

HOUSE MINUTES OF JOINT HEARING,  
HB 792, HOUSE AND SENATE COMMITTEES  
ON NATURAL RESOURCES  
February 20, 1979

The joint hearing of the Senate and House Committees on Natural Resources to hear HB 792, sponsored by Representative Willie Day, co-sponsored by Senator C. R. Thiessen, was called to order by Chairman Art Sheldon on February 20, 1979, at 10:00 a.m. Roll call was taken of House members and the following members were present: Representatives Sheldon, Bertelsen, Cooney, McBride, Burnett, Iverson, Fagg, Nathe, Spilker and Johnston, which constituted a quorum of the House committee.

Chairman Sheldon announced that proponents and opponents would each have one hour in which to present their arguments after which time the committee would ask pertinent questions.

REPRESENTATIVE WILLIE DAY opened proponents' testimony by commenting that HB 792 addresses a solution to a long-standing problem. He also stated that Representative Kvaalen and Senator Thiessen have co-sponsored the bill.

SENATOR C. R. THIESSEN, DISTRICT NO. 27, PROPONENT: Spoke to his knowledge of a landowner in Sidney with minerals severed from the surface who has five wells on his acreage. This landowner is experiencing nausea, inconvenience, noise and air pollution problems as a result of these wells, and should have compensation for tolerating such conditions. He does not believe the bill is confiscatory.

REPRESENTATIVE OSCAR S. KVAALEN, DISTRICT NO. 53, PROPONENT: Stated he co-sponsored the bill because of the high-handed methods of some of the oil companies in Eastern Montana.

ZACH STEVENS, PROPONENT; REPRESENTING THE MONTANA FARM BUREAU, NFO, THE GRANGE, MONTANA GRAIN GROWERS, ET AL, BOZEMAN, MONTANA: Supports the bill because of the experienced disruption of the land from oil and gas wells.

SHERRILL HENDERSON, PROPONENT; FARMER NORTHWEST OF SIDNEY: Presented written testimony. See Exhibit 1.

VERA HENDERSON, PROPONENT: Believes production is unfair to the landowner since the initial payment made when the wells are drilled is not enough to compensate for the disruption of the landowner's life and that the problems encountered on irrigated land are even worse than on dryland. Some agreement should be reached that recognizes the rights of each side.

AMIE NELSON, PROPONENT; REPRESENTING NORMAN NELSON, THE NORTH-EAST MONTANA LAND AND MINERAL OWNER'S ASSOCIATION, INC., WESTBY, MONTANA; and HIMSELF: Written testimony presented. See Exhibit 2.

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DENNIS WICK, PROPONENT; AN IRRIGATED FARM OWNER: Presented written testimony and pictures attached. See Exhibit 3.

HUGO ASBECK, PROPONENT; FARMER FROM FAIRVIEW, MONTANA: Presented written testimony. See Exhibit 4.

RUSSELL DENOWH, PROPONENT; A RANCHER FROM SIDNEY: Presented written testimony. See Exhibit 5.

RAY FRANZ, PROPONENT; A FARMER-RANCHER FROM SIDNEY: Presented written testimony. See Exhibit 6.

SAM RITTER, PROPONENT; A RANCHER FROM SIDNEY: Spoke in support of HB792 stating he has had no work done yet on his place, but is anticipating that some will be done.

CARL DYNNESEN, PROPONENT; A FARMER-RANCHER FROM SIDNEY; REPRESENTING THE NEML & MA: Stated he has had wells in production since 1951 and during this time has had 11 locations on about 65 acres. He has gullies so bad a horse can't get across them. He cannot cut hay on a previously productive meadow due to the high water table on the meadow, now. He has had no compensation for the meadow. He has had 1800 acres of pasture land which he couldn't use for one summer and has received no compensation. He did receive \$500 in damages on one location, but it will not produce anything except gumweed, and the producer won't come back and re-seed it. Many locations were backfilled and cables were left in the ground. After a few years' time, the cables are coming up with the mud. Farm machinery cannot be used to work the land as they have ruined their machinery, in some instances, trying to do so. The producer refuses to backfill again.

STAN MARLOWSKI, PROPONENT; FROM SIDNEY, MONTANA: Presented written testimony. See Exhibit 7.

RAY SMART, PROPONENT; A FARMER FROM SIDNEY: He has two sites with two roads into the sites. He has had no compensation as the producer pulled out of his place.

DAVID McMILLEN, PROPONENT; FARMER FROM SIDNEY: Presented written testimony. See Exhibit 8.

