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Salvatore Riccardi 10/16/63
Operator's Signature Date

2003 HOUSE NATURAL RESOURCES
HB 1470

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Julie R. Richardson
Operator's Signature

10/16/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1470

House Natural Resources Committee

Conference Committee

Hearing Date February 6, 2003

Tape Number	Side A	Side B	Meter #
3	xx		0-3119

Committee Clerk Signature *Eric Moran*

Minutes:

Chair Nelson called the meeting to order on HB 1470 relating to release of surface mining and reclamation performance bonds.

Rep. Weisz: Introduced on behalf of a constituent. I would defer to them with questions.

Jeff Reinke: Testified on behalf of HB 1470. (See Attached Testimony)

Mary Christianson: Testified on behalf of HB 1470. (See Attached Testimony)

Rep. Solberg: The person owns this property prior to mining. Are they able to farm it after the bond is released. Do they charge you rent?

Jeff Reinke: I do not think they charge rent. Usually there is an agreement made before hand.

Susan Wefald: Public Service Commissioner. Testified on behalf of HB 1470. (See Attached

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Solista Richardson
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10/16/03
Date

Page 2
House Natural Resources Committee
Bill/Resolution Number 1470
Hearing Date February 6, 2003

Testimony).

John Dwyer: Testified in opposition to HB 1470. Gave an overview of the mining and reclamation process. (See Attached Testimony)

Rep. Clark: Have you seen the Wefald Figures. What is holdup on this process.

John Dwyer: There are many hold ups in the process. Whole areas have sedimentation ponds. vegetation success standards. Bad years of data. The bond relief process takes time. It must fit in with a mine plan.

Rep. DeKrey (2430): Where did the 80 acre figure come from?

John Dwyer: That came from the sponsors of the bill. It is an arbitrarily chosen. We feel it is a bad idea because it creates islands in the mining plan. 320 acres would make more sense.

Tony Clark (2680): Public Service Commissioner. (See Attached Testimony)

Rep. Solberg: Does the original owner have the first chance to reclaim the land.

Tony Clark: My understanding is the coal company buys the land and the landowner by contract can have right of first purchase.

Chair Nelson closes the hearing on HB 1470.

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10/16/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1470

House Natural Resources Committee

Conference Committee

Hearing Date February 6, 2003

Tape Number	Side A	Side B	Meter #
3		xx	190-468

Committee Clerk Signature

Minutes:

Jim Meyer

Rep. Porter: Makes a motion to recall HB 1470 for the purposes of hog housing the amendment making the a resolution to congress on improving the time frame on bond resolution.

Seconded by **Rep. DeKrey.**

Motion fails due to 6-8-0.

Rep. Keiser: I object to this because it takes someone else's bill and changes it so profoundly. I have a personal bias against that. I share Rep. Porter's opinion on the issue.

La Costa Richard
Operator's Signature

10/16/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1470

House Natural Resources Committee

Conference Committee

Hearing Date February 6, 2003

Tape Number	Side A	Side B	Meter #
3		XX	0-676
Committee Clerk Signature <i>C. M. ...</i>			

Minutes:

Chair Nelson called the meeting to order.

Rep. DeKrey motions a **Do Not Pass** on HB 1470. Seconded by **Rep. Solberg**.

Rep. DeKrey: The 80 acres is ridiculous. Ag producers know that 80 acres would not be feasible.

Rep. Solberg: This would be an absolute nightmare from the book work and monetary strains.

Rep. Norland calls question.

The motion carries by a vote of 14-0-0.

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To Costa Rickford
Operator's Signature

10/16/03
Date

FISCAL NOTE
 Requested by Legislative Council
 01/21/2003

Bill/Resolution No.: HB 1470

1A. **State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$400,000	\$0	\$200,000	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

There are currently about 78,500 acres of land under mine permit in North Dakota. There is a ten year productivity assessment period once mining and initial reclamation is complete. This bill proposes to assess an annual fine against mining companies that fail to seek bond release once this ten year assessment period is over. Funds generated would go to the General Fund.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

The Public Service Commission estimates that there may be between 8,000 and 10,000 acres of land that are technically eligible for bond release but for which no related requests have been filed by mining companies. Based on this bill's \$25 per acre fee assessment, annual collections would total about \$200,000; biennial collections would approach \$400,000. It is anticipated that collections would diminish as companies move to avoid the assessment by seeking earlier bond release dates.

