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HB 790 SUBCOMMITTEE MINUTES

Date: March 16, 2006 Room 102, State Capitol Building

Please note: 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 accessed from the Legislative Branch home page at http://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

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

COMMITTEE MEMBERS EXCUSED

SEN. MICHAEL WHEAT (Chairman)

STAFF PRESENT

JOE KOLMAN, Research Analyst
CYNTHIA PETERSON, Secretary

Visitors

Visitors' list (Attachment 1)
Agenda (**Attachment 2**)

COMMITTEE ACTION

- The Subcommittee voted to change Section 82-1-107, MCA, to make it mandatory that the person who is going to do seismic activity notify the surface user and give them copies of Title 82, chapter 1, part 1, and the proposed EQC publication regarding split estates.

- The Subcommittee adopted the underlined language in Section 2, **Exhibit 6**, requiring a copy of the current law and proposed EQC publication on split estates to be included with the initial notice.

- The Subcommittee voted to amend Section 82-10-504(1)(e), MCA, to read: "The oil and gas developer or operator and the surface owner shall attempt to negotiate agreement on damages. At any time during the negotiation, at the request of either party and upon mutual agreement, the surface owner and the oil and gas developer or operator may enter into a dispute resolution process, including mediation."

- The Subcommittee amended Section 82-10-508, MCA, by striking the language "receives no" and inserting the language "does not receive a".

- The Subcommittee adopted the language contained in Section 7, Exhibit 6, together with a $1,500 to $10,000 bonding range, providing for an administrative process, and a provision for blanket bonding.

- The Subcommittee adopted the new language proposed in Section 82-10-504(1)(f), MCA, Exhibit 6.

- The Subcommittee approved the January minutes.

CALL TO ORDER AND ROLL CALL

00:00:03 Sen. Daniel McGee, Vice Chairman of the HB 790 Subcommittee, called the meeting to order. The secretary noted the roll (**Attachment 3**).

AGENDA

A GUIDE TO BONDING

Oil and Gas Bonding - Tom Richmond, Montana Board of Oil and Gas Conservation

00:01:16 Tom Richmond, Montana Board of Oil and Gas Conservation (MBOGC), provided a copy of the applicable statute, Title 82, chapter 11, as well as a copy of the Administrative Rules of Montana (ARM) Sections 36.22.1308 and 36.22.1408 (**Exhibit 1**). Mr. Richmond reviewed the applicable statute and rules with the Subcommittee. Mr. Richmond made the distinction between reclamation bonds and the use of those bonds to restore the surface, and "bonding on," which would be used to pay the landowner for damages.

Questions from the Subcommittee

00:12:57 Mr. Rogers asked if coal bed methane (CBM) impoundments were covered by the language requiring restoration of surface lands to their previous grade. Mr. Richmond believed CBM impoundments are covered by the reclamation bond since they are constructed by the bonded operator to serve production. Mr. Rogers noted the reference to "furnishing of reasonable bond" and wondered how the MBOGC establishes "reasonable." Mr. Richmond explained bond amounts are adopted in the ARM. Mr. Richmond replied it depends on the depth of the well. Mr. Richmond pointed out the statute is broad and MBOGC has reserved the ability to set the bond at an amount other than what is in the rules. If there is a change of operator, the new operator can be asked to come before the MBOGC and propose a bond. Mr. Rogers asked about the Bureau of Land Management's (BLM) practice of obtaining an engineering estimate on a surface bond and then utilizing a five-year review to keep the cost current, and whether that would be a good practice for Montana. Mr. Richmond replied the MBOGC's process states if additional liabilities are identified after the bond is issued, the bond can be increased. Mr. Richmond identified performance bonds as a way to ensure the operator performs his duty and not to actually perform the duty for the operator. Mr. Rogers summarized the bond is not to cover the damages that may be left, but rather to encourage the operator to perform his duty. Mr. Richmond agreed with that analysis.

00:18:57 Vice Chairman McGee asked Mr. Richmond if he had reviewed the initial product currently before the Subcommittee and whether the MBOGC currently has the sufficient statutory authority for bonding on rulemaking or whether additional authority would need to be included in any proposed legislation. Mr. Richmond stated MBOGC would need direct authority to adopt those rules. Vice Chairman McGee requested Mr. Richmond to speak specifically to the language contained in 36.22.1308(3), ARM. Mr. Richmond explained in the past, a bond has been increased because a small company may not have the financial wherewithal to perform its obligations. Vice Chairman McGee requested a history on forfeited bond situations. Mr. Richmond responded at least one bond per year is forfeited and sometimes more, and there are very few wells added to the orphan well list.

Mr. Richmond suggested most forfeited bonds are the result of deaths. Mr. Richmond recalled one operator who went bankrupt and had to forfeit his bond. Mr. Richmond explained how wells are assets, and good wells do not typically end up on the orphaned well list. Therefore, they look at wells that have not produced for a substantial period of time since those wells are more likely to become liabilities rather than assets. Vice Chairman McGee asked what happens with the money. Mr. Richmond replied the money goes into the Production Damage Mitigation Account. Vice Chairman McGee asked how many orphan wells the MBOGC deals with annually. Mr. Richmond replied 12-15 wells a year are plugged.

00:26:29 Rep. Peterson asked about Section 82-11-123(5), MCA, and use of the word "reasonable." Rep. Peterson wondered if there was a better way to articulate what the bond should be specifically in reference to bonding on. Mr. Richmond agreed the language is broad, but suggested the language is purposeful. Mr. Richmond liked the broad language, but noted the statute does not relate to bonding on. Mr. Richmond suggested adding a new code section for bonding on.

Bureau of Land Management Bonding - Jim Albano, Bureau of Land Management

00:29:29 Mr. Jim Albano, Lead Minerals Specialist, Bureau of Land Management (BLM) appreciated the opportunity to discuss BLM's requirements and practices for bonding in split estate situations. Mr. Albano submitted a flow chart which illustrated the process used when a separate bond is required and secured for the benefit of the private surface owner (**EXHIBIT 2**). Mr. Albano also submitted the BLM's recently published brochure explaining the management of split estate situations (**EXHIBIT 3**). Mr. Albano offered to provide the Subcommittee with copies of BLM's regulations to the Subcommittee. Mr. Albano explained an oil and gas lessee or operator must have a bond before disturbing the surface related to drilling operations. The BLM can increase the amount of the bond if it is determined the operator has an increased level of risk. The bond can be also be increased if five years previous to a drilling proposal, a demand was made on a bond for plugging and reclaiming land. Mr. Albano explained the history of BLM's split estate land. Mr. Albano emphasized a good-faith effort needs to be undertaken by the mineral lessee to negotiate either a surface agreement or obtain a waiver from the surface owner. Mr. Albano explained that bonding on is required if no agreement between the surface owner and operator is reached, and the purpose of the bond is to assure compensatory protection for the surface owner. Mr. Albano reviewed the flowchart, Exhibit 2, with the Subcommittee.

(Tape 1; Side B)

Mr. Albano continued reviewing Exhibit 2. Mr. Albano explained the BLM never utilized bonding on from 1992 until 2004. Mr. Albano stated there is always a possibility that an agreement can be reached anytime in the process, which would necessitate termination of the bond.

Questions from the Subcommittee

00:52:08 Mr. Owen asked specifically what bonding on is for. Mr. Albano replied the bonding on provision is to assure compensatory protection to the surface owner, including payment for damages to crops, tangible improvements, and damages that may be caused to the value of the land for grazing. Mr. Owen asked whether loss of resale value would be included. Mr. Albano agreed things such as loss of resale value, loss of view shed, nuisance factor, loss of privacy, and loss of wildlife habitat would not be included.

00:54:00 Mr. Williams asked how many instances in Montana there have been where BLM has had to plug wells and provide reclamation on federal leases. Mr. Albano recalled two cases where the BLM had to contract for well plugging. Mr. Williams asked relative to private surface owner bonds whether there have been instances where landowners have appealed the amount of the bond. Mr. Albano could not recall any instances where landowners have appealed the amount of the bond.

00:55:10 Mr. Cebull referred to the time frame for the surface owner bond process and asked what amount of time the normal process adds to the Application for Permit to Drill (APD) time period. Mr. Albano estimated it would add 60 days to the APD process. Mr. Albano identified the average APD process as being approximately 35 days. Mr. Cebull asked about BLM's bond adequacy determination and asked if there had ever been a land appraiser involved in that process. Mr. Albano replied BLM decided not to involve appraisers, and that BLM utilized conservative data.

