ENVIRONMENTAL QUALITY COUNCIL

PO BOX 201704
HELENA, MONTANA 59620-1704
(406) 444-3742

HB 790 SUBCOMMITTEE MINUTES

Date: December 8-9, 2005 Location: Elks Lodge, Sidney, 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 Environmental Policy Office.

COMMITTEE MEMBERS PRESENT

SEN. MICHAEL WHEAT (Chairman)
REP. NORMA BIXBY
MR. BRIAN CEBULL
MS. CONNIE IVERSEN
MR. DOUGLAS MCRAE
MR. JIM ROGERS
MS. LILA TAYLOR
MR. BRUCE WILLIAMS
MR. DAVE WOODGERD

SUBCOMMITTEE MEMBERS ABSENT

SEN. DANIEL MCGEE (Vice-Chairman)
SEN. GLENN ROUSCH
REP. JIM PETERSON
REP. RICK RIPLEY
MR. JOE OWEN

STAFF PRESENT

JOE KOLMAN, Research Analyst

VISITORS

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

COMMITTEE ACTION

- The HB 790 Subcommittee approved the minutes of the October 27, 2005, meeting in Sheridan, Wyoming.

DECEMBER 8, 2005

On December 8, 2005, the HB 790 Subcommittee members toured the Nance Petroleum development in the Sidney, Montana, area. Exhibits submitted included Nance Petroleum's Base Map (**EXHIBIT 1**), a synopsis of oil and gas development in eastern Montana prepared by Joe Kolman (**EXHIBIT 2**), and Redwater State 24X-16 Wellbore Diagram (**EXHIBIT 3**). The tour began at 12:00 p.m. and concluded at 3:30 p.m.

DECEMBER 9, 2005

CALL TO ORDER AND ROLL CALL

Chairman Wheat called the HB 790 Subcommittee meeting to order at 8:00 a.m. at the Elks Lodge, Sidney, Montana. Mr. Kolman noted the roll (**Attachment 3**). Chairman Wheat explained the purpose of the HB 790 Subcommittee, as well as the Subcommittee's past activities.

AGENDA

Industry Perspective--Dennis Guenther, Nance Petroleum

Dennis Guenther, Nance Petroleum, provided an overview on the process utilized by Nance Petroleum when it is contemplating drilling. Mr. Guenther submitted written testimony (**EXHIBIT 1**).

Subcommittee Questions

Mr. Williams requested Mr. Guenther to provide specific examples of how the ten-day notice requirement must be retained. Mr. Guenther explained that oil rigs are a precious commodity in the industry, and that companies need to seize the opportunity when a rig becomes available. Mr. Guenther explained how unpredictable weather can create the need to move a rig rather than letting the rig set idle.

Ms. Taylor followed up by asking whether the landowner would have already been contacted by the driller. Mr. Guenther replied there could be cases where a rig could become available or there has been a deviation from the drilling schedule for an unforeseen reason. Mr. Guenther explained how the company would need to take advantage of unforeseen circumstances. Mr. Guenther clarified communications with landowners would have begun at the time the drilling company decided to drill, but unforeseen circumstances could move the projected drilling date.

Ms. Taylor disagreed with Mr. Guenther and suggested at the time a company knows it has a lease, it has the ability to contact the landowner. Mr. Guenther clarified the company would not contact the landowner until it has decided to do the work.

Ms. Taylor inquired about absentee landowners and asked whether Nance Petroleum openly asks an absentee landowner who the tenant is. Mr. Guenther responded they generally wait and see if the absentee landowner lets them know there is a tenant and whether the landowner wants the tenant to be part of the process.

Ms. Iverson asked if consideration is given to the problems incurred by surface owners and the ability of surface owners to meet their own deadlines. Mr. Guenther explained how those considerations can be addressed in the damage agreement, and that operators are still subject to the ten-day notice requirement.

Mr. Cebull asked how often Nance Petroleum needs the ten-day notice. Mr. Guenther recalled three different cases in the past four years which required Nance Petroleum to move quickly to take advantage of an opportunity. Mr. Guenther explained how they worked with the surface owners in those situations.

