

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE

January 30, 1987

The meeting of the Senate Natural Resources Committee was called to order by Chairman Thomas Keating on January 30, 1987, at 1:00 p.m., in Room 405 of the State Capitol.

ROLL CALL: All members were present with the exception of Senator Severson who was absent.

CONSIDERATION OF SENATE BILL 208: Chair was taken by Sen. Cecil Weeding, Vice Chairman of Natural Resources, during the consideration and disposition of SB 208 that was introduced by Sen. Keating.

Sen. Keating said that SB 208 was introduced for the protection of royalty owners in the State from loss of royalties in the event an operator who handles funds from production falls into bankruptcy. Sen. Keating stated a case where the operator was also the purchaser of crude oil. The operator would buy the crude oil and move the money through his accounts to fund the royalty owners. However, when money flows into the operator's accounts at the time of of bankruptcy, there is no segregation between operator's own money and the money that belongs to the royalty owners. SB 208 would require those operators who commingle their royalty production with the royalty production that belongs to others to be held in a separate account and treated as trust proceeds rather than their own funds. In the event of bankruptcy, those proceeds would not be attached as assets of the operator who is filing Chapter 11 or Chapter 7.

PROPOSERS: Sen. Gage announced he was a "qualified" proponent; and if an amendment were attached to SB 208, he would be a proponent. The amendment that Sen. Gage suggested would be to strike that part of the bill that would require that separate accounts be set up for the funds; then the bill would simply state that particular funds are trust proceeds for the royalty owner and are not subject to bankruptcy or other proceedings from creditors. Sen. Gage said that he would prepare an amendment at a future time.

Sen. Larry Tveit stated that he would also be a proponent if the bill were to include the amendment that Sen. Gage suggested.

OPPONENTS: Janelle Fallan, Executive Director of the Montana Petroleum Association, testified that she was aware of the problems that led to the introduction of SB 208; however, Ms. Fallan had difficulties with the bill concerning definition. Ms. Fallan reported that Wyoming had a similar bill last session that failed to pass. Texas takes the approach of putting a lien on production in case of bankruptcy, and Ms. Fallan suggested this approach for Montana. (Exhibit 1)

Attorney Jerome Anderson, who represented Shell Western Exploration and Production Co., testified that Shell is responsible for 30% of production in Montana and Shell opposes SB 208 for three reasons.

1) Bill would cause an administrative nightmare for the company. Mr. Anderson explained that Shell issues 20,000 monthly royalty checks across the United States, and the checks are mechanically generated. If SB 208 were passed, the company would have to segregate Montana royalty payments and set up new computer accounts for Montana.

2) SB 208 is not an incentive to attract producers to the State of Montana.

3) If SB 208 were passed, it would change the definition of the bankruptcy estate.

Mike Zimmerman, representative of Montana Power Company and a subsidiary of MPC, North American Resources Company, stated the same objections as Mr. Anderson. Also, Mr. Zimmerman explained that separate accounts would not solve the problem because chances are that there would be a "trust account" with no money in it, and there would still be the problem of collecting from the bankrupt estate. Furthermore, Mr. Zimmerman informed the committee that calling the fund "trust proceeds" would begin to subtly change the relationship that the producer has with the royalty owner.

Doug Abelin, Montana Oil and Gas Association, opposed SB 208 because "it is not necessary and will only make things more complex." (Exhibit 2)

John Augustine, Conoco, stated for record his opposition to SB 208.

QUESTIONS (OR DISCUSSION) FROM THE COMMITTEE: Sen. Halligan was concerned about creating an exemption in the bankruptcy law without doing it in the exemption statutes.

Sen. Keating explained that the bill was introduced based upon misinformation from some oil business and royalty owners, constituents from his district, who told Sen. Keating that a similar bill had been passed in Wyoming. Sen. Keating said that royalty owners do need some protection.

Sen. Lynch asked Mr. Zimmerman if bill could be amended, and Mr. Zimmerman replied that the bill was not workable in any form.

Sen. Gage asked if language could be added to the bill so that a lien could be attached to the proceeds. Mr. Zimmerman said the change would be too drastic under the title of the bill, and he didn't feel the amendment would be permissible.

The committee continued with lengthy discussion about leases, royalty payments, contracts, law suits, and even changing language in SB 208, without reaching any pertinent conclusion.

Sen. Weeding returned chairmanship to Senator Keating, and an Executive Session was held.

CONSIDERATION OF SB 86: Sen. Keating informed the committee that Sen. Gage wanted to make a motion on SB 86, Uniform Dormant Mineral Interests Act. Sen. Gage made the motion that SB 86 DO PASS but withdrew the motion so that the amendment from the mining industry, written by Ward Shanahan, could be considered. Sen. Gage explained that the amendment would strike section 8 in its entirety and be replaced with Mr. Shanahan's amendment which would provide appropriate due process to the owner of dormant mineral interest. (Exhibit 3)

Sen. Lynch moved that the amendment to SB 86 DO PASS.

Sen. Halligan expressed concern that the original section 8 dealt with litigation expenses, and the proposed amendment was written with that portion removed. Sen. Halligan said that section 8 had been changed to presumption with the surface owner and conclusively presumes abandonment of dormant mineral interest.

