



SIERRA CLUB

LONE STAR CHAPTER

September 14, 2022

To: Chairman Birdwell
Members, Senate Committee on Natural Resources
From: Cyrus Reed, Conservation Director, Lone Star Chapter, Sierra Club
512-888-9411; cyrus.reed@sierraclub.org

More action needed to plug wells and to better reform and utilize the oil and gas regulation and cleanup fund.

The Lone Star Chapter of the Sierra Club is pleased to submit these brief comments related to efforts to protect the state's groundwater, surface water and air through efforts to clean up and plug abandoned and orphaned water wells and oil and gas wells, and to implement HB 3973, related to a study on abandoned wells and the use of state funds.

We would note that the State of Texas has a longstanding program aimed at plugging orphaned oil and gas wells that has been somewhat successful at preventing groundwater and surface contamination, but the large number of both older wells, and the boom and bust cycle of the oil and gas industry means that we are constantly playing catch up. The recent passage and signing of the Infrastructure, Investment and Jobs Act of 2021 (sometimes known as the Bipartisan infrastructure Law or BIL) is a unique opportunity to make real progress in cleaning up our backlog of abandoned oil and gas wells.

In addition to these oil and gas wells, there is a real risk from older water wells that were dug in oil and gas formations and may have initially been used for energy production and were later converted to use as water wells. These were drilled with older technology and lack the more updated casing and cement rules and many high-profile cases have led to large-scale contamination. Because these were initially drilled through the Railroad Commission of Texas, we do believe that these wells could be cleaned up and plugged through the Orphan Well program. Alternatively, or in addition, we believe that an abandoned and orphaned water well program run through the Department of Licensing and should be expanded with a funding mechanism to begin to address the real issue of abandoned water wells, many of which are found in energy production

areas and have the potential to be a conduit of hydrocarbons from one geologic formation to another.

Oil and Gas Well Cleanup and the IIJA

The passage of the IIJA remains a unique opportunity for Texas to finally clean up thousands of orphan wells. No state has the potential to benefit more from the Orphan Well Program than Texas. The federal government through the Department of the Interior is making available more than \$4.7 billion in funding to Texas and other oil and gas producing states with a legacy of abandoned infrastructure. Texas could – if we play our cards right – receive approximately \$343 million in three tranches of funding over the next few years. This money could help prevent water pollution, reduce the emissions of methane from these wells, prevent accidents of people and livestock, create jobs and help our economy. We hope the jobs created are good paying, family-sustaining labor.

Earlier this year, the DOI held public meetings to get input on their initial guidelines for the first tranche of money - which allows states that qualify to receive up to \$25 million. Comments on those guidelines were due in March. The RRC has already applied for that first batch of money in May. Guidelines for the future tranches of money are still in development but are likely to be more specific.

Just a reminder that Texas has a lot of orphaned, abandoned and low-producing or out-of-production oil and gas wells, as well as other types of wells that are no longer used and useful such as injection wells, water wells and empty wells that never found a product but are still potentially dangerous to human health and the environment. According to RRC records, from a 2021 annual report, Texas used state funds to plug 1,453 orphan wells in Fiscal Year 2021, and has a goal of plugging another 1,000 this fiscal year. Texas also cleaned up another 158 sites with oilfield waste and other issues. In all we spent about \$50 million on those two activities, the majority of that money from the Oil and Gas Regulatory and Cleanup Fund. ***But according to RRC data, there are about 7,935 wells that are considered inactive for more than 12 months and also out of compliance for more than 12 months and eligible for state clean-up. Indeed, the current list is over 55 pages long.*** \$343 million could not take care of all of these wells, but it could take care of a majority of them. If average clean-up costs are about \$50,000 for a well, then \$343 million could however clean up almost 7,000 wells.

While we don't know the final guidelines yet for future tranches of money, some themes are emerging. First, the DOI wants states to engage the public on this use of federal taxpayer dollars.

RRC has to its credit done a good job posting information about the state program, and the proposed prioritization of wells on a separate website, but there should be a more formal public input process, perhaps with one or more official public meetings at the RRC. Landowners, communities and industry - which has paid fees to create the state program - deserve the chance to give input into this process and help shape the outcome. Again to its credit, the RRC has created an email and public portal for input and has recently provided information in both English and Spanish, although they have not held any public meetings on the issue.

