

Approved: Carl Dean Holmes
Date 4-29-95

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes on March 14, 1995 in Room 526-S of the Capitol.

All members were present except: Representative Flora - Excused
Representative Kline - Excused

Committee staff present:: Dennis Hodgins, Legislative Research Department
Mary Torrence, Revisor of Statutes
Shirley Wilds, Committee Secretary

Conferees appearing before the committee: Jack Glaves - Oxy USA

Others attending: See attached list

The Chair referred the Committee to the following items before them:

- A response to the Committee from questions posed at yesterday's meeting to Sharon Patnode, Legislative Division of Post Audit with reference to funding in other states. (See Attachment #1.)
- Also in response to questions at the meeting yesterday, a copy of the Wildlife and Parks Land Acquisition Report. (See Attachment #1 in March 13 minutes.)

Upon adjournment of today's meeting, the Chair, Vice Chair and Ranking Minority member will have a meeting. The meeting was then opened to a **Hearing on SB 113**:

Jack Glaves. (See Attachment #2.) Mr. Glaves provided a letter from the Conservation Division of the KCC indicating that for the past two years nearly 98% of the working interest owners have approved the Unit Operating Agreement at the time the Commission holds a hearing. Without a penalty provision, Mr. Glaves said there is a tremendous incentive for the two or three percent interest holders to let the operator finance the costs associated with their interest, with the operator assuming all of the risk of the venture. This results in a situation whereby the nonconsenting interest holder is free of cost if the project does not succeed; and, a right to have his interest carried and paid out of his share of production if it succeeds. The object of the penalty provision is to discourage such results.

Mr. Glaves reported that a similar bill has passed the House of Representatives in Oklahoma, and Colorado has a similar statute which utilizes a 200% penalty provision. He said that **SB 113** was amended by the Senate Committee to delete the specified percentage penalty and to simply authorize the KCC to establish penalty and interest provisions by rule and regulation. He informed the Committee that Oxy USA believes that inclusion of such a provision would facilitate the decision making by participants in the unit, providing incentive for operators to undertake risky secondary recovery projects. This would then, he concluded, be beneficial to the industry and the state and counties, through increased production revenue and taxes. He urged favorable passage of this measure.

The Chair referred the Committee to a written handout from the Kansas Corporation Commission regarding this bill. (See Attachment #3.)

The Chair announced that all the Senate bills now in this Committee are scheduled for action at Friday's meeting. He recommended that those Committee members intending to offer any amendments meet with Staff to draft their proposals.

Action on SCR 1604:

Representative Lawrence reported on the Subcommittee's study and the conclusions reached on **SCR 1604**,

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m.. on March 14, 1995.

and staff provided a balloon draft to the Committee. (See Attachment #4.)

Representative Lawrence moved to adopt the balloon on SCR 1604. Representative Sloan seconded. Motion carried.

Representative Lawrence moved to adopt SCR 1604 as amended. Representative Sloan seconded. Motion carried.

Action on HB 2546:

Representative Freeborn made a motion to recommended HB 2546 favorable for passage. Representative Myers seconded. Motion carried.

Upon completion of its business the meeting adjourned at 4:15 p.m.

The next meeting is scheduled for March 15, 1995.

ENERGY AND NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: March 14

NAME	REPRESENTING
Jack Graves	Opj USA
Peter J. Herley	Wag Creek
Doug Smith	SW KS Royalty Owners Assn
Bill Bryson	Kans Corp. Comm
Rutha Marts	SRS
Kalen Dnose	SRS (NEAP)
Randall J. Jones	---
Marshall Clark	KEC
Tom Day	KCC



LEGISLATURE OF KANSAS
LEGISLATIVE DIVISION OF POST AUDIT

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TELEPHONE (913) 296-3792
FAX (913) 296-4482

March 14, 1994

To: Representative Carl Holmes

From: Sharon Patnode, Senior Auditor

Sharon Patnode

Re: K-GOAL Audit of the Department of Wildlife and Parks (Audit #95-37)

In answer to your question at yesterday's Energy and Natural Resources Committee meeting regarding the use of federal moneys at South Dakota's parks, I found an agency official had told us federal moneys were used in parks for boat ramps. There was no indication federal moneys were used regularly for any other purpose. As I mentioned yesterday, the use of federal fisheries moneys for boat ramp construction is an eligible activity under federal fishery program regulations.

