

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
MINUTES OF THE
BOARD OF OIL AND GAS CONSERVATION MEETING AND PUBLIC HEARING
February 1 & 2, 2017

CALL TO ORDER

The regular business meeting of the Montana Board of Oil and Gas Conservation was called to order by Chairman Linda Nelson at 2:00 p.m., Wednesday, February 1, 2017, at its office at 2535 St. Johns Avenue in Billings, Montana. Board members present were Chairman Linda Nelson, Steven Durrett, Ronald S. Efta, Paul Gatzemeier, Peggy Ames-Nerud, Wayne Smith, and Corey Welter. Staff present was Brea Frickle, John Gizicki, Jim Halvorson, George Hudak, Ben Jones, Gary Klotz, Dave Popp, Jennifer Rath, and Rob Stutz.

APPROVAL OF MINUTES

A motion was made by Mr. Efta, seconded by Mr. Welter, and unanimously passed, to approve the minutes of the December 14, 2016, business meeting.

PUBLIC COMMENT ON AGENDA AND NON-AGENDA ITEMS

Susann Beug, member of Northern Plains Resource Council (NPRC) and Carbon County Resource Council (CCRC), thanked the Board for adopting New Rule 1 regarding drilling notification. Ms. Beug's letter of appreciation is attached as Exhibit 1.

Becky Gray, member of NPRC, read a letter in support of the Board's decision to reconsider initiating rulemaking on hydraulic fracturing. Ms. Gray's letter is attached as Exhibit 2.

Alexis Bonogofsky supported the Board's decision to reevaluate fracking reform. The Board's decision to deny the petition in September was erroneous.

CONSIDERATION OF INITIATING RULEMAKING ON HYDRAULIC FRACTURING DISCLOSURE

Mr. Stutz opened the hydraulic fracturing disclosure discussion by reviewing the Board's action to Earthjustice's rulemaking petition submitted in late July. The petition required the Board to respond within 60 days. With this 60-day limitation, the Board felt it had to deny rulemaking until the following events were addressed:

- 1) The Board was awaiting the Supreme Court's decision on its CCRC case. The courts reaffirmed the Board's position on the issue.
- 2) Earthjustice had not considered the impact, if any, of the federal trade secret law that was enacted summer of 2016.
- 3) The Montana Legislative session was coming up and the Board wanted the issue addressed by the Legislature. As of now, no bills have been introduced regarding this issue.

The Board's decision to deny the petition in September has now been challenged in a lawsuit filed by Earthjustice.

Earthjustice sent to the Board a packet that included reasons for the Board to reconsider initiating rulemaking, attached as Exhibit 3.

If the Board decided to initiate rulemaking, the Board could follow one of several processes for developing draft rule language for the Board's consideration:

- 1) Board committee or staff draft
- 2) Board committee or staff draft with input from interested parties
- 3) Negotiated rulemaking where all interested parties help draft a rule

Mr. Welter wondered who decides if a trade secret is legitimate.

Mr. Stutz said the Board would have to address this issue during the rulemaking process. He then referenced Wyoming's process and how the trade secret disclosure is filed with the state agency.

Mr. Halvorson went over the process if the Board was to pass its authority to staff. The chemical compounds in the trade secret would remain confidential and would be in staff files. Staff with access to the files would include the administrator and a designee for backup.

Mr. Durrett noted that under the Wyoming disclosure rule, Wyoming's director keeps the disclosure, but under the Montana Constitution, this may not be possible.

Mr. Halvorson said it would have to be the Board's decision. Currently, Wyoming's rule has a checklist on how it determines a valid trade secret.

The last day to introduce a bill is February 23, 2017. It is possible that a bill draft could be introduced addressing these issues prior to that deadline.

Chairman Nelson wanted to know the opinion of each Board member of whether to initiate rulemaking or to wait until after the February 23rd bill draft deadline.

Ms. Ames-Nerud favored opening rulemaking now and not waiting until the April meeting. There will be two new Board members who will not have the background knowledge of this issue.

Mr. Welter wanted to wait until the April meeting.

Mr. Efta also wanted to wait until the April meeting. He also wanted a committee appointed to review the Board's options.

Mr. Smith stated this is a complex issue and that he needed more information. As a trade secret pertains to emergencies, industry has the chemical information available at the wellsite.

Mr. Durrett thought that the Board's decision today would be litigated, so wait for the Legislature's bill draft deadline.

Mr. Stutz reminded the Board that not all bill drafts are adopted by the Legislature.

