

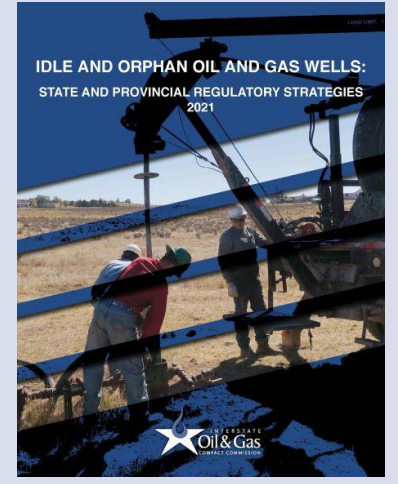
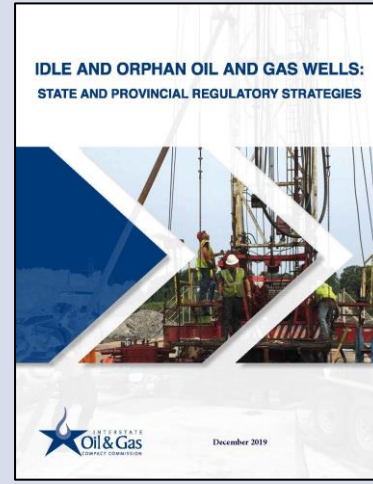
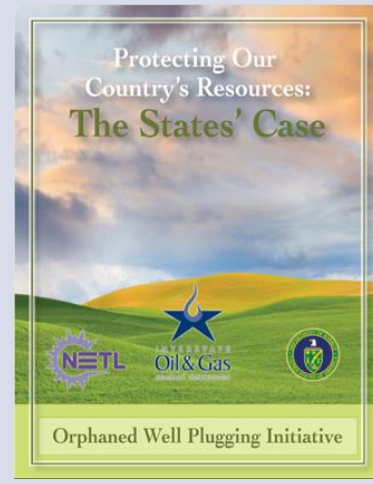
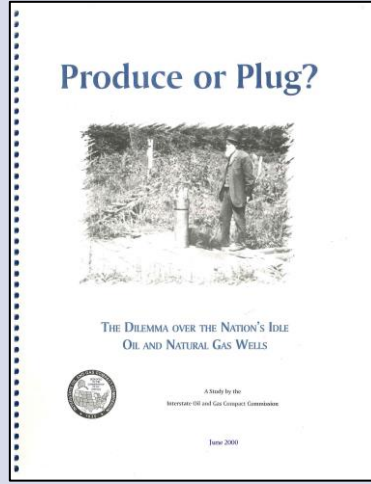
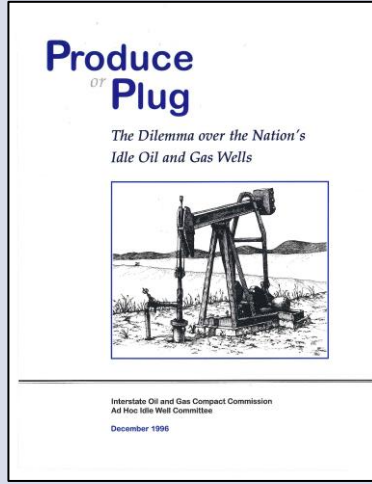
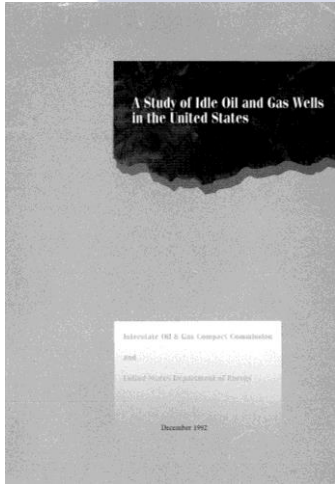


