APPENDIX B

Statement of Basis, Specific Statutory Authority, and Purpose
New Rules and Amendments to Current Rules of the
Colorado Oil and Gas Conservation Commission, 2 C.C.R. § 404-1

Cause No. 1R Docket No. 210600097
Financial Assurance Rulemaking

This statement sets forth the basis, specific statutory authority, and purpose for amendments ("Financial Assurance Rulemaking") to the Colorado Oil and Gas Conservation Commission ("Commission" or "COGCC") Rules of Practice and Procedure, 2 C.C.R. § 404-1 ("Rules").

Unless otherwise specified, the new rules and amendments become effective on January 1, 2022.

In adopting amendments to the Rules, the Commission relied upon the entire administrative record for this rulemaking proceeding, which formally began on June 15, 2021, when the Commission submitted its Notice of Rulemaking to the Colorado Secretary of State for revisions to its 200, 300, 400, 500, 700, 800, and 900 Series Rules and related 100 Series definitions. This record includes public comments, written prehearing statements, written prehearing testimony, and oral testimony and comments provided during public hearings and Commission deliberations.

Background

In the Financial Assurance Rulemaking, the Commission revised its Rules to align with the statutory amendments adopted in Senate Bill 19-181. The Financial Assurance Rulemaking fulfills the Commission's statutory obligation to undertake a rulemaking to "require every operator to provide assurance that it is financially capable of fulfilling ever obligation imposed by this article 60 as specified in rules adopted on or after April 16, 2019." C.R.S. § 34-60-106(13).

Additionally, the Commission improved the clarity of its Rules by continuing its ongoing efforts to group related Rules together in the same Series and by re-ordering Rules within its 700 Series Rules to follow a more logical, sequential order. The Commission also eliminated duplicative, outdated, and unnecessary Rules. And the Commission used clearer language, eliminated typographic errors, and ensured consistency throughout its Rules.

Statutory Authority

A. Senate Bill 19-181

On April 16, 2019, Governor Polis signed Senate Bill 19-181 into law. Senate Bill 19-181 changed the Oil and Gas Conservation Act's (the "Act") legislative declaration from directing

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the Commission to "[f]oster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of environment and wildlife resources," C.R.S. § 34-60-102(1)(a)(I) (2018), to directing the Commission to "[r]egulate the development and production of the natural resources of oil and gas in the state of Colorado in a manner that protects public health, safety, and welfare, including protection of the environment and wildlife resources," C.R.S. § 34-60-102(1)(a)(I) (2020). In sum, the General Assembly changed the term "foster" to "regulate;" removed the terms "responsible," "balanced," and "utilization;" and changed the phrase "in a manner consistent with protection of" to "in a manner that protects."

Consistent with these changes to the Act's legislative declaration, Senate Bill 19-181 also added a new mandate that "[i]n exercising the authority granted by this article 60, the Commission shall regulate oil and gas operations in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources and shall protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations." C.R.S. § 34-60-106(2.5)(a).

Another fundamental change enacted by Senate Bill 19-181 is a transition to a Commission staffed by five full-time professionals. Previously, the Commission was a nine-member volunteer body that meets periodically. Senate Bill 19-181 made several structural changes to the Commission. C.R.S. § 34-60-104.3(2). The full-time Commission provisions of Senate Bill 19-181 became effective on July 1, 2020. *See id.* In the Financial Assurance Rulemaking, the Commission revised several of its Rules to account for the transition to a full-time Commission, which allows for additional Commission-level oversight of financial assurance matters that were previously addressed by Staff.

B. Financial Assurance

Senate Bill 19-181 specifically required the Commission to conduct several rulemakings to address various topics. The Commission addressed many of these topics in prior rulemakings, including its 2019 500 Series Rulemaking, 2019 Flowline Rulemaking, 2020 Wellbore Integrity Rulemaking, 2020 Mill Levy Rulemaking, and 2020 Mission Change Rulemakings (which separately addressed the 200–600 Series and 800/900/1200 Series).

Senate Bill 19-181 also required the Commission to conduct a rulemaking to update its financial assurance rules. This Financial Assurance Rulemaking fulfills that statutory obligation. Specifically, Senate Bill 19-181 provides that:

> The commission shall require every operator to provide assurance that it is financially capable of fulfilling every obligation imposed by this article 60 as specified in rules adopted on or after April 16, 2019. The rule-making must consider: Increasing financial assurance for inactive wells and for wells

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> transferred to a new owner; requiring a financial assurance account, which must remain tied to the well in the event of a transfer of ownership, to be fully funded in the initial years of operation for each new well to cover future costs to plug, reclaim, and remediate the well; and creating a pooled fund to address orphaned wells for which no owner, operator, or responsible party is capable of covering the costs of plugging, reclamation, and remediation.

C.R.S. § 34-60-106(13). In addition to this rulemaking directive, Senate Bill 19-181 also made minor typographical amendments to all six subsections of Subpart 13. *Compare* C.R.S. § 34-60-106(13)(a)–(f) (2018) *with* C.R.S. § 34-60-106(13)(a)–(f) (2020). The General Assembly did not substantively revise those subsections except to clarify that financial assurance must cover every obligation imposed by the Act, rather than only obligations imposed by specific subsections of Section 106.

The Financial Assurance Rulemaking fulfills the Commission's statutory obligation under C.R.S. § 34-60-106(13) because it requires every operator to provide assurance that it is capable of fulfilling every obligation imposed by the Act and the Commission's Rules. Additionally, the Commission considered, and in some cases adopted, regulations addressing the topics listed below. Because C.R.S. § 34-60-106(13) only requires the Commission to "consider" adopting the specific regulations discussed below, in some cases the Commission did not adopt the specific rule discussed by the statute, or adopted a variation on that Rule. *See Fed. Energy Reg. Comm'n v. Mississippi*, 456 U.S. 742, 761–66 (1982) (holding that statute requiring state agencies to "consider" adopting federal standards did not actually require states to do adopt the federal standards); *U.S. Sugar Corp. v. Envtl. Prot. Agency*, 830 F.3d 579, 623–24 (D.C. Cir. 2016) (holding that statute providing that agency "may consider" adopting an alternative emission standard did not require agency to adopt a specific alternative standard).

1. Increasing financial assurance for inactive wells and for wells transferred to a new owner.

The Commission revised Rules 218.b, 218.d, and 218.e to require full-cost bonding for all transferred inactive wells. Consistent with these requirements, Rules 702.d.(1).C.ii.cc, 702.d.(2).C.ii.cc, and 702.d.(3).A.i require operators to maintain financial assurance to cover the full cost of plugging, abandoning, and reclaiming an inactive well that has been transferred. Additionally, the Commission revised its definition of inactive well to be wells that produce less than 1 barrel of oil equivalent per day over the course of a 12-month rolling average, in order to avoid challenges with the implementation of its prior definition.

Based on Staff's recent review of extensive, long-term data from the Commission's expenditures to plug, abandon, remediate, and reclaim oil and gas locations through its Orphaned Well Program, Rule 218.b.(5).A establishes a default value of $78,000.00 per well as the full cost of financial assurance for inactive wells. However, the Commission recognizes that in some cases, plugging, abandonment, remediation, and reclamation costs

for inactive wells may exceed that average value. Accordingly, the Commission added additional informational requirements to the Form 9, Transfer of Operatorship – Intent in Rule 218.b.(3).B, to facilitate a desktop review of key factors that are most relevant to determining whether reclamation costs will be higher.

Additionally, the Commission adopted a new definition of Low Producing Wells, which are defined as producing less than 5 barrels of oil equivalent per day over the course of a 12-month rolling average. Rule 218.b.(8) requires a Commission hearing for transfers that consist of more than 30% Low Producing Wells. Based on the Commission's experience, transactions in which a large number of Low Producing Wells are transferred are likely to result in higher risks to the public of the new operator orphaning the wells. Accordingly, Rule 218.b.(8) will allow the Commission to have increased oversight over transfers that may create greater risks to the Commission and the public by increasing the likelihood of operators orphaning wells.

In Rule 434.c, the Commission adopted comprehensive new standards to require and incentivize plugging of inactive wells, including some financial assurance requirements. Rule 434.c gives operators four options for wells that have been inactive for more than six months: plug the well, return it to production, pay increased financial assurance, or convert it to out of service status and add it to a plugging list. If an operator pays increased financial assurance pursuant to Rule 434.c.(2) or adds the well to its plugging list pursuant to Rule 434.c.(3), the operator must plug the well within three years, or increase the financial assurance for the inactive well to full-cost bonding.

Finally, in Rule 707.b, the Commission added additional oversight by requiring Commission-level review of an operator's financial assurance on an annual basis if more than 75% of the operator's wells are low-producing, or if more than 50% of the operator's wells are inactive. This will further facilitate Commission-level oversight of wells that pose a more significant risk to the public of the operator orphaning the wells, because they are held by an operator with a high ratio of low-producing or inactive wells.

2. *Requiring a financial assurance account, which must remain tied to the well in the event of a transfer of ownership, to be fully funded in the initial years of operation for each new well to cover future costs to plug, reclaim, and remediate the well*.

In Rule 702.d.(3), the Commission created an option for operators to submit a Tier 3 financial assurance plan to use a sinking fund, which would be a financial assurance account that would be funded over time until it reached the full cost required to plug and reclaim the well. Any operator with a sufficiently high percentage of inactive wells, or that is plugging too low a percentage of wells to qualify for Tier 1 or Tier 2 financial assurance plans pursuant to Rules 702.d.(1) and (2) must submit a financial assurance plan to use a sinking fund.

The Commission determined that a sinking fund is an appropriate mechanism to provide financial assurance for operators whose asset portfolio presents a higher risk, and the operator is therefore unable to qualify for blanket bonding under Tier 1 or Tier 2. The operator is therefore required to build up financial assurance over time until it reaches full-cost bonding for all of its wells. This will both incentivize operators to plug wells, to avoid having to pay into the sinking fund for them, and also provide additional financial assurance to the Commission at a rate that will not pose such a financial hardship to operators that the operators orphan their wells.

To avoid complexity with transfers, the Commission chose not to tie the sinking fund to individual wells, but rather to an operator's overall operations. This will significantly improve administrability, and better tie financial assurance to the actual source of the risk to the state—the possibility of an individual operator's inability to comply with its obligations—rather than a specific well which could be transferred to a more solvent operator.

The Commission did not require the sinking fund to be funded in the initial years of a well's operation, but rather provided a 10-year time frame for all Tier 3 operators to reach the full amount of funds that must be paid into the sinking fund.

Finally, the Commission chose not to require that the sinking fund cover the cost of remediation, because it determined that financial assurance for remediation costs was best addressed through environmental liability insurance pursuant to Rule 705.b, and through case-by-case determinations for individual remediation projects pursuant to Rule 913.i.(1).

3. *Creating a pooled fund to address orphaned wells for which no owner, operator, or responsible party is capable of covering the costs of plugging, reclamation, and remediation*.

In Rule 205.c, the Commission created a new pooled fund to address orphaned wells. The Commission adopted a new annual registration fee of $100.00 per well in the first year and $200.00 per well in subsequent years. The fees will be deposited into the pooled fund, and may be used by the Director solely to address orphaned sites. Consistent with this regulatory change, the Commission eliminated its prior 100 Series definition of Orphan Well, and determined that it was more prudent to rely on a single definition of Orphaned Site that includes all wells, oil and gas locations, and oil and gas facilities for which there is no operator with unaccessed financial assurance, active Form 1, Registration for Oil and Gas Operations, or responsible party. The catch-all term Orphaned Site will better encapsulate the range of activities that the Commission's Orphaned Well Program conducts, which sometimes involve reclamation, remediation, or equipment decommissioning at oil and gas locations that do not have a well, or where a well was already plugged.

In future rulemakings, the Commission may also consider changing the fee and reducing the mill levy pursuant to Rule 217. Over the long term, the Commission's intent is to shift

funding for the Orphaned Well Program from the mill levy on production to a pooled fund that is funded by an annual registration fee. This will reduce the volatility of the funding for the Orphaned Well Program. The number of wells in the state does not fluctuate to the same degree or depend on market conditions as heavily as the mill levy. Over time, this reduction in volatility will ensure that the Orphaned Well Program is fully funded through the pooled fund and can successfully fulfill its role of plugging, abandoning, reclaiming, and remediating orphaned facilities.

E. Specific Statutory Authority

In addition to the statutory language quoted above, the Commission's authority to promulgate amendments to the Rules is derived from the following sections of the Act:

- C.R.S. § 34-60-102 (Legislative declaration)
- C.R.S. § 34-60-103 (Definitions);
- C.R.S. § 34-60-104.5 (Duties of the Director);
- C.R.S. § 34-60-105 (Powers and authority of the Commission);
- C.R.S. § 34-60-106 (Specific Commission duties, including Financial Assurance);
- C.R.S. § 34-60-108 (Procedural rules);
- C.R.S. § 34-60-120 (Authority over federal lands and minerals);
- C.R.S. § 34-60-121 (Enforcement);
- C.R.S. § 34-60-122 (Calculation of expenses);
- C.R.S. § 34-60-124 (Oil and gas conservation and environmental response fund);
- C.R.S. § 34-60-127 (Reasonable accommodation of surface owners); and
- C.R.S. § 34-60-131 (Local government preemption).

Stakeholder and Public Participation

The Commission initiated the informal stakeholder and public participation process for the Financial Assurance Hearing during its weekly hearing on February 10, 2021. The Commission released a list of questions about financial assurance-related topics to the public on its website. The Commission also instructed its Hearings Staff to convene an informational docket for interested members of the public to provide information.

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On February 24, 2021, the Commission, on its own motion, issued notice and applied for an informational docket hearing pursuant to Rules 503.a and 904.c. The hearing was noticed for March 31, 2021. Members of the public were given the option to participate by submitting written and oral comment. Interested Persons were given the option of submitting written statements and presenting oral statements.

On March 15, 2021, 31 Interested Persons (including organizations and individuals, some of whom filed jointly) filed written statements. On March 17, 2021, the Commission's Hearing Officer issued a Pre-Hearing Order, allocating time for the Interested Persons to present to the Commission at its informational docket hearing. The Commission conducted the informational docket hearing during business hours on March 31 and April 1, 2021. It also received oral public comment from individuals who did not submit written materials at a 6:00 p.m. hearing on March 31 to accommodate members of the public who were unavailable to provide comment during ordinary business hours.

After the conclusion of the Financial Assurance Informational Docket, the Commissioners presented a list of additional and follow-up questions to Staff. Staff presented its responses to those questions at the Commission's May 5, 2021. Among other things, Staff presented data about average costs borne by its Orphaned Well Program, bond claims, stripper wells, reclamation costs, and emissions from idle and plugged wells. Staff also identified additional questions that the Commission could pose to industry stakeholders and regulators from other states for matters where Staff lacked access to information required to answer the Commission's questions. Staff and stakeholders presented responses to the Commission's additional informational questions at the Commission's May 26, 2021 hearing.

Throughout the course of the informal stakeholder process, individual Commissioners and Staff met with interested persons to discuss topics relevant to the Financial Assurance Rulemaking.

The formal stakeholder process began on June 15, 2021, when the Commission submitted its Notice of Rulemaking to the Colorado Secretary of State.

Identification of New and Amended Rules

Consistent with its statutory authority and its legislative mandates, and in accord with the administrative record, the Commission has revised, reorganized, and added to Rules 205, 211, 217, 218, 223, 304, 306, 413, 434, 436, 503, 504, 505, 810, 907, 912, and 913 and its 700 Series Rules. Additionally, the Commission has revised several definitions in its 100 Series Rules, added several new definitions to its 100 Series Rules, and removed several definitions from its 100 Series Rules.

To assist stakeholders in identifying how the 700 Series Rules have been amended, moved, and removed, a table cross-referencing the Commission's prior and newly adopted 700 Series Rules is attached as Attachment 1 to this Statement of Basis and Purpose.

Amendments and Additions to Rules

Throughout Financial Assurance Rulemaking, the Commission made minor edits, conforming changes, and clarifications to improve clarity and consistency. Among other things, these changes include:

- Phrasing regulatory language in active voice, rather than passive voice, to clarify the responsible entity;
- Capitalizing all terms defined in the 100 Series to signal to stakeholders that the term has a definition;
- Reorganizing the 700 Series Rules and moving some Rules between Series to ensure that all Rules addressing the same topic are located in the same Series, and making the 700 Series proceed in a logical, sequential order that better reflects the lifecycle of financial assurance;
- Eliminating outdated and unnecessary Rules and provisions of Rules that reflect practices or requirements that are no longer in use;
- Eliminating Rules and provisions of Rules that unnecessarily duplicate other Rules;
- Streamlining internal cross-references within the Rules;
- Consistently using the term "will" instead of "shall" or "must";
- Using consistent terminology to refer to key entities such as the Commission, the Director, operators, and local governments;
- Using consistent terminology to refer to the Commission's Forms;
- Using consistent formatting conventions throughout the Rules; and
- Correcting typographic errors.

Retroactivity

The Commission intends for its Financial Assurance Rules to applying beginning on January 1, 2022. The Commission revised financial assurance requirements for numerous existing facilities, including all wells statewide. Colorado courts recognize that agencies may permissibly revise financial assurance requirements that apply to existing facilities and apply them retroactively because participants in highly regulated industries are

expected to be aware of the risk of further regulations and because the public health and environmental risks posed by inadequate financial assurance outweigh the financial interests of regulated industry. *See Colo. Dep't of Pub. Health & Env't v. Bethell*, 60 P.3d 779, 785 (Colo. App. 2002). The Commission determined that it was necessary to apply its revised financial assurance requirements retroactively to existing facilities in order to comply with the revised statutory requirement of C.R.S. § 34-60-106(13), and to fulfill its obligation to protect and minimize impacts to public health, safety, welfare, the environment, and wildlife resources, C.R.S. § 34-60-106(2.5)(a).

To accommodate operators during the transition period, the Commission adopted a phased in compliance schedule in Rule 702.b.(1), allowing operators until July 1, 2022 to submit a financial assurance plan demonstrating the operator's plan for complying with the new financial assurance rules. Pursuant to Rules 702.d.(1).C & 702.d.(2).C, the Commission intends for operators to have until 30 days from the date the Commission approves their financial assurance plan to provide their new financial assurance amount to the Commission. Operators subject to Tier 3 financial assurance plans will pay their increased financial assurance amounts over time, rather than an up front lump sum. Additionally, Rule 702.f allows an operator to credit any existing financial assurance towards its new financial assurance obligations.

Applicability to Pending Permit Applications

Pursuant to C.R.S. § 24-4-104.5(2)(a), the Commission intends for all Rules adopted and amended in the Financial Assurance Rulemaking to apply to all applications that were pending as of January 1, 2022, the effective date of the Rules. This is consistent with the General Assembly's intent, as expressed in Section 19 of Senate Bill 19-181, which states that "[t]his act applies to conduct occurring on or after the effective date of this act, including determinations of applications pending on the effective date." For example, if an operator has a pending oil and gas development plan ("OGDP") application pending on December 31, 2021, it must comply with the revised financial assurance requirements prior to the Director recommending approval of the application pursuant to Rule 306.a.(5). Additionally, any Form 9, Transfer of Operatorship pending on December 31, 2021 must comply with the requirements adopted in this Financial Assurance Rulemaking prior to receiving the Director's or Commission's approval pursuant to Rule 218.e.

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APPENDIX B

100 Series Rules--Definitions

The Commission revised existing 100 Series definitions, removed existing 100 Series definitions, or adopted new definitions of the terms listed below.

