

David Straley – The North American Coal Corporation
Senate Energy and Natural Resources Committee
Testimony on February 11, 2021

SUPPORT SB 2317

Chairman Kreun and members of the Senate Energy and Natural Resources Committee, my name is David Straley and I represent The North American Coal Corporation (NACoal) and its subsidiaries within North Dakota. I am here today to ask for your consideration of the amendments and then to support Senate Bill 2317 for two main policy reasons: 1. the coal industry is under economic pressures that are influenced by regular market supply and demand issues, but also government and other ESG policies that unfairly discriminate against coal and we believe this bill may help relieve the economic pressures, and 2. the ND Public Service Commission (PSC) has authority under 69-05.2-12-04 to allow collateral bond. We are trying to address a potential new situation that our company has not encountered before but could be in the near future; and we believe by creating this Trust, and with the cooperation of the Bank of North Dakota, it can serve as a potential necessary tool in the future to help the North Dakota coal industry at no risk to the state.

Before I get into the substance and background of the bill and amendments, first a little bit about the company I represent. NACoal has been operating in North Dakota since 1957. Beginning with the Indianhead Mine in an open-market, retail sales of coal concept, we have since grown our operations to dedicated mine-mouth customers that benefit not only North Dakota consumers, but also customers throughout the entire Midwest. Through today's Coyote Creek, Falkirk and Freedom Mines, our company provides over 20 million tons of coal annually in North Dakota, and it has done so consistently since the 1990s. On a more national perspective, we have mining operations in five other states, and NACoal has had continuous business operations since 1913. We have maintained dozens of mining permits throughout the nation and have always been in full compliance with those permits and the requirements surrounding bonding.

Every coal mining company operating in North Dakota does so with a permit from the PSC. The PSC runs this permitting system under the State Version of the federal law passed in 1977 under the title Surface Mining Control and Reclamation Act (SMCRA). And by no means take this as a comprehensive overview of that program, but I offer this very shortened version to help understand only one component—performance bonding. I am confident that the PSC can give you a complete education on SMCRA requirements and answer more details as you need, but my main point is to explain performance bonding. It is our intent here today to ensure the PSC maintains primacy in administering the program. We hope this bill and amendments offer ideas for potential solutions to some issues that we face in the realities of the marketplace in meeting the requirements of this program in North Dakota. One of the many

regulations within this program contains performance bonding requirements. North Dakota Administrative Code section 69-05.2-12-02 currently allows for three types of performance bonding to cover the necessary final reclamation process. Those three types of bonds are Surety Bond, Collateral Bond, or Self-Bond.

Given the three options and the costs associated with these options, we are looking for useful solutions of how best to pledge assets into a fund or escrow account that would still allow the flexibility of using them to produce coal, but also be available in the worst-case scenario to be accessed to perform the duties the PSC needs to ensure the program's goals are met. Again, I will stress that this is a worst-case scenario, and hopefully, the PSC continues their perfect record of never having had to call for the forfeiture of any coal mining bonds in North Dakota. The ramifications of that action would be far beyond the state of North Dakota, and it is our goal to never have that happen.

Another reality that we are facing is the size of the actual surety market. Given all that is happening nationally and regionally, we aren't sure that the market is really able to offer all that we'd demand, given that some in the surety market are using ESG requirements to raise the costs significantly or simply not offer a product at all to fossil fuels. If adopted and passed into law, we hope this tool would be an acceptable method of offering assurances of collateral bond, and we are asking the appropriate agencies to help administer. We have been extremely pleased with the help, advice, and ideas offered by Land Commissioner Jodi Smith and her staff—they have done an excellent job and really stepped up for us to help get us this far along.

Now, I know we've talked a lot of 'downside' and 'problems' that we face, and it would be remiss if I didn't point out all the negative and worst-case scenarios—that really is the idea behind performance bonding—providing protection to the state and public in the event of the negative and worst-case scenarios. But I think it is really important to offer some good news if this bill passes and some of the opportunities of the industry and the State that come along with it. The first is that the SMCRA program regarding bonding works well, in fact, very well. I am unaware of any coal company or bonding company defaulting on any commitments they have made across the United States, even in the recent years of so many bankruptcies.

If passed into law, the state will have more opportunity to recoup royalties for the State lands and coal minerals it holds. Commissioner Smith can give you exact numbers, but we know coal mining on State Coal has contributed millions of dollars into the education trusts held by the Land Department. Later today, this committee will get to hear about another idea of how to support the increase in those opportunities, and we are hopeful to earn your support for that concept as well.

Something that should not be confused with this bill is reclaiming abandoned mine lands. Again, I would turn the full description of the AML program and their success stories to the PSC. The short version is that the ND coal mines pay a dedicated

federal tax that is specifically for abandoned mine lands (prior to the enactment of SMCRA in August of 1977). Those federal tax dollars are then redistributed back to qualifying states through a division of our own PSC for specific purposes. We firmly support the PSC in this program—their staff does a fine job of wisely and efficiently spending of these precious federal dollars. Again, that is an industry tax and not state general fund or taxpayer dollars, nor should it be equated to reclamation bonding.

Although we may not have all the details worked out exactly as of today, assuming these amendments are adopted, we are dedicated to working toward positive resolution to help the coal industry use the assets we have as pledged collateral for meeting the requirements required by the PSC. As I review these amendments with the committee, please note that these are modeled after and are very similar to NDCC Chapter 15-68 Indian Cultural Education Trust, another example of a creative solution that was enacted into law that allowed industry to set up a trust with a specific purpose, administered through the Land Department. This program was set up by this legislative body in the last 20 years and has allowed the coal industry some creative flexibility and offers a win-win. Just like that trust, we are asking for your support of the next trust to be used in a different, yet important manner.

In a few minutes, I'm going to introduce Mr. Christopher Friez, an attorney with years of experience directly dealing with bonding, and currently is the Land Manager for NACoal's Royalty Company to answer any specific questions you may have.

Again, we would ask for your adoption of the amendments and a Do Pass of SB 2317. We would also ask for a little bit of time from the committee to address issues that may get raised. It is our first attempt at offering change and a potential solution. I'd like to thank the committee and those affected with additional work in advance for their patience—we do appreciate it. With some time, hard work, and dedication, we can all continue to enjoy access to affordable, reliable, clean, domestic, and efficient electricity from ND Lignite. Not only does it provide luxury, it powers the North Dakota economy. Given the extremely low temperatures in the last week, we are blessed to be counting on these "always on resources" like fossil fuel fired baseload power plants, and with your support, we can continue to enjoy the benefits for generations to come.

Thank you for taking this testimony today and I'd be happy to answer any questions you may have.