Interstate Oil and Gas Compact Commission

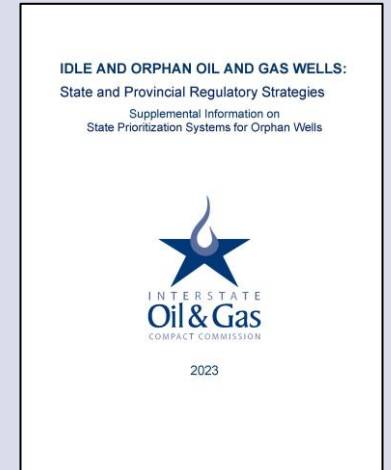
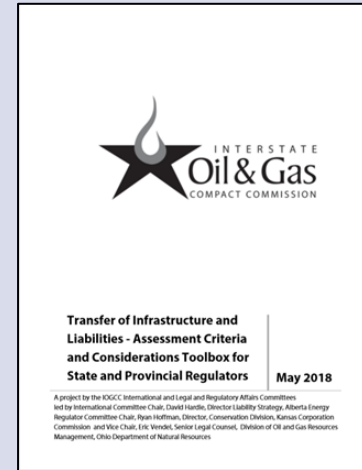
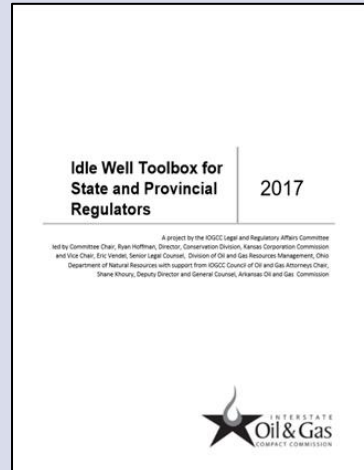
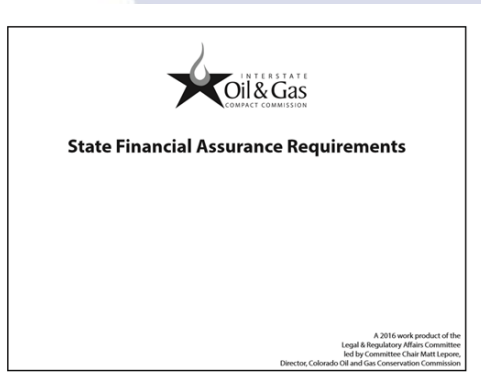
