

## COMMENT BY ENCORE ACQUISITION CO. IN OPPOSITION TO SB 258

Encore is writing in opposition to Senate Bill 258. Senate Bill 258 is an unnecessary piece of legislation as numerous laws/regulations, both state and federal, already exist and work effectively to handle surface damage disputes.

Under historical practice and current law mineral owners are entitled to develop their minerals. This bill goes against what the courts have already ruled on and allows the surface owner to control something in which they have no vested interest. This is a violation of the rights of the mineral owner. This bill is going to take away the right of the severed mineral owner to develop their minerals. Also this does not give the lessee the right of ingress and egress across the property in which they have leased and plan to develop the oil and gas minerals underlying the surface.

Current legislation in Montana is adequate and places the responsibility on the surface owner if they feel that the operator is not negotiating in good faith. It allows sufficient time to notify the surface owner and negotiate surface damages that will satisfy both parties. The surface owner is protected under the current legislation and there are remedies for both parties if either one of them feels that the other is not negotiating in good faith. It also allows the operator to conduct their operations which are granted under the oil and gas lease in a timely manner. This bill does not allow the operator to timely develop their oil and gas lease.

This proposed legislation would allow the surface owner to dictate if and when oil and gas operations are to be conducted when they have no interest in the minerals which are severed from the surface. There are several problems/concerns that arise from such a bill:

- A. This proposed legislation would not allow the operator enough time to drill a well to save a lease at the end of the primary term of the oil and gas lease. If an operator wanted to drill a well during the last year of the oil and gas lease they may not be able to due to the fact that the surface owner may delay drilling operations over a year based on the proposed legislation. The oil and gas lease would then expire and the operator would lose revenues and future reserves by the passing of this bill.
- B. Operator's rig cost would increase due to additional stand by time if the operator is not allowed to enter the property to conduct operations if the surface owner is being difficult or is extorting the operator for more money than the current rate in the area. At current rates, this standby time would cost the operator approximately \$9,000.00 per day. This would become very costly for the operator.
- C. Additionally, there may be unforeseen circumstances that are out of the control of the operator. If the operators rig schedule changes due to the

success or failure of certain wells, the operator may need to move the rig to another location to keep demobilization and mobilization costs down.

The surface owner can intentionally delay the operator anywhere from 90 days up to two years by not negotiating in good faith. An operator cannot pay the surface owner for potential use that is not currently there.

This bill will delay the oil and gas operators tremendously which will decrease the yearly oil and gas production in the state of Montana which in turn will lower the amount of taxes paid to the state of Montana by the oil and gas operators which ultimately hurts all residents of Montana.

Punitive and treble damages are one-sided and in favor of the surface owner. The surface owner has nothing to lose by not negotiating in good faith. There should be some type of punitive damages assessed against the surface owner if it is determined that the operator is negotiating in good faith and is settling damages based on the local rates in the area.

How do you handle the severed mineral estate? The State of Montana will be affected in a large way when the minerals have been severed from the surface; an operator will not want to lease state lands if the surface has been severed because they may not be able to develop the minerals if the surface owner does not negotiate in good faith. The same will occur with the federal lands and the state will lose out on that portion of the royalties they are paid back to the state under federal minerals.

This bill will only impede the oil and gas industry from developing the natural resources of Montana and tie up the Montana courts with litigation. This legislation does not hold the surface owner accountable to act in good faith; therefore, the surface owner will be able to string the process out over a long period of time keeping the operator from developing the minerals of the fee land owner, State of Montana and the Federal government.

Encore is opposed to Senate Bill 258 and asks that you vote against this proposed legislation.

Respectfully submitted,

Mark Carter  
Sr. Land Man  
Encore Acquisition Co.