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

The Commission anticipates that staff work required by this bill can be completed with few additional out-of-pocket expenses and with no additional FTEs.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

No additional appropriations would be needed to carry out the provisions of this bill.

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Richard Costa
 Operator's Signature

10/16/03
 Date

Name:	Jon Mielke	Agency:	Public Service Commission
Phone Number:	328-4082	Date Prepared:	01/23/2003

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Yolanda Rickford
Operator's Signature

10/16/03
Date

LR

Date: 2/6/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1470

House House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By De Krey Seconded By Solberg

Representatives	Yes	No	Representatives	Yes	No
Chairman Jon O. Nelson	✓				
Vice-Chairman Todd Porter	✓				
Rep. Byron Clark	✓				
Rep. Duane DeKrey	✓				
Rep. David Drovdal	✓				
Rep. Lyle Hanson	✓				
Rep. Bob Hunsakor	✓				
Rep. Dennis Johnson	✓				
Rep. George Keiser	✓				
Rep. Scott Kelsh	✓				
Rep. Frank Klein	✓				
Rep. Mike Norland	✓				
Rep. Darrell Nottestad	✓				
Rep. Dorvan Solberg	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment ~~De Krey~~

If the vote is on an amendment, briefly indicate intent:

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Yolanda Richardson
Operator's Signature

10/6/03
Date

Date: 2/6/03
Roll Call Vote #: 2

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. ~~1470~~ 1470

House House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion to reconsider

Motion Made By Porter Seconded By DeKrey

Representatives	Yes	No	Representatives	Yes	No
Chairman Jon O. Nelson	✓				
Vice-Chairman Todd Porter	✓				
Rep. Byron Clark		✓			
Rep. Duane DeKrey	✓				
Rep. David Drovdal		✓			
Rep. Lyle Hanson		✓			
Rep. Bob Hunskor		✓			
Rep. Dennis Johnson	✓				
Rep. George Keiser		✓			
Rep. Scott Kelsh	✓				
Rep. Frank Klein	✓				
Rep. Mike Norland		✓			
Rep. Darrell Nottestad		✓			
Rep. Dorvan Solberg		✓			

Total (Yes) 6 No 8

Absent 0

Floor Assignment DeKrey

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 6, 2003 6:12 p.m.

Module No: HR-23-1925
Carrier: DeKrey
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1470: Natural Resources Committee (Rep. Nelson, Chairman) recommends **DO NOT**
PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1470 was placed on
the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-23-1925

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Richard Costa
Operator's Signature

10/16/03
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2003 TESTIMONY

HB 1470

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10/6/03
Date

House Natural Resources Committee

February 6th, 2003

Chairman Nelson and Members of the Committee,

My name is Jeff Reinke and I live in Center, North Dakota. I have interest in reclaimed farm land in Oliver County.

I am representing myself in support of **HB 1470**.

According to the North Dakota Public Service Commission, roughly 10,000 acres of reclaimed land have been seeded for 10 years or more. These lands are subject to the 10-year revegetation liability period required under the current Reclamation Law enacted in 1979. This acreage includes reclaimed cropland, hay land, native grassland, tame pastureland, woodlands, shelterbelts, and fish and wildlife habitat. Well over 90 % of this acreage will have some type of agricultural use.

The Reclamation law and rules enacted in 1979 do not specify any timelines when mining companies must request final bond release.

There are many circumstances where the land is in full production, all mining and reclamation has been completed and the coal company has no more industrial use for the land, yet, they are not applying for final bond release. One coal company that I am aware of in Oliver County is charging average county rental rate for land. In another circumstance they are paying someone to farm for them, even though it is not being mined. Some of that land has been reclaimed for 17 years. The loophole, the company says, is not having a timeline for bond release, thus enabling a corporation to profit from agricultural lands and production.

One objection that was brought to my attention was the possibility that there would be access problems and liability problems because of haul roads and storage sights in the mining areas. However, the land tracts in the bill are 80 acres, meaning that a buffer zone, so to speak, would be around the areas in question. Also, those lands would not be subject to bond release because they are supporting the mining operation. Closed section lines could be re-opened for access. The liability would not be any greater and probably much less than what Basin has by allowing ash

trucks to cross Highway 200 near the Leland Olds Station at Stanton. These issues are not major ones.

