MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Thomas Keating, on March 3, 1989, at 1:00 p.m. in Room 405 of the State Capitol.

ROLL CALL

Members Present: Senators: Thomas Keating, Chairman, Larry Tveit, Fred Van Valkenburg, Loren Jenkins, Lawrence Stimatz, Pete Story, Bill Yellowtail, Elmer Severson, Cecil Weeding, Dorothy Eck and Jerry Noble.

Members Excused: None

Members Absent: Senator Darryl Meyer

Staff Present: Bob Thompson and Helen McDonald

HEARING ON HB 362

Presentation and Opening Statement by Sponsor:

Representative Dave Brown, House District #72, Butte-Silver Bow, introduced this bill. This bill comes under the Federal Emergency Management Agency (FEMA) regulations, which are a result of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The state and federal governments are seeking to work together to identify and eliminate hazardous waste contamination. In some instances some properties must be condemned in order to begin the reclamation. The Department of State Lands (DLS) currently does not have condemnation authority so the federal government has used its power to condemn properties identified in Montana as being a hazardous waste contamination. The federal government requires that the state must accept title to the lands condemned.

Because of current language in Section 77-1-211, the state cannot accept title to the lands unless there is specific legislative approval. This prohibition caused a substantial problem in attempting to clean up Mill Creek in Deer Lodge County where property was identified as having hazardous waste contamination because of the Anaconda Smelter. Subsequently the

area was condemned to protect the health of the seven families living in the area. The state was not able to accept title to the land and the cleanup was delayed substantially while alternative methods were sought to solve the problem. This bill lists restrictions and states very narrow circumstances under which the state can subsequently dispose of the property so that cleanup can progress. This bill allows the state to assume that land and then sends it back to the original owner. In this case, the land went back to ARCO in Anaconda for the cleanup activities.

List of Testifying Proponents and What Group they Represent:

John North, Department of State Lands
Tom Eggert, Department of Health & Environmental Services.

List of Testifying Opponents and What Group They Represent:

None

Testimony:

John North, Department of State Lands, submitted written testimony. (Exhibit #1)

Tom Eggert, DHES, submitted written testimony. (Exhibit #2)

Questions From Committee Members:

Senator Jenkins asked about the amendment on page 3, line 15 "and federal land grants". Since the school trust fund is all federal money, would the government be able to sell the land?

John North said that the language referred to here is in the title of the bill only and the title has no substantive effect. The new language in subsection 2 is limited solely to lands that are acquired for superfund. That would prevail and the statute as amended would not apply to school trust lands.

Senator Jensen hoped that measure would never be interpreted on the broad base that it is written.

John North said very few things are absolute certainties but he thinks bill could not be interpreted that broadly.

Bob Thompson thought one amendment that would address Senator Jenkins' concern would be to add at the end of

the title an amendment which simply says "add the word 'certain'" prior to federal on line 15. That would clarify that not all federal land grants are addressed with the amendment.

Senator Keating said an amendment should be drafted for the committee to examine.

Senator Eck asked if state accepts the land and then gets rid of it, does the state end up with any liability?

Mr. Eggert said the state doesn't have any liability. The department did substantive legal research before originally agreeing to accept this property from the EPA.

Senator Keating understood that the land the state accepted from EPA is superfund land, and under other statutes, the Department of Health and Environmental Sciences (DHES) can determine the violator of the Hazardous Waste Act and the cause of the hazardous waste. The state can repair it and bill the violator or it can make the violator reclaim the land.

Tom Eggert explained under the superfund program, the DHES can order the responsible parties to clean up the land. The department can take them to court and sue them to clean up the land or it can clean up land itselves and bill the responsible parties. This would enable private property to be transferred to the responsible party which in this case was the Atlantic Richfield Company.

Senator Van Valkenburg wondered if the state was liable with regard to hazardous waste of such land based on present federal statutes regarding Superfund.

Tom Eggert said "yes," under federal law.

Senator Van Valkenburg's concern was that federal statutory law could be changed any time Congress decides and wants to change the law. The law could be interpreted by federal courts including the U.S. Supreme Court to be unconstitutional or in other ways to make it not effective. If something like that happens, then this whole business of the state not being liable disappears unless there is something in the transfer of title of this land that voids the liability of the state of Montana in the event that present federal statutory laws ever change.

