ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON OIL AND GAS
February 5, 2004
1:03 p.m.

MEMBERS PRESENT

Representative Vic Kohring, Chair
Representative Cheryll Heinze
Representative Jim Holm
Representative Lesil McGuire
Representative Norman Rokeberg
Representative Beth Kerttula

MEMBERS ABSENT

Representative Harry Crawford

OTHER LEGISLATORS PRESENT

Representative Bill Stoltze
Representative Carl Gatto
Representative Mike Chenault

COMMITTEE CALENDAR

HOUSE BILL NO. 395
"An Act relating to shallow natural gas leasing and the regulation of shallow natural gas operations."

- HEARD AND HELD

HOUSE BILL NO. 420
"An Act relating to recovery of shallow natural gas; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 395
SHORT TITLE: SHALLOW NATURAL GAS
SPONSOR(S): REPRESENTATIVE(S) HARRIS

01/23/04	(H)	READ THE FIRST TIME - REFERRALS
01/23/04	(H)	O&G, RES, JUD, FIN
02/05/04	(H)	O&G AT 1:00 PM CAPITOL 124

BILL: HB 420
SHORT TITLE: SHALLOW NATURAL GAS RECOVERY ACTIVITIES
SPONSOR(S): OIL & GAS

02/02/04	(H)	READ THE FIRST TIME - REFERRALS
02/02/04	(H)	O&G, RES, FIN
02/05/04	(H)	O&G AT 1:00 PM CAPITOL 124

WITNESS REGISTER

TOM WRIGHT, Staff
to Representative John Harris
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 395 on behalf of Representative Harris, sponsor.

RICHARD VANDERKOLK, Staff
to Representative John Harris
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Discussed specific sections of HB 395 and answered questions.

REPRESENTATIVE PAUL SEATON
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified as a cosponsor of HB 395, explaining it is a corrective action for some unintended consequences; answered questions.

ERIC MUSSER, Staff
to Representative Vic Kohring
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During discussion of HB 420, answered questions.

JACK EKSTROM, Director
Government Affairs
Evergreen Resources, Inc.
Denver, Colorado
POSITION STATEMENT: Provided testimony on HB 420.

CHRIS WHITTINGTON-EVANS
Palmer, Alaska

POSITION STATEMENT: During hearing on HB 420, suggested ways to improve both HB 420 and HB 395.

ROBIN McLEAN
Sutton, Alaska
POSITION STATEMENT: During hearing on HB 420, provided testimony on HB 395.

SETH LITTLE, Legislative Coordinator
Alaska Center for the Environment (ACE)
Anchorage, Alaska
POSITION STATEMENT: During hearing on HB 420, provided suggestions for improving both HB 420 and HB 395.

DOUG STARK, Ph.D.
Homer, Alaska
POSITION STATEMENT: During hearing on HB 420, provided testimony on HB 395 and HB 420.

JOHN NORMAN, Commissioner
Alaska Oil and Gas Conservation Commission (AOGCC)
Anchorage, Alaska
POSITION STATEMENT: Testified on HB 420, provided suggestions for improving the bill.

MIKE McCARTHY
Kachemak Bay Property Owner's Alliance
Homer, Alaska
POSITION STATEMENT: During hearing on HB 420, provided testimony on HB 395 and HB 420.

JEANNE WALKER
Homer, Alaska
POSITION STATEMENT: During discussion of HB 420, provided testimony on HB 395 and HB 420.

MARK MYERS, Director
Division of Oil & Gas
Department of Natural Resources (DNR)
Anchorage, Alaska
POSITION STATEMENT: Provided comments regarding HB 395 during discussion of HB 420.

MYRL THOMPSON
Wasilla, Alaska
POSITION STATEMENT: During hearing on HB 420, provided testimony on HB 395

ACTION NARRATIVE

TAPE 04-1, SIDE A
Number 0001

CHAIR VIC KOHRING called the House Special Committee on Oil and Gas meeting to order at 1:03 p.m. Representatives Kohring, Holm, and McGuire were present at the call to order. Representatives Rokeberg, Heinze, and Kerttula arrived as the meeting was in progress. Also in attendance were Representatives Stoltze, Seaton, Gatto, and Chenault.

HB 395-SHALLOW NATURAL GAS

[Contains discussion of HB 69, which became law last year, and HB 420]

Number 0120

CHAIR KOHRING announced that the first order of business would be HOUSE BILL NO. 395, "An Act relating to shallow natural gas leasing and the regulation of shallow natural gas operations."

Number 0171

TOM WRIGHT, Staff to Representative John Harris, Alaska State Legislature, presented HB 395 on behalf of Representative Harris, prime sponsor. He noted that during the summer, meetings were held to discuss coal bed methane; when he'd attended the first meeting in [the Matanuska-Susitna area], he was a little skeptical at first, expecting to see people who didn't want any development in their area, but discovered that the concerns expressed by the 300-plus participants seemed valid. Those concerns primarily related to lack of local government input in discussions involving coal bed methane, public notice requirements, drinking water contamination, and private property rights. Later that fall, meetings were held in the Homer area, where a number of the same concerns were expressed; he suggested Representative Seaton may want to discuss those with the committee.

MR. WRIGHT offered the belief that the Department of Natural Resources (DNR) had instituted a good public policy process, but said there were limitations under which [DNR] could actually go forth; although concerns had been expressed about that, he

suggested DNR should be thanked for its efforts in getting citizens involved in this process.

MR. WRIGHT reported that during the fall, Representatives Stoltze, Gatto, Seaton, and Harris met to discuss these issues and try to find solutions. The bill is an effort to discuss some of those issues and isn't a finished product. He explained that it doesn't include "buy-back" [of leases], although a number of people want to see that happen in the Sutton and Homer areas. Noting that other legislation has been introduced to address that issue, he said, "I think at this point in time we'd just as soon see what's going to happen with that legislation and see where it's going to go before we start instituting buy-backs into the process that we've developed thus far."

MR. WRIGHT acknowledged Barbara Bitney for involving him in this process when she worked for Representative Stoltze. He also introduced Rick VanderKolk, who he said has worked extensively on this bill along with staff to Representatives Gatto, Seaton, and Stoltze.

CHAIR KOHRING announced that Representatives Heinze and Kerttula had joined the meeting. He also recognized the presence of Representative Chenault.

Number 0520

RICHARD VANDERKOLK, Staff to Representative John Harris, Alaska State Legislature, began by addressing Section 1, which contains assurance about water quality and integrity with regard to hydraulic fracturing. He explained that hydraulic fracturing is a technique used by the oil and gas industry to improve the efficiency of production wells, including CBM [coal bed methane] production wells. The hydraulically created fracture acts as a conduit in the rock or coal formation, allowing the oil or gas to travel more freely from the rock pores. To create such a fracture, a [viscous] water-based fluid is sometimes pumped into the coal seam under high pressures until a fracture is created. These fluids consist primarily of water, but in some cases contain various additives such as diesel fuel.

MR. VANDERKOLK said there are at least three arguments for establishing Section 1. Reading in part from the sectional analysis for HB 395, he explained that Section 1 adds to the authority of the Alaska Oil and Gas Conservation Commission (AOGCC) the ability to regulate hydraulic fracturing associated with exploration for and recovery of shallow natural gas to

assure that reinjected water doesn't contaminate supplies of drinking water or water for agricultural purposes. He pointed out that there has been a great deal of public concern about the quality of people's water.

Number 0650

MR. VANDERKOLK addressed a second reason for Section 1: it conforms to recent case law. Referring to a handout relating to a 9th Circuit Court of Appeals decision from 2003, he said it sets the tone of allowing states to regulate CBM operations and how water is handled. [The handout was a memorandum dated February 2, 2004, to Mr. VanderKolk from Jack Chenoweth, Assistant Revisor of Statutes, with an enclosed decision from Northern Plains Resource Council v. Fidelity Exploration and Development Company.]

