

**TESTIMONY OF DANA L. MURPHY
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BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
OF THE U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON
TRANSPORTATION AND INFRASTRUCTURE**

*Hydraulic Fracturing of Shale Beds: Ensuring Regulatory Approaches that Will Help
Protect Jobs and Domestic Energy Production*

Wednesday, November 16, 2011

I very much appreciate the opportunity to testify today before the Subcommittee on Water Resources and Environment of the House Committee on Transportation and Infrastructure concerning regulation of hydraulic fracturing. It is a pleasure and privilege to be here to represent my state of Oklahoma.

I would like to compliment the Subcommittee for its focus on the question of what regulatory approaches will help protect jobs and domestic energy production. As the holder of a statewide elected office and Chair of the state agency that has regulatory responsibility not only over the oil and gas industry but also other key areas of Oklahoma's economy, such as public utilities, I know very well the danger of "regulation for regulation's sake." Any meaningful debate regarding regulation must include what a given regulatory approach is expected to accomplish. Protection of our water and the beneficial development of our nation's oil and gas resources are not mutually exclusive goals.

Oklahoma is proof of that. The oil and gas industry's annual operations in Oklahoma generate \$51.7 billion in goods and services, nearly one-third of Oklahoma's gross state product. The industry directly employs more than 65,000 Oklahomans, and its activity means many more jobs in other sectors of the state's economy as well. One in seven jobs in Oklahoma is directly or indirectly supported by the oil and gas industry. Oklahoma's oil and natural gas producers will pay an estimated \$800 million in gross production taxes to the State of Oklahoma in the current fiscal year. Those funds are spent by the state on education, roads, bridges, and other essential programs and infrastructure. All of this has occurred without any compromise in our environmental protections.

Recent technological developments have given us access to natural gas and oil resources held tightly in shale formations. The impact of this should not be underestimated. In a few short years America has gone from a nation that appeared doomed to eventually be entirely dependent on fuel sources from foreign countries—many of them unfriendly—to one with a bright energy future. With this change come huge new opportunities for energy security and economic development. Of course we welcome this. But we also recognize the challenges such a significant change can

bring, particularly to those of us who work on a daily basis to manage and protect our precious water resources.

The challenges in protecting our limited, precious water resources while producing the hydrocarbons that fuel our economic engine and give us a measure of independence from foreign state and terrorist powers are profound. But we must meet these challenges because failure will bear dire consequences on many fronts.

The challenges also arise on the personal level in Oklahoma. If I may present a personal example: I am a Corporation Commissioner, an attorney, and a petroleum geologist. As a fifth generation Oklahoman whose family has been involved in farming and ranching for generations, water and water use is crucial for our lives and our livelihood. At an early age, my grandparents and parents taught my brothers and me the value of being good stewards of water and land all while making a living from that water and land. Oklahoma's land and water, its diversity of wildlife and vegetation, is our history and our legacy. Certainly, this is not unique for just me and my family. There are millions of others like my family in Oklahoma and the other producing states. To put it simply, who better to develop the necessary regulations than those who drink the water and whose livelihood depends upon water?

To address these challenges, states across the nation are actively reviewing and updating their regulatory standards and procedures to ensure that shale gas drilling and production operations are conducted safely. States are also continually testing, evaluating, and strengthening the mechanisms they have in place to develop, implement, and enforce sound regulations.

In Oklahoma, these regulatory changes are being developed in a new, more democratic manner. Abraham Lincoln's phrase "of the people, by the people and for the people" is more than a platitude; it is the genius of American government sought by so many around the world, including revolutionaries in the recent Arab Spring. At the Oklahoma Corporation Commission, we regularly strive to incorporate Lincoln's understanding of government into our rulemaking procedures, formal and informal.

Rather than proclaiming regulation from on high or convening an oligarchy of technocrats to impose rules on the many industries we regulate, the Corporation Commission has in recent years engaged in a much broader discussion of issues before us with a vastly wider array of stakeholders. From this approach, we have found it is, indeed, possible to reach consensus among divergent opinions and interests—so long as everyone is literally face-to-face in the same room and fully engaged.

We have found better yet, a more efficacious regulatory product is manufactured and a greater acceptance of the rules is obtained through our collegial approach. From our experience, we know Thomas Jefferson was correct when he said, "That government is the strongest of which every man feels himself a part."

When we saw that new technology, evolving use of old technology and adaptive business practices required an updating of Commission rules and state oil and gas statutes, we knew our efforts could profoundly affect the environment, Oklahomans' jobs, our state's economy, the rights of producers and landowners, as well as our nation's energy independence—we are after all the third largest producer of natural gas in the country, and the sixth largest in oil production.

The Commission, therefore, did not draft rules or suggest language for a statute and then sit back as stakeholders commented on our efforts. Instead, we invited oil and gas operators, property owners, environmentalists and a host of interested parties to explore the options with us before a single word was committed to paper. We and our stakeholders actually sat in the same room together around a ring of tables and argued with each other, pleaded with each other, explained to each other what we needed to accomplish, what we wanted to avoid and how we should proceed.

