

MINUTES OF THE MEETING  
SENATE NATURAL RESOURCES COMMITTEE  
MONTANA STATE SENATE  
February 6, 1985

The fourth meeting of the Senate Natural Resources Committee was called to order at 1:02 p.m., February 6, 1985, by Chairman Dorothy Eck in Room 405, State Capitol Building.

ROLL CALL: All members of the committee were present with the exception of Senator Stimatz and Senator Manning, who was excused.

CONSIDERATION OF SB258: Senator Tveit, sponsor of SB258, received permission from Chairman Eck to be removed from the committee for purposes of testifying. Senator Tveit submitted written testimony (Exhibit 1) and proposed amendments (Exhibit 2). Senator Tveit explained that SB258 provides for advance notice to be given to surface owners before seismic or oil and gas operations begin on their land. Senator Tveit stated that although problems with seismograph crews coming on the land is not a major problem for surface owners, it is a problem nonetheless. He further explained that Section 3 of SB258 provides for triple penalties to ensure that surface owners are compensated for damages in a timely fashion.

PROPONENTS: Mr. William Petersen, Vice President of the Northeast Montana Land and Mineral Owners' Association, submitted written testimony in favor of SB258 (Exhibit 4).

Senator Ed Smith told the committee that he sponsored the bill which is responsible for the current language in the law. Senator Smith supports SB258 and, in particular, the proposed penalties. Senator Smith feels if there is no penalty involved, the law is ineffective. Senator Smith also testified that sometimes the only way the surface owner is aware of oil and gas exploration is when he sees the equipment being hauled onto the land. Senator Smith contends the possibility of oil and gas companies having to pay triple penalties will encourage the companies to negotiate a settlement for damages with the surface owners. Senator Smith feels that none of the language contained in SB258 should be deemed unreasonable.

Mr. Russ Brown, representing the Northern Plains Resource Council, feels that SB258 is a valid attempt to solve problems between oil and gas companies and surface owners.

There being no further proponents, the hearing was opened to opponents.

OPPONENTS: Mr. Pat Melby, representing the Montana Oil and Gas Association, opposes the bill; although, the amendments make the bill more tolerable. Mr. Melby does not agree with the criminal penalties provided, and would rather see the contract between the surface owner, mineral owner and land developer be a contract of a civil nature. Mr. Melby feels that failure to give notice should be a civil crime and carry a civil penalty.

Mr. Darwin VanDeGraaff, Executive Director of the Montana Petroleum Association, testified that the issue of damages is handled in the lease which is entered into between the parties prior to exploration. Mr. VanDeGraaff did not understand why seismic operations were mentioned in the bill, when these operations do not pertain to oil and gas exploration. Mr. VanDeGraaff also had problems with Section 2(2) of SB258 and the mention of a "mutually agreeable formula." Mr. VanDeGraaff feels the problems arise when the formula is not mutually agreeable and suggested third-party arbitration. Mr. VanDeGraaff pointed out that when a surface owner denies a mineral owner access to the land, he is denying the mineral owner of his rights.

Mr. Jim Wise, representing CENEX, submitted written testimony (Exhibit 5) in opposition to SB258.

Senator Thomas Keating, Senate District 44, testified about the existence of a contractual agreement when the owners sign an oil and gas lease. Senator Keating contends that surface owners are aware of mineral reservations at the time the land is purchased and should be prepared for the day when these minerals are developed. Senator Keating stated that although the surface owner has rights, these rights are not superior to those of the mineral owner. Senator Keating also feels that seismic operations have no proper place in the bill. Mr. Keating also explained that the issue of damages is decided before the fact with explicit instructions as to how and by whom damages are to be paid. Senator Keating feels the criminal penalty is not proper, and past history shows this bill is not necessary because of the lack of court action.

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

Senator Gage informed the committee that part of the procedure for obtaining a permit to drill requires evidence that the surface owner has been notified of the oil and gas company's intentions.

Upon question from Senator Eck, Senator Keating stated that often the surveyor is the first person to go on the land and make contact with the surface owner.

