

**U.S. Department of the Interior, Orphaned Wells Program Office
State Grant Frequently Asked Questions and Answers - Updated September 2024¹**

Q1: What happens after a state submits an orphaned well grant application to the Department of the Interior (DOI)?

- The Orphaned Wells Program Office (OWPO) and the Interior Business Center (IBC) partner to review, process, and approve state orphaned well grants. The OWPO administers the grant’s programmatic and technical elements, and IBC awards and administers the grant.

Applications are reviewed for completeness, accuracy, and conformance with the statutory requirements, Uniform Guidance, and DOI policies and procedures. During the review process, OWPO and IBC staff often need to hold meetings with the state program and financial staff that prepared the state application. This process is deliberative and confidential. Once the grant package is deemed complete by IBC, the 60-day clock required by Section 40601(c)(4)(C) begins. Each completed application package goes through quality control and an internal review process before OWPO and IBC deem the grant ready for award.

Q2: What legal basis does the Department of the Interior have for requiring recipients of formula and matching grants to detect and, if identified, quantify the methane emissions at orphaned wells before plugging and verify the lack of gaseous emissions after plugging?

- The terms and conditions applicable to the orphaned well grants, in concert with the statute (the Infrastructure Investment and Jobs Act also known as the Bipartisan Infrastructure Law or “BIL”) and applicable federal regulations (2 CFR part 200), provide the underlying and enforceable legal basis for the Orphaned Wells Program Office to ensure the orphaned wells program is administered consistently with the statutory language and Congressional intent. Specifically, 2 C.F.R. § 200.202 provides that the Department “. . . must design a program... with clear goals and objectives that facilitate the delivery of meaningful results consistent with the Federal authorizing legislation of the program.”

As noted above, the Department is required to design various OW grant programs for the states and Tribes, in accordance with the statutory purposes and other requirements set forth in the BIL. As part of the program design, OWPO requires methane detection and quantification when BIL funds are used in connection with orphaned well plugging. OWPO, as set forth in the Phase 1 Formula Grant Guidance, stated the requirement that any well-plugged with BIL Formula Grant funding is subject to both pre- and post-plugging methane detection and quantification. Each performance report, required by the terms of the grant, requires that the state include pre- and post-plugging methane data. Failure to submit the data will render the state out of compliance with the reporting terms of the award.

¹ This document supplements the relevant guidance that has been issued. This FAQ does not amend the terms of any grant that has been awarded.

The requirement that states detect, and, if identified, quantify methane emissions at wells before plugging and verify the lack of gaseous emissions after plugging is necessary to meet the monitoring requirement found in the applicable regulation and the reporting requirements in the BIL. This data is essential for, among other things, reporting to Congress. The BIL provides that “. . . the Secretary shall submit to the Committees on Appropriations and Energy and Natural Resources of the Senate and the Committees on Appropriations and Natural Resources of the House of Representatives a report describing the program established and grants awarded under this section, including-- . . . (2) an estimate of the quantities of—(A) methane and other gasses emitted from orphaned wells; and (B) emissions reduced as a result of plugging, remediating, and reclaiming orphaned wells.” 40601(f)(2).

The mandatory methane detection and quantification before plugging and requirement to verify the lack of gaseous emissions after well plugging provide data to show that the grant recipient is performing consistently with the goals and objectives of the overall program, which is to reduce methane in the environment. That this is Congress’ intent in designing this program is indicated by substantive provisions within the legislation, including required reporting to Congress, relating to the measuring and tracking of methane emissions relating to orphaned wells, as well as other indicia such as the name of Title VI of the BIL, “Methane Reduction Infrastructure,” given that this Title contains no other sections besides the one establishing the orphaned well program. Without methane measurement data, the OWPO cannot know whether recipients of the orphaned well grants are meeting the goals of the orphaned well state grant program.

Q3: Section 40601 of the Bipartisan Infrastructure Law permits the Interior Department’s annual Report to Congress to include “an estimate of the quantities” of methane emitted and reduced from orphaned wells. Why doesn’t the OWPO allow state grant recipients to estimate emissions from wells plugged with BIL funds?

