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HB 790 SUBCOMMITTEE MINUTES

Date: May 18, 2006

Room 102, State Capitol Building

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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COMMITTEE MEMBERS PRESENT

SEN. GLENN ROUSH
SEN. MICHAEL WHEAT (Chairman)
REP. JIM PETERSON
MR. DOUGLAS MCRAE
MR. BRIAN CEBULL
MS. CONNIE IVERSEN
MR. JOE OWEN
MR. JIM ROGERS
MR. BRUCE WILLIAMS
MR. DAVE WOODGERD

COMMITTEE MEMBERS EXCUSED

SEN. DANIEL MCGEE (Vice Chairman)
REP. NORMA BIXBY
REP. RICK RIPLEY
MS. LILA TAYLOR

STAFF PRESENT

JOE KOLMAN, Research Analyst
CYNTHIA PETERSON, Secretary

Visitors

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

COMMITTEE ACTION

- The Subcommittee agreed to replace the term "drilling operations" with the term "oil and gas operations" in Sections 82-10-504 and 82-10-505, MCA.
- The Subcommittee agreed to amend Section 82-10-503, MCA, as presented in Exhibit 3 with the addition of language after "boundary" insert "and well-site location and access road surveys."
- The Subcommittee adopted the new language in Section 1, subsection (3), and Section 2, subsection (2) (Exhibit 1) and changing the reference to "or others" to "other parties."
- The Subcommittee rejected the proposed new Section 5 and directed Mr. Kolman and the Code Commissioner to let the Subcommittee know at its next meeting how to reference the penalty section in the statutes.

CALL TO ORDER AND ROLL CALL

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

AGENDA

PROPOSED BILL DRAFT

Staff Overview of Changes Implemented from April Meeting

00:01:27 Joe Kolman, Research Analyst, reviewed the summary of the changes made in April to the HB 790 draft legislation ([EXHIBIT 1](#)). Mr. Kolman also submitted a one-page summary regarding "drilling operations" and "oil and gas operations" ([EXHIBIT 2](#)). Mr. Kolman pointed out the term "oil and gas operations" is defined; however, the term "drilling operations" is used throughout. Mr. Kolman suggested either providing a definition for "drilling operations" or using the term "oil and gas operations."

Public Comment on Bill Draft

No public comment was offered.

Committee Discussion

- 00:07:44 Chairman Wheat requested comments on the issue of using the term "drilling operations" versus "oil and gas operations."
- 00:08:00 Mr. Williams commented the "oil and gas operations" definition includes production operations subsequent to establishing production from a well. Mr. Williams suggested industry would not want to be in the position where it has to give written notice every time it goes out and checks a producing well. Mr. Williams suggested defining "drilling operations" as being the first step in oil and gas operations.
- 00:08:52 Rep. Peterson expressed confusion and stated he thought the first step would be the surveying and staking and questioned which of these activities require notice for access. Chairman Wheat wondered if "drilling operations" needed to be defined in code. Mr. Kolman explained in terms of the notice, drilling operations could include surveying, but in Section 82-10-504, MCA, "drilling operations" could mean something else. Chairman Wheat suggested if the term refers to actual drilling operations, it could be called "oil and gas operations." If the term refers to something other than that, the term used should reflect the exact activity. Mr. Williams pointed out there are actually two notices: one before seismic activity and a notice of oil and gas operations. Mr. Peterson asked about unintended consequences that could occur if "drilling operations" was replaced with "oil and gas operations." Mr. Williams believed replacing the term would not result in an unintended consequence.
- 00:00:01 8:55 a.m. time reset due to computer difficulties.
- 00:01:01 Mr. Woodgerd thought it would be better to replace the term "drilling operations" with "oil and gas operations." Mr. Woodgerd wondered if that would be a problem in Section 82-10-503, MCA, since everyone had interpreted that language as being broad and to include surveying.
- Tom Richmond, Administrator and Petroleum Engineer, Montana Board of Oil and Gas Conservation (MBOGC), stated there is no definition of "drilling operations" in the statute and suggested if "drilling operations" is defined, the definition should be narrowly constructed and should apply solely to notice. Mr. Richmond addressed changing the term to "oil and gas operations" and cautioned against creating the possibility for on-going notice. Mr. Richmond suggested the first surface disturbance could be referred to as "initial oil and gas operations."
- Mr. Woodgerd moved to replace the term "drilling operations" with the term "oil and gas operations" in Section 82-10-504, MCA, and Section 82-10-505, MCA. The term "drilling operations" would remain the same in Section 82-10-503, MCA.

