

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

**IN THE MATTER OF APPLICATION  
OF THE OIL CONSERVATION  
DIVISION TO ADOPT 19.15.41 NMAC,  
19.15.42 NMAC, AND 19.15.43 NMAC**

**CASE NO. 25875**

**MOTION TO DISMISS APPLICATION TO ADOPT 19.15.41 NMAC, 19.15.42 NMAC,  
AND 19.15.43 NMAC FOR LACK OF AUTHORITY AND REQUEST FOR STAY**

**PRELIMINARY STATEMENT**

The Center for Biological Diversity, Diné C.A.R.E., Earthworks, San Juan Citizens Alliance, Sierra Club Rio Grande Chapter, Tó Nizhóní Ání, Western Environmental Law Center, and WildEarth Guardians hereby move the Oil Conservation Commission (“Commission”) to dismiss the *Application of Oil Conservation Division to Adopt 19.15.41 NMAC, 19.15.42 NMAC, 19.15.43 NMAC* (“Application”) seeking to create a program to permit and regulate Class VI carbon dioxide injection wells because neither the Commission nor the Oil Conservation Division (“Division” or “Applicant”) has authority to promulgate the proposed rules.

The Commission and Division are restricted to the statutory authority granted to them by the Legislature and neither the New Mexico Oil and Gas Act, NMSA 1978, §§ 70-2-1 – 70-2-39 (“Oil and Gas Act”), nor the Geologic Carbon Dioxide Storage Stewardship Act, NMSA 1978, §§ 74-14-1 – 74-14-7 (“Stewardship Act”), confer the necessary authority to promulgate the rules in the Application. The Oil and Gas Act’s fundamental purpose and grants of authority concern the conservation of oil and gas and protecting correlative rights; the act does not expressly or impliedly provide authority to regulate Class VI wells. NMSA 1978, §§ 70-2-6; 70-2-11. The Stewardship Act allows the Commission to execute its discrete and limited mandate to establish a

fee schedule for the geologic carbon dioxide long-term storage stewardship fund (“Stewardship Fund”) but nothing more. NMSA 1978, § 74-14-5(A). Further, the Stewardship Act grants the Division the limited authority to: 1) administer the Stewardship Fund, 2) issue certificates of closure and completion to Class VI facility operators after carbon dioxide injection ceases, and 3) regulate post-closure activities for Class VI projects. *See* NMSA 1978, §§ 74-14-1 – 74-14-7.

Neither statute authorizes the expansive regulatory scheme found in Applicant’s proposed rules and neither agency has authority to promulgate them. Any Class VI rule promulgated by this Commission that goes beyond establishing a fee schedule for the Stewardship Fund exceeds the Commission’s statutory authority and will necessarily be arbitrary, an abuse of discretion, and not otherwise in accordance with the law. Accordingly, the Commission should dismiss the Application. Pending disposition of this motion, Movants request a stay of all deadlines in this matter to prevent the unnecessary expenditure of resources by the Commission and all parties.

### **BACKGROUND**

1. The federal Underground Injection Control (“UIC”) program created under the federal Safe Drinking Water Act (“SDWA”) regulates injection wells to protect underground sources of drinking water. 42 U.S.C. § 300f *et seq.* By default, the United States Environmental Protection Agency (“EPA”) regulates all classes of injection well under the SDWA. *See* 42 U.S.C. § 300h.

2. However, upon approval by the EPA, states and tribal nations may assume primary permitting and enforcement authority over aspects of the UIC program for specific well classes—this is referred to as the state obtaining “primacy” over such a program under the SDWA. *Id.*

3. Currently, the Class VI UIC program in New Mexico is administered by EPA, Region 6. The state has not been granted primacy over this class of wells, which are used for long-term underground storage of carbon dioxide. *E.g.*, 40 C.F.R. § 144.3.

