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HB 790 SUBCOMMITTEE MINUTES

Date: July 17, 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.

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SUBCOMMITTEE MEMBERS PRESENT

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

SUBCOMMITTEE MEMBERS EXCUSED

REP. JIM PETERSON
SEN. GLENN ROUSH
MR. BRIAN CEBULL

STAFF PRESENT

JOE KOLMAN, Research Analyst
CYNTHIA A. PETERSON, Secretary

Visitors

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

COMMITTEE ACTION

- The Subcommittee removed the previously approved bolded language on Exhibit 2, to have LC9999, Exhibit 3, remain as currently drafted.
- The Subcommittee agreed to submit bill draft LC9999 to the full Environmental Quality Council (EQC) for approval.
- The Subcommittee approved a draft of the educational brochure, as amended, to be presented to the full EQC.
- The Subcommittee approved the April 24, 2006, and May 18, 2006, minutes.
- The Subcommittee approved the draft of its final report, as amended, to be presented to the full EQC.

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Michael Wheat, Chairman of the HB 790 Subcommittee (Subcommittee), called the meeting order at 8:30 a.m. The secretary noted the roll ([Attachment 3](#)).

AGENDA

OVERVIEW OF PUBLIC COMMENT

00:02:29 Chairman Wheat directed the Subcommittee to the written comments received by the Subcommittee ([EXHIBIT 1](#)).

00:03:34 Sen. McGee suggested the Subcommittee could address specific issues during the public comment period.

PUBLIC COMMENT

No public comment was offered.

PROPOSED BILL DRAFT

Staff Overview

00:05:15 Mr. Kolman directed the Subcommittee to his memorandum and the bolded language (**EXHIBIT 2**). Mr. Kolman asked the Subcommittee to consider whether it wanted to include the already approved bolded language in Exhibit 2 in Section 82-1-107, MCA. Mr. Kolman submitted bill draft LC9999 (**EXHIBIT 3**), which contained all the changes the Subcommittee had made to date.

Committee Discussion

00:09:10 Upon request from Sen. McGee, Mr. Kolman asked the Subcommittee whether it wanted to include the already approved bolded language in Section 82-10-503, MCA, and in Section 82-1-107, MCA. Specifically, Mr. Kolman sought to know whether the Subcommittee wanted to provide the publication and a copy of the law at the time of seismic activity.

00:10:38 Mr. Williams restated the question as whether the surface owner is required to provide the brochure to the tenant or other surface user.

00:11:23 Sen. McGee stated he would prefer not to encumber the surface owner by requiring them to provide lessees and surface users with the EQC publication and current law. Chairman Wheat recalled the subcommittee decided earlier not to make it a requirement in Section 3.

00:13:02 Ms. Taylor requested clarification about who is the permit holder. Mr. Owen clarified the permit holder is the company that is going to do the seismic activity.

00:14:06 Sen. McGee believed the company should provide information to the surface owner, but did not want to require the surface owner to provide information to the lessees or surface users. Sen. McGee stated in every case the company is responsible for notifying the surface owner, including providing the law and the brochure, but believed the surface owner should not be encumbered by having to provide copies of the law and brochure to the surface user.

00:18:02 Sen. McGee moved to strike the previously approved bolded language on Exhibit 2, and have LC9999 remain as currently drafted. Ms. Taylor agreed and suggested some surface owners may not even know the requirement exists. Mr. Kolman clarified the surface owner would know the requirement exists since the seismic company or drilling company would have been required to give the information to the surface owner.

00:20:26 Mr. McRae emphasized there are very few aspects of the law that apply to lessees.

00:20:39 Mr. Owen believed once the brochure was published, it would, over time, become common knowledge among the ranching and farming community.