Mr. Rogers asked if a definition of "drilling operations" would be included. Mr. Woodgerd replied a definition would go beyond his motion.

Mr. Owen noted that if "drilling operations" is left in Section 82-10-503, MCA, the Subcommittee had previously agreed that notice would be given before entry onto the property for surveying, so surveying would be included in "drilling operations." Mr. Woodgerd clarified his motion did not include Section 82-10-503, MCA.

- 00:03:06 Rep. Peterson suggested the Subcommittee should vote on the motion as presented and then go back and address Section 82-10-503, MCA. Mr. Woodgerd's motion carried unanimously by voice vote with Mr. Cebull, Sen. McGee and Rep. Bixby voting yes by proxy.
- 00:05:17 Rep. Peterson suggested confusion exists between geophysical activity and the actual triggering of development of a lease which begins largely with a survey and a stake. Rep. Peterson thought Section 52-10-503, MCA, should be clearer.
- 00:06:04 Mr. Owen commented if the first reference to "drilling operations" were changed to "oil and gas operations" and the next two references to "drilling operations" were left the same, the statute would flow correctly.
- 00:06:52 Mr. Woodgerd suggested the catch phrase, the first reference to "drilling operations," is a meaningless term and making the change would not have any effect.
- 00:07:44 Mr. Richmond responded to Rep. Peterson's suggestion and stated he believed clarification is always helpful. Rep. Peterson suggested changing the title to say "notice of oil and gas operations" which could mean exploration for, surveying for, or drilling for an oil and gas well. Rep. Peterson recalled from testimony that it is important for landowners to get notice when someone will be coming onto the land for surveying.
- 00:11:20 Chairman Wheat asked Mr. Richmond whether the issue of defining "drilling operations" and "any activity on the land surface" has been a problem. Mr. Richmond responded it has not been a problem. Mr. Richmond understood the concern about surveying, but thought most of the time the concern is about surface-disturbing activities. Mr. Richmond stated the MBOGC has not received a lot of complaints about surveying. Chairman Wheat noted surveyors have their own notice statutes.
- 00:13:34 Mr. Woodgerd submitted a proposed amendment to address surveying (**EXHIBIT 3**) and explained the intent of the amendment is to accommodate both the developer and the surface owner.
- 00:16:26 Mr. Williams commented the proposed amendment takes something that is relatively simple and has been working well and adds a level of complexity. Chairman Wheat responded the amendment clarifies the surveyor will give notice to the landowner under the statute that requires them to give notice, and once that has been done, the oil and gas developer performs the survey and goes to

the MBOGC to get their permit. Once the developer has the permit, then they give notice to the landowner.

00:18:26 Mr. Owen believed the proposed amendment would defeat the efforts of the Subcommittee to try and protect the landowners. Mr. Owen pointed out the surveyor will not have the plan of oil and gas developer to give to the surface owner.

(Tape 1; Side B)

Mr. Owen recalled that landowners wanted to be part of the decision-making process. Chairman Wheat disagreed and did not see how the proposed amendment could do any harm. Mr. Owen explained that the plan submitted to MBOGC as part of the permit is generally a plan that has already been discussed with the surface owner. Mr. Owen thought the proposed amendment would delay the notice containing the most information. Ms. Iversen suggested there really is no plan at the time of staking.

00:22:14 Mr. Richmond commented that he liked the concept, but was concerned whether the language would allow a stake to be placed at the well site. Mr. Richmond viewed surveying as a slight disturbance and stated the survey adds a lot of information necessary to develop a plan of operation. Mr. Richmond suggested adding language saying "in staking the well site." Chairman Wheat suggested the language should reflect roads and well location, and Mr. Richmond agreed that would be appropriate.

00:25:30 Mr. Rogers stated he believed the amendment provided clarity and stated he would support the amendment.

00:26:00 Mr. Owen agreed with the amendment with the suggested inserted language "well-site location, and access road surveys." Mr. Williams and Rep. Peterson agreed with the revisions. Chairman Wheat commented that he liked the revised amendment since it provides additional notice to the landowners and more open lines of communication between landowners and operators.

00:27:33 Mr. Woodgerd moved to amend Section 82-10-503, MCA, as presented in Exhibit 3 with the addition of language after "boundary" insert "and well-site location and access road" surveys.

00:28:41 Ms. Iversen requested clarification that the amendment refers to the oil and gas developer. Chairman Wheat clarified that was correct.

