

**SENATE BILL 2374
ENERGY AND NATURAL RESOURCES COMMITTEE
FEBRUARY 9, 2023**

TESTIMONY FROM A NORTH DAKOTA LAND & MINERAL OWNER

SENATE BILL 2374

North Dakota Century Code Updates and Additions

- Six main provisions in the bill
 - 1) Clarify Industrial Commission's relationship between a lessor and lessee
 - 2) Provide revenue statements in an electronic format
 - 3) Resolution for disputes involving how royalties are calculated
 - 4) Clarifies the obligation to pay royalties and interest
 - 5) Provide production and royalty records in electronic format
 - 6) Specifies information to be provided to royalty owner in spacing unit disputes
- SB 2374 brought forth to address noncompliance with existing statutes

SENATE BILL 2374 – SECTION 1

38-08-04 of the North Dakota Century Code

New subsection addressing the Industrial Commission

Regarding disputes between a Lessor (mineral owner) and a Lessee (oil company)

- Clearly defines where the Commission does not have jurisdiction to minimize claims that a mineral owner has not exhausted administrative remedies
- Statement from Commission letter:**
“The Commission does not have jurisdiction to enforce lease terms, division orders, or other agreements regarding the payment of royalties; that jurisdiction lies with a district court.”
- North Dakota Supreme Court ruling for Schank v. North American Royalties, Inc. 201 N.W.2d 419 (1972):**
“Furthermore, the Industrial Commission is an administrative agency and, as such, is not empowered by the statutes to determine the legal relationship between a lessor and a lessee. This is a matter for the courts in an appropriate action.”
- Adding subsection will save time for the courts and the Commission

SENATE BILL 2374 – SECTION 2

38-08-06.3 of the North Dakota Century Code

Information statement to accompany payment to royalty owner - Penalty

SB 2374 will require that statements be provided in Excel format:

- Issues with paper copies and PDF files:
 - ✓ Data not easy to review
 - ✓ Single well with adjustments spanning 98 pages from May 2014 – March 2022
 - ✓ Blue pop out box shows dates not printed in any chronological order
 - Adjustments for Oct 2017 production on pages 39, 53, 62, 75 & 76
 - ✓ Yellow highlighted area - amounts are not totaled leading to manual calculations
 - ✓ Excel would take seconds to sort and tabulate data

Type	Production Date	DTU	Volume	Price	Value	Owner Interest	Distinction Interest	Owner Share	Volume	Value
<p>ROYALTY INTEREST</p> <p>ND MINERAL EXTRACTION TAX</p> <p>SEVERANCE TAX</p> <p>TRANSPORTATION/GATHERING EXP</p> <p>ND - STATE NON-RESIDENT WITHHOLDING</p> <p>AMOUNT</p> <p>ROYALTY INTEREST</p> <p>ND MINERAL EXTRACTION TAX</p> <p>SEVERANCE TAX</p> <p>TRANSPORTATION/GATHERING EXP</p> <p>ND - STATE NON-RESIDENT WITHHOLDING</p> <p>AMOUNT</p> <p>ROYALTY INTEREST</p> <p>ND MINERAL EXTRACTION TAX</p> <p>SEVERANCE TAX</p> <p>TRANSPORTATION/GATHERING EXP</p> <p>ND - STATE NON-RESIDENT WITHHOLDING</p> <p>AMOUNT</p>										
	04/17		(2,298.32)	51.22	(117,720.50)	0.00038922	0.00038922	(0.89)		(45.82)
	04/17		5,558.32	0.00038922	0.00038922	0.00038922	0.00038922	2.16		2.16
	04/17		6,650.20	0.00038922	0.00038922	0.00038922	0.00038922	2.55		2.55
	04/17		0.00	0.00038922	0.00038922	0.00038922	0.00038922	0.99		0.99
	04/17		(2,160.28)	54.67	(118,423.04)	0.00038922	0.00038922	(0.84)		(46.09)
	04/17		5,523.12	0.00038922	0.00038922	0.00038922	0.00038922	2.07		2.07
	04/17		20.64	0.00038922	0.00038922	0.00038922	0.00038922	0.00		0.00
	04/17		8,222.33	0.00038922	0.00038922	0.00038922	0.00038922	3.20		3.20
	04/17		3,717.72	0.00038922	0.00038922	0.00038922	0.00038922	1.45		1.45
	04/17		0.00	0.00038922	0.00038922	0.00038922	0.00038922	0.99		0.99
	04/18		(107.83)	63.25	(132,650.34)	0.00038922	0.00038922	(0.82)		(51.77)
	04/18		6,341.39	0.00038922	0.00038922	0.00038922	0.00038922	2.46		2.46
	04/18		6,341.39	0.00038922	0.00038922	0.00038922	0.00038922	2.46		2.46
	04/18		61.34	0.00038922	0.00038922	0.00038922	0.00038922	0.02		0.02
	04/19		(104,411.63)	50.12	(5,234,350.31)	0.00038922	0.00038922	(40.64)		(2,041.41)
	04/19		4,749.35	0.00038922	0.00038922	0.00038922	0.00038922	1.85		1.85
	04/19		4,749.35	0.00038922	0.00038922	0.00038922	0.00038922	1.85		1.85
	04/19		7.50	0.00038922	0.00038922	0.00038922	0.00038922	0.00		0.00
	04/19		6,145.11	0.00038922	0.00038922	0.00038922	0.00038922	2.39		2.39
	04/19		3,222.11	0.00038922	0.00038922	0.00038922	0.00038922	1.27		1.27
	04/19		0.00	0.00038922	0.00038922	0.00038922	0.00038922	0.87		0.87