Mr. Cebull asked whether there is information on record as to who the tenant is, and asked Mr. Guenther to expound on tenant/surface owner issues. Mr. Guenther explained if there is nothing of record in the courthouse, the operator cannot determine who the tenant is, unless the landowner provides the information. Recent privacy laws have changed the operator's ability to access tenant information.

Mr. Woodgerd asked Mr. Guenther whether he knew of other companies who have accessed property without proper notification. Mr. Guenther was not personally aware of any situations. Mr. Woodgerd asked if there is any enforcement mechanism under the 1981 law that would penalize a company for violating the ten-day notice requirement. Mr. Guenther explained there is no penalty in the 1981 statute; however, trespass laws would provide penalties.

Mr. McRae asked whether Mr. Guenther was aware of any problems caused to drillers in Wyoming by the thirty-day notice requirement in Wyoming law. Mr. Guenther was not familiar with the Wyoming law and could not comment.

Landowner Perspective--Dennis Trudell, Northeastern Montana Land & Mineral Association

Mr. Trudell explained the history and purpose behind the Northeastern Montana Land & Mineral Association. Mr. Trudell pointed out that drilling companies can afford to pay landowners an annual rental fee. Mr. Trudell stated he knows of numerous examples where surveyors have gone onto land with nothing being said to the landowner. Mr. Trudell suggested the current legislation needs "teeth." Mr. Trudell believed the notification period would be more workable if it was longer. Mr. Trudell also believed the agreement should include an annual rental amount since oil development can substantially impact the land. Mr. Trudell believed landowners do not pursue the annual rental amount since it would necessitate hiring an attorney. Mr. Trudell believed annual rental fees would protect the landowner and provide fair compensation for the inconvenience, disruption, and damages the landowner experiences. Mr. Trudell identified the lack of an annual rental payment as a main concern of landowners in the Northeastern Montana Land & Mineral Association. Mr. Trudell explained how the annual rental amount was a standard part of the agreement back in the 1980s but was discontinued. Mr. Trudell believed it would be fair for landowners to receive compensation for the impact to the land caused by oil

development. Mr. Trudell emphasized the loss of production incurred by landowners during oil development. Mr. Trudell would like to see solutions reached to address landowners' concerns.

Questions from the Subcommittee

Mr. Rogers asked how much notice the members of the Northeastern Montana Land & Mineral Association are currently given before their land is entered. Mr. Trudell thought most people receive a ten-day notice, but knew of instances where the landowner did not receive any notice. Mr. Rogers asked if the lack of notice happened because it came so long after the staking. Mr. Trudell explained the landowners' biggest concern is that they need advance notice, so the landowner has ample time to put a deal together.

Rep. Bixby asked if Mr. Trudell had any recommendations on how issues could be mediated without the necessity of filing an action in court. Mr. Trudell suggested changes, such as an annual rental fee, would give the landowner more leverage in putting an agreement together and would be very helpful.

Mr. Williams asked if there is a trade off between the up-front payment and the annual rental fee. Mr. Williams wondered if landowners would be satisfied if the up-front payment was less, but was reflected in an annual payment. Mr. Williams noted the current law requires the loss of the production of the land be part of the initial damage settlement. Mr. Trudell responded landowners are receptive to a compromise, but that prices were set twenty years ago by the oil companies.

(Tape 1; Side B)

Mr. Trudell believed the annual rental fee is more important in the long run. Mr. Trudell emphasized the members of his organization have indicated the lack of an annual rental fee is problematic.

Mr. Cebull recalled reference to Montana requiring a thirty-day notice, and stated he was not aware that was the rule. Mr. Cebull requested clarification.

Raymond Franz, Franz Ranch, submitted a copy of the Department of Natural Resources and Conservation, Trust Land Management Division, requirements for leasing which were published in the November issue of the *Rocky Mountain Oil Journal* (**EXHIBIT 2**). Mr. Franz directed the Subcommittee members to item No. 6 which states:

> 6. Lessee must contact the owner of the surface in writing at least 30 days prior to any surface activity. A copy of the correspondence shall be sent to TLMD.

