MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

March 21, 1977

The forty-eighth meeting of the Taxation Committee was called to order on the above date in Room 415 of the State Capitol Building by Chairman Mathers at 8:10 a.m.

ROLL CALL: Roll call found Sens. Brown, Roskie and Turnage absent, excused.

The following witnesses were present:

Dean Zinnecker	Mont. Assoc. of Counties
Lawrence Weinberg	Legis. Council
Les Hirsch	Legislator, Dist. 52
Stephen M. Williams	Anaconda Co.
Lloyd Crippen	"
Gene Phillips	ASARCO, Pac. Power & Lights
Gorham E. Swanberg	Mont. R.R. Assoc.
Bob Gannon	Mont. Power, Western Energy
Dave Schaenen	Mont. Pet. Assoc.
Don Allen	Mont. Pet. Assoc.
Jim Mockler	Mont. Coal Council
Elmer Gabel	Self
Mrs. Elmer Gabel	
Ward Shanahan	Dryer Bros., Inc.
Mons Teigen	Mont. Stockgrowers & Woolgrowers
Tom Williams	Rancher
Neil J. Lynch	Coal Counties

CONSIDERATION OF HOUSE BILL 722: Rep. Hirsch presented this bill and said when land is sold, often all, or a portion, of the mineral interest is reserved. As the years go by these rights become fractionalized, often becoming worthless. Sen Towe had a bill that tried to get at the same problem with his SB211, and he said his bill is an alternative method for resolving this problem. Rep. Hirsch continued saying in this bill they provide a 3-year recording of the mineral interest. They then provide for another 3-year waiting period and the surface owner can apply for a quiet title, then make a search for the holder of the mineral rights. The surface owner could then take title to the interest if the holder cannot be located. He stated Mr. Weinberg would explain the amendments that had been prepared for the bill.

Mr. Weinberg introduced Exh. #1, 2 and 3, and began explaining them, noting the choice for the committee in the 3 exhibits, attached. He referred to a Michigan statute that provided for procedure of abandonment and said he believed there would be major problems with this which would necessarily result in a lower court decision. He said the bill also provides a 25-year period if inaction would result in a presumption of abandonment for the purposes of bring a quiet title action. There is a 3-year grace period and the owner can record with the Clerk and Recorder thus

preserving rights for another 25 years. The legislature would restore all minerals to the scope of the act, delete the provisions on automatic abandonment to tie the bill a bit better to escheated estate laws and tie the type of minerals which the state might wish to include.

Mr. Shanahan said he was in support of the concept of the bill but with the permission of Chairman Mathers and the committee, he wished to make a statement in regard to both this bill and SB211, a bill dealing also with the problem of fractionalized mineral rights. He distributed Exh. #4, which contained numerous amendments to the bill. He stated he strenuously opposed SB211 because the taxation of minerals in place creates some tremendous problems. He said he didn't believe the mineral right of entry tax should be repealed and this substituted in its place. He had objections to some of the terms used in SB211, specifying use of words "or royalties" as the bill covers both mineral interests and royalties and he said the two are much different. He referred to legal action that had been taken in the Williston Basin some years ago when mineral interests had been presumed abandoned and people came in 10 to 15 years later looking for their mineral rights and encountered the resultant complications. He said he favored the present quiet title action. He would like to see the effect delayed until 1980 in order that the Legislature might take another look at the legislation after 2 years to see its effect.

The Chairman asked for other proponents of the bill and there being none, permitted opponents to testify. Mr. Williams said he had not had an opportunity to look at the amendments of Rep. Hirsch, but saw problems in the term 'minerals' as used in the bill. He joined with Mr. Shanahan in his comments in regard to SB211. He said he was not in opposition to the present concept of HB722, but would reserve further comment until he had seen the proposed amendments. Mr. Phillips also said he had not seen the amendments either, but stated his opposition to SB211. He said it might be 25 years before coal could be mined in the eastern part of the state, and this bill with its additional tax, would tax it doubly, even before it could be mined.

