MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
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DESCRIPTION

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2007 HOUSE NATURAL RESOURCES

HB 1060

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1060

House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: January 5, 2007

Recorder Job Number: 665

Committee Clerk Signature Sherry R Hmoted

Minutes:

Chairman Porter called the House Natural Resources committee to order. All members (14) were present.

Terry Helms, Director of the Department of Mineral Resources (DMR) introduced testimony and explained each section as to how it applies to HB 1060. Please see attachment of that testimony.

Relative to Section 1: This modernizes the Oil and Gas Divisions contracting authority to deal with production equipment. (i.e. equipment that is on abandon sites.) They would deal with this in the same way that they have historically dealt with wells which mostly is emergency situations. They have the authority right now if a oil well or salt water disposal well is leaking and is creating any safety, health or environmental hazard, They would be able to intervene on an emergency basis and spent money from the abandon restoration fund without having to go out for bids and spent State dollars to take care of the problem. They currently do not have that authority with a piece of equipment that starts leaking.

Relative to Section 2: This would allow funds that are accumulated from cash bonds to be transferred into the abandoned well reclamation fund so that they could pay for the reclamation of all abandon wells with these funds. This would make this process simpler and easier. It also raises the cap from $250,000 to $500,000 which is where most of the fiscal note is coming from. The reason for this is that there is currently a one time transfer from an operator. There is a large settlement that is about to be made from an operator that will go into that fund and that settlement puts us over the $250,000 cap temporarily. That money ends up going into the general fund and does not stay there to take care of the 34 wells that ultimately I think we are going to inherit. We will be able to transfer most of them to a good operator but some of them the state is going to have to take care of, out of that fund, so it is necessary to increase that cap. Plugging costs have doubled since the last time we increased that fund. We doubled the cap and that is how we came up with the $250,000. The fiscal impact on this section is $125,000.00.

Relative to Section 3: This would change the way geothermal installations are regulated. Current law requires commercial geothermal installers to permit and report what they have done. Residential installers just have to send in a report. The law is very confusing. We feel like we are getting a tremendous amount of under reporting. Residential installers have to file a completion report and we can fine them if they don't, but they don't have to get a permit from us. This bill corrects this and insures that these systems are installed using approved fluids that are not going to contaminate ground water and that everything is appropriate. We can better prevent problems up front looking at the permit application rather than having to deal with them at the completion report, when we see that something was not done right. We get 50 completion reports each year historically but we are sure that many, many more are being

installed and the paperwork just isn't being sent in. This proposal was presented to the Water Well Drillers Annual Meting and the installers don't oppose the change.

Relative to Section 4: This establishes a new special fund. We put in a $500,000 cap there because that is what we had on the other fund. Current income to the General Fund from fees for things like geophysical exploration, geothermal and all of that is $10,000 per biennium and that just flows into the general fund. We would like to create this fund and build an industry funded bank account that can take care of problems if they develop in the future. With the explosion of geothermal installations, it is almost inevitable that at some point a parking lot is going to have to be torn up and an installation is going to have to be repaired for a seismic flowing well and we are going to have to repair it. We have never had funds on the state side to take care of those problems. We would obviously first go to the installer and their bond, if they had a bond, but in the case that it is truly an abandoned situation and the six years had run on the bond, we would like to have an industry funded bank account that could take care of these problems. We think it will work here.

Relative to Section 5: This creates a special fund with a continuing appropriation. The energy policy after 2005 that was passed in the US Congress authorized thirty million dollars a year for 5 years for geologic data preservation. The states are going to have to apply for that funding. We anticipate that North Dakota could get $50,000 per year for five years. The Federal Funds have to be used for preserving geological data. We would use the funds to set up a geological survey subscription web site. We would anticipate that once the 5 years runs out, and we are not getting money from the Federal Government anymore, we would be self-sustaining. This is money that if we got it without creating a special fund, it would flow to the

General fund. We would have to use General Fund salary dollars or somehow match to achieve it, so there would be no net gain to the state.

