

1/15/07

SENATE NATURAL RESOURCES  
COMMITTEE NO. 8  
DATE 1-15-07  
BILL NO. SB 26

Mr. Chairman and Committee:

Hello, my name is Shawn Heringer. I am a Petroleum Landman employed by Nance Petroleum Corporation in Billings, MT. I currently serve as President of the Montana Association of Professional Landmen. I am a native Montanan, however my 20 plus years of industry experience has exposed me not only to minerals in Montana, but also in Texas, Oklahoma, Kansas, New Mexico, Wyoming and Colorado. Thank you for giving me the opportunity to speak in front of you today.

The Montana Association of Professional Landmen and Nance Petroleum Corporation are "Opposed" to Senate Bill No. 26 which creates a Dormant Mineral Interest Act. The Bill requirements will make it mandatory for **individuals, corporations, farms, ranches, trusts, estates, charitable trusts, charities, churches and like entities** to file a statement of claim with the Department of Natural Resources in an effort to protect and preserve their severed mineral interests. Interests, which were acquired through good faith negotiation with the surface owner, inherited, or received as a beneficiary of a trust or charity. In most cases the severed mineral owners have been the legal owners for decades. The committee should be reminded that at some point in time over the history of the property, the surface owner either retained part of the mineral estate after the sale of the surface or sold the minerals and received compensation for the sale.

I am reminded of a story my father told me about a landowner who sold him a one-quarter of his minerals back in the early 1950s. The landowner *sought out* my dad who was a mineral buyer and said he needed money to make his mortgage, pay taxes, repair his roof, make some other improvements to the ranch and pay off bills. The transaction, which took place in 1952 was over \$15,000. My father filed a Mineral Deed with the County Clerk and Recorder's office to acknowledge and state to the whole world that he owned one-fourth of the minerals under the same tracts as the landowner. It was a good faith negotiation with both parties satisfied. There has never been a legal dispute since. Thousands of similar transactions have taken place to create severed minerals. **The minerals my father acquired from this landowner back in the 1952 have never been leased. Based on Senate Bill No. 26, they would now be classified as dormant minerals and subject to "Taking" by the surface owner. That is not right.**

The Clerk and Recorder's office is where abstractors, title companies, attorneys, landmen, and landowners can review all transactions regarding the transfer of real property. It is the vehicle used to determine ownership of the surface and minerals by professionals in my association. Oil and gas leases, royalty deeds, mineral deeds, warranty deeds with mineral reservations, liens and mortgages

are all filed with the Clerk and Recorder's Office giving "Notice" for the whole world to see. Anyone can walk in and review the records, as they are open to the public. Requiring severed mineral owners to also file their Notice of ownership with the Department of Natural Resources, now weakens the County Clerk and Recorders office should an interest dispute occur because the information in both places is different. It will create an unnecessary uncertainty. Title attorneys and litigators will stay gainfully employed. Is that really what you want to do?

The obligation for the severed mineral owners to file with the Department of Natural Resources creates several problems and concerns. First there is a \$10.00 filing fee or tax for the mineral interest. Once again, the legal document creating the severed mineral interest has been filed of record in its respective County Clerk and Recorder's office. A fee was paid at the time of recording.

Second, if **an individual, corporation, farmer, rancher, trust, estate, charitable trust, charity, church or like entity** does not file with the Department of Natural Resources then they will be **charged** by the State and fined \$100 for an interest they already own. This is too onerous. Not only will the mineral owner receive a notice that their minerals will be "taken" from them but they also will get hit with a \$100 fine on top of it. Include the \$100 fine with the costs and attorney's fees necessary for the severed mineral interest owner to attempt preserve their interest and now you are at \$1000+ in expenses. It sounds like a win for the attorneys but not the severed mineral interest owner.

Most severed mineral interest owners are **not** sophisticated oil and gas people or attorneys. They are folks who inherited the interests from their grandparents, mom, dad, aunt or uncle, by way of probate, intestate succession, trusts beneficiaries or for working family farms or ranches. Some live in state and some don't. They are people who today are unaware of this bill that will jeopardize and create uncertainty in the very interest they believe they rightfully own. A Bill that gives the "Right of Taking" to the surface owner but leaves the severed mineral owner with the obligation to defend an interest in which Notice has been given to the whole world by filing of record in the county where the property is located. Which leads to the next point.

We are concerned that this bill might be laying the groundwork for future taxation of undeveloped severed mineral interests. The DNR will have an unreliable list of owners with varying interests in which to start taxing. A list that starts when the Bill is effective verses compiling the true and accurate list of known severed mineral interest owners filed in the County Clerk and recorder's office. Further, the only way I see the Department of Natural Resources running a positive cash flow is if the actual severed mineral taxation becomes Law. A previous bill contained nearly all the problems this bill has and thankfully the Senate Taxation Committee said "No".

Although advocates may argue that this dormant mineral act is a vehicle to clean up unlocatable owners, I remind the Committee that a surface owner has options regarding this matter. First, there are members of the Montana Association of Professional Landmen who have years of experience tracking down "unlocatable" owners. They do it for the oil and gas industry every day. I am certain that they could do it for the surface owner who rightfully wants to re-acquire severed mineral interests or learn who owns the minerals. I can provide the Department of Natural Resources a copy of the directory of the 2006-2007 Edition once it is completed. Also, accessing the information on the internet using "AOL White Pages", or subscribing to finder vehicles such as "Info Age" or "Credit Commander", the "unlocatable" mineral owner can usually be located in a matter of seconds. The other option available to the surface owner is Montana's unlocatable mineral owner statute which is an existing law that creates a court appointed trustee to handle transactions for unlocatable owners. I was advised by a Billings attorney that the law works well to insure the benefit to all and not just surface owners.

Again, the MAPL and Nance Petroleum Corporation are "opposed" to Senate Bill No. 26. Thank you for letting me present my testimony.

Sincerely,



Shawn C. Heringer  
President, Montana Association of Professional Landmen and  
Landman for Nance Petroleum Corporation

406 255-8624