4. As part of the process to obtain Class VI primacy, the State of New Mexico must demonstrate to EPA that, among other things, the state has in place an adequate legal framework to regulate Class VI wells and that its agencies have sufficient authority to ensure compliance. 40 C.F.R. § 145.

5. This legal framework may include both statutes enacted and regulations promulgated under state law.

6. In the New Mexico Legislature's 2025 Regular Session, two complementary bills concerning different aspects of regulating carbon dioxide capture and storage were introduced, H.B. 457 and H.B. 458. H.B. 457 concerned broad regulatory authority over Class VI wells, including a permitting regime, technical requirements, and reporting obligations. H.B. 458, as outlined in detail below, was limited to the closure procedures for Class VI wells, ongoing state responsibility for those wells, and creating a fund to support these efforts.

7. Ultimately, only one of those bills, H.B. 458—the Stewardship Act—was signed into law. *See* NMSA 1978, §§ 74-14-1 – 74-14-7. In H.B. 457, the Legislature considered and rejected the comprehensive Class VI regulatory framework. Because H.B. 457 did not pass, it may not be relied upon for this rulemaking. *See, e.g., State v. Vest*, 2021-NMSC-020, ¶ 34 (“Further, [in interpreting legislative intent] we do not analyze the language of bills that died in committee and never became law or bills that were vetoed by the Governor.”).

8. On December 22, 2025, Applicant Oil Conservation Division filed its *Application of Oil Conservation Division to Adopt 19.15.41 NMAC, 19.15.42 NMAC, 19.15.43 NMAC* (“Application”), initiating the matter presently before this Commission.

9. The Application is “intended to establish the regulatory framework necessary for the State [...] to obtain primacy for the Class VI Underground Injection Control (“UIC”) program.” (Application at ¶ 1). The Application’s proposed rules lay out an extensive Class VI regulatory regime that would allow Applicant to, among other things: grant, modify, and terminate Class VI permits; establish siting and characterization guidelines; institute record-keeping requirements; add permit conditions; dictate financial responsibility requirements; require periodic monitoring; and set technical specifications. *See* Application, proposed 19.15.41 NMAC, 19.15.42 NMAC, 19.15.43 NMAC.

10. The Division and Commission are state administrative bodies that must operate within the statutory authority the Legislature has granted them when they promulgate rules. *E.g., Rivas v. Bd. of Cosmetologists*, 1984-NMSC-076, ¶ 3; 101 N.M. 592.

11. Applicant’s proposed 19.15.41 NMAC, 19.15.42 NMAC, and 19.15.43 NMAC identify the Commission as the issuing agency for the rules and state that they are “adopted pursuant to the Geologic Carbon Dioxide Storage Stewardship Act, Sections 74-14-1 through 74-14-7 and the Oil and Gas Act, Section 70-2-6, 70-2-11, and Paragraph (15) of Subsection B of Section 70-2-12.” Application, Ex. 2A, 19.15.41.3 NMAC; Ex. 2B, 19.15.42.3 NMAC; Ex. 2C, 19.15.43.3 NMAC.

12. However, neither of those statutes—nor any other statute—provides the requisite authority to adopt the expansive rules Applicant proposes to the Commission.

13. Under the Oil and Gas Act, the Commission and the Division have concurrent authority to prevent the waste of oil and gas and to protect correlative rights of mineral owners. NMSA 1978, §§ 70-2-6(B); 70-2-11(B). This authority is unrelated to regulating the deep underground injection of carbon dioxide for long-term storage.

14. Under the Stewardship Act, the Commission's authority regarding Class VI wells is not concurrent with that of the Division and is expressly limited to "establish[ing] by rule a fee schedule sufficient to meet the projected needs of the [geologic carbon dioxide long-term storage stewardship] fund." NMSA 1978, § 74-14-5(A).

15. Further, under the Stewardship Act, the authority of the Division concerning Class VI wells is limited to administering the Stewardship Fund, issuing certificates of closure and completion, and regulating post-closure activities. NMSA 1978, §§ 74-14-3 – 74-14-6.

