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Lawmakers attempt to address oil, gas divide

By Staci Matlock

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In 2008, three Rio Arriba County landowners — John Sena, Leo Valdez and Beth Sulzemeier — testified before a state hearing officer about a dilemma. They understood a Texas oil company had the right to drill for hydrocarbons on their forested New Mexico properties, but they didn't think the company was drilling in the right places. They worried the wells were going to pollute nearby wetlands, streams and drainages feeding into the Rio Chama and Rio Grande.

The trio echoed the fear felt by people across Northern New Mexico and elsewhere in the United States as new technology, a push for domestic energy supplies and the ever-present need for hydrocarbons drive up production.

New Mexico's state coffers depend heavily on revenues from oil and gas production. But there's a growing divide between those who make their living from the industry and those who worry about its impact on land and water. The divide prompted legislators to introduce several bills this session, some favorable to producers and some aimed at protecting the public.

Industry lobbyists and John Bemis, secretary of the state Energy, Minerals and Natural Resources Department, think there are plenty of regulations in place to safeguard the public. Others disagree, including residents in several counties where drilling is proposed.

At a meeting Thursday (Feb. 21) in Tierra Amarilla, a small valley hamlet in eastern Rio Arriba County that is no stranger to land wars, about 30 residents and industry representatives debated changes proposed to a Rio Arriba County ordinance governing oil and gas development in the region. While the west side of Rio Arriba County has been a producing part of the gas-rich San Juan Basin for years, the more water-rich, east side of the county isn't used to it.

"I would say the majority are not in favor of it at all," said Ben Singer, an assistant county planner. "The discussion has been fairly polarized. No matter how much the oil and gas industry tries to explain the safeguards, which I think people here understand at an intellectual level, they still oppose drilling. Their fears are related to the risks [to water] if something does go wrong."

Counties assert authority

The debate over oil and gas production in the last half dozen years has led to lawsuits, county-imposed drilling moratoriums and acrimonious debate in front of Legislative committees. Some attempts at compromise have been successful, such as a 2007 New Mexico Surface Owner Protection Act, which requires oil and gas operators to notify landowners before they drill and

offers compensation for land damaged by production. (Landowners often don't own the minerals on their property, resulting in a split estate.) Other negotiations lead to a pit rule governing the disposal of drilling and production waste, but that rule has been challenged by industry and is under review by the Oil Conservation Division.

More than 100,000 oil and gas wells dot the New Mexico landscape, largely in the northwest and the southeast. New technology could open up some once hard-to-tap but potentially lucrative pockets of natural gas in Rio Arriba, Mora and Colfax counties. But the technology is controversial, and some areas where producers want to drill are places where people are unaccustomed to dealing with the industry.

Hydraulic fracturing — forcing high pressure fluids into horizontal bore holes to fracture rock and release gas — has people worried about what's in the fluid and how the "fracking" technique might affect drinking water.

The industry says those fears are overblown and that it is a safe technology ill-understood by the public. Those opposed to fracking, such as the nonprofit Oil and Gas Accountability Project and many other local citizen groups, say there are still enough unknowns about fracked wells to merit extreme caution, especially in a place like New Mexico where clean water is hard to come by.

As Rio Arriba amends its oil and gas ordinance, Taos, Mora and San Miguel counties are all considering their own versions. San Miguel County commissioners have recently held day-long hearings to solicit comments from residents and the industry. Santa Fe County has had a fairly restrictive ordinance in place for a couple of years, prompted by a company's attempt to explore the hydrocarbon potential in the Galisteo Basin.

San Miguel County hired attorney Bob Freilich, who created Santa Fe County's Oil and Gas Ordinance. On its website, the Independent Petroleum Association of New Mexico calls Santa Fe's ordinance "very bad" and worries Mora County could adopt a similar regulation. "After two years of work on the San Miguel County Oil and Gas Taskforce and several rounds of legal comments, the Commission has decided to throw out our work in favor of whatever Mr. Frielich decides to propose," according to the IPANM website.

A fight ahead

Both the state and industry want a law clarifying authority over oil and gas operations. The New Mexico Oil and Gas Association convinced Sen. Carlos Cisneros, D-Questa, to carry a bill this session giving the state the power to preempt local oil and gas ordinances.

"We thought it was a way to respect both state and local governments," said Wally Drangmeister, communications director for the New Mexico Oil and Gas Association.

Cisneros said Senate Bill 463 is a way to start a needed conversation about the jurisdiction of the state versus local governments over oil and gas operations. "The intent was to get the dialogue going," Cisneros said.

Bemis said the bill is needed. "Our view is oil and gas should not be regulated by 33 counties," the Energy, Minerals and Natural Resources secretary said. "Oil and gas should be centrally regulated by the Oil Conservation Division."

Attorney Karin Foster, executive director of the 350-member Independent Petroleum Association of New Mexico said, "My position is the state cannot be preempted by the county when it comes to oil and gas operations."

SB 463 caused a firestorm of opposition from counties and anti-drilling advocates. The New Mexico Association of Counties, the municipal league and the New Mexico Acequia Association all wrote comments strongly opposing the bill.

The bill is supposed to be heard first by the Senate Conservation Committee, but Cisneros is asking chairman Peter Wirth, D-Santa Fe, to hold off. Cisneros said he might change the bill to a memorial asking for a study instead.

Local governments need to have some say over protecting their residents and resources, Cisneros said. And the state has granted drilling permits in areas local people consider off limits. By the same token, companies that own minerals have a right to develop them and the state needs the revenues, he said.

"We have two forces on either extreme [oil and gas proponents versus anti-drilling] that are diametrically opposed," Cisneros said.

Community rights

Both the Santa Fe and Rio Arriba oil and gas ordinances are written to supplement, not replace, federal and state oil and gas laws. The ordinances apply only to private and county land, not state trust, tribal or federal lands.

But some of the proposed changes in the Rio Arriba ordinance leave no doubt where the county commission stands on its rights. Along with larger set backs between hydrocarbon wells and water, there's a new "right-to-self governance" section in the ordinance.

"The long-term sustainability of Rio Arriba County as a healthy ecosystem that can support residents for many generations to come cannot be safeguarded if Corporations possess legal powers in excess of those of the County and its residents," says the section.

The amended ordinance, if adopted, makes it clear "any attempt by a corporation, the state of New Mexico or the federal government to undermine or overturn" the ordinance will be fought.

Rio Arriba County is planning two more community meetings, including one Thursday. The proposed ordinance will be considered by the planning and zoning committee March 6 and will be voted on by county commissioners on Thursday (March 28).