00:29:20 Mr. Richmond commented about roads and asked that the road not be an engineered or surveyed road, but rather a pin flag. Chairman Wheat replied the intent is to identify the location of the access road, so the landowner knows where the road will go.

00:30:49 Mr. Woodgerd's motion carried unanimously by voice vote with Mr. Cebull, Rep. Bixby, and Sen. McGee voting by yes by proxy.

- 00:32:03 Mr. Kolman suggested "drilling operations" in Section 82-10-503, MCA, could be changed to "oil and gas operations." Chairman Wheat requested comments from Mr. Richmond regarding the suggestion. Mr. Richmond believed the reference should be left as "drilling operations." Mr. Williams and Mr. Owen agreed the language should refer to "drilling operations."
- 00:34:53 The Subcommittee addressed Section 1, Exhibit 1. Chairman Wheat requested an explanation from Mr. Williams regarding seismic activity. Mr. Williams explained the permit holder is the company actually doing the seismic survey, and it is responsible for posting a bond with the Clerk and Recorder and providing notice to the landowner, and the operator is never disclosed.
- (Mr. Cebull arrived.).
- Chairman Wheat suggested the language that addresses information to be furnished should clarify the seismic exploration firm that holds the permit. Mr. Kolman noted that in Section 82-1-106, MCA, the geophysical firm has to apply for the permit, and the issue is clarified by the rest of the code section.
- 00:38:29 Mr. Owen commented on Section 1, subsection (3) and the reference to "or others" and suggested using the language "other parties." Mr. Owen thought the same change should be made in Section 2, subsection (2). Chairman Wheat agreed.
- 00:40:34 Mr. Woodgerd moved the adoption of the new language in Section 1, subsection (3), and Section 2, subsection (2) (Exhibit 1) with the change as proposed by Mr. Owen.
- 00:41:18 Rep. Peterson agreed with the proposed amendment and believed the language is consistent with information on the record and would clarify the process.
- 00:42:06 Mr. Rogers recalled testimony from Daryl Sather and the need to educate landowners that it is their responsibility to notify surface users.
- 00:43:04 Mr. McRae was concerned about placing the burden on the surface owner to provide the name and address, but noted there is no follow up required by the industry. Mr. McRae suggested there should be language requiring the oil and gas operator to provide the same information to the tenant that it did to the surface owner.
- 00:44:40 Mr. Owen replied he was not aware that industry was responsible for notifying tenants and thought it would provide an extra burden to industry. Mr. McRae admitted he was confused about the language and retracted his concern.
- 00:46:01 Mr. Cebull requested clarification. Mr. Kolman explained the Subcommittee previously voted on the concept, and now needs to approve the formal language that he drafted at the Subcommittee's request. Mr. Cebull stated he believed surface owners have the right to provide notice to their tenants if they choose, but did not like the idea of making it mandatory for landowners. Chairman Wheat

explained the Subcommittee is not trying to establish burdens, but rather establish open communication.

- 00:48:44 Mr. Woodgerd's motion carried by voice vote with Mr. Cebull voting no and Sen. McGee and Rep. Bixby voting yes by proxy.
- 00:49:37 Chairman Wheat asked about the provision to provide landowners with the brochure and the use of "if available." Mr. Kolman pointed out that at some point the brochure may not be available.
- 00:52:11 Mr. Kolman pointed out that all changes in Section 3, Exhibit 1, were voted on and approved and there were no changes made to that section at the April meeting. Chairman Wheat referred to an e-mail from Linda Nelson (**EXHIBIT 4**). Mr. Kolman summarized Ms. Nelson's e-mail and concerns.
- 00:54:10 Mr. Richmond explained the term "exploration" is not very well defined and could include a variety of things. Mr. Richmond stated it is not clear from the current statute what exactly is intended and suggested the language should be tightened.
- 00:56:33 Chairman Wheat understood Ms. Nelson's concern to be that annual payments should fit in with damages to clarify that annual payments will be for a drilling activity that extends over a period of time. Ms. Iversen suggested changing "exploration" to "oil and gas operations" and adding a subsection (d) which would state "for harm caused by work conducted under a permit issued pursuant to Section 82-1-105, MCA, the oil and gas developer shall pay the surface owner a single-sum payment."

