

HOUSE BILL 285

Introduced by Steppler, et al.

1/17	Introduced
1/18	Referred to Natural Resources
1/23	Hearing
1/27	Tabled in Committee

1 HOUSE BILL NO. 285
2 INTRODUCED BY Don Stupples, Cindy L. Nelson
3 Lehy
4 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM
5 DORMANT MINERAL INTERESTS ACT; PROVIDING A METHOD FOR
6 TERMINATING A DORMANT MINERAL INTEREST THAT IMPAIRS 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 NEW SECTION. Section 1. Short title. [This act] may
12 be cited as the "Dormant Mineral Interests Act".

13 NEW SECTION. Section 2. Statement of policy. (1) The
14 public policy of this state is to enable and encourage
15 marketability of real property and to mitigate the impact of
16 dormant mineral interests on the full use and development of
17 both surface 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 NEW SECTION. Section 3. Definitions. As used in [this
23 act];

24 (1) "mineral interest" means an interest in a mineral
25 estate, however created and regardless of form, whether

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

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

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

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

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

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

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

NEW SECTION. Section 5. Termination of dormant

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

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

(a) production, geophysical exploration, exploratory or developmental drilling, mining, exploitation, development, or other active mineral operations on or below the surface of the real property or other property unitized or pooled with the real property. Injection of substances for purposes of disposal or storage is not an active mineral

operation within the meaning of this subsection. Active mineral operations constitute use of any mineral interest owned by any person in any mineral that is the object of the operations.

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

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

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

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

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

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

NEW SECTION. Section 6. Preservation of mineral

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

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

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

1 preserved by one of the following means:

2 (a) a reference to the record location of the
 3 instrument that creates, reserves, or otherwise evidences
 4 the interest or of the judgment or decree that confirms the
 5 interest;

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

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

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

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

NEW SECTION. Section 7. Late recording by mineral owner. In an action to terminate a mineral interest pursuant to [this act], the court shall permit the owner of the mineral interest to record a late notice of intent to preserve the mineral interest as a condition of dismissal of the action, upon payment into court for the benefit of the surface owner of the real property, the litigation expenses, as provided in [section 8], attributable to the mineral interest or portion thereof as to which the notice is recorded.

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

NEW SECTION. Section 9. Effect of termination. A

court order terminating a mineral interest, when recorded, merges the terminated mineral interest, including express and implied appurtenant surface rights and obligations, with the surface estate in shares proportionate to the ownership of the surface estate, subject to existing tax liens or assessments.

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

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

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

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

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

NEW SECTION. Section 12. Severability. If a part of [this act] is invalid, all valid parts that are severable

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1 from the invalid part remain in effect. If a part of [this
2 act] is invalid in one or more of its applications, the part
3 remains in effect in all valid applications that are
4 severable from the invalid applications.

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