

NDPC Celebrates Legislative Success

By Dan Larson
Special Correspondent

BISMARCK, N.D.—The 2017 biennial session of the North Dakota Legislature saw belt tightening because of lower revenue from Bakken oil production, but significant victories for the oil and gas industry on several important policy fronts, reports the head of the state trade association.

“It was an historic session for the industry,” declares Ron Ness, president of the North Dakota Petroleum Council. “The protests over the Dakota Access Pipeline were a distraction in January, but that was resolved quickly. After that, (lawmakers) got right down to business.

“The tight budget made this a very tough session for everybody, but in the end we had eight pieces of significant legislation passed,” he reports. “These were major policy issues, and we won bipartisan support. I would give this session an A plus, without question.”

The top issue for NDPC was revising the state’s spill reporting threshold, Ness says. Any spill of one barrel or more has been reportable, he points out, calling it the lowest threshold in the country.

HB 1151, known as the Spill Bill, passed the Senate 31-14 and the House 83-8 in early April, and was signed by Governor Doug Burgum three days later. Effective Aug. 1, it raises the spill reporting threshold to 10 barrels for spills on a well or facility for wells drilled since Sept. 1, 2001. It also directs the Department of Mineral Resources to add any notice of violation for fire, blowout, spill or leak to an operator’s well file and make it available to the public.

Passage of the bill will reduce the appearance of sloppy operations and relieve the workload for state inspectors, Ness says. “Right off the bat, we will see two-thirds fewer spill reports, and with the

way pads are constructed now, a small spill like that really is a nonevent.”

High Water Mark

Running a close second in terms of priority this session was SB 2134, referred to as the Lake Bed Minerals Bill. NDPC reports this legislation directs the DMR when determining mineral ownership to refer to an original U.S. Army Corps of Engineers’ survey of the high water mark along the Missouri River before construction of the Garrison Dam created Lake Sakakawea.

The bill was written to allow for a “margin of error or dispute on some parcels between (the Army Corps) survey and the survey done by the state more recently,” the council says.

“This will return minerals to the rightful owners,” Ness explains. “It sets forth a very clear process for determining mineral ownership, and will spur development because operators won’t have to get involved in title disputes. Ultimately, it will release hundreds of millions of dollars in suspense that were never going to get paid.”

Although the logjam is broken now, it still will take 18 months to two years to sort through mineral ownership claims, Ness estimates.

“This was a huge piece of legislation. We see this as one of the most important bills ever to pass through our legislature,” he says.

Among other NDPC priorities this session were bills to lower the state’s unitization threshold to 55 from 60 percent (HB 1257); provide immunity to companies that self-report environmental or safety violations (HB 1336); create a new, cabinet-level agency called the Department of Environmental Quality (SB 2327); and allow state-issued permits to pre-empt local government land use restrictions (SB 2286).

All four passed and were signed by the governor, Ness reports.

Protest Spillover

Early in the legislative session, while protests continued over the Dakota Access Pipeline, legislators approved a pair of bills that provided police with additional means to contain protests that turned unlawful, according to published reports.

State Legislative Council records indicate HB 1304 makes it a misdemeanor to wear a mask while committing a crime. A second bill, HB 1426, raises rioting to a Class B felony and makes providing firearms to rioters a Class C felony.

After the initial rush, the session got down to business as legislators faced the daunting task of trimming spending and patching holes, Ness says.

Taxes

Although the legislature did not make any changes to the state’s severance taxes this session, “big oil tax cuts” were a common theme for Democrats concerned over a reduced budget.

In a letter to the state’s largest newspaper published May 3, Senate Minority Leader Joan Heckaman, D-New Rockford, and House Minority Leader Corey Mock, D-Grand Forks, argued the reduction in the state’s oil extraction tax to 5.0 percent from 6.5 percent that was passed by the legislature in 2015 “drastically reduced revenues.”

That 2015 late-session bill resulted in \$235 million less revenue over 14 months, or an average \$16.8 million monthly, reported *InForum* columnist Mike McFeeley.

And yet, despite the reduced rate, removing the OET price trigger, which also was approved in 2015, resulted in an additional \$600 million in revenues, replied blogger and radio host Rob Port. The reduced OET rate and removing the price trigger are part of the same tax policy, he added.

At the time it was passed, Ness characterized the tax revision as a compromise that struck “a good balance for the state and industry” (*AOGR*, May 2015, pg. 34).

By agreeing to eliminate a price trigger that would have cut the OET to less than 2.0 percent when prices fell below \$55 a barrel for five consecutive months, legislators gained approval for the lower rate. The bill also included a “reverse trigger” that pushes the OET rate back to 6.0 percent if prices move above \$90 a barrel for three consecutive months (Table 1).

TABLE 1

North Dakota Natural Gas and Oil Tax Rates

The natural gas production tax is based on a price index that changes every year on July 1. Through June 30, 2017, gas production is taxed at \$0.0601 an Mcf

Oil is subject to a production tax of 5.0 percent of the gross value and an extraction tax of 5.0 percent. The OET for oil produced outside the Bakken and Three Forks formations is 2.0 percent, while qualified stripper wells are not subject to the OET.

