Executive Order D 2018-12

Financial Assurance Technical Working Group

Final Report

December 1, 2018

Table of Contents

A. Introduction

Governor Hickenlooper signed Executive Order D 2018-12 on July 18, 2018 to improve the environment, public health, and safety of Coloradans by directing the Colorado Oil and Gas Conservation Commission ("COGCC") to plug, remediate, and reclaim orphaned wells and sites and prevent future orphaned wells and sites.[1] The Executive Order requires COGCC to establish a technical working group to review financial assurance requirements and report to the Governor on recommended changes by December 1, 2018. COGCC is then required to promulgate rules by September 1, 2019 to ensure the sufficiency of financial assurance, including funding plugging, remediation, and reclamation activities for future orphaned wells and sites.

The Financial Assurance Technical Working Group ("Working Group") was composed of members with significant experience with Colorado's financial assurance rules and processes, including representatives from local, state, and federal government agencies, the environmental community, the oil and gas industry, and private citizens (*See* Appendix). The Working Group met four times during the fall of 2018 with COGCC and DNR staff to review Colorado financial assurance requirements, best practices in other states, and proposals for modernizing Colorado's financial assurance rules. COGCC gathered information during these meetings for the purpose of developing recommendations for revisions to Colorado's financial assurance rules. Working group members had an opportunity to review and comment on the draft recommendations prior to finalization.

B. Summary of Key Recommendations

Taking into account the Working Group's discussions, COGCC recommends that the following steps be considered in a financial assurance rulemaking in 2019. This rulemaking will ensure that sufficient resources are available to conduct remediation and reclamation activities and address orphaned wells and associated oil and gas facilities, both current and future, in the state of Colorado. COGCC will continue to engage Working Group members to further develop these recommendations prior to the rulemaking.

While the implementation costs of these measures were not evaluated, it is important to note that all will require additional state resources, including increased staffing. Action on these recommendations should also take into account Colorado's strong efforts, compared to other states, to minimize the number of wells that are orphaned. The Commission should also consider the possibility that additional financial assurance requirements for smaller, undercapitalized operators could increase the number of orphaned wells in the short term.

I. Increase Bonding and Clarify Definitions for Inactive Wells

Inactive well bonding drives Colorado's financial assurance system and accounts for the vast majority of all financial assurance for oil and gas wells in the state. COGCC should consider increasing bonding amounts for excess inactive wells above current $10,000/$20,000 levels. The threshold for what constitutes excess inactive wells under Rule 707 should also be lowered, which would require an increase in the amount an operator's total financial assurance is divided by (likely mirroring increases to the $10,000/$20,000 bonding amounts) when calculating the number of excess inactive wells that require additional financial

[1] Executive Order D 2018-12, available at https://www.colorado.gov/governor/2018-executive-orders.

assurance. These actions will incentivize operators to reduce the number of wells they maintain in inactive status.

In addition, the Commission should clarify the definition of an "inactive well," including how it relates to other well status definitions such as "shut-in" and "temporarily abandoned," and clean up related definitions to prohibit efforts to avoid inactive status though activities such as swabbing and selling past production from a tank.

II. Develop a Risk Model for use in Form 10 Transfer Analysis

The Form 10 process presents a clear opportunity for COGCC to review the sufficiency of financial assurance for a specific group of wells, especially adherence to inactive well bonding requirements. In addition to this sufficiency review, COGCC should develop a simple, multi-factor model that identifies assets with high estimated remediation and reclamation costs that could outstrip a new operator's resources and available financial assurance. The model could be made available to operators for use in their due diligence process as well. Higher levels of risk related to inactive wells, inactive equipment, remediation, or reclamation needs could result in additional mandatory bonding at the time of transfer. However, the Commission should take care not to involve COGCC in an assessment of the viability of an operator's business plan, as the agency lacks the expertise to undertake such analysis.