Cash Bond

The Commission adopted a new definition of Cash Bond to provide better clarity about permissible forms of financial assurance. The Act expressly permits financial assurance to be in the form of "[a] letter of credit, certificate of deposit, or other financial instrument." C.R.S. § 34-60-106(13)(d). However, it does not expressly enumerate cash or currency as one such financial instrument. Because of the ease of holding cash bonds and accessing cash bonds, the Commission has long preferred cash bonds as a type of financial assurance. Accordingly, the Commission adopted a new definition of Cash Bond and expressly identified it as a type of financial assurance.

The Commission's definition of Cash Bond includes all forms of liquid and semi-liquid currency, including actual cash (or currency otherwise provided in the form of a check or other method), as well as interest-earning accounts such as money market accounts and certificates of deposit. The Commission's definition of Cash Bond encapsulates all forms of liquid United States currency in which an operator provides the actual dollar amount of financial assurance it is required to provide to the Commission. That makes a Cash Bond distinct from a surety bond or letter of credit, in which a third-party entity holds or guarantees funds on behalf of the operator to the benefit of the Commission, and the Commission does not actually hold the operator's financial assurance funds unless and until it accesses an operator's bond. Because Cash Bonds are liquid, they are also distinct from the Commission's less-preferred forms of financial assurance such as liens and security interests in real property, which require the Commission to foreclose upon property and liquidate it in order to access the financial assurance funds if the operator fails to fulfill its obligations under the Act.

The Commission holds Cash Bonds in the state treasury for the benefit of operators and for the benefit of the people of Colorado. Like other forms of financial assurance, the Commission may expend the financial assurance only if an operator fails to perform its plugging and abandonment, reclamation, or remediation obligations under the Act and the Commission's Rules. The Commission cannot expend the funds for other reasons, such as funding personnel costs or other matters that are funded through the Commission's general budget. Rather, the funds can be expended only following a formal Commission hearing to access the bond initiated pursuant to Rule 706.

Although there are limitations on the Commission's ability to spend the funds held as a Cash Bond, the operator that provides the Cash Bond also has a very limited interest in the Cash Bond. Because the operator provides the funds to serve as assurance to the Commission and the State of Colorado that it will be capable of complying with its regulatory and statutory obligations to plug and abandon its wells, reclaim its oil and gas

locations, and remediate any spills or releases, the operator has no interest in the funds under either property law or contract law. The operator's sole interest in the funds is a contingent reversionary interest. A Cash Bond will revert to the operator that provided it only if the Director determines pursuant to Rule 706 that the operator has fully complied with all of its plugging and abandonment, reclamation, and remediation obligations, abandoned its permits to drill, or another operator has acquired the assets subject to the bond and provided sufficient replacement financial assurance pursuant to Rule 218. As discussed below, pursuant to Rule 706.a, a component of the operator's contingent reversionary interest is any interest accrued on the Cash Bond while it is invested.

The Commission's prior 100 Series definition of financial assurance referred to Cash Bonds as cash collateral. This led to the unintended consequence of confusion in bankruptcy proceedings as to whether cash bonds were intended to be considered cash collateral under 11 U.S.C. § 363(a). Accordingly, the Commission changed the term "cash collateral" to "Cash Bond" in the 100 Series definition of Financial Assurance, and also clarified in the definition of Cash Bond that Cash Bonds are not intended to be considered as cash collateral within the meaning of federal bankruptcy statutes.

Financial Assurance

The Commission revised its definition of Financial Assurance in multiple ways.

First, the Commission revised the list of types of Financial Assurance to better match the types of Financial Assurance enumerated in the Act, C.R.S. § 34-60-106(13)(a)–(f). This is consistent with the Commission's revised Rule 701, which enumerates permissible types of Financial Assurance and establishes procedures for operators to utilize each type.

Second, as noted above, the Commission changed the term "cash collateral" to the newly defined term "Cash Bond," to clarify that cash bonds are not intended to be considered as cash collateral within the meaning of 11 U.S.C. § 363(a) in bankruptcy proceedings.

Third, the Commission removed the term "certificate of deposit" from the definition, because certificates of deposit are included in the new 100 Series definition of Cash Bond.

Fourth, the Commission removed the term "guarantee" as a form of Financial Assurance. The Commission made conforming edits to other language in the definition to clarify that Rule 701 establishes the types of Financial Assurance that are acceptable to ensure that an operator is able to perform its obligations under the Act and the Commission's Rules.

Finally, the Commission removed language discussing the purpose of general liability insurance for addressing third-party liability. The Commission determined that this language is unnecessary, and that the purpose of liability insurance pursuant to Rule 705 did not need to be enumerated in a regulatory definition.

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Inactive Well

The Commission revised its definition of Inactive Well to address challenges that arose in the course of implementing its prior definition, and also to better reflect the new array of regulatory standards that the Commission adopted for Inactive Wells throughout the Financial Assurance Rulemaking.

The Commission's prior definition included shut-in wells from which no production was sold for a period of 12 consecutive months, and wells that were temporarily abandoned for a period of six consecutive months. This definition was unduly complex because it treated wells differently depending on their status as shut-in and temporarily abandoned, and also overlooked wells that had not been shut-in or temporarily abandoned, but were no longer producing. Additionally, by tying the definition to any level of production that was sold, the definition inadvertently excluded wells that were no longer producing in significant volumes, but still had occasional sales, including potential sales from hydrocarbons stored on-site in tanks.

The Commission addressed these issues with its new definition of Inactive Well.

First, rather than requiring that a well have no production at all, the Commission adopted a definition that includes all wells producing less than one barrel of oil equivalent ("BOE") per day ("BOE/d"). This recognizes the reality that some wells produce so little as to be functionally inactive, and are therefore within the risk profile of wells that are at the end of their useful productive life. Because operators already must report the monthly production of each of their wells every month through a Form 7, Operator's Monthly Report of Production, it will be relatively straightforward for both an operator and the Commission to determine whether a well meets the definition of Inactive based on the most recent production reports for the well. The Commission determined that 1 BOE/d is a reasonable threshold, because it is one-fifteenth of the production rate necessary for a well to be classified as a stripper well. Additionally, based on the Commission's experience and current and long-term oil prices, 1 BOE/d is well below the threshold at which a well can continue to be operated profitably.

The Commission recognizes that calculating BOE/d may be more difficult for gas wells and wells that produce both oil and gas. The Commission intends for Staff to issue guidance instructing operators in how to calculate BOE/d based on their Form 7 reports, and to explore whether a system of calculating BOE/d can be automated in the future. However, because operators already report all the information necessary to calculate a well's BOE/d to the Commission on the monthly Form 7 report, the Commission determined that using a BOE/d metric was not unduly burdensome. Specifically, operators already must report the BTU value for any natural gas produced, and the Commission expects operators to calculate BOE/d based on the reported BTU of natural gas.

Second, the Commission adopted a single definition of Inactive Well that applies to all wells, regardless of whether their official status is shut-in, temporarily abandoned, or producing.

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This avoids complexities that arise from those wells still selling a small amount of production that are not yet shut-in or temporarily abandoned. It also avoids confusion around the technical classification of the well as temporarily abandoned or shut-in, which the Commission determined added an unnecessary layer of complexity to determining whether a well is inactive.

Third, the Commission determined that using a trailing 12-month average would be a more effective way of identifying wells as inactive. A trailing average is a moving average that looks backwards from the point in time when the calculation is made. Thus, operators can take an average of the prior 12 months to determine the trailing 12-month average, based on the data reported each month on the Form 7. The prior definition relied on one-time, fixed review of the prior 6 or 12 months. As a result, the data could be inadvertently skewed by the timing of the sale of some form of production from a well. By using a trailing 12-month average, the Commission determined that it could have up-to-date information that evolved over time to reflect the conditions at a well, rather than relying on a fixed-in-time point.

The Commission had not experienced similar difficulties with implementing its definition of inactive injection wells. Accordingly, the Commission maintained its prior definition, but changed the term “injection well” in the definition to instead refer to Class II UIC Well. All of the injection wells that the Commission has jurisdiction to regulate are Class II UIC wells.

Letter of Credit

The Commission adopted a new definition of Letter of Credit to better define the types of financial assurance permitted under the Act and the Commission’s Rules. The use of the term Letter of Credit in the Commission’s Rules refers only to irrevocable Letters of Credit. The Commission will not accept a revocable letter of credit as a form of Financial Assurance.

A Letter of Credit is distinct from a surety bond in that it is a guarantee by a third party entity of an operator’s creditworthiness, rather than an actual financial instrument. Additionally, the Commission is the beneficiary of the Letter of Credit, while it is an obligee of a surety bond. As discussed below in Rule 701.a, a Letter of Credit carries greater risk for the Commission than a surety bond, and is therefore not a form of preferred financial assurance.

For a more detailed description of when the Commission may call and spend a Letter of Credit, see the discussion of similar language in the 100 Series definition of Cash Bond, above.

Low Producing Well

The Commission adopted a new definition of Low Producing Well, in concert with its revised definition of Inactive Well. Much of the Commission’s focus in the Financial Assurance Rulemaking was on identifying wells that pose financial risks to the Commission and the

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public because it is more likely that an operator will orphan the well. The Commission recognizes that inactive wells—wells that are no longer producing—pose the greatest risks in many cases. But the Commission also recognizes that there are wells that pose some lesser risk because their production has declined to lower levels, but they will continue some level of production for some time.

Because the Commission is adopting rules that treat wells differently depending on their risk profile, the Commission determined that it was necessary to adopt a new definition of Low Producing Well to identify those wells with a lower risk profile than inactive wells, but still some higher risk profile than a well producing at a higher level.

The Commission determined that 5 BOE/d was a reasonable threshold for identifying Low Producing because it reflects a level where the well is still producing in sufficient quantities to potentially be profitable, but may be at the point in its decline curve where it will become inactive at some point in the relatively near future. This allows the Commission to revisit a well's status prior to it becoming inactive. Because the primary place in the Commission's rules where the term Low Producing well is used is in Rule 218, in the context of transfers of operatorship, the Commission determined that a 5 BOE/d threshold was reasonable because it would help identify transfers with high percentages of relatively unprofitable assets. In the Commission's experience, this type of transfer of high percentages of relatively unprofitable assets poses the greatest risks to the Commission and the public of the buying operator eventually orphaning the assets.

To facilitate ease in administration and implementation, the Commission structured the definition of Low Producing Well to match the definition of Inactive Well, and based it on a BOE/d metric calculated over a 12-month trailing average.

Operator

The Commission moved the definitions of Selling Operator, Buying Operator, and Prior Operator from prior Rules 218.a.(2)–(4) to the 100 Series. The Commission did so because in the Financial Assurance Rulemaking, it adopted regulations using those terms in Rules other than Rule 218.

The Commission did not substantively change the definition of Operator, or of Selling Operator, Buying Operator, or Prior Operator in the Financial Assurance Rulemaking.

Orphan Well

The Commission removed its prior definition of Orphan Well. The term Orphan Well is not used in the Commission's Rules, and the Commission determined that it was therefore unnecessary to define the term.

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Orphaned Site

The Commission revised the definition of Orphaned Site to better reflect that it includes wells, oil and gas locations, and oil and gas facilities. The Commission's Orphaned Well Program address a wide array of plugging, abandonment, reclamation, and remediation projects, which occur at a variety of different sites where oil and gas operations have occurred in the past. The Commission intends for the definition of Orphaned Site to encompass the full array of oil and gas operations orphaned by an operator that can be addressed by its Orphaned Well Program.

Consistent with eliminating the prior definition of Orphan Well because that term was not used in the Commission's Rules, the Commission also revised the definition of Orphaned Site to reflect that it is a site where no operator with unaccessed financial assurance or an active Form 1 exists. The Commission will only expend funds collected pursuant to Rule 205.c to address Orphaned Sites for which there is no active operator, no available financial assurance, and no responsible party.

The Commission also revised the definition to remove language about significant adverse environmental impacts. Orphaned Sites may not always have significant adverse environmental impacts, and may require only straightforward plugging and abandonment, site decommissioning, or reclamation. Additionally, the Commission simplified references to identifying responsible parties in the definition. The definition of Responsible Party, along with Rule 525, already provide adequate guidelines for determining whether a responsible party exists. The Commission determined that providing additional guidelines in the definition of Orphaned Site would lead to undue confusion and was unnecessary.

Out of Service Well

The Commission adopted a new definition of Out of Service Well to describe wells that an operator will not return to production and has added to its plugging list pursuant to Rule 434.c.(2). As part of its overall efforts to incentivize operators to more rapidly plug, abandon, and reclaim wells that are no longer economically viable, the Commission determined it was necessary to create a new classification for wells that are no longer actively producing, and that an operator intends to plug. The Commission therefore tied the definition of an Out of Service Well to the well being included on the operator's Form 6A, Plugging List pursuant to Rule 434.c.(2), which is discussed below.

Plugging and Abandonment

The Commission revised its definition of Plugging and Abandonment to clarify that it does not include reclamation and remediation activities. The Commission revised its Rules to ensure that the term "plugging and abandonment" is used to refer to actually plugging a well and the associated site decommissioning and removal of production facilities. The terms "reclamation" and "remediation" are separately used to refer to the process of restoring an oil and gas location to its original state pursuant to the Commission's 1000

DRAFT

Series Rules, and to cleaning up any spills and releases or other sources of contamination pursuant to the Commission's 900 Series rules, respectively.

The Commission also revised the definition by changing the term "cementing" to "permanent plugging," in recognition that there may be other equally or more effective methods of permanently plugging that do not involve cement.

The Commission also made minor changes to the wording of the definition of Plugging and Abandonment to improve clarity and for consistency with changes made in the Mission Change Rulemakings to reflect Senate Bill 19-181's changes to the Commission's mission and statutory authority.

Reclamation

The Commission made minor changes to the wording of the definition of Reclamation to improve clarity and for consistency with changes made in the Mission Change Rulemakings to reflect Senate Bill 19-181's changes to the Commission's mission and statutory authority.

Also consistent with the Commission's Mission Change Rulemaking, the Commission removed the cross-reference to the Rule 502 variance process in the definition of Reclamation. As discussed in the Statement of Basis and Purpose for the 200–600 Mission Change Rulemaking, including cross-references to the Rule 502 variance process in some rules but not others created unnecessary confusion about which Rules are subject to the variance process. *See* COGCC, *Statement of Basis, Specific Statutory Authority, and Purpose, Cause No. 1R Docket No. 200300071, 200–600 Mission Change, Cumulative Impacts, and Alternative Location Analysis Rulemaking* at 177 (Nov. 23, 2020) ("200–600 SBP"). The Commission intends for all of its Rules to be subject to the Rule 502 variance process, unless otherwise specified in the text of the Rule.

Remediation

The Commission included the 100 Series definition of the term Remediation in the notice for the Financial Assurance Rulemaking as a reference, because it is an important term that is used frequently in the Financial Assurance Rules. However, the Commission did not revise the definition.

Shut-In Well

Consistent with changes made to the definition of Inactive Well, the Commission revised the definition of a Shut-In Well to clarify that a Shut-In Well is not currently producing or injecting.

Spud

The Commission adopted a new definition of Spud to clarify that it refers to the initiation of drilling a well's surface hole. The Commission does not intend for operators to pay an

DRAFT

annual registration fee for wells that have not yet been Spud pursuant to Rule 205.c, because in most cases, such wells are associated with little to no surface disturbance, and therefore pose lower risks to the Commission's Orphaned Well Program if an operator orphans the oil and gas location. It was accordingly necessary to adopt a definition of Spud to provide a single understanding of a term that is commonly used in the oil and gas industry, in the context of its specific use in the Commission's Rules.

Spud Date

Consistent with adopting a new definition of Spud, the Commission adopted a separate definition of Spud Date. The Commission's Rules occasionally refer to both the date a well is spud and the action of spudding a well, and accordingly a separate definition of Spud Date was necessary.

Surety Bond

The Commission adopted a new definition of Surety Bond to better define the types of financial assurance permitted under the Act and the Commission's Rules. A Surety Bond refers to a financial instrument that exists, in perpetuity, between a third party (sometimes called the surety, surety company, bond company, or issuer) and the Commission. The Commission is the obligee of the Surety Bond, which serves as a formal instrument guaranteeing that the third party will provide the full amount of financial assurance required by the Act and the Commission's Rules in the event that an operator—the principal—defaults on its obligations and the Commission must access the bond pursuant to Rule 706. Essentially, a Surety Bond transfers the risk of the principal's performance to the surety company.

A letter of credit is distinct from a surety bond in that it is a guarantee by a third party entity of an operator's creditworthiness, rather than an actual financial instrument. Additionally, the Commission is a beneficiary of a letter of credit rather than an oblige. Because surety bonds are a perpetual and formal financial instrument, they are among the preferred forms of financial assurance under Rule 701.

For a more detailed description of other the aspects of the definition of Surety Bond, including when they may be called and spent by the Commission, and the nature of the operator's contingent reversionary interest, see the discussion of related provisions in the 100 Series definition of Cash Bond, above.

Suspended Operations Well

Because the term Suspended Operations Well is used to describe wells that must pay an annual registration fee pursuant to Rule 205.c, the Commission revised and updated the 100 Series definition of the term to improve clarity and readability. The Commission further clarified that the term Suspended Operations Well refers to a well that has been spud, but where drilling operations are suspended prior to reaching total depth. The Commission also

eliminated a confusing reference to the surface casing in the definition. The Commission does not intend for the term “casing string” to refer to a conductor.

Temporarily Abandoned Well

Because the term Temporarily Abandoned is used frequently in the Financial Assurance Rulemaking, the Commission revised the definition to improve clarity. The Commission added substructure to the definition to improve readability. Consistent with changes to the definition of Inactive Well and Shut-In Well, the Commission also clarified that a temporarily abandoned well is neither currently producing nor permanently plugged.

Used or Useful

In the 200–600 Mission Change rulemaking, the Commission committed to revisiting the definition of the term “used or useful” in the Financial Assurance Rulemaking, because the term was tied to concepts related to financial assurance, orphaned wells, and the risk profile for wells nearing the end of their economic viability. *See* 200–600 SBP at 35.

Accordingly, in the Financial Assurance Rulemaking, the Commission determined that it was appropriate to adopt a new definition of the term Used or Useful. The term Used or Useful has been used in the Commission’s 200 Series Rules since 1954. However, the Commission has never specifically defined the term. Based on the Commission’s review of relevant data in the administrative record related to orphaned wells, the Commission adopted a definition that recognizes indicators that a well is no longer used or useful, and therefore should be eligible for an application from the Director or a Relevant Local Government to plug the well, or close the associated location, pursuant to Rule 211.

A well is no longer used or useful if it has two core characteristics. First, a well that is no longer economically viability is no longer useful. Conversely, a well is used or useful if the well has remains economically viable. Second, a well that is not currently being used is not "used." Of course, not all wells that are not currently being used are no longer “useful.” Some wells might be temporarily shut-in for maintenance, pipeline capacity issues, temporary economic considerations, or other factors. Accordingly, both components of the definition are important, and they are intended to be inclusive, not mutually exclusive.

The Commission recognizes that the economic viability of each well is different, and in some cases may relate as much to the financial characteristics of the well’s operator as actual production trends at a well. Accordingly, the Commission identified a non-exclusive list of factors that it determined are relevant to identifying whether a well has reached the end of its economic viability.

First, the Commission determined that production trends, while not the only metric of a well’s economic viability, are highly relevant. Production is the primary, and often only, source of revenue from a well. Therefore, declining production over time, or zero production, is a strong indicator that a well is no longer economically viable. While a well can potentially be re-completed, or a different formation is completed in the same well, in general in the

DRAFT

Commission's experience, a well declines in production prior to an operator plugging and abandoning, or orphaning, it.

