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HB 790 SUBCOMMITTEE MINUTES

Date: January 26, 2006

Room 102, State Capitol Building

These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time (in hours, minutes, and seconds) that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

An electronic copy of these minutes and the audio recording may be located from the Legislative Branch home page at <http://www.leg.mt.gov/>. On the left-side column of the home page, select "Committees," then "Interim," and then the appropriate committee.

To view the minutes, locate the meeting date and click on "minutes." To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

MR. BRIAN CEBULL
MS. CONNIE IVERSEN
MR. DOUGLAS McRAE
MR. JOE OWEN
MR. JIM ROGERS
MS. LILA TAYLOR
MR. BRUCE WILLIAMS
MR. DAVE WOODGERD
SEN. DANIEL MCGEE
SEN. MICHAEL WHEAT (Chairman)
REP. NORMA BIXBY
REP. JIM PETERSON
REP. RICK RIPLEY

COMMITTEE MEMBERS ABSENT

SEN. GLENN ROUSH

STAFF PRESENT

JOE KOLMAN, Research Analyst
CYNTHIA PETERSON, Secretary

Visitors

Visitors' list (Attachment 1).
Agenda ([Attachment 2](#)).

COMMITTEE ACTION

- The HB 790 Subcommittee agreed not to make any recommendations for changes or additions in the current statute regarding notice of transfer of mineral lease and, if a brochure is recommended and generated by EQC or some other state agency, the issue of transference of mineral leases would be fully explained in the brochure.
- The HB 790 Subcommittee voted to recommend amending Section 82-10-503, MCA, by extending the notice periods from no more than 90 days to no more than 180 days, and no fewer than 10 days to no fewer than 20 days, and to provide for a waiver by the contracting parties.
- The HB 790 Subcommittee approved the December 8-9, 2005, meeting minutes.
- The HB 790 Subcommittee approved the Coal Bed Methane/Split Estate Work Plan.

CALL TO ORDER AND ROLL CALL

00:00:01 Chairman Wheat called the meeting to order at 9:30 a.m. The secretary noted the roll ([Attachment 3](#)).

AGENDA

INDUSTRY PERSPECTIVE

Dave Galt--Montana Petroleum Association

00:02:11 Dave Galt, Executive Director, Montana Petroleum Association, submitted written testimony ([EXHIBIT 1](#)) and a summary of Oil and gas Production Tax Total Collections by County, and County Distributions in FY 2005 ([EXHIBIT 2](#)).

Robert Fisher--Ballard Petroleum Holdings

00:05:29 Robert Fisher, Senior VP/Managing Partner, Ballard Petroleum Holdings, submitted written testimony ([EXHIBIT 3](#)) and a surveyor's plat depicting the location of #22-12 Willow Creek Ranch, Carbon County, Montana ([EXHIBIT 4](#)).

Questions from the Subcommittee

- 00:23:40 Mr. Rogers asked about early negotiations with surface owners and their neighbors and recalled Mr. Fisher's testimony that if early negotiations are required by the state, they would no longer work with the surface owner. Mr. Rogers wondered why Mr. Fisher would retaliate. Mr. Fisher clarified he did not say he would retaliate against the surface owner, but that people would lean toward the minimum standards if those standards are mandated. Mr. Fisher cautioned about being careful of unintended consequences that can come from mandated agreements. Mr. Fisher suggested the majority of operators conduct very good business in the state.
- 00:26:43 Mr. Rogers stated Mr. Fisher's company has shown it has appropriate standards, but suggested not all companies do. Mr. Fisher cautioned that hardships may be placed on small mom and pop operations by implementation of mandates on surface use agreements. Mr. Fisher explained his company's utilization of handshake deals with many landowners and believed mandating a surface use agreement could cause problems and change economics for all operators and landowners. Minimums set by the state could mean the operator no longer has the ability to negotiate with surface owners.
- 00:30:22 Mr. Rogers asked if early negotiations could be a handshake and a check. Mr. Fisher clarified it could be and stated there are situations where the surface owner is not entitled to a check such as on the Fort Peck Reservation.
- 00:31:04 Mr. Woodgerd asked about what happens on federal leases when an agreement cannot be reached. Mr. Fisher explained a federal bonding-on process is currently used. Mr. Fisher stated there have been ten cases in Montana where the bonding on process has been used. Mr. Fisher told of having been literally blackmailed by surface owners.
- 00:35:00 Mr. McRae recalled testimony at previous HB 790 Subcommittees where reference was made to operators entering land without notice. Mr. McRae wondered if Mr. Fisher would be in favor of an enforcement mechanism to prevent operators from entering without notice. Mr. Fisher thought he would support an enforcement mechanism, but stated he thought the provision already existed in trespassing statutes. Mr. Fisher stated he would need to contemplate the notion further. Mr. Fisher recalled having to pay for mistakenly trespassing.

Mark Carter--Encore Acquisition Company

- 00:39:10 Mark Carter, Encore Acquisition Company, gave a power point presentation to the Subcommllttee regarding split estates (**EXHIBIT 5**). Mr. Carter emphasized Montana is the only state in the Northwest that is increasing its oil production.

(Tape 1; Side B)