(Tape 2; Side A)

- 00:58:33 Mr. Cebull stated he did not see the confusion in subsection (d) and did not believe clarification was necessary since it would apply to what normally would be a one-time event. Chairman Wheat thought moving the annual payment language up to where other damages are addressed would provide more clarity. Mr. Cebull suggested the language as written is a protection to the surface owner, and one-time events require one-time lump sum payments.
- 01:01:05 Mr. Rogers suggested that changing "exploration" to "oil and gas operations" would allow people to take a lump-sum payment for their oil and gas operations. Ms. Iversen submitted a proposed amendment, but noted the amendment also contained language she no longer wanted to introduce (**EXHIBIT 5**). Ms. Iversen directed the Subcommittee to the new subsection (d) proposed in Exhibit 5.
- 01:04:11 Rep. Peterson asked for clarification, and Ms. Iversen explained the deleted language in subsection (c) would remain, with the exception that "exploration" would be changed to "oil and gas operations," and the underlined language would be stricken. In addition, there would be a new subsection (d) as proposed.

- 01:07:03 Mr. Williams thought subsection (d) was too narrow and stated there are exploration costs and damages caused by exploration, such as the case of a dry hole, and it should be a single sum payment. Chairman Wheat posed a hypothetical scenario, and Mr. Williams responded that a seismic firm would pay for damages under Title 82, chapter 1.
- 01:10:22 Chairman Wheat asked Mr. Richmond what would happen if the statute is not changed. Mr. Richmond suggested the Subcommittee should not change the statute and should place an explanation of "exploration" in the brochure. Chairman Wheat wondered about inserting language such as "any activity that does not result in a producing well." Mr. Richmond was concerned the language would not work in every case, such as in the case of production facilities or compressor sites for gas wells.
- 01:12:36 Mr. Owen asked if in the permitting process there is a differentiation between development drilling and drilling that is more exploratory. Mr. Richmond explained the MBOGC makes a distinction between development wells and wildcat wells for the purpose of providing published notice. The way the MBOGC distinguishes between exploratory drilling and development drilling is whether a well is located in a field delineated by MBOGC order. Mr. Richmond stated he would not be comfortable using the MBOGC definition since it is relatively arbitrary.
- 01:14:03 Mr. McRae recalled there was substantial testimony that this was not working, and people would have preferred to receive annual payments. Chairman Wheat sensed the Subcommittee would prefer to leave subsection (d) alone, and no one objected.
- 01:15:42 Mr. Kolman noted Section 4 did not contain any new changes.
- 01:16:00 Mr. Woodgerd submitted a proposed amendment to Section 3 (**EXHIBIT 6**). Mr. Woodgerd explained that the intent of his amendment is to facilitate mediation by those parties who wish to enter into mediation. Mr. Woodgerd noted the only burden would be to the MBOGC to maintain a list. Mr. Cebull believed the proposed language should be in the brochure and not in statute.
- 01:18:57 Chairman Wheat asked Mr. Richmond whether the MBOGC could maintain a list to facilitate the mediation process. Mr. Richmond agreed the MBOGC could maintain a list, but expressed concern about being responsible for determining qualifications, as well as keeping the list accurate and up to date.
- 01:22:23 Mr. Williams wondered if there is an organization that qualifies mediators. Mr. Woodgerd replied there is an organization of mediators, and they do qualify people, but most of the mediators are for family law.
- 01:23:52 Rep. Peterson stated he was hesitant to put the requirement into statute and thought it would be better to put the information in the publication or on a website.

- 01:24:37 Mr. Woodgerd addressed the concerns voiced by the Subcommittee and explained the best thing would be to put the language into the statute to guarantee that the information is available.
- 01:26:00 Ms. Iversen observed subsection (c) would not be any good if it does not provide direction on where to go to find a negotiator.
- 01:26:49 Mr. Woodgerd moved his proposed amendment as contained in Exhibit 6. The motion failed by roll call vote.

BREAK

- 01:45:57 Chairman Wheat reconvened the meeting and the Subcommittee continued reviewing Section 4 of the bill draft request.
- 01:46:31 Mr. Woodgerd submitted his proposed amendment to Section 82-10-508, MCA (**EXHIBIT 7**). Mr. Woodgerd explained he is proposing the amendment because in the current process if an agreement cannot be reached or damages are not paid, it is the responsibility of the surface owner to bring an action in court. Mr. Woodgerd did not believe the procedure represented a level playing field and did not encourage negotiations.
- 01:53:02 Mr. Cebull commented on Mr. Woodgerd's proposed amendment and stated he did not recall hearing from people that there was an intent by operators to not pay damages; rather, disputes result over how much to pay. Mr. Cebull suggested the court levels the playing field. Mr. Cebull stated he does not like the term "leveling the playing field" since there are bad surface owners, as well as bad operators. Mr. Cebull stated he would not support the amendment.
- 01:55:29 Mr. Williams agreed and stated he does not like the implication that oil and gas operators are more at fault. Mr. Williams stated he would not support the amendment.
- 01:56:43 Mr. Rogers identified the value of mediation as the ability of both sides to enter into an agreement contrary to a court action where the decision comes from a judge.

