Financial Assurance Follow-Up Questions

A presentation of questions and answers of interest to the Board of County Commissioners related to financial assurance policy decisions

Question: What is the history of Red Mesa Holdings?

- ANSWER: In summary, the COGCC after inspection, found that Red Mesa Holdings (RMH) had 17 wells that were in disrepair. Warning notices were sent with a list of corrective actions to which RMH failed to comply and later filed for a waiver which COGCC denied. The COGCC then ordered RMH to pay $250,000 to clean up the 17 wells. RMH filed for bankruptcy shortly after. The State ultimately foreclosed on RMH's financial assurance demand and all 75 RMH wells were added to the orphaned well program.
- There are currently 53 RMH wells in the orphaned well program; 35 wells are "in progress" and the other 18 are "planned"; all of the wells are in the medium or high priority rank. A facility search revealed that RMH has 75 wells, 37 of which have already been P&A. – See *2022 Comprehensive Orphan Wells and Orphaned Site List* (7/1/2022), available at: https://sites.google.com/state.co.us/cogcc-owp/reports. *See also* COGIS Database (facility search), available at: https://cogcc.state.co.us/data.html#/cogis.

Question: What is taking so long to P&A Red Mesa Holding wells?

- ANSWER: In progress, but a major issue is the lack of resources (well service providers).
- COGCC Orphaned Well Program Staff: a majority of RMH's wells on the Orphaned Well list are scheduled to be started by summer 2023 (pgs. 14-17) and they have recently sent a team to the area to work on several.
- Sources at the COGCC: Costly for well-service providers to operate a business in Colorado due to several factors (equipment costs, safety certification, liability insurance, bonding). SW Colorado must compete with the Front Range, Utah, and New Mexico.
  - Keep Jobs In Colorado Act – 80% of CO labor shall be employed to perform any public work that is financed in whole or in part by the state, counties, school districts, or municipalities in the state of CO. There is a waiver for the 80% requirement if there is reasonable evidence to demonstrate insufficient CO labor to perform the work to comply with the law.

Question: If a well remains unplugged, what is the impact on the surface?

- An unplugged well delays final surface reclamation.
- Delayed P&A and reclamation may impact a surface owner who wishes to put the property to a different use.
- Delayed P&A may impact adjoining property owners due to setback limitations. Under the draft, once a well is properly P&A, the setback is reduced to 150’.
- Unplugged wells may pose a greater risk of pollution than a properly P&A well but the risk is minimal because operators and COGCC prioritize the stabilization of all wells, particularly those that might pose an immediate risk.
- Until a well is P&A, a surface owner’s property may be subject to the intrusion of inspections by the county or COGCC.

Question: How does the State's P&A program work?

- ANSWER: The State's Orphaned Well Program identifies, prioritizes, and addresses oil and gas wells, locations, and production facilities statewide for which there are no known responsible parties or for which financial assurance instruments have been claimed. – COGCC, *Orphaned Well Program FAQ* (2022), https://cogcc.state.co.us/documents/OWE/2022%20OWP%20FAQ.pdf.
- More specific questions & information related to the program include:
  A. How does LPC get State funds for P&A?
  B. How do wells make the State's list and how are they prioritized?
  C. What will happen to the LPC wells on the list as more are added?
  D. How does the enterprise grant program work? Is it competitive?

The audio recording of Jeff Robbin's answers to these questions and discussions with the Board (11/4/2022 meeting) may be found on the County's website: http://laplatacountyco.iqm2.com/Citizens/Default.aspx.

Question: Provide a copy of the State's orphaned well list and verification of number of orphaned wells in LPC.

- The State's comprehensive orphan wells and orphaned sites list was last updated on July 1, 2022 and is available here: https://sites.google.com/state.co.us/cogcc-owp/reports.

Question: How much is the premium on a bond?

