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 EXCEPTIONS TO HEARING OFFICER'S RECOMMENDATIONS ON JOINT MOTION TO DISMISS

The New Mexico Oil and Gas Association ("NMOGA") and Independent Petroleum Association of New Mexico ("IPANM") (collectively, "Movants") submit these Exceptions to Hearing Officer's Recommendations on Joint Motion to Dismiss ("Recommendation"), pursuant to 19.15.3.8 of the New Mexico Administrative Code ("NMAC").[1]

I. Introduction and Standard of Review

Pursuant to 19.15.3.8 NMAC, NMOGA and IPANM submit these Exceptions to the Hearing Officer's Recommendation to deny their Joint Motion to Dismiss portions of Applicants' proposed amendments to 19.15.2.7 and 19.15.8.9 NMAC. The Recommendation, by adopting the reasoning of Applicants and the Oil Conservation Division ("OCD") without independent statutory analysis, fails to apply the controlling limits of authority under the New Mexico Oil and Gas Act ("the Act"), NMSA 1978, §§ 70-2-6, 70-2-11, and 70-2-14(A). For the reasons set forth below, the Commission should reject the Recommendation as contrary to law and unsupported by substantial reasoning.

II. Statutory Framework of NMSA 1978, § 70-2-14(A)

Section 70-2-14(A) expressly confines the Commission's financial-assurance authority to three enumerated categories:

1. One-well assurance in an amount "determined sufficient to cover the cost of plugging;"

2. A blanket assurance not exceeding $250,000; and
3. A separate category for temporarily abandoned wells.

By allowing new categories labeled "marginal," "inactive," and portfolios exceeding 15 percent marginal wells, the Recommendation transforms this limited statutory delegation into an open-ended grant. That reading disregards the statute's structure and the Legislature's deliberate use of a cap as a jurisdictional ceiling. *Marbob Energy Corp*. v. OCC, 2009-NMSC-013, ¶ 5 (agency may not create a regulation that exceeds its statutory authority).

III. Functional Circumvention of the $250,000 Statutory Cap

The Recommendation concludes that Applicants' proposed $150,000 "per-well" obligations are permissible "one-well" assurances even when secured through a single instrument covering entire well portfolios. In substance, such an instrument operates as a blanket bond far exceeding the statutory cap. The Recommendation's focus on form over effect nullifies the Legislature's express limitation and invites unlawful circumvention. Moreover, the Recommendation overlooks that all Marginal Wells are also active wells, and therefore captured by the $250,000 blanket bonding cap. As discussed below in the 2018 Rulemaking, the Division made clear in testimony submitted and accepted by the Commission, integral to the final financial assurance scheme, that only temporarily abandoned wells in TA status greater than 2 years could create bonding burdens in excess of the $250,000 cap.

IV. Misconstruction of "Acquisition" Under Proposed 19.15.8.9(A) NMAC

The Recommendation accepts Applicants' assertion that "acquisition" means "acquisition of operating authority," treating the new sentence as a mere timing clarification. The plain text, however, reads:

> "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."

"Acquisition" is a property term, not a regulatory one. Nothing in the Act authorizes OCD to approve or disapprove property transfers. Reading new words into the text cannot cure this overreach. The proposed rule thus exceeds the Commission's statutory jurisdiction and must be dismissed.

V. Proposed Textual Fixes to Conform Rules to Statute

NMOGA and IPANM propose the following edits to Applicants' proposed text to ensure that the proposed rules conform to the requirements of the Act:

1. 19.15.8.9(A) – Clarify the scope of "acquisition:"

- Replace "…any proposed drilling or acquisition…"

o With: "…any proposed drilling or acquisition of operating authority through registration or transfer of operatorship…"

2. Add savings clause: "Nothing in this Part authorizes the Division to approve or disapprove the acquisition, sale, or transfer of property interests."

3. 19.15.8.9(D)-(F) – Preserve statutory categories

4. Replace current subsections with:

"The Division may require one-well financial assurance in an amount commensurate with the estimated plugging cost based on well depth, condition, and compliance history, consistent with NMSA 1978, § 70-2-14(A). Blanket financial assurance shall not exceed $250,000."

5. 19.15.2.7(M)(2) – Strike proposed definition of "marginal well," or substitute:

Marginal well means a well producing less than 750 barrels of oil equivalent annually, consistent with the 2025 Legislative Finance Committee's 2025 recommendation."

VI. 2018 Division Testimony Confirms the Statutory Limits on Bonding Authority

During the 2018 Commission rulemaking on financial assurance (Case No. 16078), Allison Marks, then OCD Deputy Director, testified that NMSA 1978, § 70-2-14(A) authorizes only two categories of financial assurance for active wells—(1) a one-well amount sufficient to cover plugging costs for the well; or (2) a blanket assurance not to exceed $250,000—and that the Commission's role is to implement those limits, not expand them:

"Consistent with the statute, an operator can either post a single-well bond or a blanket bond for the wells produced within the last two years." *Testimony of Allison Marks, Deputy Director of Oil Conservation Division, Witness for Environmental Natural Resources Department, Transcript of Proceedings*, Case No. 16078, Vol. 1 of 2, 18:8-10 (July 19, 2018), attached hereto as Exhibit A. In the 2018 Rulemaking, OCD and the Commission agreed that both had to follow the legislative cap of $250,000 for active wells. Ms. Marks' testimony makes clear that temporary abandoned wells are inactive wells and excluded from the blanket bonding calculations, while also the only category of well that would increase financial assurance levels in excess of the $250,000 blanket bonding cap. *See generally id.*, 25-31 (extensive colloquy between Ms. Marks and EMNRD attorney running through hypothetical well scenarios and bonding requirements).

Additionally, in proposing new single-well bonding costs, the OCD performed an exhaustive analysis of actual plugging costs, excluded outliers as not representative of the average costs, and established a per-footage basis—wholly absent from Applicant's Proposed Rules which set a blanket $150,000 single well cost regardless of condition, depth, or time produced. *See id.* at 13:7-17 (after reviewing statutory mandate in Section 70-2-14(A), attesting that in drafting the 2018 rule, "the statutory requirements are really taken to heart, and we have tried to develop the most fair and equitable proposal"); *see also id.*, 14:6-21 (explaining review and analysis of plugging costs), and *id.*, 17:20-22 (after experience filling in for OCD bond administrator, Ms.

Marks "attempted to add a lot of clarity for operators, as the existing language is confusing.").

