

2009 HOUSE NATURAL RESOURCES

HB 1370

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1370

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 1-30-09

Recorder Job Number: 8269

Committee Clerk Signature

Nancy S. Gerhardt

Minutes:

Chairman Porter – Open the hearing for HB 1370.

Rep Shirley Meyer – Did not sign in – **See Attachment # 1 & # 2**. There was a worry about page 3 line 13. Which is covered in Attachment # 2. Basically the only thing the amendment does is strike all the language on line 13. There was some confusion with different people that it had to be recorded in the county. Sometimes if you had a will or just a conveyance and it wasn't recorded in the county. This is just trying to clarify this law, that yes we do need some kind of proof that the ?????? does exist. When you go to where you have your participating and nonparticipating owners of the well, you will go in and see under that section people who have made a business out of fraudulently using this section. They go in there, they see these minerals identified, they claim them, and then they become a nonparticipating, or even a participating interest in one of these wells. It is a very lucrative business and I don't think it is honest. Questions?

Rep. Keiser – I'm confused. You have to prove your interest prior to the publication – what does that mean and why do we require publication?

Rep. Meyer – In order for a surface owner, he can't just state this miner is being abandoned. This is what deems what is abandoned and what is not. You may recall last session we put in

an oil company that couldn't find a mineral owner, they were going in and placing them in an unused interest bearing trust account. We did amend that and that does not deem them not to be used. This is how they are used. If this is happening to the minerals, they aren't abandoned. The reason the notice is, maybe there's somebody you think you haven't found and that is why the publication. We aren't trying to take anybody's estate. There are many of these minerals, and they are abandoned. It's a growing concern.

Chairman Porter – On page 1 you deleted the existing language on # h. Can you explain that?

Rep. Meyer – That was deleted after visiting with 4 or 5 attorneys there wasn't 1 of them that understood what it was requiring. They felt it was language that needed to be stricken. They had no idea why it was in there. They felt it was a piece of language that shouldn't be in there and was covered again in sec. 3. They felt it should be taken out and put in page 3 starting with line 7 and down.

Rep. Hofstad - I'm having trouble understanding this also. If this is a time specific instrument, or easement, why after that length of time doesn't it just go back to the surface owner? If that is the intent, can't we write that into the statute?

Rep. Meyer – You would be our hero if you could make that happen. Anyone that has a legitimate claim, we aren't trying to take away anyone's legitimate claim to a mineral acre interest. That is why it's handled in this manner. If someone has a legitimate claim, if long lost Clara comes up and she was entitled to have these minerals, good, we have no problem with that. These people are experts at finding these minerals, locating them and knowing they haven't been used for 20 years. If I had a copy of a mineral trust, no one would let me borrow theirs, on the back, they go in and find these and then they become a nonparticipating member and they are getting a royalty. It is a fraudulent transaction. That's how they are getting

away with it. They are claiming these minerals without any proof they have a right to that claim.

Chairman Porter – That could be challenged in court too.

Rep. Meyer – Yes, but it could be very expensive. Who is going to cover it. The minimum retainer they had to fork over is \$ 10,000. There is no guarantee you are going to win. That was their retainer. There is a gentlemen in Stanley, he started this little mini business, and he calls these guys and says “I’ll make this process easy for you if you give me half the minerals”. They are all done with the work. They are doing this because they think “Well if I don’t somebody could come and in and take it.”

Chairman Porter – Further questions? Seeing none – thank you.

Rep. Drovdal – We want to get the rightful owners of the abandoned minerals. We do have a problem. It is a problem for the landowners and it’s a problem for the people who actually own minerals, it’s a problem for oil companies to develop this area. This is a bill that doesn’t have to be out by the 5th of February. Hopefully this committee will take the time to look at it and see if there is any way we can address the problem that has been created. I hope this committee will take some time and take a look at this issue.

Rep. Keiser – I bet you could go through abstracts and find the same person’s name on many different abstracts claiming a little bit of royalty and making a living of this. Has there been an attempt to go after these people on the fraud side?

Rep. Drovdal – That is where we would like to go.

Chairman Porter - We’re changing the procedure that a person that has a rightful claim to a mineral that has been abandoned. If the mineral is leased and they didn’t put the claim in prior to the mineral being leased they wouldn’t have a claim to the mineral any longer.

Rep. Drovdal – That's not the intent I don't believe. The intent that is a long lost relative, they need to prove they are a long lost relative. That is the intent.