A variance, as mentioned in the bill, is simply an area within a reclaimed area that has supported the mining operation in some way i.e. haul roads, sedimentation ponds, stock piles, etc. that were reclaimed after the areas surrounding it. These areas would be exempt from the 10-year liability period required for revegetation success.

As mining companies have become more efficient with their reclamation procedures over the last 10 years, more and more land is being reclaimed every year. Equipment has gotten bigger and changes in their reclamation procedure have sped up the process. One example of this is the direct spread method. In earlier years the coal companies would stock pile the subsoil and topsoil as they were uncovering an area to be mined. After the area was mined they would go back to the stockpiles and re-spread the areas to be reclaimed. Now, stockpiles have been eliminated by the direct spread method, which means they are taking the soil from one area directly to the re-spread area, thus saving time and money.

The legislators who enacted the 1979 Reclamation Law had great foresight as all problems seemed to have been taken care of regarding reclaiming the land to equal or greater production. However, the coal companies seem to choose not to apply for bond release on land that qualifies. Effective government legislation needs to be in place to ensure that coal companies apply for final bond release as soon as possible, as the intent of the 1979 law was meant to accomplish.

The proposed fee would not be an issue for the companies as long as they follow the intent of the original law in a timely manner.

Please recommend a 'Do Pass' on HB 1470.



Jeff Reinke, Center

701-794-3167

HB 1470

**Presented By: Susan E. Wefald
Public Service Commissioner**

**Before: Natural Resources Committee
Representative Jon O. Nelson, Chairman**

Date: February 6, 2003

TESTIMONY

Mr. Chairman and Members of the Committee, I am Commissioner Susan Wefald. The Public Service Commission has responsibility for Coal Mining Permitting and Reclamation. The views that I am sharing today are my own views and not those of the Commission.

First, I would like to complement the Mining Companies on the excellent reclamation work that they do in North Dakota. When I accompany staff on inspections, I am impressed with the crops being grown, the grasslands and wetlands being established, and the general commitment to excellent reclamation. Therefore, I am sympathetic with people who wish to again own this land, since it is very attractive property.

I am in support of HB 1470, however, in its present form, the bill has some problems, and therefore I am recommending two amendments. (Attachment A) The first amendment would redefine the 80-acre blocks. It would replace that language with "occupy half of one-quarter section of land or more based on the standard United States land survey system. It would be extremely difficult for our staff to monitor all of the different shape 80-acre plots, with the present language. The proposed language would still be 80-acre plots, but make them much easier to monitor.

The second amendment adds an effective date of January 1, 2005. Under the present language, the mining companies would have to start paying penalties in August 2003. With my suggested amendment, if companies got right to work and started

gathering their two-year vegetation measurements and submitted them for all eligible properties by fall, 2004, no mining company would have to pay any penalty. Either the vegetation measurements would show that reclamation standards are met and the company would submit an application for final bond release, or our staff would determine that the reclamation standards are not met, and the company would need to do more work on the property involved.

The Commission has really worked over the past five years to encourage voluntary final bond release. I have participated in several meetings where we have talked about possible incentives within our jurisdiction and worked to encourage more voluntary performance bond release by the mining companies. However, I know that although the law provides for bond release, there is nothing in the law that says that a company has to pursue it.

The chart in Attachment B, through 2001, shows final bond release statistics for all of the mines. The active mines, Beulah, Center, Falkirk, and Freedom are at the top of the chart. The final two columns on this chart are the most important for this discussion. The one is labeled "Areas Seeded 10 Years," and the next is labeled "Disturbed Acres Final Bond Released." For example, Falkirk, which started mining the land in 1978, has 2,630 acres that have been seeded for 10 years, and has applied for and received final bond release on 246 acres.

Most of the acreage the Commission has approved for final bond release in the last two years has occurred on closed mines, not active mines
(See Attachment C).

The law anticipated that the dollars saved in "bond release" would be the incentive to encourage the companies to do the work necessary to prepare for the performance bond release requirements contained in our reclamation law. The reality is that in 1985 the Commission adopted a policy for "worst case bonding." Under worst-case bonding, the bond amount is determined when the reclamation liabilities will be the greatest based on the mining and reclamation plans. Costs are calculated for the maximum amount of land that may be disturbed at particular times during the permit term. Under the "worst-case bonding," no reclamation costs are assessed to lands that are graded, resoiled, and seeded contemporaneously with mining operations.