16. Lacking the authority to adopt the far-reaching regulatory scheme proposed in the Application, the Commission must dismiss this matter.

### **ARGUMENT**

#### **I. THE COMMISSION AND DIVISION'S AUTHORITY IS LIMITED TO WHAT HAS BEEN GRANTED BY THE LEGISLATURE THROUGH STATUTE.**

17. New Mexico's constitution separates the state's government into legislative, executive, and judicial departments and mandates that "no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others." N.M. Const. art. III, § 1.

18. The legislative branch is vested with the exclusive power to determine what the law shall be. *Unite N.M. v. Oliver*, 2019-NMSC-009, ¶ 8. Although it can charge an agency with implementation of a legal scheme, policy, or purpose, it "cannot delegate the right to determine, in the first instance and wholesale, what that scheme, policy, or purpose will be." *Id.* There must

be reasonable standards to ensure that, upon review, it can be discerned whether administrative action is in accordance with the legislature's will. *Cobb v. State Canvassing Bd.*, 2006-NMSC-034, ¶ 41; 140 N.M. 77.

19. The executive department's role is to execute the law, often through an extensive web of administrative agencies, but "[a]dministrative bodies are the creatures of statutes" without inherent powers and "can act only as to those matters which are within the scope of the authority delegated to them." *Pub. Serv. Co. of N.M. v. N.M. Env't Improvement Bd.*, 1976-NMCA-039, ¶ 7; 89 N.M. 223. An agency may not "amend or enlarge their authority through the device of promulgating rules and regulations." *N.M. Mining Ass'n v. N.M. Mining Comm'n*, 1996-NMCA-098, ¶ 15; 122 N.M. 332. In short, "[a]n administrative agency has no power to create a rule or regulation that is not in harmony with its statutory authority." *Rivas*, 1984-NMSC-076, ¶ 3.

20. An agency's rules "will be upheld if they are in harmony with the agency's express statutory authority or spring from those powers that may be fairly implied therefrom." *N.M. Mining Ass'n*, 1996-NMCA-098, ¶15. Determining the bounds of an agency's authority is a legal question of statutory construction that seeks to determine the legislature's intent. *Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, ¶¶ 5 – 9; 146 N.M. 24.

21. Such analysis looks first "to the plain language of the statute, giving the words their ordinary meaning." *Id.* Courts "construe the entire statute as a whole" and "will not read into a statute...language which is not there, particularly if it makes sense as written." *Cobb*, 2006-NMSC-034, ¶ 34. The analysis ends here "[w]hen statutory language is clear and unambiguous." *Marbob Energy Corp.*, 2009-NMSC-013, ¶ 9.

22. As explained in detail below, the present rulemaking fundamentally exceeds the scope of authority conferred upon the Commission and Division by the Legislature. The Oil and Gas Act

grants authority over the conservation of oil and gas and the protection of correlative rights and the Stewardship Act grants narrow, non-concurrent authority to each agency that falls far short of that required for this rulemaking.

23. Neither statute is ambiguous and a plain reading of these statutes demonstrates no set of circumstances in which either statute supports the expansive reach of the proposed rules set forth in this Application.

## **II. THE OIL AND GAS ACT DOES NOT GIVE THE COMMISSION OR DIVISION AUTHORITY OVER CLASS VI WELLS.**

24. The Commission and Division (collectively, “the Agencies”) were created by the Oil and Gas Act, NMSA 1978, § 70-2-4. Because the Agencies have concurrent authority under the Oil and Gas Act, NMSA 1978, §§ 70-2-6(B); 70-2-11(B), their authority to regulate Class VI wells under that statute are functionally identical and are analyzed together. In any case, neither agency has authority under the Oil and Gas Act to promulgate the Class VI well rules proposed in the Application.