- Presently, there is no proven methodology or approach to estimating emissions from orphaned wells. According to a recent publication from the U.S. Geological Survey (USGS), “There remains much uncertainty about orphaned and abandoned well emissions, their sources, and the variability of emissions through time.” The Department and other federal agencies are actively conducting scientific research to support the development of accurate models for the purposes of estimating methane emissions and prioritizing orphaned wells for plugging activity. Until estimation modeling techniques are more advanced and proven, however, the Department requires direct methane emission measurement at the well so Congress and the public may be well-informed of the quantities of methane reduced due to Section 40601 funding and trust the data reported by the Department.

Q4: What legal basis does the Department of the Interior have for prohibiting states from using orphaned wells plugged with BIL funds to generate carbon credits?

- It is OWPO’s position that the transfer of any well, and in particular a high-emitting well, to allow private industry to generate carbon credits is inconsistent with the BIL’s primary

purpose – methane reduction. Pursuant to OWPO’s authority to design a program consistent with Congressional objectives, the terms and conditions of awarded and pending Formula Grants state that “[t]he Recipient may not directly or indirectly use the reduced emissions from wells plugged with Federal financial assistance funds, in whole or in part, to monetize, generate, or collect carbon credits or otherwise use the plugging of wells funded with this grant to generate income of any type by offsetting another party’s greenhouse gas emissions. DOI considers the required methane screening and quantification efforts that must occur before and after well plugging necessary for measuring the impact on methane emissions, not for carbon credit generation.”

Q5: Does Section 106 of the National Historic Preservation Act (NHPA) apply to state formula and matching grants?

- Yes. The terms and conditions of each grant award will identify what is required of states to meet these obligations.

Q6: Are there tools and resources available to assist states in understanding the NHPA consultation process and identifying historic properties near project areas?

- Yes. See the below table for NHPA tools and resources.

Q7: Does Section 7 of the Endangered Species Act (ESA) apply to state formula and matching grants?

- Yes. The terms and conditions of each grant award will identify what is required of states to meet these obligations.

Q8: Are there tools and resources available to assist states in understanding the ESA consultation process and identifying federally listed species and critical habitats near project areas?

- Yes. See the below table for ESA tools and resources.

Q9: Can states use formula or matching grant funds for ESA or NHPA compliance activities? And if so, would compliance costs incurred by a state related to the ESA and NHPA requirements be classified as “program costs” or “administrative costs”?

- Yes, in general, formula and matching grant funds may be used to pay for activities conducted by states necessary to meet the ESA Section 7 and NHPA Section 106 requirements included in the terms and conditions of each award.

In terms of whether these would be program or administrative costs, the BIL does not provide guidance on these expenses. As ESA and NHPA costs may fall into either category, States need to determine how to allocate time and funds appropriately for these activities.

Programmatic costs are essential to a project or activity and directly contribute to the execution of a specific project, service, or activity undertaken by a Grantee to achieve the desired outcomes of the funding program. Environmental compliance is a required step in the process of plugging an orphaned well and must be completed before any groundbreaking activities. As these authorization activities are directly related to the project, they are considered program expenses. Examples of such costs include environmental assessment, site characterization, cleanup verification sampling, post-cleanup confirmation sampling, and consultations with the State Historic Preservation Officer and other relevant parties. Staff members responsible for submitting reports to the Orphaned Wells Program Office are also allowed to utilize programmatic funds for these purposes.

On the other hand, administrative costs refer to expenses incurred by grant recipients in support of the day-to-day operations of their programs. These overhead costs are not directly tied to a specific program purpose. In the case of environmental compliance, administrative activities may include general data reporting and the review of environmental compliance during performance audits. Staff members who engage in both project-specific and general administrative duties must maintain detailed time records to ensure accountability and transparency.

If States encounter uncertainties regarding the categorization of costs, they should reach out to their grants officer for additional guidance.

Q10: Are there other environmental compliance responsibilities for recipients of formula and matching grants?

- Yes. Formula and matching grant recipients must comply with all applicable federal statutes, regulations, and executive orders and with all applicable Tribal, state, and local statutes and regulations to ensure that potential impacts to the environment are considered before undertaking any action funded with financial assistance under a formula or matching grant. The terms and conditions of each grant award will provide more information.

Q11: To calculate a Matching Grant application's Certified Amount, is a State limited to including only the funds that it will actually outlay in the fiscal year on which the State is basing its application?

