



# ENVIRONMENTAL QUALITY COUNCIL

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KRIS KOK  
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DOUGLAS MCRAE

**COUNCIL STAFF**  
KRISTA LEE EVANS, Research Analyst  
JOE KOLMAN, Research Analyst  
CYNTHIA PETERSON, Secretary  
TODD EVERTS, Legislative Environmental Analyst

## HB 790 SUBCOMMITTEE

### MINUTES

DATE: October 27, 2005

Location: Sheridan Community College  
Sheridan, Wyoming

#### **SUBCOMMITTEE MEMBERS PRESENT**

SEN. DANIEL MCGEE (Vice Chairman)  
SEN. GLENN ROUSH (non-voting)  
SEN. MICHAEL WHEAT (Chairman)

REP. NORMA BIXBY  
REP. JIM PETERSON  
REP. RICK RIPLEY (non-voting)

MR. BRIAN CEBULL  
MS. CONNIE IVERSEN  
MR. DOUGLAS MCRAE  
MR. JOE OWEN  
MR. JIM ROGERS  
MS. LILA TAYLOR  
MR. BRUCE WILLIAMS  
MR. DAVE WOODGERD

#### **SUBCOMMITTEE MEMBERS EXCUSED**

None.

#### **STAFF PRESENT**

JOE KOLMAN, Research Analyst  
CYNTHIA PETERSON, Secretary

#### **Visitors**

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

## **SUBCOMMITTEE ACTION**

The Subcommittee approved the September 15, 2005, minutes of the HB 790 Subcommittee.

## **CALL TO ORDER AND ROLL CALL**

The October 27, 2005, meeting of the HB 790 Subcommittee was called to order at 12:05 p.m., by Sen. Mike Wheat, Chairman. The secretary called roll ([Attachment 3](#)). Chairman Wheat explained the purpose of the HB 790 Subcommittee.

## **AGENDA**

### **WYOMING'S NEW SPLIT ESTATE LAW**

#### **Rep. Rosie Berger (R)--Big Horn, Wyoming**

Rep. Rosie Berger, a Wyoming state legislator, hoped the Montana Legislature would be as successful as the Wyoming Legislature in addressing split estates. Rep. Berger explained that Wyoming now has a balanced budget, and coal bed methane (CBM) gas accounts for approximately 17 percent of Wyoming's total state gas production in 2004. Rep. Berger explained how she pursued legislation in Wyoming to address split estates. Rep. Berger suggested producers are now doing a lot more planning since the new legislation acts as a hammer. Rep. Berger stated that Wyoming's legislation has required surface owners to be included in the planning process. Rep. Berger admitted that Wyoming's laws may need to be tweaked in the future. Rep. Berger identified competition among developers as an unintended consequence of the legislation. Mediation is included as part of the surface use agreement, which is a private contract between the landowner and the developer. Rep. Berger suggested it is too early to know whether the legislation was effective. Rep. Berger suggested communication is vital to the legislation because as energy prices increase conflict also increases.

#### **Laurie Goodman--Landowners' Association of Wyoming**

Laurie Goodman, President of the Landowners' Association of Wyoming, stated her organization was formed to pass Wyoming's legislation and to focus on the legal aspects of the legislation. Ms. Goodman explained that, since statehood, Wyoming has had 71,000 wells drilled across the state, and the Bureau of Land Management (BLM) predicts an additional 76,000 wells would be drilled in the next 10 years. Ms. Goodman explained new technology creates a different impact on the surface and affects the pace of drilling and the spacing of wells. Wyoming has to face the reality that, with all the new drilling, Wyoming's landscape could look very different in ten years. Ms. Goodman suggested that the greatest amount of environmental protection could be achieved by empowering landowners since they are the land's stewards and are concerned with the land's long-term integrity. Ms. Goodman reported that Wyoming's legislation was referred to the Judiciary Committee because it involved property rights. Ms. Goodman explained the legislation contained a 30-day notice requirement, but it had been suggested landowners need a minimum of 6-months' notice. Ms. Goodman emphasized the importance of strengthening joint planning, so landowners can preserve and protect the

land. Ms. Goodman also suggested well spacing should be required to be disclosed since well spacing directly impacts the land. Joint planning also helps manage transportation. Ms. Goodman encouraged the Subcommittee to avoid mandating what the surface use agreement should look like and to leave those decisions up to the landowner. Ms. Goodman emphasized the importance of "lost land value" language and explained how landowners can be impacted for more acreage, depending upon the land's use. Loss should include commercial, agricultural, and lost land values. Wyoming's legislation did not contain any damage appraisal language. Ms. Goodman referred to specific language contained on page 10, subsection (iii), of Wyoming's legislation (**EXHIBIT 1**). Ms. Goodman encouraged the Subcommittee not to include lengthy bonding provisions in any proposed legislation. Ms. Goodman also stated she would have preferred to strengthen the provisions for water management and water protection. Ms. Goodman identified waivers as very important in cases where landowners are satisfied with their current situation. Ms. Goodman explained how landowners who own their mineral rights are treated quite differently by industry. Ms. Goodman thought it was important to apply the Surface Owner Accommodation Act from the very beginning since it makes the oil and gas company initiate planning with the landowner. Ms. Goodman also identified arbitration as very important. Ms. Goodman emphasized the importance of protecting state lands that lie over federal minerals.

***(Tape 1; Side B)***

Ms. Goodman warned that some BLM offices take the landowner out of the joint-planning process. Western states need to understand the importance of protecting state lands and their responsibility to protect the environmental integrity of the land.

**Questions from the Subcommittee**

Rep. Peterson asked about instances of the BLM ignoring Wyoming's legislation and whether those instances occurred on BLM land or on private land overlying federally owned minerals. Ms. Goodman explained the proposed amendment to On Shore Order No. 1 would apply to split estates with private landowners and underlying federally owned minerals. Mr. Kolman offered to obtain information on the proposed rule for the Subcommittee.

