**STATE OF NEW MEXICO**
**ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT**
**OIL CONSERVATION COMMISSION**

**IN THE MATTER OF PROPOSED AMENDMENTS TO 19.15.2, 19.15.5, 19.15.8, 19.15.9, AND 19.15.25 NMAC**

**CASE NO. 24683**

# NEW MEXICO OIL AND GAS ASSOCIATION AND INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO'S REPLY IN SUPPORT OF THEIR MOTION TO DISMISS

The New Mexico Oil and Gas Association ("NMOGA") and Independent Petroleum Association of New Mexico ("IPANM") (collectively, "Movants") submit this Reply in Support of their Motion to Dismiss portions of the proposed rules in the above-captioned matter. Following Movants' Motion to Dismiss, the Western Environmental Law Center ("WELC") and the Oil Conservation Division ("OCD") filed Responses opposing dismissal. This Reply addresses those Responses and explains why the challenged rule provisions must be dismissed as ultra vires and contrary to law. Specifically, the proposed changes exceed the OCD's express statutory authority.

## Summary of Reply

1. The proposed amendments to 19.15.8.9(A) NMAC impermissibly expand OCD's authority into the regulation of acquisitions and ownership transfers—matters outside its statutory jurisdiction over oil and gas operations.

2. The proposed new definition of "marginal well" and corresponding amendments to 19.15.8.9(D)–(F) NMAC unlawfully circumvent the Legislature's express $250,000 cap on blanket financial assurance under NMSA 1978, Section 70-2-14(A). Notably, neither Response attempts or offers a plausible explanation of how new financial assurance requirements advance or support the Oil Conservation Commission's ("OCC") mandate to conserve oil and gas and

prevent waste.[1]

3. The purpose clause of the New Mexico Oil and Gas Act, N.M. Stat. Ann. 1978, Sections 70-2-1 to -44 (the "Act") does not override these statutory limits, and the Commission may not rely on general rulemaking authority to expand its powers.

4. Legislative history confirms that any additional bonding categories must come from legislative amendment, not administrative rulemaking.

5. The proposed rules, if adopted, would constitute a major policy change reserved to the Legislature under the major question and non-delegation doctrines.

## I. ARGUMENT

### A. The Act Does Not Give the OCD Authority to Circumvent Substantive Provisions by Inventing the "Marginal Well."

1. The proposed rules seek to create a definition of "marginal well" and impose a new financial assurance requirement for these active wells that (a) removes them from the $250,000 blanket financial assurance option provided in Section 70-2-14(A), and (b) requires instead a "one-well" financial assurance at $150,000 "for each marginal well." WELC's proposal is not authorized by and is contrary to the unequivocal restrictions in Section 70-2-14(A).

2. Section 70-2-14(A) has been periodically modified as needed by the Legislature. For example, the 2015 amendment created a category of blanket financial assurance for "temporarily abandonment status wells" and authorized this new category of financial assurance to exceed $50,000. At the time of this amendment, the statute set financial assurance not to exceed $50,000. *See* NMSA 1978, § 70-2-14 (2015), and 70-2-12(B)(1)(2015). The 2015 amendment

[1] A simple keyword search of WELC Applicants' Response dated September 30, 2025, yielded 0 hits for waste or conserve, and "Conservation" was only used in reference to the Commission title. OCD's Response dated September 30, 2025, referenced waste in one sentence, without elaboration: "Irresponsible management transfer and abandonment of oil and gas infrastructure may cause waste, impact correlative rights, and result in contamination from nondomestic wastes which affect public health and environment." OCD Response, 8.

therefore specifically authorized a blanket financial assurance for "temporarily abandonment status wells" outside of and in addition to the blanket $50,000 general statutory restriction.

3. On the surface, Applicants' proposed financial assurance for "active wells" stays within the $250,000 limit adopted by the Legislature in 2018. In practical effect, however, Applicants' Proposed Rules circumvent the $250,000 ceiling by creating a new category of "marginal wells," thus removing these otherwise active wells from the existing, tiered blanket bonds established in the 2018 rulemaking. This new exception to the statutory restriction on financial assurance is not authorized by the Legislature and should be dismissed from the proposed rule.

