Package 2
Exhibit 1

Montana Supreme Court, Case Number DA 15-0613

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA
Case No. DA 15-0613

CARBON COUNTY RESOURCE COUNCIL a Montana Non-profit public benefit corporation, AND NORTHERN PLAINS RESOURCE COUNCIL, Montana Non-profit public benefit corporation,

Appellants and Plaintiffs

v.

Montana Board of Oil and Gas Conservation,

Appellee/Defendant.

ON APPEAL FROM THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY, HON. MARY J. KNISELY PRESIDING

APPELLANTS/PLAINTIFFS' NOTICE OF CONSTITUTIONAL CHALLENGE

APPEARANCES:

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Attorneys for Appellants/Plaintiffs

Rob Scheirer
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Assistant Montana Attorneys General
Agency Legal Services
P.O. Box 201440
Helena MT 59620

Attorneys for the Appellee/Defendant

NOTICE IS HEREBY GIVEN pursuant to Mont. R. Civ. P. § 25-1-502, on October 13, 2015 Carbon County Resource Council Inc., and Northern Plains Resource Council Inc., both Montana non-profit public benefit corporations, filed a Notice of Appeal to the Supreme Court of the State of Montana from the District Court's Order on Cross Motions for Summary Judgment dated September 3, 2015, granting summary judgment against the Appellants, and in favor of the Appellee, and dismissing the case, Cause No DV 14-00027. Notice of Entry of Judgment was served on Appellants September 16, 2015.

Appellants/Plaintiffs intend to challenge the constitutionality of Admin. R. Mont. §36.22.608 on the basis that the Rule violates Appellants/Plaintiffs' fundamental, interrelated rights to know and to participate in government decision-making processes under Mont. Const. Art. II, §§ 8-9.

Respectfully submitted this 15 day of October, 2015.

Jack R. Tuholske

Amanda R. Knuteson

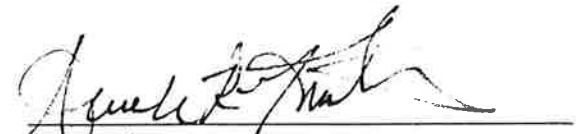
CERTIFICATE OF SERVICE

I hereby certify that on October 15 2015, I have filed a true and accurate copy of the foregoing NOTICE OF CONSTITUTIONAL CHALLENGE with the Clerk of the Montana Supreme Court and that I have served true and accurate copies of the foregoing NOTICE OF CONSTITUTIONAL CHALLENGE upon the Montana Attorney General's Office, each attorney of record and each party not represented by an attorney in the above-referenced District Court action, as follows:

Tim Fox, Attorney General
Office of the Attorney General
Justice Building, Third Floor
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

Rob Scheirer
Rob Stutz
Assistant Montana Attorneys General
Agency Legal Services
P.O. Box 201440
Helena MT 59620

Jan Barry, Court Reporter
P.O. Box 35028
Billings MT 59107



Amanda R. Knuteson

Package 2
Exhibit 2

Notice of Hearing
Proposed Rule for Expanded Notice of Drilling Operations

Montana Administrative Register Notice 36-22-193 **No. 17**
09/02/2016

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BEFORE THE BOARD OF OIL AND GAS CONSERVATION AND
THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to notification of application for permit to drill	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

To: All Concerned Persons

1. On October 26, 2016, at 2:00 p.m., the Department of Natural Resources and Conservation and the Board of Oil and Gas Conservation will hold a public hearing at 2535 St. Johns Avenue, Billings, Montana, to consider the proposed adoption of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than September 16, 2016, to advise us of the nature of the accommodation that you need. Please contact Jim Halvorson, Montana Board of Oil and Gas Conservation, 2535 St. Johns Avenue, Billings, MT 59102; telephone (406) 656-0040; fax (406) 655-6015; e-mail jhalvorson@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I NOTIFICATION OF APPLICATION FOR PERMIT TO DRILL

(1) For the purposes of this rule, "occupied structure" means any building suitable for human occupancy or for carrying on business, including a residence, school, office, or hospital, but not including outbuildings such as, but not limited to sheds, barns, or garages.

(2) An applicant for a permit to drill a new well under ARM 36.22.601 must provide reasonable notice of the intent to file an application to all owners of record of an occupied structure within 1,320 feet of the proposed well.

(a) The notice must advise each owner that the application is eligible for administrative approval unless a demand for an opportunity to be heard is filed with the board within 14 days of an owner having received the notice.

(b) The applicant must file proof of the notice required by this rule with its application to the board.

(c) The owner may waive, in writing, their opportunity to request a hearing any time within the 14-day period. If waived, the application will be immediately eligible for administrative approval.

(3) The staff of the board shall refer an application for permit to drill to the board for notice and public hearing at the next regularly scheduled hearing if an owner of an occupied structure, as to any application for permit to drill for which the owner received notice, files a demand for an opportunity to be heard concerning the application in the form set forth in (5).

(4) In those instances where such requests for a permit to drill have been the subject of notice and public hearing, the board shall, after such hearing, either:

(a) enter its order granting such permit under such conditions as the board shall find proper and necessary; or

(b) enter its order denying the application for the permit.

(5) A demand for opportunity to be heard concerning an application for permit to drill for which notice is required must:

(a) be in writing; and

(b) set forth the name, address, and telephone number of each party making the demand, and demonstrate standing to demand an opportunity to be heard by providing a notarized, written statement declaring ownership of the occupied structure within 1,320 feet from the proposed well, which statement must include the owner's signature, the date of signature, and the declaration "I declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true and correct"; and

(c) set forth the specific reasons why the party requests a hearing regarding the issuance of the proposed drilling permit; and

(d) be received by the board no later than 14 days after the date the notice is received by the owner. Service of such demand may be made on the board personally, by mail, by e-mail, or by FAX transmission; and

(e) be simultaneously served upon the applicant for the permit by written copy mailed or FAX transmitted to the address or number set forth in the published notice. A certificate of such service must accompany the demand as filed with the board.

AUTH: 82-11-111, MCA
IMP: 82-11-122, 82-11-127, 82-11-134, 82-11-141, MCA

REASON: The proposed new rule would require reasonable notice of proposed drilling operations to owners of record of occupied structures. The proposed new rule also would provide a process for those owners to demand a board hearing on the application for a permit to drill. Both the notice requirement and the opportunity for a hearing are proposed in response to public inquiries about the board establishing setback requirements for wells. After consideration of public comment during several board meetings, the board proposes this notification rule, not a specific setback rule. This proposed rule would allow the board to consider establishing conditions for issuance of a drilling permit near an occupied structure.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing to Jim Halvorson, Montana Board of Oil and Gas Conservation, 2535 St. Johns Avenue, Billings, MT 59102; telephone (406) 656-0040; fax (406) 655-6015; or e-mail jhalvorson@mt.gov, and must be received no later than 5:00 p.m. on October 26, 2016.

5. Jim Halvorson, Board of Oil and Gas Conservation, has been designated to preside over and conduct the public hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to KarenDe Herman, P.O. Box 201601, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-5258; e-mail KDHerman@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the department's web site at http://www.dnrc.mt.gov. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered.

Package 2
Exhibit 3

Federal Defend Trade Secrets Act of 2016

PUBLIC LAW 114–153—MAY 11, 2016

DEFEND TRADE SECRETS ACT OF 2016

Public Law 114–153
114th Congress

An Act

May 11, 2016
[S. 1890]

To amend chapter 90 of title 18, United States Code, to provide Federal jurisdiction for the theft of trade secrets, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Defend Trade Secrets Act of 2016.
18 USC 1 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Defend Trade Secrets Act of 2016".

SEC. 2. FEDERAL JURISDICTION FOR THEFT OF TRADE SECRETS.

(a) IN GENERAL.—Section 1836 of title 18, United States Code, is amended by striking subsection (b) and inserting the following:

"(b) PRIVATE CIVIL ACTIONS.—

"(1) IN GENERAL.—An owner of a trade secret that is misappropriated may bring a civil action under this subsection if the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce.

"(2) CIVIL SEIZURE.—

"(A) IN GENERAL.—

"(i) APPLICATION.—Based on an affidavit or verified complaint satisfying the requirements of this paragraph, the court may, upon ex parte application but only in extraordinary circumstances, issue an order providing for the seizure of property necessary to prevent the propagation or dissemination of the trade secret that is the subject of the action.

"(ii) REQUIREMENTS FOR ISSUING ORDER.—The court may not grant an application under clause (i) unless the court finds that it clearly appears from specific facts that—

"(I) an order issued pursuant to Rule 65 of the Federal Rules of Civil Procedure or another form of equitable relief would be inadequate to achieve the purpose of this paragraph because the party to which the order would be issued would evade, avoid, or otherwise not comply with such an order;

"(II) an immediate and irreparable injury will occur if such seizure is not ordered;

"(III) the harm to the applicant of denying the application outweighs the harm to the legitimate interests of the person against whom seizure would be ordered of granting the application and

substantially outweighs the harm to any third parties who may be harmed by such seizure;

"(IV) the applicant is likely to succeed in showing that—

"(aa) the information is a trade secret; and

"(bb) the person against whom seizure would be ordered—

"(AA) misappropriated the trade secret of the applicant by improper means; or

"(BB) conspired to use improper means to misappropriate the trade secret of the applicant;

"(V) the person against whom seizure would be ordered has actual possession of—

"(aa) the trade secret; and

"(bb) any property to be seized;

"(VI) the application describes with reasonable particularity the matter to be seized and, to the extent reasonable under the circumstances, identifies the location where the matter is to be seized;

"(VII) the person against whom seizure would be ordered, or persons acting in concert with such person, would destroy, move, hide, or otherwise make such matter inaccessible to the court, if the applicant were to proceed on notice to such person; and

"(VIII) the applicant has not publicized the requested seizure.

"(B) ELEMENTS OF ORDER.—If an order is issued under subparagraph (A), it shall—

"(i) set forth findings of fact and conclusions of law required for the order;

"(ii) provide for the narrowest seizure of property necessary to achieve the purpose of this paragraph and direct that the seizure be conducted in a manner that minimizes any interruption of the business operations of third parties and, to the extent possible, does not interrupt the legitimate business operations of the person accused of misappropriating the trade secret;

"(iii)(I) be accompanied by an order protecting the seized property from disclosure by prohibiting access by the applicant or the person against whom the order is directed, and prohibiting any copies, in whole or in part, of the seized property, to prevent undue damage to the party against whom the order has issued or others, until such parties have an opportunity to be heard in court; and

"(II) provide that if access is granted by the court to the applicant or the person against whom the order is directed, the access shall be consistent with subparagraph (D);

"(iv) provide guidance to the law enforcement officials executing the seizure that clearly delineates the scope of the authority of the officials, including—

"(I) the hours during which the seizure may be executed; and

"(II) whether force may be used to access locked areas;

Deadline. Notification.