Ms. Iverson recalled Mr. Trudell's testimony that he receives telephone calls daily and asked who called and an explanation of their problems. Mr. Trudell estimated 90 percent of the calls he receives are from landowners where the site has been staked, and the landowner is requesting information on how to put an agreement together that would include an annual rental fee and what prices they should expect to receive.

Mr. Woodgerd asked Mr. Trudell if he was familiar with the law recently passed in Wyoming. Mr. Trudell replied was not familiar with Wyoming laws.

Overview of Current Oil and Gas Laws and Rules--Tom Richmond, Montana Board of Oil and Gas

Mr. Richmond submitted written testimony reviewing the HB 790 mandate and containing his comments about the current law in Montana, Wyoming, and North Dakota (**EXHIBIT 3**). Mr. Richmond pointed out that if land is occupied without notice, Montana statute does not contain a penalty. In addressing the notice requirement, Mr. Richmond suggested the HB 790 Subcommittee "pick a number." Mr. Richmond recommended the notice requirement be doubled on both ends, so notice is not given years before activity actually occurs. Mr. Richmond explained how produced water in the Sidney area is reinjected. Mr. Richmond also noted difficulties that may be incurred with notice of leasing when there are thirty or forty mineral owners per tract. Mr. Richmond thought the notice of leasing would be cumbersome and not very practical.

Mr. Richmond stated annual rental fees are allowed under state statute, but are not required. Mr. Richmond explained how damages are usually paid up front since most exploratory wells are dry.

While there are no current laws in Montana that provide for bonding-on, Mr. Richmond believed in many situations an agreement is reached. Mr. Richmond suggested any bonding-on provision should be specific as to what the bond is for, who hold the bonds, and how the bond can be released. Mr. Richmond hoped any bonding-on process adopted by Montana would be a simple process.

Mr. Richmond stated he believes there is wisdom in applying the entire regulatory program to coal bed methane (CBM) and conventional oil and gas operations without distinction. Mr. Richmond testified that BLM lands generally require a surface use agreement and also contain a bond-on provision. Mr. Richmond directed the HB 790 Subcommittee to Order 99-99, contained in Exhibit 3, and the requirements for CBM projects contained in the order. Mr. Richmond provided information regarding the number of federal wells, state and private wells, and wells on Indian land. Mr. Richmond stated ownership information pre-1984 is based on well name, so the numbers are not accurate. Mr. Richmond also explained the numbers contained in Exhibit 3 regarding orphan wells and stated very few orphan wells have been added since 1980. Mr. Richmond explained that producing wells are assets, and that there are separate bonding procedures for underground injection wells and producing wells. The Resource Indemnity Trust (RIT) has accumulated $100 million to pay for plugging, abandonment, and restoration bonds. In the 2001 and 2003 cycles, it cost approximately $9,000 to plug wells in northern Montana. In central Montana, it costs approximately $13,500 to plug wells. In eastern Montana, it costs approximately $4,100 to plug wells. The program is funded by two grants of $300,000 each. An oil and gas production damage mitigation account is also available which covers orphan wells and wells where the operator refuses to perform the work ordered. This account has a cap of $200,000, and if the account falls below the $200,000 cap, the account receives RIT interest income, up to $50,000 a biennium. This account is utilized to perform cleanup on an emergency basis.

Questions from the Subcommittee

Mr. Cebull was interested in hearing more information about state inspections. Mr. Richmond explained there are five field inspectors and one supervisory inspector. Mr. Richmond stated

more emphasis has been placed on having field inspectors physically present when wells are plugged and when operators change. The policy is to never release a well from bond until it has been inspected and the reclamation has been approved. The inspectors also perform unannounced random inspections looking for violations and perform integrity tests. Inspectors also perform complaint investigations, and the policy is to have an inspector on-site within 48 hours of receipt of a complaint.