4. The Legislature has instructed that operators may choose a "blanket plugging financial assurance" that shall not exceed $250,000. NMSA 1978, § 70-2-14(A). Unlike 2015 when the Legislature created a blanket bond option for "temporarily abandonment status wells" to exceed the statutory restriction on financial assurance, the Legislature has not authorized the OCC to exceed this restriction for active "marginal" wells. Under Applicants' proposal, if an operator has active wells that are considered "marginal," or when an operator's inactive plus "marginal" wells exceed 15%, then that operator is no longer allowed to keep those active wells under the $250,000 blanket financial assurance. Instead, that operator must provide one-well financial assurance in the amount of $150,000 "for each" well. This proposal exceeds the statutory restriction on financial assurance without statutory authority.

5. Further, the Legislature has not authorized the OCC to remove active wells from the $250,000 blanket financial assurance and require "one-well" financial assurance for each of these active wells. Instead, the Legislature has limited additional "one-well" financial assurance authority exceeding blanket bonding levels to a "well that has been held in a temporarily

abandoned status for more than two years." NMSA 1978, § 70-2-14(A). If, as Applicants suggest, the OCC can always require one-well financial assurance for active wells, then the $250,000 financial assurance restriction and the specific one-well financial assurance authority set forth in Section 70-2-14 have no meaning and are rendered superfluous.

**B. Operatorship is Tied to an Interest in Real Property**

6. The OCD's statutory authority under the Act does not include the authority to regulate acquisitions. Applicants' proposed addition to 19.15.8.9(A) NMAC extends OCD's authority by vesting OCD with the power to regulate acquisitions—ownership transfers—which is not within the OCD's authority under Sections 70-2-6, -11, -12(A)(1)-(8), or 12(B)(1)-(22) of the Act. Without Legislative action to grant OCD authority to regulate acquisitions, this addition fails as a matter of law.

7. NMAC 19.15.8.9(A), as currently enacted, requires operators to furnish financial assurance to the OCD in conjunction with the drilling or assumption of operations of any oil, gas, injection, or other service well, unless the well is covered by a federal bond. The rule, however, is silent on the timing of when an operator must comply and provide the bond to the OCD. Applicants inserted the following sentence into their Proposed Rules, WELC Ex. 1:

> …<u>The division shall not approve and the operator shall not proceed with any proposed drilling or acquisition until the operator has furnished the required financial assurance.</u>

8. Movants object that "acquire" and "acquisition" could be interpreted to impermissibly infringe on the real property rights of operators, in the form of delaying, impeding, or preventing the free transfer of property interests.

9. OCD argues that Movants conflate operating wells with ownership of real property interests, and argues that the proposed rules do not attempt to regulate ownership interests of oil

and gas properties, but rather only operatorship. Therefore, it argues, the term "acquisitions" does not refer to acquisition of real property interests.

10. This attempt to parse words is not only semantic, but it is contrary to how New Mexico courts have interpreted ownership interests. *See Skaggs v. Conoco, Inc.*, 1998-NMCA-061, ¶ 19, 125 N.M. 97, 957 P.2d 526 (assuming that an operating agreement conveyed an interest in realty); *Rock Island Oil & Ref. Co. v. Simmons*, 19630-NMSC-192, ¶ 11, 73 N.M. 142, 386 P.2d 239 (operating agreement affected an interest in real estate where it granted "something more than a mere right to prospect for oil and gas").

11. No provision of the Act allows OCD to regulate private assignments or acquisitions of real property interests. Transfer of operatorship is inherent in the access to those real property interests and is not "a result of oil or gas operations," which is the only authority granted to the OCD. NMSA 1978, § 70-2-6(A). Operatorship acquisition is a property transaction, not an operation. Giving OCD the authority to approve, or disapprove, acquisitions affects the operator's ability to exercise its right to the real property interest that underlays its operatorship. The Commission, therefore, is prohibited from expanding OCD's authority beyond the Legislature's express delegation of regulation of oil and gas *operations*.

12. Applicants and OCD attempt to assuage this concern by opining with respect to their mutual intent, practice, and custom, but without concrete guardrails for application of the inserted language.

13. Should the Commission determine that some regulation should be adopted, the easy fix, referenced below, is to amend Applicants' Proposed Rule to reflect its asserted mutual intent in an express format, rather than rely on fleeting promises. Specifically, the following additional bracketed language is necessary:

> **Applicability.** An operator who has drilled or acquired [operating authority], is drilling or proposes to drill or acquire [operating authority over] an oil, gas or injection or other service well within this state shall furnish a financial assurance acceptable to the division in accordance with 19.15.8.9 NMAC and in the form of an irrevocable letter of credit, plugging insurance policy or cash or surety bond running to the state of New Mexico conditioned that the well be plugged and abandoned and the location restored and remediated in compliance with commission rules, unless the well is covered by federally required financial assurance. The division shall not approve and the operator shall not proceed with any proposed drilling or acquisition [of operating authority] until the operator has furnished the required financial assurance.