We met often and for long hours. At times it felt we would never reach agreement. Occasionally we wanted to strangle one another. But sitting face-to-face, without the armor of anonymity we worked to find solutions. We found them. There were no pronouncements from on high. There was give-and-take, there was the genuine good feeling of working through difficulties together and reaching consensus.

We produced both legislation and rules that are recognized as some of the most important legal developments in the oil patch in at least the last twenty years. We produced agreement among diverse groups, and these collaborative efforts resulted in a bill that unanimously passed our state house, senate and the Governor to become law in April 2011. This single piece of legislation allows for increased access to shale formation reserves through the use of longer horizontal laterals, thus cutting costs and reducing the environmental footprint, as there are fewer vertical boreholes and surface locations. We have had many requests for copies from around the country.

We have protected our underground water supplies and continue to guard our surface water. We have protected existing jobs and in a time of economic doldrums, we have actually promoted new jobs.

Frankly, we could not have reached this place if the map had already been drawn in the form of proposed rules or proposed statutes. The trek, the surveying of the ground, the process was as important as the end point.

The states can more easily engage in this face-to-face effort than the federal government. On the national level, the number of players is too voluminous and, as a geologist I can say, the geology is far too diverse from the Atlantic Coastal Plain to the Appalachians to the Great Plains to the Rockies to the Redwood Coast for a one-size fits all approach.

On July 22, 2009 the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC) adopted a resolution a fellow Commissioner and I were

privileged to bring before NARUC regarding hydraulic fracturing (see Attachment 1). The resolution supports continued state regulation of hydraulic fracturing. To say that NARUC is made up of members with diverse opinions would be an understatement, including opinions regarding domestic energy production. Why did the resolution win approval from such a diverse group? Because its members know that the facts show these matters are best handled by the states.

NARUC, which is composed of utility regulators, not oil and gas regulators, recognizes the importance of natural gas as a clean-burning fuel for the direct heating of our homes and for electric generation. It also recognizes that the states are the place where geological differences can be best addressed and where the people directly affected—whether environmentally or economically—can best be heard.

Oklahoma has been working in collaboration with other states on these issues. State regulatory agencies routinely compare notes with their counterparts in other states as to their experiences in responding to new developments in technology, the economy, and public policy. Oil and gas regulators from different states regularly communicate with one another to share information on regulatory approaches and emerging issues.

Collaboration among states for the mutual benefit of all when it comes to domestic oil and gas production is nothing new. Oklahoma led the effort to form the Interstate Oil Compact Commission (now the Interstate Oil and Gas Compact Commission (IOGCC)) in 1935. In its 75 years of existence, the group, consisting of 30 member states and 8 associate member states, has an established history of promoting the safe recovery of domestic oil and natural gas resources while protecting the environment. In addition, there are several other national organizations that facilitate this process, including the Ground Water Protection Council (GWPC), and State Review of Oil and Natural Gas Environmental Regulations, Inc. (STRONGER).

STRONGER is an organization particularly worth noting. It serves as a multi-stakeholder collaborative effort to benchmark state regulatory programs; develop guidelines for effective state regulatory programs; and conduct reviews of state regulatory programs against those guidelines.

STRONGER's board is made up of representatives from each of three stakeholder groups: state regulators, environmental organizations, and oil and gas producers. In fact, the director of the Commission's Oil and Gas Conservation Division, Lori Wrotenbery, is a representative on STRONGER's board. Likewise, all STRONGER efforts, such as the teams that review a state's hydraulic fracturing regulations, involve the same balanced representation of the stakeholder groups.

When STRONGER reviews a state's hydraulic fracturing regulations, the STRONGER stakeholder review team takes the time to review the materials provided by the state describing its hydraulic fracturing regulations, listen to a presentation by the state on its standards and procedures, and discuss with the state how the state addresses the key program elements laid out in the STRONGER hydraulic fracturing guidelines. The

review team then prepares a report. All of the STRONGER hydraulic fracturing reports are posted on the STRONGER website (www.strongerinc.org).

Most importantly, the reports contain specific recommendations for improvement and the STRONGER stakeholder organization looks forward to returning to the states to learn how they have responded to the STRONGER recommendations.

It is worth noting that in the two years it has taken the Environmental Protection Agency (EPA) to finish simply discussing how it will go about a study on hydraulic fracturing, STRONGER has completed five state reviews of hydraulic fracturing regulations, made recommendations, and states have been implementing the recommended changes.

Another example: While there has been much debate over federally required disclosure of the chemicals used by a company doing hydraulic fracturing, the states have been working with the Groundwater Protection Council to develop FracFocus, a site that provides not only full information on hydraulic fracturing, but a listing of the chemicals used by participating companies on a well-by-well basis. Moreover, in its upcoming rulemaking slated to begin in January, the Oklahoma Corporation Commission will be considering adoption of FracFocus into our state regulations, mandating that companies participate.