Delmer Ficek – Didn't sign in – I farm & ranch NW of Dickinson – I am in litigation with oil companies over lapsed mineral acres. My parents purchased the land in 1958 and when they purchased it they were deeded $\frac{1}{4}$ interest in that land. I am a surface owner now with that $\frac{1}{4}$ interest in that land. In the summer of 2005 a lease man approached me and asked me if I would be interested in leasing. He gave me the terms and I said let me think about it. In September I told him I only had a $\frac{1}{4}$ interest do you have all the other people? He said there was 1 person there has been no activity in a number of years and they will not approach them at all. When I signed the lease in September I asked them the same question and he said they had no intention of approaching this person. I left it 6 months. In March of 2006 I approached an attorney so I nothing would go wrong. I filed a notice of laps on March 21st. We published it 3 times in the local paper. On June 2nd he called me and sent me a paper that he recorded the deed and that $\frac{1}{4}$ interest was mine. I now own $\frac{1}{2}$ interest. On September 11th he gave me another call that a brokerage firm had contacted him that they had found an heir to this individual who hadn't had any activity for 20 years and they wanted me to file a quit claim deed on that $\frac{1}{4}$ interest. I thought about it for a while and, and being as stubborn as I was, I wasn't going to give in. We will be going on trial on March 17th. If this statute passes the house will have no bearing on my case at all. I feel strongly that something needs to be done. It doesn't allow the surface owner a chance to apply for that portion of lapsed mineral acres. I do have a letter from my attorney I would like to submit. See **Attachment # 3**. Question?

Rep. Drovdal – When you purchased that land and got the title for deed did they withhold the mineral rights?

Mr. Ficek – Each of the owners retained $\frac{1}{4}$ interest.

Richard Schlosser – ND Farmers Union – Didn't sign in – I do have to admit I'm a farmer from eastern ND and have no idea of the issues of mineral rights. Having worked in policy for 14 years for the ND Farmers Union our members - farmers and ranchers in the western part of ND – have eluded to this problem for many years. We want in support of this, particularly the efforts of Rep. Drovdal and Rep. Meyer for bringing this forward. Our response is Rep. Hofstad's response – how come. Why isn't this going back to the surface owner.

Chairman Porter – Further testimony in support? Any opposition to HB 1370?

Robert Harms – The language contained on page 3 lines 10 through 13. Claims are asserted by people who have no interest in the mineral interests. A little bit about the property rights and the so called fraud that has been involved. We have surface owners who have obvious property rights in their interests and mineral interests that have been severed over a number of years. Grandpa may have died and his will may not have probated his estate and his heirs may reside in CA, or in my family in Norway, but they are the rightful owners of those mineral interests. They rightfully own the minerals their father or grandfather owned. The challenge from the industries perspective is it does create a lot of small mineral interests the industry has difficulty finding. The property right is what you still need to be sensitive to. The process that takes place is it requires a 20 year period, or a no use of the minerals takes place. That is the 1st hoop the surface owner to take advantage of the abandoned mineral statute. Then you go through the publication process – that is the 2nd loop. A brokerage firm may be working for a mineral company trying to find all the rightful property owners in that mineral interest. They don't want 1 or 2% mineral interest owners out there not found. There is a basified need for the industry to find those people. I've never run accords these so called fraudulent act taking place. These are legitimate interests that are being sought out. The language on lines on 10

through 13 needs a little work. On the top of page 3, which is underlined I am wondering if that language isn't creating confusion within the code.

Chairman Porter – Questions

Rep. Drovdal – The surface owner would have put a publication 3 times in the official county paper and also send a letter to the last known address of the registered owner. That's correct is it not?

Mr. Harms – Yes, that is correct.

Chairman Porter – Further questions for Mr. Harms? Further opposition for HB 1370?

Rep. Meyer – This does not change the procedure in any way. I want you to really look at what Mr. Ficek said. The brokerage firm filed that 6 days after the first notice. It doesn't change any of the requirements right now of the surface owner. It just puts a provision in there.

Chairman Porter - We will close the hearing on HB 1370.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1370

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 2-5-09

Recorder Job Number: 8838

Committee Clerk Signature	<i>Nancy L. Gerhardt</i>
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Minutes:

Chairman Porter –

Rep. Keiser – The reason this bill was brought here was when the surface owner, after 20 years of no activity and they have no owner of record that has been identified, the surface could go in and publish in the local paper and put the public on notice they were going to try to take over the unclaimed mineral rights on that property and consolidate those mineral rights. Parties were coming in after the publications and claiming they owned the unclaimed mineral rights. The Burdon of proving that person who came forward fell on the surface owner to prove those people didn't have the mineral rights. What they were asking, and thought they had, but it wasn't clearly stated in the legislation, was the responsibility of assuming they had the mineral rights falls on the individual claiming they own the mineral rights. They also went on to say is, what some people were doing just as a business, is when that notice appears in the paper they were saying you can't prove I don't have those mineral rights. If I put a claim in that I do have the mineral rights, and you can't justify I don't then I will take possession of the unclaimed mineral rights. If they falsely claim they have mineral rights with a penalty. What this bill does on page 3 "a" & "b", it addresses the owner of record what they have to do. Then on subsection 2 it addresses someone other than the owner of record and what they have to

do and according to the attorneys up stairs they have to come in with an explanation of the actual legal basis of the person's assertion of legal title. Then it adds a penalty clause in subsection 3, A person that files a false claim under this section is guilty of a class B misdemeanor and is liable for attorney's fees in an action brought pursuant to this section. If somebody did infect, just looking at the newspaper article, they really had no legal interest in the property, and they come in and file one of those claims and subsequently they can demonstrate no mineral rights but were just taking them. The current system requires you prove that they don't then they would be guilty of a misdemeanor. See **Attachment # 1-** Proposed Amendments to HB 1370. Chairman Porter – Rep. Keiser in the first subsection a & b those remain existing law.