**C. The Purpose Provision of the Oil and Gas Act Does Not Authorize the OCD to Act Outside of the Boundaries Enumerated in the Act's Other Provisions**

14. Finally, the OCD cites the enabling statute and argues that the Legislature "empowered OCC and OCD 'to make and enforce rules, regulations, and orders, and to do whatever may be reasonably necessary to carry out the purpose of [the Act], whether or not indicated or specified in any section [of the Act].'" While this is an accurate reading of the enabling statute, it does not authorize agencies to act outside of the boundaries of the body of the statute itself.

15. In *Morningstar Water Users Ass'n v. N.M. Pub. Util. Comm'n*, 1995-NMSC-062, 120 N.M. 579, 904 P.2d 28, the New Mexico Supreme Court emphasized that the Public Utilities Act's purpose to regulate and protect utilities under its jurisdiction did not extend the Public Utilities Commission's authority beyond statutory boundaries. There, the PUC argued it did not have jurisdiction to hear a dispute involving the plaintiff utility company because it did not meet the definition of a "public utility" under the Public Utilities Act. *Id.* ¶ 16. The utility company argued that the Public Utilities Act's purpose to regulate and protect utilities and a "notwithstanding" clause meant that the Commission did have jurisdiction and must hear the case. *Id.* ¶ 16. The Supreme Court held that despite the purpose and "notwithstanding" clauses, the Act specifically enumerated a limitation on the Commission's authority by defining "public utility"

and since the plaintiff did not meet that definition, the Commission did not have jurisdiction over the plaintiff. *Id.* ¶ 44.

16. As in *Morningstar*, here, the purpose statute does not overcome the restrictions placed on OCC's authority by the body of the Oil and Gas Act. While the Commission is authorized to do "whatever may be reasonably necessary," it is not authorized to act outside of the restrictions placed on its authority elsewhere in the Act, for example regulating acquisitions or creating new categories of wells to circumvent Legislature-created caps. *See also Marbob Energy Corp. v. N.M. Oil Conservation Comm.,* 2009-NMSC-013, ¶¶ 13-14 (where Commission argued for "broad jurisdiction and authority…to do whatever may be reasonably necessary to carry out the purpose of this act," the New Mexico Supreme Court disagreed and gave effect to the more specific statutory provision).

**D. Statutory Interpretation and Legislative History Support Dismissal**

17. Here, Applicants and OCD assure the Commission that the creation of three new additional bonding burdens comports with its fundamental policy of conservation, but without explanation. All parties agree that the Oil Conservation Commission is a creature of statute, created by the 1935 Oil and Gas Conservation Act.[2] Thus, the legislative history of the Act and the Commission's rulemaking informs as to the boundaries of the Legislature's delegation.

1. *Adoption and Amendment of the Oil and Gas Act Establishes Set Categories.*

18. New Mexico adopted the 1935 Oil and Gas Act in response to events like the Spindletop field and uncontrolled, overproduction which flooded the market to the tune of

[2] Laws of 1935, Ch. 72, §§ 1–27; *See, e.g.*, *City of New Orleans v. New Orleans Water Works Co.*, 142 U.S. 79, 89, 12 S. Ct. 142, 146, 35 L. Ed. 943 (1891) (in oldest identified use of term, characterizing municipality as "creature of the state legislature"); *see also Sturges v. Seward v. Denver & Rio Grande R.R. Co.*, 1913-NMSC-019, ¶ 14, 17 N.M. 557, 131 P. 980, 984 (identifying commissions as "creatures of statute or constitutional provisions"); *In re Chavez's Estate*, 1929-NMSC-067, ¶ 5, 34 N.M. 258, 280 P. 241, 242 ("Community property is, however, a concept foreign to the English common-law system, and with us as a creature of statute.").