- 00:21:07 Sen. McGee's motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy.
- 00:22:09 Chairman Wheat called for additional discussion regarding public comment to Section 82-1-107, MCA.
- 00:23:16 Chairman Wheat called for additional discussion regarding public comment to Section 82-10-503, MCA, Notice of Drilling Operation. Chairman Wheat relayed most of the public comment suggested 20 days was not enough notice.
- 00:24:53 Rep. Bixby asked about increasing the number of days required for notice. Chairman Wheat pointed out the time limit of 20 days was a compromise that had been extensively discussed.
- 00:26:10 Mr. Owen clarified the 20-day notice is for surface-disturbing activities and that the survey notice is covered by existing law. Mr. Kolman agreed that Section 70-16-111, MCA, the current surveying law, contains a requirement for notice.
- 00:27:12 Ms. Iversen suggested the brochure should include the information that surveyors are addressed under a different section of law.
- 00:28:01 Sen. McGee emphasized that seismic surveying does not fall under the auspices of the Board of Registration of Professional Surveyors and Engineers. Seismic surveying is not considered surveying as far as the licensure requirements are concerned. The law that requires a surveyor to get permission is primarily for legal boundary work. Sen. McGee was unaware of any requirement that seismic work has to be done under the direct supervision of a professional land surveyor.
- 00:29:26 Mr. Woodgerd clarified that surveying is addressed under Section 82-10-503, MCA, and the intent was that before someone can get a permit from the Montana Board of Oil and Gas Conservation (MBOGC), they have to survey the drill site and the regulations would apply.
- 00:30:46 Mr. Kolman pointed out the brochure will not match the bill draft since the brochure will need to reflect current law. Mr. Owen wondered if there was a conflict with current survey law. Chairman Wheat believed that was an issue the Subcommittee would not be able to change.
- 00:33:16 The Subcommittee addressed Section 82-10-504, MCA, Mandatory Surface Use Agreements, and Chairman Wheat stated substantial public comment had been received on this section of the proposed legislation. Ms. Taylor asked about the use of "gas developer" versus "operator." Mr. Kolman clarified the discussion centered around "drilling operations" versus "oil and gas operations." Mr. Kolman noted the change was made since there was no definition for "drilling operations."
- 00:35:26 Mr. Williams commented on Section 82-10-504, MCA, and stated he reviewed the minutes from the Subcommittee's previous meetings, and there was no public comment offered from anyone who wanted a surface use agreement and did not

get one. Mr. Williams thought it was important to understand the role of the mineral lessor and the terms of the lease.

- 00:37:53 Ms. Iversen identified the issue as landowners wanting to have a surface use agreement before things get started. Ms. Iversen believed landowners need more leverage.
- 00:38:51 Ms. Taylor asked Mr. Williams whether the MBOGC oversees drilling on state lands. Mr. Williams replied MBOGC does supervise drilling operations, but the relationship is with the State Land Office. An on-site inspection would be done by the Department of Natural Resources and Conservation (DNRC). Ms. Iversen stated she would like to see a surface use agreement mandated before a company comes onto the site.
- 00:41:21 The Subcommittee addressed Section 82-10-505, MCA, Liability for Damages to Property, and no comments were offered from the Subcommittee.
- 00:41:53 The Subcommittee addressed Section 82-10-508, MCA, Rejection--Legal Action, and Chairman Wheat noted the section was clean up language.
- 00:42:09 In addressing Section 6 of the bill draft, Penalty for Notice Violation, Mr. Kolman recalled past discussions for violations of the notice and how the violations could be penalized. Mr. Kolman depicted Section 6 as a reminder of the penalties.

