

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
MINUTES OF THE
BOARD OF OIL AND GAS CONSERVATION MEETING AND PUBLIC HEARING
August 9 & 10, 2023

CALL TO ORDER

The regular business meeting of the Montana Board of Oil and Gas Conservation was called to order by Chairman Steven Durrett at 2:00 p.m., Wednesday, August 9, 2023, at its office at 2535 St. Johns Avenue in Billings, Montana. Board members present were Chairman Steven Durrett, Roy Brown, Paul Gatzemeier, Mac McDermott, John Tietz, Corey Welter, and Jeff Wivholm. Staff present was Ben Jones, Ben Davis, Perry Fields, Liz Leman, Jennifer Breton, and John Gizicki.

PUBLIC COMMENT ON AGENDA AND NON-AGENDA ITEMS

Ms. Susann Bueg, Mr. Edward Barta, and Mr. Terry Punt from Northern Plains Resource Council (NPRC) appeared to discuss the board's plugging and reclamation bonds and reviewed their letter submitted to the Board, attached as Exhibit 1.

NPRC provided five recommendations for the Board to consider:

- 1) Raise the base blanket bond amount for new oil and gas development to a minimum of \$90,000 to \$100,000, due to inflation.
- 2) Remove the cap on the damage mitigation fund.
- 3) Establish a maximum number of wells that can be on a multiple well bond.
- 4) Bonding policy should reflect the complexity of the well and the expenses associated with reclaiming and mitigating any given well.
- 5) Northern Plains advocates that the BOGC ensure that Montana remains eligible for any future funding that can be used to address orphaned wells and plugging issues in our state.

NPRC proposes that any bonding increase would not be retroactive. The bonding would apply to new wells only and no wells currently in the permitting process. NPRC wants Montana's bonding levels to address the actual costs of plugging and reclamation and to be in line with the neighboring states. NPRC is willing to work with the Board and industry in this matter.

Mr. Jones stated that there have only been seven operators who have drilled more than five wells since 2015, so there hasn't been much drilling activity.

Since the change of operator policy was introduced in 2019, over \$1 million of additional bonding over the standard bonding requirements have been collected to ensure adequate bonding resulted from those transfers. All transfers for new operators taking over more than 10 wells and transfers that would result in five or more inactive wells on a single, multiple well bond are reviewed in front of the Board. It has been an effective policy.

The diversity across the state with different well types and well abandonment costs make a one size fits all solution difficult.

Ms. Bueg would like the rules changed to reflect the higher bonding levels, even though the Board has the authority to double bonds and limit the number of wells on a bond.

The Resource Indemnity Trust (RIT) Fund account cap of \$100 million could be raised so there would be additional funding available from the RIT account to transfer to the Board's Damage Mitigation account for plugging orphan wells. The RIT account was funded by a tax on mineral extraction industries and to be used for issues such as plugging and reclamation of oil and gas wells and mining operations. Removing or increasing the cap could be a solution to many problems.

NPRC will support the Board if a bill to increase the RIT account cap is brought before the Legislature next session.

Board staff will continue to monitor all federal grant opportunities it is eligible for; however, the recent federal initial grant to plug orphan wells in the state has been a huge burden to staff. The formula grant will require additional reporting requirements, but currently all orphan wells are under contract to plug, so this grant may not be necessary until further down the road.

The federal government is currently proposing to significantly increase its bonding levels and this action will have a major impact to operators across the state. Staff recommends waiting to see the outcome of the federal government bonding changes, and not enter rulemaking to increase bonding on state and private wells concurrently.

Mr. Punt mentioned that the coalbed methane (CBM) tax provided water monitoring before and after a well was drilled. There needs to be a baseline of data, as this is beneficial to the state. CBM was handled poorly, and operators need accountability.

