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**House Bill 1520**  
**Testimony of Ron Ness**  
**House Energy and Natural Resources Committee**  
**February 9, 2023**

Chairman Porter and members of the Committee, my name is Ron Ness, president of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 600 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. I appear before you today in opposition of House Bill 1520.

The responsibility for the correct payment and distribution of proceeds related to oil and gas production falls with the operator. We estimate that there are somewhere between 150,000 and 200,000 royalty owners in the Williston Basin who receive monthly royalty checks related to their mineral interests. It is not uncommon for a single Bakken operator to be responsible for the payment and distribution of around 25,000 royalties to mineral owners. Based on the Economic Petroleum Study conducted by North Dakota State University in 2021, operators in our state are responsible for the annual payment and distribution of approximately \$1.4 billion in royalties to private owners and \$3.77 billion in royalties to private and governmental mineral owners. **Total gross private royalties paid in 2021 were \$4.1 billion.**

As you can imagine, this is a complex issue, with title and ownership under a given drilling spacing unit that could include from one to fifteen hundred owners. Operators must take the time to get payments and distributions of proceeds done right and not pay the wrong party at the expense of another party. The royalty distribution process is not going to keep everyone happy – that is simply an impossible task. At times, the process will be delayed and even reset on account of the sale or transfer of mineral interests or the death of a

mineral or royalty owner. We have an expert in the room who can describe in greater detail the complexity of this process if the committee would like that testimony.

House Bill 1520 as presented before the Committee today is punitive in nature with serious unintended consequences. We adamantly oppose this bill and the extreme shifting of costs to operators and other working interest owners, as well as the harsh punitive fees and processes that will ultimately result in reduced royalty interest leasing offered to royalty owners and undoubtedly lead to increased litigation in our already overwhelmed courts. Our members indicate they have never seen a bill this punitive in an oil-producing state.

The bill sponsor was kind enough to share a copy of the amendment with us. The issue of contention, including that of deductions allowed for by lease contracts, has been before this body numerous times. As you are likely aware, private contract interpretation and reformation does not fall under the purview of the legislature, and such issues must be decided by the courts. It may be true that the amendment acknowledges that changing lease contracts and the terms of the lease contracts dating back to the 1940s is not in the purview of the legislature. However, the issues relating to HB 1520, as amended or not, must be decided in a court of law. Currently, I know of at least four cases relating to this issue that are now in court, and many of the parties advocating for this bill are involved in those cases. I urge this body to let the courts decide what are reasonable post-production deductions and what are not. Each operator and midstream company has a unique contractual lease agreement establishing what will generate the best value for the commodity being sold. Additionally, each royalty owner, overriding royalty owner, and working interest owner also has a unique contract establishing value and payment. It is impossible to derive a single process or formula that works for all the various parties and lease agreements. The proposed amendment to HB 1520 shifts the bill from that of a contractual dispute to a process that will utilize unreasonable timelines, massive penalties, and litigation costs that will necessarily lead to court intervention.

The North Dakota Industrial Commission made substantial changes to the Administrative Code a few years ago that were intended to improve the clarity and accessibility of data relating to royalties. The parties

advocating for this bill did not engage in that process. In my opinion, some changes to the regulations made at that time were positive. However, others resulted in substantial changes to royalty statements that only served to confuse mineral and royalty owners. This process is simply too complex to create a one-size-fits-all formula, a situation very similar to what you may see in your investment statements.

There are some parties that are never going to be satisfied regardless of the amount of data or communication they receive. This is because it is the bottom line with which they are unhappy. We believe that the majority of mineral and royalty owners simply want a place where they can seek support. The Senate Energy and Natural Resources Committee has passed Senate Bill 2194, which creates a Royalty Owner Ombudsman Program within the Department of Agriculture. We have seen this type of program prove successful in resolving issues related to pipelines and wind farms. The Petroleum Council supported that bill understanding there is a critical role for an ombudsman to serve. There are also businesses like Mineral Tracker in North Dakota that provide support for mineral owners and help track owners' production and royalties, a service not unlike using an accountant for your taxes or a lawyer for legal issues. This type of expertise is invaluable.

Finally, the various disputes that may occur between mineral owners and operators are often couched as "David versus Goliath" type situations, with many in favor of shifting liability and costs towards the operator. However, I know firsthand that many of our member operators and working interests owners are local individuals and companies that do not have the financial resources or wherewithal of the larger operators. You will hear directly from some of those individuals today and how this bill, if enacted, will make it impossible for them to continue to thrive as a small operator in this state.

The North Dakota Petroleum Council urges your support and a **Do Not Pass recommendation** for House Bill 1520. I would be happy to answer any questions.