(Tape 1; Side B)

- 00:43:31 Chairman Wheat believed it would be more than just a reminder because the language would give MBOGC discretion in setting a penalty amount.
- 00:44:02 Sen. McGee commented about frustration that occurs when attempting to read the law and when the law refers the reader to other sections of law. Sen. McGee believed it would be better for the public if the law could quote the penalties instead of making a reference to other parts of Code. Sen. McGee would like to see the law written in a clear manner.
- 00:45:41 The Subcommittee addressed Section 7, Codification Instructions, of the bill draft. New Sections 8 and 9 deal with effective and applicability dates, and the law would be effective October 1, 2007.
- 00:47:11 Mr. Owen addressed Section 82-10-504(e), MCA, and suggested deleting "drilling operations" and that a reference to "oil and gas drilling and production operations" would be more appropriate. Mr. Owen made the same comment in the last sentence in Section 82-10-505, MCA. Chairman Wheat recalled "oil and gas operations" was used because it is defined in statute. Mr. Kolman added the definition of "oil and gas operations" includes production in its definition. Chairman Wheat suggested leaving the language the way it is and explained it is the Subcommittee's intent to include production. Mr. Woodgerd agreed, as did Mr. Owen.

00:50:22 Sen. McGee moved that the Subcommittee submit bill draft LC9999 to the full EQC for approval. The motion carried 11-1 by roll call vote with Rep. Bixby voting no, and Rep. Peterson and Mr. Cebull voting aye by proxy.

DRAFT BROCHURE

- 00:53:18 Mr. Kolman directed the Subcommittee to the proposed brochure ([EXHIBIT 4](#)). Mr. Woodgerd asked if the brochure would still be created even if the proposed legislation did not pass. Mr. Kolman replied that decision would be made by the EQC, and the brochure could be made available without distribution being mandated by law. Mr. Woodgerd suggested part of the Subcommittee's recommendation should be that the EQC publish the brochure regardless of whether the legislation passes.
- 00:55:53 Mr. Owen moved to replace the reference to "a" piece of land to "any" piece of land in the section "Who owns What." The motion carried unanimously by voice vote with Mr. Cebull and Rep. Peterson voting aye by proxy.
- 00:57:19 Mr. Owen moved that the last sentence in "Where are the Mineral Rights Records" to read "surface and mineral rights ownership in the title search." The motion carried by unanimously voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy.
- 01:00:16 Mr. Owen commented on the section "What Happens with Exploration" and noted seismic exploration cannot tell the presence of oil and gas and can only test the structure. Chairman Wheat suggested the language could read that the equipment tests for the "potential presence." Mr. Owen agreed that language would be acceptable. Sen. McGee moved to include "potential" before "presence." The motion carried unanimously by voice vote with Mr. Cebull and Rep. Peterson voting aye by proxy.
- 01:02:40 Ms. Iversen recalled her earlier suggestion of including language in the brochure indicating surveyors have their own notice requirements. Mr. Owen emphasized there is a conflict between the 10-day notice requirement for drillers and the 15-day notice requirement for surveyors. Mr. Owen noted many drilling companies employ their own surveyors.
- 01:06:57 Sen. McGee explained it would not matter who hired the surveyor; the surveyor would be encumbered by the requirements in the law regarding surveyors.
- 01:08:16 Chairman Wheat asked Tom Richmond, Montana Board of Oil and Gas Conservation, whether the survey has to be completed and to MBOGC before a permit can be issued. Mr. Richmond agreed the survey has to be completed before a permit can be issued. Mr. Richmond believed all the noticing has been completed by the time MBOGC gets the permit. Chairman Wheat suggested the 15-day notice would override the 10-day notice. Sen. McGee stated the law is specific that surveyors have to provide their own notice and the notice contains a laundry list of information to be provided. Sen. McGee suggested if the notices are combined, the 15-day notice requirement would be proper. Ms. Iversen was

concerned that a surface owner would not be aware that the surveyor has to give his own notice.

