

HOUSE BILL NO. 434

1/23 Introduced
1/23 Referred to Natural Resources
1/24 Fiscal Note Requested
1/29 Fiscal Note Received
2/01 Hearing
2/11 Committee Report-Bill Pass As Amended
2/12 2nd Reading Do Not Pass
2/12 Bill Killed

HOUSE BILL NO. 434

INTRODUCED BY *John Swartz*

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE TERMINATION OF CERTAIN SEVERED MINERAL INTERESTS OWNED BY PERSONS OTHER THAN THE SURFACE OWNER AND FOR REVERSION OF OWNERSHIP TO THE SURFACE OWNER; PROVIDING FOR NOTICE AND A 60-DAY REDEMPTION PERIOD; AND ALLOWING THE PRESERVATION OF SEVERED MINERAL INTERESTS BY USE OR RERECORDATION."

WHEREAS, there exist in Montana many fractional interests in severed minerals such as coal, oil and gas, and other minerals; and

WHEREAS, difficulty in locating the owners of fractional mineral rights may prevent or delay development of scarce natural resources and the proper payment of taxes; and

WHEREAS, the United States Supreme Court, in the case of Texaco, Inc. v. Short, 454 US 516 (1982), upheld the constitutionality of the Indiana Dormant Minerals Interests Act, which provides for a lapse of severed mineral rights unless those rights are used or registered by the owners.

THEREFORE, it is the intent of the Legislature to enact a dormant minerals interests act substantially similar to the provisions of the Indiana act, in order that the owners

of fractionalized mineral interests may be determined and chances for development of those minerals increased.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [this act], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Minerals" means all forms and varieties of materials and substances formed or deposited in the crust of the earth by natural agencies alone that have value when separated from the crust of the earth and excluding only water and common forms of sand and gravel.

(2) "Person" means an individual or private corporation, association, partnership, joint venture, trust, or other legal entity but does not include the United States of America or the state of Montana or any political subdivision thereof.

(3) "Royalty interest" means an expense-free interest in production of minerals that is not entitled to any share of any bonus or rental as under a lease or other type of development agreement.

(4) "Severed mineral interest" means an interest in minerals owned by a person other than the owner of the surface of the land in which the minerals lie, except a royalty interest, lease, or other contractual right for

1 development.

2 (5) "Unused severed mineral interest" means a severed
3 mineral interest that is not used. A mineral interest is
4 used when any of the following exist:

5 (a) minerals are produced therefrom or from lands
6 pooled or unitized therewith or operations are conducted
7 thereon, or on lands pooled or unitized therewith, in
8 furtherance of development of any mineral interest including
9 injection, withdrawal, storage, or disposal of water, gas,
10 or other fluid substances;

11 (b) the mineral interest is subject to a lease or
12 other contract having as its object the development of such
13 interest and which lease or other contract (or a memorandum
14 thereof) is recorded in the office of the clerk and recorder
15 of each county wherein the interest is located;

16 (c) in the case of coal or other solid materials, when
17 there is production from a common vein or seam by the owner
18 of the severed mineral interest or by the owner's lessee or
19 permittee; or

20 (d) a statement of claim is filed pursuant to [section
21 3].

22 Section 2. Lapse of mineral interest -- prevention.
23 Unless a statement of claim is recorded in accordance with
24 [section 3], a severed mineral interest in minerals that is
25 continuously unused for a period of 20 years is extinguished

1 subject to the right of redemption provided for in [section
2 4] and ownership of the interest reverts to the surface
3 owner of the land out of which the severed mineral interest
4 was carved.

5 Section 3. Statement of claim -- recording --
6 requirements. (1) The statement of claim provided for in
7 [section 2] must be executed, acknowledged, and recorded by
8 the owner of the severed mineral interest prior to the end
9 of the 20-year period set forth in [section 2] or within 2
10 years after [the effective date of this act], whichever is
11 later, and must contain:

12 (a) the name and address of the owner of the interest;
13 (b) a description by legal subdivision, township, and
14 range of the land on or under which such mineral interest is
15 located; and

16 (c) a statement that the claimant intends to preserve
17 and not abandon whatever severed mineral interest is owned
18 by the claimant.

