



May 25, 2021

Commissioners
Colorado Oil and Gas Conservation Commission

Re: Follow Up Questions to Industry on Financial Assurance Rulemaking

Dear Commissioners,

Thank you for your continued time and attention to the issue of financial assurance. WildEarth Guardians believes that robust financial assurance is crucial to achieving the goal of protecting Coloradans, our health, and our environment from the risks associated with oil & gas extraction. There are numerous examples of states and provinces that are now facing the need for public investment in remediation of oil and gas sites and infrastructure, including recent reports from both New Mexico¹ and Alberta, Canada.² Meanwhile there are other examples of states which have implemented meaningful financial assurances rules without causing any apparent wave of abandonment, such as Alaska.³

We noted that the Commission asked the oil and gas industry for their input on several questions to assist your development of financial assurance rules. While a few of these questions seemed important to resolving factual questions aimed at ensuring that the Commission has the best data on what “full cost bonding” might mean in terms of actual numbers, other questions raise concerns that the focus of this rulemaking may be drifting. Financial assurance means *assuring* that Colorado does not face (or can swiftly solve) a crisis in idle or abandoned wells, it’s not about balancing taxpayer risk with industry profitability. The goal of financial assurances is to prevent “strategic orphanage,” where certain assets are transferred, idled, or simply allowed to remain active while essentially non-productive, rather than being properly plugged & abandoned. These assets can in fact often be better thought of as liabilities, as the cost of P&A and

¹ Center for Applied Research, Inc., *An Analysis of The Adequacy of Financial Assurance Requirements For Oil And Gas Infrastructure Located On State Trust And Private Lands In New Mexico* (April 30, 2021), available at <https://www.nmstatelands.org/wp-content/uploads/2021/05/NM-Assurance-Assessment-May-FINAL.pdf>

² Victoria Goodday and Braeden Larson, *The Surface Owner’s Burden: Landowner Rights and Alberta’s Oil and Gas Well Liabilities Crisis*, University of Calgary School of Public Policy Publications (May 2021), available at https://www.policyschool.ca/wp-content/uploads/2021/05/RF19_AB-Oil_Goodday-Larson.pdf.

³ See Elwood Brehmer, *Oil regulators consider relief for new bond requirements*, ALASKA JOURNAL OF COMMERCE (Jan. 22, 2020), available at <https://www.alaskajournal.com/2020-01-22/oil-regulators-consider-relief-new-bond-requirements> (after moving financial assurances from a \$200,000 blanket bond to a blanket bond of at least \$400,000 per well for the smallest operators up to \$30 million, only nine operators requested reconsideration of their bonds, however Commissioners were “skeptical” about any attempt to reduce the bond amount, because “the small companies are exactly where the problem is.”).

reclamation often exceeds any future value of production and salvage. Bonds “tied” to these assets through their lifetime provide financial assurance that these liabilities cannot be avoided, and that only operators that are financially capable, now, of fulfilling every obligation under COGCC rules are permitted to engage in production, as the law unambiguously requires.

While the maintenance of an orphan well program is unfortunately a necessity at the present, the existence of orphans indicates a fundamental breakdown in the regulatory system. Operators should not be abandoning their financial liabilities to the care of the state. Orphanage is tragic. The apparent ability of the remaining operators to absorb the pace of current orphan P&A and reclamation does not eliminate the future risk of rising orphan numbers, falling operator numbers, crashing prices, or a sudden bankruptcy of a major operator.

From our perspective, asking how to craft financial assurances rules narrowly to only require assurances from wells that are deemed “at risk” is an approach that laughs in the face of danger. Downturns in the oil and gas industry can happen fast, are often unpredictable, and can hit the whole industry simultaneously. The transition away from fossil fuels adds even more uncertainty and risk as investors flee fossil fuels, consumers look for alternatives, and utilities increasingly seek out carbon-free alternatives. Major orphanage crises have developed quickly in the past. This rulemaking is our opportunity to adopt rules to *prevent* the crisis, rather than react to it.

Colorado is, today, in a somewhat better position to act on financial assurances to prevent the financial and environmental catastrophes that are already occurring elsewhere. Alberta, Canada is an example of what can happen if regulators miss the opportunity to impose sufficient financial assurance requirements to prevent orphanage. Since 2015 the number of inactive wells has gone up 50% and the number of orphans quintupled since 2016.⁴

The bottom line on financial assurances is that this is not a problem that solves itself, nor does it spontaneously improve. The problem that these questions to industry implicitly asks is, ‘how can we determine which wells are risky, and ‘target’ our bond structure at these wells.’ With all due respect, these are the wrong questions and this is the wrong place to seek impartial, objective data. The questions that should be asked are, **where have we seen long-term idling, orphanage and abandonment occur, and how did or does it manage to occur there, and what measures were effective elsewhere in preventing or correcting the issue without taxpayer funds.** The environmental and community stakeholders, including WildEarth Guardians, are willing and able to do more to answer these questions for you. However, we believe that the singular answer to the broadest question is simple: bonds must be able to cover the full cost of liability if and when they are called upon to do so.

Sincerely,

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⁴ Bob Weber, *Abandoned oil and gas wells put unfair burden on Alberta landowners, taxpayers, study says*, CANADIAN BROADCASTING CORP. (May 20, 2021) available at <https://www.cbc.ca/news/canada/calgary/abandoned-wells-oil-gas-alberta-cost-report-1.6033830>.