

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1490

2005 HOUSE NATURAL RESOURCES

HB 1490

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1490

House Natural Resources Committee

☐ Conference Committee

Hearing Date February 3, 2005

Tape Number	Side A	Side B	Meter #
2	x		822-End
2		x	0-2310
Note: Tape 2-B did not record; it is blank.			
Committee Clerk Signature <i>Karen Bonnet</i>			

Minutes:

**Chr. Nelson:** Opened hearing on HB 1490. Six members absent at roll; quorum was present.

Bill was read aloud.

**Rep. Merle Boucher, Dist. 9:** I handed out supporting information involving a news release, statistical info, and data/documentation of the issues that you will have before you today. HB 1490 deals with issues related to the reclamation of lands that have been mined. I think it's important to bring up this issue and the people affected by the issues that will be discussed. I have met with people over the past several months about this. It is of significant concern. Many of the people I visited with feel that the process (of reclamation) is not moving forward as it was intended to and there are issues that need to be addressed. A process that was developed a long time ago when coal mining activity became a part of the ND economic landscape, there were reclamation issues, landowner issues, committee issues then that need to be addressed today. I will read the last part of the bill, Lines 11-16: (Quoted directly from HB 1490) . What this does

is develop a reporting process that would say that the operator/mine owners would outline and submit a report annually to the Public Service commission (defining) what properties they are intending to submit during the following 12 months after the report submitted for the final bond release. I think it would also go a long way as a public relations initiative to inform the public what their intentions are and what properties will be available during the subsequent 12-month period. This report would be filed as an annual disclosure. It is not obtrusive as it is a matter of open record and open policy. We are dealing with properties and public law in reclamation. The coal is being mined and developed by private companies. The land that they acquired to get the coal from was once either private property that they bought or leased. When we talk of the natural resources of the state, coal, water and land is within the public domain and is in the public's best interest what is actually taking place. I hope this committee can produce something that is workable for the public, the landowners and all the parties involved.

**Chr. Nelson:** Are there questions of Mr. Boucer? Seeing none, thank you. Further testimony in support of HB 1490?

**Mark Trechock, Dakota Resource Council: (Written testimony attached)** Placed multiple maps on the wall to go with this, showing the mining areas of the state. The green areas have been reseeded 10-14 years and are eligible for final bond release. The yellow is land that was 15+ years since reseeding; final bond release has not yet taken place.

**Rep. Nottestad, as stand in chairman:** Are there questions of Mr. Trechock?

**Rep. Solberg:** This procedure can get complicated. What is the procedure to divest themselves of this property after final bond release? Do they go through a bidding process or do they sell it back to the original owner or does he have first chance?

**Trechock:** Any arrangement after reclaiming would be a private contractual arrangement. There is nothing in law that prescribes who the land would be sold to. I don't see any exceptions to the corporate farming law that specifically provides for farmland. Once it is no longer fit for mining, the corporate farming chapter would take effect. The company would have to follow the same procedures that would be required of any other company that owns farmland. The thing to point out is that the exemption to the corporate farming law is not terribly clear as to what constitutes reasonably necessary for mining. The one case that has been tried on the exemption to surface mining resulted in the opinion that mines could hold land outside the permit area as a business practice. They would need to trade with farmers who were losing land to mining. At this point, it is quite broad. Some years ago, representatives of the attorney general's office seemed to have the opinion that when final bond release applications would come in, the A.G. would look closely at the implications of corporate farming law at that time.

**Chr. Nelson:** You may continue.

**Solberg:** So they do use this bidding process to sell some of their property after final bond release?

**Trechock:** I'm not exactly familiar with that process.

**Rep. Hunskor:** You indicated that potential agricultural land seems to be slower in going through the final bonding process than other lands. Do you know why that might be true?

**Trechock:** As I mentioned, there are final bond release requirements for agricultural land that involve full productivity of the land. Whether it is crop land or hay land, productivity must meet standards that makes it at least as productive as it was prior to mining. Water supplies that were used for agriculture on that property must also be restored. Those requirements are not going

through the necessary or industrial or recreational post-mining use, so the standard is less rigorous.

**Hunskor:** So there are legitimate reasons for this process going that way?

**Trechock:** There are logical reasons why it's done this way. It's simply easier to get a final bond release for land that is not agricultural. However, we've seen the amount of land that has been through the required 10-year liability period, or much of the land of 15 years or more, in which the bond release applications are not forthcoming.

**Chr. Nelson:** Further questions for Mr. Trechock? Seeing none, thank you for your testimony. Is there further support of HB 1490?

**Jim Deutsch, Reclamation Div. of the Public Service Commission, FOR Susan Wefald:**

**(Written testimony attached - on behalf of Public Service Commissioner Susan Wefald, including proposed amendment) - in favor of bill.**

**Chr. Nelson:** Are there questions of Mr. Deutsch? Seeing none, Jim, do you want to wait to present the other two commissioners' testimony at this time?

