

ENERGY & ENVIRONMENTAL POLICY TRENDS

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OWED LANDOWNERS: THE STATUS OF ORPHAN WELL RENTAL RECOVERY IN ALBERTA

On April 2nd, Alberta's Legislative Assembly passed [Bill 12](#), intended to address the province's orphan well problem. In this Policy Trends, we look at one of the lesser-known impacts of the problem: unsustainable pressure on the system meant to compensate Albertans with orphan wells on their land. Will changes under Bill 12 help alleviate this pressure and ensure landowners are protected?

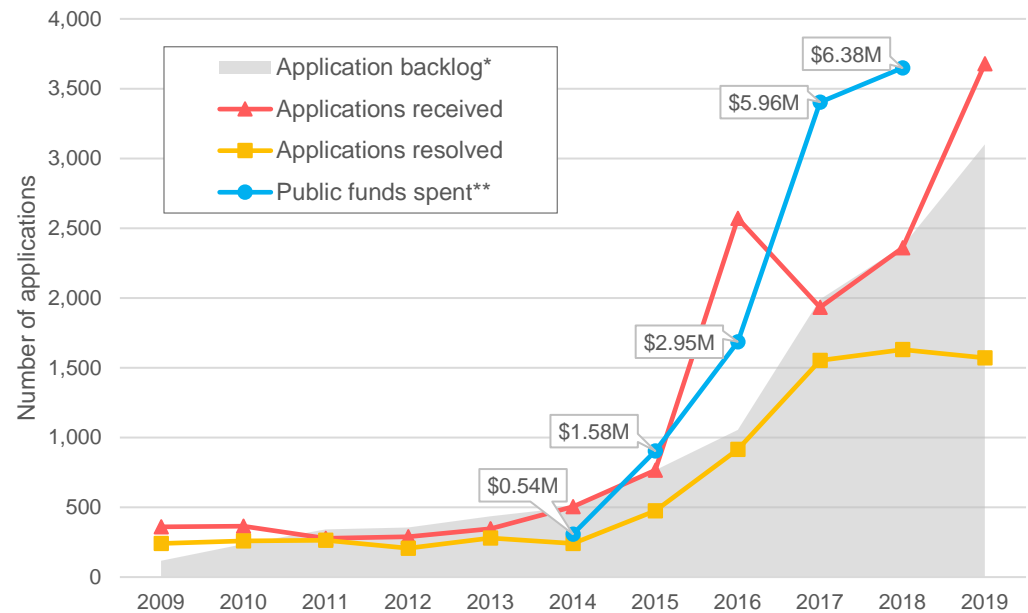
In Alberta, landowners cannot deny use of their land to mineral rights holders. Instead, financial compensation is intended to keep a landowner's property rights "whole" while their land is temporarily expropriated for resource development. Compensation is meant to be provided as annual surface lease payments made by the oil and gas operator (lessor) to the landowner (lessee).

If a landowner doesn't receive this annual payment, they may apply to the Alberta Surface Rights Board (SRB), a quasi-judicial body, for payment of the rental fee out of the province's General Revenue Fund. They must re-apply each year until transfer or reclamation of the site; the process is time-consuming and an added burden. Where the operator of a well becomes insolvent and no working interest participant remains, it becomes the responsibility of the Orphan Well Association (OWA), and is called an "orphan well". Currently, any landowner with an orphan well on their land must undergo this inefficient SRB process to collect the rental fees owed to them.

In 2018, \$6.38 million in public funds was spent to compensate landowners — almost 12 times more than what was spent in 2014.

There is a growing number of orphan wells in Alberta, which means more landowners are applying to the SRB for rental recovery. The number of rental recovery applications jumped from an average of 365 per year over 2004-2014, to 765 in 2015. The number then tripled to 2,570 in 2016, responding (with an expected lag) to significant increases in the number of wells orphaned in 2014

Landowner Applications to the Surface Rights Board for Surface Lease Rental Recovery



Sources: [SRB 2009-2017](#); [Government of Alberta 2019](#).

*Backlog for 2008-2016 is calculated based on applications received and resolved in subsequent years.

**Annual amount (in millions CAD) paid to landowners from the General Revenue Fund as a result of SRB decisions.

and 2015. As more applications are resolved, the annual total paid to landowners from the General Revenue Fund as a result of SRB decisions increased almost twelve-fold since 2014, reaching \$6.38 million in 2018.

Despite faster processing rates, in all years since 2007 the SRB received more rental recovery applications than it resolved, meaning there is a growing backlog. There were an estimated 3,101 rental recovery applications left unresolved at the end of 2018. At the SRB's highest application-resolution rate to-date (1,630 in 2018), it would take almost two years to resolve this carry-over alone, assuming no applications are on hold pending legal stay.

In its latest annual reports, the SRB called the boom in applications “an enormous workload for our administrative staff” (SRB 2016) and stated that “[rental recovery] matters will likely continue to be a challenge, particularly if large operators continue to fail” (SRB 2017). The growing backlog translates to longer processing times and delayed payment to landowners. When landowners are not compensated in a fair and timely manner, their rights are not respected and the integrity of Alberta’s property rights framework is compromised.

Each year since 2007, the SRB received more rental recovery applications than it resolved, resulting in a growing backlog.

Policy options to address the backlog should be urgently considered. A simple approach could be eliminating the need for landowner re-application, which would require amendment of section 36 of the Surface Rights Act. Bill 12, instead, amends the Oil and Gas Conservation Act and the Pipeline Act to broaden (1) the powers of the OWA and the AER, and (2) how funds collected through the existing industry levy can be used to manage orphan wells.

One change brought about by Bill 12 is that funds collected through the industry orphan well levy can now be used “for the purpose of making payments associated with taking over the management and control of wells or facilities in accordance with the regulations” ([Bill 12, section 13](#)). This change may allow the OWA — or another body authorized by the regulator — to pay rentals directly to landowners that have orphan wells on their land. This would free up SRB capacity to deal with the other matters assigned to it, help to ensure landowners are paid in a fair and timely manner, and free landowners of the burden of having to apply for rental recovery every year.

We recommend the Government of Alberta take advantage of this opportunity to better protect the property rights of Albertans.

References:

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