(Tape 2; Side B)

- Mr. Rogers stated he would support an even split on the cost.
- 01:57:42 Mr. Cebull pointed out the statute already contains language stating upon mutual agreement the parties may enter mediation. Mr. Cebull believed mediation needs to be voluntary, and the proposed amendment would be inconsistent with what has already been inserted.
- 01:58:59 Chairman Wheat explained the mediation process is currently being imposed upon parties by the courts. Chairman Wheat suggested the parties should file their actions in court if they cannot reach an agreement, and costs and attorney

fees should be awarded if the landowner recovers as much as what was offered or more. Chairman Wheat understood the need to assist people who do not have the same economic abilities.

- 02:01:59 Mr. Woodgerd explained his intent was to get mediation to take place sooner, so the landowner does not have to hire an attorney. Mr. Woodgerd thought there would be an unequal bargaining platform if a landowner had to hire an attorney. Mr. Woodgerd stated he would agree to a 50/50 split for mediation and emphasized the mediation process would be cheaper for both sides.
- 02:04:55 Mr. Williams agreed, but could not recall a suit ever being brought under the statute. Mr. Williams suggested industry is paying a number that is generally a multiple of the purchase price for the land.
- 02:07:43 Mr. Woodgerd suggested the reason Mr. Williams has not seen any legal actions is because it is not feasible for landowners to hire attorneys for the amount of money involved in the disputes. Mr. Woodgerd noted the statute is meant as a last resort.
- 02:09:16 Ms. Iversen agreed with Mr. Woodgerd that there are no lawsuits because it is very expensive and difficult for a landowner to prevail.
- 02:10:08 Mr. Woodgerd moved his amendment to Section 4 (Exhibit 7), with the revision that the cost would be split 50/50. Mr. Woodgerd's motion failed by roll call vote.
- 02:12:57 Chairman Wheat proposed an amendment to Section 4 stating: "If the person seeking compensation recovers an amount equal to or greater than the highest offer from the oil and gas developer or operator prior to the commencement of litigation, he shall be awarded costs and attorneys fees. If the amount recovered is less than the highest offer, each party shall pay their own attorney fees and costs."
- 02:16:11 Mr. Rogers asked what would happen if the judge orders mediation and an agreement is reached. Chairman Wheat clarified his amendment would only apply to an award from either the court or a jury. Mr. Owen asked what would happen if the exact amount offered by the company is awarded and whether the developer would have to pay everyone's legal expenses. Chairman Wheat responded his amendment would require an amount "equal to or greater than."
- 02:17:20 Mr. Cebull asked if courts could award attorney fees. Chairman Wheat explained that generally, attorney fees could be recovered if they are provided by contract or statute. Courts can also award attorney fees in very limited circumstances.
- 02:18:17 Mr. Williams thought the proposed language would put all the risk on the company and none on the landowner and would not provide any motivation to come to an agreement. Mr. Williams suggested a landowner would not enter into an agreement if there was no risk. Chairman Wheat disagreed and said if an offer has a sound basis and is reasonable, there should not be any risk.

- 02:20:20 Mr. Cebull wondered how a court would determine the value of an annual damage payment versus a lump-sum payment without knowing the life of a property. Mr. Cebull agreed with Mr. Williams' previous comments.
- 02:22:07 Mr. McRae thought the proposal mirrored current North Dakota law and wondered how many cases were brought in North Dakota.
- 02:22:35 Rep. Peterson wondered what would prevent the employment of expert witnesses that might make themselves available, which could result in escalated costs. Chairman Wheat agreed litigation is expensive.
- 02:23:40 Mr. Cebull suggested inserting "reasonable" in front of "attorney fees." Chairman Wheat agreed and further suggested recovery should be an amount "greater than the highest amount offered," and if you receive an amount "equal to or less than," each party would pay their own attorney fees and costs.
- 02:24:48 Sen. Wheat's motion failed by roll call vote.
- 02:25:50 The Subcommittee addressed Section 5, Exhibit 1, and Mr. Kolman commented it is already illegal to violate a surface notice, and the penalties are already in statute and need to be referenced.
- 02:28:24 Ms. Iversen asked about the penalty for surveyors and whether there are penalties for failure to give notice. Mr. Kolman clarified there was earlier discussion about whether a permit could be issued without surveying, and if you did survey, you would be in violation of the statute. Mr. Kolman explained Section 82-11-122, MCA, already provides penalties for violation of notice by the oil and gas operator, but the section should be referenced since it is not readily apparent.
- 02:32:03 Rep. Peterson commented the reference to Section 82-11-122, MCA, should be included in the brochure.
- 02:33:24 Chairman Wheat was concerned about there being a statute nobody knew was there, and did not see any purpose in creating a new section of law.
- 02:33:45 Mr. Rogers recalled the question as whether there is a penalty for the surveyor who is not handing out the information when he comes onto the land. Mr. Kolman replied the surveyor would be subject to trespass provisions. Ms. Iversen asked if it would be possible to put penalties in the statutes that would apply to surveyors.