Mr. Alan Olson, Executive Director of Montana Petroleum Association, commented that he worked along side NPRC on the hydraulic fracturing rule. The Board is handling bonding with the change of operator policy and holds operators responsible for its shut-in/inactive wells. Bonding isn't the issue. Montana has had a plugging and reclamation account since 1973. The account has reached its limit of \$100 million in 2003 and the tax continues to be collected but now goes to many different places that the funds were not intended for. The money was set aside for reclamation purposes. The federal bonding of \$150,000 per lease is going to be detrimental to small operators along with other challenges, such as the current sage grouse restrictions. Mr. Olson requested the Board reject NPRC bonding recommendations.

APPROVAL OF MINUTES

A motion was made by Mr. Welter seconded by Mr. Wivholm and unanimously passed, to approve the minutes of the June 14, 2023, business meeting.

PLUGGING AND RECLAMATION BOND REVIEW

No additional comments were made regarding the plugging and reclamation bond that took place during public comment.

PRIVILEGE AND LICENSE TAX

Mr. Jones reviewed the privilege and license tax (P&L tax) spreadsheets, attached as Exhibit 2.

In June 2019, the Board lowered the P&L tax rate from the statutory maximum of 0.30% to 0.25% to allow Cities and Counties to receive 0.05% of the Board's P&L taxes collected.

Due to higher oil prices, conservative forecasts, and an adequate account balance in the Board's special revenue account, Mr. Jones recommended initiating the rulemaking process to lower the P&L tax rate from 0.25% to 0.22%. Cities and towns in oil and gas producing counties would receive additional funding and would be at the maximum funding allowed by statute of 0.08%.

The Board is required to give the Department of Revenue a required 90-day notice prior to the rule's effective date. There is no impact to industry and oil and gas producers will continue to pay 0.30%.

Motion: Mr. Gatzemeier made the motion to approve the recommendation to initiate rulemaking to reduce the privilege and license tax rate from the current rate of 0.25% to 0.22%. Mr. Brown seconded, and the motion passed unanimously.

Mr. Jones believes that due to the statutory limit of 0.08% of the Board's P&L taxes being distributed to oil and gas natural resource distribution account, the Board's operating account will continue to grow. He would like to see an increase of the cap into the damage mitigation account and a way to transfer the excessive operating account funds into the damage mitigation account rather than have it go to other legislative transfers. This would take legislative action.

BLACK GOLD ENERGY RESOURCE DEVELOPMENT, LLC AGREEMENT PER BOARD ORDER 66-2023

At the June hearing, an agreement between Black Gold Energy Resource Development, LLC (Black Gold) and the Board was established whereby Black Gold would voluntarily increase its reclamation bond from \$20,000 to \$40,000 and address the remaining site issues. In exchange, the Board would reduce the total fine from \$125,000 to \$105,000 (\$42,000 remaining). At the December hearing, Black Gold's compliance will be reviewed and a determination will be made concerning the remainder of the fine. The agreement is attached as Exhibit 3.

Mr. Davis informed the Board that Black Gold had signed the agreement, submitted the increased plugging and reclamation bond of \$20,000, performed a mechanical integrity test, and provided a facility layout listing tank contents. The facility layout and tank contents are also attached as Exhibit 3. The only issue left is berming the tanks.

Mr. Davis recommended that the Board accept the agreement and for the Board to authorize Chairman Durrett to execute the agreement to make it binding.

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

FINANCIAL REPORT

Mrs. Breton discussed the financial statement, attached as Exhibit 4.

BOND SUMMARY & INCIDENT REPORT

Mr. Jones presented the bond report and the incident report, attached as Exhibit 5 & 6.

DOCKET SUMMARY

Mr. Jones presented the docket summary, attached as Exhibit 7.

GAS FLARING EXCEPTIONS

Mr. Jones discussed the gas flaring report, attached as Exhibit 8. There is one Continental Resources Inc. (Continental) well flaring in excess of 100 MCFG/day with an exception request. Continental is working with the surface owner to obtain a surface use agreement and OneOK to lay pipeline in the area. Mr. Jones recommended a six-month exception for Continental.

