

SENATE BILL NO. 26
INTRODUCED BY D. WEINBERG

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE DORMANT MINERAL INTERESTS ACT; AUTHORIZING THE SURFACE OWNER OF REAL PROPERTY SUBJECT TO A MINERAL INTEREST TO MAINTAIN AN ACTION TO TERMINATE A DORMANT MINERAL INTEREST UNDER CERTAIN CONDITIONS; REQUIRING THE OWNER OF A MINERAL INTEREST TO RECORD A NOTICE OF MINERAL INTEREST OR NOTICE OF INTENT TO PRESERVE ALL OR PART OF THE MINERAL INTEREST AND PAY A FEE BY OCTOBER 1, 2009; PROVIDING FOR PRESERVATION OF A MINERAL INTEREST BY NOTICE; ESTABLISHING A PENALTY FOR FAILURE TO RECORD THE NOTICE; AUTHORIZING LATE NOTICE OF INTENT TO PRESERVE A MINERAL INTEREST UPON PAYMENT OF LITIGATION EXPENSES; ESTABLISHING A MINERAL INTEREST REGISTRY; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO PUBLISH A NOTICE CONTAINING A SUMMARY OF THE PROVISIONS OF THE ACT; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 14] may be cited as the "Dormant Mineral Interests Act".

NEW SECTION. **Section 2. Purpose.** (1) It is the public policy of this state to enable and encourage marketability of real property and to mitigate the adverse effect of dormant mineral interests on the full use and development of both surface estates and mineral interests in real property.

(2) [Sections 1 through 14] must be construed to effect this purpose to provide a means for termination of dormant mineral interests that impair marketability of real property.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 14], the following definitions apply:

(1) "Department" means the department of natural resources and conservation as provided for in 2-15-3301.

(2) "Litigation expenses" means costs and expenses that the court determines are reasonably and

necessarily incurred in preparing for and prosecuting an action, including reasonable attorney fees.

(3) "Mineral" has the meaning provided in 70-9-802.

(4) "Mineral interest" means an interest in a mineral estate, however created and regardless of form, whether absolute or fractional, divided or undivided, corporeal or incorporeal, including a fee simple or any lesser interest in minerals or any kind of royalty, production payment, executive right, nonelective right, leasehold, or lien related to the minerals, regardless of character.

NEW SECTION. Section 4. Exclusions. (1) [Sections 1 through 14] do not apply to:

(a) a mineral interest of the United States or an Indian tribe, except to the extent permitted by federal law; or

(b) a mineral interest of this state or an agency or political subdivision of this state, except to the extent permitted by state law other than [sections 1 through 14].

(2) [Sections 1 through 14] do not affect water rights.

NEW SECTION. Section 5. Termination of dormant mineral interest. (1) On or after October 1, 2009, the surface owner of real property subject to a mineral interest may maintain an action in district court to terminate a dormant mineral interest. A mineral interest is dormant for the purposes of [sections 1 through 14] if the mineral interest is unused as determined under subsection (2) for a period of 20 years or more preceding commencement of the action and has not been preserved as provided in [section 6]. The action must be in the nature of and requires the same notice as is required in an action to quiet title. The action may be maintained whether or not the owner of the mineral interest or the owner's location is known or unknown. Disability or lack of knowledge of any kind on the part of any person does not suspend the running of the 20-year period.

(2) For the purpose of this section, any of the following actions taken by or under authority of the owner of a mineral interest in relation to any mineral that is part of the mineral interest constitutes use of the mineral interest:

(a) active mineral operations on or below the surface of the real property or other property unitized or pooled with the real property, including production, geophysical exploration, exploratory or developmental drilling, mining, exploitation, and development, but not including injection of substances for purposes of disposal or storage. Active mineral operations constitute use of any mineral interest owned by any person in any mineral that is the object of the operations.

(b) payment of taxes on a separate assessment of the mineral interest or of a transfer or severance tax

relating to the mineral interest;

(c) recordation of a judgment or decree that makes specific reference to the mineral interest; or

(d) recordation of an instrument that creates, reserves, or otherwise evidences a claim to or the continued existence of the mineral interest, including an instrument that transfers, leases, or divides the mineral interest. Recordation of an instrument constitutes use of:

(i) any recorded mineral interest owned by any person in any mineral that is the subject of the instrument;

and

(ii) any recorded mineral interest in the property owned by any party to the instrument.

(3) This section applies notwithstanding any provision to the contrary in the instrument that creates, reserves, transfers, leases, divides, or otherwise evidences the claim to or the continued existence of the mineral interest or in another recorded document unless the instrument or other recorded document provides an earlier termination date.

NEW SECTION. Section 6. Preservation of mineral interest by notice -- requirement to record notice of mineral interest -- required fee. (1) An owner of a mineral interest shall record 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, 2009. The notice must be filed with the department, which shall charge a fee of \$10 for each notice filed. The mineral interest is preserved in each county named in a notice of intent to preserve a mineral interest. A mineral interest is not dormant if the notice of intent to preserve a mineral interest is recorded within 20 years preceding commencement of the action to terminate the mineral interest or, pursuant to [section 8], after commencement of the action.

(2) The notice may be executed by an owner of the mineral interest or by another person acting on behalf of an owner, including an owner who is under a disability or unable to assert a claim on the owner's own behalf or whose identity cannot be established or is uncertain at the time of execution of the notice. The notice may be executed by or on behalf of a co-owner for the benefit of any co-owners or by or on behalf of an owner for the benefit of any persons claiming under the owner or persons under whom the owner claims.

