



Executive Board

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October 22, 2021

Re: Landowners and taxpayers now liable for abandoned and orphaned oil wells in North Dakota

Dear Sir or Madam:

The Northwest Landowners Association commissioned the enclosed report after the North Dakota Industrial Commission (“NDIC”) appropriated CARES Act funds for its program to plug and abandoned oil wells in the state. While well-intentioned, this program mostly leaves the landowner and North Dakota taxpayers holding the bag. In many cases, the operators who had their wells confiscated and plugged are still solvent and, to this day, continue operating wells in North Dakota. Some received CARES Act funds from the NDIC without even accessing the bond that the law requires them to keep in place for the very purpose of plugging and reclaiming their wells. This is the result of using the CARES Act fund to reclaim “abandoned” wells in addition to “orphaned” wells.

Oil-producing states around the country recognize their potential liability that attaches to the old, orphaned wells in their states. They are working hard to prepare and avoid hundreds of millions of dollars of liability for these wells. North Dakota has started using CARES Act money to plug and reclaim wells, but the state has failed to limit its payments to truly orphaned wells. The confiscation of these wells will cause serious problems for landowners. In response to complaints from landowners, the NDIC has advocated for a law that would require landowners to wait *seven years* to simply ask for the NDIC to review a well on temporary abandoned status. Landowners were not given notice of the operations contemplated on their own property by NDIC until the contractor was ready to do the work. And in many cases contractors asked landowners to sign liability releases for work that the contractor and NDIC admitted up front would not result in full reclamation. Many of these reclamation sites were never finished and remediation is still not completed, resulting in significant contamination on numerous sites. In some cases, landowners had entered into surface use agreements that require the operator to make annual payments. Now, after NDIC confiscated those wells, the landowner no longer receives annual payments. NDIC failed to finish its job and does not appear to have any plan to do so unless additional taxpayer funds are released.

Northwest Landowners Association has been working hard for over a decade to educate the public and our state leaders about the massive, expanding problem caused by abandoned and orphaned wells. North Dakota needs to follow the lead of other states and take significant efforts

to address the issue, including reform of bonding requirements, moratoriums on operator transfers of wells, reform regarding temporary abandoned status, and elimination of blanket bonds. Otherwise the problem will only grow. Currently, our taxpayers are funding this effort when the responsibility lies with the operators. That is wrong, morally and legally. The operators who profited from the oilfield should be cleaning up their wells when they are done, but they do not because the NDIC allows them to pass off their oilfield assets to less and less solvent operators until old wells finally are left with an insolvent operator who truly “orphans” the wells. North Dakotans need to understand that they are funding a massive cleanup without even knowing they are doing so and without any effort to reform a regulatory system that caused the current problem.

On a national level, the federal government is distributing large amounts of money to address the problems caused by old, abandoned wells, but with little directive to reform the systems that led to this situation in the first place. North Dakota could show the rest of the country the lessons it has already learned. And North Dakota could learn from other states who are ahead of us in addressing this issue. The federal government should also look at what went wrong in North Dakota before issuing additional funds to extend these programs. Otherwise, taxpayer funds being spent to clean up the oil wells left behind by solvent operators will still not be enough to cover the bill. And once the taxpayer funding dries up, unless there is some political will to hold operators accountable in North Dakota, North Dakota’s landowners will be left with the liability for these wells. The North Dakota Legislative Assembly passed specific laws in 2019 to ensure that it is the landowner who will be responsible. The new law says that if “no other viable responsible party can be located after the department's reasonable investigation, the department shall consider a person that became an owner of the property after the release to be a responsible party.” That person who became an owner after the release is an innocent landowner. Yet the North Dakota Legislative Assembly has decided that same landowner should be on the hook after North Dakota has spent all the state and federal taxpayer funds it is allowed to spend on this problem of cleaning up abandoned wells. Whether the mineral developers in the state are ever required to pay any of this cost is yet to be seen. North Dakota landowners are imploring you – whether you are from North Dakota or not – to stand up for property rights, for land, and for landowners, and not allow hundreds of millions of dollars of taxpayer funds to be spent without fixing the problems that got us all here in the first place.

We have enclosed a report on the North Dakota CARES Act program that our board commissioned after seeing what the North Dakota Industrial Commission was doing with the CARES Act funding. We’ve also included materials we obtained through records requests to NDIC (a “readme” file is included in the materials as a guide). The documents and data were organized by the report authors in a manner that will allow the public and others to dig into the data and information themselves and draw their own conclusions. For example, Northwest Landowners Association has not fully analyzed all costs associated with plugging and reclamation, but the data thus far is sufficient to draw one conclusion: Many plugging and reclamation operations cost far, far more than any bond would ever provide for those operations. In most cases, that actual cost of plugging and reclamation greatly exceeds the bond amount. This tells us that bonding is woefully insufficient to accomplish that goal, especially blanket bonds.

There are lessons to be learned from the NDIC's use of CARES Act funds for its plugging and reclamation program. There is also precious little time in which to learn these lessons before hundreds of millions of dollars are spent plugging and reclaiming old wells without any intention to address the problem that led us to a place where we are spending hundreds of millions of dollars of taxpayer funds to pay to plug and reclaim oil wells, some of which are operated by companies that are still solvent and operating other active wells in the same state. Although the conclusions in this letter and report are our opinions, we have provided all the materials, data, and references used to allow anyone reading the report to dig into the source materials themselves and arrive at their own conclusions. Our goal with this letter, and the report, is to sound the alarm. There is a large, looming problem on the horizon. If you do not address it, you will leave the landowners holding the bag. With this letter and this report, the politicians and regulators have been given notice of this problem. Whether, and how, you respond to protect landowners and the land they care for is your decision, but we will recall which decisions were made during this critical time.

Sincerely,

NWLA Board of Directors