

HOUSE BILL NO. 406

INTRODUCED BY A. KNUDSEN

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO OIL AND GAS POOLING INTERESTS; DEFINING "OWNER WITH MINERAL RIGHTS"; CLARIFYING THE SHARE OF COSTS OF WELL DEVELOPMENT PAID BY CERTAIN REFUSING OWNERS; AND AMENDING SECTIONS 82-11-101 AND 82-11-202, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 82-11-101, MCA, is amended to read:

**"82-11-101. (Temporary) Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

- (1) "Administrator" means the administrator of the division of oil and gas conservation.
- (2) "Board" means the board of oil and gas conservation provided for in 2-15-3303.
- (3) "Class II injection well" means a well, as defined by the federal environmental protection agency or any successor agency, that injects fluids:
  - (a) that have been brought to the surface in connection with oil or natural gas production;
  - (b) for purposes of enhancing the ultimate recovery of oil or natural gas; or
  - (c) for purposes of storing liquid hydrocarbons.
- (4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.
- (5) "Determinations" means those decisions delegated to the state by or under authority of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.
- (6) "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool; such artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

1 (7) "Field" means the general area overlaid by one or more pools.

2 (8) "Fluid" means any material or substance that flows or moves, whether in a semisolid, liquid, sludge,  
3 gas, or any other form or state.

4 (9) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate  
5 the oil or gas the person produces from a pool either for the person or others or for the person and others, and  
6 the term includes all persons holding that authority by or through the person with the right to drill.

7 (10) "Owner with mineral rights" means a person who owns mineral rights containing oil and gas  
8 resources.

9 ~~(10)~~(11) "Person" means any natural person, corporation, association, partnership, receiver, trustee,  
10 executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or  
11 instrumentality of the state or any governmental subdivision of the state.

12 ~~(11)~~(12) "Pollution" means contamination or other alteration of the physical, chemical, or biological  
13 properties of any state waters that exceeds that permitted by state water quality standards or standards adopted  
14 by the board, including but not limited to the disposal, discharge, seepage, drainage, infiltration, flow, or injection  
15 of any liquid, gaseous, solid, or other substance into any state waters that will or is likely to create a nuisance or  
16 render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild  
17 animals, birds, fish, or other wildlife. A disposal, discharge, seepage, drainage, infiltration, flow, or injection of fluid  
18 that is authorized under a rule, permit, or order of the board is not pollution under this chapter.

19 ~~(12)~~(13) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both;  
20 each zone of a structure which is completely separated from any other zone in the same structure is a pool, as  
21 that term is used in this chapter.

22 ~~(13)~~(14) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

23 ~~(14)~~(15) "Responsible person" means a person who is determined by the board under 82-10-402 to have  
24 abandoned an oil or gas well, injection well, disposal well, water source well, drill site, sump, seismographic shot  
25 hole, or other area where oil and gas drilling and production operations were conducted.

26 ~~(15)~~(16) "State waters" means any body of water, either surface or underground.

27 ~~(16)~~(17) (a) "Waste" means:

28 (i) physical waste, as that term is generally understood in the oil and gas industry;

29 (ii) the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;

30 (iii) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a

1 manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool  
 2 under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss  
 3 or destruction of oil or gas; and

4 (iv) the inefficient storing of oil or gas. ~~(The~~

5 (b) (i) The production of oil or gas from any pool or by any well to the full extent that the well or pool can  
 6 be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the  
 7 board, is not waste within the meaning of this definition.) subsection (17)(a).

8 ~~(b)(ii)~~ The loss of gas to the atmosphere during coal mining operations is not waste within the meaning  
 9 of this definition.

10 **82-11-101. (Effective on occurrence of contingency) Definitions.** As used in this chapter, unless the  
 11 context requires otherwise, the following definitions apply:

12 (1) "Administrator" means the administrator of the division of oil and gas conservation.

13 (2) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

14 (3) "Carbon dioxide" means carbon dioxide produced by anthropogenic sources that is of such purity  
 15 and quality that it will not compromise the safety of a geologic storage reservoir and will not compromise those  
 16 properties of a geologic storage reservoir that allow the reservoir to effectively enclose and contain a stored gas.