Rep. Keiser – Yes

Rep. Drovdal – Move the amendment 0102...

Chairman Porter – I have a motion from Rep. Drovdal to adopt the amendment 0102. Is there a 2nd?

Rep. Nottestad – 2nd

Chairman Porter – And a 2nd from Rep. Nottestad. Discussion?

Rep. Drovdal – The good news of this whole thing is, there aren't a lot of abandoned minerals. The bad news is it's a mess out there. I can't really speak for Ron Ness, but I would be surprised if the oil companies want to clear this up more than anybody. It costs them a lot of time and research. We do have cases out there where there are some questionable transactions. That is the whole intent of it. I did tell Rep. Pinkerton in the near future to represent a bill sending a resolution asking we take a look at abandoned and severed minerals. That whole aspect.

Rep. Hofstad – We are taking out the date?

Rep. Drovdal – Yes

Chairman Porter - There was a huge concern with the timing issues on whether you were giving proper notice or just taking someone else's property. That was a huge concern of mine.

Further discussion on the amendment? All those in favor – unison voice vote – opposition – none – motion carries.

We have an amended bill in front of us.

Rep. Keiser – I move a Do Pass As Amended

Chairman Porter – We have a motion from Rep. Keiser for a Do Pass As Amended. Is there a 2nd?

Rep. Drovdal – 2nd

Chairman Porter – 2nd from Rep. Drovdal, discussion? Seeing none the clerk will call on a Do Pass As Amended.

Yes 10 No 1 Absent 2 Carrier Rep. Drovdal

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1370

Page 1, line 2, after "interests" insert "; and to provide a penalty"

Page 2, line 26, after "claim" insert "**- Penalty**"

Page 2, line 28, overstrike "the owner of", remove "record of", overstrike "the mineral interest", and remove "at the time of the first publication"

Page 2, line 29, remove "required in section 38-18.1-06", overstrike "meets", remove "one", and overstrike "of the following requirements"

Page 3, line 1, remove "Within sixty days after first publication of the notice provided"

Page 3, remove lines 2 through 4

Page 3, line 5, overstrike "2."

Page 3, line 7, replace "Within sixty days after first publication" with "The owner of record of the mineral interest satisfies either one of the following requirements within sixty days after first publication of the notice provided for in section 38-18.1-06:"

- a. Files with the county recorder a statement of claim as required in section 38-18.1-04 which is dated and notarized to confirm that the statement was signed before the first publication of notice; or
 - b. Files with the county recorder documentation that at least one of the activities under subsection 1 of section 38-18.1-03 took place during the twenty-year period immediately preceding the first publication of notice.
2. A person other than the owner of record of the mineral interest files with the county recorder within sixty days after first publication of the notice provided for in section 38-18.1-06 an affidavit under oath or a declaration under oath which includes the following:
- a. An explanation of the factual and legal basis for the person's assertion of title to the mineral interest. This explanation must be accompanied by documentation supporting the assertion or an explanation why documentation is unavailable; and
 - b. An explanation with supporting documentation that at least one of the activities under subsection 1 of section 38-18.1-03 took place during the twenty-year period immediately preceding the first publication of notice.
3. A person that files a false claim under this section is guilty of a class B misdemeanor and is liable for attorney's fees in an action brought pursuant to this section."

Page 3, remove lines 8 through 13

Renumber accordingly

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2/6/09
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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1370

Page 1, line 2, after "interests" insert "; and to provide a penalty"

Page 2, line 26, after "claim" insert "**- Penalty**" and after the second boldfaced period insert:

"1."

Page 2, line 28, overstrike "the owner of", remove "record of", overstrike "the mineral interest", and remove "at the time of the first publication"

Page 2, line 29, remove "required in section 38-18.1-06", overstrike "meets", remove "one", and overstrike "of the following requirements"

Page 2, line 30, overstrike "1."

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Renumber accordingly

Date: 2-5-09
Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1370

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass As Amended

Motion Made By Keiser Seconded By Drovdal

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hanson		✓
Vice Chairman Damschen	✓		Rep Hunskor	✓	
Rep Clark	✓		Rep Keish	✓	
Rep DeKrey			Rep Myxter	✓	
Rep Drovdal	✓		Rep Pinkerton		
Rep Hofstad	✓				
Rep Keiser	✓				
Rep Nottestad	✓				

Total (Yes) 10 No 1

Absent 2

Floor Assignment Drovdal

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1370: Natural Resources Committee (Rep. Porter, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (10 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). HB 1370 was placed on the Sixth order on the calendar.

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(1) An explanation of the factual and legal basis for the person's assertion of title to the mineral interest. This explanation must be accompanied by documentation supporting the assertion or an explanation why documentation is unavailable; and

(2) An explanation with supporting documentation that at least one of the activities under subsection 1 of section 38-18.1-03 took place during the twenty-year period immediately preceding the first publication of notice.

