

SENATE JUDICIARY  
Exhibit No. 6  
Date 2-3-05  
Bill No. SB 258

Testimony Before The Montana State Senate  
Judiciary Committee

Re: SB 258  
February 3, 2005  
8:00 am, Rm. 303, Capitol Bldg.

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Good morning Mr. Chairman and members of the Committee. My name is Dan Dutton and I own and operate a farm/ranch operation south of Belfry, MT in Carbon County.

SB 258 is a very important piece of legislation for Montana landowners. It is important because it begins to address inequities, inequalities and injustices suffered by surface owners at the hands of owners of severed oil and gas estates. SB 258 addresses these inequities, inequalities and injustices without impairment of any constitutionally protected rights of owners of severed oil and gas estates. SB 258 does not prevent the owner of a severed oil and gas estate from engaging in the development of oil or gas. It does encourage that developer to be a better corporate citizen while doing business in the State of Montana.

You should know that I am not opposed to the responsible development of our natural resources. But for the responsible development of our oil and gas resources, it must be development that fosters—or at least does not reduce—the viability and sustainability of Montana's farms, ranches and rural communities. The development of our oil and gas resources—or for that matter, any of Montana's natural resources—must meet the needs of present Montanans without compromising the ability of future generations of Montanans to meet their needs.

Article II, Section 3 of the Montana Constitution says that all persons have inalienable rights including 'the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property.' Section 17 of Article II says that no person shall be deprived of life, liberty, or property without due process of law. It is only right that the surface owner's private property shall not be taken or damaged without just compensation to the full extent of the loss.

If you are fortunate enough to own the minerals (which include oil and gas) beneath your land, you essentially have the power to determine if and how development of the minerals will proceed. If oil and gas are discovered and produced, you will be financially rewarded. However, if someone else (an individual, company, tribe, state or federal government) owns the minerals, and that owner becomes interested in developing that resource, it is highly

unlikely that you will be able to stop the occurrence of development on your property. You will receive no financial benefit and may, in fact, suffer irreparable damage to your property.

The reality is that many landowners own only the surface, not the subsurface, portion of the land. Many of the conflicts involved in the development of oil and gas are rooted in the severance of the land title where property is divided into the surface estate and mineral estate, frequently referred to as a split or severed estate. Many surface owners are unaware that someone else owns the minerals beneath their property, and even if they do realize this, they may not realize that when mineral and surface rights conflict, mineral rights take precedence. When a landowner does realize this, he begins to live in fear.

It is a hard reality for many landowners to accept that a mineral owner may have legal right to enter the property, build roads, drill wells, install flow lines and water discharge pits, set gas flares and conduct other activities that will generally disrupt farm and ranch operations and devalue the property—all without permission of the surface owner.

SB 258 is important, because whereas current law focuses on the well being of individuals engaged in agricultural production, this bill extends that focus to 'other surface owners.' This is becoming more important as more and more subdivisions, with lots in the 5-20 acre size, are developed in rural areas. The fear I mentioned earlier is now a reality for over 350 subdivision landowners in the Clark, WY area just 8 miles south of Belfry. Just north of there, in Montana in the shadow of the Beartooth Mountains, the Grove Creek Ranch is being developed into over 200-20 acre homesites. It is almost certain that natural gas will be sought in this proven overthrust belt.

Now is the time to update Montana's laws governing compensation for damages sustained by surface owners when oil and gas operations are conducted. Now is the time, because for too long, Montana's citizens have been treated unfairly and unjustly in the name of development. Montanans want development of Montana's natural resources but not at the expense of human rights and human justice. I urge you to pass SB 258 out of committee with a do pass recommendation. Thank you.