00:58:08 Sen. Roush asked about BLM's listening sessions and whether the process has been accepted by landowners in the past or whether BLM has been receiving complaints about the process. Mr. Albano clarified that in response to Mr. Williams' question, there was a bankruptcy, and the situation did not have to do with split estates. In response to Sen. Roush, Mr. Albano replied the BLM has not often heard from landowners about the bonding on process. Mr. Albano suggested the bonding on process works and is generally acceptable.

01:01:04 Ms. Taylor asked about the increased activity in bonding on and whether the increase was for oil, gas, or a combination. Mr. Albano explained the cases were related to shallow natural gas and conventional natural gas.

01:01:56 Vice Chairman McGee asked Mr. Albano to review the two bonds utilized by BLM. Mr. Albano explained one is a private surface owner bond for damage, and that in all cases, a lease bond is required to ensure compliance with the Mineral Leasing Act, BLM regulations, terms and conditions of the lease, timely and complete reclamation and plugging of the wells, and restoration of any lands and surface waters that are adversely affected by lease operations.

01:03:40 Mr. Rogers asked if it is BLM's practice in Montana to secure an engineering estimate for lease bonds and conduct five-year reviews. Mr. Albano responded that is the practice in Wyoming, and there is separate bond for impoundments. Mr. Rogers suggested the lease bond does not cover impoundments in Montana.

Mr. Albano clarified the lease bond would cover impoundments if it was part of a lease operation.

01:06:33 Vice Chairman McGee asked if the BLM office in Buffalo utilized three bonds. Mr. Albano agreed there could be cases where there are three federal bonds.

Bonding for Other Industries - Steve Welch, Department of Environmental Quality

01:07:35 Steve Welch, Department of Environmental Quality (DEQ), submitted information on Coal and Uranium Prospecting Bonding and the U.S. Department of the Interior, Office of Surface Mining's Handbook for Calculation of Reclamation Bond Amounts (**EXHIBIT 4**). Mr. Welch submitted written testimony providing a overview of bonding (**EXHIBIT 5**).

01:16:51 Mr. McRae asked how often bonds are reviewed and adjusted. Mr. Welch explained that the Strip and Underground Mine Reclamation Act requires review every five years and the Metal Mine Reclamation Act requires a less-intense review every year, but a very thorough review every five years. The Opencut Mining Act requires a less-intense review every year.

01:17:30 Mr. Cebull asked Mr. Welch to comment on how many mining bonds are issued and how many bonds DEQ oversees. Mr. Welch did not have specific numbers but estimated there are approximately 1,800 - 2,000 active operations under the Opencut Mining Act. The Metal Mine Reclamation Act has 70 operating permits. The total amount of bonds administered by DEQ is approximately $662 million.

01:18:58 Ms. Taylor inquired whether the Spring Creek and Decker coal mines have separate bonds for water. Mr. Welch explained water is included in the overall bond but would be addressed separately if there were water issues.

Questions from the Committee

There were no further questions from the Subcommittee.

BREAK

01:36:44 Vice Chairman McGee reconvened the meeting.

Committee Debate on HB 790 Issues

01:37:54 Vice Chairman McGee referred the Subcommittee to the draft bill draft request developed by himself and Sen. Wheat (**EXHIBIT 6**).

(Tape 2; Side A)

Vice Chairman McGee continued explaining the approach taken to draft legislation. Vice Chairman McGee explained his past discussions with Mr. McRae and Sen. Wheat and their conclusion that people who live on the ground do not understand and are unaware of such things such as Code requirements and industry practice. Vice Chairman McGee suggested that the current law already contains notification information, and the developer could send the educational publication and law to surface owners with its notice of drilling. EQC's publication would provide each party's rights and responsibilities. Vice Chairman McGee believed this would help balance the rights of landowners and mineral owners, in addition to addressing the issue of bad actors if an agreement cannot be reached. Vice Chairman McGee acknowledged the fact that the mineral owner has a right to develop the minerals, and the surface owner has a right to the surface, but the mineral owner cannot develop his minerals without disturbing or damaging the surface. Vice Chairman McGee recalled Sen. Wheat's suggestion that attorneys' fees could be awarded if the court awards more compensation than what the developer of the minerals was initially offering. Vice Chairman McGee pointed out that Exhibit 6 is simply a starting point, and the HB 790 Subcommittee will need to make recommendations to the full EQC. Vice Chairman McGee noted Sen. Wheat did not leave a proxy. In addition, all motions must pass the Subcommittee by a super majority, and a super majority would also be required for amendments.

01:51:12 Mr. Kolman reviewed the Subcommittee's time line. A draft report and draft publication will be submitted at the April 20, 2006, meeting in Billings. The May meeting will be the HB 790 Subcommittee's last chance to make changes before the proposal goes out for public comment. The July meeting will be the last chance for tweaking the final product. Mr. Kolman explained Exhibit 6 and reviewed the individual sections of the bill draft.

01:56:51 Mr. Cebull recalled the Subcommittee had previously voted to include waiver language with the 20- to 180-day notice requirement. Mr. Kolman agreed and stated he would add the waiver language.

01:57:29 Mr. Kolman continued reviewing the bill draft with the Subcommittee.

01:58:10 Rep. Peterson asked about Section 3 and whether the parties both have to agree to mediation. Vice Chairman McGee asked Rep. Peterson to address the issue after Mr. Kolman's presentation.

01:58:58 Mr. Kolman continued reviewing the bill draft with the Subcommittee and addressed the proposal to include attorneys' fees.

02:00:17 Ms. Taylor asked whether judges currently have the ability to award attorneys' fees.

02:00:32 Mr. Woodgerd explained that generally under the law, unless there is a specific provision allowing for attorneys' fees, a judge cannot award attorneys' fees.

02:00:57 Mr. Kolman continued reviewing the bill draft noting the proposal also contains cleanup language to the current statutes. Mr. Kolman explained the new Section 7, the provision for bonding on.

02:06:49 Vice Chairman McGee requested copies of the existing statute be distributed to the Subcommittee (**EXHIBIT 7**).

BREAK

02:16:23 Vice Chairman McGee requested philosophical concerns from the Subcommittee.

02:18:05 Mr. Rogers addressed the lack of a surface use agreement provision and noted Section 3(e) and Section 7, Exhibit 6, refer to mutual agreement. Vice Chairman McGee pointed out that Section 3(e) refers to an agreement to go to mediation or other dispute resolution and does not envision a surface use agreement. Mr. Rogers noted Section 7 references "conditioned upon the failure . . . to reach an agreement . . .."

02:21:17 Mr. Kolman offered clarification and stated a person could infer from language that the surface operator and industry should be negotiating, but does not specifically reference a surface use agreement. Mr. Rogers commented that he would like to see language written in that there would be an offer to negotiate and mitigate surface damages. Vice Chairman McGee commented negotiations could be about location rather than damages and, if an agreement is not reached, the issue could go to mediation. Vice Chairman McGee suggested negotiations could include surface damage, but does not have to be limited to surface damage.

02:23:28 Ms. Taylor commented the parties would not be discussing well placement until there was a surface agreement.

02:23:39 Ms. Iversen suggested the surface use agreement would include well location. Vice Chairman McGee explained he and Sen. Wheat purposely stayed clear of using the term "surface use agreement" because that would necessitate defining the term.

02:24:21 Mr. Rogers proposed language stating "notice must include an offer to enter into good-faith negotiations with the surface owner regarding mitigation of and compensation for damages."

02:24:53 Mr. Williams recalled previous testimony that the majority of wells drilled in Montana do not have written surface agreements. Mr. Williams thought trying to put in statute a requirement for surface use agreements may create something that is not needed.

02:26:26 Rep. Peterson noted the philosophical difference between mandating and codifying a written surface use agreement or requiring an alternative dispute resolution. Rep. Peterson's main concern was with legal fees and suggested Section 4, Exhibit 6, was written one-sided. Rep. Peterson explained how

settlement negotiations work in reality. Rep. Peterson believed Section 4 should be rewritten since good-faith negotiations usually entail the parties meeting in the middle.

02:30:31 Ms. Taylor was emphatic that a landowner who wants a written surface use agreement should be able to demand it.

(Tape 2; Side B)

02:32:19 Vice Chairman McGee read the current statute regarding surface use agreements. Vice Chairman McGee stated the parties could enter into a written surface use agreement if the parties reach a mutual agreement. Ms. Taylor reiterated that a landowner should be able to request a written agreement.

