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Editorial Office
230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862
www.lexisnexus.com

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Department of the Interior Funding for State Orphaned Well Programs

By *Harve Truskett, Jason A. Hill, Garrett Korbitz and Sami M. Khan**

The authors review the grants available to states under the Bipartisan Infrastructure Law to address orphaned wells and well sites.

The Bipartisan Infrastructure Law (“BIL”), passed November 15, 2021, creates a program within the U.S. Department of the Interior (“DOI”) addressing orphaned wells and well sites under Section 40601.¹ Section 40601(c) creates three types of grants available to states:

- Initial grants (Section 40601(c)(3)): the Secretary of the Interior (“SOI”) may distribute up to \$25 million to each state that submitted a request by May 13, 2022.²
- Formula grants (Section 40601(c)(4)): states may request funds according to a formula developed by the SOI, based on factors such as: job losses in the oil and gas industry since the Covid-19 pandemic, the state’s number of documented orphaned wells, and the projected cost of operations.³
- Performance grants (Section 40601(c)(5)): the SOI may distribute funds to states who have provided an application showing sufficient evidence of increased state spending on well plugging, remediation, and reclamation or improved regulation of oil and gas wells. The application must also show how the state will use the funds to lower unemployment and improve economic conditions in economically distressed areas.⁴

States must apply for small-scale grants (up to \$5 million) within a time frame sufficient to ensure periods of performance and final obligations are

* Harve Truskett, a partner in the Houston office of Hunton Andrews Kurth and the head of the firm’s Oil and Gas practice group, focuses his practice on a broad range of energy transactions. Jason A. Hill, counsel in the firm’s Houston office, represents clients through complex natural resource litigation, compliance, and regulatory issues arising under a wide array of federal natural resource and energy statutes and regulations. Garrett Korbitz and Sami M. Khan are corporate associates in the firm’s Oil and Gas practice group in Houston. The authors may be contacted at harvetruskett@huntonak.com, hillj@huntonak.com, gkorbitz@huntonak.com and skhan@huntonak.com.

¹ <https://www.doi.gov/sites/doi.gov/files/state-initial-grant-guidance-bil.pdf>.

² Public Law No. 117-58 135 STAT. 1083.

³ Public Law No. 117-58 135 STAT. 1084.

⁴ Public Law No. 117-58 135 STAT. 1086.

complete prior to September 30, 2030.⁵ Large-scale grants (up to \$25 million) had to be submitted by May 13, 2022.⁶

A state's application must include, among other items:

- The requisite federal forms;
- A detailed budget proposal/justification; and
- A project abstract summary.⁷

Additionally, the DOI enumerated 19 “recommended elements” of successful orphaned well programs.⁸ While these recommended elements are not required for initial grant funding, most will be required for subsequent grants and states are encouraged to work these features into projects funded with initial grants.⁹

States must comply with restrictions on funding use, provide certain certifications, and are strongly encouraged to abide by recommended standards for measurement, plugging, and remediation, coordinate with federal and tribal entities, follow specific data collection and reporting requirements, etc.¹⁰

STATE ORPHANED WELL PROGRAMS

Texas

The Railroad Commission of Texas (“RRC”) administers the plugging of orphaned wells, reclaiming and remediating well sites, and ensuring contractors abide by the regulations pertaining to these activities.¹¹ Plugging wells is administered by the Texas Oil Field Cleanup Program and the surface remediation and reclamation is administered by the State Managed Cleanup Program. Both are funded by the Oil & Gas Regulation and Cleanup Fund (“OGRC”), which is funded by regulatory, permit and bond fees paid by the oil and gas industry.¹² Once a site or well is identified, it is evaluated to determine its priority and a plan is created for plugging the well or reclaiming and remediating the well site.¹³

⁵ <https://www.doi.gov/sites/doi.gov/files/state-initial-grant-guidance-bil.pdf>.

⁶ <https://www.doi.gov/sites/doi.gov/files/state-initial-grant-guidance-bil.pdf>.

