MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on January 20, 1993, at 1:00 p.m.

ROLL CALL

Members Present:

Sen. Don Bianchi, Chair (D)
Sen. Cecil Weeding, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Lorents Grosfield (R)
Sen. Bob Hockett (D)
Sen. Tom Keating (R)
Sen. Ed Kennedy (D)
Sen. Bernie Swift (R)
Sen. Chuck Swysgood (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)
Sen. Jeff Weldon (D)

Members Excused: None.

Members Absent: None.

Staff Present: Paul Sihler, Environmental Quality Council
Leanne Kurtz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 102, SB 104, SB 128
Executive Action: None.

Announcements/Discussion:

Chair Bianchi announced that Montanans Against Toxic Burning and the Montana Environmental Information Center would be presenting their perspective on hazardous waste burning on 1/22. Chair Bianchi added that a presentation by realtors and surveyors on the subdivision issue was also scheduled for 1/22.

Chair Bianchi announced on 1/25, the Committee would take executive action on the five bills the Committee has heard and not acted upon.

HEARING ON SB 102

Opening Statement by Sponsor:

Sen. Gage, SD 5, said he introduced SB 102 at the request of the Uniform Codes Commission, and noted a bill of this nature is introduced almost every legislative session. He said mineral interests are being split up around the state in such small increments that some individuals are receiving as little as 18 cents per year in royalties. Sen. Gage said these interests are so small that people do not care about them. People owning these interests move out of the area, often do not notify anyone of a change of address, and the interest is lost.

Sen. Gage stated SB 102 "is an attempt at trying to do something with dormant minerals in properties in the state of Montana," and provide ways the dormant mineral rights can get back to the landowner. He said allowing mineral and surface rights to be segregated was one of the worst things the state has ever done.

Proponents' Testimony:

Robert Sullivan, a Montana Uniform Laws Commissioner, said one of the Commission's responsibilities is to recommend bills to the governor and chairs of the House and Senate Judiciary Committees. He said one of the recommendations this year is the Uniform Dormant Mineral Interest Act (SB 102). He said the SB 102 provides landowners the opportunity to terminate mineral interests "that are worthless or that nobody cares about," while preserving the rights of mineral owners who wish to maintain their mineral interests. Mr. Sullivan stated this act underwent a 3 year study period, while the drafting committee examined all the dormant mineral statutes and the marketable title acts in the United States. During this period, the draft was subject to public comment.

Mr. Sullivan said if there is no record of mineral use on a particular piece of land for 20 years, SB 102 will allow a landowner to bring a "quiet title suit". He noted "mineral" and "use" are both broadly defined in the bill, adding that transaction or conveyance of a fractional part of a mineral constitutes a "use". Mr. Sullivan explained three ways in which rights of mineral owners are protected from termination under SB 102: by using the mineral; by filing notice of intent to preserve within a 20 year period; and by filing a late notice of intent to preserve. Mr. Sullivan stated the act has an "effective date pertaining to minerals that are in existence, have been in existence, or that may be created anew." He said there is a 2 year moratorium on any lawsuits brought by landowners. Mr. Sullivan said this act has passed and been well received in Connecticut.

Giles Gregoire, representing the Montana Land and Mineral Owners Association, said SB 102 is a good example of the industry, and land and mineral owners working together to solve a common problem. He said mineral interests are commonly divided and subdivided "until finally [they] quit producing and the ownership just disappears."

Lorna Frank, representing the Montana Farm Bureau, noted the majority of the organization's members are landowners and urged the Committee's support for SB 102.

Opponents' Testimony:

Janelle Fallan, Executive Director, Montana Petroleum Association, said petroleum producers have traditionally opposed this kind of legislation. She said the bill would result in "something for nothing for the surface owner," and would lead to the transfer of property from one individual to another without compensation. Ms. Fallan stated existing laws provide for the use of minerals when the owners cannot be located, and Montana petroleum producers believe the laws are "working just fine." She said this sort of statute does not necessarily clarify title; it increases the title examiner's obligations. Ms. Fallan said a similar statute has been adopted in North Dakota, and questions have been raised about clarity of title for that region.

Tom Hopgood, Montana Association of Realtors, said the Association supports the preservation of rights of private property owners as well as the right to mineral interests of real property. Mr. Hopgood observed the bill provides for a "pseudo quiet title action" and wondered why an individual could not just file a regular quiet title action to quiet title to the minerals.

Mr. Hopgood said laws already exist to allow a service owner to quiet title to mineral interests. He said he believes the provision in SB 102 which gives a mineral owner 20 years to redeem a mineral interest would "throw a wrench into title insurance policies."

