



HOUSE COMMITTEE ON
NATURAL RESOURCES
RANKING MEMBER BRUCE WESTERMAN

To: House Committee on Natural Resources Republican Members
From: Subcommittee on Energy and Mineral Resources; Ashley Nichols
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Date: March 28, 2022
Subject: Oversight Hearing: “*Benefits of the Legacy Pollution Clean-Up Programs in the Bipartisan Infrastructure Law.*”

On **Thursday, March 31, 2022, at 10:00 a.m. EDT, via Cisco WebEx**, the Subcommittee on Energy and Mineral Resources will hold a remote oversight hearing on titled, “*Benefits of the Legacy Pollution Clean-Up Programs in the Bipartisan Infrastructure Law.*”

Member offices are requested to notify Ashley Nichols no later than **Wednesday, March 30, at 4:30 p.m. EDT**, if their Member intends to participate in the committee room or remotely via his/her laptop from another location. Submissions for the hearing record must be submitted through the Committee’s electronic repository at HNRCDocs@mail.house.gov. Please contact David DeMarco (David.DeMarco@mail.house.gov) or Everett Winnick (Everett.Winnick@mail.house.gov) should any technical difficulties arise.

I. KEY MESSAGES

- Robust oil and gas development and mining are critical to maintaining the workforce, supply chains and funding streams necessary for orphan well and AML cleanup activities. DOI should immediately restart the coal, oil, and gas leasing programs to increase production on federal lands, address the ongoing energy crisis and provide the necessary inputs for orphan well and AML cleanup.
- There is bipartisan interest in remediating orphan wells and abandoned mine lands (AML) from historic coal mining to both help the environment and support the workforce. The states are in the best position to oversee these processes, and this bipartisan issue should not be used as an opportunity for “back door” regulations or imposing the Biden administration’s anti-energy policies.
- States with mining and oil and gas development should maintain primary authority over oil, gas, and mining activities on state and private lands, including addressing orphan wells and



AML cleanup, without unnecessary and duplicative burdens and requirements imposed by the Department of the Interior (DOI).

II. WITNESSES

Panel I

- Steven H. Feldgus, Ph.D., Deputy Assistant Secretary, U.S. Department of the Interior

Panel II

- John R. Baza, P.E., Director, Division of Oil, Gas and Mining, Utah Department of Natural Resources [*Republican Witness*]
- Adam Peltz, Senior Attorney, Environmental Defense Fund
- Uduak-Joe Ntuk, Supervisor, California Geologic Energy Management Division
- Rebecca Shelton, Director of Policy and Organizing, Appalachian Citizens' Law Center

III. BACKGROUND

Orphan Well Programs

The United States has thousands of abandoned oil and gas wells with unknown or insolvent operators.¹ Oil and gas operations began in the United States in the 1800s, and many of the sites in question were abandoned before modern regulation became widespread a century later.² These are referred to as “orphan” wells. Thirty-two states have longstanding orphan well programs and have plugged 78,000 wells to date.³ A 2021 report from the Interstate Oil & Gas Compact Commission (IOGCC) found that states have documented 92,198 orphan wells.⁴ This is a 50 percent increase from 2018, which is attributed to concerted state documentation efforts in recent years.⁵

“Idle” wells are wells that have not yet been plugged and are not producing or injecting, but that may have potential for future oil or gas production. As of December 31, 2020, the states have reported 231,287 approved idled wells, which is 14 percent of the total number of documented wells that have been drilled but not plugged.⁶

Orphan Well Funding Authorized in the Infrastructure Investment and Jobs Act (IIJA): The IIJA (P.L. 117-58) authorized \$4.677 billion for the plugging, remediation, and reclamation of orphaned wells on federal, state, private and tribal land.⁷ Federal agencies and stakeholders signed a Memorandum of Understanding in January of 2022 outlining goals and responsibilities for implementing the program.⁸

¹ Interstate Oil & Gas Compact Commission. *Idle and Orphan Oil and Gas Wells: State and Regulatory Strategies*, (2021) at p.10.

² *Id.*

³ *Id.* at p.7.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Public Law 117-58.

⁸ Department of the Interior, Memorandum of Understanding on Orphaned Wells, (Jan. 13, 2022), <https://www.doi.gov/sites/doi.gov/files/orphan-well-mou-01-13-2022.pdf>.