- 01:12:45 Ms. Taylor believed 15 days would not be enough time to negotiate a surface agreement. Mr. Owen suggested adding a bullet point under "developer shall" stating the requirements rather than referring the public to another section of law.
- 01:16:12 Chairman Wheat suggested the new bullet point should read, "The developer surveyor is required to provide 15-days' notice before entering upon the property unless waived." Sen. McGee moved the language as recited by Chairman Wheat. The motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting by proxy.
- 01:17:16 Mr. Owen suggested the third bullet point under "the surface owner shall" should read "learns who owns and/or leases the minerals." The motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy.
- 01:19:55 Ms. Taylor wondered how landowners are notified when leases are transferred or sold. Mr. Owen explained the information is recorded in the courthouse. Ms. Taylor wondered whether landowners need to continuously go to the courthouse to find out who owns the minerals and wondered if there was a better way. Sen. McGee agreed Ms. Taylor's point was good, and that it might be wise for a landowner to have a contract with a title company, so the landowner can keep informed of transactions that affect his property.

(Tape 2; Side A)

- 01:22:57 Mr. Williams thought mineral owners could put into the mineral lease a requirement that they be notified of lease transfers.
- 01:23:58 Sen. McGee suggested adding language to the brochure telling the surface owner he may want to contract with a title company to track who owns the minerals, and that the landowner may want to request a written surface use agreement. Sen. McGee moved to add language to the brochure under "What are surface damage/disruption payments?" under "The surface owner may" stating the surface owner may wish to consult a title company to track subsurface ownership interests. Sen. McGee's motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy.
- 01:27:40 Sen. McGee moved to add language to the brochure stating the surface owner may request a written surface use agreement.
- 01:29:28 Chairman Wheat clarified the previous motion was to the section in the brochure entitled "What are surface damage/disruption payments?" and would be listed under "The surface owner may."
- 01:30:00 Mr. Kolman referred the Subcommittee to the section under "What is the drilling notice." Sen. McGee explained he is trying to tell the surface owner that he might

want to request a written surface use agreement. Sen. McGee moved to add language stating the surface owner may wish to have a written surface use agreement under "What is the drilling notice?" under "The surface owner may."

- 01:32:50 Ms. Taylor agreed but thought the language should be the first bulleted item under "The surface owner may." Ms. Taylor suggested the order should be what the developer does, what the surface owner does, and then what the two parties do together.
- 01:34:18 Sen. McGee's motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy.
- 01:34:35 Ms. Taylor moved the bulleted item just passed be moved to the number one position under "What is the drilling notice?" Ms. Taylor's motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy.
- 01:34:58 Ms. Taylor moved to switch the two boxes under "What is the drilling notice?" so "The surface owner may" is listed second and "The developer and surface owner should" would be listed third. The motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy.
- 01:35:50 Sen. McGee asked Mr. Kolman whether "should" would mean it is mandatory. Mr. Kolman explained "should" is a more powerful suggestion than "may," but it would not be a mandate.
- 01:39:09 Sen. McGee moved to replace "should" with "recommended that." Ms. Taylor suggested leaving it alone because of the strength behind "should." Mr. Owen agreed. Mr. Williams preferred "recommended that." Mr. Rogers supported "should."
- 01:40:20 Sen. McGee closed on his motion and thought "should" was compulsive. Sen. McGee stated laws either state you do it or it is not stated. Chairman Wheat responded "should" is not as mandatory and compulsory as Sen. McGee believed.
- 01:43:43 Sen. McGee's motion failed 5-7 by roll call vote with Rep. Peterson and Mr. Cebull voting aye by proxy.
- 01:46:16 Ms. Iversen expressed concern about the reference that damages could be paid annually instead of in a lump sum and suggested the statement should be omitted. Ms. Iversen believed current law was unclear. Mr. Kolman read the current law. Ms. Iversen suggested the whole statute would need to be included to be interpreted correctly. Chairman Wheat reminded the Subcommittee the purpose of the brochure is to educate. Chairman Wheat suggested in the case of a producing well, it would be important to educate landowners that they can elect to receive annual damage payments over a period of time. Ms. Iversen agreed. Ms. Iversen moved to include the specific language from the statute stating that landowners can elect to receive annual damage payments over a period of time.

Ms. Iversen's motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy.

01:51:13 Ms. Taylor moved the brochure be approved and submitted to EQC for adoption. The motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy.