02:34:18 Rep. Bixby did not like the use of the word 'formula." Rep. Bixby believed it would be acceptable to put into law what should be contained in a surface use agreement. Rep. Bixby pointed out that phrases such as "not limited to" could be used. Rep. Bixby thought the law should itemize the considerations that landowners could negotiate in a surface use agreement. Rep. Bixby thought surface use agreements and good-faith negotiations should be included.

02:36:23 Mr. Cebull recalled from public hearings that no one testified they did not get a written agreement when they asked for one, but that disagreement occurred on the terms of the agreement. Mr. Cebull stated "formula" could mean a lot of different things, and damages could be caused by numerous activities. Mr. Cebull believed the appropriate place for a landowner to find a list of concerns they may want to negotiate would be in an educational brochure.

02:38:32 Ms. Iversen spoke about her current negotiations and the differences on "formula." Ms. Iversen explained how the parties read the statute differently. Vice Chairman McGee read the Code which says "the amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer or operator." Vice Chairman McGee stated if there is not a mutually agreeable formula for determining damages, the parties can enter into a dispute resolution process, including mediation. If the parties still cannot reach an agreement, the company can bond on, and the parties can go to court. Ms. Iversen suggested the statute should require annual damage payments and one lump sum. Ms. Iversen identified this as a controversial issue in the field. Ms. Iversen also suggested adopting an enforcement mechanism.

02:44:24 Mr. McRae suggested a waiver option for annual damage payments could also be included.

02:44:33 Ms. Taylor agreed with the need for an enforcement mechanism.

02:45:17 Ms. Iversen explained how developers used to pay annual payments in the 1980s. Ms. Iversen stated there is no way, other than court, to make a developer pay if it elects not to make annual payments. Vice Chairman McGee did not see

where the process proposed by Ms. Iversen and Ms. Taylor would allow for any discretion.

02:46:47 Rep. Bixby suggested the discretion would be created by adding waiver language and "not limited to." Vice Chairman McGee requested a list of items Rep. Bixby proposes should be included in a surface use agreement. Rep. Bixby agreed to provide a list.

02:47:32 Sen. Roush agreed with Rep. Peterson about legal fees. Sen. Roush observed the bill would not include the numerous current wells. Sen. Roush believed the current law is working and was concerned about shutting down development in Montana and urged the Subcommittee to be reasonable regarding development in Montana. Sen. Roush cautioned against using mandated language.

02:50:15 Mr. Woodgerd thanked Vice Chairman McGee and Sen. Wheat for their work. Mr. Woodgerd suggested past testimony indicated landowners do not feel like they are on equal footing with operators. Mr. Woodgerd would like to find a way to make the parties more equal in their negotiating abilities. Mr. Woodgerd thought the language should not be made too restrictive or too detailed, so the parties have the ability to negotiate.

02:52:08 Mr. Cebull commented being too specific would be detrimental. Mr. Cebull suggested there is much more detail involved in Ms. Iversen's situation and cautioned against attempting to craft legislation specific to any situation. Mr. Cebull referred to Section 7 where rulemaking authority is given to the MBOGC and asked Mr. Richmond to explain more about the MBOGC's rulemaking process. Mr. Richmond explained there are several processes involved and many rule changes are self-generated. Mr. Richmond cited horizontal drilling as an example of a self-generated rule change because of change in technology. Mr. Richmond explained the rulemaking process, including putting draft rules out for public comment and conducting a public hearing process. Ultimately, the Administrative Code Committee reviews all proposed rules.

02:57:00 Vice Chairman McGee disagreed and stated there is no Administrative Code Committee anymore and explained how rule review is now done by the interim committees. The Environmental Quality Council (EQC) has broad rule review overview over all natural resource agencies. Mr. Richmond added the agency has the responsibility to go to the sponsor of the legislation and allow them to review the proposed rules,

02:58:51 Mr. Cebull inquired whether members of the public could submit a petition to propose new rules. Mr. Richmond stated MBOGC does not have anything to address a petition for rulemaking. Mr. Cebull asked Mr. Richmond whether he was comfortable with the Board's ability to handle the extra responsibility. Mr. Richmond admitted there are a few things that are unclear. Vice Chairman McGee invited Mr. Richmond to submit his ideas regarding rulemaking authority sideboards to the Subcommittee.

03:02:05 Mr. McRae recalled Mr. Richmond's concerns about bonding on. Mr. Richmond reiterated he does not like the concept of bonding on, but could not suggest an alternative. Mr. Richmond suggested existing law contemplates an agreement on damage and disruption payments. Mr. Richmond suggested looking at existing law and that the bonding on process should be the last resort. Mr. Richmond explained the sideboards he was referring to have to do with the bonding on provision.

03:04:02 Rep. Peterson expressed his difficulty with mandating a surface use agreement and mandating dispute resolution. Rep. Peterson was concerned about the unintended consequences that could result from mandating a surface use agreement. Rep. Peterson suggested there may not be time to mandate a surface use agreement and a waiver of the provision could result in a landowner being in worse position. Rep. Peterson stated he would rather see a dispute resolution process in place and believed that would ultimately provide more protection. Rep. Peterson suggested using the words "formula or agreement mutually agreed to."

03:07:15 Ms. Taylor stated her neighbors were not supportive of a waiver since someone may sign away more rights than they ever even knew they had. Ms. Taylor reminded the Subcommittee that the point was to give landowners more footing in the process. Ms. Taylor stated she was cautious about the waiver.

Public Testimony

03:08:44 Jerome Anderson, representing Encore Acquisition Company, wondered what protection an oil company would have from the surface owner who is a "bad actor." Mr. Anderson expressed concerns about the proposed payment of attorneys' fees and suggested the imposition of attorneys' fees should be applied on both sides.

(Tape 3; Side A)

Mr. Anderson testified he has seen many court cases where the damage amount has been less than the offer of settlement. Mr. Anderson suggested barriers would destroy the company's ability to move forward and a balance would allow the continuance of exploration and the generation of revenue for Montana. Mr. Anderson asked the Subcommittee to remember that the RIT balance is $100 million, and that the money is there to be used for reclamation purposes. In addition, the orphan well account balance is $7 million, and that money is also available. Mr. Anderson also identified available money in the damage and mitigation account, as well as biennial appropriations made to the MBOGC.

03:16:23 Herb Vasseur, Montana Land and Minerals Association, questioned how a verbal agreement in history exists if one party is deceased. Mr. Vasseur believed there should be a written agreement that can be passed on to heirs. Mr. Vasseur commented surface owners are not trying to run the industry out of the state, but just want to be treated fairly. Mr. Vasseur clarified his interpretation of the notice process and stated a one-time notice would be sufficient.

03:18:49 Dave Galt, Montana Petroleum Association, agreed with Rep. Peterson's analysis of awarding attorneys' fees. Mr. Galt emphasized that mineral development is very competitive and delay is the largest issue and is very costly to operators.

03:19:48 Patrick Montalban, Northern Montana Oil and Gas Association, agreed the legal requirements are unfair to independent operators. Mr. Montalban also agreed the formula would result in the surface owner getting hurt. Mr. Montalban suggested an acre of land could be purchased for less than they are paying for damages. Mr. Montalban agreed with Mr. Anderson that there are people out there who do not want development. Mr. Montalban agreed the RIT fund should be utilized if there are issues with cleanup. Mr. Montalban emphasized the geologist picks the location, and it is a scientific process and not a random pick. Mr. Montalban believed the requirement of an annual payment could kill the industry in Montana.

LUNCH

00:00:03 Vice Chairman McGee reconvened the meeting.

Committee Debate on HB 790 Issues

00:01:24 Rep. Bixby commented on the civil penalties in Section 6, Exhibit 6, and thought $75 should be raised to a higher amount to deter bad players. Vice Chairman McGee noted the language is <u>at least</u> $75 and not more than $10,000 and that the fine is per day. Rep. Bixby thought the $75 minimum should be raised to $1,000. Vice Chairman McGee clarified "per person" could apply to either the surface owner or the operator. Mr. Williams pointed out a surface owner could not violate Section 82-10-502, MCA, and Mr. Kolman pointed out that definitions of oil and gas operator and surface owner are provided in Chapter 10. Mr. Kolman suggested the language may need to be made more clear.