Mr. Swanberg states his opposition to HB722, saying we are looking at a problem that does not need to be solved immediately. He said the problems have been around the state for some time and he felt it is a matter that should be studied. He said also that because of the number of amendments that have been offered he would want to look at them more closely. He said that between SB211 and HB722, he preferred this bill. He said anyone who owns property had a responsibility to watch over it, but since there has been no tax on sub-surface minerals such holders have not had to watch over these interests and perhaps this made the (referred-to) Michigan case unconstitutional. He felt that a lot of study should be made on the problem so more protection is written in the law for the sub-surface owner. Mr. Gannon said he concurred with the comments of Mr. Phillips and disagreed with SB211. He thought HB722 had merit but opposed it in its present form.

Mr. Allen said he too opposed SB211 and had some problems with HB722 as well. He said the industry would be happy to furnish people to assist with a study such as had been mentioned. Mr. Schaenen agreed there is a problem in the fractionalization of dormant mineral interests but, he said, this problem does not hold up exploration in very many cases. He questioned the constitutionality of taking a landowner's mineral interests away. He said this cannot be done without due process, and distributed Exh. #5, an opinion of the State of Michigan. He thought SB211 would be almost impossible to handle because of the administrative problems finding out if the minerals were settled or not.

Mr. Mockler wished to go on record as favoring HB722 both in its concept and its workability over SB211. He is opposed to SB211 for the reasons stated, though he does not really favor HB722 by itself.

The Chairman called for other proponents or opponents and following, permitted Rep. Hirsch to close. He said he couldn't rebut the mechanical problems that might exist in the bill but he said they did work on it and had what they thought were the proper mechanics. He said if there is still time they would do their best to do a better job with the bill as he felt there is need to clear up the problem. He said the industry can still get leases to explore for minerals but he said as time goes on the problem of establishing mineral rights gets worse as these rights get fractionalized even moreso. He felt there was a need to address the problem.

Chairman Mathers then stated there was a short time for questions from the committee. He also asked that Mr. Weinberg put the referred-to amendments into the bill so the committee can have a better understanding of their significance to the bill.

Following his instruction, the hearing on SB211 and HB722 was closed.

CONSIDERATION OF HOUSE BILL 553: Rep. Driscoll distributed Exh. #6, and said the bill would exempt one-half of net proceeds tax, and all the severance tax for the first 3 years of production from new gas wells 5,000 feet or more deep. He referred to differencein drilling costs in the state and said he believed this tax incentive would induce drilling in the state. The price of gas is expected to go up so the incentive should become even greater. He said the bill was introduced by the Governor's office to help solve the energy problems in the state.

Mr. Allen said the bill as originally written provided no incentive, however it had been amended to provide some changes that would help. He introduced Exh. #7 and said there will be new wells drilled and that there is potential that should be explored. He thought this legislation would show that Montana had a desire to do something to encourage more drilling and would be in the best interests of the state.

Chairman Mathers asked for other proponents of the bill and there being none, called for opponents. Mr. Lynch spoke next, saying counties are worried that such legislation is chopping away at the net proceeds. He said the next Legislature may exempt wells at 3 or perhaps even at 2,000 feet and the revenue loss has to come from somewhere, thus it would be the property owners who would pick up the lost revenue. He continued with his testimony by showing a chart using figures he obtained from the Dept. of Revenue, indicating production of natural gas has decreased in the state by only about 25% in the last 5 years, whereas the price has increased by approximately 900%. He asked then, what more incentive do you need for that kind of money for that same amount of gas. He didn't believe Montana is as bad as one of the witnesses stated, insofar as taxing is concerned, rather, he thoughtthe state was about average. He was only worred about net proceeds, as there are at present about 6 taxes on natural gas and he asked why pick on net proceeds which is so important to the counties.

Rep. Driscoll made his closing remarks at this point and had figures that differed with those of Mr. Lynch. He said most of the wells that are producing are at less than 5,000 feet, and he felt that though this was a small incentive, he thought it wise to establish it in order to have a priority for natural gas exploration.

Due to previous lengthytestimony on HB722, the Chairman was forced to conclude hearing on this bill.