2. A person that files a false claim under this section is guilty of a class B misdemeanor and is liable for attorney's fees in an action brought pursuant to this section."

Page 3, remove lines 8 through 13

Renumber accordingly

2009 SENATE NATURAL RESOURCES

HB 1370

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1370

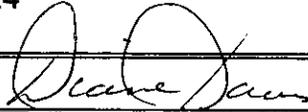
Senate Natural Resources Committee

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Hearing Date: March 20, 2009

Recorder Job Number: 11324

Committee Clerk Signature



Minutes:

Chairman Lyson opens the hearing on HB 1370. All committee members were present.

Representative Meyer introduces the bill. See attached testimony #1).

Senator Freborg asks who would qualify to be the legitimate mineral owners.

Representative Meyer replies you have to have some relation to the original owners in order to make a claim as the mineral owners.

Senator Lyson asks if a person wanted to keep the mineral rights they would have to declare them with the registered deeds in that county within the 20 years if there is no activity.

Representative Meyer replies that is correct. Any conveyance such as a mortgage or lien deems them used. I have a handout from Mike Maus (see attachment #2) which is an example some of the problems he has faced. I also have some amendments (attachment #3) I will walk you through a couple of them.

Senator Triplett asks if there have been any cases where the court penalized anyone for making false statements of record.

Representative Meyer replies that is exactly the case. However, judges have pointed out under this loophole they don't know how to determine if it is a fraudulent statement.

Representative Drovdal, District 36, I am a co-sponsor on this piece of legislation. I had concerns expressed to me by folks in Bowman and McKenzie Counties about fraudulent filing of abandoned minerals. The only person who can oppose it is a person who is harmed and in these transactions it would be the surface owners. It would cost the surface owner thousands of dollars for an attorney and the filing fees. The idea is not to deprive anyone who has the right to those minerals, but to be sure they go to the rightful owners.

Senator Hogue asks what the land men receive for compensation for tracking down the mineral owners.

Representative Meyer replies the land men were calling the owners and telling them it was a hassle and they would probably end up in court. They would offer to take over from there if the land owner would agree to give them half of the minerals.

Ron Ness, North Dakota Petroleum Council, we stand in support of this resolution with the amendments offered in addition to work we are doing with Senator Hogue and the prime sponsor. The oil industry is truly neutral on an issue like this, because we benefit when we know who the rightful owner is. It is the obligation of the oil company to lease the proper heir of those mineral rights. This bill, if not done correctly, will only make the problems we have out there worse. We will create an expectation that surface owners believe their becoming the owner of these minerals, when in reality there is a rightful heir out there that must be given due process. HB 1170 is a duplication of this bill and we supported that one also. Our preference would be to do this bill right and to have all of this in one measure and have all the parties of both bills come to an agreement. I will walk you through the rest of Representative Meyer's amendments.

Craig Smith, Attorney for Crowley Flech Law Firm, I have handout (attachment #4) of some examples of what I do and see out in the field to help you get a better understanding. As I go through these examples I will show you how they will tie in with the amendments.

Senator Triplett asks how specific the statements of claim are that are filed. Do they reference a specific land description?

Craig Smith replies they have to describe the land by township range and section.

Senator Hogue asks what the typical arrangement is when someone needs help from a lawyer to either assert that they are entitled to them as the owner of the minerals or the surface owner who's seeking to have them declared abandoned. Are most of these minerals in such small acreage that by the time the attorney and fees are paid they are left with nothing?

Craig Smith replies many times when it is a small interest the surface owner has done the notice of laps and the publication but they have not followed through with the quiet title judgment and they haven't gone to court to have them confirm that they have title. There is no point at that point in paying the expense if the minerals aren't going to be worth a lot. Procedurally we generally see is that they have gone out and done this notice of laps and then when there is a well or production then it is worth doing the quiet title.

David Straley, North Dakota Coal Company, we are in support of Mr. Smith's testimony and anything that will clean up the language to provide certainty to who we are to pay for minerals is important.

Delmer Ficek, Farmer NW of Dickinson, I have had difficulties with brokerage firms on some acreage that I had.

Robert Harms, Northern Alliance, we are in support of the bill as long as the amendments submitted by Representative Meyer are approved and I also have submitted some additional amendments (attachment #4) to you.

Brian Kramer, North Dakota Farm Bureau, We support the resolution and any attempts to clarify the right of mineral owner's.

Julie Ellingson, North Dakota Stockmen's Association, We believe this bill will help clarify and protect those property rights whether they are for severed mineral owners or the surface owners and help clarify any ambiguity that is written in the law.

LeRoy Volk spoke in a neutral position to the bill.

George Bullinger spoke in opposition to the bill. I feel some people who no longer live in the state are going to be lost.

