

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
MINUTES OF THE
BOARD OF OIL AND GAS CONSERVATION MEETING AND PUBLIC HEARING
June 15 & 16, 2016

CALL TO ORDER

The regular business meeting of the Montana Board of Oil and Gas Conservation was called to order by Chairman Linda Nelson at 2:15 p.m., Wednesday, June 15, 2016, at its office at 2535 St. Johns Avenue in Billings, Montana. Board members present were Chairman Linda Nelson, Steven Durrett, Ronald S. Efta, Paul Gatzemeier, and Peggy Ames-Nerud. Staff present was Brea Frickle, John Gizicki, Jim Halvorson, George Hudak, Ben Jones, Gary Klotz, Dave Popp, Jennifer Rath, Erin Ricci, and Rob Stutz. Board member Wayne Smith was absent.

PROPOSED AMENDMENT OF ARM 36.22.1242 “REPORTS BY PRODUCERS – TAX REPORT – TAX RATE”

Prior to the start of the meeting, the Board held a rulemaking hearing on the proposed amendment of the tax rate in ARM 36.22.1242. Upon the close of that hearing, the Board discussed the privilege and license tax.

Currently, the privilege and license tax is collected at 0.26%. Of this 0.26%, 0.09% goes to the Board, and 0.17% goes to cities and counties. The Board has statutory authority to raise the rate to a maximum of 0.30%. Oil and gas producers would pay the rate change of 0.04%. At the maximum rate, cities and counties will no longer receive a share of revenue.

Chairman Nelson stated how she does not like taking funds away from cities and counties.

Exhibit A depicts different scenarios the rate will have on the account balance. Over \$3 million have been transferred from the Board’s special revenue account during the past and current biennium to fund non-board related activities and over \$1 million in fixed costs in the current biennium that the Board has no control over.

The Board has reduced its expenditures by leaving two positions vacant, delayed or canceled equipment purchases, and reduced other optional expenditures that are equivalent to 15% to 20% reduction from the budget approved by the legislature.

The rate needs to be effective by October 1, 2016, and the Department of Revenue needs a 90-day notice prior to the rate change. To meet the 90-day notification requirement, there will be a special meeting prior to July 1, 2016, for the Board to adopt a rate. Mr. Halvorson recommended a rate between 0.26% and 0.30%. It is expected that future rulemaking will occur to reduce the license and privilege tax once product prices stabilize at a higher level and an adequate balance in the Board’s special revenue account is achieved.

After reviewing the graphs, Mr. Efta thought 0.26% is dangerously low and could lead to a deficit budget. He recommended doing 0.30% to provide the Board a cushion.

Mr. Stutz reminded the Board that the rulemaking public notice was to raise the privilege and license tax to 100% of the statutory maximum or 0.30%, but the Board could select a lower rate based on public comment. The next step is to reconvene for a special meeting prior to July 1, 2016, to adopt a rate. A notice will go out to all interested parties of the upcoming meeting.

Chairman Nelson decided the special meeting will take place on June 28, 2016, at 9:00 am. This meeting will be open to the public.

Written comments will be distributed to Board members after the 5:00 pm deadline on June 17, 2016.

APPROVAL OF MINUTES

A motion was made by Mr. Gatzemeier, seconded by Mr. Efta, and unanimously passed, to approve the minutes of the April 6, 2016, business meeting.

PUBLIC COMMENT

Mr. Bruce Porter, mineral and surface owner, wants to protect and prevent the reclaiming of the Porter 10-43 06-06CK well on his property that Storm Cat Energy (USA) Operating Corporation (Storm Cat) operates. The well is a coal bed methane well located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6, T10S, R43E in Big Horn County, Montana. He plans to use the well for livestock water.

Mr. Porter and his sister had a lease with Storm Cat, but it expired when the well was shut-in and Storm Cat failed to pay the shut-in royalty and periodic damage payments.

Storm Cat is in violation of the reporting rule and is scheduled to appear and show cause at the June 16, 2016, public hearing for failure to file production reports.

Mr. Stutz stated that the Board does not have authority over mineral leases, but Mr. Porter could pursue an action against Storm Cat in district court. Additionally, the Board could consider not plugging the well in the future.

