Environmental Defense Fund

August 21, 2025

EDF Comments on July 7, 2025, Proposed Performance Bonds Rule 649-13-1 and Related Rules

The Division of Oil, Gas, and Mining (the Division) has worked diligently and thoughtfully for nearly three years to modernize Rule 649-13, Performance Bonds. The Division has shown itself to be attentive to stakeholder input, adaptable and creative in its approach to performance bonding, and resolute in its efforts to ensure the updated Performance Bond Rule will minimize the financial risk to Utah and its taxpayers when wells are orphaned. EDF has been engaged with the Division's Performance Bond rulemaking from the beginning, and we applaud the Division's inclusive and transparent rulemaking process.

The Performance Bond rulemaking was prompted by the November 2019 Performance Audit of Utah's Oil and Gas Program ("Audit Report")[1] by the Office of the Legislative Auditor General ("Auditor General"). The Auditor General noted with concern that the Division had not updated its bond amounts or structures for 16 years. Audit Report, p. 49. The Auditor General also found that the Division's current bonding requirements are insufficient and posed a financial risk to Utah and its taxpayers:

> [A]ntiquated bond structures combined with insufficient bond amounts has transferred some of the financial liability to the state. The Oil and Gas Program recognizes the need for modifications to *Administrative Rule* and the need to protect the state from any liability associated with inadequate bonding. Audit Report, p. 49.

The Auditor General specifically called out "legacy wells," those drilled before 2002, which are not required to be bonded: "Legacy wells remain an issue for the division. The lack of bonding places plugging, remediation, and reclamation costs entirely on the division and, by extension, the state." Audit Report p. 47, fn. 27.

Six years after the Audit Report and 22 years since the last update to its bonding rules, the Division and the Board of Oil, Gas and Mining ("Board") must now ensure that the updated Performance Bond Rules minimize the occurrence of future orphan wells and adequately cover the costs to plug and abandon wells that do become orphaned. The financial risk to the state and its taxpayers will only grow as Legacy Wells linger, old wells get older and their production declines further, and plugging and abandonment costs rise.

The Division's January 2025 proposed Performance Bond Rule took an innovative two-pronged approach to blanket bonding that would set a new financial assurance model for other states to emulate. The Division wisely proposed to limit blanket bonds to operators that meet two requirements: 1) a minimum annual production volume (a proxy for the operator's revenue

[1] Report to the Utah Legislature No. 2019-11, A Performance Audit of Utah's Oil and Gas Program, November 2019.

stream); and (2) an At Risk Well[2] ratio requirement (a proxy for an operator's potential orphan well liabilities). Proposed R649-13-3(2)(a)(i), January. 2025.

EDF strongly endorses the Division's two-pronged approach, which accounts for an operator's revenue and potential liabilities. By tailoring each operator's financial assurance obligation in this way, the Division is closing in on the Auditor General's ideal bonding regime:

> Ideally, bond amounts should be calculated to allow the Oil and Gas Program adequate funds for remediation while not overestimating the financial burden on the industry. Audit Report, p. 49.

Unfortunately, the Division took two steps back in its proposed July 7 Rule 649-13-3(1). First, the Division would allow an operator's blanket bond to cover a certain percentage of its At Risk Wells, thereby eliminating the required supplemental bond amount for those At Risk Wells. As proposed, Tier 1 operators would never pay a supplemental bond because all their At Risk Wells would always be covered by their blanket bond. The At Risk Well supplemental bond For Tier 2 and 3 operators would be reduced but not eliminated entirely. Additionally, the Division reduced the per-well At-Risk supplemental bonding dollar amount by 33% for Tier 2 operators and by 50% for Tier 3. Under the July 7 revisions, only one of the 21 operators who qualify for Tier 1, 2, or 3 would pay any supplemental At Risk Well bonding based on current production and At Risk Well ratios. Additionally, two out of five operators (40%) in Tier 2 under the January proposal would move into Tier 1. The projected total bonding amount for all operators drops 18%under the July 7 draft. These changes are a missed opportunity for the Division to reduce future orphan wells and ensure that Performance Bonds and not the wallets of Utah's taxpayers cover the orphan well liabilities that do arise.

The July 7 version of Rule 649-13-3(1)(a)(ii) says:

> For each tier the allowable ***percentage of at risk-wells*** that can be covered by a blanket bond will be as follows:
> (A) Tier 1: 20%
> (B) Tier 2: 13%;
> (C) Tier 3: 8%.