Questions from the Subcommittee

- 00:49:07 Mr. Rogers asked specifically which wells Encore Acquisition would be drilling in March 2006. Mr. Carter replied that Encore did know which wells it would be drilling in March 2006.
- 00:49:26 Ms. Iversen asked Mr. Carter if he was saying if a mandated agreement was implemented, his company would not allow a surface owner to add to the agreement. Mr. Carter replied the standard set in law would become the norm, and companies may not be willing to deviate from the standard. Ms. Iversen noted there is currently a standard set in law and that sometimes companies will deviate from that standard to accommodate landowners. Ms. Iversen wondered why that practice would change if a new standard was mandated, and Mr. Carter could not provide a response. Ms. Iversen commented she did not appreciate the threat that industry will leave the state if new standards are adopted. Mr. Carter replied that if it takes longer to drill a well, oil and gas companies will not be able to drill as many wells, would not be able to employ as many people, taxes would decrease, and this would have an economic impact on Montana.
- 00:52:19 Mr. Williams noted Encore Acquisition has drilled 250 wells on the Cedar Creek Anticline without surface use agreements and asked if those landowners had requested surface use agreements. Mr. Carter replied landowners in that area had not requested surface use agreements, and that many landowners prefer to proceed on a handshake and do not want anything in writing.
- 00:53:18 Ms. Taylor inquired whether Encore pays a blanket bond. Ms. Taylor expressed her concern about companies forfeiting their bonds because it is cheaper to do so. Mr. Carter replied that sometimes that happens. Ms. Taylor suggested the bonding does not have enough teeth in it. Mr. Carter explained how horizontal drilling has allowed Encore to turn idle wells into injection wells or producing wells. Ms. Taylor asked if Encore carries the same bonds as it did when it first entered Montana. Mr. Carter replied Encore's original bonds are still in place.
- 00:56:09 Mr. McRae thought it would be advantageous for a company to have a mandatory surface use agreement in writing. Mr. Carter explained it depends on the individual surface owner, and that a surface use agreement is sometimes not necessary.
- 00:57:22 Cebull asked Mr. Carter to elaborate on Encore's reclamation bonding and how the amounts were set. Mr. Carter was not certain but imagined the state took the number of wells and based on production and estimate what it would cost at that time to plug idle wells.
- 00:58:12 Chairman Wheat commented about Encore's confidential and cautionary statements contained on Exhibit 5. Mr. Carter explained Encore requires those statements on all presentations.

Todd Ennenga--Devon Energy Corp.

00:59:00 Mr. Ennenga submitted written testimony about Devon Energy Corp.'s operations based out of Havre, Montana (**EXHIBIT 6**).

Questions from the Subcommittee

01:08:56 Ms. Taylor asked if Devon needed to get on someone's land in less than ten days and called the landowner, whether the landowner could let them on. Mr. Ennenga stated that situation does arise, and a landowner can let them on with less than ten days' notice.

01:09:29 Mr. Woodgerd asked whether Devon has leases on federal land. Mr. Ennenga stated they do. Mr. Woodgerd asked if there are certain elements mandated in surface agreements on federal land. Mr. Ennenga stated the parties agree on what will be in the surface use agreement on federal lands. Mr. Woodgerd recalled Mr. Ennenga's testimony that a mandated agreement could take away goodwill between landowners and mineral lessees and asked if that would be the case for a well located on federal land. Mr. Ennenga explained the language in the BLM agreements is very broad, which allows the parties to negotiate. Mr. Woodgerd asked if there are situations where the landowner is not satisfied. Mr. Ennenga replied the situations do not arise frequently, but when it does, Devon attempts to negotiate and, if necessary, the company will revise its drilling schedule and move on. Mr. Woodgerd asked if it would be beneficial for Devon to be able to bond on. Mr. Ennenga replied not necessarily and suggested bonding is such a detailed, process-orientated procedure, that it would be impossible to come up with a bond that would make all parties happy. Mr. Ennenga did not believe bonding would be a good solution. Mr. Woodgerd asked how the receipt would hold Devon liable for loss of crops. Mr. Ennenga clarified the receipt is not a release.

Colby Branch--Crowley Law Firm

01:15:19 Colby Branch, a natural resource attorney from Billings, believed the Subcommittee should not recommend any changes to the current statute. Mr. Branch based this belief on three principles: respect for the rights of the properties of others; if it's not broke, don't fix it; and, good intentions sometimes bring unintended consequences. In addressing respect for the rights of others, Mr. Branch asked the Subcommittee to remember anything legislation gives to the landowner will be taken away from the mineral owner. Mr. Branch provided a history of split estates in Montana. Mr. Branch testified that reasonable access to minerals is a right of the mineral owner and intent to access minerals is almost always stated in the deed. If the state unreasonably restricts the right of access of the mineral holder, the mineral owner will lose their mineral rights. Mr. Branch cautioned any legislation which reallocates the rights of the surface owners and the mineral owners would rewrite thousands of deeds and oil and gas leases. Mr. Branch read an excerpt from the Montana Supreme Court decision which struck down the last Surface Use Act that addressed strip mining. The Supreme Court

determined statutes must serve a public, not private, interest, and the state should not get involved in a private contract between two parties.

(Tape 2; Side A)

Mr. Branch believed there would need to be a compelling reason for any proposed legislation which would change the current law. Mr. Branch identified prior testimony from landowners as subjective. Mr. Branch suggested the current ten-day notice requirement is sufficient and an increase in the notice time could cause oil and gas operators to lose their leases. Mr. Branch noted the current Land Use Act is very broad in nature and provides adequate compensation for damages. Mr. Branch suggested the court system could be utilized to resolve damage disputes. Mr. Branch did not believe surface use agreements should be mandated because the oil and gas industry is already a highly regulated industry, and the surface use agreement could conflict with applicable regulations. Mr. Branch identified unintended consequences and talked about the downfall of Montana's oil boom in the 1980s. Mr. Branch urged the Subcommittee to encourage the recovery of the oil and gas industry in Montana. Mr. Branch pointed out that any new legislation would not affect federally reserved minerals managed by the Bureau of Land Management (BLM) since they are governed by federal law. Mr. Branch concluded his testimony by stating the record does not support any changes to the Surface Use Act.

Questions from the Subcommittee

01:32:36 Ms. Taylor recalled her question regarding bonding and whether it is sometimes cheaper for a company to forfeit its bond if its liability is greater than the bond. Mr. Branch explained if the liability was greater than the bond amount and the operator walked away, the operator will still remain liable regardless of whether the company forfeits its bond. Additional reclamation funds could come from the RIT account.

Colby Branch--Crowley Law Firm (cont'd)

01:34:32 Mr. Branch continued and discussed the federal procedures on federal leases. Mr. Branch pointed out the BLM is the mineral owner, and if the mineral owner wants to condition his leases on the lessee's ability to obtain a surface use agreement with the landowner, that is the mineral owner's prerogative. Likewise, if the operator wants to take a lease under those conditions, that is the operator's right.

01:35:42 Mr. McRae asked Mr. Branch if he would ever advise a client to enter into an agreement with another entity without having a written agreement. Mr. Branch replied it would depend on the circumstances.

