

Memorandum of Understanding
Between
The Department of the Interior;
And
The Department of Agriculture;
And
The Department of Energy;
And
The Environmental Protection Agency;
And
The Interstate Oil and Gas Compact Commission
on
Orphaned Well Site Plugging, Remediation, and Restoration

I. Purpose

This Memorandum of Understanding (MOU) establishes a framework within which the Parties intend to work together to implement the Orphaned Well Site Plugging, Remediation, and Restoration program (Orphaned Well Program) established by Section 40601 of the Infrastructure Investment and Jobs Act (IIJA) to create good-paying jobs and address the environmental harms caused by orphaned wells.

II. Background

Orphaned wells, either unplugged or improperly plugged, can leak methane and other harmful air pollutants into the atmosphere, leach contaminants into surrounding lands and waters, create safety hazards on the ground, and prevent lands from being used for recreation or other productive purposes. Addressing the environmental harms caused by orphaned wells requires the cooperation and collaboration of numerous agencies across the whole of government.

The IIJA, a once-in-a-generation investment in our Nation's infrastructure and competitiveness, was signed into law on November 15, 2021. Among its many goals are tackling the climate crisis, advancing environmental justice, and investing in communities that have too often been left behind. To help achieve these goals, the IIJA established the Orphaned Well Program, which includes a Federal program for addressing orphaned wells on Federal Land and a grant program for States and Tribes to establish or grow and manage their own orphaned well plugging, remediation, and restoration programs.

III. Parties

The Department of the Interior (DOI); As the United States' largest Federal Land Manager, DOI manages approximately 420 million acres of federal lands, nearly 55 million acres of tribal lands, and about 2.5 billion acres of the Outer Continental Shelf. The Bureau of Land Management, U.S. Fish & Wildlife Service, National Park Service, and Bureau of Reclamation all manage

lands that contain orphaned wells, and the Bureau of Safety and Environmental Enforcement is responsible for orphaned wells and infrastructure on the Outer Continental Shelf. DOI manages those lands to sustain their health, diversity, and productivity for the use and enjoyment of present and future generations. The United States also has a trust responsibility to Indian Tribes. In most instances, the Bureau of Indian Affairs and other DOI bureaus are responsible for assisting Tribes in the management, development, and protection of Indian land and natural resources.

The U.S. Department of Agriculture (USDA); The USDA provides leadership on food, agriculture, and natural resources related issues based on public policy, the best available science and effective management. As the managers of the nation's roughly 193 million acres of national forest system, the United States Forest Service's mission is to sustain the health, diversity, and productivity of the nation's forests and grasslands. The plugging and remediation of orphan well sites on National Forest System lands addresses agency priorities to remediate and reduce legacy pollution, protect watersheds by removing potential sources of contamination of clean water, reduce greenhouse gas emissions, promote inclusion by providing safe access for all recreationalists, and potentially provide jobs and other economic benefits to underserved communities.

The Department of Energy (DOE); DOE's mission is to ensure America's safety and security by addressing its energy and environmental challenges through transformative science and technology. The Department catalyzes the transformative growth of basic and applied scientific research, the discovery and development of new clean energy technologies, and prioritizes scientific innovation as a cornerstone of U.S. economic prosperity. DOE also plays a leadership role in facilitating an equitable clean energy transition, including supporting the potential for repurposing existing fossil assets for the new clean energy economy. Further, DOE received funds under the IJA to assist, in particular, in identifying and characterizing undocumented orphan wells and in detecting and measuring methane releases from such wells.

The Environmental Protection Agency (EPA); The EPA's mission is to protect human health and the environment. It leads national efforts to reduce environmental risks based on the best available scientific information; ensure environmental stewardship is integral to US policies concerning natural resources, human health, and energy; and that contaminated lands and toxic sites are cleaned up. EPA collects and reports greenhouse gas and other emissions data.

The Interstate Oil and Gas Compact Commission (IOGCC); The IOGCC is a multi-state government entity that is passionate about advancing the quality of life for all Americans by ensuring the responsible development of our nation's oil and natural gas resources while protecting health, safety, and the environment. The IOGCC provides its members with a clear and unified voice on issues surrounding these resources, assists states in balancing a multitude of interests through sound regulatory practices, and offers a highly effective forum for sharing information and viewpoints.

IV. Authorities

The Energy Policy Act of 2005, 42 U.S.C.A. § 15907, as amended by the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, Title VI – Methane Reduction Infrastructure (Nov. 15, 2021).

V. Definitions

The terms Federal land, Idled Well, Indian Tribe, Operator, Orphaned Well, and Tribal land are used here consistent with the definitions in 42 U.S.C.A. § 15907(a) and are defined below.