$0.04/barrel in 1933, reinforcing the need to conserve oil and gas production to prevent both economic and physical waste.[3] Thus, the Commission was originally created with the fundamental purpose it has now, "the conservation of oil or gas in this State," Laws of 1935, Ch. 72 at Section 4, "...to prevent the waste prohibited by this act." *Id.* at Section 9.[4]

19. Within its initial enumerated powers, the Legislature authorized the Commission to make rules to require a bond not to exceed $10,000 for the performance of plugging dry or abandoned wells. Laws of 1935, Ch. 72, Section 10 (codified at NMSA 1935, § 97-810(1)). This delegation at $10,000 set the outer bounds of the Commission's bonding authority for the next 37 years. Then, in 1977, the Legislature enacted Section 65-3-11.2, predecessor of Section 70-2-14, which provided for three categories of bonding: (i) a blanket bond, (ii) a single well bond, and (iii) "in addition to the blanket plugging bond," a single well bond for wells in TA status more than two years. The same amendment increased the cap set under the OCC's enumeration of powers provision, NMSA 1953, § 65-3-11(1), from $10,000 to $50,000. Here, use of the phrase "in addition to" must be read in context with the remainder of Section 65-3-11.2 to only authorize bonding in excess of $50,000 on a single-well basis for wells in TA status for more than two years, because the blanket plugging bond covered all other wells.[5]

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[3] In furtherance of a larger conservation effort, New Mexico also joined the Interstate Oil and Gas Compact in 1935. *See* §§ 97-901 to -909 (NMSA 1938) (joining Oklahoma, California, Texas, Arkansas, Colorado, Kansas, Michigan, and Illinois).

[4] Waste, defined under Section 2, included underground waste resulting from dissipation of reservoir energy or lost recovery, loss of beneficial use of gas, crude, or any petroleum product, and production in excess of reasonable market demand. *See* Laws of 1935, Ch. 72, Section 2(a), (b), & (c).

[5] Putting this bonding scheme into practice, an operator could bond any number of wells in the New Mexico under the $50,000 blanket bond but may have been required to single-well bond each well in TA status more than 2 years. For example, using $10,000 as estimated the single well bond cost ($5,000 plus $1/ft @ 5000' MD):

| # WELLS | # TA < 2YRS WELLS | # TA>2YRS WELLS | TOTAL BONDING |
|---|---|---|---|
| 2 | 1 | 1 | $40,000 |
| 5 | 3 | 0 | $50,000 Blanket |
| 15 | 3 | 2 | $70,000 |

20. A 2008 rulemaking repealed 19.15.3.101 NMAC, but kept a blanket bond of $50,000 "covering all oil, gas or service wells drilled, acquired, or operated in this state," and established one-well financial assurance levels on a footage and county basis.[6] Only when the Legislature carved out an additional exception for a blanket TA bonds under HB383/SB442[7] did the Commission then adopt NMAC 19.15.8.9(D)(5),[8] setting forth blanket bonding levels for TA wells. Following that change, no effort was made by the Division to establish new categories of financial assurance under Section 70-2-14 until 2018 when the Legislature again directed an increase of the blanket plugging bond to $250,000. *See* Laws 2018, Ch. 16, § 2 (SB189).[9] Under this guidance, the Commission reorganized the three categories of bonding under Section 70-2-14 (2018) for blanket plugging, blanket TA, and single well into "active" and "inactive" groups and created tiers under the statutorily defined blanket bonding options. *See* NMAC 19.15.8.9(C) & (D). However, inactive wells were defined to include only TA wells. Commission deliberations during the ensuing 2018 rulemaking demonstrate that Commissioners were especially cognizant of their duty to prevent waste and protect correlative rights while following the direction of the Legislature to increase bonding levels within the statutory cap.[10]

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[6] See NM Register Vol. XIX, No. 22 (Dec. 1, 2008) at 1100, at NMAC 19.15.8.9(D)(1) & (2).

[7] *See* Exhibit A, Timeline of Historical Changes to Bonding Requirement in the New Mexico Oil & Gas Act at 3 (inserting after blanket bond of $50,000 'except for a blanket plugging financial assurance for temporarily abandoned status wells, which shall be set by rule at amounts greater than fifty thousand dollars ($50,000)," and making single-well bonds for TA wells greater than 2 years mandatory)

[8] *See* NM Register Vol. XXVI, Issue 12 (June 30, 2015) at 539 (amending 19.15.8.9(C) to follow the Legislature's directive and to read: "The division accepts [~~two~~] three forms of financial assurance: a one-well financial assurance that covers a single well, [~~and~~] a blanket financial assurance that covers multiple wells, and a blanket plugging financial assurance for wells in temporary abandoned status."). Note, no fourth form was required, because a single well bond already addressed the requirement for wells in TA status more than 2 years.

