

STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
MINUTES OF THE  
BOARD OF OIL AND GAS CONSERVATION SETBACK MEETING  
June 24, 2015

CALL TO ORDER

Chairman Linda Nelson called to order the special session public meeting on drilling setbacks of the Montana Board of Oil and Gas Conservation at 1:00 p.m., Wednesday, June 24, 2015, at its office at 2535 St. Johns Avenue in Billings, Montana. Board members present were Chairman Linda Nelson, Steven Durrett, Ronald S. Efta, John Evans, Paul Gatzemeier, and Peggy Ames Nerud. Staff present was John Gizicki, Jim Halvorson, George Hudak, Ben Jones, Dave Popp, Jennifer Rath, Erin Ricci, and Rob Stutz. Vice Chairman Wayne Smith was absent.

PUBLIC COMMENT

**Anne Ostby** from South Dagmar, MT supports a setback rule. Ms. Ostby is a former administrative law judge and believes there is a process issue in regards to setbacks. Majority of surface owners have no control over the minerals under their land. If standards are set now to address this process problem, it will lead to a better outcome. With a setback rule, oil companies would come before the Board for a variance; because without a rule, oil companies have no incentive. Currently, surface owners only receive notice through the Helena Independent Record and the county paper. With this notice, the surface owner has 10 days to object to the drilling of a well, and permit renewals do not require public notice. Ms. Ostby does not understand why there is such a tight deadline for protests.

**Pat Wilson** from Bainville, MT supports a setback rule. Exhibit 1 details his top 5 reasons for a setback rule. An overview is as follows:

5. Noise & dust
4. Trash
3. Spills, pipeline leaks, casing failures
2. Volatile organic compounds (VOC)
1. Landowner has little to no say

**Debra Muth** from Red Lodge, MT supports a setback rule. Ms. Muth's family water well was contaminated from landfill seepage. This has negatively affected her family's health. Rulemaking can protect us from harm. In Exhibit 2, there are studies that show how certain health issues are a result of living in close proximity to a well and how homes in close proximity to a well decrease a homeowner's property value. If you do not own minerals and are only a surface owner, you have no merit. Let industry ask for the exemption; do not put the burden on the people, but on industry.

**Becky Grey** agrees with Ms. Muth and supports a setback rule.

**Dale Nelson** from Homestead, MT supports a setback rule. Mr. Nelson is a landowner without minerals in Montana, but owns minerals in North Dakota. Mr. Nelson would like to see a minimum 1,000 ft setback rule. One reason for the setback is homeowner safety. He has been with the fire department for 30 years and has seen three oil rig fires started by lightning. Another reason is industry can put a well anywhere, and Mr. Nelson knows from experience a well location can be changed with the input of the landowner.

**Dennis Trudell** from Sidney, MT is a member of the Northeast Montana Land and Mineral Owners Association. He recommends adopting a rule where landowners receive written notice of the intent to permit the well before the company begins the permit process and where people can come to the Board should an issue arise.

**Larry Tveit** is a former landowner with minerals. Mr. Tveit has worked with five oil companies that resulted in the drilling of 13 wells on his property. He stated that someone who owns minerals in Montana, but does not live in Montana has more rights than a surface owner who is living in Montana. Mr. Tveit does not want to see oil and gas companies leave the state, especially since Montana benefits greatly from the oil and gas industry. He noted that vertical and horizontal wells cannot be treated the same. If you move 1,000 ft in a vertical well, the well may not be drilled because the geology could be different. As for a horizontal well, there is more room for well placement.

**Lana Sangmeister** from Nye, MT supports a setback rule. Ms. Sangmeister stated without setbacks, property values decrease and homeowners have issues renewing their homeowners insurance because of the perceived risk of the well. The setback rule would have a fair and equitable way to protest a drilling permit.

**Jack King** opposes a setback rule. Mr. King works for Hancock Enterprises, a family owned company since the 1920's. In Exhibit 3, Mr. King pointed out the public's accessibility to the Board. If the Board gets away from the current system, where companies work directly with surface owners, there will be more issues. A negotiated location is far better than a regulated location. While serving on the Board of Oil and Gas, he found attendance was not a problem. In fact, surface owners would take advantage of the Board's time. The issue is communication, not rules. Lastly, geology in Montana has small targets, so if a well is moved a couple hundred feet, geology could be different.

