

WRITTEN TESTIMONY OF TOM KROPATSCH

DEPUTY OIL AND GAS SUPERVISOR OF THE WYOMING OIL AND GAS CONSERVATION COMMISSION

BEFORE

THE HOUSE NATURAL RESOURCES COMMITTEE

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

HEARING ON:

“Building Back Better: Creating Jobs and Reducing Pollution by Plugging and Reclaiming Orphan Wells”

April 15, 2021

Good afternoon Chairman Lowenthal, Ranking Member Stauber, and members of the House Subcommittee on Energy and Mineral Resources, my name is Tom Kropatsch and I am the Deputy Oil and Gas Supervisor for the Wyoming Oil and Gas Conservation Commission (WOGCC). Thank you for inviting the State of Wyoming to this hearing to share our experience with operating a successful orphan well plugging program.

**Wyoming Background**

Wyoming currently ranks 8<sup>th</sup> in oil production and 9<sup>th</sup> in natural gas production in the nation. There are approximately 51,000 drilled and unplugged federal, fee and state wells in Wyoming including oil, gas, injection, and disposal wells. Approximately 60 percent of oil production and 75 percent of natural gas production in Wyoming is from federal minerals.

The WOGCC is committed to regulating oil and gas in a manner that ensures responsible development of Wyoming’s oil and gas resources and provides appropriate environmental stewardship for Wyoming’s citizens. The WOGCC is proud of its history of implementing effective programs and regulations that are protective of public health and the environment without unnecessarily burdening the industry. In recent years, these regulations include requirements for baseline groundwater testing, well stimulations, and updated regulations on setback distances, bonding requirements, and flaring. Many of these regulations are enforced on federal, state, and fee wells throughout the state.

**WOGCC Authority to Operate Orphan Well Program**

The WOGCC orphan well plugging program plays an important role in our commitment to the citizens and the industry in the State of Wyoming. The WOGCC does not officially define orphan well, but uses a working definition of a well or seismic hole in which there exists no identifiable owner/operator or in which the owner/operator is unwilling or unable to complete their responsibility to plug the well or seismic hole. Wyoming Statute §30-5-104(d)(vii) authorizes the WOGCC to use funds collected as part of the conservation tax to plug wells and seismic holes and reclaim the area around them. The conservation tax is paid solely by the industry based on sales of oil and gas. Chapter 3, Section 16 of the WOGCC Rules and Regulations states “The Supervisor shall establish and maintain a well plugging schedule which prioritizes wells for plugging through an assessment of the well’s potential to adversely

impact public health, public safety, surface or ground waters, surface use, or other mineral resources.” Wyoming Statute §30-5-104(a) states that the commission has “...jurisdiction and authority over all persons and property, public and private, necessary to effectuate the purposes and intent of this act...”

### **Orphan Well Plugging Program Summary**

The WOGCC has operated an orphan well plugging program for many years. In the earlier days of this program, only small numbers of wells were identified as orphan in a given year and were typically plugged and abandoned shortly thereafter. Electronic record keeping of the orphan well projects began in 1997; and between 1997 and 2014, a total of 425 wells were plugged in the program (25/year average) with very few wells carrying over from year to year. Beginning in about 2010, the coalbed methane (CBM) industry in Wyoming experienced a downturn, which created increasing numbers of orphan wells. Since 2010, the WOGCC has identified approximately 5,900 orphan wells, largely CBM wells. Due to the increasing numbers of orphan wells, the WOGCC implemented an accelerated orphan well plugging program in 2014. Since 2014, the WOGCC has permanently plugged and reclaimed nearly 4,000 orphan CBM wells and approximately 50 conventional wells.

The total cost to the WOGCC for orphan well plugging since 1997 has been \$32 million. These costs have been paid by bond forfeiture totaling \$21 million and conservation tax dollars covering the remainder.

Though the state has experienced increasing numbers of orphan wells since 2010, nearly 4,300 of these orphan wells came from only five operators. The majority of industry fulfills their responsibilities by plugging their wells when they are at the end of their economic life. The oil and gas industry in Wyoming has plugged and reclaimed approximately 12,100 CBM wells and 5,200 conventional wells since 2010.