Senator Lyson closes the hearing on HB 1370.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1370

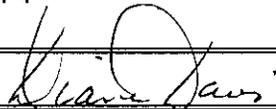
Senate Natural Resources Committee

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Hearing Date: 4/2/09

Recorder Job Number: 11674

Committee Clerk Signature



Minutes: **Senator Lyson, Chairman**

Committee Work

Senator Hogue brings in amendments. He explains the background on the amendment.

He said the amendment he offered on HB1170 which was passed tried to bring some clarity to what it means for the surface owner to make a reasonable inquiry before the dormant minerals are forfeited to the surface owner. He said the folks from the oil and gas industry looked at that and thought that it was too easy for the surface owner to work a forfeiture of the dormant mineral owner's minerals. He said these amendments try to accomplish is to put the surface owner through a little more due diligence in terms of trying to find the dormant mineral owner and if that is unsuccessful after going through the inquiry at the end of the process the surface owner is going to be entitled to those minerals. These were proposed by the oil and gas industry and they have provided protection for themselves in the event that they rely on the judicial finding that the surface owner is now the new mineral owner and they start making royalty payments to the surface owner that they will be protected that they won't have to pay the dormant mineral owner if the court determines the surface owner didn't comply. Senator Hogue thinks this is a dramatic improvement on the law. This makes the surface owner do a more rigorous search.

Senator Schneider asks if a public data base is considered like Google.

Senator Hogue replies it says one or more public data bases. They listed four but there are a multitude of them out there.

Senator Hogue moves the amendments,0205

Senator Triplett seconds

Verbal vote – all yes

Discussion continues on the proposed amendments that are included in this amendment.

Senator Hogue moves a do pass as amended

Senator Schneider seconds

Vote – 7- 0

Senator Hogue will carry

April 1, 2009

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1370

Page 1, line 1, after "to" insert "create and enact a new section to chapter 38-18.1 of the North Dakota Century Code, relating to perfecting title to dormant minerals; and to"

Page 1, line 2, remove "; and"

Page 1, line 3, remove "to provide a penalty"

Page 2, line 25, after the period insert "A statement of claim filed after July 31, 2009, by a person other than the owner of record of the mineral interest is not effective to preserve a mineral interest unless accompanied by a reference to the name of the record owner under whom the owner of the mineral interest claims."

Page 2, line 28, remove "Penalty"

Page 2, line 29, remove "1."

Page 3, line 7, replace "a." with "1."

Page 3, line 10, replace "(1)" with "a."

Page 3, line 11, remove "which is dated and notarized to confirm that the"

Page 3, line 12, remove "statement was signed before the first publication of notice"

Page 3, line 13, replace "(2)" with "b."

Page 3, line 17, replace "b." with "2."

Page 3, line 20, remove "the following:"

Page 3, line 21, replace "(1) An" with "an"

Page 3, line 24, replace "; and" with an underscored period

Page 3, remove lines 25 through 31

Page 4, line 11, after "inquiry" insert "as defined in subsection 6"

Page 4, line 25, remove the overstrike over "entities" and remove "required"

Page 4, after line 28, insert:

6. To constitute a reasonable inquiry as provided in subsection 2, the owner or owners of the surface estate or the owner's authorized agent must conduct a search of:

- a. The county recorder's records for the existence of any uses as defined in section 38-18.1-03 by the owner of the mineral interest;
- b. The clerk of court's records for the existence of any judgments, liens, or probate records which identify the owner of the mineral interest;
- c. The social security death index for the last-known residence of the owner of the mineral interest, if deceased; and
- d. One or more public internet databases to locate or identify the owner of the mineral interest or any known heirs of the owner. The owner or owners of the surface estate are not required to conduct internet searches on private fee internet databases.

SECTION 5. A new section to chapter 38-18.1 of the North Dakota Century Code is created and enacted as follows:

Perfecting title In surface owner.

- 1. Upon completion of the procedure provided in section 38-18.1-06, the owner or owners of the surface estate may maintain an action in district court in the county in which the minerals are located and obtain a judgment in quiet title in the owner or owners of the surface estate. This action must be brought in the same manner and is subject to the same procedure as an action to quiet title pursuant to chapter 32-17.
- 2. In an action brought under this section, the owner or owners of the surface estate must submit evidence to the district court establishing that all procedures required by this chapter were properly completed and that a reasonable inquiry as defined by subsection 6 of section 38-18.1-06 was conducted. If the district court finds that the surface owner has complied with all procedures of the chapter and has conducted a reasonable inquiry, the district court shall issue its findings of fact, conclusions of law, and enter judgment perfecting title to the mineral interest in the owner or owners of the surface estate.
- 3. A judgment obtained by the owner or owners of the surface estate in compliance with this section is deemed conclusive except for fraud, misrepresentation, or other misconduct.
- 4. A mineral lessee that obtains a lease from the owner of the surface estate who has obtained a judgment to minerals pursuant to this section is deemed a bona fide purchaser and its lease remains effective in the event the judgment is subsequently vacated for any reason. Further, the lessee is not liable to any third party for lease bonus, royalties, or any other proceeds paid to the surface owner pursuant to the lease prior to the judgment being vacated.
- 5. Absent fraud or misrepresentation, the owner or owners of the surface estate who obtain a judgment under this section and lease minerals to a lessee are entitled to retain all lease bonus, royalties, or any other proceeds paid to the surface owner pursuant to the lease before the judgment being vacated."