If the oil extraction tax trigger price of \$90 a barrel is exceeded for three consecutive months, the OET increases to 6.0 percent. The OET returns to 5.0 percent if oil falls below \$90 a barrel for three consecutive months.

Tough Decisions

Even with the additional extraction tax revenue, North Dakota legislators were faced early in the session with a budget deficit of \$595 million. That amount eventually was trimmed to less than \$65 million, according to published reports. The final budget bill, HB 1015, put 2017-18 state spending at \$13.6 billion, down from \$14.4 billion in the 2015-16 budget.

Ness observes that after several years of growth driven by Bakken development, the state this year was forced to cut costs and trim programs. "Downsizing, especially after years of expansion, is always tough," he reflects. "Our state will come out better for having to tighten its belt. We can see how our industry came out of the downturn stronger and smarter.

"When things are good, there are cries to spend everything. This downturn really shows how important it is for a state driven by commodity markets to have rainy day funds," Ness concludes.

Tribal Dialogue

As a late-session bill, the budget bill included several amendments, including one that prohibits the North Dakota Public Service Commission from setting rates on gas royalty valuations, while a second creates a legislation management committee to consider tax concerns raised by the Three Affiliated Tribes, Ness mentions.

Efforts by the tribe to change the tax agreement it has with the state were unsuccessful, he says.

"They came in too late in the session to have any real discussion," he reasons. "The new commission will hold a dialogue between the tribe and the state prior to the next session.

"The tribe says it wants to sit only with the governor," Ness adds. "That is not the way the process works."

In April, it was reported that members of the Three Affiliated Tribes attended a meeting at the White House sponsored by Senators John Hoeven, R-N.D., and Steve Daines, R-Mt. The meeting included members of a dozen tribes and was held to seek the president's support for Senator Hoeven's bill to streamline permitting on tribal lands, and to encourage tribes to enter joint ventures with operators for energy development.

Optimism Renews

The 2017 session will be remembered as one that started with plenty of noise, but ultimately lacked the drama of the past decade when angry landowners, right-of-way tussles and crude-by-rail controversies grabbed the spotlight, Ness remarks. "The downturn also turned down the vol-

ume from the opposition," he allows.

"We are seeing increased activity across the Bakken," Ness reports. "(As of mid-May), we were back to 50 rigs running. Most companies are completing

their drilled-but-uncompleted wells, and production is back at 1.3 million barrels a day. This summer is shaping up to be busy, and 2018 should be even busier." □

Late-Breaking Developments Don't Alter Course In Colorado

DENVER—In a legislative session that went from three months of customary debate about familiar issues to a final two weeks of heated challenges regarding the level of acceptable risk associated with oil and natural gas facilities' proximity to growing suburban communities, the industry emerged from the session without taking any hits, assesses Colorado Oil & Gas Association President and Chief Executive Officer Dan Haley. With the Capitol split between a Democratic-controlled House and a Republican-controlled Senate, no extreme or oppressive anti-oil and gas bills made their way to the governor's desk, Haley said.

"We are seeing reaction to the Trump administration on the local level," Haley suggested. "There is a sense among some activists that the federal government is not going to protect them, so they are asking for help from their local political leaders."

Several controversial bills appeared to be more political than substantive, he suggested, but the split legislature meant the "more extreme measures would not advance from either chamber."

"A few years ago, there were 13 bills aimed squarely at halting oil and gas development in Colorado," he observed. "This was a year for us to 'hold the line' and I think we did that."

After adjournment, COGA hosted a review of the session on May 12 at the Denver Athletic Club. The event featured four legislators who provided perspectives from inside the Capitol. In a panel discussion, Representative Cole Wist, R-Arapahoe County, Representative Matt Gray, D-Broomfield, Senator Kevin Priola, R-Adams County, and Senator Dominick Moreno, D-Commerce City, discussed how an April home explosion in Firestone, Co., which was attributed to a nearby well, influenced debate during the session's final weeks.

"We must recognize that accidents are not acceptable," Wist intoned. "The incident management process will determine the underlying cause, so it was inappropriate for some to jump to conclusions."

On the other hand, the oil and gas industry "must recognize it is held to safety standards that are unbelievably high," Gray advised. "Wherever there is oil and gas near homes or schools, the community will have a very low tolerance for risk."

In the heated climate following the Firestone tragedy, Haley noted that some Democratic legislators, led by Representative Mike Foote, D-Lafayette, proposed bills that aimed to move oil and gas operations further from schools and force companies to provide mapping data for all subsurface infrastructure.

Flowline Mapping

Foote sponsored a notable bill that would have required operators to provide a description and mapping data for all flowlines in the state, Haley said. HB 1372 would have required operators to provide the location of all flowlines, gathering lines and pipelines to both the Colorado Oil & Gas Conservation Commission and local governments. The bill included a provision that required operators to fulfill local governments' prospective requests for five-year development plans in their areas.

"The debate intensity really turned up the last few weeks of the session," Haley described. "We got wind of the mapping bill less than a week before the end of the session. It was definitely cause for concern."