"(v) set a date for a hearing described in subparagraph (F) at the earliest possible time, and not later than 7 days after the order has issued, unless the party against whom the order is directed and others harmed by the order consent to another date for the hearing, except that a party against whom the order has issued or any person harmed by the order may move the court at any time to dissolve or modify the order after giving notice to the applicant who obtained the order; and

"(vi) require the person obtaining the order to provide the security determined adequate by the court for the payment of the damages that any person may be entitled to recover as a result of a wrongful or excessive seizure or wrongful or excessive attempted seizure under this paragraph.

Courts.

"(C) PROTECTION FROM PUBLICITY.—The court shall take appropriate action to protect the person against whom an order under this paragraph is directed from publicity, by or at the behest of the person obtaining the order, about such order and any seizure under such order.

"(D) MATERIALS IN CUSTODY OF COURT.—

"(i) IN GENERAL.—Any materials seized under this paragraph shall be taken into the custody of the court. The court shall secure the seized material from physical and electronic access during the seizure and while in the custody of the court.

"(ii) STORAGE MEDIUM.—If the seized material includes a storage medium, or if the seized material is stored on a storage medium, the court shall prohibit the medium from being connected to a network or the Internet without the consent of both parties, until the hearing required under subparagraph (B)(v) and described in subparagraph (F).

"(iii) PROTECTION OF CONFIDENTIALITY.—The court shall take appropriate measures to protect the confidentiality of seized materials that are unrelated to the trade secret information ordered seized pursuant to this paragraph unless the person against whom the order is entered consents to disclosure of the material.

"(iv) APPOINTMENT OF SPECIAL MASTER.—The court may appoint a special master to locate and isolate all misappropriated trade secret information and to facilitate the return of unrelated property and data to the person from whom the property was seized. The special master appointed by the court shall agree to be bound by a non-disclosure agreement approved by the court.

"(E) SERVICE OF ORDER.—The court shall order that service of a copy of the order under this paragraph, and the submissions of the applicant to obtain the order, shall be made by a Federal law enforcement officer who, upon

making service, shall carry out the seizure under the order. The court may allow State or local law enforcement officials to participate, but may not permit the applicant or any agent of the applicant to participate in the seizure. At the request of law enforcement officials, the court may allow a technical expert who is unaffiliated with the applicant and who is bound by a court-approved non-disclosure agreement to participate in the seizure if the court determines that the participation of the expert will aid the efficient execution of and minimize the burden of the seizure. Determination.

"(F) SEIZURE HEARING.—

"(i) DATE.—A court that issues a seizure order shall hold a hearing on the date set by the court under subparagraph (B)(v).

"(ii) BURDEN OF PROOF.—At a hearing held under this subparagraph, the party who obtained the order under subparagraph (A) shall have the burden to prove the facts supporting the findings of fact and conclusions of law necessary to support the order. If the party fails to meet that burden, the seizure order shall be dissolved or modified appropriately.

"(iii) DISSOLUTION OR MODIFICATION OF ORDER.—A party against whom the order has been issued or any person harmed by the order may move the court at any time to dissolve or modify the order after giving notice to the party who obtained the order.

"(iv) DISCOVERY TIME LIMITS.—The court may make such orders modifying the time limits for discovery under the Federal Rules of Civil Procedure as may be necessary to prevent the frustration of the purposes of a hearing under this subparagraph.

"(G) ACTION FOR DAMAGE CAUSED BY WRONGFUL SEIZURE.—A person who suffers damage by reason of a wrongful or excessive seizure under this paragraph has a cause of action against the applicant for the order under which such seizure was made, and shall be entitled to the same relief as is provided under section 34(d)(11) of the Trademark Act of 1946 (15 U.S.C. 1116(d)(11)). The security posted with the court under subparagraph (B)(vi) shall not limit the recovery of third parties for damages.

"(H) MOTION FOR ENCRYPTION.—A party or a person who claims to have an interest in the subject matter seized may make a motion at any time, which may be heard ex parte, to encrypt any material seized or to be seized under this paragraph that is stored on a storage medium. The motion shall include, when possible, the desired encryption method.

"(3) REMEDIES.—In a civil action brought under this subsection with respect to the misappropriation of a trade secret, a court may—

"(A) grant an injunction—

"(i) to prevent any actual or threatened misappropriation described in paragraph (1) on such terms as the court deems reasonable, provided the order does not—

"(I) prevent a person from entering into an employment relationship, and that conditions placed on such employment shall be based on evidence of threatened misappropriation and not merely on the information the person knows; or

"(II) otherwise conflict with an applicable State law prohibiting restraints on the practice of a lawful profession, trade, or business;

"(ii) if determined appropriate by the court, requiring affirmative actions to be taken to protect the trade secret; and

"(iii) in exceptional circumstances that render an injunction inequitable, that conditions future use of the trade secret upon payment of a reasonable royalty for no longer than the period of time for which such use could have been prohibited;

"(B) award—

"(i)(I) damages for actual loss caused by the misappropriation of the trade secret; and

"(II) damages for any unjust enrichment caused by the misappropriation of the trade secret that is not addressed in computing damages for actual loss; or

"(ii) in lieu of damages measured by any other methods, the damages caused by the misappropriation measured by imposition of liability for a reasonable royalty for the misappropriator's unauthorized disclosure or use of the trade secret;

"(C) if the trade secret is willfully and maliciously misappropriated, award exemplary damages in an amount not more than 2 times the amount of the damages awarded under subparagraph (B); and

"(D) if a claim of the misappropriation is made in bad faith, which may be established by circumstantial evidence, a motion to terminate an injunction is made or opposed in bad faith, or the trade secret was willfully and maliciously misappropriated, award reasonable attorney's fees to the prevailing party.

"(c) JURISDICTION.—The district courts of the United States shall have original jurisdiction of civil actions brought under this section.

"(d) PERIOD OF LIMITATIONS.—A civil action under subsection (b) may not be commenced later than 3 years after the date on which the misappropriation with respect to which the action would relate is discovered or by the exercise of reasonable diligence should have been discovered. For purposes of this subsection, a continuing misappropriation constitutes a single claim of misappropriation.".

(b) DEFINITIONS.—Section 1839 of title 18, United States Code, is amended—

(1) in paragraph (3)—

(A) in subparagraph (B), by striking "the public" and inserting "another person who can obtain economic value from the disclosure or use of the information"; and

(B) by striking "and" at the end;

(2) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(5) the term 'misappropriation' means—

"(A) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

"(B) disclosure or use of a trade secret of another without express or implied consent by a person who—

"(i) used improper means to acquire knowledge of the trade secret;

"(ii) at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was—

"(I) derived from or through a person who had used improper means to acquire the trade secret;

"(II) acquired under circumstances giving rise to a duty to maintain the secrecy of the trade secret or limit the use of the trade secret; or

"(III) derived from or through a person who owed a duty to the person seeking relief to maintain the secrecy of the trade secret or limit the use of the trade secret; or

"(iii) before a material change of the position of the person, knew or had reason to know that—

"(I) the trade secret was a trade secret; and

"(II) knowledge of the trade secret had been acquired by accident or mistake;

"(6) the term 'improper means'—

"(A) includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means; and

"(B) does not include reverse engineering, independent derivation, or any other lawful means of acquisition; and

"(7) the term 'Trademark Act of 1946' means the Act entitled 'An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes, approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the "Trademark Act of 1946" or the "Lanham Act")'.".

(c) EXCEPTIONS TO PROHIBITION.—Section 1833 of title 18, United States Code, is amended, in the matter preceding paragraph (1), by inserting "or create a private right of action for" after "prohibit".

(d) CONFORMING AMENDMENTS.—

(1) The section heading for section 1836 of title 18, United States Code, is amended to read as follows:

"§ 1836. Civil proceedings".

(2) The table of sections for chapter 90 of title 18, United States Code, is amended by striking the item relating to section 1836 and inserting the following: 18 USC 1831 prec.

"1836. Civil proceedings.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any misappropriation of a trade secret (as defined in section 1839 of title 18, United States Code, as Applicability. 18 USC 1833 note.

amended by this section) for which any act occurs on or after the date of the enactment of this Act.

18 USC 1833 note.

(f) RULE OF CONSTRUCTION.—Nothing in the amendments made by this section shall be construed to modify the rule of construction under section 1838 of title 18, United States Code, or to preempt any other provision of law.

18 USC 1833 note.

(g) APPLICABILITY TO OTHER LAWS.—This section and the amendments made by this section shall not be construed to be a law pertaining to intellectual property for purposes of any other Act of Congress.

SEC. 3. TRADE SECRET THEFT ENFORCEMENT.

(a) IN GENERAL.—Chapter 90 of title 18, United States Code, is amended—

(1) in section 1832(b), by striking "$5,000,000" and inserting "the greater of $5,000,000 or 3 times the value of the stolen trade secret to the organization, including expenses for research and design and other costs of reproducing the trade secret that the organization has thereby avoided"; and

(2) in section 1835—

(A) by striking "In any prosecution" and inserting the following:

"(a) IN GENERAL.—In any prosecution"; and

(B) by adding at the end the following:

"(b) RIGHTS OF TRADE SECRET OWNERS.—The court may not authorize or direct the disclosure of any information the owner asserts to be a trade secret unless the court allows the owner the opportunity to file a submission under seal that describes the interest of the owner in keeping the information confidential. No submission under seal made under this subsection may be used in a prosecution under this chapter for any purpose other than those set forth in this section, or otherwise required by law. The provision of information relating to a trade secret to the United States or the court in connection with a prosecution under this chapter shall not constitute a waiver of trade secret protection, and the disclosure of information relating to a trade secret in connection with a prosecution under this chapter shall not constitute a waiver of trade secret protection unless the trade secret owner expressly consents to such waiver.".

(b) RICO PREDICATE OFFENSES.—Section 1961(1) of title 18, United States Code, is amended by inserting "sections 1831 and 1832 (relating to economic espionage and theft of trade secrets)," before "section 1951".

18 USC 1832 note.

SEC. 4. REPORT ON THEFT OF TRADE SECRETS OCCURRING ABROAD.

(a) DEFINITIONS.—In this section:

(1) DIRECTOR.—The term "Director" means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

(2) FOREIGN INSTRUMENTALITY, ETC.—The terms "foreign instrumentality", "foreign agent", and "trade secret" have the meanings given those terms in section 1839 of title 18, United States Code.

(3) STATE.—The term "State" includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(4) UNITED STATES COMPANY.—The term "United States company" means an organization organized under the laws of the United States or a State or political subdivision thereof.

(b) REPORTS.—Not later than 1 year after the date of enactment of this Act, and biannually thereafter, the Attorney General, in consultation with the Intellectual Property Enforcement Coordinator, the Director, and the heads of other appropriate agencies, shall submit to the Committees on the Judiciary of the House of Representatives and the Senate, and make publicly available on the Web site of the Department of Justice and disseminate to the public through such other means as the Attorney General may identify, a report on the following:

Consultation. Public information. Web posting.

(1) The scope and breadth of the theft of the trade secrets of United States companies occurring outside of the United States.