Mr. Gatzemeier noted that in NPRC's letter for early disclosure of chemicals, if the chemicals are a trade secret, the chemicals used will remain unknown.

Mr. Halvorson recommended the Board think about its options and have Board staff involved in the process.

Motion: Ms. Ames-Nerud made the motion to open rulemaking. No one seconded. The motion died.

The Board decided to wait for the February 23, 2017, bill draft deadline to see if there are any bills introduced regarding this matter.

Mr. Stutz volunteered to meet with an informational working group made up of Board members and Board staff to talk about the Board's rulemaking options. This group would make a recommendation to the Board at the next business meeting.

Mr. Gatzemeier, Mr. Welter, and Mr. Halvorson agreed to be a part of the group. Chairman Nelson instructed group to meet and make a recommendation at the next business meeting.

PLUGGING AND RECLAMATION PROGRAM AND UPDATE

Mr. Halvorson reviewed Mr. Popp's plugging project summary, the plugging cost spreadsheet, and the orphan well list, attached as Exhibit 4.

The plugging and reclamation grants have been closed out. Going forward, all plugging and reclamation projections will be directly funded by the Damage Mitigation Account.

Mr. Popp is talking with contractors to increase their interest in plugging projects. A frequent complaint by the contractors is that the plugging and reclamation projects sometime only have one well in the project. They request more wells added to the project that are in the same vicinity.

FINANCIAL REPORT

Ms. Rath discussed the financial statement, attached as Exhibit 5.

Mr. Halvorson updated the Board on its recommendation at the last meeting to draft a letter to the Legislature requesting a reserve balance of \$1.5 – 2 million. The Board was not authorized to submit a letter to the budget committee.

BOND SUMMARY & INCIDENT REPORT

Mr. Halvorson presented the bond report and the incident report, attached as Exhibits 6 and 7.

DOCKET SUMMARY

Mr. Halvorson presented the docket summary, attached as Exhibit 8.

The Augusta Exploration, LLC (Augusta) docket will be continued. Prior to proceeding with bond forfeiture, the federal receiver needs to confirm that Augusta has no remaining assets to plug and abandon the well. No confirmation has been received.

GAS FLARING EXCEPTIONS

Mr. Jones discussed the gas flaring report, attached as Exhibit 9. There are ten wells flaring in excess of 100 mcf/day. Of these ten wells, there are five flaring exception requests at this time. The exception requests are for Continental Resources Inc. and Whiting Oil and Gas Corporation. Both operators reported insufficient pipeline/plant compression. Mr. Jones recommended a six-month flaring exception for these wells.

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

STAFF REPORTS

John Gizicki

Mr. Gizicki provided the Board an update on Black Gold Energy Resource Development, LLC's (Black Gold) spill cleanup at the Indian Mound 1 SWD well located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15, T23N, R55E, Richland County, Montana.

Black Gold was brought to the Board's attention at the August 10, 2016, business meeting, for an unreported significant spill that took place on or before June 26, 2016. Black Gold failed to file a spill report and failed to make any cleanup progress on the spill. In violation of ARM 36.22.1103, which requires an operator to give immediate notice by telephone to staff and file a written report within five working days of the spill, Black Gold was then docketed for the October 27, 2016, hearing to show cause why additional penalties should not be assessed for failure to clean up the spill. At that hearing, Chris Blunt appeared and stated compliance would be achieved prior to the deadline of December 1, 2016, after which a \$250 fine per day was to be instated until compliance was achieved for the well.

Black Gold did not achieve compliance prior to the deadline and the daily fine was instated. As of today, the total fine amounts to \$15,500.

No board action took place and the \$250 per day fine will continue to accrue until compliance is achieved.

Jim Halvorson

The Senate committee took action on the drilling notification bill. The bill specified notification to

owners of occupied dwellings within 660' of a wellbore surface location. The distance was amended from 660' to 990'. The next step for the bill is the senate floor and if passed then to the House subcommittee.

At the December 14, 2016, business meeting, the Board adopted a drilling notification rule that provided notification to owners of occupied dwellings within 1,320' of a wellbore surface location. At the end of the Legislature, there will be a notification rule in either statute or rule.

Rob Stutz

Mr. Stutz gave a litigation update. The Hekkel case has been settled. In the Malsam case, Malsam is going to voluntarily dismiss its claim against the Board regarding J. Burns Brown Operating's \$400 fine.

Earthjustice has not formally served its lawsuit against the Board, regarding the Board's decision to deny its petition on hydraulic fracturing.

