

Montana Petroleum Association

phone (406) 442-7582 ♦ fax (406) 443-7291 ♦ mpa@montanapetroleum.org ♦
[Hwww.montanapetroleum.org](http://www.montanapetroleum.org)

HEARD IT THROUGH THE PIPELINE

May 21, 2010

MONTANA WILDLIFE FEDERATION LAWSUIT AGAINST THE MONTANA BOARD OF OIL AND GAS

On Tuesday Judge Joe Hegel of Baker, Montana, heard oral argument on cross-motions for summary judgment hearing in the lawsuit filed by the Montana and National Wildlife Federations against the Montana Board of Oil and Gas Conservation (MBOGC). The suit alleges that the MBOGC failed to adequately analyze the impact of 23 drilling permits that were issued on private and state land in the Cedar Creek Anticline field. The MBOGC relies on a programmatic environmental impact statement that was done in 1989 along with an additional EIS done in 2003. Then a checklist environmental assessment is completed by MBOGC staff when each drilling permit is reviewed by the MBOGC.

NWF/MWF claims that on these 23 drilling permits the MBOGC failed to consider the cumulative impacts of the additional wells to the field, and that the MBOGC failed to consider the impacts of these wells on sage grouse. NWF/MWF continued that it was the responsibility of the MBOGC to inquire about potential impacts to the sage grouse because they knew, or should have known, that information was available and that the sage grouse is a species of concern. Finally, they felt the MBOGC has a constitutional duty to do the environmental review, including allowing the public to comment.

In response to the MWF, Norm Peterson represented the MBOGC, Ron Opsahl with the Mountain States Legal Foundation represented the MPA, and Jon Metropoulos and Dana Hupp represented Fidelity. Ron Opsahl began by questioning the standing of the MWF and NWF and their ability to bring the suit. MWF failed to show any evidence of injury. Mr. Opsahl also asked that the constitutional issue raised by MWF be dropped since it had not been argued in any brief.

Mr. Peterson explained the use of programmatic environmental statements and how they are used across agencies and how checklist environmental assessments are used by all agencies and are tiered to a programmatic EIS. Mr. Peterson explained the authority of the MBOGC and pointed out that they have no authority to direct a private land or mineral owners to take any action in regards to their land or mineral holdings. The State claimed they took reasonable action and checked for sage grouse information in a manner that the MBOGC has been told to use. Mr. Peterson went on to state that the job of the MBOGC is to protect mineral owner's rights and ensure the responsible development of oil and gas. At this point Judge Hegel asked for clarification of what action MBOGC would have taken if they have determined that sage grouse were in the area. Mr. Peterson responded that they did not have the authority to do anything other than work with the developer and the land

owner to change the location. Mr. Peterson went on to say that when dealing with wildlife situations the MBOGC looks at four factors:

- a) Listed as endangered
- b) Listed as threatened
- c) Determines if a state agency has authority to limit activity
- d) Determines if there is a state statute that limits activity

Since the sage grouse was not listed or threatened in 2008, nor are there any statutes or agencies with authority over private surface and minerals, the MBOGC could not take action. Mr. Peterson closed by stating that if they had the information then they could have worked with the developer to voluntarily work out a solution. No information was received, and since there was not authority in statute to direct any changes the permits were approved. Mr. Peterson also stated that while the checklist EA does not require public input, there is an opportunity for public input at the MBOGC hearings.

Jon Metropoulos closed with Fidelity's summary. Mr. Metropoulos showed aerial photographs of the area along with still photos. The pictures showed that the area is industrialized, not only with oil and gas but also wind development. The point of this discussion is that there were over 2,000 wells in the area and the area has been under development for a long time. Consequently the addition of 23 wells did not have any significant impact on what is already occurring in the area.

Mr. Metropoulos pointed out that the burden of proof was on the plaintiff and that they had failed to prove the MBOGC action was inappropriate. It was also pointed out that a plaintiff challenging a MBOGC decision under MEPA is required to provide information and raise issue to the MBOGC before it makes its decision. Since sage grouse was not raised in their letter to the MBOGC, and the MWF did not provide information in a timely manner, they had failed to provide information to MBOGC as required.

Both sides asked the Court to give summary judgment. The next step is to get a response from the Judge, who felt it should be done in 60 days. The July 14–16, trial date was vacated. If all issues are not resolved at summary judgment, a new trial date will be set.