Second, the Commission determined that the ratio between a well's gross revenue and plugging, abandonment, remediation, and reclamation costs is an indicator of a well's economic viability. All wells must be plugged, abandoned, and reclaimed pursuant to the Act and the Commission's Rules. Some wells must also be remediated to clean up contamination or spills and releases. Thus, when the costs of conducting these required activities exceeds the revenue actually generated by the well, it is a strong indicator that the well is no longer economically viable. The Commission recognizes that it is important to review gross revenue over time. Accordingly, it intends to consider a relevant timeframe that factors in the remaining production from a well (if any). The Commission will also consider an operator's total number of wells and production from those wells over a recent timeframe (likely the last five years). Finally, the Commission will consider an annual average of the operator's gross revenue over a five year period. The Commission would review the operator's gross revenue from the well in conjunction with the status of the operator's financial assurance for the well.

Third, the Commission identified an operator's failure to use or develop a facility as an indication that the well is no longer used, and that it may also no longer be economically viable. In some cases, the Commission has encountered situations where an operator obtains a permit, partially constructs a location, or partially drills a well but does not complete the process so as to generate revenue from a completed well and is not using the facility. This situation would be an example of one in which an operator fails to use or develop the facility, which indicates that the facility is no longer economic for the operator to complete or develop, and therefore that it is no longer used or useful.

Finally, the Commission recognizes that other factors not listed in the 100 Series definition of Used or Useful may also be relevant in determining whether a well is Used or Useful pursuant to Rule 211. Accordingly, in subpart d of the definition, the Commission included a catch-all for other relevant evidence, which the Commission recognizes may vary on a case-by-case basis.

The elements of the definition of Used or Useful are intended to be the criteria that the Commission will weigh when determining whether a well and/or location are no longer useful in a well or location closure hearing pursuant to Rule 503.g.(12), initiated by the Director or a relevant local government pursuant to Rule 211. The elements are also what an operator would be required to show, as an affirmative defense, in such a hearing. The Commission will entertain arguments from an operator about why a well or location is indeed still used or useful, based on the elements listed in the definition.

Waiting on Completion Well

Because the term Waiting on Completion Well is used to describe wells that must pay an annual registration fee pursuant to Rule 205.c, the Commission revised and updated the

DRAFT

100 Series definition of the term to improve clarity and readability. The Commission first clarified that a Waiting on Completion Well has been drilled to total depth. This is to clarify that a Waiting on Completion Well is distinct from a Suspended Operations Well, which has not yet been drilled to total depth. The Commission also simplified the definition by removing references to methods of completing and stimulating a well, and instead used the defined term Stimulated, based on the 100 Series definition the Commission adopted in its recent Wellbore Integrity Rulemaking. Finally, the Commission removed a reference to "hydrocarbon" formation, to clarify that the definition applies to both production and injection wells.

Well

Because the Commission clarified many of its well status definitions in the Financial Assurance Rulemaking, the Commission also updated, simplified, and clarified its definition of Well. The Commission removed unnecessary language, and adjusted references to use terms defined in the 100 Series as much as possible.

The Commission also clarified that the term "gas" includes non-hydrocarbon gases such as carbon dioxide and helium. Some questions have arisen about the Commission's regulatory jurisdiction over helium. Consistent with Colorado law, the Commission determined that clarifying its jurisdiction through the definition of "well" would help resolve those questions and streamline compliance. *See* C.R.S. § 34-60-103(5); *Hoff v. Girdler Corp.*, 88 P.2d 100, 101 (Colo. 1939); *CO2 Comm., Inc. v. Montezuma Cty.*, 2021 COA 36, 1 (Colo. App. 2021); *Hudgeons v. Tenneco Oil Co.*, 796 P.2d 21, 22–23 (Colo. App. 1990); *see also Exxon Corp. v. Lujan*, 970 F.2d 757, 762 (10th Cir. 1992); *Aulston v. United States*, 915 F.2d 584, 589 (10th Cir. 1990); *N. Nat. Gas Co. v. Grounds*, 441 F.2d 704, 715 (10th Cir. 1971).

DRAFT

APPENDIX B

200 Series – General Provisions

Rule 205.

Rule 205.a

The Commission revised Rule 205.a.(3) by adding the term "immediately" to ensure that operators promptly report changes of address, and for consistency with Rule 205.b.(3).

The Commission also removed references to refiners and gasoline and other extraction plant operators, and replaced them with a reference to gatherers. The Commission does not regulate any activities by refineries or gasoline or extraction plant operators, and accordingly such entities are not required to register as operators with the Commission. However, the Commission does have limited jurisdiction to regulate exploration and production waste spills and releases from gas gathering lines, and accordingly updated Rule 205 to codify the expectation that such entities file a Form 1 to register as operators.

Rule 205.b

The Commission revised Rule 205.b.(3) by moving the term "reported" within the sentence for consistency with Rule 205.a.(3).

Rule 205.c

The Commission adopted a new Rule 205.c, which creates a new Form 1B, Annual Well Registration, and a new annual registration fee that will fund the new pooled fund for addressing orphaned sites.

Previously, the Commission required operators to register with the Commission only once by filing a Form 1. As a result, the Commission's internal records of active oil and gas operators have at times been out of date or not reflected key changes. In the recent 200–600 Mission Change Rulemaking, the Commission codified the new Form 1A, Designation of Agent process to ensure that Staff have up-to-date contact information for all registered operators. The new Form 1B will complement that process and ensure that the Commission has accurate and up-to-date records of both active operators and the number of active wells by requiring annual registration.

The Commission uses the term "active wells" to refer to any well that has been spud, drilled, is producing, or capable of production, including shut-in wells, suspended operations wells, temporarily abandoned wells, and waiting on completion wells. In other words, the Commission uses the term "active wells" to refer to any well that has been spud, but has not been plugged. This is synonymous with the subset of wells that should be listed as active on a Form 3A, Single Well Financial Assurance, pursuant to Rule 434.c.(2).A.iii.

DRAFT

APPENDIX B

Rule 205.c.(1) requires all operators that have filed a Form 1 and operate at least one well (including a well that is currently Temporarily Abandoned or Shut-In) to file a Form 1B each year. The Form 1B must be filed by no later than April 1 of each calendar year. The Commission determined that April 1 is an appropriate date because it will allow operators sufficient time to inventory the number of wells and their status as of December 31 of the prior calendar year, while still affording the Commission sufficient time to review and process the Form 1B prior to the end of the Fiscal Year on June 30.

Rule 205.c.(2) establishes an annual registration fee, which operators must remit with their Form 1B. The Commission calculated the amount of the fee based on the reasonably anticipated costs of addressing orphaned sites. For the first year—2022—the Commission adopted a fee of $100.00 per well. Because the Commission estimates that there will be approximately 50,000 wells subject to the fee, the Commission estimates that in the first year, the fee will raise $5,000,000.00 in revenue to be spent in Fiscal Year 2022 to 2023. This will allow the Commission's Orphaned Well Program to slightly increase its current level of operations and expenditures, based on the program's current $3,850,000 annual budget. The annual well registration fee will therefore reasonably fund the current operations of the Commission's Orphaned Well Program, and may also allow an increase in the program's activities to more rapidly address the backlog of orphan facilities that pose risks to public health, safety, welfare, the environment, or wildlife resources.

However, given long term trends in the rate of operators orphaning facilities and other factors, the Commission anticipates that the number of orphaned sites will increase over time. Accordingly, starting in 2023 and in subsequent years, the annual registration fee will be $200.00 per well. This will generate approximately $10,000,000.00 per year in annual revenue, which will allow the Orphaned Well Program to increase its capacity to address orphaned wells over time, concurrent with the anticipated expansion in the number of facilities becoming orphaned. Should the Commission's estimate of the costs necessary to fund the Orphaned Well Program prove to be inaccurate, the Commission intends to commence another rulemaking to increase or decrease the annual registration fee, as appropriate.

The Commission further determined that the $100.00 and $200.00 fees are reasonable because they are relatively low compared to the average annual revenue from a typical well. For example, even a stripper well that is exempt from paying severance taxes produces up to 15 barrels of oil per day or up to 90 thousand cubic feet (MCF) of natural gas per year. Assuming a conservatively low price of $40 per barrel of oil and $2 per MCF of natural gas, a stripper oil well could generate $219,000.00 in total revenue per year, and a stripper gas well could generate up to $65,700 in total revenue per year. Thus, a $200.00 fee would be only 0.09% of the total annual revenue generated by a high-producing oil stripper well, and 0.30% of the total revenue generated by a high-producing gas stripper well.

To further reduce any unnecessary financial burdens on operators, the Commission intends to consider making reductions to the mill levy in a future rulemaking. The Commission

determined that it is premature to revise the mill levy in the Financial Assurance Rulemaking, because the budgetary effects of the new annual registration fee will not be realized until the spring quarter of 2022. If the Commission reduced the mill levy in the Financial Assurance Rulemaking, it could have the effect of unduly limiting the agency's revenues and constraining its operating budget. However, in the future, the Commission intends to make appropriate adjustments. Considering these future changes to the mill levy, the annual registration fee may not be a net loss for all operators, and in fact some operators will pay less to the Commission through the annual well registration fee than they previously paid through the mill levy.

Although the Commission adopted the Annual Well Registration Fee as a mechanism to fund its Orphaned Well Program in the Financial Assurance Rulemaking, the Commission intends to pursue working with the General Assembly to transition the Orphaned Well Program to a state government enterprise.

The fee is levied based on the number of wells that an operator operated as of December 31 of the prior calendar year. To ensure that operators pay the appropriate fee for the correct number of wells, Rule 205.c.(3) requires operators to list all of their wells, including the well status as of December 31. In addition to ensuring that operators pay the appropriate fee, this information will also allow the Commission to ensure that its records of the number of wells in Colorado, as well as their current status, are up-to-date and accurate. Having up-to-date information on these topics is critical to the Commission's budgeting, planning, resource allocation, and policymaking abilities.

The Commission intends for operators to pay the annual registration fee for every well that has been spud until the well is plugged. The only wells that an operator need not pay the fee for are wells that have not yet been spud (for example, a well approved on a Form 2, Application for Permit to Drill but where construction has not yet commenced), and wells that have been permanently plugged subject to the Commission's approval of a Form 6, Well Abandonment Report – Subsequent Report of Abandonment. The Commission recognizes that the December 31 deadline may result in operators submitting a high volume of Form 6 – Subsequent for Staff review and approval close to the end of the year, which coincides with multiple state holidays. The Commission does not intend to burden Staff with a high volume of forms to review, and recognizes that Staff may not be able to review or approve any Form 6 – Subsequent reports submitted after December 1 of each year prior to the December 31 deadline. Rather, the Commission encourages operators to submit such forms promptly to afford Staff adequate time for review.

The Commission determined that this is a reasonable range of wells to levy a registration fee on because all such wells may pose some risk of costs to the Commission's Orphaned Well Program if an operator orphans the wells. Less risk exists prior to spudding a well, because if the location was orphaned, there would be no plugging for the Commission to perform, and likely fewer requisite reclamation and remediation activities. Similarly, less risk exists for the Orphaned Well Program after a well is properly plugged subject to the

DRAFT

Commission's approval, because all that might remain to be accomplished at the facility would be remediation, reclamation, and site decommissioning.

Although Senate Bill 19-181 required the Commission to consider adopting a pooled fund to address orphan wells, C.R.S. § 34-60-106(13), it did not specify how the Commission should structure and fund the pooled fund. In addition to C.R.S. § 34-60-106(13) instructing the Commission to consider creating a pooled fund, the Commission also has statutory authority to levy fees under numerous other provisions of the Act, including C.R.S. §§ 34-60-106(1)(f)(B)(II), (7)(a), (7)(b), & (16). The Commission does not intend for the annual registration fee adopted in this Financial Assurance Rulemaking to be the only fee adopted pursuant to C.R.S. § 34-60-106(7)(b), and intends to address potential additional fees in its forthcoming Fees Rulemaking, which is also directed by Senate Bill 19-181.

Based on stakeholder feedback, advice of its own Staff, and the administrative record, the Commission determined that levying a per-well annual registration fee would be the most equitable and effective manner of funding the pooled fund.

First, other alternatives for funding the pooled fund, such as levying fees on production, run the risk of being duplicative with existing fees and taxes levied on production such as the mill levy and severance tax, and might raise questions about the source of the Commission's statutory authority. To avoid raising unnecessary legal questions, the Commission determined that levying an annual registration fee on a per-well basis was more appropriate.

Second, a production-based method of funding the pooled fund would create additional risks and budgeting challenges due to the volatility of oil and gas prices and fluctuation in production rates over time. The Commission's budget is challenging to manage because of these fluctuations over time. The Commission intends to insulate the pooled fund from market volatility through funding using a steadier metric that changes more slowly over time—the number of wells in Colorado. Steadier funding will ensure that its Orphaned Well Program is able to maintain a steady pace of addressing orphan wells over time.

Third, the Commission determined that a per-well fee would be easier to administer, because the Commission already has detailed records of well numbers, and it will enable the Commission to avoid unnecessary disputes over production metrics.

Finally, the Commission determined that levying a per-well registration fee was more equitable than other methods of funding the pooled fund. Because most new wells drilled in Colorado are subject to a steep decline curve, funding the pooled fund through a production-based metric would result in newer wells contributing to a higher percentage of the fund, even though those newer wells are at less risk of an operator orphaning them. Additionally, a production-based metric would not be equitably distributed among operators. A well-based fee is therefore more targeted to the facilities that pose risks of an operator orphaning them and is more equitably distributed among operators.

DRAFT

Ultimately, the sole purpose of the new Annual Well Registration fee is to address the liabilities presented to the state of Colorado by orphaned sites. The purpose of the Annual Well Registration fee is not to raise general revenue to fund the Commission's operations. The Commission's operating budget will continue to be funded by the mill levy. And Rule 205.c.(4) prohibits the Commission from using the funds for any purpose other than addressing orphaned sites. Rather, the primary, and indeed sole, purpose of the Annual Well Registration fee is to fund the reasonably-calculated direct and indirect costs of administering the Orphaned Well Program. *See generally Colo. Union of Taxpayers Found. v. City of Aspen*, 418 P.3d 506, 515 (Colo. 2018). Rule 205.c.(4) ensures that the fund will be appropriately spent only for purposes of addressing orphaned sites by requiring the annual registration fee may only be spent for this purpose. The Commission determined that levying a per-well fee is reasonably related to the financial liabilities posed to the state by orphaned wells, because it is impossible to determine which wells operators will ultimately orphan. Too many factors influence whether an operator will orphan a facility, which cannot readily be predicted until the operator is already so in danger of orphaning its assets that the Commission is unable to levy a fee directly on those locations. Accordingly, the Commission determined that a per-well fee was the alternative to fund the Orphaned Well Program that is most reasonably related to the actual direct and indirect costs the Commission will incur in plugging, abandoning, and reclaiming orphaned sites.

Rule 211.

The Commission significantly revised Rule 211 in its recent 200–600 Mission Change Rulemaking, but also committed to making further updates by adopting a 100 Series definition of the term Used or Useful. *See* 200–600 SBP at 35.

In the Financial Assurance Rulemaking, the Commission adopted a definition of the term Used or Useful, as discussed above.

The Commission also revised Rules 211.a and 211.b based on the clarified and revised 100 Series definitions of the terms Plug and Abandon, Reclamation, and Remediation. The Commission ensured that each term was used properly in Rule 211 to clarify that an operator subject to an order under Rule 211 must plug abandon, reclaim, and remediate the well or oil and gas location subject to the order, rather than solely plugging and abandoning the well.

Finally, the Commission revised its 500 Series Rules to create procedures for Commission hearings that require an operator to plug and abandon a well or close a location. The Commission therefore added a cross reference to Rule 503.g.(12) in Rules 211.a and 211.b.

Rule 217.

The Commission included Rule 217, governing the mill levy, in the notice for the Financial Assurance Rulemaking in order to properly notify interested stakeholders that it could

DRAFT

become relevant or subject to change during the Rulemaking. As discussed above, because the Commission adopted an annual registration fee in Rule 205, in the future, the Commission may decide to lower the mill levy in order to properly balance its budget. However, the Commission chose not to do so in the Financial Assurance Rulemaking given its present budgetary considerations, and therefore did not revise Rule 217.

Rule 218.

To implement Senate Bill 19-181's instruction that the Commission consider increasing financial assurance for inactive wells and for wells transferred to a new owner, the Commission substantially amended Rule 218, governing transfer of operatorship. The Commission amended the Rule in multiple ways to require full-cost bonding for transferred inactive wells, and to create Commission-level oversight over transactions that transfer a high percentage of low producing wells.

Rule 218.a

In the Financial Assurance Rulemaking, the Commission adopted and amended several Rules besides Rule 218 that use the terms "Selling Operator" and "Buying Operator." Accordingly, the Commission moved the definitions of those terms, along with the definition of Prior Operator, from Rule 218.a to its 100 Series Definitions. The Commission did not substantively revise any of the definitions.

Rule 218.b

The Commission amended Rule 218.b, which governs the informational requirements for the Form 9, Transfer of Operatorship – Intent, to facilitate full-cost bonding for transferred inactive wells, and Commission oversight of transfers involving a high percentage of low producing wells.

Rule 218.b.(3)

Rule 218.b.(3) requires the selling operator to populate the Form 9 – Intent with a complete list of items that are proposed for transfer.

Because the Commission adopted requirements that are specific to inactive wells and low-producing wells that are subject to a transfer, the Commission adopted a new Rule 218.b.(3).A requiring the selling operator to specifically identify all inactive wells and low producing wells that are proposed for transfer. This will enable Staff to process Form 9 – Intents and ensure compliance with the newly adopted Rules governing transfer of inactive wells and low producing wells. It will also ensure that the selling operator and buying operator are each fully aware of the nature of the transaction, including which transferred wells may be less economically viable.

DRAFT

In order to require full cost bonding for transferred inactive wells, the Commission adopted multiple informational requirements for transferred inactive wells in Rule 218.b.(3).B.

The Commission reviewed extensive data and analysis by Staff in the administrative record related to the costs of plugging, abandoning, and reclaiming oil and gas wells and their associated locations. As discussed below, the Commission determined that $78,000.00 is a reasonable statewide estimate of the average cost to plug, abandon, and reclaim an oil and gas location in Colorado as of 2021. However, the Commission also recognizes that the evidence shows that in some cases, reclamation expenses can increase costs, sometimes by a significant amount. Accordingly, the Commission determined that to properly require full-cost bonding for inactive wells, it would need to identify wells that likely involve higher reclamation costs, and require increased financial assurance for those wells.

In Rule 218.b.(3).B, the Commission codified a list of factors that drive higher reclamation costs. These will enable Staff to conduct a desktop review of the Form 9 – Intent to identify which inactive wells proposed for transfer, if any, are likely to have above-average reclamation costs and therefore require increased financial assurance above the $78,000.00 default. The Commission developed this list of factors based on the analysis Staff conducted in the administrative record. The Commission requested that Staff provide information on reclamation costs at its May 5, 2021 hearing. The Commission's reclamation experts and financial analysis experts compiled cost data based on multiple sources. First, Staff used its extensive expertise with reviewing invoices for reclamation projects associated with the Orphaned Well Program. Second, Staff reviewed typical contractor pricing for key services related to reclamation. Staff consulted directly with multiple contractors to ensure that the prices they were reviewing were current. Finally, Staff cross-checked price estimates in the RS Means Heavy Construction Costs database. Staff considered contractor pricing statewide, and reviewed invoices from contractors throughout the state. The Commission therefore determined that Staff's reclamation cost estimates reflect a reasonable statewide estimate, factoring in variability among basis.

