

The Honorable Jim Wright, Commissioner, Railroad Commission of Texas
Testimony before the House Natural Resources Committee, Subcommittee on Energy and Mineral Resources
Legislative Hearing on Discussion Draft of H.R. _____, H.R. 7053, H.R. 8665, and H.R. 8954
Tuesday, July 23, 2024

Chairman Stauber, Ranking Member Ocasio-Cortez, Members of this Subcommittee, thank you for the invitation to testify before you today about our experience with the Department of Interior's Orphan Well Plugging Grant program and how it might be improved.

The Railroad Commission of Texas was established in 1891, making it the oldest regulatory agency in Texas, and one of the oldest of its kind in the nation. The Commission is the state agency with primary regulatory jurisdiction over the oil and natural gas industry, pipeline transporters, natural gas and hazardous liquid pipeline industry, natural gas utilities, the LP-gas industry, critical natural gas infrastructure, and coal and uranium surface mining operations. The Commission exists under provisions of the Texas Constitution and exercises its statutory responsibilities under state and federal laws for regulation and enforcement of the state's energy industries. The Commission also has regulatory and enforcement responsibilities under federal law including the Surface Coal Mining Control and Reclamation Act, Safe Drinking Water Act, Pipeline Safety Acts, Resource Conservation Recovery Act, and Clean Water Act.

As the members of this panel are no doubt aware, the State of Texas is the largest energy producer in the nation. We are responsible for over 42% of all U.S. oil production, and 28% of U.S. Natural Gas production. Texas contains almost half a million miles of pipeline, through which energy products travel to reach refineries of which the state of Texas is responsible for a full third of all U.S. capacity.

Texas State Managed Well Plugging

Like all oil and gas producing states, Texas must contend with a subset of wells for which there is no viable operator and is thus considered orphaned.

The Commission maintains oversight over Texas's orphan well plugging program, which is funded through regulatory fees, permit fees and bonds paid by the Oil and Gas industry. Since its inception 40 years ago, the Commission's State Managed Plugging Program has plugged over 45,000 wells, constituting approximately half of all wells plugged by state programs.¹

Federal Orphan Well Grant Funding

Following the passage of the *Infrastructure Investment and Jobs Act (IIJA)*, the Commission applied for the first of the three available funding mechanisms available under the IIJA for orphaned well plugging and was awarded \$25 million through the Initial Grant. I am proud to report that a few short weeks later, the State of Texas was among the first in the nation to begin plugging orphan oil and gas wells using federal grants from the IIJA. Through the first tranche of \$25 million dollars received under the Initial Grant phase, Texas ultimately plugged 730 wells.

¹ [Idle and Orphaned Oil & Gas Wells: State and Provincial Regulatory Strategies, IOGCC 2024](#)

The successful deployment of these Initial Grant funds by Texas and other states was due in large part to the fact these funds had very little in the way of new requirements or conditions for recipient states. That stands in stark contrast to the subsequent Formula Grant requirements, such as required methane detection and monitoring, and other prerequisites which I highlight later in this testimony. These additional requirements have resulted in a substantial increase in the average cost to plug a well, while simultaneously adding significant time to complete each plugging job.

Put simply, while the Initial Grant was successful, when it comes to the Formula Grant, taxpayers are getting less, paying more, and waiting longer.

Methane Detection & Monitoring Requirements: Additional Cost = Opportunity Cost

The Commission has repeatedly expressed concerns to The Department of the Interior (DOI), the federal agency responsible for establishing rules for the disbursement of funds from the IJA for plugging of orphan wells, that requiring methane monitoring as a condition of receiving federal formula grant funds would result in additional contracting costs and ultimately result in fewer orphan wells being plugged.²