Renumber accordingly

Date: 4/2/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate Natural Resources Committee

Check here for Conference Committee *Bill #: 1370*

Legislative Council Amendment Number .0205

Action Taken Do Pass Do Not Pass Amended Amendment

Motion Made By _____ Seconded By _____

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman			Senator Jim Pomeroy		
Senator David Hogue, Vice Chairman			Senator Mac Schneider		
Senator Robert S. Erbele			Senator Constance Triplett		
Senator Layton W. Freborg					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*Carried
voice vote*

Date: 4/2/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate Natural Resources Committee

Check here for Conference Committee Bill #: 1370

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended Amendment

Motion Made By Sen Hogue Seconded By Sen Schneider

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	✓		Senator Jim Pomeroy	✓	
Senator David Hogue, Vice Chairman	✓		Senator Mac Schneider	✓	
Senator Robert S. Erbele	✓		Senator Constance Triplett	✓	
Senator Layton W. Freborg	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment Sen. Hogue

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1370, as engrossed: Natural Resources Committee (Sen. Lyson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1370 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new section to chapter 38-18.1 of the North Dakota Century Code, relating to perfecting title to dormant minerals; and to"

Page 1, line 2, remove "; and"

Page 1, line 3, remove "to provide a penalty"

Page 2, line 25, after the period insert "A statement of claim filed after July 31, 2009, by a person other than the owner of record of the mineral interest is not effective to preserve a mineral interest unless accompanied by a reference to the name of the record owner under whom the owner of the mineral interest claims."

Page 2, line 28, remove "**- Penalty**"

Page 2, line 29, remove "1."

Page 3, line 7, replace "a." with "1."

Page 3, line 10, replace "(1)" with "a."

Page 3, line 11, remove "which is dated and notarized to confirm that the"

Page 3, line 12, remove "statement was signed before the first publication of notice"

Page 3, line 13, replace "(2)" with "b."

Page 3, line 17, replace "b." with "2."

Page 3, line 20, remove "the following:"

Page 3, line 21, replace "(1) An" with "an"

Page 3, line 24, replace "; and" with an underscored period

Page 3, remove lines 25 through 31

Page 4, line 11, after "inquiry" insert "as defined in subsection 6"

Page 4, line 25, remove the overstrike over "~~entitled~~" and remove "required"

Page 4, after line 28, insert:

6. To constitute a reasonable inquiry as provided in subsection 2, the owner or owners of the surface estate or the owner's authorized agent must conduct a search of:

a. The county recorder's records for the existence of any uses as defined in section 38-18.1-03 by the owner of the mineral interest;

b. The clerk of court's records for the existence of any judgments, liens, or probate records which identify the owner of the mineral interest;

- c. The social security death index for the last-known residence of the owner of the mineral interest, if deceased; and
- d. One or more public internet databases to locate or identify the owner of the mineral interest or any known heirs of the owner. The owner or owners of the surface estate are not required to conduct internet searches on private fee internet databases.

SECTION 5. A new section to chapter 38-18.1 of the North Dakota Century Code is created and enacted as follows:

Perfecting title in surface owner.

1. Upon completion of the procedure provided in section 38-18.1-06, the owner or owners of the surface estate may maintain an action in district court in the county in which the minerals are located and obtain a judgment in quiet title in the owner or owners of the surface estate. This action must be brought in the same manner and is subject to the same procedure as an action to quiet title pursuant to chapter 32-17.
2. In an action brought under this section, the owner or owners of the surface estate shall submit evidence to the district court establishing that all procedures required by this chapter were properly completed and that a reasonable inquiry as defined by subsection 6 of section 38-18.1-06 was conducted. If the district court finds that the surface owner has complied with all procedures of the chapter and has conducted a reasonable inquiry, the district court shall issue its findings of fact, conclusions of law, and enter judgment perfecting title to the mineral interest in the owner or owners of the surface estate.
3. A judgment obtained by the owner or owners of the surface estate in compliance with this section is deemed conclusive except for fraud, misrepresentation, or other misconduct.
4. A mineral lessee that obtains a lease from the owner of the surface estate, which owner has obtained a judgment to minerals pursuant to this section, is deemed a bona fide purchaser and its lease remains effective in the event the judgment is subsequently vacated for any reason. Further, the lessee is not liable to any third party for lease bonus, royalties, or any other proceeds paid to the surface owner under the lease before the judgment being vacated.
5. Absent fraud or misrepresentation, the owner or owners of the surface estate which obtain a judgment under this section and lease minerals to a lessee are entitled to retain all lease bonus, royalties, or any other proceeds paid to the surface owner under the lease before the judgment being vacated."