00:05:51 Mr. Cebull thought there should be a definition for "surface user." Mr. Cebull was unclear whether the intent was "surface owner" or if it also included tenants or other entities. Mr. Kolman acknowledged Mr. Cebull's concern and stated it could be an item that needs to be cleaned up. Mr. Cebull requested the language be clarified and the intent made clear.

00:10:29 Mr. Cebull clarified the proposed waiver of 20 to 280 days is for the notice period and does not waive the obligations under the statute to compensate. Ms. Taylor commented she thought the waiver provision also applied to a surface use agreement.

00:11:33 Mr. Woodgerd commented on the civil penalty and stated he would be more supportive of a civil penalty specific to Section 82-10-503, MCA. Mr. Woodgerd explained the range of $75 to $10,000 per day could result in a penalty of $50,000 if a developer were five days late giving notice. Mr. Woodgerd thought the range provided too much discretion for violation of the notification provision.

00:12:50 Ms. Taylor requested the title to Section 82-11-149, MCA. Vice Chairman McGee read the title as "Regulation by the Board of Oil and Gas Conservation." Vice Chairman McGee suggested it is implied that the penalty is focused toward the industry but acknowledged Rep. Bixby's point that it could apply to the surface owner.

00:14:23 Ms. Iversen asked if there was a penalty for violation of Section 82-10-504, MCA.

00:14:49 Mr. Williams explained Section 82-10-504, MCA, provides a penalty for late payment. Ms. Iversen inquired whether there would be a penalty if a developer refuses to pay damages.

00:16:31 Mr. Cebull suggested there would not be a penalty if the parties did not reach a mutual agreement.

00:17:43 Ms. Iversen had questions about the effective date of the proposed legislation and asked if the legislation could be implemented sooner. Vice Chairman McGee explained possible effective dates and the time line for any legislation that is ultimately passed. In addition, Vice Chairman McGee believed it would take time for EQC to create an educational publication.

00:19:21 Mr. Kolman cited the issue of bonding and suggested the Subcommittee may want to delay the effective date to allow for rulemaking. Mr. Kolman also pointed out the legislation would apply only to processes that began after the effective date of the legislation.

00:20:25 Mr. McRae noted the proposed language offered to Section 82-10-508, MCA, does not address the situation where the surface owner does not receive a reply.

00:22:31 Mr. Woodgerd addressed Section 82-1-107(1), MCA, the notice provision for seismic operations, and noted the surface owner has to request the enumerated information. Mr. Woodgerd was concerned the surface owner will not know what they can request. Vice Chairman McGee agreed the language would need to be changed and made mandatory.

00:24:55 Mr. Richmond commented that under Section 82-1-107, MCA, notice is given to the "surface user" and it should read "surface owner."

00:25:43 Ms. Taylor thought there should be discussion about whether "surface owner" or "surface user" is correct. Ms. Taylor recalled from Sidney that there were users of the land who were not the owners. Ms. Taylor recalled that operators do not openly ask who the lessee is. Vice Chairman McGee understood the problem and commented on reliance on public record. Ms. Taylor suggested it would be better to ask the owner who the surface user is. Vice Chairman McGee agreed the surface owner should notify the surface user.

00:30:01 Mr. McRae suggested it might not have been the intent of the statute and maybe the intent was to inform the surface user. Mr. McRae suggested an inquiry made to the surface owner would reveal the name of the surface user.

00:30:43 Mr. Owen commented industry makes notice to the surface owner, and it is the surface owner's responsibility to disseminate the information to the surface user.

(Tape 3; Side B)

00:31:34 Sen. Roush pointed out that surface owners are registered at the county courthouse.

00:32:59 Mr. Cebull inquired about the process which would be utilized by the Subcommittee to adopt draft legislation. Vice Chairman McGee explained the proper procedure. Mr. Kolman clarified the Subcommittee could go through each individual section of the proposal and entertain motions.

00:35:27 In addressing Section 1, Exhibit 6, proposed Section 82-1-107, MCA, Rep. Peterson moved to strike the word "user" and insert "owner".

00:36:47 Mr. Owen pointed out the same reference to surface "user" occurs in two places in Section 1. Vice Chairman McGee clarified Rep. Peterson's motion would change the reference to "user" to "owner" throughout Section 1. Mr. Cebull pointed out the title also refers to surface "user".

00:39:03 Mr. Woodgerd commented that 82-10-503 defines surface owner and includes the contract for deed purchaser, and any tenant lease recorded at the courthouse would also fall under the notification. Mr. Woodgerd referred to the definitions contained in 82-10-502 which defines "surface owner" and includes a contract for deed purchaser's interest. Mr. Woodgerd suggested the term "surface owner" as used in 82-1-107 should be tied to the definition contained in 82-10-502.

00:40:20 Rep. Peterson stated officially it should say "owner" because that is the only information that can be tracked. Rep. Peterson was concerned since many owners do not pay attention, and the lessee is the one that has to deal with the activity. Rep. Peterson wondered how the information would get transmitted from the owner to the user.

00:42:06 Mr. McRae expressed concern about creating an unintended consequence by placing a burden on the surface owner that did not previously exist. Vice Chairman McGee replied he could not think of anything that occurs on the land that the surface owner would not be responsible for. Mr. McRae thought if the language is changed, the landowner should be required in some way to notify the surface user.

00:43:53 Ms. Taylor explained how she feels responsible for the land she leases. Ms. Taylor suggested it would be more of a courtesy to keep the lessee informed.

00:45:25 Mr. Owen added his company usually contacts the landowner to determine if there is a lessee, but specific notice is given to the landowner. As a practical matter, Mr. Owen explained he wants to know if there is a lessee. However, Mr. Owen cautioned about getting caught up between the surface owner and the lessee.

00:46:10 Mr. Cebull explained the surface owner has no obligation to disclose who is leasing his property. Mr. Cebull pointed out that the last section of 82-1-107, MCA, already gives the surface owner the responsibility "for providing the permit holder with the name and permanent address of a responsible person with whom communication may be maintained." Ms. Taylor recalled hearing in Sidney that developers do not ask landowners for the name of the tenant. Mr. Cebull suggested landowners do not have to disclose the name because of privacy, but Mr. Cebull was not aware of any situations where the developer does not know the identity of the tenant. Vice Chairman McGee asked Ms. Taylor if this language would address her concern. Ms. Taylor suggested the name of a responsible person could refer to an attorney. Vice Chairman McGee pointed out the language is specific to seismic activity.

00:48:43 Vice Chairman McGee restated Rep. Peterson's motion to change in Section 82-1-107, MCA, the term "surface user" to "surface owner." The motion failed 6-5 by a raise of hands.

00:49:27 Mr. Woodgerd moved to change Section 82-1-107, MCA, to make it mandatory that the person who is going to do seismic activity notify the surface user and give them copies of Title 82, chapter 1, part 1, and the EQC brochure. Mr. Woodgerd added he would like Mr. Kolman to draft the appropriate language. Vice Chairman McGee asked whether the MBOGC currently has a brochure that speaks to surface owners. Mr. Richmond replied it does not. Mr. Richmond explained the seismic statutes and how those statutes work. Mr. Richmond was uncertain whether the Subcommittee would want to deal with the seismic statutes. Vice Chairman McGee thought it was important to try to inform and educate the people of Montana and stated he would rather err on the side of safety.

00:55:33 Mr. Williams asked Mr. Woodgerd if he intentionally left out Title 82, chapter 10, part 5 as part of the information to be distributed. Mr. Woodgerd clarified his intention was for it to be the law as currently stated in the bill; therefore subsection (1)(g) would be mandatory.

00:56:37 Ms. Iversen stated she did not see any reason why a landowner would mind receiving the information and beginning the education process. Ms. Iversen stated seismic activity often times means an oil rig is in the near future. Ms. Iversen asked whether the brochure would be sent to industry, as well as surface owners. Vice Chairman McGee envisioned the brochure being available on the Internet, and that industry would be the entity sending the brochure to the surface owners.

00:58:31 Mr. McRae recalled that past testimony indicated there is a need for more education.

00:58:43 Rep. Peterson noted the way the statute currently reads, the information will be provided to the surface user and not necessarily the surface owner. Vice Chairman McGee agreed.

00:59:12 Mr. Cebull requested clarification as to who the surface user is and the need for a definition. Vice Chairman McGee replied he could not find a definition of surface user in statute.

00:59:53 Rep. Ripley asked if the reference should be to "surface user" or "surface users" since many times there is more than one lease. Vice Chairman McGee clarified legislative language provides that the singular includes the plural.