**Jim Deutsch:** I can wait for other testimony.

**Chr. Nelson:** Further testimony in support of HB 1490?

**Rev. Daniel D. Maurer, Augustana & Birka Lutheran Churches, Underwood & rural**

**Washburn:** I'm here to give a human side of this issue. I drive to west to my rural Washburn church, I see abandoned farmsteads, one after another. I see open land that is being farmed, but the mine owns. Two of my closest parishioners no longer live there since the mine has moved in. I'm not against mining in ND. I think it is a wonderful resource. What I am against is some of the power plays that the mine has used against people out there. I have heard (many) times when

people have been threatened or felt threatened because of the issue of power of the mine owning certain lands and not leasing to certain people and leasing to other people. People say I have to keep quiet on this because I don't want to make them mad. (I've heard of) Representatives not willing to introduce this bill because it is politically bad for them. I look this as a matter of justice. This is a very modest bill, a simple request that the mine give some accountability and intentions of when some of this land will go back into private ownership. I think it is a very American thing (private ownership).

**Chr. Nelson:** Are there any questions of Rev. Maurer? Seeing none, thank you for your testimony. Is there further support of HB 1490? Seeing none, is there opposition to HB 1490? **(Change to tape 2B)** (Note: Tape 2B did not work, it is blank, minutes are less detailed)

**Jim Deutsch, on behalf of Tony Clark and Kevin Cramer, Public Service Commission:** They believe bill is unnecessary, recommend Do Not Pass. **(Written testimony attached)**

**Chr. Nelson:** Are there questions of Mr. Deutsch?

**Rep. Nottestad:** In your position as Director or the Reclamation Division of the PSC, what is your opinion of this bill?

**Deutsch:** I don't see it as burdensome, but it is unnecessary. (I) did what legislation required, met and discussed bond release plans. I don't feel it needs anything in the law to require it.

**Chr. Nelson:** Prior to 2003, was it common for acres to be quickly submitted for final bond release or has that been increasing?

**Deutsch:** That was probably the most acres release in those years. The spreadsheet shows about 6,000 acres for agriculture, the other half was for industrial use, etc. All of it had to meet the requirements for proper bond release.

**Chr. Nelson:** Regarding an active mine, are there site regulations such as haul roads that hinder the final bond release? Looking at the maps shown, I don't see them as irregular shapes. What is your opinion?

**Deutsch:** There are a number of tracts under consideration at any time. They look at quarter sections to determine how many have been reclaimed over ten years or more. Found that some mines are in the process of collecting data, that is not all bad. In one instance, at Indian Head Mine, ( someone? ) expressed (a concern about) repair. Once the final release has taken place, the mining company is off the hook, their liability ends. Holding some land is not all bad as the mining company is responsible for it. Once it's eligible for release, it can be sold.

**Chr. Nelson:** Regarding the haul roads: Does a mining company have to hold land to have absolute access to site roads through out the area?

**Deutsch:** Haul roads remain under bond until the sites are totally reclaimed. (Some companies) have adopted policies re future changes of plans...minimal permitting process...issues of safety.

**Rep. Hunskor:** Page two of your testimony reads, "sound reasons for land being held in bond.." What about "almost" issues?

**Deutsch:** There are a few instances where the company hadn't collected the data. (Cites examples.)

**Rep. Kelsch:** In summary, passage of the bill wouldn't substantially change the way you're doing business now?

**Deutsch:** No.

**Chr. Nelson:** Are there further questions of Mr. Deutsch? Seeing none, thank you. Is there further opposition to HB 1490?



**John Dwyer, President, Lignite Energy Council:** (Written testimony attached, including booklet by the Public Service Commission, of laws governing surface mining and reclamation operations, with items on page 5,6,7 highlighting some of the powers and duties of the commission)

**Chr. Nelson:** Are there questions of Mr. Dwyer?

**Rep. Hunsakor:** Did you see the suggested amendments by Commissioner Wefald?

**Dwyer:** I don't think an amendment is needed, (mines) are already authorized by committee. Commissioner Wefald can require that without the bill. Her position is to require a three-year map, and a biennial report and annual map. Her amendment is in the same spirit as the bill.

**Chr. Nelson:** You indicate that the final bond release process is ramping up. Do you anticipate that to continue?

**Dwyer:** There is no logical reason to hold the land; when it's ready it's released. We think we're making progress. The bond application takes years to put together data regarding soil, wildlife, water, etc.

**Chr. Nelson:** Are there further questions of Mr. Dwyer? Seeing none, thank you for your testimony. Is there further opposition to HB 1490? Seeing none, I will close the hearing on HB 1490.

2/7/05 - Barb Price, Dakota Resource Council submitted rebuttal to John Dwyer's testimony of 2/3/05 at the hearing of HB 1490. Copies were given to all committee members.