- ANSWER: Surety companies charge a range of premiums based on risk factors unique to each operator's field operations and financial health. The range for premium bonds is anywhere from 2% of the face value of the bond at the low end, and 10% of the face value at the high end. - DEPT. OF NATURAL RESOURCES, COGCC, COST-BENEFIT ANALYSIS AND REGULATORY ANALYSIS 34 (2021).
- During the CoGCC Financial Assurances Rulemaking, the Colorado Oil and Gas Association (COGA) presented an expert witness, Trevor Gilstrap with AssuredPartners, who acts as an insurance liaison for the oil and gas industry. Mr. Gilstrap stated that, 2.5%-3.5% + is very standard for a bond premium. Typically, the lower the collateral the higher the premium and within the 50-100% collateral range the normal bond rate is 2.5%-3.5%. *CoGCC Financial Assurance Rulemaking Hearing – January 26, 2022* at 5:18 [Video] YouTube. https://www.youtube.com/watch?v=y5c9XCWMIsY

Question: Is it possible for the County to be named as a co-obligee on a bond?

- ANSWER: Yes. The designation of a dual obligee or co-obligee is a common business practice. The addition of the County on a bond provided to the State should not change the extent of the surety's liability. – NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS, *ANSWERS TO 32 QUESTIONS PUBLIC AND PRIVATE OWNERS ASK ABOUT CONTRACT BONDING*. (WWW.SURETYLEARN.ORG)
- Historically, in other scenarios, the County has been named as a co-obligee on other bonds. Generally, this has arisen in the context where both the County and a metro district are both obligees on a bond securing the completion of subdivision improvements. Whether an operator wishes to secure a bond naming both the County and the State as an obligee or prefers to secure a separate bond is a business decision for the operator but a co-obligee bond is an instrument available on the market.

Draft Ch. 90 Financial Assurance Requirements:

- Construction and completion phase impacts: $5,000.
- Interim reclamation: 115% of estimated costs of performing interim reclamation.
- Final reclamation: 115% of estimated costs of performing final reclamation.
- Compliance financial assurance: $175,000 for each operator operating within the county regardless of the number of wells or size of the company.

Scope of Draft Financial Assurance Provisions – Sec. 90-14:

Not at Issue:

- Construction and completion phase FA of $5k (protects roads and other infrastructure).
- Interim and final reclamation FA of 115% of the estimated cost for completing the reclamation (protects the surface).

At Issue: Policy direction needed:

- Should the financial assurance provided to LPC also cover plugging and abandoning a well?
- Should LPC have financial assurance to ensure compliance with our Code and if so, in what amounts and “per well/facility” or “per operator”?

Should the financial assurance provided to LPC also cover plugging and abandoning a well?

- Option 1:

	PROS	CONS
COUNTY FOCUSES SOLELY ON LAND USE AND SURFACE IMPACTS	• County authority is express and generally accepted by other parties. • County unlikely to receive opposition from COGCC or other regulatory agencies. • County has history and expertise regulating land use and surface impacts. • Allows the State to implement its program without competition from the County for scarce resources	• Orphaned wells that are not timely plugged and abandoned may pose a risk to public health, safety, and welfare. • The County must rely on others (primarily COGCC) to accomplish the incomplete P&A. • COGCC has a backlog.

Should the financial assurance provided to LPC also cover plugging and abandoning a well?

- Option 2:

	Pros	Cons
County requires some level of FA for P&A	• County might be less reliant on other agencies like COGCC. • County could have its own financial resources to complete P&A. • County may be able to complete P&A more quickly than waiting on COGCC.	• County does not have experience or expertise with down-hole issues. • Taking on P&A responsibilities may expose the County to additional costs if the County's financial assurances are inadequate to cover costs. • Unknown whether (unlikely that) Enterprise or federal funds would be available to the County • Companies and equipment able to complete P&A are a limited resource.

Should LPC have financial assurance to ensure compliance with our Code and if so, in what amounts and “per well/facility” or “per operator”?

- Option 1:

	Pros	Cons
General Compliance on a per operator basis	• Easy and predictable to operators. Need not fluctuate or otherwise be adjusted simply based on changes in well count (or other increases or decreases to numbers of facilities). • Easy to administer for County. • More clearly includes operator/portfolio level compliance such as annual reporting, insurance, etc.	• Does not differentiate the level of risk from or burden on different sized operators who operate a different number of wells or other facilities.

Should LPC have financial assurance to ensure compliance with our Code and if so, in what amounts and "per well/facility" or "per operator"?

- Option 2:

	Pros	Cons
General Compliance on a per well or facility basis	• Allows County to differentiate between different sized operators who operate a different number of wells or other facilities.	• More difficult to administer. May require adjustments for each new, closed, purchased, or sold well/ O&G location. • The number of wells may not have a direct relationship to general compliance issues