III. Create a Plugging, Remediation, and Reclamation Fund

Increased bond amounts present a financial challenge for smaller operators that must pay cash or provide 100% collateral for their bonds. COGCC should explore alternatives for smaller operators such as the creation of a plugging, remediation, and reclamation fund. Fines and penalty revenue in the Environmental Response Account ("ERA") and some Oil and Gas Conservation Mill Levy ("Mill Levy") funds are already supporting the orphaned wells program, and the Commission has existing authority to implement permit fees up to $200 per application.

The Commission could also request authority from the legislature to charge higher application fees (for example, BLM charges $10,050 per application[2]) or to impose a per-well fee or a per-location fee (for sites without wells) at the time of transfer to a new operator. A portion of any new revenue could stay with the well or location to ensure that funds are available for plugging in the future, and these dollars could be supplemented by a sinking fund or other mechanism to generate additional well-specific or location-specific funds. Some proceeds could also be used by COGCC to address future orphaned wells.

As an alternative to per-well or per-location funds, COGCC should explore the concept of a pooled fund like the Petroleum Storage Tank Fund ("PSTF"). Similar to the PSTF, fees could be raised or lowered depending on the balance of the fund and could be suspended when the fund reaches a maximum allowable amount. The fund would reimburse operators for all or a portion of work related to plugging wells, reclamation, and remediation, after payment of a deductible, as long as the operator is in compliance with COGCC rules and regulations.

[2] BLM Instruction Memorandum 2019-001, available at https://www.blm.gov/policy/im-2019-001.

IV. Consider Increases to Existing Bond Amounts

The Commission should consider increases to per-well and blanket bonding amounts and the creation of more tiers of blanket bonding, as the existing two-tiered structure allows many operators with hundreds, and sometimes thousands, of wells to maintain less than $1,000 of financial assurance per well. Existing $10,000/$20,000 per-well bonding amounts should be raised to correspond with increases to excess inactive well bonding amounts. However, the Commission should refrain from increasing blanket bonding amounts significantly because most companies already maintain excess inactive well bonding that dwarfs blanket bonding amounts. Future increases in bonding amounts should also be scheduled on a regular basis to take into account inflation, though annual increases should be avoided as there are significant transaction costs associated with procuring new bonds.

Additional bonding should also be considered for new sites that will require significant reclamation, such as those with long roads and steep slopes. And blanket and individual bonding or increases to existing bonding levels should be considered for surface owner protection (especially when bonding on to a surface location), underground injection control wells or facilities, and facilities with no wells such as remote tank battery facilities. COGCC should also consider hiring additional staff to assist with bond release requests and related inspections.

Finally, COGCC should conduct financial assurance audits of large operators and a percentage of medium and small operators each year. The agency should also redouble its efforts to provide data about financial assurance, orphaned wells, remediation, and reclamation efforts to the public through its website and in its annual reporting.

C. Existing Financial Assurance Rules and Challenges

C.R.S. § 34-60-106(13) requires oil and gas operators to provide financial assurance to COGCC to demonstrate that they can meet their obligations under the agency's rules. As defined in statute, financial assurance can take the form of a guarantee of performance, certificate of general liability insurance, bond or other surety instrument, letter of credit, certificate of deposit, or other financial instrument, escrow account or sinking fund, or lien or other security interest in real or other property. As reported by COGCC, the vast majority of financial assurance instruments are bonds or other surety instruments, with some operators using certificates of deposit or cash bonds. This is likely because Rule 702 expresses a preference for surety bonds and requires all other instruments to obtain approval by the Commission.

Financial assurance requirements and procedures are set out in COGCC's 700-Series Rules.[3] COGCC claims a bond when an operator fails to perform statutory and regulatory obligations, and releases a bond when an operator has complied with all such obligations. The amount of financial assurance and purpose of different types of bonds within the Commission's jurisdiction are outlined in the table below.

[3] COGCC 700 Series Rules, available at https://cogcc.state.co.us/documents/reg/Rules/LATEST/700Series.pdf.