- No. A State may include both actual outlays (not previously accounted for as prior year obligations) and obligations that occurred during the same fiscal year for purposes of the Certified Amount. For these purposes, an "obligation" exists when the State has entered into a definite commitment that creates a legal liability of the State for the payment of goods and/or services ordered or received.

The BIL uses the language "expend" for the determination of the Certified Amount. The usual meaning of "expend" means outlay, *i.e.* an actual transfer of funds. However, the Department has determined that a more expansive view of the term "expend" includes

both actual outlays *and obligations made in the same fiscal year* is what is meant by the term “expend” for the Matching Grant Certified Amount.

Therefore, for purposes of an application’s Certified Amount, the term *expend* includes both: 1) outlays in the relevant fiscal year (provided they were not previously counted as an obligation in a previous fiscal year’s Certified Amount); and 2) funds obligated in the relevant fiscal year. As such, it is important that a State carefully track and account for the expenditures included in any given Matching Grant application’s Certified Amount, so that it is clear to which State fiscal year the funds relate to and that no expenditures are included in more than one Certified Amount.

Q12: Does a State have to obligate and spend all awarded Matching Grant funds in the same State fiscal year included in the associated application’s Certified Amount?

- No. The direction that funds “expend[ed]” during the applicable fiscal year are included in the Certified Amount is only used to calculate the *amount* of the grant by establishing the amount that the available funds to be matched. It does not impact the *timing* of the grant’s expenditure. The amount of the grant will be one of the many terms in the final award, which will include a period-of-performance that will ultimately control the time period for obligation and expenditure of the grant. That period-of-performance typically will extend past the fiscal year that is the subject of the Certified Amount.

For example, assume the following: 1) a State applies for a Matching Grant for State fiscal year 2026; 2) the average annual amount that the State spent on its orphaned well program between 2010 and 2019 was \$2 million; and 3) the State certifies in its application that it will *expend* \$5.5 million in State fiscal year 2026 (Certified Amount). In this situation, the State would be eligible to apply for \$3.5 million in federal Matching Grant funds, which the State can expend during the grant’s period of performance as specified by the terms of the award. The period of performance is not necessarily limited to State fiscal year 2026, but may include future years, *e.g.*, fiscal years 2027 and 2028.

NHPA Tools and Resources	
The following tools and resources are available to assist states in understanding the consultation process and identifying historic properties near orphaned well project areas.	
NHPA	https://www.achp.gov/sites/default/files/2018-06/nhpa.pdf
U.S. Code of Federal Regulations	
CFR NHPA	https://www.ecfr.gov/current/title-36/chapter-VIII/part-800
ACHP	
An Introduction to §106	https://www.achp.gov/protecting-historic-properties/section-106-process/introduction-section-106
§106 Review Process Flowchart	https://www.achp.gov/digital-library-section-106-landing/section-106-review-process-flowchart
§106 Applicant Toolkit	https://www.achp.gov/digital-library-section-106-landing/section-106-applicant-toolkit
Q&A NHPA §106	https://www.achp.gov/digital-library-section-106-landing/section-106-regulations-section-section-questions-and-answers
Citizen’s Guide to §106 Review	https://www.achp.gov/sites/default/files/documents/2021-01/CitizenGuide2021_011321.pdf
Reasonable & Good Faith Identification Standard §106	https://www.achp.gov/sites/default/files/guidance/2018-05/reasonable_good_faith_identification.pdf
NPS	
Historic Preservation: NHPA	https://www.nps.gov/subjects/historicpreservation/national-historic-preservation-act.htm
National Register of Historic Places (NRHP)	https://www.nps.gov/subjects/nationalregister/index.htm
NRHP Database	https://www.nps.gov/subjects/nationalregister/database-research.htm
SHPO/THPO	
SHPO Directory	https://ncshpo.org/directory/ Visit your SHPO website for §106 consultation package & submission requirements
ACHP Role of THPO in §106 Process	https://www.achp.gov/digital-library-section-106-landing/role-tribal-historic-preservation-officer-section-106-process
National Association of THPOs	https://members.nathpo.org/thpodirectory/FindStartsWith?term=%23%21
NPS Find a THPO	https://www.nps.gov/subjects/historicpreservationfund/tribal-historic-preservation-office-program.htm
Tribal Nations	
White House Memo Standards for Tribal Consultation	https://www.whitehouse.gov/briefing-room/presidential-actions/2022/11/30/memorandum-on-uniform-standards-for-tribal-consultation/
ACHP §106 Consultation w/ Tribes in the Review Process: The Handbook	https://www.achp.gov/sites/default/files/2021-06/ConsultationwithIndianTribesHandbook6-11-21Final_0.pdf
ACHP Limitations on Delegation of Authority by Federal Agencies to Initiate Tribal Consult §106	https://www.achp.gov/sites/default/files/guidance/2018-06/LimitationsontheDelegationofAuthoritybyFederalAgenciestoInitiateTribalConsultationunderSection106oftheNHPA01Jul2011.pdf
BIA Tract Viewer	https://biamaps.geoplatform.gov/biatracts/
BIA Tribal Leaders Directory	https://www.bia.gov/service/tribal-leaders-directory
Tribal Directory Assessment Tool	https://egis.hud.gov/tdat/
National Archives: Treaties	https://www.archives.gov/research/native-americans/treaties/catalog-links
OK Tribal Treaties Database	https://treaties.okstate.edu/

