July 11, 2023

Orphan Well Association Annual Report 2022/2023

By: Drew Yewchuk

Annual Report Commented On: Orphan Well Association, Annual Report 2022/23

The 2022/2023 Orphan Well Association (OWA) annual report was posted to the OWA website on July 7, 2023. OWA annual reports provide insight into Alberta's orphan oil and gas asset situation and the pace at which the problem is being addressed. This post summarizes the report and discusses the implications of the information for Alberta's oil and gas liability problem.

Background on the OWA

ABlawg has previously described the statutory basis for the Orphan Fund and the Orphan Fund Levy in a 2022 post. In short, the Orphan Fund Levy is charged to all oil and gas licensees based on their portion of Alberta's deemed oil and gas closure liabilities. Section 3 of the *Orphan Fund Delegated Administration Regulation*, Alta Reg 45/2001 delegates powers relating to the use of the Orphan Fund to the OWA. The OWA is an "independent non-profit organization" (at 43) in the sense that it is independent from government and the Alberta Energy Regulator (AER). However, the OWA is not independent from industry because the OWA's Board of Directors is stocked with representatives of large oil and gas corporations and oil and gas lobbying organizations (at page 43-44). The OWA is an example of part of a regulatory system being delegated to the industry in a version of partial self-regulation.

This delegation to an industry-run non-profit means the OWA is not subject to direct audit by the Auditor General of Alberta (Auditor General). However, the AER's supervision of the OWA is subject to audit, as ABlawg covered here. Neither is the OWA subject to the *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25. For a discussion of the transparency problems created by delegation to industry, see Alasdair S. Roberts, "Less Government, More Secrecy: Reinvention and the Weakening of Freedom of Information Law" (2002) 60:4 Pub Admin Rev 308.

The delegation to industry also means the OWA's annual reports tilt heavily towards industry's view of the orphan and inactive situation. The OWA annual reports focus on stories that give the impression that the regulatory system for oil and gas closure in Alberta is working well. This is not the case: see ABlawg's coverage of the Auditor General's 2023 report here. Everything in the OWA annual report is true, but negative implications of the information are de-emphasized and not drawn out. This post describes some implications that the most recent OWA Annual Report leaves unsaid.

The Good News: Prioritization of Critical Habitat

The OWA is prioritizing closure of wells in the critical habitat of three species at risk: the Sage Grouse, Bull Trout, and Westslope Cutthroat Trout (at 10-15). It is sensible prioritization, and those species need all the help they can get.

The Bad News: Government Funding and Total Closure Costs

The Alberta government loaned $335 million interest-free to the OWA, of which $121 has been paid back by May 2023 (at 17). The federal government has also loaned the OWA $200 million interest free (at 17). The OWA therefore held around $414 in government loans in May 2023. The OWA is scheduled to pay back the provincial loans until 2031, and the federal loans will be repaid from January 2032 to October 2035 (at 39).

The OWA notes that these loans are separate from the billion-dollar federal grant to fund the Site Rehabilitation Program, a program used to fund the closure of inactive wells that are not the responsibility of the OWA (at 17). The OWA does note that receiverships funded by the OWA did use site rehabilitation money from the federal government (at 17). As reported earlier by the Narwhal, Sanling's receiver got $2,982,444, Sequoia's got $3,898,303, and Questfire's got $1,651,340 to pay for closure work of wells that would have otherwise been destined for the OWA. The federal grant money was indirectly used to reduce the size of the OWA's inventory.

I emphasize that the federal government's willingness to provide an interest free loan with no payments for almost a decade to an industry whose future is uncertain, and that the federal government was willing to pass a billion dollars to that industry under a flimsy pretence of COVID measures (The site rehabilitation program was part of the federal COVID-19 Economic Response Plan, COVID was not a significant cause of Alberta's inactive well problem, as it predates COVID by decades). It should be of interest to many Albertans that this federal support completely contradicts the bafflingly common view that the federal government is intent on destroying Alberta's oil and gas industry.

As of March 31, 2023, the OWA estimates the total remaining closure cost of the oil and gas infrastructure in their responsibility at $890 million (at 5), up from the less than $700 million estimated by the OWA in March 2022 (OWA Annual Report 2021/2022 at 5.) OWA expenditures were $161.8 million in 2021/2022 and $183.6 million in 2022/23, and all the government loans have been spent (at 18). Given that the Orphan Fund Levy is planned to be $135 million for the next few years (at 4) and the OWA has an obligation to pay back around $30 million in government loans per year (at 39), the OWA is planning on a work slowdown despite the growth in its inventory. With around $105 million to spend on closure work per year and more than $890 million of work to be done, the OWA does not appear on track to finish work on their current inventory until after 2030. The OWA ought to have included a clear statement of their planned rate for reducing the orphan inventory, to allow Albertans to assess the adequacy of that goal, and to assess the OWA's future performance.

