

TESTIMONY OF NANCE PETROLEUM CORPORATION AND MARATHON OIL IN OPPOSITION TO DORMANT MINERAL INTERESTS ACT; SB 492

Mr. Chairman and members of the Senate Taxation Committee. For the record my name is Tom Ebzery; I am a Billings attorney appearing in opposition to SB 492 on behalf of Nance Petroleum of Billings and Marathon Oil Company. Marathon has significant mineral reserves on the Montana Wyoming border in Big Horn and Powder River Counties for coalbed natural gas development.

Nance has been in Montana since 1969 and has significant mineral ownership in the Williston Basin and is in predevelopment of coalbed natural gas in southeastern Montana. Both companies strongly oppose this legislation as it is unneeded and is an attempt to displace long time mineral owners in Montana to benefit just a few. There is no demonstrated need for this legislation and the consequences of enactment of such legislation would be staggering.

Many of the opponents have given valid reasons why such a bill would overturn nearly a hundred years of court precedent and the implications behind imposing a mineral interest tax of \$5 per acre on the owner of a recorded mineral interest. I would like to focus on what I think are terrible flaws in the bill, which even if this bill were to pass would be almost impossible to implement.

I would mention that instituting a new "requirement to record notice of mineral interest" by 2007 would be a massive undertaking for each county clerk and recorder. This is not unlike the water rights adjudication process which we have undertaken since the 1970s and have spent millions. We now have HB 22, which is a massive effort to speed up the process, and we still have 15 more years before that process could be complete.

As to the bill itself I have a number of drafting questions and concerns:

1. Page 1 lines 24-25 there is language that states in the purpose clause that provides a means for termination of dormant mineral interests that "impair marketability of real property. There are no findings in the bill or any definition of what would "impair marketability of real property."
2. Page 2: there is a long and convoluted definition of mineral interest, but nowhere in the bill is there any definition of "surface owner." This bill seems to confer a special status to a surface owner without any definition. One with a leasehold interest might qualify under this bill. Line 15 refers to "surface owner of real property." What does this mean?
3. Page 2 Section 4 Exclusion Section: It appears in line 8 that minerals owned by the United States are excluded but there is language stating except to the

extent permitted by federal law; this is vague and if there is such “permissible” language it should be stated in the bill.

4. Page 2 line 17: there is reference to a mineral interest that is “unused” but that odd term is undefined unless the author intended that the word “use” means all the activities that would be excluded from unused. Clearly this bill was lifted from another state and it is very confusing.
5. Page 2 lines 18-19 states that the “action must be in the nature of and requires the same notice as is required in an action to quiet title.” Where is reference to the quiet title section of the Montana Code? This needs to be spelled out, as the affected party needs to know specifically what is required of them, particularly if failure to follow this will result in the loss of a valuable property right.
6. Page 4: New Section 7: Penalty for failure to record notice of mineral interest. First we are installing a revolutionary new system and even before it is installed there is a civil penalty system. Who administers this penalty? Is this reflected in the fiscal note? Does each county budget for such a process. Is the Sheriff responsible for tracking down those who fail to record a notice?
6. Page 5 New Section 10. Publication of Notice. Why the Department of Natural Resources and Conservation the responsible party for notice? There are 56 counties in Montana and definitely not 56 DNRC offices. Is this massive publication fee represented in the fiscal note? Is it accurate?

These are just a few of the technical and other legal flaws in SB 492. This bill will result in numerous unintended consequences such as the loss of mineral or royalty income to unknown people such as churches and foundations, which have been beneficiaries of mineral grants and may lose them as a result of this bill.

We strongly urge you to say no to the tax and no to the bill.