CONSIDERATION OF HOUSE BILL 434: Due to press of time, this bill was not formally presented but Mr. Williams, from out of town, was invited to give his testimony. He stated his land was mostly sagebrush when he first purchasedit and undeveloped, with a land value at a bare minimum. Now, after sprinkler irrigation, the land has increased in value by almost 2000%. The land will now generate more taxes in the county and state, and if it weren't for the sprinkler irrigation system the land would still be sagebrush. He said he would support any legislation that would help decrease the taxes on such systems.

Mr. Williams was informed that there was a bill now in the House that eliminated taxes on the sprinkler systems and was awaiting action by that body.

Following this brief discussion, the meeting adjourned.

W Mathers

WILLIAM MATHERS CHAIRMAN

ROLL CALL

SENATE TAXATION COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 3/21/77

NAME	PRESENT	ABSENT	EXCUSED
SEN. WATT	✓		
SEN. BROWN	excused		
SEN. GOODOVER	✓		
SEN. HEALY	✓		
SEN. MANNING	✓		
SEN. NORMAN	✓		
SEN. ROSKIE	excused		
SEN. TOWE	✓		
SEN. TURNAGE	excused		
CHAIRMAN MATHERS	✓		

HOUSE

SENATE TAXATION COMMITTEE

BILL 434, 553, 722 VISITORS' REGISTER DATE 3/21/77

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOSE
Dean Zinnecker	Mt. Assn of Cos.	434 553	—	—
Lawrence Waring	Legis. Council	722		
Lee Heinish	Legislator Dist 52	722		
STEPHEN M. WILLIAMS	ANACONDA CO.	722		
Lloyd Crippen	"	"		—
Gene Phillips	Pacific Power & Light and ASARCO	"		X
Gorham E. Swanberg	MT. R.R. Assoc.	722		X
Bob Hannon	Mont Power - Western Energy	722		X
Dave Schaeman	Montana Pet. Assoc.	722		X
Don Allen	Montana Petroleum Assoc.	722		X
"	"	553	X	
Jim Mockler	Mont. Coal Council	722		
ELMER GABEL		722		
MRS. ELMER GABEL		722		
WARD SHANAHAN	DREYER BROS INC	722	AMEND	
Mens Tegen	Mt. Stockgrowers & Woolgrowers	434	X	
Tom Williams	RANCHER	434	X	

Exh. #1

HOUSE BILL NO. 722

PROPOSED AMENDMENTS

1. Amend title, lines 9 through 11.
Following: PRODUCTION"
Strike: "THE VESTING OF TITLE OF ABANDONED INTERESTS IN THE SURFACE OWNER,"

2. Amend title, line 13.
Following: "NOTICE"
Insert: "; AMENDING SECTION 91-502, R.C.M. 1947"

3. Amend page 1, section 1, line 20.
Following: "~~minerals~~"
Insert: ", or other minerals"

4. Amend page 2, section 3, line 8.
Following: "interests."
Strike: "(1)"

5. Amend page 2, section 3, line 15.
Following: "abandoned"
Insert: "for purposes of instituting a quiet title action under [section 6]"

6. Amend page 2, section 3, line 16.
Following: line 15
Strike: "(a)"
Insert: "(1)"

7. Amend page 2, section 3, line 20.
Following: line 19
Strike: "(b)"
Insert: "(2)"

8. Amend page 2, section 3, line 22.
Following: line 21
Strike: "(i)"
Insert: "(a)"

9. Amend page 2, section 3, line 23.
Following: line 22
Strike: "(ii)"
Insert: "(b)"

10. Amend page 2, section 3, line 25.
Following: line 24
Strike: "(iii)"
Insert: "(c)"

11. Amend page 3, section 3, line 2.
Following: line 1
Strike: "(iv)"
Insert: "(d)"

Exh 4

NAME WARD A. SHANAHAN Bill No. HB 722

ADDRESS 301 First Nat'l Bank Bldg DATE 3-21-77

WHOM DO YOU REPRESENT DREYER BROS INC. subsid. Burlington Northern

SUPPORT OPPOSE AMEND X X X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: Amend House Bill 722 as follows:

1. Page 1 line 6 Amend the Title by adding the words "or royalty" after the word "mineral"

2. Page 1 line 19 restore the words "or other minerals"

3. Page 2 line 1 by adding the words " or royalty" after the word "mineral"

4. Page 2 line 2 strike the words "whether royalty"

5. Page 2 line 9 by adding the words "or royalty" after the word "mineral"

6. Page 2 line 11 by striking the words "mortgaged or"

7. Page 2 line 12 by adding the words "or subject to a valid mortgage" at the beginning of the sentence.

8. Page 2 lines 12 and 13 by striking the words " in the office of the county clerk and recorder of the county where the land is located" and inserting in lieu thereof the words: "in accordance with law"

9. Page 2 line 20 by adding the words "or royalty" after the word "mineral"

10. Page 2 line 24 strike the words " mortgage or" and after the word " transfer" insert the words "satisfaction or release by operation of law, of a valid mrtgage."

11. Page 3 line 5 by adding the words "or royalty" after the word "mineral"

12. Page 3 line 9 by adding the words "or royalty" after the word "mineral"

13. Page 3 line 13, line 15 and line 16 stike the word " mineral"

14. Page 3 line 19 strike the words "a mineral" and insert in lieu thereof the word "an"

15. Page 3 line 25 stike the word " mineral"

16. Page 4 line 11 strike the word "mineral"

17. Page 4 lines 17 through 23 strike all language.

#5

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MONTMORENCY

JOHN E. BICKEL, ETTA MAE BICKEL,
GERRY OIL COMPANY, a Delaware Corp.,
SKELLY OIL COMPANY, a Delaware Corp.,
TOTAL LEONARD, INC., a Michigan Corp.,
THE DOW CHEMICAL COMPANY, a Delaware Corp.,
SAXON OIL COMPANY, a Texas Corporation,

Plaintiffs

vs.

JAMES I. FAIRCHILD, WINIFRED E. FAIRCHILD,
CARL M. WORTH, DORIS W. WORTH,
SHELL OIL COMPANY, a Delaware Corp.,
DELORES M. COOK d/b/a SOUTHWESTERN OIL
COMPANY,

Defendants

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JOSEPH P. SWALLOW
Circuit Judge
(P-21187)

File No. 75-000877-CH

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521 Seymour Avenue
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Attorney for Defendants Delores M.
Cook, d/b/a Southwestern Oil Co, and
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First State Bank Bldg.
Greenville, MI 48838

JOHN H. NORRIS (P18340)
Attorney for Defendants
Carl M. Worth, Doris W. Worth (Deceased)
and Shell Oil Company
1732 Buhl Building
Detroit, MI 48226

* OPINION OF THE COURT *

O P I N I O N

This action involves a dispute as to the ownership of oil and gas rights in certain lands located in this county.

Plaintiffs claim title by operation of statute, namely; the Dormant Mineral Act, 1963 PA 43 (effective September MCLA 554.291 et seq.; MSA 26.1163 et seq.

Defendants claim title by reservation of same, being made by their predecessors in title.

Vested title in defendants, or those claiming thereunder, is conceded; plaintiffs' claim is one of superior title by operation of statute, supra.

Both parties concede that no factual dispute exists and each has moved for summary judgment to quiet title. Thus, the sole question for determination, requested of this Court, is constitutionality of the Act, supra.

The Act in question, supra, so far as material, provi that any person holding any interest in oil or gas in any land, other than the surface owner, shall be deemed to have abandoned them, if during any twenty (20) year period, they, relative to said lands, fail to:

1) Secure a drilling permit; or,

2) Sell, lease, mortgage or transfer (said rights) by recorded instrument, in absence of a drilling permit; or,

3) Actually produce or withdraw gas or oil; or,

4) Actually use such interest in underground gas storage operations; or,

5) Record a notice of interest claimed with the Register of Deeds in the County wherein the the land is located.