⁷ <https://www.doi.gov/sites/doi.gov/files/state-initial-grant-guidance-bil.pdf>.

⁸ <https://www.doi.gov/sites/doi.gov/files/state-initial-grant-guidance-bil.pdf>.

⁹ <https://www.doi.gov/sites/doi.gov/files/state-initial-grant-guidance-bil.pdf>.

¹⁰ <https://www.doi.gov/sites/doi.gov/files/state-initial-grant-guidance-bil.pdf>.

¹¹ 16 Tex. Admin. Code § 3.15.

¹² <https://www.rrc.texas.gov/media/k3yqkqqa/oilfield-cleanup-program-annual-report-fiscal-year-2021.pdf>.

¹³ <https://www.rrc.texas.gov/media/piloayuj/site-remediation-overview.pdf>; *see, also*, <https://>

Although, the RRC intends to apply for all available funds from the federal program, it also criticized certain actions required by the program such as emissions monitoring, coordination with Tribal and Federal land management agencies, and providing the federal awarding agency access to project sites when the RRC does not have the authority to do so.¹⁴ The RRC will utilize a Request for Qualifications Procurement Method to accept responses for well plugging contracts. Responses should include the contractor's qualifications and experience, personnel experience, plugging equipment, and the RRC districts where they intend on providing services. Contracts will be valid for the fiscal year (September 1—August 31), but may be renewed for up to three one-year terms.¹⁵

Louisiana

The Department of Natural Resources administers the Louisiana Oilfield Site Restoration (“OSR”) Program which prioritizes the proper plugging and abandonment of orphan wells, as well as the restoration of sites to conditions suitable for redevelopment.¹⁶ The OSR Program employs approved oilfield site restoration contractors who bid for these projects.¹⁷ In order to become an approved contractor, interested parties must complete and submit the Oilfield Site Restoration Contractor Application.¹⁸ The list of approved contractors can be found on the OSR homepage.¹⁹

Projects are awarded through a competitive sealed bid process stipulated within the rules of the Louisiana State Bid Law and Title 30.²⁰ When an orphan wellsite is put up for bidding, approved contractors are notified and may then submit their bids.²¹

www.rrc.texas.gov/media/3hjhjroj/well-plugging-prioritization.pdf.

¹⁴ https://www.rrc.texas.gov/media/vtzcky3y/notice-of-intent-to-apply-for-a-formula-grant_tx_rrc.pdf; *see, also*, https://www.rrc.texas.gov/media/1b5hvzzw/ijja-well-plugging_rrc-texas-comments.pdf.

¹⁵ <https://www.rrc.texas.gov/oil-and-gas/environmental-cleanup-programs/federally-funded-well-plugging/well-plugging-solicitation-process-overview/>.

¹⁶ Oilfield Site Restoration (“OSR”) Program—Background.

¹⁷ <http://www.dnr.louisiana.gov/index.cfm/page/157#ques9>.

¹⁸ <http://www.dnr.louisiana.gov/assets/docs/conservation/engineering/OSR-contractor-app.pdf>.

¹⁹ http://www.dnr.louisiana.gov/assets/OC/eng_div/OSR/ApprovedContractorsApr2021.xlsx.

²⁰ <http://www.dnr.louisiana.gov/index.cfm/page/157#ques9>. A sample bid can be found at http://www.dnr.louisiana.gov/assets/OC/eng_div/OSR/431-PA22-009.pdf.

²¹ <http://www.dnr.louisiana.gov/index.cfm/page/157#ques9>.

As it stands, the OSR Program can, financially, address approximately 46 orphaned wells per year.²² Plugging all of Louisiana's orphan wells could employ over 1,000 people fulltime for a year and could reduce methane emissions by 558 metric tons per year.²³

Oklahoma

Oklahoma has two entities focusing their efforts on orphaned wells. The Oklahoma Energy Resources Board ("OERB"), who works on surface reclamation/remediation, and the Oklahoma Corporation Commission ("OCC"), who plugs the wells. The OERB contracts for this reclamation/remediation work. In order to assure access to upcoming projects with estimated costs in excess of \$50,000, one must submit a contractor application on the OERB website. In addition, these projects are also publicly advertised in the county where the work will take place.²⁴ Oklahoma Statute ("O.S.") § 17-53.3 gives the OCC the power to regulate the plugging of wells in Oklahoma. The Oklahoma Administrative Code § 165-10-11 sets forth the regulations for plugging wells. Contractors wishing to plug wells must obtain a license from the OCC.²⁵ There are approximately 80 contractors currently licensed to plug wells throughout Oklahoma.