(Tape 2; Side A)

Mr. Cebull asked about the CBM damage account. Mr. Richmond explained the CBM account was established as a sub-fund within the RIT, and the Conservation Districts have been given rule-making authority to determine damages and how those damages will be paid. Mr. Richmond was uncertain whether draft rules had been published. Mr. Richmond could not recall whether the CBM damage account had a cap, but stated the fund is receiving money.

Mr. Woodgerd had questions regarding bonding and asked if the Board of Oil and Gas Conservation (BOGC) has the authority to set the amount of a bond required for a well. Mr. Richmond explained the domestic gas well bond was set by the Legislature, and the BOGC has authority to set other types of bonds. The bond amounts set by the Legislature for domestic gas wells are $5,000 for one well or $10,000 for multiple wells. A surface owner can acquire a noncommercial gas well for domestic purposes, as long as the surface owner posts his bond. The BOGC will be proposing a change to the bonding rules because it has experienced difficulties in collecting bonds from out-of-state banks. The new rules will require bonds to be posted with in-state banks.

Mr. Woodgerd asked if the current bonds are adequate. Mr. Richmond responded the BOGC has flexibility and will often ask an unfamiliar company to appear before the BOGC and propose a bond amount. Mr. Richmond thought the bonding amount was adequate, and stated they have not accumulated many orphan wells in the past twenty years. Mr. Richmond suggested if problems do start occurring with orphan wells, the bonding requirements would be changed.

Mr. Cebull asked Mr. Richmond to respond to testimony heard in Sheridan, Wyoming, that particular bonds, such as on Fidelity's project in Big Horn County, were inadequate. Mr. Richmond recalled the testimony was taken from his deposition transcript and was taken out of context. Mr. Richmond clarified Fidelity's bond was not adequate to plug and restore the surface of all of Fidelity's wells. Mr. Richmond stated they BOGC would not allow itself to be put in a position where it would have to plug, abandon, and cleanup all of Fidelity's wells. Mr. Richmond stated if a company is out of compliance with the rules and not responding, the BOGC would notify the purchaser that it could no longer accept the oil or gas due to noncompliance. Mr. Richmond noted problems usually occur at the end of projects when wells are transferred to smaller operators with less financial capabilities.

Ms. Iverson requested suggestions about what should be included in surface use agreements. Mr. Richmond did not have any specific recommendations and did not see any particular purpose to put suggested elements of a surface use agreement in statute. Mr. Richmond believed suggestions for specific elements of a surface use agreement should come from land and mineral owner associations. Mr. Richmond believed a surface use agreement requirement should be in statute, but what is contained in each agreement should be negotiable, although the statute could be specific to a few key elements. Mr. Richmond was of the opinion that the

statute should allow for both annual rental payments and annual damage payments, and the statute should not pick one over the other. Mr. Richmond suggested that there will always be instances where parties cannot come to an agreement, and that it would be important to have a process in place which would allow both owners to satisfy the value of their stakes.

Ms. Taylor wondered what happens to the original bond if a company sells its leases and gets out. Mr. Richmond explained that the policy is to perform an inspection and ensure everything is in compliance at the time of transfer. If there is no noncompliance, the bond is released, and the new operator's bond is accepted. The new company's bond could be for an amount different from the original bond, and typically the amount would be larger.

Ms. Taylor asked whether the surface owner would be contacted before a bond is released. Mr. Richmond explained they contact the surface owner prior to any reclamation. Mr. Richmond further explained the list of orphan wells is developed because of complaints of landowners. Landowners also have a statutory right to take the well over as a water well.