Mr. Helms indicated there are some proposed amendments already. He apologized for that. He said that they had overlooked a couple of things in the original bill draft. They forgot to put geological exploration in the bill description in Section 4, so the amendments that you have on page 4 take care of that. In addition, when we were talking about Section 1 with the OBM, they suggested that because our bidding requirements meet or exceed their requirements, we should just exempt this process from OMB's procurement requirements, so that is what Section 6 does.

Chairman Porter asked Mr. Helm if he had amendments drafted. He indicated that they are on page 4.

Representative Keiser indicated that he was trying to do Chairman Porter a favor by asking that if a discussion had yet been done regarding at what level this had to be referred to Appropriations?

Chairman Porter indicated that it had always been $50,000.

Representative Keiser said this has a fiscal note on it and he would think this has to be referred to Appropriations. I would appreciate you again running through the appropriation a little more specifically on what you are proposing here. For Committee members, when this bill gets referred, the Chairman gets to go before Appropriations. It is very important for us to

understand exactly what you are proposing here. One of the questions I would like you to address as we go back through this is that you said there were 32 or some number of wells that were going to be transferred to your responsibility? What is the cost estimated to address these versus the $500,000 or the other dollars in there?

Mr. Helms indicated he would go back through it. He also indicated that he would go with Chairman Porter to Appropriations.

Section 1 is the main part of the fiscal note. It is $135,000. 00. The reason for the raising of the cap on the fund is for the plugging of abandon wells restoration fund. Relevant to the 34 wells that this operator operates, about one half of those wells will probably get transferred to another operator. It would be economical for another operator to take over. Typically, we get another operator to file a bond with us, and they take them so those wells will be off the table. This would be about 15. The remaining wells are going to cost probably $50,000.00 each to plug and reclaim and restore the production sites. That leaves us with 19 wells. Let's round that up to 20. We are looking at about a $1,000,000 dollars obligation. They have a $100,000.00 bond posted with us. They are making a settlement of $150,000.00 with us, so that is $250,000.00 off the million. We are still $750,000.00 short of completely covering that obligation. We have that much currently is the cash fund (in the Abandoned Restoration Fund) if we can do the other thing in this section about transferring the cash bond into the Abandoned Restoration Fund. That is a worst case scenario. We could end up with about a one million dollar obligation for plugging and restoration and about $250,000 from this operator. We think it is very important that this money not flow into the General Fund and stay here to go for this

purpose. It is 90% certain that this operator is going to go under based on the settlement and the bond and their inability to produce the wells.

Representative Meyer asked for clarification as to why if he had 34 wells, why he only had to carry $100,000 bond on those wells.

Mr. Helms indicated that when he took the wells over, he was in compliance and he was able to get a blanket bond to cover those 34 wells. This is not an a typical situation. For most operators, it is not a problem. You will get this occasional operator where we end up in this situation.

Representative Meyer asked for clarification that the bonding for one well is $20,000.00? **Mr. Helms** indicated that was correct. **Representative Meyer** asked what the $100,000.00 included. **Mr. Helms** indicated that it was unlimited. However, as an operator begins to slide into problems, there are restrictions on that blanket bond. The current rules provide that they can only have 6 wells out of compliance at any point in time on that blanket bond before they begin a complaint process with them. If they would ever try to drill another well, or buy another well, they would have to take out a new blanket bond. This is an unusual situation. Do any of your remember the name Earl Schwartz? This operator was his personal assistant. He willed these wells to him. There was a court battle over the wells that these wells should even go to him, but he won in the courts, and was actually able to get the wells and able to come up with the money to post the $100,000.00 bond. We were backed into a corner and forced into this situation when Earl Schwartz died 6 years ago. This is the only situation like this that we have. This is very unique.

Representative Solberg asked for clarification of operator. Is that the same as owner? **Mr. Helms** indicated that in general it was the same as owner. A well may be operated by an owner who has a majority interest in the well. There can be dozens of other owners. The operator is the person whose name is on the bond. The operator is the one that posts the money and is registered with the Secretary of State. He is the responsible party. We are aggressively pursuing this individual in terms of all of their assets in terms of everything we can lay our hands on. They are active producing wells and we have garnished the oil production from those wells. We will actually recover dollars from this company oil production as this court fight goes on.