01:00:35 Sen. Roush explained users usually lease or rent from the owners. Sen. Roush pointed out that the users of the land frequently change. Sen. Roush liked the motion that was defeated. Vice Chairman McGee agreed and stated there is no clear definition of "surface user" in law, and the statute would remain vague.

01:02:04 Ms. Taylor noted that the term "surface user" has been in statute for 25 years, but every developer has sent the information to the owner.

01:02:36 Mr. Woodgerd's motion to change Section 82-1-107, MCA, to make it mandatory that the person who is going to do seismic activity notify the surface user and give them copies of Title 82, chapter 1, part 1, and the EQC brochure carried unanimously by voice vote.

01:03:06 Vice Chairman McGee directed the Subcommittee to Section 2, Exhibit 6, and requested comments and/or motions from the Subcommittee.

01:03:48 Rep. Peterson recalled the minutes reflect the Subcommittee previously agreed to include a waiver provision for the notice requirement. Vice Chairman McGee agreed and stated the waiver provision would be included in the proposed amendments to Section 82-10-503, MCA.

01:04:27 Mr. Rogers moved to amend Section 82-10-503, MCA, by inserting a sentence stating "This notice must include an offer to enter into good-faith negotiations with the surface owner regarding mitigation of and compensation for damages."

01:06:18 Mr. Cebull requested Mr. Rogers to clarify that his intent is that the developer have an offer in hand. Mr. Rogers explained his intent is that the developer will enter into the offer to negotiate the agreement. Mr. Rogers stated if that requirement does not take place, then the bonding-on requirement would step in. The bond could be released when an agreement is in place. The sentence would be inserted in the third line from the bottom between "property." and "The".

01:07:41 Rep. Peterson requested clarification and Mr. Rogers explained mitigation may include the whole work plan development and how the operation will be run. Mr. Rogers stated his amendment may preclude some of the other sections.

01:09:59 Mr. Woodgerd asked Mr. Rogers whether he believes there is currently a requirement in statute for mitigation. Mr. Woodgerd read the existing statute to require payment of damages but does not require mitigation of damages. Mr. Rogers suggested "operations" would be the correct word instead of "mitigation."

(Tape 4; Side A)

01:11:17 Mr. Rogers amended his motion to strike "mitigation of" and insert "operation."

01:11:45 Vice Chairman McGee asked if it would be appropriate for Mr. Roger's motion to include "This notice must include an offer to enter into good-faith negotiations regarding compensation in accordance with Section 82-10-504." Mr. Rogers identified two separate issues and stated Section 82-10-504, MCA, strictly speaks to damages, and Mr. Rogers would like the whole plan discussed and not limit the discussion to the issue of damages.

01:13:34 Mr. Rogers amended his motion to read: "This notice must include an offer to enter into good-faith negotiations with the surface owner regarding operation of development and compensation for damages."

01:14:30 Mr. Cebull asked Mr. Rogers if he was suggesting that there needs to be a plan of development at the time of notice. Mr. Rogers explained his intention to have negotiation take place for what is going to happen on the surface, and there would be a discussion about the entire process.

01:15:29 Mr. Kolman explained the current statute says the notice must sufficiently disclose the plan of work and operations. Mr. Kolman suggested using consistent language and inserting "plan of work and operations".

01:16:34 Mr. Rogers agreed to amend his motion to read: "This notice must include an offer to enter into good-faith negotiations with the surface owner regarding plan of work, operations and compensation for damages."

01:17:34 Rep. Bixby requested clarification. Vice Chairman McGee recited the current amended motion to include language that would read: "This notice must include an offer to enter into good-faith negotiations with the surface owner regarding the work plan, operations and compensation for damages."

01:19:11 Rep. Peterson summarized the notice must disclose the plan of work and operations, and that the notice comes from the owner of the mineral estate. Rep. Peterson continued stating once the notice is filed, Mr. Rogers is attempting to provide an opportunity for the surface owner to force good-faith negotiations to renegotiate the plan of operations on the surface for developing the mineral estate. Rep. Peterson suggested the amendment would give the surface owner authority to force negotiations back to square one and renegotiate the plan of operations. Rep. Peterson thought the attempt was to equalize the mineral estate with the surface estate.

01:20:31 Mr. Rogers disagreed with Rep. Peterson's conclusions and stated there is no renegotiation since the surface owner, at this point, has not had any negotiation. In addition, the surface would never have primacy over the mineral estate. Rep. Peterson thought the motion clearly directed the mineral owner to enter into good-faith negotiations with the surface owner as to the plan of operation for development of the mineral estate. This would give the surface owner the

opportunity to force negotiations on the plan of operation of the mineral estate if the surface owner does not agree with the development plan in the notice. Mr. Rogers replied the issue will be negotiable, and a developer could always bond on if the parties cannot come to terms.

01:22:40 Ms. Taylor commented about the importance of giving the landowner an opportunity to have discussions with the operator.

01:23:49 Rep. Bixby thought the first sentence should allow the surface owner to evaluate and negotiate. Rep. Bixby agreed good-faith negotiation should be included in the statute, but was not certain where the language should be included.

01:25:07 Ms. Taylor explained she has a work plan initially, but does not have the whole scope of the operation. Ms. Taylor's agreement states that she has a right to talk about the operation.

01:25:46 Mr. Williams explained his problem with the proposed language was not the willingness to negotiate with the surface owner relative to the operation or the compensation for damages. Mr. Williams cited his problem as not knowing what further language may also be approved. Mr. Williams was concerned about attempting to legislate relationships between neighbors.

01:28:37 Upon request from Vice Chairman McGee, Mr. Rogers defined good-faith as coming to the table with what you know and presenting the information. Mr. Rogers stated a person acting in good-faith would not withhold information.

01:29:29 Vice Chairman McGee requested Mr. Woodgerd to provide a definition of good faith. Mr. Woodgerd responded good faith is in the eye of the beholder.

01:29:56 Vice Chairman McGee asked Mr. Anderson for a definition of good faith. Mr. Anderson explained the use of the term in labor negotiations. Relative to labor negotiations, it means that a person comes to the table prepared to negotiate and offer information to the extent necessary to continue the negotiations to a point. A person is not required to divulge proprietary information. Mr. Anderson also commented that the parameters of an operation are established by highly trained geologists and petroleum engineers, and landowners are not qualified to establish those parameters. Mr. Anderson explained when operators first begin, they often times do not have a plan of operation, and the communication process with the surface owner is continually developing because of the changing nature of the relationship.

01:33:11 Vice Chairman McGee asked if "good-faith" is it a legal term of art, and Mr. Anderson responded he had never seen the term statutorily defined.

01:33:31 Rep. Bixby commented she believes the members of the Subcommittee who represent industry do things right, but acknowledged some developers do not negotiate in good faith. Therefore, Rep. Bixby believed there needs to be language in law requiring negotiations.

01:34:41 Ms. Iversen asked Mr. Rogers whether he intended to get negotiations going verbally, in writing, or both. Mr. Rogers viewed the language as a beginning point, and that the language would provide an avenue to develop details.

01:36:09 Vice Chairman McGee suggested notice of drilling operations and inclusion of the code and brochure, would not necessarily mean negotiations would begin as a result of the notice. Mr. Rogers agreed negotiations may not begin immediately. Vice Chairman McGee stated that under Mr. Rogers' amendment, the company will state in a letter to the landowner that it will enter into good-faith negotiations, but that will not actually begin the good-faith negotiations. Mr. Rogers agreed.

01:40:20 Mr. Anderson noted there is nothing in the suggested language that requires the surface owner to enter into good-faith negotiations.

01:40:57 Rep. Peterson commented he would like to get through the whole process and hear everyone's suggestions before making changes.

01:42:31 Mr. McRae stated he likes the idea because it allows communication to occur early in the process while a plan of development can address a surface owner's concerns. Vice Chairman McGee asked Mr. McRae to talk about good-faith negotiations on the part of the landowner. Mr. McRae explained from a landowner's point of view, it is in the landowner's best interest to enter into negotiations. Vice Chairman McGee was concerned about the lack of a requirement for good-faith negotiations from landowners.

01:45:35 Ms. Taylor thought landowners are already disadvantaged. Ms. Taylor thought good faith means attempting to sort everything out. Ms. Taylor emphasized landowners are not just concerned about monetary considerations. Vice Chairman McGee explained there should be a reciprocal good-faith offer from the surface owner. Ms. Taylor agreed the situation should work both ways.