(Tape 3; Side A)

Mr. Kolman did not believe surveyors could be regulated by the MBOGC.

- 02:36:39 Rep. Peterson emphasized the statutes already address the issue, but it is a matter of getting the information out. Rep. Peterson thought it would be appropriate to reference the penalty sections in the brochure.

- 02:37:43 Mr. Woodgerd inquired whether Mr. Richmond was comfortable with enforcing the statute and the penalties. Mr. Richmond explained that the statute could never be enforced the way it was written. Mr. Richmond believed the statute was now capable of being enforced and suggested the penalty for failure to notice would probably fall in the lower range. Mr. Richmond believed there could be a potential for a dispute on what constitutes notice, whether notice was received, and whether notice was given to the correct party.
- 02:40:22 Mr. Rogers wondered if the MBOGC could currently enforce the notice requirement without the proposed changes. Mr. Richmond agreed and explained there is a conflict between at least two code sections. Mr. Richmond stated there is no purpose to having a statute with a penalty if the statute cannot be enforced. Chairman Wheat asked if the amendments adopted by the Subcommittee would now make the penalty statute applicable. Mr. Richmond agreed.
- 02:42:46 Chairman Wheat moved that the Subcommittee reject the proposed new Section 5 since it is already covered in statute. Mr. Woodgerd suggested referencing the applicable penalty statute. Chairman Wheat's motion included direction to Mr. Kolman and the Code Commissioner to let the Subcommittee know at its next meeting how to reference the penalty section in the statutes. Chairman Wheat's motion carried unanimously by voice vote with Rep. Bixby and Sen. McGee voting aye by proxy.
- 02:45:22 The Subcommittee addressed Section 6, the standard legislative operating procedure. The Subcommittee agreed the effective date and applicability date for the new legislation would be October 1, 2007.

LUNCH

DRAFT REPORT

Committee Discussion--Findings and Recommendations

- 00:00:02 Mr. Kolman reviewed the Findings and Recommendations portion of the HB 790 Report (**EXHIBIT 8**). Mr. Kolman explained the Findings and Recommendations came from past Subcommittee testimony, presentations, and Subcommittee discussions. Mr. Kolman invited comments and suggestions.
- 00:03:02 Mr. Williams suggested the first recommendation should reference "the history of split estate law" to indicate that split estate law is still in existence. Chairman Wheat suggested the issue addressed more than split estate law. Chairman Wheat suggested referencing "Historical development of split estates and the law associated with split estates."
- 00:05:11 Mr. Kolman continued reviewing the findings and recommendations.
- 00:06:45 Mr. Cebull thought the report should specifically reflect that the Subcommittee decided not to recommend a mandated surface use agreement.