01:36:04 Ms. Iversen, was curious what the cost would be to take an issue like this to court. Mr. Branch responded it would depend on the circumstances and requested more specifics.

01:36:35 Chairman Wheat asked Mr. Branch what his hourly fee was. Chairman Wheat assumed the hourly rate was approximately \$200 and asked Mr. Branch to estimate how many hours would be needed to represent a dissatisfied surface owner in a court action on a split estate issue, assuming the action went to trial. Mr. Branch could not provide an answer.

01:37:37 Mr. Cebull wanted to know how many cases regarding damages actually end up in court. Mr. Branch replied in most cases, the parties reach an agreement. Mr. Branch explained that he has provided mineral owners with estimates of what it would cost to gain access to their minerals through legal action, and that amount is usually less than what the surface owner has demanded. Mr. Branch stressed the value of a mineral operator having good relations with a surface owner.

**Questions from the Subcommittee
(Directed to any previous speaker)**

01:40:39 Sen. McGee asked Mr. Fisher about US oil reserves and recalled earlier discussions about releasing those reserves. Sen. McGee explained the history behind reserving mineral rights and the ability to access minerals. Sen. McGee explained the United States imports oil because of the time, energy, effort and cost to drill in the United States. Sen. McGee wondered how much reserve oil supply the United States has and how long the United States could continue to operate without foreign oil. Mr. Fisher offered to provide the exact data to Sen. McGee but estimated the United States could last a week without foreign oil. Sen. McGee asked how much it costs to obtain a mineral rights lease for oil and gas exploration. Mr. Fisher estimated the cost as \$300-\$400 per mineral acre right now in Richland County, but noted the cost varies depending on location. Sen. McGee asked how many acres are contained in a typical mineral lease. Mr. Fisher explained drilling in Richland County is currently on 1280-acre spacing units. Sen. McGee wanted to know the production value of a lease. Mr. Fisher explained a 1280-acre horizontal well in Richland County that extracts 600,000 barrels, at \$60 a barrel, would generate \$36 million in revenue. Royalties and operating costs would then have to be paid, but even at \$20 a barrel, the revenue would be \$12 million. Mr. Fisher emphasized the well would be worth a lot of money to the operator, landowners, county, state, federal, and everyone in the chain. Sen. McGee asked if the Subcommittee decided it would be appropriate to set surface use agreement requirements and bonding requirements whether the Subcommittee should also recognize damages to the mineral owners when they are not being allowed to develop their minerals. Sen. McGee wondered what a bond would look like to the surface owner who wants to stop development of an original mineral right. Mr. Fisher suggested no surface owner would want to see the cost of that bond because of the value of mineral resources.

01:51:11 Ms. Taylor asked if Mr. Fisher's company ever used eminent domain to access land. Mr. Fisher responded he has never used eminent domain, and that he was not certain that would be a proper use of eminent domain. Mr. Branch explained if someone was restricting right of access, the proper procedure would be to obtain a restraining order from the court.

BREAK

PUBLIC COMMENT

- 02:04:59 Chairman Wheat called for public comment on HB 790 issues.
- 02:06:22 John Youngberg, Montana Farm Bureau, testified he would like to see EQC develop an educational publication regarding split estates. Mr. Youngberg suggested many landowners have questions since drilling is being done in new areas, and those landowners do not have any experience in dealing with oil and gas producers.
- 02:08:14 Rep. Peterson asked Mr. Youngberg if he has had any discussion with his members about extending the notice period or mandating a surface use agreement. Mr. Youngberg explained the Montana Farm Bureau thought a surface use agreement should be a negotiated contract between the landowner and the operator/lessee. Mr. Youngberg questioned whether a surface use agreement mandated by the state would have to be on file with the state. Mr. Youngberg stated his members are not comfortable having the agreements be of public record.
- 02:09:50 Ms. Taylor asked how publications would be distributed. Mr. Youngberg suggested distribution could be accomplished through various organizations.
- 02:10:22 Sen. Keith Bales, SD 20, submitted proposed recommended legislation for consideration by the HB 790 Subcommittee (**EXHIBIT 7**). Sen. Bales cautioned one size does not fit all and will not work. Sen. Bales suggested creating an impact fund for cities and towns in areas where substantial mineral development is occurring. Sen. Bales suggested utilizing some of the federal minerals revenue coming back to the state as an impact fund. Sen. Bales identified this as a good tool to offset any problems caused by impact.

(Tape 2; Side B)

- Sen. Bales stated the proposed impact fund would make money available to take care of any unintended consequences from coal bed methane (CBM) development. Sen. Bales suggested revenue to the fund should continue as long as CBM development is occurring, and money could revert to another account when no further applications for the funds have been made. Sen. Bales' other concern was the lack of rules regarding the fund.
- 02:21:10 Mr. Rogers explained the reason the rules were not written was because there was no funding in the legislation to write rules. Mr. Rogers explained the funds are now available and the rulemaking process will proceed. Sen. Bales responded two legislative sessions have passed since the legislation was enacted, and the rules should have been in place as of July 1. Sen. Bales believed someone should have requested the funding earlier.
- 02:22:23 Mr. Williams requested clarification about the 25 percent of federal royalties coming back to the counties. Sen. Bales explained the federal government pays 50 percent of their coal and oil and gas royalties to the state, and 25 percent of

that amount is going to the counties where development is taking place. Sen. Bales is proposing an additional 25 percent of the royalties be placed in a fund that would not necessarily go to the counties in which the activities are taking place, but would be placed in a fund to address impacts where new activity was beginning. Sen. Bales suggested the fund could be used to address impacts to county infrastructures from development.

02:25:00 Mr. Williams inquired who would make the decision on how the funds would be used. Sen. Bales suggested a board, similar to the coal board, could be utilized, and counties and cities could apply to the board for funds.

02:25:36 Mr. Cebull asked for the balance of the CBM impact account. Sen. Bales cited the balance as \$4,166,491 in June 2007.

02:27:07 Rep. Peterson asked about the figure cited by Sen. Bales. Sen. Bales clarified the number is an estimate for June 2007. Rep. Peterson asked about the lack of rules to regulate implementation of the fund. Sen. Bales explained the legislation required utilization of the funds to begin July 2005, but no rules have been put in place to allow that to happen, and the conservation districts were supposed to be working on the rules.