Environmental reviews refer to those reviews, analyses, and consultations conducted to comply with the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), National Historic Preservation Act (NHPA), and other applicable environmental statutes.

Federal land means land administered by a land management agency within the Department of Agriculture or the Department of the Interior.

Federal Land Managers refers to the Bureau of Land Management (BLM), United States Fish and Wildlife Service (FWS), National Park Service (NPS), Bureau of Indian Affairs (BIA), Bureau of Safety and Environmental Enforcement (BSEE), Bureau of Reclamation (Reclamation), and United States Forest Service (USFS).

Idled well means a well that has been nonoperational for not fewer than 4 years and for which there is no anticipated beneficial future use.

Indian Tribe has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5304.

Operator, with respect to an oil or gas operation, means any entity, including a lessee or operating rights owner, that has provided to a relevant authority a written statement that the entity is responsible for the oil or gas operation, or any portion of the operation.

Orphaned well with respect to Federal land or Tribal land, means a well that is not used for an authorized purpose, such as production, injection, or monitoring; and

- for which no operator can be located;
- the operator of which is unable to plug the well and to remediate and reclaim the well site; or
- that is within the National Petroleum Reserve–Alaska.

Orphaned Well with respect to State or private land, has the meaning given the term by the applicable State; or if that State uses different terminology, has the meaning given another term used by the State to describe a well eligible for plugging, remediation, and reclamation by the State.

Tribal Land, for the purposes of the Orphaned Well Program and this MOU, means any land or interest in land owned by an Indian Tribe, the title to which is held in trust by the United States, or which is subject to a restriction against alienation under Federal law.

VI. Framework and Responsibilities

To achieve the goals of the Orphaned Well Program, the Parties resolve to leverage their capabilities, resources, and expertise and provide leadership and commitment to foster a culture of collaboration and partnership internally and externally. Efficient and successful implementation of the Orphaned Well Program requires establishment of workgroups to coordinate funding, reporting, and sharing of expertise. To the extent authorized by law and consistent with applicable regulations, agency management objectives, and available funding, the Parties agree to participate in and support the following organizational framework and responsibilities:

A. Federal Program Executive Group (EG)

The Orphaned Well Program establishes a Federal program for the plugging, remediating, and reclaiming of orphaned wells and associated facilities on Federal Land. An Executive Group (EG) is hereby established to provide executive level oversight and ensure the successful implementation of the Federal program. The Deputy Secretary of DOI and Deputy Secretary of USDA will serve as co-chairs. At the discretion of the co-chairs, the EG may draw on separate Assistant Secretary, Undersecretary, or bureau/office/agency representation as appropriate.

1. Membership in the EG consists of:

- a. DOI, Assistant Secretary – Land and Minerals Management;
- b. DOI, Assistant Secretary – Fish, Wildlife and Parks;
- c. DOI, Assistant Secretary – Indian Affairs;
- d. DOI, Assistant Secretary – Water and Science;
- e. DOI, Assistant Secretary – Policy, Management, and Budget; and
- f. USDA, Undersecretary for Natural Resources and Environment.
- g. BLM, Director – *non-voting member*

2. Roles and Responsibilities. The EG will:

- a. meet as necessary, but no less frequently than bi-annually;
- b. determine the amount of funding provided to each eligible bureau/office/or agency, emphasizing geographic and agency equity toward achieving the goals of the Orphaned Well Program; and
- c. oversee and approve the annual reports to Congress describing the Federal program and grants awarded under the Orphaned Well Program. The reports will include:
 - i) an updated inventory of wells located on Federal Land, Tribal land, and State and private land that are orphaned wells or at risk of becoming orphaned wells;
 - ii) an estimate of the quantities of methane and other gases emitted from orphaned wells, and emissions reduced as a

- result of plugging, remediating, and reclaiming orphaned wells;
- iii) the numbers of jobs created and saved through the plugging, remediation, and reclamation of orphaned wells; and
- iv) the acreage of habitat restored using grants awarded to plug, remediate, and reclaim orphaned wells and to remediate or reclaim adjacent land, together with a description of the purposes for which that land is likely to be used in the future.

B. Federal Program Technical Working Group (TWG)

A Technical Working Group (TWG) is established to provide input and recommendations to the EG, to coordinate funding and overarching program objectives, and to share best practices and technical expertise for implementing the Federal Program.

1. Membership.

- a. The TWG will be led by BLM, and its membership will consist of a representative from each of the other Federal Land Managers.
- b. Representatives of the DOI - Office of Environmental Policy and Compliance (OEPC), U.S. Geological Survey (USGS), the Bureau of Indian Affairs – Indian Energy Service Center, EPA, and DOE are included as consulting members.
- c. Other agencies may also be included, as deemed appropriate by BLM as the group lead.

