

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 1, 1985

The meeting of the Natural Resources Committee was called to order by Chairman Dennis Iverson at 3:15 p.m. in Room 312-1 of the Capitol Building.

ROLL CALL: All members were present.

HOUSE BILL 516: Rep. Kerry Keyser, Dist. 74, introduced House Bill 516, of which he is the sponsor. He said the purpose of HB 516 was to allow potential developers of subdivisions to carry out and complete subdivisions under the same regulations that were in effect when applications for such subdivisions were first approved. Such a policy would save time and cost by not forcing developers to adapt plans once a project is underway.

Terry Carmody, representing the Montana Association of Realtors, spoke in support of HB 516.

There were no further proponents present.

Steve Pilcher, representing the Water Quality Bureau of the Dept. of Health and Environmental Sciences, said the department opposes HB 516 because it already has a policy of reviewing subdivision development in accordance with those rules that were in effect when the project was approved. He said HB 516 could result in reduced flexibility by the department in regulating subdivision development.

There being no further opponents, the floor was opened to questions from committee, which centered primarily on the question of whether legislation already in place covers the problem addressed in HB 516.

Rep. Keyser closed by saying that HB 516 is necessary legislation.

The committee agreed to take further action on HB 516 after receiving proposed amendments to the measure.

HOUSE BILL 434: Rep. Ted Schye, Dist. 18, was at another hearing, and was unable to introduce HB 434, of which he was the chief sponsor. Rep. Kelly Addy, Dist. 94, introduced the bill on Rep. Schye's behalf.

Rep. Addy explained that HB 434 would allow severed mineral interests on property to revert to the owner of the surface rights to that property in cases where the owner of such mineral interests cannot be located. A similar bill (HB 94) was introduced last session, was passed in the House, and killed in the Senate.

Former Representative John Ryan (sponsor of HB 94) asked the committee to approve HB 434.

James Mockler, representing the Montana Coal Council and the Montana Mining Association, expressed support for HB 434, and submitted a list of suggested amendments, which is attached and marked as Exhibit 1.

John Rabenberg of Wolf Point, representing High Plains Land and Minerals Association, rose in support of HB 434. He said when mineral rights are lost or fragmented, it is sensible that they be turned over to the surface owner. He said such a policy would make development of those rights easier, by making it simpler to locate the owner of the rights.

Richard Estre, Hinsdale, also representing High Plains Land and Minerals, asked to be put on record in support of HB 434.

There being no further proponents, opponents of HB 434 addressed the committee.

Pat Melby, representing the Montana Oil and Gas Association, said his group does not oppose the concept of HB 434, but he questioned whether the surface landowner should receive the "windfall" of mineral interests, especially when that landowner may have been the party that originally sold or transferred those interests. Melby said severed mineral interests may best be treated in the same way as abandoned personal property or estates, and revert to state ownership. He noted, however, that the opposition of the Montana Oil and Gas Association to HB 434 is "very mild."

Robert Virts, of Helena, made a personal statement in opposition to HB 434. A copy of his testimony is attached hereto as Exhibit 2.

Sam Ryan, representing the Montana Senior Citizens' Association, asked to be put on record in opposition to HB 434.

Jack King, a consulting "petroleum landman" from Billings, said HB 434 was not coveted by the minerals industry. He

said that in almost every case, the owner of the mineral interests can be found through diligent effort. A copy of his testimony is attached as Exhibit 3.

Terry Carmody, representing the Montana Association of Realtors, said his group opposes HB 434 because it appears to take away private property rights without due compensation.

Lloyd Anderson, of East Helena, told the committee he opposes HB 434.

There being no further opponents, the floor was opened to questions from committee.

(Rep. Schye arrived to field questions from the committee.)

Rep. Raney asked Rep. Schye why the surface owner should receive the "windfall" of mineral interests, and asked if a proposal to have those interests revert to the state had been considered. Rep. Schye said that turning those interests over to the state would likely encourage litigation by the surface owner.

A brief discussion about the recording of mineral interests in deeds and abstracts followed.

Terry Murphy, a representative of the Montana Farmers' Union, who had been detained along with Rep. Schye when the hearing began, was allowed to testify as a proponent of HB 434.

Mr. Murphy said his group advocates the return of severed mineral rights to the surface landowner when the owner of the mineral rights cannot be traced or has abandoned those interests. He said it can be a "nightmare" trying to find the owner of severed rights. HB 434 would end that difficulty, and make development of those rights much simpler.

