



**TESTIMONY OF CHRIS SUELZLE
MINERALS DIRECTOR
North Dakota Department of Trust Lands**

HOUSE Bill 1459

House Energy and Natural Resources Committee
February 6, 2025

Chairman Porter and members of the House Energy and Natural Resources Committee, my name is Chris Suelzle, and I serve as the Minerals Director for the North Dakota Department of Trust Lands (Department). I am here to provide testimony on House Bill 1459.

The Board of University and School Lands (Board), as established by the North Dakota Constitution, is charged with overseeing the management of state trust lands and investing the revenue generated therefrom to grow as a source of long-term funding for the support of trust beneficiaries. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The Department is the administrative arm of the Board, serving under the direction and authority of the Board.

The Department manages over 2.5 million mineral acres, with approximately 8,700 oil & gas and coal leases, and over 700,000 surface acres, with approximately 4,400 agricultural leases. Revenues generated from these leases, along with payments received from other sources such as oil & gas lease bonus payments and easements granted for pipelines, roads, and well pads, are deposited into 13 permanent trust funds and invested to provide long-term revenue for trust beneficiaries. Beneficiaries of these trust funds include public K-12 education, various colleges and universities, and other state institutions throughout North Dakota.

House Bill 1459 provides an opportunity to begin the extraction of critical minerals and rare earth elements embedded within coal. The Department currently manages approximately 67 active coal leases, covering approximately 10,000 acres. Royalties for most of these coal leases range from \$0.15 to \$0.30 per ton of coal mined.

The Department recognizes the importance of launching this industry and appreciates the work that has gone into crafting this bill. However, we believe further discussion will be beneficial regarding specific provisions of the bill.

One point of concern is the provision that royalties be paid at 2.5 percent of "net profits". Net profits are defined as "gross receipts" received by the operator from the "sale of critical minerals or rare earth elements less costs incurred or expenditures" attributed to those

minerals, including expenditures related to the extraction, processing, milling, smelting, refining, and transportation of the critical minerals or rare earth elements. (Emphasis added). However, the exact costs involved in mining critical minerals and rare earth elements are currently unknown. Additionally, costs and expenditures can be subjective, and as this industry is still in its infancy, there is no established industry standard to guide the calculation of royalties. The Department has been involved in substantial litigation over such deductions as they pertain to oil and gas operations. Therefore, the Department recommends that the bill establish a royalty based on gross proceeds, without deductions, which we have found to be a clear and transparent means of determining compensation. Using gross proceeds would align with the current practice of the Board's oil and gas leases.

The one example we found of critical mineral and rare earth element mining royalty practices in the United States is the Mountain Pass Rare Earth Mine in California. Secure Natural Resources negotiated a royalty of 2.5 percent of the gross proceeds from the sale of critical minerals and rare earth elements extracted from ores in this mine. Basing royalty payments on gross proceeds avoids complications that have arisen in the oil and gas industry.

To allow the industry time to develop and actual costs to become clearer, the Department also proposes including a five-year sunset provision for the royalty percentage. After this period, the profitability of mining critical minerals and rare earth elements embedded within coal and the royalty rates can be reassessed to determine a fair and market-driven royalty rate.

Finally, the Department recommends that royalties of critical minerals and rare earth elements be more precisely attributed to mineral interest owners based on the actual mining activities conducted during a specific calendar year, rather than being distributed to all interest owners within the permitted mining area. This approach aligns with the current method for coal royalty distribution and ensures that only landowners whose minerals are actively being mined receive royalties. This would more accurately reflect the value of the minerals extracted from each individual owner. Without this provision, there is a risk of unjustly benefiting landowners who are far removed from the mining activity and diluting payments to those whose minerals are being actively mined.

Thank you for your time and consideration, I am happy to answer any questions you may have.