BREAK

DRAFT REPORT

02:12:47 Mr. Kolman directed the Subcommittee to the draft report (**EXHIBIT 5**) and photos submitted on behalf of Mr. Cebull (**EXHIBIT 6**). The Subcommittee reviewed the individual sections of Exhibit 5.

02:18:57 Mr. Williams addressed the first finding under "Study minimum provisions for surface use agreements." Elements that should be considered include road development, onsite water impoundments, quality and disposal of produced water and suggested adding wording that "industry representatives and some landowners." Mr. Williams moved adding the language "and some landowners" to the finding. Mr. Williams' motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy. Mr. Williams suggested striking "infringes upon private negotiations" and insert "is not the current practice in the overwhelming majority of negotiations and could disrupt the orderly process."

02:22:05 Ms. Taylor did not agree to Mr. Williams' proposed language and did not believe it would disrupt the orderly process. Mr. Woodgerd agreed the proposed language is excessive. Mr. Williams clarified there was no need to change the language, and that he would not be making the motion, but was simply relaying a comment.

02:23:30 Mr. Rogers asked if the recorded vote could be part of the recommendation instead of being referenced in a separate part of the report.

02:24:42 Ms. Taylor recalled the brochure would be done whether the law passes or not. Mr. Kolman pointed out the recommendation is that the brochure be produced regardless of whether the law passes. Mr. Owen suggested adding "Additionally." Mr. Owen moved to add "Additionally," to the second recommendation. The motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting by proxy.

02:26:00 Mr. McRae stated he was not comfortable stating surface use agreements should not be required. Mr. McRae stated although the Subcommittee is not recommending surface use agreements, neither is it recommending surface use agreements should not be required.

(Tape 2; Side B)

Sen. McGee suggested stating "surface use agreements shall not be mandated in statute." Mr. McRae believed the Subcommittee was not making any recommendation since there was a tie vote. Rep. Bixby agreed the Subcommittee did not reach an agreement on whether surface use agreements should be in statute. Sen. McGee suggested the finding could state the Subcommittee was unable to reach an agreement on mandatory surface use agreements. Mr. Rogers believed the reference to "based on the findings" was not correct and the decision was a process issue. Mr. Williams suggested stating the Subcommittee could not reach a super majority on recommending surface use agreements.

- 02:29:47 Sen. McGee moved the language "The subcommittee was unable to agree that written surface use agreements should be mandated in statute" be added in the finding. Mr. Rogers thought it was important to note that many issues passed, but did not reach super majority, and that the report on final votes should be noted in the introduction. Sen. McGee's motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy.
- 02:32:29 Chairman Wheat agreed the introduction should contain information about the voting process utilized by the Subcommittee.
- 02:33:06 Sen. McGee suggested the introduction paragraph in Chapter 6, the Decision Making Process, could be restated in the introduction to the report. Sen. McGee further suggested a final statement could be a reference to Chapter 6 and the recorded votes. Rep. Bixby thought the individual votes should be with the finding.
- 02:35:24 Mr. Rogers moved to include a paragraph that explains the decision-making process and the closeness of the votes. Chairman Wheat instructed Mr. Kolman to supply an introductory paragraph. Mr. Rogers' motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy.
- 02:37:06 Mr. Kolman reminded the Subcommittee that none of the documents had gone through the editing process, and everything would go through the editors.
- 02:39:38 Rep. Bixby reiterated she would like to see the vote count reflected under the appropriate finding. Mr. Woodgerd agreed with Rep. Bixby's suggestion and thought it would provide clarification.
- 02:41:54 Mr. Williams thought Rep. Bixby's suggestion would make the report unreadable. Mr. Owen suggested findings are supposed to be a broad-brush synopsis of different discussions, and that the votes were on very specific language.
- 02:43:32 Sen. McGee reminded the Subcommittee that it voted on items over and over and believed it would be better to leave the votes as they are currently listed since issues were addressed on various calendar dates. Rep. Bixby moved to

include the votes that were not a super majority in Chapter 6 and in the appropriate sections of the report.