ESA Tools and Resources	
The following tools and resources are available to assist states in understanding the consultation process and identifying federally listed species and critical habitats near orphaned well project areas.	
ESA	https://www.fws.gov/law/endangered-species-act
U.S. Code of Federal Regulations	
CFR ESA§7 Process	https://www.ecfr.gov/current/title-50/chapter-IV/subchapter-A/part-402
CFR Listed Species	https://www.ecfr.gov/current/title-50/chapter-I/subchapter-B/part-17/subpart-B/section-17.11
FWS & NMFS Joint Consultation Handbook	
ESA§7 Consultation Handbook	https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.pdf Chpt. 1.1 Introduction to ESA§7 Consultation Chpt. 2.2(F) Role of the Non-Federal Representative Chpt. 3 Informal Consultation
FWS	
ESA§7 Consultation Overview	https://www.fws.gov/service/esa-section-7-consultation
ESA§7 Flowchart	https://www.fws.gov/media/section-7-consultation-process-flow-chart
FWS Action Area	https://www.fws.gov/media/action-area-diagram
IPaC	https://ipac.ecosphere.fws.gov/ Helpful Videos and Frequently Asked Questions
Critical Habitat Map	https://fws.maps.arcgis.com/home/webmap/viewer.html
FWS YouTube Channel Section 7 Interagency Consultation Playlist	1 Welcome to Section 7 https://www.youtube.com/watch?v=QHFbYY49IAI
	2 ESA Overview https://www.youtube.com/watch?v=zWQeIjTsF2Q
	3 What is ESA§7 https://www.youtube.com/watch?v=hDEw9bbtQv8
	4 Incidental Take https://www.youtube.com/watch?v=Rdy5_rw8JFU
	5 Introduction to the Federal Register https://www.youtube.com/watch?v=rVDtqDGx5Kc
	6 Use of 50 CFR https://www.youtube.com/watch?v=bTeGn33xafM
	7 The Process of ESA§7 https://www.youtube.com/watch?v=pNJMLvzSwqI&t=3s
	8 Definitions https://www.youtube.com/watch?v=2fAenXtL05M
	9 Section 7(a)(1) https://www.youtube.com/watch?v=6hl9XHjx0UI&list=PLZb5DyVcCk96Ulq44opZaGZVIkLSLmDEo&index=10
	10 Deep Dive into ESA§7 https://www.youtube.com/watch?v=6hl9XHjx0UI&list=PLZb5DyVcCk96Ulq44opZaGZVIkLSLmDEo&index=10
NMFS	
ESA§7 Consultation	https://www.fisheries.noaa.gov/topic/consultations/endangered-species-act-consultations
ESA§7 Implementation	https://www.fisheries.noaa.gov/topic/endangered-species-conservation/endangered-species-act-implementation
ESA§7 Sp. Directory	https://www.fisheries.noaa.gov/species-directory/threatened-endangered
Critical Habitat	https://www.fisheries.noaa.gov/national/endangered-species-conservation/critical-habitat
Critical Habitat Map	https://www.fisheries.noaa.gov/resource/map/national-esa-critical-habitat-mapper