MR. VANDERKOLK read from the above-referenced memorandum, which states in part:

> In that decision, a three-member Circuit Court panel unanimously concluded that water from a coal bed methane operation is a pollutant even if unaltered. The court rejected application of an earlier decision that the emission of biological wastes involving farmed shellfish operations is not a discharge of pollutants as applicable precedent. Instead, the court declared the water, salty when discharged, was "an unwanted byproduct" of the coal bed methane extraction process, that it was "produced water" that could qualify for a Clean Water Act permit discharge exemption only if disposed of underground, and that the water, when discharged, might degrade and restrict the receiving waters (in the Montana case, of course, to freshwater rivers and creeks).

MR. VANDERKOLK ended with the words "only if disposed of underground" and remarked, "So there is our precedent." He observed that this took place relatively recently; he mentioned HB 69 and said it's more appropriate now to look at that case.

Number 0774

MR. VANDERKOLK addressed a third element [of Section 1]: it enshrines a good business practice. Referring to a memorandum of agreement between the U.S. Environmental Protection Agency (EPA) and three companies [BJ Services Company, Halliburton

Energy Services, Inc., and Schlumberger Technology Corporation, dated December 12, 2003], he said it was a voluntary agreement that they no longer would use diesel fuel and hydraulic fracturing fluids injected into CBM production wells "for any of the water tables." Suggesting this is extremely important because it sets a kind of business-practice precedent and is a model for others to follow, he added, "They recognize that it's a sensitive issue and that mountains of litigation are possible. And so, rather than hashing it out that way, they assumed it was better to enter a voluntary agreement."

MR. VANDERKOLK said for the past several months there have been hundreds of residents attending local meetings, voicing concern about potential impacts. With regard to the case law, he summarized by saying the discharge of water must be separated from surrounding water tables - the reinjection - which [the bill] does. As for public participation, he remarked, "It's a necessary part to put in that memorandum of agreement."

Number 0886

MR. VANDERKOLK paraphrased the first paragraph of the sectional analysis for Section 2. It states:

> In conjunction with shallow natural gas exploration and recovery, this section adds a new provision directing the Alaska Oil and Gas Conservation Commission to initiate a public forum process to informally resolve issues of public health, safety, welfare, and environmental complaints.

MR. VANDERKOLK remarked, "This is where we initiate a public forum in Sections 2 and 4." He said one long-term complaint from many residents has been that it's not very lengthy or thorough, and they'd like an opportunity for a "lecture" from the company, an explanation, "without trying to delay the leasing process."

Number 0916

MR. VANDERKOLK addressed Sections 3 and 9, noting that this applies to Section 6 as well. Saying this standardizes and defines what is meant by "shallow natural gas lease," he paraphrased the sectional analysis for Sections 3 and 9. It states:

> The amendments made in each of these sections eliminate, in the respective definitions of "shallow natural gas", the reference to recovery of natural gas from a depth of up to 4,000 feet and replace it with a reference to 3,000 feet. The amendment standardizes references to depth of recovery.

[The sectional analysis for Section 6 reads, "Adds language to clarify that gas recoverable from a depth of more than 3,000 feet may occur only under a conventional lease issued under AS 38.05.180."]

MR. VANDERKOLK paraphrased the sectional analysis for Section 5. It states [original punctuation provided]:

> Amends AS 38.05.177(f) to add a series of additional requirements that must be inserted in a shallow natural gas lease, to include (in paragraph (2)) required payments of fees by a lessee to an owner; (3) setbacks applicable to compressor stations that are appropriate to the lease; (4) appropriate noise mitigation measures; and (5) surface restoration requirements, if the surface is disturbed by exploration or development operations.

MR. VANDERKOLK noted that Section 7 provides for reasonable access. He paraphrased the sectional analysis for Section 7. That analysis states [original punctuation provided]:

> In instances in which an owner and a lessee cannot reach agreement for the latter's entry on to property to explore for and develop shallow natural gas and the lessee seeks to post a bond to permit entry, the amendment (page 6, lines 9 – 17) adds a further requirement that the lessee demonstrate "that access and entry upon the land of the owner is reasonable necessary or convenient" to secure the lessee's rights.

MR. VANDERKOLK said basically this will show justification for the lessee's proposal.

Number 1025

MR. VANDERKOLK paraphrased the first portion of the sectional analysis for Section 8. It states:

Adds two new subsections.

The language of subsection (p) expands upon the procedures currently applicable to securing protection against damages insofar as those procedures relate to shallow natural gas exploration and development activities:

[The sectional analysis goes on to discuss subparagraphs (1)(A), (1)(B), (2)(A), and (2)(B), as well as subsection (q).]

MR. VANDERKOLK paraphrased the sectional analysis for Sections 10 and 11. It states [with Mr. VanderKolk's clarification added in brackets]:

AS 31.05.125 and AS 38.05.177(n), added in 2003, authorized the commissioner of natural resources to approve a waiver of local planning authority approval and requirements relating to compliance with local ordinances and regulations if the Department of Natural Resources clearly demonstrates an overriding state interest. These provisions are proposed for repeal [in this bill]. In the same 2003 vehicle that added these provisions, language adding section 7 to the bill's legislative findings was inserted. The amendment made in bill section 10 reverses that addition.

MR. VANDERKOLK offered to answer questions, noting that there was a lot more background material as well.

MR. WRIGHT pointed out that Representatives Gatto, Seaton, and Stoltze were present and could answer questions.

Number 1156

REPRESENTATIVE PAUL SEATON, Alaska State Legislature, cosponsor of HB 395, told members:

These are corrective actions that we're trying to take. What has happened is, the shallow natural gas regulations went forward under one set of ideas, that is, rural development, shallow in nature, ... with very streamlined regulations, ... extremely streamlined. And at the time, the thought was that these were going to be small wells that were going to

be ... water-drilling kind of rigs that would be in place for less than a week on a pad.

And what has happened is that this has morphed beyond what anyone really intended. ... Actually, the language, as it came out, ... it turned out that DNR was not able to consider public comments ... that were offered, by statute. And DNR was not happy about that, ... and no one else was - ... those unintended consequences. ...

Also, the reason we are putting back in the 3,000 feet is because what is happening in the Homer area is that this is turning into a conventional gas play, not water well-size rigs, but ... full-blown rigs to full depth - if anything can be shown to exist about 3,000 feet - and ... these large rigs could be in place for extended periods of time with directional drilling, et cetera.

So ... what we're trying to do is get back with these provisions so that the best interest of the state is again considered. And ... we're not saying that anyone intended to make this happen, but it was an unintended consequence of looking at a rural situation and trying to develop energy sources, and then having that applied in [an] urban area. And ... that's been the frustration that's come forward.

Number 1300

REPRESENTATIVE HEINZE asked where language about the reasonable justification to cross someone's land is found in the bill.

MR. VANDERKOLK said its Section 7.

REPRESENTATIVE HEINZE asked how "reasonable" is defined.

REPRESENTATIVE SEATON explained:

What we're doing is trying to get some balance back in the situation here. This is relating to a surety bond. If there is a lease and a surface holder who is not the subsurface holder, and ... we've leased the subsurface rights, there's supposed to be a surface-use agreement.

> The way it works right now is if the surface holder and the subsurface right holder can't come to an agreement, the subsurface right holder goes to the commissioner of DNR, and the DNR's only ability is to say, "Okay, what absolute damages are [there] going to be, by drilling in this person's front yard or their backyard or in the schoolyard, or wherever this drilling happens to be," and posting a bond for the physical damage that would occur and the rehabilitation of that piece of property. What isn't related here is, is it necessary for the company to use that person's front yard when there's 15 acres of undeveloped land sitting right next to it.

REPRESENTATIVE SEATON went on to say that the oil leaseholder has to just demonstrate to the commissioner of DNR that it's reasonably necessary or convenient to use that particular piece of ground to put a drilling rig or compressor station on, and that there aren't other reasonable sources. Reporting that this language is taken right out of the current statute, he said it gives the commissioner some flexibility to weigh and consider the surface use and the subsurface rights.

REPRESENTATIVE SEATON concluded by saying state law and the constitution obviously allow for the subsurface right to have precedence. This brings it back to DNR so [the commissioner] can balance it and ask whether that particular piece of ground is needed for "access to the subsurface rights that we've given you." Noting that those are the criteria of "reasonably necessary and convenient," he said that's all the mineral right holder would have to show to the DNR commissioner and then the surety bond would be (indisc.).