JAY KERMIT PETERSEN, PROPONENT, FARMER FROM SIDNEY: Submitted written testimony. See Exhibit 9.

CHARLOTTE EDWARDS, PROPONENT, REPRESENTING THE POWDER RIVER COUNTY FARM BUREAU, BROADUS, MONTANA: Stated she was the County Clerk and Recorder during the Belle Creek oil discovery. They had a good relationship with the producer there and considered themselves fortunate.

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PAT SMITH, PROPONENT; REPRESENTING THE NORTHERN PLAINS RESOURCE COUNCIL, HELENA: Stated the laws on coal recognize that the owner of the land has rights; in the case of gas and oil, the landowner also has rights. There have been many unpleasant experiences with gas and oil companies and thinks the landowner should be compensated.

JOHN REDMOND, PROPONENT; REPRESENTING THE SMITH CREEK COOPERATIVE STATE GRAZING DISTRICT IN RICHLAND COUNTY, SIDNEY, MONTANA: Submitted written testimony. See Exhibit 10.

Chairman Sheldon called for any further proponents' testimony; there being none, he called for the opponents' testimony.

DON ALLEN, OPPONENT, EXECUTIVE DIRECTOR OF THE MONTANA PETROLEUM ASSOCIATION: Presented written testimony. See Exhibit 11.

RICHARD L. BEATTY, OPPONENT, AN ATTORNEY FROM TOOLE COUNTY, SHELBY, MONTANA: Stated he often represents both oil producers and farmers in his law practice. They have not had such problems in Toole County in their 50 years of production, and stated he believes this bill will affect established wells, too. His opposition to the bill is based on:

1. The multiple use concept, which is recognized as right and just, and mineral severance fits into the concept of multiple use of land. This bill establishes mineral use as constituting interference with the surface use and is probably unconstitutional. Also, if there is a right to extract the minerals, then perhaps the farmer is interfering with the mineral use.
2. Sooner or later, farmers will be retiring and in almost 100% of the cases, they will reserve their minerals. If the right is really interference, then what is the effect of a mineral reservation? Such a bill will create tremendous problems of valuation in estate planning since there would then be a question of the right to reserve the minerals.
3. The bill would take away from the farmer the right to contract and the right to negotiate his own compensation. The bill does not limit itself to Richland and Sheridan Counties and would affect all farmers in Montana. The 2 1/2% has no relationship to surface damages and is a bit hypocritical and appears to be unfair legislation to all concerned.

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JIM HAUGHEY, OPPONENT; ATTORNEY IN THE FIELD OF OIL AND GAS LAWS FROM BILLINGS, MONTANA: Stated he represents farmers and oil companies in his practice, has compared Montana with other states and has seen many oil companies leave this state. His objections to the bill were enumerated as follows:

1. Montana's taxes are already high in comparison to other states, and Montana has to compete for the same investment dollar. Higher taxes should not be added to the bad winters and long distances in discouraging development.
2. He believes the bill is unconstitutional and unfair and if enacted and found constitutional, would still destroy development of the resources of the whole state while only benefiting a few.
3. The bill takes away due process of the law; the State cannot take one man's property away and give it to another. When an operator buys a contract, he pays for that and has the right to operate without unnecessary and unreasonable interference. This bill would make the operator pay more than he has agreed to pay.

CLYDE LOGAN, OPPONENT, REPRESENTING SAM GARY AT BELLE CREEK, MONTANA: Stated that since there is no fiscal note, the committee should prepare their own, noting that high taxes have an adverse economic effect on tax revenues to the State of Montana. In Belle Creek, efforts are underway to raise capital for tertiary flood recovery, and without such capital, it will not be recovered. The cost of this recovery is equal to the cost of drilling the upper tertiary and there must be some encouragement to take this risk. If the 2 1/2% is taken off the top, the tertiary recovery will not be done. More importantly to the local small producer is what the 2 1/2% off the top will do to stripper production when the encouragement is not there even without the 2 1/2%.