The James Brown Law Office has requested the Board cleanup five wells on the landowner's property of Dave and Leonora McEwen. Mr. Stutz will respond to Mr. Brown with the field inspection reports.

OTHER BUSINESS

There is a farewell reception for Linda Nelson, Board Chairman, and Wayne Smith, Vice Chairman, on Wednesday, February 1, 2017, at 5:30 p.m. This will take place at the Billings Petroleum Club at 27 North 27th Street, 22nd floor in Billings, Montana.

PUBLIC HEARING

The Board reconvened on Thursday, February 2, 2017, at 8:00 a.m. at the Board's hearing room at its office at 2535 St. Johns Avenue in Billings, Montana, to hear the matters docketed for public hearing. As a result of the discussion, testimony, technical data, and other evidence placed before the Board, the following action was taken in each matter.

Docket No. 39-2016 – A motion was made by Mr. Gatzemeier, seconded by Mr. Durrett and unanimously passed, to deny Nova NRG LLC's protest of XTO Energy Inc.'s application of non-consent penalties with respect to its interests in the Dige #41X-29DXA well.

A second motion was made by Mr. Smith, seconded by Mr. Gatzemeier and unanimously passed, to approve the application of XTO Energy, Inc., as set forth in Board Order 1-2017.

Docket No.1-2017 – A motion was made by Mr. Smith, seconded by Mr. Gatzemeier and unanimously passed, to have Montana Oil Field Acquisition I, LLC appear at the April 6, 2017, public hearing and show-cause, if any it has, why its wells should not be plugged and abandoned and why additional penalties should not be assessed for failure to file production reports, to pay the outstanding fine, and to appear at the February 2, 2017, public hearing. This is set forth in Board Order 2-2017.

Docket No. 2-2017 – A motion was made by Mr. Durrett, seconded by Welter and unanimously passed, to have Mountain Pacific General Inc. provide a plan for the plugging and abandonment of its wells at the Board's April 6, 2017, public hearing. This is set forth in Board Order 3-2017.

Docket No. 3-2017 – A motion was made by Ms. Ames-Nerud, seconded by Mr. Efta and unanimously passed, to dismiss Docket 3-2017, Seymour, James G. This is set forth in Board Order 4-2017.

Docket No. 4-2017 – A motion was made by Ms. Ames-Nerud, seconded by Mr. Efta and unanimously passed, to dismiss Docket 4-2017, Seymour, James & Lorraine. This is set forth in Board Order 5-2017.

Docket No. 5-2017 – The show-cause hearing of Bensun Energy, LLC was dismissed.

Docket No. 6-2017 – The show-cause hearing of Hinto Energy, LLC was dismissed.

Docket No. 7-2017 – A motion was made by Mr. Smith, seconded by Mr. Gatzemeier and unanimously passed, to assess Kykuit Resources, LLC \$1,000 for failure to appear at the February 2, 2017, public hearing. Kykuit Resources, LLC is to appear at the April 6, 2017, public hearing and show-cause, if any it has, why additional penalties should not be assessed for failure to pay the penalty assessed for delinquent reporting and to appear at the February 2, 2017, public hearing. This is set forth in Board Order 6-2017.

Docket No. 8-2017 – The show-cause hearing of Montana Land & Mineral Co. was dismissed.

Docket No. 97-2015 – A motion was made by Mr. Gatzemeier, seconded by Mr. Efta and unanimously passed, to continue Docket 97-2015, Augusta Exploration, LLC, until the April 6, 2017, public hearing. This is set forth in Board Order 7-2017.

Docket No. 49-2016 – A motion was made by Mr. Durrett, seconded by Mr. Gatzemeier and unanimously passed, to continue Docket 49-2016, Storm Cat Energy (USA) Operating Corporation, until the April 6, 2017, public hearing. This is set forth in Board Order 8-2017.

NEXT MEETINGS

The next business meeting of the Board will be Wednesday, April 5, 2017, at 2:00 p.m. at the Board's hearing room at its office at 2535 St. Johns Avenue in Billings, Montana. The next regular public hearing will be Thursday, April 6, 2017, beginning at 8:00 a.m. at the Board's hearing room at its office at the 2535 St. Johns Avenue in Billings, Montana. The filing deadline for the April 6, 2017, public hearing is March 2, 2017.

BOARD OF OIL AND GAS CONSERVATION OF THE STATE OF MONTANA

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

ATTEST:

Jennifer Rath, Program Specialist