Representative Solberg also asked about the procedure used to pursue another operator?

Mr. Helms indicated that what typically what happens if an operator is in violation, they will file a complaint with the Attorney General's Office. They have 20 days to respond to that complaint, and then we will hold a hearing. The Industrial Commission will make a decision. If it is a situation like this one, the Industrial Commission will actually take the well facilities and any oil that is being produced. We actually have the authority to take ownership of that facility and to take the bond. If it is a chronic situation like this, and they don't clean it up, we will actually take it. At that point, we then own the well. The State will actually own the well. We are not in the business to operate wells, but what we can then do is (we own the equipment on the well, the site, the roads, everything) transfer title to a new operator. They will post a single bond with us and we will take the bond and transfer the title to them and make them the bonded operator of the well. That has worked very well for us. Probably 75%

of the abandon wells have had value. We have been able to get a new operator to step in and take on the responsibility of getting the well back in operation.

Representative Charging indicated that she was familiar with some of these situations, but indicated that she was wondering if $50,000.00 was adequate for equipment and cleaning up the well to get it operational. If the equipment was outdated, and not state of the art, she felt that it would be a lot more than $50,000.00. She would think that maybe $250,000.00 would be more like the number in some cases to get all the equipment up to speed.

Mr. Helms indicated that the number was an average, of course, and he thought it was a pretty solid number. He also indicated that had just done two reclamations on a project in the Mon-Dak Fields. They went out of business and forfeited the bond. Those two site reclamations together cost them $50,000.00 and the two pluggings cost $50,000.00 so the total per well was $50,000.00. That is an average. Up in the Minot area, the wells are shallow and they get a lot of rain, so reclamation goes easy. We can do a well for probably $25,000.00 up there. There are situations like you are talking about, like out in the Badlands north of Medora, and you have a mile of roads, and it could run $250,000.00, but on an average, that is what it costs.

Chairman Porter asked Mr. Helms that in the discussion of the overview of the oil and gas industry, we talked about the salt water wells and the permitting process. Would it be possible for him to draw up an amendment for us on how that would look for your agency to takeover the permitting process on the salt water wells? **Mr. Helms** indicated that he could certainly do that and this bill would be the appropriate vehicle if it was the will of the legislature that the Oil

and Gas Division should begin temporary permitting of supply wells for recovery. He indicated that he would be hesitant to go any deeper into the permitting business than that because when you start getting into fresh water wells that are going to be supplying fresh water to oil production; these have the potential to impact ground water resources. There are no hydrologists on staff. That certainly could be appropriate for temporary permits to be issued. Something could be drafted up. This would certainly be the appropriate vehicle for that.

Mr. Porter also asked that with the situation up in Minot and some of the things that happened with section one and two of this bill, would it work better for the department to have an emergency clause in place on those two sections to speed the process up so that some of the things you are talking about don't happen? You are looking at July before this would even come into place and if between now and July something happens up there, we could be in a little bit of trouble?

Mr. Helms indicated that he appreciated this and that he had not thought of that. It would be very helpful on this bill because we are reaching some deadlines in the middle of January with this operator and things are going to begin happening very quickly in terms of taking over wells and garnishing oil. It would be helpful to have the emergency clause in place so that we could handle this as quickly as possible.

Chairman Porter asked him to include this in that same amendment. **Mr. Helms** indicated that he would.

Representative Keiser was following up on Representative Meyer's question regarding the bond. Are we approaching the bond correctly? In some cases, it is obvious that the $100,000.00 bond is not adequate to cover the risk associated with these wells. Are we doing what is right in that area?

Mr. Helms indicated that in general we are doing what our neighboring states are doing. That is usually what we are doing when we are involved in this rule making process. The last time we did a rule making, we asked for increased bonding levels, and we did get some, but not near what we asked for. When we do rule making, we are going to ask to increase all of those bonding levels. We rarely have a problem with the blanket bond. Usually it is our single well bonds, and it is the one or two well operator that gives us the trouble. We have a very unique situation here. We will address the bonds when we do the rule making this year. I anticipate raising those bond levels.