RAYMOND PEETE, OPPONENT; ATTORNEY FROM BILLINGS, MONTANA, REPRESENTING CHARLES W. AUSTIN; BROWNLIE, WALLACE, ARMSTRONG & BANDER; and ROBERT NANCE & ASSOCIATES; PRODUCERS FROM WYOMING AND MONTANA: Stated there would be problems with the Federal mineral leasing law which prevents payment of more than 17 1/2% of the lease. Producers must reserve an override and they would have to tack the 2 1/2% onto the top. Two years ago, the engineering costs of a tertiary program were at \$250 million and if this program was successful, it would have meant \$56 million in revenue to Powder River County alone. This program may go by the board because of HB792. Farmers need not accept whatever is given them; he has represented land owners on surface damages and their damages were paid on an annual basis. There are options available such as receiving annual damages, getting gas piped into the house on a meter, changing the roads every

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year to cooperate with the strip farming operation. If problems can't be resolved by negotiation, then court action is always another option open. Mr. Peete presented figures supplied by Patrick Engineering and Petroleum, as follows:

Cost of producing a well at 11,500 feet:

Red River (producing):	\$1,152,780.00
Dry hole:	\$ 781,880.00

A producing well will last 12-15 years; production can be 400,000 barrels of oil at \$12.00 per barrel for a return of \$4,800,000.00 or \$3.41 for each dollar invested (producing wells only). Patrick Engineering has a success ratio of 60%.

If Patrick Engineering bought a certificate of deposit for 12 years, with no risk, the return would be \$2.35 for each dollar invested. In 15 years the return would be the same as from a successful well. Mr. Peete stated they will discontinue Montana production if this bill passes and go into North Dakota. He further stated he believes the bill is unconstitutional and would only benefit a few.

BILL VAUGHEY, JR., OPPONENT; AN INDEPENDENT GAS PRODUCER FROM HAVRE, MONTANA: Stated he used to be a lease man and in the course of running Tri-Central's office, he settled many claims for damage himself. Tri-Central was one of the first oil producers in Montana and has drilled 475 wells and does not believe one individual can come forward and claim unfair treatment by Tri-Central who has over 200 producing wells of the 475 mentioned. They send an agent out to the farmers and ranchers and make settlement for damages over each two year period, and he believes every well operator follows the same practice. He does not believe it just for the oil industry to be burdened with a 2 1/2% override when 95% of the money used for drilling comes from out of state. The producer must compete for these dollars with Alberta and Wyoming and already has a disadvantage under the leasing rules and high taxes here and this bill would add another deterrent. The only benefit accomplished would be to the owners of ranches who have been drilled; it would not benefit others at all. The biggest losers would be the citizens of the State of Montana.

KNEELON TEAGUE, OPPONENT; INDEPENDENT GEOLOGIST, SHELBY, MONTANA: As an independent geologist, he works for both oil producers and farmers and thinks the problems presented are unique to the Sidney area. If a producer gets an 8-10 barrel well in Shelby they think they are in heaven. Many of the ranchers depend on the water produced for their cattle operations, but they have fresh water not saline water. Working relationships are smooth with very few problems. The 2 1/2% override would not solve the problem as the farmers don't own the minerals: they either

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haven't bought them or they have sold them. Some of the problems heard here have already been litigated in court and while the participants may not be satisfied, they have had their day in court. It is clear that 1/2 of 1% of Montana land is owned by these people and is a small part of what this bill is concerned with.

DAVID WOODGERD, DEPARTMENT OF STATE LAND, OPINION BY LEO BERRY, OPPONENT: Presented written testimony. See Exhibit 12.

Upon the closing of opponents' testimony, a question and answer period followed.

Representative Nathe asked Mr. Haughey if under the due process clauses there is allowance of compensation for damages. Mr. Haughey stated that if a surface owner is damaged, then the surface owner should have a compensation right. When the owner makes a lease, he should bargain for damages. Representative Nathe requested clarification when the surface owners and mineral owners are separate; Mr. Haughey stated that the mineral owner has right of reasonable access to use of the minerals. Most operators have made surface damage payments whether they are required to by law or not. Representative Nathe stated he believed that if the minerals are severed and if those minerals are developed, the landowner does not have access to his land and has no recourse, subject to the mineral owner's agreements.

Representative Sheldon stated the damage cannot be unreasonable. One of the attorneys present stated that people have a right to handle their property rights in a reasonable manner as long as one doesn't interfere and infringe on another's rights; what is "reasonable" depends on the case and is the province of the courts to determine what is reasonable.

A committee member asked what standing a surface owner has before the courts, and was told that the property owner who does not own minerals, generally speaking, does not have any legal right to surface damages and has no standing because he bought the property without the rights. However, it is usually stated in most oil and gas leases that the operator will pay for damages. This is where the surface owner's right comes from as it flows through to him. He is a third party beneficiary of surface damage rights in that contract.

A committee member questioned the concept of multiple use of the land, if the surface owner is damaged and cannot use his land, then concluded there is no multiple use. This statement was

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rebutted by one of the attorneys present with the contention that this bill was concerned with a 2 1/2% override payment on damages to the surface and not with the multiple use concept. He stated that many of the complaints heard today seem to be about rape of and abuse to the land, but this bill has no relationship to these abuses.