Renumber accordingly

2009 TESTIMONY

HB 1370

Testimony on HB 1370

Natural Resources Committee

Todd Porter, Chairman

HB 1370 addresses the growing concern of surface owners who are in the process of trying to reclaim abandoned mineral acre interests under their property. With the exploding oil and gas industry in the western part of the state and the ever increasing bonus lease payments this issue of fraudulently claiming minerals deemed abandoned is becoming more and more of a problem.

Surface owners are the only people who are entitled to mineral interests that haven't been used for a period of twenty years. After that time period the mineral interest is deemed "abandoned" and title to the mineral interest vests in the owner of the surface estate.

If a surface owner intends to succeed to the ownership of a mineral interest upon its lapse has to give notice once a week for three weeks in the official county newspaper of the county in which the mineral interest is located.

This is when the trouble begins. After the first publication of notice we have people very familiar with how the system works stepping in and claiming these minerals for a long lost relative.

Basically without having to provide any proof whatsoever, they send notice to the landowner that they have found a long lost relative and are claiming the minerals on their behalf. The only recourse a landowner has is to hire an attorney and take the person to court.

A case in point in my area a couple had worked for an elderly couple for years. This elderly couple decided to sell the farm to these people by a contract for deed. The minerals were never mentioned in the contract, so upon their death (he was 96 and she was 94) they decided to file an abandoned mineral claim. Keep in mind the elderly couple were only children and they did not have any children of their own. When the first notice hit the papers, lo and behold someone found long lost Aunt Clara and sent the couple a notice that they were claiming the mineral interests. They were very frustrated with what little recourse they had to this situation.

HB 1370 clarifies that only the surface owner is entitled to the succession of abandoned mineral interests and requires proof of ownership.

You earlier passed HB 1170 which dealt with this section. HB 1370 just makes further clarification and doesn't conflict with the language in HB 1170.

I would appreciate a do pass on HB 1370

Attachment #2

98273.0101
Title.

Prepared by the Legislative Council staff for
Representative S. Meyer
January 29, 2009

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1370

Page 3, line 13, remove "recorded in the county in which the mineral interest in question is located"

Renumber accordingly

Attachment #3

Albert J. Hardy
Michael J. Maus
Mary E. Nordsvan
Paul Bloom, CLA
Some members also authorized to practice
law in Montana, Colorado and Texas

**Hardy, Maus
& Nordsvan, P.C.**
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January 29, 2009

TO WHOM IT MAY CONCERN:

The purpose of this letter is to describe the situation involving Delmar Ficek and his involvement with the Abandoned Mineral Statute.

Mr. Ficek is the surface owner and retained legal counsel to assist him with declaring that minerals under property owned by him had been abandoned. Mr. Ficek published the Notice of Lapse of Mineral Interest and recorded it with the County Recorder. Some time later, a mineral deed appears of record from the estate of the prior mineral owner to a North Dakota corporation in the business of purchasing and selling minerals.

The oil company that purchased the mineral interest then deeded the minerals to two other oil companies in North Dakota that buy and purchase mineral interests. These companies then brought suit against Mr. Ficek asking the Court to declare that they were the owners of the minerals, not him.

The position of the oil companies that purchased these minerals is that Mr. Ficek did not make "reasonable inquiry" before he declared the minerals abandoned. Mr. Ficek relied upon the records at the courthouse relating to the address of the person that last owned the minerals.

I have approximately six cases involving this very same issue in my office. The legislature needs to declare exactly what is required to constitute "reasonable inquiry". Without more specificity, the land owner is required to go to court and litigate it in each instance to get clear title to the minerals.

Sincerely,

HARDY, MAUS & NORDSVAN, P.C.



Michael J. Maus

MJM:mh

Proposed amendments to HB 1370

Robert W. Harms

P 3, line 19, remove "or a declaration under oath"

P 3, line 21, remove "An explanation of" and "and legal"

P 3, line 22, change "must" to "may"

P 3, line 24, remove "and" insert "or"

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1370

Page 1, line 2, remove "; and"

Page 1, line 3, remove "to provide a penalty"

Page 2, line 25, after the period insert "A statement of claim filed after July 31, 2009, by a person other than the owner of record of the mineral interest is not effective to preserve a mineral interest unless accompanied by a reference to the name of the record owner under whom the owner of the mineral interest claims."

Page 2, line 28, remove "**- Penalty**"

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Renumber accordingly

Testimony on HB 1370

Natural Resources Committee

Senator Stan Lyson, Chairman

HB 1370 addresses the growing concern of surface owners who are in the process of trying to reclaim abandoned mineral acre interests under their property. With the exploding oil and gas industry in the western part of the state and the ever increasing bonus lease payments this issue of fraudulently claiming minerals deemed abandoned is becoming more and more of a problem.

Surface owners are the only people who are entitled to mineral interests that haven't been used for a period of twenty years. After that time period the mineral interest is deemed "abandoned" and title to the mineral interest vests in the owner of the surface estate.

If a surface owner intends to succeed to the ownership of a mineral interest upon its lapse has to give notice once a week for three weeks in the official county newspaper of the county in which the mineral interest is located.