Questions From Committee Members and Responses:

Sen. Doherty wondered why the bill is necessary with the current availability of quiet title actions. Mr. Sullivan responded the bill attempts to achieve a balance between the interest of the land owner and the interest of the mineral owner. He noted it was not the intention of the drafting committee that there be a 20 year waiting period before a title is preserved. Mr. Sullivan said the bill is an effort to terminate worthless mineral interests.

Mr. Sullivan explained to the Committee the meaning of a uniform act, stating the hope is that it will be enacted in the same form

in all the states that adopt it.

Mr. Sullivan stressed a mineral estate is separate from a surface estate, so an effort to bring quiet title action in many states is "against a separate distinct estate and not a part of the subsisting estate." Mr. Sullivan confirmed Sen. Keating's understanding that if SB 102 were passed, it would be "the cause to bring quiet title for a dormant mineral that has been severed from the surface estate."

Sen. Keating expressed concern about the definition of a mineral interest in SB 102. He said a true mineral estate has the executive right to lease, but a royalty interest does not have that right. Mr. Sullivan explained the definition of "mineral" is broad in order to apply to sand and gravel, and cover all kinds of interests. He added the definition of the term "mineral" is solely for the purpose of the Act and not intended to create uncertainty about what true minerals, true royalties or true production payments are. He described the way a royalty owner could preserve interest without having to sell a portion of the royalty.

Mr. Sullivan said about twelve states have some form of dormant mineral statutes, and agreed to furnish the Committee with a list of those states. Mr. Sullivan said an individual would have to file notice of intent every 20 years unless there was use of the mineral.

Sen. Grosfield asked why the surface owner and not the dominant mineral right initiates quiet title action. Mr. Sullivan said the mineral estate initially came into existence by action of the surface owner.

Sen. Grosfield asked what happens to royalties that would be payable to dormant mineral interests. Ms. Fallan replied they are put into escrow accounts until the mineral owner appears. Sen. Keating said the royalties are established in a trust account in district court, and the owners are found if the account gets big enough.

Sen. Hockett asked for elaboration on the problems of dividing estates until the interests become meaningless. Sen. Gage said there are currently royalty owners who receive 4 cents to 12 cents per year, but who will not sell their interests.

Closing by Sponsor:

Sen. Gage stated regular quiet title action does not have the property rights protection that SB 102 offers for mineral owners. He noted the problem will continue to get worse and urged the Committee to support the legislation.

HEARING ON SB 104

Opening Statement by Sponsor:

Sen. Gage said the purpose of SB 104 is to expand upon legislation previously passed regarding pooling and spacing agreements. He said pooling and spacing rules exist for the purpose of oil and gas conservation. SB 104 deals with temporary spacing and pooling of interests.

Proponents' Testimony:

Tom Richmond, Administrator and Petroleum Engineer for the Board of Oil and Gas Conservation, said SB 104 makes substantial changes to the statute the Board enforces. He added the Board appreciates the efforts to clean up some of the language and "kill some of the dinosaurs" that have been in the statutes for 30 years.

Kemp Wilson, representing the Norfolk Energy Company, said he drafted the proposed changes to the statutes and described his background. Mr. Wilson said the Montana Conservation Act, passed in 1953, contained spacing and pooling provisions which have remained unchanged since that time. The 1985 legislature adopted a risk penalty provision to assist those who risked drilling wells when others were recalcitrant. Mr. Wilson said the proposed changes would create the concept of temporary well spacing units, which are the statewide units the Board of Oil and Gas Conservation has adopted. Mr. Wilson said many of SB 104's provisions are intended to modernize Montana's spacing and pooling statutes. Mr. Wilson distributed an outline of a presentation to the Board of Oil and Gas explaining proposed changes to spacing and pooling statutes (Exhibit #1).

Janelle Fallan, Executive Director, Montana Petroleum Association, said SB 104 provides necessary clarity in the law and provides for more fairness and equity for the mineral owner. She asked the Committee to approve the legislation.

Doug Ablin, representing the Northern Montana Oil and Gas Association expressed his support for SB 104.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Mr. Wilson said SB 104 would not affect an individual's rights granted under an oil and gas lease. He said the bill does not change the requirement that any attempt to drill two wells in a

spacing unit will require special consideration by the Board of Oil and Gas Conservation. Mr. Wilson discussed the problems with wildcat wells. He said Montana would be the first state to allow the imposition of risk sharing penalties for wildcat wells. Mr. Wilson discussed the Board's role in adjudicating disputes.

Closing by Sponsor:

Sen. Gage said SB 104 has the potential of helping conservation and drilling activity in Montana.