However, I would like to mention again that in our discussions with park and wildlife agency officials in Nebraska, South Dakota, Texas, and Iowa, it appeared all those states face a risk of diversion of federal moneys much the same as Kansas because they do not attempt to account for cross-over work (that is, work between park and wildlife areas). Of course we did not audit those states' accounting records nor conduct in-depth analyses of their operations, but general indications are they pay employees based on estimated time worked in park, wildlife, and other areas, not on actual time spent in those areas, a situation potentially leading to diversion of wildlife moneys.

One other area I'd like to mention regarding the issue we briefly discussed concerning the Legislature's need to appropriate federal funds. In research done subsequent to the K-GOAL audit, we found Article 2, Section 24 of the Kansas Constitution indicates "No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law." In general, federal funds made available to State agencies are deposited in the treasury. We have not researched this issue in detail, but this section of the Constitution would seem to indicate a constitutional amendment may be needed if federal moneys were to be made exempt from the appropriation process.

Please call me if you have further questions or need further assistance regarding this issue.

*3/14/95
Energy & Natural Resources
Attachment #1*

**BEFORE THE HOUSE ENERGY AND
NATURAL RESOURCES COMMITTEE
STATEMENT OF JACK GLAVES IN BEHALF OF
OXY USA IN SUPPORT OF SENATE BILL 113
MARCH 14, 1995**

K.S.A. 55-1301, et seq was adopted in 1967 to provide a procedure for compulsory unitization of oil and gas lease-hold interests in a common pool, upon application to the Corporation Commission. The procedure applies only to pools that are nearly depleted and which face imminent abandonment unless secondary operations are conducted. The statute requires the obtaining of at least 75% approval of a unitization plan of both the working interests and royalty interest owners in the area sought to be unitized.

K.S.A. 55-1305 sets forth the required provisions of the Commission's order which includes in Subparagraph (g) a provision for carrying any nonoperating working interest owner payable out of production, upon terms and conditions determined by the Commission to be just and reasonable. A provision allowing a reasonable interest charge, also payable out of such owner's share of production, is included. Typical operating agreements generally used for operating contracts between the operator and the other working interest owners provide for a penalty of 200% to 300% for failure of the nonworking interest owner to pay his share of the drilling and completion costs. However, no such provision exists in the current law pertaining to the unitization procedure.

3/14/95
Energy & Natural Resources
Attachment #2

In reviewing recent Commission orders providing for compulsory unitization, it is apparent that the Commission, in practice, adopts the unit operating agreement that has been signed by the consenting cost bearing interest holders (working interest owners) which typically provides for the nonpayment penalty that otherwise prevails in the industry. There being no statutory authority for the adoption of the penalty provision, the orders would be subject to challenge on judicial review, in our opinion.

I have attached a letter from the Conservation Division's attorney reflecting that for the past two years, nearly 98% of the working interest owners have approved the unit operating agreement at the time the Commission holds a hearing on these matters. Without a penalty provision, there is obviously a tremendous incentive for the 2% or 3% of interest holders that have not consented, to let the operator finance the costs associated with their interest with the operator assuming all of the risk of the venture. If the project does not succeed, the nonconsenting interest holder walks away free of cost. If it succeeds, he has the right to have his interest carried and paid out of his share of production. This is an unjust result, and the object of the penalty provision is to discourage such behavior.

A Bill similar to the original version of SB 113 has passed the House of Representatives in the Oklahoma Legislature. Colorado has a similar statute which utilizes a 200% penalty provision, (SB 34-60-116) (7) (b).

SB 113 was amended by the Senate Committee to delete the

specified percentage penalty and to simply authorize the KCC to establish penalty and interest provisions by rule and regulation, with which my client does not disagree.

My client, OXY, believes that inclusion of such a provision would facilitate the decision making by participants in the unit and would provide additional incentive for operators to undertake risky secondary recovery projects, inuring to the benefit of the industry, the state and counties through increased production revenue and taxes. The Bill passed the Senate 40 to 0. We urge your favorable consideration of this measure.