Texas is not alone in raising this concern. The DOI received comments from a diverse group of stakeholders in response to the Draft Formula Grant Guidance published in January of 2023. The Interstate Oil and Gas Compact Commission (IOGCC), which is composed of 29 oil and gas producing states, including California, New York, Arizona, Louisiana, Texas and others which are represented by the members of this committee, unanimously passed a resolution which called for the DOI to provide states with flexibility with respect to the formula grants.³ The IOGCC resolution states that additional requirements not expressly required by the IJA statute will serve to increase the cost to plug an orphan well, resulting in fewer wells being plugged. Section 40601 of the IJA contains no requirement with respect to methane detection or methane monitoring as a condition of receiving formula grant funds. This requirement was added as a condition to receive funds in express contravention of the statutory language which was passed into law. The statutory language in IJA affirmatively requires the DOI to consult with the IOGCC and its member states regarding the implementation and distribution of Federal Orphan well plugging funds. As a member of that body, I have found that consultation to be sorely lacking.

Indeed, other stakeholders shared similar concerns to those held by the Commission and the IOGCC. The Environmental Defense Fund, for example, noted in their comments to DOI on March 24, 2023 that *“There are some requirements in the current draft that would likely significantly drive up the costs and time needed to plug wells and could materially reduce the number of wells states will be able to plug... Of particular concern is the requirement to measure and quantify methane emissions before and after plugging.”*⁴

Estimates vary, but the specific costs of monitoring can result in anywhere from \$2,000 to \$5,500 dollars in additional expenses. For context, plugging an onshore well varies due to several factors, including

² [Railroad Commission of Texas: Response to Department of Interior Draft Formula Grant Guidance, February 24, 2023](#)

³ [IOGCC Resolution 23.053: Urging Congress to Direct the Department of Interior to Follow Statutory Language in Implementation of Section 40601 of the IJA, Interstate Oil and Gas Compact Commission, May 24, 2023. There were no votes against the resolution.](#)

⁴ Environmental Defense Fund: Response to Department of Interior Draft Formula Grant Guidance, March 24, 2023

geographic location, but has averaged anywhere between \$30,000 to \$35,000 over the last several years. Simply put, spending 10% or more for methane detection and monitoring means 10% fewer wells that could ultimately be plugged in Texas. That does not account for the additional time needed to conduct the pre- and post-testing requirements, which can also add significant costs.

While this extra expenditure may provide some data, it does nothing to change the necessary solution, which is to plug the well.

Importantly, several states chose to use the Initial Grant funding to measure methane emissions, as was within their right in the Initial Grant. H.R. 7053, the *Orphan Well Flexibility Act*, simply extends that optionality for remaining grant funds, consistent with the intent and text of the IJA. It bears repeating that H.R. 7053 does nothing to prohibit states from utilizing federal funds for the purposes of methane detection and monitoring. However, for states with significant orphan well populations, the current requirement under the formula grant to spend additional resources to detect and monitor for methane at the expense of plugging fewer wells makes little sense. It should also be noted that these testing requirements mandated by the DOI requires detection equipment 100 times more sensitive than those required under the Inflation Reduction Act's Methane Emissions Reduction Plan (MERP) run by the EPA and the Department of Energy.^{5,6} Such a requirement makes little sense and, again, represents additional and unnecessary costs due to their rigor. This inflexibility is self-defeating to the underlying goals of the IJA and ultimately limits a state's ability to innovate and stretch these taxpayer dollars further.

Several states have had conversations with plugging contractors and others about the potential to utilize the voluntary carbon credit market to offset plugging costs. This could represent a way to lower the average cost to plug a well, enabling states to stretch these taxpayer dollars further and ultimately plug more wells. Importantly, the voluntary carbon credit markets such as the American Carbon Registry have standards which the DOI itself references in their methane monitoring guidance materials. Yet, DOI has denied states the opportunity to further explore this as a novel way to potentially lower plugging costs and obtain data related to methane emissions.

While this may not be a practical use of funds for some states, for others it may prove beneficial. Providing flexibility in these Formula Grants so that states may choose whether, and to what degree, they conduct methane testing will result in innovative solutions which directly achieve the goal and intent of Congress through the IJA.