Representative Keiser said that the purpose of the bond is like an insurance policy. The purpose is to cover risk. I am not opposed to a blanket bond, but it should correlate with the risk. If you have 60 wells under a $100,000 bond, it does not correlate with the risk. There is something wrong with that and it should be addressed.

Mr. Helm agreed and it has been a long term concern of his. We look at different ways to fix this. They are looking at a situation if you temporarily want to abandon a well, then you post a single well bond for that well for the full plugging costs. There are other states like Texas that have gone to a well life insurance policy system. You actually go out to a company and buy a life insurance policy on your well. If at the end of the life of your well, you cannot afford to plug

it, the insurance policy plugs it. There are some new vehicles that are being developed in this area. This certainly is an area that needs some looking at.

Representative Hunskor asked about the situation with Mr. Schwartz. He asked about the effect of the property owner. Is there any relation between the problem there and your department?

Mr. Helms asked if this was a mineral owner or a surface owner? One of the situations that they run into is making sure that the mineral rights actually flow back to the owner. As they go through the process that he just described, if the state takes over title to the well, one of the things that we do is idle the well long enough that the production clause expires on the lease so that the mineral owners get their leases back. It is important that they get their mineral rights back and that they are not somehow tied up in this well that is being transferred. They can then negotiate a new lease with the new operator that wants to take over the well. We also have to prioritize with the surface owners. They have a list that needs to be taken care and one of the main things to get them to the top of the list is if they are getting complaints from a surface owner. If we have an idle well and the surface owner wants that well out of there, we will really get on the company hard and file the complaint. We will get the well plugged and abandoned and get it out of there. These things are difficult in that it could represent a constitutional taking. You have to go through the legal process to take this well to take it over and transfer it to the new operator. It is a long process.

Since there were no further questions and testimony in support or opposition to this house bill 1060, the hearing was closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1060

House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: January 11, 2007

Recorder Job Number: 952 (Beginning at 42:41 of tape)

Committee Clerk Signature Sherry Olmsted

Minutes:

Chairman Porter opened the discussion on HB 1060. Mr. Helms was working on an amendment for an emergency act and what that would do is to change the money size of the accounts in Section 1 & 2 that needed to happen in order to accept the settlements that are coming out of the situation in Minot. By doing that, by making it an emergency, it does not exceed the size currently set out in statute, and would avoid having to go through the appropriation process because that money will be received before this bill will be enacted. Does anyone have any questions on the emergency clause on HB 1060? The second part of the amendment would move the permitting process for the appropriation of the salt water well from the state engineer to the Oil and Gas Division. The definition of that is that the unit operator tests satisfy the unit water needs from an aquifer containing more than 3000 mg/l total dissolved solids. That basically is the salt water well. That jurisdiction for the permits and the terms would move from the State Engineers Office to the Oil and Gas Division. They are in charge of the inspections. They are in charge of the conditions in the oil field. They just are not in charge of the permitting process. One of the things that prompted this particular amendment, during the last spring there was a problem with companies getting the salt water wells because of the other aquifer issues with the fresh water wells. The amount of work

required on the potable size was holding up the process on the saline side. This held us drilling and exploration in the oil fields. That is where the amendment came from. In the process of the discussion, all of the parties got together to discuss this. I have asked Mr. Shaver to come here to talk to us.

Mr. Robert Shaver spoke with Dale Frink today but unfortunately he is not available today. We have not been able to discuss the proposed amendment. He requested that we have time to look at this later today. We could possibly return tomorrow sometime. Mr. Frink said that he would be available to provide testimony at that time.

Chairman Porter said that would work. The Committee meeting was adjourned.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1060

House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: January 12, 2007

Recorder Job Number: 992

Committee Clerk Signature Stacey Osmstad

Minutes:

Chairman Porter opened the hearing on HB 1060. He asked Mr. Dale Frink to come down to address the proposed amendments from that we had asked to have submitted from the Oil and Gas Division in regards to the permanent process or salt water wells in the oil industry.

