



January 15, 2014

Shawn Reese
Policy Director
Office of Governor Matt Mead
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Grant Black
Supervisor
Wyoming Oil and Gas Conservation Commission
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Dear Director Reese and Supervisor Black,

We support Governor Mead's efforts to aggressively attack the issue of orphan oil and gas wells in Wyoming. This is an issue that has languished for far too long creating an unnecessary threat to landowners, wildlife and the state's precious water resources. We believe the plan released by the Governor constitutes a good first step in this effort and include suggestions below on how this plan could be further improved going forward.

All agree that \$3 million is not adequate to completely solve a problem that, according to current estimates, may ultimately cost as much as \$32 million to complete. That said the plan Governor Mead has proposed is a down payment on a very important issue. A comprehensive and well-managed program would get the state on track toward clearing the orphan well backlog and it would ensure that current and future operators are held accountable to prevent this problem from happening again.

We commend Governor Mead, the Wyoming Oil and Gas Conservation Commission, and the Legislature for their attention to this persistent problem. We urge them to work with

industry and landowners to adopt both a funding mechanism and a schedule for action that will reduce the risk that unplugged wells pose to the state's groundwater resources.

Suggestions for improvements:

While Governor Mead's plan is a positive step toward eliminating the state's orphan well backlog and also preventing the perpetuation of this problem into the future, several critical improvements are needed to make the plan as effective as possible. These considerations should include:

Funding:

1. **Raise the conservation tax** (a.k.a. the mill levy). The conservation tax is currently at 4 mills (1 mill ~ 1-1.1 million). The conservation tax is a major component of the OGCC funding (along with operator fees and EPA funds). The fund cap may also need to be raised in order to allow the fund to retain this additional revenue. With industry support the state of Texas recently raised the cap for their fund to \$30 million for similar reasons. To its credit, the Petroleum Association of Wyoming has come forward in support of raising the conservation tax and using those funds to help plug orphan wells.
2. **Consider adding a surcharge to regular operator fees.** Operator fees comprise a large portion of the WOGCC's funds. Texas has added surcharges to help fund the plugging of orphan wells. Texas' surcharges on fees are calculated at 150% of the original fee amount. See here:
<http://www.rrc.state.tx.us/forms/reports/notices/Surcharges-021412.pdf>
3. **Regulate transfer of wells from one operator to another.** Large operators should not be allowed to transfer a well to a smaller operator with less capital, collect their bond, and walk-away, never to be held liable for a subsequently orphaned well. Measures must be taken to ensure that bonds stay with wells or that bonds are paid in full prior to a transfer. One option may be a bond payment that is non-refundable to any party until the well is plugged. New operators taking over wells would need to pay their bond to the previous operator, but that would become a matter of negotiation between the operators, regardless bonding would be never removed from a well. Texas Natural Resources Code 89.022(a) is a possible model that Wyoming could look toward as a template for regulating the transfer of wells and bonding.
4. **Review bond amounts and consider increases.** Current bond amounts were set in the 1960s and can be inadequate. These amounts should be reviewed and such factors as location should also be considered since some locational circumstances can add to the cost of proper plugging and surface remediation.
5. **Prohibit future permits and/or leasing by "bad operators" who once failed to pay their bonds and/or orphaned wells.** Although the Director of State Lands and the Wyoming Oil and Gas Conservation Commission may have the authority to deny future permits and/or leases to operators who have not paid their bonds or who have orphaned wells in the past, it is not an explicit requirement that this authority be exercised. Texas also has statute that addresses this issue (Natural Resources Code Chapter 89.022(c-f)).

