

Approved: 2-7-95  
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 8:00 a.m. on February 2, 1995 in Room 254-E- of the Capitol.

All members were present except:  
Senator Phil Martin

Committee staff present: Raney Gilliland, Legislative Research Department  
Dennis Hodgins, Legislative Research Department  
Mike Corrigan, Revisor of Statutes  
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:  
Whitney Damron, Pet McGill & Associates  
Jack Glaves, Oxy, Inc.

Others attending: See attached list

Chairperson Sallee requested introduction of a state concurrent resolution concerning the Corps of Engineers' master plan for the Missouri River. The resolution speaks to the exact position taken by Kansas at the very inception of this plan which would raise the level of the Missouri river by four feet during June when spring rains are coming thus making the rivers and reservoirs in Kansas more susceptible to flood. Senator Sallee stated the plan had been set forth in protection of a specie of fish somewhere in northern tributaries which appears to have survived for numerous years without endangered species protection. The resolution requests reconsideration of this master plan. The plan also would shorten the grain barge traffic shipping season by one month in the fall thereby forcing more expensive shipment by trucks.

Senator Tillotson moved, with a second from Senator Lawrence for the committee to introduce this concurrent resolution. The motion carried.

Whitney Damron, representing The Coastal Corporation and Colorado and Interstate Gas, requested introduction of a bill dealing with voluntary cleanup and remediation of pollution. Mr. Damron stated such legislation has been used in Colorado and Missouri. He further stated he had been in discussion with Kansas Department of Health and Environment and furnished copies of the Colorado and Missouri legislation. Due to the short period of time available for introduction of bills the request was presented prior to KDHE finalizing their draft. This bill would allow property owners to go to KDHE, pay a fee up front to develop an assessment of a remediation problem on their property. KDHE would assist them in an assessment of necessary remediation. The landowner would pay KDHE for their time, in essence the project would be fee funded by the person wanting to use the program.

Senator Hardenburger moved introduction of the bill. Senator Lawrence seconded the motion and the motion carried.

**SB 113: Concerning oil and gas; relating to unitization and unit operations of oil and gas pools; providing for the sharing of costs of oil and gas operations and productions; establishing procedures for penalties and interest to be assessed nonpaying interest owners for unpaid production expenses by the Kansas corporation commission;**

Jack Glaves, Oxy, Inc., appeared in support of **SB 113** stating that Kansas' law concerning unitization is very restrictive and requires a provision for carrying any nonoperating working interest owner with his costs payable out of production (Attachment 1). He further stated the unitization statute does not contain language requiring the inclusion of a penalty provision to the nonpaying interest holder. The proposed amendment to 55-1305(g) would require that if 75 percent of all parties involved in a primary production contract desire to proceed with a secondary recover project, the remaining 25 percent either pay their share of the project or a penalty of 300% will be taken

## CONTINUATION SHEET

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from their royalties if the project were successful.

A member questioned how often this happens with Mr. Graves replying that Oxy, Inc. says it is a problem and that company does a lot of secondary projects.

A member noted that the way he read the amendment, even if a party wanted to participate and sign off but was immediately unable to meet the financial responsibilities, they would still pay the 300 per cent penalty. Mr. Graves replied that in essence it is a penalty for non-payment of bills.

A member questioned whether a reduced percentage would be acceptable. Mr. Graves stated Colorado uses 200 percent or it could be left up to the Commission. The member felt it should be a stated amount.

A member questioned whether the Kansas corporation commission had presented a position, if not, one was requested prior to consideration of the bill.

The meeting adjourned at 8:30 a.m.

The next meeting is scheduled for February 3, 1995.



BEFORE THE SENATE ENERGY AND  
NATURAL RESOURCES COMMITTEE  
STATEMENT OF JACK GLAVES IN BEHALF OF  
OXY USA IN SUPPORT OF SENATE BILL 113

K.S.A. 55-1301, et seq provides the only method for obtaining compulsory unitization. Unlike Oklahoma, which has had forced pooling for many years, Kansas has limited the right to instances where primary production has reached a low economic level and without the introduction of secondary recovery, the abandonment of oil or gas wells is imminent. The Corporation Commission has jurisdiction to order unitization in that instance only after 75% of the royalty and operating interests have consented to a plan of unitization. K.S.A. 55-1305 sets forth the terms and conditions that the Commission's order must include and Subsection (g) requires a provision for carrying any nonoperating working interest owner with his costs payable out of production.

Aside from unitization, the typical operating agreement between the working interest owner and the operator, provides for a penalty for a nonoperating interest owner that does not consent to the drilling of a development well, which is known in industry parlance as "going non-consent." In that even, the operating agreement typically provides that a penalty is imposed up to 300% of the cost of drilling for such nonconsenting partner's interest. In other words, if it is a dry hole, he pays nothing, but if it is a well, up to three times what his cost would otherwise have been is collected from his share of production.

The unitization statute does not contain language requiring

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Attachment 1

the inclusion of a penalty provision as to the costs of the nonpaying interest holder. There is certainly as much risk, if not more, as to whether or not a secondary recovery operation will be successful as there is in the drilling of a development well. It is the natural inclination of nonconsenting interest holders to not pay their share of the costs, particularly if the operation does not pan out.

The proposed amendment to 55-1305(g) would require the Commission in its order to include a penalty for nonpayment comparable to the typical provision in the operating agreements in drilling projects. OXY believes that inclusion of such provision would facilitate the decision making by participants in the unit and would provide additional incentive for operators to undertake secondary recovery projects, inuring to the benefit of the industry and the state and counties through increased revenue and taxes.

A similar amendment is pending in the Oklahoma legislature which is patterned after an existing Colorado statute (34-60-116(7)(b)).