I support H.R. 7053, the *Orphan Well Flexibility Act* because I believe the ultimate success or failure of the program hangs in the balance. Texas and many other states have proven with the Initial Grant funding that they are more than capable of being good stewards of taxpayer dollars and making rational decisions which best serve the specific needs of their citizenry as well as the orphan well population in their respective states.

⁵ [Orphan Well Methane Measurement Guidelines \(Page 24\)](#), U.S. Department of Interior

⁶ [Methane Measurement Guidelines for Marginal Conventional Wells \(Page 9\)](#), U.S. Department of Energy

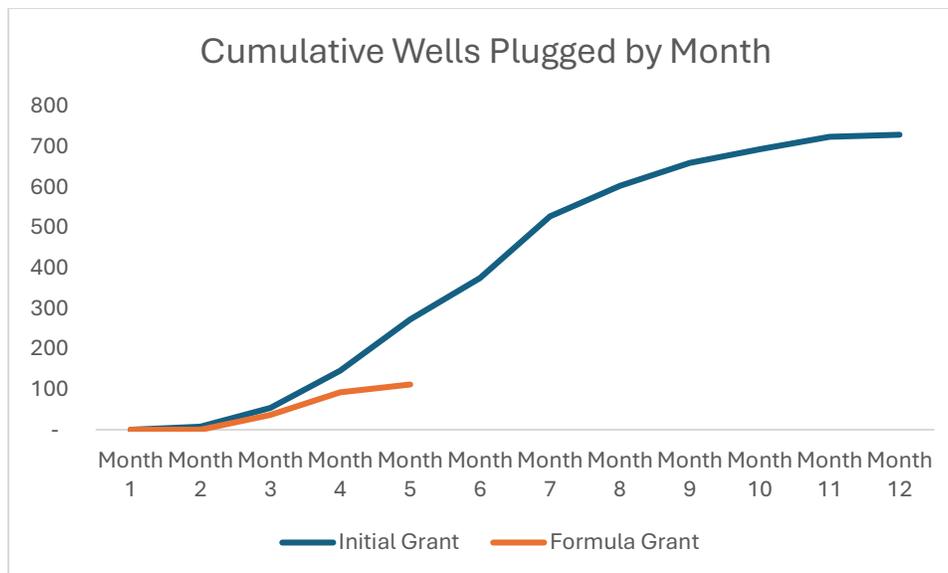
Approval Delays Within the Orphan Well Program Office

While this hearing is focused on providing state flexibility, I would like to take this opportunity to highlight several other issues the Railroad Commission has experienced recently as it relates to burdensome requirements and monitoring efforts which hinders the Commission's ability to utilize the Formula Grant funds effectively.

The Commission submitted its Phase I Formula Grant on September 21, 2023. Over three months later, on January 11, 2024, the Orphaned Well Program Office informed those states that submitted a formula grant application that new terms and conditions would be included in their Formula Grant awards. One day later, on January 12, 2024, the Commission received its Phase I Formula Grant award including new Award Term 25: Endangered Species Act (ESA) Compliance Reviews and new Award Term 26: Historic Preservation.

The Railroad Commission project period began on February 1, 2024, with the agency positioned to begin plugging orphaned wells across Texas immediately, just as it had done with the Initial Grant funding. Compliance with the new award terms, and the absence of processes within the Orphaned Well Program Office (OPWO) to implement those terms delayed well-plugging work until April 8, 2024, when six wells were finally able to be plugged in Bexar County using Phase I Formula Grant funds. The addition of ESA Section 7 and National Historic Preservation Act (NHPA) Section 106 compliance to the award terms and conditions adds significantly to the oversight activities of the OPWO.

Absent changes to the requirements of ESA Section 7 and NHPA Section 106, well plugging may be slowed to such a pace that funds may not be expended before their expiration on September 30, 2030. During the first five months of the Formula Grant, the Commission plugged approximately 60 percent fewer wells than were plugged during the first five months of the Initial Grant (9/22-2/23, 273 wells vs 2/24-6/24, 112 wells).