(2) The extent to which theft of trade secrets occurring outside of the United States is sponsored by foreign governments, foreign instrumentalities, or foreign agents.

(3) The threat posed by theft of trade secrets occurring outside of the United States.

(4) The ability and limitations of trade secret owners to prevent the misappropriation of trade secrets outside of the United States, to enforce any judgment against foreign entities for theft of trade secrets, and to prevent imports based on theft of trade secrets overseas.

(5) A breakdown of the trade secret protections afforded United States companies by each country that is a trading partner of the United States and enforcement efforts available and undertaken in each such country, including a list identifying specific countries where trade secret theft, laws, or enforcement is a significant problem for United States companies.

(6) Instances of the Federal Government working with foreign countries to investigate, arrest, and prosecute entities and individuals involved in the theft of trade secrets outside of the United States.

(7) Specific progress made under trade agreements and treaties, including any new remedies enacted by foreign countries, to protect against theft of trade secrets of United States companies outside of the United States.

(8) Recommendations of legislative and executive branch actions that may be undertaken to— Recommendations.

(A) reduce the threat of and economic impact caused by the theft of the trade secrets of United States companies occurring outside of the United States;

(B) educate United States companies regarding the threats to their trade secrets when taken outside of the United States;

(C) provide assistance to United States companies to reduce the risk of loss of their trade secrets when taken outside of the United States; and

(D) provide a mechanism for United States companies to confidentially or anonymously report the theft of trade secrets occurring outside of the United States.

SEC. 5. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) trade secret theft occurs in the United States and around the world;

(2) trade secret theft, wherever it occurs, harms the companies that own the trade secrets and the employees of the companies;

(3) chapter 90 of title 18, United States Code (commonly known as the "Economic Espionage Act of 1996"), applies broadly to protect trade secrets from theft; and

(4) it is important when seizing information to balance the need to prevent or remedy misappropriation with the need to avoid interrupting the—

(A) business of third parties; and

(B) legitimate interests of the party accused of wrongdoing.

28 USC 620 note.

SEC. 6. BEST PRACTICES.

Deadline.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Federal Judicial Center, using existing resources, shall develop recommended best practices for—

(1) the seizure of information and media storing the information; and

(2) the securing of the information and media once seized.

(b) UPDATES.—The Federal Judicial Center shall update the recommended best practices developed under subsection (a) from time to time.

Records.

(c) CONGRESSIONAL SUBMISSIONS.—The Federal Judicial Center shall provide a copy of the recommendations developed under subsection (a), and any updates made under subsection (b), to the—

(1) Committee on the Judiciary of the Senate; and

(2) Committee on the Judiciary of the House of Representatives.

SEC. 7. IMMUNITY FROM LIABILITY FOR CONFIDENTIAL DISCLOSURE OF A TRADE SECRET TO THE GOVERNMENT OR IN A COURT FILING.

(a) AMENDMENT.—Section 1833 of title 18, United States Code, is amended—

(1) by striking "This chapter" and inserting "(a) IN GENERAL.—This chapter";

(2) in subsection (a)(2), as designated by paragraph (1), by striking "the reporting of a suspected violation of law to any governmental entity of the United States, a State, or a political subdivision of a State, if such entity has lawful authority with respect to that violation" and inserting "the disclosure of a trade secret in accordance with subsection (b)"; and

(3) by adding at the end the following:

"(b) IMMUNITY FROM LIABILITY FOR CONFIDENTIAL DISCLOSURE OF A TRADE SECRET TO THE GOVERNMENT OR IN A COURT FILING.—

"(1) IMMUNITY.—An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that—

"(A) is made—

"(i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and

"(ii) solely for the purpose of reporting or investigating a suspected violation of law; or

"(B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

"(2) USE OF TRADE SECRET INFORMATION IN ANTI-RETALIATION LAWSUIT.—An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual—

"(A) files any document containing the trade secret under seal; and

"(B) does not disclose the trade secret, except pursuant to court order.

"(3) NOTICE.—

"(A) IN GENERAL.—An employer shall provide notice of the immunity set forth in this subsection in any contract or agreement with an employee that governs the use of a trade secret or other confidential information. Contracts.

"(B) POLICY DOCUMENT.—An employer shall be considered to be in compliance with the notice requirement in subparagraph (A) if the employer provides a cross-reference to a policy document provided to the employee that sets forth the employer's reporting policy for a suspected violation of law.

"(C) NON-COMPLIANCE.—If an employer does not comply with the notice requirement in subparagraph (A), the employer may not be awarded exemplary damages or attorney fees under subparagraph (C) or (D) of section 1836(b)(3) in an action against an employee to whom notice was not provided.

"(D) APPLICABILITY.—This paragraph shall apply to contracts and agreements that are entered into or updated after the date of enactment of this subsection. Contracts.

"(4) EMPLOYEE DEFINED.—For purposes of this subsection, the term 'employee' includes any individual performing work as a contractor or consultant for an employer.

"(5) RULE OF CONSTRUCTION.—Except as expressly provided for under this subsection, nothing in this subsection shall be construed to authorize, or limit liability for, an act that is otherwise prohibited by law, such as the unlawful access of material by unauthorized means.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 1838 of title 18, United States Code, is amended by striking "This

Package 2
Exhibit 4

Montana Trade Secrets Statutes, §§ 30-14-401, MCA, et. seq.
and § 82-11-117, MCA

Montana Code Annotated 2015

30-14-401. Short title. This part may be cited as the "Uniform Trade Secrets Act".

History: En. Sec. 1, Ch. 104, L. 1985.

Montana Code Annotated 2015

30-14-402. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

(2) "Misappropriation" means:

(a) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(b) disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the trade secret;

(ii) at the time of disclosure or use, knew or had reason to know that the person's knowledge of the trade secret was:

(A) derived from or through a person who had used improper means to acquire it;

(B) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(C) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) before a material change of the person's position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(3) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(4) "Trade secret" means information or computer software, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(a) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

History: En. Sec. 2, Ch. 104, L. 1985; amd. Sec. 963, Ch. 56, L. 2009.

Montana Code Annotated 2015

30-14-403. Injunctive relief -- royalty. (1) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction must be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include but are not limited to a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

(3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

History: En. Sec. 3, Ch. 104, L. 1985; amd. Sec. 1, Ch. 269, L. 1995.

Montana Code Annotated 2015

30-14-404. Damages. (1) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages may include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized use of a trade secret.

(2) If willful and malicious misappropriation exists, the court may award exemplary damages.

History: En. Sec. 4, Ch. 104, L. 1985; amd. Sec. 2, Ch. 269, L. 1995.

Montana Code Annotated 2015

30-14-405. Costs and attorney fees. If a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or willful and malicious misappropriation exists, the court may award reasonable costs and attorney fees to the prevailing party.

History: En. Sec. 5, Ch. 104, L. 1985.

Montana Code Annotated 2015

30-14-406. Preservation of secret. In an action under this part, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

History: En. Sec. 6, Ch. 104, L. 1985.

Montana Code Annotated 2015

30-14-407. Statute of limitations. An action for misappropriation must be brought within 3 years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

History: En. Sec. 7, Ch. 104, L. 1985.

Montana Code Annotated 2015

30-14-408. Effect on other law. (1) Except as provided in subsection (2), this part displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret.

(2) This part does not affect:

(a) contractual remedies, whether or not based upon misappropriation of a trade secret;

(b) other civil remedies that are not based upon misappropriation of a trade secret; or

(c) criminal remedies, whether or not based upon misappropriation of a trade secret.

History: En. Sec. 8, Ch. 104, L. 1985; amd. Sec. 3, Ch. 269, L. 1995.

Montana Code Annotated 2015

82-11-117. Confidentiality of records. (1) Any information that is furnished to the board or the board's staff or that is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by the board.

(2) If an owner or operator disagrees with a determination by the board that certain material will not be maintained as confidential, the owner or operator may file a declaratory judgment action in a court of competent jurisdiction to establish the existence of a trade secret if the owner or operator wishes the information to enjoy confidential status. The department must be served in the action and may intervene as a party.

(3) Any information not intended to be public when submitted to the board or the board's staff must be submitted in writing and clearly marked as confidential.

(4) Data describing physical and chemical characteristics of a liquid, gaseous, solid, or other substance injected or discharged into state waters may not be considered confidential.

(5) The board may use any information in compiling or publishing analyses or summaries relating to water pollution if the analyses or summaries do not identify the owner or operator or reveal any information that is otherwise made confidential by this section.

History: En. Sec. 3, Ch. 503, L. 1987; amd. Sec. 2741, Ch. 56, L. 2009.

Package 2
Exhibit 5

Notice of Adoption and Response to Comments
Current Well Stimulation Rule
Effective August 27, 2011

BEFORE THE BOARD OF OIL AND GAS CONSERVATION AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through V regarding oil and gas well stimulation	)))	NOTICE OF ADOPTION

To: All Concerned Persons

1. On May 26, 2011, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-157 regarding a notice of public hearing on the proposed adoption of the above-stated rules at page 819 of the 2011 Montana Administrative Register, Issue No. 10.

2. The department has adopted New Rules I (36.22.608), II (36.22.1015), III (36.22.1016), IV (36.22.1106), and V (36.22.1010) as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (36.22.608) WELL STIMULATION ACTIVITIES COVERED BY DRILLING PERMIT

(1) remains as proposed.

(2) For wildcat or exploratory wells or when the operator is unable to determine that hydraulic fracturing, acidizing, or other chemical treatment will be done to complete the well, the operator must submit a notice of intent to stimulate or chemically treat a well on Form No. 2 ~~obtain prior written approval of such activities from the board's staff at any time~~ prior to commencing such activities provided that:

(a) the written information describing the fracturing, acidizing, or other chemical treatment must be provided to the board's staff at least ~~24~~ 48 hours before commencement of well stimulation activities.

(3) and (3)(a) remain as proposed.

(b) the trade name or generic name of the principle components or chemicals;

(c) the estimated amount or volume of the principle components such as viscosifiers, acids, or gelling agents;

(d) the estimated weight or volume of inert substances such as proppants and other substances injected to aid in well cleanup, either for each stage of a multistage job or for the total job; and

(e) the ~~anticipated surface treating pressure and the~~ maximum anticipated treating pressure or a written description of the well construction specifications which demonstrate that the well is appropriately constructed for the proposed fracture stimulation.

(4) In lieu of a well specific design the ~~The~~ owner, operator, or service company may provide:

(i) and (ii) remain as proposed.

NEW RULE II (36.22.1015) DISCLOSURE OF WELL STIMULATION FLUIDS (1) The owner or operator of a well shall, upon completion of the well, provide the board, on its Form No. 4 for a new well or Form No. 2 for an existing well:

(a) through (c) remain as proposed.

(2) For hydraulic fracturing treatments the description of the amount and type of material used must include:

(a) remains as proposed.