Respectfully submitted,



Jack Graves
Legislative Counsel for OXY USA



Kansas Corporation Commission

Bill Graves, Governor Susan M. Seltsam, Chair F.S. Jack Alexander, Commissioner Rachel C. Lipman, Commissioner
Judith McConnell, Executive Director Brian Moline, General Counsel

February 8, 1995

Senator Don Sallee
Chairman Senate Energy and Natural Resource Committee
Capitol Building
Topeka, Kansas 66612

RE: S.B. 113

Dear Senator Sallee:

Jack Graves requested that I provide you and your Committee with the percentages of working interest owners that have approved a Unit Operating Agreement at the time the Commission holds a hearing on the matter. I looked at the approval percentage in the last four unitization applications the Commission has heard. These four applications cover a period of approximately two years. Those figures are as follows:

97.5%
94.9%
100%
98.6%

These percentages yield an average of 97.8 percent working interest approval at the time of hearing. This would be representative of the unitization applications we hear.

The average approval for royalty interest owners is lower at 93.1 percent, but their interest is not affected by the bill, since their interests are cost free.

If you need anything further, feel free to call me.

Very truly yours,

A handwritten signature in cursive script that reads "John McCannon".

John McCannon
Assistant General Counsel

cc: Susan M. Seltsam
Bill Bryson
Jack Graves ✓

KANSAS CORPORATION COMMISSION
COMMENTS ON AMENDED SENATE BILL 113

When SB 113 was heard in the Senate Energy and Natural Resources Committee, the Kansas Corporation Commission did not find it necessary to appear and provide testimony. The Commission comments to the Senate Committee are attached. The Commission staff has never taken issue with the "reasonable interest and penalty charges" proposed in unit plans and would only become involved if one of the parties filed a complaint with the Commission. We have traditionally taken the position that the establishment of interest and penalty schedules for unit agreements was the purview of parties involved in private pool unitization negotiations. Every non operating interest owner agrees to the interest and penalty schedule set forth by negotiation during the development of an unitization plan or they do not sign the agreement. In the past, Conservation Division staff has merely approved the plan for unitization with the penalty and interest provision being a part.

The original version of Senate Bill 113 merely took what is standard practice and prescriptively defined the phrase "reasonable interest and penalty charges." The Senate amendment shifts the burden of determining "reasonable interest and penalty charges" from the negotiating parties to the Kansas Corporation Commission in the form of adopted rules and regulations. The Commission has no control over the private unitization negotiations among the parties within or outside the unit. If the amended version of Senate Bill 113 were to become enacted into law, the Commission would have to adopt regulations for penalties and interest charges which may look very similar to the schedule set forth in original Senate Bill 113 only prescribing the amounts as maxima.

Our position, therefore, is one of neutrality on the concept of Senate Bill 113. As an agency, we do not see the advantage of having to promulgate rules and regulations for an issue which could be adequately handled in statutory language, particularly since the KCC would have to take common practice into account in writing rules and regulations. We are currently beginning our review of rules and regulations per instructions from the Governor's office to identify areas of duplicity, superfluous and ambiguous language and obsolescence. Another set of regulations could be avoid by retaining the penalty and interest provision in the statute.

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Attachment #3

KANSAS CORPORATION COMMISSION
COMMENTS ON SENATE BILL 113

Background And Analysis

Senate Bill 113 amends KSA 55-1305 to include a specific schedule of interest and penalty provisions to be incorporated as a part of a plan for unit operations. The plan for unit operations becomes part of an Order by the Commission providing for the unitization and unit operation of an oil or gas pool. Any interest and penalty provisions to be applied to the financing of nonoperating working interests who are unable to meet their financial obligations become part of the plan. Senate Bill 113 changes existing statutory language where the determination of "reasonable interest charges" for financing nonoperating working interest owners has been changed to three rather prescriptive sets of penalties which are targeted toward different parts of the unit operation. These are found in amended (9) of KSA 55-1305. In order to unitize pools in Kansas, there has to be a 7% signed agreement of 75% of the operators in the field. Unitization is a process whereby all operators in a producing oil or gas field share both production and costs of operation in proportion to their equitable percentage of the field area.

