SENATE [redacted] Judiciary
EXHIBIT NO. 2
DATE 2-17-05 SB0258
BILL NO. SB-258

SENATE BILL NO. 258

INTRODUCED BY M. WHEAT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS GOVERNING COMPENSATION FOR DAMAGES SUSTAINED BY THE SURFACE OWNER WHEN OIL OR GAS OPERATIONS ARE CONDUCTED; CLARIFYING THE PURPOSE OF THE LAWS; ELIMINATING AND REVISING CERTAIN DEFINITIONS; CONFORMING SECTIONS TO THE REVISED DEFINITIONS; REVISING THE REQUIREMENTS GOVERNING NOTICE OF OIL AND GAS OPERATIONS; REQUIRING THE OPERATOR ***AND SURFACE OWNER*** TO ENTER INTO GOOD FAITH NEGOTIATIONS ~~***WITH THE SURFACE OWNER***~~ REGARDING MITIGATION OF AND COMPENSATION FOR DAMAGES BEFORE ENTERING THE SITE TO BEGIN OIL OR GAS OPERATIONS; SPECIFYING ITEMS THAT MUST BE ADDRESSED IN THE NEGOTIATIONS; PROVIDING THAT THE OPERATOR IS REQUIRED TO COMPENSATE THE SURFACE OWNER FOR LOST USE OF ~~***AND ACCESS TO***~~ THE SURFACE OWNER'S LAND; PROHIBITING ENTRY ON THE SURFACE OWNER'S LAND UNTIL NOTICE HAS BEEN PROVIDED AND A WRITTEN AGREEMENT HAS BEEN REACHED REGARDING MITIGATION OF AND COMPENSATION FOR DAMAGES OR THE OPERATOR HAS ~~***PETITIONED THE COURT TO APPOINT APPRAISERS TO DETERMINE COMPENSATION FOR DAMAGES AND***~~ ***PAID THE SURFACE OWNER AND POSTED A BOND; REQUIRING MINERAL LESSEES TO NOTIFY SURFACE OWNER OF LEASING*** PROVIDING TREBLE DAMAGES FOR A VIOLATION OF THIS PROHIBITION; PROVIDING A PROCESS OR AN OFFER ON APPEAL AND AWARDING LITIGATION EXPENSES; ~~***PROVIDING FOR DETERMINATION OF DAMAGES BY A DISTRICT COURT UPON PETITION; PROVIDING FOR APPEAL OF THE COURT'S JUDGMENT;***~~ AMENDING SECTIONS 82-10-501, 82-10-502, 82-10-503, 82-10-504, 82-10-505, AND 82-11-122, MCA; REPEALING SECTIONS 82-10-506, 82-10-507, AND 82-10-508, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-10-501, MCA, is amended to read:

"**82-10-501. Purpose -- legislative findings.** (1) The purpose of this part is to:

(a) provide for the protection of surface owners of land underlaid with oil and gas reserves ~~***while allowing***~~ ***and the owners of those reserves by providing*** for the necessary ***and reasonable*** development of those reserves;

(b) encourage accommodation of potentially conflicting interests ***between the oil or gas operator and surface owner*** by agreement; and

(c) ~~***provide expeditious procedures for quantifying the obligations of owners of severed oil and gas estates when agreement cannot be reached***~~ ***provide procedures for protecting the rights of both surface owners and operators when disputes or disagreements arise between them relating to mitigation and compensation for damages to the surface owner***.

(2) To carry out the purpose described in subsection (1), the legislature finds that:

(a) it is necessary to protect the economic well-being of individuals engaged in agricultural production and of other surface owners ***of record***;

(b) exploration for and development of oil and gas reserves in this state, while necessary, interferes with the use, agricultural or otherwise, of the surface of certain land; and

(c) owners of the surface estate should be justly compensated for use of their property and interference with the use of their property due to oil ~~and~~ or gas development.

(3) The legislature further finds that the purpose of this part can be pursued without impairment of any constitutionally protected rights of owners of severed oil and gas estates through the exercise of the state's police power by:

(a) ~~***requiring accommodation of uses; and***~~ ***requiring compensation of owners of the surface estate for damages and disruption; and***

(b) ~~***providing for compensation for damages to the surface estate***~~ ***allowing entry on the surface owner's land in the absence of an agreement related to estimated damages after notice and posting a bond.***

(4) The legislature further finds that this part does not prevent:

(a) the owner of a severed oil and gas estate from engaging in the development of oil or gas; or

(b) the issuance of a permit required under law for oil or gas development."