Public Comment on HB 790 Oil and Gas Issues

Larry Twight, a former Montana Senator from Sidney, thought § 82-10-504, MCA, could be improved on and reviewed the statute with the Subcommittee. Mr. Twight thought an annual rental fee would be appropriate for both the surface owner with minerals and the surface owner without minerals. Mr. Twight believed twenty days' written notice would be appropriate for a notice of intent to drill. Mr. Twight pointed out there is a provision in the statute which provides for a penalty for late payment for surface damage. Mr. Twight thought it would be difficult for any statute to mandate a price for surface damage because there are wide differences between the values of different types of land. Mr. Twight emphasized the statute states consideration "shall" be given to the period of time during which the losses occur. Mr. Twight believed an annual rental fee would result in good relationships between surface owners and oil companies. Mr. Twight also suggested that oil companies should be subjected to penalties when they do not comply with the law.

Sen. Don Steinbeisser, SD 19, Sidney, and a land and mineral owner, suggested the current statute could be fine tuned. Mr. Steinbeisser suggested implementing a longer notification period. Mr. Steinbeisser thought the biggest problem was with split estates and suggested an annual rental payment to the landowner who does not own the minerals would be helpful. Mr. Steinbeisser identified lack of communication between oil companies and landowners as problematic.

Charles Larson told of his experience in having wells staked near his residence. Mr. Larson believed the wells on his land are being strategically placed out of spite. Mr. Larson suggested the notice requirement should be a minimum of 90 days. Mr. Larson explained his difficulties with washing, lack of grass seeding, and loss of top soil. Mr. Larson has had a difficult time with the oil company. Mr. Larson stated he has had garbage in his creek for the past three years despite many times requesting the company to pick up the garbage. Mr. Larson has also had to get the Environmental Protection Agency involved due to damage to wetlands.

(Tape 2; Side B)

Mr. Larson testified he no longer has a view from his home and can now see an oil rig out every window, and that this has devalued his property. Mr. Larson explained how he no longer has access to one parcel of his property. Mr. Larson has not received any annual payments.

Raymond Franz thought Mr. Richmond made good simple points regarding how the current law is working. Mr. Franz agreed the current law may need tweaking. Mr. Franz referred the Subcommittee back to Exhibit 2 which requires a thirty-day notice. Mr. Franz thought a thirty-day notice would be reasonable. Mr. Franz explained how he accepted less for damages in order to receive an annual rental fee. Mr. Franz believed an annual rental fee to landowners is justified. Mr. Franz thought it would be appropriate to write into law a requirement for notice to surface owners. Mr. Franz cautioned any new legislation should be kept simple and not attempt to legislate every aspect of every problem. Mr. Franz realized CBM and conventional oil and gas development have similar issues, but acknowledged the differences and thought the two industries should be treated separate.

Scott Staffanson testified that dealing with oil development has been unsettling. Mr. Staffanson believed landowners should have more input from the start about how development proceeds. Mr. Staffanson supported annual rental fees. Mr. Staffanson gave examples of how he has been confused by the various parties involved in the process. Mr. Staffanson believed working with the landowner would ultimately save money for the oil developers. Mr. Staffanson explained how his efforts to minimize damage to his land have been frustrating.

David McMillen, a Richland County landowner, owns land both with and without minerals. Mr. McMillen supported Dennis Trudell's views, and explained he has not been adversely affected by the ten-day notice requirement. Mr. McMillen thought it was frustrating not receiving an annual rental fee since most of his neighbors do receive an annual fee. Mr. McMillen believed CBM development and conventional oil and gas should be kept separate because of the vast differences between the two industries. Mr. McMillen believed an annual rental would help compensate the landowners for some of the problems caused by oil development. Mr. McMillen believed landowners should be treated equally.

Tom Ruffatto, a Richland County resident, shared his story of what happened when he filed a protest with the BOGC regarding oil development near his land. Mr. Ruffatto was told he had no right to file the protest since he did not actually own any mineral or surface rights on the land being developed. Mr. Ruffatto explained the BOGC agreed with him that he had a right to set precedent. Ultimately, Mr. Ruffatto's protest was dismissed. Mr. Ruffatto believed a citizen of Montana should have the ability to talk to a board about what may affect them in the future. Mr. Ruffatto was clear that his problem was not with the BOGC, but was with the BOGC's legal counsel.