Mr. Rogers asked whether the 30-day notice requirement had created a hardship for developers. Ms. Goodman replied it had not. Mr. Rogers then asked whether the legislation had leveled the playing field between landowners and mineral developers in split estate situations. Ms. Goodman replied that, if both property rights are empowered equally, it is a fair fight but it has not quite leveled the playing field. Ms. Goodman suggested if the playing field were truly level, the predominance of the mineral estate would be abolished. Mr. Rogers wondered where conservation easements fit in with split estates. Ms. Goodman replied that, unfortunately, they do not because of the predominance of the mineral estate. Ms. Goodman explained the potential positive economic impacts experienced by the real estate market, agriculture, and tourism. Mr. Rogers noted enforcement comes from the landowner through the courts. Ms. Goodman agreed that is the case. Ms. Goodman explained how the oil and gas company has to attempt to get a surface use agreement and to make an offer to the landowner for lost land value and joint planning. If the landowner refuses to negotiate and is unreasonable the company can go to the Wyoming Oil and Gas Commission and gets a bond without proving they made a good-faith negotiation. At that time, the landowner can sue the company. Ms. Goodman

thought this was unfair and suggested that Wyoming has a responsibility, prior to issuing a bond, to make sure all the requirements were met, including good-faith negotiations. Ms. Goodman spoke about various state statutes that go beyond the federal minimum except for cases involving BLM land.

Mr. Williams asked whether a mineral right actually has a value if it is not accompanied by a right of access. Ms. Goodman explained that the value in the mineral right is in the right of access. Mr. Williams expressed his confusion regarding not being able to obtain a bond and being forced to negotiate with the landowner. Ms. Goodman explained that, if you recognize it will never be a level playing field, the goal is to give as much power as possible to the landowner, including access, which becomes a hook for the landowners to gain more power. Ms. Goodman was curious concerning how Montana landowners have been working these situations out without a bonding provision. Ms. Goodman pointed out that the sums paid to landowners do not begin to come close to the amounts received from the extracted minerals, so companies do have the ability to cut deals with landowners to gain access.

Mr. Williams asked if BLM mandates notice no later than the notice of staking and what Ms. Goodman's experience has been in seeing a BLM permit issued in 30 days. Ms. Goodman replied the BLM is pushing permits through. Mr. Williams suggested the data suggests it is more like 100 days. Ms. Goodman explained she would like to see the landowner receive as much notice as possible about all drilling plans for the land. Ms. Goodman spoke about hesitation by the companies to disclose their drilling plans. Mr. Williams requested firm data from Ms. Goodman regarding her observation that landowners were treated differently when they owned the surface and the minerals. Ms. Goodman recalled testimony during the legislative hearings and pointed out that, if a landowner is receiving benefits from drilling, the impacts from that drilling are easier to deal with.

Mr. Cebull asked whether the lack of litigation in Montana suggests that the current law is working. Ms. Goodman stated that the intensity, pace, and impact of coal bed development in Wyoming is different from the traditional oil and gas development in Montana. Ms. Goodman suggested that as development increases in Montana the process is not working as well. Mr. Cebull asked if Ms. Goodman was aware of any instances where surface owners were not invited to participate in the process. Ms. Goodman stated when a landowner is invited on a notice of staking, it is usually just for one well. Notice of staking is no longer working at the pace at which the industry is proceeding. Industry has a tremendous ability to proceed in a manner that would raise the bar and address the needs of landowners.

Sen. McGee asked about the areas where Montana exceeds federal regulations and asked if there are any court cases pending regarding Wyoming's legislation. Ms. Goodman replied there are controversies, but no pending litigation. Ms. Goodman recalled the mining of coal and the implementation of the Surface Mining Reclamation and Control Act, when Wyoming approached its federal delegation for assistance and the federal delegation did not want to get involved. Mr. McRae asked Ms. Goodman to expand on her comment that she would have liked to have seen surface owners empowered with more say in water management. Ms. Goodman responded they had to compromise on the issue and it was thought that lost land value would provide landowners some security. Ms. Goodman pointed out that New Mexico's legislation requires the Surface Use Agreement to address water impoundments and drainage. Ms

Goodman suggested that, in the end, there are many ranches that ultimately will not look the same as they have historically and that those losses should not be borne by the landowner.

Ms. Iversen asked whether landowners are preventing access or just requesting that access be conducted responsibly. Ms. Goodman replied some landowners do not want industry to have access at all and some landowners just want negotiations before access is granted. Ms. Iversen asked about Wyoming's arbitration process and Ms. Goodman explained the choice of an arbitrator is up to the parties involved and encouraged flexibility and accessibility to the arbitration process.

Rep. Peterson asked how Wyoming arrived at the 30-day notice requirement. Ms. Goodman explained it was a difficult process and that the notice requirement was almost a deal breaker. Ms. Goodman reiterated that 30-days' notice is not enough.

Sen. Wheat asked about the consideration of requiring notification to the landowner when minerals have been leased and asked whether Wyoming considered including this information in its notice requirement. Ms. Goodman replied they did not consider that requirement and pointed out that the lease is filed in the courthouse; therefore, the landowner has access to that information. Ms. Goodman cited other decisions that directly affect landowners which landowners do not know about.

## **MEDIATING SPLIT ESTATE DISAGREEMENTS**

### **Lucy Hansen--Wyoming Agriculture & Natural Resource Mediation Program**

Lucy Hanson, Coordinator for the Wyoming Agriculture and Natural Resource Mediation Program, submitted a written power point presentation (**EXHIBIT 2**), a pamphlet entitled "Agricultural and Natural Resource Mediation" (**EXHIBIT 3**), and a booklet on the Wyoming Split Estate Initiative (**EXHIBIT 4**). Ms. Hanson reviewed Exhibit 2 with the Subcommittee. Ms. Hanson suggested the Subcommittee would need to give consideration as to who would be the entity that would take the initial request for mediation and act as the coordinating entity.