02:29:26 Julia Page, Northern Plains Resource Council, summarized past conflicting testimony regarding timing and how much notice a landowner needs and suggested the Subcommittee should investigate to determine the reality. Ms. Page took exception to the suggestion that a landowner can pick up a phone and call a company to determine what is going on. Ms. Page agreed landowner concerns vary throughout the state and also agreed the landowner should be able to waive those standards. Ms. Page believed a landowner's power lies with his ability to negotiate. Ms. Page emphasized landowners are not trying to prevent a mineral owner from accessing his minerals, but rather are attempting to give the landowner enough say in the process to address landowner concerns. Ms. Page did not believe recourse through the courts was a viable option for landowners. Ms. Page viewed past testimony as indicative that landowners were experiencing substantial problems.

LUNCH

00:01:47 Chairman Wheat reconvened the meeting and explained the process for the afternoon work session.

COMMITTEE DISCUSSION

00:03:13 Mr. Cebull suggested the Subcommittee should review the existing statute.

00:04:43 Mr. Kolman reviewed the Options for Surface Damage & Agreement Statutes (**EXHIBIT 8**), and the spreadsheet containing a Summary of State and Federal Surface Damage Regulations (**EXHIBIT 9**). Mr. Kolman pointed out that other options could also be considered, and that the Subcommittee could also choose

to take no action. Mr. Kolman explained the purpose of the options list is to assist the subcommittee in organizing its thoughts.

- 00:07:15 Chairman Wheat explained his breakdown of the issue into three broad areas: notice, surface use agreements, and bonding.
- 00:08:43 Mr. Kolman reviewed the existing statute (**EXHIBIT 10**) with the Subcommittee at the request of Mr. Cebull.
- 00:13:34 Mr. Cebull pointed out that under the current statute the surface owner can assign damage payments to a tenant if he chooses.
- 00:14:31 Chairman Wheat suggested the Subcommittee begin its discussions with the issue of notice and directed the subcommittee to Exhibit 8 and the available options under notice of transfer of mineral lease.
- 00:16:04 Mr. Rogers explained he spoke with Rosebud County Clerk and Recorder to determine how difficult it would be for them to notify the surface owner when mineral rights are recorded. Mr. Rogers reported the Rosebud County Clerk and Recorder's office would be able to provide notice when private mineral rights recorded.
- 00:16:47 Mr. Owen thought going down this road would have the absolute unintended opposite consequence. Mr. Owen believed the procedure proposed by Mr. Rogers would set up an adversarial relationship from the onset.
- 00:18:04 Chairman Wheat did not believe being notified when minerals are leased would be feasible because of the number of leases and the fragmented nature of split estates. Chairman Wheat wondered if the Subcommittee should be making recommendations in this area.
- 00:19:46 Mr. Cebull explained a situation that occurred with Nance Petroleum and clarified the landowners were not notified of the lease because there were no immediate plans for development. Mr. Cebull suggested there are various places people can go to get information regarding who owns the minerals under their land and whether those minerals have sold. Mr. Cebull identified landowner education as an important issue.

(Tape 3; Side A)

- 00:21:20 Mr. Rogers suggested including the information cited by Mr. Cebull in any EQC publication that may be developed.
- 00:22:00 Chairman Wheat explained the Subcommittee's ultimate goal should be to help improve communication between landowners and industry. Chairman Wheat believed education is an excellent idea and would help alleviate communication problems. Chairman Wheat explained his goal has never been to shut down the oil and gas industry in Montana.

- 00:24:06 Ms. Iversen commented that sometimes the lease states where pipelines and roads can be located on the land, and it is difficult for a surface owner to change the conditions of the lease once the lease has been signed by the mineral owner.
- 00:25:22 Mr. Owen clarified a mineral owner cannot grant rights to the surface. Mr. Owen stated no matter what a mineral owner places in the lease, he cannot take from the surface owner without the surface owner's permission.
- 00:26:17 Chairman Wheat explained two different situations: one where the surface is owned in fee but not the minerals; and the second situation where the surface is leased and the lessee also owns the minerals.
- 00:27:05 Chairman Wheat moved the HB 790 Subcommittee not make a recommendations for any changes or additions in the current statute regarding notice of transfer of mineral lease.
- 00:27:50 Chairman Wheat asked who would generate the proposed brochure and solicited information regarding the proposed EQC publication.
- 00:28:20 Sen. McGee spoke about past EQC publications on eminent domain and water rights. Sen. McGee could envision an unbiased publication regarding split estates which would provide explanations of the process in plain English. Mr. Kolman agreed EQC staff would be responsible for generating the publication.
- 00:30:00 Chairman Wheat amended his motion to include that if a brochure is recommended and generated by EQC or some other state agency, the issue of transference of mineral leases would be fully explained in the brochure, so whoever reads the brochure will know where they can go to find out about leases on their property.
- 00:30:34 Mr. McRae asked if there is a way to make information available to surface owners who are in an area targeted for development. Mr. McRae suggested an appropriation be available to do a mailing to a specific area that would be affected by development. Mr. McRae believed the information would be critical to a landowner's ability to negotiate.
- 00:31:22 Sen. McGee commented a landowner could go to the county Clerk and Recorder's office on a routine basis and examine the records to determine whether mineral leases have changed hands. Sen. McGee also suggested landowners could enter into an agreement with their title company to keep them informed. This information could be included in the proposed EQC publication. Mr. McRae emphasized he would like to see funding in place to keep affected landowners informed.
- 00:32:43 Mr. Williams suggested placing the publication on the EQC website, as well as other websites, to make the information readily available to the public.
- 00:33:54 Ms. Iversen reiterated her concern that landowners would like to know before a lease is signed, so they have the ability to negotiate the terms of the lease.

Chairman Wheat suggested this information could be included in the proposed publication, so landowners are aware of the option to negotiate the surface use agreement.