Mr. Frink thanked the committee for the opportunity to make some comments on this amendment. He has no problems with the rest of the bill. He wanted to address three things. In regards to the amendment itself, his major concern on this, and it is pretty significant, that it fracturalizes the water permit process almost state wide between two state agencies. In the water commission they do not even like fracturalizing the process between two hydrologists within their own agency. They like assign an aquifer to one person if possible. That makes that individual responsible for this but it makes him an expert on this. The ground water situation in North Dakota is very complex. He passed out a list of some of the aquifers that have a TDS content of at least 3000 mg/l. One of the concerns they have when analyzing is that if we approve a well, we can then start pulling in some of this back water into the good areas. This should be the opposite. It could have some drastic impacts on many of the livestock wells in the state of North Dakota. There are some problems in the Fox Hills area

as well as others in Western North Dakota in the Alexandria area. There can be a significant amount of coordination necessary between the two divisions to make this happen.

Chairman Porter asked that if under the current system, isn't there a significant amount of coordination that needs to happen already?

Mr. Frink said yes, but in terms of water and the water aquifers they do most of the scientific investigations in house. There are not many other ground water experts in the state of North Dakota. Oil and Gas primarily deal with the deeper formations. He does not want to fractionalize the evaluations of these aquifers between two agencies.

Chairman Porter asked Mr. Frink if he thinks the saline pockets are intermingling or connected hydraulically to the fresh water pockets, or are they stand alone pools that have no value other than to the industry?

Mr. Frink said in some cases they are separate, but in some cases they would be connected. In some cases they will do a pump test to find out where that water is going to come from. They do not want it to come from these high TDS areas because then it can contaminate the better portions of the aquifer.

Chairman Porter asked that if in these pump tests have you found that you have drawn salt water into a fresh water aquifer.

Mr. Frink said they found that was possible.

Chairman Porter asked if there was an area of the state where that has happened.

Mr. Frink said he had some hydrologist along and they could address that.

Representative DeKrey asked him to explain some of these locations.

Mr. Frink talked about the water permit process in general. They spend an enormous amount of time on this because North Dakota does not have a lot of extra water to appropriate. It is a very time consuming process. When an oil company wants a permit, you must pull someone

off another job to do this. They do that in some cases. It is my understanding that oil companies do not like to give a lot of advanced notice because the competition is great between the oil companies themselves. They wait as long as possible to do this and then they want the water right away. They do work with them on the Dakota aquifer as much as they can. The Dakota aquifer is the largest aquifer in North Dakota. You don't have a lot of use for the Dakota aquifer in the western part of North Dakota, so they don't mind giving water out of the Dakota aquifer in certain areas to pump down and use for this purpose. The Dakota is used in many parts of the state for drinking water and for livestock. When you come in for a water permit, you have to advertise in the paper for a couple of weeks and notify all the land owners and it takes a few months of administrative type things to get that. Once that is completed, then it goes to the geologists for analysis. If it is the Dakota aquifer, you can probably have it in a day. An agreement was reached with the governor's office that if the water is coming of the Dakota aquifer for water spraying purposes, they issue a temporary water permit as soon as possible. That temporary permit will be accompanied by an additional water permit application. That gives them one year to get that permit processed. Most oil companies and the state water commission agree that it works. We don't like giving temporary water permits for some of the other areas.

Representative Meyer asked if this amendment just targeted the 3000 ml/l. It would be just that aquifer.

Mr. Frink indicated that was correct but this amendment would get them in aquifers that the ranchers are using and there is not that much water in there. He is concerned about depleting these sources.

Representative Meyer asked if it was somewhere in the code an amount of time that an oil company has to talk to you about getting a permit?

Mr. Frink said they have to have an approved water permit, whether it is temporary or not, in hand and signed before they use the water.