### **Questions from the Subcommittee**

Mr. Cebull asked for clarification that the group was not legislated, and Ms. Hanson stated that her program was legislated. Mr. Cebull asked what the typical cost for a mediation would be. Ms. Hanson responded mediators are allowed to set their own fees, which average between \$50 and \$100 per hour plus reimbursement of travel expenses, and the fee is split by the parties. Mr. Cebull asked Ms. Hanson if she was aware of any attempt to create a similar organization in Montana. Ms. Hanson explained that Wyoming's mediation programs belong to a national coalition and are formed through either the Wyoming Department of Agriculture or the College of Agriculture. Ms. Hanson emphasized there is federal funding available through the U.S. Department of Agriculture.

Mr. Rogers asked if mediation is a substitute for basic rights in law. Ms. Hanson could not answer and explained that mediation is another option.

Sen. McGee asked if there are other qualifications for a mediator and what the qualifications are for an arbitrator. Ms. Hanson replied that mediators receive 30 hours of training and come from all walks of life. Ms. Hanson emphasized that the parties choose the mediator. Many mediators in Wyoming have agricultural backgrounds. The Wyoming Agriculture & Natural Resource Mediation Program will be meeting with the Wyoming State Bar to determine how a roster of arbitrators will be established.

Mr. Woodgerd asked about specific requirements regarding who pays for mediation. Ms. Hanson stated who pays is decided beforehand and no one is turned away because they cannot pay for mediation.

Mr. Cebull asked about the technical advisory groups, who decides who will be on the group, and whether they add to the cost of the mediation process. Ms. Hanson explained that, through the Split Estate Initiative, people ask to be listed as technical experts and attend training. The Split Estate Initiative has agreed to cover the cost of advisory teams.

## **PUBLIC COMMENT ON HB 790 OIL AND GAS ISSUES**

Kenneth Medicine Bull, from the Tongue River Valley, urged the Subcommittee to fix Montana's bonding and reclamation laws related to CBM extraction. Mr. Medicine Bull's family were early settlers in Montana. Mr. Medicine Bull stated how wrong it was to lose what took generations to build. Mr. Medicine Bull depicted CBM extraction as devastating to the land.

### ***(Tape 2; Side B)***

Mr. Medicine Bull spoke about coal development and suggested the state should establish clear and consistent rules and regulations regarding all alternative energy producers. Mr. Medicine Bull supported mandatory surface use agreements and negotiations with landowners. Mr. Medicine Bull also supported the use of mediation to resolve disputes.

Connie Morris, a rancher in Otter, Montana, submitted written testimony in support of CBM development to stimulate Montana's economy and responsible CBM development that is fair to landowners (**EXHIBIT 5**).

Gary Packard, Powder River, circulated photographs of his land. Mr. Packard has had two wells drilled on his land and reported he is now out of water. Mr. Packard also lost the topsoil on his land, and the developer never performed any reclamation.

Hugh Kendrick, Remington Creek, LLC and Kendrick Cattle Company, spoke about his experience as a fee mineral owner. Mr. Kendrick stated surface owners bought land with full knowledge mineral rights had been retained and could be developed. Mr. Kendrick suggested that the new laws give a new and valuable right to surface owners at the expense of fee mineral owners. Mr. Kendrick emphasized that the federal government does not have to comply with the provisions set forth in law. Mr. Kendrick believed the long-term property rights of some citizens have been taken away by the new law.

Dru Bower, President of Dru Consulting and representing Devon Energy, spoke about the Wyoming Split Estate Initiative (WYSEI) and the possibility of starting a Montana Split Estate

Initiative. Ms. Bower spoke about the various parties involved in efforts to pass the WYSEI. Ms. Bower stated that from the beginning the parties involved recognized there was no "one size fits all" solution for the problem and only approximately 10% of landowners were experiencing problems. Ms. Bower identified education of landowners and communication between landowners and operators as critical. Ms. Bower also explained how perspective can play a role since the landowners and industry have completely different perspectives. Ms. Bower identified communication, education, and information as critical areas that were lacking prior to the WYSEI. Ms. Bower reviewed the pamphlet submitted as Exhibit 4 and spoke about the importance of preplanning on the part of landowners to determine what their vision is for their land. Ms. Bower addressed the importance and usefulness of mediation and cautioned that good manners and greed cannot be legislated.

Joanne Tweedy, a rancher, stated many of the ranchers that she has known were in favor of the Wyoming Split Estate Initiative. Ms. Tweedy told about her successful experiences and those of her neighbors in working with developers. Ms. Tweedy noted that if the private landowner stops development the mineral owner loses their mineral rights and that constitutes a taking. Ms. Tweedy cautioned the Subcommittee to proceed slowly. Ms. Tweedy provided a history of oil and gas operations in Wyoming.

Art Hayes, Birney, Montana, submitted a copy of the Department of Natural Resources and Conservation's (DNRC) Final Order dated December 20, 1999, which contained requirements for water well mitigation ([EXHIBIT 6](#)) and a USGS study done in Wyoming ([EXHIBIT 7](#)).

***(Tape 3; Side A)***

Mr. Hayes spoke about how CBM development impacts water and suggested Montana has a clearer picture about the extent of CBM development. Mr. Hayes expressed concern regarding how aquifers would be recharged. Mr. Hayes explained that if a developer drills a new well for him in a different aquifer then he would lose his existing water right. Mr. Hayes referred to artisan wells as priceless and explained how detrimental it is to lose an artisan well. Mr. Hayes suggested a new source of water, with the same quality and quantity, should be guaranteed to the landowner before drilling begins.