17 (4) (a) "Carbon dioxide injection well" means a well that injects carbon dioxide for the underground  
 18 storage of carbon dioxide in a geologic storage reservoir.

19 (b) The term does not include a class II injection well in which carbon dioxide is injected for the purpose  
 20 of enhancing the recovery of oil and gas.

21 (5) "Class II injection well" means a well, as defined by the federal environmental protection agency or  
 22 any successor agency, that injects fluids:

23 (a) that have been brought to the surface in connection with oil or natural gas production;

24 (b) for purposes of enhancing the ultimate recovery of oil or natural gas; or

25 (c) for purposes of storing liquid hydrocarbons.

26 (6) "Department" means the department of natural resources and conservation provided for in Title 2,  
 27 chapter 15, part 33.

28 (7) "Determinations" means those decisions delegated to the state by or under authority of the Natural  
 29 Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.

30 (8) "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by

1 the application of energy extrinsic to the pool; artificial means or application includes pressuring, cycling, pressure  
2 maintenance, or injection into the pool of any substance or form of energy as is contemplated in secondary  
3 recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for  
4 the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by  
5 mechanical, chemical, thermal, or explosive means.

6 (9) "Field" means the general area overlaid by one or more pools.

7 (10) "Fluid" means any material or substance that flows or moves, whether in a semisolid, liquid, sludge,  
8 gas, or any other form or state.

9 (11) "Geologic storage operator" means a person holding or applying for a carbon dioxide injection well  
10 permit.

11 (12) (a) "Geologic storage reservoir" means a subsurface sedimentary stratum, formation, aquifer, cavity,  
12 or void, whether natural or artificially created, including vacant or filled reservoirs, saline formations, and coal  
13 seams suitable for or capable of being made suitable for injecting and storing carbon dioxide.

14 (b) The term does not include a natural gas storage reservoir. However, the owner of a natural gas  
15 storage reservoir may convert a depleted natural gas storage reservoir into a geologic storage reservoir to be  
16 used pursuant to Title 82, chapter 11, parts 1 and 2.

17 (13) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate  
18 the oil or gas the person produces from a pool either for the person or others or for the person and others, and  
19 the term includes all persons holding that authority by or through the person with the right to drill.

20 (14) "Owner with mineral rights" means a person who owns mineral rights containing oil and gas  
21 resources.

22 ~~(14)~~(15) "Person" means any natural person, corporation, association, partnership, receiver, trustee,  
23 executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or  
24 instrumentality of the state or any governmental subdivision of the state.

25 ~~(15)~~(16) "Pollution" means contamination or other alteration of the physical, chemical, or biological  
26 properties of any state waters that exceeds that permitted by state water quality standards or standards adopted  
27 by the board, including but not limited to the disposal, discharge, seepage, drainage, infiltration, flow, or injection  
28 of any liquid, gaseous, solid, or other substance into any state waters that will or is likely to create a nuisance or  
29 render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild  
30 animals, birds, fish, or other wildlife. A disposal, discharge, seepage, drainage, infiltration, flow, or injection of fluid

1 that is authorized under a rule, permit, or order of the board is not pollution under this chapter.

2 ~~(16)~~(17) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both.  
3 Each zone of a structure that is completely separated from any other zone in the same structure is a pool. For  
4 the purposes of unitization pursuant to Title 82, chapter 11, part 2, "pool" also includes an underground reservoir  
5 for the long-term storage of carbon dioxide after the effective date of this section.

6 ~~(17)~~(18) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

7 ~~(18)~~(19) "Responsible person" means a person who is determined by the board under 82-10-402 to have  
8 abandoned an oil or gas well, injection well, disposal well, water source well, drill site, sump, seismographic shot  
9 hole, or other area where oil and gas drilling and production operations were conducted.

10 ~~(19)~~(20) "State waters" means any body of water, either surface or underground.