Senator Harding questioned Senator Tveit as to whether there are oil and gas contracts where the parties agree the land will not be damaged. Senator Tveit replied that anything can be written into the lease, but the lease is between the oil and gas company and the mineral owners and does not include the surface owner. Senator Tveit contends that since the lease deals mostly with the royalties between the oil and gas company and the mineral owner, SB258 is necessary to protect the rights of the surface owner.

Senator Mohar questioned Senator Tveit about what happens in the situation where the parties cannot agree upon settlement or a mutual formula as mentioned in Section 2(2). Senator Eck pointed out that Senator Mazurek has a bill providing for binding arbitration, and, if his bill passes, this situation would be taken care of.

Senator Eck questioned Senator Tveit as to whether trespass laws would apply in situations where the surveyors, seismograph crews or persons from oil and gas companies access a person's land without giving notice. Senator Tveit stated that the trespass laws do apply; however, the penalty for trespass is a misdemeanor, and it is difficult to prosecute "tire tracks."

Upon question from Senator Eck, both Senators Tveit and Keating agreed that the Oil and Gas Commission was monitoring the quality of water on drilling sites.

Senator Tveit closed the hearing by stating that the Oil and Gas Commission told him the current law is not worth the paper it is written on. Senator Tveit feels that although the penalty is not real substantial, oil and gas companies will respect it.

There being no further questions from the committee, the hearing on SB258 was closed.

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ACTION ON HJR5: Senator Halligan moved that the committee adopt the proposed amendments to HJR5.

Senator Fuller asked why the proposed amendments did not include the Missouri River. These amendments were provided by Jim Flynn, Department of Fish, Wildlife and Parks. It was concluded that the omission was an oversight, and the Missouri River should be included in the amendment.

Senator Halligan made a substitute motion that the proposed amendments to HJR5 be adopted only if the amendments include the Missouri River. The motion carried.

Senator Halligan moved that HJR5 BE CONCURRED IN AS AMENDED. The motion carried.

There being no further business to come before the committee, the meeting was adjourned at 2:15.

  
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Senator Dorothy Eck, Chairman

ROLL CALL

Natural Resources

COMMITTEE

48th LEGISLATIVE SESSION -- 1985

Date 020685

SENATE  
SEAT  
#

NAME	PRESENT	ABSENT	EXCUSED
<u>ECK, Dorothy (Chairman</u>	✓		
<u>HALLIGAN, Mike (Vice Chairman)</u>	✓		
<u>MANNING, Dave</u>			✓
<u>MOHAR, John</u>	✓		
<u>DANIELS, M. K.</u>	✓		
<u>FULLER, David</u>	✓		
<u>STIMATZ, Larry</u>			
<u>TVEIT, Larry</u>	✓		
<u>GAGE, Delwyn</u>			
<u>ANDERSON, John</u>	✓		
<u>SHAW, James</u>	✓		
<u>HARDING, Ethel</u>	✓		

Each day attach to minutes.



TESTIMONY - SB 258

SENATOR LARRY TVEIT

MADAM CHAIRMAN, MEMBERS OF THE COMMITTEE,

I am Senator Larry Tveit, District 11 representing Roosevelt and Richland County. I also serve as a director of the Northeast Montana Land and Mineral Owners Association serving several hundred mineral owners, surface owners, and farmers.

This bill which I am sponsoring today is SB 258, which amends current law stemming from Senate Bill 16 which I helped put through in the 1981 session.

SB 258 amends several parts of the law by providing a penalty for failure to give notice before entering surface owners' property, by amending seismic operations to "Oil and gas operations and adding a new section (3) which addresses the penalty and double damages."

The purpose of the bill is the failure of both seismic companies and oil companies to respect the surface owners' property by properly notifying the owner or tenant when they come on or cross over his land.

The "double" damage amendment stems from oil and seismic companies who fail to live up to their agreements with surface owners.

