West Virginia Surface Owners' Rights Organization
1500 Dixie Street, Charleston, WV 25311
www.wvsoro.org

March 30, 2022

US Department of the Interior

Re: Comment on Draft Guidance for New Orphaned Well Program

Dear Friends,

This letter is the comments of the West Virginia Surface Owner's Rights Organization (WVSORO) on the draft guidance announced by your News Release dated Thursday, March 17, 2022.

WVSORO also supports the unified comments WVSORO understand is being submitted thsi same date by Small, Biven, Ingraffea, Baum, Levy, Boettner and Palacios

WVSORO.

WVSORO is an organization that educates and advocates for surface owners when oil and gas well drilling occurs on their lands or in their communities. Our website address is above and it gets 40 or so visits every day. We have 800 members who have paid dues. Only about one-third of them own any interest in the minerals under their land and so are surface-only owners of what is often termed a split estate. Even those who own the minerals are often subject to antiquated, unfair leases. But we like to think that we speak not just for those 800 citizens who have paid dues, but for the 1 Million citizens of the State that own land outside of municipalities and who therefore are subject to surface use, sometimes without their consent, for oil and gas well drilling exploration and development. And even if their personal surface is not used, they are subject to the traffic, air pollution, ground water pollution and other effects of the exploration for and production of oil and gas.

Introduction.

First let us say that we are grateful for this federal money coming to remedy the problem of unplugged orphaned wells as part of the Bipartisan Infrastructure Law, Public Law 117-58. It is the largest issue affecting property rights in West Virginia, not to mention pollution and other problems.

We were able to get three bills passed by the 2020 West Virginia Legislature that provided some funds to plug orphaned wells. For a quick explanation of those bills look at page 6 of our winter 2020/2021 newsletter at this URL in the archive section of our website above. https://wvsoro.org/winter-2020-21-newsletter/ However the problem is so large in West Virginia that those bills would have taken several decades just to plug the existing inventory of orphaned wells. And with the advent of horizontal shale drilling and its effect on the conventional industry, and in particular as a result of irresponsible operators such as Diversified Gas and Oil there will be many more to come.

We especially appreciate that efforts that states have already made to deal with orphaned wells can be considered in dividing up some of the latter distributions of money. West Virginia's efforts in particular include the three bills passed in 2020 as mentioned above.

Comment on obligation of money.

As I am sure you are hearing from other states, it is not easy to spend this amount of money both quickly and responsibly. I understood from listening to the introductory remarks form the DOI that the states only need to "obligate" the money to plug wells within the year set out in the statute. To make sure it is spent responsibly to plug the most wells, to plug them correctly, and to plug them with oversight, will take much longer than one year for all of the cement to dry. So we appreciate that the money only needs to be obligated within the year requirement.

Oversight of privatization.

We understand West Virginia is going to contract out a lot of this work. We think it is important that states that contract out the work either 1) fund and retain enough staff for oversight of the work that the plugging contractors do, or 2) contract out separate entities to audit and oversee the work of the contractor doing the work. In West Virginia we have had difficulties with "design-build" highways being done poorly because those two functions were not separated.

Infrastructure and expertise for plugging.

It is no secret that there will soon be a shortage of rigs and other equipment necessary to plug wells. And there will be a shortage of workers with experience and training at plugging, particularly those who are the leaders of the operation at the plugging site. These persons are called "tool pushers" in the drilling of wells. We do not know if the term transfers over to plugging crews. But they need to know how to follow the plugging permit requirements properly and direct the labor under them to do the job without shortcuts. Hopefully money may be spent on educational programs at local educational institutions.

Surface disturbance.

Surface owners need consulted on what is going to happen.

Plugging a well of course requires a fair amount of surface disturbance. For those only thinking of the wells in the wide-open spaces of the West, they must realize that the mountainous regions of the Appalachians are different. Proper re-seeding with reclamation is important. There are some reclamation seedlings that are popular with reclamation companies because they grow fast, but they are not good for the health of animals. West Virginia in fact has a separate category of wildlife re-seeding. Erosion of sites and sedimentation in streams is more important here where it rains more.

Roads are of utmost concern. Some surface owners will be happy to have a road reconstructed in order to plug a long abandoned well because it will give them access to the, probably, higher elevation at the rear of their land. Others will not like it that an easy way for 4-wheelers to get to the back of their land that is going to happen. The farmer surface owners should be accommodated. The latter should be able to say, plug somewhere else first, or if the plugging occurs to have the roads blocked, really blocked or well gated, to prevent access.

Pipelines.

Reference was noted to "decommission or remove associated pipelines," as part of the funded work. The act of removing a gathering or other pipeline that lies on the surface has relatively little impact. But it still can be a small mess and it ought to be at the option of the surface owner whether this is done, or whether it is just decommissioned by making sure it is disconnected and vented. Digging up buried pipelines is a much greater mess and in most cases that should be explained to the surface owner and rather than digging up the pipeline, just decommissioning it by venting it and leaving it to rust in the ground.

Free gas.

