

# HB790 Committee member poll results

As of 3/1/06

Does not include response from McGee

**Note:** The subcommittee intended this poll to be a guide for Sens. Wheat and McGee as they draft a proposed bill to be discussed at the March 16 meeting. These are not official votes. If responders voted for more than one item, each of those items received a vote. If people voted for something other than the original choices, those are listed after the "no action" alternative. Also, many respondents listed other comments about their choices and those will be included in the mailing packet that will go out prior to the next meeting.

These results do not include responses from non-voting members Sen. Roush and Rep. Ripley. Rep. Ripley did not respond, but the response from Sen. Roush is included in the mailing packet.

## Notice of transfer of mineral lease

- a. Mineral owner or developer notify surface owner.
- b. County clerk notify surface owner (possible fiscal impact).
- c. Federal or state minerals, agency notifies (possible fiscal impact).
- d. No action
- e. 30 day notice to surface owner
- f. Notice to surface owner of mineral estate changes and notice to mineral owner of surface activities that could limit access (urban development).

**ACTION: Vote to take no action**

## Notice for surface activity

- a. Between 10 and 90 days (MT)
- b. 20 and 180 days
- c. At least 20 days (ND)
- d. 1 year
- e. 5 days for non-surface disturbing activity, 30 to 100 days for drilling. (WY)
- f. No action
- g. 20 and 180 days with waiver language
- h. Operator contact person listed with assessor (taxpayer). That person must contact surface owner, if different than taxpayer.

**ACTION: Vote in favor of option "B"**

## Components of initial notice

- a. **4** Disclose work plan to extent surface owner can evaluate possible effects on land. (MT).
- b. **5** Work plan, including – but not limited to - facility locations, roads, access points, wells, seismic locations, pits, reservoirs, power lines, pipe lines compressor pads, tank batteries. (WY).
- c. **1** Copy of landowner rights under state/federal law and regulations. (ND)
- d. **2** No action
- e. Copy of brochure. Statute should more accurately reflect information available to operator at this time.
- f. Disclose work plan to extent known at the time of notice so the surface owner can evaluate possible effects on land. Surface owner may waive notice.

### **Obligation to negotiate surface damage agreement**

- a. **3** Parties required to enter into "good faith" negotiations (WY)
- b. **2** Lessee agrees to make satisfactory adjustment with surface owner for damages. (DNRC)
- c. **2** Parties may sign a waiver, forgoing further actions under surface damage statutes.
- d. **4** No action
- e. Lessee shall enter into an agreement for damage settlement and annual rental with surface owner before entering premises. Parties may sign a waiver.
- f. Agreement shall acknowledge dominance of mineral estate and provide for indemnification of surface owner.
- g. Bonding on provisions.
- h. Surface use agreement required before drilling permit issued.
- i. A, B, and C. If company starts work w/o plan and agreement, \$50,000 fine.

### **Items that may be negotiated or waived**

- a. **4** Road placement and quality, access points and times of access (KY)
- b. **5** Onsite water impoundments, quality and disposal of produced water, construction and placement of pits (HB790 & KY)
- c. **3** Use of waters on surface lands (KY)
- d. **5** Weed control, restoration of surface and facilities -- fences, trees, and grasses.
- e. **5** Reclamation activities, reclamation time line, and damages. (KY & IL)
  - i. **3** Operator must plug well, restore surface and any improvements near as possible to pre-drilling condition
  - ii. **4** May be waived by surface owner and operator if in accordance with appropriate agency regulations.
- f. **4** No action
- g. Location of compressors, dust mitigation
- h. No restrictions on what is negotiated.
- i. A through D should be negotiated. Reclamation of land to original state is required.
- j. Items A through E as well as length of drilling activity. SUA may be waived.

### **If no agreement reached**

- a. **1** Drilling may proceed subject to later damage claims. (IL & KY)
  - i. Operator must pay within 90 days of well completion
  - ii. If fail to pay, surface owner entitled to compensation and attorney fees.
- b. **2** Parties may agree to mediation at any time (WY)
- c. **4** No action
- d. Cannot proceed until agreement is reached. May sign waiver.
- e. Post bond while process (mediation, court, arbitration) continues.
- f. Post \$25,000 per well bond.
- g. Mediation/arbitration are options. No work w/o agreement.
- h. Find a middle ground that protects surface owner and developer

### **Surface damages that be compensated**

- a. **5** Loss of agriculture production and income, land value, improvements (MT)
- b. **3** Any damages. (OK & AR)
- c. **1** Lost income, market value of crops, damage to water supply, value of surface land, cost to repair personal property. (WV)
- d. **1** Crops, trees, shrubs, fences roads, structures, improvements, livestock, productive capacity of soil. (KY & IL)
- e. **2** No action
- f. Loss of agriculture production and income, land value, improvements, damage to water supply, cost to repair personal property, trees, shrubs, fences roads, structures, improvements, livestock.
- g. Compensate all surface damages.

