Statement for the Record of
Kevin Cramer
U.S. Senator
House Committee on Natural Resources
July 23, 2024

Chairman Stauber, Ranking Member Ocasio-Cortez, and members of the committee, thank you for holding today's hearing. I write in support of H.R. 7053, the "Orphan Well Grant Flexibility Act of 2024," bipartisan legislation authored by Representatives Thompson (R-PA-15) and Deluzio (D-PA-17). According to the sponsor, "This legislation removes unnecessary burdens on state agencies regarding certain testing procedures, which will maximize federal dollars and lead to more wells being plugged."[1] Put simply, the bill reflects how the underlying legislation was supposed to be implemented.

When Senator Luján and I wrote the Revive Economic Growth and Reclaim Orphaned Wells Act (REGROW), I was inspired by North Dakota's decision to utilize CARES Act funding for orphaned well reclamation.[2] Our state program kept oil and gas workers on the job as they plugged wells. Senator Luján and I both saw the potential to replicate this on a national scale by supplementing state reclamation funding to get more work done. As our joint summary noted, state and federal agencies had been plugging and reclaiming these wells with limited funds so our goal was "to get funds to states quickly to help unemployed oil and gas workers" and address the hazards associated with orphan wells.[3]

When the bill was introduced, it was clear the goal was to boost the work of state programs. "New Mexico is leading the nation on climate action, and I'm proud to introduce bipartisan **legislation to build on our state's momentum**, help slash methane emissions, and create new opportunities," [emphasis added] stated Sen. Lujan. My comments reflected the same sentiment, "The REGROW Act would **follow our state's lead** by providing states, tribes, and federal agencies the resources they need to properly plug orphaned wells."[4] [emphasis added] REGROW allocated the bulk of the money to state programs so they could get more work done. The bill went to great lengths to provide states with the flexibility needed to continue their reclamation programs without federal interference.

I frequently remind federal agencies to not impose their mediocrity on states' excellence. Unfortunately, that is exactly what the Department of the Interior (DOI or Department) has done with its implementation of the program.

As a critic of lazy legislating, I make a point of being as specific as possible in authoring bills. In a July 2022 essay in the *Harvard Journal of Law & Public Policy* regarding the REGROW Act, I

[1] https://thompson.house.gov/media-center/press-releases/thompson-deluzio-introduce-orphan-well-grant-flexibility-act
[2] https://www.dmr.nd.gov/oilgas/pressreleases/Oil_and_Gas_Division_Three-Part_Education_Series_on_Well_Plugging_and_Reclamation.pdf
[3] https://www.lujan.senate.gov/wp-content/uploads/2021/04/REGROW-Act.pdf
[4] https://www.lujan.senate.gov/newsroom/press-releases/lujan-cramer-introduce-bipartisan-regrow-act-to-clean-up-orphaned-wells-create-new-jobs-and-opportunities/

stated, “Throughout the bill writing process, one of my main priorities was to confine the administration and bureaucracy by clearly stating our intent in the definition section so we did not defer to bureaucrats charged with implementation. … By using direct language spelling out deference to existing state policy, future administrations and unelected career bureaucrats, regardless of the political party, do not have the authority to set parameters on what constitutes an orphaned well. This clarity was also necessary to expedite implementation of the program by circumventing the administrative rulemaking processes to put unemployed oilfield workers back to work and remediate the land faster.”[5]

Despite the statute’s unambiguity, the administration cannot tell the difference between “may” and “shall.” We intentionally gave more flexibility to state programs with the word “may” in the list of activities they could carry out. We knew states already had programs in place to do this work and our goal was to inject dollars into their coffers as quickly as possible to keep these skilled workers employed and fix the environmental problem at hand. When I testified before the Senate Energy and Natural Resources Committee on this bill, I said, “We have kept the main thing, the main thing. Rather than inserting things into the measure that would divide us we’re focused to getting people back to work and cleaning up the mess.”[6] This approach earned the support from a broad coalition ranging from the Environmental Defense Fund to the Independent Petroleum Association of America.