- 02:48:33 Ms. Taylor asked whether Chapter 6 could be moved behind the findings and recommendations. Mr. Kolman agreed that could be done. Rep. Bixby agreed with that recommendation and withdrew her original motion and moved to relocate Chapter 6, so it would directly follow the findings and recommendations. The motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy.
- 02:50:52 Mr. Williams stated he researched the final recommendation that EQC should support the efforts of outside organizations that may offer mediation services to surface owners and mineral developers, but could not find a specific recommendation in the minutes. Mr. Woodgerd commented on the mediation procedure utilized in Wyoming and suggested such a procedure could be useful in Montana. Chairman Wheat agreed the Subcommittee discussed mediation but did not make it a formal recommendation. Mr. Williams did not find anywhere in the record that the Subcommittee came to a consensus regarding mediation and stated he would like to see the recommendation removed. Sen. McGee suggested mediation should be a finding and not a recommendation.
- 02:56:17 Sen. McGee moved to strike the recommendation regarding mediation services and to add language into the finding stating the Subcommittee found the efforts of outside organizations that offer mediation services to surface owners and mineral developers can be beneficial. Sen. McGee's motion carried 11-1 by voice vote with Rep. Bixby voting no, and Rep. Peterson and Mr. Cebull voting aye by proxy.
- 02:57:29 In addressing the section "Study bonding requirements based on the type of activity," Mr. Kolman directed the Subcommittee to the Montana Petroleum Association's (MPA) comments about the inclusion of the word "may" in the first finding. Mr. Kolman explained "may" was used because even some oil well drilling operations may not be exactly alike. Mr. Williams explained MPA's intent in making the comment was that all drilling operations are in some way unique and require site-specific decision-making and negotiation processes.
- 03:01:10 Sen. McGee addressed the first finding under "Study bonding requirements based on the type of activity" and moved to strike the words "even" and "may" to state "Different types of drilling operations have unique impacts." Chairman Wheat suggested deleting the second sentence in its entirety. Sen. McGee made a substitute motion to leave the word "even" and only delete the word "may." Sen. McGee's motion carried 8-4 by roll call vote with Rep. Bixby, Ms. Iversen, Mr. Owen, and Ms. Taylor voting no, and Rep. Peterson and Mr. Cebull voting aye by proxy.
- 03:05:54 Mr. Williams moved to replace the language in the first sentence of the fourth finding under the bonding section to read: "In addition to operator bonds, there exists several current funding sources for remediation of sites."

(Tape 3; Side A)

- 03:08:19 Mr. McRae pointed out that currently under Coal Bed Methane Protection Act the only available remediation is water replacement and nothing else is available for remediation until 2011.
- 03:10:05 Mr. Williams' motion carried 9-3 by voice vote with Mr. Woodgerd, Ms. Taylor, and Ms. Iversen voting no, and Rep. Peterson and Mr. Cebull voting aye by proxy.
- 03:11:18 Mr. Williams moved changing the language throughout the report to read "Based on the findings, the Subcommittee has no recommendations." Chairman Wheat recalled previous Subcommittee discussions to include a recommendation stating the Subcommittee has no recommendation. Mr. Williams' motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy.
- 03:15:30 The Subcommittee addressed the section "Assess current reclamation and bonding requirements for coal bed methane operations." The Subcommittee had no further changes. The Subcommittee addressed the section "Evaluate statutes for surface damage, coal bed methane exploration, coal bed methane operations, and coal bed methane reclamation." The Subcommittee had no further modifications. The Subcommittee addressed "Explore approaches for balancing mineral rights and surface rights." Mr. Williams moved to replace "legal history" with "the law of split estates" and change "holds" to "provides." Mr. Williams agreed with Sen. McGee's friendly amendment to change the wording to "the law governing split estates." The motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy.
- 03:20:30 Sen. McGee moved to make the third recommendation under "Explore approaches for balancing mineral rights and surface rights" to the finding section. Sen. McGee's motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy. The Subcommittee addressed the sections "Identify the relationship between federal law and state law related to split estates" and "Evaluate necessity and feasibility of post-operation reclamation requirements or alternatives including water pits and impoundments." The Subcommittee had no further comments or recommendations.