- 00:36:27 Chairman Wheat's motion that the HB 790 Subcommittee not make any recommendations for changes or additions in the current statute regarding notice of transfer of mineral lease and that if a brochure is recommended and generated by EQC, or some other state agency, the issue of transference of mineral leases would be fully explained in the brochure carried unanimously by voice vote.
- 00:36:49 Regarding notice of surface activity, Chairman Wheat explained the current statute is ten days' notice of "drilling operations" and suggested "drilling operations" should include surveying and staking.
- 00:38:03 Ms. Taylor noticed the statute requires "written" notice, and wanted to know if written notice was always given.
- 00:39:14 Mr. Cebull explained Nance Petroleum gives ten days' minimum written notice, although sometimes they give verbal notice with the consent of the landowner. Mr. Cebull addressed "drilling operations," and stated Nance Petroleum interpreted "drilling operations" to include the surveying. Mr. Cebull could not say if that was an industry-wide interpretation.
- 00:41:06 Ms. Iversen replied the Board of Oil and Gas also has the same interpretation of "drilling operations," but noted the statute does not clearly state that "drilling operations" includes surveying and staking.
- 00:41:24 Mr. Williams believed Fidelity also gives written notice, but the practicality is that notice is given when Fidelity sits down with landowners and discusses the development plan. Mr. Williams also commented that it would be important to make it clear that written notice for routine maintenance operations on an existing producing well would not be required.
- 00:43:12 Mr. Owen asked for clarification and commented that the way the statute is written is subject to interpretation. Specifically, Mr. Owen asked about multiple notice in multiple phases. Mr. Owen could understand that what one person views as not receiving notice, another could see that he has complied with the notice statute. Mr. Owen would like to see the statute clarify each person's responsibility.
- 00:44:08 Chairman Wheat provided the Subcommittee with his ideas about surface use agreements. Chairman Wheat believed the company should give its initial notice when it wants to come onto the land and perform surveying and staking. Chairman Wheat would like to mandate negotiation, but not the particulars of any one agreement. Chairman Wheat would also like to see the landowner have the ability to waive his right to a surface use agreement. Chairman Wheat agreed it should be clearer as to when notices should be given.

- 00:46:17 Mr. Williams pointed out that if staking of the well is the first notice required by the statute, an operator is not in a good position at that moment to discuss future plans.
- 00:47:53 Ms. Taylor agreed with Mr. Williams that at that point, a plan may not have been conceived.
- 00:49:00 Chairman Wheat asked whether it is a problem to notify the landowner when a company does the survey and then notice the landowner again when a drilling plan is conceived.
- 00:49:27 Mr. Cebull explained his concern that mandating multiple notification deadlines could result in companies not being able to access land in the cases where there are difficult landowners. Mr. Cebull cautioned the subcommittee that one-size solutions will not fit all situations.
- 00:51:39 Mr. Williams suggested a notice to landowners of staking should not be required to be written and then requiring a ten-day written notice of initial land disturbance activities.
- 00:54:04 Mr. Cebull suggested the written notice requirement is already in statute. Chairman Wheat replied the notice requirement is not clear in statute.
- 00:55:08 Ms. Iversen stated she would prefer to see a written notice requirement even for surveying since a landowner may want to be present for the surveying.
- 00:55:42 Rep. Peterson asked Sen. McGee if there is anything in statute regarding surveying that addresses the issue. Sen. McGee replied he has never gone onto someone's property without permission. Sometimes Sen. McGee has to get permission go onto the adjacent owner's property and, if the landowner is not present, Sen. McGee leaves a business card and a detailed description of the work he performed. Sen. McGee explained he always records information regarding his meeting with a landowner. Sen. McGee explained the procedure for conducting survey work when the landowner is not cooperative. Sen. McGee suggested the notice requirement is covered by practice and current law.
- 01:00:12 Mr. Woodgerd stated he was impressed with Wyoming's ability to come up with their current law. In Wyoming, they have a five-day notice requirement for non-surface disturbing activity, and that notice does not have to be in writing. However, Wyoming requires a 30-day written notice for drilling.
- 01:02:25 Mr. Owen suggested the Subcommittee should combine ideas, and a proposed EQC publication could suggest the element of notice should be included in a surface use agreement, if appropriate to the situation.

(Tape 3; Side B)

- 01:04:06 Mr. Rogers suggested there are different circumstances for every landowner and that due to his cattle operations, Mr. Rogers needs three- to six-months' notice

when the surface is going to be disturbed. Mr. Rogers explained that he practices management intensive grazing, and that he does not have an extra section of ground available for grazing if he has to relocate his cattle. Mr. Rogers explained how his business plan would drive the contents of a surface use agreement.

- 01:06:49 Chairman Wheat asked if Mr. Rogers knew who owned the mineral rights under his property. Mr. Rogers did know who owned the mineral rights and stated that to the best of his knowledge, the minerals have not been leased. Chairman Wheat emphasized the importance for a landowner to know who owns the mineral rights under his property and to stay in contact with the mineral owner.
- 01:08:26 Mr. Rogers suggested companies know where the capital is coming from more than ten days prior. Mr. Rogers believed his business would need substantially more than ten days' notice. Mr. Rogers suggested the Subcommittee should look at both perspectives.
- 01:10:00 Rep. Bixby agreed the language should be cleaned up even if it sets up an adversarial relationship. Rep. Bixby believed discussions should start before the survey begins, and that ten days' notice is not long enough. Rep. Bixby has noticed that most people work much better with options than they do mandates.
- 01:12:17 Rep. Peterson suggested the process would not go forward unless there was a survey. Rep. Peterson did not recall hearing from landowners that this is a huge problem. Rep. Peterson agreed there is a need to educate landowners. Rep. Peterson acknowledged industry is affected by weather, equipment availability, and numerous other factors. Rep. Peterson did not think landowner responsibilities should be put onto the mineral owner.
- 01:15:48 Rep. Ripley suggested going with five days' written notice for non-surface disturbing activity and ten to ninety days' for drilling activity. Rep. Ripley believed his suggestion would clarify current law and allow ample time for drillers to deal with any emergencies that may arise. Rep. Ripley could not recall hearing substantial public testimony relating problems with the ten- to ninety-day notice requirement.
- 01:17:05 Mr. Cebull stated by statute operators cannot notify landowners more than 90 days ahead of time. Mr. Cebull suggested extending that notice time could be beneficial in some circumstances. Mr. Cebull also suggested there should be a waiver alternative on either side of the notice requirement.
- 01:18:14 Mr. Rogers responded to Mr. Cebull's suggestion and agreed 90 days on the back end was unreasonable and could cause the need to re-notice. Mr. Rogers agreed to support the extension suggested by Mr. Cebull. Mr. Rogers also agreed waivers are a good option.
- 01:19:42 Ms. Taylor responded to Rep. Ripley and stated five days' written notice is not long enough. Ms. Taylor suggested the mail may not even arrive in some places in five days. Ms. Taylor was wary of developers that use the law to skirt around notice requirements. Ms. Taylor favored a 30-day notice requirement.