Where the OWA Annual Report Misleads

The comments in the report about the efficiency of the OWA funding model cannot be taken seriously. The report makes no mention of the problem recently described by the Auditor General with the Orphan Well Levy – the amount of the annual Orphan Levy was not being supervised by the AER to confirm its adequacy in any way prior to 2023. This is why the orphan inventory has grown out of control and is consuming public money – the regulatory system was not working to obtain sufficient funds to perform the timely closure of orphans. Other jurisdictions should not consider adopting this regulatory model given its serious failures.

The report also says the OWA expects to shift to a "steady-state operation" and that they are confident they "will continue to bend the curve toward closures outpacing new inventory" (at 3, 9). This confidence is totally unwarranted. Alberta's years of failures on liability management mean that huge closure liabilities are, in many cases, owned by financially shaky companies. Here are some recent statements from the OWA:

> With the annual orphan levy on industry being raised to $70 million for 2021/22, we are confident that we will be able to significantly reduce the estimated closure liability over the next two to three years. (OWA Annual Report, 2020/21 at 5)
>
> The closure estimate [slightly less than $700 million] is obviously a large number, but we still have substantial access to funds, and we are confident that we will be able to significantly reduce the closure liability over the next three to five years. (OWA Annual Report 2021/22 at 5)
>
> The closure estimate [about $890 million] is obviously a large number, but we still have substantial access to funds, and we are confident that we will be able to significantly reduce the closure liability over the next three to five years. (OWA Annual Report 2022/23 at 5 - *it is the exact same phrase from the 2021/22 Annual Report.*)

There will be large new waves of orphan oil and gas assets during the next price downturn. The OWA's optimism will leave them underfunded, in debt, and underprepared when that next crisis comes, at which point the oil and gas industry will go back to government asking for another round of loans, grants, or tax breaks because the OWA refused to foresee the easily foreseeable.

A Footnote on Terminology - Legally Accurate Names and Descriptive Names

In everyday English, 'orphaned' and 'abandoned' have similar meanings. In Alberta oil and gas law, an orphaned well and an abandoned well are nearly opposites. Abandonment means dismantlement of an oil and gas asset into a permanently safe and secure condition (*Oil and Gas Conservation Act*, RSA 2000, c O-6 s 1(1)(a)), and an orphan well is one that the Alberta Energy Regulator has placed into the care of the OWA under Part 11 of the *Oil and Gas Conservation Act*.

This means that in Alberta, wells that have no financially capable remaining party responsible for their closure are *not technically* official orphans, since 'orphans' are the responsibility of the Orphan Well Association. There is no established term for wells with no financially capable remaining owner that have not yet been designated official orphans by the AER. This means that it is accurate to say a key job of the Orphan Well Association is to abandon orphans.

This linguistic mess is why the OWA only uses barely uses the term 'abandon', except in the legal name of the OWA: the "Alberta Orphan Oil and Gas Reclamation Association". The OWA instead "uses the term 'decommission' to refer to the responsible abandonment of energy infrastructure in a manner that ensures it will not pose a risk to the environment or the public" (at 1, fn 1).

We could learn to live with the counterintuitive naming scheme, but it pointlessly confuses non-experts for no benefit. The better option would be for the legislature to follow the OWA's lead and switch to clear and accurate names. 'Abandon' should be replaced with 'decommission', and the 'Orphan Well Association' should be renamed the 'collective oil and gas industry closure assurance fund'. This name would better capture who is responsible for what we now call 'orphan wells'. The OWA does not hold wells and other oil and gas assets that are no one's responsibility; rather, they have wells that are the collective responsibility of the oil and gas industry. Industry accepted this responsibility in a bargain with Alberta regulators, in which Alberta regulators agreed not to set timelines for the closure of inactive assets and to allow for low-scrutiny license transfers that allowed smoother oil and gas transactions. These changes would do a terrific job in clearing up the public's misconceptions about the orphan and inactive oil and gas problem.

This post may be cited as: Drew Yewchuk, "Orphan Well Association Annual Report 2022/2023" (11 July 2023), online: ABlawg, http://ablawg.ca/wp-content/uploads/2023/07/Blog_DY_OWA_Annual_Report_22_23.pdf

To subscribe to ABlawg by email or RSS feed, please go to http://ablawg.ca

Follow us on Twitter [@ABlawg](https://twitter.com/ABlawg)