

Testimony of Troy Coons on behalf of
Northwest Landowners Association
in opposition to
HOUSE BILL NO. 1510
Senate Energy and Natural Resources
March 23, 2023

Chairman Patten and members of the committee, thank you for taking my testimony into consideration today.

My name is Troy Coons and I am the Chairman of the Northwest Landowners Association. Northwest Landowners Association represents over 525 farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

We oppose HB 1510 because the attorneys' fees reimbursement provisions of this statute were set up to ensure that it is economic for individual landowners to bring claims related to oilfield uses against large oil companies with significant resources. Litigation is expensive and the claims that exist under the surface damage act are not always claims with a value high enough to justify litigation. The purpose of the provision granting the landowner their fees is to ensure that claims for oilfield uses on small acreages are economic to litigate if the offer from the developer is unreasonable. As of right now, we do not hear of a lot of landowners needing to litigate under this provision.

Amending the law in this way will make it uneconomic for landowners to litigate claims under the surface damage act, and the result will be landowners receiving far less compensation in the oilfield. In general we believe many operators pay reasonable compensation right now in order to avoid litigation specifically because of this attorneys' fees provision. With this change, it will be in the operator's interest to engage in litigation and we will see fewer landowners receiving

reasonable compensation. This change is unnecessary and it strips landowners of rights they have long held under the surface damage act.

We have included a proposed amendment to the bill that would address our primary concern with how this bill impacts the settlement dynamics. Our attorney will explain this amendment and how it addresses our concerns. We feel that the attached proposed amendment addresses these concerns, but also believe that this law works well as it was written and intended and that the changes brought forth by HB 1510 are unnecessary and are an attack by some members of the industry on one of the few tools we as landowners have to protect our land and its value.

Thank you,

Troy Coons

Northwest Landowners Association

PROPOSED AMENDMENTS TO SENATE BILL NO. 1510

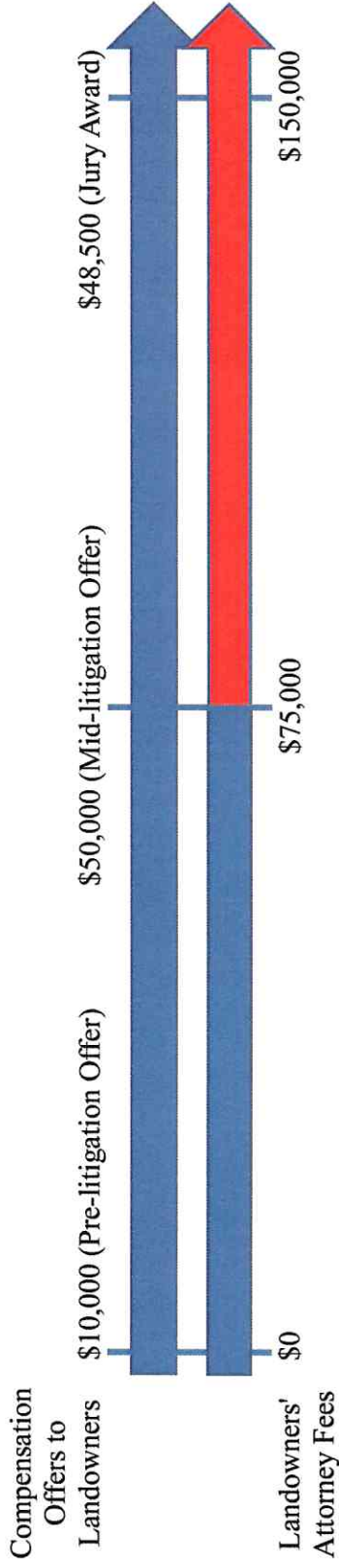
Page 2, lines 1-7, delete "5. Notwithstanding any provision of the North Dakota Rules of Civil Procedure, if the surface owner rejects an offer of settlement made by the mineral developer after the start of litigation, and the amount of compensation awarded by the court to the surface owner is less than the offer of settlement, the surface owner is entitled to an award of reasonable attorney's fees and costs incurred by the surface owner before the date of the offer of settlement, but is not entitled to any award of reasonable attorney's fees and costs after the date the offer of settlement was made to the surface owner"

And replace with

"5. If the surface owner accepts an offer of settlement made by the mineral developer after the start of litigation in an amount greater than that which had been offered by the mineral developer to the surface owner before the start of the litigation, the court shall award the surface owner the reasonable attorney's fees and costs incurred by the surface owner before the date of the offer of settlement.

6. If the surface owner rejects an offer of settlement made by the mineral developer after the start of litigation, and the amount of compensation awarded by the court to the surface owner together with the reasonable attorney's fees and costs incurred by the surface owner before the date of the offer of settlement is less than the offer of settlement, the surface owner is entitled to an award of reasonable attorney's fees and costs incurred by the surface owner before the date of the offer of settlement, but is not entitled to any award of reasonable attorney's fees and costs after the date the offer of settlement was made to the surface owner."

Landowner's opinion of damages = \$50,000



- If the landowner accepts the \$50,000 mid-litigation offer, but has already paid \$75,000 in fees, he will incur an out-of-pocket loss of **\$25,000**. (\$50,000 mid-litigation offer - \$75,000 in mid-litigation fees = **-\$25,000**). In effect, the landowner has received \$50,000 for damages which makes them whole on damages, but because the offer does not include prior fees the landowner's net loss is **\$75,000**.
- If the landowner declines the \$50,000 mid-litigation offer and is awarded just \$1,500 less than the offer and his opinion of damages at trial, the landowner loses \$75,000 in fees, making the landowner's out-of-pocket loss **\$26,500**. (\$48,500 jury award - \$75,000 post mid-litigation offer fees = **-\$26,500**). And again, because the landowner cannot recover the fees after the mid-litigation offer, the landowner is made whole by the \$48,500 from the jury, but again has a net loss of **\$75,000** to pay the fees to get there.