

Jan 31 2023

Current bonding requirements

Huerfano County Land Use Regulations already has the following on Bonding in Oil and Gas Regulations Section 6.16 --

6.16 PERFORMANCE SECURITY

The applicant shall provide one form of the following security to ensure compliance with mitigation requirements set forth in this article and specific conditions of approval for minor and major facilities: **\$7,500 performance bond** (irrevocable letter of credit; or equivalent financial security acceptable to the county) for each minor facility up to 15 facilities subject to uncompleted conditions of approval (maximum \$105,000); or \$7,000 performance bond for operators with more than 15 minor facilities subject to uncompleted conditions of approval (maximum \$175,000);. Performance bond requirements for major facilities will be determined on a case by case basis.

Conditions of approval covered by this performance security shall consist of mitigation measures addressing specific impacts affecting the general public and/or adjacent landowners by the applicable performance standards contained in this section with regard to the county permit. Specific minor and major facilities will be released from the bonding requirement after the applicant demonstrates to the Board of County Commissioners that all conditions of approval have been met. Reclamation activities which fall under COGCC jurisdiction are exempted from this performance security coverage. This provision is not meant to replace the COGCC's financial assurance requirement.

Current state level COGCC Rules and Regulations also has language covering bonding requirements in the Series 700 (Financial Assurance for new drilling projects), and Series 100 (definitions of Single Well Financial Assurance for plugging and abandoning wells) Transfers of bonding obligations from one operator to another are covered in Series 200.

Specifically, in **COGCC Series 700 for new projects**, item 702.d.(2).B. states –

B. Financial Assurance Amount. The total amount of Financial Assurance the Operator will provide to the Commission as soon as practicable but no later than 90 days from the Commission's approval of the Financial Assurance Plan, which will be:

- i. Blanket Financial Assurance Amount (excludes Out of Service Wells).
 - aa. \$18,000 per Well if the Operator operates less than or equal to 50 Wells;
 - bb. \$15,000 per Well if the Operator operates more than 50 Wells and less than or equal to 150 Wells;

cc. \$12,000 per Well if the Operator operates more than 150 Wells and less than or equal to 1,500 Wells;

dd. \$10,000 per Well if the Operator operates more than 1500 Wells and less than or equal to 4,000 Wells; or

ee. \$8,000 per Well if the Operator operates more than 4,000 Wells.

Also in Series 700 are bonding amounts for other oil and gas facilities, including gas gathering, gas processing, and underground gas storage (703.d -- \$100,000 for large facilities or \$5,000 for facilities processing less than 5 million standard cubic feet per day); produced water (703.e -- \$50,000 per facility or \$5,000 for facilities processing less than 700 barrels per day); and underground disposal wells (703.f. -- \$100,000 per well).

Surface Owner protections are also covered in COGCC Series 700. For seismic exploration, the operator must provide \$25,000 at the state level (703.c.). For drilling and processing, if the operator does not have a lease or other agreement with the surface owner, the operator must provide as follows in 704.(a).1. --

- i. \$4,000 per Well for non-irrigated land;
- ii. \$10,000 per Well for irrigated land; or
- iii. \$100,000 as a statewide blanket bond.

Surface owners who feel their surface has been damaged by seismic operations can file a complaint (Form 18, Rule 524) with the COGCC. Surface owners who feel their surface has been damaged by oil and gas drilling and processing can file for a Financial Assurance hearing with the COGCC (Rule 503). The surface owner must prove damage to the COGCC, which determines if these complaints are valid and, if they are, the terms of settlement.

For plugging and abandonment, in COGCC Series 100 –

SINGLE WELL FINANCIAL ASSURANCE means either:

- a. The sum of an Operator's demonstrated costs of Plugging and Abandonment of the Well and the associated and apportioned Reclamation cost for the Well, which is calculated by dividing the demonstrated Reclamation costs by the number of Wells on the Oil and Gas Location or at the Oil and Gas Facility; or
- b. The sum of the Single Well Plugging and Abandonment Cost and the Single Well Location Reclamation Cost.
- c. For purposes of this definition, costs are calculated as follows:

(1) LOCATION RECLAMATION COST means the Commission's estimated costs of Reclamation at an Oil and Gas Location or an Oil and Gas Facility, which is set at \$100,000 per Location or Facility.

(2) SINGLE WELL LOCATION RECLAMATION COST means the cost of Reclamation attributable to a single Well on an Oil and Gas Location or at an Oil and Gas Facility, which is calculated by dividing the Location Reclamation Cost by the number of Wells on the Oil and Gas Location or at an Oil and Gas Facility.

(3) SINGLE WELL PLUGGING AND ABANDONMENT COST means the Commission's estimated costs of Plugging and Abandonment of the Well as follows:

A. For a Well drilled to a total vertical depth of 4,000 feet or less: \$10,000 of Financial Assurance.

B. For a Well drilled to a total vertical depth of more than 4,000 feet and less than or equal to 8,000 feet: \$30,000 of Financial Assurance.