Not to belabor the point, but EMNRD counsel and the Commission's own counsel repeatedly advised as to the role of the Commission to adopt rules which implemented, not exceeding, the legislative directive up to $250,000. *See*, *e.g.*, *id.*, 25:21-26:4 (rule increases amount of certain financial assurances pursuant to legislative authorization); *see also* Transcript of Proceedings, Case No. 16078, Vol. 2 of 2 (July 20, 2018), 4:2-6:4, attached as Exhbiti B, (Commission counsel explaining the "statutory guidance" in what SB-189 instructed the Commission to accomplish).

Finally, in Order R-14834, the Commission agreed that Section 70-2-14(A) specifies the types and requirements of acceptance financial assurance and that the 2018 amendment "increased the cap on blanket financial assurance for active wells." Order R-14834, Case No. 16078 (August 20, 2018), attached as Exhibit C, at ¶¶1 & 9. In explaining its reasoning for the adopted rule changes, the Commission modified OCD's proposed to increase financial assurance "as required by the Act, without unnecessarily burdening small operators." *Id*, ¶19.

These statements demonstrate that the Division itself recognized its authority as bounded by § 70-2-14(A) and understood that broad bonding increases require legislative action. Adopting the current Recommendation would therefore place the Commission in a position directly contrary to its own sworn representations in 2018, undermining the consistency and integrity of the Commission's rulemaking record.

Conclusion

Because the Recommendation disregards statutory limits, misconstrues rule text, and contradicts the Division's own prior testimony, NMOGA and IPANM respectfully request that the Commission reject the Hearing Officer's Recommendation and grant the Joint Motion to Dismiss the challenged provisions—19.15.2.7(M)(2) and 19.15.8.9(A), (D), (E), and (F). Alternatively, the Commission should direct that any further consideration of these provisions be confined to the statutory categories and language set out in Section VI above.

Respectfully submitted,

DATED: October 19, 2025.

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Exhibit A

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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION COMMISSION FOR THE PURPOSE OF CONSIDERING:

COPY

IN THE MATTER OF THE:

PROPOSED AMENDMENTS TO THE COMMISSION'S RULES ON FINANCIAL ASSURANCE AND PLUGGING AND ABANDONMENT OF WELLS, 19.15.2, 19.15.8, AND 19.15.25 NMAC.

CASE NO. 16078

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

July 19, 2018

Volume 1 of 2

Santa Fe, New Mexico

BEFORE: HEATHER RILEY, CHAIRWOMAN
ED MARTIN, COMMISSIONER
DR. ROBERT S. BALCH, COMMISSIONER
BILL BRANCARD, ESQ.

This matter came on for hearing before the New Mexico Oil Conservation Commission on Thursday, July 19, 2018, at the New Mexico Energy, Minerals and Natural Resources Department, Wendell Chino Building, 1220 South St. Francis Drive, Porter Hall, Room 102, Santa Fe, New Mexico.

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(9:05 a.m.)

CHAIRWOMAN RILEY: So the first case we're going to hear today is 16078. It is a rulemaking. It's been continued from the May 24th hearing date, and it's In the Matter of Proposed Amendments to the Commission's Rules on Financial Assurance and Plugging and Abandonment of Wells, 19.15.2, 19.15.8 and 19.15.25 NMAC.

It looks like we have two parties to this. We have the OCD represented by Mr. Brooks.

MR. BROOKS: David Brooks, with the Energy, Minerals and Natural Resources Department, general counsel for the Oil Conservation Division.

CHAIRWOMAN RILEY: Thank you.

And then we have a second party.

MR. LARSON: Good morning, Madam Chair, Commissioners.

Gary Larson for the Independent Petroleum Association of New Mexico. I do not have any witnesses.

CHAIRWOMAN RILEY: Okay. Thank you.

MR. BROOKS: I have two witnesses.

CHAIRWOMAN RILEY: Two witnesses. All right. All right.

Mr. Brooks, do you want to --

MR. BROOKS: I think we should swear in the witnesses first.

(Ms. Marks and Mr. Goetze sworn.)

CHAIRWOMAN RILEY: Thank you.

Mr. Brooks.

MR. BROOKS: These are very simple rule changes, and my witness will explain them. So I think in the interest of time, I will defer -- I will not make any opening statement and begin by calling Ms. Marks.

Do you want to make an opening statement?

MR. LARSON: I do not have an opening statement.

I would like to point out to the Commission on IPANM's proposed modifications of the Division's proposed rules -- and Ms. Marks was kind enough to point this out to me -- in Subparagraph D, we have a category of 149 to 199 wells. That should be 150 to 199 wells.

MR. BROOKS: Very well. I'll call Allison Marks.

ALLISON MARKS,

after having been previously sworn under oath, was questioned and testified as follows:

DIRECT EXAMINATION

BY MR. BROOKS:

Q. Good morning, Ms. Marks.

A. Good morning, Mr. Brooks.

Q. State your name, please, for the record.
A. Allison Marks.
Q. And what position do you hold at the Oil Conservation Division?
A. I am the deputy director.
Q. And how long have you been in that office?
A. A little over two years, I believe.
Q. Very good.
Were you involved in directing the proposed amendments being submitted for adoption at this hearing?
A. I was.
Q. Rather than doing a detailed Q and A, since this is a rulemaking proceeding, I'm going to ask you to go through the rule section by section, explain the changes and state for each one the reasons which the Division came in and offered these amendments for the Commission's consideration.
A. Very well. It will be my pleasure.
So in 19.15.2.7, in (6), we have added a definition of "measured depth," with that definition being "means the total length of the wellbore."
Since Phil Goetze prepared a nice diagram, I believe Exhibit 8 in your packets, to explain the proposed changes to "measured depth" and "true vertical depth," I will let him testify as to both of those

definitions. Both are new definitions that are used in the proposed 19.15.8.9E.

Finally, the only other new definition is under 19.15.2.7.T.(3). The words "or temporarily abandoned status" have been added after "temporary abandonment." And this serves as a means to simply clean up this definition, as the Division uses this term regularly.

And also the phrasing has been incorporated into the proposed amendments to 19.15.8.9.D, and the term "temporarily abandoned status" is also used in statute. So defining it in our rule is helpful and consistent with the new rulemaking statute, I believe, as well.

Q. Ms. Marks, for a considerable time, we have had a situation where a well -- where we had a requirement and I believe we still do under the present rules that will change under this amendment.

Under the present rules, if a well is abandoned temporarily but is not permitted for temporary abandonment by the Division, it is -- it is required -- the operator of that well is required to supply additional financial assurance of that well, correct? Under present rules, if a well is temporarily abandoned, it's not being used, but it is not -- has not been approved by the Division for temporary abandonment, then, in that event, the operator is currently required to supply financial assurance -- to provide the Division with additional financial assurance for the plugging of that well, correct?

