

Written Testimony of Fidelity Exploration & Production Company
S.B. 492 - Dormant Mineral Interests Act
Senate Taxation Committee
March 9, 2005

Fidelity Exploration & Production opposes Senate Bill 492. The following are specific comments relative to the bill.

General Comments:

S.B. 492 will implement a process for taking the mineral estate by the surface estate. The mineral owner will receive no compensation for the taking. On or after October 1, 2007 the surface owner can initiate court proceedings against the dormant mineral owner to acquire a real property right that the surface owner did not purchase.

S.B. 492 will create real property title uncertainty in Montana. This may greatly impede private mineral development if passed. While, the surface owner can not take action against a mineral owner if they have been active as defined in New Section 5, mineral owners will still be obligated to file the notice as defined in New Section 6. The owner(s) of mineral interest(s) as defined would have to file "... a notice of mineral interest or a notice of intent to preserve a mineral interest or a part of the mineral interest by October 1, 2007" regardless, if the mineral interest is productive or not, or has been leased, conveyed or severed within the past twenty years. The mineral owner may incur leasing or development obstacles if they have not properly filed a "notice" whether or not they've been active in the marketing of their minerals.

The bill also imposes a \$5.00/acre tax on the mineral estate. This tax applies to any mineral (separate tax on oil, gas, coal, gravel, uranium, etc), productive or not, and any mineral/royalty interest (royalty, production payment, executive rights, etc). The mineral/royalty owner would have to pay this tax in addition to any production taxes if the mineral estate were productive. The legislation does not exclude a surface owner with a mineral interest from paying this tax.

Specific Comments:

Page 1, line 22, **NEW SECTION. Section 2. Purpose.**

Legislation states "It is the public policy of this state to enable and encourage marketability of real property and to mitigate the adverse effect of dormant minerals..."

Comment: This language implies that the mineral estate is not real property and that a dormant mineral interest causes an adverse affect on both the surface estate and mineral estate. An ownership in the mineral estate is a real property interest. Conveyances, reservations and any other action affecting an ownership of the mineral estate has to be filed in the official records of a county (County Clerk or Clerk of Recorder) in order to "notify the world" as required by the notice doctrine of every state.

A dormant mineral estate does not create an adverse affect on the use of the mineral interest. Land professionals employed by various mineral exploration and production companies evaluate the title as reflected in the county records and through negotiation acquire development rights. A dormant mineral estate only creates an adverse affect on a surface owner who is frustrated that their ownership is subject to pre-existing rights, that

they were fully aware of when they purchased the surface. A surface owner, like a mineral exploration and production company can try to purchase the mineral rights below their surface.

Page 2, lines 2 – 5, NEW SECTION. **Section 3. Definitions.**

Comment: The definition of “Mineral interest” includes all types of mineral ownership, whether productive or not. Royalty, production payments, leasehold interests are generally created when minerals are being developed. The majority of royalty owners are private individuals and churches.

Page 2, line 20, NEW SECTION. **Section 5. Termination of dormant mineral interest.**

On or after October 1, 2007, the surface owner can commence legal action in district court to terminate a dormant mineral interest ... whether or not the owner or the mineral interest of the owner’s whereabouts is known or unknown.

Comment: If the surface owner knows the whereabouts of the dormant mineral owner, shouldn’t this mineral owner be excluded from this legislation? The surface owner can approach the mineral owner to purchase the respective interest. This legislation provides a mechanism for the surface owner to use the courts to acquire an interest without being obligated to negotiate in good faith with the mineral owner.

Page 2, line 27 & 28, NEW SECTION. **Section 5. Termination of dormant mineral interest.**

Disposal and storage on or below the surface have been excluded from active mineral operations.

Comment: Gas storage agreements and water disposal agreements are negotiated with the surface owner because title to the “container” of minerals generally lies with the surface owner. However, in order to protect the operator or owner of the storage or disposal facility ratification is obtained from the mineral owners. Under this legislation, this may provide a method for a surface owner to shut-down a disposal or storage facility that their ownership is subject to.

Page 3, lines 14 - 30, NEW SECTION. **Section 6. Preservation of mineral interest by notice – requirement to record notice of mineral interest.**

Comment: Language does not exclude the active mineral owner as defined in New Section 5(2).

Page 4, lines 16 - 18, NEW SECTION. **Section 7. Penalty for failure to record notice of mineral interest.**

Comment: This section creates the opportunity of courts to fine active mineral owners who did not file the notice as required under New Section 6.

Page 4, lines 20 - 24, NEW SECTION. **Section 8. Late notice of intent to preserve mineral interest.**

Comment: This section punishes the mineral interest owner for protecting his real property interest.

Page 5, lines 1 - 14 NEW SECTION. **Section 10. Publication of notice.**

The Department of Natural Resources and Conservation is to publish notice of this statute in all daily newspapers of the state, at least one newspaper in each county of the state, and at least two nationwide, mining publications at least once each year in 2005, 2006 and 2007.

Comment: If the state wants to take private property rights, notification should be expanded to all mineral, royalty mining associations for publication at least monthly for the next ten years.

Page 5, lines 17 - 23, NEW SECTION. **Section 11. Mineral interest tax – property tax reduction.**

“Beginning January 1, 2010, each county shall impose a tax of \$5 an acre on the owner of a recorded mineral interest.”

Comment: This tax does not exclude productive minerals that are already paying taxes. This legislation will tax all types of mineral interests and non-productive minerals that may have no value at the time of taxation.

Page 5, lines 29 - 30, NEW SECTION. **Section 13. Retroactive applicability.**

Comment: This legislation will apply to all severed mineral interests regardless of the language that created the mineral ownership. This clearly vests the surface owners with litigation rights that may be in addition to rights conveyed when they purchased the property. In some instances, this law may create a conflict between the law and the actual conveyance documents.