

SENATE BILL 102

Introduced by Gage, et al.

1/08	Introduced
1/08	Referred to Natural Resources
1/08	Fiscal Note Requested
1/13	Fiscal Note Received
1/14	Fiscal Note Printed
1/20	Hearing
1/29	Tabled in Committee

1 Senate BILL NO. 102

2 INTRODUCED BY [Signature]

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM
5 DORMANT MINERAL INTERESTS ACT; PROVIDING FOR THE TERMINATION
6 OF CERTAIN DORMANT MINERAL RIGHTS; AND PROVIDING A PROCEDURE
7 FOR THE PROTECTION AND PRESERVATION OF MINERAL RIGHTS."
8

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

10 NEW SECTION. Section 1. Short title. [Sections 1
11 through 9] may be cited as the "Uniform Dormant Mineral
12 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 adverse
16 effect of dormant mineral interests on the full use and
17 development of both surface estate and mineral interests in
18 real property.

19 (2) [Sections 1 through 9] must be construed to
20 effectuate the purpose of providing a means for termination
21 of dormant mineral interests that impair marketability of
22 real property.

23 NEW SECTION. Section 3. Definitions. As used in
24 [sections 1 through 9], the following definitions apply:

25 (1) "Mineral" includes gas; oil; coal; other gaseous,

1 liquid, and solid hydrocarbons; oil shale; cement material;
2 sand and gravel; road material; building stone; chemical
3 substances; gemstones; metallic, fissionable, and
4 nonfissionable ores; colloidal or other clay; steam or other
5 geothermal resource; and any other substance defined as a
6 mineral by the law of this state.

7 (2) "Mineral interest" means an interest in a mineral
8 estate, however created and regardless of form, whether
9 absolute or fractional, divided or undivided, corporeal or
10 incorporeal, including a fee simple or any lesser interest
11 or any kind of royalty, production payment, executive right,
12 nonexecutive right, leasehold, or lien in minerals,
13 regardless of character.

14 NEW SECTION. Section 4. Exclusions. (1) [Sections 1
15 through 9] do 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 [sections 1 through 9].

22 (2) [Sections 1 through 9] do not affect water rights.

23 NEW SECTION. Section 5. Termination of dormant mineral
24 interest. (1) The surface owner of real property subject to
25 a mineral interest may maintain an action to terminate a

1 dormant mineral interest. A mineral interest is dormant for
 2 the purpose of [sections 1 through 9] if the interest is
 3 unused within the meaning of subsection (2) for 20 years or
 4 more immediately preceding commencement of the action and
 5 has not been preserved pursuant to [section 6]. The action
 6 must be in the nature of and requires the same notice as for
 7 an action to quiet title. The action may be maintained
 8 whether the owner of the mineral interest or the owner's
 9 whereabouts is known or unknown. Disability or lack of
 10 knowledge of any kind on the part of any person does not
 11 suspend the running of the 20-year period.

12 (2) For purposes of this section, any of the following
 13 actions taken by or under authority of the owner of a
 14 mineral interest in relation to any mineral that is part of
 15 the mineral interest constitutes use of the entire mineral
 16 interest:

17 (a) active mineral operations on or below the surface
 18 of the real property or other property unitized or pooled
 19 with real property, including production, geophysical
 20 exploration, exploratory or developmental drilling, mining,
 21 exploitation, and development, but not including injection
 22 of substances for purposes of disposal or storage. Active
 23 mineral operations constitute use of any mineral interest
 24 owned by any person in any mineral that is the object of the
 25 operations.

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

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

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

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

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

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

21 NEW SECTION. **Section 5. Preservation of mineral**
 22 **interest by notice.** (1) The owner of a mineral interest may
 23 record at any time a notice of intent to preserve the
 24 mineral interest or a part of the mineral interest. The
 25 mineral interest is preserved in each county in which the

(2) In an action to terminate a mineral interest pursuant to [sections 1 through 9], 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, of the litigation expenses attributable to the mineral interest or portion of the mineral interest as to which the notice is recorded.

(3) This section does not apply in an action in which a mineral interest has been unused within the meaning of [section 5(2)] for 40 or more years immediately preceding commencement of the action.

NEW SECTION. Section 8. 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 liens for taxes or assessments.

NEW SECTION. Section 9. Saving and transitional provisions. (1) Except as otherwise provided in this section, [sections 1 through 9] apply to all mineral interests, whether created before, on, or after October 1, 1993.

(2) An action may not be maintained to terminate a mineral interest pursuant to [sections 1 through 9] until October 1, 1995.

(3) [Sections 1 through 9] do not limit or affect any other procedure provided by law for clearing an abandoned mineral interest from title to real property.

(4) [Sections 1 through 9] do not affect the validity of the termination of any mineral interest made pursuant to any predecessor statute on dormant mineral interests. The repeal by [sections 1 through 9] of any statute on dormant mineral interests takes effect October 1, 1995.

NEW SECTION. Section 10. Uniformity of application and construction. [Sections 1 through 9] must be applied and construed to effectuate the general purpose of making uniform the law with respect to the subject of [sections 1 through 9] among states enacting it.

NEW SECTION. Section 11. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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1 notice is recorded. A mineral interest is not dormant if the
2 notice is recorded within 20 years immediately preceding
3 commencement of the action to terminate the mineral interest
4 or pursuant to [section 7] after commencement of the action.

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

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

22 (a) a reference to the location in the records of the
23 instrument that creates, reserves, or otherwise evidences
24 the interest or of the judgment or decree that confirms the
25 interest;

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

12 (c) a reference generally and without specificity to
13 any or all mineral interests of the owner in any real
14 property situated in the county. The reference is not
15 effective to preserve a particular mineral interest unless
16 there is, in the county, in the name of the person claiming
17 to be the owner of the interest:

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

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

21 NEW SECTION. Section 7. Late recording by mineral
22 owner. (1) In this section, "litigation expenses" means
23 costs and expenses that the court determines are reasonably
24 and necessarily incurred in preparing for and prosecuting an
25 action, including reasonable attorney fees.

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0102, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: This bill would adopt the Uniform Dormant Mineral Interests Act, which provides for the termination of certain dormant mineral rights and a procedure for the protection and preservation of mineral rights.

ASSUMPTIONS:

1. There is no impact on the Department of State Lands.

FISCAL IMPACT: No fiscal impact.

Dave Lewis

1-13-93

DAVE LEWIS, BUDGET DIRECTOR
Office of Budget and Program Planning

DATE

Delwyn Gage

1-13-93

DELWYN GAGE, PRIMARY SPONSOR

DATE

Fiscal Note for SB0102, as introduced.

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