01:48:48 Sen. Roush reiterated his concerns about the use of the term "surface owner" versus "surface users." Sen. Roush reminded the Subcommittee that a substantial amount of land is being used by lessees and renters. Vice Chairman McGee explained under 82-1 there is no definition of surface user or surface owner. There is a definition of surface owner in 82-10. Vice Chairman McGee stated it would be the responsibility of the surface owner or the purchaser's interest person to notify whoever is physically on the ground since there is no way to know who the lessees are. Sen. Roush wondered what would happen if the surface owner does not notify the surface lessee.

01:52:11 Mr. Owen wondered if a developer could be fined under Section 82-11-147, MCA, if they did not enter into good-faith negotiations. Vice Chairman McGee suggested use of the term "good-faith" could be problematic.

(Tape 4; Side B)

Mr. Owen stated he could not vote for a proposal that could subject his company to $10,000 a day in fines.

01:55:07 Mr. Woodgerd suggested inserting a sentence into the notice that says the producer intends to enter into good-faith negotiations and the only way a developer could get fined is if the sentence was not in the notice. Mr. Woodgerd agreed the penalty section is too strong. Mr. Woodgerd provided an explanation of the way the law currently works in Montana. Mr. Woodgerd stated he could not vote for requiring a developer to negotiate a work plan since it would be a fundamental change in Montana law.

01:57:51 Ms. Taylor stated her understanding of a work plan is more than just location. Mr. McRae expressed his concern about negotiating without a mandatory outcome.

01:59:29 Mr. Cebull expressed concern about inserting vague language into code. Mr. Cebull reminded the Subcommittee this is an initial notice, and a work plan may be very vague. Mr. Cebull thought the proposed language would not be necessary, and asked the Subcommittee to keep in mind the timing of the notice. Mr. Cebull stated he could not support the amendment.

02:00:58 Vice Chairman McGee restated the motion as: "This notice must include an offer to enter into good-faith negotiations with the surface owner regarding the work plan, operations and compensation for damages." Mr. Roger's amended motion failed by roll call vote. (**Attachment 4**)

BREAK

02:17:14 Vice Chairman McGee reconvened the Subcommittee and requested a motion on the underlined language contained in Section 2, Exhibit 6, as originally presented.

02:17:58 Mr. Williams moved to adopt the underlined language in Section 2 Exhibit 6. Mr. Williams' motion carried by voice vote with Rep. Bixby voting no. (**Attachment 5**)

02:19:06 Mr. Woodgerd submitted a copy of Section 3, 82-10-504, MCA (**EXHIBIT 8**) and noted his proposed amendment is the language shown in uppercase letters. Mr. Woodgerd explained he thought it was important for there to be a threshold and some explanation of exactly what had to happen before bonding on could occur. Negotiations would have to take place prior to any actual drilling or construction. If the negotiations are not successful, bonding on would occur. Both the oil and gas developer and the surface owner would be required to enter into good-faith negotiations for damages.

02:23:09 Mr. Cebull commented the language would mandate a surface use agreement and represents a wholesale fundamental change to the way business is conducted. Mr. Woodgerd responded that was not what he was attempting and the language is strictly limited to damages.

02:24:02 Mr. Woodgerd moved his amendment (the uppercase language) be adopted as submitted.

02:25:05 Mr. Cebull suggested the words "prior to surface disturbance" gives surface owners the right to hold up mineral development.

02:25:47 Mr. McRae asked whether the word "attempt" would alleviate Mr. Cebull's concerns. Mr. Cebull questioned the definition of "attempt." Mr. Cebull responded the use of "attempt" does not satisfy his concerns.

02:27:14 Mr. Williams was confused since a developer has to offer compensation for damages under the current statute. Mr. Owen added the surface damage agreement provides money for anticipated damages and actual damages are paid for after drilling occurs.

02:28:53 Vice Chairman McGee believed Mr. Woodgerd's amendment helped to clarify and requires both parties to negotiate in good faith to reach an agreement on damages.

02:30:39 Rep. Peterson inquired what would happen if the parties do not reach an agreement to go to mediation. Vice Chairman McGee responded the company could still bond on.

02:31:52 Mr. Cebull noted there is already a requirement for negotiation of damages in statute. Mr. Cebull did not like the language "prior to surface disturbance" and "good-faith negotiations."

02:32:30 Mr. Woodgerd explained the language "prior to surface disturbance" is there because of the provision for bonding on which allows surface disturbance to occur if there is no agreement.

02:33:39 Mr. Cebull disagreed and suggested bonding is a temporary measure until an agreement is reached and is not an alternative to an agreement. Mr. Cebull was concerned the attempt to negotiate in good faith would be drawn out and affect the timing of operations.

02:34:18 Rep. Peterson asked if the words "prior to surface disturbance" were removed, whether that would be acceptable. Mr. Cebull replied he would be more comfortable, but admitted he also does not like the reference to "good-faith negotiations."

02:35:39 Ms. Taylor identified the amendment as a rewrite of what Mr. Rogers attempted to do. Ms. Taylor pointed out the parties have twenty days to discuss the proposal. Ms. Taylor noted the language says the parties have to make an attempt and not necessarily succeed.

02:36:43 Rep. Peterson wondered if the language should contain a time line, so negotiations cannot drag on. Vice Chairman McGee noted many other factors drive a developer's operations. Vice Chairman McGee emphasized the

importance of not holding up the legitimate right of the mineral owner to develop his minerals.

02:40:18 Rep. Ripley believed the language "prior to surface disturbance" sets a time line. Rep. Ripley admitted he has problems with the reference to "good-faith negotiations" since there is no definition.

02:41:15 Mr. Williams made a substitute motion to amend Section 82-10-504(1)(e), MCA, to read: "The oil and gas developer or operator and the surface owner shall negotiate to reach agreement on damages. At any time during the negotiation, at the request of either party and upon mutual agreement, the surface owner and the oil and gas developer or operator may enter into a dispute resolution process, including mediation." Mr. Williams was uncertain whether "attempt" should be included.

02:43:51 Mr. Anderson suggested leaving in the word "attempt" in case the developer cannot get a hold of the surface owner. Mr. Williams replied if the developer attempts to give twenty days' notice, and the landowner is on a six-month cruise, the developer has the right to move onto the land and drill. Mr. Anderson replied the current statute only requires an attempt to negotiate. Mr. Williams stated he does not see anything that says negotiation has to occur before drilling begins.

02:46:49 Rep. Peterson sought to amend Mr. Williams' motion to include the word "attempt," but Vice Chairman McGee suggested Mr. Williams would need to make that amendment. Mr. Williams agreed and clarified his substitute motion to amend would read: "The oil and gas developer or operator and the surface owner shall attempt to negotiate agreement on damages. At any time during the negotiation, at the request of either party and upon mutual agreement, the surface owner and the oil and gas developer or operator may enter into a dispute resolution process, including mediation."

(Tape 5; Side A)

02:48:30 Mr. Williams clarified his intention was to include the second sentence of the paragraph.

02:49:46 Ms. Iversen disagreed with removing the reference to "prior to surface disturbance" and believed the language gives leverage to the surface owner. Vice Chairman McGee understood Ms. Iversen's concern and stated the landowner's leverage would occur in court. Ms. Iversen questioned the way the mutual agreement and mitigation process would be set up. Vice Chairman McGee replied he did not want to address those issues at this point in time. Ms. Iversen voiced her concern about the unanswered questions as to who would mediate, who would initiate the process, and who would pay for the mediation.

02:53:37 Mr. Williams recalled the mediation process in Wyoming is voluntary and not part of the statute. Ms. Iversen recalled Wyoming already had a mediation process in place.

02:54:15 Rep. Peterson stated he has difficulty defining the exact process and cautioned against attempting to micro-manage.

02:55:17 Mr. Cebull believed a dispute resolution would be part of the education process for landowners. Mr. Williams' substitute motion carried 10-1 by roll call vote.

02:57:15 Ms. Iversen stated she would like the Subcommittee to address damage payments and the annual damage payments. Ms. Iversen directed the Subcommittee to a copy of a memorandum from the Northeast Montana Land & Minerals Owners Association, Inc. (**EXHIBIT 9**). Vice Chairman McGee asked Mr. Woodgerd for his interpretation of Section 82-10-504(1)(c), MCA, and the reference to the surface owner "may" elect to receive annual damage payments over a period of time.