Table 1: COGCC 700 Series Financial Assurance Rules Overview

Rule 703: Surface Bond	- Provides a monetary award to a surface owner who neither owns the minerals nor has a surface use agreement with the operator for unreasonable crop loss or land damage that cannot be remediated. - Requires a $2,000 (non-irrigated) or $5,000 (irrigated) individual bond by well or a $25,000 state-wide blanket bond.
Rule 704: E&P waste man. facilities bond	- Bonding must equal the total estimated cost to properly reclaim, close, and abandon a facility, including those on federal land.
Rule 705: Seismic operations bond	- Provides for plugging of shot holes and surface reclamation. - Requires a $25,000 state-wide blanket bond.
Rule 706: Plugging Bond	- Provides for protection of the soil, proper plugging and abandonment of the well, and reclamation of the site. - Requires a $10,000 individual bond for a well less than 3,000 feet in total measured depth or $20,000 if equal to or more than 3,000 feet in total measured depth. - Alternatively, requires a $60,000 state-wide blanket bond for less than 100 wells or $100,000 for 100 wells or more.
Rule 707: Inactive Wells Bond	- Provides additional financial assurance for excess inactive wells. - Requires a $10,000 bond for each excess inactive well less than 3,000 feet in total measured depth or $20,000 if equal to or more than 3,000 feet in total measured depth. - Requirements can be modified or waived if the Commission approves a plan for returning wells to production in a timely manner or for plugging wells on an acceptable schedule.
Rule 711: Natural gas Gathering, Processing, or Underground Storage Facilities Bond	- Ensures compliance with rules pertaining to methods of E&P waste management, procedures for spill/release response and reporting, and sampling and analysis for remediation activities. - Was revised in 2018 to include produced water transfer systems. - Requires a $50,000 statewide blanket bond or $5,000 individual bond for small gas gathering systems or processing less than 5 MMSCFD or 700 barrels of water per day.
Rule 712: Bond for Facilities/Structures Associated with Class II UIC wells	- Ensures compliance with rules pertaining to methods of E&P waste management, procedures for spill/release response and reporting, and sampling and analysis for remediation activities. - Requires a $50,000 bond for each facility.

Rule 702 also allows the Director to petition the Commission for an increase in any individual or blanket financial assurance when there is reasonable cause to believe that the Commission may become burdened with the costs of fulfilling the statutory obligations. In addition, Rule 708 requires all operators to maintain general liability insurance of $1,000,000 per occurrence to cover property damage and bodily injury to third parties. Oil and gas operations on federal or tribal lands and on State Trust lands are generally covered by separate bonds.

As a supplement to these financial assurance mechanisms, the COGCC has an emergency response fund of $750,000 annually to address environmental needs. In 2018, the Colorado General Assembly also increased COGCC's spending authority for plugging and reclaiming abandoned wells ("PROW") from $445,000 to $5 million to address the state's backlog of orphaned wells and sites. The revenue that allows COGCC to utilize this spending authority is currently generated from the Mill Levy and, to a lesser extent, from fines and penalties.

COGCC uses any available financial assurance for a particular orphan well or site prior to using funds from the PROW appropriation. Financial assurance, if available, can offset some of the costs for plugging, remediating, and reclaiming orphaned sites. However, financial assurance is often insufficient to complete all necessary work. COGCC estimates that it costs an average of $82,500[4] to plug, reclaim and remediate a single-well orphaned location. In comparison, the average amount of financial assurance available from bond claims for orphan well work done from 2010 through September 2018 was $8,088 per site. This drops to $4,218 per site when taking into account sites with no financial assurance or that did not increase bonding to comply with the 2008 rulemaking.

D. Technical Working Group Discussion Topics

The Working Group met four times to discuss potential changes to COGCC's financial assurance rules and processes. An introductory presentation was provided for each discussion topic. This was followed by an open discussion about the challenges and advantages of that particular approach. The following is a summary of the Working Group's discussions.

I. Risk-Based Models

The Working Group discussed the possibility of developing a risk-based model to determine when operators would be required to increase financial assurance. Case studies of orphaned well projects for Benchmark Energy and Red Mesa Holdings were presented to illustrate specific indicators that could be used to assess the risk of a site becoming orphaned. While inactive well bonding increased over time, it was still insufficient to cover all plugging, waste removal, and equipment removal costs at these sites. In addition, the operator history in both case studies illustrated a pattern of transfers from larger, well-capitalized operators to those with fewer financial resources as production from the wells tapered off.