(b) the chemical ~~compound~~ ingredient name and the Chemical Abstracts Service (CAS) Registry number, as published by the Chemical Abstracts Service, a division of the American Chemical Society (www.cas.org), for each ~~constituent~~ ingredient of the additive used. The rate or concentration for each additive shall be provided in appropriate measurement units (pounds per gallon, gallons per thousand gallons, percent by weight or percent by volume, or parts per million).

(3) To comply with the requirements of this section, the ~~The~~ owner or operator may submit:

(a) the service contractor's job log;~~,~~

(b) the service company's final treatment report (without any cost/pricing data);~~, or~~

(c) an owner or operator's ~~representative's~~ well treatment job log; or

(d) other report providing the above required information.

(4) The administrator may waive all or a portion of the requirements in (2) or (3) of this rule if:

(a) the owner or operator demonstrates that it has ~~provided~~ posted the required information to the Interstate Oil and Gas Compact Commission/Groundwater Protection Council hydraulic fracturing web site (FracFocus.org); or

(b) a successor web site to FracFocus.org or other publically accessible Internet information repositories that the board may choose to accept ~~can be accessed by the public~~.

NEW RULE III (36.22.1016) PROPRIETARY CHEMICALS AND TRADE SECRETS (1) As provided in 30-14-402 ~~82-11-117~~, MCA, where the ~~use~~ formula, pattern, compilation, program, device, method, technique, process, or composition of a chemical product is unique to the owner or operator or service contractor and would, if disclosed, reveal methods or processes entitled to protection as trade secrets, such a chemical need not be disclosed to the board or staff. The owner, operator, or service contractor may identify the trade secret chemical or product by trade name, inventory name, chemical family name, or other unique name and the quantity of such constituent(s) used.

(2) If necessary to respond to a spill or release of a trade secret product the owner, operator, or service contractor must provide to the board or staff, upon request, a list of the chemical constituents contained in a trade secret product. The administrator may request information be provided orally or be provided directly to a laboratory or other third party performing analysis for the board. Board members, board staff, and any third parties receiving trade secret information on behalf of the board may be required to execute a nondisclosure agreement.

(3) and (4) remain as proposed.

NEW RULE IV (36.22.1106) SAFETY AND WELL CONTROL REQUIREMENTS – HYDRAULIC FRACTURING (1) New and existing wells which will be stimulated by

hydraulic fracturing must demonstrate suitable and safe mechanical ~~integrity~~ configuration for the stimulation treatment proposed.

(2) Prior to initiation of fracture stimulation, the operator must evaluate the well. If the operator proposes hydraulic fracturing through, production casing or through intermediate casing, the casing must be tested to the maximum anticipated treating pressure ~~in the unsupported (uncemented) portion of the casing exposed to treating pressure~~. If the casing fails the pressure test it must be repaired or the operator must use a temporary casing string (fracturing string).

(a) If the operator proposes hydraulic fracturing though a ~~A~~ fracturing string, it must be stung into a liner or run on a packer set not less than 100 feet below the cement top of the production or intermediate casing and must be tested to not less than maximum anticipated treating pressure minus the annulus pressure applied between the fracturing string and the production or immediate casing.

(3) A casing pressure test will be considered successful if the pressure applied has been held for ~~15~~ 30 minutes with no more than ~~five~~ ten percent pressure loss.

(4) A pressure relief valve(s) must be installed on the treating lines between pumps and wellhead to limit the line pressure to the test pressure determined above; the well must be equipped with a remotely controlled shut-in device unless waived by the board administrator should the factual situation warrant.

(5) remains as proposed.

NEW RULE V (36.22.1010) WORK-OVER, RECOMPLETION, WELL STIMULATION – NOTICE AND APPROVAL

(1) remains as proposed.

(2) Well repairs, including tubing, pump, sucker rod replacement or repair, repairs and reconfiguration of well equipment which do not substantially change the mechanical configuration of the well bore or casing, and hot oil treatments do not require prior approval or a subsequent report. Acid and chemical treatments of less than ~~5000~~ 10,000 gallons~~, hot oil treatments,~~ and similar treatments intended to clean perforations, remove scale or paraffin, or remedy near-well bore damage do not require prior approval, but do require a subsequent report of the actual work performed submitted on Form No. 2 within 30 days following completion of the work.

3. The department has thoroughly considered the comments and testimony received. The comments and responses have been divided into a general comment/response section and a rule specific comment/response section. The following is a summary of the public comments received and the department's response to those comments:

GENERAL COMMENTS/RESPONSES

GENERAL COMMENT 1: Disclosure

A number of commenters support chemical disclosure, "full disclosure," or similar expressions of support for public availability of the composition of fracturing fluids. Northern Plains Resource Council (NPRC) stated that they supported disclosure of all chemicals used in oil and gas drilling, not just those used in the hydraulic fracturing process. Some commenters suggest that the board should ban hydraulic fracturing or not permit its use altogether.

GENERAL RESPONSE 1: Disclosure

The rules as drafted do require all of the components used in hydraulic fracturing, including fluids which are nonhazardous, to be listed. However, NPRC's request that all chemicals used in drilling be identified is beyond the scope of the current rulingmaking, which is specific to hydraulic fracturing and similar treatments of drilled and cased wells.

Hundreds of Montana oil and gas wells have been hydraulically fractured over the past sixty years. Over 700 modern horizontal oil wells have been fracture stimulated using current techniques without any incident of groundwater contamination either observed by the board or reported to it by any other regulatory agency in Montana. The practice of hydraulic fracturing allows recovery of oil and gas resources which could not be recovered economically in any other way. To prohibit fracturing as a completion practice is to prohibit drilling. That is an administrative action the board does not have the authority to perform, and which is not justified based upon Montana experiences with the technique.

GENERAL COMMENT 2: Notice and Baseline Water Sampling

Many commenters suggested that notice of hydraulic fracturing be given to landowners in advance of the well treatment to allow background water samples to be taken from an area within a specific radius of the well (some commenters suggested one or two miles, and one commenter suggested five miles).

Some commenters also tied chemical disclosure to background samples, indicating knowledge of the fracturing chemicals would be needed to perform the analysis. One commenter suggested notice be given one year in advance, while others suggest seven days; 30 to 60 days advance notice; and other suggested no specific timeline.

GENERAL RESPONSE 2: Notice and Baseline Water Sampling

Drilling permits outside of board delineated fields are only issued after notice has been published in a general circulation newspaper for the county where the land is located and in the Helena *Independent Record*. There is a ten-day waiting period after the notice is published before the permit is issued. This notice is in addition to the 20-day (minimum) actual written notice to the surface owner where drilling is proposed. The well site surveyor must also give notice prior to entering the land for well site location and boundary identification.

Hydraulic fracturing occurs after a well has been drilled and production casing set and cemented. There would be no particular advantage to delaying the taking of a background water sample until the drilling operation is finished, and the board believes the mandatory notices, plus the presence of a drilling rig on the site, give an adequate opportunity to sample water sources before any fracturing stimulation might occur.

The board also considers requiring detailed chemical disclosure prior to performing a fracture stimulation to facilitate background water analysis as unlikely to accomplish the result desired by the commenters. There is no potential for groundwater contamination from hydraulic fracturing if a well has not been hydraulically fractured. Testing water for specific chemicals which have not been used is likely to be both fruitless and prohibitively expensive. The board does support

disclosure of substances used in fracture stimulation after the work has been completed and the actual substances used are known with certainty.

GENERAL COMMENT 3: Trade Secrets and Confidential Business Information
Commenters asked the board to: (1) not protect proprietary or trade secret components used in fracturing fluid: (2) require disclosure of all chemicals; (3) and/or establish a process for the board to review and approve trade secrets. Several commenters added that the board "...must have access to this information in case of water well/spring contamination." Trout Unlimited (TU) and other commenters said that the need for public disclosure and the public's right to know far outweighs industry trade secrets.

GENERAL RESPONSE 3: Trade Secrets and Confidential Business Information
The board believes New Rule III (ARM 36.22.1016) adequately frames the trade secret issue for spills and other releases of fracturing components. As to the need for full disclosure (including proprietary chemicals) to determine the presence of contamination due to a fracture stimulation process, the board notes that it is not necessary to analyze a water sample for every chemical in fracturing fluid to determine a possible source of contamination. It would only be necessary to identify one or two constituents that are persistent and not naturally occurring in the groundwater to establish a premise for investigation of fracturing fluids as a potential source of contamination. As to the issue of trade secrets, New Rule III(2) (ARM 36.22.1016(2)) states: "If necessary to respond to a spill or release of a trade secret product the owner... must provide to the board ... a list of the chemical constituents contained in a trade secret product."

The board recognizes the concern over proprietary chemicals and techniques and confidential business information; however, Montana has a Uniform Trade Secrets Act (30-14-401 MCA) that provides for substantial sanctions for misappropriation of intellectual property or trade secrets. Industry must comply with Occupational Safety and Health Agency (OSHA) requirements as well as U.S. EPA's Emergency Planning and Community Right-to-Know Act (EPCRA); both OSHA and EPA recognize trade secrets and have procedures to justify the claim of trade secrets. The board may, under existing authority, request copies of either the OSHA required Material Safety Data Sheets (MSDS) or a copy of the EPA's trade secret justification form if it questions the validity of a trade secret claim. The board believes it has insufficient statutory support in current law to re-invent procedures to deal with trade secrets that have already been addressed by current state and federal law. The only clear exception is in responding to spills, discharges, or medical emergencies which the board believes are adequately addressed in proposed Rule III (ARM 36.22.1016).

GENERAL COMMENT 4: Nondisclosure Agreements
Commenters also addressed the use of nondisclosure agreements in New Rule III (36.22.1016). For example Mark Mackin comments that health information is confidential and protected and he does not see the need for a physician to sign a nondisclosure agreement. Mr. Makin further states that health officials should be obligated to disclose public health threats, implying that proposed Rule III (ARM 36.22.1016) would stop physicians from reporting potential public health problems and that the nature of any toxic, flammable, or explosive chemicals and materials as stored or mixed at or near the surface should be known to emergency services, particularly first responders.

GENERAL RESPONSE 4: Nondisclosure Agreements

New Rule III (ARM 36.22.1016) is only intended to address emergency treatment of individuals exposed to certain chemicals under limited circumstances (likely to be workers in immediate proximity to the worksite) where the board's regulatory authority may provide a process to expedite appropriate response. The board asserts no jurisdiction over the process of determining public health risks and does not believe the limited applicability of Rule III impedes the process. The board also believes that a proper nondisclosure agreement protects both the recipient of protected information as well as the owner of the information. EPA's EPCRA requirements already include providing chemical inventories to the State Emergency Response Commission (in Montana that is Disaster and Emergency Services and Montana Department of Environmental Quality), Local Emergency Planning Committees (LEPC), and local fire departments.

GENERAL COMMENT 5: FracFocus Web Site and Data Availability

Commenters suggested that the board avoid use of a national hydraulic fracturing information web site in favor of a site hosted and maintained by the board and/or state government in general. The Montana Environmental Information Center (MEIC) and other commenters said that the board's web site is the central repository and the rules should require operators to submit electronically to the web site. One commenter also suggested use of name, location, and permit number.