11 ~~(20)~~(21) "Verification and monitoring" means measuring the amount of carbon dioxide stored at a specific  
12 geologic storage reservoir, checking the site for leaks or deterioration of storage integrity, and ensuring that  
13 carbon dioxide is stored in a way that is permanent and not harmful to the ecosystem. The term includes:

14 (a) using models to show, before injection is allowed, that injected carbon dioxide will be securely stored.  
15 Modeling includes but is not limited to consideration of seismic activity, possible paths for fugitive emissions, and  
16 chemical reactions in the geologic formation.

17 (b) tracking plume behavior after injection of carbon dioxide, including the use of pressure monitoring;  
18 and

19 (c) establishing a system of leak monitors.

20 ~~(21)~~(22) (a) "Waste" means:

21 (i) physical waste, as that term is generally understood in the oil and gas industry;

22 (ii) the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;

23 (iii) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a  
24 manner that causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool  
25 under prudent and proper operations or that causes or tends to cause unnecessary or excessive surface loss  
26 or destruction of oil or gas; and

27 (iv) the inefficient storing of oil or gas.

28 (b) (i) The production of oil or gas from any pool or by any well to the full extent that the well or pool can  
29 be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the  
30 board, is not waste within the meaning of subsection ~~(21)~~(a) (22)(a).

1 (ii) The loss of gas to the atmosphere during coal mining operations is not waste within the meaning of  
2 subsection (21)(a)."

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4 **Section 2.** Section 82-11-202, MCA, is amended to read:

5 **"82-11-202. Pooling of interest within spacing unit.** (1) (a) When two or more separately owned tracts  
6 are embraced within a temporary or permanent spacing unit or when there are separately owned interests in all  
7 or a part of the spacing unit, then the persons owning those interests may pool their interests for the development  
8 and operation of the spacing unit.

9 (b) The board, upon the application of an interested person, may enter an order pooling all interests in  
10 the permanent spacing unit for the development and operation of the permanent spacing unit and the allocation  
11 of production if the applicant has made an unsuccessful, good faith attempt to voluntarily pool the interests within  
12 the permanent spacing unit. The applicant must be a person who owns an interest in the oil or gas underlying  
13 the permanent spacing unit or who has drilled a well, proposes to drill a well, or proposes to conduct other  
14 operations on a well, including recompleting, deepening, or stimulation. The pooling order must be made after  
15 a hearing and must be upon terms and conditions that are just and reasonable and that afford to the owner of  
16 each tract or interest in the permanent spacing unit the opportunity to recover or receive without unnecessary  
17 expense a just and equitable share of the oil or gas produced and saved from the spacing unit. Operations  
18 incident to the drilling of a well upon any portion of a permanent spacing unit covered by a pooling order are  
19 considered, for all purposes, the conduct of the operations upon each separately owned tract in the spacing unit  
20 by the several owners of the tracts. That portion of the production allocated to each tract included in a permanent  
21 spacing unit covered by a pooling order must when produced be considered for all purposes to have been  
22 produced from the tract by a well drilled on the tract.

23 (2) (a) As to each owner who refuses to pay the owner's share of the costs of development or other  
24 operations referred to in subsection (1), the order must provide for payment of the owner's share of the cost out  
25 of and only out of production from the well allocable to the owner's interest in the permanent spacing unit,  
26 excluding royalty or other interest not obligated to pay any part of the cost and excluding the royalty provided for  
27 in subsection ~~(2)(c)~~ (2)(d). If a well has not been drilled prior to the hearing on the application, the pooling order  
28 must provide for the drilling and operating of a well on the permanent spacing unit and for the payment of the cost  
29 of the well, which may include a reasonable charge for supervision, handling, and storage. If a dispute arises as  
30 to the cost, the board by subsequent order, after notice and hearing, shall determine the proper cost. The order

1 may provide in substance that the owners who agree to share in the cost of drilling and operating the well are,  
2 unless they agree otherwise, entitled to receive, subject to royalty or similar obligations, all of the production of  
3 the well until they have recovered all of the costs out of the production. After all costs of drilling and operation are  
4 recovered, all of the owners in the permanent spacing unit are entitled to receive their respective shares of the  
5 production of the well as their interest may appear after deducting their respective shares of current operating  
6 costs.