HEARING ON SB 128

Opening Statement by Sponsor:

Sen. Burnett said SB 128 enters into statute a fee for water right objections not to exceed $15.

Proponents' Testimony:

Jo Brunner, Executive Director, Montana Water Resources Association (MWRA), described a situation in the Bitterroot Valley in which there are many changes of diversion, changes of use and objections filed on a particular stream. She said MWRA supports SB 128.

Gary Fritz, Administrator, Department of Natural Resources and Conservation (DNRC) Water Resources Division, submitted written testimony expressing DNRC's support for SB 128 (Exhibit #2), and suggesting an amendment. Mr. Fritz discussed the authority of the Board of Natural Resources and Conservation to assess fees in order to compensate for budget cuts.

Stan Bradshaw, representing Montana Trout Unlimited, said he echoes DNRC's testimony. He said many people have been worried that low objection fees would result in frivolous water rights objections to disrupt the water allocation system. Mr. Bradshaw said the Board should have the latitude to set fees at a rate that would prevent such frivolous objections.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

The Committee discussed with Don McIntyre, DNRC Legal Counsel, the Board Natural Resources and Conservation's authority to adopt rules and establish fees. Mr. McIntyre said SB 128 does not

currently give the Board that authority.

Sen. Weeding asked Mr. McIntyre to furnish proper language that would give the Board the authority to establish fees. Chair Bianchi asked Mr. McIntyre to submit DNRC's suggestions for amendments.

Sen. Grosfield said the amendments being discussed would directly conflict with the bill's title. Paul Sihler said he would check the legalities of possible amendments with Greg Petesch.

Sen. Swift discussed the stream closure process with Mr. Fritz.

Closing by Sponsor:

Sen. Burnett said the $50 fee has becomes prohibitive and noted he has no objection to DNRC raising the filing fee to offset any funding that the Department might lose.

ADJOURNMENT

Adjournment: 2:40 p.m.

Don Bianchi
SEN. DON BIANCHI, Chair

Leanne Kurtz
LEANNE KURTZ, Secretary

DB/lk

PROPOSED CHANGES TO MONTANA'S SPACING AND POOLING STATUTES

I. SPACING STATUTE [82-11-201]

A. Concept of "temporary" and "permanent" spacing units used to enable imposition of non-joinder penalties in wildcat well ventures

1. Present statute and state-wide well location rule interpretation do not allow non-joinder penalties to be imposed unless forced pooling hearing held prior to drilling of well.

2. Proposed changes intended to make it clear by statute that MBOGC state-wide rules are spacing rules. The proposed changes specifically allow for drilling before hearing as to both wildcat and development wells, with the imposition of penalties to be ordered upon evidence that the refusing owner was given an opportunity to join prior to drilling.

B. Concept of "temporary" and "permanent" spacing units will eliminate inequity of production from wildcat considered as property of owner under the well via the rule of capture for the period from well completion to the date of spacing order.

1. Under the "temporary spacing unit" concept, production would be shared from date of first runs by at least a good portion of the owners who would ultimately be within a permanent unit.

C. Proposed changes intended to give Board maximum flexibility in the creation of spacing units, and recognize that thin discontinuous formations and/or fractured formations do not lend themselves to units of "uniform size and shape," on a field-wide basis.

D. Proposed changes intended to allow Board to deal with technical advances in drilling and completion techniques in determining proper spacing units (*i.e.*, horizontal wells or stimulation techniques that inhance possible areal extent of drainage).

E. Proposed change (subparagraph 6) would allow the Board to consider downspacing or infill well applications on less than a field-wide basis in order to prevent waste or protect correlative rights. This will give stronger and more uniform effect to the Board's past, and somewhat inconsistent, practice of allowing additional wells in faulted areas.

F. Express recognition of Board's duty to consider

protection of correlative rights.

II. POOLING STATUTE [82-11-202]

A. Non-joinder penalties expanded to include not only failure to join in drilling, but also post-completion operations, such as reworking and deepening.

B. Costs defined to include reasonable charge for supervision and overhead (Schaenen and Courtney suggestions).

C. Board's pooling authority remains limited to only permanent spacing units.

1. Non-joinder penalties applied to wildcat wells only after owner has received written notice by certified mail 30 days in advance of spudding well, and will not agree in writing to pay his share of well costs. Board order imposing penalties can only be entered after permanent spacing is established by Board (thus fixing the refusing owner's interest in the spacing unit for purpose of determining proper share of costs upon which penalties are to be based).

D. Notice provision added to insure that penalties only assessed in those situations where information sufficient to provide basis for decision whether or not to join has been given in writing to interest owners.