GENERAL RESPONSE 5: FracFocus Web Site and Data Availability

The board's technical staff maintains the board web site. Data is received in many formats and the permanent official records are the paper records maintained in Billings and Helena. Those records are open for public inspection and copying. The oil and gas data system captures well information, production filings, board orders and other key elements of well and regulatory data and makes them available without charge to the public. The staff has recommended the use the FracFocus web site, which is unique in the secure gathering of state specific hydraulic fracturing data, putting data in a logical format, and through use of a data template, insuring the data is consistent and timely. Web site hosting is transparent to the user and whether the site is hosted in Helena, Billings, or elsewhere is immaterial.

FracFocus is hosted at a commercial web facility in central Oklahoma with secure virtual servers, back-up software and hardware, and back-up power and communications network. The site is at least as secure and reliable as any state- owned site and the board does not incur any cost in using FracFocus. Additionally, this site is managed by the Ground Water Protection Council (GWPC) and two of the board's staff are active in GPWC data management projects and have direct influence over the design and use of the system. There would be significant unbudgeted costs to design and develop a site as comprehensive as FracFocus solely with board funding.

Staff will continue to work with the Interstate Oil and Gas Compact Commission (IOGCC) and GWPC to improve the data template as well as making fracturing information more user friendly; to make available on the board's web site information from those operators not using FracFocus (or to develop a procedure for the board staff to submit the data on behalf of less

active operators); and to plan for an alternative system if FracFocus does not meet long term needs.

Regarding the use of name, location, and permit number, the board uses the American Petroleum Institute (API) well number as the unique well identifier, not the sequential permit number. FracFocus allows searches by state, county, operator name, well name, or well API number. The search function works even if the only available data is the name of the state in which a hydraulically fractured well is located. The other criteria are used to narrow the search results. API well numbers can be found on the board's Webmapper application, from the online data portion of the board's web site, and from the weekly letter posted on the web site that lists all new permits.

GENERAL COMMENT 6: Other States and Issues

Several commenters discussed Pennsylvania and New York shale gas issues, Wyoming's Pavilion and Clark area issues and similar issues portrayed in the "Gaslands" movie. Concerns were also expressed by some about coal bed methane. The Coal Bed Methane Protection Act Committee suggested the board include special provisions for chemical disclosure for these seeking compensation under 76-15-902(5). Some commenters also suggested the board factor in consideration of other state fracturing rules, recently passed Texas statute, and the possibility of future federal rules.

GENERAL RESPONSE 6: Other States and Issues

Montana has had no incidents of hydraulic fracturing contaminating underground sources of drinking water either discovered by or reported to the board. Biogenic natural gas, which is composed almost entirely of methane, occurs naturally in coal seams and organic rich shale. Many aquifers in coal country are either composed partially or entirely of coal, or are in intimate contact with coal. The presence of methane in water is likely in those areas and its presence is generally not associated with natural gas or oil development. There have been allegations of harm from exposure to hydraulic fracturing chemicals, yet there is no state or federal confirmation available to the board.

Groundwater contamination in the Clark, Wyoming, area was the result of an underground blowout at a well during drilling operations and was not associated with fracture stimulation technology. The Wyoming Department of Environmental Quality includes the following statement on its web site: "...There is no evidence that fracking has caused any water quality problems in Wyoming...", and "...In Pavillion, oil and gas development has been ongoing for about 50 years. It should be noted that in both Pavillion and Pinedale, domestic water wells have been drilled into shallow intervals containing natural gas...".

Regarding the comments from the Coal Bed Methane Act Protection Committee, hydraulic fracturing of coal seams has proved unnecessary to produce CBM in Montana. Coal seams currently producing in the state have very high natural permeability, which does not need artificial enhancement. The board is not inclined to make rules for specialized circumstances unlikely to occur. See General Response 2.

Board staff has met with officials of the Texas Rail Road Commission, Oklahoma Corporation Commission, Michigan Office of Geologic Survey, and the Nebraska Oil and Gas Commission about proposed hydraulic fracturing rules. Montana's rules and Texas statute are currently at least as comprehensive as any other state disclosure approaches. U.S. EPA is conducting a study of hydraulic fracturing and regulatory approaches, as are the Bureau of Land Management, and the U.S. Department of Energy. The board cannot predict the outcome of these efforts nor the timetable for any proposed rulemaking by others. Importantly, the board cannot predict the regulatory program(s) which the federal government might choose to use to implement any rules it proposes. The board is proposing rules which it believes adequately address the issues which can be addressed at this point in time.

GENERAL COMMENT 7: Additional Hearings and Affected Communities

Commenters suggested that the board should also hold a hearing in Park or Sweet Grass counties in addition to the one held in Sidney.

GENERAL RESPONSE 7: Additional Hearings and Affected Communities

The board has a statutory obligation to hold a public hearing in the community likely to be impacted the most by its proposed rules. Since 2007, Richland County has had 260 oil wells completed and hydraulically fractured as part of the well completion process. That averages out to one fracture stimulation job performed every week for the past five years. From 2007 to date, eleven total wells were permitted by the board in Park County: six were dry holes; four had the permits expire; and one was completed, but does not produce. Seven wells have been permitted in Sweet Grass County: four permits have expired with the wells never drilled; one well was a dry hole; one well was completed as shallow gas well in an existing (conventional) gas field; and one was completed as a shale well that has never produced. There have been no new drilling permits issued in either county in the last year.

Park and Sweet Grass counties are well represented in the comments received. The board has considered all of the comments and does not consider written comments less valuable than those presented at a hearing. The board chose to hold a public hearing in Sidney because it predicted with certainty that hydraulic fracturing well stimulation would occur regularly and often in the northeastern counties of the state; a prediction it could not make for any other part of the state with the same certainty.

GENERAL COMMENT 8: Future Rulemaking

Several commenters suggested amendments to cover other subjects related to hydraulic fracturing, but which were not originally proposed by the board as part of this rulemaking. For example, Bradly Shepard and Peter Fox suggested the board review requirements for closed system drilling. Rep. Kathleen Williams (HD 65) commented on requiring that the source of water used in fracturing be disclosed as well as the entity that might treat the wastewater. Rep. Williams suggested disclosure of depth and thickness of permeable/water zones be disclosed under the proposed rules.

Potential federal rules, EPA regulation of the use of diesel fuel in fracturing fluids, bonding requirements, transportation of fracturing fluids to the well and spill preparedness were also mentioned by several commenters.

GENERAL RESPONSE 8: Future Rulemaking

While these issues may have merit for future rulemaking, the board's current effort is to appropriately regulate the chemical disclosure, well integrity, and operational safety issues related to hydraulic fracturing and to clarify how those activities are permitted. While outside the scope of this rulemaking, the board's existing rules do not allow long-term storage of waste fluid in pits, and do require either closed systems or total removal of pits' contents in irrigated farmlands, areas of high groundwater and in floodplains.

The board has no regulatory authority over water use and the subject of the board regulating or requiring water sources is well beyond current rulemaking. Since most produced water in the Williston Basin—including flow back water—is highly mineralized, virtually all of the water is re-injected through permitted injection wells.

Current board rules require the owner or operator to run an electrical, radioactivity, or similar petrophysical log or combination of logs sufficient to determine formation tops from total depth to the base of the surface casing unless waived by the board administrator. "Electric" logs are a permanent part of the board's well files which are not confidential and are open for public use.

The board has bond rules that apply to all wells, regardless of type of well completion, in existing rules. Transportation is not under the board's jurisdiction, and the effect of any federal rulemaking is unknown at this time, and involves a time schedule beyond the board's ability to predict.

The board is taking a specific direction with its rules that is unlikely to conflict with other jurisdictions; it has chosen to limit the scope of the rules to those necessary to address chemical disclosure, well integrity and safety, and to clarify hydraulic fracturing permitting process.

RULE SPECIFIC COMMENTS/RESPONSES

NEW RULE I (36.22.608)

COMMENT 1:

A number of commenters, including Devon, Newfield, and the Montana Petroleum Association (MPA) suggested that some fracturing design data requested as part of the drilling permit is difficult to determine ahead of the job being proposed.

Newfield, MPA and others comment that the anticipated and the maximum treating pressure in New Rule I(3)(e) (ARM 36.22.608(3)(e)) would be difficult to estimate at the permit stage of a well. TAQA commented that there should be casing design requirements for fracture stimulated wells and the maximum treating pressure should not exceed 80 percent of the maximum casing pressure rating. TU and Park County Environmental Council suggest Rule I(3)(b) (ARM 36.22.608(3)(b)) be reworded to require the trade name or generic name "...of the components or chemicals to be used in the...process". One commenter (Welter) suggested that disclosing

procedures and products on the board's Form 2 should be sufficient and this could be done in a timely manner prior to the fracturing procedure. MEIC, NPRC, and several others suggested that 24 hours is too short a timeframe for the process of modifying the drilling permit to include fracture stimulation. Finally, comments from MPA, Devon, Western Energy, and others suggest the requirements in Rule I (e)(i) and (ii) apply to the entire rule, not just to paragraph (3). NPRC also suggested that chemical abstract numbers be associated with the pre-frac chemicals.

RESPONSE 1:
Where actual formation parameters are needed to determine the design, the well may need to be drilled, logged, and evaluated before a fracture can be designed. The board and staff understand that stimulation treatments are customized designs and the final design of the treatment may not be known at permitting. The request for basic information at the time a well is permitted is to assist staff's analysis of impacts anticipated from drilling.

The board agrees that the apparent specificity required in New Rule I (ARM 36.22.608) may be problematic. Requiring CAS numbers for components would exacerbate the problem. At the same time, the board believes certain information about proposed well completion and anticipated stimulation activities must be available to the operator sufficiently ahead of time to request contractor bids, to inform partners of anticipated costs and to prepare well site locations and ancillary facilities for potential stimulation operations. The board agrees that Form No.2, Sundry Notice, is the appropriate written notification of a change in plans, including well stimulation requests. The board also agrees that 24 hours, which was originally proposed to allow an opportunity to have a field inspector present during well treatment operations, is too short for processing a written notice and has increased the time to 48 hours.

The request for requesting treating pressure and maximum treating pressure data is to review well construction and potential pressure limitations of the design. The board appreciates TAQA's comment about pressure ratings and XTO's comment about requesting design specifications that provide confidence the well will be properly constructed for hydraulic fracturing stimulation.

During formatting of proposed Rule I (ARM 36.22.608), the sections (3)(e)((i) and (ii) were placed under (3) but were intended to apply to the entire New Rule I. The rule has been amended to reflect the original intent and to read that operators may file analog fracture designs from previously stimulated wells in the area or prefiled generic designs, which form the basis for pre-frac design for a particular well.