### **Funding the WOGCC Orphan Well Program**

The funds used to plug orphan wells in Wyoming comes from two sources. Operators are required to post bonds, which can be individual well bonds or operator blanket bonds. If an operator posts a blanket bond, then idle well bonding is also required for wells that are determined to be idle. If wells are identified as orphan, any bonds the operator has posted with the WOGCC will be forfeited to offset the cost of plugging the wells.

In the event that the operator’s bonds do not cover the cost to plug the wells, the WOGCC uses money collected from the conservation tax to fund the remainder. The conservation tax is a mill levy as described in WY statute §30-5-104, collected from the operators on sales of oil and gas, and funds the majority of the WOGCC budget. The WOGCC does not receive any funding from Wyoming general funds or any general taxpayer dollars.

The WOGCC operates an idle well bonding program in which all operators’ fee idle wells are reviewed annually if the operator has posted blanket bonds instead of individual well bonds. Our rules define idle wells as wells that are not producing, disposing, or injecting in an economic manner. The rules allow an operator to submit plans for each idle well for consideration in lieu of bonding. If an operator’s plans include plugging or returning the well to production within the next year then additional bonding is typically not required. If an operator has no plans for the well then additional idle well bond of \$10/foot of wellbore may be required from the operator. The WOGCC currently holds over \$150 million of idle fee well bonding for operators. If the operator plugs the well, returns it to production, or transfers the

well to another operator then their idle well bonds are returned. In addition to bonding, the WOGCC requires regular mechanical integrity testing of idle wells.

### **Identifying Orphan Wells**

The process of identifying orphan wells varies depending on the specifics of each well or operator and can be a time consuming task. Typically orphan wells result from operator non-compliance, operator bankruptcy, or previously unknown wells with no existing operator. Each of these situations present different requirements for agency action to declare a well orphan. Legal proceedings and court actions, especially in the case of bankruptcy, may create significant delays in declaring a well orphan and plugging the well.

Each state will have their own specific requirements to declare a well orphan, in Wyoming the process is completed at a Commission hearing with the agency staff requesting the Commission to declare the well orphan and authorize staff to plug and abandon the well. Prior to the hearing, staff will have already spent months or even years working with operators on compliance issues, monitoring bankruptcy proceedings, or researching potential responsible parties. If an operator for the wells still exists, they are afforded the opportunity to make their case for continuing operations in front of the Commission at the hearing. In many cases, the operator understands they are out of compliance with WOGCC rules, agree they are unable to continue operations, and are unable to permanently plug the wells. In other cases, the operator has already walked away from the wells or the wells may have been drilled many years ago with an existing operator unable to be identified. This situation is rare in Wyoming, with one or less of this type of orphan well identified on an annual basis.

### **Orphan Well Plugging Project Considerations**

Once the Commission declares a well orphaned, the agency staff begin the process of plugging the wells. Much of the early phases of the projects are administrative in nature. These tasks are ideally conducted during winter and spring months when the weather and ground conditions are not conducive to field work. In addition to weather conditions, the projects must be planned around wildlife stipulations and landowner concerns.

The first step is to declare any equipment or infrastructure on location abandoned. This requires contracting with a landman to conduct lien searches, providing notification to any lien holders that equipment and infrastructure will be declared abandoned if they do not remove it from location and a second Commission hearing to declare the equipment/infrastructure abandoned. Once the hearing is complete, WOGCC has the right to transfer title free and clear to any equipment or infrastructure to defray the cost of plugging the well. Typically, nothing of any real value remains on location and what is left adds to the agency cost to plug the well.

Agency staff conduct well completion and record reviews to write a plugging procedure for each well. This may be a simple process for a single well, but many orphan well packages in Wyoming consist of 200-300 wells. The less that is known about each well, the longer the process and the more uncertainty becomes part of the final plugging procedure. Writing plugging procedures for old wells with unknown operators or wells with operators who were out of compliance with agency rules can be difficult. The plugging procedures are included when the agency issues an orphan well package to statewide bid, so uncertainty introduced into this process creates less accurate bids. This may result in significantly increased cost and increased plugging time, which require change orders during a project.