Stan Lund, a retired farmer/rancher from Sheridan County, has experience on both sides of the split-estate issue. Mr. Lund believed landowners with split estate lands are due an annual rental. Mr. Lund suggested that in the future, there will be more land with split estate. Mr. Lund explained how a decrease in farming efficiency can be detrimental to landowners because income will be cut, but expenses will increase.

Dale Leivestad, a resident of Fallon County, relayed his past experiences with oil development. Mr. Leivestad thought his experience went fairly well. Mr. Leivestad was unaware of the possibility of annual rental payments and the ten-day notice requirement. Mr. Leivestad asked

the Subcommittee to consider the ability of Montana to invite industry into the state. Mr. Leivestad testified it would be impossible to legislate common sense and what is reasonable. Mr. Leivestad spoke about presumed integrity and stated some landowners and some operators will be unreasonable. Mr. Leivestad explained how his business has grown over the years. Mr. Leivestad cautioned that if things are too complicated and burdensome in Montana, the industry will not remain in the state. Mr. Leivestad urged the Subcommittee to keep any proposed legislation simple.

Duane Mitchell, Mitchell's Oil Field Service, agreed with Mr. Leivestad regarding the economic benefits of having the oil industry in Montana. Mr. Mitchell recalled the economic benefits Sidney, Montana, realized during the past oil boom. Mr. Mitchell recalled a number of oil companies that left Montana in the 1980s because they could not afford to do business in Montana. Mr. Mitchell has been able to upgrade his equipment because of oil development, which has also resulted in an increase in the value of the county tax base. Mr. Mitchell also believed there were high-quality individuals currently working in the oil fields. Mr. Mitchell was hesitant about telling oil companies they have to pay annual rental fees for fear the companies would leave Montana.

Don Franz, Franz Construction, works mostly in the oil fields. Mr. Franz stated he has had very few problems with landowners since damages and differences are usually settled prior to his arrival. Mr. Franz agreed with Mr. Leivestad and Mr. Mitchell that if legislation is too tough on the industry, the industry will simply pull out of Montana and operate in North Dakota. Mr. Franz is also a landowner and a mineral owner and has had very little trouble negotiating with oil companies.

Dennis Goetz, Glendive, has farmland in Wibaux and Dawson Counties. Mr. Goetz did some permitting for seismograph and testified that the better relations were with the surface owner, the smoother things went. Mr. Goetz thought a notice to surface owners was reasonable. Mr. Goetz suggested problems arise when landowners are treated differently. Mr. Goetz did not believe legislation is always bad because sometimes people take advantage. Mr. Goetz acknowledged that CBM development is different than conventional oil and gas development and should be treated separately. Mr. Goetz pointed out that many ranchers are in the business because they like the lifestyle. Mr. Goetz believed there should be minimum standards for surface use agreements, and landowners should have input as to road and waste water reservoir locations, surface points of entry, disposal of produced water, improvement of surface water, and surface drainage changes. Mr. Goetz also believed a mediation process would be helpful. Mr. Goetz outlined how court actions can be expensive and are not always feasible for landowners.

Linda Simonsen suggested it is easy to say landowners and industry need to communicate, but that most people will not do so unless they are forced. Ms. Simonsen agreed the statute should be kept simple, but that there are disagreements as to what the statute requires. Ms. Simonsen explained how difficult and expensive it is to go up against an oil company. Ms. Simonsen explained "time is money" to the oil companies, so oil companies will push and shove.

(Tape 3; Side A)

Ms. Simonsen suggested the statute should specifically say the surface owner should receive an annual payment over the life of the well.

Becky Daniels, a fourth-generation farmer, believed the annual rental fee could be mandated by legislation. Ms. Daniels has been unsuccessful in negotiating for an annual rental fee. Ms. Daniels suggested only the smaller oil companies are willing to pay an annual rental fee. Ms. Daniels has experienced problems with dust caused by large trucks on the county road in front of her home, but has been unsuccessful in getting the county to conduct dust abatement activities.