The Rule's plain language appears to say that a Tier 1 operator with 100 At Risk Wells would pay the supplemental bond amount on 80 of those wells, and 20 would be covered by the operator's blanket bond. Similarly, a Tier 2 operator would pay the supplemental bond on 87 At Risk Wells, and a Tier 3 operator on 92 At Risk Wells. However, at the July 30, 2025, Board of Oil, Gas and Mining Division meeting, Division Director Mick Thomas explained that the Division intended a different outcome. Under the Division's interpretation of the new proposal, the percentage of At Risk Wells covered by a blanket bond is based on its total well count. Thus, a Tier 1 operator with 500 total wells can cover up to 100 At Risk Wells with its blanket. However, to qualify for Tier 1 an operator's At Risk Well ratio is capped at 20%. R649-13-3(1)(a)(iii)(B). Consequently, the 20% blanket bond allowance fully negates supplemental bonding for Tier 1 operators.[3] The number of At Risk Wells that would require supplemental bonding for Tier 2 and

[2] An At Risk Well is a well that produces less than an average of one barrel of oil equivalency (BOE) per day over 12 months, or a UIC well with zero injection activity over the same time. Proposed Rule 649-1-1, July 7, 2025. At Risk Wells present a greater orphan well risk because their future revenue stream will not cover the costs to plug, abandon, and reclaim them. One BOE per day is a very low production volume, which means the risk of such wells becoming orphans is high.

[3] Inexplicably, the Tier 1 Bonding Schedule still contains a supplemental bonding schedule for At Risk Wells. This is misleading, because the 20% blanket bond allowance would always negate the

3 operators is substantially lower but not eliminated under the Division's new interpretation. The table below shows the difference in the number of At Risk Wells that would require supplemental bonding for each Tier, based on an operator with 500 total wells.

Tier	Total # Wells	Max. # At Risk Wells Allowed	# of At Risk Wells Subject to Supp. Bond using **% At-Risk Wells**	# of At Risk Wells Subject to Supp. Bond using **% Total Wells**
1	500	100	80	0
2	500	100	87	35
3	500	125	115	85

The plain language of proposed Rule 649-13-3(1)(a)(ii) and the more progressive and protective interpretation of the Rule is that a blanket bond would cover a percentage of an operator's At Risk Wells (20% of 100, or 20 At Risk Wells in the example), rather than a percentage of the operator's total wells (20% of 500, or 100 At Risk Wells, in the example).

The Division's revised Blanket Bond proposal simultaneously increases the risk of future orphan wells and reduces the amount of bonding it will have to plug and abandon those orphan wells. <u>Conversely, requiring meaningful supplemental bonding for all At Risk Wells will incentivize owners not to have At Risk Wells: operators can reduce the amount of financial assurance they pay by plugging At Risk Wells or increasing their production volume.</u> ***<u>An operator who does either will lower its future financial assurance obligation and simultaneously reduce the state's orphan well liability risk, protect the environment, and boost the economy</u>***. Giving Tier 1 operators a free pass on all At Risk Wells is an open invitation to let their low producing wells remain idle and molder over time or, worse, sell them to an undercapitalized operator. Tier 2 and Tier 3 operators, who start out with a higher orphan well risk profile, should also be encouraged to plug or return their low producing wells to production rather than remaining indefinitely suspended in a borderline economical state.

This is a boom or bust industry: sharp or sustained downturns in commodity price are inevitable. The July 7 changes will imperil the state's ability to cover potential future orphan well plugging liabilities, particularly in the event of a downturn or other unforeseen event. The Division and Board should take this opportunity to future-proof the Performance Bond Rule in case another 20 years pass before the next update.

EDF has analyzed the extent to which the July 7 proposed Rule reduces the financial assurance requirements and increases the state's exposure to orphan well liability compared to the January 2025 proposed rules. *See* Appendix A.

EDF joins UPA in the belief that an operator's state, fee, **and federal** wells must be included when calculating an operator's production and the number of its At Risk wells. The operator should be able to count on the production revenue from its federal wells and must also account for the potential plugging liability for its complete well portfolio, federal wells included. Although an operator may have federal financial assurance, that money cannot be used to plug and abandon fee or state wells. Similarly, if an operator's At Risk federal wells lead the operator into bankruptcy, its state wells will be orphaned and that potential liability must be accounted for in its state Performance Bond.

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supplemental bond requirement under the Division's interpretation of the Rule. R649-13-4(2)(b). At a minimum, the Division should re-write the Rule and remove the misleading bond schedule to make it clear that Tier 1 operators are getting a free pass on their At-Risk Wells.

EDF's Proposed Revisions to the July 7, 2025, Proposed Rules

The January 2025 proposed R649-13-3(1) Blanket Well Performance Bonds was a progressive, future-proofing rule that would greatly reduce the occurrence of future orphan wells in Utah and ensure that the industry would pay to plug, abandon, and reclaim wells that did become orphans. Returning to those Rules would be the best outcome for Utah and EDF's preference.