TESTIMONY OF THE
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
ON SENATE BILL 128, FIRST READING

BEFORE THE SENATE NATURAL RESOURCES COMMITTEE

JANUARY 20, 1993

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO CHARGE A FEE NOT TO EXCEED $15 FOR OBJECTIONS TO APPLICATIONS FOR NEW WATER USE PERMITS OR TO CHANGES TO WATER USE PERMITS; AMENDING SECTION 85-2-113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

The Department of Natural Resources and Conservation (DNRC) supports this proposed legislation which expands the rule making authority of Board of Natural Resources and Conservation under Section 85-2-113 (1) to clarify that fees may be collected for the filing of objections. The DNRC is concerned with the limits placed on the objection fee in the bill. More specifically, Senate Bill 128 limits the fee charged for filing objections to water right permit and change applications to $15. Under Senate Bill 128, the $15 filing fee limit for objections would apply retroactively to all objections filed with the Department after September 30, 1992.

The current objection filing fee of $50 is prescribed by Board Rule 36.12.103 and became effective on July 31, 1992. It was adopted in response to action of the February 1992 special session of the Legislature aimed at relieving the burden of the State's general fund monies. One of those actions directed the Department (DNRC) to increase water right processing fees. Among the fees involved was that of an objection fee. The objection fee is required only when a water right holder wants to participate in the administrative processing of a water right permit or change application received by the Department. The term "objection" refers to a formal, legal action that is part of a statutorily mandated process. The Department spends significant resources in making a legally correct decision when objections are received to an application. Accordingly, it is appropriate to assess the user of the process a small share of the program costs.

Processing fees for formal objections are certainly not a new concept. Other states, such as Oregon, assess user fees for this same service. The objection fee is also much the same as fees charged in a court of law. For example, when a complaint is filed in District Court, a court fee of $90 is charged, and a fee of $100 is required for the substitution of a judge. Indeed, these types of judicial or administrative proceedings are costly and it is appropriate that a portion of the cost be borne by the user of the service.

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 1/20
BILL NO. 128

However, even with the 1992 legislatively mandated fee increases on water right applicants and objectors, the revenue generated by these fees pays for only about 10 percent of the program costs. This means the general taxpayer, even those who may never have an occasion to apply for a water right permit, change authorization, objection, or transfer ownership of an existing water right is still paying 90 percent of the program costs.

In revising the fee schedule, the Board and Department sought to make the fees commensurate with the actual cost of processing the various filings involved. As an example, the processing of water right permit applications generally requires the greatest commitment of staff time and resources. Accordingly, the associated filing fee of $100 was among the higher to be assessed. In contrast, the processing of notices of completion for new water wells of 35 gpm or less is simpler and therefore a $25 filing fee seemed appropriate.

Overall, the increases in water right fees assure that those who directly benefit from Montana's water rights program contribute to the expense of its operation. At the same time it does not impose an onerous burden, since the revenues generated pay for only a small portion of the total program costs. Those who may never apply for a water right permit or file an objection to a water right application, still pay the majority of the program costs.

Under Senate Bill 128, the Department would be required to refund 70 percent of the objection filing fees collected between October 1, 1992 and the effective date of the bill. It is estimated that approximately $4,000 would need to be refunded. Further, in the future this bill would reduce water right fee revenue by an estimated ***$10,500*** per year -- a loss amounting to about 10 percent of the revenue resulting from the fee increase adopted by the Board in 1992.

As general fund monies continue to dwindle and budgets become tighter, an appropriate solution is to charge those people actually receiving a governmental service -- such as that provided under the water rights program -- a small percentage of the cost of that service.

As an alternative to the inflexible $15 statutory fee, DNRC would urge that Senate Bill 128 be amended to direct the Board pursuant to M.C.A. 2-4-412 to set the objection fee by rule at $15 or some other reasonable fee less than $50.

DATE 1/20

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 102, SB 104, SB 128

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Robert E. Sullivan	Uniform Laws Comm.	102	✓	
Janelle Fallan	MT Petroleum	102		✓
"	"	104	✓	
~~Peggy Peters~~	~~Keep MT Clean & Beautiful~~	~~102~~		
~~Greg Gianforte~~	~~Self~~	~~102~~		
Lorna Frank	MT. Farm Bureau	102	✓	
Giles Gregoire	Mont. Land & Mineral Assoc. Owners	102	✓	
Kemp Wilson	Norfolk Energy Co.	104	✓	
Joe Brunner	MCEA	128	✓	
Tom Hopgood	MT Assoc. Realtors	102		✓
Stan Bradshaw	M.T.U.	128	W/ Amend	
TOM RICHMOND	MT BOARD OF OIL & GAS	104	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

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