Greg Rauschedorfer, a land and mineral owner in Richland County, also represented the Lower Yellowstone REA. Mr. Rauschedorfer agreed bonding needs to be addressed and the statute should be kept simple and straight-forward. Mr. Rauschedorfer encouraged the Department of Environment Quality (DEQ) and the BOGC to cooperate to address the issues surrounding oil and gas development. Mr. Rauschedorfer urged caution in developing laws so as to not run the industry out of Montana. Mr. Rauschedorfer agreed dust is a substantial problem and has negatively impacted his cattle operations. Mr. Rauschedorfer is also a state land lessee and explained how he would violate his state lease if he received compensation. Mr. Rauschedorfer identified pit liners and pit mud as problems since they are not being removed but just covered up. Mr. Rauschedorfer would like to see funds diverted to establish a detailed map depicting buried infrastructures such as water lines. Mr. Rauschedorfer suggested the map should be updated quarterly.

Dick Iversen expressed concern about pit mud and liners that are left buried in the ground. Mr. Iversen believed the pit mud and liners should be removed. Mr. Iversen took samples of pit mud and submitted the written findings to the Subcommittee (**EXHIBIT 4**). The written findings indicated the amounts for conductivity, lead, silver, chromium and barium were two to ten times higher than the standard drinking analysis. Mr. Iversen suggested something should be done to protect future drinking water. Mr. Iversen suggested it would be better to deal with the pits and liners now rather than risk an environmental disaster in the future.

Don Steppler, a Richland County Commissioner, agreed Richland County has seen economic benefits from oil development. Mr. Steppler explained that the past oil boom did not have the significant impacts currently being experienced in Richland County. Mr. Steppler is also a land and mineral owner and explained most of the developers he has dealt with have been cooperative, but several have not been easy to deal with. Mr. Steppler emphasized the importance of communication between the landowners and developers. Mr. Steppler spoke about how oil development can change the appearance of the land. Mr. Steppler believed landowners would begin retaining their mineral rights when land is sold. Oil development has resulted in Mr. Steppler losing 85 acres of production, and damage payments have not begun to cover the loss of production he has experienced. Mr. Steppler also identified dust as a major problem county wide and has resulted in substantial expense to Richland County for dust abatement. Mr. Steppler suggested the land should be protected for the future.

John Mercer, an area resident, depicted the negotiation process as insurmountable. Mr. Mercer spoke about his experiences in negotiating with developers and was concerned that when he signs off on an easement, it is for eternity. Mr. Mercer noted easements signed with the Department of Natural Resources and Conservation are for ten years, and easements signed with BLM are for thirty years. Mr. Mercer wondered why his easements cannot be for a shorter time. Mr. Mercer suggested most landowners are ill-equipped to participate in the negotiation process. Mr. Mercer would like to see an annual rental fee and specific length of term implemented in statute.

Herb Vasser, Montana Land and Mineral Owners' Association, observed the impacts of oil wells in the Sidney area are quite different than the impacts of natural gas wells in the Havre area. Mr. Vasser suggested it takes more than ten days to construct a well site and thought the notice period should be a minimum of thirty days. Mr. Vasser agreed there should be an annual rental fee paid to landowners over the lifetime of a well. Mr. Vasser believed the split estate issue in Montana would get worse, and that landowners would begin retaining their mineral rights. Mr. Vasser believed the surface owner should be allowed to participate in decisions about activities that are going to occur on his land.

Mickey McCall, Plentywood, works for the Sheridan County Conservation District. Mr. McCall was concerned about mud pits and water quality. Mr. McCall explained how studies of older drilling sites have revealed the migration of drilling fluids, salts, and chemicals. Mr. McCall provided specific examples of leaching and migration from pits which have ruined water resources. Mr. McCall wondered why pitless drilling was not being practiced in Montana.

(Tape 3; Side B)

Mr. McCall directed the Subcommittee to the study results found on the Montana Bureau of Mines website. In addition, the Medicine Lake Wildlife Refuge has conducted a similar study with drill sites on their properties. In addition, the Sheridan County Conservation District is performing reclamation work on old drill sites.