LSU Energy Law Center Orphan Well Symposium

Friday, January 19, 2024

LSU Paul M. Hebert Law Center



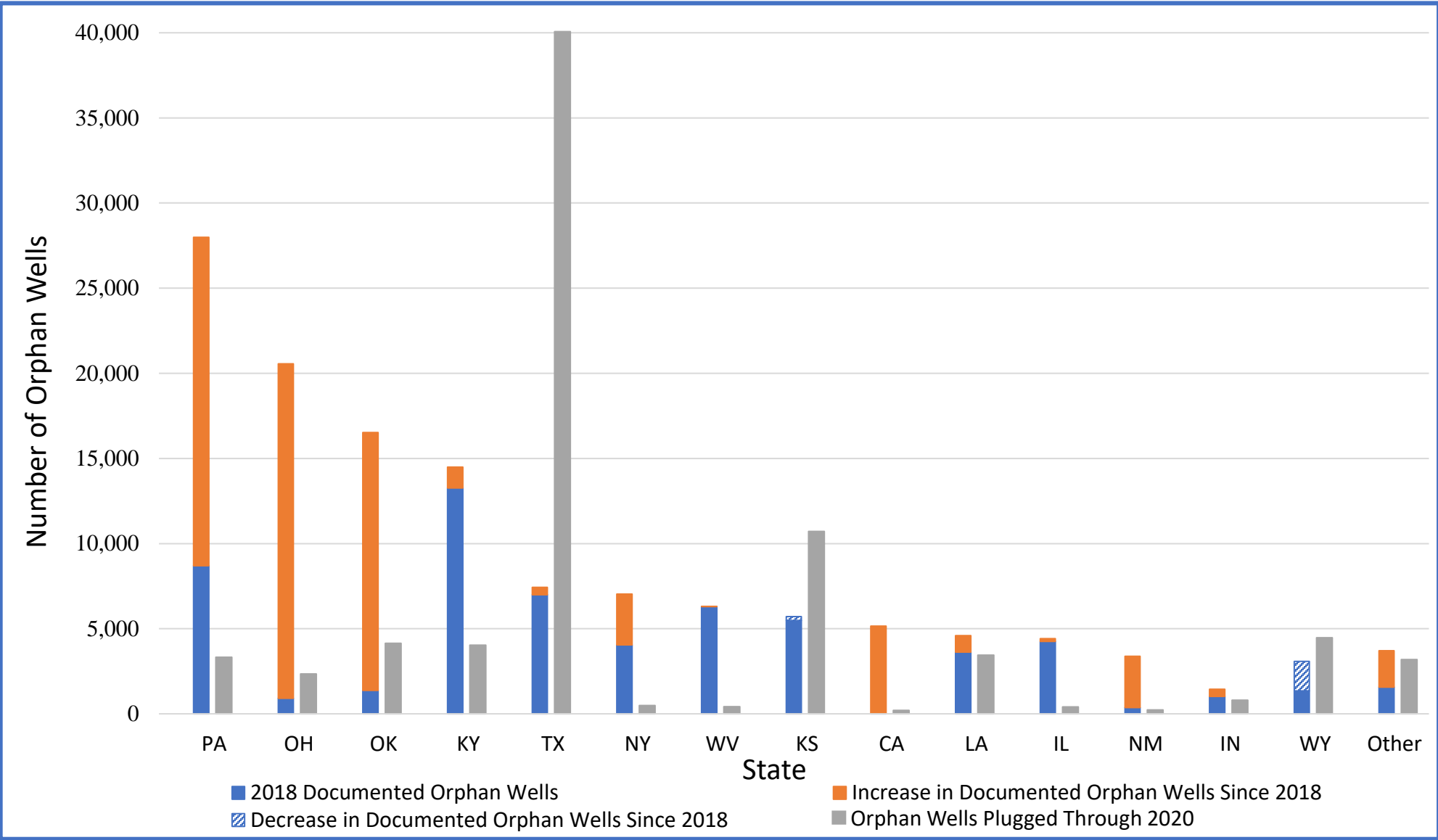
Previous IOGCC/State Work on Idle and Orphan Wells