(3) The notice must contain the name of the owner of the mineral interest or the co-owners or other persons for whom the mineral interest is to be preserved or, if the identity of the owner cannot be established or is uncertain, the name of the class of which the owner is a member and must identify the mineral interest or part of the mineral interest to be preserved by the following means:

(a) an adequate legal description of the land associated with the mineral interest:

(i) if a certificate of survey or a subdivision plat has been filed with the clerk and recorder pursuant to Title

76, chapter 3, by reference to the filed certificate or plat; or

(ii) if a certificate of survey or a subdivision plat has not been filed with the clerk and recorder pursuant to Title 76, chapter 3, by reference to a previously recorded document or description by aliquot part; and

(b) an adequate legal description of the mineral interest by:

(i) a reference to the location in the records of the instrument that creates, reserves, or otherwise evidences the mineral interest or of the judgment or decree that confirms the mineral interest; or

(ii) a reference generally and without specificity to any mineral interests of the owner in any real property situated in the county. The reference is not effective to preserve a particular mineral interest unless there is, in the county, in the name of the person claiming to be the owner of the mineral interest:

(A) a previously recorded instrument that creates, reserves, or otherwise evidences that mineral interest;

or

(B) a judgment or decree that confirms that mineral interest.

NEW SECTION. Section 7. Penalty for failure to record notice of mineral interest. Failure to record a notice of mineral interest or a notice of intent to preserve a mineral interest or a part of the mineral interest pursuant to [section 6] is a civil offense punishable by a civil penalty of \$100 for each mineral interest.

NEW SECTION. Section 8. Late notice of intent to preserve mineral interest. In an action to terminate a mineral interest pursuant to [sections 1 through 14], the court shall permit the owner of the mineral interest to record with the department a late notice of intent to preserve the mineral interest as a condition of dismissal of the action. The owner of the mineral interest shall pay to the court for the benefit of the surface owner of the real property the litigation expenses attributable to the mineral interest or the portion of the mineral interest for which the notice is recorded. The owner of the mineral interest shall pay a \$10 fee to the department for each late notice of intent.

NEW SECTION. Section 9. Effect of termination of mineral interest. (1) A court order terminating a mineral interest, when recorded, merges the terminated mineral interest, including express and implied appurtenant surface rights and obligations, with the surface estate in shares proportionate to the ownership of the surface estate, subject to existing liens for taxes or assessments.

(2) The surface owner shall file with the department a mineral interest ownership update form, provided for in [section 10], reflecting the court order.

NEW SECTION. Section 10. Mineral interest ownership updates. (1) The department shall prescribe the form and content of a mineral interest ownership update form.

(2) The transferor of a mineral interest shall file with the department a mineral interest ownership update form within 60 days of recording a deed or other instrument evidencing a transfer of real property.

(3) When any person presents for recording a deed or other instrument evidencing a transfer of real property, the realty transfer certificate must contain a mineral interest disclosure whereby the transferor shall acknowledge, at or before closing, whether or not any mineral interests are associated with the property to be transferred and whether or not any mineral interests will transfer with the real property. If the realty transfer certificate discloses a transfer of mineral interests, a mineral interest ownership update form must be completed and filed with the department. The recording of the deed or other instrument may not be delayed because of the transfer of the mineral interests.

NEW SECTION. Section 11. Fee. (1) The department shall by rule prescribe a fee that is no higher than necessary to cover the cost to the department of processing the mineral interest ownership update form. The fee must be paid at the time of filing of the mineral interest ownership update form.

(2) The fee must be deposited in the mineral interest ownership account provided for in [section 12].

NEW SECTION. Section 12. Mineral interest ownership account. There is a mineral interest ownership account in the state special revenue fund. All fees collected pursuant to [sections 6 and 11] must be deposited in the account to help pay the expenses incurred by the department for administering and enforcing [sections 1 through 14].

NEW SECTION. Section 13. Mineral interest registry -- requirements. (1) The department shall establish and maintain a mineral interest registry to record notices and updates filed pursuant to this part.

(2) The registry must be made available to the public via the internet, as defined in 2-17-551.

NEW SECTION. Section 14. Publication of notice. (1) The department shall publish a notice that summarizes the provisions of [sections 1 through 14]. The notice must be published in:

- (a) all daily newspapers of the state;
- (b) at least one newspaper published in each county of the state; and
- (c) at least two publications related to mining activities that have nationwide circulation.

(2) The notice provided for in subsection (1) must be published at least once each year in 2007 and 2008 and once in 2009 before October 1, 2009.

(3) The notice must include:

(a) a statement that dormant mineral interests may be terminated under the provisions of [sections 1 through 14];

(b) a statement that a notice of mineral interest or a notice of intent to preserve a mineral interest or part of a mineral interest must be recorded by October 1, 2009, by the department; and

(c) a reference to the sections of the Montana Code Annotated that are included in [sections 1 through 14].

NEW SECTION. Section 15. Codification instruction. [Sections 1 through 14] are intended to be codified as an integral part of Title 82, chapter 1, and the provisions of Title 82, chapter 1, apply to [sections 1 through 14].

NEW SECTION. Section 16. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 17. Retroactive applicability. (1) Except as provided in subsection (2), [sections 1 through 14] apply to all mineral interests, whether created before, on, or after [the effective date of this act].

(2) [Sections 1 through 14] do not limit or affect any other procedure provided by law for clearing an abandoned mineral interest from a title to real property.

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