

HOUSE BILL NO. 1440

Introduced by

Representatives Jones, Fegley, D. Johnson, Longmuir

Senators Kannianen, J. Roers

1 A BILL for an Act to amend and reenact section 38-11.1-06 of the North Dakota Century Code,
2 relating to the protection of groundwater and other responsibilities of a mineral developer.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 38-11.1-06 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **38-11.1-06. Protection of surface and ground water - Other responsibilities of mineral**
7 **developer.**

8 1. If the domestic, livestock, or irrigation water supply of any person ~~who~~that owns an
9 interest in real property within one-half mile [804.67 meters] of where geophysical or
10 seismograph activities are or have been conducted or within one mile [1.61 kilometers]
11 of an oil or gas well site has been disrupted, or diminished in quality or quantity by the
12 drilling operations ~~and a certified water quality and quantity test has been performed~~
13 ~~by the person who owns an interest in real property within one year preceding the~~
14 ~~commencement of drilling operations,~~ the person ~~who~~that owns an interest in real
15 property is entitled to recover the cost of making ~~such~~the repairs, alterations, or
16 construction that will ensure the delivery to the surface owner of that quality and
17 quantity of water available to the surface owner prior to the commencement of drilling
18 operations.

19 2. Any person ~~who~~that owns an interest in real property ~~where~~and which obtains all or a
20 part of that person's water supply for domestic, agricultural, industrial, or other
21 beneficial use from an underground source has a claim for relief against a mineral
22 developer to recover damages for disruption or diminution in quality or quantity of that
23 person's water supply proximately caused from drilling operations conducted by the
24 mineral developer.

- 1 3. Prima facie evidence of injury under this section may be established by a showing that
2 the mineral developer's drilling operations penetrated or disrupted an aquifer in such a
3 manner as to cause a diminution in water quality or quantity within the distance limits
4 imposed by this section. An action brought under this section when not otherwise
5 specifically provided by law must be brought within six years of the time the action has
6 accrued. For purposes of this section, the claim for relief is deemed to have accrued at
7 the time it is discovered or might have been discovered in the exercise of reasonable
8 diligence.
- 9 4. A tract of land is not bound to receive water contaminated by drilling operations on
10 another tract of land, and the owner of a tract has a claim for relief against a mineral
11 developer to recover the damages proximately resulting from natural drainage of
12 waters contaminated by drilling operations.
- 13 5. The mineral developer also is ~~also~~ responsible for all damages to person or property
14 resulting from the lack of ordinary care by the mineral developer or resulting from a
15 nuisance caused by drilling operations. This section does not create a cause of action
16 if an appropriator of water can reasonably acquire the water under the changed
17 conditions and if the changed conditions are a result of the legal appropriation of water
18 by the mineral developer.
- 19 6. At least thirty days before the commencement of construction of any proposed oil or
20 gas well site, tank battery site, access road, or underground gathering pipeline right of
21 way, the mineral developer shall obtain samples from the top six inches [15.24
22 centimeters] of topsoil and from between six to twenty-four inches [15.24 to 60.96
23 centimeters] of the soil, and have the samples analyzed for chloride, sulphate, sodium,
24 calcium, magnesium, bromide, potential of hydrogen, electroconductivity, and sodium
25 adsorption rate.
- 26 a. For oil or gas well sites and tank battery sites, the mineral developer shall take at
27 least one sample per two acres [0.0080 square kilometers] of land that will be
28 disturbed.
- 29 b. For access roads and underground gathering pipeline rights of way, the mineral
30 developer shall take at least one sample every three hundred feet [91.44 meters]
31 and at both terminuses.

- 1 c. The written results of the sampling and analysis must be provided to the surface
2 owner and filed with the industrial commission and placed in the well file or facility
3 file.
- 4 7. The mineral developer shall conduct or have conducted an inventory of water wells
5 located within one mile [1.61 kilometers] of any proposed seismograph exploration
6 activity, oil or gas well site, tank battery site, access road, or underground gathering
7 pipeline right of way.
- 8 a. For each well identified by this inventory, the mineral developer shall conduct or
9 have conducted a water quality and flow rate test by a laboratory certified by the
10 North Dakota environmental laboratory certification program within one year
11 preceding the commencement of drilling operations or seismograph exploration
12 operations.
- 13 b. The written results of the sampling and analysis must be provided to the surface
14 owner and filed with the commission and placed in the well file or facility file.