

HB 790 Subcommittee of the Environmental Quality Council

Thursday, January 26th, 2006 – 9:30 AM

Oil & Gas Permitting Timelines and Surface Owner Notifications Including Split Mineral Estate Permitting

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Introduction: Ballard Petroleum has been doing business in MT since 1963. Mr. Fisher has been in industry for 28 years. He is the Exploration Manager for Ballard Petroleum and a Geologist by training. He received a Bachelor of Science in both Mathematics and Geology from Rocky Mountain College in 1978.

Public Perception: Sometimes a statement, no matter how inaccurate, if repeated enough times, can grow to become perceived fact. In the case of drilling oil & gas wells the notion that a bulldozer and a drilling rig can “just show up one day” without any notification, on a ranch or farm, has been successfully perpetuated in our media and coffee shops by certain organizations and individuals opposed to development of the mineral estate.

Actual First Contact: In reality, the ability to receive a permit to drill on Federal, State or private lands begins with the acquisition of a survey of the proposed well site, which then must be properly submitted to state and or federal agencies. This first contact is generally made with the “impacted surface owner” weeks and sometimes months ahead of any surface disturbing activities. The notion that a drilling rig “just shows up unannounced” I would submit, is patently false.

The Survey: You have before you an exhibit of a typical survey plat for a well drilled in Montana. To acquire this survey our land department went to the Carbon County courthouse and researched the records for both mineral and surface ownership. In order not to trespass, the surveyor and our land department must first ascertain who owns the surface in Section 12 where we proposed to stake the well. They also ascertained the surface ownership of a minimum of one-half mile around section 12. In other words, we also contact many of the impacted surface owners neighbors so that we can have access to locate the scribed survey caps that allow the surveyor to triangulate into the proposed well site accurately. The lay of the land and the existence or non-existence of trails and roads dictates our access to these critical survey points.

Early Negotiations: Generally, with the first contact of the surface owner our engineering or land department will also discuss other issues such as crops, livestock, irrigation ditches, culverts, surface materials – such as road base materials, possible dust abatement issues, not only with the surface owner but sometimes neighbors and county road superintendents. All of these issues, issues dependent upon the area of operations, are components of a private contractual agreement. An agreement tailored to local

concerns and conditions; not something that should be mandated in statute in cookbook form.

The State Permit & Notice Period: Montana requires the preparation of a permit detailing a plan of operation submitted to the Board of Oil & Gas Conservation for review and publication in two print media for **ten days**. In the case of the example before you Ballard Petroleum published our proposed drilling in the Billings Gazette and Helena Record. Generally, from the time of first contact with the surface owner, it takes a couple of weeks to a couple of months to survey, plan, permit and publish depending on the complexity of the well being drilled.

Are there times when our industry moves faster than ten days, absolutely! Examples were provided at the Sidney hearings but moving quickly to an alternative site also means having an approved permit in hand. An example would be moving to another site because of poor results found in the previous well such as encountering a water bearing fault, or in these times of severe equipment shortages where the sudden availability of a rig allows us to drill a well. In this case our land and engineering groups would be contacting the impacted surface owner asking for permission to move the rig inside the 10-day notification process. We have also delayed or changed drilling locations in the past for farm and ranching operation concerns. There are numerous reasons that have driven a short-term change of plans in the past but they have always come with the permission of the surface owner and a permit in hand. Statute does not allow for anything less and good business practice dictates that we try to work with the surface owner and not spring this surprise very often and only when absolutely necessary.