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

INACTIVE WELL REVIEW

Mr. Davis reviewed a list of inactive well operators and their current statuses, attached as Exhibit 9.

Midway Energy, LLC provided staff a detailed well plan with a timeline and benchmarks for reactivating, transferring, or plugging its inactive wells, as required by Administrative Order 7-A-2023.

ORPHAN WELL AND FEDERAL GRANT UPDATE

Mr. Jones provided the Board an update of the Bipartisan Infrastructure Law Sec. 40601: Initial Grants (BIL). The Department of Interior (DOI) awarded Montana \$25 million to plug and abandon orphan wells under a federal grant program.

So far, 95 wells have been plugged and have all been witnessed by BOGC staff. The surface reclamation for these wells will follow. In addition to the wells plugged to date, 14 wells have been bonded by an operator or surface owner for domestic use and no longer require plugging. These wells have been removed

from the respective plugging contracts. There are zero orphan wells remaining to be plugged.

DOI is helping Montana obligate additional funds prior to the September 30, 2023, deadline. Since the last meeting, four more orphan wells have been obligated under contracts to be plugged with federal funds. Any change orders that have been issued to date have been approved with federal funding. Any unobligated funds cannot be used past 9/30/23, so Mr. Jones has worked with Ms. Leman for a legal way to obligate additional funding to existing contracts for unforeseeable issues in the future. As a result, about \$1 million of additional funding will be obligated for unforeseen issues that occur after the 9/30/23 obligation deadline.

DOI has released the formal guidance for the formula grants authorized in the BIL. With zero orphan wells left to plug, staff does not plan to pursue this grant at this time but can pursue it in the future. The grant has six phases and Montana is eligible for \$5.1 million in federal funding. The formula grant has additional requirements compared to the current initial grant.

Just this week, the DOI informed states that there will be a grant for states to work with operators to plug its 'marginal' wells. Under Board's rules, an economical well cannot be plugged. Mr. Jones will wait for a formal guidance to be released for this grant.

STAFF REPORTS

Perry Fields

Mr. Fields is working on a quality assurance plan for the UIC program. The plan has been filed and the next step is a crosswalk where each line will be reviewed by the EPA.

Mr. Fields is working on the federal fiscal year 2024 UIC grant from the EPA.

Last month, Mr. Fields attended a conference for the primacy of class VI carbon sequestration. There is currently one proposed project in the state, and it takes a minimum of two years to pursue primacy. There is a federal grant to help states apply for this primacy; however, the dollar amounts and guidance for that grant have not been release yet.

Ben Davis

Mr. Davis provided the Board an update on well activity, attached as Exhibit 10. Since the last business meeting, there have been two APDs for vertical wells, eleven APDs for horizontal wells, six APD renewals and six completion reports filed.

Mr. Davis brought to the Board attention Montana Energy Company (Montana Energy). Montana Energy has ten wells with several rule violations at each well, the violations are attached at Exhibit 11.

Mr. Davis recommended Montana Energy be required to have the well locations in compliance by the August 31, 2023, hearing application deadline. Failure to come into compliance by that date will result in Montana Energy being ordered to show cause at the October 5, 2023, public hearing, as to why penalties

should not be imposed for failure to remedy the field violations. Board staff has the authority to dismiss the docket if compliance is achieved prior to October 4, 2023.

Motion: Mr. Wivholm made the motion to approve the recommendation. Mr. McDermott seconded, and the motion passed unanimously.

The Board issued Montana Energy Administrative Order 8-A-2023, attached as Exhibit 12.

Ben Jones

Mr. Jones will be attending a GWPC meeting in September where one of the main topic of discussion will be class VI UIC primacy and carbon sequestration. He will also be attending an IOGCC conference in October where some of the proposed main topics of discussion will be the federal orphan well plugging grants and operator's financial assurance options (bonding).