Number 1509

REPRESENTATIVE HEINZE remarked that in the past there have been DNR commissioners who were "friendly to development" and some who weren't. She suggested that there is a precarious balance and that it's a lot of power to put in one person's hands.

REPRESENTATIVE SEATON responded:

> We didn't want to bring this out and try to balance weights. What we did want to do was give some discretion to the commissioner of DNR to consider whether it's reasonable and necessary for them to use that particular piece of property. ... So this just

throws in some consideration, and the commissioner of DNR, whose responsibility is for developing our natural resources, is going to do that.

But like I say, ... you might have a piece of ground and you might have a canyon and acreage on the other side of that ground that's available. Well, it would be very inconvenient for the oil company or gas company to come in and have to cross a canyon to do that. So I would presume DNR would say, "No, you've shown me that it's reasonably necessary and convenient for you to use this person's front yard." But it could also be the situation in which you have many vying pieces of property around and for some reason, a driller - not the ones that we know right now, because the ones that we know right now are fairly responsible - could come in and say, "I want to put it in your front yard ... just because I want to put it there." And the way the law is written right now, the commissioner of DNR, ... all he does is say, "Well, the rehabilitation amount for having that in your front yard is going to be this, and the surety bond," and you have absolute right to put it there without any consideration to the property owner.

CHAIR HEINZE remarked that it troubles her.

Number 1630

REPRESENTATIVE KERTTULA requested an explanation at some point of how "reasonably necessary or convenient" is interpreted and will be applied. Noting that it is broad, she expressed concern that it doesn't say "and convenient".

Number 1695

CHAIR KOHRING cautioned against having any legislation that moves out of this committee hinder the industry, but also highlighted the need to make sure there are adequate protections for property owners. Offering his belief that a lot was accomplished last year with HB 69 [which he sponsored] in terms of streamlining the permitting process to encourage resource development, he advised members, "As opposed to rolling back what we did, I'd like to just look at this whole effort here as a way to add protections."

CHAIR KOHRING announced a tentative plan to roll HB 395 and HB 420 together in the near future. [HB 395 was held over.]

HB 420-SHALLOW NATURAL GAS RECOVERY ACTIVITIES

[Contains discussion of HB 69, which became law last year, and HB 395]

CHAIR KOHRING announced that the next order of business would be HOUSE BILL NO. 420, "An Act relating to recovery of shallow natural gas; and providing for an effective date."

Number 1821

CHAIR KOHRING presented HB 420 on behalf of the House Special Committee on Oil and Gas, sponsor. He said this legislation is in response to concerns that coal bed methane drilling could have a negative affect on waters such that water sources could be depleted. However, the industry contends that given the depths of most coal bed methane drilling, the water quality or quantity wouldn't be impacted. Due to these concerns, this legislation establishes a water well fund.

CHAIR KOHRING explained that if any drilling that occurs within 1,500 feet of any water well causes the water well to be compromised, a claim could be filed by the affected property owner. As a result, the replacement well could be paid for by this fund. The fund is [established] through a $0.01 charge per 20 mcf [thousand cubic feet]. The fund is capped at $250,000 per drilling operation. This legislation specifies that the driller would be afforded a refund once drilling, production, and reclamation has occurred. Therefore, this legislation offers protection for the property owners but doesn't discourage the drillers because of the refund.

Number 1960

ERIC MUSSER, Staff to Representative Vic Kohring, Alaska State Legislature, noted that an amendment is necessary to clarify how that exaction fee is calculated using mcf for which the unit of measure is thousand [cubic feet] rather than million [cubic feet].

Number 2006

REPRESENTATIVE McGUIRE moved that the committee adopt Amendment 1 [which would change the reference to "million" on

page 3, line 7, such that it referred to "mcf" because the unit of measure is thousand cubic feet]. There being no objection, it was so ordered.

MR. MUSSER explained that the fee in HB 420 would amount to about $29,000 a year and thus it would take approximately eight to nine years, assuming that there are approximately 800 producing wells. He noted that the aforementioned is modeled after the old producer exaction fee of a nickel a barrel that existed for several years.

REPRESENTATIVE McGUIRE asked if the shallow gas company is required to post a bond; if so, why would this legislation be necessary?

Number 2136

MR. MUSSER agreed that a bond is required. However, the public testimony heard in the Matanuska-Susitna ("Mat-Su")] area highlighted the biggest concern of residents, that they were forced to hire legal counsel to go after the bond. Furthermore, there were concerns with regard to lengthy delays to replace a well. Therefore, this legislation precludes those obstacles. He pointed out that there is a presumed liability provision in HB 420 and thus if a permit is obtained by a company, this legislation requires the company to give 30 days notice before entering a premises. When that notice is received, the owner would have the responsibility of testing the well. Once [drilling] activities commence and months later the well goes dry, the legislation allows a direct vehicle provided the well owner has tested the well.

REPRESENTATIVE McGUIRE inquired as to how one proves that a well is impacted due to drilling activities.

MR. MUSSER responded that it's presumed drilling activities are the cause of problems that a well is having after drilling activities have occurred within 1,500 feet. Under such circumstances, he said the well would be replaced.

REPRESENTATIVE GATTO remarked that one wouldn't want the driller to [have to replace a well] because the pump went out. He asked if the driller would face [responsibility] if a well went bad after an earthquake. He also asked if the driller would face [responsibility] if a well went bad because the water seems to be half the volume is once was. Therefore, Representative Gatto asked if any consideration has been given to involve an

arbitrator or does the well owner need a well log prior to [drilling activities commence] in order to determine the depth, volume, and strata as it went down.

MR. MUSSER answered that certain components of that have been considered. This legislation speaks to replacement. Certainly, he said this legislation doesn't govern a situation in which one's pump goes bad. Furthermore, this legislation doesn't address the event of a natural catastrophe. This legislation specifically addresses a well going dry after the start of drilling activities, but one must have tested the well with regard to flow, quantity, and quality prior to drilling.

REPRESENTATIVE GATTO surmised, then, that the homeowner should have a water quality report done that identifies the hardness, chemicals, and iron of the water. He inquired as to the arrangements [with regard to testing the well water] before the well owner is asked to obtain testing.

MR. MUSSER directed attention to page 2, lines 17-19, which requires that a landowner receive written notice that activities will take place. It requires that the owner test the well with regard to purity, form, and flow. In response to Representative Holm, he explained that Amendment 1 would remove the word "million" on page 3, line 7, and insert "mcf per day". He confirmed that the fee would be a penny for every 20 thousand cubic feet per day.

REPRESENTATIVE HOLM related his understanding that the state would say [the property owner] doesn't own the subsurface rights and thus [the property owner] wouldn't be paid but would have to test the well. Therefore, if there is a change after drilling, there would be substantive proof that something has changed. He inquired as to why the drilling company isn't being required to pay for water quality tests of any wells owned by those within 1,500 feet of the drilling.

Number 2559

MR. MUSSER answered that [such a requirement] would be left to the will of the committee. However, he related his understanding that the majority of well owners test them periodically anyway.

CHAIR KOHRING noted that Representative Holm's suggestion is something to consider.

REPRESENTATIVE HOLM said that since the state has taken away the subsurface rights from the people of Alaska, then it seems that a positive approach would be taken.

CHAIR KOHRING clarified that taking away the subsurface rights from the people of Alaska was the result of the state's constitution upon Alaska's statehood. Therefore, the state is bound by that, although it has created some problems. Chair Kohring related his personal opinion that he would like for subsurface rights to be granted [to the individual].

Number 2661

REPRESENTATIVE SEATON surmised that this legislation will mean every well owner [within 1,500 feet of a drilling operation] would have to obtain special testing within 30 days of the notification. Representative Seaton remarked that testing for purity and flow and maintaining testing records isn't a normal well log that a residential well owner would perform.

REPRESENTATIVE SEATON related his understanding that with coal bed methane, it would probably result in four wells per square mile, and 1,500 feet would be merely a third of a mile. Therefore, he said, leasing in the Mat-Su Valley under the spacing suggested by the companies, every single person in the Mat-Su Valley leasing area of the development would have to test his or her well. The aforementioned places a significant amount of cost on the surface owner so that the surface owner could be able to claim damages. He agreed with Representative Holm about possibly looking at that.