Therefore, when the companies reclaim one pit area (through filling the pit, respreading the subsoil and topsoil, and planting native grasses or precrop) and continue mining and disturb the next pit area, their bond amount stays the same. Therefore, there is no monetary incentive for the company to apply for final bond release. Our bonding policy has been approved by the Federal Office of Surface Mining. The Commission could attempt to change this policy, but this may not be the best course, given the current state of the bonding climate.

Therefore, House Bill 1470, with my suggested amendments, seems to fill a need at this time.

I would be happy to answer any questions that you may have.

ATTACHMENT A

Commissioner Wefald's Proposed
AMENDMENTS TO HOUSE BILL NO. 1470

Page 1, line 7, remove "are eighty acres [32.37 hectares] or larger" and replace with "occupy half of one-quarter section of land or more based on the standard United States land survey system"

Page 2, add new Section 3 following line 2 that states "Sections 1 and 2 of this Act will become effective January 1, 2005."

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Salvatore Riccardi
Operator's Signature

10/16/03
Date

**North Dakota Permanent Program Permits
Cumulative Acres through 2001**

Mine	Disturbed Areas	Long Term facilities	Active Mine Areas	Areas Graded	Phase I Bond Release	Areas Re-soiled & Seeded	Phase III (veg. est.) Release	Areas Seeded 10 years*	Dist. Acres Final Bond Released
Beulah	4432	1050	847	2635	469	2443	469	664	469
Center	5866	1240	1077	3549	126	3586	126	1515	126
Falkirk	12857	4903	1344	6610	1079	6331	246	2630	246
Freedom	15431	4315	2849	8267	315	7635	315	1438	295
Gascoyne	2360	79	0	2281	2215	1970	586	560	586
Glenharold	4355	30	0	4325	1060	4325	372	1650	372
IndianHead	2404	3	0	2401	2401	2401	2170	778	605
Larson	650	0	0	650	528	650	485	550	50
New Leipzig	25	0	0	25	25	25	25	0	25
Royal Oak-JK	105	0	0	105	89	105	86	18	10
Royal Oak	318	0	0	318	312	318	177	72	237
Velva	387	0	0	387	387	387	387	0	387
	49190	11620	6117	31553	9006	30176	5444	9875	3408

* Does not include final bond release areas

ATTACHMENT B

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Operator's signature Roberta Rickford 10/16/83
Date

14

ATTACHMENT C

Final Bond Releases Granted by PSC Since January 1, 2000

Mine	Acres	Postmining land use	Comments
Beulah	225 acres	Industrial – ash pit	Owned by Coyote partners
Center	72 acres	Mostly hayland	State and privately owned
Glenharold	754 acres	Rangeland, cropland, hayland & wildlife	Mostly under private ownership – Game & Fish has long-term on part of this land
Larson	114 acres	Industrial & roads	Mostly pre-law areas used to support mining, includes shop that earth-moving contractor
Royal Oak	80 acres	Cropland	Privately owned
Velva	109 acres	Rangeland	Privately owned, all disturbed areas at this mine have received final bond release
Total since 1-1-00	1354 acres		

Other Bond Release Numbers

1. Total disturbed lands that have been granted final bond released since the 1969 law was enacted – about 9,000 acres.
2. Disturbed areas bond released under the 1979 law – about 3500 acres. (The 10-year revegetation liability period applies to most land uses under this current law.)
3. Approximately 1000 acres of undisturbed land within permit areas have received bond release as well. These areas were adjacent to the reclaimed lands that were granted bond release. This acreage is **not** included in items 1 and 2 above.

Status of Permitted Acreage

1. Approximately 78,500 acres currently under permit.
2. Approximately 50,000 acres under permit have been disturbed.
3. Roughly 18,000 acres of the disturbed acreage is used for active mining and long-term disturbances such as facilities, haul roads, soil stockpiles, sedimentation ponds, etc.
4. About 31,000 acres have been graded, re-soiled and seeded.
5. Roughly 10,000 acres of reclaimed land have been seeded for 10 years or more.