25. The Oil and Gas Act prohibits the waste of oil and gas resources in New Mexico. NMSA 1978, § 70-2-2. Accordingly, the Agencies are “empowered, and it is its duty, to prevent waste...and to protect correlative rights.” NMSA 1978, § 70-2-11. The Oil and Gas Act limits the authority it grants accordingly, granting the Agencies what is necessary to prevent oil and gas waste and protect correlative rights.

26. The statute’s language makes clear that the Agencies have “jurisdiction and authority over all matters relating to the conservation of oil and gas” and authority “over all persons, matters or things necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the conservation of oil or gas.” NMSA 1978, § 70-2-6.

27. This understanding is underscored by the New Mexico Supreme Court, which has long identified the Commission<sup>1</sup> as “a creature of statute, expressly defined, limited and empowered by the laws creating it.” *Cont'l Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, ¶ 11, 70 N.M. 310. The Agencies may “make rules and regulations to implement and enforce the [Oil and Gas] Act.” NMSA 1978, § 70-2-11(A); *Marbob Energy Corp.*, 2009-NMSC-013, ¶ 2. The Commission has jurisdiction “over matters related to the conservation of oil and gas in New Mexico, but the basis of its powers is founded on the duty to prevent waste and to protect correlative rights.” *Cont'l Oil Co.*, 1962-NMSC-062, ¶ 11. The duty to prevent waste is paramount and the duty to protect correlative rights flows naturally from it. *Id.*

28. As explained below, the regulation of Class VI wells necessarily falls outside the authority granted to the Agencies by the Oil and Gas Act, first, because there is no express authority in the act to promulgate rules for a comprehensive Class VI UIC program and, second, because the act lacks a sufficient nexus to the conservation of oil and gas.

29. The specific sections of the act cited by Applicant only underscore the statute’s focus on the conservation of oil and gas. Applicant cites the Oil and Gas Act sections 70-2-6, 70-2-11, and 70-2-12(B)(15) as authority for this rulemaking but none of those sections provides such authority expressly or by implication. Application at ¶¶ 8, 17, 38.

30. Section 70-2-6 of the Oil and Gas Act does not confer authority to regulate Class VI wells. This section provides that the Agencies “shall have jurisdiction, authority and control of and over all persons, matters or things necessary or proper *to enforce effectively the provisions of*

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<sup>1</sup> Where language in this motion directly references language in a statutory section or court opinion that uses only one of the agencies’ names, as is the case here, the original wording is retained. However, this language is understood to extend to the counterpart agency because of the concurrent authority.

*this act* or any other law of this state *relating to the conservation of oil or gas.*” NMSA 1978, § 70-2-6 (emphasis added).

31. But the permanent underground storage of carbon dioxide does not satisfy this requirement – it is simply not related to the conservation of oil and gas. Long-term carbon storage through Class VI wells is even a distinct legal regime, as evidenced by the fact that it comprises a separate injection class under the federal UIC program.

32. The fact that the Division already has primacy over the Class II UIC program, or any other class of UIC well, has no bearing on its authority over Class VI wells. *See Application at ¶ 6.* The uses of Class II wells demonstrate why the Oil and Gas Act may provide the Division with authority to administer that Class II UIC program but not the Class VI program. For example, the EPA’s webpage dedicated to Class II wells (titled “Class II Oil and Gas Related Injection Wells”) explains that “Class II wells are used only to inject fluids associated with oil and natural gas production.”<sup>2</sup> The Division may have jurisdiction over the carbon dioxide injection wells used for enhanced oil recovery under the Class II UIC program, but there is a clear nexus between that carbon dioxide and oil and gas conservation that does not extend to Class VI wells. Unlike carbon dioxide used for enhanced oil recovery, carbon injected in Class VI wells is not used by the oil and gas industry; the purpose of injecting carbon dioxide in a Class VI program is to permanently store it underground. *E.g.*, 40 C.F.R. § 144.3 (“Geologic sequestration means the long-term containment of a gaseous, liquid, or supercritical carbon dioxide stream in subsurface geologic formations.”).