Terry Helms came forward with the draft of the language that Mr. Frink was addressing. When they initially looked at this, they looked at a number of ways of quantifying water that you might permit in conjunction with a water flood unit. There are a lot of definitions out there. We chose the definition of 3000 mg/l based on the program that they currently run for the EPA. This may not be the right number. He was surprised that some of the aquifers had pockets of salty water. His concern with this process is that the process of getting a water permit is taking a great deal of time. He made reference to a company that is going to invest nine million dollars in this state, and when the process of getting a water permit is taking 6 to 12 months, that is not acceptable. The process for putting a unit in place, all the documents have to be pre-filed with the Industrial Commission 45 days prior to the unit hearing. They have to be filed with all impacted owners, surface and mineral owners. The way it would work at the Industrial Commission is it would become part of the unit application. Everyone would have 45 days of advanced notice that they plan to use this water for their water flood operations. He was a little concerned himself about chopping up a process like this. He does not feel that this amendment would totally take away the water commission input into the process, but it would certainly remove it from the expert who works that aquifer. I applaud the goal because the oil companies are spending millions of dollars and they cannot afford to make that kind of investment and then quickly be able to get the water flooding up and running and start seeing production results. It would come in as part of the unit application, it would be pre-filed with us, and pre-filed with all the affected agencies and affected surface and mineral owners. It would be advertised in the local newspapers and the Bismarck Tribune. It would be one of the things discussed at the unit hearing. Some 30 days later, it would be one of the things that would be

contained with the Industrial Commission unit order that permission is hereby granted for use of this aquifer for this water purpose.

Chairman Porter said he thought it would simplify the application process, allow the oil company seeking the application to make one request, but the notification concerns from other state agencies, particularly the state engineer's office could be addressed during the hearing process.

Mr. Helms indicated that was correct. They would get the 45 day notice so if they had concerns, they would have 45 days to voice those concerns with the Industrial Commission.

Chairman Porter also asked if when a permit is granted currently, who has the regulatory authority over that well after that point.

Mr. Helms said it was his understanding that the water supply well authority lies with the water commission. Once the water is on the surface in a tank, then it becomes our jurisdiction.

Chairman Porter asked if an injection well falls in their jurisdiction. In your example of the company in the Glenburn taking the existing injection wells and then reversing them to take that water back out, is there another permit required?

Mr. Helms said yes. That disposal well has been under their jurisdiction since 1963. Once the application is made to the water commission to convert that to a supply well, it now comes out of our jurisdiction and goes into Mr. Frink's jurisdiction. It makes the transfer from one agency to another.

Chairman Porter asked so that as it is currently set up, there is a certain amount of fractionalization of authority now so this might help bring this together?

Mr. Helms said if they do this right, whether they leave it as it is now or change it, it will be a smooth process.

Chairman Porter said that the proposed amendments were before them.

Representative Hofstad had a general comment that he had some concerns about fragmenting this process. He said the study of aquifers is a very complicated system. He is concerned that we may be taking that authority away from an agency that has that expertise. He thinks this can best be addressed at the State Water Commission.

Representative DeKrey asked Mr. Frink a question. He asked about the oil companies wanting to keep this process quiet. Can we statutorily distinguish between a well of potable water into two processes so that we could keep them separate in your agency so perhaps that would spur the oil companies to get this request in a little faster?

Mr. Frink thought that you could specify that it was for water flooding only. The issue that he has is that mainly the aquifers above the Dakota are used heavily by other people and he thinks that should be under one jurisdiction. Farmers and ranchers have to go through quite a process for this and then an oil company comes in and we say we will treat them special. Possibly something could be worked out. The temporary permit gives them one year to get everything in place and that should not be any problem at all.

Chairman Porter addressed Mr. Ron Ness of the ND Petroleum Council.

Mr. Ron Ness said this issue in not a confidentiality issue, but a timing issue. Everyone has an interest in getting the unit up and running. The temporary permit solves the problem. It may be a resource issue. They are very happy with the agreement that has been reached.

Chairman Porter asked for discussion from the committee.

Representative Meyer part of this came up with the emergency temporary water permits for one year. At the end of that year, they are automatically reissued. We do have some of them that are going on 4 years. The ranchers are saying they want to be able to come in and say that the wells are being monitored and make sure there is no contamination when the water goes back down.