



New Mexico State Senate

STATE CAPITOL

Santa Fe 87501

October 13, 2025

New Mexico Oil Conservation Commission
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Re: Legislative Authority & Policy Considerations in Pending Rulemaking (Case No. 24683)

Dear Chairman Chang, Commissioner Bloom, and Commissioner Ampomah:

As members of the New Mexico Legislature, we appreciate the Oil Conservation Commission's ("Commission") important work to ensure the responsible development of New Mexico's oil and gas resources. We also have a responsibility to safeguard the Legislature's constitutional role in establishing the policies that guide such regulation. We write to express concern that certain proposals in the pending rulemaking (Case No. 24683) would exceed the authority that the Legislature has delegated to the Commission and the Oil Conservation Division ("Division") under the New Mexico Oil and Gas Act, NMSA 1978, §§ 70-2-1 et seq.

The Oil and Gas Act (the "Act") gives the Commission the power to administer and enforce the Act's provisions, not to redefine or expand them. Sections 70-2-6, -11, and -12 authorize the Commission to make rules "necessary to carry out the purposes of the Act," but that authority does not extend to creating new substantive rights or obligations that the Legislature has not enacted. Courts have consistently held that an agency may not adopt rules that alter the balance or limits established by statute. See *Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013; *Morningstar Water Users Ass'n v. N.M. PUC*, 1995-NMSC-062.

Several of the proposed amendments now before the Commission would do precisely that. They include:

1. **New financial-assurance categories** - such as the creation of "marginal well" bonding—that would effectively circumvent the Legislature's clear \$250,000 cap on blanket financial assurance under § 70-2-14(A);
2. **Expanded regulation of acquisitions and ownership** transfers - under proposed 19.15.8.9(A) NMAC, which would extend the Division's reach beyond operations into private property transactions; and
3. **New definitional and enforcement presumptions** - that would re-write the Legislature's statutory structure for well status, abandonment, and beneficial use.

These proposals represent significant policy changes that the Legislature has not authorized and that must, if pursued, be debated and enacted through the legislative process. The Legislature has historically adjusted the financial-assurance framework itself—most recently in 2015 and 2018—and has not granted the Commission authority to create new categories or alter statutory limits through rulemaking.

Beyond the legal issues, the policy implications are substantial. The proposed changes could have major economic and operational effects on New Mexico’s producing wells—particularly small and marginal wells that contribute to state revenues, rural employment, and energy stability. Such broad policy choices warrant full legislative deliberation, fiscal analysis, and public debate.

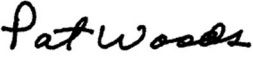
For these reasons, we respectfully urge the Commission to defer action on the portions of the proposed rule that exceed existing statutory authority and to allow the Legislature to consider whether additional changes to the Act are warranted. Doing so would ensure that any new policy direction is implemented through the constitutionally prescribed process and would maintain a clear separation between legislative policy-making and administrative execution.

We appreciate your service to the State of New Mexico and your dedication to upholding both the letter and the spirit of the Act.

Respectfully,


WILLIAM SHARER
State Senator, District 1

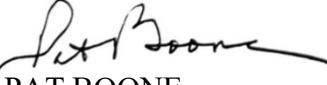

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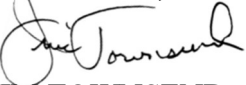

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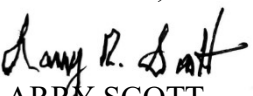

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