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RAILROAD COMMISSION OF TEXAS

February 24, 2023

Ms. Kimbra Davis
Director, Orphaned Wells Program Office
U. S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Ms. Davis:

The Railroad Commission of Texas appreciates the opportunity to provide comments on the draft State Formula Grant Guidance for funding provided under Section 40601 of the Infrastructure Investment and Jobs Act (2021). The Railroad Commission concurs with the comments submitted by the Interstate Oil and Gas Compact Commission and would like to highlight concerns specific to the Texas program based on our experience overseeing the largest well plugging program in the United States.

In 1983, the Texas Legislature created the Well Plugging Fund to plug abandoned oil and gas wells that cause or threaten to cause pollution of the state's surface and ground waters by leaking saltwater or residual hydrocarbon fluids. While the fund's name has changed, its purpose has not. From its inception in 1983, the Commission has plugged 44,220 orphaned wells, including 281 orphaned wells with Initial Grant Funds as of January 31, 2023. Currently, there are 8,515 wells in orphaned status, an increase of 1,246 wells from the Notice of Intent to Apply for Formula Grants.

Our concerns are enumerated in the attached document, but they generally fall within three areas:

1. The Draft Guidance exceeds the statutory authority of Section 40601 with programmatic requirements beyond the scope of the legislation.
2. The Draft Guidance introduces uncertainty to formula funding with unclear statements related to funding levels and the timing of that funding.
3. The Draft Guidance creates an unnecessary administrative burden for Texas with phased funding and monthly data reporting requirements.

We look forward to working with you to implement this once in a lifetime opportunity, but it is critical that the Final Guidance does not exceed what the Act mandates and reflects a funding opportunity that can be used within the existing Texas program, as Section 40601 envisioned. Please contact Colleen Forrest at colleen.forrest@rrc.texas.gov or (512) 463-2645 with any questions you may have related to the Commission's comments. Thank you again for the opportunity to share our concerns.

Sincerely,

Wei Wang
Executive Director

SECTION I. INTRODUCTION

Section 40601(c)(4) of the Infrastructure Investment and Jobs Act (2021) created Formula Grants for states. This section does not authorize the Department of the Interior (DOI) to create a phased approach to funding. Section 40601(c)(4)(A)(iv) is clear that DOI was to "publish on a public website the amount that each State is eligible to receive under the formula." DOI did so on January 31, 2022, allocating formula funding of $318,695,000 to the State of Texas. Statutory language does not allow for DOI at a later date to "publish the total amount available and State eligibility for subsequent phases based on State-provided updates on documented well inventories and cost estimates."

The Railroad Commission of Texas ("Commission") does not support a recalculation of the formula grant amount for each state at this stage or a phased approach. DOI should consider awarding the whole amount to each state to allow the states to continue their well plugging efforts without unnecessary interruptions.

This approach exceeds statutory authority, introduces unnecessary uncertainty to the Formula Grant program, and creates a potential administrative burden for the State of Texas should multiple grant applications be required.

SECTION II. DEFINITIONS

The Definition section defines an "Orphaned Well" as the "meaning given the term by the applicable State," while defining a "Documented Well" as "a well for which the State or other regulatory agency has a drilling report, completion report, inspection report, or other record establishing the existence of the well, including its precise location. (i.e., latitude and longitude in decimal degrees)." DOI should clarify that the precise location is a mandatory aspect of documenting an orphaned well, and those wells listed on a state's Notice of Intent to Apply without this documentation will not be included in the application of the formula.

Again, the Commission does not support a recalculation of the formula grant amount for each state at this stage to include wells that do not meet the "Documented Well" definition or include wells that were not included in a state's Notice of Intent to Apply.

SECTION III. PERMISSIBLE USE OF FORMULA GRANT FUNDS

DOI should delete a reference in C of this section to revisions in a "subsequent DOI publication of Formula eligibility." Statutory language does not allow subsequent revisions to the formula. This approach exceeds statutory authority, introduces unnecessary uncertainty to the Formula Grant program, and creates a potential administrative burden for the State of Texas should multiple grant applications be required.

Similar to previous comments, the Commission does not support a recalculation of the formula grant at this stage. However, in the event additional funds become available from de-obligated Formula Grant funds, DOI should make those funds available to the states with a demonstrated need and capacity to expend funds.

SECTION IV. INSTRUCTIONS FOR FORMULA GRANT APPLICATIONS

DOI should clarify in (B) eligibility exactly which "required document well data" will be required to avoid a reduction in the award amount. If, as Draft element (C)(iv)(i) requires, providing all data elements from the Orphaned Well Data Reporting Template to verify that each well is documented is

administratively burdensome, and unnecessary to establish a well's documented status. DOI should request only Latitude/Longitude and the well's API number to establish its documented status.

DOI should work closely with states to ensure that those items enumerated under (C)(iv) Work Plan do not require substantial and costly changes to existing state programs. If necessary, DOI should consider delaying release of a final guidance document until these issues can be resolved in partnership with the states.

Draft element (C)(iv)(i) requires "Latitude/Longitude, type of well, surface ownership, mineral ownership (e.g., Federal, Tribal, State, private), and all other data elements and associated units of measure as indicated in the Orphaned Well Data Reporting Template" as verification that each wells meets the standard of a "Documented Well" from the Definitions section. Requiring all data elements from the Orphaned Well Data Reporting Template to verify that each well is documented is administratively burdensome, and unnecessary to establish a well's documented status. DOI should request only Latitude/Longitude and the well's API number to establish its documented status. For application purposes Section 40601(c)(4)(B)(ii)(I) only requires a state to provide an estimate of the number of wells to be plugged, remediated, or reclaimed, not a list of the exact wells with location information and numerous data elements that may be unknown at the time of application.