33. For the same reason, Section 70-2-11 of the Oil and Gas Act does not grant the Agencies authority to regulate Class VI wells. That section gives the Agencies the authority “to prevent

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<sup>2</sup> EPA, *Class II Oil and Gas Related Injection Wells* (accessed April 23, 2026), <https://www.epa.gov/uic/class-ii-oil-and-gas-related-injection-wells/>.

waste prohibited by this act and to protect correlative rights, *as in this act provided*. To that end, the division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary *to carry out the purpose of this act*.” NMSA 1978, § 70-2-11 (emphasis added). The purpose of the Oil and Gas Act is to prevent the waste of oil and gas, with a related goal of protecting correlative rights. NMSA 1978, § 70-2-11. Accordingly, the Oil and Gas Act only allows the Agencies to regulate oil and gas activities as necessary to prevent waste and protect those rights. *Cont'l Oil Co.*, 1962-NMSC-062, ¶ 11. As noted above, the long-term storage of carbon dioxide does not implicate either of those goals and is thus not within the Agencies’ authority under NMSA 1978, § 70-2-11.

34. Section 70-2-12(B)(15) of the Oil and Gas Act also fails to provide the Agencies with authority to regulate Class VI wells because it is solely concerned with produced water. It gives the Division and Commission authority to make rules:

to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of *produced water* during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas, including disposal by injection pursuant to authority delegated under the federal Safe Drinking Water Act, in a manner that protects public health, the environment and fresh water resources;

(Emphasis added.)

35. The first clause of 70-2-12(B)(15) gives the Agencies the authority to regulate the “disposition, handling, transport, storage, recycling, treatment and disposal” of produced water. The remainder of Section 70-2-12(B)(15) elaborates on the different contexts in which this regulatory authority may arise. Nothing in the subsection contains language related to the regulation of any substance other than produced water. The mention of “the federal Safe Drinking Water Act” does nothing to enlarge the narrow scope of Section 70-2-12(B)(15), as

these words are included in relation to the injection of liquid oil and gas waste, also called produced water.

36. Nor does any other provision of the Oil and Gas Act give the Agencies express or implied authority to regulate Class VI wells. When the statute is read as a whole, the four corners of the Oil and Gas Act clearly concern the conservation of oil and gas and protection of correlative rights. This scope is unambiguously stated multiple times in the act itself and has been reinforced by the courts for decades. *E.g.*, *Cont'l Oil Co.*, 1962-NMSC-062, ¶ 26 (“It is apparent from a study of the entire act...that the two fundamental powers and duties of the commission are prevention of waste and protection of correlative rights.”).

37. When regulating the conservation of oil and gas, the Agencies have broad authority to prevent waste and protect correlative rights. However, because Class VI injection wells are unrelated to the conservation of oil or gas, these wells are outside of the scope of authority the statute grants the Agencies. Neither agency may use a rulemaking to extend its regulatory reach to industries and activities not authorized by the Oil and Gas Act that are distinct from its purposes.

### **III. THE STEWARDSHIP ACT GIVES LIMITED, NON-CONCURRENT AUTHORITY TO THE COMMISSION AND DIVISION THAT IS INSUFFICIENT TO SUPPORT THIS RULEMAKING.**

38. Unlike the Oil and Gas Act, the Stewardship Act gives both the Commission and the Division authority over distinct and discrete components of the Class VI UIC program. However, as explained below, this authority is granted through unambiguous language that is limited in scope.

*A. The Stewardship Act gives the Commission the authority to establish a fee schedule for the Stewardship Fund and nothing more.*

39. The Stewardship Act confers exceedingly narrow authority upon the Commission. In fact, the Stewardship Act only mentions the Commission once. It does so in the context of a very explicit and limited demand: “[t]he oil conservation commission shall establish by rule a fee schedule sufficient to meet the projected needs of the [geologic carbon dioxide long-term storage stewardship] fund.” NMSA 1978, § 74-14-5(A). This language is unambiguous, limited, and cannot authorize the broad rulemaking Applicant seeks to undertake.