Of the \$79.6 million awarded to Texas under phase I of the Formula Grant, the Commission has drawn on approximately \$3 million to date. This is not due to a lack of trying, nor is it for a lack of wells to be

plugged. It is due to significant delays and reviews by the OPWO with respect to ESA reviews, and compliance with the NHPA.

Endangered Species Act

Compliance with ESA Section 7 delays the implementation of well plugging activities as the Commission must assess each project area for applicable species. OWPO has 10 business days to concur with a "no effect" determination made by the Commission, the best-case outcome. However, the OWPO has, in several instances, rejected the Commission's "no effect" determination, and instead directed the Commission to perform site surveys for specific species or implement other mitigation measures, extending the timeline indefinitely before a project may proceed. Should a review result in a "may affect" or "not likely to adversely" affect determination, the timeline is significantly longer as the Commission is required to seek concurrence with the determination from U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS). Should formal consultation be required, the OWPO must submit the initiation package. Award Term 25 indicates that the Railroad Commission may seek technical assistance from the USFWS or the NMFS. While that assistance was sought from USFWS in the development of internal processes, assistance has not been forthcoming in a timely manner.

National Historic Preservation Act

Compliance with NHPA Section 106 adds a minimum of 30 days to each well plugging project. Award Term 26 describes plugging as "undertakings" with the potential to affect historic properties.

Among the requirements for NHPA is the need for a "Cultural Monitor" to oversee well plugging for several wells in plugging packages submitted to DOI. These are individuals, such as archeologists, hired to conduct site surveys and monitor the plugging operations for the unlikely discovery of cultural artifacts during ground disturbance. These are unplugged orphan wells, which by their very nature have been disturbed at some point in the recent past by modern human activity.

Real World Implications

The delays experienced by our staff with respect to these provisions have had an impact on our ability to plug orphan wells in a timely fashion. This is especially concerning in emergency situations and when it is evident that a leak is occurring.

In June of this year, a little over one month ago, the Railroad Commission was notified about an orphan oil well which was leaking produced water. The Commission submitted the project to the Texas Historical Commission for NHPA Section 106 Review, as well as to the DOI requesting an expedited review of their ESA Analysis. The Commission received a completed review from the Texas Historical Commission within 24 hours. The USFWS Official Species List identified five species as potentially present in the project area. Three species (Tricolored Bat, Piping Plover, and Rufa Red Knot) only need to be considered for wind energy projects. The two fish species (Sharprnose Shiner and Smalleye Shiner) only need to be considered for reservoir projects or projects that alter the flow of water in rivers and streams. While RRC staff determined the project would have no effect on these species, since the plugging job in question did not involve wind turbines or reservoirs, it took the DOI five days to reach a

similar conclusion before granting the RRC approval to proceed and indicating standard approval would be forthcoming. Standard approval from the DOI was received 18 days later.

Earlier this year, the Railroad Commission submitted for approval an expedited review for a leaking well in Matagorda Bay. On the very same platform as the well in question were seven additional orphan wells and one well on an adjacent platform which the Commission wanted to address simultaneously. Because the leaking well was submitted via emergency procedures with respect to ESA and NHPA requirements, the OPWO only initially approved plugging for the one leaking well. The cost savings of addressing all the wells at once are significant, as the rig mobilization costs constitute a significant portion of a bay or offshore well's total plugging cost, which in Texas averages approximately \$500,000 for a bay well and \$1,000,000 those further offshore.

Closing

Again, thank you for allowing me the opportunity to testify on the *Orphan Well Grant Flexibility Act* and update the committee you some of the other issues faced by the Railroad Commission with respect to the Formula Grant funding and coordination with the OWPO.

As I hope my testimony has shown, providing states with flexibility will be key to reducing our nation's orphan well plugging population. It is in America's best interest to use this funding to plug as many orphan wells as possible, and the best way to achieve that is through state flexibility.

As the deployment of the Initial Grant made clear, when given the opportunity, states can move quickly to utilize and deploy these federal funds in a manner best suited to address their specific orphan well population.