Tom Eggert replied that what DHES is requesting here

doesn't place any mandatory duty on the state. Should federal law be changed or a few federal court cases come down that would somehow suggest the state would be liable in such a transfer, the state would not accept the property even though the state now has the legal ability to do so.

Senator Van Valkenburg was concerned that the state might already have it and if this changes, for whatever reasons, somebody may look at the State of Montana as a deep pocket.

Tom Eggert said the the state would never become the final depository of property as the department would only act as an intermediary. DHES doesn't want to hold contaminated property because it would not be in the state's best interest. All DHES is doing is acting as an intermediary allowing property to be passed through to parties that are responsible for the contamination.

Representative Brown commented that the bill puts the state in an intermediary role, as it would be a very quick transfer. The state won't hold the property for any length of time. The difficulty with the Superfund law is that you can't do the clean up without the transfer to the state.

Senator Jenkins asked if the federal government condemns the land why can't it turn it over to the other party instead of involving the state?

Senator Brown said that question was asked of EPA and the Department of Justice. They provided the legislature with statutory rationale. The federal government is unable to transfer land directly to private persons, corporations, or partnerships.

Senator Keating asked if the USA is precluded from assigning or transferring property directly to a citizen.

Tom Eggert said that was correct.

Closing by Sponsor: Representative Brown closed by mentioning on the last line on the fourth page, the effective date would to be on passage and approval.

DISPOSITION OF HB 362

Discussion: Hearing was closed on HB 362

HEARING ON HB 133

Presentation and Opening Statement by Sponsor:
Representative Harriet Hayne, District #10, submitted opening statement. (Exhibit #3)

List of Testifying Proponents and What Group they Represent:

Janelle Fallon, Montana Petroleum Association
Doug Abelin, Montana Oil and Gas
Gary Willis, Montana Power Company
John North, Department of State Lands

List of Testifying Opponents and What Group They Represent:

None

Testimony:

John North, DSL, submitted written testimony. (Exhibit 5)

Janelle Fallon, Montana Petroleum Assn., submitted written testimony from Jack E. King, President, Montana Petroleum Association. (Exhibit 4)

Doug Abelin, Montana Oil and Gas Association, stated there are a lot of small oil wells in his area and he feels that what little this bill does would be a large benefit.

Gary Willis, Montana Power Company, stated the company leases both state leases and fee leases which are the landowner leases. The state leases pay rental in addition to royalty, which isn't usually the case with fee leases, so it supports the bill.

John North, DSL, submitted written testimony. (Exhibit 5)

Questions From Committee Members: Senator Tveit wondered if this bill passes, and regarding delay rentals, would DSL come in and assess damages instead of paying rental on the property that is disturbed.

John North said that particular provision would require the delayed drilling penalty but the actual elimination of rentals follows the lease that is producing. The state uses those payments in lieu of damage payments.

Closing by Sponsor: Representative Hayne closed by saying new production in the oil and gas fields on state lands is the main purpose of this bill. The petroleum industry in Montana paid nearly a 108 million dollars in state taxes, local taxes, and royalties in 1987. From the perspective of local government, one 50 barrel

per day oil well will generate as much local property tax as 6,240 cows, 7,900 grazing acres or 11,773 acres of tillable land. The oil well is a very good way to raise income for local government.

## DISPOSITION OF HB 133

Discussion: Hearing is closed.

## HEARING ON HB 172

Presentation and Opening Statement by Sponsor:

Representative Bernie Swift, District #64, introduced this bill to solve some of the "spiking " problems the logging industry has had since 1985. Spiking means placing metal or some other hard object into trees that would damage saws or manufacturing equipment. Representative Swift recalled a situation in the West Fork District where at least a dozen or more trees were "spiked". It is very difficult to find when or where this occurs. At the time this particular incident occurred, people in lumber jobs were being vandalized by having nails jammed in their tires. In 1986 on a sale in the Flathead National forest, the industry had to adjust the contract areas that were spiked and go in with metal detectors before processing those trees into logs. The cost was twenty to thirty thousand dollars. From 1986 into 1988 Champion International experienced spiked trees. In addition, dirt has been placed in crank cases in spouts of heavy equipment, dozers, etc.