This is when the trouble begins. After the first publication of notice we have brokerage firms and/or land men who are very

familiar with how the system works stepping in and claiming these minerals for a long lost relative.

Basically without having to provide any proof whatsoever, they send notice to the landowner that they have found a long lost relative and are claiming the minerals on their behalf. The only recourse a landowner has is to hire an attorney and take the person to court.

A case in point in my area a couple had worked for an elderly couple for years. This elderly couple decided to sell the farm to these people by a contract for deed. The minerals were retained by the couple, so upon their death (he was 96 and she was 94) the young couple who had purchased the property decided to file an abandoned mineral claim. Keep in mind the elderly couple were only children and they did not have any children of their own. When the first notice hit the papers, lo and behold someone found long lost Aunt Clara and sent the couple a notice that they were claiming the mineral interests. They were very frustrated with what little recourse they had to this situation. These situations have identified a glaring loophole in this section of law. People who are fraudulently claiming abandoned minerals on behalf of a long lost relative do not have to provide any proof whatsoever that they have a legitimate claim to those minerals. This bill is an attempt to rectify this situation and clarify the intent of this statute.

HB 1370 clarifies that only the surface owner is entitled to the succession of abandoned mineral interests and requires proof of ownership if you are other than the owner of record.

Example 1:

1955-- **“J. Smith, of Dallas Texas”** – acquires 10 net mineral acres in Section 10.

No further use of record since 1955. No statements of claim, no oil and gas leases, nothing of record since 1955. J. Smith interest is subject to Dormant Mineral Act and surface owner likely to succeed to this interest.

Example 2:

1965-- **“John Anderson, of Stanley, North Dakota”** – sells his farm to his neighbor’s son and **“reserves ¼ of the minerals.”**

-1974- John Anderson dies in Minot. His family probates the estate and his minerals are deeded to his three children:

David Anderson – 1/12
Fargo, North Dakota

Susan Olson-1/12
Minot, North Dakota

Sherry Miller -1/12
Rapid City, South Dakota

-1985- David Anderson, Susan Olson and Sherry Miller all file of record Statements of Claim pursuant to Chapter 38-18.1. No further use since 1985. Minerals are preserved until 2005.

-1997 –One son, David Anderson, dies. David is survived by two daughters, both married:

Jill Simpson, Minneapolis, MN – 1/24

Anna Jacobson, Milner, North Dakota - 1/24

David Anderson’s family believes his minerals are worthless, and his daughters do not record a Personal Representative’s Deed in Mountrail County.

-2005- Mountrail minerals become more valuable. Daughters Jill Simpson and Anna Jacobson record Statements of Claim in Mountrail County to preserve their interests. However, they do *not* identify themselves as heirs of David Anderson.

-2006- Surface owner does review of county recorder records. Discovers that David Anderson, Susan Olson and Sherry Miller did not file new statements of claim in 2005. . Minerals potentially dormant as of 2005. Surface owner serves Notice of Lapse on David Anderson, Susan Olson and Sherry Miller at their 1985 addresses shown of record. Surface owner does no further inquiry. Notices are returned undelivered. Surface owner ignores statements filed by Jill Simpson and Anna Jacobsen as he does not know who they are—they appear to be strangers. Surface owner thinks he has acquired the full ¼ mineral interest.

2006- Surface owner obtains a “DEFAULT QUIET TITLE JUDGEMENT
vesting the ¼ minerals owned by David Anderson, Susan Olson and Sherry Miller in the surface owner. Notice of the legal action was sent to their 2005 addresses. But, David is deceased, and Susan and Sherry, while still living in the same cities as in 1985, both moved to different addresses. None of them get actual notice and are returned “undeliverable”. Also, the surface owner does not send notice to Jill Simpson and Anna Jacobsen as they do not know why they filed statements of claim or that David Anderson is deceased.

Later in 2006.—Oil Company “A” decides to lease all owners in the subject lands. Company “A” does a title review:

Step 1: Company A contacts Jill Simpson and Anna Jacobsen to find out who they are, as they have filed recent statements of claim. Company A does this believing they are probably heirs to other record owners appearing in the chain of title. The daughters advise they are heirs of David Anderson. Company A immediately leases them.

Step 2: The daughters further give Company “A” the current addresses of their two Aunts, Susan Olson and Sherry Miller. Company A contacts them and leases them the same day.

2007—Susan Olson, Sherry Miller, Jill Simpson, Anna Jacobsen file a lawsuit to set aside the 2006 QT judgment in favor of surface owner. The trial judge rules:

1. Jill Simpson and Anna Jacobsen both filed proper statements of claim, their interest was never dormant, and the quiet title judgment is void against them, and

2. The trial court finds that the surface owner did not do a “*reasonable inquiry*” in locating Susan Olson or Sherry Miller, and bases this in part on the premise that Company “A” was able to locate them in less than one hour. The court finds the surface owner, in only reviewing the county records, simply did not do a “reasonable inquiry”. Result: Surface owner loses.