Section 2. Section 82-10-502, MCA, is amended to read:

"82-10-502. Definitions. As used in this part, the following definitions apply:

(1) "Agricultural production" means the production of any growing grass, crops, or trees attached to the surface of the land or farm animals with commercial value.

~~(2) "Oil and gas developer or operator" means the person who acquires the oil and gas lease for the purpose of extracting oil and gas.~~

(2) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

~~(3)~~(3) "Oil and gas estate" means an estate in or ownership of all or part of the oil and gas underlying a specified tract of land.

~~(4)~~(4) "Oil ~~and~~ or gas operations" means the exploration for or drilling of an oil ~~and~~ or gas well that requires entry upon the surface estate ~~and is begun subsequent to June 1, 1981,~~ and the production operations directly related to the exploration or drilling.

(4) "Operator" means the owner or lessee of the oil and gas estate who intends to conduct oil or gas operations.

(5) "Surface owner" means the person who holds record title to or has a purchaser's interest in the surface of the land."

Section 3. Section 82-10-503, MCA, is amended to read:

"82-10-503. Notice of ~~drilling~~ oil or gas *leasing and* operations. ***(1) When an interest in an oil and gas estate is leased or conveyed, the entity leasing the interest must give written notice of the lease or conveyance to the surface owner of record within 30 days after the leasing or conveyance occurs***.

~~(1)~~(2) In addition to the requirements for geophysical exploration activities governed by Title 82, chapter 1, part 1, the ~~oil and gas developer or~~ operator shall give the surface owner and any purchaser under contract for deed written notice of the ~~drilling~~ oil or gas operations that ~~he~~ the operator plans to undertake. ~~This~~

~~***(2) The notice shall must be given to the record surface owner and any purchaser under contract for deed at their addresses as shown by the records of the county clerk and recorder at the time the notice is given. This***~~

~~(3)~~ The notice ~~shall~~ must:

(a) sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of ~~drilling~~ oil or gas operations on the surface owner's use of the property; and

(b) include an offer to enter into good faith negotiations with the surface owner regarding mitigation of and compensation for damages as provided in 82-10-504.

~~(4)~~(5) The notice ~~shall~~ must be given no more than 90 days and no fewer than ~~10~~ 45 days before ~~commencement of any activity on the land surface~~ entering the surface owner's land to conduct oil or gas operations ***for the first time***."

Section 4. Section 82-10-504, MCA, is amended to read:

"**82-10-504. Surface damage ~~and disruption payments~~ mitigation and compensation -- negotiation -- penalty for late payment.** (1) After notice of oil or gas operations has been provided under 82-10-503 and before entering the surface owner's land to conduct oil or gas operations, the operator ***and the surface owner of record*** shall enter into good faith negotiations ~~***with the surface owner***~~ to reach a written ***surface use*** agreement regarding ~~***the following***~~ ***mitigation of and compensation for disruption and damages expected to be incurred by the surface owner as a result of the oil or gas operations. The surface use agreement should incude:***

(a) placement of roads to be constructed by the operator;

(b) points of entry upon the surface for oil or gas operations;

(c) construction and placement of pits used for oil or gas operations;

(d) use and impoundment of water on the surface of the land;

(e) removal of plants;

(f) surface water drainage changes caused by oil or gas operations;

(g) actions to be taken by the operator to mitigate damages, ***including but not limited to*** reclamation of the land and actions to control weeds, dust, and traffic;

~~***(h) compensation for damages as provided in subsection (2);***~~

~~***(i)***~~***(h) disruption of the surface owner's operations;***

~~***(j)***~~***(i) loss or impairment of ground water wells;*** ~~***and***~~

(j) loss of agricultural production and income;

(k) loss of land value;

(l) loss of use of the surface owner's land;

(m) loss of value of improvements caused by oil or gas operation;

(n) compensation for damages as provided in subsection (2); and

~~***(k)***~~***(o)*** any other activities or facilities necessary for oil or gas operations, including seismic exploration.

