

# Oil & Gas Bonding and Orphaned Wells Reform

## *General Principles and Options*

Abandoned oil and gas wells pose environmental and public health risks. They can leak methane gas, contaminate surface water and groundwater, fragment habitats, erode soil, and interfere with agricultural land use. Orphaned wells, a subset of abandoned wells with no legally or financially responsible party (e.g. when a well operator goes bankrupt) create significant financial liabilities for taxpayers. It is in the national interest to ensure these wells are properly reclaimed. (Read [our FAQ on abandoned and orphaned wells](#) to learn more.)

The Infrastructure, Investment, and Jobs Act (P.L. 117-58) appropriated \$4.7 billion to plug and reclaim orphaned wells, \$250 million of which was for cleanup on federal lands. And several proposals this year, including the Abandoned Well Remediation Research and Development Act (S. 429) and the President's FY2024 Budget, propose millions of dollars more in funds to address the reclamation of orphaned wells. But generously doling out taxpayer dollars is not a magical cure that can solve the underlying problem, and the measures' lack of reforms to accompany the dollars is alarming. Without reform and industry accountability, reclamation liabilities will only continue to grow and burden taxpayers.

TCS has [long advocated for reforms](#) to address the increasing taxpayer costs from orphaned wells, like the Oil and Gas Bonding Reform and Orphaned Well Remediation Act (S. 2177) and the Bonding Reform and Taxpayer Protection Act (H.R. 1505) introduced in the 117<sup>th</sup> Congress. Below are some general principles and reform options lawmakers should take into consideration when addressing oil and gas bonding and orphaned well issues. Industry should be held responsible for cleaning up its operations and properly restoring sites. Taxpayers should not be left on the hook.

### **1. Raise Oil and Gas Bonding Minimums**

Oil and gas bonds (check out our fact sheet [here](#) for background information) should be sufficient to cover the cost of reclamation. In the case an operator goes bankrupt, the Bureau of Land Management (BLM) can use the bond posted by the operator to cover the reclamation cost. Currently, BLM does not hold sufficient bonds to fully cover the future cost of reclaiming operating and idle wells on federal lands. Moreover, bond values lower than actual costs provide a reclamation disincentive by making it cheaper to abandon wells than reclaim them.

Currently, there are three types of bond coverage the BLM accepts. Their minimum values, which were set in the 1950s and 60s and have never been adjusted for inflation, are as follows:

- \$10,000 for an operator's wells on an individual lease;
- \$25,000 for all wells owned by an operator in one state; and
- \$150,000 for all wells owned by an operator nationwide.

If the current bond rates were adjusted for inflation, an individual lease bond would be \$98,870, statewide coverage would be \$271,984 and nationwide coverage would be \$1,631,905. Moreover, in the 70 years since bonding rates were set, the average well depth of crude oil exploratory wells

has increased from approximately 4000 to 5000 feet to more than 7700 feet.<sup>1</sup> Well depth is one of many factors that affect reclamation cost, which has also increased since the 1950s and 60s and can now range from \$20,000 to \$145,000 per well.

To bring bonding rates into the 21<sup>st</sup> century and better protect taxpayers from shouldering industry costs, the Department of the Interior released [a proposed rule](#) in July 2023 that proposes to raise the rates to the following:

- Individual Lease - \$150,000
- Statewide - \$500,000
- In addition, eliminating nationwide bonding

The Government Accountability Office (GAO) calculated that on average, an individual lease bond covered 10 wells and a statewide bond covered 49 wells in 2018.<sup>2</sup> So, at the proposed updated individual lease rate, the minimum bond would provide \$15,000 worth of coverage per well and the updated statewide bond would cover \$10,204 per well. While still lower than the estimated reclamation cost between \$20,000 and \$145,000 per well, the updated rates would better protect taxpayers.

Importantly, higher rates do not mean that operators will have to post the lump sum amount in cash before they start drilling. BLM accepts surety bonds, which can be obtained by paying a premium, usually around 1%-15% of the bond amount and signing an agreement pledging some assets to reimburse a surety company who posts the bond if a claim occurs.

