



ENVIRONMENTAL QUALITY COUNCIL

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JOE KOLMAN, Research Analyst
CYNTHIA PETERSON, Secretary
TODD EVERTS, Legislative Environmental Analyst

ENVIRONMENTAL QUALITY COUNCIL HB 790 SUBCOMMITTEE

MINUTES

DATE: August 1, 2005

Brockman Center, MSU-Northern Campus
Havre, Montana

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division.

COMMITTEE MEMBERS PRESENT

EQC Members:

SEN. MICHAEL WHEAT (Chairman)
SEN. DANIEL MCGEE
REP. NORMA BIXBY
REP. JIM PETERSON
MR. BRIAN CEBULL
MR. DOUGLAS MCRAE

Public Members:

MR. JIM ROGERS
MR. BRUCE WILLIAMS
MS. CONNIE IVERSEN
MR. JOE OWEN
MS. LILA TAYLOR
MR. DAVID WOODGERD

Nonvoting EQC Representatives:

REP. RICK RIPLEY

COMMITTEE MEMBERS ABSENT:

SEN. GLEN ROUSH

STAFF PRESENT

KRISTA LEE EVANS, Research Analyst
JOE KOLMAN, Research Analyst
CYNTHIA PETERSON, Secretary

Visitors

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

COMMITTEE ACTION

None.

CALL TO ORDER - ROLL CALL/INTRODUCTIONS:

Chairman Mike Wheat called the meeting to order at 8:30 a.m. The secretary noted the roll ([ATTACHMENT 3](#)). Chairman Wheat addressed the audience and Subcommittee about the purpose of the HB 790 Subcommittee and the need for objectivity. The members of the HB 790 Subcommittee introduced themselves.

ADMINISTRATIVE MATTERS:

Staff Introductions

Joe Kolman, Legislative Research Analyst, introduced HB 790 Subcommittee staff.

HB 790 Budget Overview

Mr. Kolman provided budget information for the HB 790 Subcommittee and asked the members to decide how they would like to allocate the funds. Sen. Wheat asked the Subcommittee members to think about where they would like to meet and suggested they should cover as much of Montana as possible. Sen. Wheat will consider suggested meeting locations at the September HB 790 Subcommittee meeting in Helena.

Krista Lee Evans, Legislative Research Analyst, recommended the Subcommittee consider how it will conduct its decision-making process. Sen. Wheat suggested the Subcommittee members provide their preferences on that process at the September meeting. Rep. Jim Peterson supported Chairman Wheat's suggestion.

OVERVIEW OF THE ISSUES:

Split Estates - Ms. Evans

Ms. Evans reported she will be responsible for split estate issues and submitted a background paper regarding split estates related to oil and gas production in Montana (**EXHIBIT 1**). The background information explains the relationship between the surface ownership and the mineral ownership.

Surface Owner Regulations, Reclamation, Bonding - Mr. Kolman

Mr. Kolman submitted background information paper regarding oil and gas regulation in Montana (**EXHIBIT 2**). Mr. Kolman explained the Bureau of Land Management (BLM) is the lead agency for federally-owned or leased minerals, and the Board of Oil and Gas is the lead agency if the minerals are privately owned or state owned. Mr. Kolman pointed out there are intricate differences.

Questions from the Subcommittee

Rep. Peterson wondered if restrictions that applied to state lands applied to the land banking provision where land can actually be sold to a purchaser and the money used to buy other state land so there is a no-net-loss/no-net-gain provision. Ms. Evans explained the statute still applies to land banking.

Sen. Daniel McGee inquired how much land the state currently has a vested interest in mineral rights. Ms. Evans offered to obtain that information. Sen. McGee requested that the information include lands where the state owns both the surface and minerals, and where the state owns only the minerals.

PUBLIC COMMENT:

Jon Tester, President, Montana State Senate, addressed the Subcommittee, and agreed the Subcommittee is on a fact-finding mission. Sen. Tester has met with landowners regarding many issues. Sen. Tester emphasized it is very important to meet with, and receive information from, as many landowners as possible.