(2) (a) ~~***The oil and gas developer or operator shall pay the surface owner a sum of money or other compensation equal to the amount of damages sustained by the surface owner for loss of agricultural production and income, lost land value, lost use of and access to the surface owner's land, and lost value of improvements caused by drilling oil or gas operations***~~. ***The surface use agreement must include the amount of compensation to be paid to the surface owner of record for disruption and damages expected to be caused by the oil or gas operations.***

(b) The amount of damages may be determined by any formula mutually agreeable between the surface

owner and the ~~oil and gas developer or~~ operator. When determining damages, consideration ~~shall~~ must be given to the period of time during which the loss occurs.

(c) The surface owner may elect to receive annual damage payments over a period of time, except that the surface owner ~~shall~~ must be compensated by a single sum payment for harm caused by exploration only.

(d) ~~The payments contemplated by this subsection (1) may only cover land directly affected by drilling operations and production.~~ Payments under this ~~subsection (1)~~ section are intended to compensate the surface owner for damage and disruption~~; no~~. A person may not reserve or assign that compensation apart from the surface estate except to a tenant of the surface estate.

~~*(3) If the surface owner and the operator do not reach a written agreement regarding mitigation of and compensation for damages under this section, the operator may petition the court to determine damages as provided in [section 9].*~~ ***(3)(a)If the parties are unable to agree on the amount of compensation for disruption and damages then theagreement shall set forth both the operator's damageestimate and the surface owner's damage estimate. Both estimates must be attached to the surface use agreement and made a part thereof.***

(b) Before the operator enters upon the surface owner's property to begin oil or gas operations, the operator shall pay the surface owner the amount of damages estimated by the operator and post a bond for twice the amount of the difference between the damages estimated by the operator and damages estimated by the surface owner. The bond must be posted under [section 11].

~~(2)~~(4) An ~~oil and gas developer or~~ operator who fails to timely ~~pay an installment under any annual~~ make payment ***within 30 days*** under a ~~***damage***~~ ***surface use*** agreement negotiated with a surface owner~~***or as provided in a compensation award determined by the court pursuant to [section 9]***~~ is liable for payment to the surface owner of twice the unpaid amount ~~of the unpaid installment~~ if the ~~installment~~ payment is not paid within 60 days of receipt of notice of failure to pay from the surface owner."

Section 5. Section 82-10-505, MCA, is amended to read:

"82-10-505. Liability for damages to property. The ~~oil and gas developer or~~ operator is responsible for all damages to property, real or personal, resulting from the lack of ordinary care by the ~~oil and gas developer or~~ operator. The ~~oil and gas developer or~~ operator is responsible for damages to property, real or personal, caused by ~~drilling~~ oil or gas operations ~~and production~~."

Section 6. Section 82-11-122, MCA, is amended to read:

"**82-11-122. Notice of intention to drill or conduct seismic operations -- notice to surface owner.** It is unlawful to commence the drilling of a well for oil or gas without first filing with the board written notice of intention to drill, ~~and~~ obtaining a drilling permit as provided in 82-11-134. ~~After the permit is issued, an oil and gas developer or operator as defined under 82-10-502 shall comply~~ and complying with the notice requirements of 82-10-503 ~~before commencing drilling operations~~, if applicable. It is unlawful to conduct seismic explorations without first giving the board a copy of the notice of intention to explore filed with the county under 82-1-103."

NEW SECTION. **Section 7. Entry for oil or gas operations.** ~~(1)~~ Except as provided in subsection (2), the operator may enter on the surface owner's land to begin oil or gas operations in substantial compliance with the permit issued by the board of oil and gas conservation under Title 82, chapter 11, only after the operator has given notice of oil or gas operations, as provided in 82-10-503, after the operator has complied with all necessary federal and state permitting laws, and after~~:~~

~~(a)~~ the surface owner and the operator reach a written ***surface use*** agreement regarding mitigation of and compensation for damages ~~*under 82-10-504*~~ ***or the operator pays the surface owner and posts a bond under 82-10-504 and [section 11].***

~~*(b) the operator has petitioned the court for appointment of appraisers, as provided in [section 9]; or*~~

~~*(c) the court determines compensation pursuant to [section 9].*~~

~~*(2) Unless a written agreement is reached or an offer is accepted, the operator may not conduct any activity that will cause a material change in the surface owner's agricultural production and income, land value, use of and access to the surface owner's land, or value of improvements before the court enters an order on the appraiser's written report pursuant to [section 9].*~~