[9] *See* Ex. A at 3-4.

[10] *See*, *e.g.*, Transcript of July 20, 2018 in Case No. 16078, 16:19-17:25 (noting "quandary" Commission faced in balancing the right of small operators, the "backbone" of New Mexico production and a critical industry component with increasing bonding levels), *see also id.*, 27:24-25:3 (expressing concern that increasing bonding levels could orphan more wells); 43:19-25 (increasing bonds to put operators out of business compounds the problem); 50:4-10 (acknowledging outer limit of rule change to $250,000).

21. Thus, the novel argument advanced by WELC Applicants and the OCD that the Legislature's directive to establish "categories" is not bound by the enumerated categories set forth in Section 70-2-14 ignores the historical circumstances of adoption and evolution of both the Act and its corresponding regulations regarding financial assurance, which have followed each other in lockstep for almost a century. If the Commission were to adopt the WELC Applicants' and OCD recommendation to now carve out additional categories of financial assurance for active wells already secured by the blanket plugging bond, such a decision marks a dangerous departure with precedent and steps outside the bounds of the Commission's jurisdiction.

2. *Single Well Bonding for Marginal Wells and All Wells of Operators Exceeding the 15% Threshold Contradicts the Purpose and Construction of Section 70-2-14.*

22. WELC and OCD assert that the Commission may adopt any number of single-well bonds for "certain" wells, relying on the catchall provision to consider "such other factors as the oil conservation division deems relevant," to the complete exclusion of other factors. *But see* NMSA 1978, § 70-2-14 ("division shall consider the depth of the well involved, the length of time since the well was produced, [and] the cost of plugging similar wells.") Specific to the single-well bonds that WELC and OCD now urge the Commission to adopt for marginal wells and all wells in excess of the 15% threshold, the "one-well plugging financial assurance" is to be set in an amount to pay the cost of plugging the well covered by the financial assurance. *Id.* There is clear intent within the express language of the bonding requirement statute that one-well plugging bonds are to be tied to the characteristics of the well, which is why 19.15.8.9(C)(1) and D(1) NMAC currently set one-well financial assurance levels according to the depth of the well. New Mexico is not alone in this, nearly every other oil or gas producing state links single-well financial assurance and well characteristics.[11] The $150,000 proposed by WELC and OCD is not tied to the

[11]*See*, *e.g.*, Al. Admin Code 400-1-1-.01 thru 400-7-1-.23. Exception producing states with set single well bonds

depth of each marginal well, nor the cost of plugging similar wells to the well covered by the single-well bond.

23. WELC is partially correct in paraphrasing NMOGA and IPANM's objection to the three (3) new categories of one-well bonding: "[O]ne well financial assurances* that cumulatively amount to more than $250,000 violate the statutory cap on blanket bonding." WELC Response, 8. Under Section 70-2-14, requiring one-well financial assurance *for any well that is not in TA status, *e.g.*, marginal wells or 85% of an operator's otherwise active wells* violates the $250,000 blanket plugging bond. This is because the Act contemplates only three (3) forms of bonds: (1) a single well bond based on footage for active or individual TA wells, (2) a blanket plugging bond not to exceed $250,000 covering all oil, gas or service wells, and (3) a blanket plugging bond for TA wells in amounts greater than $50,000. Any other interpretation, especially as urged by WELC that there is **"no cap"** on single-well bonds, WELC Response, 9 (emphasis in original), reads the blanket plugging bond out of existence, especially under the Proposed Rules which sweep 85% of an operator's active wells into the same single-well bond established by the Legislature as additional bonding for 2-year+ TA wells only, in excess of the then $50,000 cap. Alternately, while an operator may opt to single-well bond all active wells, the absence of a cap does not equate to permission or authority to impose more bonding for any well other than in TA status.

24. Under the rules of statutory interpretation and construction followed by New Mexico Courts, for which agency determinations are afforded little deference, if any,[12] the first

consist of Alaska ($400,000 1-5 wells); Arkansas ($3,000); North Dakota ($50,000); Ohio ($5,000); West Virginia ($5,000). Summary: State Oil and Gas Bonding Requirements, *National Conference of State Legislatures* (Jan. 26, 2022), available at https://www.ncsl.org/energy/state-oil-and-gas-bonding-requirements (last visited 10/3/2025).