LUNCH

- 00:00:08 Chairman Wheat reconvened the Subcommittee at 1:01 p.m. The Subcommittee addressed Chapter 1, "Split Estate and Coal Bed Methane Issues Rise to the Fore."
- 00:00:37 Mr. Williams pointed out that Bureau of Land Management (BLM) does not own eight million acres; however, the federal government owns the land and BLM manages and administers the land. Mr. Williams also suggested making the language consistent with the data in Appendix E. Mr. Kolman explained the statement that five million acres of BLM oil and gas deposits are under private

land came from a conversation Mr. Kolman had with Mr. Albano from the BLM. Mr. Williams stated he would like the numbers to be more accurate. Mr. Williams referred to Appendix E and the figures contained in Table 1-3. Chairman Wheat suggested the language could reflect that the land is owned and administered by the federal government without being specific as to a particular agency. Mr. Williams moved the language addressing Chapter 1 contained in his e-mail (**EXHIBIT 7**) subject to Mr. Kolman's confirmation of the numbers.

- 00:08:13 Jim Albano, BLM, confirmed the figures presented in Mr. Williams' e-mail were correct.
- 00:09:42 Mr. Kolman asked if the motion included removing the five million acres of gas and leaving it at 11.7 million acres of mineral rights. Mr. Williams clarified he would like to replace the sentence reading "In Montana . . . under private land." Mr. Williams' motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy.
- 00:11:58 Mr. Williams addressed Chapter 3 and noted Appendix H contained media coverage on HB 790, but questioned the value of including portions of the coverage but not all of the coverage. Mr. Williams stated his preference would be to strike the media coverage.
- 00:14:06 Chairman Wheat inquired whether the newspaper article list was complete, and Mr. Kolman replied he believed the list was comprehensive. Mr. Williams stated he had reviewed other EQC reports and media coverage was not part of those reports. Mr. Williams was concerned about including a sampling of the media coverage.
- 00:16:08 Rep. Ripley asked if any other EQC reports contained media coverage. Chairman Wheat was unaware of any other EQC reports containing media coverage and explained the attempt was to show the extent of the public involvement. Chairman Wheat favored including media coverage as long as it indicated the media coverage was not a random sample. Sen. McGee stated he did not feel it was important to have the media coverage included in the report. Rep. Bixby favored including media coverage in the report.
- 00:20:02 Mr. Williams moved to eliminate Appendix H and any reference to Appendix H in the report. Mr. Williams' motion failed 5-7 by roll call vote with Sen. McGee, Mr. Owen, and Mr. Williams voting aye, and Rep. Peterson and Mr. Cebull voting aye by proxy. Chairman Wheat expressed concerns about having a complete list of media coverage. Sen. McGee thought there could not be a guarantee that every article was included and thought it would be appropriate to say it was a sampling.
- 00:24:03 Mr. Kolman referred to the photographs from Mr. Cebull depicting and describing the areas the Subcommittee toured in the Sidney area.

(Tape 3; Side B)