**Mark Metz** opposes a setback rule. Mr. Metz works for Oasis Petroleum (Oasis). Oasis has drilled over 800 wells and has dealt with numerous surface owners. They always reached an agreement because there was discussion with the surface owner of its plan to drill the well. The surface owner has multiple opportunities to discuss setbacks and was always asked to be a part of the staking of the well. In the last two legislative sessions, setbacks were discussed and failed. A mandatory setback rule is not necessary. Mr. Metz went through Exhibit 4, which depicts the effects of a ¼ mile setback on industry. A mandatory ¼ mile setback would limit the options for well placement, drastically limit well pad options, and negatively impact correlative rights. The rule is not in the best interest of Montana, and a large percentage of wells would never have been drilled if a setback rule was in place. Projects may no longer be economical if a company cannot get 5-9 wells in a spacing unit due to setback restrictions. This rule would be detrimental to future oil and gas development.

**Jim Harmon** with Petro Hunt agrees with Mr. Metz and opposes a setback rule. Mr. Harmon meets with the surface owner multiple times and states he has always come to an agreement with the surface owner. He primarily deals with the drilling of vertical Red River wells. If a rule was established, he would have to come to the Board for a variance for each well proposed, because every well would be a variance. His successful wells would not have been possible to drill if a setback rule was in place. In Exhibit 5, Mr. Harmon depicts the effect of a setback on Dawson, Richland, and Roosevelt County, MT and the associated acreage that would be un-drillable with a setback rule.

**Mac McDermott** opposes a setback rule. Mr. McDermott is a member of the Northern Montana Oil and Gas Association and drills shallow vertical wells on 40 acre tracts. Exhibit 6 shows the effect of a home in the middle of a 40 acre spacing unit and the limited options for well placement because the setback takes up almost the entire spacing unit. Additionally, many locations in his area would be off limits

because it is a drainage area, so there would be no variance from the Board. A setback rule in this area would be detrimental.

**Susan Bueg** supports a setback rule. Ms. Bueg is with the Carbon County Resource Council and stated she does not oppose oil and gas development but wants Montana to set the standard and initiate rule making for setbacks. The new rule would still allow for negotiations with the landowner. Currently, there is no notification for surrounding landowners of the proposed well location. Recently, a public hearing took place regarding a gravel pit that was proposed and everyone within a ¼ mile radius was notified. There is nothing like that for oil and gas. Also, she said there is no public knowledge people can go before the Board. With this rule, she doesn't feel anything is taken away from the oil companies. Written comments in support of a setback rule are attached as Exhibit 7.

**Richard Beatty** from Great Falls opposes a setback rule. Mr. Beatty is a retired real estate attorney from Shelby, MT with 47 years of experience. He is now a rancher who owns 20,000 acres without the mineral rights. As an attorney, he represented small oil companies and farmers/ranchers. He has dealt with many negotiations and cannot recall in his 47 years of practice where a problem between industry and surface owner was not worked out prior to litigation. A company will work with surface owner, if it is a reasonable company. The public has the right to come before the board, so no more rules are necessary.

**Alan Olson** from Musselshell County opposes a setback rule. Mr. Olson has worked in the oil and gas industry for 38 years and of those years, 19 years with the Board of Oil and Gas. He cannot think of one instance where the Board was unable to reach an agreement between the surface owner and the company. If the legislature wanted the Board to pursue a setback rule, they would have directed the Board to do so. Lastly, Mr. Olson noted the Sumatra Field would not have been discovered if there was a setback rule.

**Jessica Sena** with the Montana Petroleum Association opposes a setback rule. Ms. Sena stated the legislature had the opportunity to hear both sides of a proposed setback rule and still the rule was tabled, twice. Oil and Gas development is important to the state and a setback of any size will negatively influence drilling opportunities, resulting in fewer jobs and less revenue. She noted the public has incredible access to the Board to protest a well, and negotiating with the surface owner is far better than having to go through the Board.

**Ben Jones** with the Board of Oil and Gas Conservation reviewed Wyoming, North Dakota, and Colorado setback rules, attached as exhibit 8. A basic overview is as follows:

**Wyoming:** Setback rule is 500 ft from an occupied structure. Owners of occupied dwellings within 1,000 ft of the proposed well must receive notification within 30-180 days before the commencement of drilling activity.

**North Dakota:** Setback rule is 500 ft from an occupied structure. As a part of the permit process owners of occupied dwellings within ¼ mile of the proposed well receive notification.

**Colorado:** Setback of 500 ft from an occupied structure and 1,000 ft from schools and hospitals. Surface owners within 1,000 ft of the proposed well must receive notification 30 days prior to the company submitting the permit.

**BLM:** Setback rule is 500 ft from a human occupied structure.

The Board will accept written comments for the next month.

BOARD OF OIL AND GAS CONSERVATION  
OF THE STATE OF MONTANA

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Linda Nelson, Chairman  
Steven Durrett, Board Member  
Ronald S. Efta, Board Member  
John Evans, Board Member  
Paul Gatzemeier, Board Member  
Peggy Ames-Nerud, Board Member

ATTEST:

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Jennifer Rath, Program Specialist