The most recent incident was in November 1988 when five dozers crank cases were drained. The company lost three engines that amounted to twenty-five or thirty thousand dollars. Now that in itself is damaging and costly but the other part of it is when spiked logs are processed and they hit a band saw 40 or 50 feet long with teeth. When spiked trees hit a saw, it is just like a bullet exploding and that can cause serious injuries to workers. Representative Swift wants to deter this activity.

List of Testifying Proponents and What Group they Represent:

Tucker Hill, Champion International
Bud Clinch, Montana Loggers Association
Jim Jensen, Montana Environmental Information Center
Don Allen, Montana Wood Products Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Tucker Hill said that spiking trees is an unfortunate situation. He thinks the vandals are making political and terrorist statements. When a piece of metal is hit by a saw it goes in every direction. Champion International thinks this bill is necessary.

Bud Clinch represents about 600 family-owned logging operations scattered throughout Montana. Mr. Clinch is aware of the many dangers associated with the logging and lumbering process. Workers, whether they are in the woods or in the mill, must make observations and react constantly to safeguard their personal safety. He is also aware of the increasing controversy over allocation and utilization of our natural resources. Activities such as spiking trees are intended to prevent timber harvest by presenting a dangerous condition when these trees are milled or processed. When foreign objects are hit by band saws, chippers and planers not only is lumber recovery minimized and expensive equipment damaged but potentially lethal fragments are hurled out. Financial losses associated with damaged timber, damaged equipment, and down time is insignificant compared to the potential for personal injury. Mr. Clinch is concerned for the senseless increased hazards to workers. While the incidents of such sabotage have been minimal, any measure serving as a deterrent to such activities would be worthwhile.

Jim Jensen stated that any excuse is unacceptable when a few people who call themselves environmentalists engage in spiking tress and destroying personal and real property while endangering lives. The EIC does not support it, never has, and never will.

Don Allen supports this legislation for all the reasons outlined. He was pleased that Mr. Jensen chose to speak because it is not the mainstream people that have many times been blamed for this activity. There are just a few who call have a total disregard for the safety and human values of the people involved in this industry. Mr. Allen believes it is necessary to do something to discourage this sort of behavior in the future.

Questions from Committee Members:

Senator Yellowtail wondered if spiking wasn't already

illegal.

Senator Van Valkenburg doesn't think this bill is necessary. He thinks existing law in the bill takes care of the situation right now.

Senator Yellowtail stated that spiking is already illegal under the terms of the criminal mischief statute.

Representative Swift did not question that spiking could be prosecuted under the language set forth in the codes. He thinks that this is such a vicious, careless action that it needs to be focused on. He thinks, stating it clearly in the codes would have some deterring effect. He won't argue the legal question at all.

Senator Yellowtail asked Representative Swift was aware of anyone brought to court for spiking.

Representative Swift said there is a law in California where he got the basic legal wording for the spiking bill. California has a mandatory sentence for anyone involved in this kind of activity.

Senator Weeding said Representative Swift spoke about contaminating and draining the oil in equipment. Would this bill help in cases when the oil was drained?

Representative Swift said the amendment is strictly zeroed in on "tree spiking."

Senator Yellowtail asked if it was reasonable to expect that someone could be found guilty of spiking unless he was found in the act.

Representative Swift said he couldn't answer that question, but wants it made clear to anyone spiking trees that the courts can prosecute them.

Senator Van Valkenburg asked Representative Swift if he wanted this bill to have the effect of reducing the maximum penalty that somebody could suffer from 10 years in prison down to 6 months in the county jail.

Representative Swift said he didn't want anybody to be let off.

Senator Van Valkenburg said last session a law called criminal endangerment was passed that a lot of county attorneys are using now that deals with this very situation. What it says is that a person who knowingly engaged in conduct that creates a substantial risk of

death or serious bodily injury to another commits the offense of criminal endangerment which is punishable by 10 years in prison and/or $50,000 fine. If we pass HB 172 that specifically treats this kind of conduct as criminal mischief, then Senator VanValkenburg suspects the courts will say the legislature never intended to treat putting spikes in trees as criminal endangerment because it put it in the criminal mischief part of the code.

Representative Swift said he wants to prosecute the people that are engaged in this activity. He thinks both of these codes would apply.