DRILLING NOTIFICATION DRAFT RULE

Mr. Jones reviewed the additional language that was added to the rule since the last hearing, attached as Exhibit 1. The first revision was to occupied dwellings and the draft now includes businesses, hospitals, schools, etc. The second revision pertains to protesters. The draft now reflects how it is the protester's responsibility to demonstrate their interest in the property with a notarized certificate of ownership. Any falsification of the ownership is subject to perjury.

The setback subcommittee decided not to make additional changes.

A formal draft will be reviewed at the next meeting. If the Board proceeds with rulemaking, that draft would be the proposal of the setback rule required to initiate rulemaking.

FINANCIAL REPORT

Ms. Rath discussed the financial statement, attached as Exhibit 2.

BOND SUMMARY & INCIDENT REPORT

Mr. Halvorson presented the bond report and the incident report, attached as Exhibit 3 and 4.

Mr. Halvorson brought up Miocene Oil Company (Miocene). Miocene was ordered to forfeit its \$10,000 certificate of deposit at the February 11, 2016, public hearing. Upon collection of the bond, the bank assessed a \$96 early withdrawal fee against the funds sent to the Board.

The Board decided it was not worth the legal cost to try to recover the \$96. Mr. Durrett asked if the information is available to the Board to know when a CD is up for renewal. Chairman Nelson requested we get the bond information prior to the bond forfeiture. Mr. Stutz stated the Board could change the bond rules so the bond forfeiture nets its required value after any fees are taken out.

DOCKET SUMMARY

Mr. Halvorson discussed the docket summary, attached as Exhibit 5. There was no default docket.

GAS FLARING EXCEPTIONS

Mr. Jones discussed the gas flaring report, attached as Exhibit 6. There are eight wells flaring in excess of 100 mcf/day. Of these eight wells, there are only two flaring exception requests at this time due to pipeline/gas plant capacity issues. Mr. Jones recommended a six-month flaring exception for these two wells.

Motion: Mr. Efta made the motion to approve the recommendation. Mr. Durrett seconded and the motion passed unanimously.

PLUGGING AND RECLAMATION PROGRAM AND UPDATE

Mr. Halvorson reviewed Mr. Popp's plugging project summary, attached as Exhibit 7. The plugging and reclamation program involves wells with the highest priority to be plugged that is derived from wells with the greatest surface and well threat. There are seven wells on the list that would be likely candidates for plugging at this time.

Mr. Halvorson recommended including the State E-2 well on the approved plugging list since the well failed to maintain mechanical integrity and is required to be plugged under UIC program rules. This well, located in Section 36, T11N, R30E, Musselshell County, Montana, and is in core sage grouse area.

Motion: Mr. Efta made the motion to approve the recommendations made by staff. Mr. Gatzemeier seconded and the motion passed unanimously.

SPILL REPORTING VIOLATIONS / MONTANA OIL FIELD ACQUISITION I, LLC

Board staff notified Montana Oil Field Acquisition I, LLC (MOFA) of three unreported significant spill violations, attached as Exhibit 8. This is in violation of ARM 36.22.1103, which requires an operator to give immediate notice by telephone to staff and file a written report within five working days of the spill. The spills took place at the following wells:

- Montana A 2 well located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T28N, R5W, Pondera County, Montana
- Brownell 1 well located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1, T27N, 5W, Teton County, Montana
- Haugen 14-2 well located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T35N,3W, Toole County, Montana

Ms. Emmy Lambert, Vice President of MOFA, appeared on behalf of MOFA. Ms. Lambert sent a letter to the Board, attached as Exhibit 9, of its effort to resolve the issues. Being based in New Jersey, MOFA was unaware issues remained unresolved when communication between MOFA's pumper informed her otherwise.

Mr. Gizicki and Mr. Klotz recommended a daily fine if compliance is not achieved by the deadline. Discussion took place about the timeframe in which the work needs to be completed. Ms. Lambert agreed 45 days was reasonable to accomplish compliance, after which a \$250 fine per day will be instated until compliance is achieved for all three wells.

Motion: Mr. Durrett made the motion to approve the recommendation. Mr. Gatzemeier seconded and the motion passed unanimously.

Mr. Halvorson believes the Board should review all future unreported spills on an individual basis and not pursue an automatic penalty.

STAFF REPORTS

John Gizicki.

Mr. Gizicki received a landowner's complaint from Richard Propp, attached as Exhibit 10, regarding Cowry Enterprises, Ltd (Cowry) reclamation of the Lewis #1 well located in the SE $\frac{1}{4}$ of Section 12, T23N, R59E, Richland County, Montana.