Having a more public facing process would also likely help get a leg up on other states that are also seeking this money. Part of this process could also include mapping those wells, and providing actual lat-long coordinates. While the RRC has done a good job showing the visualization of the wells that have been plugged, there does not appear to be a similar tool for those wells waiting for plugging activity.

Second, a likely requirement will be helping communities that have been overburdened with potential water and air pollution that can result from abandoned and orphaned wells. Sometimes called environmental justice factors, when we asked DOI what tool states could use to assess how to prioritize these communities, they mentioned a tool in development at the White House CEQ and an existing tool at the EPA. Using one of these tools to assess our orphan wells would be good exercise in prioritization and making sure that our existing prioritization scheme matches up with prioritizing wells that can most affect overburdened communities.

Finally, they are also looking for reforms to prevent the creation of future abandoned and orphaned wells. While many and indeed most of Texas's wells in the state managed program preceded changes that were made in the 1980s, our regulatory scheme is still in need of reform. The state – both the RRC and the legislature - needs to look at our bonding levels – which are extremely low and were set in the 1980s.

In conclusion, we would hope the RRC will create a public process for more formal input on how to prioritize cleanup, commit to creating an analysis of community impacts from spending this money through either the EPA environmental justice tool, or the upcoming CEQ tool, and begin a conversation about reforms that are needed both on the front end - in bonding policy – and at the back end, in preventing the creation of new abandoned and orphaned wells by giving industry too easy a path to escape their responsibility.

Orphan Wells and Passage of HB 3973

Fortunately, in 2021 the Legislature signed and Governor Abbott signed HB 3973 (Walle, Senate Sponsor Nichols), which requires an interim committee of the legislature to look at efforts to plug abandoned and orphaned wells, and examine how we fund our Oil and Gas Regulatory and Cleanup Fund. With some 450,000 oil and gas wells in Texas, about a third of which are no longer operating, assuring that the industry caps and plugs their wells, and that there is sufficient funds to plug those that become “orphaned” is of utmost importance.

Sierra Club was very supportive of the Senate version of the legislation, which created the interim committee and called for a look at potential reforms. As we look to spend hundreds of millions of taxpayer funds, it is important that we commit to make changes so that 10 or 20 years from now we will not be forced to spend another \$4.7 billion or more to bail out the impacts of oil and gas production.

Recently, Lt. Governor Dan Patrick named the five members of the interim committee on the Senate side, naming Senators Bryan Hughes, Lois Kolkhorst, Robert Nichols, Drew Springer and Judith Zaffarini to the committee. We are still waiting for the Speaker to name his five picks, but the committee is supposed to produce a final report and recommendations by December 1, 2022.

Among its charges, the Committee is directed to:

- (1) study matters related to abandoned oil and gas wells in this state, including the costs associated with plugging abandoned wells and bonding requirements imposed on owners or operators of oil and gas wells;*
- (2) identify potential solutions to reduce the need for general revenue spending to plug abandoned wells;*
- (3) conduct a review of the oil and gas regulation and cleanup fund, including:*
 - (A) revenue sources of the fund;*
 - (B) projected revenue for the fund through fiscal year 2025 based on the fund's existing fee and fine structure; and*
 - (C) an assessment of the rules and statutory limits that determine the amount of the fees and fines that contribute to the fund; and*
- (4) evaluate and identify other sources of potential revenue, including federal funds and other existing taxes and fees paid to the benefit of the state which could be utilized to meet the goals of the committee.*

Potential Reforms Needed at RRC and Statutory reforms

We hope the interim committee set up as part of HB 3973 will look at a number of issues needing reform. Bond amounts were last adjusted by the RRC in 1989, and changes are needed in the criteria for how wells are considered abandoned and orphaned. Last legislative session, the Sierra Club was supportive of legislation that would have raised the blanket and individual bonds for the first time in 35 years. HB 2868 by Longoria, as well as SB 954 by Hinojosa, Chuy and SB 2108 by Schwertner would have required the Commission to annually determine the amount of average bonding needed to plug a well, and used that as a bonding amount. Secondly, the bill would have significantly raised the amount of blanket bonds, essentially doubling the amounts of bonds.