Current rules contain some consideration of risk through excess inactive well bonding and higher bonding amounts for deeper wells, however a more robust model could be established that takes into account the age of the well, type of well, production curve, testing history, remediation and reclamation liability (tanks, pits, etc.), spill history, and other potential liabilities. Additional bonding or other financial assurance could be required for a well or group of wells as risk increases or at the time of transfer to another operator.

[4] Operators in the Working Group generally agreed that $82,500 was a reasonable estimate for the cost of plugging, reclaiming, and remediating a one-well site, though some stated that their costs were substantially less than COGCC's and varied considerably based on geographic location. Removal of equipment, pits, long roads and other intensive reclamation, and remediation of historic spills are some key cost drivers in orphaned wells projects.

Challenges

- Large/complex risk model for individual wells would take considerable staff time to develop and keep up-to-date.
- Risk model does not work if COGCC does not have correct information from operators.
- Delaying an increase in financial assurance until later in the life of the well misses the opportunity to generate sufficient plugging funds when the well is most productive.

Advantages

- Catches declining wells before they are at risk of becoming orphaned.
- Simple, publicly-available risk model would also be helpful for operator due diligence.

II. Change of Operator / Form 10 Process

The change of operator or "Form 10" process was identified as a key point when wells/operators could be assessed and additional financial assurance could potentially be required. COGCC currently reviews Form 10s to determine that both the buyer and seller are in compliance with Rule 707, including reviewing the buyer for proper bonding to accommodate any inactive wells to be transferred by the seller. COGCC also reviews each line item listed on the Form 10 to ensure that all related liability, such as active pits, spills, and tank batteries, are addressed and/or transferred. Active Remediation projects need to be closed out by the current operator or transferred by the new operator with a supplemental Form 27. Enforcement matters that are open or unresolved may also halt the Form 10 approval process (e.g., Notice of Alleged Violation, Administrative Orders, warning letters).

The group discussed the possibility of additional review through the Form 10 process, noting that the time of transfer was a reasonable point to reassess the viability of a well, a group of wells, or other oil and gas facilities. Some group members also suggested the need for COGCC to obtain additional information about the financial health of the operators involved in the transaction, such as financial statements. The group also acknowledged that the Form 10 process would be an appropriate time to add additional bonding requirements or to implement a risk model.

Challenges

- COGCC does not currently have access to information about the financial health of operators and lacks the resources to assess the viability of operator business strategies.
- Operators often sign agreements to transfer assets before submitting a Form 10.

Advantages

- Could be combined with other strategies like increased bonding or a risk model to prevent larger operators from selling off plugging and abandonment liabilities.

III. Per-well and Blanket Bonding Amounts

Three Working Group participants offered to provide their companies' perspectives of the existing financial assurance system. A smaller operator with just over 100 wells expressed the concern that most private companies have trouble getting bonds without providing substantial collateral. For example, to meet the blanket bond requirement of $100,000 of financial assurance, the operator delivered a $30,000 bond that was procured in 1984 at a premium cost of $250 per year and a $70,000 cash CD. The smaller operator considers that $70,000 to be stranded capital.

A medium-sized operator with over $1 billion in market capitalization was able to obtain surety bonds at a premium of around 2% per year. That operator holds roughly $2 million in bonds to comply with various local, state, and federal requirements. Finally, a representative from a large operator with thousands of wells in Colorado stated that the operator paid $65,000 in premiums each year to obtain $44 million in bonding, a premium of less than 1%.

As of October 2018, COGCC records show $131.8 million in total bonds/financial assurance for 43,474 wells held by 333 operators. 90 operators posted bonds of at least $100,000 (the blanket bond amount for 100 wells or more), with the three most heavily-bonded operators posting total bonds of $44.1 million, $32.5 million, and $4.6 million, respectively. Financial assurance per well ranged from $107 for one larger operator with 935 wells to $100,000 each for two one-well operators. The average financial assurance per well was $3,031.