01:21:47 Sen. McGee stated he has a neutral perspective since he does not own any surface or mineral interests. Sen. McGee pointed out the current statute does not mention the legitimate property right of the mineral owners. Sen. McGee believed the end result should be reasonable and fair to all parties and cautioned the issue is not just how to accommodate the landowner. Sen. McGee asked the Subcommittee to remember that mineral owners have also made a personal investment in their property right.

01:26:14 Chairman Wheat recalled the mineral estate is the dominant estate and can be developed without protection for the surface owner and to the detriment of the surface owner. Chairman Wheat explained that it has been recognized that mineral owners have the right to develop their minerals.

01:27:19 Sen. McGee pointed out that the entire Section 82-10 does not mention the rights of the mineral owners but only recognizes the surface right. Sen. McGee asked the Subcommittee to remember that this is not just a local issue.

BREAK

01:47:21 Chairman Wheat called the meeting back to order. Chairman Wheat referred to Patrick Montalban's letter and allows Mr. Montalban to comment.

01:47:46 Patrick Montalban, President and CEO of Altamont Oil and Gas, gave specific examples of how his companies (small oil producers) cannot conduct business with a ten-day notice requirement. Mr. Montalban strongly suggested his company will miss out on many opportunities if it has to adhere to a ten-day notice requirement. Mr. Montalban referred to a letter he had submitted to the Subcommittee earlier ([EXHIBIT 11](#)).

01:50:29 Rep. Ripley moved that Section 82-10-503 be amended to include the time frame of five days for non-surface disturbing activity and ten to ninety days for drilling.

01:51:13 Sen. McGee read the statute to say "any activity," which would include surveying activity. Therefore, current law requires ten days' notice to the landowner before a person can go onto the land to survey.

01:52:04 Rep. Peterson clarified that the motion would be for five days' written notice for non-surface disturbing activities, including surveying, and ten days' notice would be required for any activity that would be surface disturbing. Rep. Ripley agreed with Rep. Peterson's understanding and stated his motion would follow Wyoming law.

01:52:47 Sen. McGee stated Rep. Riley's suggestion is already covered by current law and that current law just needs to clarify that "any activity" includes surveying. Sen. McGee would not support the motion.

01:53:57 Mr. Cebull agreed with Sen. McGee's interpretation of current law. Mr. Cebull noted the current law had not been challenged in court. Mr. Cebull asked that the

Subcommittee clarify that notice is not needed every time someone goes onto the land. Mr. Cebull urged caution about stacking notification requirements.

- 01:55:13 Mr. Owen explained the five-day notice to survey does not seem unreasonable, but was not sure that notice needed to be written and thought a telephone call could be sufficient. Mr. Owen suggested the ideal time for notice of drilling operations would be at the time the drilling permit is submitted. Mr. Owen suggested at that time, the driller would have more information for the landowner, and the landowner could negotiate the details of the surface damage agreement.
- 01:57:07 Sen. McGee asked for specific information on how the notice requirements work under current law. Mr. Cebull responded that for BLM the average is 60-90 days for a general permit; permitting time for the State of Montana, without other caveats, is typically a 15-20 day process. The process can be accelerated under certain circumstances. Sen. McGee pointed out it would be at least 20 days before equipment would be on the ground.
- 01:59:31 Ms. Taylor commented a permit cannot be applied for until a stake is in the ground.
- 01:59:59 Mr. Williams responded and agreed it takes 60-90 days for a BLM permit and 15-20 days for a permit through the Board of Oil and Gas.
- 02:00:39 Sen. McGee stated he did not believe Rep. Ripley's motion was necessary under current law.

(Tape 4; Side A)

- 02:01:43 Rep. Ripley agreed Sen. McGee was reading the current law correctly, but explained his motion is meant to be a compromise designed to meet various Subcommittee members' concerns.
- 02:03:09 Rep. Peterson explained the current statute could be interpreted in different ways because the title refers to "Written Notice of Intent to Begin Drilling Operations" and the title of Section 82-10-503 is "Notice of Drilling Operations," which would imply an operator would supply a notice before it begins drilling. Rep. Peterson stated he supports Rep. Ripley's motion because it provides clarification of the statute. Rep. Peterson believed Rep. Ripley's motion would trigger communication and provide a way to notify landowner that a process is beginning.
- 02:06:33 Ms. Taylor was adamant that the proposed five days' notice is not long enough and stated she would not support Rep. Ripley's motion.
- 02:06:53 Mr. Owen stated the statute, as currently written, is difficult for operators to comply with. Mr. Owen explained a company cannot provide information it does not have at the time of staking. Mr. Owen suggested Rep. Ripley's motion would give the company the ability to comply with the intent of the law by being able to

provide information to the surface owner, so the surface owner can make a good decision.