Number 2763

REPRESENTATIVE HEINZE said merely suggesting that a base line be formed creates the fear that [the drilling companies] are going to come in and cause problems for wells. Therefore, care must be taken in crafting a message that balances the people of Alaska and the [drilling] companies.

REPRESENTATIVE KERTTULA turned to page 2, line 23, which specifies that the standard is that "the activities appear to be probable". She commented that she'd never seen [such a standard] and expressed the need to see how that would be interpreted.

MR. MUSSER pointed out that the [standard] language was taken from existing statute relating to surface mining activities in

Title 27. In response to Representative Kerttula, Mr. Musser acknowledged that the aforementioned statute is old.

CHAIR KOHRING related that the legislation is sort of an outline of a concept and the meeting has generated some good points, which he indicated would be incorporated to improve the legislation without [discouraging] development. Chair Kohring noted the presence of former lieutenant governor Red Boucher.

REPRESENTATIVE HOLM asked if lateral drilling can be done for coal bed methane.

Number 2979

JACK EKSTROM, Director, Government Affairs, Evergreen Resources, Inc. ("Evergreen"), explained that the practice of horizontal drilling is gaining in its economic viability. It is not something that Evergreen has done in the Raton Basin [in Colorado] where its base of operations is. He said the technology continues to improve, and it may become economically viable in Alaska in the coming years. He added that coal bed methane technology has evolved so rapidly, it's very difficult to say "it would or wouldn't."

MR. EKSTROM explained that 10 years ago, Evergreen had zero reserves in coal bed methane and there was very little production in the United States, although now it accounts for 8 percent of all natural gas produced in the country. It came on very rapidly, and a lot of mistakes were made in the beginning that were corrected over time. Mr. Ekstrom said horizontal drilling technology and [the practice of] drilling multiple wells from one pad is being done in western Colorado, where Evergreen is beginning operations.

TAPE 04-1, SIDE B

MR. EKSTROM said horizontal drilling is kind of a cutting-edge thing that's being refined as time goes on. He said he is very hopeful, but it is difficult to say if it would apply in Alaska until some kind of commerciality is developed. Suggesting Evergreen would be using conventional technology and unconventional gas, he remarked, "I think that's from the outset, but I have high hopes for that technology."

REPRESENTATIVE HOLM said he'd mentioned horizontal drilling because it has to do with water quality.

CHAIR KOHRING said he thought directional drilling would alleviate any concerns about drilling occurring in people's backyards, which he doesn't think is ever going to happen. He said he didn't think DNR would ever issue a permit that would allow [drilling in people's backyards] or on school grounds, and he remarked, "That has been overblown a lot in this whole argument."

MR. EKSTROM stated that Evergreen has never done that, and never would.

CHAIR KOHRING said Evergreen has been very responsible, which he appreciates, and has been a model company. He said he thought directional drilling would greatly minimize that prospect.

Number 2907

REPRESENTATIVE GATTO asked Mr. Ekstrom if Evergreen has a competitor that uses directional drilling or if he knew of anyone who is directional drilling for [coal bed methane].

MR. EKSTROM responded that Evergreen doesn't have a competitor that does directional drilling in the Raton Basin, where it operates. He said Evergreen views all natural gas producers, ultimately, as competitors. He remarked, "Friendly competitors in most cases, people with whom we join in common interest on many issues." Mr. Ekstrom said it's a different kind of geologic or surface scenario that allows for that kind of technology, the particular geology where Evergreen Resources operates is not conducive to the present horizontal drilling technology. It is less economic because Evergreen doesn't have surface use problems in the Raton Basin; it drills the wells fairly quickly and fairly cheaply.

MR. EKSTROM said the wells are drilled in about a day. He said there isn't any compelling reason for Evergreen to do that, and in ecologically sensitive areas he could see how [horizontal drilling] would be desirable, but Evergreen has had no problems in the Raton Basin. Furthermore, Evergreen's economics are very strong in the way it is doing it and it doesn't have a compelling reason to move to that technology. He commented that it would pretty much be a financial consideration rather than any other kind of consideration.

Number 2829

REPRESENTATIVE SEATON said he appreciates the idea of improving [legislation] relating to water wells, although who is responsible for doing the testing might be questionable. In addition to testing, he said [homeowners] need to have water rights. Furthermore, he said [homeowners] have to file for water rights on water wells, because even if the water is tested, if the [homeowner] hasn't filed for water rights, there is no compensation. This is a definite improvement because it is not requiring [homeowners] to have filed for water rights for personal wells, he remarked.

CHAIR KOHRING thanked Mr. Ekstrom for Evergreen's continued faith in Alaska and for its desire to want to stay in the state. There have been companies that have intended to invest in Alaska, including in the Mat-Su Valley, that were literally driven out because those companies didn't want to deal with the criticism and the uproar that occurred, he explained.

Number 2736

CHRIS WHITTINGTON-EVANS testified. He asked if the committee would consider taking further public testimony for both bills when other committee members are present.

CHAIR KOHRING answered yes. He said these bills are in the initial stages and there will be some changes. It is likely that the two bills will be combined, and at that point, the committee will allow additional testimony, he noted.

MR. WHITTINGTON-EVANS explained that he lives on Lazy Mountain, adjacent to a shallow gas lease. He characterized himself as a small-business owner in Palmer who has served on the board of Lazy Mountain's community council, and is currently serving as the board president to Friends of Mat-Su (FoMS), a local nonprofit organization citizens' group that promotes land-use planning and responsible development. It currently has 300 members. He said FoMS has been very active in the coal bed methane equal lease issue over the last six months, educating themselves and the community about potential costs and benefits of these programs.

MR. WHITTINGTON-EVANS said it was brought to his attention last week that there are 12,396 parcels in the Matanuska-Susitna Valley with coal bed methane leases on them. About 96 percent of those are privately held parcels that represent a value of approximately $815 million in taxable value. He said people care about this issue a great deal and about the legislation

before the committee, which attempts to fix some of the egregious problems with the current gas-leasing program.

MR. WHITTINGTON-EVANS said two resolutions passed in his community council encourage both the buying-back of existing leases and the creation of an exclusion zone around the community to keep shallow gas [leases] from occurring there in the future. He noted that he had recently attended one of five public work sessions that DNR is sponsoring to help create recommendations for new rules governing coal bed methane.

Number 2565

MR. WHITTINGTON-EVANS said there were about 200 people at the work session who spent about four hours grappling with the inherent conflicts resulting from this program that is offering gas leases under private homes, neighborhoods, schools, and watersheds. He turned attention to HB 420, and he said it is felt that this legislation in its current form is doing little to protect property owners. The notification requirement called for is already in policy within DNR, and greater notification measures are going to be necessary from the public's standpoint, he suggested. Proper notice would include actual written notification to property owners prior to leasing being done, he said not prior to [the land] being entered and drilled upon. Suggesting the exaction provision is inadequate and encourages litigation, he said several aspects of the bill are undefined and incomplete. For instance, the testing of wells must take place in a reasonable timeframe after notice is given, and at the public's own cost.

MR. WHITTINGTON-EVANS suggested the costs would probably be in excess of $5 million for the 11,000 people who have private parcels and wells on those parcels in the Mat-Su Valley that are currently being leased. Other adjacent owners meanwhile would go unnoticed under this legislation and would be unable to know if they needed to test their wells and therefore wouldn't have a claim. Furthermore, collecting for damages still falls on the property owner to prove, and is a huge burden for individual citizens to employ the expertise and to argue such a case. He said that few litigants in other developed basins have been successful with doing this, and he recognized that the commissioner would make that determination, but the language "may" should be mandatory and not left up to interpretation. Mr. Whittington-Evans said this bill is currently inadequate in covering damages, is unnecessarily litigious, and does little to

provide any new notice to affected property owners. He stated that FoMS does not support this bill in its current form.