BLM NEW ONSHORE LEASING PROGRAM GUIDELINES

On May 19th the Washington Office held a series of regional conference calls to outline the new leasing reform program rules that are now in effect. The BLM Assistant Director and other BLM folks walked through, line by line, the presentations that are on the BLM website. The readings of the two BLM presentations took about a half and hour and then stakeholders were allowed to ask questions. All folks that asked questions were very politely thanked for asking their questions. Further, most of the industry questioners were told that BLM and other officials at the Department of Interior were sure the system was broken because the number of protests has climbed so dramatically in the last 10 years that a new process was required. A detailed report of the conference call, prepared by Gail Abercrombie, is attached for your review, complete with links to the pertinent documents.

CONGRESSMAN REHBERG INTRODUCES BILL AIMED AT ANALYZING CLIMATE CHANGE IN NEPA DOCUMENTS.

WASHINGTON, D.C. – Congressman Denny Rehberg (MT-AL) and Congresswoman Stephanie Herseth Sandlin (SD-AL) have joined forces in introducing the bipartisan Limit Executive Actions Suspending Energy (LEASE) Act of 2010. This legislation would prevent the executive branch from circumventing Congress to create laws with regard to climate change regulation. Most recently, the Bureau of Land Management (BLM) unilaterally suspended oil and gas leases in three Western states.

The LEASE Act prevents the head of federal agencies from taking administrative actions to regulate greenhouse gas emissions without express statutory authorization from Congress. Prohibited actions include issuing secretarial orders or regulations and monitoring, mitigating, predicting or documenting so-called greenhouse gas emissions.

Earlier this year, BLM settled a lawsuit filed by several well-funded special interest groups to suspend 61 oil and gas lease sales in Montana, North Dakota and South Dakota. The lawsuit alleged that BLM did not analyze the impacts of climate change as would be required by Secretarial Order 3226, which was issued by Interior Secretary Bruce Babbitt in the final days of the Clinton Administration. BLM also postponed all of its upcoming 2010 lease sales after Interior Secretary Ken Salazar decided to incorporate climate change evaluation into all decision-making at the Department of Interior (DOI). These regulatory decisions were made without consulting Congress.

A copy of the act is attached. I am pleased that Congressman Rehberg took action. I think it would be a good idea to send Denny a quick thank you. You can do so on this link: <http://rehberg.house.gov/index.cfm?sectionid=62§iontree=6,62>

MISSOURI RIVER STEWARDS

The Missouri River Stewards is a group of ranchers who border the Upper Missouri National Monument. In November of 2009 MPA agreed to help fund an effort by the Missouri River Stewards to intervene in a lawsuit by several environmental groups against the BLM in an effort to overturn the entire Monument management plan. They send out a periodic update to members and friends. If you are interested their update, it is attached.

MPA PLANNING MEETING

The annual MPA Planning Meeting is set for June 22nd and 23rd in Big Sky Montana at the River Rock Lodge. The agenda is attached. While the agenda looks like this is a Board of Director's meeting, it is also a meeting where MPA members are encouraged to attend. The goal of the meeting is to identify issues and prioritize what we spend our time working on, and the more members that are involved the stronger we make our action plan and our association. The available rooms at the River Rock Lodge are full, but we have overflow rooms just down the road. Please give consideration to attending. We have also attached a registration.

OTHER MEETINGS

MPA is hosting a town hall meeting for landowners who are interested in recent activity in Roosevelt County. The notice is attached. The meeting will be held at the Bainville School on June 2, at 5:30 PM. A huge thanks for the MPA members who will provide presentation, as well as the other presenters...this could not have been done without them. A special thank you to Ms. Hansen the Bainville School superintendent for letting us use the school facility and providing food and beverages.

MPA E&S Committee will meet at 1:30pm, June 3rd at the Petroleum Club on the 22nd floor of the Crowne Plaza hotel in Billings. The agenda, and call in numbers are attached.

MPA Legislative and P/R Committee will meet at 3:00pm on June 21st at the River Rock Lodge in Big Sky. Call in is available although the agenda is not yet finished. If you are interested, and not on the committees please let Bobbie know at bobbie@montanapetroleum.org

ARTICLES OF INTEREST

Montana Supreme Court Remands CBNG water permits back to DEQ, says that water must be treated. http://helenair.com/news/local/state-and-regional/article_9a569ff2-649b-11df-9f68-001cc4c03286.html

THANK YOU TO 2010 NEW AND RENEWED MEMBERS (4/23/10 – 5/21/10):

Kootenai Resource Corp; Saga Petroleum; Trihydro Corporation