40. Further, the Commission lacks any implied authority under the Stewardship Act. The Commission is not mentioned in the statute nor given any responsibility or role apart from establishing a fee schedule. The plain language of the statute is straightforward and the Legislature’s intent for the Commission is clear and cabined, providing it with a single discrete task. No language in the Stewardship Act suggests further regulatory action or power on the part of the Commission was authorized or intended.

41. Further, unlike the Oil and Gas Act, the Stewardship Act contains no language granting the Commission concurrent jurisdiction with the Division. The Oil and Gas Act provides explicit language granting the Commission and Division concurrent authority in multiple sections of that statute. NMSA 1978, §§ 70-2-6; 70-2-11. The Legislature has not included this language and grant of concurrent authority in the Stewardship Act. If it had intended this shared authority, it would have explicitly provided for such as it did in the Oil and Gas Act.

42. Taking the plain language of the Stewardship Act and giving it its ordinary meaning, left are provisions that are clear and unambiguous. Accordingly, this is where statutory interpretation concerning legislative intent must end. The Commission’s authority under the Stewardship Act extends only as far as expressly stated: establishing a fee schedule for the Stewardship Fund.

***B. The authority of the Division under the Stewardship Act is limited to administering the Stewardship Fund, issuing certificates of closure and completion, and regulating post-closure for Class VI projects.***

43. The Stewardship Act confers upon the Division “the jurisdiction and authority necessary to enforce the provisions of [the act]” and allows it to “adopt and promulgate rules and issue orders for the implementation of the provisions of that act.” NMSA 1978, § 74-14-3(B). However, the rules proposed by the Division in this rulemaking reach far past “the implementation of that [Stewardship] act.”

44. The Stewardship Act outlines three distinct areas of regulation over which the Division has authority: 1) the administration of the Stewardship Fund, NMSA 1978, § 74-14-5, 2) the issuance of certificates of closure and completion to operators winding up injection activities, NMSA 1978, § 74-14-4; 74-14-6, and 3) post-closure activities concerning ongoing maintenance and care, NMSA 1978, § 74-14-6. These regulatory areas are clearly delineated by the statute and none of them authorize Applicant’s proposed rules.

45. Section 74-14-4 details how and when a Class VI injection project operator may receive a certificate of closure after an injection facility has ceased operations.

46. Section 74-14-5 establishes the Stewardship Fund, how it will be capitalized, and for what purposes its funds may be expended. It also outlines that “[a]ll money in the fund is appropriated to the division *for the sole purpose of ensuring the long-term storage security of geologic sequestration facilities.*” NMSA 1978, § 74-14-5(A) (emphasis added).

47. Section 74-14-6 requires the Division to issue a certificate of completion to a Class VI injection operator upon certain showings and provides that a certificate of completion transfers all ongoing stewardship responsibilities for the Class VI facility to the State of New Mexico.

48. Accordingly, the Geologic Carbon Dioxide Storage Stewardship Act, as its name suggests, centers exclusively on the State of New Mexico’s ongoing stewardship responsibilities

for Class VI injection wells *post-closure* and the Division's role performing them. In each of the act's provisions, the Legislature has unambiguously outlined a specific aspect of the post-closure regulatory regime. The statute governs the state's responsibility for Class VI injection wells *after* the operator of the well ceases operations and it provides a roadmap to the Division detailing how ongoing stewardship should look.

49. Despite these clear limits, Applicant proposes that the Commission promulgate extensive Class VI regulations that include permitting rules, project siting criteria, application conditions, and technical requirements, just to name a few regulatory areas in the Application. *See* Application, proposed 19.15.41 NMAC, 19.15.42 NMAC, 19.15.43 NMAC.

50. The narrowly focused Stewardship Act does not grant the expansive authority sought by the Division for the Commission to promulgate the proposed regulatory regime for Class VI wells.