19 (2) The statement of claim must be recorded in the
20 office of the county clerk and recorder in each county in
21 which the severed mineral interest is located. Upon the
22 recording of the statement of claim within the time
23 provided, the mineral interest is considered to be used on
24 the date the statement of claim is recorded.

25 Section 4. Successor in interest -- notice

1 requirements -- redemption. (1) Any person who succeeds to
2 the ownership of any severed mineral interest by reversion
3 under [section 2] shall, upon succeeding to that interest,
4 give notice of same:

5 (a) by publishing the same in a newspaper of general
6 circulation in the county in which the mineral interest is
7 located;

8 (b) if the address of the former owner of the lapsed
9 mineral interest is shown of record or can be determined by
10 reasonable inquiry, by mailing a copy of such notice to the
11 former owner of the lapsed mineral interest within 10 days
12 after publication; and

13 (c) by recording in the office of the county clerk and
14 recorder in each county in which the mineral interest is
15 located, a copy of the newspaper notice, together with an
16 affidavit of compliance with subsection (1)(b).

17 (2) The notice must state:

18 (a) the name of the owner of the mineral interest as
19 shown of record;

20 (b) a description of the land;

21 (c) the nature of the interest;

22 (d) the name of the person giving notice; and

23 (e) that the owner of a lapsed interest may redeem the
24 lapsed interest by recording within 60 days as provided in
25 subsection (3).

1 (3) The owner of a lapsed severed mineral interest may
2 redeem that interest by recording a statement of claim as
3 provided for in [section 3] within 60 days of the
4 recordation pursuant to subsection (1)(c) of this section.

5 Section 5. Recording duties of clerk and recorder.
6 Upon the receipt of the statement of claim provided for in
7 [section 3] or [section 4(3)] or the copy of newspaper
8 notice and affidavit of compliance as provided in [section
9 4(1)(c)], the clerk shall record the same in a book to be
10 kept for that purpose, which shall be known as the "Dormant
11 Mineral Interest Record".

12 Section 6. Rerecordation not to revive lost interests.
13 Rerecordation under [section 3] serves only to preserve a
14 severed mineral interest from extinguishment under the
15 provisions of [section 2]. A lease or other terminable
16 interest that has expired, lapsed, or otherwise been lost by
17 its own terms or by operation of law is not revived by
18 rerecordation under [section 3].

19 Section 7. Waiver of [act] -- time limit. The
20 provisions of this [act] may not be waived at any time prior
21 to the expiration of the 20-year period provided in [section
22 2].

23 Section 8. County not required to conduct title
24 search. Nothing in [this act] may be construed to require
25 any county official or employee to conduct a title search to

LC 0288/01

1 locate any severed mineral interest.

-End-

STATE OF MONTANA

REQUEST NO. FNN205-85

FISCAL NOTE

Form BD-15

In compliance with a written request received January 25, 1985, there is hereby submitted a Fiscal Note for H.B. 434 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION:

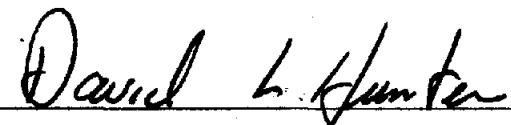
An act providing for the termination of certain severed mineral interests owned by persons other than the surface owner and for reversion of ownership to the surface owner; providing for notice and a 60 day redemption period; and allowing the preservation of severed mineral interests by use or rerecording.

ASSUMPTIONS:

This proposal will have no fiscal impact on collections from minerals in the state. Disputes over severed mineral interests would be settled in local courts. Lands owned by the State of Montana are exempt from the provisions of the legislation.

FISCAL IMPACT:

NONE.