IOGCC Orphan Well Task Force

- **John Adams**, Assistant Commissioner, Office of Conservation, **Louisiana** Department of Natural Resources
- **Dylan Fuge** (Co-Chair), Deputy Secretary, **New Mexico** Energy, Minerals and Natural Resources Department
- **Catherine Dickert**, Director, Division of Mineral Resources, **New York** State Department of Environmental Conservation
- **Lynn Helms** (Co-Chair), Director, Department of Mineral Resources, **North Dakota** Industrial Commission
- **Eric Vendel**, Chief, Division of Oil and Gas Resources Management, **Ohio** Department of Natural Resources
- **Ken McQueen**, Secretary of Energy and Environment, State of **Oklahoma**
- **Kurt Klappowski**, Deputy Secretary, Office of Oil and Gas Management, **Pennsylvania** Department of Environmental Protection
- **Wei Wang**, Executive Director, Railroad Commission of **Texas**

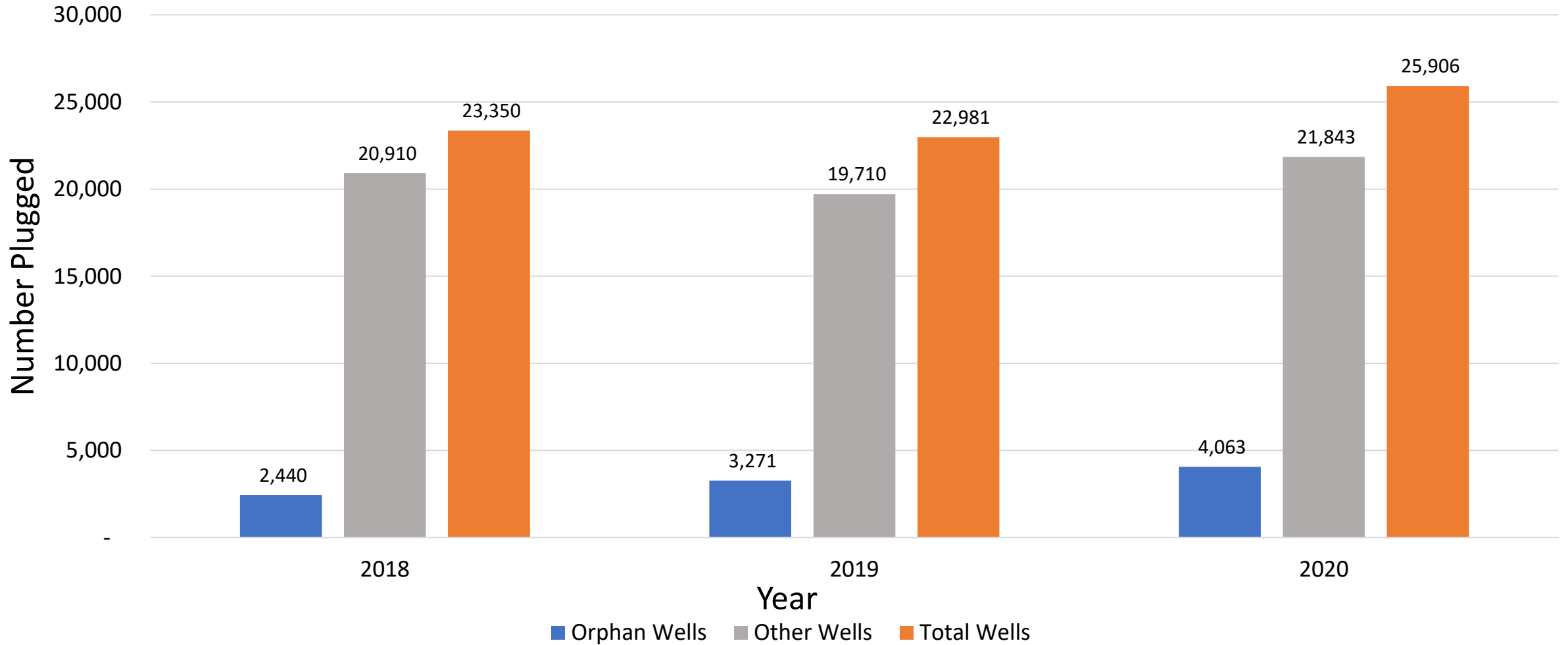
State Efforts to Document and Plug Orphan Wells as of IJA Enactment



Source: Interstate Oil and Gas Compact Commission, 2021. *Idle and Orphan Oil and Gas Wells: State and Provincial Regulatory Strategies*, Figure 13.

All Well Plugging

Data as of December 31 each year.



Source: Interstate Oil and Gas Compact Commission, 2021. *Idle and Orphan Oil and Gas Wells: State and Provincial Regulatory Strategies*, Figure 7.

IOGCC Recommendations to Congress

- To plug large numbers of orphan wells expeditiously:
 - Recognize and support the capacity of the existing state programs
 - Accelerate, not disrupt, state plugging operations
 - Avoid duplicate and unnecessary federal requirements
 - Provide flexibility to accommodate state definitions and procedures
 - Do not superimpose a new federal program for state and private lands
 - Focus on well plugging with basic decommissioning and cleanup

Infrastructure Investment and Jobs Act (IIJA)

- Orphaned Well Site Plugging, Remediation, and Restoration
 - Federal and Tribal programs (§ 40601(b) and (d))
 - \$250 million for wells on Federal land
 - \$150 million for wells on Tribal land
 - Funding for state programs (§ 40601(c))—NOT a federal program
 - \$4.275 billion for wells on state and private land
 - Initial grants—Up to \$25 million per state to mobilize quickly
 - Formula grants—\$2 billion allocated based on 2021 data submission
 - Performance grants—Up to \$70 million per state for improvements