Wayne Fahsholtz, Padlock Ranch Company, which operates ranches in Wyoming and Montana submitted written testimony regarding his leasing experience with Nance Petroleum Corporation ([EXHIBIT 8](#)).

Mark Fix, a rancher and irrigator on the Tongue River, submitted written testimony regarding bonding and reclamation ([EXHIBIT 9](#)).

Robert Brug, a rancher from Recluse, Wyoming, has been dealing with conventional oil and gas development for the past 33 years and during the last 4-5 years has had experience with CBM developers. Mr. Brug stated he has dealt with good developers and bad developers, and his land is all split estate. Mr. Brug has a policy that no water leaves his ranch. Mr. Brug testified there are many steps that landowners can take to help themselves. Mr. Brug suggested that landowners should have a plan before they are approached by developers.

Carl Dewey a rancher with property in Sheridan County, Wyoming, and Big Horn County, Montana, negotiated his own agreement with the CBM developer. Mr. Dewey spoke about his

lack of privacy and the negative impacts of roads, but stated the wells are located where he directed them. Mr. Dewey has three containment ponds on his ranch that he uses for irrigation and to provide more water for his livestock. The additional availability of water has also allowed wildlife to thrive. Mr. Dewey would like the ponds to continue to be available for generations to come. Mr. Dewey suggested it would not be fair to renegotiate a sales contract with the mineral owners at this late date. Mr. Dewey testified he would not like to see landowners restricted in their negotiations with developers. Mr. Dewey cautioned against allowing special interest groups to slow down production.

Clint McRae, a rancher south of Colstrip, Montana, submitted written testimony regarding split estates ([EXHIBIT 10](#)).

James Kuipers, representing the Northern Plains Resource Council, spoke about bonding and reclamation. Mr. Kuipers read Section 4 of the HB 790 Subcommittee's mandate. Mr. Kuipers offered to provide the Subcommittee with information regarding reclamation and bonding. Mr. Kuipers gave statistics regarding reclamation. Mr. Kuipers noted that none of the other states really have a handle on the problem. Mr. Kuipers also addressed soil degradation caused by the sodium absorption ratio of CBM water. Mr. Kuipers thought Montana is different from Wyoming regarding natural resource development and that good reclamation plans and good financial assurances would go a long way in preventing problems. Mr. Kuipers pointed out the Montana Constitution requires a clean and healthy environment, as well as reclamation of all mine lands, including petroleum extraction. Mr. Kuipers cited Tom Richmond's Fidelity Oil and Gas Exploration deposition and Mr. Richmond's statements regarding reclamation and bonding.

***(Tape 3; Side B)***

Mr. Kuipers recommended adopting bonding requirements modeled after the Montana metal mine reclamation act. Mr. Kuipers suggested Montana should be proactive and not wait for problems to surface. Mr. Kuipers suggested an agency would need to be created to coordinate efforts. Mr. Kuipers stated that bad operators should be dealt with early. Mr. Kuipers thought the cost to industry for complying with the new act would not be that great.

Christine Valentine, a landowner north of Birney, Montana, emphasized the importance of making bonds non-refundable for a period of 10 years, which would allow time for the reclamation to prove itself. Ms. Valentine would like to see the Subcommittee protect individual households from their wells going dry. Ms. Valentine would like to set aside a portion of the bonds in a state fund, on a no-fault basis, to help protect individual wells.

Ky Dixon, a Sheridan County Commissioner and Chairman of the Coal Bed Methane Coordination Coalition, stated that three years ago people in Sheridan were unaware of CBM development. Ms. Dixon enumerated the things she would do differently. First, Ms. Dixon acknowledged that revenues have come back slowly to Sheridan County; and there has been an impact to the community from the additional people that have moved in with the coal bed development. Ms. Dixon pointed out it is important for local governments to know who, at the state level, is available to answer questions. Constituent work and follow up was the last item Ms. Dixon thought would be important.



Carol Ann Hamilton has CBM development on her land and testified her family worked hard to reach a mutual surface use agreement with the developer. Ms. Hamilton cautioned the Subcommittee against adopting more rules and regulations because of political pressure.

K. D. Feedback, a geologist and attorney who does a considerable amount of work for Fidelity Exploration & Production Company, submitted written testimony to the Subcommittee regarding water production realized from CBM development (**EXHIBIT 11**). Mr. Feedback spoke about water created by CBM development and the need to treat those types of water rights differently. Keith Bales, a state Senator and rancher east of Sheridan, provided a map depicting his mineral ownership in Montana and Wyoming. Sen. Bales stated he was contacted by another oil company who told him they were interested in developing minerals in Wyoming, but were not interested in developing minerals in Montana.

Mr. Bales submitted written testimony on behalf of Bruce Porter, a rancher in Decker, Montana (**EXHIBIT 12**).

Sen. Bales continued and asked the Subcommittee to err on the side of caution, not take away landowners' rights, and suggested Montana's current laws are adequate. Sen. Bales stated if his land was ever developed, he would not allow the water to leave his ranch. Sen. Bales recalled that the federal government pays Montana 50% of the royalties it receives on oil and gas and, before 2001, the state was keeping all of that money. Sen. Bales got legislation passed in 2001 that gave 25% of what the state received back to the county with the oil and gas. Sen. Bales spoke about the 2001 legislation also attempting to create an impact fund, but that portion of the bill did not pass. Sen. Bales urged the Subcommittee to consider including a provision for an impact fund in any proposed legislation. Sen. Bales also offered legislation in 2001 which created a CBM mitigation fund designed to mitigate water wells that go dry as well as to provide a process to address problems that may accrue in land development due to water or other problems attributed to CBM development. Sen. Bales explained the legislation originally added \$400,000 per year into the RIT fund. Sen. Bales recalled the \$400,000 amount had been changed to a percentage. Sen. Bales suggested using 25% of the money that comes to the state from the federal government to create an impact fund. Sen. Bales noted the RIT fund is available for reclamation projects and questioned taking the authority from the Board of Oil and Gas and giving supervision to the Department of Environmental Quality (DEQ).