- 02:07:57 Chairman Wheat solicited comments from the Subcommittee regarding requiring ten days' notice to go out and survey and then requiring another notice to be given when there is submission of an application for a permit.
- 02:08:30 Mr. Williams responded the second notice is redundant and once a company surveys, with or without the landowner's involvement, notice has been given of intent to drill. Mr. Williams was concerned about imposing too many deadlines.
- 02:09:48 Mr. Cebull agreed with Mr. Williams' comments that the second notice is redundant. Mr. Cebull cautioned against applying one requirement to all aspects of a vast industry across Montana.
- 02:11:19 Mr. Williams stated he would prefer the notice not be required to be written. Mr. Williams struggled with the concept of writing into statute how to be courteous and neighborly. Chairman Wheat commented there are many statutes that regulate people's behavior and are meant for a small percentage of the population.
- 02:14:49 Rep. Bixby believed the Subcommittee should look at a comprehensive law and would like to see the law simplified. Rep. Bixby believed a well-laid out process would be helpful to all parties.
- 02:17:43 Mr. Cebull reminded the Subcommittee that in public testimony in Sheridan, it was stated that Wyoming used Montana's current statute as a model.
- 02:18:55 Rep. Bixby pointed out ranchers and farmers do not have resources to file an action in court and that court battles can be expensive. Rep. Bixby spoke about the need for compromise to clarify the statute.
- 02:21:06 Mr. McRae stated when the initial contact is made for surveying, no action is required by the landowner. Mr. McRae believed if a waiver is involved, it would open the door for negotiations and communication. Mr. McRae also believed the second notification is necessary because of economic concerns of the rancher.
- 02:22:34 Mr. Williams suggested the court would always be the proper forum in the case of unresolved disputes. Chairman Wheat added mediation and arbitration were also available options in the case of a dispute.
- 02:24:55 Mr. Woodgerd noted mediation and arbitration are currently alternatives in Wyoming, and one of the problems Wyoming struggles with is deciding who will pay for the arbitration or mediation process. Mr. Woodgerd suggested a mediation or arbitration process is something Montana should consider.
- 02:26:06 Mr. Williams pointed out that in Wyoming mediation and arbitration are voluntary.

- 02:27:03 Rep. Peterson requested Rep. Ripley to change his motion and require the initial notice to be a generic notice that could be given in writing, electronically, or verbally. Rep. Peterson suggested this would address Ms. Taylor's concerns about the mail not arriving within five days. Rep. Peterson noted the statute already requires the ten-day notice to be in writing.
- 02:27:44 Rep. Ripley agreed to amend his motion to include that the initial five-day notice could be generic in nature and include receiving a written, electronic, or verbal notice.
- 02:28:17 Mr. Woodgerd liked the five-day notice for non-disturbing land activity and thought the requirement should be an actual notice. Mr. Woodgerd did not agree with the ten-days' notice and thought it could be intimidating for a surface owner. Mr. Woodgerd identified the issue as how to balance the two property rights, and thought that a ten-day notice requirement would be too much in favor of the mineral owner.
- 02:30:22 Chairman Wheat recalled Mr. Richmond suggesting twenty days would be a fair notice requirement.
- 02:30:58 Mr. Williams recalled Mr. Richmond endorsed doubling the number on both ends.
- 02:31:20 Rep. Peterson moved to amend the motion to include the initial five-day actual notice (written, electronic, or verbal) and change the ten-day notice requirement to twenty days and double the number at the other end as well. Rep. Peterson's motion included a waiver provision, which would allow the parties to agree to something shorter if they desired to do so.
- 02:32:10 Chairman Wheat clarified the motion is for a five-day actual notice for non-surface disturbing activity on the land, a 20-day notice prior to the commencement of surface-disturbing activity, and 180 days on the other end. Mr. Cebull suggested definitions would have to be added.
- 02:35:29 Sen. McGee suggested language referring to a five-day notice for initial non-disturbing activity since the initial activity may not be the surveying. Chairman Wheat clarified that "waiver" would mean if the parties agree otherwise, they can waive the time periods, and the Subcommittee agreed.
- 02:37:06 Ms. Taylor inquired when the 20-day notice would be given. Chairman Wheat clarified the 20-day notice would be given prior to the commencement of any surface-disturbing activity.
- 02:37:43 Chairman Wheat provided an explanation of the current law. Ms. Taylor gave the landowner's perspective and expressed her concern about the trigger and did not see where landowners would benefit.
- 02:39:48 Sen. McGee read the current statute and stated it is to the landowner's advantage not to have the five-day notice. Sen. McGee asked Rep. Peterson if language on Exhibit 10, pp. 1-2, stating, "This notice shall sufficiently disclose the

plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property" would stay in statute. Rep. Peterson replied the language would stay and noted a permit would be required before drilling activities could commence.

02:41:42 Sen. McGee drew a picture for the Subcommittee explaining the implications of Rep. Peterson's motion. Sen. McGee suggested that current law requires the plan to be disclosed earlier than the proposed amendment would require disclosure.

02:43:53 Chairman Wheat recalled the current statute, which requires no fewer than ten days' notice of any activity, is interpreted to include surveying.

(Tape 4; Side B)

02:45:06 Rep. Peterson responded that the landowner has been noticed initially and can begin his own inquiry and all the responsibility should not be placed on the mineral owner. Rep. Peterson's purpose in making the motion was to put the landowner on notice that there is, in fact, going to be a survey and staking and to provide an opportunity for the landowner to make inquiries.

02:46:35 Sen. McGee believed current law already provides protections for the surface owner. Sen. McGee agreed perhaps people need to be educated. Sen. McGee thought the current motions were not necessary, and that it would be more important to get the current law out to the people.

02:47:52 Ms. Iversen believed five days is unacceptable and that any notice to landowners should be written. Ms. Iversen favored changing the current notice time to 20 or 30 days and doubling the other end. Ms. Iversen also suggested "drilling operations" should be clarified.

02:48:43 Chairman Wheat repeated the current motion to amend Section 82-10-503 to provide for a five-day notice of initial non-disturbance of the surface and amend the statute to provide for a notice for surface disturbance activity of no more than 180 days and no fewer than 20 days, and to provide for waiver of the notice periods by the parties.

02:49:20 Sen. McGee requested clarification that the motion will be to make a recommendation to the full EQC. Chairman Wheat agreed, but stated he would like to have the proposal in writing at the next meeting, so the HB 790 Subcommittee could take a final look at the proposal.

02:50:05 The motion failed by roll call vote in accordance with the super majority rule adopted earlier by the Subcommittee. ([Attachment 4](#))

BREAK

03:08:58 Chairman Wheat called the Subcommittee back to order.

