ENGROSSED HOUSE BILL 1510
Testimony of Todd D. Kranda
Senate Energy and Natural Resources Committee

- March 23, 2023 -

Chairman Patten and members of the Senate Energy and Natural Resources Committee, for the record, my name is Todd D. Kranda, I am an attorney with the law firm of Kelsch Ruff Kranda Nagle & Ludwig in Mandan, ND. I am appearing before you as a lobbyist on behalf of the North Dakota Petroleum Council.

The North Dakota Petroleum Council represents more than 600 companies 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.

The North Dakota Petroleum Council (NDPC) is in support of Engrossed HB 1510, which was amended by the House Judiciary after the hearing to address concerns that were mentioned by landowners. If there are additional concerns, NDPC is more than willing to review and consider any further changes that promote and encourage reasonable offers to be provided to landowners involved in any legal matter covered by this damage compensation statute.

1510 was introduced to clarify the damages compensation statute without changing the ultimate intent and effect, which is to establish reasonable and fair guardrails on how attorneys' fees and court costs are awarded in litigation matters under the Oil and Gas Production Damage Compensation Act, Chapter 38-11.1 of the North Dakota Century Code. 1510 specifically amends Section 38-11.1-09 which addresses the surface owner's rejection of the settlement offer made by the mineral developer, the commencement of a legal action and the award of legal fees and costs, as well as interest.

This statute being updated was enacted in 1979, forty-four (44) years ago. During that period since the enactment of this statute, there hasn't been a single case heard by the

North Dakota Supreme Court involving a dispute of damages between a surface owner and an oil company. There was a Federal Court case in 1983 that confirmed the constitutionality of the statute recognizing the underlying purpose of encouraging and promoting good-faith settlement offers as a rational basis. The purpose of the original statute was for compensation issues relating to actual drilling operations, actual operations by an oil and gas company which disrupted the surface estate and caused damage by the location of a well site and associated facilities.

The purpose of the statute was to require a mineral developer to make an offer of settlement for damages caused by oil and gas drilling and exploration operations which disrupted the surface estate.

The statute encouraged settlement by requiring the operator to make a settlement offer to the surface owner at the same time when the notice of operations was provided which was twenty-days before commencement of drilling operations. If the settlement offer was unacceptable to the surface owner, the surface owner could reject the offer and sue for damages. If the court awarded the surface owner greater damages than the offer made by the mineral developer, then the surface owner also was entitled to reasonable attorney's fees and costs, but the surface owner would not be awarded attorney's fees if the compensation determined by the court was less than the mineral developer's offer.

The North Dakota Supreme Court has subsequently ruled that this surface compensation statute, namely Section 38-11.1-09, also applies to claims involving pore space issues, pore space being a surface interest. However, the statute when enacted 44 years ago did not contemplate claims for anything but above ground or actual surface disturbance relating to drilling operations.

The issue with pore space claims is there may never have been an express offer for pore space alone, or there may be situations where the operator does not believe there is a pore space claim for damages. For example, under the statute as originally enacted, an

adjacent pore space owner could sue claiming trespass or other claims without an opportunity for the operator to consider making an offer before such a lawsuit is commenced. Once the lawsuit is commenced, and no offer was made, then the pore space owner could be entitled to their attorney's fees and costs even if the Court only awarded $1 in nominal damages since no offer had been presented and the opportunity to do so is not provided for under the statute.

1510 does not change the original process contemplated under Section 38-11.1-09, but retains that original intent and purpose, the operator must still make an offer for surface damages, and if the surface owner rejects the offer, sues, and receives an award greater than the offer, then the surface owner still is entitled to attorney's fees.

What 1510 changes is the opportunity to present an offer of settlement after the commencement of litigation which would then be treated the same as the original process for awarding attorney's fees and costs with an offer before commencement of drilling. The surface owner may reject an offer of settlement made by the mineral developer after the commencement of litigation, and if the compensation awarded by the court to the surface owner is less than such offer of settlement, then the surface owner is only entitled to reasonably attorney's fees and costs incurred by the surface owner prior to the date the offer of settlement was made. On the other hand, if the surface owner rejects an offer of settlement made by the mineral developer after the commencement of litigation, and the compensation awarded by the court to the surface owner is greater than the offer of settlement, then the surface owner is entitled to reasonably attorney's fees and costs incurred both prior to and after the commencement of litigation.

1510 attempts to provide for a degree of fundamental fairness. 1510 updates and partially levels the playing field, especially after litigation is commenced by allowing offers for settlement after the commencement of litigation. 1510 will encourage settlements, rather than encourage litigation.

As is currently in effect under Section 38-11.1-09, there is no incentive for a surface (or pore space) owner or their attorneys to settle during litigation if the mineral developer never made an offer prior to the surface owner commencing a lawsuit. Therefore, 1510 attempts to provide for and encourage settlement and resolution which ultimately benefits both surface owners and mineral developers.

The changes requested under 1510 are reasonable, appropriate, and necessary for the damage compensation statute with the changes that have occurred since Section 38-11.1-09 was enacted in 1979, 44 years ago.

The North Dakota Petroleum Council strongly supports the passage of Engrossed **HB 1510** and urges a **Do Pass Recommendation**. Thank you for the opportunity to provide this information. I would be happy to answer any questions.