Returning to questions from the committee, Rep. Addy asked Mr. Melby (MT Oil and Gas Assoc.) if that group would stand to benefit by having severed mineral interests revert to the state. Mr. Melby said yes, such a policy would allow an operator/developer to buy those rights.

Rep. Addy asked that a letter from one of his constituents in support of HB 434 be made part of the hearing record. That letter is attached hereto as Exhibit 4.

Rep. Schye closed on HB 434, saying the bill would not result in a big windfall to surface owners. Only about 1% to 3% of severed mineral interests cannot be determined through rigorous searching, he said. He said it would be sensible that these minor interests become the property of the surface owner.

The committee agreed to take executive action on HB 434 at a later date.

ADJOURNMENT: There being no further business before the committee, the meeting was adjourned at 4:40 p.m.


Rep. DENNIS IVERSON, Chairman

DAILY ROLL CALL

HOUSE NATURAL RESOURCES

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date ~~February 1, 1985~~ February 1, 1985

NAME	PRESENT	ABSENT	EXCUSED
IVERSON, Dennis (Chairman)	X		
KADAS, Mike (Vice-Chairman)	X		
ADDY, Kelly	X		
ASAY, Tom	X		
COBB, John	X		
DRISCOLL, Jerry	X		
GARCIA, Rodney	X		
GRADY, Edward	X		
HARP, John	X		
JONES, Tom	X		
KRUEGER, Kurt	X		
MILES, Joan	X		
MOORE, Janet	X		
O'HARA, Jesse	X		
PETERSON, Mary Lou	X		
RANEY, Bob	X		
REAM, Bob	X		
SMITH, Clyde	X		

MONTANA HOUSE BILL 434

Concerns - Suggested Amendments

Page 2, Line 12:

The definition of minerals excludes common forms of sand and gravel. While it might be helpful to have sand and gravel excluded from the provisions of this bill, it could have the effect of further complicating mineral ownership by severing previously unsevered mineral ownerships. For example, all minerals could currently be owned by one owner, but following extinguishment, the sand and gravel would still be owned by an unknown party. We recommend deleting the words "and common forms of sand and gravel."

Page 3, Line 20:

The definition of use does not currently include actions such as a recorded sale, mortgage or exchange. Any recorded instrument creating or referring to a severed mineral right should certainly be sufficient recognition of the use and ownership of that mineral right. To rectify this, we recommend addition of a new subsection (d) and re-numbering of the existing subsection (d) as subsection (e). The new subsection (d) would read as follows:

(d) the mineral interest or any portion thereof is the subject of a sale, mortgage or other transfer evidenced by a document or a memorandum thereof recorded in the office of the clerk and recorder of each county wherein the interest is located prior to the end of the 20-year period set forth in [section 2] or within 2 years after [the effective date of this act], whichever is later.

Page 3, Line 23:

Ownership of unused mineral interests should not automatically revert to the surface owner of the land. The mineral owner should be entitled to greater protection of their property right than this would afford. In addition, automatic reversion raises a serious legal question as to who actually owns a severed mineral right when no attempt has been made to determine whether that right is actually used or unused, and the surface owner has not undertaken the actions prescribed in Section 4. We recommend that the reversion should be discretionary and only occur if the surface owner undertakes successfully the actions prescribed in Section 4. Our recommended amendment is as follows:

Unless a statement of claim is recorded in accordance with [section 3], a severed mineral interest that is continuously unused for a period of 20 years shall revert to the surface owner of the land out of which the severed mineral interest was carved if the surface owner complies with the notice requirements of [section 4].

Page 5, Line 1:

A severed mineral interest should not be allowed to revert to a surface owner until after recording of the notice prescribed in Section 4 (1)(c) and 60 days have lapsed in accordance with Section 4 (3). Again, the concern here is that the mineral owner is not being given adequate protection because he is losing his mineral right before an attempt has been made to determine whether the mineral right is used and without notice and an opportunity to redeem the mineral right. Section 4 should be amended to read:

- (1) Any surface owner of the land who wishes to succeed to ownership of an unused mineral interest shall give notice of same: . . .

Page 5, Line 5:

The current publication requirement does not specify the minimum frequency and duration for publishing a notice in a newspaper such that a mineral owner may only have one opportunity to see a published notice in a newspaper. This is unreasonable and does not give the mineral owner adequate opportunity to preserve his right. We recommend that newspaper publication should be required at least once each week for three consecutive weeks.