Number 2467

MR. WHITTINGTON-EVANS, turning attention to HB 395, said the bill represents a good first step, and is something that can be "put on the table" and discussed. He said there are several provisions within the bill that deserve mention. With regard to Sections 5, 7, and 8, he said HB 395 needs to grant DNR the capacity to regulate coal bed methane development and ensure that surface use agreements and maturity bonds are negotiated before a lease is granted to protect the owners negotiating position. He explained that HB 395 should also contain provisions to give surface owners adequate opportunity to seeks and receive court damages without risking litigation costs. Bringing attention to Section 1, he said HB 395 takes a step toward protecting [drinking water] by allowing the state to regulate the reinjection of wastewater. However, he said this bill should require, not merely allow, the state to regulate the injection of water below the known subsurface drinking and agricultural supplies.

MR. WHITTINGTON-EVANS said the bill should also go further and ban the use of toxic hydraulic fracturing fluids in Alaska. Turning attention to Sections 2 and 4, he said HB 395 does add limited public process requirements on leasing and development by extending the newspaper requirements and local government notice. However, he said in the work sessions being conducted in the valley, the public is overwhelmingly asking that the state notify individual landowners by mail, so that there aren't communication conflicts and gaps, because if a property owner does not get a newspaper or look in the right place in the newspaper, that person would miss notification that his or her land could be leased. A more formal process with safeguards to address public concerns and provide for public hearing should be a part of that, he said.

MR. WHITTINGTON-EVANS, turning attention to Sections 10 and 11, he said HB 395 repeals some of the more controversial provisions of HB 69, which FoMS and the local government would appreciate and support. However, he said the bill could be improved by giving local municipalities the full authority to provide neighborhood setbacks, health and safety safeguards, noise abatement, and help with some of the safety and health issues that have been brought up. It really should be in the hands of the municipalities to do that, he stated. Mr. Whittington-Evans

suggested that other states are looking at this issue (indisc.) litigated with industry, and have found that local government ought to have that jurisdiction to be able to take control of those issues. Referencing Sections 3 and 6, he said this would grant rental fees to surface owners for companies siting wells or compresses on their land. Without a best interest finding preceding it, he said this approach pits neighbors against one another granting rent to those landowners willing to sacrifice the use of their land without protecting adjacent landowners.

MR. WHITTINGTON-EVANS said for example, if a landowner who didn't have a home or a substantial investment in the land he or she owns were to find the rent an interesting idea and want to receive rent for that, this would open up the possibility that landowner would be able to take rent and help pay for that land. However, adjacent landowners wouldn't necessarily be receiving anything for their damages or for the noise of a compressor, for instance, that would bothersome because his or her home is nearby. Noting that he is skeptical about the compensation in the bill, he said he thinks that needs to be thought out a little bit further. There are obviously some loopholes closed within narrowing the definition of coal bed methane and the depth at which it is done, he said. Especially for those tracks in Homer where conventional gas is being looked at and for elsewhere in Alaska where this would probably be done. He said this provision is excellent and well thought out.

MR. WHITTINGTON-EVANS said Mat-Su citizens are concerned about a few issues that are not addressed in HB 395, for example, a buy-back of existing leases to ensure equal application of this new legislation coming forward for all areas of the state. Also, the application of traditional oil and gas development standards to coal bed methane development including a best interest finding. Another concern, he said is for a requirement that the Mat-Su borough has asked for in resolution for baseline studies to be conducted and paid for by the state with respect to water quality, which would address some of the issues brought up in HB 420, and for methane seepage as well, with the eye on public health and safety.

Number 2159

ROBIN McLEAN testified. She said she is a resident of Sutton and a member of the Sutton community council, which has been working closely with the Buffalo Mine community council located in Representative Harris's district. She thanked Representative Harris for his concern and for helping his constituents in the

area. Calling attention to HB 395, she said [the community council] is very happy to see this bill and the work that is being done. Noting that there are a lot of good provisions in the bill, she said the hope is that some things can be added that will satisfy some of the citizens concerns, and she urged the committee to act on the bill sooner than later. Indicating that residents are very happy to see that the reinjection of water may be required, she recommended that be a mandatory requirement since it was learned from the USDS [United States Department of State] that the water recharge for wells in the Mat-Su area is 25 years.

MS. McLEAN said in ensuring the safety of water over time, after the drilling operations are over and after the bonds are gone, it is felt that reinjection is the safest way to deal with the water and put people's minds at ease. Additionally, she said the [community council] agrees that since it is known that Evergreen and other companies can do fracturing with nontoxic materials, its hope is that the state would ask that only nontoxic fracturing fluids be used in neighborhoods.

MS. McLEAN said the community council is in support of and has passed resolutions asking for hydrological, geological methane (indisc.) studies prior to any drilling in neighborhoods and in areas where residents live, have investments, and have property. The hope is that the committee will consider a buy-back of the leases or a buy-back mechanism once these studies are done, she said. Ms. McLean mentioned that [the community council] had been told through borough assembly work sessions with AOGCC and with geologists, that there are some areas that are simply geologically unsound for coal bed methane development.

Number 1980

MS. MCLEAN said given those facts and studies, the hope is that some areas can be determined to be not suitable and then bought back through the reasonable assessment of science on a case-by-case basis. Furthermore, she said [the community council] supports the notion of increasing public notice for leases prior to leasing. The overwhelming consensus of property owners is that individual property owners must be notified in person of the leasing, she explained. In thanking the committee, she said the public forum is appreciated and is thought to be a step in the right direction. Furthermore, she said the feeling is that the reversal of the local control override from HB 69 is a very positive step that the community will support strongly. The various property rights provisions having to do with noise are

thought to be very good, but need to be more specific in the legislation, she said. Ms. McLean said the hope is that good things will come out of this process.

CHAIR KOHRING provided the public with his contact information.

Number 1851

SETH LITTLE, Legislative Coordinator, Alaska Center for the Environment (ACE), testified. Mr. Little said ACE is Alaska's largest homegrown conservation organization with over 8,000 due paying members statewide and it is glad to hear that this is an open and honest debate on how fast to act to fix the problem with a system that is presently broken. The oil and gas committee is the correct place to make these changes and have this open debate, he said. Mr. Little suggested that HB 395 is an appropriate vehicle for members of this committee to begin to resolve the coal bed methane mess that resulted after last year's ill-conceived coal bed methane legislation - HB 69. Alaskan's across the state need this committee to act to provide relief, he stated.

MR. LITTLE urged the committee to review the bill provisions carefully and amend it as suggested by the public. Suggesting HB 420 isn't a productive piece of legislation in its present form, he said it doesn't provide for previous notification to landowners and puts the burden of proof on landowners to protect themselves, should they be negatively impacted by development. While ACE recognizes the need to develop the states resources for the benefit of all Alaskans, he said it also understands the need to do it responsibly, which means that it must not impair the environment, and should pay its own way and have local support. Mr. Little said the state's economy and its residents depend on the health of the its unique environment. Coal bed methane in Alaska is a statewide issue, he said; it's not an urban or a rural issue.

MR. LITTLE said leases have been issued in the Mat-Su Valley, the Homer area, and other areas of the state including the Holitna Basin, Healy, and Kateel Meridian, which including the Red Dog Mine have been identified as future coal bed methane "hot spots." In actuality, he said, most of the state's subsurface rights for coal bed methane are open for lease applications on a first come, first served basis. What is being seen is a fragment approach to dealing with a broken system, he said. He suggested that the state should have a statewide buy-back, start from the beginning, and do it right, which he said

would require AOGCC to regulate the industry properly and require DNR to develop regulations for development, not just guidelines. Coal bed methane development is much more than a drilling pad and a pump station, he said, development turns into production, and the completed infrastructure will take a toll with compounding effects on Alaska's unique resources.

MR. LITTLE said wildlife habitat will be fragmented from roads and pipelines crisscrossing the landscape to access well sites, pump stations, compressor facilities, and power stations. Furthermore, fish streams could be damaged by crossings and siltation from road construction. Dust will impair air quality from increased traffic and off-road vehicle access on new roads and pipeline easements will then keep increased pressures on the state's fish and wildlife habitat, he said.