Dave Nelson, one of the owners of Wyoming Electric in Sheridan, testified how CBM development constitutes over half of his business. Mr. Nelson identified one of the benefits as being the substantial amount of union dues paid to the Local 532 in Billings. Mr. Nelson identified approximately 20 families who are thriving from CBM development in the Sheridan area. In addressing the road situation, Mr. Nelson stated not all production companies are the same and that there are only isolated instances of abuse.

***(Tape 4; Side A)***

Mr. Nelson testified it is unlikely that Fidelity will go bankrupt, and that he believes Fidelity will back up its reclamation promises.

Dave Galt, Executive Director of the Montana Petroleum Association (MPA), expressed his concern that the Subcommittee's work plan advances the decision-making process before the Subcommittee has an opportunity to explore all the facts. Mr. Galt requested that MPA be

granted at least 1.5 hours at the Subcommittee's meeting in January to make a presentation. In addition, Mr. Galt asked that efforts to draft legislation and vote on recommendations be moved to after the Subcommittee's meeting in Sidney. Mr. Galt also suggested it would be helpful to obtain a complete understanding of Montana's existing statutes before moving forward.

Young Ki Kim, originally from Korea and a 25-year resident of Sheridan, Wyoming, submitted written testimony from Roger Tipton ([EXHIBIT 13](#)). Mr. Kim spoke about the importance of jobs for people who are laborers and how those people ultimately suffer from the fighting between landowners and industry regarding CBM development. Mr. Kim was concerned about preserving jobs and testified he would like to see less fighting. Mr. Kim was adamant about the benefits derived from having the ability to work, especially for young people and people who may not have any other opportunity to work.

Julia Page, a small business owner in Gardiner, member of Northern Plains Resource Council, and former member of the Environmental Quality Council, submitted a copy of the deposition of Tom Richmond taken in T & Y Irrigation District, et al. v. Montana Board of Oil and Conservation and Fidelity Exploration & Production Company, Cause No. BDV 2003-579 ([EXHIBIT 14](#)). Ms. Page directed the Subcommittee to pp. 33-37 of the exhibit and suggested that Mr. Richmond's deposition testimony clearly states that Fidelity's bonding amount was not adequate to cover reclamation of the developed areas. Ms. Page cautioned about repeating past mistakes in terms of not having adequate financial assurance to make sure lands are reclaimed. Ms. Page disagreed that the lack of maintenance on Lower Prairie Dog Road is an isolated instance. Ms. Page believed that prior testimony supported evidence that roads are a main concern. Ms. Page stated the issue is not about stopping coal bed methane development, but rather protecting private property rights. Ms. Page stated that eventually the CBM will be mined out and that there will need to be good economic vitality after the CBM industry leaves the state. Ms. Page wondered about the quality of the water used for irrigation from CBM wells and how CBM water is treated. Ms. Page suggested the term "managed irrigation" might be misleading. Ms. Page agreed economic development is important for Montana, but does not want to see the loss of good productive land.

Patrick Montalban, representing the small independents, thought a requirement of six- months to a year would stop the independent oil and gas business in Montana. Mr. Montalban suggested a 20-day notice requirement would be acceptable. In addressing surface use agreements, Mr. Montalban pointed out independents drill one well per 640 acres and encouraged the Subcommittee to keep that consideration in mind. Mr. Montalban noted a surety bond cannot be purchased in Montana by small independents and small independents must put up cash. Mr. Montalban stated industry often uses existing roads and when the producers are gone, the landowners continue to use the roads. Mr. Montalban cited the differences between the infrastructures need for CBM development and traditional oil and gas production. Mr. Montalban agreed Montana needs jobs and specifically referenced Montana's teachers and the cost of health insurance. Mr. Montalban agreed it is important to empower landowners but stated he did not want to see mineral owners lose their property rights either. Mr. Montalban commended the Subcommittee for traveling to Sheridan to hear another perspective on CBM development.

John Weishoff, a petroleum engineer for Sanjel USA, employs 80 individuals and appreciated the ability CBM development has provided for him to come back to Montana. Mr. Weishoff appreciated the economic and employment opportunities provided by CBM development.

Ray Muggli, an irrigator on the Lower Tongue River, showed aerial photographs of damage done to his land by CBM development. Mr. Muggli spoke about the negative affects of sodium bicarbonates on clay.

Barbara Varnes, a resident of Billings and a property owner in Cooke City, Montana, submitted written testimony (**EXHIBIT 15**) and thought bonding and reclamation should be done correctly. Ms. Varnes referred the Subcommittee to the July/August issue of *National Geographic* which contained an article and photographs on Jonah Field and spoke about the need for caution and reclamation.

**(Tape 4; Side B)**

Nellie Israel, a member of Northern Plains Resource Council, and a resident of both Joliet, Montana, and Cooke City, Montana, expressed her concern about what is occurring in Carbon County. Ms. Israel expressed her astonishment at how many leases have been sold in Carbon County. Ms. Israel asked the Subcommittee to help Carbon County prepare for mineral development by supporting a bonding requirement.

Charles Larson, a cow-calf producer ranching on both sides of the state line, is a lessee and stated he would like to see water stay on the property. Mr. Larson testified that Montana has been in a drought for the last eight years and the local gas developers have helped him keep in production.