The orphan well provisions enacted into law in IJA are similar to the bipartisan S. 1076, *the REGROW Act*, sponsored by Senator Ben Ray Lujan (D-NM) and Senator Kevin Kramer (R-ND).⁹ Importantly, the enacted language does *not* include certain provisions included in H.R. 2415, *the Orphaned Well Cleanup and Jobs Act*, sponsored by Rep. Teresa Leger Fernandez (D-NM). H.R. 2415 would have conditioned state grant funding on adopting specific onerous regulations, including the Obama-era methane rule, and was strongly opposed by Committee Republicans at the markup of H.R. 2415.¹⁰

Federal Program: The IJA authorized \$250 million for remediation of orphan wells on federal land,¹¹ to be administered by the Bureau of Land Management (BLM), in coordination with the U.S. Forest Service, Department of Energy and other agencies.¹² The federal agencies involved in orphan well cleanup have formed a working group to determine priority sites to be addressed this year. While BLM employees will help determine which sites will be addressed, much of the cleanup work will be contracted to outside entities.

Funding for the federal program will be used to plug orphaned wells, inventory orphaned and idled wells, remediate land, restore soil and habitat, provide information to the public, and measure and track methane and water contamination on federal lands. Administrative costs are capped at 3 percent.¹³

State Program: The IJA authorized up to \$4.275 billion for state orphan well programs, with a 10 percent cap on administrative costs.¹⁴ Under the IJA, DOI may provide funding to states to clean up and inventory orphaned wells through 3 types of grants:

- Initial grants – The IJA authorizes up to \$25 million for states within the IOGCC that have an active orphan well program and up to \$5 million for states that are not a part of the IOGCC.
- Formula grants – The IJA directs DOI to disburse grants to states based on a formula that includes: 1) job losses in the oil and gas sector during the COVID-19 pandemic, 2) the number of documented orphan wells, and 3) the projected cost to cleanup orphan wells within the state. This data was provided to DOI by states in the Notices of Intent (NOIs) they submitted for formula grants.
- Performance grants – The IJA authorizes DOI to disburse two types of performance grants:
 - **Regulatory improvement grants** - up to \$20 million per grant if the state has: 1) strengthened its plugging and abandonment rules or 2) improved state programs intended to prevent future orphan wells, including bonding reform regulations.

⁹ Senator Ben Ray Lujan, S. 1076, *REGROW Act* (117th Congress).

¹⁰ Rep. Teresa Leger Fernandez, H.R. 2415, *The Orphaned Well Cleanup and Jobs Act*, (117th Congress).

¹¹ Public Law 117–58.

¹² Department of the Interior, *Biden Administration Announces \$1.15 Billion for States to Create Jobs Cleaning Up Orphaned Oil and Gas Wells*, (Jan. 31, 2022), <https://www.doi.gov/pressreleases/biden-administration-announces-115-billion-states-create-jobs-cleaning-orphaned-oil>.

¹³ Bureau of Land Management, *Federal Orphan Well Program*, <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/federal-orphaned-well-program>.

¹⁴ Public Law 117–58.

- **Matching grants** – states may be eligible for a matching grant (up to \$30 million total) six months after receiving an “initial grant” under this bill which is equal to the difference between the amount the state has spent to clean up orphan wells between 2010 and 2019 and the amount the state intends to spend over the next fiscal year.

On January 31, 2022, DOI announced that 26 states are eligible to apply for “phase one” funding. Phase one funding includes 1) up to \$25 million per state in initial grant funding, and 2) a quarter of the total formula grant money available for the 26 states that submitted NOIs for formula grants.¹⁵ DOI determined eligibility based on data provided by the states in their NOIs, as required by the IJA (described above). DOI issued guidance for states to apply for formula grants in December of 2021¹⁶ and issued guidance to apply for initial grants on March 17, 2022.¹⁷ DOI has not yet issued guidance on the \$1.5 billion authorized in the IJA in performance grants for the states.

Tribal Program: The IJA authorized \$150 million for the Bureau of Indian Affairs to clean up orphaned wells on tribal lands, administered by Interior’s Office of Environmental Policy and Compliance (OEPC).¹⁸

Abandoned Mine Land (AML) Program

AML Program Overview and Reauthorization: Thousands of inactive coal mines, abandoned before the era of modern regulation, exist across the country.¹⁹ Many of these sites pose health and safety risks or environmental hazards, burdening landowners and inhibiting opportunities for development.

