

STATE OF MONTANA
59th Legislative Assembly

Testimony of Jim Canon in Opposition to Senate Bill No. 258
February 3, 2005

Mr. Chairman and members of the Senate Judiciary Committee:

My name is Jim Canon, I am a district landman for Continental Resources, Inc.

Continental is an independent oil and gas exploration company headquartered in Enid, Oklahoma (approximately 70 miles north of Oklahoma City, Oklahoma). Continental has oil and gas production in 11 states, including the states of North Dakota, South Dakota and Montana. In Montana, Continental's exploration and production activities have been focused in Fallon County, Richland County, Roosevelt County, Sheridan County, and Valley County. In these five counties, Continental operates approximately 75 producing oil and gas wells, which produce approximately 6,500 barrels of oil per day. In Richland County, Continental currently has four rigs drilling for oil and gas in what is commonly referred to as the Richland County-Middle Bakken Play. It is with that background that I appear before this Committee today and offer testimony on Senate Bill No. 258.

Senate Bill No. 258 is an attempt to completely revamp Montana's Surface Owner Damage and Disruption Compensation Act. This law was first enacted in 1981 and is very similar to the acts which were adopted in the states of North Dakota and South Dakota. Continental has drilled more than 225 wells in North Dakota, South Dakota and Montana, and under the surface owner compensation of those states, there has not been one surface owner complaint that has resulted in litigation. In that respect, Senate Bill No. 258 is a "solution looking for a problem."

Some of the specific concerns Continental has with Senate Bill No. 258 are as follows:

1. Section 1 of the bill adds a new subsection which provides that the purpose of the act is to "encourage accommodation of potentially conflicting interests by agreement." I am not a lawyer, but this language seems incredibly vague and will likely result in litigation just to determine what it means.
2. Section 3 of the bill proposes to amend current notice requirements so that an operator must give the surface owner notice of operations at least 45 days prior to entering the land. I submit to you that this will cause incredible hardships to oil and gas operators in the State of Montana. While Continental and other operators try to give notice to surface owners well in advance of drilling operations, sometimes that is just not possible. Expiring

leases, offsetting development, and state and federal permitting requirements result in changes to drilling plans that sometimes just cannot be avoided. Changing the notice period from 10 days to 45 days will eliminate the flexibility operators need to adequately protect the investments they have made in oil and gas leases and to have a well drilled in a timely manner.

3. Section 4 of the bill outlines a laundry list of items which the operator and the surface owner are required to agree upon before operations can begin. Many of these items listed in this section of the bill are matters which are already addressed by the permitting process of the Montana Board of Oil and Gas. For example, location and construction of pits, placement of roads, and the reclamation of surface, are all matters which are addressed by the Montana Board of Oil and Gas before a permit is issued to an operator. As such, Continental believes that the provisions contained in Section 4 are duplicative and unnecessary. Moreover, if implemented, confusion and litigation will likely result between the operator and the surface owner agreeing to matters that are in conflict with stipulations contained in permits issued by the Montana Board of Oil and Gas. Section 4 is, therefore, unnecessary because these matters are already addressed by the statute, and rules and regulations of the Montana Board of Oil and Gas.
4. Section 7 of the bill proposes to add a new complex layer of requirements before oil and gas operations can be commenced. Under current law, if an operator and a surface owner cannot reach an agreement as to surface damages (which very rarely happens), the surface owner has the right to bring an action in district court. Section 7 proposes to alter that procedure by requiring the operator and the surface owner to go through the time and expense of engaging an appraiser or obtaining a court decree before operations can be commenced. I submit that this is an additional step that does nothing more than impose additional expenses upon the operator and the surface owner and delays operations. Continental's experience in the current process works very well – "so if it is not broke, why fix it?"
5. Section 8 is, once again, another needless step in the process to settle surface damages. If the operator makes a reasonable offer of settlement, what purpose does it serve to require the operator to, within 30 days after the filing of a petition with the court, to make another "final" offer. Just like some of the other provisions contained in the bill – more duplication which adds delay and expense both for the operator and the surface owner.

6. Section 9 of the bill outlines an elaborate procedure for the process which must be followed if the operator and the surface owner cannot reach agreement and the matter is litigated. Continental believes that this section is totally unnecessary. In the rare instances (if ever) a judicial determination as to surface damages is necessary, the operator and the surface owner, for that matter, the courts, should not be burdened with such an elaborate procedure in determining surface damages. The judicial process is such that these matters (if they ultimately must be resolved by judicial action) can be streamlined so that the parties do not need to incur significant costs. Section 9 would eliminate any possibility of streamlining the litigation process by setting forth rigid requirements to be followed by the operator, the surface owner and the court. Making the judicial process more expensive and time consuming may be in the best interest of lawyers, but it is certainly not in the best interest of operators, surface owners and the taxpayers of the State of Montana who fund the judicial system.

In closing, let me say that for the past 10 years, Continental has been a very active participant in oil and gas exploration activities in the State of Montana. Continental has conducted its operation with concern and respect for the surface owner. We believe that the current statutory enactments which regulate the relationship between operator and surface owners has worked quite well and does not require a total revamping as proposed by Senate Bill No. 258. We believe Senate Bill No. 258 has the potential for causing extensive delay to drilling operators in the State of Montana and will certainly add considerable expense for operators and surface owners. Continental, therefore, respectfully urges this committee to kill Senate Bill No. 258.

That concludes my testimony. Should you have any questions, I would be happy to respond.