Bill Kupfner, Rock Creek Drilling, is currently drilling for Fidelity. Mr. Kupfner spoke positively about the integrity of Fidelity and stated the ranches that Fidelity drills on benefit by receiving better roads, more water, and increased productivity.

Mark Moreland, a rancher in Decker with CBM development on his land, stated 90% of the roads used by the developer on his land were existing two-tracks. Mr. Moreland testified that the developer on his land works hard on dust abatement. Mr. Moreland pointed out that developers are not the only ones who use county roads. Mr. Moreland suggested everyone step back and use common sense. Mr. Moreland's experience has been that the CBM developers are very willing to negotiate and work for landowners.

Mark Gordon, a rancher in Sheridan County, suggested all CBM development and CBM water is not created equally. Mr. Gordon observed that the ability to meet landowners' needs depends on how financially secure the company is. Mr. Gordon explained his experiences with CBM development and the variables that come into play.

Jim LaClair, Tomahawk Pipeline, employs approximately 100 people with an average wage of \$13-\$14 per hour. Mr. LaClair emphasized the economic benefits of CBM development to the Sheridan community.

Mike Kuzara, Buffalo, Wyoming, depicted CBM development as a double-edged sword. Mr. Kuzara saw half truths being told at the hearing. Mr. Kuzara has mostly observed improvement

of existing roads. Mr. Kuzara suggested companies that do a bad job do not stay in business long. Mr. Kuzara believed a certain method of water treatment and disposal was being forced on the Subcommittee. Mr. Kuzara has heard CBM water depicted as both poison and a precious resource. Mr. Kuzara agreed all CBM water is not created equal. Mr. Kuzara believed forcing expensive water treatment methods and expensive bonding will force the small operators out of business in Montana. Mr. Kuzara also suggested all CBM water should not be treated with the same process without giving consideration to other variables.

Kevin Harvey, a soil scientist and water-quality specialist, has been doing work in the Powder River Basin for approximately 6 years. Mr. Harvey coined the term "managed irrigation." Mr. Harvey cautioned that aerial photographs may not give an accurate analysis of soil. Mr. Harvey has worked with many producers to develop managed irrigation programs. Mr. Harvey was proud of the fact that he has worked to take a potential negative and turned it into a great positive. Mr. Harvey is a reclamation specialist and stated the worst-case scenario reclamation project he was involved with in the Powder River Basin was done years ago by a small company, and the cost of that reclamation was less than \$2,000 an acre. Mr. Harvey is working on developing an unprecedented reclamation program for the Jonah Field.

Mary Spence from Wyoming stated in other parts of the world it has been found that when large amounts of water are extracted, the water table drops in the entire area. Ms. Spence requested the Subcommittee to look at water quantity issues, as well as quality.

Butch Jellis, a rancher in Sheridan, spoke about CBM development being performed on his ranch by Fidelity. Mr. Jellis testified he is quite pleased with the work Fidelity has done on his land. Mr. Jellis explained his attempt to implement a process to mix CBM water to fill a reservoir on his ranch. Mr. Jellis spoke about his frustration with different organizations and agencies blocking his attempts to use the CBM water. Mr. Jellis stated he recently witnessed reclamation projects on the Jonah Field. Mr. Jellis suggested background checks should be done on people who will be working for the DEQ and other agencies because he would like to know whether these individuals are for or against development.

#### **PUBLIC COMMENT ON ANY OTHER MATTER WITHIN THE JURISDICTION OF THE EQC.**

There was no further public comment.

*(Tape 5; Side A)*

#### **COMMITTEE DISCUSSION/ACTION**

##### **Approval of Minutes**

Sen. McGee moved the minutes of the September 15 meeting be approved

Mr. Rogers had questions on page 8 of the minutes and Monte Mason's statement that it is required that there be an agreement between the parties and that the agreement is usually mediated by a field person. Mr. Rogers wondered who the field person is. Mr. Kolman did not readily have the information, but offered to obtain an answer for Mr. Rogers. Mr. Rogers also noted on page 8 that a written agreement is required for water mitigation on CBM development

and that the Board of Oil and Gas also has the same requirement. Mr. Rogers asked if the requirement was in statute, and Mr. Kolman explained water well mitigation is in statute. Mr. Rogers also requested information regarding the approval letter referenced by Mr. Mason on page 9 of the minutes.

Mr. Williams commented that in addition to the statute, the Board of Oil and Gas also has a regulation requiring water well mitigation agreements.

Sen. McGee's motion to approve minutes carried unanimously by voice vote.

### **Work Plan**

Mr. Kolman explained the revised Work Plan is still in draft and that was derived directly from the directive of HB 790 ([EXHIBIT 16](#)). Mr. Kolman explained the HB 790 Subcommittee should assess how it wants to proceed and whether there were other areas of interest in addition to those mandated by HB 790.

Chairman Wheat suggested the Work Plan could be approved in January and submitted to the full EQC. Chairman Wheat identified the issues of notice, surface use agreements, and bonding. Chairman Wheat was interested whether the Subcommittee should separate traditional oil and gas from coal bed methane. Chairman Wheat also thought the Subcommittee should also consider the use of mediation and arbitration to resolve disputes. Chairman Wheat also identified water issues as important, especially in CBM development.

Mr. Cebull asked for clarification that the timeline would be approved as part of the Work Plan. Mr. Kolman stated the timeline is part of the Work Plan, but the Work Plan could be deviated from. Mr. Cebull expressed concerns about discussing any proposed legislation before the HB 790 Subcommittee travels to Sidney and completes its fact finding. Mr. Cebull thought public testimony in Sidney would be critical before discussing any legislation. Mr. Cebull also suggested that the Subcommittee begin with reviewing existing statutes and discuss which parts of those statutes are adequate and which parts need to be changed.

Chairman Wheat agreed and suggested it would also be important to look at statutes from other states.