A. Correct.

Under -- under 19.15.2, "temporarily abandoned" is synonymous with the term "inactive."

Under the proposed rule, "approved temporarily" -- "approved temporary abandoned" and "approved temporarily abandoned status" is a different term. And under this proposed amendment, it puts the well in approved temporary abandoned status. They still have to place additional financial assurance.

Q. But under the present rule, that is not the case, right?

A. Correct. If you want -- wish to -- a condition to get an approved temporary abandoned permit, it's not a condition precedent to place additional financial assurance.

Q. Okay. So this change in definition, to make the terms synonymous of -- temporary abandonment and approved temporary abandonment are synonymous or will be under the new rule if it's adopted and, therefore -- that goes along with the substantive change that both --

either one will require the filing and maintenance of additional financial assurance?

A. No, that's not correct.

Approved temporary abandonment and -- approved temporary abandonment will still be a term of art under 19.15.25.12. "Temporary abandonment" and "temporarily abandoned status," the Division is proposing just to simply modify those terms, but the word "approved" has a different meaning under 19.15.25.12.

Q. Okay. But "temporary abandonment" includes both a generic temporary abandonment, that is: This well is abandoned with the new intention that it will be restored in the future, but it's not being used currently, and it also includes approved temporary abandonment status. Either way, it's temporarily abandoned, right?

A. "Temporary abandonment" and "temporarily abandoned status" simply means that the well is inactive.

Q. Whether it's proved that they're inactive status -- whether it's approved temporary abandonment or not? Doesn't make any difference about it being temporarily abandoned status?

A. I think we should just address if they're "temporary abandoned" later on in the section on "Approved Temporary Abandonment."

Q. Well, you will agree with me that it makes no difference as a matter of requiring additional bonding under the new rules that it is approved to be temporary abandonment status, right?

A. I'm sorry. Can you restate your question?

Q. You will agree with me, will you not, that under the proposed changes, it will make no difference for the purpose of -- the requirement of additional funding whether a well is in temporary abandonment status generically or whether it is approved for temporary abandonment -- well, no. I put it -- it does make a difference whether it's one or the other. It doesn't make a difference which category it's in.

A. That's not correct. If a well is seeking to be in approved temporary abandonment, which I will discuss later on, to get that permit, you will need to place additional financial assurance. Just for a well to be temporarily abandoned or in temporarily abandoned status or temporary abandonment, which is at the two-year mark, the existing financial assurance requirements remain in place.

Q. I don't understand, but go ahead.

A. Okay. Should I continue?

Q. Yes.

A. Okay. The Division is also proposing modifications to 19.15.8.9 here. And the title to this section, we added the words "categories and amounts of" before the words "financial assurance for well plugging."

And then before I go into specific changes, I'd like to just give a bit of an overview of what prompted some of the proposed changes and what we as the Division have seen over the last several years.

First, during the last legislative session, the legislature passed and the governor signed Senate Bill 189. While the bill cleaned up a few matters not relevant to this rulemaking, the bill also raised the amount of blanket plugging financial assurance to $250,000 from $50,000 and instructed the blanket plugging amount to be set by rule before this Commission. For reference, the blanket plugging amount has not been increased since 1977.

In addition and in contemplating the Division's proposed amendments, there is some statutory language I'd like point out to the Commission. Namely, 70-2-14(a) states in part that "one well plugging financial assurance amounts determined to be" -- "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 has produced, the cost of plugging similar wells, and such other factors as the Oil Conservation Division seems relevant."

In drafting a rule before the Commission, the statutory requirements are really taken to heart, and we have tried to develop the most fair and equitable proposal while also considering the Division's actual plugging costs in conjunction with the Division's compliance efforts and potential risk exposure.

With the above in mind and having undertaken over the past several years an analysis of the Division's expenditures due to underbonding of well plugging, we worked to develop new appropriate financial assurance levels. On that note and before diving into the proposed changes, it may be helpful to look at Exhibits 3 through 7 at this time, which I believe are in the packets before the Commission.

So if we could start with Exhibit 6, what I did here is I pulled from fiscal year '14 all the wells that the Division has plugged since fiscal year '14 until a certain time in fiscal year '18. And I can't tell you exactly when I stopped in fiscal year '18. I believe it was sometime in February or March. And you'll see all wells listed by API, depth and the total plugging costs and the price per foot and the fiscal year the well was plugged.

Then this data was plotted in Exhibits 3 and 4 in your packet. Exhibit 4 excluded some of the unusually high outlier well plugging the Division saw. You'll see one for $140,000, $146,023, and some of the really shallow wells of 45 feet, which cost $50.89 per foot. I didn't think it was really fair, in contemplating a rule change, to include those very high outliers.

Then if you turn to Exhibit 5, I wanted to see what our fixed costs, plus price per foot looked like with different fixed costs. And since we have mobilization costs and other expected costs in every plugging job, bearing those minimum costs in minds and in consideration of our statutory duty, I wanted to develop an appropriate cost -- an appropriate single-well bond amount, and that's how we came up with $25,000, plus $2 per foot.

Then if you turn to Exhibit 7 in your packets, this is a list of operators as of June 28th, 2018 who are not compliant with our inactive well rule. There are 136 operators on this list, with a total of

1,738 wells out of compliance.

As a matter of reference, when an operator continues to be out of compliance with the Division's inactive well rule and fails to come into compliance, whether it be by plugging the well, bringing the well back in production or entering into an agreed compliance order with the Division, the Division pursues a compliance case against the operator, and we seek a plugging order. When the operator fails to plug the well, the Division plugs the well, and then if the operator has financial assurance, the Division first seeks to recover under the financial assurance, which the Division is the beneficiary of. And then as the Oil and Gas Act under 70-2-14(e) allows, the Division will bring suit for indemnification for all costs incurred by the Division in plugging the well.

So I'll just point out some of these operators in Exhibit 7 because I think that could be helpful. Some Commissioners may not be familiar with some of these operators. So Canyon E & P on this list, they have 271 inactive wells showing up, and we have a plugging order against this company. And they went through bankruptcy, and we aren't going to recover anything further from this company.

Then the same can be said about DC Energy, LLC. So there is a broad range of small operators to larger operators. DC Energy, they also went through bankruptcy, and the Division recovered $50,000. Again, we're not going to recover any other funds from this operator, and we still have six wells to plug, along with any reclamation.

Giant Operating, LLC is yet another operator -- operator the Division is left with recovering -- covering plugging costs. The operator went through a receivership, and the Division received $37,000 from the receiver. Giant still has five wells to plug.

