

Testimony of Troy Coons on behalf of
Northwest Landowners Association
in favor of
SENATE BILL NO. 2228
Senate Energy and Natural Resources Committee
January 27, 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 support SB 2228 because it is a constitutional path for these projects to occur. I have been asked by many people: "What is the right percentage?" When you amalgamate any amount of property owners, it is a taking, and for them, it is a 100% taking. So we cannot agree that there is a certain percentage that allows something that is unconstitutional.

But we were also asked how these projects could happen if that is true, and so we tried to find a way, and that is what our proposed amendment does, which I am offering along with this testimony and with the blessing and support of Senator Magrum. Amalgamation proceedings before the North Dakota Industrial Commission are actually permit proceedings before Lynn Helms and the Oil and Gas Division. Our concern with this is that Mr. Helms testified in 2019 in favor of SB 2344, and said it was necessary to remove the ability of landowners to receive compensation based on an example of the economics for gas storage. *See* Legislative History of SB 2344, p. 4, (2019) (<https://www.legis.nd.gov/files/resource/66-2019/library/sb2344.pdf>). He explained the point of his illustration, stating "I bring that up because you can see this project stores and reproduces the gas at \$2.96, which means it can't endure any additional burden from having to compensate for pore space being temporarily used for the storage of natural gas." *Id.*

This law as it stands requires landowners to go before this same regulator to determine the amount of "equitable" compensation they will receive. That is not fair. That is not "just" compensation. Article One, Section Sixteen of the North Dakota Constitution says that for a taking, the landowner "may have a jury trial, unless a jury be waived, to determine the damages, which damages the owner may choose to accept in annual payments as may be provided for by law."

Many, many projects happen in this state every day through the use of eminent domain. We as landowners never like to see the use of eminent domain, but we understand that sometimes it is necessary. We do not believe the eminent domain process is one that is very favorable for landowners, either. But we are trying to find a compromise with the industries who want to operate in North Dakota, and we are also trying to find a path that is constitutional and allows development to occur. This amendment and the bill as amended would provide regulatory certainty and avoid the need for litigation over permitting and jurisdictional issues. If there are disputes about just compensation, they can be decided by juries the way our Constitution requires and by using a system that is tried and true. It is simply more reasonable to use the process of eminent domain rather than making up a new amalgamation process that is clearly unconstitutional and will only subject developers to litigation.

This is our opportunity to find a solution and resolve these issues. We have said from the beginning that we are here to work cooperatively, and our invitation stands to work with industry. Even without that cooperation, we are trying to meet in the middle and that is why we are offering this proposed amendment – to find a way forward and find some middle ground. We hope you will take us up on this offer, and please vote do pass on SB 2228.

Thank you,

Troy Coons
Northwest Landowners Association

January 15, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2228

Page 1, line 15, remove the overstrike over "~~made a good faith effort to get~~"

Page 1, line 15, remove "obtained"

Page 1, line 17, remove the overstrike over "~~That the storage operator has obtained the consent of persons who own at least~~"

Page 1, line 17, after "~~sixty~~" insert "eighty-five"

Page 1, remove the overstrike over line 18 and insert immediately thereafter "If a county elects to require written consent from more than eighty-five percent of the persons that own the storage reservoir's pore space, the storage operator has received written consent from the specified percentage of the owners required by the county."

Page 1, line 19, remove the overstrike over "~~6.~~"

Page 2, line 1, remove the overstrike over "~~7.~~"

Page 2, line 1, remove "6."

Page 2, line 3, remove the overstrike over "~~8.~~"

Page 2, line 3, remove "7."

Page 2, line 4, remove the overstrike over "~~9.~~"

Page 2, line 4, remove "8."

Page 2, line 6, remove the overstrike over "~~10.~~"

Page 2, line 6, remove "9."

Page 2, line 8, remove the overstrike over "~~11.~~"

Page 2, line 8, remove "10."

Page 2, line 9, remove the overstrike over "~~12.~~"

Page 2, line 9, remove "11."

Page 2, line 12, remove the overstrike over "~~13.~~"

Page 2, line 12, remove "12."

Page 2, line 15, remove the overstrike over "~~14.~~"

Page 2, line 15, remove the overstrike over "~~That all nonconsenting pore space owners~~"

Page 2, line 15, after the overstruck period insert "have received just compensation under chapter 32-15 and section 16 of article I of the Constitution of North Dakota or the district court has authorized the plaintiff to take possession under section 32-15-29."

Renumber accordingly