In lieu of that, EDF respectfully urges the Division and the Board to adopt the plain language reading of R649-13-3 and calculate the number of At Risk Wells that are covered by an operator's blanket bond as a percentage of its At Risk Wells and not as a percentage of its total well count. EDF proposes changes to the July 7, 2025, Division proposed Rule 649-13-3, in the redline mark-below:

Proposed Revisions to R649-13-3 Blanket Well Performance Bonds

R649-13-3 Blanket Well Performance Bonds

(1) **Blanket Well Performance Bonds**

An operator who, on or after [effective date], engages in the drilling, completion, re-entry, deepening of a well, or who acquires an existing well, and who meets the qualifications set forth in subsection (2)(a), may file with the division a Blanket Well Performance Bond to cover all operations of its State and fee wells in lieu of an Individual Well Performance Bond for each well as required by Section R649-13-2.

(a) Qualifications Required for Blanket Bonding

(i) To qualify for Blanket Well Performance Bond, an operator must meet: (1) a production level requirement, and (2) a threshold at risk well ratio requirement.

(ii) For each tier the allowable percentage of at-risk wells that can be covered by a blanket bond will be as follows:

(A) Tier 1: 20%

(B)Tier 2: 13%

(C)Tier 3: 8%

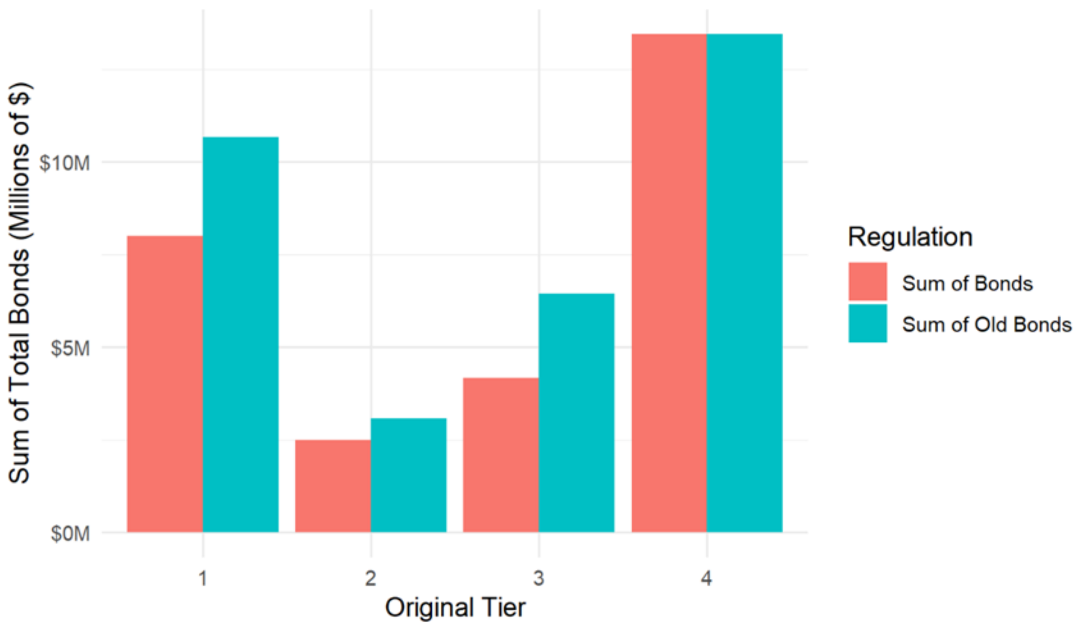
The number of at risk wells that can be covered by a blanket bond in each Tier is calculated as a percentage of the operator's At Risk Wells, not its total wells. For example, a Tier 1 operator with 500 total wells, of which 100 are At Risk Wells, would be required to have an At Risk Well Supplemental Bond for 80 of its At Risk Wells. The remaining 20 At Risk Wells would be covered by the operator's Blanket Well Performance.

* * *

EDF appreciates the opportunity to work with the Board, the Division, UPA and other stakeholders to craft a rule that is responsive to the legislative audit, protective of Utah taxpayers, and not overly burdensome to industry. With the changes articulated above, we believe the goal has been achieved.