Representative Johnston stated that he had a letter from Shelby to the effect that there were problems with the oil operators there. One of the Shelby residents stated that the complaint there centered around one landowner and one operator arguing over who was going to do some dirt work. A land owner's association was set up as a result and nothing further came of it.

Mr. Teague stated that the only right a surface owner has is that damage of the surface cannot be unreasonable, but most leases give the surface owner the right to damages despite the fact that he is not a party to the contract.

Representative McBride asked how it is decided what is a reasonable amount of compensation for surface damage; Don Allen replied that this is the point of contention here--there is a foul-up in trying to communicate. Most prefer to negotiate their own settlements as this is difficult, if not impossible, to legislate.

One of the committee members asked what kind of land values were used in negotiations with the farmer; Mr. Peete stated he usually uses the local land owner's association valuations.

One of the committee members asked where the bill states the 2 1/2% should be paid by the oil producers. Mr. Peete stated the bill calls for an overriding royalty payment which would have to be paid by the oil companies.

A committee member asked if the oil industry has any objections to annual payments for land taken out of production. Mr. Peete stated that clients may feel differently about it, but in cases of producing wells, the owner should be compensated on an annual basis. On dry holes, a lump sum payment would be proper.

One opponent suggested that if the tax were based on profits, then the 2 1/2% should not be paid until there is a profit, but the way this bill reads, the 2 1/2% would be added to the gross cost of drilling.

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A committee member asked if there had been a dollar value placed on the loss of land value through damages. There was no response to this question.

Representative Sheldon suggested that since the problem appears to be with the right of entry wherein the surface owners do not own the minerals, there should be a negotiated settlement with the oil companies with the lease having to be signed before the right of entry is exercised.

Mr. Vaughey stated that in Alberta, 90% of Alberta minerals are owned by the Crown, and to drill a well there the producer has to purchase the surface lease. To do that here, it would be necessary to establish a new network of state employees.

A proponent stated that the farmer cannot afford to sue for \$500 worth of damages.

Representative Sheldon asked for reactions to a law limiting entry before damages. Objections to such a law centered on any changing of real estate laws that have been around for a long time and a mineral reservation having no effect in that case.

Representative Sheldon clarified that he meant a voluntary or litigated lease which would require the driller to go to court. An objection to this was that it could be a two-edged sword and could be a burden on the use of the minerals as it may decrease their value.

Representative Willie Day summarized for proponents by stating the bill is important to many people from Eastern Montana. Mr. Day read from a newspaper from Shelby (See Exhibit 13) concerning the problems there. Representative Day stated that minerals have been severed from the surface in past years and often there is no chance to buy the minerals. The mineral owners pay no taxes until after production; the landowner pays taxes on the land at all times. Despite his sympathy for the oil people and the lawyers, Representative Day quoted that Shell Oil had a 19.1% increase in dividends in 1977-78, Mobil had an increase of 6.7% and Tenneco had a 6.8% increase. In response to fiscal note requests, Representative Day stated that Mr. Allen had access to a copy of the bill and indicated no interest in a fiscal note until today. He further stated that while figures presented were impressive and we all need oil production, oil production is not for farmers, it is for profit. Representative Day maintained that the landowner is not asking something for nothing when the mineral owner is interfering with the surface owner. He stated that he refuses



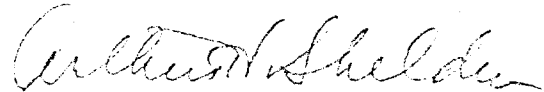
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to believe the oil companies will move to North Dakota or that this bill is unconstitutional. There are problems in Shelby as noted by the newspaper article and he has other petitions concerning this bill which will be made available to the committee. Concerning the opposition of the State Land Department, Representative Day read from MRC, Section 77-2-303, (Subsection 2) pertaining to the sale of land containing minerals of value, stating that State land is not subject to sale when it contains minerals; therefore, if State land is sold it is assumed there are no minerals on this land as it is against the law to sell it if there are.

Senator Thiessen's closing comments were that this Legislature has taxing powers and is aware of the patent right of mineral owners of ingress and egress, but there is reasonable care needed. He does not believe the bill is a confiscatory bill and thinks the 2 1/2% is reasonable. He suggested that the bill could be amended to read that the owner contribute and stated it should be amended to so read in that respect.

Representative Shelden adjourned the hearing at 1:30 p.m. and stated the committee would attempt to meet that evening and take action on this bill.



CHAIRMAN, NATURAL RESOURCES COMMITTEE

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Recording Secretary, Iris Basta