SENATE BILL 2374 – SECTION 2
38-08-06.3 of the North Dakota Century Code
 Information statement to accompany payment to royalty owner - Penalty

Excel is required by North Dakota Trust Lands Revenue Compliance Division:

- Excel reports were provided free prior to companies moving to EnergyLink
- Vast majority of industry now uses EnergyLink for reporting
- Companies can easily send similar Excel data to individual royalty owners
- Data should be unlocked and editable with no password required



 NORTH Dakota Trust lands

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- Energy Infrastructure & Impact Office (EIIIO)

Home / Revenue Compliance Division

Revenue Compliance Division


What reporting formats are allowed to submit royalty data?

Excel is the only accepted form. The report is available on our website under the Revenue Compliance link.

 Export PDF



File Type	Description	Create Date	Status
 Excel Report	Data Analysis Revenue XLS for E570187359	2023-02-03 10:16:41 AM	 Click to Purchase (\$78) * Create Free Sample
 Excel Report	Data Analysis Revenue XLS for E570203599	2023-02-03 10:16:08 AM	 Click to Purchase (\$80.34) * Create Free Sample


 "Revenue St ... 022-12.pdf" is password protected and cannot be exported.
 To export this document, remove the protection and try again.

SENATE BILL 2374 – SECTION 2

38-08-06.3 of the North Dakota Century Code

Information statement to accompany payment to royalty owner - Penalty

SB 2374 adds requirement that mailing addresses be made available to the commission:

- There is no current requirement for industry to provide contact information
- No penalty or recourse when certified mail is undeliverable
- Director Lynn Helms provided the following testimony on January 20, 2023, for SB 2194:
 - “The most common concern is the inability to find and maintain a consistent and helpful contact within the operator’s mineral owner department.”
- The commission and royalty owners should have easily obtainable, up-to-date contact information for all companies to address concerns



SENATE BILL 2374 – SECTION 3

38-08-06.6 of the North Dakota Century Code

Resolution for disputes involving how royalties are calculated
Commission role and requirements

- **Three components in determining a decimal interest which is used to pay royalties:**
 - 1) The number of mineral acres owned
 - 2) The royalty percentage agreed to on the lease
 - 3) The spacing unit information
- **Mineral owner responsible for:**
 - Knowing what they own, i.e., copies of the mineral deeds and leases
- **Commission responsible for:**
 - Determining the spacing unit
 - Issuing cases and orders related to spacing units
 - Currently no search function for specific wells or land descriptions
 - The information is behind a paywall but should be made available for free to individuals
 - Department said legislation in 1985 requires them to charge a fee

SENATE BILL 2374 – SECTION 3
38-08-06.6 of the North Dakota Century Code
Do companies comply with existing requirements to resolve disputes?

Individual mineral owners can research data at the county courthouse

T-R	Sec	Doc No	Doc Date
149-97-17	SW4, SE4	35669	2/14/1916
149-97-17	S2	83982	6/16/1924
149-97-17	S2	102356	2/28/1929
149-97-17	S2	124253	7/26/1945
149-97-17	S2	125097	3/29/1946
149-97-17	S2	128030	3/29/1948
149-97-17	S2	134689	7/20/1951

Or they can hire a company to do the research

T-R	Doc No	Doc Date	DECIMAL INTEREST	NET ACRES	LEASE STATUS
Tract 21-5	W2884, N84584		.007576	0.91	Citation et al HBP Exp. 1/4/85 Book 257M, Page 1
154-100-21:	W2884, N84584			120.00 gross	