State Orphaned Well Grant Awards/Eligibility

State	Initial Grant		Formula Grants	Performance Grants		
	Awards	Remaining Eligibility	Total Eligibility	Matching	Regulatory Improvement-Plugging	Regulatory Improvement-Orphan Reduction
Alabama		5,000,000	1,681,430	30,000,000	20,000,000	20,000,000
Alaska	25,000,000		28,336,497	30,000,000	20,000,000	20,000,000
Arizona	25,000,000		4,871,791	30,000,000	20,000,000	20,000,000
Arkansas	5,000,000		5,589,721	30,000,000	20,000,000	20,000,000
California	25,000,000		140,870,510	30,000,000	20,000,000	20,000,000
Colorado	25,000,000		54,064,506	30,000,000	20,000,000	20,000,000
Florida	25,000,000			30,000,000	20,000,000	20,000,000
Georgia		5,000,000		30,000,000	20,000,000	20,000,000
Idaho		5,000,000		30,000,000	20,000,000	20,000,000
Illinois	25,000,000		36,875,485	30,000,000	20,000,000	20,000,000
Indiana	25,000,000		14,076,668	30,000,000	20,000,000	20,000,000
Kansas	25,000,000		33,666,697	30,000,000	20,000,000	20,000,000
Kentucky	25,000,000		78,980,737	30,000,000	20,000,000	20,000,000
Louisiana	25,000,000		86,449,520	30,000,000	20,000,000	20,000,000
Maryland		5,000,000		30,000,000	20,000,000	20,000,000
Michigan	25,000,000		5,873,295	30,000,000	20,000,000	20,000,000
Mississippi	5,000,000		6,830,345	30,000,000	20,000,000	20,000,000
Missouri		5,000,000	26,925,384	30,000,000	20,000,000	20,000,000
Montana	25,000,000		5,139,423	30,000,000	20,000,000	20,000,000
Nebraska	25,000,000		4,151,076	30,000,000	20,000,000	20,000,000
Nevada		5,000,000		30,000,000	20,000,000	20,000,000
New Mexico	25,000,000		72,260,163	30,000,000	20,000,000	20,000,000
New York	25,000,000		44,672,162	30,000,000	20,000,000	20,000,000
North Carolina		5,000,000		30,000,000	20,000,000	20,000,000
North Dakota	25,000,000		55,266,234	30,000,000	20,000,000	20,000,000
Ohio	25,000,000		231,028,206	30,000,000	20,000,000	20,000,000
Oklahoma	25,000,000		205,226,972	30,000,000	20,000,000	20,000,000
Oregon		5,000,000		30,000,000	20,000,000	20,000,000
Pennsylvania	25,000,000		305,625,896	30,000,000	20,000,000	20,000,000
South Carolina		5,000,000		30,000,000	20,000,000	20,000,000
South Dakota		5,000,000		30,000,000	20,000,000	20,000,000
Tennessee		5,000,000		30,000,000	20,000,000	20,000,000
Texas	25,000,000		318,695,029	30,000,000	20,000,000	20,000,000
Utah		5,000,000	5,229,389	30,000,000	20,000,000	20,000,000
Virginia		5,000,000		30,000,000	20,000,000	20,000,000
Washington		5,000,000		30,000,000	20,000,000	20,000,000
West Virginia	25,000,000		116,932,226	30,000,000	20,000,000	20,000,000
Wyoming	25,000,000		40,680,639	30,000,000	20,000,000	20,000,000
Totals	\$560,000,000	\$70,000,000	\$1,930,000,000	\$1,140,000,000	\$760,000,000	\$760,000,000

IOGCC/State Perspective on IJA Implementation

- Gratitude for opportunity
- Focus on primary objectives
 - Create jobs for oil and gas workers
 - Address hazards of orphan wells
- Accelerate state work
 - Use state authorities, definitions, procedures
 - Engage plugging and remediation crews in full force
- Honor spirit of the legislation
 - Work in partnership
 - Follow the roadmap in the law

DOI Guidance

- Initial grants
 - Guidance issued April 12, 2022
 - Grants awarded in August 2022 to 24 states
- Formula grants
 - Final guidance issued July 10, 2023
 - State allocations
 - 26 states eligible—filed notices of intent by December 30, 2021
 - 21 states applied in Phase 1—applications accepted through December 31, 2023
- Performance grants
 - Guidance pending

DOI Formula Grant Guidance

- Key issues in final guidance
 - State options versus DOI requirements
- Related IOGCC Resolutions
 - Resolution 23.053, Urging the United States Congress to Direct the Department of the Interior to Follow Statutory Language in All Phases of Implementation of Section 40601 of the IIJA
 - Resolution 23.101, Urging the Department of the Interior to Allow the Use of Carbon Credits as Program Income for Formula and Performance Grants Under Section 40601 of the IIJA

State Issues with DOI Formula Grant Guidance

- Regulation through guidance

Last paragraph of I. Introduction (page 2): This document indicates the information that is **required** to be included in an application for a Phase 1 Formula grant and for expenditure of the grant funding. States are required to apply these practices to meet the requirements of Sec. 40601(c)(4), to promote consistent standards for well plugging and reclamation activities and facilitate the proper tracking of the program's benefits.