Then we have a number of operators on this list with 100 percent of their wells inactive and have plugging orders or have a very high number of noncompliance rates with our Legal Bureau. And I can anticipate, based on history with the Division, the Division will have to plug these wells, and the cost will be paid out of the oil reclamation fund.

For instance, Dominion Production Company, LLC, the Division has a pending district court case against the operator for inactive well violations and for violations of financial assurance rules, amongst other violations. Dominion has 126 noncompliant wells and requires additional financial assurance on 62 wells.

Blue Sky NM is another operator we filed suit against in district court. They have 32 wells in need of additional financial assurance and 38 inactive wells.

So just Blue Sky and Dominion alone, we're looking at millions of dollars in plugging costs that will come out of the reclamation fund. So by illustration, there are several noncompliant operators for which we turn to the reclamation fund to fill the gap when financial assurance isn't enough. And we have really stepped up our compliance efforts, and, therefore, we will have a lot of operators whose wells will be added to the plugging list. Since February of this year alone, we have added hundreds of wells onto the plugging list, and at present, we have about 500 or so wells on our plugging list with only a million and a half or $2 million in bonding to cover our anticipated plugging jobs.

So with that said, I'll go back to the rule before you. If you turn to 8.9C. and D., I have attempted to add a lot of clarity for operators, as the existing language is confusing. Our bond administrator was just back from maternity leave, and I filled in for her for several months. And I had the pleasure of interacting with a number of operators during this time, and I saw a lot of the confusion and frustration that they faced, so I think this does a nice job of cleaning up the rule for them.

So Subsection C sets forth the financial assurance requirements just for wells that have been producing within the last two years or which is in new, not in approved temporary abandoned status. Consistent with statute, an operator can either post a single-well bond or a blanket bond for the wells produced within the last two years.

Thus, we propose striking the existing Subsection C and replacing it with the words "the division accepts the following categories of financial assurance for wells that are not required to provide financial assurance under Subsection D of 19.15.8.9 NMAC: (1) a one well financial assurance in the amount of $25,000 plus $2 per foot of the projected depth of a proposed well or the depth of an existing well";

Or "(2) a blanket plugging financial assurance in the following amounts covering all oil, gas or service wells drilled, acquired or operated in this state by the principal on the bond: $50,000 for one to 10 wells; $75,000 for 11 to 50 wells; $125,000 for 51 to 100 wells; $250,000 for more than 100 wells."

I did an analysis of the 613 operators in statutorily requires additional financial assurance at this time.

Certainly when a well is producing, there is less likelihood of a wellbore deteriorating, and an operator knows if there are any problems with the well -- with a producing well.

When a well is inactive, the risk of something happening to the wellbore increases, and the risk of damage to a producing zone or the migration of hydrocarbons or other leaks increases. During a five-year cycle, there is no way to monitor the wells if anything is happening with the wells, so this provides more protection to the Division.

These are all of our proposed changes.

Q. (BY MR. BROOKS) Well, I need to ask you some questions about them because I don't understand it very well myself. The test of whether a presentation is sufficient is whether the dullest person in the audience understands. So assuming I am in that category, I do need to understand.

One thing this -- this rule has not specifically discussed is it increases the amount of certain financial assurances, right?

A. Correct.

Q. It increases the amount pursuant to legislative

authorization --
    A. Correct.
    Q. -- at the last regular session of the legislature?
        This rule would increase the amount of the blanket plugging bond required of an operator who has no wells in temporary abandonment status, correct, from 25,000 to 250,000?
    A. I'm sorry?
    Q. I'm sorry. Yeah. It increases the amount of the blanket bond required of an operator that has no wells in temporary abandonment status, correct?
    A. If an operator has a well in approved temporary abandonment status --
    Q. No. That's not what I asked you. I'm sorry.
        Suppose an operator has no wells in temporary abandonment status. Under present law, what is the required blanket bond of that operator if the operator chooses to use a blanket bond instead of single-well bonds?
    A. $50,000.
    Q. And what would it be under this new rule?
    A. It would depend on the number of wells that an operator has.
    Q. Okay. Let's assume the operator had 15 wells.

What would it be?
A. $75,000.
Q. And that schedule is found in 8.9C.(2) of the proposed new rule, correct?
A. Correct.
Q. And depending -- and if you want to know what the blanket bond is required of an operator regardless of the existence of temporary abandoned wells, supposing he has none, you go to 18 -- you go to 8.9C.(2) of the proposed rule and look at how many wells does the operator have. You've got to figure that's the amount of blanket bond that will be required to provide under this new rule, correct?
A. That's correct. And just to clarify -- I just want to bring clarity to the term "temporary abandoned." It simply means an inactive well.
Q. Correct.
A. So an inactive well, regardless, will be included in this well count. But I don't think -- I don't think we need to make any distinction over whether a well is temporary abandoned or not.
Q. Well, not -- I assume they were not temporarily abandoned. Merely to clarify what purpose, but your point is very -- what is the -- the bonding requirement in that situation, but your point is well taken.

The existing $50,000 bond and the -- under the existing rule and the revised -- the amended $50,000 bond required under 8.9C.(2) would apply based on the number of wells regardless of how many of them may be in inactive temporary abandonment, correct?

A. Correct.

Even if they're in approved temporary abandonment, the blanket bond -- if an operator chooses to place all of their wells under a blanket bond, if they are in approved temporary abandonment, that just requires additional bonding.

Q. Yeah. Well, I'm going to get to that in a minute. I'm trying to go through this step-by-step.

Now, an operator under present law and under the proposed rules has the option of putting a single-well bond on each well that he has --

A. Correct.

Q. -- instead of using a blanket bond, right?

A. Correct.

Q. But it's seldom to the operator's advantage to do that, correct? Most operators have a blanket, don't they?

A. Most operators have a blanket bond.

Q. Okay. Now, when it comes time to -- when an operator has wells that go inactive and they stay inactive for two years, they are deemed to be in temporary abandonment status for two years, correct?

A. Correct.

Q. At that point, whether or not the operator has applied -- well, if the operator had applied for temporary abandonment previously under the existing rule, no bonding would have been required at the time of that application for temporary abandonment, correct?

A. For approved temporary abandonment, we have not previously required financial assurance at the time of application.

Q. Right.

Now, if a well -- this is perhaps where I'm missing -- where I need clarification, maybe where I'm misunderstanding.

If a well is placed in approved temporary abandonment, under the present rule, without regard to these amendments, and then the two years passes and that well has been in temporary abandonment status for two years, it's been approved maybe for two months but the approval is still current, is the operator then required under the present rules to provide additional financial assurance?