Communication with surface owners is essential. Projects vary from having only a few large landowners to having tens to hundreds of landowners for large projects or projects near communities. A landman may be necessary for projects with many landowners to assist in locating landowners and coordinating access to their property.

Agency field inspectors begin discussions with landowners early in the planning phase. Working around calving, lambing, irrigation, haying, and hunting seasons are all concerns that landowners express to the WOGCC. Access routes to the wells must be discussed with landowners to avoid unnecessary surface disturbance. Other surface issues to be considered in project planning are the risk of grass fires from equipment, surface damage due to mud or soil conditions, construction or rebuilding of roads, and staging areas for equipment and surplus infrastructure removed from the locations.

Many of these issues must be determined at the time of bidding for the plugging service providers. Timing stipulations, potential multiple site mobilizations, road construction, removal and hauling of equipment and trash, and other issues impact the cost of the projects and the service companies must know these details to include accurate costs in their bids. Determination of all of these possible issues takes time and requires flexibility.

The WOGCC generally issues statewide bids for orphan well plugging projects and the lowest qualified bidder is awarded the project. Upon awarding the contract, contracting is conducted by the agency, in conjunction with the Attorney General's office and the service company. This is the point that the money is encumbered or obligated, but if the appropriation was not approved by the legislature, even if received in the form of a grant, the contract cannot be executed.

### **Orphan Plugging Project Execution**

Once the contract is signed, the service provider is authorized to begin work on the plugging project. All work in the field is coordinated by WOGCC field inspectors. Utilizing agency staff to coordinate crews completing the work ensures that the needs and requirements of all parties involved in the project are understood and met. Projects that are comprised of hundreds of wells utilize multiple crews each needing to complete their portion of the project on the correct well at the correct time. Many of the orphan wells are interspersed with producing wells owned by other operators. Pulling equipment from, or plugging the wrong well would not only create legal issues, it could be a safety issue as well. The WOGCC is committed to completing the work efficiently and safely, utilizing the bond money and conservation tax dollars responsibly.

In 2020, the WOGCC used at least six field inspectors and office staff consisting of engineering, financial, natural resources, and administrative personnel to plug 989 orphan wells. These wells consisted of CBM and conventional wells ranging from 300 feet to 15,500 feet in total depth. The WOGCC had over 1,600 orphan wells under contract to be plugged beginning in 2020, the remainder of which carried over to 2021 when the field work slowed during winter.

### **Federal Orphan Wells in Wyoming**

Beginning in 2017, the WOGCC and the Bureau of Land Management (BLM) state office began a program to plug federal orphan wells in the state. Although the BLM has different processes to follow to declare wells orphan and different avenues to consider responsible parties to plug wells before they are considered orphan, by 2017 they had identified orphan wells in Wyoming. Due to constraints within the federal budgeting requirements, the BLM was unable to secure funding for their field offices to bid

and contract for plugging of these wells. Discussions were held between the WOGCC and BLM and it was determined that the WOGCC would apply for a grant that could be funded to coordinate the plugging of the federal orphan wells.

The first grant was applied for in 2018 and a grant revision was applied for in 2019, together awarding slightly over \$2 million to the WOGCC to coordinate the plugging of federal orphan wells. The WOGCC works with the BLM to write plugging procedures for orphan wells identified by the BLM. The WOGCC issues statewide bids and contracts with the service company who was awarded the bid, following all state bidding and contracting requirements. The WOGCC works with personnel in the BLM Field Office to coordinate the field work portion of the plugging project, including working with landowners. Once the wells are plugged and projects complete, the WOGCC pays the invoices of the service companies and then submits the costs to the grant for reimbursement.