NEW SECTION. **Section 8. Offer -- award of litigation expenses.** (1) An operator shall, within 30 days after ~~*a petition is filed under [section 9]*~~ ***either party petitions the court to determine damages***, submit to the surface owner a final written offer for damages, including the accrued necessary expenses of the surface owner. If at any time prior to 10 days before the trial the surface owner serves a written notice to the operator that the offer is accepted, either party may then file the offer and notice of acceptance, together with the proof of service of the acceptance with the court, and a judgment must be entered. An offer not accepted is considered withdrawn and evidence of the offer is not admissible at trial, except in a proceeding to determine litigation expenses. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(2) In the event of litigation and if the surface owner prevails by receiving an award in excess of the final offer of the operator, the court shall award necessary litigation expenses to the surface owner.

~~*NEW SECTION. Section 9. Determination of damages by court -- petition. (1) If the surface owner and the operator do not reach a written agreement regarding mitigation of and compensation for damages under 82-10-504, the operator may petition the district court for the county in which the site is located for appointment of appraisers to make recommendations to the parties and to the court regarding compensation for damages that are expected to be caused by the operator's proposed oil or gas operations.*~~

~~*(2) Within 10 days after filing a petition for appointment of appraisers, the operator shall serve the surface owner with notice of the petition as provided in the Montana Rules of Civil Procedure. If the address of the surface owner cannot be determined, the operator may serve notice by publication as provided in the Montana Rules of Civil Procedure.*~~

~~*(3) If a surface owner who cannot be located does not respond within 20 days after notice by publication, the operator may elect to terminate the appraisal proceeding and has the continuing right of entry to conduct oil or gas operations in substantial compliance with the permit issued by the board of oil and gas conservation under Title 82, chapter 11.*~~

~~*(4) The court shall appoint appraisers who:*~~

~~*(a) must be general real estate appraisers, certified under Title 37, chapter 54, part 3;*~~

~~*(b) may not be a current or former director, officer, partner, employee, consultant, attorney, accountant, or relative of the operator or surface owner; and*~~

~~*(c) must be selected as follows:*~~

~~*(i) the operator shall select one appraiser;*~~

~~*(ii) the surface owner shall select one appraiser; and*~~

~~*(iii) the two selected appraisers shall select a third appraiser.*~~

~~*(5) Unless the court allows additional time for good cause shown, including suspension or abandonment of the appraisal process as set forth in subsection (12), the three appraisers must be selected within 20 days after service of the notice of the petition to appoint appraisers. If either of the parties fails to appoint an appraiser or if the two appraisers cannot agree on the selection of the third appraiser within the required time period, the court shall select the remaining required appraisers upon application of either party.*~~

~~(6) (a) The appraisers shall inspect the site to determine the damages that are expected to be caused by the operator's proposed oil or gas operations. To the extent that the damages include the diminution of the site's property value, the valuation must be calculated in accordance with the fair market value of the site.~~

~~(b) The appraisers shall file a signed, written report with the clerk of the court within 30 days after the date of their appointment.~~

~~(c) The report filed by the appraisers must:~~

~~(i) describe the surface area, boundaries, value of the site, and amount of damages that are expected to be caused by the operator's proposed oil or gas operations;~~

~~(ii) recommend the amount of money, if any, to be paid by the operator to the surface owner in compensation for damages expected to be sustained by the surface owner for loss of agricultural production and income, lost land value, lost use of and access to the surface owner's land, and lost value of improvements caused by oil or gas operations; and~~

~~(iii) specify the manner in which the operator shall pay the money.~~

~~(7) The court shall determine the appraisers' compensation. The court shall assess the appraisers' costs against the parties in amounts the court finds equitable.~~

~~(8) Within 10 days after the appraisers file the report required pursuant to subsection (6), the clerk of the court shall forward to each party a copy of the report and a dated notice stating the time limits for filing an exception or a demand for jury trial.~~

~~(9) Either party may file written exceptions within 30 days after filing of the report required pursuant to subsection (6). Upon the filing of written exceptions, the court shall hold a hearing to review the report. After the hearing, the court shall enter an appropriate order confirming, rejecting, or modifying the report or ordering a new appraisal for good cause shown. If the court orders a new appraisal at the request of the operator, the operator has continuing right of entry.~~

