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Senate Bill 2374

Testimony of Ron Ness

Senate Energy and Natural Resources Committee

February 9, 2023

Chairman Patten and members of the Committee, my name is Ron Ness, president of the North Dakota Petroleum Council (“NDPC”). The North Dakota Petroleum Council represents more than 600 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. I appear before you today in opposition of Senate Bill 2374.

We estimate that there are somewhere between 150,000 and 200,000 mineral and royalty owners in the Williston Basin who receive monthly royalty checks related to their mineral interests. It is not uncommon for a single Bakken operator to have between 7,000 to 15,000 payments to process on a monthly basis. If you count all interest owners, including overriding royalty owners and working interest owners, the larger operators have 15,000 or more owners in their accounting pay deck systems. And that is only those in North Dakota. The responsibility for the correct payment and distribution of proceeds related to oil and gas production falls with the operator. Based on the Economic Petroleum Study conducted by the North Dakota State University in 2021, operators in our state are responsible for the annual payment and distribution of approximately \$1.4 billion in royalties to private mineral and royalty interests and \$3.77 billion in total royalties. **Total gross private royalties paid in 2021 were \$4.1 billion.** This is a big task, and our companies do it quite well. With the sheer number of parties involved, however, there are bound to be disputes.

As you can imagine, this is a complex issue, with title and ownership under a given drilling spacing unit that could include from one to fifteen hundred owners. Operators must take the time to get payments and distributions of proceeds done right and not pay the wrong party at the expense of another party. The royalty distribution process is not going to keep everyone happy – that is simply an impossible task. At times, the

process will be delayed and even reset on account of the sale or transfer of mineral interests or the death of a mineral or royalty owner. We have an expert in the room who can describe in greater detail the complexity of this process if the Committee would like that testimony.

The issue of contention sought to be resolved with this bill has been before this body numerous times. As you are likely aware, private contract interpretation and reformation does not fall under the purview of the legislature, and such issues must be decided by the courts. It may be true that the bill sponsor acknowledges that changing lease contracts and the terms of the lease contracts dating back to the 1940s is not in the purview of the legislature. However, the issues relating to SB 2374 must also be decided in a court of law. Currently, I know of at least four cases relating to this issue that are now in court, and many of the parties advocating for this bill are involved in those cases. I urge this body to let the courts decide what are reasonable post-production deductions and what are not. Each operator and midstream company has a unique contractual lease agreement establishing what will generate the best value for the commodity being sold. Additionally, each royalty owner, overriding royalty owner, and working interest owner also has a unique contract establishing value and payment. It is impossible to derive a single process or formula that works for all the various parties and lease agreements. This bill, as proposed, shifts the focus from that of a contractual dispute to a process that will require unreasonable timelines, massive penalties, and litigation costs that will necessarily lead to court intervention.

The North Dakota Industrial Commission made substantial changes to the Administrative Code a few years ago that were intended to improve the clarity and accessibility of data relating to royalties. The parties advocating for this bill did not engage in that process. In my opinion, some changes to the regulations made at that time were positive. However, others resulted in substantial changes to royalty statements that only served to confuse mineral and royalty owners. This process is simply too complex to create a one-size-fits-all formula, a situation very similar to what you may see in your investment statements.

There are some parties that are never going to be satisfied, regardless of the amount of data or communication they receive. This is because it is the bottom line with which they are unhappy. We believe that the majority of mineral and royalty owners simply want a place where they can seek support. This Committee has passed Senate Bill 2194, which creates a Royalty Owner Ombudsman Program within the Department of Agriculture. We have seen this type of program prove highly successful in resolving issues related to pipelines and wind farms. The Petroleum Council supported that bill with the understanding there is a critical role for an ombudsman to serve. There are also businesses like Mineral Tracker in North Dakota that provide support for mineral owners and help track owners' production and royalties, a service not unlike using an accountant for taxes or an attorney for legal issues. This type of expertise is invaluable.

Finally, the various disputes that may occur between mineral owners and operators are often couched as "David versus Goliath" type situations, with many in favor of shifting liability and costs towards the operator. However, I know firsthand that many of our member operators and working interests owners are local individuals and companies that do not have the financial resources or wherewithal of the larger operators. You will hear directly from some of those individuals today and how this bill, if enacted, will make it impossible for them to continue to thrive as a small operator in this state.

The North Dakota Petroleum Council urges your support and a **Do Not Pass recommendation** for Senate Bill 2374. I would be happy to answer any questions.