John Aisenbrey just recently became a landman. Mr. Aisenbrey stated he does not get paid any differently regardless of whether the people he is pursuing ultimately sign a lease. Mr. Aisenbrey clarified he does not get paid based on the terms of the contact. Mr. Aisenbrey suggested communication and education are important factors for producers and landowners. Mr. Aisenbrey's company provides ten days' notice. Mr. Aisenbrey's experience has been that landowners will allow a company on sooner than ten days if the company makes a request.

Deb Reichman is a rancher in North Dakota. Ms. Reichman's minerals are owned by the federal government. Ms. Reichman has experienced extensive problems with dust and traffic. Ms. Reichman testified the oil companies frequently use intimidation tactics. Ms. Reichman's property was staked without any notice, which was in violation of North Dakota's twenty-day notice requirement. Ms. Reichman explained some oil companies in North Dakota are drilling water wells in order to produce their oil wells, and the water wells are located very close to existing domestic and stock water wells. Ms. Reichman explained how those water wells are being permitted for substantial amounts of water. Ms. Reichman's suggestions included requiring oil companies, prior to drilling, to establish a baseline test on existing domestic and stock wells located within one-half mile of any proposed drilling. Ms. Reichman believed oil companies should be required to conduct water monitoring throughout the life of the well. Any water well associated with drilling activity should also be properly permitted. Ms. Reichman believed landowners should be involved in the planning and negotiation before a mineral lease is entered. Regarding spacing of wells, Ms. Reichman believed surface use should be reasonable, with minimal surface disturbance, and spacing should be larger. Ms. Reichman suggested one well for every two or three sections would be adequate. Ms. Reichman asked the Subcommittee to consider compensating landowners for lost-land value. Ms. Reichman also requested consideration be given to allowing surface owners to recover attorney and court fees in the event litigation is necessary. Ms. Reichman also proposed a two percent royalty interest should be paid to all surface owners in split estates from oil production over the life of the well.

In addressing whether the oil industry could be driven from Montana, Ms. Reichman believed the oil companies would operate wherever the oil is located.

Tom Richmond, Board of Oil and Gas Conservation, addressed the issue of reserve pits. Mr. Richmond explained in 1990-93 a study was conducted on waste that is exempt from the Resource Conservation and Recovery Act (RCRA). A complex technical analysis was performed on oil field waste from approximately 100 sites around Montana. Mr. Richmond stated the study looked at five reserve pits in Richland County, which revealed no detection of T-clip metals. Another test revealed chromium and lead in the pit, as well as the topsoil. Mr. Richmond explained this is common in all topsoil, and there were no leachable metals that were likely to leave the site. Mr. Richmond cited chlorides in the pits as a major concern in the past, but now fresh water is used for drilling. Mr. Richmond explained reserve pits are no longer allowed to be trenched like they were in the 1980s.

Chairman Wheat encouraged members of the public to send their written concerns to Mr. Kolman for distribution to individual Subcommittee members. There being no further public comment, Chairman Wheat thanked the members of the public for participating and closed the hearing to further public comment.

Committee Discussion and Directions to Staff

Mr. McRae asked how much time would be allowed for the January HB 790 Subcommittee meeting in Helena. Mr. Kolman anticipated the meeting would begin at approximately 10:30 a.m. Industry would present in the morning, and the afternoon would be devoted to Subcommittee work and discussion.

Chairman Wheat requested Mr. Kolman to take the outline he had previously drafted and incorporate suggestions and testimony heard in Sidney. This document would be the starting point for Subcommittee discussion in January. Mr. Kolman clarified the outline would summarize the issues and contain the various options for each issue. Current laws in other states will also be provided.

Mr. McRae moved the October 27, 2005, minutes of the HB 790 Subcommittee be approved. The motion carried unanimously.

Mr. Rogers requested Mr. Kolman to research what the DEQ's standard for allowable visibility is on county roads.

There being no further business to come before the HB 790 Subcommittee, the meeting was adjourned at 1:00 p.m.