Senator VanValkenburg's concern is that sometimes people figure that a law should be put on the books when, in fact, there is already a law. Since no one has been caught and no one has been prosecuted, just because California did it doesn't mean Montana has to.

Representative Swift said Montana does not have to do it because California did it. He said the problem is in Montana and he wants some attention directed to it.

Senator Keating asked if California's penalties were closer to the criminal endangerment penalties of Montana rather than criminal mischief.

Representative Swift responded he did not know.

Senator Weeding asked if this was really a serious problem in the Missoula area and was it on the upswing.

Representative Swift said there was one incident in 1985 and in checking with the forest service office in Missoula, he found out there were two others plus the one he mentioned specifically in the Flathead area. He didn't go to Plum Creek or all the other private operators. In the period from 1987 to November, 1988, Champion International had at least a half dozen incidents where they lost equipment or had to spend more time in the trees using metal detectors.

Senator Weeding wondered how trees were spiked so that the spike couldn't be seen.

Representative Swift said vandals would select Ponderosa Pine or Larch, which have a bark that is an inch to an inch and a half thick and bury the heads of ten penny spikes or drive small railroad spikes into the trees. The vandals don't always put the spikes in the same place in the trees. They climb the trees and put them

in unsuspected places.

Senator Keating thought it would be a good idea for Representative Swift to meet with his people and decide if this bill should be withdrawn and not acted on. He said this bill has a lot of support but it's going to be difficult for legislators to say that on a technicality, they decided not to pass the bill. Senator Keating doesn't think the bill should be passed if it is not in the industry's best interest.

Representative Swift said he would leave that up to the committee.

Bob Thompson described a technical flaw in the title of the bill, which Representative Swift agreed needs an amendment.

Closing by Sponsor:

Representative Swift closed by thanking the committee.

EXECUTIVE ACTION

HB 362 On HB 362, Senator Keating asked Bob Thompson to describe a possible technical amendment.

Bob Thompson said page 1, line 7 should say "dispose of certain lands."

Senator Keating said the committee is amending the title and section 77-2-302.

Senator Jenkins moved the amendment.

Senator Keating said it has been moved that page 3, line 14, be amended following the word "and," adding the word "certain." Motion carried.

Senator VanValkenburg expressed a reservation about the liability the state might endure by virtue of transferring the title. He doesn't know if there is any cure except that there has to be good people using good judgment. If Congress changes the superfund law, Montana might get stuck holding some of the land. He doesn't understand how the transfer goes immediately to the private party.

Senator Jenkins understands the agreement is made before the state assumes the title.

Senator Stimatz said in regard to the ARCO smelter situation

the deeds were signed and handed across the table at the same time.

Senator Eck said in regard to the problems of the superfund sites, is there a possibility of someone buying the land with a written agreement and not accepting the liability.

Senator Stimatz said that liability would be attached to the land and somebody has to clean it up. You are fool if you buy the land from somebody who says he is the responsible party because you'll learn very quickly they slipped out and you're it.

Senator Eck asked if that meant that Dennis Washington has all the liability in this situation.

Senator Stimatz said Denny Washington has some liability but who is responsible for how much will take the EPA 15 years to decide.

Senator Eck wondered if the state was liable for cleanup if the land was only owned by the state for 10 minutes.

Senator Stimatz said no, but he didn't know what the procedures are.

Senator Weeding wondered if the State of Montana was just being a conduit in this case.

Senator Stimatz said the transaction would have to take place in a short length of time. The Mill Creek transaction was instantaneous.

Senator Van Valkenburg said he is going to vote for this bill but he wanted to have this discussion on the floor of the Senate.

Senator Van Valkenburg moved that HB 362 be passed as amended. Motion carried.

HB 133 Senator Keating wants to let the wood products people sit on their bill for a couple of days to think about it. Senator Keating said he will hold off on HB 172 until another meeting.

Senator Keating said there was no opposition to HB 133 which was Representative Haynes bill.

Senator Jenkins moved HB 133 be concurred. Motion carried unanimously.

Adjournment At: 2:10 p.m.