Since the last meeting, the administrative assistant position has been filled by Allison YoungSwallow.

In July, Mr. Jones talked with visitors from Africa regarding resource sustainability.

Mr. Jones was a presenter at the annual teacher workshop. This workshop used to be funded by the Board and provides teachers an overview of oil and gas development.

Lastly, the proposed BLM bonding rule could affect all operators across the state. Board staff is following the proposed rules and engaging in talks with operators about concerns on how they may be affected.

OTHER BUSINESS

The Board closed the next portion of the meeting to discuss staffing in which individual's privacy exceeds the merits of public disclosure.

PUBLIC HEARING

The Board reconvened on Thursday, August 10, 2023, at 9:00 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 81-2023 – The application of Grayson Mill Operating, LLC was continued to the October 2023 hearing.

Docket 82-2023 – The application of Grayson Mill Operating, LLC was continued to the October 2023 hearing.

Docket 83-2023 – The application of Grayson Mill Operating, LLC was continued to the October 2023 hearing.

Docket 84-2023 – The application of Grayson Mill Operating, LLC was continued to the October 2023 hearing.

Docket 85-2023 – A motion was made by Mr. Welter, seconded by Mr. Gatzemeier and unanimously passed, to approve the application of Foundation Energy management, LLC as set forth in Board Order 68-2023.

Docket 86-2023 – A motion was made by Mr. Welter, seconded by Mr. Wivholm and unanimously passed, to approve the application of Northern Oil Production, Inc. as set forth in Board Order 69-2023.

Docket 87-2023 – A motion was made by Mr. Wivholm, seconded by Mr. Gatzemeier and passed, to approve the application of Bluebird Energy, LLC as set forth in Board Order 70-2023. Mr. Welter recused himself and took no part in this matter.

Docket 88-2023 – A motion was made by Mr. Wivholm, seconded by Mr. Gatzemeier and passed, to approve the application of Bluebird Energy, LLC as set forth in Board Order 71-2023. Mr. Welter recused himself and took no part in this matter.

Docket 89-2023 – A motion was made by Mr. Welter, seconded by Mr. Gatzemeier and unanimously passed, to approve the application of Kraken Oil & Gas LLC as set forth in Board Order 72-2023.

Docket 90-2023 – A motion was made by Mr. Welter, seconded by Mr. Gatzemeier and unanimously passed, to approve the application of Kraken Oil & Gas LLC as set forth in Board Order 73-2023.

Docket 91-2023 – The application of Kraken Oil & Gas LLC was continued to the October 2023 hearing.

Docket 92-2023 – A motion was made by Mr. Welter, seconded by Mr. Gatzemeier and unanimously passed, to approve the application of Kraken Oil & Gas LLC as set forth in Board Order 74-2023.

Docket 93-2023 – A motion was made by Mr. Gatzemeier, seconded by Mr. Brown and unanimously passed, to approve the application of Kraken Oil & Gas LLC as set forth in Board Order 75-2023.

Docket 94-2023 – A motion was made by Mr. Gatzemeier, seconded by Mr. Brown and unanimously passed, to approve the application of Kraken Oil & Gas LLC as set forth in Board Order 76-2023.

Docket 95-2023 – A motion was made by Mr. Welter, seconded by Mr. McDermott and unanimously passed, to approve the application of Kraken Oil & Gas LLC as set forth in Board Order 77-2023.

Docket 96-2023 – A motion was made by Mr. Gatzemeier, seconded by Mr. Welter and unanimously passed, to approve the application of Kraken Oil & Gas LLC as set forth in Board Order 78-2023.

Docket 97-2023 – A motion was made by Mr. Gatzemeier, seconded by Mr. Welter and unanimously passed, to approve the application of Kraken Oil & Gas LLC as set forth in Board Order 79-2023.

Docket 98-2023 – Board staff placed this application on the Default Docket for approval without hearing if no protests or requests for hearing were received by 10:00 a.m. on the day of the hearing. None were received. The application of Hydra MT, LLC was approved as set forth in Board Order 80-2023.