Page 5, Line 10:

The proposed provisions for a surface owner to notify a mineral owner appear to provide lots of opportunities for the mineral owner not to receive notice. "Reasonable inquiry" and the use of regular mail do not give the mineral owner reasonable protection. We recommend that the surface owner must search for the former mineral owner "with due diligence" and must use personal service or registered mail.

Page 5, Line 17:

There is currently no requirement that the surface owner be certain that the severed mineral right is unused. We recommend adding the following language:

- (2) The notice, which shall be verified by the surface owner, shall state:
 - (a) . . .
 - (b) . . .
 - (c) . . .
 - (d) . . .
 - (e) that to the best information, knowledge and belief of the surface owner, the severed mineral interest is unused as defined in this [Act].
 - ~~(e)~~ (f) that the owner of a lapsed interest may redeem . . .

COMMITTEE HEARING ON HB 434

Exhibit 2
2/1/85

CHAIRMAN IVERSON
MEMBERS OF COMMITTEE

To give you a brief history of my interest: In the 1909-10 Era, my father homesteaded on the south $\frac{1}{2}$ of Section 17, 11N, 61E in Wibaux County, Montana. After my parents were married, my mother acquired the NW $\frac{1}{4}$ of this section. After my father's untimely death Nov. 28, 1919, my mother had both surface and mineral rights to three-fourths of this section.

When my mother died Aug. 2, 1956, she had Willed the surface land to my half-brother, Orren Lindstrom her youngest child, and the mineral rights to be equally divided among her seven natural-born children. My half-brother, Orren Lindstrom, only lived 11 months after my mother's death, dying of Lukemia July 2, 1957, resulting in the surface land going to his widow. She has since re-married, so the surface land is no longer in the family. She and her two sons do have one seventh. of the mineral rights.

My oldest sister died in 1979 and her husband, a half-sister in Wyoming, a sister in Illinois, a brother in Nebraska, my self, and a blind brother in Glasgow, Montana have the rest of the mineral rights. This brother is unable to protect his rights. These mineral rights were last leased by Gulf Oil, expiring August 17, 1984.

I have several objections to this bill which I hope put^{to}/before this committee. I'm sure there are hundreds of Seniors around the country with "severed mineral interest" that would be affected by this bill. Many might never realize what happened to their mineral rights until it was too late. In my opinion, you members of this committee have a moral obligation to kill this bill.

Respectively
Robert D. Virts
561 Highland
Helena, Montana

Exhibit #3
2/1/85

Friday, February 1, 1985
Re: HB #434

Ladies and Gentlemen of the House Natural Resources Committee:

As a consulting Petroleum Landman from Billings, I would like to thank you for affording me your time to discuss House Bill No. 434 Termination of Unused Severed Mineral Interests.

The stated purpose of the said Bill is to assist the Oil and Gas Exploration Industry in its efforts to develop the Natural Resources in the State of Montana. As immediate Past President of the Montana Association of Petroleum Landmen, and as a Director of Independent Production Association of America and American Association of Petroleum Landmen, I can assure this Committee that any signal that this legislative body is sending that says we want to help the most taxed industry in the State with the highest industry taxes, well, that effort on your part is greatly appreciated. However, I speak for many when I say that this Bill is not coveted by our industry and that the explorers for oil and gas do not want a dormant minerals Act legislated.

The simple fact is in almost every case mineral owners can be found by persons interested in acquiring oil and gas leases. I polled a number of operators and landmen on the subject and they agreed that people and heirs can be found with a diligent effort. Further, I am unaware of any instances where oil and gas exploration was not pursued due to unfindable mineral owners.

I admit that it would make leasing easier if this Bill were passed. However, there are costs involved with every "free lunch". All titles involving farmout minerals would be clouded and suspect for exploration until courts resolved the constitutionality and legality of all transfers on a

case by case basis. Upon publication of the 60 day notice to reclaim minerals, people will locate the dormant mineral owner and strike a deal with that party whereby they will advise the owner of the location of the pot of gold if the owners share 50% of the pot with the informer. This will not affect oil and gas exploration but will do the opposite by putting another encumbrance in the way of exploration activity in the form of new, greedy, mineral owners who have to be dealt with and who, in many cases, will strike such tough deals that the economics for further activity are not justifiable.

Each Clerk and Recorders office will be inundated with claims and each office, individual or other owner will have the paper shuffle responsibility of determining their interest, filing on the interest, and setting up a system whereby they can be called up again in twenty years for possible filing at that point.