Industry representatives had several concerns with HB 1372, Haley observed. "There are proprietary issues over public access to the data, to say nothing of the jurisdictional and safety issues if the data were to fall into the wrong hands," he said. As an example of the latter, he pointed to a letter published in a Boulder, Co., newspaper that appeared to advocate direct action against oil and gas facilities and physical harm to industry workers.

Companies were in the process of complying with a COGCC notice to operators that sought information on flowline locations when HB 1372 was introduced. Governor John Hickenlooper ordered the NTO following the April 17 home explosion that resulted in two deaths and one

injury in Firestone. The explosion was caused, according to a preliminary report by state investigators, by methane that migrated to the house from an abandoned flowline connected to an older vertical well that predates the nearby homes.

The well's operator announced on April 26 that it would shut in all 3,000 of its northern Colorado vertical wells in "an abundance of caution." The wells, which the company indicated produce about 13,000 barrels of oil equivalent a day, were to remain shut in until they were inspected and tested, the company said.

Flowline Integrity

A review of the May 2 NTO indicates it requires operators "to inspect their inventory of existing flowlines and verify that any existing flowline not in active use, regardless of when it was installed or taken out of service, is abandoned" according to procedures described in Rule 1103. Operators also are required "to document the location of all existing, active flowlines located within 1,000 feet of a building and confirm that these lines have integrity."

The notice reminds operators that COGCC regulations "do not recognize an 'idle' status for flowlines or pipelines. All flowlines and pipelines are considered active until they have been abandoned under Rule 1103."

The notice included a May 30 deadline by which operators were to have inspected flowlines within 1,000 feet of a building and documented the associated well by API number and the tank battery by location ID number.

By the end of June, operators must either perform integrity tests on pipelines and flowlines operating within 1,000 feet of a building or officially abandon them. "The compliance deadline for this NTO is a heavy lift for operators," Haley commented.

He also called for flowline and pipeline location concerns to be discussed in the interim, before the 2018 session. "We did have an opportunity to voice our concerns with the mapping bill, but, like the pooling and setback bills, it is an issue that should be discussed without the urgency that comes at the end of the session," he suggested.

Setback Again

Many in the oil and gas industry experienced some déjà vu at the introduction of HB 1256, a bill that sought to increase drilling setbacks to 1,000 feet from the property lines of schools or high-occupancy buildings, Haley reported. "We nearly tripled the setback distance four years ago, he observed (*AOGR*, February 2013, pg. 147). "We have yet to see any

science that tells us these increased setbacks are protective of health."

Sponsored by Foote and Senator Matt Jones, D-Louisville, HB 1256 would have revised regulations to specify that well setbacks be measured from the property line and not the building.

"When you consider the entire school property, especially in some rural areas, you are looking at quite a distance," Haley remarked. "This was another late-session bill that did not leave enough time to consider the effects. There are no studies on the economic impact when that much additional acreage is put off limits."

The setback bill passed the House 37-28 on March 29, but died in a Senate committee.

Pooling Notice

Foote and Jones teamed again to sponsor HB 1336. According to the lawmakers, it sought to revise the state's pooling regulations to offer additional protections for mineral owners. Among its provisions was a requirement for operators to give 90-days' notice of a COGCC hearing to pool a drilling unit. It also required such notices offer a "clear, concise, neutral explanation" of Colorado pooling rules, and for operators to provide the commission with a summary of nonconsenting owners and the percentage of acres pooled.

According to Jones, an early version of HB 1336 would have raised the interest owner threshold to 51 percent of a unit from the current single-owner request. After the threshold language was removed from the bill it passed the House, he said.

"Our pooling laws have been on the

books since 1935," Haley noted. "This is another issue that we can look at off-session and see if there are some changes that can be made. We agree that the notices can be difficult to read; some operators have proactively revised their notice letters so you can read them without hiring an attorney. That is something we can consider."

The pooling bill passed the House 36-29 on April 26 and was sent to the Senate, where it died in committee.

Energy Assistance

COGA was not entirely on the defensive this session, Haley indicated. "We championed HB 1116 to continue providing low-income families with energy assistance funds from severance tax revenues," he pointed out.

The bill was co-sponsored by Representatives Millie Hamner, D-Dillon, Tony Exum, D-Colorado Springs and Senator Beth Martinez Humenik, R-Thornton. It authorizes continued funding for low-income energy assistance through 2024. On March 9, it passed the House 48-17 and was approved in the Senate 24-11 on the session's final day.

According to COGA, the only other bill of significant interest for the industry was a pipeline and facilities tampering bill sponsored by Senate President Jerry Sonnenberg, R-Sterling.

The bill, SB 35, was introduced early in the session and would have raised the penalty for tampering to a Class 6 felony from a misdemeanor. It passed the Senate 19-16, but died in committee in the House. □



Pausing for a moment during a COGA-sponsored event to discuss the 2017 Colorado Legislature are, from left, consultant Debbie Brown, COGA President and Chief Executive Officer Dan Haley and COGA Director of Communications and Public Affairs Scott Prestidge. The end-of-session review was held at the Denver Athletic Club.