



Kraken Operating

9805 Katy Freeway – Ste.300. Houston, TX 77024

To Whom it May Concern,

Kraken Operating LLC (“Kraken”) has been an operator of oil and gas wells in North Dakota since 2016. We currently operate ~450 wells and have drilled more than 180 wells in the state. As I am sure is the same with most operators in North Dakota, we place tremendous value on our relationship with all of our partners. As we develop our leased mineral interests, we always endeavor to treat everyone in a fair and honest manner.

After more than seven years of operating, I am proud to say that I can count on one hand the number of times I have been made aware of any issues related to the payment of royalties or other interests associated with our minerals under lease.

The State of North Dakota currently has very robust rules that control the content, timing and distribution of notices and payments. The current rules have worked very well for operators, such as Kraken, to establish workflows and processes to make sure we maintain compliance and our partners remain satisfied with our performance. If you ask around, I am confident you will find that Kraken has a good reputation and is well known as a good operator. Our track record should speak for itself.

If there are operators in North Dakota who are not treating their partners fairly by paying or responding in a timely manner, let me start by saying, “Shame on them.” I am not here to defend bad actors or bad deeds, and am in full support of taking the necessary steps to eliminate any undesired practices.

However, the current Senate Bill No. 2374 (“SB 2374”) will have serious repercussions on how we, as a reputable oil and gas operator in the State of North Dakota, do business going forward. Some specific examples are included in Exhibit A. The list is long and the potential impact on our ability to operate are real.

The State of North Dakota currently has very robust rules and regulations and a body of case law which address many of the issues contemplated by SB 2374. We believe that the amendments proposed, in particular the award of attorney’s fees for a prevailing plaintiff (and not a successful defendant) and the newly proposed civil penalties will entice a feeding frenzy for plaintiff’s attorneys and class action lawyers to launch frivolous suits. This will result in countless lawsuits that will likely overwhelm the North Dakota Judicial system which is already heavily burdened. We ourselves were named in a recent class action lawsuit along with numerous other operators in North Dakota and even though the royalty payments we had made to the plaintiff were only ~\$11,000, we incurred over \$250,000 of legal fees to defend the suit before it was dismissed by the plaintiff. At the very least, both parties should share in the risk to reduce the likelihood of frivolous lawsuits and any prevailing party should be entitled to recover their reasonable attorney’s fees.

I appreciate your time to consider these comments. As stated previously, Kraken would love to be part of a broader solution that looks at ways to eliminate or penalize specific companies that fail to pay or respond to legitimate concerns in a timely manner. I believe the majority of oil and gas companies are like Kraken and operate with honor and integrity in the best interest of all stakeholders. After reviewing our comments, we hope you will determine that passing SB 2374 in its current form is not the best path forward for the regulation of all oil and gas operators.

Sincerely,

Bruce Larsen
President

EXHIBIT A – SPECIFIC COMMENTS TO SB 2374

Section 38-06-06.3 Information Statement to accompany payment to royalty owner.

- 38-08-06.3 (1). This subsection applies to the information statement that is required to be sent to a royalty owner. However, the first proposed change in 38-08-06.3 (1) potentially expands the requirement from an owner of a royalty interest to an owner of an interest in the land which exceeds the scope of 38-08-06.3 and is difficult to predict how that may be interpreted.
- 38-08-06.3 (1). The additional language "including a portable document format and comma-separated value file which are unlocked and editable by the recipient free of charge" would require these items to be included in all royalty owner statements. This would be an added expense and incredible burden on every operator in the State of North Dakota. We currently process approximately ~5,800 revenue payments per month. Of these, approximately ~3,300 are electronic and ~2,500 are physical. For all physical payments we have asked such owners if they would prefer to receive their payments electronically, which they have denied. For such owners (receiving physical checks and statements) this additional language would require us to include a thumb drive, cd, zip drive or floppy disk with each physical royalty payment and statement? In addition, we have no way of knowing what software a royalty owner has and whether it allows them to edit a portable document format. Any offense would be a class B misdemeanor and this places enormous risk on the operators in North Dakota.
- 38-08-06.3 (5) New subpart (5) allows for a prevailing plaintiff in a proceeding under this section to be awarded attorney's fees. The penalty for non-compliance with this section is a Class B misdemeanor, which is a criminal offense, not a monetary penalty against the operator which would be a civil matter. There should be no attorney's fees awarded in a criminal matter, this is not a civil action.