These amendments to the existing law are fair and address the problems that exist now and I would appreciate your consideration in passage of the bill. Thank you.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 1

DATE 020685

Senate Bill 258 Amendments

1. Title, line 7.  
Strike: "TRIPLE"  
Insert: "DOUBLE"
2. Page 3, line 7.  
Strike: "triple"  
Insert: "double"
3. Page 3.  
Following: line 11  
Strike: subsection (2) in its entirety  
Insert: "(2) An oil and gas developer or operator who is in default with respect to the payment of any annual or single-sum damage payment as required by any damage agreement negotiated with a surface owner, and who remains in default with respect to such payment 60 days after notice of default is given by certified mail by the surface owner, is liable to the surface owner for double the amount of such payment."

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 2

DATE 020685

BILL NO. SB258



Mr. Chairman - Members of the Committee:

My name is William Petersen. I am Vice President of the Northeast Montana Land and Mineral Owners Association. I'm a farmer, rancher from Culbertson.

This is a situation as reported to me by John Dethman of Bainville.

An oil company moved earth moving equipment in on this property, April 1977, with no prior notice and started building a pad for one oil well. Mr. Dethman contacted the Gas and Oil Commission and was informed that no permit to drill had been issued. The permit was issued later that day. No representative of the oil company had contacted Mr. Dethman to discuss surface damages. Surface damages still haven't been settled on this well and the pit was left open for two years.

In December of 1979 the same company moved in, again with no advance notice, and started building a pad approximately 500 ft. from the first well. The Vice President of the company contacted Mr. Dethman and told him that they would get together on damages after the Christmas holidays. After Christmas Mr. Dethman was told that the Vice President had quit the company and a new man would negotiate with him. To date, no damage settlement on either of the two wells has been reached.

To further complicate things, these wells have changed ownership three times and no royalty payments have been made since June of 1983 altho loads of oil have been going out of the site. Mr. Dethman has contacted the Gas and Oil Commission for help, but they say they are no

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 3

DATE 020685

an enforcement agency.

Mr. Dethman has hired an attorney, but after eight months, they have given up, so he will have to look elsewhere.

With passage of SB 258 the surface owner will have legal help through the state legal system.

In 1984 another oil company moved equipment in to prepare another site. Mr. Dethman contacted the company and asked them if they know that state law required them to notify him before starting work. They immediately notified him in writing. Their local representative said they weren't too concerned because there is no penalty for not complying with that law. SB 258 will help correct this. I urge passage of SB 258. Thank you.

TESTIMONY OF MARLYN VANNATH - February 6, 1985

Mr. Chairman and members of the committee we support S.B. 258.

*VANNATH*

I am Marlyn Vannath, a member and Director of the Northeast Montana Land and Mineral Owners Association. We have 3 1/2 million acres in our Association in Montana.

We support S.B. 258. This bill would do away with a lot of the problems caused by oil and gas development.

We have a monthly meeting and rotate them between Scobey, Plentywood, Culbertson and Sidney, Montana. The thing we hear the most from our members is the problem of getting just and fair payments for land taken out of production due to oil and gas exploration, site damages and road damages.

I might also make the comment that our Oil and Gas Commission have no authority to enforce these rules or laws. You can have all the rules and regulations, but if not enforced you have nothing.

I don't know how many of you people have dealt with the oil companies, but if you don't have laws to abide by, you are at their mercy. The Gas and Oil Commission should have the authority to enforce laws.

I am not against the oil companies, don't get me wrong, we need the development locally and for Montana. I would like to STRESS very much, we need LAWS and enforcement, this is a MUST.

SENATE NATURAL RESOURCES COMMITTEE  
EXHIBIT NO. 4  
DATE 020685  
BILL NO. SB 258

FARMERS UNION CENTRAL EXCHANGE, INC.



" Where the customer is the company

February 6, 1985

1601 Lewis Ave • Post Office Box 21479  
Billings, Mont. 59104 • (406) 245-4747

Senate Natural Resources Committee

RE: Senate Bill 258

Ladies and Gentlemen:

As a representative of CENEX I appreciate the opportunity to be here today to object to Senate Bill 258.

