

Exhibit No. 14
Date 2-3-05
Bill No. SB 258

TESTIMONY OF MARATHON OIL AND NANCE PETROLEUM

SB 258 Senator Mike Wheat: Senate Judiciary Committee

Mr. Chairman and members of the Committee. My name is Tom Ebzery, an attorney from Billings. I appear here on behalf of Marathon Oil Company and Nance Petroleum of Billings. Both companies have extensive leases for coal bed natural gas and Nance is actively producing oil and gas in Montana and throughout the Rocky Mountain region.

Senate Bill 258, if enacted in its present form will undo over 80 years of landowner/ mineral relations and will turn the oil and gas industry on its head. You have heard about split estates, where the landowner owns the surface but some other entity, normally the federal government owns the mineral estate. A number of stories have appeared from surface owners who said they bought property and had no idea they didn't own the mineral estate. Any title passing will clearly show the status of title and particularly if the mineral estate has been reserved. I would give little credence to this statement. This is hard to believe particularly in cases where the landowner has paid big money for the property.

Both companies have offered surface compensation agreements to our surface estate holders in every case and have maintained good relationships with them. SB 258 is unnecessary and is seriously flawed.

Montana has passed the Surface Owner Damage and Disruption Compensation Statute and this has been on the books for 22 years. The key statute is 82-10-504 that requires the operator to pay the surface owner compensation for damages for loss of agricultural production and income, lost land value and lost value of improvements caused by drilling operations.

This statute does not dictate that the courts intervene. It does not follow eminent domain procedure where appraisers are selected. The surface owner is not only entitled to damage payments but the operator is required under 82-11-123 to post a bond.

In addition to these protections the Bureau of Land Management who administers federal surface and minerals in Montana has a standing requirement for all operators of oil and gas development to work with the surface owner to reach a mutually accepted agreement addressing surface impacts prior to development.

Senate Bill 258 is a wolf in sheep's clothing. For example: on page 1 line 30 and page 2 lines 1 & 2 it appears to be "encouraging accommodation of potentially conflicting interests by agreement" and "providing expeditious procedures for resolving deadlock, the effect is just the opposite. This bill discourages good-faith negotiations between the surface owner and operator.

Here are some specific points we have identified as flaws in the legislation:

- 1) Oil and gas operations on p.2 line 27 is amended to read "oil or gas." This apparently is an attempt at dividing customary language and customs related to conventional oil and gas in order to single out coal bed natural gas even though the drilling procedures for both are nearly identical including surface disturbance.
- 2) Page 2 Lines 10-17 attempts to make legislative findings that nothing in this legislation will impair any constitutional rights and will not affect oil and gas operations in spite of the language throughout the bill. We question why this bill goes to the trouble of doing this unless there is a concern that it will be challenged for legal reasons.
- 3) Page 3: Section 3 subsection (4) line 18: changes notice of drilling to notice of operations from the traditional 10 days to 45 days. This is a significant departure and it isn't just to enter the surface owner's land to conduct oil and gas operations. You need an agreement in place before you enter the property. Instead this is the beginning of a long and expensive process that is designed so that the surface owner under this bill will clearly have no incentive to enter into good faith negotiations. Under this bill he has no downside to hold out as long as possible through the appraisal process to the court. Who pays for appraisal? The bill appears to be silent.
- 4) What do "good faith negotiations" mean? This is not defined. Page 3 lines 16-17.
- 5) Page 3 Section 3 line 10. The word "record" is deleted. This is a legal term of art and with this word removed would appear to require notice to the surface owner even though he might not be the surface owner of record. This word needs to be reinstated. Significant case law referring to surface owner of record.
- 6) Section 4. Subsection 1 purports to list a "cookbook" approach to what must go in a written agreement. This is a person to person relationship and to incorporate specifics in statute such as requiring an agreement to address "removal of plants (Page 4 sub 4) ignores reality.
- 7) Page 4 line 2 eliminate "caused by" and insert "directly attributable." Totally open-ended.
- 8) Page 4 line 11 delete "loss use of an access to the surface owner's land." This is redundant and unnecessary.
9. Page 4 line 12 delete "or" and insert "and" See above comment.
10. Page 4: Line 22 through 24: delete. This is a significant problem with the bill. The language will result in delay and is unprecedented in oil and gas law. In a subtle manner it overturns federal and state common law as to the dominant and servient estate. Should this language be retained there is no incentive for "good faith negotiations." If this were enacted in this form and I was an attorney advising a landowner I would strongly urge them not to sign the agreement. Delay means money and the appraisal is a no risk, no cost item to the surface owner.
11. Page 5, New Section 7 lines 15-27: This new section gives the surface owner the unfettered right to go to court and in essence encourages it. A new process will be installed as a result of this bill in statute for resolving disputes. Let the busy district courts do it. A bit of irony to illustrate the point. Senator Wheat's district needs another judge because of a full docket by the existing judges. This process will compound the problem. Surface owners know courts are clogged and they can just sit back and wait for a higher price knowing their day in court is a long ways off.
12. Page 6: New Section 9: Determination of damages by court—petition. This section defines the procedures one undertakes to have the court ascertain damages. To illustrate: the

timeframes once the petition for appointment of appraisers a notice of the petition is filed with the surface owner. He has 20 days to respond and presuming the surface owner takes the full 20 days, the court then appoints appraisers. The procedures for appraisal are slow and designed to end the process. It also provides for a report within 30 days of appointment. What happens if a report is not forthcoming? What remedy does the operator have? He must go back to the busy court requesting him to order the report?

13: Page 7 Sub 9: Exceptions: These subsections allow either party 30 days to file written exceptions and then is the court to hold a hearing? What prospects of a speedy hearing in District Court lie ahead?

14. Page 8 Section 11: Treble damages: Section 9 invokes a provision usually left to fraud, anti-trust or strict liability. It is punitive and without precedent to provide treble damages for negligence. If punishment is not enough: lines 20-21 allow collection of additional damages caused by the operator at a subsequent date.