- 03:09:08 Ms. Taylor moved to extend the notice requirement as currently written in the existing statute and amend it to read no more than 180 days and no fewer than 20 days before a commencement of any activity on the land surface and include the ability to waive the notice requirement.
- 03:10:18 Mr. Owen asked if the statute could be clarified to state this is a one-time notice for the initial entry and there would not be a need for subsequent notices. Mr. Owen thought the language was vague and needed to be cleaned up.
- 03:10:30 Sen. McGee suggested Mr. Owen's concern should be addressed under a separate motion.
- 03:10:55 Rep. Bixby would like to see the 20-day period be longer since there was a provision for a waiver. Chairman Wheat explained the waiver is not for the period of time but is there for the benefit of the contracting parties and would give them the ability to say they do not want to comply with the statute's notice requirements.
- 03:13:39 Rep. Peterson pointed out that initial notice is for any activity, including the survey. In addition, it takes 20 days to obtain a permit. Realistically, advance notice could end up to be 40 days.
- 03:14:47 Mr. Cebull addressed Rep. Bixby's concerns and stated he would like to see the value and rights of mineral owners protected and the issue is with the landowners who won't give waivers and do not want drilling companies on the land at any cost. Mr. Cebull suggested 15 days would be a reasonable compromise. In addition, Mr. Cebull clarified notice is sent to landowners by certified mail and the clock starts when the letter is signed for.
- 03:17:54 Ms. Iversen commented she thought landowners had already compromised.
- 03:18:03 Chairman Wheat asked Mr. Cebull if he was moving to amend Ms. Taylor's motion. Mr. Cebull replied he would like to discuss his suggestion to determine whether it would be well-received by the Subcommittee. Chairman Wheat emphasized that Mr. Cebull could make the motion if he desired.
- 03:19:30 Sen. McGee inquired what the point would be for enlarging the last number from 90 to 180 days.
- 03:19:41 Mr. Williams provided an explanation for the larger number and stated that it could take 120 days to get a permit and, if that is the case, the company would want to have to begin the process again. Sen. McGee reiterated again that he did not understand the need for the 90-day requirement.
- 03:21:44 Ms. Taylor stated if the landowner is going to have some advantage on the front-end, drilling companies should have an advantage on the back-end. Ms. Taylor explained how if a landowner received a notice and then never heard from a company for two years, the landowner would want to again be informed when the company will be coming back in. Mr. Kolman recalled testimony that a landowner

would not want to receive notice of drilling six years prior to drilling. Mr. Kolman suggested the language would be a protection to surface owners.

- 03:22:53 Chairman Wheat reviewed the current statute and stated doubling both ends would give the company up to 180 days to come onto the property and drill.
- 03:24:42 Rep. Peterson stated that after 180 days, if the company intends to continue the process, it would have to re-notice.
- 03:25:18 Chairman Wheat explained the motion would amend Section 82-10-503 to change the notice periods from no more than 90 days to no more than 180 days, and no fewer than 10 days to no fewer than 20 days and would provide for a waiver by the contracting parties.
- 03:25:48 The motion carried by voice vote with Rep. Bixby and Mr. McRae voting in opposition.

ADMINISTRATIVE MATTERS

- 03:26:42 Chairman Wheat requested input from Subcommittee members on how to speed up the process. Chairman Wheat suggested the Subcommittee could break up into groups to address individual issues. Chairman Wheat planned on having the next HB 790 Subcommittee meeting be a work session.
- 03:28:06 Mr. Cebull suggested polling the Subcommittee members to get an idea of where they stand on the remaining issues to identify which issues would be the most contentious. The Subcommittee members agreed that would be acceptable.
- 03:30:34 Sen. McGee commented on the importance of the remaining issues and the importance of having the ability to debate the issues. Sen. McGee reinforced the importance of the process.
- 03:31:50 Mr. Kolman clarified his instructions are to send out a revised form of the options for surface and damage agreements and tabulate the results. In addition, Chairman Wheat, Sen. McGee, and Mr. Kolman will work on a bill draft and will distribute it to the Subcommittee members. Chairman Wheat concurred that it will be helpful to have a bill draft to give the Subcommittee members something concrete to work on.

Approval of Work Plan/Future Meetings

- 03:33:29 Mr. Kolman directed the Subcommittee to the Coal Bed Methane/Split Estates Work Plan tasks (**EXHIBIT 12**) and directed the Subcommittee to the tasks required by HB 790 that have not been completed. Mr. Kolman spoke about reclamation and bonding in other industries and asked the Subcommittee if it still wanted that information.

- 03:35:11 Chairman Wheat suggested the Subcommittee should wait and see what comes back on the members' poll. The Subcommittee requested a presentation on bonding be given in March.
- 03:36:23 Mr. Cebull explained there is a difference between a surface owner bond and a reclamation bond. Mr. Cebull suggested Tom Richmond could talk about reclamation bonding with oil and natural gas. Chairman Wheat agreed, and Mr. Kolman agreed to contact Mr. Richmond and the Department of Environmental Quality (DEQ).
- 03:37:27 Mr. Rogers requested information about the RIT fund. Mr. Kolman agreed to provide a summary brochure on the RIT Fund. Chairman Wheat also requested that a summary on bonding from both Mr. Richmond and DEQ be sent out to the Subcommittee prior to the meeting.
- 03:38:49 Mr. Kolman asked about CBM specific laws in other states and asked if the Subcommittee was still interested in having that information. Rep. Peterson thought the spreadsheet (Exhibit 9) was thorough enough.
- 03:39:15 Mr. Williams stated Montana is the only state that has specific laws relating to coal bed methane and other states just have regulations. The Subcommittee agreed it would not need any further information. Chairman Wheat requested Mr. Kolman to send any information he has regarding split estates on federal BLM land to the Subcommittee members.
- 03:42:22 Mr. Kolman addressed future meetings. Chairman Wheat would like the March HB 790 Subcommittee meeting to be on Thursday prior to the full EQC meeting on Friday.
- 03:43:37 Ms. Taylor moved the December 8-9 HB 790 Subcommittee meeting minutes be approved. The motion carried unanimously by voice vote.
- 03:43:54 Mr. Williams moved to approve the Coal Bed Methane/Split Estate Work Plan. The motion carried unanimously by voice vote.
- 03:44:42 Sen. McGee asked Mr. Kolman to develop a list of items to be included in any educational publication proposed by the Subcommittee. Chairman Wheat agreed and stated he would like to see the Subcommittee seriously focus on the publication.

ADJOURNMENT

- 03:45:45 There being no further business to come before the Subcommittee, Chairman Wheat adjourned the meeting.