A. All operators, whether a well is in approved temporary abandonment status or temporary abandonment status, which is just synonymous with inactive, are required to post additional financial assurance after two years.

Q. Even if a well is in approved temporary abandonment status at that point?

A. Correct.

Q. Okay. That was a misunderstanding. And because I was dealt with this some time ago and there have been several amendments to the rule, that's probably the source of my misunderstanding.

A. That's okay.

Q. So additional bonding is required for wells that have been in temporarily abandonment status for two years under the present rule and under the new rule regardless of whether they are approved for temporary abandonment or not?

A. Yes, with the caveat that any well under the proposed rule to be in approved temporary abandonment status will require additional financial assurance in order to get that approval. But yes. Any well in the state of New Mexico that is on private or state land will require -- does require financial assurance after two years, and if it is to be an approved temporary abandonment status, will require additional financial assurance under the Division's proposal in order to get approval.

Q. Well, but you said two different things there. And I'm trying to get this clear, and I'm still not clear. And I thought I was until you answered the last question.

Let's say well X is inactive. Two years passes. It's still inactive. No application for temporary abandonment has been filed. Then when the clock hits two years, the additional financial assurance requirement kicks in, correct?

A. Correct.

Q. But that's not because the operator doesn't have financial assurance because the operator does have financial assurance. They have to have additional financial assurance because that well is in temporary abandonment status, correct?

A. Correct.

Q. Okay. And that's true under the old rule, and it's true under the new rule?

A. Correct.

Q. Now let's say the well was completed on November the 1st, 2016. Well, no. Let's go back so we're under the old rule. The well was completed on November the 1st, 2015. On November the 1st, 2017, it would have required additional financial assurance?

Q. So the proposed rule would make no change in the present rule for that particular -- those particular amounts?

A. Correct.

Q. And, of course, the schedule in C.(2) for blanket bonds for all wells is a new schedule because we had a plat amount before by statute?

A. That's correct.

Q. Okay. Now, the amounts of a one-well bond have been changed -- or are proposed to change; are they not?

A. That's correct.

Q. And what will be the new amounts for one-well bonds? Well, before you answer that question, let me clarify. The amount for one-well bond, is that the same amount if you choose to use one-well bonds for all your wells as it is for a temporarily abandoned well?

A. For one-well bonds, that's correct. Yes.

Q. And what is that amount?

A. $25,000, plus $2 per foot. And that's based off of our statutory duty to determine the appropriate well plugging costs.

Q. And you have already testified to the fact that we have made a study of well-plugging costs and that those figures are justified pursuant to that study?

A. Yes, based off of our downhole plugging costs,

and those are reflected in Exhibit 6.
Q. Again, you'll have to pardon me because I'm a Texan and I speak very slowly, and when someone speaks very fast, I'm not sure if I'm covering everything or not because I lose track. I haven't developed the talent to speak both Texan and American --
A. I'll try to speak Texan.
Q. Well, I'm not sure there's much hope for you (laughter). But New Mexico is not Texas. Somebody around here used to have a sign that said, "I know how you do it in Texas. Now let's talk about how we do it in New Mexico."
Okay. I think I've covered all the questions that I have, and I think I now understand what you're doing. So I will move on to a couple of other things.
You did cover, specifically, the fact of the 500-foot tolerance on the depth bracket. In other words, it used to be if you have -- if a well goes 500 feet below the depth bracket for which -- waiver for additional bonding is required when going into the next depth category, correct?
A. The district office had that ability and we -- it was very difficult from an administrative perspective to manage that.

CHAIRWOMAN RILEY: Uh-huh.

COMMISSIONER BALCH: Actually, I would move to adopt this language.

COMMISSIONER MARTIN: I agree. I second.

CHAIRWOMAN RILEY: So moved.

Okay. That was easy.

That gets us to 19.15.8.9.

COMMISSIONER BALCH: I'm wondering if perhaps we -- that's going to be the main part of the discussion.

CHAIRWOMAN RILEY: Uh-huh.

COMMISSIONER BALCH: But we could clean up some of the other parts of it probably rather quickly.

CHAIRWOMAN RILEY: Are you saying you don't want to go in a linear fashion?

COMMISSIONER BALCH: I'm saying I want to skip ahead. I don't know. Well, there's the effective dates, but I think those are going to be driven by when we can get this processed. We can go linear.

CHAIRWOMAN RILEY: Okay.

COMMISSIONER MARTIN: Inclusion of federal wells may be a shorter discussion. Do you want to talk about that?

COMMISSIONER BALCH: I would like to talk about inclusion of federal wells.

100 wells, if we're stuck with all of them, will not get you very far.

COMMISSIONER BALCH: My real concern is the prevention of waste. We had at least one piece of testimony from the public, Mr. McMinn, who said if this passes in this form, he'll shut in three wells.

COMMISSIONER MARTIN: I agree.

COMMISSIONER BALCH: Those are three wells that are making oil for the State of New Mexico.

CHAIRWOMAN RILEY: Is he going to shut those in, or is he going to shut in and then plug them?

COMMISSIONER BALCH: He was going to plug them, plug three wells.

CHAIRWOMAN RILEY: Put a bond on -- and so I come back and argue the other side of that, which is if you can't afford to fix them so that they do produce and then you can't afford to put a bond on them, then maybe they should be plugged.

COMMISSIONER MARTIN: But he's talking about plugging producing wells.

MR. BRANCARD: No.

CHAIRWOMAN RILEY: No, I don't think so.

COMMISSIONER BALCH: Doesn't matter if they're producing or not.

COMMISSIONER MARTIN: Or prospective

producing.

COMMISSIONER BALCH: He's got them temporarily abandoned for a reason, and that's because he hopes to put them in production later on. If he takes them out of that temporarily abandoned status now and puts them into plugged status, they will never produce another drop of oil.

COMMISSIONER MARTIN: Correct. And for the waste issue, you leave reserves in the ground.

COMMISSIONER BALCH: You leave reserves in the ground, which is waste. Then not only were -- nominally using correlative rights to produce the oil.

And the real issue for me for the federal versus state in the well count is exactly what Mr. Martin said. It's double jeopardy. They're paying bonding twice for the same well. Whether the federal bonding is inadequate or not, whether the state bonding ends up being inadequate or not, it just strikes me as unfair.

CHAIRWOMAN RILEY: I think this is going to reduce the amount of bonding that the State has available, perhaps even less than what we had before. It kind of flies in the face of what the legislature was looking to us for.

