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

Cause No. IR Docket No. 220500106 Orphan Well Mitigation Fee Rulemaking

This statement sets forth the basis, specific statutory authority, and purpose for amendments (“Orphan Well Mitigation Fee Rulemaking”) to the Colorado Oil and Gas Conservation Commission (“Commission”) Rules of Practice and Procedure, 2 CCR 404-1 (“Rules”).

The new rules and amendments become effective July 30, 2022.

In adopting amendments to the Rules, the Commission relied upon the entire administrative record for this rulemaking proceeding, which formally began on May 18, 2022, when the Commission submitted its Notice of Rulemaking to the Colorado Secretary of State for revisions to its 200 Series Rules. This record includes public comments, written prehearing statements, and oral testimony and comments provided during public hearings and Commission deliberations.

Statutory Authority.

The Commission’s authority to promulgate amendments to the Rules is derived from the following sections of the Colorado Oil and Gas Conservation Act (“Act”), C.R.S. §§ 34-60-101 - 131:

- C.R.S. § 34-60-105(1), (Commission has the power to make and enforce rules);
- C.R.S. § 34-60-106(13), (Commission will create a pooled fund to address orphan wells); and
- C.R.S. § 34-60-108, (Commission has authority to adopt rules).

Identification of Amended Rules.

Consistent with its statutory authority and its legislative mandates, and in accord with the administrative record, the Commission amended the 200 Series Rules.

Overview of Purpose and Intent.

On March 1, 2022, the Commission adopted Financial Assurance Rules to align with the statutory amendments adopted in Senate Bill 19-181. The Financial Assurance Rulemaking fulfilled the Commission’s statutory obligation to undertake a rulemaking to “require every operator to provide assurance that it is financially capable of fulfilling every obligation imposed by this article 60 as specified in rules

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adopted on or after April 16, 2019.” C.R.S. § 34-60-106(13).

In Rule 205.c, the Commission created a new pooled fund to address orphaned wells. The Commission adopted a new annual registration fee, which is intended to raise \$10,000,000 in each of the first two years the fee is collected. The fees will be deposited into the pooled fund, and may be used by the Director solely to address orphaned sites.

On May 10, 2022, the Colorado Legislature adopted S.B., 22-198, the “Orphaned Oil and Gas Well Enterprise” bill. SB-22-198 creates an orphaned wells mitigation enterprise. SB22-198 provides that on or before August 1, 2022, and on or before April 30, 2023 and on or before April 30 of each year thereafter, each oil and gas operator in the State of Colorado will pay “a mitigation fee to the enterprise for each well of an operator that has been spud but is not yet plugged and abandoned.” SB22-198 at p. 9, lines 16-18. SB22-198 sets the initial mitigation fee and provides that the enterprise board will consider whether to adjust future fees. SB22-198 at p. 9, 11. 2-13. SB22-198 further directs the Commission to promulgate rules implementing the assessment of the mitigation fee. SB22-198 at p. 11, lines 9-11.

Rule 205.c. and SB22-198 are in conflict in two main ways. First, Rule 205.c.(2) provides the annual registration fee must be paid to the Commission, while SB22-198 provides the mitigation fee must be paid to the enterprise. Second, Rule 205.c.(3) does not recognize the Enterprise Board’s authority to change the dollar amount of the fee. The purpose of the Orphan Well Mitigation Fee Rulemaking is to make Rule 205.c. consistent with SB22-198.

Amendments and Additions to Rules.

The Commission added definitions of “Orphaned Wells Mitigation Enterprise” and “Enterprise Board,” to ensure that Rule 205.c. is clear when it refers to the Enterprise and Board.

Rule 205.c.(2) was amended to require operators pay the fee to the Enterprise, and not to the Commission, as is required by SB22-198. Staff recognizes that the Enterprise Board is unlikely to be seated and have policies and procedures in place in time for the initial payment of Mitigation Fee. Accordingly, the Mitigation Fee due August 1, 2022, will be remitted consistent with COGCC guidance. In all subsequent years the Mitigation Fee will be remitted consistent with the procedures adopted by the Enterprise Board.

Rules 205.c.(3)A.i. 205.c.(3)A.ii., and 205.d.(3)D were amended to recognize the Enterprise Board’s authority to change the dollar amount of the fee.

Rule 205.c.3(B) was amended to remove the reference to an “approved” Form 6, Well Abandonment Report – Subsequent Report of Abandonment (“Form 6 Subsequent”).

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Removal of the word “approved” is necessary to ensure that operators are not paying the Mitigation Fee for wells that are plugged and abandoned.

When an operator elects to plug and abandon a well, it files two forms - a Form 6, Notice of Intent to Abandon (Rule 435.a) and a Form 6 Subsequent (Rule 435.b). Prior to plugging a well, the operator must receive Director approval of its Form 6, Notice of Intent to Abandon. After an operator completes plugging of a well, it must then file its Form 6 Subsequent. The Form 6 must include a detailed account of the manner in which the well was plugged, including data verified by a third party.

As of June 29, 2022 there were 1,091 Form 6 Subsequents pending COGCC staff review. Staff anticipates that the number of Form 6 Subsequents filed will increase as operators continue to pursue plugging and abandonment of old wells. Conditioning nonpayment of the Mitigation Fee on whether the Form 6 Subsequent was approved would result in payment of the fee on wells that have been plugged and abandoned. Were that to occur, the payment of the Mitigation Fee would have to be refunded or credited to the operator, which would create an unnecessary internal accounting complexity.

Rule 205.d.(5) previously provided the Director will expend the fee as permitted by the Oil and Gas Conservation Act. The Commission amended Rule 205.d.(5) to remove the reference to an annual registration fee and clarify the Director will expend the orphaned well mitigation cash fund, created by SB22-198, in accordance with the Act. The Commission recognized that SB22-198 authorizes the Enterprise Board to use the orphaned wells mitigation cash fund for other purposes, including hiring support staff.

Effective Date.

The Commission adopted the proposed amendments at its hearing on June 30, 2022, in Cause No. IR, Docket No. 220500106. These amendments will become effective on July 30, 2022, upon publication in the Colorado Register.