BUT SEE

IIJA Sec. 40601(c)(2)(A): IN GENERAL.—A State may use funding provided under this subsection for any of the following purposes: [list of allowed but not required activities]. (*See III.A. of guidance (page 5) for the list.*)

State Issues with DOI Formula Grant Guidance

- Identification and pursuit of potentially responsible parties

v.(a)6. of IV.C. Other Required Elements (page 9): [A description of] the process the state follows to identify and pursue all potentially responsible parties that may be legally liable for plugging, remediating, or restoring orphaned wells in the state.

State Issues with DOI Formula Grant Guidance

- Modification of state prioritization systems

v.(e) of IV.C. Other Required Elements (page 10): Details of how the State will identify and prioritize the highest methane emitters and how the State will identify and prioritize well plugging and site reclamation that are intended to address disproportionate burdens of adverse human health or environmental impacts of orphaned wells on communities of color, low-income communities, and Tribal and indigenous communities. Consistent with Sec. 40601(c)(2)(A)(viii), States will identify and factor into their project prioritizations orphaned wells within 0.5 miles of communities of color, low-income communities, and Tribal and Indigenous communities. Identification of such communities will utilize established tools, such as CEJST. Decision points and underlying assumptions, such as the number and type of environmental indicators, must be described in the application.

v.(h) of IV.C. Other Required Elements (page 10): Methods the State will use to solicit recommendations from local officials and the public regarding the prioritization of well plugging and site remediation activities, and any other processes the State will use to solicit feedback on the program from local governments and the public.

State Issues with DOI Formula Grant Guidance

- Measurement and tracking of water contamination

v.(f) of IV.C. Other Required Elements (page 10): The methodology, including field indicators, sampling, and modeling approaches, to be used by the State to **measure and track contamination of groundwater and surface water** associated with orphaned wells, including how the State will assess the effectiveness of plugging activities in reducing or eliminating such contamination.

State Issues with DOI Formula Grant Guidance

- Monitoring of reclaimed locations

v.(n) of IV.C. Other Required Elements (page 11): A plan to monitor the reclaimed locations to ensure remediation and reclamation success. Such plan should include methodology and chronology of monitoring, data collection, and a plan for additional reclamation should the initial attempt be unsuccessful, and the activities outlined in the plan should be incorporated into the preliminary work schedule required in section IV.C.v.(a)3.

State Issues with DOI Formula Grant Guidance

- Modification of state procedures and standards

i. of V.A. Pre- and Post-Plugging Measurement of Air and Water Pollution (page 13): States will conduct an inspection of each orphaned well site being considered under this grant to screen for leaks of methane and other gases—and if identified to measure the rate of such leaks—and to identify potential surface water or groundwater contamination. Such inspections may be performed immediately prior to commencement of plugging and abandonment, as long as the requisite pre-plugging information is documented. State agencies also will conduct or supervise post-plugging inspections within 12 months of the plugging activity to verify the lack of gaseous emissions and water contamination from plugged wells and the achievement of vegetation performance standards appropriate to the site's future land uses, if applicable. Or, alternatively, an arms-length entity the State ensures is qualified may also conduct post-plugging inspections. Such post-plugging inspections must be documented to create a verifiable record of activities performed under the grant. To the extent practical, each well should be physically or electronically tagged after it is plugged, with tags indicating the date the well was plugged and the contractor(s) responsible for the plugging.

State Issues with DOI Formula Grant Guidance

- Methane measurement and tracking

ii. of V.A. Pre- and Post-Plugging Measurement of Air and Water Pollution (page 13): States will follow, as the minimum standard, the DOI methane emission guidelines (and subsequent revisions), including all recommendations therein. The technology and approaches for methane detection, quantification, and monitoring are rapidly improving and evolving. As such, the DOI methane emission guidelines and requirements will also evolve over time in a manner intended to reduce the costs and burdens on states of detecting and quantifying methane emissions from orphaned wells, including the use of models and estimation tools while achieving the goals of Sec. 40601 of the BIL.