2. Roles and Responsibilities. The TWG will:

- a. meet as often as necessary, but no less frequently than monthly for the first six months after this MOU is signed, and no less frequently than quarterly thereafter;
- b. develop a method or methods to identify, characterize, and inventory orphaned wells and associated pipelines, facilities, and infrastructure;
- c. develop a method to prioritize and rank orphaned wells for plugging, remediating, and reclaiming based on public health and safety, ongoing and potential environmental harm, emissions of methane and other harmful air pollutants, proximity to disadvantaged or underserved communities, potential for increased risk due to climate change, and other subsurface impacts or land use priorities, including consideration of state or Tribal plans or priorities for orphaned wells on state, private, or Tribal lands;
- d. recommend distribution of funding on an annual basis to the EG, in accordance with priorities established to plug, remediate, and reclaim wells, well pads, and facilities, including remediating soil and restoring native species habitat as well as land adjacent to orphaned wells;
- e. develop procedures and share best practices to prioritize and accelerate applicable environmental reviews;

- f. share innovative approaches, best practices, and technical expertise to address the environmental harms caused by orphaned wells;
- g. establish procedures and a process for monitoring use of funds in accordance with applicable regulations, and provide public accounting of the costs;
- h. establish procedures and a process to ensure any financial assurances are used, potentially responsible parties are identified, and efforts are made to obtain reimbursement for expenditures;
- i. develop means to measure and track the impacts of orphaned well plugging, reclamation, and remediation on:
 - i) emissions of methane and other harmful air pollutants; and
 - ii) contamination of groundwater or surface water;
- j. identify and make recommendations for addressing any disproportionate negative impacts of orphaned wells and associated facilities on disadvantaged and underserved communities as identified in Executive Order 14008 and 13985;
- k. identify opportunities to coordinate with states and Tribes on the plugging, reclamation, and remediation of orphaned wells and associated facilities to improve efficiencies, stimulate job creation, reduce methane emissions, leverage program funding, and minimize per-well costs;
- l. identify and recommend areas for federal and non-federal research that would most effectively further the goals of the Orphaned Well Program;
- m. engage with stakeholders and the private sector on a regular basis to obtain input on the operation of the program and explore opportunities to leverage program funding;
- n. prepare the annual reports for review and approval by the EG;
- o. work cooperatively with affected Indian Tribes and each State within which Federal Land is located;
- p. identify tools and develop practices for tracking the inventory of wells located on Federal or Tribal land that are orphaned or at risk for becoming orphaned;
- q. create additional subgroups as necessary to accomplish the goals of the IJA and this MOU; and
- r. conduct consultations with the IOGCC on the Federal Program, in accordance with Section 349(b)(4)(B) of the Energy Policy Act of 2005, as amended. As part of the consultation process, the TWG will work with the IOGCC to develop reporting templates and best practices to facilitate fact-gathering and reporting throughout the entirety of the Orphaned Well Program.

C. State Grant Program

In addition to the Federal Program, the Orphaned Well Program also establishes Federal funding in the form of grants for States to grow and manage their own orphan well plugging, remediation, and restoration programs (State Grant Program). The OEPC manages the

implementation of the State Grant Program on behalf of DOI. The State Grant Program consists of Initial, Formula, and Performance grants.

1. In determining the eligibility of a State to receive Formula or Performance grants, OEPC will consult with the EPA, DOE, and IOGCC.
2. OEPC, EPA, DOE, and IOGCC agree to meet as necessary, but no less frequently than annually, for the purpose of determining State grant eligibility.
3. OEPC will compile the applicable grant information for the annual reports required in the IJA and submit the information to the TWG for compilation and submission to the EG.
4. In managing the State Grant Program, OEPC will regularly consult with BLM and the USFS on the operation of the program, including coordinating to the maximum extent feasible with activities in the Federal Program and Tribal Grant Program.

D. Tribal Grant Program

The IJA also establishes a Tribal Grant Program. The OEPC, in consultation with the BIA and BLM, manages the implementation of the Tribal Grant Program on behalf of DOI.

1. In determining the eligibility of a Tribe to receive a grant, OEPC will consult with the BIA and BLM and consider:
 - a. the unemployment rate of the Indian Tribe on the date on which the Indian Tribe submits an application for a grant; and
 - b. the estimated number of orphaned wells on the Tribal land of the Indian Tribe.
2. On request of a Tribe, DOI may enter into contracts to plug, remediate, and restore orphaned wells and associated disturbances on the Tribe's land (In-Lieu Tribal Grant Program).
3. OEPC will compile the applicable grant information for the annual reports and submit the information to the TWG for compilation and submission to the EG.
4. The BLM, OEPC, and BIA, and other agencies as necessary, will attempt to coordinate plugging and reclamation activities on Tribal land to the maximum extent possible with similar activities on Federal, state, and private land.

