

STATEMENT OF ENCORE ACQUISITION COMPANY IN OPPOSITION TO SB 492

Encore is the largest producer of crude oil in Montana producing approximately 34% of Montana's total production. Encore also produces a significant amount of natural gas. Its principal production is realized on the Cedar Creek Anti-Cline—a field containing over 800 wells that runs more than 80 miles south-easterly from below Glendive through the Baker area and down to the south-east corner of the state ending with a small portion in North Dakota. Encore also has production in the Bell Creek Field in Rosebud County—in Richland County—and is actively engaged in drilling for natural gas in Hill and Blaine Counties.

Encore paid approximately \$31,000,000 in oil and gas production taxes to state and local governments in Montana in the last reported annual period.

Encore has approximately 460,000 acres of oil and gas leases which it holds in Montana. 288,000 acres of these leases are under fee lands and would clearly be subject to the provisions of SB 492 that would tax mineral interests with a \$5.00 per acre annual tax (Section 11, lines 17 through 23, p.5 of SB 492). In addition Encore holds 172,000 acres of mineral leases on state and federal lands that appear to also be subject to this tax when the mineral interest is held under lease by a private party or company or non-governmental entity. Thus 172,000 additional acres could be subject to the tax. The tax liability for Encore would be approximately \$1,440,000 annually for the fee mineral acreage—plus \$860,000 annually for the acreage underlying government owned property for a grand total tax liability of \$2,300,000 annually for these mineral leases. This would be a new tax which would be in addition to all of the other taxes paid by Encore.

In addition the bill would require Encore to file notice with the County Clerk and Recorder of the county in which each mineral interest held by Encore is located by October 1, 2007. (Section 6, lines 14 through 30, p. 3 and lines 1 through 14 p. 7 of SB 492) The bill requires payment of recording fees to the clerk and recorder. It appears that after July 1, 2005 those fees will likely be \$6.00 per page (7-4-263 and 7-4-2632 M.C.A.-2003). Encore's cost for this could be very substantial.

This bill represents more than a tax for anyone owning a mineral interest as defined in said bill, which comes at the expense of the current or rightful mineral interest owners.

SB 492 will not enable or encourage marketability of real property anymore than is already the case in the state of Montana. The surface and mineral owners already have marketable title to their property. Having a severed estate does not in any way impair the marketability of one's real property. Individuals know when they purchase property whether or not they are acquiring just the surface or minerals or both. In most cases the individual does not care if they are obtaining the mineral rights.

The mineral estate is a recognized separate estate in Montana. If the surface owner wants control of both the surface and minerals then they can research the county records, determine who owns the minerals and purchase the minerals. Under SB 492, the surface owner does not pay the current mineral owner for the minerals; all they do is wait for a specific time period of

non-use to elapse, and then they obtain the minerals for nothing. This bill would increase litigation between surface, mineral, and leasehold owners as to whether or not the minerals are in "use" as defined in the bill.

Montana was settled by pioneers hundreds of years ago and minerals have been passed down from generation to generation. The people of Montana take pride in what their ancestors went through to obtain these mineral rights and do not want to lose that heritage to some surface owner who desires to obtain the minerals for nothing. These surface owners knew when they purchased the surface that it did not include the minerals but now they are trying to claim these minerals that are not rightfully theirs. These mineral rights belong to the families that settled Montana or have purchased these minerals in later years and should stay with them and future generations.

SB 492 would just be a tax on the mineral interest as defined in this bill. This is just another way in which to tax those who are bringing jobs, improvements, and increased revenues to the State of Montana. This tax could also potentially be a burden on some of Montana's larger rural farmers that could be better served using the \$5.00 per acre of mineral interest to improve their farms and way of life.

Thus, SB 492 will not further its stated purposes of encouraging marketability of land and development of mineral resources. What SB 492 will do is transfer existing mineral owners' rights and the earnings of "dormant" minerals from the State to individual surface owners, who neither bargained nor paid for them. SB 492 could deny the current mineral owners and their successors and assigns the right to own the minerals separate from the surface estate and would create a negative tax on mineral interests in the State of Montana.

Please vote against SB 492.

Respectfully Submitted,

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