Mr. Gizicki stated Cowry has done reclamation work since the landowner's letter was received. Attached, as Exhibit 11, is Cowry's reclamation project update.

Mr. Halvorson stated Cowry has a valid lease. Staff recommended giving Cowry time to finish reclamation.

Chairman Nelson requested staff to respond to the landowner, inform the landowner the Board reviewed the letter, and the Board will continue to watch Cowry's progress.

George Hudak

Mr. Hudak brought to the Board's attention Shadwell Resources Group, LLC (Shadwell). Shadwell operates two injection wells in Richland County and has another permitted injection well that has been partially completed, the Fort Gilbert 3 SWD well, located in the SW¼NE¼ of Section 29, T24N,59E Richland County, Montana. This well has been in unknown completion status for the past four years. Mr. Hudak requested the authority to docket Shadwell at the next hearing to either plug or complete the Fort Gilbert 3 SWD well.

Motion: Ms. Ames Nerud made the motion to approve the recommendation made by staff. Mr. Efta seconded and the motion passed unanimously.

Hinto Energy, LLC (Hinto) is the only operator who has not paid the annual UIC injection fee of \$200 and the \$100 late fee assessed for nonpayment for its Van Arsdale 14-35 well. The total due is \$300. Mr. Hudak recommended the Board schedule a show-cause hearing for Hinto at the August 11, 2016, public hearing.

Motion: Mr. Durrett made the motion to approve the recommendation made by staff. Mr. Efta seconded and the motion passed unanimously.

Rob Stutz

Mr. Stutz gave a litigation update. In the Carbon County Resource Council (CCRC) case, CCRC filed a reply brief with the Supreme Court and he is awaiting a decision. The Omimex case has been settled. In the Malsam case, J. Burns Brown Operating is moving forward with the lawsuit regarding the \$400 fine. The Hekkel case was dismissed from the court system. Both parties agree that the issued Board order is enforceable, and the Board does not have to be a part of the settlement.

Jim Halvorson

Mr. Halvorson provided the Board an update on the Giacometto complaint concerning runoff from a Denbury Resources well that was received at the April 6, 2016, business meeting. Staff reviewed Denbury's permit materials and found that Denbury deviated from the permit, but at the request of the landowner, Giacometto.

OTHER BUSINESS

No other business discussed.

PUBLIC HEARING

The Board reconvened on Thursday, June 16, 2016, at 8:00 a.m. at the Board's hearing room at its office at 2535 St. Johns Avenue in Billings, Montana, to hear the matters docketed for public hearing. As a result of the discussion, testimony, technical data, and other evidence placed before the Board, the following action was taken in each matter.

Docket No. 8-2016 – A motion was made by Mr. Durrett, seconded by Mr. Efta and unanimously passed, to approve the application of Fidelity Exploration & Production Co. as set forth in Board Order 8-2016.

Docket No. 9-2016 – A motion was made by Mr. Smith, seconded by Mr. Durrett and unanimously passed, to approve the application of MCR, LLC as set forth in Board Order 9-2016.

Docket No. 10-2016 – A motion was made by Mr. Smith, seconded by Mr. Durrett and unanimously passed, to approve the application of MCR, LLC as set forth in Board Order 10-2016.

Docket No. 11-2016 – A motion was made by Mr. Efta seconded by Mr. Smith and unanimously passed, to approve the application of MCR, LLC as set forth in Board Order 11-2016.

Docket No. 12-2016 – A motion was made by Mr. Smith, seconded by Mr. Durrett and unanimously passed, to approve the application of Mountain View Energy, Inc. as set forth in Board Order 12-2016.

Docket No. 13-2016 – A motion was made by Mr. Smith, seconded by Mr. Gatzemeier and unanimously passed, to approve the application of BTA Oil Producers, LLC as set forth in Board Order 13-2016.

Docket No. 14-2016 – A motion was made by Mr. Durrett, seconded by Mr. Smith and unanimously passed, to approve the application of Mertz Energy LLC as set forth in Board Order 14-2016.

Docket No. 15-2016 – A motion was made by Mr. Smith, seconded by Ms. Ames Nerud and unanimously passed, to approve the application of Whiting Oil and Gas Corporation as set forth in Board Order 15-2016.

Docket No. 16-2016 – A motion was made by Mr. Smith, seconded by Ms. Ames Nerud and unanimously passed, to approve the application of Whiting Oil and Gas Corporation as set forth in Board Order 16-2016.

