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RE: SB 2228 – Energy and Natural Resources Committee Testimony (In Favor Of)

Chairman and Committee Members:

My name is Scott T. Solem. I am an attorney with offices in Beulah and Hebron. I have practiced law for the better part of 30 years in Beulah and 20 years in Hebron. During that time, I have reviewed and negotiated on behalf of clients numerous energy leases. I suspect that I have reviewed more coal leases than any other attorney in North Dakota, with the exception of the attorney's for the coal companies. I have reviewed and negotiated several hundred oil and gas leases, dozens of wind farm leases, and more recently solar energy leases. In the past year I have also had opportunities to review carbon sequestration leases being offered in Mercer and Oliver Counties. These leases are extremely one sided in favor of the developer, requiring full surface use and access without any pre-determined terms and conditions for easements such as location, restoration, reclamation, financial security, and compensation. Similar terms and conditions are found in virtually every other type of energy related leases currently offered in the other aforementioned energy sectors.

I and Bismarck attorney, Derrick Braaten, currently represent several private property owners who farm and ranch in Mercer, Oliver, and Morton County. The lease that they have been offered provides 1/5th of the liability and insurance coverage that the Project Tundra provides landowners in their lease and does not provide landowners any access to pollution insurance coverage. This lease further takes all of the private landowners pore space layers, whether required for their injection well permit or not. It does not provide for reimbursement of attorney's fees for landowners. It has overbearing indemnity, representation, and warranty clauses. And it fails to provide market compensation for landowners which we've estimated at 3 to 9 times less than other disposal facilities currently under development in several other states.

The low 60% threshold for amalgamation allows the developer to not have to negotiate in good faith with private landowners once the low threshold has been achieved. Attorney Braaten and I have endeavored to develop a fair and reasonable lease agreement which provides basic landowner rights protections that you would see in any other energy related lease of this nature. A redline copy of this proposed lease, which Kurt Swenson has already provided you a copy of, was provided to the developers on 1/25/2022. Despite repeated efforts to engage in good faith discussion over the requested amendments to their proposed

lease, it was not until this SB 2228 was circulated that the developer reached out to my landowners group and Mr. Braaten to start discussions on amended lease terms.

The current 60% minimum threshold for amalgamation does not encourage arm's length and good faith negotiations between carbon sequestration developers and private property owners. To the contrary, it does just the opposite. The proposed amendment as presented in SB 2228 if passed will have the effect of encouraging good faith negotiations with developers and private property owners which will in turn result in fair and reasonable lease terms similar to those that we see in coal leases, oil and gas leases, wind energy leases, and solar energy leases. I encourage a "Do-Pass" on Senate Bill 2228.

Respectfully submitted,

SCOTT T. SOLEM
Attorney at Law