The factors that drive increased reclamation costs the Commission identified based on Staff's analysis include the area of disturbance at an oil and gas location, whether the oil and gas location has a cut and fill slope (and how steep that slope is), whether the location has sandy soils, and whether an operator has properly salvaged topsoil at the location. Additionally, based on Staff's extensive reclamation experience, the Commission determined that whether a salt kill has a occurred is a relevant factor that may drive significantly increased reclamation costs, although Staff did not have sufficient data to quantify the magnitude of this increase. Finally, the Commission included the number of inactive wells at an oil and gas location as one of the factors that must be included on the Form 9 – Intent. The Commission recognizes that reclamation costs are primarily determined at a location level, not a well level. Accordingly, the Commission required operators to provide information at the location level in Rule 218.b.(3).B, but recognized that if multiple inactive wells are at the same oil and gas location, it would change the amount of full cost bonding for each inactive well.

DRAFT

When operators provide the area of initial total disturbance for the oil and gas location in Rule 218.b.(3).B.i, the Commission intends for operators to use the total final reclamation area, without subtracting the interim reclamation area. Based on the Commission's and Staff's experience, reclamation costs are driven by the total area, because some reclamation work is usually still conducted outside the bounds of an interim reclamation area when a site reaches final reclamation.

Among the factors listed in Rule 218.b.(3).B is whether an oil and gas location is within high priority habitat. The Commission included this factor because sometimes habitat-related considerations may increase reclamation costs, particularly if additional steps are necessary to ensure that an area is reclaimed to meet the specific habitat needs of a high priority species. This is particularly true in aquatic and riparian areas. While not all locations in high priority habitat have higher reclamation costs than a typical location, some do. Including this information on the list of factors that must be provided in Rule 218.b.(3).B will allow the Commission's Staff to conduct a desktop review and easily identify whether a location may have above average reclamation costs because of the nature of the high priority habitat where the location is located.

Rule 218.b.(5)

In Rule 218.b.(5), the Commission adopted procedures for providing full cost bonding of inactive wells upon transfer. Rule 218.b.(5) requires the selling operator to identify the amount of financial assurance that the buying operator will need to provide for the transferred items. The Commission revised the rule to provide that the amount of financial assurance for any transferred inactive well must be the full cost of plugging, abandoning, and reclaiming the well.

The Commission determined that $78,000.00 is a reasonable statewide estimate of the average cost to plug, abandon, and reclaim an oil and gas location in Colorado as of 2021. The Commission made this determination based on evidence in the administrative record, including evidence presented by parties and Staff. Specifically, the Commission relied on cost estimates developed by Staff in the lead up to the Financial Assurance Rulemaking. The Commission requested that Staff analyze data from the Orphaned Well Program about costs borne by the program in plugging, abandoning, and reclaiming orphan wells. Staff presented the results of its analysis at the Commission's May 5, 2021 hearing. Specifically, Staff reviewed data from the Orphaned Well Program to select a total of 23 orphaned sites that provide a general representation of the range of typical facilities that the Commission's Orphaned Well Program must address. Staff excluded extreme high cost and low cost outliers from its analysis. The analysis included only projects that were complete or near enough to completion to estimate final costs. Staff selected sites statewide, to ensure that they provided a representative sample of different basins and regions, in roughly proportionate amounts to where current development is located. Specifically, ten sites were in the Denver-Julesburg Basin, five sites where in the San Juan basin, four sites were in

DRAFT

the Piceance Basin, two sites were in the Sand Wash Basin, one site was in the Cañon City Embayment, and one site was in the Paradox Basin. All analyzed sites required both plugging and decommissioning work, including well plugging, flowline abandonment, and production equipment decommissioning.

Staff's analysis found total site costs ranging from $25,485 to $144,290. The mean cost was $77,278, and the median cost was $77,759. Within those costs, plugging and abandonment (decommissioning) costs ranged from $22,567 to $83,600. Reclamation costs ranged from $0 to $56,768. Remediation costs ranged from $0 to $33,240. Based on this evidence, the Commission concluded that a value of $78,000.00, which conservatively rounds up to the nearest hundred thousand from the mean and median costs, is a representative, statewide average value for the full cost of plugging, abandoning, and reclaiming a well as of 2021.

While $78,000.00 is a reasonable cost for 2021, the Commission also recognizes that costs change over time. Accordingly, the Commission provided that the amount may be adjusted by inflation, based on guidance or other procedures that Staff develop pursuant to Rule 707.a.(1).A in the course of annual review of financial assurance. The Commission intends for Staff to provide transparent guidance or other public information about any inflation adjustments required over time.

Although the Commission determined that $78,000.000 is a reasonable average cost for plugging, abandoning, and reclaiming a well, the Commission also recognized that some wells will have higher costs—potentially significantly higher costs—based on Staff's analysis of reclamation related costs. Accordingly, as discussed above, the Commission provided that the Director may require an operator to provide more than $78,000.00 if the information about reclamation-related factors than the operator provides in Rule 218.b.(3).B indicates that reclaiming the well will cost more than the $78,000.00 average. Rule 218.b.(5).A therefore allows the Director to determine that a greater amount of financial assurance than $78,000.00 is necessary as full cost financial assurance for a transferred inactive well in the course of reviewing an operator's Form 9 – Intent.

Rather than attempting to provide a prescribed step-up method or other set of fixed numbers for how much financial assurance may be increased based on the reclamation factors, the Commission recognized that costs may be highly variable, and that a one-size-fits-all approach is inappropriate. Accordingly, the Commission gave the Director discretion to require any amount of increased financial assurance as the result of her analysis of an operator's proposal to transfer inactive wells.

To ensure proper oversight and due process, the Commission also provided that an operator who disagrees with the amount of financial assurance that it is required to provide—which may be either the default of $78,000.00 or a greater amount required by the Director—may file an application for a Commission hearing to review the Director's decision pursuant to Rule 503.g.(11). Only the buying operator may file such an application, as it will be the

buying operator's responsibility to provide the financial assurance if the transfer of operatorship is approved.

Because the amount of financial assurance that an operator may be required to provide could be a determinative factor in the operator deciding whether to engage in the transaction, the Commission recognizes that the parties to a transaction may wish to know the amount of required financial assurance early in the process and potentially prior to submitting the Form 9 – Intent. Accordingly, the Commission intends for Staff to be available to consult with buying and selling operators about the estimated amount of required financial assurance prior to the submission of a Form 9.

Inactive wells are not the only facilities for which the buying operator must provide financial assurance. Accordingly, in Rule 218.b.(5).B, the Commission required operators to list all of the other forms of financial assurance that will be provided pursuant to the Commission's 700 Series Rules.

Finally, in Rule 218.b.(5).C, the Commission required the selling operator to identify the type or types of financial assurance that the buying operator will provide on the Form 9 – Intent. Particularly if an operator intends to provide a type of financial assurance other than a cash bond or surety bond, it may influence the Director's or Commission's review of the Form 9 application.

Rule 218.b.(8)

In Rule 218.b.(8), the Commission adopted a new requirement for Commission-level oversight of transfers that involve high percentages of low producing wells. The Commission determined that low producing wells present a greater risk of operators orphaning them than higher producing wells which still generate significant amounts of revenue. However, the Commission also determined that low producing wells present less risk than inactive wells that produce very little or no revenue whatsoever. Accordingly, the Commission determined that while full-cost bonding was unnecessary for transferred low producing wells, additional oversight was necessary.

Because transfers that involve a high percentage of low producing wells pose a higher risk of a buying operator orphaning the wells, the Commission specifically determined that transfers where more than 30% of wells are low producing require additional oversight. The Commission therefore required the buying and selling operator in such a transaction to file a joint application for a Commission hearing pursuant to Rule 503.g.(11) so that the Commission can review the transaction. This will allow the Commission to ensure that the transaction does not pose undue risks to the Commission or the State of Colorado, and that adequate financial assurance, or other requirements, are in place to prevent the buying operator from abandoning the assets and making them the responsibility of the Commission's Orphaned Well Program.

The Commission recognizes that requiring a hearing may add to the amount of time it takes to process a Form 9 – Intent, because of timing requirements related to notices of hearing. *See* Rule 504.a.(1); *see also* C.R.S. § 34-60-108. Accordingly, the Commission provided that the buying and selling operator may waive their notice rights to expedite the hearing. Because the only parties entitled to notice under Rule 504.b.(10).A would be the Director and the operators involved in the transaction, waiver of regulatory or statutory notice rights could facilitate a more expedited hearing that does not unnecessarily slow the transaction while still affording interested parties due process.

Rule 218.e

The Commission revised Rule 218.e.(4) to reflect that a Commission hearing may be required for transfers involving high percentages of low producing wells, or if a buying operator seeks a Commission hearing because it disagrees with the amount of financial assurance it is required to provide under Rule 218.b.(5).A. Accordingly, the Commission provided that the Director cannot approve a Form 9 – Intent or Subsequent until after such a Commission hearing occurs.

Rule 218.f

The Commission revised Rule 218.f.(3) to reflect that the buying operator must provide both the amount *and* type of financial assurance it is required to provide, and that the amount may be established either by the Commission's Rules, or alternatively by a Commission order in the event of the Commission holding a financial assurance hearing regarding the proposed transfer.

Rule 223.

Rule 223.b

Rule 223.b specifies examples of confidential information. The list of categories of potentially confidential information in Rule 223.b is not intended to be exclusive, and determinations of confidentiality will be made on a case by case basis. Because the revised 700 Series Rules may require operators to submit certain types of financial information to the Commission which may be confidential, the Commission adopted a new Rule 223.b.(11) recognizing non-public and confidential financial information submitted as part of a Financial Assurance Plan pursuant to Rule 702 as an additional category of confidential information.

DRAFT

APPENDIX B

<u>300 Series – Permitting Process</u>

Rule 304.

The Commission updated a cross-reference in Rule 304.b.(2).B.ix, to the 700 Series Rules regarding surface owner protection bonds.

Rule 306.

Rule 306.a specifies when the Director may issue a recommendation to the Commission to approve or deny a proposed oil and gas development plan. Rule 306.a.(5) requires the Director to ensure that an operator is in compliance with all financial assurance requirements prior to making a recommendation. Consistent with adding the new Form 1B, Annual Registration fee in Rule 205.c, the Commission required the Director to verify that an operator has submitted is its most recent Form 1B and paid all required annual registration fees prior to making a recommendation on a proposed oil and gas development plan.

DRAFT

APPENDIX B

400 Series – Operations and Reporting

Rule 413.

Rule 413

Rule 413 establishes procedural and substantive requirements for the Form 7, Monthly Report of Operations.

The Commission moved part of prior Rule 707.b to Rule 413.a.(1) but did not substantively revise the Rule. Prior Rule 707.b required operators to identify and list all shut-in wells and temporarily abandoned wells on their Form 7. Because this is an operational standard, the Commission determined that it was appropriate to move to the 400 Series as part of its broader efforts to consolidate all Rules pertaining to the same topic within the same Rule Series. The Commission determined that consolidating operational rules pertinent to the Form 7 with other Rules governing the Form 7 will facilitate easier compliance by operators.

Consistent with this change, the Commission also made minor, non-substantive edits to Rule 413 to improve readability. It broke Rule 413.a into two subparts, one pertaining to reporting for wells and the other pertaining to reporting formations. The Commission also removed passive voice from each subsection. Finally, the Commission moved fluid volume reporting requirements from Rule 413.a to Rule 413.b to consolidate requirements related to similar topics in the same subsections of Rule 413.

Rule 434.

Rule 434 establishes engineering and administrative standards for plugging and temporarily abandoning wells. Prior to the Financial Assurance Rulemaking, the Commission did not establish deadlines for plugging inactive wells. Consistent with its intent to minimize financial risks to the State of Colorado by incentivizing timely plugging and abandonment of inactive wells, the Commission revised Rule 434 to require operators to either plug or provide full-cost bonding for inactive wells.

Rule 434.b

The Commission revised and reorganized Rule 434.b, governing temporary abandonment, to improve clarity.

First, the Commission moved part of prior Rule 707.b to Rule 434.b.(1), but did not substantively revise the Rule. Prior Rule 707.b required operators to file a Form 4, Sundry Notice within 30 days of removing equipment from a well to render it temporarily abandoned. The purpose of the Form 4 filing is to notify the Commission's Staff that the temporary abandonment has occurred to ensure that the Commission's records are accurate and up-to-date. Because this is an operational standard, the Commission determined that

DRAFT

it was appropriate to move to the 400 Series Rules, and specifically to Rule 434, which establishes the operational and engineering requirements for temporary abandonment. This is consistent with the Commission's broader efforts to consolidate all Rules pertaining to the same topic within the same Rule Series, which will facilitate compliance by operators. The Commission also revised the language of Rule 434.b.(1) to clarify that an operator always must file a Form 4 within 30 days of temporarily abandoning a well, rather than implying that filing the Form 4 is contingent on the timing of equipment removal.

Second, the Commission reordered and clarified the language of Rule 434.b in several ways:

- The Commission moved all requirements for the first six months of temporary abandonment to Rule 434.b.(2). The Commission also revised the requirements to eliminate passive voice and improve clarity. The Commission also added a cross-reference in Rule 434.b.(2).E to remind operators of their obligation to properly report wells as temporarily abandoned on their monthly Form 7 reports pursuant to Rule 413.a.(1).

- The Commission similarly moved all requirements for extensions of temporarily abandoned status beyond six months to Rule 434.b.(3), and revised the requirements to eliminate passive voice and improve clarity. The Commission also clarified that the Form 4 should serve three purposes: request the extension of time, state the reason for the operator's request, and explain the operator's plans for future operation. Additionally, the Commission intends for the Form 4 to ensure that it has up-to-date records on temporarily abandoned wells.

- The Commission revised the language in Rule 434.b.(4) to more clearly state that the Commission will not release financial assurance for a temporarily abandoned well until it is permanently plugged and abandoned pursuant to Rule 435.

Finally, the Commission moved prior Rule 707.c, which established standards for persons other than a well's operator who remove equipment from a well, to Rule 434.b.(5). Because this is an operational standard, the Commission determined that it was appropriate to move to the 400 Series Rules, and specifically to Rule 434, which establishes the operational and engineering requirements for temporary abandonment. This is consistent with the Commission's broader efforts to consolidate all Rules pertaining to the same topic within the same Rule Series, which will facilitate compliance by operators. The Commission also revised the Rule to clarify that any person who is not currently registered as an operator but removes equipment from or otherwise decommissions an oil and gas facility must register as an operator by filing a Form 1. These types of decommissioning activities constitute oil and gas operations within the meaning of the Act, C.R.S. § 34-60-103(6.5), and are therefore subject to the Commission's jurisdiction and oversight. The Commission may take enforcement action or other appropriate measures against any person who fails to comply with Rule 434.b.(5) by removing equipment from or otherwise decommissioning an

DRAFT

oil and gas location without filing a Form 1 to register as an operator and filing a Form 4 to obtain the Commission's approval prior to conducting the activity.

Rule 434.c

The Commission adopted a new Rule, 434.c, that requires operators to timely plug and abandon inactive wells. As part of the Financial Assurance Rulemaking, the Commission reviewed a wide range of policy options proposed by stakeholders, as well as best practices from other jurisdictions, for minimizing the financial risks to the agency posed by operators orphaning their wells. The Commission observed that one practice employed by other states to minimize financial risk is creating more robust incentives and regulatory requirements for operators to plug wells that are no longer producing. *See, e.g.*, 16 Tex. Admin. Code §§ 3.14(b)(2); 3.15(a)(5)–(6), (e). Based on its review of these policies from other jurisdictions, as well as its review of stakeholder proposals and other evidence in the administrative record, the Commission determined that it was appropriate to adopt similar requirements for timely plugging of inactive wells in Colorado.

Rule 434.c.(1)

Rule 434.c.(1) gives operators four options for wells that remain inactive for six months: plug them, return them to production, "bond up" by providing additional financial assurance, or add the well to the operator's enforceable and binding plugging list. The Commission determined that these four options each provide equal levels of protection to the State of Colorado from the risks posed by operators orphaning inactive wells, while also providing operators with flexibility to determine an appropriate path to address inactive wells that is consistent with their individual business models.

The Commission intends for a well to "become inactive" on the last day of the month when the well's 12-month production average falls below one barrel of oil equivalent (BOE) per day. For example, as shown in Table 1, below, if an operator shuts in a well and ceases production from a well on January 1, 2021, the well would "become inactive" on December 31, 2021, no matter what BOE the well produced prior to January 1, 2021. Similarly, a well that was producing at 4 BOE per day prior to January 1, 2021, was shut in on January 1, 2021, then briefly returned to production in July 2021 at 2 BOE per day, then shut in again in August 2021, would "become inactive" on October 31, 2021, when its 12 month average production fell below 1 BOE per day.

APPENDIX B

Table 1: Example Production Thresholds for Determining Inactive Wells

Month	Well 1 Production (BOE/day)	Well 1 Avg. Production (monthly)	Well 1 Status	Well 2 Production (BOE/day)	Well 1 Avg. Production (monthly)	Well 2 Status
Sept 2020	15	15	Active	4	4	Active
Oct. 2020	15	15	Active	4	4	Active
Nov. 2020	15	15	Active	4	4	Active
Dec. 2020	15	15	Active	4	4	Active
Jan. 2021	0	13.75	Active	0	3.67	Active
Feb. 2021	0	12.5	Active	0	3.33	Active
Mar. 2021	0	11.25	Active	0	3.0	Active
Apr. 2021	0	10.0	Active	0	2.67	Active
May 2021	0	8.75	Active	0	2.33	Active
June 2021	0	7.5	Active	0	2.0	Active
July 2021	0	6.25	Active	2	1.83	Active
Aug. 2021	0	5	Active	0	1.5	Active
Sept 2021	0	3.75	Active	0	1.17	Active
Oct. 2021	0	2.5	Active	0	0.83	Inactive
Nov. 2021	0	1.25	Active	0	0.5	Inactive
Dec. 2021	0	0	Inactive	0	0.17	Inactive

The Commission intends for the six month timeline for operators to plug, produce, bond up, or add a well to their plugging list in Rule 434.c.(1) to begin on the first day of the first month after a well becomes inactive. Thus, Well 1 in the example above would have until July 1, 2022 to comply with Rule 434.c.(1) (six months from the date it became inactive on December 31, 2021), and Well 2 would have until May 1, 2022 to comply with Rule 434.c.(1) (six months from the date it became inactive on October 31, 2021).

DRAFT

The Commission intends for Staff to issue guidance, and explore the possibility of creating an automated system, to facilitate operator compliance with the process of determining when a well must comply with Rule 434.c based on its monthly production reports.

By using the defined term Plug and Abandon a well in Rule 434.c.(1), the Commission intends to refer to an operator having submitted a Form 6, Subsequent Report of Abandonment for the well pursuant to Rule 435.b. If the operator has submitted the Form 6 – Subsequent by the required date, but the Director has not yet approved the form, the operator will not be deemed to be noncompliant.

By using the phrase bringing a well back to production in Rule 434.c.(1).B, the Commission intends to refer to an operator returning a well to production at a rate that its 12-month average production exceeds one BOE per day, and the well therefore no longer meets the definition of an inactive well.

Rule 434.c.(2)

In Rule 434.c.(2), the Commission created new procedures for operators to "bond up" as an alternative to plugging or producing an inactive well within six months. The Commission created a new Form 3A, Single Well Financial Assurance, that will create an administrative process for operators and Staff to process operators' requests.

On the Form 3A, the operator must provide information about financial risk factors. The Commission developed these risk factors based on its experience in identifying operators that are at higher risk of orphaning their assets and creating liability for the State of Colorado through its Orphaned Well Program. The risk factors include the operator's average per-well production, the operator's ratio of active to inactive wells, and the number of wells the operator has plugged within the prior year. The Commission determined that there is no single quantitative threshold for any one risk factor at which point an operator would be deemed to be "high risk" and therefore required to provide a higher per-well bond, but rather intends for Staff to exercise discretion, based on their extensive experience, to determine when such a requirement is appropriate. Additionally, operators must provide the reason that a well is inactive. The Commission recognizes that operators may leave wells inactive for a variety of reasons, and that certain reasons such as a legitimate maintenance issue or a contractual dispute with a pipeline operator, are not an indication that a well is uneconomic or any financial risk factors for the operator, but rather simply a normal part of doing business. Accordingly, the Commission intends for Staff to consider the reason why a well is inactive as part of its evaluation of the amount of financial assurance required for a well.