Thomas F. Keating

THOMAS F. KEATING, Chairman

TFK/hmc

senmin.303

ROLL CALL

NATURAL RESOURCES COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 2-3-89

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| Chairman Tom Keating | ✓ | | |
| Vice-Chairman Larry Tveit | ✓ | | |
| Senator Fred VanValkenburg | ✓ | | |
| Senator Loren Jenkins | ✓ | | |
| Senator Darryl Meyer | | ✓ | |
| Senator Lawrence Stimatz | ✓ | | |
| Senator Pete Story | ✓ | | |
| Senator Bill Yellowtail | ✓ | | |
| Senator Elmer Severson | ✓ | | |
| Senator Cecil Weeding | ✓ | | |
| Senator Dorothy Eck | ✓ | | |
| Senator Jerry Noble | ✓ | | |
| | | | |
| | | | |
| | | | |

Each day attach to minutes.

# SENATE STANDING COMMITTEE REPORT

March 3, 1989

MR. PRESIDENT:
We, your committee on Natural Resources, having had under consideration HB 362 (third reading copy -- blue), respectfully report that HB 362 be amended and as so amended be concurred in:

Sponsor: Brown, D. (Jenkins)

1. Page 3, line 14.
Following: "and"
Insert: "certain"

**AND AS AMENDED BE CONCURRED IN**

Signed: Thomas F. Keating
Thomas F. Keating, Chairman

3-3-89

scrhb362.303

# SENATE STANDING COMMITTEE REPORT

March 3, 1989

MR. PRESIDENT:

We, your committee on Natural Resources, having had under consideration HB 133 (third reading copy -- blue), respectfully report that HB 133 be concurred in.

Sponsor: Hayne (Keating)

**BE CONCURRED IN**

Signed: _____

Thomas F. Keating, Chairman

3-3-89
4:00 pm

scrhb133.303

Testimony of John F. North
Department of State Lands
Senate Natural Resources Committee
House Bill 362

Section 77-1-211, MCA, currently prohibits the state from accepting land from the United States if the land was acquired through condemnation procedures unless the Legislature authorizes the state to obtain the property. The requirements of this section became an issue recently when the EPA and the state decided the only way to protect the health of seven families living in Mill Creek was to acquire their property so that clean-up could begin. The Department of Health does not currently have condemnation authority, so the federal government condemned the property under the Federal Superfund Act. In turn, the federal government stated that the state must accept title to the lands which were condemned. However, the state was unable to accept title to this property because of this statute. House Bill 362 would allow the state, without Legislative authorization, to accept title to lands that have been condemned by the federal government under the Superfund Act.

In addition, the bill would amend section 77-2-302, MCA, to allow the state to subsequently dispose of the property in accordance with Superfund procedures.

The Department recommends approval of this bill.

Tom Eggert

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
2-2-89
BILL NO. HB 362

# DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

STAN STEPHENS, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 59620

## DHES TESTIMONY ON HOUSE BILL NO. 362

**DSL and DHES Sponsored Bill**

The State of Montana and the Federal Emergency Management Agency (FEMA) recently cooperated in the relocation of seven families subject to continual exposure to hazardous substances in Mill Creek.

The community of Mill Creek was located downwind of Smelter Hill in Anaconda, and a decision was made that the only way these families could be adequately protected was for them to relocate. The Department of Health and Environmental Sciences does not have condemnation authority so FEMA would use its authority. However, MCA Section 77-1-211(2) prevents the State from accepting land condemned by the State without legislative approval. This bill would allow the State to accept, and subsequently to dispose of, land condemned because of the presence of hazardous substances.

It is not the intent of DHES to accept and retain any land which is contaminated with hazardous substances. The arrangement envisioned at the Mill Creek site would be a model for future reference. That arrangement foresaw FEMA condemning any property that the State and EPA decided must be acquired. FEMA would transfer that property to the State, and the State would immediately transfer that property to Atlantic Richfield Company, the party responsible for the cleanup.

The law, as it currently exists, does not presently allow such an exchange to occur. This bill would enable the State to participate in this type of arrangement.

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 3-3-89
BILL NO. HB # 133

Mr. Chairman, for the record I am Rep. Harriet Hayne, House District 10, most of Pondera County and part of Glacier County.

Mr. Chairman and members of the Committee, I bring you HB 133.

HB 133 is intended to deal with an area of state law in which Montana operates differently than other states, and in so doing, to improve revenues to education and state and local governments.

