

**POSITION:
OPPOSE HB09-1194**

TO: Colorado General Assembly
FROM: Jim Cole, Melanie Layton & Garin Vorthmann
ON BEHALF OF: Colorado Oil & Gas Association
RE: **HB09-1194—CONCERNING ACCRUAL OF A CAUSE OF ACTION UPON DISCOVERY OF A BREACH OF A ROYALTY OBLIGATION**
SPONSORS: Representative Kathleen Curry & Senator Jim Isgar
DATE: February 6, 2009

Under Colorado's "Payment of Proceeds Act,"¹ each monthly royalty payment must include information showing the royalty owner's share of oil and gas production revenue *before and after* deductions or adjustments. Royalty owners can demand additional explanation of any deductions or adjustments, and have *six years from the date of payment* to file a judicial claim alleging underpayment.

HB 1194 overturns a 2008 Colorado Supreme Court decision that affirms the application of this six-year statute of limitation. Because these actions seek to recover "money owed," the Supreme Court correctly ruled that claims accrue, and the statutory clock begins to run, on the "date of breach" – that is, when the alleged underpayment is made.² The bill creates a special exception applicable only to royalty payments. *It imposes this change in the law retroactively, and violates the principle of preventing the litigation of stale claims and providing defendants with reasonable closure against litigation liability.*

HB 1194 encourages a new wave of backward-looking litigation under the novel royalty valuation theory announced by the Colorado Supreme Court in 2001, which took the royalty payment obligation "on an odyssey to a new and distant galaxy."³ It is unfair to foster litigation over royalty payments more than six-years old, especially those made prior to this radical change in royalty payment law.

HB 1194 upsets existing Colorado law and eviscerates the statute of limitation. The bill subjects oil and gas producers to class action suits with high risk and huge financial exposure. It encourages litigation and creates a unique climate of legal risk for Colorado oil and gas producers.

HB 1194 allows royalty owners to play the royalty litigation lottery without limitation.

PLEASE VOTE AGAINST HB 1194.

¹ CRS 34-60-118.5

² A royalty obligation accrues "[a]t the time each payment is due," at which time "it [becomes] a debt owed by ... the leaseholder." *Grynberg v. Waltmen*, 946 P.2d 473,477 (Colo. App. 1996)

³ Anderson, Owen, "2001: A Royalty Odyssey," 53rd *Annual Institute on Oil and Gas Law* (2002).