Arnold Hokanson, a rancher in the Bears Paw Mountains, submitted written testimony (**EXHIBIT 3**).

Cole Chandler, Operations Manager, Klabzuba Oil and Gas, Inc., explained that he would be facilitating the afternoon tour for the Subcommittee and stated his intent is to simply answer any questions the Subcommittee may have. Mr. Chandler agreed oil and gas development does make an impact and can cause problems. Mr. Chandler explained how Klabzuba Oil and Gas is attempting to resolve those problems without the need for legislation. Mr. Chandler testified Klabzuba tries to be a good neighbor and has experienced a minimal number of serious problems over the years, and that most of those problems can be easily resolved. Mr. Chandler submitted a copy of the standard notification letter used by Klabzuba to notify landowners of proposed drilling operations and the subsequent process (**EXHIBIT 4**).

(Tape 1; Side B)

Mr. Chandler introduced Eric Fee from Klabzuba and stated Mr. Fee would also be available to answer questions.

Daryl Sather, land steward for the land the Subcommittee would be touring, testified that he appreciates his good relationship with Klabzuba Oil and Gas, but pointed out that he has relationships with other oil and gas companies as well. Mr. Sather gave a power point presentation about surface stewards and highlighted difficulties that he has encountered (**EXHIBIT 5**). Mr. Sather identified cooperation as key and the importance of getting land back into production. Mr. Sather also stressed the importance of keeping gates closed and the need to address ruts created on roads by heavy equipment. Mr. Sather testified he would like to know when the construction project is expected to be finished and when compensation will occur. In addition, Mr. Sather identified weeds, pipeline maintenance, and crop loss as important issues for landowners. Mr. Sather suggested revisiting access issues at some point in the process since the original access granted may no longer be acceptable to the landowner. Mr. Sather acknowledged his positive relationship with Eric Fee of Klabzuba Oil and Gas and thanked Mr. Fee for his continued cooperation.

Mr. Chandler provided a power point presentation relating to Klabzuba oil and gas development (**EXHIBIT 6**).

(Tape 2; Side A)

Representative Bob Bergren, HD 33, identified three items that the Subcommittee should address: notification, surface owner input, and implementation of a dispute resolution process. Rep. Berger acknowledged the existing good relationship between industry and landowners.

Merten Freyholtz, Gilbert, Montana, expressed concern about water and discussed detrimental damages done to various landowners' water wells. Mr. Freyholtz suggested utilizing mandatory monitoring and policing of gas and oil companies while they are drilling.

Wallace D. McRae, a ranch owner in southeastern Montana and a member of the Northern Plains Resource Council, was very concerned about the disadvantages of landowners and stressed his overriding concern about landowners' water quality. Mr. McRae submitted written testimony (**EXHIBIT 7**).

Julia Page, a former EQC member and a small business owner in Gardiner, submitted written testimony on behalf of Jeanie Alderson (**EXHIBIT 8**). Ms. Page believed a negotiated Surface Use Agreement would be key for landowners to address their individual concerns. Ms. Page also submitted a publication from Northern Plains Resource Council entitled, "Your Land, Your Rights" (**EXHIBIT 9**), and "Law and Order in the Oil and Gas Fields" published by the Western Organization of Resource Councils (**EXHIBIT 10**).

Linda Simonsen, Richland County, representing her husband, who is director of the Northeast Montana Land and Mineral Owners, and her family, is currently in negotiations regarding compensation for surface damage done by Lyco Energy. Ms. Simonsen explained the formula her family is using to calculate surface damages on their land and stated the parties remain far apart in their settlement negotiations. Ms. Simonsen suggested surface owners should be

notified of a proposed mineral lease and be given a list of the major mineral owners, and that surface owners be required to sign off on a mineral lease before the lease goes into effect. Ms. Simonsen would like to see a Surface Use Agreement finalized before drilling begins. Ms. Simonsen believed the language in Montana law should be revised and "given some teeth."

