

**Testimony of Lynn D. Helms**  
**Director, North Dakota Industrial Commission Department of Mineral Resources**  
**January 27, 2023**  
**Senate Energy and Natural Resources Committee**  
**SB 2317**

**The North Dakota Industrial Commission (NDIC) Department of Mineral Resources (DMR) strongly urges a Do Not Pass on SB2317.**

**This bill represents the end of North Dakota's potential value-added petroleum industry. Development of a North Dakota value-added petroleum industry which includes Gas to Liquids, Hydrogen, Petrochemical Processing, Pure Product Storage, etc. requires underground storage with stable and predictable tax and regulatory policies.**

**The authority of the North Dakota Industrial Commission to ensure the protection of the correlative rights of property owners while preventing waste of our natural resources is almost 6 decades old. Initial attempts to follow the state of Texas model using only voluntary pooling and unitization resulted in very few units, half of which failed to increase recovery and all of which failed to achieve 100% ratification.**

**The NDIC and courts allowed voluntary units to proceed and include unsigned tracts, like a slice of Swiss cheese. Those unsigned tracts could not be used for fluid injection, so the Enhanced Oil Recovery process was disrupted, and production from the unsigned tracts had to be measured and marketed separately from unit production. As a result, the unsigned tracts pretty quickly reached economic limit and were shut in. The unsigned owners sued to get their leases back due to cessation of production and then leased their minerals to a small independent operator who could not maintain economic production and abandoned the wells. The NDIC ended up confiscating, plugging, and reclaiming the orphaned wells and sites.**

**In 1953 the 33<sup>rd</sup> Legislative Assembly passed North Dakota's first compulsory pooling statute and in 1965 the 39<sup>th</sup> Legislative Assembly passed North Dakota's compulsory unitization statute with an 85% ratification requirement. Repeated failures to unitize new discoveries and the resulting waste of hundreds of millions of barrels of oil resulted in ratification requirement changes to 80% in 1983, 70% in 1991, 60% in 2001, and 55% in 2017. These statutes have been challenged in court and in several Legislative Assemblies but were found to not be a taking as long as all owners are equitably or justly compensated.**

**Northwest Landowners Association v. State, et al. 2022**  
**Langved v. Continental Resources, Inc., et al 2017**  
**Hanson v. Indus. Comm'n, 466 N.W.2d 587, 594 (N.D. 1991)**  
**Texaco Inc. v. Indus. Comm'n, 448 N.W.2d 621, 623 (N.D. 1989)**  
**Hystad v. Indus. Comm'n, 389 N.W.2d 590, 595-96 (N.D. 1986)**

**In the absence of pore space amalgamation North Dakota value added petroleum operators will have no options, since they are not common carriers or public utilities as required by the Constitution of North Dakota.**

**If a value-added petroleum operator somehow managed to qualify as a common carrier or public utility pore space owner compensation would be determined by a series of jury trials. As an example of how this is likely to work, I summarize the most recently completed case in which the courts have determined just compensation for a saltwater disposal well. After 4 years of litigation the surface / pore space owner of the land upon which the well is located was awarded approximately \$20,000 in a jury trial for past, present, and future damages while in a separate action the judge awarded their legal counsel approximately \$340,000 attorney's fees. The neighboring owners have not yet received anything and will have to litigate their cases. Of course, attorneys are urging them to do so. Since this is the current common law definition of just pore space owner compensation, the NDIC urges you to give SB2317 a Do Not Pass and retain equitable compensation under NDCC 38-25-05.**

**Thank you for your time and consideration,**

A handwritten signature in blue ink that reads 'Lynn D. Helms'.

Lynn D. Helms, PhD

Director

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