- 00:07:40 Mr. Rogers pointed out the vote was a majority and not a super majority and, therefore, it cannot be a recommendation to the full EQC. Mr. Rogers requested compilation of a vote index. Chairman Wheat commented about other findings that could be added. Chairman Wheat noted the Subcommittee's recommendations will include only those things that were voted on and passed by the Subcommittee. In fairness, however, Chairman Wheat suggested including the issues that the Subcommittee could not agree on. Mr. Cebull wanted to clarify the intent of the Subcommittee based on the Subcommittee's voting procedures. Chairman Wheat agreed there is another side to the finding issue. Chairman Wheat suggested including a laundry list of the Subcommittee's votes. Mr. Kolman agreed to compile a voting record for the Subcommittee, and Chairman Wheat will decide which major voting issues should be included in the report.
- 00:13:01 Rep. Peterson suggested Chairman Wheat should consult with the Vice Chairman, and the report should be limited to the factual findings of the Subcommittee. Rep. Peterson did not see a need to include additional editorial comments that can be found in the minutes.
- 00:14:36 Mr. Kolman continued reviewing the findings and recommendations. Mr. Kolman stated he would add into the recommendation that the Subcommittee failed to require a written surface use agreement by a super majority vote. Mr. Kolman continued reviewing the report.
- 00:16:16 Mr. Williams clarified the Wyoming mediation program already existed within the Wyoming Department of Agriculture, and the program is voluntary and participation is upon mutual agreement. Mr. Kolman continued reviewing the proposed findings and recommendations.
- 00:18:27 Mr. Woodgerd suggested the Subcommittee should make a recommendation that the MBOGC should continue to review bonding amounts. Mr. Woodgerd wondered if it was acceptable for the Subcommittee to not have a recommendation. Mr. Woodgerd believed there should either be a recommendation or an explanation why there is no recommendation.
- 00:20:21 Rep. Peterson thought it would be more consistent to include language saying "based on the findings of the Subcommittee, the Subcommittee has no further recommendations."
- 00:21:33 Mr. Cebull suggested including a finding regarding other existing accounts, such as the Resource Indemnity Trust, the Orphan Well Fund, and the Coal Bed Methane Damage Account, to fund problems such as abandoned wells.
- 00:24:15 Mr. Kolman continued reviewing the findings and recommendations. Chairman Wheat recalled the Subcommittee also determined action was being taken by the Board of Environmental Review relating to water quality. Sen. Roush added that last interim, the EQC did a study on water-quality issues. Mr. Kolman continued reviewing the findings and recommendations.

00:27:28 Mr. McRae pointed out that the super majority vote would cause anything the Subcommittee passed to go to the EQC with a recommendation. Mr. McRae stated he is uncomfortable stating "no further action is required" since no action, in of itself, is a recommendation. Chairman Wheat explained a voting record will be included.

(Tape 3; Side B)

00:30:24 Mr. Rogers inquired whether the report would be to the EQC or the Legislature. Chairman Wheat explained the bill will be presented to the EQC with a request that the EQC draft the bill as legislation for the next session. The report will go to the EQC and will state the areas the Subcommittee was directed to address pursuant to HB 790, and the Subcommittee's findings and recommendations.

00:32:14 Mr. Kolman added the report would also need a super majority of eight votes in order to be passed on to the EQC. Mr. Kolman continued reviewing the draft report.

00:33:09 Mr. Williams reiterated the findings need to reflect split-estate law, as well as the history of split estates, and the Subcommittee agreed. Mr. Kolman continued reviewing the findings and recommendations. Mr. Williams questioned whether the statement regarding Wyoming law should be included since what happens in Wyoming deals with Wyoming law and not Montana law. Chairman Wheat agreed that how Wyoming law relates to federal law is solely a Wyoming issue.

00:37:28 Sen. Roush suggested including a general statement indicating the Subcommittee reviewed the split estate laws in other states. Chairman Wheat suggested removing the second finding regarding federal and state law related to split estates. Mr. Rogers agreed, but noted the surface use agreement differences between the Bureau of Land Management (BLM) leases, state of Montana leases, and private leases. The Subcommittee agreed to delete the second finding as suggested by Chairman Wheat.

00:41:24 Mr. Williams suggested the differences between federal versus state versus private leases could also be included under surface use agreements. Chairman Wheat thought the reference could appear in both places. Mr. Williams' recollection was that surface use agreements are not entered into with the state or the surface lessee on state minerals and suggested the minutes be reviewed.

00:45:06 Mr. Rogers recalled that information regarding differences between federal leases, state leases, and private leases went into the brochure.

00:46:14 Mr. Kolman reviewed the balance of the draft report, focusing on the work plan and public involvement.

00:47:20 Rep. Peterson commented on Chapter 3, Public Involvement, and thought it was important to report on the effort undertaken by the Subcommittee to seek public involvement. However, Rep. Peterson was concerned about including selected

testimony. Rep. Peterson thought citing certain comments could raise objections by other individuals. Rep. Peterson suggested keeping the report factual.

00:49:34 Mr. Williams agreed with Rep. Peterson and stated his concern is with what is not stated. Mr. Williams agreed it would be better to refer people to the minutes if they want direct testimony. Mr. Williams suggested site tours should indicate members of the public also attended. Mr. Williams also suggested the presentations portion should list the people who were asked to speak, but not characterize what was said during their presentations.