03:00:36 Mr. Woodgerd interpreted the language to address the manner in which a surface owner would receive damages and not the quantity of damages. Mr. Woodgerd believed the language states a surface owner can chose the form in which he would receive his damages. Mr. Woodgerd believed a landowner would have the right to receive his payments annually rather than in a lump sum. Vice Chairman McGee requested Ms. Iversen to provide her perspective. Ms. Iversen explained the way damages were paid in the oil boom of the 1980s. Ms. Iversen suggested there have been various interpretations of the statute. Ms. Iversen suggested landowners should be compensated for damages caused by exploration in addition to the annual damages.

03:09:12 Ms. Iversen moved to amend Section 82-10-504(c), MCA, as presented by the Northeast Montana Land & Minerals Owners Association, Inc. in Exhibit 9. Ms. Iversen did not want to include the next sentence of the proposed language regarding CBM, but did want to include the last sentence stating "The surface owner shall also be compensated by a single sum payment for harm caused by exploration only." Vice Chairman McGee restated the motion as amending Section 82-10-504(c), MCA, to read: "The surface owner will receive annual damage payments until the well site is reclaimed, with a minimum rate of $1500/drilling site/year for non cultivated land. The surface owner shall also be compensated by a single sum payment for harm caused by exploration only."

03:10:53 Mr. Williams stated he believes it is inappropriate to legislate the terms of agreements between private parties.

03:11:24 Mr. Richmond commented that he has a problem codifying something that only applies to one part of the state. In addition, Mr. Richmond was uncertain about the reference to "exploration only." Mr. Richmond did not agree that the intent of the Legislature was to establish annual rentals as part of damage payments.

03:13:49 Mr. Cebull cautioned against getting involved in specific disputes. Mr. Cebull suggested interpretation should be left to the courts.

03:14:42 Ms. Iversen stated she believes anyone in Montana would prefer an annual damage payment. Ms. Iversen believed landowners need to be able to recoup

lost land value. The lump sum is for the original piece of land, but landowners also incur lost-land value.

03:16:20 Mr. Owen stated his company views the payment as a damage payment. If a landowner were to put that money in the bank, the interest generated would be compensation for lost income for lost ground. Mr. Owen stated his company wants to give a lump sum payment and does not want to do the paperwork every year.

03:17:47 Mr. McRae commented from his perspective when damages are first negotiated, actual damages are unknown.

03:18:23 Ms. Iversen stated in conventional oil and gas development, the up-front payment is $6,000-$7,000. Ms. Iversen suggested, however, a landowner could lose up to four or five acres on a drilling site, and the rig could be present on the land for 50 years. Ms. Iversen did not believe $6,000-$7,000 was adequate.

03:19:35 Sen. Roush commented that there are stripper wells in Northern Montana and recalled tax breaks are given to producers to keep those wells going. Sen. Roush requested Mr. Montalban to comment on how landowners are treated in Northern Montana.

03:21:04 Mr. Montalban commented every well cannot be treated the same. Mr. Montalban stated the government should not be involved in negotiations between a private company and a surface owner. Mr. Montalban wondered if annual payments would also be paid to the mineral owner, in addition to monthly royalty payments. Mr. Montalban urged the Subcommittee to look long and hard at the issue.

03:22:38 Mr. Galt commented about the fiscal note and suggested the cost would be a minimum of $57 million. Ms. Iversen suggested removing the dollar amount from her proposed amendment and letting that amount be negotiable. Ms. Iversen restated her amendment to Section 82-10-504(c), MCA, as: The surface owner will receive annual damage payments until the well site is reclaimed and the surface owner shall also be compensated by a single sum payment for harm caused by exploration only." Mr. Kolman suggested Ms. Iversen apply her proposed amendment to the existing statute. Ms. Iversen withdrew her motion and agreed to craft her language so it would apply to the existing statute.

03:25:02 Ms. Taylor suggested Ms. Iversen should discuss her motion with the Northeast Montana Land & Minerals Owners Association.

03:26:07 Rep. Bixby stated she liked Rep. Peterson's suggestion of including the language "any formula or agreement mutually agreeable" in Section 82-10-504 (b), MCA. Rep. Bixby would like to see the various options for surface use agreements put into the brochure. Rep. Bixby moved to amend the first sentence of Section 82-10-504(b), MCA, to read: "The amount of damages may be determined by a formula or an agreement mutually agreeable between the surface owner and the oil and gas developer or operator."

03:28:15 Mr. Cebull commented "formula" refers to subsection (1)(a) and specifically to the loss of agricultural production and income, lost-land value, and lost value of improvements caused by drilling operations. Mr. Cebull asked what the intent was for adding the word "agreement." Rep. Bixby suggested adding "agreement" would clear up what "formula" means.

03:29:25 Rep. Peterson suggested the Subcommittee addressed the issue when it adopted the new Section 82-10-504(1)(e), MCA.

03:30:16 Vice Chairman McGee did not feel the word "formula" was misleading and thought adding the word "agreement" would be confusing. Ms. Taylor suggested formula may not refer to money.

03:31:27 Mr. Owen suggested using language stating the payment of damages may be determined by a formula. Mr. Owen explained the payment for damages could include gravel on a road.

(Tape 5; Side B)

03:32:00 Mr. Cebull pointed out the language in Subsection (1)(a) states: "The oil and gas developer operator shall pay the surface owner a sum of money or other compensation equal to the amount . . .." Rep. Bixby's motion failed by roll call vote. **(Attachment 6**)

03:34:41 Vice Chairman McGee explained the proposed amendment to Section 82-10-508, MCA, as reflected on Exhibit 6. Ms. Taylor moved to adopt the amendment striking the language "receives no" and inserting "does not receive a." Ms. Taylor's motion carried unanimously by voice vote.

03:36:39 In addressing attorneys' fees, Rep. Peterson believed the courts already have the authority to award attorneys' fees. Mr. Woodgerd explained attorneys' fees and the complexity of the law. Mr. Woodgerd believed attorneys' fees could not be awarded unless the language were in statute. The Subcommittee took no further action regarding the proposed amendment to Section 82-10-508, MCA.

03:38:34 Mr. Kolman reviewed the proposed changes to Section 82-11-147, MCA (Section 5, Exhibit 6) and explained the substantial amendment was to include that the person would be violating Section 82-10-503, MCA, which is the notice requirement. This amendment would then give the MBOGC the power to hear evidence and levy fines for violations of the notice.

03:39:28 Mr. Richmond did not believe both Sections 5 and 6, Exhibit 6, were necessary. Mr. Richmond explained if a penalty is authorized under Section 82-11-147, MCA, there would be no particular need to authorize a penalty under Section 82-11-149, MCA. Mr. Kolman asked about Section 5(b) and stated if a civil penalty is going to be levied under Section 82-11-149, MCA, it would have to be linked back to 147. Mr. Richmond did not think so if the penalty is specifically codified in Section 82-11-147, MCA. Mr. Richmond believed it would be redundant to assess civil penalties in Section 82-11-149, MCA.

03:43:51 Mr. Woodgerd thought the language was strange and could possibly create a problem.

03:44:45 Rep. Peterson suggested it would be best to ask the Code Commissioner to suggest language that would combine the two sections and authorize a penalty as stated in Section 82-11-147, MCA. Vice Chairman McGee directed staff to pursue and clarify the two sections. The Subcommittee will address Sections 5 and 6, Exhibit 6, at its next meeting.

03:47:04 Mr. Cebull asked Mr. Richmond to explain the standard of evidence for the MBOGC. Mr. Richmond identified the standard of evidence as being able to persuade the board to vote for what you want. Mr. Richmond explained the penalty includes a daily penalty because of the Federal Underground Injection Control Program. Vice Chairman McGee envisioned the penalties contained in Section 82-11-149, MCA, as being operational penalties. Vice Chairman McGee viewed lack of correct notice as being more administrative and not operational. Mr. Richmond explained that penalties go to the general fund and not to MBOGC or surface owner. Therefore, Mr. Richmond suggested a separate penalty section may be required, so the penalty amount for failure to notice would go to the landowner. Vice Chairman McGee agreed.