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Jan 29, 1985

HB 434

APPROVED BY COMM. ON
NATURAL RESOURCES

1 HOUSE BILL NO. 434
2 INTRODUCED BY SCHYE, SWITZER, DEVLIN, CODY,
3 ABRAMS, ZABROCKI, IVERSON, COMPTON, JENKINS,
4 PATTERSON, O'HARA, BACHINI, MANUEL, DONALDSON,
5 CONOVER, TVEIT, E. SMITH, KOEHNKE, THOMAS,
6 NATHE, HARP, MOHAR
7

8 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
9 TERMINATION OF CERTAIN SEVERED MINERAL INTERESTS OWNED BY
10 PERSONS OTHER THAN THE SURFACE OWNER AND FOR REVERSION OF
11 OWNERSHIP TO THE SURFACE OWNER; PROVIDING FOR NOTICE AND A
12 ~~60-DAY~~ 1-YEAR REDEMPTION PERIOD; AND ALLOWING THE
13 PRESERVATION OF SEVERED MINERAL INTERESTS BY USE OR
14 RERECORDATION."
15

16 WHEREAS, there exist in Montana many fractional
17 interests in severed minerals such as coal, oil and gas, and
18 other minerals; and

19 WHEREAS, difficulty in locating the owners of
20 fractional mineral rights may prevent or delay development
21 of scarce natural resources and the proper payment of taxes;
22 and

23 WHEREAS, the United States Supreme Court, in the case
24 of Texaco, Inc. v. Short, 454 US 516 (1982), upheld the
25 constitutionality of the Indiana Dormant Minerals Interests

1 Act, which provides for a lapse of severed mineral rights
2 unless those rights are used or registered by the owners.

3 THEREFORE, it is the intent of the Legislature to enact
4 a dormant minerals interests act substantially similar to
5 the provisions of the Indiana act, in order that the owners
6 of fractionalized mineral interests may be determined and
7 chances for development of those minerals increased.

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14 materials and substances formed or deposited in the crust of
15 the earth by natural agencies alone that have value when
16 separated from the crust of the earth and excluding only
17 water ~~and-common-forms-of-sand-and-gravel~~.

18 (2) "Person" means an individual or private
19 corporation, association, partnership, joint venture, trust,
20 or other legal entity but does not include the United States
21 of America or the state of Montana or any political
22 subdivision thereof.

23 (3) "Royalty interest" means an expense-free interest
24 in production of minerals that is not entitled to any share
25 of any bonus or rental as under a lease or other type of

1 development agreement.

2 (4) "Severed mineral interest" means an interest in
3 minerals owned by a person other than the owner of the
4 surface of the land in which the minerals lie, except a
5 royalty interest, lease, or other contractual right for
6 development.

7 (5) "Unused severed mineral interest" means a severed
8 mineral interest that is not used. A mineral interest is
9 used when any of the following exist:

10 (a) minerals are produced therefrom or from lands
11 pooled or unitized therewith or operations are conducted
12 thereon, or on lands pooled or unitized therewith, in
13 furtherance of development of any mineral interest including
14 injection, withdrawal, storage, or disposal of water, gas,
15 or other fluid substances;

16 (b) the mineral interest is subject to a lease or
17 other contract having as its object the development of such
18 interest and which lease or other contract (or a memorandum
19 thereof) is recorded in the office of the clerk and recorder
20 of each county wherein the interest is located;

21 (c) in the case of coal or other solid materials, when
22 THE MINERAL INTEREST IS LEASED OR there is production from a
23 common vein or seam by the owner of the severed mineral
24 interest or by the owner's lessee or permittee; or

25 (D) THE MINERAL INTEREST OR ANY PORTION THEREOF IS THE

1 SUBJECT OF A SALE, MORTGAGE, OR OTHER TRANSFER EVIDENCED BY
2 A DOCUMENT OR A MEMORANDUM THEREOF RECORDED IN THE OFFICE OF
3 THE CLERK AND RECORDER OF EACH COUNTY WHEREIN THE INTEREST
4 IS LOCATED PRIOR TO THE END OF THE 20-YEAR PERIOD SET FORTH
5 IN [SECTION 2] OR WITHIN 2 YEARS AFTER [THE EFFECTIVE DATE
6 OF THIS ACT], WHICHEVER IS LATER; OR

7 (d)(E) a statement of claim is filed pursuant to
8 [section 3].