COMMISSIONER BALCH: Their idea is to

Exhibit B

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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION COMMISSION FOR THE PURPOSE OF CONSIDERING:

COPY

IN THE MATTER OF THE:

PROPOSED AMENDMENTS TO THE COMMISSION'S RULES ON FINANCIAL ASSURANCE AND PLUGGING AND ABANDONMENT OF WELLS, 19.15.2, 19.15.8, AND 19.15.25 NMAC.

CASE NO. 16078

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

July 20, 2018

Volume 2 of 2

Santa Fe, New Mexico

BEFORE: HEATHER RILEY, CHAIRWOMAN
ED MARTIN, COMMISSIONER
DR. ROBERT S. BALCH, COMMISSIONER
BILL BRANCARD, ESQ.

This matter came on for hearing before the New Mexico Oil Conservation Commission on Friday, July 20, 2018, at the New Mexico Energy, Minerals and Natural Resources Department, Wendell Chino Building, 1220 South St. Francis Drive, Porter Hall, Room 102, Santa Fe, New Mexico.

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(10:25 a.m.)

CHAIRWOMAN RILEY: Let's now move on to the deliberations of the FA rule.

MR. BRANCARD: Madam Chair, before we get started, Commissioner Balch had asked me at the end of the discussions yesterday about what was the exact language that was in the statutory change so that the Commission could have a sense of just exactly what they're being asked to do and how it fits in with what the statute says.

CHAIRWOMAN RILEY: Okay. Would you please?

MR. BRANCARD: I didn't have that language in front of me, and I have it now.

CHAIRWOMAN RILEY: Okay. Thank you.

MR. BRANCARD: Okay? The prior language said, at the beginning of the sentence, before we get into talking about temporarily abandoned status -- for now I'll just focus on the blanket -- the generic blanket bond. The prior language said, when it talks about "the division shall establish categories of financial assurance after noticing such categories blanket financial assurance in an amount not to exceed $50,000." Okay? That's what the statute used to say. So whereas 50,000 was capped at 50,000, it could have been less, but by rule, this Commission has set that at

50,000, period. Okay?

The new statute says: "Such category shall include a blanket plugging financial assurance which shall be set by rule in an amount not to exceed $250,000." So the "not to exceed" goes from 50- to 250,000, but basically directs the Commission to establish this rule to implement that.

COMMISSIONER MARTIN: Right.

MR. BRANCARD: I mean, the other part of the Act that has not changed but is sort of the basis for the discussion about the one well, what we call the single-well bond -- the statute calls it a one-well bond -- in listing the categories of financial assurance it says: "Includes a one-well plugging financial assurance in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by financial assurance." Okay?

It then goes on to talk about: "In establishing categories of financial assurance, the agency 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 agency deems relevant."

So those are the two things here, is the increase from 50- to 250- for the blanket and then implementing the provision in the Act requiring that the one-well bond be in amounts sufficient to reasonably pay the cost of plugging the well. So that's your statutory guidance in this situation.

CHAIRWOMAN RILEY: Thank you.

I think at this point it would be appropriate to bring back up the witness -- the OCD witness, Allison Marks. She was tasked with providing some additional documentation, and it looks like she's come with that.

ALLISON MARKS,

after having been previously sworn under oath, was recalled, questioned and testified as follows:

THE WITNESS: I did also just -- I didn't make a ton of copies, but I had referred to a global bonding compliance report. This is what that report looks like. There are a lot of pages here, but all the operators who are out of compliance with our current bonding is here. You can just look at that. It's not really an exhibit but so you can see there.

And then I thought it might be helpful -- I have lots of copies of these, too. Mr. Marker was here yesterday. This is what his sites look like (indicating).

MR. BRANCARD: I don't think the Commission

Exhibit

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

IN THE MATTER OF PROPOSED AMENDMENTS TO THE COMMISSION'S RULES ON FINANCIAL ASSURANCE AND PLUGGING AND ABANDONMENT OF WELLS, 19.15.2, 19.15.8 AND 19.15.25 NMAC; STATEWIDE

CASE NO. 16078
ORDER NO. R-14834

ORDER OF THE COMMISSION

THIS MATTER came before the New Mexico Oil Conservation Commission ("Commission") on the application of the Oil Conservation Division of the Energy, Minerals and Natural Resources Department ("OCD") to amend Rules 19.15.2, 19.15.8 and 19.15.25 NMAC. The Commission, having conducted a hearing on July 19 and 20, 2018 and deliberated in open session following the hearing, and having considered the testimony, the record, and the arguments of the parties, and being otherwise fully advised, enters the following findings, conclusions, and order.

THE COMMISSION FINDS THAT:

1. Statutory Authority. The Commission is authorized to adopt rules, after a hearing, under the Oil and Gas Act, NMSA 1978, §§ 70-2-1 to -38 (1935, as amended through 2018) ("Act"). NMSA 1978, § 70-2-12.2 (2015). The Commission and OCD are given the duty to prevent waste and protect correlative rights and to make and enforce rules to carry out the purpose of the Act, NMSA 1978, § 70-2-11, and are specifically authorized to make rules to require abandoned wells to be plugged and to require financial assurance for the performance of such rules. NMSA 1978, § 70-2-12(B)(1). The Act also specifies the requirements for types and amounts of acceptable financial assurance and requires the adoption of rules to establish amounts. NMSA 1978, § 70-2-14 (2018). In 2018, the Legislature amended Section 70-2-14 to increase the cap for a blanket financial assurance and required that the amounts for a blanket plugging financial assurance be set by rule. Laws 2018, ch. 16.

2. Application and Notice. OCD filed an Application on March 28, 2018, to amend 19.15.2, 19.15.8 and 19.15.25 NMAC, which rules relate to financial assurance and plugging and abandonment of wells ("proposed rule change"). The Application included a draft of the proposed rule change and a proposed legal notice. 19.15.3.8(A) NMAC.

3. At a public meeting on April 12, 2018, the Commission determined to hold a hearing on the proposed rule change and scheduled the hearing to begin on May 24, 2018. 19.15.3.8(C) NMAC. The Commission continued the hearing to July 19, 2018.

4. Notice of the rulemaking and of the date, time, and place of the hearing was provided as required by NMSA 1978, § 14-4-5.2 (2017) and 19.15.3.9 NMAC, including publication in the New Mexico Register on April 24, 2018. (OCD exh. 2).

5. Pre-hearing statements were submitted by OCD and the Independent Petroleum Association of New Mexico ("IPANM"). OCD proposed technical witnesses for the hearing; IPANM did not propose any technical witnesses. In its pre-hearing statement, IPANM offered modifications to the proposed rule changes. The OCC did not receive any written submittals, other than those submitted in the hearing process.