By using the term "active wells" in Rule 434.c.(2).A.ii, the Commission intends to refer to any well that has been spud, drilled, is producing, or capable of production, including shut-in wells, suspended operations wells, temporarily abandoned wells, and waiting on

DRAFT

completion wells. In other words, the Commission uses the term "active wells" to refer to any well that has been spud, but has not been plugged. This is synonymous with the subset of wells that are required to pay an annual registration fee pursuant to Rule 205.c.

The default level of financial assurance that the Commission intends for operators to provide with their Form 3A is $30,000.00. This is less than the full cost of plugging, abandoning, and reclaiming a well, which the Commission estimates to be $78,000.00 on average. Because operators will submit a Form 3A for wells that have been inactive—and thus no longer generating revenue—for only a limited period of time, they pose lower risks to the State of Colorado than wells that have been inactive for a longer period of time.

However, to mitigate the risk posed by such wells, the Commission determined that it was appropriate to delegate the ability to require a higher financial assurance amount to the Director. The Commission intends for the Director to rely on the information submitted on a Form 3A in determining whether a greater amount of financial assurance is necessary. If an operator disagrees with the Director's determination, it can request a Commission hearing pursuant to Rule 503.g.(11). Operator's may also dispute the default requirement of $30,000.00 in the rare instance that a lower amount of financial assurance is appropriate for the specific circumstances of a well with unusually low plugging, abandonment, and reclamation costs.

If a well is inactive for three of more years, the Commission determined that it is appropriate to require full cost financial assurance for the well. This both provides a strong incentive for operators to plug and abandon inactive wells within three years, and also fully mitigates the risk posed by such wells to the state, because the Commission will have access to funds to plug, abandon, and reclaim such a well if the operator orphans it.

To facilitate the transition to full cost bonding, the Commission required operators to file an updated Form 3A within three years of the date the initial Form 3A is approved if the well has not yet been plugged or returned to production.

The Commission established the default amount of $78,000.00 as the full cost of financial assurance for inactive wells after three years in Rule 434.c.(2).C.i. However, as with other uses of the term "full cost" financial assurance in the Commission's Rules, the Commission intends to delegate its discretion to the Director to determine whether a greater amount is necessary, based on anticipated reclamation and remediation costs.

Accordingly, on the updated Form 3A, the Commission required operators to provide additional information relevant to potential reclamation costs of the oil and gas well and its associated location. The Commission used the same factors in Rule 434.c.(2).C.ii as it used in Rule 218.b.(3).B, based on its similar review of evidence in the administrative record about factors that drive reclamation costs. However, the Commission also included known remediation issues in Rule 434.c.(2).C.ii.aa. Because remediation projects are a separate transferable item under Rules 218.a.(1).F & G, the Commission determined that it would

add unnecessary confusion and provide redundant information to require information about outstanding remediation projects in Rule 218.b.(3).B.

The Commission determined that it was necessary to require the information in Rule 434.c.(2).C.ii.aa because there is no equivalent information provided on the Form 3A. Because both remediation and reclamation costs may significantly increase the costs of final location closure, the Commission determined that it was necessary for Staff to have access to information about both remediation and reclamation in assessing the full costs of financial assurance for wells that have remained inactive for more than three years.

When operators provide the area of initial total disturbance for the oil and gas location in Rule 434.c.(2).C.ii.bb, the Commission intends for operators to use the total final reclamation area, without subtracting the interim reclamation area. Based on the Commission's and Staff's experience, reclamation costs are driven by the total area, because some reclamation work is usually still conducted within the area reclaimed during interim reclamation when a site reaches final reclamation.

If an operator disagrees with the Director's determination about the amount of financial assurance that it is required to provide, Rule 434.c.(2).C.iii allows the operator to seek a Commission hearing pursuant to Rule 503.g.(11).

Rule 434.c.(3)

In Rule 434.c.(3), the Commission created new procedures for operators to designate a well as out of service and add it to their enforceable plugging list as an alternative to plugging, producing, or "bonding up" an inactive well within six months. The Commission created a new Form 6A, Plugging List, that will create an administrative process for operators and Staff to process operators' requests to designate wells as out of service status and add the wells to their plugging lists. As discussed above, the Commission adopted a new 100 Series definition of Out of Service Status to designate wells that an operator no longer intends to produce, and instead intends to plug and abandon.

To add a well to the plugging list, an operator must file a Form 6A providing the well's API number, the anticipated date the operator intends to plug the well, and evidence that the operator is financially capable of plugging each well on its plugging list by the designated date. The Commission recognizes that a wide variety of evidence may serve to demonstrate financial capability. The Commission accordingly did not prescribe a single form of evidence, but intends for that evidence to include, at a minimum the number of wells an operator has plugged and abandoned within the prior calendar year. The Commission determined that an operator's past history of plugging wells is strong evidence of the operator's capacity to continue doing so.

The Commission also recognizes that operators will be providing estimates of the date when a well will be plugged on their plugging list, and that a variety of factors may influence the

DRAFT

exact date when an operator plugs a well. Accordingly, in Rule 434.c.(3).B, the Commission established a firm, three-year deadline for operators to plug all out of service status wells designated on a Form 6A. The Commission does not intend for operators to allow wells to remain in out of service status for longer than three years. If an operator maintains a well in out of service status for more than three years, the operator may be subject to enforcement action for a violation of Rule 434.c.(3).B, and for the operator's failure to comply with the deadlines established on its plugging list.

Additionally, to mitigate the risks of wells that are in out of service status (and thus also inactive) for more than three years, the Commission required such wells to provide full cost bonding in Rule 434.c.(3).C. The Commission established the default amount of $78,000.00 as the full cost of financial assurance for inactive wells after three years in Rule 434.c.(3).C. However, as with other uses of the term full cost financial assurance in the Commission's Rules, the Commission intends to delegate its discretion to the Director to determine whether a greater amount is necessary, based on anticipated reclamation and remediation costs. Accordingly, in Rule 434.c.(3).C, the Commission required operators to provide an updated Form 6A with additional information relevant to potential remediation and reclamation costs of the oil and gas well and its associated location. The Commission used the same factors in Rule 434.c.(3).C as it used in Rule 434.c.(2).C.ii. When operators provide the area of initial total disturbance for the oil and gas location in Rule 434.c.(3).C.ii, the Commission therefore also intends for operators to use the total final reclamation area, without subtracting the interim reclamation area.

As with other instances where the Commission delegates its discretion to the Director to determine the amount of financial assurance an operator is required to provide, if an operator disagrees with the amount, Rule 434.c.(3).D allows the operator to seek a Commission hearing pursuant to Rule 503.g.(11).

Rule 434.c.(4)

In Rule 434.c.(4), the Commission revised prior Rule 434.b.(3) to clarify that out of service status wells must pass mechanical integrity tests at the frequencies specified in Rule 417.

Rule 434.c.(5)

The Commission moved portions of prior Rule 434.b.(3) providing an exception for gas storage wells to Rule 434.c.(5). The Commission does not intend for Rule 434.c to apply to gas storage wells, which the Commission considers to be active until such time as the well is physically plugged.

Rule 436.

Consistent with its efforts to consolidate all Rules relating to the same topic within the same Rule Series, the Commission moved prior Rules 436.g.(1)–(5), governing the release of

financial assurance for seismic operations, to Rule 703.b.(3). The Commission also updated the cross-reference to Rule 703.b in Rule 436.g.

DRAFT

APPENDIX B

500 Series – Rules of Practice and Procedure

Rule 503.

Rule 503.g

The Commission revised Rule 503.g to add two new categories of hearing application.

First, Rule 503.g.(11) authorizes operators, the Commission, the Director, or a third-party holder of financial assurance to initiate a financial assurance hearing by filing an application with the Commission. If the Director initiates a financial assurance hearing, she will be the proponent of the Commission order and therefore bear the burden of proof. The Commission may also commence a financial assurance hearing on its own motion pursuant to Rule 503.a. If either the Director or Commission institutes a financial assurance hearing, the Secretary will be required to provide appropriate notice. However, the Commission clarified that in situations where the Commission or Director initiates a financial assurance hearing, the operator that is the subject of the hearing will nevertheless be required to compile all necessary information and submit it into the docket for the hearing, as appropriate.

Second, Rule 503.g.(12) authorizes the Director or a relevant local government to file an application to plug and abandon a well or close an oil and gas location or oil and gas facility pursuant to Rule 211. Rule 503.g.(12) intentionally limits the parties that may permissibly file such an application to the Director and a relevant local government. An application filed by any other party will be summarily dismissed and will not be assigned a docket number.

Rule 503.h

The Commission revised Rule 503.h to clarify that the purpose of the Rule is to designate specific categories of hearings in which a decision must be made by the Commission in the first instance, rather than a Hearing Officer or Administrative Law Judge issuing a recommended order for the Commission's consideration.

Because of the significant importance of both financial assurance hearings and well and location closure hearings, the Commission determined that it is not appropriate to assign those matters to hearing officers or administrative law judges. Accordingly, the Commission added those hearings to the list of matters that will not be assigned to a hearing officer and will instead be heard directly by the Commission. However, this does not preclude a hearing officer or administrative law judge from presiding over preliminary matters such as issuing case management orders, overseeing discovery disputes, and other matters as necessary. The Commission itself will, however, be the final deciding entity for all merits disputes in these matters, and will not rely on a hearing officer recommended order on the merits.

DRAFT

Rule 504.

The Commission corrected a typographical error in Rule 504.a.(2).B by adding the missing word "and."

<u>*Rule 504.b*</u>

Consistent with adopting two new hearing application types in Rule 503.g, the Commission adopted unique notice procedures for each of the new hearing types.

First, in Rule 504.b.(10), the Commission adopted notice requirements for financial assurance hearings. The Commission intends for notice of financial assurance hearings to always be provided to the operator and the Director. However, because multiple parties may file applications for financial assurance hearings, and those hearings may address a range of topics, in Rules 504.b.(10).A–E, the Commission identified specific parties who must be noticed for applications filed by an operator, the Commission on its own motion, the Director, a surface owner, and a third-party provider of financial assurance seeking reinstatement, respectively.

Second, in Rule 504.b.(11), the Commission adopted notice requirements for well and location closure hearings pursuant to Rule 211. If the Director files an application for such a hearing pursuant to Rule 503.g.(12), the Director must provide notice to the operator. If the relevant local government files an application for such a hearing pursuant to Rule 503.g.(12), it must provide notice to both the operator and the Director.

The Commission intends for the specific government agencies listed in Rules 504.c–f to receive notice of relevant financial assurance and well and location closure hearings, including the Bureau of Land Management for hearings that implicate federal surface and/or mineral estate.

Rule 505.

The Commission revised Rule 505 and Rule 505.a to correct a typographic error. The typographic error inadvertently required the submission of sworn testimony in a broader range of proceedings than the Commission had intended.

<u>*Rule 505.f*</u>

The Commission adopted a new Rule 505.f, governing the evidence in financial assurance hearings. Because of the wide range of topics that can be addressed through financial assurance hearings, the Commission did not adopt a fixed evidentiary requirement that applies in all financial assurance hearings, such as sworn testimony addressing a particular topic. However, the Commission provided that parties to the proceeding may be required to

DRAFT

submit evidence by the Commission, its Hearing Officer, or Administrative Law Judge, as appropriate.

Rule 505.g

The Commission adopted a new Rule 505.g, governing the evidence in well location and closure hearings pursuant to Rules 211 and 503.g.(12). The Commission determined it was unnecessary for such hearing applications to be supported by sworn testimony. However, the Commission required the applications to include all evidence necessary for the Commission to decide the matter.

DRAFT

APPENDIX B

700 Series – Financial Assurance

The Commission reorganized, revised, and amended its prior 700 Series Rules to follow a more logical, sequential order. The Commission also eliminated duplicative, outdated, and unnecessary components of its prior 700 Series Rules. And the Commission used clearer language, eliminated typographic errors, and ensured consistency throughout its 700 series Rules. To assist stakeholders in identifying how the 700 Series Rules have been amended, moved, and removed, a table cross-referencing the Commission's prior and newly adopted 700 Series Rules is attached as Attachment 1 to this Statement of Basis and Purpose.

Rule 701.

The Commission moved prior Rule 702, governing types of financial assurance, to Rule 701.

Rule 701.a

In Rule 701.a, the Commission revised prior Rule 702, which established only a surety bond as an approved method of financial assurance. Consistent with its prior practice, in Rule 701.a the Commission clarified that both a cash bond and a surety bond, as those terms are defined in the Commission's 100 Series Rules, are preferred forms of financial assurance. The Commission intends for Staff to accept both cash bonds and surety bonds as financial assurance administratively, without requiring a Commission hearing.

The Commission determined that it was appropriate to codify this practice because both cash bonds and surety bonds provide a high degree of certainty that the Commission will be able to obtain the funds covered by the bond in the event it must access an operator's financial assurance pursuant to Rule 706. Specifically, a cash bond is held in a Colorado Department of Treasury account, with the state acting in a fiduciary position for the operator. A surety bond is held by a third party issuing entity, but the Commission is designated as the obligee.

Rule 701.b.

In Rule 701.b.(1), the Commission revised prior Rule 702 to clarify procedures for operators to provide alternative types of financial assurance that are not cash bonds or surety bonds. The Commission maintained the requirement that an operator obtain the Commission's permission to use an alternative type of financial assurance that is permitted by the Act, C.R.S. § 34-60-106(13)(A)–(F), but clarified that procedurally, an operator seeking such permission must file a hearing application pursuant to Rule 503.g.(11). The Commission also maintained the standard of providing "equivalency" of alternative forms of financial assurance from prior Rule 702, but clarified that the protection provided must be equivalent to either a cash bond or a surety bond, rather than solely a surety bond.

DRAFT

APPENDIX B

In Rule 701.b.(2), the Commission codified its October 28, 2002 Policy on Guarantees of Performance as Financial Assurance ("Policy"). Guarantees of performance, also known as "self-bonding" are a form of financial assurance that are permitted by the Act, though only with the "Commission's approval," and with other restrictions, including annual review and the operator's demonstration, to the Commission's satisfaction, that its net worth is sufficient. C.R.S. § 34-60-106(13)(a).

Since the Commission adopted the Policy in 2002, it has been the Commission's formal position that guarantees of performance are a "less desirable form" of financial assurance due to negative financial events involving major companies, including but not limited to bankruptcies and questionable accounting practices. *See* 2002 Policy at 1. The Commission continues to support the position it took in the 2002 Policy, and determined that it was appropriate to codify that policy into its Rules as part of the Financial Assurance Rulemaking, given it statutory directive to "require every operator to provide assurance that it is financial capable of fulfilling every obligation imposed by [the Act and the Commission's Rules]." C.R.S. § 34-60-106(13).

Specifically, in Rule 701.b.(2), the Commission codified the presumption that it would not accept guarantees of performance as a form of financial assurance. It also codified the 2002 Policy's requirement for annual review of each guarantee of performance that is accepted by the Commission, which is also a statutory requirement. *See* C.R.S. § 34-60-106(13)(a). The Commission added a new requirement that guarantees of performance must be supported by a personal guarantee of a corporate officer of the operator providing the financial assurance. The Commission determined that such a personal guarantee is necessary to ensure that some entity remains liable in the event of default or other financial distress encountered by the corporate entity providing the guarantee of performance. The Commission intends for Staff and attorneys to take all necessary actions to hold the individual corporate officer(s) personally liable in the event of a default of a guarantee of performance, including but not limited to foreclosing upon or otherwise initiating legal action to obtain any and all personal property, bank accounts, other financial instruments, and real property owned by the individual corporate officer.

The Commission added a new exception from the presumption against guarantees of performance for local governments that are also operators. Because local governments, by their nature, are more financially secure than a corporate entity, the Commission determined that it was appropriate to exempt them from the requirement. Additionally, very few local governments operate a very small fraction of the wells in Colorado. Accordingly, the Commission will be able to determine, on a case by case basis, whether a specific local government poses unique financial risks such that it should not be permitted to provide a guarantee of performance. If a local government does pose unique or undue risks, such as being at risk of bankruptcy or otherwise being financially insecure, the Commission may reject the local government's request to utilize a guarantee of performance as a form of financial assurance.

In Rule 701.b.(2).A, the Commission added a new requirement that the operator seeking to provide a guarantee of performance must demonstrate its net worth through financial statements accompanied by an unqualified opinion from an independent auditor. Both the 2002 Policy and the Act require an operator to demonstrate its net worth in order to use a guarantee of performance as financial assurance, but neither specify how an operator should do so. Because of the high degree of risk posed by guarantees of performance, the Commission determined that it was necessary for the operator to demonstrate its net worth through financial statements receiving an unqualified opinion from an independent auditor. The Commission intends for such an auditor to be independent in fact and in appearance from the operator, and to be fully licensed under the relevant jurisdiction where the auditor provides services.

In Rule 701.b.(2).A, the Commission codified the 2002 Policy's requirement that the operator's net worth be 20 time the amount necessary for the operator to fully plug and abandon and reclaim all of its oil and gas wells and locations. The Commission determined that this aspect of the 2002 Policy has been effective since its inception, and there was therefore no reason to deviate from the standard established by the 2002 Policy in the Financial Assurance Rulemaking.

In Rule 701.b.(2).C, the Commission added a new requirement that if an operator seeks to provide a guarantee of performance as a form of financial assurance to the Commission, it may not provide a guarantee of performance as a form of financial assurance to any other government agency. The Commission recognizes that even a solvent corporate entity with a high net worth could potentially default on its obligations if it provides a guarantee of performance to multiple agencies based on the same net worth. Moreover, some corporate entities operate in many jurisdictions, including other states and nations, and in different industries, each of which may have individual financial assurance requirements, and it is unduly burdensome for the Commission to track the complexities of such operations. Accordingly, the Commission determined that it is necessary and reasonable for the Commission to be the only entity to which an operator provides a guarantee of performance, should an operator seek to do so.

Rule 701.c

In Rule 701.c, the Commission clarified its own interest, and an operator's interest, in all forms of financial assurance. Because the Commission's prior Rules did not explain the Commission's and operator's legal interest in financial assurance during the period while the financial assurance is in place, questions have arisen in various contexts about each entity's intended interest. The Commission determined that it was therefore necessary to clarify each entity's interest to better elucidate the regulatory intent in the future.

Consistent with the new 100 Series definitions of Cash Bond, Surety Bond, and Letter of Credit, in Rule 701.c.(1) the Commission explained that it may expend all forms of financial assurance if an operator fails to perform its plugging and abandonment, reclamation, or

DRAFT

remediation obligations under the Act and the Commission's Rules. The Commission cannot expend the funds for other reasons, such as funding personnel costs or other matters that are funded through the Commission's general budget. Rather, the funds can be expended only following a formal Commission hearing to access the bond initiated pursuant to Rule 706. The Commission holds cash bonds, in particular, in a fiduciary manner, through a trust-like relationship. Accordingly, while the funds are not the property of the State of Colorado until they are formally accessed pursuant to Rule 706, the funds are also not the property of the operator—rather they are held for the mutual benefit of both the operator and the State.