The Working Group generally agreed that bonding amounts should be reevaluated to ensure that future orphaned wells are addressed. While increases are likely justified if the current tiered system of financial assurance is retained, an analysis of October 2018 financial assurance data shows that doubling the blanket bond amount for 100 plus wells to $200,000 would impact only 14 operators and result in $1,285,000 in additional financial assurance. Even an increase in the 100-plus-well blanket bond to $500,000 would impact only 21 companies and result in $6.7 million in additional financial assurance. This is because total bonding amounts in the state are driven by inactive well bonding, not blanket bonding. Of the 42 operators with 100 plus wells, most have bonds much greater than $100,000.

The group also discussed operator challenges with bond release requests. Every well that has a status of plugged and abandoned, dry and abandoned, or abandoned location is required to pass a final reclamation inspection to have a bond or other financial assurance instrument released. COGCC estimates that there are approximately 1,986 wells encompassing $9.66 million in financial assurance with pending formal bond release requests. COGCC currently has limited staffing to process release requests, so the agency prioritizes requests with completed Form 4s and those with six or fewer wells requiring inspections.

The group had no specific recommendations regarding the per-well and blanket bonding increase that is warranted, preferring to leave that question to rulemaking because any other changes to the financial assurance system could reduce the need to increase bonding.

Challenges

- Surety bonds are inefficient for smaller operators as they require 100% collateral and strand capital that could be used for other business purposes.
- Increases to blanket bond amounts have little impact on the total amount of financial assurance held by the state.
- COGCC has limited staffing to process bond release requests.

Advantages

- Surety bonds are an efficient form of financial assurance for larger operators.
- Surety bonds are usually easy for COGCC to collect and thus provide certainty that the amount of the bond will be available if needed.

IV. Sinking Funds

A sinking fund is an alternative form of financial assurance that was suggested by a number of operators. The concept is that an operator would put regular payments into a fund from the proceeds of production, instead of obtaining a bond and stranding capital up-front. This mechanism could work with single wells or a sinking fund could apply to all of an operator's wells. The fund would stay with the well or group of wells in the event of a transfer to another operator. Sinking funds are currently allowed in statute, but it is the perception of some operators that the Commission would not allow this method of financial assurance.

Challenges

- Development of sinking fund formula could be challenging because too low of a contribution would leave little funds for plugging and too high of a contribution would strand capital for the life of the well.
- Oversight of sinking funds for numerous wells/operators would require significant additional COGCC staffing.

Advantages

- Would address the problem of transferring plugging liability because the sinking fund would be tied to a well.
- An aggressive sinking fund formula could front-load payments to provide significant resources for plugging and reclamation during a well's most productive years.

V. Bonding for Other Aspects of Production

During its third meeting, the Working Group reviewed the main cost drivers for orphaned well projects. Through these discussions, it became clear that high-cost sites usually exhibit similar attributes, such as age of the wells and equipment, challenging pits, steep slopes, long access roads, water issues, extensive tank batteries or flowlines, and a history of spills. As a result, the group considered whether increased scrutiny should be required for sites that exhibit these specific high-risk attributes.

Industry representatives expressed a concern that high reclamation costs for existing orphaned wells were the result of applying modern reclamation requirements to older wells. However, COGCC noted that the agency has a variance process to help address reclamation challenges, and the Commission must comply with its own reclamation rules when addressing orphaned wells and sites. Some participants also noted that more stringent regulatory standards in recent years will minimize plugging and reclamation costs for modern wells and that horizontal drilling concentrates surface impacts so reclamation costs should be smaller. However, it was pointed out that the liability associated with plugging, reclaiming, and remediating a modern multi-well pad is unknown because one has yet to be orphaned.

Challenges

- Establishing separate bonding for other aspects of a site would make the financial assurance system more complicated and could be difficult to administer.

Advantages

- Would increase funds available for sites with high reclamation and remediation costs.