The Surface Mining Control and Reclamation Act (SMCRA) of 1977 (30 U.S.C. 1201 et seq.) established the AML Program for the reclamation of abandoned coal mines, as well as a regulatory program for active surface mines.²⁰ This law authorized a fee, paid by industry, on every ton of coal produced to fund the cleanup of historic AML sites. Funds collected are reallocated to states and tribes based on a complex distribution formula, enabling them to operate their respective programs and reclaim abandoned mines.²¹ This fee expired on September 30, 2021, and was reauthorized by the IJA from November 15, 2022, through September 30, 2034, with a 20 percent rate reduction.²²

¹⁵ U.S. Department of the Interior, *Biden Administration Announces \$1.15 Billion for States to Create Jobs Cleaning Up Orphaned Oil and Gas Wells*, (Jan. 31, 2022), <https://www.doi.gov/pressreleases/biden-administration-announces-115-billion-states-create-jobs-cleaning-orphaned-oil>.

¹⁶ U.S. Department of the Interior. *Interior Department Releases Implementation Guidance to States on Infrastructure Law Efforts to Address Legacy Pollution*, (Dec. 17, 2021), <https://www.doi.gov/pressreleases/interior-department-releases-implementation-guidance-states-infrastructure-law-efforts>.

¹⁷ U.S. Department of the Interior, *Biden-Harris Administration Releases Draft Guidance, Invites Public Comment on New Orphaned Well Program*, (March 17, 2022), <https://www.doi.gov/pressreleases/biden-harris-administration-releases-draft-guidance-invites-public-comment-new>.

¹⁸ U.S. Department of the Interior. *Bureau of Land Management. Federal Orphan Well Program*, <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/federal-orphaned-well-program>.

¹⁹ Office of Surface Mining Reclamation and Enforcement, *Reclaiming Abandoned Mine Lands*, <https://www.osmre.gov/programs/reclaiming-abandoned-mine-lands>.

²⁰ Office of Surface Mining Reclamation and Enforcement, *Chronology of Major SMCRA related events*, <https://www.osmre.gov/laws-and-regulations/chronology-of-major-smrc-related-events>.

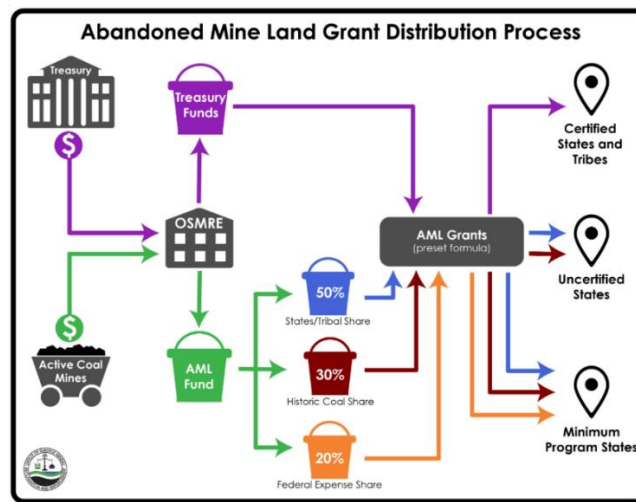
²¹ Office of Surface Mining Reclamation and Enforcement, *Reclaiming Abandoned Mine Lands*, <https://www.osmre.gov/programs/reclaiming-abandoned-mine-lands>.

²² Office of Surface Mining Reclamation and Enforcement, *Bipartisan Infrastructure Law*, <https://www.osmre.gov/bil>.

Presently, 24 states, known as Primacy States, regulate surface mining operations within the state, manage their own AML programs, and receive disbursements from the AML Fund.²³ Eleven states and 14 Indian tribes are classified as non-Primacy states, meaning the Office of Surface Mining Reclamation and Enforcement (OSMRE) regulates coal mining activities within the state.²⁴ Primacy States are classified as either “certified” states, which have certified that they have reclaimed all abandoned coal mines within their borders, or “uncertified” states, which have remaining sites to reclaim.²⁵

However, it is important to note that not all existing AML sites are catalogued. Low priority or previously unknown sites may become priorities as new residential and commercial areas are developed nearby, or as the mines’ conditions continue to deteriorate.²⁶ For this reason, certified states often utilize their AML funds to clean up newly identified abandoned coal mines.²⁷

Many abandoned mine projects include the unique complication of acid mine drainage (AMD), requiring ongoing mitigation. As a result, many state AML programs conduct water treatment projects at AML sites, which must be continually maintained to prevent future contamination. States are authorized to place up to 30 percent of their annual grant into “set aside accounts” for AMD treatment.²⁸



Source: Office of Surface Mining Reclamation and Enforcement. [osmre.gov](https://www.osmre.gov)

AML Funding Authorized in the IJA: The IJA authorized \$11.293 billion in new funding for AML cleanup in addition to the annual AML grants to states and tribes described above.²⁹ The law directs OSMRE to distribute the funding as follows:³⁰

- Eligible States and Tribes may apply for funds annually over a 15-year period.