VII. Contacts

This MOU includes an attachment that supports enhanced coordination among the Agencies. This attachment, entitled "Points of Contact," lists respective points of contact for implementation of this MOU. Any updates to the attachment will be entitled, "Updated Points of

Contact," with version date. Such updates to the attachment will not constitute material changes to this MOU and, as such, will not require that the MOU itself be updated. Instead, the "Updated Points of Contact" will become the operative attachment.

VIII. General

Nothing in this MOU is intended, nor may be construed, to limit or in any way affect the legal obligations and powers of the Parties. The Parties will comply with all applicable laws, and to the extent this MOU conflicts with applicable law, the applicable law controls.

This MOU does not, nor is it intended to, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States or any of the Parties, their Departments, agencies, or entities, their officers, employees, or agents, or any other person.

A. Effective Date and Period of Performance

This MOU is effective upon the date of the last signature of the Parties. It shall remain in effect for a period of 10 years unless amended or canceled by any Party.

B. Modifications, Interpretations and Terminations

This MOU may be extended, amended, or modified at any time by mutual consent of all the Parties. Any extensions, amendments, modifications, or corrections of this MOU will be in writing, at least 90 days prior to implementation of the requested change, and will become effective upon the date of the last signature of the Parties.

Any Party may terminate their participation in this MOU at will. Written notice of termination to all the other Parties will be provided no less than 90 days prior to termination. Such an action is within the sole discretion of the notifying Party.

C. Subsequent Implementing Documents

Subsequent to the effective date of this MOU, additional agreements, charters, or workplans may be prepared for the purposes of outlining more specific relationships and responsibilities. Any such agreements will be executed in writing separately and will reference and incorporate the terms of this MOU to the extent necessary or appropriate.

D. Dispute Resolution

Any disputes relating to this MOU will, subject to any applicable law, executive order, directive, or instruction, be resolved by consultation between the Parties at the lowest level of the organization. If disputes are unable to be resolved at the lowest level, the disputes will be elevated to the next level prior to being elevated to the EG. The Secretary of the Interior will have final decision-making authority over any disputes.

E. Funding

This MOU is subject to the availability of appropriations. Within budgetary constraints, the Parties commit to maintain adequate staffing and resources to participate and implement the provisions of this MOU. The MOU does not and should not be construed as an obligation or commitment of transfer of funds. Each Party will bear its own costs resulting from the

responsibilities under the MOU. Any agreements to obligate or transfer funds will be executed in writing in separate agreements and in accordance with applicable fiscal and contracting laws and regulations, including the proper administrative review prior to obligation of those funds. Any such subsequent contract or funding agreements should reference and incorporate the terms of this MOU.

F. Information Requests

To the extent permissible by each Party's applicable Freedom of Information Act (FOIA) regulations, in the event a Party receives a FOIA request for records related to the subject of this MOU, the agency receiving the request will:

- (a) to the extent practicable, consistent with FOIA obligations: attempt to coordinate with other Parties before disclosing responsive records that originated with one of the other Parties; and provide notice to the Party with whom the record originated when the records are released; and
- (b) refer the responsive records to the other Parties for processing when the responsive records originated with one of the other Parties.

IX. Signatures

APPROVED:

For the UNITED STATES DEPARTMENT OF THE INTERIOR

A handwritten signature in blue ink, consisting of several loops and a final flourish, positioned above a horizontal line.

Honorable Tommy Beaudreau, Deputy Secretary
U.S. Department of the Interior

Date: **01/14/2022**

APPROVED:

For the UNITED STATES DEPARTMENT OF AGRICULTURE

Jewel Bronaugh Digitally signed by Jewel Bronaugh
Date: 2022.01.14 12:46:32 -05'00'

Honorable Dr. Jewel Bronaugh, Deputy Secretary
U.S. Department of Agriculture

Date: 01/14/2022

APPROVED:

For the UNITED STATES DEPARTMENT OF ENERGY

A handwritten signature in black ink that reads "David M. Turk". The signature is written in a cursive style with a large initial "D".

Honorable David M. Turk, Deputy Secretary
U.S. Department of Energy

Date: 01/14/22

APPROVED:

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

JANET MCCABE Digitally signed by JANET MCCABE
Date: 2022.01.14 08:39:05 -05'00'

Honorable Janet McCabe, Deputy Administrator
U.S. Environmental Protection Agency

Date:

APPROVED:

For the INTERSTATE OIL AND GAS COMPACT COMMISSION



Honorable J. Kevin Stitt, Governor of Oklahoma
Chair
Interstate Oil and Gas Compact Commission

Date: 1/13/2022