

SB 86    INTRODUCED BY GAGE  
UNIFORM DORMANT MINERAL INTERESTS ACT

1/12    INTRODUCED  
1/12    REFERRED TO NATURAL RESOURCES  
1/12    FISCAL NOTE REQUESTED  
1/19    HEARING  
2/13    TABLED IN COMMITTEE

1 Senate BILL NO. 86  
2 INTRODUCED BY [Signature]

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM  
5 DORMANT MINERAL INTERESTS ACT; PROVIDING A METHOD FOR  
6 TERMINATING DORMANT MINERAL INTERESTS THAT IMPAIR THE  
7 MARKETABILITY OF REAL PROPERTY; AND PROVIDING A MEANS OF  
8 PRESERVING THE MINERAL INTEREST."  
9

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

11 Section 1. Short title. [This act] may be cited as  
12 the "Dormant Mineral Interests Act".

13 Section 2. Statement of policy. (1) The public policy  
14 of this state is to enable and encourage marketability of  
15 real property and to mitigate the impact of dormant mineral  
16 interests on the full use and development of both surface  
17 estate and mineral interests in the property.

18 (2) [This act] must be construed to effectuate its  
19 purpose to provide a means for termination of dormant  
20 mineral interests in real property that impair marketability  
21 of the property.

22 Section 3. Definitions. As used in [this act]:

23 (1) "Mineral interest" means an interest in a mineral  
24 estate, however created and regardless of form, whether  
25 absolute or fractional, divided or undivided, corporeal or

1 incorporeal, including a fee simple or any lesser interest  
2 or any kind of royalty, production payment, executive right,  
3 nonexecutive right, leasehold, or lien in minerals,  
4 regardless of character, whether fugacious or nonfugacious,  
5 organic or inorganic.

6 (2) "Minerals" includes oil, gas, coal, other liquid,  
7 gaseous, and solid hydrocarbons, oil shale, cement material,  
8 sand and gravel, road material, building stone, chemical  
9 substances, gemstones, metallic ores, fissionable and  
10 nonfissionable ores, colloidal or other clays, steam or  
11 other geothermal resources, and any other substance defined  
12 as a mineral by the laws of this state.

13 Section 4. Exclusions. (1) [This act] does not apply  
14 to:

15 (a) a mineral interest of the United States or an  
16 Indian tribe, except to the extent permitted by federal law;  
17 or

18 (b) a mineral interest of this state or an agency or  
19 political subdivision of the state, except to the extent  
20 permitted by state law other than [this act].

21 (2) [This act] does not affect water rights.

22 (3) [This act] does not affect the meaning of the  
23 terms "minerals" or "mineral interest" for purposes other  
24 than [this act].

25 Section 5. Termination of dormant mineral interest.



1 (1) The surface owner of real property subject to a mineral  
 2 interest may maintain an action to terminate a dormant  
 3 mineral interest. A mineral interest is dormant for the  
 4 purpose of [this act] if the interest is unused within the  
 5 meaning of subsection (2) for a period of 20 years  
 6 immediately preceding commencement of the action and has not  
 7 been preserved pursuant to [section 6]. The action must be  
 8 in the nature of and requires the same notice as for an  
 9 action to quiet title and may be maintained whether the  
 10 owner of the mineral interest or the whereabouts of the  
 11 owner is known or unknown. No disability or lack of  
 12 knowledge of any kind on the part of any person suspends the  
 13 running of the 20-year period.

14 (2) Any of the following actions taken in relation to  
 15 any mineral that is part of the mineral interest constitutes  
 16 use of the entire mineral interest for the purpose of this  
 17 section if the action was taken by or under authority of the  
 18 owner of the mineral interest:

19 (a) production, geophysical exploration, exploratory  
 20 or developmental drilling, mining, exploitation,  
 21 development, or other active mineral operations on or below  
 22 the surface of the real property or other property unitized  
 23 or pooled with the real property. Injection of substances  
 24 for purposes of disposal or storage is not an active mineral  
 25 operation within the meaning of this subsection. Active

1 mineral operations constitute use of any mineral interest  
 2 owned by any person in any mineral that is the object of the  
 3 operations.

4 (b) payment of taxes on a separate property tax  
 5 assessment of the mineral interest or on a mineral transfer  
 6 or severance tax relating to the mineral interest;

7 (c) recordation of an instrument that creates,  
 8 reserves, or otherwise evidences a claim to or the continued  
 9 existence of the mineral interest, including an instrument  
 10 that transfers, leases, or divides the interest.  
 11 Recordation of an instrument constitutes use of:

12 (i) any recorded interest owned by any person in any  
 13 mineral that is the subject of the instrument; and

14 (ii) any recorded mineral interest in the property  
 15 owned by any party to the instrument.

16 (d) recordation of a judgment or decree that makes  
 17 specific reference to the mineral interest.

18 (3) This section applies notwithstanding any provision  
 19 to the contrary in the instrument that creates, reserves,  
 20 transfers, leases, divides, or otherwise evidences the claim  
 21 to or the continued existence of the mineral interest or in  
 22 another recorded document unless the instrument or other  
 23 recorded document provides an earlier termination date.