Separately, we had a specific section in the bill dedicated to Performance Grants designed to incentivize states to take added fiscal and environmental actions with their programs. These are optional grants a state could pursue to refine or improve their operations, not additional mandates.

Somehow, despite the clarity, DOI is layering its cumbersome mediocrity onto state programs. When states apply for a Formula Grant, DOI’s guidance requires a plan to measure and track methane emissions. Even though the law clearly says “may:” “IN GENERAL.—A State **may** use funding provided under this subsection for any of the following purposes: … (I) emissions of methane and other gases associated with orphaned wells.”[7] [emphasis added] Some states who have done methane tracking with their initial grants had to spend thousands of extra dollars per well, adding to the cost of an already expensive process. Now, each state is forced to debate whether to invest the additional time and resources into complying with this mandate for their formula grants even though the law does not require it. Those that refuse have had their application rejected. DOI is also requiring states to perform National Historic Preservation Act and Endangered Species Act consultations.[8] The REGROW Act makes no mention of either of these statutes, yet the Department has rendered these complex consultations mandatory despite the fact the land in question is already disturbed. Some states are now backing away from taking the funds, because the requirements outweigh the benefit. The juice is not worth the squeeze. DOI has also taken the liberty of turning the Formula Grant into a series of awards. Despite DOI

[5] https://senatorkevincramer.app.box.com/s/zps5x48c0o3bqrdrjygeker55x5es5eb
[6] https://www.cramer.senate.gov/news/press-releases/sen-cramer-testifies-on-his-bipartisan-orphaned-wells-bill-at-senate-energy-subcommittee-hearing
[7] https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf
[8] https://www.doi.gov/sites/default/files/documents/2024-05/owpo-may-2024-formula-and-matching-grant-faqs.pdf

already announcing how much each state is eligible to receive and saying the formula will not change, it is requiring them to apply and reapply for each tranche.[9] Yet again, this requirement is not written anywhere in what Congress passed. In fact, when describing the application process for a formula grant, the bill specifically uses singular terms, "To be eligible to receive **a formula grant** under this paragraph, a State shall submit to the Secretary **an application** that includes…"[10] [emphasis added] This phased approach harms state's planning and contracting ability and requires extra resources and time for each application.

Each of these hurdles is an impediment, not a solution. And each denial or delay means an environmental hazard continues marring land that could be productive or preserved.

The intent of REGROW was to move funds as quickly as possible to resolve hazards on the ground. Lest we forget, when the bill was passed, there were more than 56,000 orphaned wells across the country. When states are reluctant to participate or DOI is slow to release funds, these hazards are perpetuated. For example, Texas, one of the most active and engaged states, has plugged 60 percent fewer wells in the first five months of the Formula Grant than the Initial Grant. Similarly, as of early July, some states with the largest backlogs, including Pennsylvania and New Mexico, have not even been awarded a first phase of formula grants yet. For context, just those two states are eligible for nearly $400 million.[11] That is $400 million sitting in the bureaucracy rather than states getting people to work to clean up the mess.

I support Representative Thompson and Deluzio's bipartisan Orphan Well Grant Flexibility Act, but if DOI followed the law, it would not be necessary. A basic reading of REGROW shows the Department is taking liberties Congress never authorized. As the U.S. Supreme Court has pointed out in both *West Virginia v. EPA* and *Loper Bright Enterprises v. Raimondo*, federal bureaucrats are confined by the law. They cannot wish their preferences into statute. Furthermore, the Court has made clear: the absence of a prohibition is not a license. If authority was not given, the bureaucracy cannot take it. I support Congressman Thompson's bill to once again tell DOI these activities are not required for the states as they manage their programs.

[9] https://www.doi.gov/media/document/faqs-formula-grants-07-07-2023-pdf
[10] https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf
[11] https://www.doi.gov/pressreleases/biden-harris-administration-invests-660-million-states-plug-orphaned-oil-and-gas-wells