Sen. Keating agreed that the amendment does not refer to litigation expense; it does say if the owner shows up, it is prima facie evidence of ownership and the courts cannot proceed with the case. Sen. Keating continued by saying if the owner of the dormant mineral interest does not show up, the court can proceed.

Sen. Halligan referred to Montana Rules of Civil Procedure, Rule No. 4, and said that if someone cannot be located, publication has to be made in a newspaper for three successive weeks of the name of the person and the fact that they are going to lose their right of the property interest.

Sen. Gage said it was his understanding that this coincides with quiet title action procedures. Sen. Halligan agreed, but added that quiet title action is very specific.

Sen. Keating asked the legal researcher, Gail Kuntz, for her comments.

Ms. Kuntz said that the law is specific and publication must be made for three consecutive weeks; however, every effort must be made to locate the person.

Sen. Keating asked the researcher's views on the amendment. Ms. Kuntz replied that there is almost no comparison between section 8 and the amendment, but a concern she had about the language in the amendment is that there is no mention of time limit in which mineral interest owner could appear in order for a counter claim. Ms. Kuntz reported she had done a comparison study with North Dakota and South Dakota, and mentioned a 60-day time limit.

Sen. Lynch at that point withdrew his motion that the amendment be passed.

Sen. Keating made the statement that the amendment was not germane to section 8 and there should be two amendments-- 1) delete litigation expenses, and 2) make appropriate changes in the body of the amendment.

Senator Lynch suggested delaying executive action on SB 86.

Before SB 86 was set aside for action for another day, Sen. Gage made the following motion to amend SB 86.

Strike: Section 8 in its entirety.

Committee adopted the amendment unanimously.

Sen. Gage indicated that he would talk to Mr. Shanahan and Montana Uniform Code Commissioners before committee meets for executive action on SB 86 and asked if there were any other items committee members would like brought to commissioners' attention.

Sen. Halligan stated his concern about the time limit that researcher mentioned. Also, Sen. Halligan said the definition of "minerals" was poor.

Sen. Keating said he would like "royalty" stricken from mineral interest definition.

Sen. Weeding asked Sen. Gage if Sen. Gage had any objection to striking "royalty interest" from SB 86. Sen. Gage replied that with so many deviations, SB 86 could hardly be called a "uniform act."

Sen. Keating said he knew of no cases where lost mineral owners had hindered marketability of property.

Sen. Gage reminded the committee that such a small amount of mineral interest is involved that it has no practical use to anyone or minerals would not have been allowed to become dormant nor mineral interest owners be unidentifiable.

Sens. Tveit and Lynch verbalized that they would like to discuss SB 86 after Sen. Gage had talked to those involved in writing SB 86 and after amendment had been written.

Sen. Gage stated that with the numerous objections that were cited, perhaps bill should be reported on an adverse committee report. However, Sen. Gage again said that he would first like to communicate with the uniform code commissioners.

DISPOSITION OF SB 208: Sen. Lynch said that since SB 208 seemed unworkable in any form that he would make a motion that SB 208 DO NOT PASS. Motion carried by majority vote.

DISPOSITION OF SB 92, EXTENSION OF RESERVED WATER RIGHTS COMPACT COMMISSION: Sen. Halligan said that the intent of Natural Resources Committee of the 50th Legislature should state intent that if progress is not made by compact commission by 1993, that reserved water rights agencies will go to court.

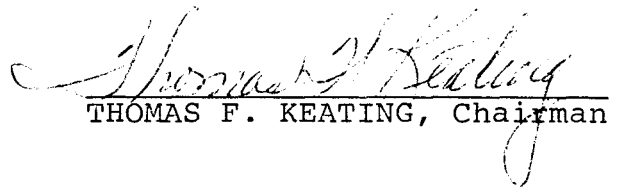
Senate Natural Resources
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Page 6

Sen. Yellowtail stated that negotiation of reserved water rights is a delicate matter and requested that committee reserve judgement on terminating the compact commission until 1993 and that no Statement of Intent be issued.

Sen. Stimatz explained that in the past, compact commission had authority to operate only in increments of two years; and SB 92 gives the commission a meaningful increment in which to work. Also, Sen. Stimatz reminded the committee that the compact commission only deals with reserved water rights of federal agencies and Indian tribes.

Sen. Walker made a motion that SB 92 DO PASS. Motion carried unanimously.

There being no further business to come before the committee, the hearing was adjourned at 2:30 P.M.


THOMAS F. KEATING, Chairman

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ROLL CALL

NATURAL RESOURCES

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date January 30, '88

NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Keating, Chairman	X		
Sen. Cecil Weeding, Vice Chairman	X		
Sen. John Anderson	X		
Sen. Mike Halligan	X		
Sen. Delwyn Gage	X		
Sen. Lawrence Stimatz			
Sen. Larry Tveit	X		
Sen. "J.D." Lynch	X		
Sen. Sam Hofman	X		
Sen. William Yellowtail	X		
Sen. Elmer Severson		X	
Sen. Mike Walker	X		

Each day attach to minutes.