The Oil and Gas Conservation Division of the OCC, stated that it will apply for the federal funding.²⁶ Given the OCC licensing requirements and the 90 day obligation requirement tied to receiving the federal funds, those wishing to obtain these contracts should act quickly to ensure all requirements are timely met.

New Mexico

The Oil Conservation Division ("OCD") of the Energy, Minerals and Natural Resources Department ("EMNRD") is authorized to plug orphaned wells pursuant to the New Mexico Oil and Gas Act. The OCD requires financial assurances from operators for well plugging and restoration/remediation and creates a "Reclamation Fund" to administer well plugging operations.

The OCD employs personnel to survey orphan wells, sites, and associated facilities which are then plugged, remediated, and reclaimed when the funds

²² <http://www.dnr.louisiana.gov/index.cfm/page/157#ques9>.

²³ https://www.nola.com/news/environment/article_ccb3c4fe-6f18-11ec-94fc-1730d30fc5ae.html.

²⁴ <https://oerb.com/well-cleanup/>.

²⁵ Okla. Admin. Code § 165-10-11-1.

²⁶ *Id.*

become available.²⁷ The OCD relies on small, local oil and gas service companies to perform the work, thereby injecting money and jobs into the local economy.²⁸

The EMNRD, has been generally supportive of the federal program and will likely take advantage of the funds.²⁹ What is not yet clear, is how contracts will be awarded. Although it is unknown if this is related to the DOI funding, the OCD has an Invitation to Bid tab listed as “coming soon” on their website, so interested parties should monitor the OCD site.³⁰

Colorado

The Colorado Oil & Gas Conservation Commission (“COGCC”) administers the state’s orphaned well program (“OWP”), and identifies, prioritizes, and addresses orphaned oil and gas wells, locations, and production facilities across the state. Orphaned wells, once identified, are categorized into low, medium and high priorities, and then plugged, remediated, and reclaimed.

Once a site has been identified, the OWP identifies any responsible operators or financial assurances for the site. If there are no financial assurances or responsible operators, the site gets logged into the OWP. The site is then analyzed and the general scope of work is defined. The OWP team then works with the state procurement system to put the project out for bids and then awards a contract or purchase order. The OWP then verifies that all plugging, remediation, and reclamation work is complete.³¹

The COGCC stated that it intended on applying for \$11 million of the initial round of \$25 million funds. It stated that the restrictions placed on the funds by the DOI (primarily the requirement that 90 percent of the funds must be obligated within 90 days of receipt) prevented the COGCC from utilizing all \$25 million and that even the \$11 million goal was ambitious and that a certain portion of this money may get returned to the DOI.³²

²⁷ <https://www.nmlegis.gov/handouts/WNR%20071221%20Item%202%20OCD%20Bonding%20and%20Plugging.pdf>.

²⁸ https://www.emnrd.nm.gov/OCD/documents/AdrienneSandovalOfficialStatement_EnergyAndMineralResourcesSubcommittee_6-1-2020.pdf.

²⁹ <https://www.emnrd.nm.gov/officeofsecretary/wp-content/uploads/sites/2/OrphanWellReleaseEMNRD041321.pdf>.

³⁰ <https://www.emnrd.nm.gov/ocd/rfps/>.

³¹ <https://drive.google.com/file/d/1b3wPpRxRFuAaFWAicJusi7RRhcj0WX-/view>.

³² https://drive.google.com/file/d/15enoRrgBfEinlZr12dB_laHaK1xQ18-q/view.