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

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

WESTERN ENVIRONMENTAL LAW CENTER, ET AL. **CASE NO. 24683**

APPLICANTS.

NEW MEXICO OIL AND GAS ASSOCIATION'S SUPPLEMENTAL BRIEF ON THE IMPACT OF HOUSE BILL 80

Pursuant to the Hearing Officer's Orders of March 17 and March 30, 2026, the New Mexico Oil and Gas Association ("NMOGA") submits this Supplemental Brief addressing the impact of House Bill 80 ("HB 80"),[1] on the Applicants' proposed amendments to the Oil Conservation Division's ("OCD" or "Division") regulations ("Proposed Rules/Amendments"), and on Oil Conservation Commission's ("OCC" or "Commission") authority to adopt them. NMOGA hereby submits the following five approved pages of supplemental legal briefing.[2] NMOGA's position is not that HB 80 eliminates the need for financial assurance ("FA"), it is more precise: the one-well FA amount required by the New Mexico Oil and Gas Act, NMSA 1978, §§ 70-2-1, 70-2-14(A) ("OGAct"), must be "sufficient to reasonably pay the cost of plugging the wells covered" by the FA and calibrated to actual plugging costs, not to the inflated costs OCD incurs when it plugs wells years after they should have been plugged, using a statewide price agreement that limits competition and drives up expenses. Because HB 80 legislatively funds the funding gap identified

[1] H.B. 80, Oil and Gas Reclamation Fund Enhancement Act, 2026 Leg., Budget Sess. (N.M. Mar. 9, 2026) ("HB 80").
[2] The Hearing Officer's Orders of March 17 and March 30, 2026 granted in part NMOGA and IPANM's (the "Industry Associations") *Expedited Joint Motion to Reopen the Evidentiary Record*, directing all parties to address the impact of HB 80 on the Proposed Rules in their Closing Documents with five additional pages of separate supplemental briefing approved. NMOGA hereby adopts and incorporates by reference the contents of NMOGA and IPANM's *Expedited Joint Motion*, and preserves its objections to the denial of the Industry Associations' other requested relief.

by the Legislative Finance Committee ("LFC") in its 2025 *Policy Spotlight: Orphaned Wells*, Applicants Ex. 4/OCD Ex. 18 ("LFC Report"), on which the Proposed Rules are based, the underlying factual and statutory context has been fundamentally altered and must be re-evaluated.

A. HB 80 Changes the Factual Predicate Upon Which the Proposed Rules Rest

HB 80 amends the Oil and Gas Reclamation Fund ("Rec. Fund" or "Fund"), established in accordance with NMSA 1978, § 70-2-37("Rec. Fund Statute"), to make it a nonreverting fund in the State Treasury, and amends the operator Conservation Tax distribution formula under NMSA 1978, § 7-1-6.21, to direct those revenues to the Fund on an accelerated and substantially increased schedule: 50% beginning July 1, 2027; 75% beginning July 1, 2028; 100% beginning July 1, 2029 through June 30, 2037; and 50% beginning July 1, 2037. *NMOGA Closing Brief, Part III.E.* HB 80 directs those Tax revenues to the Fund on an accelerated schedule, resulting in dedicated industry funding sufficient to retire the State's identified orphan well liability.[3] The new $1.23 billion in funding dedicated by the Rec. Fund Statute is industry-funded and provided for the precise problem this rulemaking was designed to address.[4] Improved efficiency and efficacy of the State's ability to plug wells will accompany HB80's funding infusion.

Applicants' central factual premise rests on the insufficiency of the Rec. Fund.[5] Applicants expert Mr. Peltz admitted in his rebuttal testimony in the record that "[t]here are other ways to do this than what we have proposed" explicitly including "a jumbo reclamation fund" funded by the Legislature and "[a]bsent that, Applicants are left with the various forms and mechanisms of FA allowed under the [OGAct]."[6] The Legislature has now done precisely what Mr. Peltz

[3] General Fund Consensus Revenue Estimate, December 2025, pp. 20–21.
[4] N.M. Dep't of Finance & Admin., Fund Balance Projection (FY2026), p. 104 (reporting Rec. Fund balance of $72.2 million as of July 2025).
[5] Applicants Ex. 15 (Applicants' expert Mr. Morgan pre-filed direct testimony) at 65:17-21 ("There's simply not enough money in the Reclamation Fund to cover the shortfall between existing FA levels and the current and anticipated inventory of orphaned wells.").
[6] Applicants Ex. 82 (Mr. Peltz pre-filed rebuttal testimony) at 1178:14-20.

acknowledged would render the Proposed Rules unnecessary. HB 80 is not just a new fact; it is a new legislative choice about the proper fiscal mechanism for addressing abandoned-well liabilities. This Commission cannot proceed as though that has not happened.