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Operator's Signature Yolanda Richardson Date 10/16/03

2/6/03

**Testimony of John W. Dwyer
President, Lignite Energy Council
Before the House Natural Resources Committee
In Opposition to HB 1470**

- A. Mining Process (Permits, Mining, Reclamation, Bonding)
1. History of bonding concept – Role of Bonding in Reclamation Process
 - a. Adds nothing to success of reclamation – only cost to operator & consumer!
 - b. 10 year liability period in West vs. 5 year liability period in East
 2. What's required before bond release application filed?
 - a. Data collection – range or crop yield data / surface & groundwater quality and quantity data / wildlife data / land use data / legal land surveys
 - b. Soil re-spread standards / regraded topography / proven reclamation success equal or better than prior to mining
 3. Interest of mining company to obtain bond release as soon as possible – reduce liability and “worst case” amount
 4. Agricultural land within 10 year liability period is being farmed and grazed by landowners as contemporaneous reclamation is required within three years of coal removal
- B. HB 1470 would be counter-productive in expediting bond release
1. Establishes 80 acre tracts as “trigger” to apply for bond release
 - a. Impractical – breaks up ½ section or section fields in 80 acre tracts;
 - What if different landowners on two contiguous 40 acre tracts?
 - What if water source is just outside 80 acre tract?
 - What if upstream areas are not yet reclaimed – will require operator to unnecessarily build additional water management structures on upstream areas
 - May create safety hazard for landowners going to 80 acre tracts
 - Lots of questions and regulatory uncertainty created
 - b. Costly – more data and more applications from industry / more review time by regulators if smaller bond release areas are required
 - c. Release of one 80 acre tract could cause delays in other tracts because of additional water management structures being required
 - d. Would require farmers to determine yield data by 80 acre tracts versus fields that are laid out to accommodate changes in topography, drainage systems and other site specific conditions
 2. Bottom Line – HB 1470 - creates additional administrative burden without rational purpose - 80 acre tract is an arbitrary standard

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John W. Dwyer
Operator's Signature

10/16/03
Date

2/6/03

- C. HB 1470 would add unnecessary costs / \$25 fee would amount to \$250,000 first year and \$300,000 the second year, or over one-half million for biennium
- D. Better solution than HB 1470 is to:
1. Urge Congress to reduce bond liability period for western states
 2. Urge PSC to continue to be pro-active in regulatory initiatives / PSC has done good job!
 - a. PSC has revised rules on data collection
 - b. PSC has revised rules on native grasslands standards
 - c. PSC has changed boundary informational requirements for partial bond release
 3. Potential PSC regulatory initiatives:
 - a. Encourage flexibility in proving reclamation success so that an operator does not have to use last year of data (would require OSM approval)
 - b. Allow operator access across bond released lands without having to re-permit or keep such lands in existing permits
 - c. Encourage PSC assessments on data already submitted instead of waiting for bond release application to assess reclamation success (surface water, groundwater, wildlife, vegetation success data, etc.)
 - d. Encourage PSC and industry to establish mutual goals and action plan in reducing information required for bond release applications
- E. Summary
1. Many things PSC has done – can do in future to expedite bond release
 2. Agree to sit down with PSC to find solutions if problems do in fact exist
 3. HB 1470 is a step backward:
 - a. HB 1470 is counter-productive from administrative perspective
 - b. HB 1470 is costly to operators, a burden to farmers, and will increase PSC administrative costs
 - c. Better ways to reach mutual objective of expedited bond release for all parties involved
 4. Urge you to give HB 1470 a Do Not Pass recommendation.

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Salvatore Riccardi
Operator's Signature

10/16/03
Date

H.B. 1470

Presented by: Tony Clark, Public Service Commissioner

Before: House Natural Resources Committee
Honorable Jon Nelson, Chairman

Date: February 6, 2003

TESTIMONY

Mr. Chairman and members of the Committee, I am Public Service Commissioner Tony Clark.

I have a number of administrative concerns with this bill that I will be sharing with you. Perhaps the most important is the sheer complexity of it. As currently written, the bill would require the PSC to identify every 80-acre tract of land under permit in the tenth or greater year after seeding for a potential fine. The problem is in identifying 80 acres. There are numerous ways the staff could try and "gerrymander" an 80-acre plot of land.

Even if this land can be identified and tracked for enforcement purposes, it still must be noted that significant problems would exist for the coal companies. Land is not typically sold in "snaking" 80-acre tracts, which would be a hardship on both the sellers and buyers of the property.

Amendments that have been suggested do make the bill somewhat better, but even if adopted, I would still have similar concerns. Changing the language to "occupying half of one quarter section" would simply mean 80 acres within a quarter section. This cures some of the "gerrymandering" problems I referred to earlier. It also alleviates some of the land transaction concerns. Unfortunately, it only minimally

Improves the administrative complexity of the bill. PSC staff would still need to run through multiple scenarios to conclude whether there is any combination of eligible land within every quarter section that adds-up to 80 acres.