03:51:53 Vice Chairman McGee explained bonding as proposed in Section 7, Exhibit 6. Upon question from Vice Chairman McGee, Mr. Richmond explained there is no administrative appeal process, and appeals go directly to district court. Mr. Richmond was concerned that without sideboards, litigation would result and requested implementation of a minimum bond and a maximum bond. Mr. Richmond thought this would alleviate the number of appeals. Mr. Richmond suggested setting a minimum bond of $1,500 and a maximum bond of $10,000. Mr. Richmond suggested a bond up to $5,000 should be an administrative process and subject to notice and hearing in front of MBOGC to increase the bond to $10,000. Mr. Richmond and Mr. Kolman will work on proposed draft language to be submitted to the Subcommittee.

03:57:13 Vice Chairman McGee suggested utilizing language stating "The board shall adopt rules for the oil and gas developer or operator to post a reasonable bond with good and sufficient surety at a minimum of $1,500 and a maximum of $10,000, payable to the state, conditioned upon the failure of oil and gas developer . . .."

03:58:24 Mr. Woodgerd moved to adopt the new Section 7, Exhibit 6, including setting the minimum amount of $1,500 and a maximum amount of $10,000.

03:59:14 Ms. Taylor asked specifically what $1,500 would allow a company that bonds on to do and how many wells it could drill. Mr. Richmond suggested the amount would be per site. Vice Chairman McGee reminded the Subcommittee that the details would need to be decided by the MBOGC.

04:00:27 Mr. Cebull requested clarification about administrative approval and asked if the amount of $5,000 would replace the $1,500 to $10,000 range. Mr. Richmond

explained he was suggesting the MBOGC process would be from the minimum amount to $5,000 and to go from $5,000 to $10,00 would require MBOGC approval.

04:02:21 Mr. Cebull inquired about blanket bonds. Mr. Richmond suggested authorization for a blanket bond would also need to be included in statute. Vice Chairman McGee asked whether industry would agree with the blanket bond concept. Mr. Cebull stated if bonding was going to be required, he would like to have the ability to utilize a blanket bond. Vice Chairman McGee clarified Section 7 would allow the MBOGC to make the rules and would allow them to set either a maximum/minimum or some sort of a blanket. Mr. Cebull agreed and stated there would need to be administrative approval at certain levels.

04:04:36 Mr. Montalban explained drilling costs in North-Central Montana stated they are paying $1,000 per location for damages. Mr. Montalban requested the Subcommittee to lower the minimum to $1,000. Mr. Montalban reminded the Subcommittee that the operations in Northern Montana are a whole different operation than those in Eastern Montana. Vice Chairman McGee pointed out the bond is to enable industry to get on the ground and do its work, and does not mean the total amount of the bond goes to the surface owner. Vice Chairman McGee explained this is a temporary stop-gap measure to allow industry to continue doing its business and is not reflective of what the final amount is going to be for damage settlements to the landowner.

04:07:12 Mr. Cebull cited the intent of having a range is to give the MBOGC authority to set an appropriate bond for a specific area. Mr. Cebull moved to amend the motion and lower the minimum amount to $500 and let the MBOGC decide the appropriate amount.

04:09:21 Mr. Rogers addressed the issue of bonding on and understood that bonding on would be used when there is no damage agreement in place. At that point, the producer would go to the MBOGC and bond on so it could meet its time line. The incentive would be to negotiate a damage agreement and get the bond removed. Therefore, it would be in the best interests of industry to negotiate a damage agreement

04:10:15 Mr. McRae expressed concern that the bonding amount of $500 is too low and cautioned about encouraging bonding on.

04:10:44 Mr. Cebull clarified the MBOGC would set the amount within the range and in accordance with what other customary damages are in the area.

(Tape 6; Side A)

04:11:30 Mr. Williams asked for clarification and stated industry needs to have the ability to move on in the absence of an agreement, so it could post an administrative bond and not have to wait for a MBOGC hearing. Mr. Williams believed it was key that the Subcommittee not lose sight of industry's right to be able to develop minerals. Vice Chairman McGee agreed and stated his thought was to give the

MBOGC rulemaking authority to set an appropriate and reasonable bond within the specified range. Mr. Cebull's motion to amend Mr. Woodgerd's motion failed by roll call vote. (**Attachment 7**)

04:15:44 Ms. Taylor asked if the bonding on provision was for one site. Vice Chairman McGee responded the motion is to give rulemaking authority to the MBOGC, and it would decide if it was per well or per site. Mr. Cebull asked about providing for a blanket bond, and Vice Chairman McGee suggested the issue of blanket bonds would be addressed by staff and Mr. Richmond when they construct the new statute. Vice Chairman McGee reminded the Subcommittee that it would receive another opportunity to review the proposed language. Vice Chairman McGee recited Mr. Woodgerd's motion as the language contained in Section 7, Exhibit 6, together with a $1,500 to $10,000 bonding range, providing an administrative process and a provision for blanket bonding. Mr. Woodgerd's motion carried by roll call vote. (**Attachment 8**)

04:18:17 Mr. McRae asked if further amendments could be made to the statute. Vice Chairman McGee agreed and stated the proposed language could be amended at the Subcommittee's next meeting.

04:18:37 Rep. Bixby asked if additional language could be proposed, given to Mr. Kolman, and considered by the Subcommittee at its next meeting. Vice Chairman McGee agreed that was a good idea.

04:20:21 Mr. Woodgerd noted Section 3(f) refers to Section 7. Mr. Woodgerd moved to accept the new language proposed in Section 82-10-504(1)(f), MCA, Exhibit 6. The motion carried 10-1 by voice vote, with Rep. Bixby voting no.

04:21:39 Mr. Kolman asked Mr. Richmond whether there would be an administrative appeal process. Mr. Richmond clarified an administrative bond would be established, which can be appealed to the MBOGC at its next meeting, but would not stop the operator from going on with the administrative bond in place. Vice Chairman McGee stated he likes the idea of an administrative bond being set, with a provision for an appeal to the full MBOGC, and having the final appeal be to court.

04:23:23 Mr. Rogers requested clarification that if the incentive is to negotiate a damage agreement, then a blanket bond would only cover those wells under that agreement and would not be a blanket bond for the company. Vice Chairman McGee agreed.

04:24:12 Rep. Peterson commented on the minimum amount of the bond and asked the Subcommittee to give careful thought to setting the minimum amount since it could become the standard for the industry. Vice Chairman McGee replied the bond is not an agreement and is meant to address worst-case scenarios. Vice Chairman McGee saw the purpose of the bond as being to allow operations to continue. Vice Chairman McGee pointed out that there is currently no bonding requirement in statute. Vice Chairman McGee stated if a producer does what it is supposed to do, it will get its bond back.

04:28:00 Mr. Cebull explained a surface owner's options. Mr. Cebull expressed concern about offering an incentive to the surface owner not to negotiate. Vice Chairman McGee stated that was never the intent and identified the intent as providing a surety for producers so they can get on the ground, and if they do not pay for damages, then the MBOGC can use the bond to pay the surface owner for damages.

04:29:25 Mr. Rogers thought the incentive should be that damages are paid to restore the resource and not to go into someone's pocket.

04:30:26 Mr. Williams disagreed since the surface damage payment made today goes into the pocket of the surface owner. Mr. Williams pointed out this is not a reclamation bond.

Administrative Matters

Input for HB 790 Report and Brochure

04:31:45 Vice Chairman McGee requested the Subcommittee members to bring their input for the brochure to the April 20, 2006, meeting. Mr. Kolman requested the Subcommittee members to send him information on amendments prior to the next meeting.

04:33:44 Vice Chairman McGee identified a meeting conflict with an Energy and Telecommunications being held April 20 in Helena. Mr. Kolman will research alternative meeting dates and will try to accommodate the Energy and Telecommunications Committee meeting. The Subcommittee decided the next HB 790 meeting would be held April 24, 2006, in Helena.

Approval of Minutes

04:39:20 Ms. Taylor moved the January meeting minutes be approved. The motion carried unanimously by voice vote.

04:40:02 Mr. Kolman provided the Subcommittee with upcoming meeting dates. Mr. Kolman cited the dates as April 24 in Helena, May 18 in Helena (in conjunction with the full EQC) and July 17 in Helena (in conjunction with the full EQC). Mr. Kolman identified May 18, 2006, as the date the Subcommittee will make its final determination on what it will send out for public comment.

04:40:58 Mr. Kolman noted there is a BLM meeting being held March 27, 2006, in Miles City, and asked the Subcommittee whether it would like him to attend. The Subcommittee requested Mr. Kolman to attend the meeting and report in April on BLM's proposed changes on how it deals with split estates.

04:41:43 There being no further business, the meeting adjourned.