6. Proposed Rule Change. The applicant, OCD, proposed to amend rules 19.15.2, 19.15.8 and 19.15.25 NMAC. The proposed rule change adds the following provisions:

(a) Blanket Financial Assurance: To implement the higher cap enacted by the Legislature, OCD proposed a ladder of blanket bond amounts with steps at $50,000, $75,000, $125,000 and $250,000 depending on the total number of wells operated by the company on the bond. The amounts of blanket plugging financial assurance for wells in temporarily abandoned status are not changed.

(b) Single Well Financial Assurance: OCD proposed to increase the financial assurance amount for a single well. The current formula of $5000 or $10,000 per well plus $1 per foot is increased to $25,000 per well and $2 per foot. The current system of two formulas based on the location within the state is replaced by a single formula. In 19.15.2, OCD proposes to add definitions for the terms "measured depth" and "true vertical depth", which terms are employed in the formulas.

(c) Approved Temporary Abandonment: OCD proposes to amend 19.15.25 to limit the percentage of wells that an operator can place in approved temporary abandonment. An operator will not be permitted to place more than one-third of all its wells in approved temporary abandonment. The proposal also requires that an operator must comply with the financial assurance requirements for temporarily abandoned wells under 19.15.8 NMAC before the well can receive a permit for approved temporary abandonment.

(d) Transition Provision: OCD proposes that the new financial assurance requirements will apply immediately to all permit applications to drill, deepen or plug back a well or for approved temporary abandonment. For all other wells, the effective date of the new requirements is delayed approximately 3 months.

7. Public hearing. The Commission commenced a public hearing on the proposed rule changes that began on July 19, 2018 and continued until July 20, 2018. The Commission completed deliberations on July 20, 2018.

8. OCD presented Allison Marks and Philip Goetze as technical witnesses. No other technical witnesses were presented by the parties. Each technical witness was subject to cross-examination by the other parties and by the Commissioners and Commission Counsel.

9. Allison Marks explained the purposes of the proposed rule change. The primary purpose is to implement changes to the Act enacted in 2018, to amend financial assurance requirements to reflect the goals of the Act and to prevent the overuse of approved temporary abandonment. The Act was amended in 2018 to increase the cap on blanket financial assurance for active wells from $50,000 to $250,000. Laws 2018, ch. 16. The amendments to the Act require that the amounts be set by rule. Laws 2018, ch. 16, §2. The proposed rule change also amends the formula for a one well financial assurance to meet the requirement in the Act that a one well plugging financial assurance be "in amounts determined sufficient to reasonably pay the costs of plugging the wells." NMSA 1978, §70-2-14(A). Finally, the proposed amendments to the temporary abandonment rules are designed to limit the percentage of wells that an operator can place in approved temporary abandonment and to link the approval with the requirements for financial assurance. (Marks testimony).

10. Allison Marks went through each of the provisions to explain the changes. The proposal to implement the Legislative change to blanket plugging financial assurance provides for a tiered approach with blanket bonds at $50,000 for operators with one to ten wells, $75,000 for operators with eleven to fifty wells, $125,000 for operators with fifty-one to one hundred wells and $250,000 for operators with more than one hundred wells. The tiered approach follows what the Commission had adopted in 2015 for blanket plugging financial assurance for temporarily abandoned status wells. 19.15.8.9(D) NMAC. The proposal increases the amount of financial assurance available to the State if an operator fails to comply with the requirements to plug and abandon their wells. (Marks testimony).

11. The proposal to increase the amount of the one well financial assurance is based on data from the last 4 years of actual plugging costs incurred by OCD. (OCD exh. 6). The current formula in the rule does not accurately reflect the actual costs. OCD provided data and charts demonstrating how the proposed formula ($25,000 plus two dollars per foot of the depth of the well) fit the actual costs of plugging wells at various depths. OCD also proposed to eliminate the use of two different formulas for different areas of the State. (Marks testimony; OCD exh. 3-5, 9, 10).

12. The proposal adds new definitions of "measured depth" and "true vertical depth" that are used in the calculation of the one well financial assurance amount. Given the variation in the types of wells now employed by operators, different calculations of depth are used for vertical and horizontal wells (true vertical depth) and for deviated and directional wells (measured depth). OCD explained the methods and the reasoning for using each in different situations. (Goetze testimony; OCD exh. 8). In response to questions from the Commission, OCD offered a slightly revised definition of "true vertical depth". (OCD exh. 12).

13. The OCD proposal amends 19.15.25 ("Plugging and Abandonment of Wells") to (a) limit the percentage of wells that an operator can place into approved temporary abandonment status and (b) link the approval of temporary abandonment with the change in financial assurance required by the Act and Rules. Under the Rules, OCD can permit a well to be in approved temporary abandonment if the well has been inactive for fifteen months and the well meets certain requirements. This status allows the well to

remain inactive without being permanently plugged. OCD presented evidence on operators that are currently out of compliance with the inactive well rules and the risks those operators pose. (Marks testimony; OCD exh. 7). Operators with a high percentage of inactive wells pose the greatest threats. The OCD proposal would limit the number the number of wells that could receive approved temporary abandonment to one-third of the total number of wells. OCD provided amended language for this proposal. (OCD exh. 12)

14. OCD proposed to add a financial assurance requirement to the standards for approved temporary abandonment. 19.15.25.13(F) NMAC. The Act requires operators to have increased financial assurance for wells in "temporary abandonment status". NMSA 1978, §70-2-14(A). This proposal is intended to simplify the process for both operators and the agency by having the operator provide the new financial assurance at the same time they would apply for approved temporary abandonment. (Marks testimony).

15. IPANM participated in the hearing through the submittal of amendments to the proposed rule change and through cross examination of witnesses. IPANM proposed to lower the tiers for blanket financial assurance by beginning at $25,000. In cross-examination, IPANM raised several concerns with the proposed rule change including whether it is fair to include the numbers of federal wells in the calculating the tier levels. The financial assurance requirements only cover wells on state and private land. 19.15.8.9(A) NMAC. Federal wells have separate financial assurance through the federal government.

16. Public comment was provided at the hearing by Larry Marker and Rory McMinn. Mr. Marker also offered written comments, which included proposed changes to the proposal. Mr. Marker and Mr. McMinn both testified as operators of low volume wells, sometimes referred to as "stripper wells". Both testified on the costs to comply with financial assurance requirements, and that the OCD proposal would increase those costs. Both supported the IPANM proposal for blanket plugging financial assurance. Mr. Marker also proposed changes to the one well financial assurance formulas; Mr. McMinn supported Mr. Marker's changes.