Rep. Peterson agreed with Mr. Cebull and suggested the Subcommittee is still in the process of fact-finding. Rep. Peterson also believed it would be important for the Subcommittee members to realize there are already statutes in place regarding water mitigation. Rep. Peterson suggested it is sometimes difficult to decipher all the different pieces of information. Rep. Peterson thought it would not be appropriate to consider proposed recommendations before the fact-finding was complete.

Chairman Wheat proposed that at the January meeting someone from the Board of Oil and Gas review the existing statutes with the Subcommittee for both traditional oil and gas and coal and CBM development. Chairman Wheat also suggested someone could review water mitigation.

Mr. Rogers commented the existing statutes are straightforward and thought the Subcommittee could go through the Work Plan item by item. Mr. Rogers asked if there was a consensus

among the Subcommittee members whether the notice requirement is too short. Chairman Wheat responded some members may need more time to make that decision, and those items could be dealt with in January. Chairman Wheat wanted the Subcommittee to be as constructive as possible. Mr. Rogers voiced his frustration that the process is taking too long and stated he would like to move forward.

Sen. McGee added the Subcommittee is at the tip of the iceberg in a long, tedious process. Sen. McGee emphasized that any legislation proposed will ultimately go through a long process and numerous changes. Sen. McGee identified voting as the last step the Subcommittee should take.

Mr. Cebull agreed with Sen. McGee and thought it was important that votes not be taken before the Subcommittee's education process is complete. Mr. Cebull agreed with the suggestion of hearing from the Board of Oil and Gas at the January meeting. Mr. Cebull pointed out the issues being discussed will also impact the conventional oil and gas industry.

Mr. McRae expressed his concern about delaying action and wondered if the Subcommittee would have enough time to address the items contained in the Work Plan. Mr. McRae asked if the Subcommittee could hold a 2-day meeting in Sidney.

Chairman Wheat explained the two different points of view. Chairman Wheat suggested the Subcommittee members put together an outline for proposals the Subcommittee should be considering. Chairman Wheat reiterated his desire to have a discussion at the January meeting about existing statutes and how they work with oil and gas and CBM development. After that discussion, the Subcommittee could discuss the various proposals of Subcommittee members.

Mr. Rogers agreed to prepare an outline, but noted Mr. Kolman had already prepared an outline in the Work Plan. Mr. Rogers suggested the Subcommittee could review the outline and options as presented by Mr. Kolman in the Work Plan.

Rep. Ripley urged caution about voting at this time and limiting public comment. Ms. Taylor agreed it is not wise to vote before going to Sidney for public comment. Mr. Rogers agreed with not voting, but stated he would like to hold a discussion among the Subcommittee members since the makeup of the Subcommittee included both landowners and industry. Chairman Wheat commented he did not want to be presumptuous and go to the Sidney meeting with a predetermined mind set.

Sen. McGee recalled utilizing a mini Code Commissioner's bill relating to eminent domain laws and suggested the same process could be used to deal with split estates. Sen. McGee also suggested the EQC may want to prepare a publication explaining the issues and current statutes. In addition, Sen. McGee suggested the publication could include federal versus state issues. Sen. McGee recalled at one time legislation considered codifying the surface use agreement, but that idea was not generally supported. Sen. McGee suggested there are certain elements that should be contained in a surface use agreement, and one of those elements should include a waiver for people who do not desire to enter into a surface use agreement. Sen. McGee explained he is not comfortable codifying a detailed surface use agreement. Chairman Wheat explained how opinions can change and thoughts can shift during the fact-finding process. Chairman Wheat likes the outline prepared by Mr. Kolman (**EXHIBIT 17**) and

thought the outline did a good job of identifying various issues. As an example of an issue to be considered, Chairman Wheat wondered what would happen when an agreement cannot be reached between the producer and the landowner and whether the operator could bond-on.

Mr. Rogers explained his understanding that there are two distinct bonds; one for surface damages, and the second is a performance bond. Mr. Rogers asked about the Resource Indemnity Trust (RIT). Mr. Rogers suggested if bonds were adequate, there would no longer be a need to use the RIT. Mr. Montalban explained the wells were drilled 70 years ago and there were cash bonds. Mr. Rogers would like to use long-term vision. Mr. Montalban stated the cash bond sits with the bank. Mr. Montalban explained there is a difference between wells that were drilled 70 years ago that were not bonded and wells today that have cash bonds.

Mr. Williams clarified that a group of wells were drilled prior to regulation, and RIT funds have been used for those old wells. RIT funds have not been used for post-regulation wells. Mr. Williams would like to put perspective in conventional oil and gas versus CBM development.

***(Tape 5; Side B)***

Mr. Williams explained conventional oil and gas is a competitive industry and that providing notice when the producer first takes a lease is problematic. Mr. Williams has not heard any examples of a producer showing up and attempting to drill a well in 10 days. Mr. Williams suggested having a longer minimum notice would work in 95% of cases. Mr. Williams suggested the Subcommittee should hear examples of when a longer notice requirement would cause difficulties.

Ms. Iversen explained that developers recently came on her land and staked it without notice. Ms. Iversen would like to see some sort of enforcement mechanism in the notice requirement. Ms. Iversen also suggested sometimes the notice appears in the paper after the site has been staked.

Tom Richmond, Board of Oil and Gas, provided an explanation about notice being published. The location has to be published in the newspaper, once in the Helena paper and once in a newspaper of general circulation in the county where drilling is to occur. A permit cannot be approved until after the 10th day of the last notice. However, the notice cannot be published until the land is surveyed. Therefore, the surveyor has to access the land before the notice is published.

Ms. Taylor believed that while producers are protecting their business, they are involving someone else's business in the process. Ms. Taylor thought it was essential that the notice requirement be long enough.