VI. "Inactive Well" and other Definitions

The Working Group reviewed numerous overlapping definitions in regulation and statute related to the state's financial assurance system. There is no definition of "idle well" in Colorado, and many states have different definitions for the term. However, COGCC's 100 Series Rules define an "inactive well" as "any shut-in well from which: no production has been sold for a period of twelve (12) consecutive months; any well which has been temporarily abandoned for a period of six (6) consecutive months; or, any injection well which has not been utilized for a period of twelve (12) consecutive months. The 100 Series also distinguish between a "shut-in well," which could resume production quickly by opening valves and turning on equipment, and a "temporarily abandoned well," which lacks functioning surface equipment or is blocked with downhole plugs, requiring more extensive work to resume production.

Members of the Working Group pointed out that some operators maintain "active" status for wells by selling past production from leasehold tank inventory or by "swabbing" the well to extract and sell a small amount of fluid product each year. Produced water "production" can also currently keep a well "active." While COGCC's production group looks for data that could indicate the use of these techniques, many marginal wells do not receive additional scrutiny. The Working Group discussed the possibility of addressing these issues by revising the definition of "inactive well" to sync with the definition of "stripper well" in statute, and potentially adding new definitions or changing existing definition for a "low flow well," "suspended operations well," and "waiting on completion" well. These new classifications of wells would then be scrutinized during the Form 10 process and perhaps at other times.

Challenges

- Over 70% of wells in Colorado are classified as "stripper wells" in statute, so additional scrutiny of that category of well could require significant new COGCC staffing.
- Additional regulatory burdens placed on a large number of "low flow wells" could result in a significant short-term increase in the number of orphaned wells.

Advantages

- Would clarify regulatory definitions both for COGCC staff and operators.
- Prohibiting techniques such as selling from tank inventory and "swabbing" to maintain "active" status would remove some marginal wells from inactive well bonding and prevent operators from further delaying liability for plugging and abandonment costs.

VII. Pooled Bonding

The group also discussed the possibility of developing a mandatory, operator-supported fund to address future orphaned wells and sites. A representative from the Department of Labor and Employment attended the Working Group's third meeting to provide information about the Petroleum Storage Tank Fund (PSTF), which imposes a fee of up to $100 per load on fuel tanker trucks for the remediation of spills.[5] The fee is raised or lowered depending on the balance of the fund, with the fee diminishing to $0 per load if the balance of the fund exceeds $12 million and climbing to $100 per load if the fund balance is less than $3 million.

The fund reimburses an average of $36 million each year to clean up fuel contamination at gas stations and other facilities. Through this self-insurance process, operators are eligible to receive 100% reimbursement on all costs up to $2 million (after a $10,000 deductible) as long as they are in compliance with rules and regulations. Operators in partial compliance may be eligible to receive partial reimbursement. Over the past five years, the fund has had an average of 167 unique requests for reimbursement, with 13% of the applications on average for newly discovered contamination. Arkansas has a similar abandoned well plugging fund that is separate from its bonding framework, though per-well contributions to the fund are small.[6]

[5] Petroleum Storage Tank Fund overview, available at https://www.colorado.gov/pacific/ops/Fund.
[6] Interstate Oil and Gas Compact Commission, State Financial Assurance Requirements (2016), available at http://iogcc.ok.gov/Websites/iogcc/images/Financial_Assurances_FINAL_web.pdf.

Challenges

- The PSTF is focused on spills, not on challenges associated with facilities at the end of their useful life (i.e. tank removal is currently not reimbursable under the PSTF).
- In the oil and gas context, some operators may rely on the fund instead of maintaining their own funds to address plugging and abandonment.
- Establishing a sizable fund could require statutory authorization and would take time to build up to the desired minimum threshold.

Advantages

- Would provide a predictable source of funding for future orphaned well projects.
- A smaller fund could be created with existing Commission authority, such as the establishment of a $200 permit application fee or a Mill Levy increase.

VIII. Other Alternatives to Bonding

The group discussed a number of alternatives to address orphaned wells using existing resources instead of increased bonding. Some Working Group members suggested that additional funds could be allocated from the Environmental Response Account (a component of the Oil and Gas Conservation Environmental Response Fund) that have accumulated as a result of increased fines and penalties collected by COGCC. COGCC indicated that fines and penalties increased to $1 million in both FY2016-17 and 2017-18. These funds currently support a portion of the orphaned well program, but are insufficient to cover all of the $5M in spending authority granted by the General Assembly. Other alternatives discussed by the Working Group include using Severance Tax and Mill Levy revenue to address orphaned wells.