17. <u>Changes to Published Rule</u>. During the rulemaking proceeding, modifications to the proposed rule were offered. IPANM proposed modifications in its pre-hearing submittal. Larry Marker submitted written modifications at the hearing that were untimely under Commission rules, 19.15.3.11.B NMAC, but no party objected and the Commission considered the proposals during deliberations. In response to requests and questions from the Commissioners, additional changes were submitted by OCD at the hearing prior to deliberation by the Commission (OCD exh. 11, 12, 15).

18. <u>Deliberations and Actions</u>. The Commission commenced deliberation on July 19. During deliberation, the Commission reviewed the proposed rule changes, the modifications submitted by other parties, the further modifications submitted by OCD, and the evidence presented during the hearing. The Commission reviewed each section of the proposed rule and made some changes to the proposal. The Commission directed Commission counsel to prepare a clean version of the proposed rule changes based on the deliberation, and a draft Order. On August 20, 2018, the Commission reviewed the final draft of the proposed rule changes, completed deliberations and adopted this Order. The

Commission adopted the attached rule changes which consist of the proposed rule changes with modifications.

19. Reasons for Adopting the Rule Changes. The Commission finds that the 2018 amendments to the Act require changes to the Commission's financial assurance rules. The proposed rule changes are a reasonable implementation of the statutory changes and are supported by substantial evidence. The changes are necessary to bring the rules into compliance with the statutory mandates, which require financial assurance to assure that operators meet the requirements to properly plug and abandon wells. The Commission finds that the proposed rule change, as modified, increases the requirements for financial assurance, as required by the Act, without unnecessarily burdening small operators. The proposed rule change provides a clear and detailed process for when and how to provide financial assurance, and brings greater consistency to the rules.

20. Blanket plugging financial assurance. The Commission finds that the proposal from OCD, as amended, is a reasonable implementation of the Legislative change to the Act. The Commission reviewed the impacts of the OCD and IPANM proposals, and the impacts with and without including federal wells in the totals. (OCD exh. 9, 13. 14). The Commission finds that the proposed rule changes provide for the statutory increase in blanket financial assurance without unreasonably burdening small operators. Under the OCD proposal, over 50% of the operators would not be subject to a blanket bond greater than is currently required. By not unreasonably burdening small operators who could be forced to plug low volume wells, the proposal avoids potential waste. NMSA 1978, §§ 70-2-3, 70-2-6, and 70-2-11. The Commission finds that the IPANM proposal, which would allow over 50% of the operators to be eligible for reduced blanket financial assurance and increase the amount for less than 12% of the operators, is not consistent with the intent of the legislation which authorized a 400% increase in the maximum blanket financial assurance.

21. The Commission finds that the IPANM concern about potential double bonding when the number of wells covered by the state blanket bond includes federal wells which are covered by separate financial assurance is valid. The Commission modified the proposed rule change to provide that if the number of federal wells held by an operator causes the operator to move into a higher tier under 19.15.8.9(C)(2) NMAC, then the state blanket bond can be reduced by the amount of the federal statewide blanket bond. 10.15.8.9(C)(3) NMAC.

22. One Well Financial Assurance. The Commission finds that the new formula for one well financial assurance more accurately reflects the actual costs of plugging wells at various depths. The evidence clearly shows that the current formulas for one well financial assurance do not accurately reflect the actual costs, and that it is not necessary to prescribe different formulas for different areas of the State. The new formula will bring the rule into compliance with the statutory mandate that the one well financial assurance must be in "amounts determined sufficient to reasonably pay the costs of plugging the wells". NMSA 1978, §70-2-14(A). The Commission finds that the formulas offered by Mr. Marker do not reflect the actual costs nearly as well as the OCD proposal. The Commission also finds that the new definitions of "measured depth" and "true vertical depth", as amended, are reasonable and necessary to implement the one well financial assurance.

23. Temporary Abandonment. The Commission finds that the OCD proposal to limit the percentage of approved temporary abandonment wells reasonable. Wells that are inactive for a significant period pose threats to the environment and fresh water. Operators with large percentages of inactive wells present an increased risk of improperly abandoning the wells and leaving the plugging and cleanup costs to the State. The Commission also finds that coordinating the requirements to permit temporary abandoned wells and to provide increased financial assurance is reasonable and will simplify the process for both the operators and the agency.

24. Transition provisions. The Commission finds that the proposal to have the new financial assurance requirements be effective immediately for new applications but be delayed for other wells is reasonable. The Commission modified the dates to comply with the actual effective date of the rule change.

25. The Commission finds that the proposed rule changes, as modified by the Commission, are supported by substantial evidence in the record. The Commission reviewed the amendments to the proposed rule changes submitted by the parties. The changes approved by the Commission are within the scope of the rulemaking as provided in the notice.

THE COMMISSION CONCLUDES THAT:

1. The Commission has jurisdiction, under the Oil and Gas Act, NMSA 1978, §§ 70-2-1 to -38, over the parties and subject matter of this case.

2. The Commission has legal authority, under the Oil and Gas Act, to enact the proposed rule changes.

3. The Commission provided due public notice and an opportunity for the public to provide comments regarding the proposed rule change. A public hearing was held and reasonable opportunity was provided for all persons present to provide testimony, evidence and exhibits.

4. All Commissioners were present at the public hearing and considered all the evidence presented during the hearing including the proposed modifications submitted by the parties. The Commission deliberated after the hearing and adopted the rule changes.

5. The amendments to the proposed rule changes adopted by the Commission were a logical outgrowth of the original proposal.

6. The Commission concludes that there is substantial evidence in the record to support the proposed rule changes, as amended by the Commission, that these rule changes are within the authority of the Commission under the Oil and Gas Act and that these rule changes are reasonable and further the goals of the Oil and Gas Act.

IT IS THEREFORE ORDERED THAT:

1. The proposed changes to 19.15.2, 19.15.8 and 19.15.25 NMAC, as submitted to the Commission by the OCD and as amended by the Commission during

deliberation, are hereby approved by the Commission. The adoption of the rule changes will be final upon the later of (a) the action, or deemed action, of the Commission on a rehearing application filed pursuant to NMSA 1978, § 70-2-25, or (b) 20 days from the date of this order if no rehearing application is filed. The rule change shall not be filed with the state records administrator until the rule change is adopted and then must be filed within 15 days after the adoption. If no rehearing is required by the Commission, this Order shall serve as the "concise explanatory statement" required by NMSA 1978, § 14-4-5.5 (2017).

2. Commission counsel shall review the text of the final rule and make any necessary non-substantive corrections prior to filing.

DONE at Santa Fe, New Mexico, on August 20, 2018.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

HEATHER RILEY, Chair

ROBERT BALCH, Member

ED MARTIN, Member

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