BUT SEE

iv. of IV.D. Restrictions and instructions on funding (page 12): States may not use wells plugged with formula grant funds to monetize, generate, or collect carbon credits or otherwise use the plugging of wells funded with formula grants to generate income of any type by offsetting another party's greenhouse gas emissions.

State Issues with DOI Formula Grant Guidance

- Workforce programs

v.(k) of IV.C. Other Required Elements (page 11): Plans the State has to support opportunities for all workers and vendors, including workers underrepresented in well plugging or site remediation, workers in traditional energy communities impacted by changing markets and technology, and workers from underserved communities to be trained and placed in good-paying jobs directly related to the project, including through workforce development programs and incorporating workforce strategies into project development.

v.(l)1. of IV.C. Other Required Elements (page 11): Training programs, including pre-apprenticeships, registered apprenticeships, local and economic hire agreements for workers, and engagement with relevant labor unions with which the State intends to conduct outreach, partner, or fund in well plugging or site remediation.

COMPARE

v.(l)4. of IV.C. Other Required Elements (page 11): Whether the State plans to support safe, equitable, and fair labor practices by adopting, requiring, or encouraging contractors to adopt collective bargaining agreements, local hiring provisions, project labor agreements, and community benefits agreements.

State Issues with DOI Formula Grant Guidance

- Other unclear “requirements”

v.(g) of IV.C. Other Required Elements (page 10): Methods to be used to decommission or remove associated pipelines, facilities, and infrastructure and to remediate soil and restore habitat that has been degraded due to the presence of orphaned wells and associated infrastructure.

v.(i) of IV.C. Other Required Elements (page 10): How the State will use funding to locate currently undocumented orphaned wells.

v.(j) of IV.C. Other Required Elements (page 10): Plans the State has to engage third parties in partnerships around well plugging and site remediation, or any existing similar partnerships the State currently belongs to.

State Issues with DOI Formula Grant Guidance

- Data reporting requirements

i. of VIII.E. Data Collection and Reporting (page 18-19): In order to standardize reporting requirements and ensure that the Federal resources are well-spent and meet statutory objectives, States must track and report (pursuant to A and D of this section) the data outlined below for all actions taken using orphaned well grant funding. As appropriate, data tracking may be accomplished through existing systems such as the Groundwater Protection Council's Risk Based Data Management System (RBDMS):

[list of select parameters]

This list highlights important parameters that DOI will report to Congress annually and is a subset of the larger data set the States must report as part of the performance reports (VIII.A and D.) and detailed in the **Orphaned Wells Data Reporting Template** available on the State Orphaned Wells Program webpage. States must update the Data Reporting Template information in conjunction with the quarterly and final reporting required by VIII.A and D.

State Issues with New Award Terms and Conditions

- Endangered Species Act compliance reviews

Under Section 7(a)(2) of the ESA, the Department of the Interior is required to ensure that activities funded by this award are not likely to jeopardize species listed on the Federal List of Endangered and Threatened Wildlife and Plants or result in the destruction or adverse modification of critical habitat designated for Federal Endangered and Threatened Wildlife and Plants.

The ESA Section 7 implementing regulations at 50 C.F.R. § 402.08 allow federal agencies to designate a non-federal representative (NFR) to conduct informal consultation. Accordingly, as a condition of this award, the recipient (and, if any, the recipient's designee(s) assisting with environmental compliance with respect to the award) agrees to serve as an NFR pursuant to 50 C.F.R. § 402.08. The Orphaned Wells Program Office (OWPO) reserves the right to rescind this designation.

As an NFR, the recipient of this award (and, if any, the recipient's designee(s) assisting with environmental compliance with respect to the award) agrees to carry out the responsibilities described in Paragraphs (1)–(3) below. The recipient also agrees to coordinate with the OWPO or its designated agent assisting with ESA Section 7 compliance.

