

**Testimony of Scott McBurney before the United States Senate
Committee on Environment and Public Works
Subcommittee on Transportation and Infrastructure
Yellowstone River Oil Spill Oversight
Wednesday July 20, 2011
10:00 a.m.**

About Us

My name is Scott McBurney and I live at 651 N River Rd, Laurel MT 59044. Since 2005 I have lived near the Yellowstone River between Billings and Laurel with my wife Sue and two sons, ages 12 and 15. Sue and I are self-employed and both work at home. I build gadgets that measure radiation in a machine shop on our place. Sue does business management while finishing up her accounting degree at MSU Billings. Our family is pretty much the average Montana family; we are active in sports, Boy Scouting, camping, river rafting, fishing and hunting. We own 4 horses which we keep at home and try to find some time to ride when the weather is good. We put up grass hay, most of which we sell except for what we keep for our horses. Our hay is high quality, at least when I can get it put up without a lot of rain falling on it. We usually cut our hay field (15 acres) by mid-June, water it, and by the end of summer our horses are pastured in the hay field until spring.

Our place is 20 acres, we have no river frontage but I tell people our house is a pitching wedge from the river. For you non-golfers that's less than about 140 yards. We share an irrigation pump with some of our neighbors and pump water out of the river into small ditches on either side of our property. To irrigate, ditches are plugged with moveable dams to force the water out onto the graded pasture where it runs into a low area in the middle. This valley or low area in the middle of the pasture is where the water pools up when we irrigate, normally this water is only a foot or so deep, covers only a couple acres at most and is gone the next day.

When we bought our house we thought long and hard about the risk of the river flooding. We knew that living near the river would be a great joy for the most part; the wildlife viewing, the beauty, the water and decided to accept the risks as long as we had flood insurance.

This spring it became clear that 2011 would be the year that tested the wisdom of that decision. The snowpack by May was up to about 200% of normal and the river flooded after a big rainstorm, and this was before the snowmelt had really started in earnest. It was spooky to see most of our hay pasture, half the corrals and the lawn behind the house underwater. On May 25, 2011, the water crested at 13.8 feet on the Billings gauging station the third highest crest ever recorded at that point in time. It was pretty clear that there was more to come so I bought a dump truck load of sand, Sue bought 200 sand bags from Yellowstone County and we and our neighbors started filling sandbags.

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Friday, July 1 was a hectic day even by our standards. The river was in full flood mode for at least the third time this season. I have to say I think the USGS does a really good job with their river forecasts as far as snowmelt is concerned; we use their website a lot. The USGS forecast was for it to top out at about 14 feet, at this level the water is just inches from getting into my shop and barn and less than a vertical foot from getting into the lower level of my home. There were some pretty nervous people at my house.

My older son had earned his Eagle Scout award and his Court of Honor was scheduled for Saturday. My Mother and Stepfather had come from California for the ceremony and a McBurney family reunion, and were staying with us. Sue was busy helping Mom bake and decorate a huge, wedding-type Eagle Scout cake. Both of my brothers were coming to stay with us on Saturday.

My son had taken a custom hay cutting job with his boss in Laurel and I was helping him with that. We baled hay until well after dark getting home about 10:30 pm. After we had been home a short while Sue started accusing us of smelling like diesel fuel, even after showering she was walking around muttering about how bad we smelled.

Everyone except me had gone to bed and I was getting ready to do the same when the Laurel Volunteer Fire Department showed up at one of my neighbors' house with their lights flashing. When they came to our house next, I met them in driveway, when I walked out the door the odor was powerful. They informed us we were under a mandatory evacuation. "You got to go, and bring a change of clothes," they said. I've got to tip my cap to those firefighters driving around in dark looking for houses next to a flooding river, those guys were great. As we were walking out the door, I remember somebody asking, "Should we bring the cake?" We found rooms in a hotel in Billings on our fourth try at about 1:30 a.m. Saturday morning, Sue called the Laurel police/fire people and we found we could get back in to the house. When we got home I walked out in the pasture, I found out we had a problem.

The middle of the hay field, the valley or bottom area, had not been cut because it was too muddy after the May flood and after getting my swather (hay cutting machine) stuck a couple times I gave up on it for the time being, thinking I would cut it as soon as it dried out.

Oil had come over the ditch next to the river about halfway down the pasture. Big patches of oil were lying on the short grass where I had cut hay. As you went further down the property away from the house the amount of oil increased. Oily water stood in the ditches and the pasture. The tall uncut hay had acted like a big brush and stopped a lot of the heavy oil, a thick line of oil showed on the edge of the uncut hay. Water was still coming over the ditch down at the end of our property so I couldn't go all the way down there. A simple fact seemed to be in play, where there had been more moving water Friday night, there was more oil. There was also something else that was troubling to me, the water standing in the valley of the pasture, which during the

two previous floods had been pretty clear, had an ugly brown color. As I write this on July 16 the last of that brown water is drying up.

The Response

When we got home on Saturday Sue went on the internet and found an article about the oil spill, which included a phone number to contact Exxon/Mobil. We called they took our information and we were called later in the day by Crawford Co. who are acting as Exxon/Mobil's Insurance Company. Crawford has done a good job keeping in touch with us since the spill, when we need something we call and they have come through every time, so far.

