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March 8, 2005

The Honorable Jim Elliott
Chairman, Senate Taxation Committee
Montana State Senate
State Capitol
Helena, Montana 59620-0500

Re: SB 492 (Dormant Mineral Interests Act)

Dear Mr. Chairman and Members of the Committee:

Please vote against Senate Bill 492, for the following reasons:

1. Dormant mineral acts have proven unsuccessful in several states. They do not achieve their intended result, but do generate a lot of paperwork, litigation and attorney's fees.
2. SB 492 would reduce income to the State of Montana. Current law provides for the creation of a trust for unlocatable mineral owners. See Mont. Code Ann. §§82-1-301 to -306. The clerk of district court is generally appointed as the trustee. Under terms that are determined to be fair by the district judge, the clerk of court is authorized to enter into mineral leases on behalf of the unlocatable owner. This allows the mineral rights to be developed. All funds attributable to the lease are paid to the clerk of court for safekeeping. Eventually, if not claimed by the proper owner, these funds make their way to the Department of Revenue, where they benefit the general fund.
3. SB 492 is not tied to the value of the property being taxed. It is therefore arbitrary and capricious. Some mineral rights may be worth hundreds of dollars per acre, but minerals in many areas of Montana can presently be purchased for \$5.00 per acre or less. SB 492 would tax the latter mineral rights at 100% of value. To avoid the uncertainty in mineral valuation, and the resulting unfairness, Montana has always taxed mineral rights at the time of severance.

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4. SB 492 imposes a huge, additional tax burden on mineral owners, who already pay their fair share in severance taxes. Oil and gas production, for instance, is already taxed at rates up to 14.98%.

5. The proposed tax is discriminatory and unfair. Consider two similar and adjacent tracts of land in Liberty County, Montana, each comprising about 500 acres (example based on actual facts). The minerals under Tract A have never been severed. The owner of Tract A pays about \$300.00 per year in property taxes. Tract B was owned by Mom and Dad, who sold it to Junior, reserving the mineral rights (on which they hoped to retire). Under SB 492, Junior pays about \$300 in property tax – but Mom and Dad pay an additional \$2500.00 in dormant mineral taxes. The result: two identical tracts of property, one taxed at \$300.00 per year, the other at \$2800.00 per year – with the distinction based solely on ownership.

6. SB 492 is also unfair in that it fails to recognize that the financial benefit of reserved minerals is often shared among many persons – including the surface owner. Often, the surface owner is given part of the landowner's royalty at the time the minerals are reserved. This royalty is commonly one-half of the amount realized from leasing the reserved minerals. Under SB 492, a mineral owner who receives only one-half the royalty from production must pay the new tax (in addition to the existing severance tax) – but a surface owner who receives an equal royalty payment from the produced minerals need not pay the new tax.

7. SB 492 may conceivably provide a windfall to a few individuals, but will adversely affect thousands of descendants of Montana farmers and ranchers. The adverse effects have not been considered. Minerals were often severed in an attempt to equitably distribute family property to the next generation. For example, parents often devised the family farm to only one child because the land wouldn't support more than one family. In fairness, the parents devised the underlying mineral rights to the remaining children. The new tax imposed by SB 492 would undo the intended distribution.

Senate Bill 492 is fundamentally unfair. Please vote against it.

Sincerely yours,



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