Also consistent with the new 100 Series definitions of Cash Bond, Surety Bond, and Letter of Credit, in Rule 701.c.(2) the Commission explained the operator's limited interest in financial assurance that it provides to the Commission. Because the operator provides the funds to serve as a guarantee to the Commission and the State of Colorado that it will be capable of complying with its regulatory and statutory obligations to plug and abandon its wells, reclaim its oil and gas locations, and remediate any spills or releases, the operator has no interest in the funds under either property law or contract law. The operator's sole interest in the funds is a contingent reversionary interest. Financial assurance will revert to the operator that provided it only if the Director determines pursuant to Rule 706 that the operator has fully complied with all of its plugging and abandonment, reclamation, and remediation obligations, abandoned its permit(s), or another operator has acquired the assets subject to the bond and provided sufficient replacement financial assurance pursuant to Rule 218. As discussed below, pursuant to Rule 706.a, a component of the operator's contingent reversionary interest is any interest accrued on a cash bond while it is invested.

Rule 701.d

In Rule 701.d, the Commission prohibited bond riders. A bond rider refers to the practice of one operator "riding" on another operator's bond—meaning that the operator riding on the bond relies on financial assurance provided by a different operator in lieu of providing its own financial assurance. The Commission's prior 700 Series Rules neither expressly allowed nor expressly prohibited bond riders. The Commission's Staff initially allowed bond riders in limited instances, such as in the event of a name change or a transfer of a limited number of assets. But over time, the use of bond riders has become a liability to the state. For example, in many cases, multiple operators are riding on a single bond. In other cases, some current operators are riding on financial assurance provided by an entity that no longer exists. Because of these liabilities, the Commission determined that it was appropriate to prohibit bond riders in the future, with limited exceptions, and to require all operators with existing bond riders to promptly remedy any liability posed by their present financial situation.

Accordingly, in Rule 701.d.(1), the Commission prohibited new bond riders, with two narrow exceptions. First, in instances where an operator changes its name without any associated transfer of assets. So long as the entity with the new name has access to the financial

DRAFT

instruments provided under its prior name, the Commission determined that a rider may be permitted in such a situation. Second, in instances where a transfer of assets results in the change in the amount of financial assurance that an operator provides. In such a situation, the total amount of financial assurance due is unlikely to change, and so long as both the selling operator and buying operator involved in such a transaction provide the appropriate amount of financial assurance, a rider may be appropriate. The Commission intends for Staff to review requests for future bond riders carefully, and to deny any request that poses undue liability to the State of Colorado.

In Rule 701.d.(2), the Commission required all existing operators whose financial assurance is partially or entirely provided through bond riders to submit a financial assurance plan, for Staff to review and approve or deny, addressing the liability posed by the rider. In limited instances, Staff may approve the operator continuing to rely on financial assurance provided by a rider—for example, where the rider solely resulted in a name change and the operator still has access to the relevant financial assets. However, for the most part, the Commission intends for operators to remedy any deficiencies posed by current riders by providing their own financial assurance, rather than continuing to rely on financial assurance provided by another entity.

The Commission recognizes that the term "bond rider" is sometimes also used to refer to an amendment to a financial assurance instrument—for example an operator providing increased financial assurance as a result of a well becoming inactive. The Commission does not intend to prohibit this practice in Rule 701.d. The Commission intends only to prohibit the practice of one operator relying on financial assurance provided by a different operator.

Rule 701.e

The Commission adopted a new Rule 701.e, establishing when an operator must file a Form 3, Financial Assurance. The Commission has used the Form 3 as the primary form for operators to submit, change, and otherwise address matters related to financial assurance for many years. However, the Commission's prior 700 Series Rules did not reference the Form 3. Accordingly, the Commission adopted a new Rule describing the purpose of the Form 3 and when it must be submitted. The Commission also renamed the Form 3 from "Performance Bond" to "Financial Assurance" to better reflect the wide array of purposes for which the form can be used, including to submit types of financial assurance that are not surety bonds. The Commission intends for Staff to make appropriate updates and modifications to the Form 3 to reflect the changes adopted in the Financial Assurance Rulemaking.

Rule 702.

Rule 702 establishes the financial assurance requirements for plugging, abandonment, and reclamation of oil and gas wells, oil and gas locations, and associated oil and gas facilities. The purpose of the Rule, like prior Rule 706, is to protect public health, safety, welfare, the

DRAFT

environment, and wildlife resources, as well as air, water, soil, and biological resources, by ensuring that operators have the financial capability to fulfill all of their obligations under the Act and the Commission's Rules. *See* C.R.S. § 34-60-106(2.5)(a), (13). Specifically, Rule 702 is intended to ensure that operators are capable of fulfilling their obligation to plug and abandon wells pursuant to the Commission's 400 Series Rules, to fully reclaim oil and gas locations pursuant to the Commission's 1000 Series Rules, and to properly clean up and abandon oil and gas facilities such as tanks and flowlines pursuant to the Commission's 600 and 1100 Series Rules. Although the Commission removed language related to the purpose of the 700 Series from prior Rules 701 and 706, the Commission still intends to use financial assurance as a tool to ensure that operators fulfill all of their plugging, abandonment, and reclamation obligations under the Act and the Commission's Rules.

Rule 702.a

The Commission moved prior Rule 702.b, which provides exceptions to the Commission's ordinary 700 Series financial assurance requirements, to Rule 702.a. The Commission revised the Rule to frame it as providing a positive statement of applicability—what Rule 702 covers—rather than an inverse statement of exception.

The Commission maintained the requirement that its 700 Series Rules do not apply to oil and gas wells located on federal surface or mineral estate. The Commission's longstanding practice is to exempt federal wells form financial assurance requirements, because the federal government also requires financial assurance. The Commission has adopted this practice, and continues to follow it, in order to avoid "double bonding" for such facilities. The Commission determined that so long as either the state or federal government has financial assurance for an oil and gas well, there is assurance that funds will be available for plugging, abandoning, and reclaiming the well. However, the Commission has legal authority to require financial assurance for oil and gas wells on federal lands and minerals if necessary to protect the environment. *See, e.g.*, *Bd. of Cty. Comm'rs of Gunnison Cty. v. BDS Int'l, LLC.*, 159 P.3d 773 (Colo. App. 2006); *see also, generally Cal. Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572 (1987); *United States v. Massachusetts*, 493 F.3d 1, 20–23 (1st Cir. 2007); *Massachusetts v. U.S. Dep't of Transp.*, 93 F.3d 890, 895 (D.C. Cir. 1996); *Ree-Co Uranium L.P. v. N.M. Mining Comm'n* No. 9-CV-881 WJ/ACT, 2010 WL 11601223 (D.N.M. May 11, 2010); *State ex rel. Andrus v. Click*, 554 P.2d 969, 973–94 (Idaho 1976).

The Commission revised Rule 702.a to clarify when and how an operator should demonstrate that it carries adequate financial assurance for oil and gas locations and wells on federal lands or that develop federal minerals. Operators should provide this evidence at the time they file a Form 2 to drill a well, or an oil and gas development plan to develop a new location. Additionally, operators should indicate which of their wells are covered by federal financial assurance, and therefore exempt from the Commission's financial assurance requirements, when filing a financial assurance plan pursuant to Rule 702.b.

Consistent with its intent for financial assurance to be submitted at the permitting stage, the Commission also revised Rule 702.a to clarify that all references to "Wells" in Rule 702 includes wells that have been permitted—meaning subject to an approved Form 2—but not yet spud. Operators need not continue to provide financial assurance for wells that had approved Form 2s that expired before the operator spud the well. Operators may also submit a Form 4 to formally abandon the permit and request release of the applicable financial assurance pursuant to Rule 706.a.(5) before the permit expires.

Prior Rule 702.b also exempted situations where an operator provided financial assurance to an Indian (tribal) agency for operations solely regulated by that agency. However, the Commission does not have jurisdiction over wells oil and gas wells within Indian Country, with the limited exception of oil and gas wells operated by non-Indians on lands within the exterior boundaries of the Southern Ute Indian Reservation where both the surface and oil and gas estates are owned in fee by persons or entities other than the Southern Ute Indian Tribe. C.R.S. § 34-60-105(4); Rule 201.d. Accordingly, the Commission determined that maintaining the language about financial assurance provided to tribal agencies from prior Rule 702.b would create unnecessary confusion about the scope of the Commission's jurisdiction. Accordingly, the Commission removed the language from Rule 702.a. The removal of this language does not imply, in any way, that the Commission intends to exercise jurisdiction over tribal lands or minerals.

Rule 702.b

In Rule 702.b, the Commission adopted a new system of financial assurance plans to determine the amount and type of financial assurance that operators must provide to ensure that they can to plug, abandon and reclaim their wells and oil and gas locations.

Rule 702.b transitions from a system of financial assurance that is overseen by Staff to a system with Commission oversight. Like OGDPs, financial assurance plans are submitted by operators in conjunction with a financial assurance hearing application. Financial assurance plans will be initially reviewed by Staff, then by the Commission. This will allow the Commission the flexibility to tailor appropriate financial assurance requirements that meet the unique needs and risk profile of each operator.

Rule 702.b outlines when operators must or may submit financial assurance plans. Rule 702.b.(1) establishes a transition period for existing operators to submit initial plans to the Commission. Subsequent plans may be submitted when new operators register with the Commission, for renewal at the discretion of an operator, or when the Director or the Commission requires an operator to do so pursuant to Rule 707.

Rule 702.c

Rule 702.c establishes three tiers of financial assurance plans. All operators will fall into one of the tiers identified by Rule 702.c. The Commission established the tiers in Rule 702.c

DRAFT

based on characteristics that are related to an operator's financial health, and the risk of an operator orphaning its assets. These factors include what percentage of an operator's wells are low-producing wells, and what percentage of wells an operator has plugged in the prior year. The tier that an operator falls within determines the type of financial assurance plan it must file pursuant to Rule 702.d.

Rule 702.d

Rule 702.d governs the contents of financial assurance plans. This includes the amount of financial assurance that an operator must provide to ensure that it will be financially capable of fulfilling its statutory and regulatory obligations under the Act and the Commission's Rules. The Commission recognizes that a variety of circumstances may influence the appropriate amount of financial assurance. Accordingly, Rule 702.d provides that if an operator believes an exception to the amount of financial assurance listed in Rule 702.d is warranted, the operator may describe the basis for the exception in its financial assurance plan, without submitting a separate application for a variance hearing pursuant to Rule 502. This will streamline the review process by allowing the Commission to review requested exceptions as part of the financial assurance hearing.

Rule 702.d.(1)

Rule 702.d.(1) establishes the requirements for financial assurance plans for Tier 1 operators. Tier 1 operators are at the lowest risk of orphaning their oil and gas wells and locations, and therefore are required to provide the lowest amount of financial assurance.

The informational requirements for a Tier 1 financial assurance plan include basic information that will allow the Commission and Staff to verify that an operator falls within Tier 1, including information about how many of the operator's wells are low producing and how many wells the operator plugged and abandoned within the prior year.

The other informational requirements for a Tier 1 plan pertain to the amount and type of financial assurance that the operator will provide. Because Tier 1 operators are at the lowest risk of orphaning their wells, the Commission adopted a system of blanket bonds based on the number of wells that an operator operates. The Tier 1 financial assurance plan must also identify other types of financial assurance that the operator will provide, including financial assurance for inactive wells pursuant to Rules 218 and 434, and for other oil and gas facilities and operations pursuant to Rules 703 and 704.

Rule 702.d.(2)

Rule 702.d.(2) establishes the requirements for Tier 2 financial assurance plans. These are the same as the requirements for Tier 1 financial assurance plans, except that the amounts of blanket bonds are higher, because Tier 2 operators are at a somewhat higher risk of orphaning their wells.

DRAFT

Rule 702.d.(3)

Rule 702.d.(3) establishes the requirements for Tier 3 financial assurance plans. Tier 3 operators may have the highest risk of orphaning their wells, because they have a higher percentage of low producing wells that generate relatively little revenue, and they are plugging a relatively low percentage of their wells. Accordingly, the Commission required Tier 3 operators to provide financial assurance that matches the full cost of plugging, abandoning, and reclaiming the operator's wells and associated oil and gas locations. As with other Rules that require full-cost bonding, the Commission used $78,000.00 as the amount to approximate a statewide average of the full costs of plugging, abandonment, and reclamation, for the reasons discussed above.

To allow Tier 3 operators sufficient time to generate revenue to comply with the full-cost bonding requirement, Rule 702.d.(3) requires Tier 3 operators to provide financial assurance in the form of a cash bond paid into a sinking fund. The Commission established a 10 year period for operators to fully comply with their financial assurance requirements, either by paying $7,800 per well per year, or 10% of the total financial assurance the operator is required to provide by Rule 702.d.(3).A, whichever is greater.

The Commission recognizes that operators will have varying circumstances, and any number of factors may influence the full cost of plugging, abandonment, and reclamation for any given well, including but not limited to well depth, soil type, location size, and topsoil preservation. Accordingly, the Commission intends for Tier 3 operators to be able to propose lower amounts than $78,000 per well as part of their financial assurance plans. However, the Tier 3 operator will bear the burden of proving why the lower amount is appropriate.

Rule 702.e

In Rule 702.e, the Commission established a procedure for reviewing and approving or denying operators' financial assurance plans. The Commission intends for the system to be similar to the OGDP review process, in which Staff first reviews a plan, then makes a recommendation to the Commission about the plan to consider in the course of a hearing.

Rule 702.e.(1)

Under Rule 702.e.(1), the Director will first review an operator's financial assurance plan. The Director's review will include procedural matters, including verifying that a plan is complete and complies with all substantive requirements of Rule 702.d. If an operator's plan is incomplete, fails to meet the requirements of Rule 702.d, or more information is necessary for any other reason, Rule 702.e.(1).C provides that the Director may request additional information from the operator. The operator must provide the Director with the additional information in order for the Director to make a recommendation to the Commission, and for the Commission to consider the financial assurance plan.

DRAFT

The Director's review also includes a substantive component, as to whether the operator's financial assurance plan demonstrates that the operator will provide adequate financial assurance to comply with all of its obligations under the Act and the Commission's Rules. The Commission intends for Staff to use their substantial expertise in financial assurance, plugging and abandonment costs, remediation, and reclamation to exercise appropriate judgment and discretion when making a recommendation.

Rule 702.e.(2)

Rule 702.e.(2) governs the Commission's review of financial assurance plans. The Commission cannot review a plan until the Director makes a recommendation, and all appropriate notice and process requirements of the 500 Series Rules have been met.

Like the Director, the Commission may approve or deny a financial assurance plan based on whether the plan complies with Rule 702's substantive requirements, and whether it demonstrates that the operator will provide adequate financial assurance to fulfill all of its obligations under the Act and the Commission's Rules. The Commission intends to exercise its judgment and substantial experience, as appropriate, in making this determination, consistent with the requirements of the Act and its Rules. The Commission may also approve a financial assurance plan subject to conditions of approval, which will be binding and enforceable terms of the plan that the operator must fulfill.

Rule 702.e.(2).D provides that the Commission may require an operator to submit additional information or evidence in support of its plan, if necessary, for the Commission's consideration of the plan. The evidence may include confidential financial information, which would be kept confidential pursuant to Rule 223.b.(11). Rule 702.e.(2).D is intended to work in harmony with Rule 505.f, governing evidence in financial assurance hearings. Although the Commission alone will make a merits ruling in a financial assurance hearing pursuant to Rule 503.h.(5), if the Commission assigns a hearing officer or administrative law judge to preside over procedural or other matters, the operator must provide any evidence requested or required by the hearing officer or administrative law judge.

Rule 702.e.(2).E discusses the content of the Commission's order memorializing its decision in a financial assurance hearing. After the conclusion of all quasi-adjudicatory hearings, the Commission issues an order memorializing its decision. The contents of such orders vary between hearings, as is appropriate. Rule 702.e.(2).E is not intended to limit what the Commission may include in its orders in any way. Rather, it is intended to provide notice to the public about what types of matters the Commission may choose to address in its order for any given financial assurance hearing. These topics include, but are not limited to, establishing deadlines for compliance, requiring periodic progress reports from an operator, and requiring an operator to re-submit its financial assurance plan after a certain amount of time.

DRAFT

Deadlines are an important component of plans, and the Commission may determine it is necessary to establish an enforceable deadline for an operator to provide financial assurance in certain amounts (which could be done over time, rather than as a lump sum payment), or to plug, abandon, remediate, or reclaim specific oil and gas wells, locations, or facilities.

Additionally, the Commission may determine that additional oversight is necessary based on an operator's risk profile or other factors, which may warrant periodic progress reports from an operator.

The Commission recognizes that an operator's risk profile and appropriate financial assurance structure may change over time, and that periodic revisitation of an operator's plan could be warranted, particularly if it is likely that an operator will move between tiers in the near future based on its percentage of inactive wells. Accordingly, the Commission may require an operator to resubmit a new financial assurance plan, or seek renewal of its plan, at a specific future date.

Finally, one of the core issues that the Commission will consider in the course of reviewing an operator's financial assurance plan is the amount of financial assurance that the operator must provide. Depending on numerous factors, including the operator's overall financial health and risk profile, the Commission may determine that either more or less financial assurance than the default required by Rule 702 is necessary and reasonable. Accordingly, Rule 702.e.(2).E.iv notifies stakeholders that one matter the Commission order may address is the amount of financial assurance that the operator must provide, and that the amount may be more than the minimum required by Rules 702, 703, and 704.

Rule 702.f

In Rule 702.f, the Commission identified a process for transitioning from the financial assurance requirements of its prior Rules to the new financial assurance requirements adopted in the Financial Assurance Rulemaking. The primary mechanism for doing so is the requirement for existing operators to submit financial assurance plans by no later than July 1, 2022. Additionally, the Commission clarified in Rule 702.f that it intends to apply any financial assurance currently held by an operator toward its new financial assurance obligations.

Rule 703.

In Rule 703, the Commission consolidated all of its prior Rules that addressed financial assurance requirements for oil and gas facilities and operations that are not wells into a single Rule, and also standardized the format of each requirement. The Commission determined that this consolidation will make its Rules more readable and facilitate compliance. Additionally, standardizing the format of each type of financial assurance to address when it must be submitted, the amount that must be provided, and when it will be returned to operators will improve transparency and provide better clarity for operators.

Rule 703.a

The Commission moved prior Rule 704, governing financial assurance for centralized exploration and production ("E&P") waste management facilities, to Rule 703.a. Consistent with other subsections of Rule 703, the Commission amended the Rule to specify when such financial assurance must be submitted, the amount of the financial assurance, and when it will be released. The Commission did not substantively revise Rules 703.a.(1) or (2), addressing when financial assurance must be provided for centralized E&P waste management facilities, and how that amount is determined, except to provide that the amount may be periodically adjusted for inflation during the Director's annual review pursuant to Rule 707.a.(1).A.

Prior Rule 704 did not specify when financial assurance provided for a centralized E&P waste management facility would be released. The Commission intends to release financial assurance back to an operator when the operator fully reclaims and remediates a centralized E&P waste management facility, even if the operator has other active oil and gas operations at other locations in the state of Colorado that have not yet been fully plugged, abandoned, reclaimed, and remediated. Accordingly, in Rule 703.a.(3), the Commission articulated the conditions under which financial assurance will be released to the operator, which includes upon an approved transfer of assets and when the centralized E&P waste management facility is closed pursuant to Rule 913.h. Additionally, the Commission specified in Rule 703.a.(3).C that if an operator provides financial assurance for a centralized E&P waste management facility, but files a Form 4 to formally abandon its approved permit without actually constructing the facility, it can receive the financial assurance back, though only after the site is inspected by the Commission's Staff to verify that construction did not occur.

The Commission also removed unnecessary language from prior Rule 704 that related to compliance deadlines that have since passed. It also removed unnecessary language from prior Rule 704 clarifying that the Rule did not apply to multi-well pits or underground injection wells. Because the Commission's 100 Series definitions of Centralized E&P Waste Management Facility, Multi-Well Pit, and Class II UIC Well are clearly mutually exclusive, the Commission determined that such language was unnecessary.