Other elements included in the Orphan Well Data Reporting Template are not appropriate identifying characteristics of the responsible party associated with an orphaned well. If the aim of these elements is to identify a responsible party in the context of Texas oil and natural gas production the last Lease Holder on file is the responsible party, while "Surface Managing Entity" and "Subsurface Managing Entity" are not terms used in Texas to identify the responsible party. The Railroad Commission recommends adjusting these data elements to allow states to use the terminology appropriate to their jurisdiction to identify a responsible party.

Draft elements (C)(iv)(l) and (iv)(m) address training programs, registered apprenticeships, and local and economic hire agreements for workers the State intends to conduct or fund in well plugging or site remediation. The Railroad Commission recommends that the guidance account for workforce development programs that may already be in place with other, existing funding sources, rather than imply that a portion of a state's administrative funds should be used for workforce development.

Draft element (C)(iv)(p) seeks a work schedule that would cover a five-year period. This is impractical as well plugging and site remediation efforts regularly change as priority wells and site conditions evolve in response environmental conditions. The states should be allowed the flexibility with the five-year work schedule to address high priority wells in the order most appropriate for efficient operations as field conditions dictate.

Additionally, the State of Texas does not have access to private property to "monitor reclaimed locations to ensure remediation and reclamation success" once plugging or site remediation efforts are complete as the property would no longer meet the State's statutory definition of an oil property, the basis for Railroad Commission access.

DOI should clarify in (D)(ii) their statutory authority for creating a phased formula, understanding that this approach exceeds statutory authority, introduces unnecessary uncertainty to the Formula Grant program, and creates a potential administrative burden for the State of Texas should multiple grant applications be required.

The Commission does not support a phased approach for the Formula Grant.

DOI should clarify in (D)(iv) that its Office of the Solicitor determined that property solely on private land with no public access is not subject to Buy America. Further, the Railroad Commissions recommends revised language to explicitly state that Section 70917(c) of the Infrastructure Act excludes cement and cementitious materials from Buy American clauses.

SECTION V. STANDARDS FOR MEASUREMENT, PLUGGING, AND REMEDIATION

With the scale of the Texas well plugging program and the proximity of orphaned wells to actively producing wells measurement of emissions is not always accurate, appropriate, or practicable. Many of these practices would greatly increase the cost of well plugging and site remediation, while reducing the efficiency of the Railroad Commission's well plugging program and the number of wells the Commission will be able to plug. The Railroad Commission appreciates the approach DOI deployed to screen for leaks of methane or other gases, rather than require measurement at each well site, and notes that Section 40601 does not require states to modify their programs to incorporate DOI's practices.

However, Section V(A) mandates pre- and post-plugging measurement or estimation of air and water pollution, which exceeds the statutory authority of Section 40601. Statutory language in (c)(2)(A)(v) provides that a state may use funding to measure and track emissions of methane and other gases associated with orphaned wells; and contamination of groundwater or surface water associated with orphaned wells, but does not require a state to do so. Further, the guidance mandates post-plugging inspections to verify the lack of gaseous emissions and water contamination from plugged wells. The Railroad Commission recommends revising the guidance to require verification of "the lack of releases of oil, gas, water, or other fluids at the surface at the immediate conclusion of site activities." Verifying the lack of groundwater contamination may require extensive monitoring measures, while post-plugging gaseous emissions measurement will be costly, directing funds away from the plugging of additional wells. The State of Texas does not have access to private property to ensure "the achievement of vegetation performance standards appropriate to the site's future land uses" once plugging or site remediation efforts are complete as the property would no longer meet the State's statutory definition of an oil property, the basis for Railroad Commission access. Further, the State of Texas has no authority to determine a site's future land use if it is private property.

Therefore, the Commission recommends that instead of "States will…", DOI should use language from the Initial Guidance "As a best practice, States are encouraged…."

SECTION VII. FEDERAL AND TRIBAL COORDINATION

Section VII places the onus on states to contact relevant offices of Tribal or Federal land management agencies. The Railroad Commission recommends that DOI coordinate this outreach initially. The burden should not be on the states as they implement this program. The Federal agency should be responsible for data collection at these sites.

SECTION VIII. REPORTING REQUIREMENTS

Generally, Subsection E, Data Collection and Reporting, requires reporting on data elements that exceed the statutory authority granted to DOI by Section 40601 of the Infrastructure Investment and Jobs Act.

Specifically, E(i)(c) mandates a data reporting element that is administratively burdensome, unreasonable, and indicates a misunderstanding of NAICS codes. An organization self-assigns its NAICS codes based on its primary activity. Codes are not assigned at the employee level and hourly employee data could not

be appropriately collected based on this system. If the intention was to tracking employees by Bureau of Labor Statistics Standard Occupation Classifications, this approach is administratively burdensome and is likely to cause contractors to decline to participate in this effort.

Monthly reporting, as required by E(ii) is administratively burdensome and exceeds the 2 CFR 200.329 performance reporting interval that "must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances." Section 40601(f) requires an annual report to Congress. There is no justification to mandate monthly reporting from the states.