NEW RULE II (36.22.1015)
COMMENT 2:
Comments were received from MPA, Halliburton Energy Services, Inc.(HESI), Devon, Samson, Newfield and others regarding the language in proposed New Rule II (ARM 36.22.1015), which appears to require additive level disclosure, but requires the Chemical Abstract Number (CAS) which is only appropriate at the component level. MPA and Newfield suggested dropping the requirement for CAS numbers and require disclosure at the additive level. Devon and Samson suggested retaining CAS numbers and clarifying the substances they refer to (the chemical components of the additives). HESI suggest retaining CAS number but requiring disclosure of

those constituents listed on an additive product Material Safety Data Sheet (MSDS). HESI correctly interprets the proposed rule as requiring disclosure of all chemicals, including nonhazardous ingredients.

Commenters also addressed use of the FracFocus.org web site and suggested the Rule require the board administrator to waive reporting to the board if the FracFocus.org site (or a successor site) is used. Other commenters suggested that the board not use FracFocus.org, but use its own site.

RESPONSE 2:
The board thanks the commenters for their input. However, the board and its staff believe the board has an obligation under existing law to know the composition of all materials injected to enhance the recovery of oil or natural gas, including nonhazardous substances.

The board believes it must retain the authority over its reporting requirements. While it supports FracFocus, it must also develop rules which remain in effect whether or not there is a desirable reporting alternative. If no web site meets, or one only partially meets the disclosure needs, the board must continue the direct requirement. The board appreciates Samson's comment about successor web sites, and has clarified the rule to recognize that it may accept other sites if they meet the board's disclosure needs.

The board may use its own web site to deliver electronic images of information submitted by companies; however, the board staff would not recommend developing a database of chemical disclosure data as was suggested because of the expense in both development and maintenance and the limited value such data represents to the regulatory program. Staff is participating in the ongoing design and management of FracFocus, and is confident the site will continue to grow more useful to the public. Also, see General Response 5.

NEW RULE III (36.22.1016)
COMMENT 3:
In addition to the general comments received about this proposed rule (see "General Comments/Responses"), HESI provided extensive comments about trade secrets and the statutes and case law in Montana. Devon offered clarifying language. While Park County Environmental Council objects to medical personnel being required to execute nondisclosure agreements, MPA, and Western Energy Alliance suggest such agreements be signed by any party receiving trade secret information.

HESI suggested the dependence of New Rule III (ARM 36.22.1016) on 82-11-117, MCA, may be seen to narrow the trade secret definition established in 30-14-402, MCA, and that Montana courts have already adopted the later standard.

RESPONSE 3:
Section 82-11-117, MCA, was adopted several years ago in support of the Underground Injection Control Program and may have limited applicability to hydraulic fracturing. Because 82-11-117, MCA, addresses injection into state waters and the purpose of the proposed hydraulic fracturing regulations is to prevent contamination of state waters, the board agrees that this code cite may be misleading. The rule's exemption for board or staff or third parties working for the

board from executing a nondisclosure agreement was inadvertent. The rule has been amended to cite 30-14-402, MCA.

NEW RULE IV (36.22.1106)
COMMENT 4:
Continental Resources (Aman) commented at the hearing that the proposed rule appeared to limit pre-fracturing testing by means other than the pressure test and requiring the casing pressure test be run even if the operator determined the use of a fracturing string was necessary. Newfield interprets New Rule IV(2) (ARM 36.22.1106(2)) as ignoring the contribution of cement to the pressure integrity of the casing. HESI commented that the concept of mechanical integrity in the context of section (1) of Rule IV is ambiguous. MPA, Western Energy Alliance, and others comment that 15 minute/5 percent pressure loss is too stringent. Northern Plains suggest the casing pressure test should be 110 to 150 percent of the anticipated treating pressure. TAQA expressed concerns that wells can continue to be fracture treated down production casing, if appropriately configured, without the use of a fracturing string. Other commenters expressed concerns regarding the use of remotely controlled valves, and one comment was received about automatic pressure shut-downs on pump trucks as well as the use of pressure relief valves.

RESPONSE 4:
The board does not wish to preclude the operator from running other tests or tools to evaluate the need for a fracturing string, and does not intend the rule preclude the use of properly cemented production casing as the conduit for stimulation treatments. The board agrees that the broad requirement to demonstrate mechanical integrity may be ambiguous, and also generally agrees with the concept of requiring remotely controlled shut-down valves. Since these rules apply statewide, automatic shut-in valves may serve little purpose in those parts of the state with predominately low-pressure and limited deliverability wells. The 15- minute/5 percent loss test was taken from the board's mechanical integrity requirement for injection wells and is more stringent than many other states. The board appreciates that testing casing-tubing-packer mechanical integrity in an injection well that may operate continuously for five years without further testing is different from testing the casing of a well that will see treating pressure for a few hours or days. The purpose of the casing pressure test is to determine if there are leaks in the system being tested. A 30-minute/10 percent loss test is adequate to determine if significant leaks exist. There is risk of weakening the cement-casing bond by testing significantly above the pressure needed to determine significant leakage. The board's staff does not support testing production or intermediate casing above the maximum anticipated treating pressure.

NEW RULE V (36.22.1010)
COMMENT 5:
Devon suggests modifying New Rule V (ARM 36.22.1010) to allow a 48-hour notice of activities covered by rule V and allowing work to proceed at the expiration of the 48-hour notice. NPRC suggests requiring a subsequent report of the activities in (2) within 30 days. MPA, Western Energy Alliance, and others suggested increasing the amount of treatment materials that do not require notice in (2) from 5000 gallons to 10,000 gallons.

RESPONSE 5:

The essential difference between the activities covered in New Rule V (ARM 36.22.1010) and those covered under New Rule I (ARM 36.22.608) is that all of the New Rule V (ARM 36.22.1010) actions are performed on existing wells and are not part of a drilling permit. The reperforating, recompletion, and reworking activities in (1) trigger a review of well spacing/setback requirements that may take more than 48 hours to complete. The staff ordinarily processes these items quickly, but would not want an operator committed to well work that would result in the well being in violation of other board rules.

The board agrees with MPA that one twin trailer-truck load of material is a reasonable limitation, and with Northern Plains on the issue of requiring a subsequent report. The board has moved the hot oil treatment exemption into the first sentence of section (2), as hot oil treatments customarily involve small volumes of oil from the lease being treated, but will require a subsequent report for acid and chemical treatments.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Tommy Butler
TOMMY BUTLER
Rule Reviewer

/s/ Terri Perrigo
TERRI PERRIGO
Executive Secretary
Board of Oil and Gas Conservation

Package 2
Exhibit 6

Petition and Exhibit Analysis

- No evidence was presented in the petition to indicate that the board's current rules have resulted in environmental damage or health and safety issues.

- Possible issues identified in exhibits submitted with the petition involve drilling, well construction, and production activities in addition to fracture stimulation. This is consistent with the Board's position that all pertinent data and concerns must be gathered and addressed at the time the application for permit to drill is being evaluated.

One submitted technical paper (Beak et al, 2015) analyzed an incident of casing failure in North Dakota where fluids associated with hydraulic fracturing entered penetrated aquifers after casing rupture. This incident, which occurred during September, 2010, was specifically considered during the development of the current hydraulic fracturing rules.

DiGiulio and Jackson, 2016, reported data from an earlier EPA study of Pavillion Field, Wyoming. Well construction and water sampling methodology used as the basis of this study were determined by the United States Geological Survey to be inadequate, EPA work was discontinued, and the Wyoming Department of Environmental Quality (WDEQ) was tasked with continuing the study. WDEQ has concluded that it was unlikely that hydraulic fracturing fluids had risen to shallow depths intercepted by water wells, but identified that inadequate cementing of production or intermediate casing in wells and the use of unlined surface disposal pits contribute to aquifer contamination. (Pavillion, Wyoming Area Domestic Water Wells, Draft Report and Palatability Study, WDEQ, December, 2015.)

The results of Llewellyn et al., 2015, are summarized by the author following release of the paper. Excerpts from those comments include:

> *Llewellyn et al: "We explicitly state in the paper that there is no evidence that HVHF of the Marcellus Shale at depths of approximately 6000-7000 feet was the cause of impacts. In fact, we provide strong evidence that this did not happen."*
>
> *Llewellyn et al: "[I]it is indeed likely that these impacts are derived from different sources. We state this explicitly in the paper. There is overwhelming evidence that natural gas migrated from Welles 3-2H or multiple gas wells present on the Welles 3, 4 and 5 pads: for example, these wells were reported to have excessive annular pressures due to poor construction and subsequent remedial activities (e.g. "cement squeezes") were successful in reducing sustained annular gas pressures that had contributed to the gas migration to the impacted water wells. Additionally, we summarized three reasonable scenarios for the UCM and the 2-BE (but also see FAQ 6 above pertaining to 2-BE). First, the gas company was cited for a pit leak on the Welles 1 pad, and this could therefore implicate a surface-related release. Second, drilling fluids could have leaked out of one of the gas well boreholes at shallow to intermediate depths. The final scenario is leakage at shallow to intermediate depths of HVHF fluids prior to or during injection at the Welles 1 gas wells – well above the depth of hydraulic fracturing in the shale. We explain the scenarios in our paper."*

https://energyindepth.org/wp-content/uploads/2015/05/Frequently-Asked-Questions-about-Llewellyn-et-al-2015-4.pdf

The remaining technical papers document health-related concerns that are related to all stages of unconventional reservoir development and production. Board's professional staff has reviewed the exhibits and determined that none provided direct evidence that a specific chemical or practice related to the process of hydraulic fracturing was identified.