Other components for consideration:

1. **Staffing** – The plan contemplates a significant increase in WOGCC workload this fiscal year. Accordingly, we would encourage the Governor's office and WOGCC to consider adding staff now to begin addressing this problem and not wait until the end of the fiscal year.
2. **Oversight** – The state's current practice of having qualified regulatory staff witness state-funded pluggings is commendable and undoubtedly ensures quality work. This practice should not be abandoned or reduced.
3. **Clarify the inclusion of surface disturbance reclamation** – The Governor's plan currently urges prioritization of those orphan wells in sage grouse core areas, but adequate surface remediation is required for such prioritization to be meaningful (considering that it is the surface topography, vegetation type and presence of any man-made structures that is obstructive to sage grouse habitat, not necessarily the well casing itself). Furthermore, the extent to which plugging needs and surface remediation needs are or are not linked ought to be clarified. Sometimes surface pollution is due to an unplugged well (in which case it should go straight to the top of the priority list) but more often it is due to poor surface operations and has nothing to do with the well. Cleanup of problems originating or occurring at the surface is potentially much more expensive than plugging. Texas and Oklahoma both use their cleanup funds to address both plugging and surface remediation, but they account for these two things separately. Decisions need to be made in a given year about how much money to allocate to plugging and how much to remediation.
4. **Water well conversions** -- Landowners opting to take over a well to convert to a water well must be well informed of the responsibilities they are taking on. The law and regulations governing this practice should also be clear that conversion is not allowed unless the agency is satisfied that the well is transferred in a condition that protects the state's water resources. For example, in Texas, that means wells must be "plugged back" so that the depths below usable quality are isolated. Rule 3.14(a)(4)(A)(ii).
5. **Clarify that conventional wells are not excluded** -- These wells are much deeper than CBM wells and while profitable now, stand to create the same problem as CBM wells have in the future. Clarifying that conventional wells are contemplated in this plan is a key to protecting future generations.
6. **Seek consistency in orphan well definitions between the OGCC and the OSLI** – To minimize the possibility of confusion, definitions of orphan wells should be made consistent across agencies. This could also include a provision similar to Texas' Natural Resources Code Chapter 89, Section 012: Duty of Nonoperator. Like the Wyoming OSLI, this rule states that those who own a working interest in the well, but aren't the operator are then responsible for plugging the well should "the operator of a well fail to comply."
7. **Clarify the responsibilities of the project manager** – The role of the Project Manager and his or her relationship to the agencies should be made more clear including to whom the project manager reports.
8. **Utilize RDBMS to clarify inconsistent data** – The state should consider recommending that WOGCC consult with the Groundwater Protection Council to

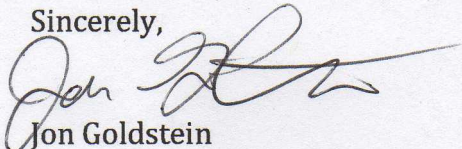
determine whether upgrades to the state's Relational Database Management System (RDBMS) could solve the problem and what the cost would be. This could also be a way to address the call to incorporate geographic information in prioritization.

9. **Caution on the use of corporate "assurances"** -- The narrative lists "assurances" as a type of bond that is separate from "surety bonds." But this "assurances" category is not included in the pie chart. If these "assurances" are what are sometimes known as "corporate guarantees" then we would encourage utmost caution in their use. As the recent financial crisis showed, long established corporations can be wiped out virtually overnight and the state should not be left holding the bag in this situation.
10. **Review the maximum blanket bond level** -- \$75,000 may be too low for a maximum blanket bond. Other states, such as Texas have set maximums as high as \$250,000, and even those have proved too low on occasion. However, if the WOGCC has the authority in all appropriate circumstances to pierce that ceiling, the current ceiling may be adequate if at a minimum, additional bonding were required before a company was allowed to develop over 7,500 feet of well depth. 7,500 feet is the maximum length of wellbore approximately covered by \$75,000 (@ \$10/foot to plug).

It is impressive that state has 67 wells scheduled for plugging beginning in 2014. This is a significant improvement over the average number plugged annually for the last 10 years (18). Though that is short of the annual goal in any of the three scenarios outlined, this aggressive beginning is worthy of recognition and underscores the fact that WOGCC needs more staff now to begin this effort.

Thank you for the opportunity to comment on this important issue.

Sincerely,



Jon Goldstein
Senior Energy Policy Manager
Environmental Defense Fund

And on behalf of:

Amber Wilson
Environmental Quality Coordinator
Wyoming Outdoor Council