These examples are not meant to be critical of the EPA, an entity that my agency strives to work with cooperatively and successfully in a variety of areas every day. This is not an "us vs. them" debate. State regulatory bodies do not claim to be perfect. It is simply a question of what proven strengths and experience the states possess that make them the clear choice for hydraulic fracturing regulation. As the preceding examples show, the ability to respond quickly is one. Simply by virtue of their more limited size and scope of their area of jurisdiction, states can and do move much more quickly than can a large federal agency like the EPA. Oftentimes, speed and the appropriate response is of the essence in regards to tackling the huge changes and advancements in domestic energy production. For example, the regulatory responses of the states to the water protection issues raised by shale gas development demonstrate the unique ability of the states to respond quickly and appropriately to the special circumstances within their own borders.

Hand in hand with responsiveness is accountability. State officials are directly accountable to the residents of their state. In Oklahoma, if someone has an issue he or she can contact not only personnel with our Oil and Gas Conservation Division directly, but my office as well. My fellow Commissioners and I personally address complaints and inquiries from Oklahomans across our state. When it comes to those areas that we are responsible for, the buck stops with us, and the people of Oklahoma know that.

Openness is also something the states have to offer. This applies not only to such things as information, but the actual regulatory process. In Oklahoma, our rulemaking process is open to all, and we actively work to be sure all stakeholders are involved. Further, we know who those stakeholders are, because they are part of our state.

“Openness” applies to logistics as well. States can be far more flexible in scheduling meetings and taking other steps to be sure all voices are heard.

The knowledge stakeholders can bring to the table in an open, inclusive process cannot be underestimated. They have an intimate knowledge of their state. While there are some common issues shared by all states when it comes to hydraulic fracturing, there are many concerns that are unique to a particular state, and can only be addressed by unique rules formulated by those with the necessary knowledge regarding the state, and with a vested interest in that state. A “one size fits all” approach simply will not work.

Experience is yet another element. Oklahoma, for example, currently has about 185,000 oil and natural gas wells. Hydraulic fracturing has been routinely done in Oklahoma for some 60 years—in approximately 95,000 wells. Today, 80 percent of the oil and gas wells drilled in the state are completed using the hydraulic fracturing process. We know what we’re doing. We have a proven track record. We continue to improve our processes and are working harder than ever with all the various stakeholders to implement good regulatory practices that consider the health and safety of Oklahomans as well as protecting the Oklahoma environment.

Central to ensuring regulatory practices that do not just protect, but promote jobs as well as protecting and promoting domestic energy production is collaboration. It is key to dealing with innovation. The states are the best models for facilitating on-going dialogue and relationships among such diverse stakeholders as industry, surface and mineral owners, environmentalists, businesses and manufacturing and fundamentally, individuals and groups from the public. Protecting and promoting jobs and the economy can be harmonious with protecting and promoting public safety, health and the environment if we can collectively try to do what individually we may not be able to do. One of the best steps the federal government and agencies can take is to support and encourage the states and the working relationships among the states in ensuring the best regulatory practices are put in place for various states.

Resolution Supporting State Regulation of Hydraulic Fracturing

WHEREAS, The National Association of Regulatory Utility Commissioners has observed with great concern the current debate in Congress over the appropriate method for regulating the use of hydraulic fracturing to complete oil and gas wells; *and*

WHEREAS, Hydraulic fracturing is a proven technology with a long history of environmentally safe use in the completion of oil and gas wells; *and*

WHEREAS, The oil and gas producing States regulate hydraulic fracturing as a component of their regulatory programs for the drilling, completion, operation, and plugging of oil and gas wells; *and*

WHEREAS, The reservoirs that produce oil and gas are highly variable geologically and separated geographically across the oil and gas producing States such that State regulatory agencies are best suited by local expertise and experience to effectively regulate hydraulic fracturing; *and*

WHEREAS, State regulatory agencies are the most appropriate regulatory bodies to provide oversight and protection of hydrologically and environmentally sensitive localities as they relate to hydraulic fracturing; *and*

WHEREAS, The regulation of hydraulic fracturing under the federal Safe Drinking Water Act would add burdensome and unnecessary regulatory requirements to the drilling and completion of oil and gas wells, thereby increasing costs of producing domestic natural gas resources without any ancillary benefit to public health, safety or the environment; *and*

WHEREAS, The increased cost of producing domestic natural gas resources will reduce domestic supplies of natural gas, increase utility prices, and other costs to consumers, reduce tax and royalty revenues for local, State, and federal governments; and increase the nation's dependence on foreign energy imports; *and*

WHEREAS, The Interstate Oil and Gas Compact Commission (IOGCC) conducted a survey of oil and gas producing States, which found that there were no known cases of ground water contamination associated with hydraulic fracturing, and set forth its opposition to federal regulation of hydraulic fracturing under the underground injection control program in Resolution 09.011, dated January 7, 2009, "Urging Congress Not to Remove Exemption of Hydraulic Fracturing from Provisions of the Safe Drinking Water Act;" *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2009 Summer Committee Meetings in Seattle, Washington, supports continued jurisdiction of the States to conserve and properly regulate oil and gas production in their unique geological and geographical circumstances.

Sponsored by the Committee on Gas

Adopted by the NARUC Board of Directors, July 22, 2009