- 00:26:55 Sen. McGee moved to include Mr. Cebull's photographs and requested Mr. Kolman to re-write language for the photographs. Sen. McGee's motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy.
- 00:29:16 Chairman Wheat explained that Chapter 5 had been rewritten to be more factual and less editorial. Sen. McGee stated his desire to have the first sentence of Chapter 5 rewritten to reflect Montana statutes contain numerous references to oil and gas development. Chairman Wheat suggested stating "There are numerous statutes that apply to oil and gas development in the state of Montana." Sen. McGee agreed and moved the language as proposed by Chairman Wheat. Sen. McGee's motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy.
- 00:31:29 Mr. Williams addressed paragraph 7 of Chapter 5, and moved to strike "concur with" and insert "accepts."
- 00:32:52 Mr. Richmond clarified MBOGC accepts BLM permits for record purposes only and asserts no regulatory jurisdiction on federal land. In the Memorandum of Agreement, BLM agrees to enforce the state spacing and set back requirements on federal land.
- 00:33:36 Mr. Williams' motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy.
- 00:34:45 Chairman Wheat asked whether Chapter 6 would include the votes taken at the current meeting. Mr. Woodgerd asked whether the votes were on changing the actual statute, as opposed to votes on changing the report. Mr. Woodgerd thought it would be appropriate to limit Chapter 6 to votes relating to the statute.
- 00:36:28 Chairman Wheat asked whether the Subcommittee would agree to having Chairman Wheat and Sen. McGee review the changes made to the report and approve the report, so the Subcommittee would not have to reconvene. Mr. Williams asked who would review the edited document to ensure it complies with the intent of the Subcommittee. Chairman Wheat explained the edited report would be e-mailed to the Subcommittee members, and the Subcommittee members could send any comments to him and Sen. McGee.

APPROVAL OF MINUTES

- 00:39:30 Ms. Taylor moved the April 24, 2006, minutes be approved. The motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy. Mr. Woodgerd moved to approve the May 18, 2006, minutes. The motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy.

00:40:53 Mr. Williams moved to approve the draft report as amended and with the clarifications agreed to by the Subcommittee. Mr. Williams' motion carried unanimously by voice vote with Rep. Peterson and Mr. Cebull voting aye by proxy.

PUBLIC COMMENT ON HB 790 ISSUES

00:41:40 Jerome Anderson, Encore Acquisition Company, voiced his surprise that the draft brochure and report were approved without an opportunity for public comment. Mr. Anderson was also surprised about the report in Chapter 5 and the meeting in Sheridan, Wyoming. Mr. Anderson noted the report mentions three witnesses that testified but nothing about the numerous witnesses that testified in support of the status quo. Mr. Anderson thought the report on the Sheridan, Wyoming, meeting should have been full and complete as to its content. Mr. Anderson objected to the inclusion of media coverage since it would be difficult to ascertain whether the media coverage was unbiased. Mr. Anderson emphasized the importance of the report since it would be part of the legislative archives and would be relied on by future legislatures.

00:44:59 Patrick Montalban, Northern Montana Oil and Gas Association, clarified that the comment that state lands request a surface use agreement is not correct and the agreement is an agreement between the surface owner and the oil and gas company as to what they are paying for actual damages. Mr. Montalban addressed the brochure and asked about the mineral owners' rights. Mr. Montalban suggested the brochure does not clarify who has the predominant right until the end of the brochure. Mr. Montalban requested the Subcommittee to rethink including a statement that the mineral owner has the right to drill for the underlying oil and gas. Mr. Montalban found it amazing the Subcommittee allowed inclusion of three remarks in the brochure against industry and did not include any remarks favorable to industry. Mr. Montalban thought the Subcommittee's work was biased against the oil and gas industry.

00:49:46 Dave Galt, Executive Director, Montana Petroleum Association, thanked the Subcommittee for its work, and stated he agreed with Mr. Anderson's comments.

00:50:39 Chairman Wheat responded and explained the super majority vote process indicated the Subcommittee was not biased against industry. Chairman Wheat depicted the Subcommittee as balanced. Chairman Wheat thanked the Subcommittee members for their hard work.

00:52:09 Mr. Williams explained the Subcommittee decided the only comments that would be reported would be from those individuals whom the Subcommittee had invited to speak.

00:53:24 Sen. McGee explained how the legislative process could change the work of the Subcommittee, and that the Subcommittee's work was just the beginning.

00:55:32 Chairman Wheat adjourned the HB 790 Subcommittee at 1:57 p.m.