Appendix A

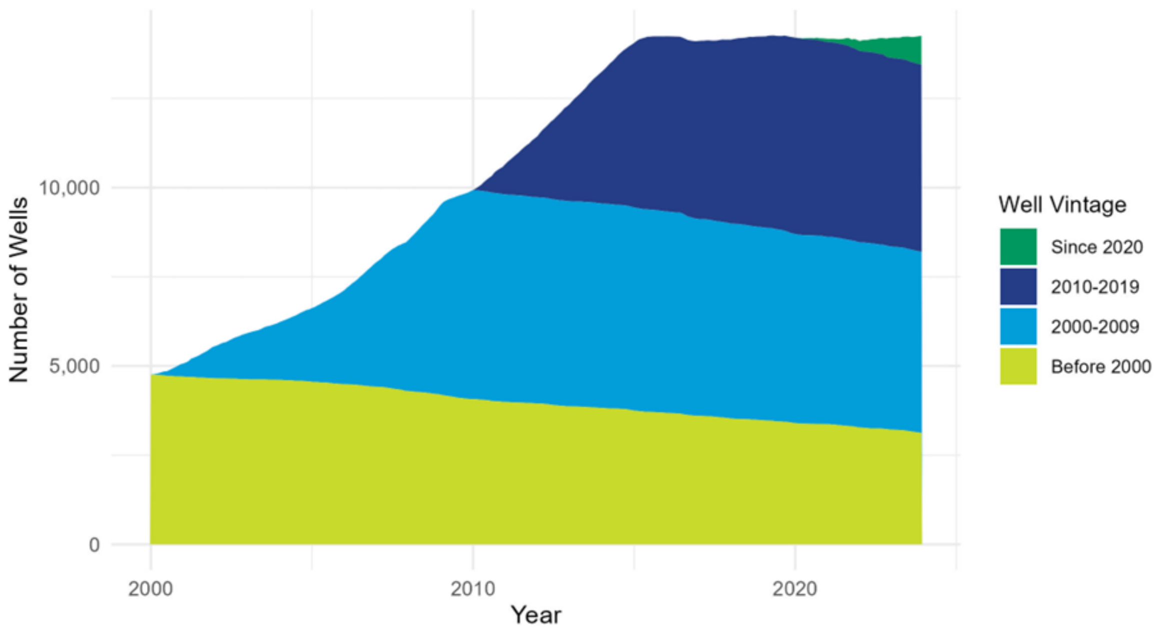
Figure 1 : Change in Total Bond Amount by Tier in the Division's July 7th Proposed Rule

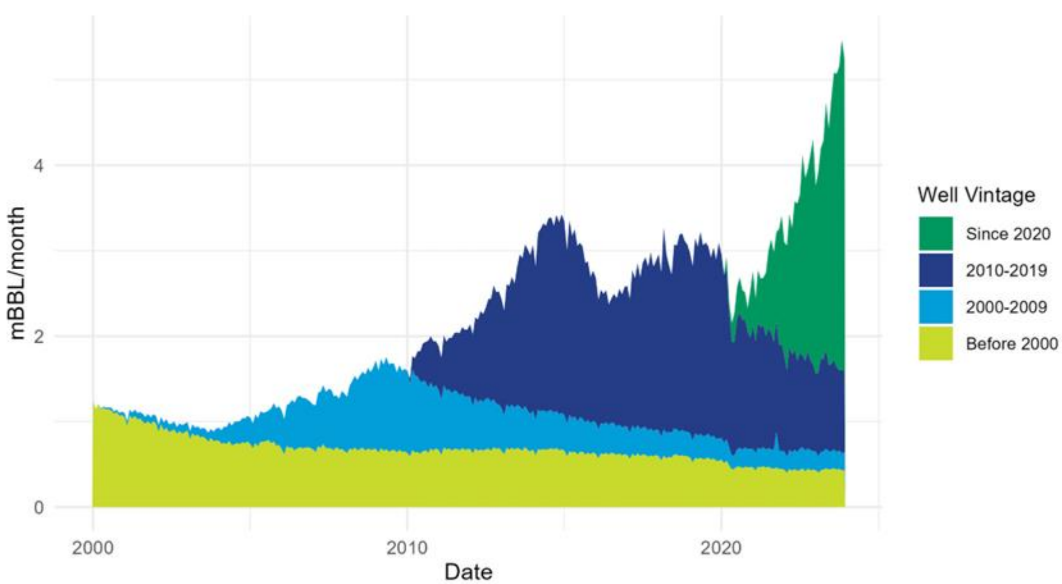


Tier 1 firms save by reductions in the number of At Risk Wells they need to bond. Tier 2 firms save by moving to tier 1, reduction in their At Risk supplemental bonding amounts, and reductions in the numbers of At Risk wells they need to bond. Tier 3 firms save by reduction in their at-risk supplemental bonding amounts and reductions in the number of At Risk Wells they must bond.

Appendix A

Figure 2: Aging Well Population and Declining Production from Older Wells





There is a large population of wells more than 15 years old. The production volume from these wells is low today and will be even less in the future.