Docket No. 17-2016 – A motion was made by Mr. Smith, seconded by Ms. Ames Nerud and unanimously passed, to approve the application of Whiting Oil and Gas Corporation as set forth in Board Order 17-2016.

Docket No. 18-2016 – A motion was made by Mr. Smith, seconded by Ms. Ames Nerud and unanimously passed, to approve the application of Whiting Oil and Gas Corporation as set forth in Board Order 18-2016.

Docket No. 19-2016 – A motion was made by Mr. Efta, seconded by Mr. Smith and unanimously passed, to approve the application of Whiting Oil and Gas Corporation as set forth in Board Order 19-2016.

Docket No. 20-2016 – A motion was made by Mr. Efta, seconded by Mr. Smith and unanimously passed, to approve the application of Whiting Oil and Gas Corporation as set forth in Board Order 20-2016.

Docket No. 21-2016 – A motion was made by Mr. Efta, seconded by Mr. Smith and unanimously passed, to approve the application of Whiting Oil and Gas Corporation as set forth in Board Order 21-2016.

Docket No. 22-2016 – A motion was made by Mr. Efta, seconded by Mr. Smith and unanimously passed, to approve the application of Whiting Oil and Gas Corporation as set forth in Board Order 22-2016.

Docket No. 23-2016 – A motion was made by Mr. Efta, seconded by Mr. Smith and unanimously passed, to approve the application of Whiting Oil and Gas Corporation as set forth in Board Order 23-2016.

Docket No. 338-2014 – A motion was made by Mr. Gatzemeier, seconded by Mr. Durrett and unanimously passed, to continue the show-cause hearing of K2 America Corporation to the June 2017 or the next public hearing thereafter. This is set forth in Board Order 24-2016.

Docket No. 24-2016 – A motion was made by Mr. Durrett, seconded by Mr. Efta and unanimously passed, to continue the show-cause hearing of Stealth Energy USA, Inc. to the August 11, 2016, public hearing. This is set forth in Board Order 25-2016.

Docket No. 25-2016 – The show-cause hearing of Hawley Oil Company was dismissed.

Docket No. 26-2016 – The show-cause hearing of Kykuit Resources, LLC was dismissed.

Docket No. 27-2016 – The show-cause hearing of Shadwell Resources Group, LLC was dismissed.

Docket No. 28-2016 – A motion was made by Mr. Efta, seconded by Ms. Ames Nerud and unanimously passed, to have Storm Cat Energy (USA) Operating Corporation appear at the August 11, 2016, public hearing and show-cause, if any it has, why additional penalties should not be assessed for failure to file delinquent production reports and appear at the June 16, 2016, public hearing. A \$1,000 fine was assessed for not appearing at the June 16, 2016, public hearing. This is set forth in Board Order 26-2016.

Docket No. 29-2016 – A motion was made by Mr. Durrett, seconded by Ms. Ames Nerud and unanimously passed, to have Stratex Oil and Gas, Inc. appear at the August 11, 2016, public hearing and show-cause, if any it has, why additional penalties should not be assessed for failure to file delinquent production reports and appear at the June 16, 2016, public hearing. A \$1,000 fine was assessed for not appearing at the June 16, 2016, public hearing. Additionally, Stratex Oil and Gas, Inc. was to immediately cease operation of its wells. This is set forth in Board Order 27-2016.

Docket No. 30-2016 – The show-cause hearing of Tyler Rockies Exploration LTD was dismissed.

NEXT MEETING

The next business meeting of the Board will be Wednesday, August 11, 2016, at 2:00 p.m. at the Board's hearing room at its office at 2535 St. Johns Avenue in Billings, Montana. The next regular public hearing will be Thursday, August 12, 2016, beginning at 8:00 a.m. at the Board's hearing room at its office at the 2535 St. Johns Avenue in Billings, Montana. The filing deadline for the August 12, 2016, public hearing is July 7, 2016.

BOARD OF OIL AND GAS CONSERVATION
OF THE STATE OF MONTANA

Linda Nelson, Chairman
Wayne Smith, Vice Chairman
Steven Durrett, Board Member
Ronald S. Efta, Board Member
Paul Gatzemeier, Board Member
Peggy Ames-Nerud, Board Member

ATTEST:

Jennifer Rath, Program Specialist