Docket 52-2023 – A motion was made by Mr. McDermott, seconded by Mr. Wivholm and unanimously passed, to approve the application of Heritage Energy Operating, LLC as set forth in Board Order 81-2023.

Docket 57-2023 – The application of Kraken Oil & Gas LLC was continued to the October 2023 hearing.

Docket 58-2023 – The application of Kraken Oil & Gas LLC was continued to the October 2023 hearing.

Docket 99-2023 – A motion was made by Mr. McDermott seconded by Mr. Welter and unanimously passed, that staff may proceed with administrative review and approval of the change of operator request from Legacy Reserves Operating LP to Eagle Operating Inc. This is set forth in Board Order 82-2023.

Docket 100-2023 – A motion was made by Mr. Gatzemeier seconded by Mr. Brown and unanimously passed that Docket 100-2023, S&H Energy, is dismissed. This is set forth in Board Order 83-2023.

Docket 101-2023 – A motion was made by Mr. Welter, seconded by Mr. Gatzemeier and unanimously passed, that Docket 101-2023, Wildcat Fluid Solutions LLC, is continued until the October 5, 2023, public hearing. This is set forth in Board Order 85-2023.

Docket 102-2023 – A motion was made by Mr. Welter, seconded by Mr. Wivholm and unanimously passed, that Wildcat Fluid Solutions LLC must submit a UIC plugging and reclamation bond in the amount of \$20,000 for the Velma SWD 1-10H well, staff may proceed with administrative review and approval of the change of operator request from Black Gold Energy Richland Facility, Inc. to Wildcat Fluid Solutions LLC, and compliance must be confirmed by a field inspector prior to resumption of injection on the well. This is set forth in Board Order 84-2023.

Docket 46-2023 – A motion was made by Mr. Welter to continue Docket 46-2023, Black Gold Energy Sheridan Facility, Inc., to the October 5, 2023, public hearing. The motion failed.

A second motion was made by Mr. Gatzemeier, seconded by Tietz and passed, that Black Gold Energy Sheridan Facility, Inc. must submit a UIC plugging and reclamation bond in the amount of \$20,000 for the Sheridan Facility SWD well, staff may proceed with administrative review and approval of the change of operator request from Cypress Energy Partners - Sheridan SWD, LLC to Black Gold Energy Sheridan Facility, Inc., and Black Gold Energy Sheridan Facility, Inc. must pass a mechanical integrity test prior to resumption of injection on the well. This is set forth in Board Order 86-2023. Mr. Welter opposed the motion.

Docket 103-2023 – New Horizon Resources LLC provided the Board an update of its efforts to reduce its plugging liability. No board action took place.

Docket 104-2023 – A motion was made by Mr. McDermott, seconded by Welter and unanimously passed, that Docket 104-2023, Interstate Explorations, LLC, is continued until the December 7, 2023, public hearing. This is set forth in Board Order 87-2023.

Docket 105-2023 – A motion was made by Mr. Gatzemeier, seconded by McDermott and unanimously passed, to forfeit the plugging and reclamation bond for Brandon Oil Company. This is set forth in Board Order 88-2023.

NEXT MEETINGS

The next business meeting of the Board will be Wednesday, October 4, 2023, 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, October 5, 2023, beginning at 9:00 a.m. at the Board's hearing room at its office at 2535 St. Johns Avenue in Billings, Montana. The filing deadline for the August October 5th public hearing is August 31, 2023.

BOARD OF OIL AND GAS CONSERVATION OF THE STATE OF MONTANA

Steven Durrett, Chairman
Paul Gatzemeier, Vice-Chairman
Roy Brown, Board Member
Mac McDermott, Board Member
W. John Tietz, Board Member
Corey Welter, Board Member
Jeff Wivholm, Board Member

ATTEST:

Jennifer Breton, Program Specialist