Section 38-06-06.3 Information Statement to accompany payment to royalty owner.

- 38-08-06.6 (2). The second sentence of 38-08-06.6 (2) requires an operator (upon request) to provide the relevant document number or book and page number of any recorded document and the county in which it was recorded which relates to the owner's decimal interest. This requirement is overly broad and will require significant time and expense of every single operator in North Dakota. We assume that the reference to an "owner's decimal interest" refers to a mineral owner's ownership interest in the minerals included in a spacing unit. The ownership of the vast majority of mineral owners are derived from an original patent obtained from the United States Government, in instances dating back to the 1800s. There is then a subsequent chain of record title from that original patent to the present mineral owners. Sometimes this chain of title covers more than one hundred and fifty years and countless conveyance documents. The requirement in this subpart of 38-08-06.6 would require an operator to include the recording information of every such document as they all relate to the ownership interest of a mineral owner. This requirement is too broad and will likely be unworkable for the majority of independent operators in North Dakota. The information is publicly available, and this task could be handled more effectively at the state level by creating a state managed and county staffed network working in connection with the local county courthouses who maintain the applicable indexes to help those mineral owners being mistreated by hopefully a very limited number of bad operators. This service could be offered free of charge.

Section 47-16-39.1 Obligation to pay royalties

- 47-16-39.1 (1) The inclusion of overriding royalty interest owner in this section should be removed. We wonder if the State wants to allow an overriding royalty interest owner (who is presumably not receiving revenue perhaps for a good reason) the ability to bring a claim to cancel an oil and gas lease even if the mineral owner (who is the lessor under the lease) has been paid their royalty. The oil and gas lease is a contract between the lessor and the

lessee and it may be problematic to allow an overriding royalty interest owner (whose interest is derived from the working interest and not from the underlying mineral interest) to unilaterally cancel the lease.

Section 47-16-39.2 Inspection of production and royalty payment records.

- As a general comment, any notice sent by a royalty owner under this section should be required to be written notice sent via certified mail. In addition, the records should be limited to only those that are applicable to the royalty owner who has requested such access.
- Some of the records to be disclosed are going to be governed by a contract between the operator and the purchaser of the oil or gas. These contracts are sometimes voluminous and include confidentiality provisions in them, which would restrict disclosure of the contracts themselves, the statements from the purchaser and other purchaser information. To disclose such information to a royalty owner in such scenario would require prior written consent from the purchaser. If such consent is not obtained and the operator nevertheless discloses such information, then the operator is in breach of their contract and could be liable to the purchaser. If the purchaser does not grant their consent or does not timely reply, the operator would then be stuck with making a decision to either be in breach of their contract or in breach of this provision. At a minimum, these proposed revisions should be limited to non-confidential or non-privileged records in the operator's possession and place an obligation on the operator to use commercially reasonable efforts to obtain consent to disclose applicable confidential and/or privileged information.

47-16-39.2(2). Proposed amendment: "The district court shall assess a civil penalty of two thousand dollars per day for any period the court determines royalty record payment records requested under this section were wrongfully withheld." The proposed amendment is unjustifiably punitive and invites plaintiff's attorneys and class action lawyers into the state to file countless frivolous suits. The proposed amendment does not specify on which date the penalty shall start from or whether every calendar day is counted or just business days. Nor does it set forth any threshold royalty amount in question to which this subpart would apply. Under 47-16-39.1 an operator is not even obligated to pay revenue to an owner monthly if the amount is less than \$50.00. We (as all operators should be) are open and receptive to a penalty being assessed against an operator who willfully withholds information that a royalty owner is entitled to, however, the proposed penalty in SB 2374 is severe and alarming in the lack of prescriptive procedures associated with it.