Note: The wells are located in NE4NW-21, SW4SW-22, NE4SW & NE4NE-23-154-100

Industry completes a title opinion for ownership in well

Our examination of the aforesaid records and documents of title reflect that as of _____, _____, at 8:00 a.m. CST, record title to the captioned land, consisting of **640.00 acres**, more or less, was vested as follows, subject to the Comments and Requirements hereinafter set forth:

SURFACE

Joe Allen Mixon et ux, Gayla J. Mixon

FRACTION INTEREST
8/8 1.000000000

OIL AND GAS LEASED

OWNER / FRACTION

Geneva Ashby Smith
(1/2 x 3/4)

Robert H. Ashby
(1/2 x 3/4)

Sherry G. Lundberg
(1/2 x 1/4)

Joe Allen Wilson et ux, Gayla J. Wilson
(1/2 x 1/4)

<u>INTEREST</u>	<u>NET ACRES</u>	<u>LEASE ROYALTY</u>	<u>LEASE</u>
.375000000	240.00000	1/6	L1
.375000000	240.00000	1/6	L2
.125000000	80.00000	1/6	L3
<u>.125000000</u>	<u>80.00000</u>	1/6	L4
1.000000000	640.00000		

SENATE BILL 2374 – SECTION 3
38-08-06.6 of the North Dakota Century Code
Example of constructive dialogue and resolution of dispute

Initial response – company sticking by the title opinion:

Our title opinion captured all of the documents in your write up, however, it appears there were previous conveyances which would have lowered the amount of interest which Minnie had available to convey. For starters, the tract was only 160 acres as opposed to the 240 that was reflected in the conveyances. The opinion credits [REDACTED].

Block	LANDOWNER ROYALTY INTERESTS (LOR)	Tract 1 (acres)	Address	Lease Recording	Mineral Interest Covered by Lease(s)	Tract 2 (Acres)	Tract 3 (Acres)	SPRIT Borehole	TRACTS FOR MINERAL ACRES ("PVA")	TOTAL UNIT FOR	EXISTING MINERAL ACRES ("PVA")	Tract 4 (Acres)
8	8122	[REDACTED]	[REDACTED]	[REDACTED]	01/23/1913	0.2	160	1280	1.810	0.0002081	0.0002081	0.0002081

Follow-up response after relevant information was pinpointed:

Yes, we are planning on making the updates in February for the February check write, we are having to review who all through the chain needs to be updated as we will follow the dates in the chain of title for the increase/decreases in interest.

What caused the discrepancy?

- The data in the title opinion showed 10 mineral acres for all three deeds conveying mineral acres to other parties
- Incorrect because one of the deeds was for 5 mineral acres

of [REDACTED] Eddling, North Dakota
 hereinafter called Grantor (whether one or more) as individual, 10/2/10 (ten mineral acres),
 minerals in and under and that may be produced from the following described lands situated in Burke County, North Dakota:

Township 161 North, Range 92 West of the 5th P.M.

Section 34: SE1/4, NE1/4

Section 35: SW1

It is the intent of the grantor to convey ten mineral acres.

of [REDACTED] Eddling, North Dakota
 hereinafter called Grantor (whether one or more) as individual, 10/2/10 (ten mineral acres),
 minerals in and under and that may be produced from the following described lands situated in Burke County, North Dakota:

Township 161 North, Range 92 West of the 5th P.M.

Section 34: SE1/4, NE1/4

Section 35: SW1

It is the intent of the grantor to convey ten mineral acres.
 Grantor reserves unto himself all gravel rights on this property.

of [REDACTED] Eddling, North Dakota
 hereinafter called Grantor (whether one or more) as individual, 5/2/10 (five mineral acres),
 minerals in and under and that may be produced from the following described lands situated in Burke County, North Dakota:

Township 161 North, Range 92 West of the 5th P.M.

Section 34: SE1/4, NE1/4

Section 35: SW1

It is the intent of the grantor to convey five mineral acres.
 The grantor reserves unto himself all gravel rights on this property.

SENATE BILL 2374 – SECTION 3

38-08-06.6 of the North Dakota Century Code

Examples of companies unwilling to help resolve disputes

- ❑ **Too many companies refuse to provide information or ignore requests altogether** even though 47-16-39.4 requires them to help resolve disputes:
 - “I really have no other information to give you. We are not obligated to mail each owner a calculation as to how their interest was calculated,”
 - “I apologize that only the WI owners seemed to be in the loop in regard to the allocation, but there is not more I can tell you, except the acreage noted when the allocation well was set up.”
 - “The computer took separate wells that were already set up, and pulled in certain percentages and created the numbers for us.”
 - “If you’re still under the impression that the acres are wrong, we would have to know who we need to be taking acres “away from” in order to give it to you”
- ❑ When companies will not respond or refuse to provide relevant information it creates distrust
 - There needs to be a remedy to cross check documents and verify where the discrepancy lies
- ❑ If the only remaining recourse is to go to court, then the court can assess a penalty for wrongfully withheld information

SENATE BILL 2374 – SECTION 4

47-16-39.1 of the North Dakota Century Code

Obligation to pay royalties – Breach.