Sen. Ken Hansen, SD 17, is also a rancher in Lake County. Sen. Hansen identified communication and education as important factors in solving problems. Sen. Hansen thanked the Subcommittee for visiting his district.

Paul Wolery, Inverness, Montana believed there is a relations problem between investors, landowners, and drilling companies. Mr. Wolery explained his past experiences with drilling companies. Mr. Wolery submitted a Release and Waiver that was presented to him and explained the reasons he could not sign the Release ([EXHIBIT 11](#)). Mr. Wolery also submitted a copy of the Surface Damage Release which he ultimately signed ([EXHIBIT 12](#)).

(Tape 2; Side B)

Mr. Wolery suggested there should be more consistency in the price paid for leasing land. Mr. Wolery would also like to see more accountability on the part of the drilling industry.

Jim Heavey, a rancher near the Canadian border, submitted written testimony to the Subcommittee explaining problems he is experiencing with the drilling company that leased his land ([EXHIBIT 13](#)).

Dan Teigen, a rancher from Winnett, Montana, has experienced a variety of leasing and exploration activity. Mr. Teigen explained the impact of "oil fever" on ranching in Winnett. Mr. Teigen identified the issue as protection of all private property owners' rights. Mr. Teigen thought mineral rights owners should be afforded the same rights as landowners. Mr. Teigen stated improved and adequate Surface Use Agreements, as well as reclamation standards, would go a long way toward resolving conflicts. Mr. Teigen suggested it is long past time for Montana to update its laws to protect landowners and hold the bad drilling companies accountable.

Peter Mickelsen, a rancher near Lewistown, stated he has a different perspective because he and his wife also own the mineral rights on their ranch. Mr. Mickelsen echoed the comments given in previous public testimony and expressed his concern about water. Mr. Mickelsen believed there should be a level playing field and that currently, landowners are always on the defensive.

Ted Solomen, a landowner and mineral interest owner, would like to see damages paid to landowners by the industry since drilling cannot occur without going on the landowners' property.

Herb Vasseur, President of Montana Land and Minerals Association, thanked the Subcommittee for coming to Havre. Mr. Vasseur testified that a ten-day notice of entry period is too short. Also, Mr. Vasseur thought a higher bond was in order to compensate landowners' future damages. Mr. Vasseur would like to see long-term coverage on surface use. Mr. Vasseur admitted there were good operators and bad operators. Mr. Vasseur believed there are problems with the valuation of land. Mr. Vasseur stated the price for leasing needs to increase and that in some

cases, the leasing prices are the same as they were in the 1930s. Mr. Vasseur suggested the Subcommittee should become familiar with both sides of the issues.

Patrick Montalban, Northern Montana Oil and Gas Association, thanked the Subcommittee for coming to Havre. Mr. Montalban appreciated the Subcommittee's willingness to travel. Mr. Montalban pointed out that the Board of Oil and Gas issued over 900 permits in 2004 and that over 200 of those permits were in the Havre area. Mr. Montalban believed the difficulties arose from a lack of communication. In addressing mineral rights, Mr. Montalban stated the both state and federal courts have ruled mineral owners have dominancy. Mr. Montalban suggested the focus should be on the surface owners' interests. Mr. Montalban explained there are many people in Montana who are happy with the oil and gas industry and are glad to have their minerals developed. Mr. Montalban asked the Subcommittee to consider whether the oil and gas companies are asking for fair compensation and whether surface owners are asking for fair compensation. Mr. Montalban identified the issue as being between the surface owners and the oil and gas companies and was uncertain why the government should be involved in the process. Mr. Montalban suggested the Legislature could set forth guidelines, but it would be unable to stop the process. Mr. Montalban agreed with the landowners that the issue of entry should be addressed in an agreement. Mr. Montalban stated the value of leases is set by the market. Mr. Montalban emphasized that oil and gas companies want to work with ranchers and farmers to develop minerals in a prudent manner.