In addition to raising bond levels, we also believe that the Legislature should consider allowing fines that the Texas Railroad Commission levies against oil and gas to flow into the Oil and Gas Regulatory Cleanup Fee. We would note that under the Natural

Resources Code, maximum fines for the oil and gas industry have been capped at \$10,000 per violation per day, and that amount has not changed since 1983. Sierra Club has long argued that statutorily we should raise the maximum fines from \$10,000 to at least \$25,000 - equivalent to what TCEQ and the Attorney General Office can fine operators – or even as much as \$50,000.

In addition, there are other statutory caps in place that have prevented the Oil and Gas Regulation Cleanup Fee from keeping up with growth or raising sufficient funds for the Texas Railroad Commission to fulfill its duties. As an example, there is a statutory cap of only \$100 on permits for injection wells, which is how the oil and gas industry generally gets rid of its liquid wastes. We hope the interim committee, once named, will look closely at all the statutory caps to allow more money to flow into the Oil and Gas Regulation Cleanup Fee. Sierra Club is supportive of making sure that the bulk of funding to the RRC comes from industry fees and fines, and not relying on general revenue.

In addition, we are concerned that decisions made by the Commission have increased the number of wells that could become abandoned and then orphaned. We believe the interim committee should look at inactive well plugging extensions that could lead to more wells becoming orphan wells. Recently, the Commission has been granting extensions during a volatile market, which could increase the number of wells that eventually become abandoned and orphaned. The committee should look at ways to reduce the marginal well population, and require industry to plug the wells once they are no longer used and useful.

Finally, we believe it is vitally important that the Legislature direct the commission to create a program to oversee perpetual monitoring of plugged wells and locate legacy wells. We have seen wells particularly in West Texas that were plugged years ago that are now failing, with devastating results for local landowners.

Oil/Water well mess

Recently, a very special but not necessarily unique issue has emerged in Pecos County due to old abandoned water wells which were originally tied to oil and gas development. Known as Boehmar Lake, oil wells were drilled back in the 1940s and 1950s but later turned over to landowners mainly for irrigation. Over time, these oil-water wells have been leaking vast amounts of very salty water, accompanied by at least some remnants of hydrocarbons, such as hydrogen sulfide.

As a result, the Middle Pecos Groundwater Conservation District and nearby landowners have filed multiple complaints with the Railroad Commission to determine

whether the water well is affecting oil, gas or freshwater strata or if the well is polluted with mineral water. Differing accounts of the level of contamination and Hydrogen Sulfide readings have emerged between the district and the Commission, but whatever the case, the Boehmer Lake points to a regulatory loophole - and the lack of a process for older oil or gas wells which at some point were converted to water wells.

It is unclear whether the IJJA money for abandoned wells could be used to clean up these unique cases but at the very least, RRC leadership should inquire of DOI whether it can since these wells are related to hydrocarbons. The current mess in Pecos County could potentially be targeted as a valid use of the funds. We should consider it since we are unlikely to find money elsewhere for this special case.

The Sierra Club believes that the Railroad Commission does have the authority to treat these old oil wells as within its jurisdiction and seek recovery from the original owners of the wells, as well as previous landowner interests.

The legislature should consider at the very least requiring an evaluation of oil and gas wells that have been converted to water wells, and their risk, and if needed, consider statutory tweaks to make clear the jurisdiction and authority of the Texas Railroad Commission over such wells.

Conclusions

The IJJA is a unique opportunity to clean up thousands of orphan oil and gas wells and Texas should take advantage and allow stakeholder input to take advantage of at least \$343 million.

In addition, Texas must assess its existing bonding programs and levels of funding, as more money will be needed to deal with our orphan well program. Sierra Club believes that bonding levels, fines and permitting fees must be increased to meet our growing needs, and rules around marginal wells so that we move quickly to plug abandoned wells.

Finally, a special case are older oil wells that have been converted into water wells, such as the Lake Boehmer situation. Texas should consider a more exhaustive study of these special cases. The Railroad Commission should consider the extent to which IJJA monies could be used to help address these unique cases and approach the DOI. The Sierra Club believes that the Railroad Commission has the regulatory authority it needs to deal with these cases and seek enforcement action, but some legislative or statutory tweaks could make the role of the RRC vs other agencies more clear.

The Sierra Club appreciates the opportunity to make these brief comments.