The purpose of state lands is to generate income for the schools. That is why the Enabling Act set up the permanent school trust fund and dedicated sections 16 and 36 of each survey township to that fund. As you may know, 95 per cent of royalties from state lands go to the constitutional permanent school trust and 95 percent of all rentals are divided among the schools, under Article X of the Montana Constitution.

The state owns more than six million acres in Montana, about 7 per cent of the state. One way it realizes income from these lands is to lease the underlying minerals.

Oil and gas leases on state minerals are sold at auction four times a year. The sale produces at least two forms of income for the state -- the bonus bid, and an annual rental. In FY 1987, bonus payments totaled $179,449. The annual rentals, of $1.50 per acre, totaled $2,315,606. The state realizes the most income when wells are successfully drilled and it receives a royalty of 13 per cent on oil and 12-1/2 per cent on gas. In FY 1987, royalties totaled $3,466,628.

An article in the Public Land Law Review, Volume 3, 1982, dealt with school trust lands and royalties. On the importance of royalties, it stated: "The royalty is the most important form of compensation, not only because it represents the most money, but also because it represents payment for the removal of the mineral."

State leasing activity and subsequent income to the trust have dropped significantly in recent years, and that is part of the reason that we are here. In the past five years, the number of acres under lease has declined 60%. Oil royalties have declined 56%, gas royalties 34%. Rentals have declined 59% and bonus bids are down a whopping 96%. The petroleum industry has also declined in the past three years, but not to this extent. For example, the price of oil has declined 40%, and production in Montana is down 22%.

Leasing of state minerals is an area in which it is important for Montana to become competitive with other states, and that is what this bill contemplates. We're not proposing to be better -- just to lease the way other states do.

Ex. #3
3-3-89
HB 133

The first change is to eliminate the rental on producing lands. Rental payments were originally established in oil and gas law to provide income to the lessor (the state, in this instance) until production is established and the lessor receives royalty income. In Montana, rentals have been charged on producing lands rather than compensation for surface damages. However, operators expect to pay for surface damages, reclaim the surface, and recompense the surface owner for land lost to production. Montana is the only state that charges rentals even when a royalty is being paid.

A partial refund of the drilling penalty is also proposed. The penalty is currently required even if the lessee is in the process of drilling. In many instances, it is less expensive for the lessee to drop and rebid the lease rather than pay the delay drilling penalty starting in the sixth year of the lease. The amendment worked out between Department of State Lands and industry provides for a refund of the penalty during the year in which a well is drilled.

The third proposal is to allow the lessee to drop a lease if it is not economic to drill an offset well. Under current statute, the lessee is forced either to drill an offset well or pay a compensatory royalty. This puts the state in the position of making economic decisions, rather than the operator.

Even in a downturn, the taxes paid by the petroleum industry in Montana are significant -- nearly $108 million in state and local taxes and royalties last year. Looked at from the perspective of local governments, one 50-barrel oil well will generate as much local property tax as 6240 cows; 79,047 grazing acres or 11,773 acres of tillable land. And about 60% of the local property taxes on oil and gas support the local schools.

The same Public Land Law Review article quoted earlier said, "The only goal of state level management is the production of sustained income for the maintenance of the public schools."

Some change is necessary to halt the decline in state leasing, for the protection of the schools' income. HB 133 will help accomplish that.

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 3-3-89
BILL NO. HB 133

TO: SENATE NATURAL RESOURCES COMMITTEE

FROM: JACK E. KING, LANDMAN
HANCOCK ENTERPRISES
Suite 500, Petroleum Building
Billings, MT 59101 252-0576
President, Montana Petroleum Association

RE: HB 133 STATE OIL & GAS LEASING BILL

The regulations for oil and gas leasing on State lands has several onerous features which this Bill addresses. The intent of this Bill is to remove glaring inconsistencies and make our regulations more consistent with our neighboring states and with common industry practice.

After the 5th year of a State lease the delay drilling penalty in 77-3-424 calls for an additional $1.25 per acre per year rental penalty on top of the existing $1.50 per acre per year rental, regardless of drilling activity on the lease. This "penalty" is unique among standard industry leases and among counterpart Rocky Mountain states. Therefore, we recommend the deletion of 77-3-424 "the delay drilling penalty".