Package 2
Exhibit 7

HB 243 (2015)
Legislative History and Bill Text

Montana Legislative Branch

Montana Legislature

Detailed Bill Information

2015 January Regular Session

NOTICE -- The LAWS web site for the 65th (2017) Regular Legislative Session is now available. 2017 Regular Session

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Bill Draft Number: LC1809 Current Bill Text:
Bill Type - Number: HB 243 Fiscal Note(s)
Short Title: Full public disclosure of hydraulic fracking fluid chemicals
Primary Sponsor: Mary Ann Dunwell (D) HD 84
All Available Audio/Video for this Bill

Bill Actions - Current Bill Progress: Probably Dead

Bill Action Count: 28

Print Friendly

Action - Most Recent First	Date	Votes Yes	Votes No	Committee / Audio
(H) Missed Deadline for General Bill Transmittal	02/27/2015			
(H) Tabled in Committee	01/30/2015			(H) Federal Relations, Energy, and Telecommunications
(H) Fiscal Note Printed	01/28/2015			(H) Federal Relations, Energy, and Telecommunications
(H) Fiscal Note Signed	01/27/2015			(H) Federal Relations, Energy, and Telecommunications
(H) Fiscal Note Received	01/27/2015			(H) Federal Relations, Energy, and Telecommunications
(H) Hearing	01/23/2015			(H) Federal Relations, Energy, and Telecommunications
(C) Introduced Bill Text Available Electronically	01/19/2015			
(H) First Reading	01/19/2015			
(H) Referred to Committee	01/19/2015			(H) Federal Relations, Energy, and Telecommunications
(H) Fiscal Note Requested	01/19/2015			
(H) Introduced	01/19/2015			
(C) Draft Delivered to Requester	01/14/2015			
(C) Draft Ready for Delivery	01/09/2015			
(C) Draft in Assembly/Executive Director Review	01/09/2015			
(C) Draft in Final Drafter Review	01/09/2015			
(C) Draft in Input/Proofing	01/09/2015			
(C) Draft to Drafter - Edit Review [JLN]	01/09/2015			
(C) Draft Taken by Drafter	01/07/2015			
(C) Draft Ready for Delivery	01/05/2015			
(C) Fiscal Note Probable	01/02/2015			
(C) Draft in Assembly/Executive Director Review	01/02/2015			
(C) Draft in Final Drafter Review	01/02/2015			

(C) Bill Draft Text Available Electronically	12/31/2014			
(C) Draft in Input/Proofing	12/31/2014			
(C) Draft to Drafter - Edit Review [JLN]	12/31/2014			
(C) Draft in Legal Review	12/31/2014			
(C) Draft to Requester for Review	12/22/2014			
(C) Draft Request Received	12/05/2014			

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Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Dunwell	Mary Ann	
Drafter	Nowakowski	Sonja	
Primary Sponsor	Dunwell	Mary Ann	

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Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Oil and Gas (see also: Mining and Minerals; Taxation--Oil and Gas)		Simple	OIL
Rule Making		Simple	RUL

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Additional Bill Information

Fiscal Note Probable: Yes
Preintroduction Required: N
Session Law Ch. Number:
DEADLINE
Category: General Bills
Transmittal Date: 02/27/2015
Return (with 2nd house amendments) Date: 04/11/2015

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Section Effective Dates

No Records returned

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09/21/2016 08:55 AM Mountain Time
Look Up Bill Information	Committee and Hearing Information
House Agenda(s)	House Journals		Senate Agenda(s)	Senate Journals
Legislator Information	Reports
LAWS Instructional Video Library **(How-to video demos!)** **NEW**

HOUSE BILL NO. 243

INTRODUCED BY M. DUNWELL

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PUBLIC DISCLOSURE AND LANDOWNER NOTICE OF FRACTURING FLUID INFORMATION IN OIL AND GAS OPERATIONS; AMENDING SECTIONS 82-11-101, 82-11-117, 82-11-123, 82-11-136, 82-11-163, 82-11-181, AND 82-11-182, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Fracturing fluid disclosure -- requirements.** (1) The fracturing fluid disclosure required by 82-11-123 must include:

(a) the complete composition of the fracturing fluid, including the product name, the additive type, the chemical compound name, the chemical abstracts service registry number, and any hazardous component listed on a material safety data sheet as defined in 50-78-102;

(b) the proposed rate or concentration for each additive per gallon, which may be expressed as percent by weight, percent by volume, parts per million, or parts per billion; and

(c) the maximum surface treating pressure range, the maximum injection treating pressure, and the estimated or calculated fracture length and fracture height.

(2) The administrator shall post the information submitted pursuant to subsection (1) to the board's website.

(3) After the posting required in subsection (2), the owner shall provide at least 45 days' notice by mail before fracturing occurs to each property owner with a water supply that is located within 3,000 feet of the well where fracturing will occur.

Section 2. Section 82-11-101, MCA, is amended to read:

"82-11-101. (Temporary) Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the administrator of the division of oil and gas conservation.

(2) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(3) "Class II injection well" means a well, as defined by the federal environmental protection agency or any successor agency, that injects fluids:

(a) that have been brought to the surface in connection with oil or natural gas production;

(b) for purposes of enhancing the ultimate recovery of oil or natural gas; or

(c) for purposes of storing liquid hydrocarbons.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(5) "Determinations" means those decisions delegated to the state by or under authority of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.

(6) "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool; such artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

(7) "Field" means the general area underlaid by one or more pools.

(8) "Fluid" means any material or substance that flows or moves, whether in a semisolid, liquid, sludge, gas, or any other form or state.

(9) "Fracturing" means the introduction of fluid that may carry in suspension a propping agent under pressure into a formation containing oil or gas for the purpose of creating cracks in the formation to serve as channels for fluids to move to or from the well bore.

~~(9)~~(10) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas the person produces from a pool either for the person or others or for the person and others, and the term includes all persons holding that authority by or through the person with the right to drill.

~~(10)~~(11) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or instrumentality of the state or any governmental subdivision of the state.

~~(11)~~(12) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters that exceeds that permitted by state water quality standards or standards adopted by the board, including but not limited to the disposal, discharge, seepage, drainage, infiltration, flow, or injection

of any liquid, gaseous, solid, or other substance into any state waters that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A disposal, discharge, seepage, drainage, infiltration, flow, or injection of fluid that is authorized under a rule, permit, or order of the board is not pollution under this chapter.

~~(12)~~(13) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this chapter.

~~(13)~~(14) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

~~(14)~~(15) "Responsible person" means a person who is determined by the board under 82-10-402 to have abandoned an oil or gas well, injection well, disposal well, water source well, drill site, sump, seismographic shot hole, or other area where oil and gas drilling and production operations were conducted.

~~(15)~~(16) "State waters" means any body of water, either surface or underground.

~~(16)~~(17) (a) "Waste" means:

(i) physical waste, as that term is generally understood in the oil and gas industry;

(ii) the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;

(iii) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and

(iv) the inefficient storing of oil or gas. (The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board, is not waste within the meaning of this definition.)

(b) The loss of gas to the atmosphere during coal mining operations is not waste within the meaning of this definition.

82-11-101. (Effective on occurrence of contingency) Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the administrator of the division of oil and gas conservation.

(2) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(3) "Carbon dioxide" means carbon dioxide produced by anthropogenic sources that is of such purity and quality that it will not compromise the safety of a geologic storage reservoir and will not compromise those

properties of a geologic storage reservoir that allow the reservoir to effectively enclose and contain a stored gas.

(4) (a) "Carbon dioxide injection well" means a well that injects carbon dioxide for the underground storage of carbon dioxide in a geologic storage reservoir.

(b) The term does not include a class II injection well in which carbon dioxide is injected for the purpose of enhancing the recovery of oil and gas.

(5) "Class II injection well" means a well, as defined by the federal environmental protection agency or any successor agency, that injects fluids:

(a) that have been brought to the surface in connection with oil or natural gas production;

(b) for purposes of enhancing the ultimate recovery of oil or natural gas; or

(c) for purposes of storing liquid hydrocarbons.

(6) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(7) "Determinations" means those decisions delegated to the state by or under authority of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.

(8) "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool; artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

(9) "Field" means the general area underlaid by one or more pools.

(10) "Fluid" means any material or substance that flows or moves, whether in a semisolid, liquid, sludge, gas, or any other form or state.

(11) "Fracturing" means the introduction of fluid that may carry in suspension a propping agent under pressure into a formation containing oil or gas for the purpose of creating cracks in the formation to serve as channels for fluids to move to or from the well bore.

~~(11)~~(12) "Geologic storage operator" means a person holding or applying for a carbon dioxide injection well permit.

~~(12)~~(13) (a) "Geologic storage reservoir" means a subsurface sedimentary stratum, formation, aquifer, cavity, or void, whether natural or artificially created, including vacant or filled reservoirs, saline formations, and

coal seams suitable for or capable of being made suitable for injecting and storing carbon dioxide.

(b) The term does not include a natural gas storage reservoir. However, the owner of a natural gas storage reservoir may convert a depleted natural gas storage reservoir into a geologic storage reservoir to be used pursuant to Title 82, chapter 11, parts 1 and 2.

~~(13)~~(14) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas the person produces from a pool either for the person or others or for the person and others, and the term includes all persons holding that authority by or through the person with the right to drill.

~~(14)~~(15) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or instrumentality of the state or any governmental subdivision of the state.

~~(15)~~(16) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters that exceeds that permitted by state water quality standards or standards adopted by the board, including but not limited to the disposal, discharge, seepage, drainage, infiltration, flow, or injection of any liquid, gaseous, solid, or other substance into any state waters that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A disposal, discharge, seepage, drainage, infiltration, flow, or injection of fluid that is authorized under a rule, permit, or order of the board is not pollution under this chapter.

~~(16)~~(17) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both. Each zone of a structure that is completely separated from any other zone in the same structure is a pool. For the purposes of unitization pursuant to Title 82, chapter 11, part 2, "pool" also includes an underground reservoir for the long-term storage of carbon dioxide after the effective date of this section.

~~(17)~~(18) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

~~(18)~~(19) "Responsible person" means a person who is determined by the board under 82-10-402 to have abandoned an oil or gas well, injection well, disposal well, water source well, drill site, sump, seismographic shot hole, or other area where oil and gas drilling and production operations were conducted.

~~(19)~~(20) "State waters" means any body of water, either surface or underground.

~~(20)~~(21) "Verification and monitoring" means measuring the amount of carbon dioxide stored at a specific geologic storage reservoir, checking the site for leaks or deterioration of storage integrity, and ensuring that carbon dioxide is stored in a way that is permanent and not harmful to the ecosystem. The term includes:

(a) using models to show, before injection is allowed, that injected carbon dioxide will be securely stored.

Modeling includes but is not limited to consideration of seismic activity, possible paths for fugitive emissions, and chemical reactions in the geologic formation.

(b) tracking plume behavior after injection of carbon dioxide, including the use of pressure monitoring; and

(c) establishing a system of leak monitors.

~~(21)~~(22) (a) "Waste" means:

(i) physical waste, as that term is generally understood in the oil and gas industry;

(ii) the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;

(iii) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner that causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or that causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and

(iv) the inefficient storing of oil or gas.

(b) (i) The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board, is not waste within the meaning of subsection ~~(21)(a)~~ (22)(a).

(ii) The loss of gas to the atmosphere during coal mining operations is not waste within the meaning of subsection ~~(21)(a)~~ (22)(a)."

Section 3. Section 82-11-117, MCA, is amended to read:

"82-11-117. Confidentiality of records. (1) Any information that is furnished to the board or the board's staff or that is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by the board.

(2) ~~If~~ Except as provided in subsection (4), if an owner or operator disagrees with a determination by the board that certain material will not be maintained as confidential, the owner or operator may file a declaratory judgment action in a court of competent jurisdiction to establish the existence of a trade secret if the owner or operator wishes the information to enjoy confidential status. The department must be served in the action and may intervene as a party.

(3) Any information not intended to be public when submitted to the board or the board's staff must be

submitted in writing and clearly marked as confidential.

(4) (a) An owner or operator subject to the requirements of [section 1] may file a declaratory judgment action in a court of competent jurisdiction to establish the existence of a trade secret for fracturing fluids unique to the owner or operator that, if disclosed, would reveal methods or processes entitled to protection as trade secrets. The trade secret must be clearly designated on materials provided to the administrator in accordance with [section 1]. Except as provided in subsection (4)(b), the administrator shall maintain the trade secret information as confidential.