00:51:49 Mr. Woodgerd agreed it would be better not to include what individuals said. Chairman Wheat agreed and asked Mr. Kolman to revise the editorial comments to make the report more factual. Mr. Rogers commented about the dryness of the subject matter and the readers' interest levels. Rep. Peterson stated that if someone wanted specifics, they could go to the minutes, and the report should concentrate on the findings and recommendations of the Subcommittee. Rep. Peterson agreed the report should not pick out individual commentary. Mr. Kolman explained the presentation section included everyone who was requested to testify by the Subcommittee.

01:00:10 Mr. Cebull stated he would like to see more information included about the Sidney tour and offered to provide additional information. Chairman Wheat agreed and requested Mr. Cebull to provide a photograph of a particular drilling rig in Sidney. Mr. Williams noted the Subcommittee did not visit a weed management area in Sheridan as indicated, but rather it was a reclaimed pond. Mr. Kolman reviewed Chapter 6, the Subcommittee's decision-making process and its decision to require eight votes to advance things to the EQC, and noted summary minutes are available and audio minutes are available on-line. Mr. Kolman explained the report will be edited and put out for public comment. The Subcommittee will have an opportunity to approve the report at its July meeting.

DRAFT BROCHURE

01:05:53 Mr. Kolman reviewed the two different versions of the proposed brochure (**EXHIBIT 9**) (**EXHIBIT 10**). Mr. Kolman explained the public comment process for the brochure, proposed legislation, and the report.

01:07:33 Rep. Peterson stated he preferred the outlined box approach utilized in Exhibit 10, because it would be more friendly to the landowner. Chairman Wheat agreed.

(Tape 4; Side A)

01:09:06 Mr. Williams suggested taking language from the middle of "Who owns what?" and moving it to "How does an estate become split?" Mr. Kolman stated he could move the language from "Who owns what?" to "How does an estate become split?" Mr. Williams agreed. Mr. Williams addressed "Where are the mineral ownership records?" and stated it is not easy to go to the courthouse with a property description and find out who owns what. In reality, a person needs to go to the title certificate, to the abstractor, or the deed as sources of information as

to ownership. Mr. Owen agreed the deed is wholly inadequate to make a determination of ownership, and a person needs to look at the chain of title. Mr. Owen suggested it would be best to hire a professional. Mr. Owen suggested adding the Montana Association of Professional Landmen to the list of contacts.

- 01:14:41 Mr. Williams suggested listing the major chapters of the code relating to oil and gas development under "For more information." Mr. Williams wondered if private organizations should also be included. Chairman Wheat believed the brochure should list any organization that can help landowners know and understand their rights.
- 01:16:40 Mr. Cebull suggested adding the Montana Petroleum Association as a contact. The Subcommittee agreed the description of each organization could be deleted to save space.
- 01:17:53 Mr. Woodgerd suggested taking off the reference to individual names because the publication will eventually become dated. Rep. Peterson agreed and thought including individual names could result in having to reprint the brochure. Ms. Iversen stated she believed it was important to include Herb Vasseur's and Dennis Trudell's names since they did not work out of dedicated offices.

PUBLIC COMMENT

- 01:22:46 Jerome Anderson, Encore, commented on the listing contained in "For more information" and agreed with including the MBOGC and the BLM, but thought that the other organizations were selective and have their own agendas.
- 01:24:15 Chairman Wheat asked about including a contact section on the EQC website where a person could go for more information. Mr. Kolman explained it would be easy to update the brochure, and anybody could print out the brochure from the EQC website.
- 01:27:10 Patrick Montalban, Northern Montana Oil and Gas Association, would also like his organization to be listed on the brochure. In addition, Mr. Montalban testified he believes it is very important that the very first notification occurs for surveying.
- 01:29:34 Mr. Cebull asked Mr. Richmond if the MBOGC could act as the clearinghouse to direct the public to local associations. Mr. Richmond replied that is the current practice of the MBOGC, and that they would continue to do so.
- 01:31:28 Mr. Owen suggested keeping only governmental agencies in the brochure. The Subcommittee agreed. Ms. Iversen agreed with the suggestion on the condition that the other organizations would be available on the EQC website.
- 01:34:09 Ms. Iversen expressed concern about the surveying and the lack of a penalty if surveyors do not give notice. Chairman Wheat pointed out surveyors are not under the control of the MBOGC. Chairman Wheat requested Ms. Iversen to draft a proposal for consideration at the next meeting.

01:36:31 Mr. Kolman stated the next meeting of the HB 790 Subcommittee would be July 17, 2006, in Helena.

01:37:38 Chairman Wheat adjourned the meeting at 2:40 p.m.