Mr. Rogers stated he asked the Rosebud County Clerk and Recorder's Office about the notice requirement and inquired what was involved in the recording process. The Rosebud County Clerk and Recorder's Office explained that when minerals are leased the legal description, as well as the name of the mineral owner, is recorded in the book of records. Mr. Rogers suggested the Clerk and Recorder could take the legal description to the County Assessor's Office to determine the name of the landowner and then the landowner could be notified of the

mineral lease. Mr. Rogers also suggested interested landowners could subscribe to a county service that would provide information regarding mineral activity on their land.

Mr. Cebull spoke about federal leases and how one federal lease could have multiple surface owners. Mr. Owen added many companies do not record their federal leases in the county courthouse. Mr. Rogers stated the greatest difficulty is with the county, not BLM leases. Mr. Owen stated it is important that landowners be proactive and know who owns the minerals below their land.

Mr. Rogers asked why SB 258 did not pass, and whether the Subcommittee's proposed legislation could be drafted in a manner that would allow it to pass. Sen. Wheat provided a history of SB 258. Sen. McGee commented that a really good idea can turn out to be very complicated. Sen. McGee reviewed the landowners' concerns versus the concerns of the producers. Sen. McGee suggested utilizing a facilitator to guide the Subcommittee through the issues.

Mr. Kolman referred to Exhibit 17 and the outline of the issues. Sen. McGee thought Exhibit 17 was a good starting point, but suggested the outline could be narrowed down through a facilitator.

Rep. Peterson agreed with the concept of utilizing a facilitator, but pointed out that he would like to hear from the Montana Petroleum Association prior to the work session. Rep. Peterson would also like to be briefed on current statutes prior to the facilitation process. Rep. Peterson requested that a professional facilitator be utilized. Chairman Wheat wondered who would pay for retaining the services of a professional facilitator.

Mr. Cebull voiced his concerns about conducting a meeting in January with a facilitator before traveling to Sidney in February. Chairman Wheat assured Mr. Cebull that the Subcommittee will be better educated and will not have made any decisions before going to Sidney. Mr. Galt reiterated his request that the Montana Board of Oil and Gas would like to give a one and one-half hour presentation to the Subcommittee. Sen. McGee reminded the Subcommittee that decisions need to be made by April, so any proposals can go out for public comment.

Mr. Galt suggested the Subcommittee should travel to Sidney in January and the full EQC should meet in February. Chairman Wheat explained the full EQC meeting is in January and is held in conjunction with the HB 790 Subcommittee meeting. Discussion was held about having a March meeting in Helena and an April meeting in Billings, as well. Mr. Kolman explained that the HB 790 budget was tight and there would not be enough money to hold an extra meeting. Chairman Wheat suggested the Subcommittee could meet in March and April in Helena to save on money.

Rep. Peterson asked about traveling to Sidney in early December. Mr. Kolman pointed out there could be a Special Session in December. Mr. Kolman informed the Subcommittee that Billings is actually less expensive than Helena. Sen. McGee suggested looking at traveling to Sidney sometime around December 10. Sen. McGee agreed it would be much better to have the Sidney meeting prior to the full EQC meeting. It could then be decided in January whether it will be necessary to meet in late February or March to finish up in time to meet the April deadline. Sen. McGee referred to the code sections in Connie Morris' testimony and requested Mr.



Kolman pull all the code sections together for the Subcommittee's review. Mr. Richmond stated he was willing to help organize a compilation of relevant statutes and administrative rules for the January meeting.

***(Tape 6; Side A)***

The Subcommittee discussed possible dates in December to meet in Sidney, as well as various locations for the meeting and hotel accommodations. The Subcommittee members agreed to be paid for one day's participation, rather than two, to save on funds. Ms. Taylor expressed her desire to have an opportunity to ask more questions. Chairman Wheat agreed that, at the next meeting, Subcommittee members will have an opportunity to ask questions of each person testifying.

Jerome Anderson, Encore Acquisition Company, explained that Encore Acquisition Company has invested more than \$600 million in the field in Montana and is very interested in the Subcommittee's actions. Mr. Anderson expressed his concern about being precluded from the agenda and would like an opportunity to make the Subcommittee aware of the problems Encore will experience as a result of the Subcommittee's decisions. Chairman Wheat assured Mr. Anderson that he would have an opportunity to present his case at the January meeting in Helena.

The Subcommittee agreed to meet December 15 and 16 in Sidney to take public comment and tour oil and gas production facilities. The Subcommittee will hear from industry at the January meeting. The Montana Petroleum and Gas Association will be allocated 1 1/2 hours at the January meeting.

Mr. Rogers asked that New Mexico and Colorado be added to the spreadsheet. Mr. Kolman responded that New Mexico and Colorado have only draft legislation and no existing statutes. Chairman Wheat requested the Subcommittee be furnished with copies of the draft legislation. McGee requested other relevant sections of the Montana Code Annotated, outside of Title 82, be provided to the Subcommittee.

Mr. Montalban requested that time also be allocated for the small independents at the January meeting.

**ADJOURNMENT**

The Subcommittee adjourned at 9:10 p.m.

**Friday, October 28, 2005**

The Subcommittee reconvened at 7:30 a.m. for a tour conducted by Bruce Williams of Fidelity Gas and Exploration Company. The tour was conducted mostly on the CX Ranch and included a drilling rig, a managed irrigation site, a large compressor site, and a water treatment facility. Connie Morris submitted a document entitled "Data Summary from Individual Surface Use Agreements in the Powder River Basin of Northern Wyoming" (**EXHIBIT 18**). In addition, documents regarding the water treatment process (**EXHIBIT 19**) and discharge results for the

Powder River (**EXHIBIT 20**) and Tongue River (**EXHIBIT 21**) were also distributed to Subcommittee members. The tour concluded at 3:00 p.m.