We have had several meetings with agents from Crawford and Exxon/Mobil they have always been helpful and more than fair. On July 13, Crawford cut us a check for the hay we couldn't cut yet, and for this year's loss of use of the pasture. The thinking is that once the ground dries out, Exxon/Mobil will remove all the grass in the affected area. We made the decision to wait for the pasture to dry out without any pressure from Exxon or Crawford. I have talked with some of the crews working on adjacent properties. One question that remains about Exxon's initial remediation is exactly how they are going to do it. The crews have been using string trimmers (weed whackers) and I am not sure I want to have my grass cut that short as it could be damaged. A guy I talked to said they were thinking about using a swather to cut it, but I am not sure about that either, I had cut some of that field only a couple weeks before the spill with my swather and think that a lot of oil could be left on the field, as it leaves about 2-3 inches of grass when cutting. I am hoping the County Extension Agent can help. In short I want to get all the oil I can off of my pasture, but not do any more damage to the grass than necessary.

On July 14, Crawford brought us a check for the hotel expenses we incurred on July 1, when we were evacuated. They also agreed to pay for us to buy an electric fence and water tank so we can put our horses out on the undamaged portion of the pasture with a temporary fence. It's now, July 17 and today we have put up the electric fence and the horses are out there getting fat.

We have been talking with Crawford about independent soil testing; they have given tentative approval for this. They would like an estimate from the company doing the work and we are now trying to find someone to do it. I feel that soil testing is important for us and I will write more about that later.

As mentioned before we had a McBurney family reunion at Fairmont Hot Springs, we left on Wednesday, July 6 and returned on Sunday, July 10. We were the host family. Sue had organized the whole thing so we really couldn't miss it. Because we were gone, we missed some meetings. I think the EPA had one and I know the Governor had one. We did attend the Wednesday, July 13 meeting at Laurel High School; I think for the most part EPA was running that meeting. The meeting had some good information and some questionable information. The information on air quality was good news, it was presented in a way I could understand and it was definitive. The air is fine, it smelled really bad for a couple days but that's all. The answers to questions about

soil testing were not quite as clear. At this meeting, I got the impression the EPA was going to do more soil testing, but a comprehensive plan was not put forward as far as I could tell. The information or advice on agricultural matters was incorrect or non-existent.

On the whole I think EPA is doing a good job, they have a lot of work to do and it's probably too early on in the process for them to think about what concerns me the most, long-term effects on soil and water. They're still cleaning up oil right now, as they should be.

On Tuesday, July 12, EPA came to my house and took a soil sample, one sample on 10 acres of effected pasture. It ended up seeming more like a public relations move than a quest for information about my pasture. They brought a television crew, Sue was interviewed in the lead story on Channel 8 News that night, so it was exciting but I couldn't help feeling disappointed.

On July 13 an EPA contractor came to our house and took water samples, this was good news. I felt like the water testing was a little overdue but I think the water is good and was not that worried. The results are not due until 7-27. That's almost a month after the pipeline broke.

As I said I haven't been to any of Governor Schweitzer's meetings, so I don't think I can say much about the State's response. He was quoted in the paper saying everyone should get a lawyer, which I'm not sure is advice worth taking at this point.

Montana DEQ (Department of Environmental Quality) called today (Sunday, July 17) and they are coming out to do some soil samples on Monday, July 18. It sounds like we are going to get about 3 soil samples. Sue and I had talked to some people from the Governor's office at the Wednesday meeting in Laurel and gave them our contact information, expressing our concerns about soil testing, in a scientific manner. I think the Governor is looking for litigation vs. Exxon more than soil remediation for my pasture, but we will see.

Montana FWP (Fish Wildlife and Parks) was in our area on Thursday, July 14. There must have been 5 trucks with 8 or 10 wardens on N River Road. I have no idea why all those game wardens were here. The funny thing is Sue had just seen a Black Bear a few moments before and we were out looking for it. FWP was unaware of the Bear, and we shared some laughs with a game warden about the Bears black color being because of oil.

I haven't had a lot of interaction with the county government; I know they were doing a lot of traffic control in the spill area before Exxon got all their crews in place. Sheriff Mike Linder and his crew had to evacuate my neighbors on July 2. They were still in their house, even though the river was 3 or 4 feet deep and running in their yard.

What The Landowners Need

As a landowner, I feel I need information. I've asked some questions that were not answered. How much oil on my property is too much for the hay to tolerate? What is the long term effect of

oil on Brome grass? Will the grass be fit to use next year if it comes back? Why is some of my grass dying and some doing fine?

There seems to me to be a gap in knowledge; the EPA guys don't know much about farming and the farm agent doesn't know much about oil spills.

I think the biggest worry the landowners have is property values. The reason I want private soil testing is I want to have a report in my file cabinet that I could show anyone who might be considering buying my place. A clean bill of health, if you will, for my property. I feel like Exxon/Mobil owes me this. The same with my well water, maybe 3 years of testing. I don't think my water is bad; I just worry that someone else will.

We will face questions from our hay customers as well, and we need solid science behind our answers.

My 2 Cents

I need oil, it's just a fact of life, there's no such thing as a plug-in tractor. This country needs oil. More than that, we need the jobs the oil industry brings to Eastern Montana. The Yellowstone Valley is a better place because the Exxon/Mobil refinery is here. I know a lot of people would take exception to this opinion, but I believe it.

The Yellowstone River is a powerful force and anything in or near its banks is at risk. That should always be a consideration when anything, whether a home or a pipeline is positioned near the river. I hope the Silvertip Pipeline accident is something we can learn from and move on.



Photo 1 shows part of the property at 651 N. River Road, and its proximity to the Yellowstone River

Photo 1



Photo 2

Photo's 2 and 3 show the line of tar/oil deposited at the base of the uncut hay in the low area of the pasture.



Photo 3



Photo 4 shows standing, brown water with sheen of oil on top.

Photo 4