~~(10) Either party may, within 60 days after the filing of the appraisers' report, file with the clerk of the court a written demand for a trial by jury, as provided in the Montana Rules of Civil Procedure. If the party demanding the trial does not recover a verdict more favorable to the party than the recommendation of the appraisers, all court costs and reasonable attorney fees must be assessed against the party demanding the trial.~~

~~(11) If the operator does not file an exception or demand a trial by jury under this section or file an appeal under [section 10] and the surface owner cannot be located, the court shall certify the~~

NEW SECTION. Section 11. Surety bond or guaranty – approval – objections – release. (1) the surety bond or other guaranty required under this section must be executed by the operator or a bonding company acceptable to the board.

(2) The surety bond or other guaranty must be in an amount equal to twice the amount of the difference between the damage estimates of the parties under 82-10-504. The bond must be in an account that the surface owner can access. The surface owner must be able to access at least half of the bond amount. The amount of the bond or other guaranty specified in this subsection (2) is not intended to establish any amount for reasonable and foreseeable damages.

(3) Within 7 days after receipt of the surety bond or other guaranty, the board shall notify the surface owner of receipt of the surety bond or other acceptable guaranty, including a description of the amount and type of bond or guaranty and provide to the surface owner a copy of the statement required under [section 10].

(4) Upon receipt of an acceptable surety bond or other guaranty by the board as specified in subsection (2), and receipt of all required regulatory approvals to secure a drilling permit, the operator shall be permitted entry upon the land to conductoil or gas operations in accordance with terms of the surface use agreement and any existing contractual or legal right.

(5) Any surety bond or other guaranty shall be released by the board after:

(a) compensation for damages has been made;

(b) all parties agree to the release; or

(c) any action for damages is finally resolved and all damages have been paid.

(6) Any surety bond or guaranty executed under this section must be in addition to the surety bond or guaranty required under 82-11-123 for reclamation and compliance with rules and orders of the board.

NEW SECTION. **Section 12. Repealer.** Sections 82-10-506, 82-10-507, and 82-10-508, MCA, are repealed.

NEW SECTION. **Section 13. Codification instruction.** [Sections 7 through 11] are intended to be codified as an integral part of Title 82, chapter 10, part 5, and the provisions of Title 82, chapter 10, part 5, apply to [sections 7 through 11].

NEW SECTION. **Section 14. Effective date.** [This act] is effective on passage and approval.

~~compensation award recommended by the appraisers as final and binding.~~

~~(12) The appraisal process may be abandoned or suspended at any time prior to the filing of the appraisers' report through mutual written agreement of the surface owner and the operator.~~

~~NEW SECTION. Section 10. Appeal. An aggrieved party may appeal the final judgment of the court. The appeal may not delay oil or gas operations.~~

NEW SECTION. **Section ~~11~~ 9. Treble damages.** (1) The court may award treble damages to a surface owner upon a showing, by a preponderance of the evidence, that the operator ~~intentionally or negligently~~ wrongfully began oil or gas operations on the surface owner's land before:

(a) giving notice of oil or gas operations as provided in 82-10-503;

(b) securing ~~an~~ a surface use agreement with the surface owner; or

(c) ~~petitioning the court for appointment of appraisers~~ paying damages and posting a bond under 82-10-504;

(2) ~~(a) Except as provided in subsection (2)(b), collection~~ Collection of damages under this part does not preclude the surface owner from the collection of any additional damages caused by the operator at a subsequent date.

~~(b) If the operator compensated the surface owner for the full market value of a site under this part, no additional compensation may be awarded for subsequent damage to the site.~~

NEW SECTION. Section 10. Application for permit to drill – additional notice. (1) When submitting an application to the board for a permit to drill, the operator shall file a statement with the board, including the surface owner's name, contact address, telephone number, and any other relevant and necessary contact information known to the operator certifying that notice of proposed oil or gas operations was provided to the surface owner and that:

(a) the parties entered into a surface use agreement that includes either mutually agreed damage compensation, or the estimates of damages by both parties; or

(b) If the parties disagree on damages, that the operator has paid its estimated damage amount and posted a bond as required under 82-10-504.

(2) Execution of a surface use agreement between the operator and the surface owner shall be required as a condition of approval of an application for a permit to conduct oil, or gas operations.

- END -