These minerals were purchased in good faith that the mineral estate would benefit to their heirs or assigns of their choosing. My main objection to this Bill is not the affect it will have on how our industry conducts its business but that legislation is being introduced whereby you are taking property away from one party or individual and giving it to another party who has no claim to that estate and in fact is the one party who knows they have no claim when they purchased a surfaceestate without the mineral estate.

You are in affect claiming that unless action of some sort is taken on minerals I have already purchased in good faith (for a point of clarification my current holdings are nominal, less that 100 acres in Montana) those minerals will be taken away through your legislation unless my heirs continue to live in the same general region in which the notice of claims are published.

Exhibit 3
2/11/85

Typically, this Bill will only affect widows, widowers, and other heirs who are least likely to be informed of the estate value and the effect of this legislation. I do not feel it is your intent or the intent of this Bill to effect oil and gas exploration at the expense of the uninformed heirs of severed mineral owners.

The level of oil and gas activity in Montana will not increase as a result of this Bill, but it may decrease if this is the first step in effecting a tax on severed mineral interests, which would devalue the price of minerals, farm estates and prices taxpayers are willing to pay for oil and gas leases. This Bill's only affect will be to punish the innocent who are unaware of the affect this Bill has on their rightfully heired dormant mineral estate.

Again, we appreciate your time and concern in dealing with one of our industry problems, which is finding owners of properties who have moved or died. However, we have dealt with this situation numerous times and we are prepared to continue to fight that battle and in extreme cases, get the local court to issue a lease and set up a suspense account for that interest.

To me this is a classic case of the cure being worse than the illness.

However, if we disagree philosophically about the affects of legislated transfer of wealth and you elect to give this Bill a do pass recommendation, I recommend a few minor changes in its content.

One page 3, item 5a, line 5 include the words "or saved" after the word "produced".

One page 3 after item 5d include item 5e which would read "where the mineral interest is conveyed either by contract or by deed".

On page 3 Section 2 line 25, change 20 years to 40 years.

On page 4 Section 2 line 4, include at the end of the sentence "which shall be proportionately reduced to reflect the surface owners net interest in the subject lands".

On page 5, Section 4 line 4, include the words "at their sole cost, risk, and expense" at the end of the sentence.

On page 5 Section 4a, change the Section to read "from newspaper in the County" to "three regional newspapers, i.e., Billings Gazette, Great Falls Tribune and the Missoulian".

On page 5 Section 4 2b, line 20, include the words "full legal" after "a" on page 5 Section 4 2e change 60 days to "180 days from receipt of written notice or publication as prescribed in Section 4a, whichever is later".

On page 5 item 3, change 60 days to "180 days from receipt of written notice or publication as prescribed in Section 4a, whichever is later".

Thank you for your time; if there are any questions I'd be happy to answer them for you.

Jack E. King
2309 Patricia Lane
Billings, Montana 59102

6550686

Exhibit # 4
2/1/85

January 30, 1985

Re: HB 434
Termination of unused severed mineral interests

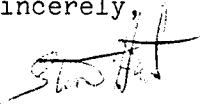
Rep. Kelly Addy
c/o Capitol Station
Helena, MT 59620

Dear Mr. Addy,

As a concerned citizen and involved businessman with the energy industry, I am proud to write you in hopes that you will be able to support the above captioned HB 434.

I have just completed work on a project that could have fallen by the wayside because such a law as that proposed in HB 434 is not in effect. The only reason that that particular project was finalized was because my client had a great interest in the land involved. However, I can foresee a tremendous problem with finding people whose ancestors reserved minerals and now their descendants cannot be found. Problems such as this can only get worse as time marches on. Thankyou for your time and efforts for us during your stint as our representative.

Sincerely,



Steve Hart
2204 Elm St.
Billings, MT 59101

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES COMMITTEE

BILL HOUSE BILL NO. 434

DATE FEBRUARY 1, 1985

SPONSOR Rep. Schye

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Jack King	2309 Patricia Ln	Self		✓
John Schaefer	Wolf Point	5th Plains State of Minnesota Monticello Mineral owners	✓	
Richard Estre	HINSDALE	1st PLAINS MINERAL	✓	
Jim Mickler	MT Mining Ass MT Coal Council	Helena	✓	
Pat Melby	MT Oil + Gas Assn	Helena		✓
Bob White	Helena	Self		✓
Sam Rippe	Helena	Self		✓
Gene M... ..	Big Falls	MT Farmers Union	✓	
Larry	Helena	MT Assoc. of REALTORS		✓
Loyd	E. Helena	self		✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.
 WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.