The Federal APD Process & Notice Period: The Federal APD also requires the same survey instrument but in addition requires more individuals on the surface to meet Federal requirements. Early on we contact the surface owner and some of the neighbors for permission to stake a location and access route. Many times in this first contact we will hear from the surface owner that the ground where we are thinking about staking the well is “pretty rough” or “that’s a pretty good spot but could you think about moving your access route because it goes right through the middle of my hay ground”. Again, for all practical purposes we are negotiating the surface agreement on first contact. We will then send the surveyor out with instructions to do the best he can to avoid the problems the surface owner has. Within a week or so we will get the survey plat and access route and send in our official Notice of Staking (NOS) to the BLM. The BLM has up to 30 days to schedule the onsite review where the surface owner, dirt contractor, our engineering representative and BLM representatives meet at the proposed well site and discuss any issues concerning the proposed site. If there are issues concerning access or where the proposed well pad is located these can be addressed and modified again at this meeting. After the meeting other individuals will be conducting site specific archeological surveys, botanical surveys, raptor/upland game bird surveys, big game surveys, other biological surveys, paleontological surveys, etc. Access for all of these personnel to the surface estate in a timely fashion is critical to the issuance of a reasonably timely permit. If any concerns come to light during this review process and the well pad or access route must be moved, for example, because of an archeological

find or recent raptor nest, we would have to move and re-stake our location and start the process over again.

Issuance of the Federal Permit: Generally, the BLM permitting process takes 45 to 60 days to receive an approved permit to drill from the BLM. The Federal permit will not be issued to an operator until a surface damage agreement has been negotiated between the operator and the surface owner in a split mineral estate situation per BLM Instruction Memorandum No. 2003-131 dated April 2, 2003.

Why not increase the notification process? The reality is that the surface owner has been contacted early in the process because of the permitting requirements of the State and Federal agencies. Why then are we being asked to extend a notification process that is working? In every regulatory process that exists to date those that wish to delay and obstruct are well versed in their tactics. If we examine almost every appeal filed by groups opposed to resource development they file their appeal on the last day of the appeal window, i.e. the 45th day of the 45-day appeal process. Why is that? Well, let's randomly choose a 20 day notification instead of the current ten day and examine what will happen to the timelines for our industry when faced with individuals who do not wish to **"negotiate in good faith"**, something none of you on this subcommittee can guarantee, but that the BLM has put in its regulation for industry to be held to per Instruction Memorandum No. 2003-131.

If I wish to send in a surveyor to stake a CBNG well that takes one day to drill I must give notice to the surface owner and ask permission for the surveyor to come out. *"Yes, you may in 20 days"*. The surveyor sends the survey plat into my company in a week and I send it into the BLM for the Notice of Staking (NOS). The BLM has up to 30 days to schedule an onsite and invite "Surface Owner Smith". The interested parties have the onsite and now all other disciplines need access to land. "Surface Owner Smith" says *you may have access in 20 days*. Third party specialists hired by industry such as Archeologists, Biologists, Botanists and others conduct their surveys and the Federal APD is processed and hopefully approved and sent to my company in approximately 45 days. I can now begin well pad construction and drill if I have a surface damage agreement and if not I must go through the "bonding on" procedure, which could add up to 30 days plus. In fact, without the surface owner agreement I cannot receive the approved Federal APD previously mentioned. But, by going through the "bonding on" procedure I can now send the **"20-day notification"** to "Surface Owner Smith" that I will be drilling my one-day CBNG well. It has taken me between 115 - 165 days to go through the process to drill a one-day well on a surface owner that is not "negotiating in good faith". This individual is using all the regulatory processes at his or her disposal to delay, frustrate and obstruct. I ask this panel, is there truly any reason to extend the ten-day notification period? Did this surface owner who was invited to the onsite by BLM personnel, who was contacted by the surveyor, our land department and other specialists conducting surveys not know the intentions to drill a well. Arguably, from day one we have been in some form of surface negotiation. We are not blind-siding these surface owners. They know we are coming no matter what some organizations may have you believe. In fact, for some of these natural resource plays EIS's or EA's may have been

ongoing for 18 months to three years. So to claim that they had no knowledge of an impending development in their backyard is hard to fathom.