A three-year grace period was provided by the Act, effective September 3, 1963, for any person so affected to perform any of the above actions and thereby protect their

interest from abandonment for another twenty-year period. 1963 PA 43, § 1; MCLA 554.291; MSA 26.1163. In all other respects, the Act, supra, provides for retrospective application.

Defendants, who are or claim under the holders of record title as to the subject oil and gas rights, concede they have failed to perform any of the required actions.

Further, the Act is self-executing, insomuch as it provides that upon the oil and gas interest being deemed abandon it shall vest in the owners of the surface. 1963 PA 43, § 2; MCLA 554.292; MSA 26.1164. It is under this provision that plaintiffs, as owners of the surface or claiming thereunder, bas their claim.

Defendants concede that plaintiffs are within the statute but contend the statute is unconstitutional.

Plaintiffs deny defendants' allegation, claiming among other grounds that the statute is a valid exercise of the police power, with means being employed which are appropriate to the ends sought.

It is elementary that historically in this jurisdict oil and gas rights constitute a separate legal estate which may, as in this case, be severed and reserved upon conveyance. Thus, the question to be answered is; Has the legislature, by statute and within constitutional propriety, extinquished this severable but vested right, as to one party and vested same within another party?

This Court has expended exhaustive research, includi extensive study of the briefs and arguments of the parties, without reaching satisfactory conclusion. This Court further finds concern relative to a question touching upon the constitutionality of the subject Act, supra, which is not raised in the briefs, as filed herein. The pleadings, nevertheless, sufficiently encompass the question that concerns this Court.

In this regard, it concerns this Court that the Act, supra, is in derogation of the common law relative to divestiture of property by abandonment.

> "At common law, perfect legal title to a corporeal hereditament cannot be abandoned." CJS, Abandonment, § 5c.

To the extent of this Court's research, it would appear that the universal rule at common law is to the effect that fee simple ownership of minerals in the ground is a corporeal hereditament. Admittedly, a severance, conveyance or contractual transfer, by the fee owner, of the right to go upon land for the taking of oil and gas, has been construed within some jurisdictions as an incorporeal hereditament, and thus subject to abandonment. Nevertheless, it would appear that there is precedent in this jurisdiction to sustain the common law rule supra, Bonninghausen v Hansen, 305 Mich 595; 9 NW2d 856 (1943), and further precedent to sustain that oil and gas leases are corporeal hereditaments, Attorney General v Pere Marquette RR Co 263 Mich 431; 248 NW 860 (1933); Jaenicke v Davidson, 290 Mich 2' 287 NW 472 (1939); 1 Am Jur 2d, Abandoned Property, § 13, 14.

Further, it is well settled that, at common law, in order to establish an abandonment of property, actual acts of relinquishment accompanied by an intention to abandon must be sh 1 Am Jur 2d, Abandoned Property, § 15, 16; Michigan Law & Practi Abandonment, § 2, 3. Also, there can be no abandonment of property if the person having the right or the property is unawa of its existence, Sabins v McAllister, 116 Vt 302; 76 A2d 106; Linscomb v Goodyear Tire & Rubber Co (CA 8 Mo) 199 F2d 431, and in this jurisdiction, there is long standing authority that abandonment of interests in real estate cannot be inferred from non user alone.[1] Doty v Gillett, 43 Mich 203; 5 NW 89 (1880).

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1. Doty is distinguishable from Attorney General, supra, and Jaenicke, supra, in that in Doty, a leasehold interest is in dispute.

Thus, the Act, supra, contrary to the common law, provides not only that the vested gas and oil interest is now subject to abandonment, when theretofore it was not, but also now requires affirmative acts to avoid abandonment and has eliminated concurrence of the former necessary elements of intent to abandon.

All of the preceding, this Court finds is specificall contrary to and in derogation of the common law in force at the time of the enactment of the Public Act, supra. Namely, prior to September 6, 1963, gas and oil interests were not subject to abandonment or, in the alternative, if subject to abandonment, could not be abandoned in absence of actual acts of relinquishme accompanied by an intention to abandon.