State Issues with New Award Terms and Conditions

- Endangered Species Act compliance reviews (continued)

1) No-Effect Determination: The NFR will evaluate its project (identified at an appropriate scale) to determine whether it will have any effects to ESA-listed species or their critical habitats. If the NFR finds that a no-effect determination is appropriate, the NFR must provide documentation supporting that finding to the Department of the Interior's OWPO. The NFR may request technical assistance from the U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) Documentation indicating the project will not result in any "effects of the action" may include an Official Species List from the Services indicating that neither the range of an ESA-listed species nor the critical habitat of an ESA-listed species is found within the respective project area (i.e., the "action area," as defined in the ESA Section 7 implementing regulations at 50 C.F.R. § 402.02). . . . If OWPO has not notified the NFR of any concerns with the NFR's no-effect determination within 10 business days of receipt of the documentation in support of the determination, then the NFR, sub-recipient, or their contractors may proceed with this project. However, if OWPO notifies the NFR, in writing, that it does not accept the "no effect" determination, as submitted, then the NFR may not begin any ground-moving activities related to this project until OWPO provides written approval to begin such activities.

State Issues with New Award Terms and Conditions

- Endangered Species Act compliance reviews (continued)

2) May Affect, Not-Likely-To-Adversely Affect Determination: If an NFR makes a preliminary determination that a project may affect, but is not likely to adversely affect, ESA-listed species or critical habitat, the NFR must notify OWPO. OWPO or its agent may seek additional information from the NFR to submit a request for the appropriate Service's written concurrence that the project is not likely to adversely affect ESA-listed species or critical habitat. As an NFR, you agree to provide additional information and further assistance to OWPO in preparing this request for concurrence. If the appropriate Service concurs that the project is not likely to adversely affect ESA-listed species or critical habitat, formal consultation is not required, and ESA compliance is complete.

3) Formal Consultation: In some limited circumstances, formal consultation of the State's project may be required. The ESA Section 7 implementing regulations do not provide for assignment of formal consultation responsibilities to an NFR. However, NFRs may assist in the development of a request for formal consultation with the appropriate Service. If formal consultation is required, the recipient of this award, as an NFR, agrees to assist OWPO or its agent in developing an initiation package (containing the requisite information described at 50 C.F.R. § 402.14(c)) that the OWPO will submit to the appropriate Service in its request for formal consultation

State Issues with New Award Terms and Conditions

- **Historic Preservation**

With the exception of those activities listed below, the activities funded under Section 40601 of the BIL are “undertakings” with the potential to affect historic properties and, as such, are subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and the implementing regulations, 36 CFR Part 800.

Section 106 applies to historic properties listed in or eligible for listing in the National Register of Historic Places. By and through this Term and Condition of award, the OWPO authorizes the Recipient to initiate NHPA, Section 106 consultation, and to assume responsibility for steps in the process consistent with 36 CFR 800.2(c)(4). As a condition for receipt of the grant, the Recipient must conduct the initial steps of the Section 106 process, which includes identifying and evaluating historic properties within the area of potential effects associated with specific projects and assessing effects (36 CFR 800.4 through 800.5). To fulfill the requirements of these steps, the Recipient must initiate consultation with the State Historic Preservation Officer (SHPO) and other consulting parties. . . .

State Issues with New Award Terms and Conditions

- Historic Preservation (continued)

Before taking any action that may affect historic properties, the Recipient must provide the OWPO with a preliminary finding or determination consistent with the documentation standards in 36 CFR 800.11(d), (e). OWPO will provide this documentation, as prepared by the Recipient, to the SHPO and/or the Tribal Historic Preservation Officer (as applicable) consistent with the requirements in 36 CFR 800.4(d)(1)-(2), 800.5. OWPO, in coordination with the Recipient, will seek to resolve any adverse effects to historic properties consistent with 36 CFR 800.6. The Recipient, or its subrecipients and contractors, may not commence activities until the Section 106 process is complete.

The following activities funded under this grant have no potential to cause effect to historic properties and, thus, require no further review: 1) documentary research and analysis; 2) GPS/GIS mapping; 3) survey and inventory with no ground disturbance (i.e. pedestrian survey, shovel testing and test unit excavation, and the use of remote sensing techniques), provided that site access is limited to existing roads and paths of ingress/egress; and 4) site assessment with no ground disturbance, provided that site access is limited to existing roads and paths of ingress/egress.

The Recipient may elect to engage the OWPO regarding the potential development of a programmatic agreement to set forth a streamlined Section 106 process covering the activities funded by these grants.

Next Steps for States

- Complete work with initial grant funds
- Receive Phase 1 formula grant awards
- Review draft guidance for performance grants
- Continue to advance their state programs



For More Information

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