[12] *See Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, ¶ 7, 146 N.M. 24, 28, 206 P.3d 135, 139 ("Nothing in the [Oil and Gas] Act requires the Commissioners to be trained in matters of statutory interpretation. Thus, we conclude that statutory construction is not within the Commission's specialized expertise."); *see also Pub. Serv. Co. of N.M. v. N.M. Pub. Util. Comm'n,* 1999–NMSC–040, ¶ 14, 128 N.M. 309, 992 P.2d 860 (statutory construction not a matter within agency expertise); *see also N.M. Indus. Energy Consumers v. N.M. Pub.*

principle is to discern and effectuate legislative intent, aided by canons of construction: plain language, ordinary meaning, and to give effect to every provision. *PRC,* 2007-NMSC-053, ¶ 20. Considering the history and background of the Act, "All parts of a statute must be read together to ascertain legislative intent, and we are to read the statute in its entirety and construe each part in connection with every other part to produce a harmonious whole," thereby rendering "no part of the statute...surplusage or superfluous." *Amdor v. Grisham*, S-1-SC-40105, ¶ 30, 2025 WL 718840, at *7 (N.M. Mar. 6, 2025) (slip. op.) (quoting *Grisham v. Romero*, 2021-NMSC-009, ¶¶ 23, 27 483 P.3d 545).

25. The effect of the blanket plugging bond "not to exceed" a set limit in Section 70-2-14(A) facilitates protection of the correlative rights of lessees and operators by providing certainty to an operator in the capital and operating expenses associated with a producing well. Stripping Section 70-2-14(A)'s blanket plugging bond of this meaning controverts decades of industry and agency interpretation, understanding, and custom. *See High Ridge Hinkle Joint Venture v. City of Albuquerque,* 1994-NMCA-139, ¶ 45, 119 N.M. 29, 42, 888 P.2d 475, 488 ("Courts generally show little deference to an agency's interpretation of its own statute when the interpretation is an unexplained reversal of a previous interpretation or consistent practice….[which] raises genuine doubts regarding whether the Council decision reflected an interpretation…as opposed to a policy decision…."). Moreover, reading out the ordinary meaning of a blanket plugging bond covering all wells not in TA status leads to an absurd interpretation of the Section as a whole and renders the term a nullity, which is at odds with the fundamental purpose and twin duties of the Commission.

*Regul. Comm'n*, 2007-NMSC-053, ¶ 19, 142 N.M. 533, 539–40, 168 P.3d 105, 111–12 (court "troubled" by "legal conclusions of Commission staff with respect to matters of statutory construction as well as the Commission's apparent reliance on those legal conclusions….").

3. *The Nondeletion and Major Question Doctrines Warrant Dismissal of Applicants' Marginal Well Rule Proposals*

26. The Act endows the Commission with many powers, but setting policy is not one. The decision to indiscriminately target operators of lower-producing wells, described by former members of this Commission as the "backbone" of the industry, must be one that comes from the Legislature. Moreover, the Legislature has already voiced significant concern regarding the drastic economic effect worked by exponentially increasing bonding levels. *See* Committee Hearings on HB 133, January 25 & 31, 2024, *see also* Legislative Finance Committee Meeting held June 24, 2025. New Mexico law is unequivocal on this issue: "An agency may not create a regulation that exceeds its statutory authority." *Gonzales v. N.M. Educ. Ret. Bd.,* 1990-NMSC-024, ¶ 11. Nor may the Legislature delegate its power to determine the law. *Unite N.M. v. Oliver*, 2019-NMSC-009, ¶ 8, 438 P.3d 343. Where an agency's jurisdiction and authority are set by statute and the agency is charged with carrying out the policy of the Oil and Gas Act, determining the parameters of that policy are reserved to the Legislature. *Dona Ana Mut. Domestic Water Consumers Ass'n v. N.M. Pub. Reg. Comm'n*, 2006-NMSC-032, ¶ 7, 140 N.M. 6, 9, 139 P.3d 166, 169; *State ex rel. Egolf v. N.M. Pub. Reg. Comm'n*, 2020-NMSC-018, ¶ 33, 476 P.3d 896.

27. Here, neither the WELC Applicants nor OCD has responded to nor distinguished the facts or holding of *Marbob* from the statutory construction question at issue in dismissing the Proposed Rules. There, the New Mexico Supreme Court applied the canon of specific over general to hold that the Commission had exceeded its boundaries of authority in adopting rules to effectuate fines and penalties. Here, where the general authority to "establish categories by notice and hearing" is limited by the specific financial assurances enumerated by the Legislature. *Compare* Part I.C & I.D above, *to Marbob*, 2009-NMSC-013, ¶ 24. As outdated or insufficient as WELC Applicants and the OCD may claim NMAC 19.15.8.9 to be, "any enhancements to the

Commission's authority must come from the same legislative body that created the Commission in the first instance." *Id.*, ¶ 23.