B. Section 70-2-14(E) Does Not Require Full-Cost Financial Assurance, and the Record Shows OCD Does Not Treat FA as a First-Line Funding Source

Applicants argue that Section 70-2-14(E) renders HB 80 irrelevant because the Legislature made operator FA the mandatory first line of defense for plugging costs. NMOGA does not dispute that FA precedes the Rec. Fund in the statutory scheme. What Applicants misconstrue is the consequence of that sequencing. Section 70-2-14(E) does not require FA to be set at OCD's ultimate public-plugging cost, nor does it require exhaustion of FA before the Reclamation Fund may be used in practice. As a matter of agency practice, OCD does not treat FA as a first-call funding source. Deputy Director Powell testified that OCD rarely, if ever, redeems operator plugging bonds and that forfeited FA is not a meaningful funding source for the Orphan Well Program.[7] EMNRD's Deputy Secretary likewise testified to the Legislature in 2025 that OCD has "barely pursued" FA because collections are minimal.[8] The bond form itself confirms this reality: it functions as a reimbursement mechanism, callable only after OCD has expended public funds to plug a well. FA is not used to prevent public expenditure; it is used, at most, to recover costs after the fact.

Nor does Section 70-2-14(E) impose a rigid exhaustion requirement as a matter of law. That provision authorizes OCD to recover costs incurred after funds have been expended from the Reclamation Fund. The parallel indemnification authority in Section 70-2-37(B), which expressly contemplates situations in which plugging costs "are paid from the oil and gas reclamation fund,"

[7] Tr. 84:2-15 (Oct. 27, 2025) (OCD Deputy Director Powell); *see also* Tr. 84:2–15 (Oct. 24, 2025) (Chief Romero).
[8] IPANM PHS Ex. D at 7:5-12 (IPANM Director Winchester pre-filed direct testimony, quoting Deputy Shelton).

confirms that the Legislature adopted an advance-and-recover structure, not a mandatory FA-first enforcement sequence.[9] Applicants' reliance on Section 70-2-14(E) to justify full-cost bonding is therefore circular. OCD asserts that existing FA amounts are insufficient because OCD does not collect them. But bond sufficiency cannot be evaluated against an enforcement baseline of zero.

The Legislature has now fully capitalized the statutory backstop through HB 80, and a bond calibrated to OCD's inflated public-plugging expenditures is not a reasonable "first line of defense." It is a duplicative hedge against costs the Legislature has already chosen to fund.

C. HB 80 Requires Recalibration of Section 70-2-14(A) "Reasonably Pay" Standard

Section 70-2-14(A) requires "one-well" FA in amounts "sufficient to reasonably pay the cost of plugging the wells covered by the financial assurance." Whether the $150,000 flat-rate one-well amount satisfies that standard is a statutory interpretation question that New Mexico courts review *de novo*—the Commission's characterization receives no deference.[10] As established in the record and NMOGA's Closing Brief, the $150,000 figure reflects OCD's higher public-plugging costs, not industry's reasonable plugging costs. *NMOGA Closing Brief, Parts I.G.2, III.H, IV.C.6.* A bond set to OCD's costs inflated by lack of enforcement of OCD's own regulations, inflated overhead, and a statewide price agreement that constrains competition is not "reasonable" under Section 70-2-14(A); it reflects avoidable public inefficiency rather than the cost of timely operator compliance set to what OCD spends under addressable circumstances, *id.* at *I.G.2, III.E-G, IV.C.6*.

HB 80 makes this mismatch dispositive. By dedicating $1.23 billion in industry-funded revenue to target precisely those public plugging costs, applicants used to calibrate the $150,000 bond. HB 80 eliminates the evidentiary basis for calibrating one-well FA to OCD's public-

[9] NMSA 1978, § 70-2-37(B) (authorizing OCD/EMNRD to bring suit for indemnification "[w]hen the costs of plugging a well or restoring and remediating well sites and associated production facilities are paid from the oil and gas reclamation fund" under the Rec. Fund Statute).
[10] *Marbob Energy Corp. v. N.M. Oil Conservation Comm'n,* 2009-NMSC-013, ¶ 7, 146 N.M. 24.

plugging cost by providing HB 80's dedicated $1.23 billion fund targeted at precisely those costs; the Legislature eliminated the factual premise upon which Applicants rely to size one-well FA to OCD's expenditures. Post-HB 80, setting FA at OCD's public-plugging cost is not a reasonable first-line safeguard. It is an impermissible duplication of a liability the Legislature has already chosen to address. Because the Commission's interpretation of "reasonably pay" receives no deference, failure to evaluate HB 80's impact on that standard renders adoption of the Proposed Rules arbitrary and capricious.[11]

CONCLUSION

HB 80 materially alters the factual and statutory basis for the Proposed Rules. The Commission cannot adopt the Proposed Rules without addressing both. NMOGA respectfully requests that the Commission: (1) find that HB 80 materially alters the factual predicate of the Proposed Rules and requires recalibration of the "reasonably pay" standard under Section 70-2-14(A) of the OGAct; (2) find that OCD's demonstrated failure to follow the Section 70-2-14(E) enforcement sequence precludes any finding that existing bond levels are demonstrably inadequate; and (3) reject the $150,000 one-well FA requirement and the associated new *ultra vires* one-well FA categories for the reasons set forth herein and in NMOGA's concurrently filed *Closing Brief*.

[11] *Atlixco Coalition v. Maggiore,* 1998-NMCA-134, 125 N.M. 786, 965 P.2d 370 (holding agency action that entirely omits consideration of relevant factors is arbitrary and capricious).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing NMOGA Supplemental Brief on the Impact of House Bill 80 was served to counsel of record by electronic mail this 3rd day of April 2026, as follows:

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