## 2. Strengthen Management of Idled and Orphaned Wells

Currently, an idled well is defined as a “well [that] has been nonoperational for at least 7 years [and] there is no anticipated beneficial use for the well.”<sup>3</sup> BLM does not systematically track the actual costs for reclaiming orphaned wells or the information, including the number of orphaned wells and inactive wells over time, necessary to determine the agency's potential liabilities, according to the GAO.<sup>4</sup> Without systematically tracking inactive wells, BLM often allows operators to keep wells in inactive status indefinitely (i.e. it seldom requires plugging/reclamation, even after years of inactivity). Reform recommendations include:

- 1) Stricter definition of idled/inactive wells
- 2) Require BLM to inventory and monitor idled and orphaned wells on federal lands and collect all needed data to determine potential reclamation liability.
- 3) Strengthen management of idled wells:

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<sup>1</sup> Average reported for 2008: [https://www.eia.gov/dnav/ng/hist/e\\_ertwo\\_xwde\\_nus\\_fwa.htm](https://www.eia.gov/dnav/ng/hist/e_ertwo_xwde_nus_fwa.htm)

<sup>2</sup> Government Accountability Office, Oil and Gas: Bureau of Land Management Should Address Risks from Insufficient Bonds to Reclaim Wells, GAO-19-615. Sep 18, 2019. <https://www.gao.gov/assets/gao-19-615.pdf>

<sup>3</sup> P.L. 109-58, Sec. 349 (e)

<sup>4</sup> Government Accountability Office, Oil and Gas Wells: Bureau of Land Management Needs to Improve Its Data and Oversight of Its Potential Liabilities, GAO-18-250. May 16, 2018. <https://www.gao.gov/assets/gao-18-250.pdf>

Operators should submit notice to BLM to keep wells inactive, otherwise operators must either bring the well into production, apply for a delay to reclaim the site, or permanently reclaim the site.

### 3. Hold the Oil and Gas Industry Accountable

Oil and gas operators have sought to escape reclamation liabilities through bankruptcy. For example, PetroShare,<sup>5</sup> a Colorado-based company, abandoned 55 wells during bankruptcy proceedings. It has also been documented that larger operators shed their reclamation liabilities by selling assets including marginal wells to smaller operators, who are more likely to go bankrupt due to market fluctuations and thereby orphan the wells. Reform recommendations to close regulatory loopholes include:

- No lease should be approved if the potential lessee is a successor of an entity that has failed to comply with reclamation requirements for any prior lease.
- Past operators/predecessors should not be able to shed liability by selling marginal wells without any responsibility. Congress can authorize BLM to hold predecessors liable if a current operator defaults, a practice used by other government agencies. For example, the Bureau of Safety and Environmental Enforcement (BSEE) under the Department of the Interior, whose mission is to “promote safety, protect the environment, and conserve offshore resources”, can hold all predecessors liable for decommissioning if current lessees default.<sup>6</sup> Established by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), Superfund allows the Environmental Protective Agency (EPA) to hold all potentially responsible parties liable for cleanup costs. Potentially Responsible Parties (PRP) include past owners/operators at the time the pollution occurred. Some hardrock reclamation on nonfederal lands has been partially paid for using Superfund resources.

### 4. Funds and Systems Should be Put in Place to Ensure Reclamation Costs are Not Shouldered by Taxpayers

The billions of dollars of reclamation liabilities on state and federal lands should not be shouldered by taxpayers. Congress should consider measures to authorize BLM to assess fees or obtain funds from operators to cover the reclamation costs on federal lands, like the Abandoned Mine Land (AML) Reclamation program that addresses legacy mine sites through a per-ton reclamation fee from coal companies. Possible fees/sources of funding include:

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<sup>5</sup> <https://www.bizjournals.com/denver/news/2021/07/14/colorado-orphan-oil-wells-cogcc-petroshare.html>

<sup>6</sup> 30 CFR part 250: Subpart Q

- 1) One-time fee charged when an Application for Permit to Drill (APD) is submitted (\$1,300 per GAO estimate to cover BLM reclamation liabilities)
- 2) Annual idle well fee (\$350/well per GAO estimate to cover BLM reclamation liabilities)
- 3) Per barrel idle well fee

Instead of authorizing and appropriating generous amounts of taxpayer dollars to address orphaned well issues, Congress should consider the above-mentioned principles and reform options so that:

1. Rules and enforcement are in place to prevent oil and gas wells from becoming orphaned in the future;
2. Rules and enforcement are in place to ensure that oil and gas companies shoulder the reclamation cost and are held liable if wells do become orphaned; and
3. Current reclamation liabilities left by legacy oil and gas wells are paid for by the industry, not taxpayers.