Number 1662

MR. LITTLE said with the elimination of the best interest finding requirements, it is expected that there will be no analysis of the adverse environmental and social impacts from coal bed methane development. He encouraged the committee to have the best interest finding as a requirement, and he said while most of the attention so far is focused on impact to private property, as most of the leases have been issued underneath private property, public lands are also at risk. Those who recreate on state public lands could be affected by the infrastructure that the production of coal bed methane will bring, he said, and there are already leases in the Mat-Su Valley area, below Hatcher pass, which is a very popular recreational site for most valley and Anchorage residents. He thanked the committee for the opportunity to comment on this legislation, and he urged the committee to take a good look at these two bills in its attempt to combine them. He noted he was glad to hear that the committee would be keeping public testimony open for further comment.

Number 1586

REPRESENTATIVE ROKEBERG said he didn't quite understand why the committee should require a best interest finding for shallow gas when [the legislature only requires] an updated existing best interest finding for conventional or deeper gas in Cook Inlet, based on the area wide leasing concept. He asked Mr. Little to justify why the committee should have a best interest finding for shallow gas as opposed to conventional gas.

MR. LITTLE offered to look into the question further and provide Representative Rokeberg with a response.

REPRESENTATIVE ROKEBERG said he wasn't sure people really understand the scope of what a best interest finding is. It sounds good, but the work product and what has to be invested to create a best interest finding that meets the standards are really quite substantial, he said. Explaining that is one of the reasons that was not part of the initial shallow gas concept, he said it was felt that it would be an enormous barrier economically on a regulatory basis, but it's not to say there shouldn't be some sideboards. He said when using the term "best interest finding," people should understand what it means.

Number 1494

CHAIR KOHRING asked Mr. Little to recognize the good things that HB 420 represents and that the bill is not forcing anything on property owners. It is establishing a fund that dollars can be drawn from to replace a well, which is the main "thrust" of this legislation, he said. The committee is here to work through any minor flaws that might exist in the legislation. Chair Kohring said the concept is to create a fund that would replace water wells that would potentially, albeit unlikely, go bad in the future.

MR. LITTLE, turning attention to HB 420, said it is his understanding that the burden is on the landowner to get his or her water tested prior to drilling commencing - after the landowner has been given a 30-day notice. He said he realizes that the bill is a beginning attempt to look at how to address this, and he understands that, but it is a reality that landowners will then be incurring that cost. He said Representative Holm suggested that maybe companies that are going to be drilling near homes should be paying for those studies.

Number 1347

DOUG STARK, Ph.D., testified. He said he thinks HB 395 is a good bill and he is favor of it. With regard to HB 420, he said he is interested in the well quantity and quality, and it is unreasonable to have the homeowner come up with those data. A reasonable way is to use any data that the homeowner has from the time the well was drilled to establish the quantity and quality of the water, he suggested

Number 1275

JOHN NORMAN, Commissioner, Alaska Oil and Gas Conservation Commission, testified. Noting that he would submit written testimony on HB 395 and HB 420, he remarked:

> I had just a few quick thoughts on [HB 420]. There's a reference to the fund to be established, and it references 43.57, which is the old oil conservation fund. ... There may be some historic artifacts out there in legislative history that by reusing this would create some confusion, and so it might be better to fix [AS 43.57.020], but that's really a matter of how legislative drafting wants to codify it.
>
> The ... statute talks about "the commissioner may pay", and that implies discretion, and perhaps ... that might answer the question about who determines this. If that were changed to "shall", then it would make it a little more mandatory. Before the section where it says shall pay the "owner for the costs", it may be advisable to put in ... "reasonable costs" to put some objective standards as opposed to whatever an actual cost might be that might (indisc.) landowners.
>
> Continuing on the next page, there is a line that begins: "well, and the activities appear to be probable hydrologic". And I think activities might be clearer if it picked up the ... introductory wording of "contamination or alteration", so that it would read "and the contamination or alteration appears to be probable hydrologic consequences of the lessee's activities". ...
>
> We had some other questions concerning the fund itself. It appears that it's to be built up to a total of one quarter of a million dollars, but then it does provide for refunds, apparently, on a lease-by-lease basis. ... What we were going to do is ... run out some numbers and then we'll alter those to you in our commentary, and certainly the other speakers have pointed out the 20 thousand mcf. ...
>
> Finally, ... a question about the concept of a refunding policy versus just creation of a fund: It clearly would declare more adjudication to track a fund and then refund the money paid into it, as

opposed to just having a surcharge, but the commission will think this through more than I have had time to do now, and then we'll try to offer you a considered opinion concerning how that might work.

Number 0960

MIKE McCARTHY, Kachemak Bay Property Owner's Alliance ("Alliance"), testified, saying he is representing over 800 members of the Alliance and is a constituent of Representative Seaton. Noting that he is a retired, registered hard-rock exploration geologist, he said he has practiced in Montana, Nevada, Arizona, Idaho, and Oregon. He mentioned that he has been a resident of Homer since 1997. He remarked:

> When I attended the DNR hearings, I was, as well as a number of the audience members, extremely upset at the fact that I became a second-class citizen by virtue of the fact that I was denied due process of notification. ... I would like to direct your attention to the aspect of the bill that sets a lower standard for the State of Alaska than the federal government has.
>
> Namely, the federal government Minerals Management Service (MMS) has to notify, in writing, all persons affected by potential areawide leases. The state should have the very same standard, that being written notification by mail to all property owners of record. I think that should be [the] number one priority. Secondly, ... I've got a little bit of broken thought here because of the fact that I wasn't necessarily planning on addressing [HB 420], but I'll incorporate that and I'll also follow this up with more detailed written comments.

Number 0827

MR. McCarthy continued by saying:

> ... As a ... retired geologist I dealt with mineral leases. I was really shocked to learn that the State of Alaska ... leased 22,000 acres for the trifling sum of $28,000. That's $1 per acre. Outside states have chastised their legislators for leasing land at $2 an acre, so I don't know how this price was arrived at, but it doesn't seem reasonable to me in view of the

funding problems the state is having. The resource is worth more than $1 per acre.

The other thing is that $1 per acre doesn't come anywhere near the cost of potential harm to individual property owners in case of restitution. Going back to the Homer DNR meeting, there was absolutely no mention of methane hazards such as methane seeps that are extremely prevalent in the winter. We have natural methane seeps right now, but if you take and examine your bill here, both [HB 395 and HB 420], you will see there's no mention of pressures involved with hydraulic fracturing.

It took me almost two months to find the figures; they vary between 1 thousand and 10 thousand pounds per square inch, and there is ... hardly any ground in this area of the state that will tolerate those kind of pressures without methane seeping through fractures that are naturally incurring or induced by the hydraulic fracturing pressure.

Number 0684

MR. McCarthy continued by saying:

... That is a very serious (indisc.) concern for the folks here. To give you an example, just out of name of the person that was burned yesterday. Talking to one of the managers of Spenard Builder's Supply, his mother is a personal friend of this person that was a victim.

In about the late 50s, this individual was working on maintenance in the hospital well, and he went in, and they don't know if he flipped a switch or what it was, but at any rate, he and the door blew out of the well house. He received severe burns on his face and hands. His ring had to be cut off.

That is a very real hazard, and people's basements and crawlspaces are subject to the same sort of methane, especially when it's subjected to hydraulic fracturing pressures. Another point, regulation should be statewide, and right now, the way DNR is approaching the [Mat-Su Valley] is inappropriate.

> We have statewide laws in effect for driver's licenses, for water quality, [and] for air quality. There should be standard safety considerations that DNR develops across the state. The bond requirement is insufficient to protect private property and community drinking water; $500,000 will not cover the loss of property or potential hazard costs for landslides, mudslides, fires, et cetera.
>
> Alabama has a statute regarding nontoxic fracturing fluids, Alaska would be well advised to adopt that standard. The pending bills do not help the private property owner. They don't provide adequate notice before property is leased. They don't require the standards for regulating noise, setbacks, surface restoration, or other qualities that would protect water resources quality of life and the environment of property owners.

Number 0489

MR. McCarthy continued by saying:

> The money that is collected for this bond needs to be increased substantially, because a five-year period is a reasonable period that ... [HB 420] is dealing with, but the money needs to be readily available over a long period of time. ... As long as there's production going on, a hydraulic fracturing process can create well problems miles away, far more than 1,500 feet away from any given well.
>
> Finally, ... as a final test for this legislation, I would ... strongly suggest that the (indisc.) with this test be what is best for Alaska. Public health and safety concerns and quality of life should all supercede corporate profits.