## II. CONCLUSION

28. For the reasons set forth above, NMOGA and IPANM respectfully request that WELC's proposed amendments to 19.15.2.7(M)(2), 19.15.8.9(A), (D), (E), and (F) NMAC be dismissed from Case No. 24683. Each Proposed Rule suffers from the same fundamental flaw: they extend beyond the authority the Legislature has expressly delegated to the OCD and the Commission.

29. The proposed amendment to 19.15.8.9(A) NMAC improperly expands the Division's jurisdiction from regulating operations into regulating private acquisitions—an authority the Oil and Gas Act, the Commission's enabling authority—does not confer.

30. The proposed amendments to 19.15.8.9(D), (E), and (F) NMAC, together with the addition of 19.15.2.7(M)(2) NMAC, impermissibly circumvent the Legislature's clear command that blanket financial assurance for active wells may not exceed $250,000.

31. Applicants' amendments fail as a matter of law, and the record of hearing will not heal these deficiencies. Accordingly, because Applicants' Proposed Rules exceed the Division's statutory authority and undermine the balance the Legislature deliberately struck, NMOGA and IPANM respectfully request that the Commission dismiss WELC's proposed language in its entirety.

Respectfully submitted,

DATED: October 10, 2025.

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TIMELINE OF HISTORICAL CHANGES TO BONDING REQUIREMENT IN THE NEW MEXICO OIL & GAS ACT

**1935**

**NMSA 1929, § 97-810 (1935):** Included in the power given to the commission is the authority: to collect data….Apart from any authority, express or implied, elsewhere given to or existing in the commission by virtue of this act or the statutes of this state, the commission is hereby authorized to make rules, regulation, and orders for the purposes and with the respect to the subject matter stated herein, viz: (1) to require dry or abandoned wells to be plugged in such way as to confine the crude petroleum oil, natural gas, and water in the strata in which they are found, and to prevent them from escaping into other strata; the commission may require a bond of not to exceed ten thousand ($10,000.00) dollars conditioned for the performance of such regulations.

**1977**

**NMSA 1953, § 65-3-11 (1977):** Included in the power given to the commission is the authority: to collect data….Apart from any authority, express or implied, elsewhere given to or existing in the commission by virtue of this act or the statutes of this state, the commission is hereby authorized to make rules, regulation, and orders for the purposes and with the respect to the subject matter stated herein, viz: (1) to require dry or abandoned wells to be plugged in such way as to confine the crude petroleum oil, natural gas, and water in the strata in which they are found, and to prevent them from escaping into other strata; the commission ~~may~~ shall require a corporate surety bond in a sum ~~of~~ not to exceed ~~ten~~ fifty thousand ($~~1~~50,000.00) dollars conditioned for the performance of such regulations.

**NMSA 1953, § 65-3-11.2(A) (1977)** Each person, firm, corporation or association who operates any oil, gas, or service well within the state shall, as a condition precedent to drilling or producing the well, furnish a surety bond to the oil conservation commission running to the benefit to the state of New Mexico, conditioned that the well be plugged and abandoned in compliance with the rules and regulations of the oil conservation commission. The oil conservation commission shall establish categories of surety bonds after notice and hearing. Such categories shall include a blanket plugging bond in an amount not to exceed fifty thousand dollars ($50,000) and one-well plugging bonds in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by each bond. In establishing categories of bonds, the oil conservation commission shall consider the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells and such other factors as the oil conservation commission deems relevant. In addition to the blanket plugging bond, the oil conservation commission may require a one-well bond on any well that has been held in temporarily abandoned status for more than two years.

**1986**

**NMSA 1978, § 70-2-12 (1986)**

B. Apart from any authority, express or implied, elsewhere given to or existing in the ~~commission~~ oil conservation division by virtue of ~~this act~~ the Oil and Gas Act or the statutes of this state, the ~~commission~~ division is ~~hereby~~ authorized to make rules, regulations and orders for the purposes and with respect to the subject matter stated ~~herein~~ in this subsection:

(1) to require dry or abandoned wells to be plugged in a way to confine the crude petroleum oil, natural gas or water in the strata in which ~~they are~~ it is found and to prevent ~~them~~ it from escaping into other strata; ~~the commission may~~ the division shall require a ~~corporate~~ cash or surety bond of not to exceed fifty thousand ($50,000.00) dollars conditioned for the performance of such regulations.