Rule 703.b

The Commission moved prior Rule 705, governing financial assurance for seismic operations, to Rule 703.b. Consistent with other subsections of Rule 703, the Commission amended the Rule to specify when such financial assurance must be submitted, the amount of the financial assurance, and when it will be released. The Commission did not substantively revise Rules 703.b.(1) or (2), addressing when financial assurance must be provided for seismic operations, and the amount of that financial assurance, except to provide that the amount of financial assurance may be periodically adjusted for inflation pursuant to Rule 707.a.(1).A. The Commission moved prior Rule 436.g.(1)–(5), governing release of financial assurance for seismic operations, to Rule 703.b.(3). The Commission

DRAFT

revised the order of the subsections to better reflect the sequence of steps that must occur for financial assurance to be released, but did not substantively revise the requirements.

Rule 703.c

The Commission moved prior Rule 711, governing financial assurance for gas gathering, gas processing, and gas underground gas storage facilities to Rule 703.c. Consistent with other subsections of Rule 703, the Commission amended the Rule to specify when such financial assurance must be submitted, the amount of the financial assurance, and when it will be released.

Prior Rule 711 did not specify when financial assurance for gas gathering, processing, and underground storage facilities must be submitted. Accordingly, the Commission clarified in Rule 703.c.(1) that such financial assurance must be provided concurrently with the operator submitting a Form 12, Gas Facility Registration/Change of Operator.

Consistent with its prior practice, the Commission does not require financial assurance for interstate gas storage facilities, and will continue to only require financial assurance for intrastate gas storage facilities. The sole purpose of this financial assurance is environmental protection and restoring the state's land—to cover the costs of reclaiming and remediating any spill or release from such a facility. It is unrelated to safety concerns.

In Rule 703.c.(2), the Commission specified the amount of financial assurance that operators of gas gathering, gas processing, and underground gas storage facilities must provide. Gas gathering, gas processing, and underground gas storage facilities pose unique risks and challenges for the Commission. Because the Commission has more limited jurisdiction over each category of facility than the other facilities it regulates, the Commission is not able to oversee a comprehensive suite of spill-prevention, integrity, and safety measures for the facilities in the same way that it regulates other oil and gas operations, such as flowlines. However, the Commission does have jurisdiction to address spills and releases from these gas facilities when they occur. Accordingly, consistent with prior Rule 711, the sole purpose of Rule 703.c.(2) is to provide financial assurance to ensure compliance with the Commission's 900 Series Rules in the event of a spill or release. When such spills and releases do occur, they can be very costly. Gas gathering systems are almost always buried belowground, and for this reason it is possible for spills and releases to go undetected for some time. Additionally, some gas gathering systems and gas storage facilities transport or process very high volumes of hydrocarbons. And finally, when spills or releases reach groundwater, although this is a rare occurrence, they can be very costly to clean up. Accordingly, the Commission determined it was appropriate to increase the financial assurance for these gas facilities from a $50,000.00 blanket bond to $50,000.00 per facility. While this amount is still less than the typical costs of cleaning up a spill or release from a gas gathering facility or gas processing facility, it will provide more financial assurance to protect the State of Colorado in the event that an operator abandons a remediation project and the liability must be assumed by the Commission. The Commission determined that

this approach of requiring financial assurance at an amount less than the full cost of remediating a spill or release was appropriate in this instance because spills and releases do not happen at every facility. The Commission intends for each facility that must file a Form 12 to provide individual financial assurance. Thus, each Form 12 should be accompanied by $50,000.00 in financial assurance.

In Rule 703.c.(2).B, the Commission maintained the exception for small gas gathering and processing systems to provide a lower amount of financial assurance from prior Rule 711, because they pose lower remediation risks.

As with other forms of financial assurance, the amount of financial assurance required for a gas gathering, gas processing, or underground gas storage facility may be periodically adjusted for inflation pursuant to Rule 707.a.(1).A.

Prior Rule 711 did not specify when financial assurance provided for a gas gathering, gas processing, or underground gas storage facility would be released. In Rule 703.c.(3), the Commission clarified that it will release financial assurance for such a facility back to an operator when the operator transfers the facility, or fully decommissions the facility and has fully remediated any spills or releases for the facility, as indicated by an approved Form 27. Consistent with current practice, the Commission intends for Staff to conduct inspections prior to releasing the financial assurance after final closure, and may determine that it is appropriate to conduct inspections prior to releasing financial assurance at the time of a transfer based on a review of the individual circumstances of the transfer.

Rule 703.d

The Commission moved prior Rule 712, governing financial assurance for produced water transfer systems, to Rule 703.d. Consistent with other subsections of Rule 703, the Commission amended the Rule to specify when such financial assurance must be submitted, the amount of the financial assurance, and when it will be released.

Prior Rule 712 did not specify when financial assurance for produced water transfer systems must be submitted. Accordingly, the Commission clarified in Rule 703.d.(1) that such financial assurance must be provided concurrently with the operator submitting a Form 44, Flowline Report, to register the system.

Like gas gathering, gas processing, and underground gas storage facilities in Rule 703.c, the Commission determined it was appropriate to increase the financial assurance required for produced water transfer systems from a $50,000.00 blanket bond to $50,000.00 per facility. The Commission determined that a per facility amount was more appropriate to provide an adequate guarantee to the state that an operator will have the capacity to remediate any spills or releases from a produced water transfer system. While the Commission recognizes that the costs of remediation of such a spill or release may vary significantly, it determined

that $50,000.00 was a reasonable estimate of typical remediation costs, based on the experience of its Environmental Unit Staff.

In Rule 703.d.(2).B, the Commission maintained the exception for small produced water transfer systems to provide a lower amount of financial assurance from prior Rule 712, because they pose lower remediation risks.

As with other forms of financial assurance, the amount of financial assurance required for a produced water transfer system may be periodically adjusted for inflation pursuant to Rule 707.a.(1).A.

Prior Rule 712 did not specify when financial assurance provided for a produced water transfer system would be released. In Rule 703.d.(3), the Commission clarified that it will release financial assurance for such a produced water transfer system back to an operator when the operator transfers the facility, or fully decommissions the system and any remediation projects for the facility are closed pursuant to Rule 913.h, as indicated by an approved Form 27. Consistent with current practice, the Commission intends for Staff to conduct inspections prior to releasing the financial assurance after final closure, and may determine that it is appropriate to conduct inspections prior to releasing financial assurance at the time of a transfer based on a review of the individual circumstances of the transfer.

Rule 703.e

The Commission moved prior Rule 713, governing financial assurance for commercial disposal wells, to Rule 703.e. Consistent with other subsections of Rule 703, the Commission amended the Rule to specify when such financial assurance must be submitted, the amount of the financial assurance, and when it will be released. Rule 703.e is specifically intended to provide financial assurance for remediation projects to address spills and releases from the surface facilities appurtenant to a commercial disposal well. Commercial disposal wells themselves remain subject to the same financial assurance requirements as all other wells to address plugging and abandonment and reclamation costs pursuant to Rule 702.

Prior Rule 713 stated that financial assurance must be in place before an operator injected E&P waste into a commercial injection well, but did not specify how and when an operator should submit such financial assurance. Accordingly, the Commission clarified in Rule 703.e.(1) that such financial assurance must be provided concurrently with the operator submitting an application for a new commercial disposal well pursuant to Rule 810.a.

Rule 703.e.(2) increases the amount of financial assurance required for a commercial disposal well from $50,000.00 to $100,000.00 per well. Commercial disposal wells process high volumes of E&P waste. Accordingly, the Commission determined that remediation costs associated with spills and releases at such facilities are generally higher than $50,000.00, and that $100,000.00 in financial assurance is a more appropriate amount for those facilities. As with other forms of financial assurance, the amount of financial

DRAFT

assurance required for a commercial disposal well may be periodically adjusted for inflation pursuant to Rule 707.a.(1).A.

Prior Rule 713 did not specify when financial assurance provided for a commercial disposal well would be released. In Rule 703.d.(3), the Commission clarified that it will release financial assurance for such a commercial disposal well back to an operator when the operator transfers the well, or fully plugs, abandons, reclaims, and remediates the well and its associated surface facilities and the facility is closed pursuant to Rule 913.h.

Rule 704.

The Commission moved prior Rule 703, which governs surface owner protection bonds and implements a specific provision of the Act, C.R.S. § 34-60-106(3.5), to Rule 704. The Commission added substructure, revised language to remove passive voice, and clarified procedural details, but did not make substantive changes to the Rule.

Rule 704.a specifies when surface owner protection bonds are required, identifies the requisite amount of financial assurance, and provides exception for State Land Board lands. The Commission did not substantively revise any of the provisions in Rule 704.a. The Commission determined that the amount of financial assurance required by Rule 704.a.(1) continues to be a "reasonable security" within the meaning of the Act. C.R.S. § 34-60-106(3.5).

In Rule 704.b, the Commission more clearly articulated the procedures for a surface owner to access a surface owner protection bond. Prior Rule 703 noted that a surface owner must file an application pursuant to the 500 Series Rules, but provided little other procedural detail. Accordingly, the Commission added a cross-reference to the specific type of hearing application that a surface owner should file—a financial assurance hearing pursuant to Rule 503.g.(11).

In Rule 704.b.(1), the Commission also clarified that the surface owner, who would be the proponent of the Commission's order in such a hearing, will bear the burden of proof, as is standard practice for all Commission Hearings.

In Rule 704.b.(2), the Commission maintained the standard from prior Rule 703 governing the relief that the Commission may provide in such a hearing, which may include a monetary award of a greater amount than was provided through the surface owner protection bond. The Commission revised the wording of this provision for clarity, but did not substantively revise the standard.

Prior Rule 703 did not specify when a surface owner protection bond would be released. In Rule 704.c, the Commission articulated the situations in which both a blanket bond and an individual bond would be released. These include plugging, abandonment, and reclamation of all relevant facilities, transfer of all relevant facilities, abandonment of the applicable

DRAFT

permit(s) without actually conducting any surface disturbance (as verified by a Commission inspection and subject to an approved Form 4), and, importantly, the operator entering into a surface use agreement with the surface owner. One of the core purposes of Rule 704 is to incentivize operators to enter into surface use agreements, leases, or other agreements with surface owners. In the Commission's experience, such agreements are mutually beneficial and provide important opportunities for operators and surface owners to negotiate and collaboratively work together towards common goals. Accordingly, the Commission determined that it was important to clarify in its Rules that surface owner protection bonds will be released if an operator is able to enter into relevant agreements with the relevant surface owners. The Commission determined that this will provide an additional financial incentive for operators to enter into such agreements.

Rule 705.

The Commission expanded upon its prior insurance requirements in Rule 705, including by adding a new requirement that operators maintain environmental liability insurance.

Rule 705.a

The Commission moved prior Rule 708, governing general liability insurance, to Rule 705.a. The Commission broke prior Rule 708 into two subsections, Rules 705.a.(1) & (2), but did not substantively revise either subsection.

The Commission adopted a new Rule 705.a.(3) to clarify how operators can demonstrate compliance with the general liability insurance requirements of Rule 705. The Commission intends for new operators to demonstrate their compliance by providing information about their insurance coverage, including the company providing the policy and the amount of the policy, when they file a Form 1.

The Commission adopted a new Rule 705.a.(4) to ensure that the Commission receives timely updates about any changes in an operator's general liability insurance policy. The Commission intends for operators to provide information about significant changes such as renewals, changes in insurer, or other matters on their Form 1B, Annual Registration.

Rule 705.b

The Commission's Approach to Requiring Financial Assurance for Remediation

The Commission adopted a new Rule 705.b, governing environmental liability insurance. The Commission previously required financial assurance for only a small category of remediation projects, including remediation of the facilities addressed by Rule 703. However, the Commission recognizes that a critical part of Senate Bill 19-181's mandate that the Commission "require every operator to provide assurance that it is financially capable of fulfilling every obligation imposed by [the Act and the Commission's Rules]" is to

DRAFT

ensure that operators are financially capable of fulfilling all their remediation obligations pursuant to the Act and the Commission's 900 Series Rules. Moreover, when operators orphan their oil and gas wells, locations, and facilities so that they become liabilities to the State of Colorado, a significant amount of the costs borne by the Commission's Orphaned Well Program relate to remediation. While not every orphaned site has contamination that requires remediation, when sites do require remediation the costs of those remediation activities can often dominate the overall costs of plugging, abandoning, and reclaiming the orphaned site.

While requiring financial assurance for remediation is important, it also poses unique challenges because of its uncertain nature. Some oil and gas wells, locations, and facilities never have spills or releases that must be remediated. And even when spills and releases do occur, they vary widely in scope, nature, and volume. Remediation costs therefore vary widely. A small volume spill of produced water with limited hydrocarbon content may require less than $1,000 to clean up, while remediating the most expensive spills of large volumes of hydrocarbons that reach groundwater may cost as much as $25,000,000.

Accordingly, the Commission determined that the best approach to address financial assurance for remediation is to require operators to maintain sufficient environmental liability insurance coverage to address the vast majority of remediation projects that an operator must complete. The Commission reviewed input from stakeholders and other evidence in the administrative record, and determined that this approach has been successfully employed by some local governments. The principal advantage of an insurance-based approach is that it provides financial certainty that funds will be available to address remediation issues as they arise, without requiring a complex administrative system that must be overseen by Staff to determine appropriate financial assurance for remediation projects on a case-by-case-basis.

Although the Commission adopted an insurance-based approach to provide financial assurance for remediation, nothing in Rule 705 precludes the Commission from requiring other types of financial assurance for remediation projects on a case-by-case basis. As discussed below, Rule 913.i allows the Director to require financial assurance for individual remediation projects in the course of reviewing a Form 27. The Commission also intends for Staff to continue requiring financial assurance as a condition of approval on Forms or other applications that involve significant remediation work. The Commission recognizes that the amount of coverage provided by an insurance policy may be insufficient to address the full costs of remediation in some cases, that insurers may deny an operator's claim, or that other circumstances may arise where additional or different forms of financial assurance are necessary to ensure that an operator has the financial capability of carrying out its remediation obligations under the Commission's 900 Series Rules. Additionally, nothing in Rule 705 precludes the Commission from requiring additional financial assurance for individual remediation projects, based on the facts and circumstances of each individual project, as a term of an administrative order on consent ("AOC") in an enforcement case. The Commission has frequently required remediation as a term of an

AOC that involves remediation work in the past, and this has proven to be a successful tool to ensure that operators complete the required remediation work in a timely manner, and to limit liability to the State of Colorado if Staff believe there is a risk that an operator may orphan its assets.

Rule 705.b.(1)

In Rule 705.b.(1), the Commission required all operators to maintain environmental liability insurance. The insurance policy should cover sudden, accidental, and gradual pollution that requires remediation—in other words, all forms of remediation projects and all forms of pollution. The Commission also adopted a requirement that the insurance cover at least $5,000,000.00 per occurrence. The Commission determined that $5,000,000.00 per occurrence is an appropriate amount, given typical remediation costs, which are generally lower than $5,000,000.00, except in rare and unusual circumstances. Additionally, requiring coverage per occurrence ensures that an operator will be insured for each spill and release that occurs at all of their oil and gas locations, or if multiple spills occur within a short period of time at the same facility.

Rule 705.b.(2)

In Rule 705.b.(2), the Commission specified that it must be included as an "additional insured" in all environmental liability insurance policies. Unlike an operator's general liability insurance, which covers the operator's liability, environmental liability insurance covers liability that may fall on both the operator and the State. If an operator is unable to pay claims from victims of an accident that occurs at an oil and gas location, the State of Colorado does not become liable. However, if an operator is unable to pay for remediating a spill or release at an oil and gas location, the cleanup can become the responsibility of the Commission's Orphaned Well Program. Accordingly, the Commission determined that it was necessary to be listed as an "additional insured" on each operator's environmental liability insurance policy, so that the Commission can claim coverage to defray the costs of remediating a spill if the operator who maintained the insurance orphans its assets.

Rules 705.b.(3) & (4)

As with general liability insurance coverage in Rule 705.a, in Rule 705.b.(3) & (4), the Commission required new operators to provide initial information about their environmental liability insurance on their Form 1, and all operators to provide annual updates about changes to their environmental liability insurance coverage on their annual Form 1B. The Commission intends for existing operators to demonstrate their initial compliance with Rule 705.b on the first Form 1B that the operator files pursuant to the newly adopted Rule 205.c, which must be filed by no later than April 1, 2022.

DRAFT

Rule 705.b.(5)

In Rule 705.b.(5), the Commission included a cross-reference to the requirement that operators provide information about their environmental liability insurance coverage on the form that the operator files to close a spill or release pursuant to Rule 912.b.(6), which may be either a Form 19 – Spill/Release Report Supplemental, or a Form 27, Site Investigation and Remediation Workplan. This will provide Staff with an opportunity to assess whether additional financial assurance may be necessary to ensure that an operator is capable of performing all of its remediation obligations.

Rule 706.

The Commission consolidated its prior Rules pertaining to the termination of financial assurance—either through release or access—into Rule 706.

Rule 706.a

The Commission moved prior Rule 709, which specified procedures for release of financial assurance, to Rule 706.a, and also added details to improve transparency and clarity. Among other things, the Commission specified that to request a release of financial assurance, an operator must submit a Form 3 formally requesting the release and demonstrating which of the requisite conditions for release have been met.

Consistent with its current practice, when the Commission releases an operator's cash bond, any accrued interest will also be released to the operator. The Commission recognizes that certificates of deposit and money market accounts meet the definition of cash bonds, but in most cases interest from those forms of cash bonds will already have been paid to the operator, rather than accrued into the state treasury. Accordingly, the provision about interest in Rule 706.a applies only to forms of cash bonds where the state treasury holds accrued interest while the cash bond is in place, and the operator has not already received the accrued interest from the cash bond.

Rule 706.a outlines five scenarios in which an operator's financial assurance would be partially or entirely released: full compliance, transfer of operatorship, final closure of a specific facility, plugging an inactive well, and abandonment of a permit without construction.

First, if an operator reaches full compliance with all of its obligations under the Act and the Commission's Rules by plugging, abandoning, reclaiming, and remediating all of its oil and gas wells, locations, and facilities, subject to final approval by the Director, the Director may release the operator's financial assurance pursuant to Rule 706.a.(1). This option is intended for operators who no longer intend to conduct oil and gas operations in Colorado, and therefore no longer need financial assurance.

DRAFT

Second, if an operator transfers all of its assets to another operator subject to an approved Form 9 – Subsequent, and the buying operator provides the required financial assurance for those assets, the Director may release the operator's financial assurance pursuant to Rule 706.a.(2). The Director may also release part of an operator's financial assurance if some, but not all, of the operator's assets are transferred. However, the Director may also require a selling operator to file a new financial assurance plan pursuant to Rule 706.b in order to determine the new amount of financial assurance that the selling operator must provide for its remaining assets.

Third, if an operator complies with the requirements for release of a specific type of financial assurance governed by Rules 703 or 704, the Director may release the applicable financial assurance for that facility or operation pursuant to Rule 706.a.(3).

Fourth, when an operator plugs, abandons, and reclaims an inactive well, the Director may release any financial assurance required for that inactive well if it was transferred pursuant to Rule 218, or was subject to some form of financial assurance pursuant to Rule 434.c. The Director may hold such financial assurance until the oil and gas location where the well is located passes final reclamation. The financial assurance for an inactive well will not be released when an operator plugs the well without completing reclamation.