²³ Office of Surface Mining Reclamation and Enforcement, *Fiscal Year 2022 Grant Distribution*,

<https://www.osmre.gov/sites/default/files/inline-files/FY2022%20AML%20Grant%20Distribution.pdf>.

²⁴ Office of Surface Mining Reclamation and Enforcement, *Regulating Active Coal Mines*, <https://www.osmre.gov/programs/regulating-active-coal-mines>.

²⁵ *Id.*

²⁶ Office of Surface Mining Reclamation and Enforcement, *E-AMLIS*, <https://www.osmre.gov/programs/e-amlis>.

²⁷ *Id.*

²⁸ Public Law 95–87.

²⁹ Office of Surface Mining Reclamation and Enforcement, *Bipartisan Infrastructure Law*. <https://www.osmre.gov/bil>.

³⁰ *Id.*

- OSMRE can use up to 3 percent for agency operations.
- The Office of Inspector General may use 0.5 percent for oversight of the newly authorized funding.
- DOI may use up to \$25 million to provide financial and technical assistance to states to update the Abandoned Mine Land Inventory System (e-AMLIS).

On February 7, 2022, DOI announced that 22 states and the Navajo Nation are eligible for \$725 million in Fiscal Year 2022 funding under this new authorization.³¹ Eligibility is based on the number of tons of coal historically produced in each state or on tribal lands before August 3, 1977, when SMCRA was enacted.³² Under the IJJA, states are eligible for at least \$20 million over 15 years if the state's AML inventory would cost \$20 million or more to clean up.³³

Issues and Concerns regarding the New Orphan Well Program and AML Funding

The IOGCC noted in a letter to Subcommittee on Energy and Mineral Resources Chair Lowenthal and Ranking Member Stauber that, “while funding for state programs flows through DOI, IJJA does not establish a delegated federal program.”³⁴ Instead, states have primary authority for implementing orphan well cleanup activities on state and private land.³⁵

This program is not intended to be a “back door” means of implementing extreme federal regulatory proposals at the state level. DOI should adhere to the IJJA when implementing grant requirements and procedures and work closely with states on implementation, best practices and guidance documents for grant applications. DOI should allow the states to manage their longstanding orphan well programs according to state law and avoid issuing requirements other than those specified in IJJA, including application of President Biden’s Justice 40 screening tool.³⁶ Any best practices developed by DOI or methodologies recommended by DOI should be considered optional for states and should not be requirements for future grant applications, as these practices are not prescribed in law. Further, DOI should defer to states on the benefits of state financial assurance and environmental regulations and award regulatory improvement grants accordingly.

Additionally, DOI has not issued any guidance to states regarding the application process for the new AML funding authorized in IJJA. This guidance is long overdue and should adhere to the requirements in IJJA. Under SMCRA, states with coal programs are given primacy to regulate mining activities and are delegated responsibility for implementation of state AML programs. DOI should consult with the states on implementation of the newly authorized AML funds and integrate their advice into the forthcoming application guidance.

³¹ U.S. Department of the Interior, *Biden Administration Announces Nearly \$725 Million to Create Good-Paying Union Jobs, Catalyze Economic Revitalization in Coal Communities*, (Feb. 7, 2022), <https://www.doi.gov/pressreleases/biden-administration-announces-nearly-725-million-create-good-paying-union-jobs>.

³² *Id.*

³³ *Id.*

³⁴ Letter from the Interstate Oil and Gas Compact Commission to Chair Lowenthal and Ranking Member Stauber (March 23, 2022).

³⁵ *Id.*

³⁶ U.S. Department of the Interior, *Biden-Harris Administration Releases Draft Guidance, Invites Public Comment on New Orphaned Well Program*, (March 17, 2022) <https://www.doi.gov/pressreleases/biden-harris-administration-releases-draft-guidance-invites-public-comment-new>.

Finally, DOI has not held any coal and oil and gas lease sales on federal lands under President Biden. DOI must immediately restart the leasing programs to ensure long term certainty for operations on federal lands, increase production to address the energy crisis and support the workforce development, supply chains and funding streams for cleaning up orphan wells and AML.