9 Section 2. Lapse of mineral interest -- prevention.
10 Unless a statement of claim is recorded in accordance with
11 [section 3], a severed mineral interest in minerals that is
12 continuously unused for a period of 20 years is extinguished
13 subject to the right of redemption provided for in [section
14 4] and ownership of the interest reverts to the surface
15 owner of the land out of which the severed mineral interest
16 was carved IF THE SURFACE OWNER COMPLIES WITH THE NOTICE
17 REQUIREMENTS OF [SECTION 4].

18 Section 3. Statement of claim -- recording --
19 requirements. (1) The statement of claim provided for in
20 [section 2] must be executed, acknowledged, and recorded by
21 the owner of the severed mineral interest prior to the end
22 of the 20-year period set forth in [section 2] or within 2
23 years after [the effective date of this act], whichever is
24 later, and must contain:

25 (a) the name and address of the owner of the interest;

1 (b) a description by legal subdivision, township, and
 2 range of the land on or under which such mineral interest is
 3 located; and

4 (c) a statement that the claimant intends to preserve
 5 and not abandon whatever severed mineral interest is owned
 6 by the claimant.

7 (2) The statement of claim must be recorded in the
 8 office of the county clerk and recorder in each county in
 9 which the severed mineral interest is located. Upon the
 10 recording of the statement of claim within the time
 11 provided, the mineral interest is considered to be used on
 12 the date the statement of claim is recorded.

13 Section 4. Successor in interest -- notice
 14 requirements -- redemption. (1) Any person-who-succeeds
 15 SURFACE OWNER OF THE LAND WHO WISHES TO SUCCEED to the
 16 ownership of any severed mineral interest by reversion under
 17 [section 2] shall ~~upon-succeeding-to-that-interest~~ give
 18 notice of same:

19 (a) by publishing ~~the-same~~ A NOTICE AT LEAST ONCE EACH
 20 WEEK FOR 3 CONSECUTIVE WEEKS in a newspaper of general
 21 circulation in the county in which the mineral interest is
 22 located;

23 (b) if the address of the former owner of the lapsed
 24 mineral interest is shown of record or can be determined by
 25 reasonable-inquiry WITH DUE DILIGENCE, by mailing PERSONAL

1 SERVICE OR BY REGISTERED MAILING OF a copy of such notice to
 2 the former owner of the lapsed mineral interest within 10
 3 days after publication; and

4 (c) by recording in the office of the county clerk and
 5 recorder in each county in which the mineral interest is
 6 located, a copy of the newspaper notice, together with an
 7 affidavit of compliance with subsection (1)(b).

8 (2) The notice, WHICH MUST BE VERIFIED BY THE SURFACE
 9 OWNER, must state:

10 (a) the name of the owner of the mineral interest as
 11 shown of record;

12 (b) a description of the land;

13 (c) the nature of the interest;

14 (d) the name of the person giving notice; and

15 (e) that the owner of a lapsed interest may redeem the
 16 lapsed interest by recording within ~~60--days~~ 1 YEAR as
 17 provided in subsection (3).

18 (3) The owner of a lapsed severed mineral interest may
 19 redeem that interest by recording a statement of claim as
 20 provided for in [section 3] within ~~60--days~~ 1 YEAR of the
 21 recordation pursuant to subsection (1)(c) of this section.

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 23 Upon the receipt of the statement of claim provided for in
 24 [section 3] or [section 4(3)] or the copy of newspaper
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2 kept for that purpose, which shall be known as the "Dormant
3 Mineral Interest Record".

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9 its own terms or by operation of law is not revived by
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12 provisions of this [act] may not be waived at any time prior
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14 2].

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16 search. Nothing in [this act] may be construed to require
17 any county official or employee to conduct a title search to
18 locate any severed mineral interest.

-End-