Gail Abercrombie, Executive Director, Montana Petroleum Association, spoke about the Wyoming Split Estate Initiative and submitted information to the Subcommittee ([EXHIBIT 14](#)).

Jim Warburton, a rancher from Chinook and a Director on Montana Land and Mineral Owners, believed there should be standards to avoid conflict. Mr. Warburton's main concern was with water availability and preservation.

Gary Melon gave an accounting of his past negative experiences with a drilling company. Mr. Melon reported he had to do his own reclamation at his cost since the original drilling company went bankrupt. Mr. Melon thought that negotiation would not work under his circumstances since there was no company to negotiate with.

Tom Richmond, Oil and Gas Board, commented that the Oil and Gas Board has been working with the United States Department of Energy on several projects. Mr. Richmond referred the Subcommittee to the "Coal Bed Methane Primer" ([EXHIBIT 15](#)). Mr. Richmond offered to supply the Subcommittee with copies of another publication entitled "Best Management Practices" and to give a presentation to the Subcommittee. Mr. Richmond also offered to provide information about the Coal Bed Methane Impoundment Study. On behalf of the Chairman of the Oil and Gas Conservation, Mr. Richmond invited the Subcommittee to come to Sidney, Montana.

Dan Arthur, ALL Consulting, testified there may be other projects that the Subcommittee may be interested in. In addition, Mr. Arthur directed the Subcommittee to discussions conducted by the Western Governor's Association and noted the similarities with the issues before the Subcommittee.

Chairman Wheat suggested additional testimony and comments could be e-mailed to Ms. Evans and Mr. Kolman for distribution to the Subcommittee members.

Questions from the Subcommittee:

Sen. McGee asked Mr. Richmond what resources the Oil and Gas Commission has to assist people when they have residual damage from oil and gas activity. Mr. Richmond referred to the Orphan Well Plugging Program funded by the Resource Indemnity Trust interest income. The current allocation for the program is \$600,000 per biennium. In addition, assistance can be obtained from the Production Damage Mitigation Account. In addition, funds from the Governor's Emergency Environmental Contingency Account may be available. Mr. Richmond referred Sen. McGee to the orphan well list available on the Oil and Gas Commission's website. Orphan wells are prioritized according to the well's potential for causing damage. Currently, there are approximately 150 wells on the orphan well list.

Mr. Jim Rogers inquired how much money is spent annually to plug orphan wells. Mr. Richmond replied approximately \$300,000 is spent over two field seasons. The funds are used for reclamation and plugging. During the last two years, no funds have been used from the Governor's Environmental Emergency Account.

Ms. Lila Taylor asked Mr. Chandler if any type of agreement is made with landowners prior to drilling. Mr. Chandler explained the type of pipelines used are granted under the rights of the lease and signed easements are obtained for their pipelines.

Sen. McGee asked about reclamation and whether the topsoil is used for reclamation. Mr. Chandler explained the common use of "double ditching."

Mr. Rogers asked if all surface use agreements were the same. Mr. Eric Fee, Klabzuba Oil and Gas, explained that they do not have a Surface Lease Agreement in place every time they access land. Chairman Wheat requested Mr. Fee to provide the Subcommittee with a copy of their standard Surface Lease Agreement.

Ms. Connie Iversen asked how deep under the surface a pipeline normally runs. Mr. Chandler explained they attempt to have five feet of cover over the pipeline. Ms. Iversen asked about the packing method used and whether it is affected by erosion. Mr. Chandler depicted the problem as ongoing and explained their attempts to keep up with erosion.

Mr. Rogers asked Mr. Montalban if there were specific elements he would like to see in a Surface Lease Agreement. Mr. Montalban explained their use of a Release on damages signed at the conclusion of drilling.

There being no further business to come before the Subcommittee, the meeting was adjourned at 12:10 p.m.

The Subcommittee toured a local oil and gas field. The tour was organized and conducted by Cole Chandler, Herb Vasseur, Eric Fee, and Daryl Sather ([EXHIBIT 16](#)). The tour concluded at 4:00 p.m.