A MEMORIAL

REQUESTING A REVIEW OF STATEWIDE REMEDIATION AND RECLAMATION
BONDS AND EXPRESSING SUPPORT FOR ESTABLISHING SUFFICIENT
BONDING AMOUNTS FOR ENERGY OPERATIONS.

WHEREAS, New Mexico is one of North America's leading
energy producers; and

WHEREAS, multiple state agencies are tasked with ensuring
adequate bonding protection for energy-related and oil-and-gas-
extration-related activities on public and private lands; and

WHEREAS, the commissioner of public lands, as the chief
executive of the state land office, has a constitutional and
statutory duty to manage and care for approximately nine
million acres of surface land and thirteen million acres of
mineral estate throughout New Mexico; and

WHEREAS, the oil conservation division of the energy,
minerals and natural resources department regulates mining, oil and gas activities and produced water disposal, and the department manages clean energy programs; and

WHEREAS, the department of environment regulates energy-related activities not exclusively regulated under the Oil and Gas Act; and

WHEREAS, persons engaged in energy-related and oil-and-gas-extraction-related activities can be required by law and contract to reclaim lands disturbed by those activities and to remediate surface and subsurface contamination caused by those activities; and

WHEREAS, a fidelity or surety bond is a contractual promise made by a third-party surety to pay a stipulated amount in the event that a party with the primary duty to perform an obligation fails to perform; and

WHEREAS, requiring that persons engaged in energy-related and oil-and-gas-extraction-related activities provide regulators and land management agencies with bonds or personal financial security can be an effective way to ensure that the persons engaged in those activities perform their obligations to reclaim the land and remediate surface and subsurface contamination; and

WHEREAS, bonds help prevent or reduce taxpayer losses; and

WHEREAS, bonds should be set at amounts that provide sufficient financial assurance to prevent remediation and
compliance costs, such as the costs of remediating sites and
removing infrastructure, from falling on taxpayers or state
land trust beneficiaries; and

WHEREAS, there are approximately fifty-seven thousand four
hundred one active oil and gas wells and sixty-four thousand
eight hundred fifty-eight inactive wells statewide, of which
seven hundred eleven wells are orphaned wells and fourteen
thousand sixty active and seventeen thousand six hundred
eighty-six inactive oil and gas wells are on state trust lands;
and

WHEREAS, the average cost in New Mexico to plug a well is
twenty-eight thousand three hundred eighteen dollars ($28,318),
and the cost to remediate a single lease can range from five
thousand dollars ($5,000) to millions of dollars, depending on
the extent of contamination; and

WHEREAS, the current state land office bonding
requirements require a maximum bond of twenty-five thousand
dollars ($25,000), which covers an unlimited number of oil and
gas and mineral leases, as well as rights of way, recycling
facilities and all other types of leases issued on state land
statewide to a single lessee; and

WHEREAS, bond requirements of the oil conservation
division of the energy, minerals and natural resources
department are generally limited to plugging and abandonment
costs, in an amount that varies depending on the number of

.217374.2
wells per operator, with the maximum amount set at two hundred fifty thousand dollars ($250,000) for over one hundred wells; and

WHEREAS, the existing exposure for plugging inactive well sites on state lands alone is over five million dollars ($5,000,000), and the cost of remediating these sites would cost additional unknown millions of dollars; and

WHEREAS, there are over ten thousand miles of hydrocarbon, produced water, fresh water, carbon dioxide and nitro sulfide pipelines in rights of way throughout the state; and

WHEREAS, the existing exposure for decommissioning pipelines and remediating rights of way on state lands alone is hundreds of millions of dollars, and the cost of remediating these rights of way if, for example, leaks and spills occur, would cost additional unknown millions of dollars; and

WHEREAS, in a September 2019 report, the United States government accountability office reviewed whether bonding inadequacies exist and found that oil and gas bond amounts set by the bureau of land management of the United States department of the interior largely have not been updated in forty years or more and fail to serve their intended purpose and recommended that bond minimums be raised to more closely reflect actual remediation and reclamation costs; and

WHEREAS, the bureau of land management concurred with the report's findings to routinely review oil and gas bonds and set

.217374.2
- 4 -
amounts that appropriately reflect the risks and liabilities
posed by lessees and operators to protect taxpayers; and

WHEREAS, the minimum bond amounts utilized by the bureau
of land management and found to be insufficient are in many
cases the same rates applicable to state land office and oil
conservation division bond thresholds;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF
REPRESENTATIVES OF THE STATE OF NEW MEXICO that support be
expressed for establishing bonding amounts that are sufficient
to cover reasonably anticipated remediation and reclamation
costs and lease obligations for energy-related and oil-and-gas-
extraction-related activities; and

BE IT FURTHER RESOLVED that the state land office, in
consultation with the oil conservation division of the energy,
minerals and natural resources department and the department of
environment, be requested to conduct a bond adequacy review
related to energy production and infrastructure; and

BE IT FURTHER RESOLVED that the agencies be requested to
evaluate how to collectively ensure adequate bonding,
appropriate use of funds from forfeited bonds and adequate
funding and appropriate use of statutorily dedicated
reclamation funds to avoid having excess expenses fall on
taxpayers or state land trust beneficiaries and to report
findings to the appropriate legislative interim committee by
December 1, 2020; and
BE IT FURTHER RESOLVED that the commissioner of public lands, or the commissioner's designee, form and chair an advisory group to meet, share information and evaluate existing requirements for and limits on bonding and to assess the need for changes to laws, rules and policies to achieve the objectives of this memorial; and

BE IT FURTHER RESOLVED that the advisory group be composed of representatives from the following groups:

A. the state land office;

B. the oil and conservation division of the energy, minerals and natural resources department;

C. the department of environment; and

D. affected stakeholders, including representatives of large and small oil and gas producers, midstream operators, other energy project operators, environmental and conservation advocacy organizations and interested members of the public; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the commissioner of public lands, the secretary of environment, the secretary of energy, minerals and natural resources and the director of the legislative finance committee.

- 6 -