### **Method of compensation**

- a. **4** Lump sum or surface owner may elect to receive annual payments; except for exploration wells must be lump sum. (MT)
- b. **2** Any manner mutually agreed to by parties. (IL)
- c. Lump sum
- d. **1** Annual payments
- e. **3** No action
- f. Surface damage agreement must include up front payment for land damage & disruption in addition to annual rental for loss of production and value for the life of the well and until reclamation complete.
- g. Item A, but with addition of enforcement mechanism.

### **If no agreement on damages**

- a. **4** Court action (MT).
- b. **4** Mediation if agreed to by both parties (WY).
- c. **1** Arbitration
  - a. Each party selects 1 appraiser who selects a 3<sup>rd</sup>. (DNRC)
  - b. Parties agree on 1 appraiser. (TN)
- d. **2** No action
- e. Mediation with qualified staff and/or fine
- f. If surface owner rejects offer, may sue developer. Legal fees, costs and interest awarded to surface owner if court determines damages in amount higher than developer offered.
- g. Bond on and parties required mediating. If mediation fails, binding arbitration.

### **Enforcement of surface agreement violations**

- a. **2** Montana Board of Oil and Gas Conservation
- b. **3** Courts
  - i. **1** Treble damages if: (OK)
    1. Operator drills before agreement or w/o notice
    2. Fails to keep required bond
    3. Fails to notify landowner, fails to ask for appraiser
- c. **3** No action
- d. Detail what constitutes breach. Operator pays attorney fees if landowner prevails in lawsuit.
- e. MBOGC, but only for surface notice violations.
- f. Mediation if both parties agree.
- g. Violations reported to DNRC and fines levied.
- h. MBOGC, mediation or courts – penalties large enough to get landowner respect, but not block production of mineral right.

### **Surface bonding**

- a. No additional surface bond (MT)
- b. **3** Required (OK)
- c. **2** Required only when no agreement in place (BLM & WY)
- d. **4** No action
- e. Required for surface damages, including surface and groundwater
- f. Require both MBOGC bond (current) as well as surface "bond on."

### **Surface bond terms (if surface bond required)**

- a. **1** \$2,000 per well or blanket. Landowner may object. (WY)
- b. \$2,000 per well, \$10,000 blanket (SD)
- c. \$25,000. (OK).
- d. At least \$1,000. (BLM)
- e. **4** No action
- f. Bond set by MBOGC for reclamation
- g. Reflect actual cost of reclamation.
- h. Wyoming statute for surface damage; MBOGC continue to set reclamation bond.
- i. Use a professional engineer's estimate; require a review in five years to keep the bond current with inflation.
- j. Bond higher than \$2,000, no blanket, landowner input.
- k. Item A, blanket adjusted according to number of wells.

### **Bond based on activity type**

- a. **6** Conventional oil and gas or CBM
- b. **2** Amount of produced water
- c. **2** Quality of produced water
- d. **2** Water disposal method: discharge, irrigation, impoundment (BLM), reinjection
- e. **3** No action
- f. Handled by MBOGC under rules
- g. Conventional and CBM. Bond for water quality, disposal method, discharge, irrigation, impoundments, reinjection, land disturbance, well sites.

### **Handling appeals, holding bond, changes to bond (if bond required)**

- a. **5** MBOGC
- b. Independent arbiter
- c. **1** Other agency
- d. **4** No action
- e. After mediation, appeal to arbitration panel.
- f. Post bond to Secretary of State.

### **Who may appeal bond (if bond required)**

- a. Surface owner
- b. Mineral developer
- c. **7** Either surface or mineral holder
- d. Other
- e. **4** No action

### **Location of habitable structures**

- a. **4** No drilling within 200 feet of residence or barn w/o consent (DNRC)
- b. Not located w/in 125 feet of wells or 50 feet of other equipment (OK)
  - i. May be waived by agreement of landowner and operator
- c. **2** No action
- d. Handled by MBOGC under rules
- e. No drilling within 1320 feet of all items listed in items a & b
- f. No drilling within 200 feet of wells or surface water.
- g. No drilling within 200 feet of habitable residence.
- h. No drilling within 200 feet of residence or barn w/o consent. May be waived by agreement.
- i. Surface owner determines where drilling occurs.

### **Water wells affected by drilling operations**

- a. **6** Offer mitigation agreement to water right/permit holder within 1 mile of CBM well or ½ mile of water well affected by CBM well. Not required to address loss of water quantity not related to production of groundwater by CBM development (MT)
- b. **1** Well owner may recover costs to reestablish quality or quantity of water if drilling operation is within one mile of well, a certified water test completed 1 year prior to drilling and the action brought within 6 years of discovery. (ND)
- c. **3** Landowner adjacent to drilling operation whose land receives water may file claim against mineral developer to recover damages resulting from natural drainage of waters contaminated by drilling operations. (ND)
- d. **3** No action
- e. Petroleum industry liable for any water (ground and surface) damage. Above damages to be determined by Montana Bureau of Mines and Geology.
- f. Adjacent landowners should be notified and given the opportunity to test and protect their water before any damage is done. If damage does occurs they should be able to recover damages. Company subject to fines if it does not negotiate in good faith before drilling.