This record is barren of any act of abandonment, as recognized at common law or any expression of intention to abandon, being attributable to defendants herein.

In applying the foregoing findings and conclusions to the case at bar, can it be said that the legislature, by creation of a new criterion of abandonment, can retroactively divest owners of vested gas and oil rights, of their right under common law to hold said interests free of a claim of abandonment or, in the alternative, to hold them free of a claim of abandonment in absence of actual acts of relinquishment accompar by an intention to abandon. This Court believes not.

Clearly, the Act, supra, by retroapplication divest vested property rights, under a criterion of abandonment, that was not in force at time of passage of the Act.

A further clear effect of the Act, supra, is to retroactively divest defendants of their right to dispose of property again by application of the criterion of abandonment n theretofore in effect.

> "The right to dispose of property is substantial and valuable. It is incidental to and inheres in the constitutional right to acquire and own property. It may not be impaired or defeated by legislation after the right has vested." Pfeifer v Ableidinger, 166 Neb 464; 89 NW2d 568, 578 (1958).

"Courts, as a rule, are loath to give retroactive effect to statutes, expecially where it will disturb contractual or vested rights." Nash v Robinson, 226 Mich 146; 197 NW 522 (1924).

This Court concludes that the Legislature by the Act 1963, supra, could not lawfully and constitutionally, retroactive deprive defendants of their common law right to hold oil and gas rights, free of a claim of abandonment or, in the alternative, to deprive them of their common law right to hold same free of a claim of abandonment absent a showing of actual acts of relinquishment accompanied by an intention to abandon.

The effect and application of this Act, supra, as to the defendants at bar, is prohibited by the Constitution of this State.

"No bill of attainder, ex post facto law or law impairing the obligation of contract shall be enacted."
Const 1963, art I, § 10.

This Court makes no finding as to the prospective application of the statute, supra; determination of same being unnecessary to reach decision herein.

Plaintiffs argument that constitutional objections should be overcome, for the reasons as set forth in their pleadings and brief, are rejected.

A Judgment necessary to effectuate this Opinion shall be submitted in accordance with GCR 1963, 522.1.

Joseph P. Swallow, Circuit Judge

Dated: March 1, 1977.

GAS TAX AND ROYALTY FUNDS

CONTROLLED BY STATE AND LOCAL GOVERNMENTS

FISCAL YEAR 1976

State Resource Indemnity Trust Tax	$ 82,754.05
State Natural Gas Severance Tax	$ 446,924.78
State and Local Net Proceeds Tax*	$1,782,460.95
State Conservation Tax	$ 21,220.00
Royalties Paid the State	$ 195,176.00
	$2,528,535.78

* Assuming the average mill levy affecting gas producers is 150 mills.

EFFECT OF HB 553

Assuming that any new well drilled would be no more productive than the average existing gas well. The average tax break per new (or capped) well would be $1,165.00 per year for two years or $2,330.00 total. This would equal a 4.3 cent per mcf break (based on next page's average well assumption) and the assumption that $1,782,460.95 was collected by state and local governments in net proceeds taxes.

Exh. #7

In order to compare, as accurately as possible, tax costs per barrel among eleven crude oil producing states, the average value of crude oil in each state was determined, and all mineral tax laws of that state were applied to that value. Thus we have the following comparison:

(1971 Production 1972 Taxes)

	Tax Per Barrel	Ratio of Tax to Value
ARIZONA	$.2335	7.63%
COLORADO	$.1610	4.85%
KANSAS	$.1412	4.27%
MONTANA	$.2747	9.18%
NEBRASKA	$.1056	3.11%
NEW MEXICO	$.2031	6.15%
NORTH DAKOTA	$.1573	5.00%
OKLAHOMA	$.2380	7.00%
SOUTH DAKOTA	none	none
UTAH	$.1584	5.19%
WYOMING	$.2025	6.54%

The tax costs per barrel demonstrated above included only those taxes applied directly to the value of the production and do not include such taxes as income taxes, production equipment taxes, sales taxes, etc.