In rural West Virginia many people heat their homes with "free gas" from taps and pipelines that they installed from the well head or a gathering line to their homes. Sometimes the right to free gas for one home was part of the original lease. Often though, back in the day, the driller wanted to take a gathering line from the well to a larger gathering line or a compressor or a transportation line, and the driller wanted to take the pipeline across the surface of neighboring surface owners. Or sometimes the driller had the right to run the pipeline across the surface owner where the well was drilled, but the surface owner was very unhappy to have the well drilled there at all, and the driller accommodated the surface owner by hooking up a free gas line. If not part of a lease, this arrangement was, more often than not, never placed in writing and recorded. But it is an important perk for surface owners who rarely had a right to royalty payments and could heat their houses for free. Wells supplying free gas, even those that are orphaned because they have no responsible operator, should be a low priority for plugging if they are not otherwise causing immediate problems.

Definition of "orphaned".

Great care should be taken that this money does not go to plug wells that are still owned by extant operators. These are creative folks who will squeeze their way out of the obligation through the smallest loophole. One possible limitation would be that the money should only be used for quailed wells that have already been orphaned. As much new money as there is there is not enough money to plug all the existing wells, so make that bright line cut off and examine those that states have determined to be orphaned already to make sure an extant well operator or its erstwhile predecessor is not avoiding its obligations.

Plugging methods.

A study of a sample of wells in West Virginia done by scientists from Princeton and McGill universities entitled "Measuring Methane Emissions from Abandoned and Active Oil and Gas Wells in West Virginia" found in section 3.1 that 20% of plugged wells were leaking methane! https://wvsoro.org/a-study-by-scientists-conventional-vertical-wells-in-west-virginia/ Funds should be allotted for a study to compare those leaking wells with the non-leaking wells to determine any commonality among the leaking wells and differences with those that are not leaking. It may be that plugging techniques need changed.

Ignoring this study, the West Virginia DEP is considering a request by Diversified Gas and Oil, the largest conventional well owner in the State, to lessen plugging requirements by no longer requiring the pulling of all un cemented casing and instead allowing for squeezing the cement bridges/plugs required between certain formations. Comments that WVSORO support notes that in at least one study squeezing only works 50% of the time. This change in plugging methods should not be allowed for federal money without the study recommended in the previous paragraph.

Plugging money set aside -- NOT bonding reform.

One of the future pots of money from the infrastructure legislation has amounts dependant on state's work to prevent future orphans. Bonding reform should not be considered.

The author of these comments has advocated for surface owners, and therefore often the environment, since the early 1980's. He has long experience with the failures of bonding -- blanket bonding in particular.

Bonding doesn't work.

Don't take the author's word for it. Name a bonding program in any state anywhere for natural resource development where the forfeited bond covered all of the work necessary for decommissioning and remediation. If you find it, mimic it. (Let the author know about it please to study its characteristics.)

Why doesn't bonding work?

Simply put, bonding/insurance companies are too smart. If you try to legislate a bonding program for sufficient money to fully decommission and remediate, the industry will say they cannot get/afford the bonding. They are right. Insurance/bonding companies know the disincentives for the industry to do proper decommissioning and reclamation and have seen the operator's agility in avoiding plugging expenses.

And trying to get a well operator of a well that is no longer producing oil or gas in paying quantities to put up the money to plug the well is not going to happen. This is particularly true when it is a conventional well that needs plugged and conventional well companies are no longer drilling new wells to have the cash flow to pay, even if they had their arm twisted and if they were inclined to pay to plug, rather than pay themselves and their investors.

Instead, legislation or regulation is needed that requires the driller to set aside money when the well is first drilled and when it is generating the most cash flow, to pay later for plugging. The money needs set aside with the state's treasurer or other state institution so it cannot be dragged into a bankruptcy for the operator's creditors. It can be paid in over the three or five years the well is first operating, or until a reliable "pay out" date can be determined before the well's production sharply drops off. That is when the driller can best afford it. It does not need to be the full amount of projected plugging because the money set aside can gather interest, and if it grows in interest beyond the future plugging cost, then that interest can be paid to the driller. If the total future plugging cost is deposited up front, again a discount rate can be considered. The future plugging cost needs to be determined by the current cost of plugging the type, depth etc. of the well and adjusting for inflation. The value of the produced gas from which the payments are made to the treasurer can be estimated at the time the permit for drilling is sought by looking at production from similar wells and estimated prices of the product from recognized futures exchanges. The treasurer's cost in managing the account or sub-account for the well should be part of what is paid in, or allowed to be deducted from interest.

This method of guaranteeing future plugging costs will work. Bonding will not. And certainly not blanket bonding. A copy of legislation drafted for the West Virginia Legislature is attached to this filing. Slightly less sophisticated versions have actually been introduced but of course blocked by the oil and gas industry.

And a similar system should be applied not just to new drilling, but to transfers of wells. This is because of the industry history of profitable operators who are drilling new wells that could generate cash for plugging old wells, instead transferring the wells to operators who will certainly not be able to plug the wells based on the money that the declining wells generate and who are also unlikely to drill new wells that could generate the cash to plug the old wells or spend it on the old wells. And the transferee operator will eventually go out of business leaving behind orphaned wells. How do we know this will happened? It has happened in West Virginia 6,500 times. The questionable practices of Diversified Gas and Oil are certainly the latest to make their result a valid question.

So bonding reform, should not be considered something that state's can do to prevent future orphans that would affect future state draw-downs of Infrastructure money, except maybe acceptable single well bonding where no other solution is possible

Sincerely,

/s/ David McMahon [intended as signature]

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