Challenges

- Other COGCC revenue streams such as fines and penalties, Mill Levy, and Severance Tax revenue are already utilized for orphaned wells or are dedicated to other important programs.
- Existing COGCC revenue streams are highly variable and dependent on market forces.
- Use of Severance Taxes is subject to annual legislative approval and would likely require a redirection of funding from other important programs, such as funds currently used for water projects, forest health, etc.

Advantages

- Would tap existing funding derived from a broad swath of the oil and gas industry.

IX. Other Considerations

The Working Group also briefly considered the following topics that are beyond the scope of this report. While not directly related to financial assurance requirements, further consideration of these tools by COGCC is warranted.

a. Insurance Requirements

One Working Group member, Brad Gibson, presented detailed recommendations for revising Rule 708, including increasing the general liability insurance requirement for operators from $1 million to $5 million per occurrence, requiring sudden and accidental pollution liability insurance, and requiring gradual pollution liability insurance for newly-drilled wells. While not directly related to the orphaned well issue, adequate insurance could help an operator stay in business should an incident occur.

b. Liability of Past Operators

Holding past operators liable for plugging, reclamation, and remediation of orphaned wells and locations was also discussed. BLM representatives provided details about efforts in Wyoming to secure funds from lease holders that had transferred operating rights to other companies.[7] However, COGCC is a regulatory agency and not in the same position as BLM as a mineral lessor. Imposing liability on past operators through a "quasi CERCLA program" that extends liability after the transfer of a well to a new operator would require a statutory change, and additional analysis would be necessary to assess the impacts of this type of measure on the oil and gas industry.[8]

c. Liens on Inventory and Equipment

The Group also discussed the possibility of strengthening the Commission's authority to claim and sell for salvage equipment or product stored at an orphaned site to provide reimbursement for plugging and reclamation costs. This measure would require legislation to provide COGCC with a first priority lean over equipment and product, as opposed to its existing authority to sell product and equipment subject to "any valid liens, security interests, or other legal interests in such equipment asserted by any taxing authority or by any creditor."[9] The Commission rarely uses its existing authority because the undefined process to identify superior interests creates liability concerns for the state. Legislation to provide COGCC with a first priority lien would result in a small amount of additional revenue to address orphaned wells, but would likely face strong opposition from financial institutions.

[7] *See Monahan v. U.S. Dept. of Interior*, No. 05-8068 (10th Cir. 2007), available at https://cases.justia.com/federal/appellate-courts/ca10/05-8068/05-8068-2011-03-14.pdf?ts=1411084726.

[8] *See* Jacqueline Ho, et al., *Plugging the Gaps in Inactive Well Policy*, Resources for the Future (May 2016), available at http://www.rff.org/files/document/file/RFF-Rpt-PluggingInactiveWells.pdf.

[9] C.R.S. §34-60-124(6)(c)

E. Appendix: List of Technical Working Group Participants

- Scott Anderson (Environmental Defense Fund)
- Tracee Bentley (Colorado Petroleum Council)
- Brian Cain (Extraction)
- Chad Calvert (Noble Energy)
- Ashley Campbell (Crestone Peak Resources)
- Andrew Casper (Colorado Oil and Gas Association)
- Morgan Cullen (Colorado Municipal League)
- Jonathan Fairbairn (BLM)
- Brad Gibson (Private Citizen, Broomfield Oil and Gas Task Force)
- Roger Hutson (HRM Resources)
- Warren King (The Wilderness Society)
- Sam Knaizer (BP)
- Dave Kulmann (SRC)
- Jason Maxey (Weld County)
- Kim Mendoza-Cooke (Anadarko)
- Neil Ray (CAMRO)
- Mick Richardson (CO Assoc. of Homebuilders)
- Jep Seman (Conoco)
- Catie Stitt (State Land Board)
- Jimmy Walker (Petron)
- Ken Wonstolen (HighPoint Resources)
- Kirby Wynn (Garfield County)