(b) Information describing physical or chemical characteristics of fracturing fluids that have been or may be released into the environment are not considered confidential. The administrator has access to and may use any trade secret information in carrying out the activities of [section 1] as may be necessary to protect the public health, safety, or welfare or the environment while maintaining the information as confidential.

~~(4)~~(5) Data describing physical and chemical characteristics of a liquid, gaseous, solid, or other substance injected or discharged into state waters may not be considered confidential.

~~(5)~~(6) The board may use any information in compiling or publishing analyses or summaries relating to water pollution if the analyses or summaries do not identify the owner or operator or reveal any information that is otherwise made confidential by this section."

Section 4. Section 82-11-123, MCA, is amended to read:

"82-11-123. (Temporary) Requirements for oil and gas operations. Subject to the administrative control of the department under 2-15-121, the board shall require:

(1) identification of ownership of oil or gas wells, producing properties, and tanks;

(2) the making and filing of acceptable well logs, including bottom-hole temperatures (in order to facilitate the discovery of potential geothermal energy sources), the making and filing of reports on well locations, and the filing of directional surveys, geological sample logs, mud logs, core descriptions, and ordinary core analysis, if made; however, logs of exploratory or wildcat wells need not be filed for a period of 6 months following completion of those wells;

(3) the drilling, casing, producing, and plugging of wells and class II injection wells in a manner that prevents the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas strata, blowouts, cave-ins, seepages, and fires and the pollution of fresh water supplies by oil, gas, salt, or brackish water;

(4) prior to fracturing, the disclosure and notice required by [section 1];

~~(4)~~(5) the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has been utilized and necessary measures to prevent adverse hydrological effects from the well or hole, unless the surface owner agrees in writing, with the approval of the board or its representatives, to a different plan of restoration;

~~(5)~~(6) the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well. The bond may be forfeited in its entirety by the board for failure to perform the duty to properly plug each dry or abandoned well and may not be canceled or absolved if the well fails to produce oil or gas in commercial quantities, until:

(a) the board determines the well is properly plugged and abandoned as provided in the board's rules; or

(b) the requirements of 82-11-163 are met.

~~(6)~~(7) proper gauging or other measuring of oil and gas produced and saved to determine the quantity and quality of oil and gas;

~~(7)~~(8) that every person who produces, transports, or stores oil or gas or injects or disposes of water in this state shall make available within this state for a period of 5 years complete and accurate records of the quantities. The records must be available for examination by the board or its employees at all reasonable times. The person shall file with the board reports as it may prescribe with respect to quantities, transportations, and storages of the oil, gas, or water.

~~(8)~~(9) the installation, use, and maintenance of monitoring equipment or methods in the operation of class II injection wells.

82-11-123. (Effective on occurrence of contingency) Requirements for oil and gas and carbon dioxide injection operations. (1) Subject to the administrative control of the department under 2-15-121, the board shall require:

(a) identification of ownership of carbon dioxide injection wells, carbon dioxide, geologic storage reservoirs, and oil or gas wells, producing properties, and tanks;

(b) the making and filing of acceptable well logs, including bottom-hole temperatures, in order to facilitate the discovery of potential geothermal energy sources, the making and filing of reports on well locations, and the filing of directional surveys, geological sample logs, mud logs, core descriptions, and ordinary core analysis, if made. However, logs of exploratory or wildcat wells need not be filed for a period of 6 months following

completion of those wells.

(c) the drilling, casing, producing, and plugging of wells, carbon dioxide injection wells, and class II injection wells in a manner that prevents the escape of carbon dioxide, oil, or gas out of one stratum into another, the intrusion of water into carbon dioxide, oil, or gas strata, blowouts, cave-ins, seepages, and fires and the pollution of fresh water supplies by carbon dioxide, oil, gas, salt, or brackish water;

(d) prior to fracturing, the disclosure and notice required by [section 1];

~~(d)~~(e) the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has been utilized and necessary measures to prevent adverse hydrological effects from the well or hole, unless the surface owner agrees in writing, with the approval of the board or its representatives, to a different plan of restoration;

~~(e)~~(f) except as provided in subsection ~~(1)(f)~~ (1)(g), the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well. The bond may be forfeited in its entirety by the board for failure to perform the duty to properly plug each dry or abandoned well and may not be canceled or absolved if the well fails to produce oil or gas in commercial quantities, until:

(i) the board determines the well is properly plugged and abandoned as provided in the board's rules; or

(ii) the requirements of 82-11-163 are met.

~~(f)~~(g) the furnishing of reasonable bond or other surety for a carbon dioxide injection well, geologic storage reservoir, and the carbon dioxide stored in the reservoir with good and sufficient surety for performance of the duty to operate and manage a carbon dioxide injection well, geologic storage reservoir, and the carbon dioxide stored in the reservoir and to properly plug and reclaim each carbon dioxide injection well. The bond or other surety may be forfeited in its entirety by the board for failure to perform the duty to properly manage and operate a well, reservoir, and stored carbon dioxide or to plug a well. Except as provided in 82-11-183(8), the bond or other surety may not be canceled or absolved.

~~(g)~~(h) proper gauging or other measuring of oil and gas produced and saved to determine the quantity and quality of oil and gas;

~~(h)~~(i) that every person who produces, transports, or stores oil or gas or injects or disposes of water or carbon dioxide in this state shall make available within this state for a period of 5 years complete and accurate records of the quantities. The records must be available for examination by the board or its employees at all reasonable times. The person shall file with the board reports as it may prescribe with respect to quantities,

transportations, and storages of the oil, gas, carbon dioxide, or water.

~~(i)~~(j) the installation, use, and maintenance of monitoring equipment or methods in the operation of carbon dioxide injection wells and class II injection wells.

(2) In addition to the requirements of subsection (1), the geologic carbon dioxide injection well permitting system must include:

(a) recordkeeping and reporting requirements sufficient to measure the effectiveness of carbon dioxide injection wells and geologic storage reservoirs;

(b) characterization of the injection zone and aquifers above and below the injection zone that may be affected, including applicable pressure and fluid chemistry data to describe the projected effects of injection activities;

(c) verification and monitoring at geologic storage reservoirs;

(d) mitigation of leaks, including the ability to stop the leaking of carbon dioxide and to address impacts of leaks;

(e) adequate baseline monitoring of drinking water wells within 1 mile of the perimeter of the geologic storage reservoir; and

(f) at a minimum, requirements pursuant to applicable federal regulatory standards established by:

(i) the Energy Independence and Security Act of 2007, Public Law 110-140, and subsequent acts;

(ii) the Safe Drinking Water Act, 42 U.S.C. 300f, et seq.; and

(iii) the underground injection control program, 40 CFR, parts 144 through 147."

Section 5. Section 82-11-136, MCA, is amended to read:

"82-11-136. (Temporary) Expenditure of funds from bonds for plugging wells. The board may accept and expend all funds received by it from bonds for properly plugging dry or abandoned wells as authorized in ~~82-11-123(5)~~ 82-11-123(6).

82-11-136. (Effective on occurrence of contingency) Expenditure of funds from bonds for plugging wells. (1) The board may accept and expend all funds received by it from bonds for properly plugging dry or abandoned wells as authorized in ~~82-11-123(1)(e)~~ 82-11-123(1)(f).

(2) The board may accept and expend all funds received by it from bonds for properly plugging abandoned carbon dioxide injection wells as authorized in ~~82-11-123(1)(f)~~ 82-11-123(1)(g)."

Section 6. Section 82-11-163, MCA, is amended to read:

"82-11-163. (Temporary) Landowner's bond on noncommercial well. If the owner of the surface land upon which has been drilled a well that fails to produce oil or gas in commercial quantities acquires the well for domestic purposes, the board may cancel and absolve the bond required in 82-11-123 upon its acceptance of surety in the form of a certificate of deposit or a surety bond in the amount of $5,000 for a single well or in the amount of $10,000 for more than one well or in the form of a property bond of two times the value of the required certificate of deposit or surety bond. The release of the certificate of deposit, surety bond, or property bond must be conditioned on proof provided by the landowner that the well has been properly plugged.

82-11-163. (Effective on occurrence of contingency) Landowner's bond on noncommercial well. If the owner of the surface land upon which has been drilled a well that fails to produce oil or gas in commercial quantities acquires the well for domestic purposes, the board may cancel and absolve the bond required in ~~82-11-123(1)(e)~~ 82-11-123(1)(f) upon its acceptance of surety in the form of a certificate of deposit or a surety bond in the amount of $5,000 for a single well or in the amount of $10,000 for more than one well or in the form of a property bond of two times the value of the required certificate of deposit or surety bond. The release of the certificate of deposit, surety bond, or property bond must be conditioned on proof provided by the landowner that the well has been properly plugged."

Section 7. Section 82-11-181, MCA, is amended to read:

"82-11-181. (Effective on occurrence of contingency) Geologic storage reservoir administrative fee -- account established. (1) (a) A geologic storage operator shall pay to the board a fee on each ton of carbon dioxide injected for storage for the purpose of carrying out the state's responsibility to monitor and manage geologic storage reservoirs. If a geologic storage operator chooses to indefinitely accept liability pursuant to 82-11-183(9)(a), the board shall remit the fee to the operator. If a geologic storage operator is required to maintain liability pursuant to 82-11-183(9)(b), the board may not remit the fee.

(b) The fee must be in the amount set by board rule.

(c) The amount must be based on the anticipated actual expenses that the board will incur in monitoring and managing geologic storage reservoirs during their postclosure phases.

(2) There is a geologic storage reservoir program account in the special revenue fund.

(3) (a) Each fiscal year there must be deposited in the account the fees collected pursuant to 82-11-184(2)(b) and subsection (1) of this section, to be used by the board for monitoring and managing geologic

storage reservoirs pursuant to 82-11-183(6) and (8).

(b) Funds received from bonds or other surety as authorized in ~~82-11-123(1)(f)~~ 82-11-123(1)(g) and 82-11-183 must be deposited in the account.

(4) Interest and earnings on the funds in the geologic storage reservoir program account accrue to that account."

Section 8. Section 82-11-182, MCA, is amended to read:

"82-11-182. (Effective on occurrence of contingency) Liability for carbon dioxide during injection. (1) Until the certificate of project completion is issued pursuant to 82-11-183(1) and title to the stored carbon dioxide and geologic storage reservoir is transferred to the state pursuant to 82-11-183(7), the geologic storage operator is liable for the operation and management of the carbon dioxide injection well, the geologic storage reservoir, and the injected or stored carbon dioxide.

(2) Bond or other surety furnished pursuant to ~~82-11-123(1)(f)~~ 82-11-123(1)(g) must be adequate to meet the requirements of subsection (1).

(3) For the purposes of 82-11-183 and this section, "title" includes title to the geologic storage reservoir and the stored carbon dioxide."

NEW SECTION. **Section 9. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 82, chapter 11, part 1, and the provisions of Title 82, chapter 11, part 1, apply to [section 1].

NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

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