Affect Of SB 113 On Program Operations

The Conservation Division receives one to two unitization plans per year for which the Commission would have to issue an Order. Most recent applications for Basic Proration Orders have a provision for pooling hence unitization plans are rarely received. The Commission has never taken issue with the "reasonable interest charge" proposed in a unit plan and would not do so unless a complaint was filed. The prescriptive schedule set forth in amended (g) may or may not be reasonable, however if Senate Bill 113 passes in its present form, the Commission Order would contain the statutory language. Senate Bill 113, if passed, would not affect the operation of the Conservation Division.

Dollar Impact Of SB 113 On Program

Passage of Senate Bill 113 would have no fiscal impact on the Conservation Division. The basis of that assessment is that processing unitization applications are a very minimal part of program operations and these applications would not be handled differently under new penalty and interest provisions.

Impact On Staffing And Personnel Resources

There would be no impact, either loss or gain of staff positions if Senate Bill 113 was passed.

Long Term Fiscal Impacts

The number of unitization applications will probably decrease because of the use of pooling agreements. The fact that this is a minimum effort program would not change due to passage of SB 113.

The Conservation Division merely enforces what the Legislature includes in KSA 55-1305 and should not make judgement on what is reasonable between operators in an agreement as long as the plan prescribed in the law is followed. The amendment in SB 113 is directed to subsection (g) which sets forth a procedure for financing any nonoperating working interest owner who cannot meet his or her financial obligations, except out of that owner's share of production.

1 interested parties to site a federal facility for monitored retrievable stor-
2 age of spent nuclear fuel; and

3 WHEREAS, ~~A venture between the Mescalero Apache tribe in New~~
4 ~~Mexico and 33 utilities~~ may result in the operation of a private interim
5 storage facility for spent nuclear fuel as early as the year 2002; and

current private monitored retrievable storage
proposal

6 WHEREAS, Shipments to a private storage facility ~~in New Mexico~~
7 would not be conducted by the Secretary of Energy and, therefor, under
8 a literal interpretation of Section 180(c) of the NWPA, states, tribes, and
9 local governments affected by these shipments would not qualify for train-
10 ing or technical assistance under the Act; and

from utilities involved in a

11 WHEREAS, Shipments of spent fuel to a storage facility ~~in Mescalero,~~
12 ~~New Mexico, from many of the utilities involved in the private venture~~
13 would either originate in or cross ~~10~~ midwestern states; and

many

14 WHEREAS, From a practical perspective, large-scale shipping cam-
15 paigns to remove spent fuel from nuclear power plants will have a similar
16 impact on states, tribes, and local governments regardless of whether the
17 destination is a federal or private facility; and

18 WHEREAS, To ensure adequate preparation for shipments in 2002,
19 states, tribes, and local governments must begin planning no later than
20 1998; and

21 WHEREAS, The Midwestern High-Level Radioactive Waste Com-
22 mittee is an independent, multi-state advisory committee representing
23 the interests of the 12 midwestern states and operating under the auspices
24 of the Midwestern Governors' Conference and the Midwestern Legisla-
25 tive Conference of the Council of State Governments: Now, therefore,

26 *Be it resolved by the Senate of the State of Kansas, the House of Rep-*
27 *resentatives concurring therein:* That we strongly urge DOE to work
28 closely with the Midwestern High-Level Radioactive Waste Committee
29 and to resume immediately all activities related to developing a policy for
30 implementing Section 180(c) of the Nuclear Waste Policy Act, with the
31 goal of having the capability to provide training assistance by no later than
32 1998; and

33 *Be it further resolved:* That DOE should actively solicit the input of
34 the Midwestern states and other stakeholders in developing a policy for
35 implementing Section 180(c); and

36 *Be it further resolved:* That the U.S. Congress should amend the Nu-
37 clear Waste Policy Act to provide states, tribes, and local governments
38 with technical assistance and training funds to prepare for any large-scale
39 shipment of spent fuel to centralized storage facilities, whether publicly
40 or privately owned; and

41 *Be it further resolved:* That the Secretary of the Senate be directed to
42 send enrolled copies of this resolution to the Secretary of the United
43

Energy & Natural Resources
3/14/95
Attachment # 4