Number 0285

JEANNE WALKER testified. She said she owns property that's leased, and she was very pleased to see HB 395 and HB 420 under consideration. She said she didn't believe that these bills go far enough in terms of adequate notification. One of the reasons she has come to this conclusion is because of what happened to her related to these leases, she said. Noting that she and her husband bought a home in the Homer area last July,

she said the property had been leased in June for shallow gas development and neither her nor her husband, the seller, or the realtor knew the property had been leased. She said she believes this happened because no notification appeared in the local Homer paper, and because DNR is not required to record the leases.

MS. WALKER suggested that the bill should go further by having individual surface owners notified in writing before the land is leased, and she said this could be done in a timely fashion, so that the landowner could also participate in a comment period. In real estate transactions, she said at least the surface owner would know that the subsurface had been leased and then the rules of full disclosure could apply. She said she thought the bill should also require that DNR develop the regulations and standards to review and possibly reject leases if the community situation, the geologic or environmental concerns, or public comments would warrant it. She noted she was disappointed that HB 395 didn't include a buy-back of the Homer area leases.

Number 0050

REPRESENTATIVE GATTO asked Ms. Walker if she got a title report when she bought her property.

MS. WALKER replied absolutely. She said she and her husband understood that they didn't own the subsurface property and the state did, but they didn't know the property had been leased for shallow gas development. Furthermore, she said, they would not have bought the property knowing it had been leased. Ms. Walker said she and her husband aren't the only people in this situation; she knew of at least two other property owners that this happened to.

TAPE 04-2, SIDE A
Number 0001

MS. WALKER continued, saying, "Real estate transactions are not occurring because people aren't willing to buy property, at least at this time, until they have a better idea what these leases will mean."

REPRESENTATIVE GATTO said he was just curious about whether the realtor was aware of it and [whether] there were some disclosure requirements. He went on to say he was fairly sure the surface rights and the subsurface rights were separate, but just wanted

to know if the title company actually knew that and should have reported it.

MS. WALKER replied that the title company didn't know that these leases existed because DNR isn't required to record them. So when normal title searches are done, title companies won't find these leases. Additionally, since the community was not aware that these leases existed, there wasn't another way for the title company to know it either.

REPRESENTATIVE SEATON remarked:

> The DNR recording these leases, I think, is a very good suggestion; however, I just ... want to point out ... that DNR receives so little money from these shallow natural gas leases that they ... didn't even print maps. The only maps that have been printed are ones that my office got the parcel numbers [for], and the borough GIS [Geographic Information Systems] department printed the maps so people could find out ... whose land was leased, because there's ... so little value, there's no competitive bid in these leases. ...
>
> So I think it's a very good suggestion; I think that we'll need to talk with DNR to figure out how [these leases] should be recorded, but at least, then, people would have the opportunity of investigating and knowing ....

CHAIR KOHRING ascertained that the representative from Union Oil Company of California (Unocal) was available for questions and might speak on the bill at a future hearing.

Number 0284

MARK MYERS, Director, Division of Oil & Gas, Department of Natural Resources, referred to HB 395, Section 1, [paragraph] (3), regarding hydraulic fracturing. Noting that there is regulation by [AOGCC], he said, "I just recommend that you do talk to them about what they currently regulate and how they do it." He also remarked, however, that that section potentially needs further clarification as to intent, specifically regarding the reinjection requirements related to hydraulic fracturing. He added, "[I'd] maybe suggest that those be separate sections in your bill, if you go that way. But, again, I encourage you

to look at the regulatory authority the [AOGCC] currently [has], and work starting from there."

MR. MYERS turned attention to Section 3 [of HB 395], and said he has concerns about limiting the depth to 3,000 feet. From the standpoint of a geological, conservation, or physical weight issue, or from the standpoint of maximum economic development, limiting the depth to 3,000 feet doesn't make a whole lot of sense, he opined. He said in general that both HB 395 and HB 420 deal with a lot of different issues such as coal bed methane development and shallow gas leasing, but these two are not the same.

MR. MYERS explained that CBM is a specific method of producing unconventional gas, and occurs on state leases and conventional leases, and could occur in "exploration license areas," shallow gas leases, and on private or federal lessees' property. Again, he remarked, "this bill" links a lot of issues to the shallow gas leasing program, but then attempts to deal with issues that are specific to CBM regardless of the type of lease. Therefore, clarification regarding when one is referring to the shallow gas leasing program is important, he opined, because depth is not really an issue when referring to CBM, nor does a depth limitation make sense from a geological or reservoir or production standpoint.

Number 0501

MR. MYERS turned attention to Section 4 [of HB 395], and indicated that [DNR] is not opposed to providing additional notice. He relayed that one of his concerns, however, is that in some areas of the state, there are not "two newspapers of general circulation in the vicinity" as is specified in the bill; thus, in some rural parts of the state, it might be difficult to comply with the bill's notification requirement. He added: "You saw that when we put it in the Clarion ..., for example, it wasn't enough ...; folks wanted it to noticed in the Homer news. ... In retrospect, we'd put it in the Homer newspaper; we were just trying to be efficient." Therefore, he opined, the newspapers-of-general-circulation issue needs to be "fixed." And with regard to notifying community councils, he said that such notification is not a problem, but pointed out that there is no standard for what constitutes a community council nor is there a list of community councils; therefore, that issue needs to be clarified. With regard to remedies for noncompliance of the notification requirement, he asked whether noncompliance would invalidate a lease or require re-

notification; although DNR supports the [concept] of providing public notice, the bill is not yet clear about what happens to the lease if a community council is not notified, for example, because it is not defined.

MR. MYERS turned attention to Section 5 [of HB 395] and reiterated that CBM activity can occur on "non shallow gas leases." Therefore, he said by regulating under proposed AS 38.05.177(f), "you're just looking at a certain type of lease." He went on to say:

> When I look at [paragraph] (3) involving ... appropriate setbacks: the "peaceful enjoyment" standard is a difficult one. ... We believe that needs to be clarified ... [because] one person's standard for peaceful enjoyment is very different than another's. The whole concept of agreeing and doing reasonable measures to mitigate compressors at all well sites, I think, is a valid point, [though] it may be more appropriate to look at actual standards.
>
> Most of these standards that you [see] in here are standards already in the lease requirements [stipulated in mitigation] measures, but you might look at ... things like specific noise level standards - certain decibels, et cetera - [and] certain specific setbacks. A lot of that is being accomplished in our process in "the valley," just from that experience. We think maybe more specific, and then a better definition of peaceful enjoyment or a standard that's maybe more legally accepted.

MR. MYERS noted that the language in subsection (f)(5) of Section 5 is similar to what is already in the [DNR's] leases, but only applies to [AS 38.05.177] shallow gas leases. He added, "It's in our conventional leases as well [as] in our shallow gas leases." He noted that this is an issue also in [areas] of the valley where 60 percent of the acreage is "non-state." He reiterated, "You're applying a standard which ... is basically a duplication of what already exists in the leasing standard." That's fine, he opined, but it isn't getting at the majority of the acreage in the valley.

Number 0784

MR. MYERS turned attention to Section 7 [of HB 395], and said [DNR] doesn't have problems with "the bonding standard

generally," but the language in proposed subsection (k)(3) details standards that [DNR] currently deals with in the plan of operations, which occurs prior to the bond. He added, "In other words, we're going to bond toward the activity. ... We have to know what activity is there to set the bonding, so those standards are set prior to the bond hearing, in the 'plan of operations' permitting process." He noted that the standards set forth in that process are higher than those proposed in [HB 395]; hence his suggestion is to have the standards proposed in subsection (k)(3) moved to the "actual committee process rather than the bonding process," so that the landowner would have more certainty "prior to the bond."

MR. MYERS said the definition of shallow gas leasing in Section 9 is 3,000 feet, which he didn't think makes a lot of sense from a geological standpoint. He said the [result] would be physical or economic waste.