C. For a Well drilled to a total vertical depth of more than 8,000 feet: \$40,000 of Financial Assurance.

d. Both the Operator's demonstrated costs and Commission's estimated costs are subject to adjustment for inflation pursuant to Rule 707.a.(1).A.

In 2019, SB-181 took effect, ushering in a broad change in the COGCC's mandate and increasing the power of local authorities. The mandate change emphasizes health, safety and the environment much more than in the past. Rule 201.a. states the rules are intended to "protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources, and to protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from Oil and Gas Operations." The rules also give local authorities the power to (1) participate up front in the permit process, (2) to require their own bonding and fees, (3) conduct their own inspections and monitoring of development, and (4) otherwise regulate the surface impacts of oil and gas activity in their jurisdictions. These changes challenge Huerfano County to use these powers and to consider updating its current regulations.

At the federal level, the Bureau of Land Management (BLM) controls bonding for all federal lands, and for the federal mineral rights underneath surfaces owned by others. BLM requires a \$10,000 bond per lease, regardless of how many wells are on the lease, \$25,000 for all leases in a state, or \$150,000 for all leases in all state. These amounts haven't been changed in decades, and are so low that developers routinely walk away from their responsibilities to plug and reclaim idle or depleted wells and facilities.

The federal Government Accounting Office (GAO) in 2011, and again in 2019, admonished BLM that these bonding levels are far too low to even begin to cover necessary reclamation of oil and gas wells and facilities. In November 2022, a formal petition to the federal Department of the Interior (DOI) and the Bureau of Land Management (BLM) was filed under the federal Administrative Procedures Act by the Western Organization of Resource Councils (WORC), Taxpayers for Common Sense, and the Natural Resources Defense Council urging BLM to establish adequate bonding requirements.

What could and should be changed at the county level?

As mentioned above, the passage and signing into law of SB-181 in 2019 gives Huerfano County power to regulate surface issues associated with oil and gas development within the county. Specifically, COGCC Rule 201.c. states that “Nothing in the Commission’s Rules constrains the legal authority conferred to Local Governments by §§ 29-20-104, 30-15-401, C.R.S., or any other statute. Local Government regulations may be more protective or stricter than state requirements.” In addition, Rule 302.a. states that “Nothing in the Commission’s Rules constrains the legal authority conferred to Local Governments by §§ 24-65.1-101 et seq., 29-20-104, 30-15-401, C.R.S., or any other statute, to regulate surface Oil and Gas Operations in a manner that is more protective or stricter than the Commission’s Rules.” Thus Huerfano County is at liberty to adjust and enforce its bonding requirements and fee structures -- and undertake additional surface-issue-related oil and gas regulations

it’s important to require developers to bond at a level high enough to ensure that (1) they operate their projects in ways that protect Huerfano County’s people, animals, vegetation, air, water and land; and (2) if they fail to do so there is enough money to repair any damage. On the other hand, bonds and fees that are set too high could signal that Huerfano County is not interested in the economic benefits that development can bring.

Well-funded developers with confidence in their processes and people will have no problem qualifying for surety bonds through third party providers, or arranging cash in lieu of a bond. Cash should be preferable on both sides, saving the developer the cost of the surety bond and giving the County direct access to the funds if necessary. Now that interest rates are rising, letting the money earn interest via a savings account or in a CD also benefits the developer. Cutting out the surety bond middleman makes sense, assuming the developer and the county operate in good faith.

The main question is, how much cash is enough? The current amounts are far too low, considering that the COGCC has put the average cost to plug and remediate the surface location of single well at \$82,000.

At the state level, the COGCC has plans and money to address the roughly 500 orphaned and abandoned wells in need of reclamation. A new COGCC program, the Orphaned Well Program (OWP) Enterprise Fund is expected to generate about \$10

million per year in new fees from developers, and another \$25 million is expected from Federal Infrastructure Investment & Jobs Act Initial Grant Budget through September, 2024. And the Colorado legislature has budgeted \$6,650,000.

Hopefully the OWP will work as planned, but what about the costs of other impacts from oil and gas development that Huerfano County might sustain? Our geology is very sensitive to shot holes and seismic testing, fluid injection and stimulation, and hydraulic fracturing (fracking). River Ridge Ranch residents remember all too well how their water wells were ruined by Petroglyph's coalbed methane project in the 2000s. What bonding levels are adequate to address these kinds of impacts? As well as damage sustained with seismic testing on sheep mountain.

What other Land Use regulations might Huerfano County establish to ensure that any oil and gas development pays its own way and doesn't damage us, our animals, our air, water and lands?

A substantial bond or escrow account, to be set aside by any oil and gas developer in Huerfano County before any site development or drilling, specifically for surface level remediation, reclamation and to cover expected costs to municipal, domestic and agricultural water sources and wells, costs to the County Shops, County Fire Protection Districts, County Sheriff and Municipal Police Departments, County Health Department, and costs to cure expected damages to citizen health. Our conservative estimate of the amount of this bond/escrow, just for health damages **is \$6,117,000.00** (6117 people in the county, with 10 percent affected, at \$10,000 in health care costs per person.)

These safeguards are certainly "more protective or stricter than state requirements." Is the bonding requirement too high?

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