**NMSA 1978, § 70-2-14 (1986)**

A. Each person, firm, corporation or association who operates any oil, gas or service well within the state shall, as a condition precedent to drilling or producing the well, furnish a cash or surety ~~surety~~ bond to the oil conservation division running to the benefit of the state and conditioned that the well be plugged and abandoned in compliance with the rules and regulations of the oil conservation division. The oil conservation division shall establish categories of ~~surety~~ bonds after notice and hearing. Such categories shall include a blanket plugging bond in an amount not to exceed fifty thousand dollars ($50,000) and one-well plugging bonds in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by each bond. In establishing categories of bonds, the oil conservation division shall consider the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells and such other factors as the oil conservation division deems relevant. In addition to the blanket plugging bond, the oil conservation division may require a one-well bond on any well that has been held in a temporarily abandoned status for more than two years. All bonds shall remain in force and effect until released by the oil conservation division. The oil conservation division shall release a bond when it is satisfied the conditions of the bond have been fully performed.

**2015**

**NMSA 1978, § 70-2-12(B)(1) (2015)** B. Apart from any authority, express or implied, elsewhere given to or existing in the oil conservation division by virtue of the Oil and Gas Act or the statutes of this state, the division is authorized to make rules, regulations and orders for the purposes and with respect to the subject matter stated in this subsection:

(1) to require dry or abandoned wells to be plugged in a way to confine the crude petroleum oil, natural gas or water in the strata in which it is found and to prevent it from escaping into other

strata; the division shall require a cash or surety bond in a sum not to exceed fifty thousand dollars ($50,000) conditioned for the performance of such regulations;

**NMSA 1978, § 70-2-14 (2015):** The oil conservation division shall establish categories of financial assurance after notice and hearing. Such categories shall include a blanket plugging financial assurance in an amount not to exceed fifty thousand dollars ($50,000), except for a blanket plugging financial assurance for temporarily abandoned status wells, which shall be set by rule at amounts greater than fifty thousand dollars ($50,000), and one-well plugging financial assurance in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by ~~each bond~~ the financial assurance. In establishing categories of financial assurance, the oil conservation division shall consider the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells and such other factors as the oil conservation division deems relevant. The oil conservation division shall ~~may~~ require a one-well financial assurance on any well that has been held in a temporarily abandoned status for more than two years or, at the election of the operator, may allow an operator to increase its blanket plugging financial assurance to cover wells held in temporarily abandoned status.

**2018**

**NMSA 1978, § 70-2-12 (2018)** B. ~~Apart from any authority, express or implied, elsewhere given to or existing in~~ The oil conservation division ~~by virtue of the Oil and Gas Act or the statutes of this state, the division is authorized to~~ may make rules ~~, regulations,~~ and orders for the purposes and with respect to the subject matter stated in this subsection:

(1) to require dry or abandoned wells to be plugged in a way so as to confine the crude petroleum oil, natural gas or water in the strata in which it is found and to prevent it from escaping into other strata; pursuant to Section 70-2-14 NMSA 1978,~~)~~ the division shall require ~~a cash or surety bond in a sum not to exceed fifty thousand dollars ($50,000 )~~ financial assurance conditioned for the performance of ~~such regulations~~ the rules;

**NMSA 1978, § 70-2-14 (2018)**: The oil conservation division shall establish categories of financial assurance after notice and hearing. Such categories shall include a blanket plugging financial assurance, which shall be set by rule in an amount not to exceed ~~fifty thousand dollars ($50,000)~~ two hundred fifty thousand dollars ($250,000), ~~except for~~ a blanket plugging financial assurance for temporarily abandoned status wells, which shall be set by rule at amounts greater than fifty thousand dollars ($50,000), and one-well plugging financial assurance in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by the financial assurance. In establishing categories of financial assurance, the oil conservation division shall consider the depth of the well involved, the length of time since the well was produced, the cost of plugging similar

wells and such other factors as the oil conservation division deems relevant. The oil conservation division shall require a one-well financial assurance on any well that has been held in a temporarily abandoned status for more than two years or, at the election of the operator, may allow an operator to increase its blanket plugging financial assurance to cover wells held in temporarily abandoned status.