MR. MYERS turned attention to HB 420, Section 1, paragraph (3), which reads:

> (3) shall require the lessee to provide written advance notice to the owner of initial entry onto the property of the owner at least 30 days before initial entry.

MR. MYERS said [the department] is fine with it, but there are questions such as what constitutes notice. Does it have to be a certified letter? He suggested it should be tightened up. If there are multiple owners, is it the owner according to the tax record? Is it the recorded owner? Is it unrecorded ownership? He said that term definitely has to be cleared up as to who is getting notified. Mr. Myers also asked what "initial entry" means. Does it mean the first time [someone from the exploration company] walks on [the land] or the first time an operation is performed on the land? Does it occur every time the property is entered, or only at one time?

Number 0959

MR. MYERS turned attention to Section 2, subparagraph (B), and recommended that a few hydrogeologists look at it to determine what appropriate distances are. He said he thought that standard needs to be "tightened up" or legally strengthened. He said a period of five years would be part of the technical analysis, whether that would be accurate or not. Turning attention to testing standards, he said he thought testing

should be for a specific standard. He said it's not really listed as a standard. "That's pretty crucial as to what you're testing for and what water (indisc.) it affects, in terms of the water supply," he remarked.

Number 1035

REPRESENTATIVE SEATON turned attention to HB 420, Section 3, paragraph (14), and said AS 38.05.177(a),(c), and (j) as well as [AS 46.03.100](f)(3) and several other statutes refer to shallow natural gas leasing at the 3,000-foot depth. He said under the bill, that's the standard on what is being leased. Representative Seaton said AS 31.05.170(14) and AS 46.04.900(25) refer to the drilling depth not being more than 4,000 feet. He said that's in current statute, but there seems to be some conflict. Representative Seaton said the [committee] had been talking about a conflict between a noncompetitive shallow natural gas lease and a competitive bid for conventional gas. He remarked:

> If you went forward and there was a reservoir that you could identify at ... 6,000 feet, and you wanted to go forward with a application for an areawide lease sale, and ... going after that gas ... - if someone else had a shallow natural gas lease in the 3,000-foot range. Is that going to give you conflict or do you think the person that has the noncompetitive 3,000-foot lease should just automatically be able to go after the conventional deep gas as well without [a] competitive bid.

Number 1196

MR. MYERS responded that fundamentally, because of the potential conflict in (indisc.) rights between the owners, [the department] will not competitively lease underneath or will not [issue] an exploration license underneath a shallow gas lease. He said there is a huge amount of potential for conflict between the mineral rights, and there's no easy way to do it. He remarked:

> The gas below it is pretty much stranded or (indisc.) unusable. If they were to produce it - and that's the problem with it too - as you go out away from the well bore, and the surface of the land changes in height, the ... geology of the reservoir underneath doesn't change laterally the same way the surface does. The

surface in the underlying rock (indisc.) are not in parallel necessarily.

... What happens is that you go in and out of the same reservoir and you could physically be draining part of the reservoir below 3,000 feet, just because laterally you move over, and compared to surface depth, true vertical depth, you're now deeper. ... It's a huge problem that we have. ... Since we haven't any production of this program, it hasn't been a problem but it leaves a huge management problem, and we really don't have a good answer.

... I think for the sense of regulating the activity 3,000 or 4,000 or even 5,000 feet makes no real difference technically. You should (indisc. - paper shuffling) protection of the groundwater system for coal bed methane activities regardless of that depth requirement and the same way with conventional gas. So this really is a production technique we're looking at, not the depth that gets at what you're trying ... to fix here.

The same way a surface owner - I don't think we could see much difference in the effects of a well drilled at 5,000 feet adjoining his land versus one drilled at 3,000 feet. You still have the wellhead. You still have the same ... type of equipment there.

There are differences in equipment between coal bed methane wells ... regardless of their depth and conventional wells, and that can be taken into account in the regulatory scheme but fundamentally the depth ... - I understand we have a conflict in mineral rights - but the depth in terms of regulating the activity really isn't the issue.

Number 1335

REPRESENTATIVE SEATON remarked:

With the conflict in the reservoir and ... actually going deeper - being able to drain deeper. Would it be your sense that we really ought to get back to saying that when you're leasing gas in an area, you're really going for ... a regular gas lease, ... instead of this artificial shallow natural gas lease, and that

> we should really be operating under a ... conventional gas lease program. ... If somebody is exploring shallow natural gas or coal bed methane, that's going to be covered within that lease?

MR. MYERS said that would be his personal recommendation. The intent of the legislature was different with the original program but the intent of the original shallow gas program was for just around rural areas, not large-scale commercial production. He said it is his opinion that the assumptions made and the development or exploration activities that are occurring in the [Mat-Su] valley and down south are more parallel to what should be done on a conventional lease. Mr. Myers said those correlative rights problems would be much less and the program would be smoother and would be easier to regulate. He remarked, "Then you would look at regulating coal bed methane activities versus shallow gas leases."

Number 1460

MYRL THOMPSON testified. Noting that he is a property owner from the Wasilla area, he continued by saying he thought HB 395 is a good starting place, but it definitely needed to be "beefed up and not watered down" in any sense. Mr. Thompson suggested that the bill should require hydraulic fracturing fluids to be of the nontoxic variety, and he said there are a large number of different kinds of hydraulic fracturing fluids including eco-friendly fracturing fluids. He suggested that nontoxic fracturing fluids should be used because in a few wells and casings that were tested after fracturing, the residue left over within the test specimens was found to be 28-64 percent of the chemicals in the fracturing fluids. He said he realized only a few [wells] were tested, but that was the result. He remarked:

> So if you have these proprietary chemicals in your fracturing fluid, ... we won't even know what it is for two years. We're not going to know how to address it, as far as HAZMAT [hazardous materials] and stuff like that ... in the valley, for one thing. ... The fact that they're staying down in these wells is not a good thing.
>
> The casings on the wells are supposed to protect the aquifers. There's a cement casing in there, but there's no regulations or stipulations saying that these things need to be ... protected for possible leaks in the cementing itself, which, ... from what I

understand from various drillers, is that a large percentage of the concrete casings do not actually seal off and protect the ... aquifers. ...

They ... need to be sealed through this process that sometimes has to run over three or four or five times to get it adequately sealed. ... There's nothing saying that these things need to be considered even, so we definitely need something that protects those areas of the aquifer, and just saying if we dump concrete in and seal it; it isn't enough; it has to be sealed.

Number 1622

MR. THOMPSON continued:

Another case that just came out of the court systems this year was ... in the Kentucky gas fields, which is part of the ... Appalachian basin. There was a particular problem. It had a gas well next to it, and the gas seeped over from that well into his well and collected in his well house. And the guy switched his switch on, and it blew him up and burned him up pretty bad. ...

That was adjudicated ... and he won an award of ... about $3.5 million against the company, but that didn't stop the industry from arguing that it was literally impossible for the gas that was beside his house to seep sideways, which the courts agreed that that was indeed what happened. ...

This instance in China where this whole gas field went up because of human error: ... some of it was some of the 174 people that were killed or injured due to the explosion and fire, and some of the people were injured due to poisoning from the fractured wellheads and stuff and released gas into the community, which had to be evacuated. ...

That's an example of what happens when you have no regulations whatsoever. ... I think we need to have baseline studies in hydrology and geology, and not only that, into the wildlife and critical habitat areas that have been leased such as the Deception

Creek management area and the Bench Lake area, and there's a number of other ones.

If we're not going to look at ... what the other resources are in that area, how could we compare them to oil and gas. ... We need a third party ... when disputes do arise over these various things, and we also need a way to formally complain separately to DNR, DEC [Department of Environmental Conservation], and the AOGCC. ...

We need to find a way where AOGCC isn't so politicized. ... They should have an independent job to do and not ... be the views of one political party over another.

Number 1759

REPRESENTATIVE STOLTZE offered his understanding that the committee was trying to address the issue of prohibiting the toxins. He suggested it is covered by the way the bill is drafted, but if not, is something he is very attendant to.

Number 1824

CHAIR KOHRING, upon determining no one else wished to testify, closed public comment. He announced that 420 would be held over.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Oil and Gas meeting was adjourned at 3:04 p.m.