51. Ultimately, the only fix for this lack of authority is a legislative one—the Legislature would have to grant the Division and/or the Commission authority to promulgate rules to establish a more comprehensive Class VI UIC program.

#### **IV. THE COMMISSION'S INTERPRETATION OF ITS OWN STATUTORY AUTHORITY RECEIVES MINIMAL DEFERENCE UPON REVIEW.**

52. An agency is accorded minimal deference regarding questions of law, especially those matters that are not within the agency's expertise. *Marbob Energy Corp.*, 2009-NMSC-013, ¶ 7. The New Mexico Supreme Court has found that “statutory construction is not within the Commission's specialized expertise” and, if the question of agency authority arises on review, the court “accord[s] the Commission little deference[.]” *Id.*

53. Neither the Oil and Gas Act nor the Stewardship Act is ambiguous in its plain language. The former explicitly states that its purpose is to prevent waste of oil and gas and to protect

correlative rights; it gives the Agencies authority under those purposes. The latter articulates specific regulatory areas over which the Division has authority—the Stewardship Fund, certificates of closure and completion, and post-closure activities—and confers upon the Commission the express and limited authority to establish a fee schedule.

54. Lacking ambiguity, judicial review of any rule promulgated under these statutes begins and ends with the plain language of the statute in question. For the reasons outlined in sections I – III, *supra*, this analysis finds the Agencies lack the authority to promulgate the expansive rule now before the Commission.

#### **V. THE PROPER REMEDY FOR LACK OF AUTHORITY IS DISMISSAL.**

55. Any rule adopted under the Oil and Gas Act “shall [be] set aside” if it is found to be “arbitrary, capricious or an abuse of discretion” or “otherwise not in accordance with law.” NMSA 1978, § 70-2-12.2(C). As noted above, “[a]n administrative agency has no power to create a rule or regulation that is not in harmony with its statutory authority.” *Rivas*, 1984-NMSC-076, ¶ 3. In fact, “where rulings by administrative agencies are not in accord with the basic requirements of the statutes relating to those agencies, the decisions of the agencies are void.” *Foster v. Board of Dentistry*, 1986-NMSC-009, ¶ 8; 103 N.M. 776.

56. The courts have consistently set aside agency rules that overreach agency authority. *E.g.*, *Marbob Energy Corp.*, 2009-NMSC-013, ¶ 24 (invalidating a rule allowing the Commission and Division to assess civil penalties where the Oil and Gas Act did not at that time grant such authority); *State ex rel. McCulloch v. Ashby*, 1963-NMSC-217, ¶¶ 17-18, 73 N.M. 267 (unauthorized Bureau of Revenue tax rule was void where its provisions were not authorized by law); *Family Dental Ctr. of N.M., P.C. v. N.M. Bd. of Dentistry*, 1982-NMSC-020, ¶ 9; 97 N.M. 464 (Dental Board rule that was broader than its authorizing statute was required to yield to the statute).

57. Any rule that does more than “establish by rule a fee schedule sufficient to meet the projected needs of the [geologic carbon dioxide long-term storage stewardship] fund,” NMSA 1978, § 74-14-5(A), exceeds the Commission’s statutory authority and will be void.

### CONCLUSION

58. In proceeding with this rulemaking, despite both the Commission and the Division lacking the authority to do so, the Commission risks expending substantial administrative time and resources to create an administrative record and promulgate a rule that ultimately will be void *ab initio*.

59. Movants respectfully request the Commission to dismiss Applicant’s *Application of Oil Conservation Division to Adopt 19.15.41 NMAC, 19.15.42 NMAC, 19.15.43 NMAC*.

60. To prevent the unnecessary expenditure of resources by the Commission and all parties, Movants further request a stay of all deadlines in this matter until the present dispositive motion is resolved.

DATED: May 4, 2026.

Respectfully submitted,

*/s/ Zachary Pavlik* \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I certify a copy of the forgoing filing was emailed to the following on May 4, 2026:

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