Section 1: The change at the end of the Section (page 2, lines 7-9) frees producers from having to pay rentals and royalties. Common lease language dictates that once you establish production the lessee pays royalties, in lieu of rentals.

Section 3: Currently, if a non-producing State lease offsets a producing well, the State, as lessor, can demand that an operator pay compensatory royalties (royalties based upon estimated drainage) or require the operator to drill a test well. The new language affords the lessee the chance to drop the lease, if the lessee does not feel that the tract has sufficient merit to warrant further activity. There are a variety of reasons the lessee may want to drop the lease, the most obvious being they may not have the capital or desire to drill a test well or pay compensatory royalties. This clause specifically addresses unusual circumstances whereby the State would feel a tract is prospective and the lessee feels that the tract is not economic, at that particular time for that particular operator. If released by the lessee the State would put the tract back up for bid, at one of their sales, and receive the added benefit of additional bonus income with the stipulation of drilling a well or paying compensatory royalties.

Section 4. The deletion of the language "in addition to the rentals as hereinbefore provided" (page 4, line 6), addresses the same questions as Section 1, the elimination of paying royalty and rentals. As this type of language is unique to our State, it is yet another example thrown up to those of us living in Montana of" those guys (State of Montana) are out to get us".

Ex. #4
3-3-89
HB 133



The changes that are made in this Bill are consistent with other Rocky Mountain states, and lends State Lands the benefit of being competitive with other states. As things currently stand, our regulations send another negative message to operators in this State, thus State lands are the last leases purchased and first leases dropped on a project.

SENATE NATURAL RESOURCES
EXHIBIT NO. 5
DATE 3-3-89
BILL NO. HB 133

Testimony of John F. North
Department of State Lands
Senate Natural Resources Committee
March 3, 1989

The Department of State Lands supports HB 133. Current law provides that a state oil and gas lessee must continue to pay rentals even though the lease is producing and the lessee is paying royalties. Most private and federal leases and leases of other states provide that the rentals are credited against royalties. Section 1 of HB 133 would insert a similar provision in state leases.

Those rentals have in the past been charged in lieu of surface damage payment to the state. The state will now begin to assess surface damages. However, if the lessee properly reclaims the site, this process will be less expensive to the lessee. Thus, it is likely that the state's surface will be better reclaimed and the lessee's costs will decrease.

Section 3 merely places in law the current practice of the Board of Land Commissioners to allow a state lessee to drop a lease in lieu of drilling an offset well or paying compensatory royalties if drainage of the state tract from a well off the state tract is occurring or is about to occur. Of course, the lessee is required to reimburse the state for any drainage that has occurred before cancellation as a result of the lessee's negligence.

Finally, Section 5 affects what are known as delay drilling penalties, which are additional rentals that a lessee must pay for each of the second five years of the ten year lease term on which he does not drill a well or operate an existing well. These penalties are payable annually in advance. Section 5 merely provides that this advance payment is refundable for any year in which the lessee drills a well.

In summary, HB 133 would make the state lease more attractive to potential lessees, may thereby increase lease activity on trust lands, and would better protect trust lands. For these reasons, the Department supports HB 133.

DATE 3-FEB-89

COMMITTEE ON NATURAL RESOURCES

VISITORS' REGISTER

| NAME | REPRESENTING | BILL # | Check One: Support | Check One: Oppose |
|---|---|---|---|---|
| JEROME ANDERSON | SHELL WESTERN E&P | HB 133 | ✓ | |
| Janelle Fallan | MT Petroleum | HB133 | ✓ | |
| Rod Sandahl | State Lands | HB133 | X | |
| Jim Jensen | MEIC | HB172 | ✓ | |
| Pam ADELIN | MONTANA OIL & GAS | HB133 | ✓ | |
| Harold Ade | CENEX | HB133 | ✓ | |
| TUCKER HILL | Champion Int'L | HB172 | ✓ | |
| JACK HAYNE | SELF | HB133 | ✓ | |
| Don Allen | MT. Wood Products Assn | HB 172 | ✓ | |
| John North | Dept. of State Lands | HB133 | ✓ | |
| BUD CLINCH | MONTANA LOGGING | HB172 | ✓ | |

(Please leave prepared statement with Secretary.)