- Legislature previously declared companies are obligated to pay royalties within 150 days and if they fail to do so must pay interest on the unpaid royalties without the mineral owner having to request it
 - Many companies do not comply with the statute and ignore requests for payment of the interest
- Clarifies that payment of the royalty does not relieve liability for unpaid interest
- Provides the relevant section of the Century Code related to the limitations period
- Inserts a penalty for noncompliance
 - Current statute has no recourse or remedy when it is ignored
 - Hiring an attorney to send a demand letter can cost more than the interest owed

SENATE BILL 2374 – SECTION 5

47-16-39.2 of the North Dakota Century Code

Inspection of production and royalty payment records – Penalty.

- ❑ Section 5 adds individual mineral owners to the existing statute
- ❑ Senate Bill 2212 was passed in the 2019 Session
 - The updates requested today are the same that were added in 2019 for the board of university and school lands
 - Requires records be made available in electronic format
 - Adds a penalty for wrongfully withheld information
 - Chair Unruh stated, “Every other state has some type of penalty for these types of violations. I think it’s appropriate for us to have something in code.”
 - Individual mineral owners in North Dakota respectfully request the same rules be applied for them

SENATE BILL 2374 – SECTION 6

47-16-39.4 of the North Dakota Century Code

Resolution of spacing unit ownership disputes - Penalty

- Section 6 adds additional language to the existing statute
- Provides clarity for the information companies are required to provide to help resolve disputes
- Adds a penalty for noncompliance or wrongfully withheld information which the court can determine

SENATE BILL 2374 – FINAL COMMENTS

- Legislature required certain information be provided on royalty statements in 1983
- Comments from the minutes related to the 1983 legislation:
 - Letter from Shell Oil Company to Allen I. Olson, Governor, State of North Dakota, “Testimony offered by Representative Jack Murphy and other royalty owners at the hearing indicated that their main concern was the **lack of meaningful communication** between the royalty owner and producer when the royalty owner posed a question regarding his royalty payment. **Representative Murphy testified that many times he would have to wait long periods of time for a response to his royalty-related inquiries and, in some instances, he testified he never received a reply.**”
- Royalty owners still face these same issues today
- There are no consequences or remedies in the Century Code when companies choose to ignore statutes
- The proposed penalties in SB 2374 are either already in the Century Code for the board of university and school lands or are similar amounts that other states impose

SENATE BILL 2374 – FINAL COMMENTS

- ❑ Additional comments from the minutes related to the 1983 legislation:
 - Letter from Rocky Mountain Oil & Gas Association, Inc., “Until recently, the industry had perceived North Dakota as a state which welcomed exploration and development of this and other industries. Unfortunately, the regulations being considered now by the Industrial Commission further damage this perception and will, I fear, have a further **chilling effect in the consideration of North Dakota as a choice for exploration whenever alternatives exist.many purchasers will find the paperwork to be unjustified, and...will undoubtedly direct their crude oil purchases out of State.** Secondly, the expense of maintaining these per well records, will undoubtedly result in the decision to eliminate purchases of small quantities from stripper and marginal wells with the result we predict with certainty the plugging of many of these wells, with the resultant loss of production and loss of tax revenue to the State as well as income to the royalty owner.”
- ❑ Industry did not leave the state as a result of the legislation that was passed to protect mineral owners
 - If industry opposes the changes requested in SB 2374 today, then what is their solution for solving the issue of companies not complying with current statutes?

SENATE BILL 2374 – FINAL COMMENTS

Perceptions can distort reality

- ❑ Royalty owners should just litigate these issues and have the courts resolve the disputes
 - A multi billion-dollar corporation has an overwhelming advantage
- ❑ Numerous families own mineral rights because they homesteaded in North Dakota or were farmers and ranchers that settled in western North Dakota decades ago
 - Many receive a few hundred or few thousand dollars a year in royalty payments
 - Costs far more to hire an attorney than they receive in royalties
- ❑ Senate Bill 2374 will provide royalty owners access to their information, so they do not need to go to court to request it

Thank you for the opportunity to present testimony today.

I respectfully ask for your favorable consideration of Senate Bill 2374.