Without fail, in my 28 years in this business, when I have seen additional regulatory burden placed on this industry it has done nothing but bring more difficulty, expense and delay to the process of resource development. New rule making has also created an opportunity for new court challenges thus delaying implementation of the new rules and once again, compounding the delays experienced by this industry in developing the natural resources of this nation. In a time when Federal agencies are manpower constrained, when goods and services are at a premium, when securing and maintaining a drilling rig in Montana is so difficult and when our nation needs every domestic form of energy it can access safely why is Montana looking to put more regulatory burden on this industry? I believe the system works that is in place now. It is not perfect but no system is. Industry, Federal and State agencies have a process that works properly, protecting the correlative rights of the mineral owners, that has a system in place for surface owner complaints and concerns and that has a State taxation system in place that places the burden of cleanup and that cost on industry. Increased State intervention is unnecessary for a system that is working and sends the wrong message to business and the continued attraction of capital investment and future job growth in this State.

Why not have mandated surface use agreements? What surface use minimums will this subcommittee place on the industry and the surface owner? Will the surface owner be mandated to “bargain in good faith” or just the industry representatives, as is the case in the Federal regulation?

First, if you set surface use agreement minimums then I would submit that you risk tying the hands of the surface owner. How many of you have noticed how setting minimums on anything can rapidly become the standard of society. **Every time government, our schools, our society in general, sets minimums then there are always a certain percentage of that society that only achieve or strive to reach those minimums.** The State of Montana risks creating an adversarial environment between companies and landowners when it sticks its nose into this area of private contractual matters. Right now, if I’m out on location with a backhoe and doing work and the surface owner needs a favor I’m inclined to help out. But now, create mandatory surface use agreements and watch as the ever-insidious governmental creep expands these initial “mandatory surface agreements”. The more this State gets in my business the less liability my business is going to want to take on and “good neighbor” behavior is going to become a thing of the past because of this State’s intrusive behavior. There are many companies and landowners who don’t think twice about helping each other out right now because that’s the way things are done in Montana. I ask you to think hard about putting government between the surface owner and the company. Nothing’s perfect, but nothing government mandates is better than two people sitting down and working out their differences.

Lets address the second question mandating “bargaining in good faith”. Obviously its been fine with the groups opposed to natural resource development to see the phrase “**bargain in good faith**” applied to industry but I know that this subcommittee cannot

mandate the same to individuals or groups. But that is a consequence of a decision you would make if you mandate surface use agreements. You cannot guarantee that the split mineral estate surface owner that is a totally opposed to the mineral estate holder will ever change his or her position and has no motivation to "bargain in good faith". The mineral estate owner has every right to access "a reasonable amount of the surface" to extract their minerals and will have to fight needlessly through the additional red tape that this subcommittee will develop because many of the issues before it are politically motivated rather than environmental & legal reality.

Conclusions: Ladies and Gentlemen, I would submit to you that the actual notification process that exists today is in fact far from broken or unfair. The statute reads that we must give the surface owner ten days notification before the initiation of drilling operations. In fact, the surface owner is contacted first and generally some considerable time in front of the process of moving in the equipment necessary to construct a well pad or the drilling rig itself. Extending the notification period will accomplish nothing except to give those who have demonstrated time and time again, given regulatory leeway to frustrate and delay, that they will use this added notification period for less than genuine purposes.

In the case of the Federal APD process, if everything were perfect a simple well permit would take approximately 30 to 45 days and the State a minimum of 20 days. But real world experience shows that is not how the process works, it takes longer. How many of you have a business that deals with regulations, paperwork and permits? Our industry is regulated by the EPA, BLM, USFS, BIA, US Fish & Wildlife Service, Corp. of Engineers, Montana DEQ & Board of Oil & Gas Conservation, National Environmental Policy Act, Endangered Species Act, State and National Historic Preservation Acts and all the commensurate regulation contained within these agencies and acts. Within the boundaries of this regulatory oversight our industry has still managed to respond to the lowering of taxation by the Montana Legislature and are generating some of the highest revenues the State has ever seen from this sector and are providing some of the very highest paying jobs for Montanan's. I hope that the message this subcommittee sends is a positive one for both business and the split mineral estate. I thank you for the opportunity to testify before this subcommittee and these extremely critical topics.