24 Section 6. Preservation of mineral interest by notice.

25 (1) The owner of a mineral interest may record at any time a

1 notice of intent to preserve the mineral interest or a part  
 2 thereof. The mineral interest is preserved in each county  
 3 in which the notice is recorded. A mineral interest is not  
 4 dormant for the purposes of [this act] if the notice is  
 5 recorded within 20 years immediately preceding commencement  
 6 of the action to terminate the mineral interest or pursuant  
 7 to [section 7] after commencement of the action.

8 (2) The notice may be executed by the owner of the  
 9 mineral interest or by another person acting on behalf of  
 10 the owner, including an owner who is under a disability or  
 11 unable to assert a claim on the owner's own behalf or whose  
 12 identity cannot be established or is uncertain at the time  
 13 of execution of the notice. The notice may be executed by  
 14 or on behalf of a co-owner for the benefit of any co-owners  
 15 or by or on behalf of an owner for the benefit of any  
 16 persons claiming under the owner or persons under whom the  
 17 owner claims.

18 (3) The notice must contain the name of the owner of  
 19 the mineral interest or the co-owners or other persons for  
 20 whom the mineral interest is to be preserved or, if the  
 21 identity of the owner cannot be established or is uncertain,  
 22 the name of the class of which the owner is a member, and  
 23 must identify the mineral interest or part thereof to be  
 24 preserved by one of the following means:

25 (a) a reference to the record location of the

1 instrument that creates, reserves, or otherwise evidences  
 2 the interest or of the judgment or decree that confirms the  
 3 interest;

4 (b) a legal description of the mineral interest. If  
 5 the owner of the mineral interest claims the mineral  
 6 interest under an instrument that is not of record or claims  
 7 under a recorded instrument that does not specifically  
 8 identify that owner, a legal description is not effective  
 9 to preserve a mineral interest unless accompanied by a  
 10 reference to the name of the record owner under whom the  
 11 owner of the mineral interest claims. In such case, the  
 12 record of the notice of intent to preserve the mineral  
 13 interest must be indexed under the name of the record owner  
 14 as well as under the name of the owner of the mineral  
 15 interest.

16 (c) a reference generally and without specificity to  
 17 any mineral interest of the owner in any real property  
 18 situated in the county. The reference is not effective to  
 19 preserve a particular mineral interest unless there is, in  
 20 the county, in the name of the person claimed to be the  
 21 owner of the interest, either:

22 (i) a previously recorded instrument that creates,  
 23 reserves, or otherwise evidences that interest; or

24 (ii) a judgment or decree that confirms that interest.

25 Section 7. Late recording by mineral owner. In an

1 action to terminate a mineral interest pursuant to [this  
2 act], the court shall permit the owner of the mineral  
3 interest to record a late notice of intent to preserve the  
4 mineral interest as a condition of dismissal of the action,  
5 upon payment into court for the benefit of the surface owner  
6 of the real property, the litigation expenses, as provided  
7 in [section 8], attributable to the mineral interest or  
8 portion thereof as to which the notice is recorded.

9 Section 8. Litigation expenses. In an action to  
10 terminate a mineral interest pursuant to [this act], if  
11 activities referred to in [section 5(2)(a)] were not ongoing  
12 at the time the action was commenced but the owner of the  
13 mineral interest establishes that the mineral interest is  
14 not dormant solely because the activities referred to in  
15 [section 5(2)(a)] occurred at some time during the  
16 immediately preceding 20 years, the court may award  
17 litigation expenses to the surface owner of the real  
18 property. In this section the term "litigation expenses"  
19 means costs and expenses reasonably and necessarily incurred  
20 in preparation for and in the action, including a reasonable  
21 attorney fee.

22 Section 9. Effect of termination. A court order  
23 terminating a mineral interest, when recorded, merges the  
24 terminated mineral interest, including express and implied  
25 appurtenant surface rights and obligations, with the surface

1 estate in shares proportionate to the ownership of the  
2 surface estate, subject to existing tax liens or  
3 assessments.

4 Section 10. Saving and transitional provisions. (1)  
5 Except as otherwise provided in this section, this act  
6 applies to all mineral interests, whether created before,  
7 on, or after October 1, 1987.

8 (2) No action may be brought to terminate a mineral  
9 interest pursuant to this act until October 1, 1989.

10 (3) This act does not limit or affect any other  
11 procedure provided by law for clearing an abandoned mineral  
12 interest from title to real property.

13 (4) This act does not affect the validity of the  
14 termination of any mineral interest made pursuant to any  
15 predecessor dormant mineral statute.

16 Section 11. Uniformity of application and  
17 construction. [This act] must be applied and construed to  
18 effectuate its general purpose to make uniform the law with  
19 respect to the subject of [this act] among states enacting  
20 it.

21 Section 12. Severability. If a part of this act is  
22 invalid, all valid parts that are severable from the invalid  
23 part remain in effect. If a part of this act is invalid in  
24 one or more of its applications, the part remains in effect  
25 in all valid applications that are severable from the

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1 invalid applications.

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