As an aside, I would note that there are about 80,000 acres of land in North Dakota under permit. 50,000 of those are disturbed acres. 30,000 of those have been seeded. And about 10,000 of those are likely in the tenth or greater year after seeding. As you can see, identifying and tracking all of this land for assessment could end up being a rather significant administrative burden for staff.

Finally, and without minimizing the concerns of the supporters and sponsors of the bill, I also must question whether the punishment to be levied under this proposal is an overly aggressive response to a fairly limited concern. Staff reports very few constituent initiated contacts (about 2) regarding the bond release issue over the past 5-10 years. I cannot help but believe that such matters may be more adequately addressed on an ad hoc informal basis. If approved, this bill would likely have a limited benefit, while creating a very broad assessment. In the end, that assessment will both decrease the competitiveness of North Dakota coal and will be a cost of fuel that is directly passed on to North Dakota's electricity ratepayers.

Mr. Chairman, that concludes my testimony. I'd be happy to answer any questions the committee may have.

Dakota Resource Council

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TESTIMONY: HB 1470
House Natural Resources Committee
February 6, 2003

Chair Nelson and Members of the Committee,

Dakota Resource Council (DRC) submits this testimony in support of HB 1470, which would fill a gap in current strip-mining reclamation law and help ensure that reclamation is completed in a timely fashion.

For some 30 years North Dakota has required that coal-mining companies agree to reclaim mined land as a pre-condition of conducting mining operations. With the passage of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the federal government set baseline standards for reclamation, which included returning the land to its original contours, replenishing water sources damaged by mining, and returning crop and pasture land to productive agricultural use. Mining companies post a bond to guarantee the completion of this work. In its early years, Dakota Resource Council (DRC) took an active role in the public debate in North Dakota that led to the enactment of companion legislation at the state level, which is administered by the Reclamation Division of the Public Service Commission. The state is justly proud of the achievements of its reclamation program, which has prevented strip-mined lands from becoming wastelands, and has won many national awards.

However, one flaw in our state and federal reclamation law has come to light in recent years. The law does not require that mining companies apply for a release of the bond they have posted to warranty the success of their reclamation work. It was probably assumed that financial constraints would be enough to motivate final bond release applications, but apparently this is not the case. The Public Service Commission reports that in a growing number of cases mining companies are not applying for final bond release on land where the compulsory 10-year liability period has elapsed. In some cases, these companies may have received partial bond release for the early stages of reclamation work. However, two of the most important tests of the success of reclamation are passed or failed only at the time of final bond release. These are the agricultural productivity of the land, and the availability of satisfactory water sources for post-mining land use. Theoretically, in other words, mined lands could continue under bond indefinitely. A majority of mined lands totaling tens of thousands of acres are now under the ownership of coal-mining companies.

DRC sees two major problems with a scenario in which mined lands remain under bond indefinitely.

1. The responsibility for reclamation is a public trust assumed by coal-mining companies when they begin operations. They are responsible to the public for its completion, and the public is entitled to a public hearing to examine whether they have discharged this public

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trust successfully. When companies postpone application for bond release, they postpone this opportunity for public scrutiny of their reclamation work, and the reclamation process remains unfinished.

2. Strip-mining companies may own or lease agricultural land under a special exemption to the corporation farming laws of North Dakota (10-06, 1-06). The law limits this control of agricultural law to the time when it is "reasonably necessary in the conduct of the business of surface coal mining or related energy conversion." This language is not found in either SMCRA or in state reclamation statutes, and it remains largely untested in case law. Staff of the previous Attorney General told DRC that final bond release would mean the coal company ownership of the land was no longer "reasonably necessary." The staff expressed no opinion about how the indefinite delay of bond release would affect the corporate farming exemption for surface mining. Clearly, however, the State Legislature did not have in mind indefinite or perpetual ownership of agricultural land by surface mining operators when it crafted this amendment to the state's corporate farming laws.

From DRC's standpoint, surface mining reclamation is not complete, and its success cannot be fully judged, until mining companies have come before the public to demonstrate that they have performed all the requirements of SMCRA and North Dakota's companion legislation, and the public has granted the release of their bond.

DRC supports HB 1470 as a reasonable means of ensuring that surface mining companies meet this final test of reclamation success in a timely manner.

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