Finally, if an operator provides financial assurance for an individual facility at the permitting phase, but never actually constructs the facility, the Commission will release the financial assurance to the operator if the operator submits a Form 4, formally abandoning the permit. Rule 706.a.(5) codifies a longstanding Commission practice, and also provides clarity and transparency to operators about the appropriate administrative procedure to follow to abandon a permit. Once an operator abandons a permit and requests release of the associated financial assurance, the operator forfeits all rights conveyed by the permit.

Rule 706.b

The Commission moved the procedures for accessing an operator's financial assurance from prior Rule 709 to Rule 706.b. The Director may access an operator's financial assurance if the operator defaults on its statutory and regulatory obligations to plug, abandon, remediate, and reclaim its oil and gas wells, oil and gas locations, or other oil and gas facilities. If the Director initiates a proceeding to access an operator's financial assurance, she must also suspend the Operator's Form 1 and Form 10, Certificate of Clearance. The Commission only intends the Director to access financial assurance from operators that the Director has determined should no longer be licensed to operate in Colorado, because they have defaulted on their regulatory and statutory obligations. Concurrently with suspending the operator's Form 1 and Form 10, the Commission required the Director to file an application for a financial assurance hearing pursuant to Rule 503.g.(11). Only the Commission may issue a final order accessing an operator's financial assurance following a hearing that is fully compliant with the Commission's 500 Series Rules.

Rule 706.b.(1) establishes the procedures for financial assurance hearings to access an operator's financial assurance. The Director, as the proponent of the Commission's Order, bears the burden of proof. Consistent with Rule 504.b.(10).C, the Secretary must provide notice of the hearing to the operator and any applicable third-party providers of financial assurance. The operator, those third-party providers of financial assurance, and any other person who meets the definition of Affected Person pursuant to Rule 507 may petition to participate in the hearing pursuant to Rule 507. However, if no petition is filed, the matter may be treated as uncontested and resolved on the Commission's consent agenda pursuant to Rules 508 and 519. In the Commission's experience, this is not uncommon, because when an operator's financial assurance is accessed, that operator will often no longer have any remaining operations, staff, or corporate infrastructure to appear at a hearing. Consistent with prior Rule 709, Rule 706.b.(3) also acknowledges the range of relief that the Commission may choose to include in its order if it rules in the Director's favor. Such relief may include permanent revocation of the operator's right to conduct oil and gas operations in Colorado, if appropriate.

Rule 706.b.(2) establishes processes for the Director to access financial assurance if the Commission issues an order authorizing the Director to do so. For cash bonds, the Director need only transfer the operator's cash bond, which is typically held in a Department of Treasury account, to the Oil and Gas Conservation and Environmental Response Fund ("OGCERF"), for expenditure by the Commission's Orphaned Well Program. For surety bonds, letters of credit, or any other financial instrument held by a third party, the Commission will call the bond and transfer the funds to the OGCERF. Such third party will have received notice of the Commission hearing, and an opportunity to participate in the hearing as an interested person. For liens or otherwise secured real or personal property, the Director will foreclose upon the lien and transfer the funds obtained from selling the asset to the OGCERF. The Commission intends for the Director to take all necessary actions to obtain and liquidate secured assets, including filing suit, if necessary. Finally, for any other form of financial assurance, including but not limited to guarantees of performance, the Commission intends for the Director to take any other action necessary to liquidate and transfer assets to the OGCERF. As discussed above, for guarantees of performance this may include pursuing real property, personal property, or financial assets of any individual corporate officer who provides a personal guarantee pursuant to Rule 701.b.(2).

Rule 706.c

The Commission moved the portions of prior Rule 709.a governing recalcitrant bond providers to Rule 706.c. Although the Commission does not regulate the conduct of third-party providers of financial assurance, the Commission has long recognized that it must have regulatory requirements in place to ensure that the Director is able to obtain financial assurance held by such third-party providers. Accordingly, the Commission maintained the portion of prior Rule 709.a allowing the Director to designate any third-party provider of financial assurance that refuses to comply with a Commission order as an unacceptable provider from whom no additional financial assurance will be accepted.

DRAFT

Prior Rule 709.a provided that an unacceptable provider could apply for and seek an order of reinstatement, but did not establish procedures for doing so. Accordingly, in Rule 706.c.(1), the Commission established procedures for unacceptable providers to seek reinstatement, consistent with related changes to Rules 503.g.(11) and 504.b.(10).E. The Commission also maintained the provision of prior Rule 709.a stating that the Commission may file suit, as authorized by the Act, to recover financial assurance, if necessary.

The Commission revised Rule 706.c to instruct the Director to maintain the list of unacceptable financial assurance providers on the Commission's website. This will improve transparency for operators and ensure that they only choose financial assurance providers that are acceptable to the Commission.

Rule 706.d

The Commission moved prior Rule 709.b to Rule 706.d, but did not substantively revise the Rule except to remove unnecessary language regarding the liability of third-party providers of financial assurance.

Rule 707.

The Commission adopted a new Rule 707, governing periodic and annual review of financial assurance. The Commission recognizes that the amount of financial assurance that is appropriate for an operator is not static, and that periodic review by both the Director and Commission is crucial to adequately protecting the State of Colorado, and also to providing relief to operators where appropriate.

Rule 707.a

The Commission adopted a new Rule 707.a, requiring the Director to conduct annual review of an operator's financial assurance. The Commission intends for the Director to review each operator's financial assurance at least once every fiscal year beginning one year from the date operators must submit their initial financial assurance plans—July 1, 2023. This phased-in implementation date will allow the Commission and Staff time to review and approve or deny all operators' initial financial assurance plans over the course of late 2022 and early 2023.

Rule 707.a.(1)

In Rule 707.a.(1).A, the Commission adopted a new requirement that the Director's annual review include whether to adjust an operator's financial assurance for inflation. The Commission did not adjust financial assurance for inflation under its prior Rules. As a result, in some cases, the amount of financial assurance that operators were required to provide became outdated due to inflationary pressures on the economy over time. Many

other state agencies have addressed the same issue and adopted regulations that adjust financial assurance inflation. *See. e.g.*, 5 C.C.R. § 1002-61:61.13(h)(7) (commercial swine feeding operations); 6 C.C.R. § 1007-1:18.3.8.3 (radioactive source material milling); 6 C.C.R. § 1007-1:3.9.5.8 (radioactive materials handling); 6 C.C.R. §§ 1007-3:255.12(b), (c) & 266.13(b), (c) (hazardous waste facilities).

Accordingly, the Commission determined that it was necessary to adjust all financial assurance amounts for inflation. As a mechanism for doing so, the Commission intends for Staff to consider whether inflation warrants adjusting an operator's financial assurance as part of the annual review required by Rule 707.a.(1). The Commission intends for Staff to rely on the U.S. Bureau of Labor & Statistics Consumer Price Index for the Denver Core Based Statistical Area as the primary metric of inflation, but to rely on other sources as appropriate, particularly for operators whose operations are concentrated in areas outside the Denver metropolitan area. The Commission does not intend for Staff to be required to adjust an operator's financial assurance for inflation every single year, but rather to periodically revisit the question as inflationary pressures on the economy play out over the long term. In years when the Director determines that an inflation adjustment is necessary, the Commission intends that adjustment to be applied as equally as possible to all operators.

The Commission intends for Staff to issue guidance on how the inflation adjustments required by Rule 707.a.(1) will be implemented.

In Rule 707.a.(1).B, the Commission provided that the Director's annual review should include a review of the operator's insurance coverage and whether the operator's environmental liability insurance is sufficient to address the operator's remediation obligations pursuant to the Commission's 900 Series Rules. The Commission intends for its Financial Assurance Staff to conduct this review in concert with its Environmental Unit Staff, who will receive annual updates as part of an operator's quarterly Form 27 report pursuant to Rule 913.e.(4).

In Rule 707.a.(1).C, the Commission established the procedure for the Director to require an operator to provide additional financial assurance based on her annual review. An operator will be provided with notice of any change in amount, including an increase due to inflation pursuant to Rule 707.a.(1).A, as well as a reasonable amount of time to cure any deficiency in the amount.

If the Director's annual review reveals a significant deficiency or other issue with the operator's financial assurance, Rule 707.a.(1).C allows the Director to require the operator to file a revised financial assurance plan for the Commission's review pursuant to Rule 702.b. The Commission recognizes that an operator's financial situation or operational profile may change over time, and accordingly such a periodic review of an operator's plan may be necessary. Among other things, the Commission intends for the Director to require an operator to file a revised financial assurance plan if the Director's annual review indicates that the operator has moved between the tiers established in Rule 702.c. For

example, the Director could require an operator to file a revised plan if a higher or lower percentage of the operator's total wells fell within the definition of low producing well, or the operator plugged a lower or higher percentage of its total well portfolio.

In Rule 707.a.(1).D, the Commission established that an operator may seek a financial assurance hearing before the Commission if it disagrees with the Director's determination that it must provide a greater amount of financial assurance as a result of the annual review.

Rule 707.a.(2)

The Commission moved prior Rule 702.a, governing the Director's discretionary review of an operator's financial assurance, to Rule 707.a.(2). The Commission revised the Rule to provide references to the new financial assurance hearing application process in Rule 503.g.(11), and to the new financial assurance plans, but did not substantively revise the Rule.

Rule 707.b

The Commission adopted a new Rule 707.b, governing its own review of financial assurance. Consistent with Senate Bill 19-181 transitioning to a full-time Commission, the Commission determined that it was appropriate to increase its level of oversight over financial assurance, given its additional capacity. *See* C.R.S. § 34-60-104.3.

Rule 707.b.(1)

Rule 707.b.(1) establishes a default requirement for a Commission oversight hearing as part of the annual review of any operator with more than 75% low producing wells or 50% inactive wells. As discussed above, the Commission determined that both low producing wells and inactive wells pose additional risks to the State, because such wells generate less revenue in relation to their operational costs than higher producing wells. This is particularly true for operators with high percentages of inactive and low producing wells in their portfolios. The Commission therefore determined that additional oversight of such operators' financial assurance is necessary and will reduce potential risks to the State. Oversight hearings will also allow the Commissioners to work with operators on achieving the goals of their financial assurance plans. However, the Commission recognizes that not all inactive wells or low producing wells pose risks to the State, and that many operators of inactive wells and low producing wells are financially viable.

Accordingly, the Commission determined that the percentage thresholds in Rule 707.b.(1) are reasonable metrics of operators that are at higher risk and therefore warrant Commission oversight. The degree of this oversight may vary. A Commission hearing for such an operator may simply involve a paper review of the operator's financial assurance through the consent agenda. Or it may involve a more in-depth hearing in which the

DRAFT

Commission determines it is necessary to probe more deeply into an operator's financial situation and the production trends for the operator's wells in order to verify that the operator is financially capable of fulfilling its obligations to plug, abandon, reclaim, and remediate its oil and gas operations.

As a procedural mechanism for such hearings, the Commission intends for the Director to file an application for a financial assurance hearing pursuant to Rule 503.g.(11) for any operator that meets the inactive and low producing well percentage thresholds in Rule 707.b.(1). The operator would then be required to provide basic information into the e-filing docket for the hearing that addresses its future plans for its inactive wells, a demonstration of its financial capacity to plug, abandon, and reclaim its inactive and low-producing wells, and any other information that Staff or the Commission deem to be relevant.

Rule 707.b.(2)

In addition to its annual oversight of higher-risk operators, the Commission adopted new procedures for financial assurance hearings commenced on its own motion pursuant to Rule 707.b.(2). Rule 503.a allows the Commission to commence a hearing on any matter pursuant to its own motion. However, the Commission determined that it would provide greater transparency to operators and other stakeholders to provide additional procedural guidance for such hearings related to financial assurance.

The following list is not intended to be exclusive—the Commission may choose to commence a financial assurance hearing for additional reasons not listed below. Additionally, the following list is not intended to be automatic—the Commission will likely not choose to commence a financial assurance hearing in most situations that meet the criteria listed below. Rather, the Commission's choice to commence a hearing will be based on the individual judgment and experiences of each Commissioner, who will become increasingly familiar with financial assurance risk factors over time. Circumstances that may lead the Commission to commence a financial assurance hearing on its own motion include one or more of the following occurring within the course of a year:

- **Enforcement** – an operator is subject to multiple orders finding violation pursuant to Rule 523.d.(2);
- **Payment of Proceeds** – the Commission finds an operator delinquent in multiple payment of proceeds hearings pursuant to Rule 523.g.(5);
- **Complaints** – an operator is subject to multiple complaints from members of the public that lead to an enforcement action by the Commission demonstrating a pattern of compliance challenges;
- **Unpaid Penalties** – an operator is currently delinquent in paying penalties owed pursuant to an order finding violation or administrative order on consent;

- **Overdue Wellbore Integrity Tests** – an operator has failed to conduct multiple required mechanical integrity tests pursuant to Rule 417 or bradenhead tests pursuant to Rule 419;
- **Overdue Monthly Reports of Operations** – an operator has failed to file Form 7s required by Rule 413 for a high percentage of its wells or in multiple months;
- **Overdue Levy Payments** – an operator has failed to make timely mill levy payments pursuant to Rule 217 for one or more quarters;
- **Overdue Annual Registration Fees** – an operator has failed to pay part or all of its required annual well registration fee pursuant to Rule 205.c; or
- **Stalled Remediation Projects** – an operator has failed to initiate or complete remediations of spills or release of E&P waste within the timeframes required by the Commission's 900 Series Rules.

Rule 707.b.(2).B establishes the procedure for a financial assurance hearing commenced on the Commission's own motion. The Secretary will provide notice of the hearing to an operator pursuant to Rule 504.b.(10).B. It will be the operator's responsibility to provide any evidence or information required for the hearing, which will be identified in the notice for the hearing, consistent with Rule 505.f. Such evidence might include evidence relevant to the operator's financial situation, the production status and volume of the operator's wells, and whether the operator's current financial assurance is sufficient. Finally, the Commission may require the operator to submit or modify an existing financial assurance plan pursuant to Rule 702.d as a component of the hearing.

Rule 707.b.(3)

Rule 707.b.(3) outlines potential topics that might be included in the Commission's order memorializing a financial assurance hearing conducted as part of the annual review pursuant to Rule 707.b.(1), or on the Commission's own motion pursuant to Rule 707.b.(2). After the conclusion of all quasi-adjudicatory hearings, the Commission issues an order memorializing its decision. The contents of such orders vary between hearings, as is appropriate. Rule 707.b.(3) is not intended to limit what the Commission may include in its orders in any way. Rather, it is intended to provide notice to the public about what types of matters the Commission may choose to address in its order for any given financial assurance hearing. These topics include, but are not limited to, requiring an operator to provide additional financial assurance based on the operator's individual financial circumstances and whether those circumstances, in the Commission's judgment, potentially pose a risk to the State of Colorado that the operator will orphan its assets and the Commission will be liable to plug, abandon, reclaim, and remediate them through its Orphaned Well Program.

DRAFT

800 Series – Underground Injection for Disposal and Enhanced Recovery Projects

Rule 810.

The Commission revised cross-references to the 700 Series in Rule 810.a.(2), governing financial assurance for commercial Class II underground injection control wells and their associated surface facilities.

DRAFT

APPENDIX B

900 Series – Environmental Impact Prevention

Rule 907.

The Commission updated cross-references to its 700 Series Rules in Rules 907.d and 907.h.(1).B, governing financial assurance for centralized exploration & production ("E&P") management facilities. The Commission also revised Rule 907.d clarify that the operating permit for a centralized E&P waste management facility refers to a Form 28. Finally, the Commission revised Rule 907.h.(2) to clarify that a final closure plan for a centralized E&P waste management facility may include reclamation activities.

Rule 912.

Rule 912.b.(6)

Consistent with its approach to addressing financial assurance for remediation through environmental liability insurance in Rule 705.b, the Commission adopted a new Rule 912.b.(6).C requiring operators to demonstrate that they carry sufficient environmental liability insurance when submitting either a Form 19, Spill/Release Report – Supplemental or Form 27, Site Investigation & Remediation Workplan to close a spill pursuant to Rule 912.b.(6). This will enable the Commission to verify that the operator is financially capable of conducting all required remediation activities at the key juncture of reviewing the operator's plans for long-term remediation of a spill or release.

Rule 913.

Rule 913.e

Consistent with Rules 705.b and 912.b.(6), the Commission adopted a new Rule 913.e, which requires operators to identify whether their environmental liability insurance is adequate to cover the costs of all anticipated remediation activities on at least one of their quarterly supplemental Form 27 reports each year. The Commission determined that this annual reporting mechanism is necessary because the adequacy of environmental liability insurance may change over time, as remediation projects become more costly. Additionally, if an insurer denies an operator's environmental liability insurance claim, that would be relevant information for the operator to report, as it may influence the Director's decision about whether to require an operator to provide some form of financial assurance for remediation activities.

The Commission intends for the annual reports submitted with the Form 27 to inform its Environmental Unit Staff as to whether to require additional financial assurance during the annual review of an operator's financial assurance pursuant to Rule 707.a.(1).B, and in review of the Form 27 pursuant to Rule 913.i.

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APPENDIX B

<u>Rule 913.i</u>

The Commission revised Rule 913.i to allow the Director to require an operator to provide additional financial assurance to address the scope of required remediation activities based on Staff's review of the adequacy of the operator's environmental liability insurance pursuant to Rule 913.e.(4). If the Director determines that an operator's environmental liability insurance is inadequate, Rule 913.i.(1) allows the Director to require an operator to provide additional financial assurance as a condition of approval of the Form 27. Although the reasons that an operator's environmental liability insurance is inadequate may vary, reasons include that the remediation project is anticipated to cost more than the operator's insurance coverage (for example, a project that costs $6,000,000.00 and the operator carries only $5,000,000.00 in environmental liability insurance), or that the operator was denied coverage by their insurer for the specific remediation project at issue.

As with other discretionary financial assurance determinations, operators may seek Commission review of the Director's determination. Rule 913.i.(1).A allows operators to seek a Commission hearing to review the Director's determination pursuant to Rule 503.g.(11). In such a hearing, the operator, as the proponent of the Commission's order, would bear the burden of proving that the Director's determination that additional financial assurance is necessary, and the amount of that financial assurance, is incorrect. However, the Commission does not intend for remediation activities to be delayed by such an application for Commission review. Accordingly, in Rule 913.i.(1).B, the Commission provided that the Director may conditionally approve a Form 27, and an operator may commence or continue remediation activities while the Commission hearing is pending.

In Rule 913.i.(2), the Commission revised prior Rule 913.i to reflect that the financial assurance released after remediation activities are fully completed may be either financial assurance specific to the remediation activity held pursuant to Rule 913.i.(1), or any other form of financial assurance required by the Commission's 700 Series Rules. The Commission also revised Rule 913.i.(2) to clarify that remediation activities must meet the standards of the approved Form 27 workplan and Rule 913.h before financial assurance will be released.

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ATTACHMENT 1

COGCC Financial Assurance Rulemaking Reorganization Crosswalk

As part of the Financial Assurance Rulemaking, the Colorado Oil and Gas Conservation Commission has reorganized its 700 Series Rules. This reorganization improved clarity for all stakeholders by continuing the Commission's efforts to group similar topics together in the same Rules and Rule Series. Additionally, the order of the Rules within the 700 Series is now in a more logical, sequential order that better reflects the sequential financial assurance process. The Tables below show both the prior and reorganized Rule numbers.

Prior Rule Number	Reorganized Rule Number
701	*Removed*
702	503.g.(11), 504.b.(10).A, 701, 702.a, 708.a.(2)
703	504.b.(10).D, 704
704	703.a
705	703.b
706	702.b, 702.c, 702.d
707	218.b, 218.d, 218.e, 413.a, 434.b, 702.c, 702.d, 708.c
708	705
709	205.a, 218.e, 306.a, 503.g.(11), 504.b.(10).C & E, 706, 707
710	*Removed*
711	703.c
712	703.d
713	703.e

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