

**Testimony of Lynn D. Helms
Director, North Dakota Industrial Commission Department of Mineral Resources
January 18, 2023
Senate Energy and Natural Resources Committee
SB 2228**

The North Dakota Industrial Commission (NDIC) Department of Mineral Resources (DMR) strongly urges a Do Not Pass on SB2228.

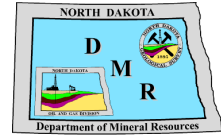
This bill represents a huge step backwards for North Dakota's Carbon Capture Utilization and Storage (CCUS) policy.

The authority of the North Dakota Industrial Commission to ensure the protection of the correlative rights of property owners while preventing waste of our natural resources is almost 6 decades old. Initial attempts to follow the state of Texas model using only voluntary pooling and unitization resulted in very few units, half of which failed to increase recovery and all of which failed to achieve 100% ratification.

The NDIC and courts allowed voluntary units to proceed and include unsigned tracts, like a slice of Swiss cheese. Those unsigned tracts could not be used for fluid injection, so the Enhanced Oil Recovery process was disrupted, and production from the unsigned tracts had to be measured and marketed separately from unit production. As a result, the unsigned tracts pretty quickly reached economic limit and were shut in. The unsigned owners sued to get their leases back due to cessation of production and then leased their minerals to a small independent operator who could not maintain economic production and abandoned the wells. The NDIC ended up confiscating, plugging, and reclaiming the orphaned wells and sites.

In 1953 the 33rd Legislative Assembly passed North Dakota's first compulsory pooling statute and in 1965 the 39th Legislative Assembly passed North Dakota's compulsory unitization statute with an 85% ratification requirement. Repeated failures to unitize new discoveries and the resulting waste of hundreds of millions of barrels of oil resulted in ratification requirement changes to 80% in 1983, 70% in 1991, 60% in 2001, and 55% in 2017. These statutes have been challenged in court and in several Legislative Assemblies but were found to not be a taking as long as all owners are equitably or justly compensated.

**Northwest Landowners Association v. State, et al. 2022
Langved v. Continental Resources, Inc., et al 2017
Hanson v. Indus. Comm'n, 466 N.W.2d 587, 594 (N.D. 1991)
Texaco Inc. v. Indus. Comm'n, 448 N.W.2d 621, 623 (N.D. 1989)
Hystad v. Indus. Comm'n, 389 N.W.2d 590, 595-96 (N.D. 1986)**



In the absence of pore space amalgamation North Dakota CCUS operators, coal fired electric generation and ethanol facilities, will be forced to utilize the Environmental Protection Agency model of waste disposal. The NDIC would still have primacy, but the well(s) would be sited the same way saltwater disposal wells or non-hazardous waste disposal wells are sited with regulatory agency concerns limited to well and formation integrity within an Area of Review (AOR). Pore space owners would be left to seek compensation through the courts under common law derived from NDCC 38-11.1 OIL AND GAS PRODUCTION DAMAGE COMPENSATION or NDCC 32-15 EMINENT DOMAIN if the facility manages to qualify as a common carrier or public utility. The most recent CCUS projects approved by the NDIC include 250 – 1,450 pore space owners within the AOR. How many CCUS projects will go forward in the face of hundreds of jury trials to determine pore space owner compensation?

To the best of my knowledge there is only one completed case in which the courts have determined just compensation for a saltwater disposal well. After 4 years of litigation the surface / pore space owner of the land upon which the well is located was awarded approximately \$20,000 in a jury trial for past, present, and future damages while in a separate action the judge awarded their legal counsel approximately \$340,000 attorney's fees. The neighboring owners have not yet received anything and will have to litigate their cases. Of course, attorneys are urging them to do so. Since this is now the common law definition of just pore space owner compensation, the NDIC urges you to give SB2228 a Do Not Pass and retain equitable compensation under NDCC 38-22 CARBON DIOXIDE UNDERGROUND STORAGE.

Thank you for your time and consideration,

Lynn D. Helms, PhD
Director

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