7 (b) If a well has been drilled prior to the hearing on the application and an owner, after written demand,  
8 has failed or refused to pay the owner's share of the costs of development or other operations referred to in  
9 subsection (1) or if a well has not been drilled prior to the hearing on the application and an owner refuses to  
10 agree to pay the owner's share of drilling and completion costs, in addition to the costs under subsection (2)(a),  
11 the order must include as costs:

12 (i) 100% of the refusing owner's share of the cost of newly acquired surface equipment beyond the  
13 wellhead connections, including but not limited to stock tanks, separators, treaters, pumping equipment, and  
14 piping, plus 100% of the refusing owner's share of the cost of operation of the well commencing with first  
15 production and continuing until the agreeing owners have recovered the costs; and

16 (ii) 200% of the refusing owner's share of the costs and expenses of staking, well site preparation,  
17 obtaining rights-of-way, rigging up, drilling, reworking, deepening or plugging back, testing, and completing the  
18 well, after deducting any cash contributions received from the refusing owners by the agreeing owners, and 200%  
19 of that portion of the cost of equipment in the well, including the wellhead connections.

20 (c) If the refusing owner under subsection (2)(b) is an owner with mineral rights, the order must include  
21 as costs:

22 (i) 50% of the refusing owner's share of the cost of newly acquired surface equipment beyond the  
23 wellhead connections, including but not limited to stock tanks, separators, treaters, pumping equipment, and  
24 piping, plus 50% of the refusing owner's share of the cost of operation of the well commencing with first  
25 production and continuing until the agreeing owners have recovered the costs; and

26 (ii) 100% of the refusing owner's share of the costs and expenses of staking, well site preparation,  
27 obtaining rights-of-way, rigging up, drillings, reworking, deepening or plugging back, testing, and completing the  
28 well, after deducting any cash contributions received from the refusing owners by the agreeing owners, and 100%  
29 of that portion of the cost of equipment in the well, including wellhead connections.

30 ~~(c)~~(d) A refusing owner of an oil and gas interest in a spacing unit that is not subject to any lease or other

1 contract for development of oil and gas is considered to own a landowner royalty equal to ~~one-eighth~~ one-sixth  
2 of the owner's proportionate share of production from the well until such time as the consenting owners recover  
3 the costs specified in ~~subsection~~ subsections (2)(b) and (2)(c). Any interest in production from the spacing unit  
4 to which the interest of the refusing owner may be subject must be deducted from the royalty considered to be  
5 owned by the refusing owner. After costs have been recovered by the agreeing owners, the refusing owner owns  
6 the refusing owner's proportionate share of the well, surface facilities, and production and is liable for further costs  
7 as if the refusing owner had originally agreed to drilling of the well.

8 (d) The operator of a well under a pooling order in which there is a refusing owner shall upon demand  
9 furnish the refusing owner with a monthly statement of all costs incurred, together with the quantity of oil or gas  
10 produced and the amount of proceeds realized from the sale of production during the preceding month.

11 (e) If an owner of an oil and gas interest in a temporary spacing unit refuses to agree to pay the owner's  
12 share of the costs of drilling and operating a well drilled within the unit and an application is filed for pooling of  
13 the interests in the well in a permanent spacing unit, the board shall, upon hearing the application for pooling of  
14 the interests for the well, order that the parties who agreed to share in the cost of drilling and operating the well  
15 prior to commencement of the drilling operation recover out of the refusing owner's share of the costs as provided  
16 in subsections (2)(a) ~~and (2)(b)~~ through (2)(c).

17 (3) (a) An owner is presumed to have refused to pay the owner's share of costs if prior to the spud date  
18 of the well, the owner fails to pay or agree in writing to promptly pay the share of the costs after notice by the well  
19 operator either:

20 (i) acknowledged in writing by the owner as received; or

21 (ii) sent at least 30 days prior to the spud date of the well to the owner by certified mail, addressed to the  
22 owner's address of record in the office of the clerk and recorder of the county where the well is to be drilled or  
23 to the owner's address on file with the board.

24 (b) The notice must set forth the location of the well, the projected depth and target formations, the  
25 anticipated costs of drilling and completing the well, and the anticipated spud date of the well."

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- END -