Through 2020, the WOGCC has coordinated the permanent plugging of 82 federal orphan wells in Wyoming, including seventy-seven CBM wells and five conventional wells. In addition, four CBM impoundments and four previously plugged well locations were reclaimed. The total cost for this work was just over \$1.5 million. The WOGCC did not bill their staff time who were utilized to prepare bids, contract, and coordinate the projects with the BLM to the grant. We are currently in the discussion phases with BLM on 2021 federal orphan projects.

#### **Consideration of the Orphaned Well Cleanup and Jobs Act 2021**

The WOGCC appreciates the opportunities presented in the bill for funding additional plugging of orphan wells in the state. The WOGCC does have several considerations for the Committee based on its understanding of the bill and its history plugging orphan wells.

The process of identifying and contracting for the plugging of orphan wells can be uncertain and time consuming, therefore allowing states flexibility in timing is important. Understanding that the goal of the bill is to quickly distribute funding to states to create or maintain jobs and jump-start the plugging of orphan wells, any opportunities for flexibility in the timing of applications or for the encumbrance of the funds would be appreciated. Depending on timing of enactment of the bill, states may have budgeting scenarios to work through to utilize the grant money. Ensuring we are able to work within the requirements of our own state and still meet the timing restrictions within the bill is critical in maximizing the beneficial impacts to employment and the environment.

Several provisions within the regulatory improvement grant are concerning to the WOGCC. The first provision relates to strengthened restrictions on methane emissions. In Wyoming, the WOGCC does not regulate methane emissions, as the agency with primacy for air quality regulations is the Department of Environmental Quality (DEQ). The WOGCC regulates flaring from oil and gas wells as it relates to waste. Requiring an agency (DEQ) who is not responsible for orphan wells and is not involved in the plugging of orphan wells to conduct rule changes to meet certain methane emission restrictions is not conducive to the ultimate goal of plugging orphan wells. The plugging of orphan wells itself will result in a reduction of potential methane emissions benefitting the environment without requiring rule changes from an unrelated agency.

The second regulatory improvement category is strengthened plugging and abandonment rules. The WOGCC feels its rules for plugging and abandonment are appropriate for the protection of oil and gas

bearing zones, protection of water zones, and for protection of public health and safety and the environment. These have been long-standing considerations in WOGCC's rules and a rule change to update these requirements is unnecessary, costly and time-consuming for the agency. Perhaps in lieu of a requirement to update or strengthen rules related to plugging and abandonment, a certification from each state stating their rules are protective of these items would be sufficient.

The WOGCC is appreciative of the 10-year lookback allowed in the third area of regulatory improvements as we have revised our bonding and well transfer rules in 2015.

Finally, idle well fees and increased bonding are provisions proposed in this bill. This seems to move the bill away from its initial goal of plugging orphan wells and creating employment benefits. The WOGCC would suggest removal of these provisions from the bill and allow these issues to be part of a separate bill if determined to be necessary.

Incentivizing operators to plug wells that are at the end of their beneficial life so they do not become at risk of being orphaned is important. Charging fees for idle wells or increasing bonding may be considered incentives for plugging or producing the wells, but they may also remove the ability of an operator to remain financially responsible for the well. The ultimate goal should be getting wells appropriately plugged by the operator at the end of their beneficial life. Just because a well is idle does not mean it presents a higher risk and needs to be plugged. There are many reasons why a well may be idle, and a program such as the WOGCC's annual idle well review allows discussions between the operator and the regulatory agency so both parties understand the potential uses of the well and the time at which plugging becomes necessary. Including a provision in the bill to create a program similar to the WOGCC's idle well review may provide more benefit than increasing fees or bonds.

The WOGCC is concerned that fees charged for idle wells will come predominantly from states with larger numbers of federal wells, further disincentivizing production from federal minerals and pushing operators out of states like Wyoming that have a larger share of production from federal minerals. If fees are to be implemented on idle federal wells, a suggestion from the WOGCC would be to add a provision in the bill requiring the proceeds to remain within the state in which they are collected to be used towards the items allowed in the bill.

Thank you for allowing the WOGCC to participate in this hearing and provide its perspective on these matters.