CENEX has been in the exploration business for nearly 40 years, establishing our first production in 1946. Today we have ownership in approximately 700 producing wells with daily production in excess of 6000 barrels. Our reserves in the ground are nearly 13 million barrels and we have more than 1 million acres of lands under lease. Most of our recent exploration activity has been in Central Montana and in the Williston Basin of Montana and North Dakota.

Nearly every day of the year we are drilling in the ground somewhere in the northern Rocky Mountain area. As a result, we are continually negotiating surface damage settlements as a part of our normal drilling operations. We have always believed that there is a contractual obligation to deal with the surface owner prior to drilling. We make contact with the landowner and are personally involved in settling damages each time we drill a well. In nearly forty years of operations we have never been involved in a court case to settle a damage claim in Montana.

Senate Bill 16 was passed into law in 1981 making it mandatory to notify the surface owner and negotiate a damage settlement. Should this be violated, the court will provide remedy. It is not necessary to amend the existing law to provide for a misdemeanor and a \$500.00 fine.

Upon settlement of damages the surface owner is more likely to be paid in excess of the actual value of the land and, many times, no annual payments are negotiated. On occasion, the surface owner negotiates to have the operator build a road, a dam, install a cattleguard or provide a fence in lieu of a damage settlement in dollars. Should Senate Bill 258 be passed, the surface owner would lose his power to barter. I do not need to remind you that compensation for damages should not be treated as income from oil and gas exploration. Royalty is the income from exploration and production. The settlement negotiated with the surface owner is payment for damages incurred.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 5

DATE 02/06/85

SB 258

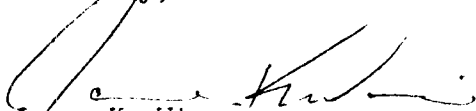
Because both parties, surface owner and operator, are currently protected under Senate Bill 16, there is no need for an amendment to said Bill by way of Senate Bill 258.

Should we continue to complicate existing Bills through amendments and modifications, the only profession to benefit will be the legal profession. The oil and gas operator and the land owner will be left on the outside looking in.

I urge you to reconsider Senate Bill 258 and delete same from the agenda.

Thank you.

CENEX Exploration & Production  
Sincerely,



James K. Wise  
Petroleum Landman

Proposed Amendment to HJR 5

1. Page 3, line 11

Following: "improvement."

Insert: "The bank stabilization program along the <sup>Missouri</sup> Yellowstone and Bighorn Rivers will be limited to non-structural erosion control means."

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 6

DATE 020685

BILL NO SB 258

(Type in committee name, committee member names, secretary and chairman. Have at least 50 printed to start.)

ROLL CALL VOTE

SENATE COMMITTEE on Natural Resources

Date 020685 Bill No. HJR5 Time 2:15

NAME	YES	NO
ECK, Dororthy (D), Chairman	✓	
HALLIGAN, Mike (D) (Vice Chairman)	✓	
MANNING, Dave (D)	E	
MOHAR, John (D)	✓	
DANIELS, M. K. (D)	✓	
FULLER, David (D)	✓	
STIMATZ, Larry (D)	A	
TVEIT, Larry (R)		✓
GAGE, Delwyn (R)	✓	
ANDERSON, John (R)	✓	
SHAW, James (R)	✓	
HARDING, Ethel (R)	✓	

Cynthia A. Peterson  
Secretary, Cynthia A. Peterson

Dorothy Eck  
Chairman, Senator Dorothy Eck

Motion: To adopt proposed amendments to  
HJR5

(include enough information on motion—put with yellow copy of committee report.)

# STANDING COMMITTEE REPORT

February 6, 1985

MR. PRESIDENT

We, your committee on Natural Resources  
having had under consideration House Joint Resolution No. 5  
third reading copy ( blue )  
color

## MISSOURI-YELLOWSTONE RIVERBANK STABILIZATION

Respectfully report as follows: That House Joint Resolution No. 5

be amended as follows:

1. Page 3, line 11

Following: "improvement."

Insert: "The bank stabilization program along the Missouri, Yellowstone, and Bighorn Rivers will be limited to non-structural erosion control means."

AND AS AMENDED

BE CONCURRED IN

~~DO NOT PASS~~

DO NOT PASS

Chairman.