DATE 1-30-87

COMMITTEE ON Natural Resources

VISITORS' REGISTER

NAME	REPRESENTING AND Address	BILL #	Check One	
			Support	Oppose
PLEASE PRINT				
Douglas Abehin	MONTANA OIL & GAS ASSOC.	208		✓
JEROME ANDERSON	SMALL WESTERN B & P	208		✓
Mike Zimmerman	MPC PHOENIX			✓
Janelle Fallon	Mont Petroleum	208		✓
John Q. Whitman	Seis Prod.	208		
Harold Ude	CENEX	208		✓
Loha Zonne	Self Visiting			

(Please leave prepared statement with)

NAME: Jamille Fallon DATE Jan 30

ADDRESS: 2030 114th Ave SENATE NATURAL RESOURCES EXHIBIT NO. 1

PHONE: 442-7582 DATE 1-30-87 BILL NO. 208

REPRESENTING WHOM? MT Petroleum Assoc

APPEARING ON WHICH PROPOSAL: SB 208

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: _____

Trust is not defined -
Does this require individual trusts
accounts? What if can't find beneficiary?
What happens to interest? Great
expense to operator. Funds are commingled
to start Texas puts lien on production
in case of bankruptcy

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Montana Oil & Gas Association

P.O. Drawer D
Shelby, Montana 59474
Phone 434-5518

SENATE NATURAL RESOURC

EXHIBIT NO. 2

DATE JAN. 30, 1987

BILL NO. 208

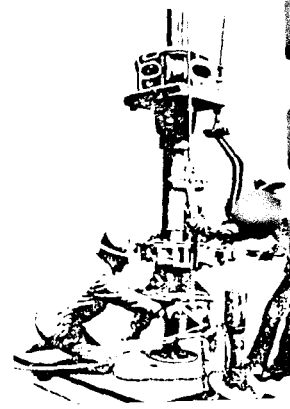
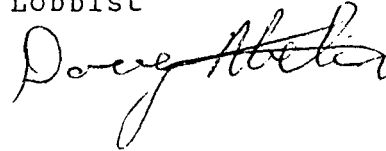
SENATE BILL #208

INTRODUCED BY SENATOR KEATING.

Montana Oil and Gas Association feels we must oppose this bill as we find it not necessary and will only make things more complex.

Doug Abelin

Lobbyist



PROPOSED AMENDMENT TO SENATE BILL 86

Mr. Chairman and Members of the Committee:

We request the following amendment to the introduced bill (Senate Bill 86):

Page 7, lines 9 through 21.

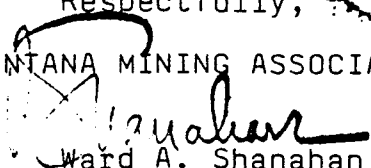
Strike: section 8 in its entirety

Insert: "Section 8. Prima facie case, appearance by dormant owner, conclusive presumption. In an action to terminate a mineral interest pursuant to (this act) if the surface owner establishes that the activities referred to in [section 5(2)(a)] were not ongoing at the time the action was commenced and that no notice has been filed as provided in [section 6] these facts are sufficient to establish a prima facie case of abandonment of a dormant mineral interest, and unless the owner of the mineral interest after service of process pursuant to the Montana Rules of Civil Procedure appears to establish that the mineral interest is not dormant because the activities referred to in [section 5(2)(a)] occurred at some time during the immediately preceding 20 years, the court having jurisdiction of the action may conclusively presume that the mineral interest has been abandoned and may proceed and enter an appropriate order and judgment terminating the mineral interest."

We respectfully submit that the proposed amendment corrects a defect in the present section 8 of the bill and provides appropriate due process of law to the owner of the dormant mineral interest.

Respectfully,

MONTANA MINING ASSOCIATION


Ward A. Shanahan,
Member of the Board

cc: Chairman, Natural Resources,
Senator Keating
Senator Gage
Senator Halligan
Senator Weeding
Senator Stimatz
Senator Yellowtail
Senator Lynch
Senator Walker
Senator Anderson
Senator Tveit
Senator Hoffman
Senator Severson
Gary Langley

STANDING COMMITTEE REPORT

January 30

19 87

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration SENATE BILL

No. 92

first reading copy (white)
color

AUTHORIZES COMPACT COMMISSION TO CONTINUE NEGOTIATIONS WITH INDIAN TRIBES

Respectfully report as follows: That SENATE BILL

No. 92

DO PASS

~~DO NOT PASS~~

SENATOR TOM KEATING

Chairman.

STANDING COMMITTEE REPORT

January 30 1957.....

MR. PRESIDENT

NATURAL RESOURCES

We, your committee on.....

having had under consideration..... **SENATE BILL** No. **208**.....

First reading copy (**white**)
color

**REQUIRES ROYALTY PAYMENTS DERIVED FROM SALE OF OIL AND GAS BE HELD
IN TRUST**

Respectfully report as follows: That..... **SENATE BILL** No. **208**.....

~~XXXX~~
~~DO PASS~~

~~DO NOT PASS~~

.....
SEN. THOMAS F. KEATING
Chairman.