**(Written/Attached)**

2/10/05 - John Dwyer, Lignite Energy Council, responded to the rebuttal by the Dakota Resource Council. Copies were given to all committee members. **(Written/Attached)**

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1490

House Natural Resources Committee

☐ Conference Committee

Hearing Date February 10, 2005

Tape Number	Side A	Side B	Meter #
3	x		900-1600
Committee Clerk Signature <i>Loren Bonnet</i>			

Minutes:

**Chr. Nelson:** Let's take up HB 1490 at this time.

**Rep. Nottestad:** John Dwyer (Lignite Energy Council) talked to me and gave me these to distribute to the committee. There was a letter laid on our desk by the Dakota Resource Council inferring some things about his testimony. Mr. Dwyer had to fly out (of town) and asked if this could be passed out in response (to DRC) (**Copies of both the DRC rebuttal and Mr. Dwyer's response attached**)

**Chr. Nelson:** I'll give the committee a moment to read.

**Rep. Hanson:** How close is this bill to the same bill we had two years ago that was defeated about 94-0?

**Chr. Nelson:** I think it's fairly similar, but I'm unsure. Mr. Deutsch is here (from the PSC). Are you familiar with both pieces of legislation?

**Jim Deutsch, Public Service Commission:** This is probably different from that. The bill two years ago required mining companies to come in and apply for final bond release on reclaimed tracts that are more than 80 acres in size or pay a penalty for those tracts that have been seeded for more than 10 years.

**Rep. Hanson:** How about this bill compared to the one we had at Garrison and at New Town?

**Deutsch:** This bill is similar to the bill that was presented at New Town that related to annual map requirements and the mining companies providing bond release plans for reclaimed lands. In that New Town bill, the proposal would have required mining companies to identify a certain percentage of land that they disturbed each year and show bond release plans for at least that amount of reclaimed land.

**Rep. Hanson:** I remember at Garrison we tabled it and Susan Wefald was going to make an amendment the next time, but she never did. I think the other two members on the committee opposed it.

**Deutsch:** There was a similar bill two years ago than what was presented to the committee up at New Town that was similar to HB 1490 with the exception of the minimum amount of acreage that had to be included in the bond release plans.

**Chr. Nelson:** Any further questions for Mr. Deutsch?

**Rep. DeKrey:** (Unintelligible)

**Chr. Nelson:** Commissioner Wefald had an amendment:

Pg. 1, Line 11: Replaces "a" with "an annual"

Pg., 1, Line 13: Replace "twelve-month" with "three years"

Pg. 1, Line 15: After "council" insert "biennially"

**Rep. Nottestad:** I want to point back as we go back to her testimony. This testimony is presented on the personal behalf of Commissioner Wefald. Is she speaking for the (Public Service) Commission here or is she speaking for herself?

**Chr. Nelson:** She did make that point for those who weren't in attendance. I think Commissioners Clark and Kramer did not share her view on this.

**Rep. Nottestad:** My point is, take that into consideration in the amendment.

**Rep. DeKrey:** I don't like the amendment and move a Do Not Pass.

**Rep. Nottestad:** Second

**Chr. Nelson:** A Do Not Pass motion has been moved by Rep. DeKrey and seconded by Nottestad. Committee discussion.

**Unknown speaker:** Are we on the amendment now or Do Not Pass this bill?

**Chr. Nelson:** We're on the bill.

**Rep. Solberg:** There were four of us on the interim Natural Resources committee and we heard a lot about this bill there. There was not one person on our final meeting that would even vote for adoption, so I see no need for this. I cannot support this bill.

**Chr. Nelson:** Further committee discussion? Seeing none, I'll call for a vote:

**Do Not Pass, Vote: 10-Yeas; 2-Nays; 2-Absent; CARRIER: Solberg**

2/10  
8:55 AM  
FEE

Date: 2/10/05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB1490- surface coal mining maps

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 Nottestad

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Jon O. Nelson	✓		Rep. Lyle Hanson	✓	
Vice Chairman - Todd Porter	<u>Abs</u>		Rep. Bob Hunsakor		✓
Rep. Dawn Marie Charging	✓		Rep. Scot Kelsh		✓
Rep. Donald L. Clark	✓		Rep. Dorvan Solberg	✓	<del>✓</del>
Rep. Duane DeKrey	✓				
Rep. David Drovdal	✓				
Rep. Dennis Johnson	✓				
Rep. George J. Keiser	<u>Abs</u>				
Rep. Mike Norland	✓				
Rep. Darrell D. Nottestad	✓				

Total (Yes) 10 No 2

Absent 2

Floor Assignment Solberg

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

**REPORT OF STANDING COMMITTEE (410)**  
**February 10, 2005 6:25 p.m.**

**Module No: HR-27-2495**  
**Carrier: Solberg**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1490: Natural Resources Committee (Rep. Nelson, Chairman) recommends DO NOT PASS (10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). HB 1490 was placed on the Eleventh order on the calendar.**

2005 TESTIMONY

HB 1490

## **Dakota Resource Council**

Bismarck Office

PO Box 1715, Bismarck, ND 58502-1715

Phone: 701-224-8587 e-mail: [barb@drcinfo.com](mailto:barb@drcinfo.com) Fax: 224-0198

### **FOR IMMEDIATE RELEASE**

February 3, 2005

### **For More Information, Contact:**

Barb Price, 701-224-8587

Gene Wirtz, 701-400-4512

### **Bill Would Require Mines to Plan for Final Bond Release**

For the first time, North Dakota coal mines would have to submit annual plans for final bond release under a bill introduced last week at the state legislature.

"Reclamation is not complete until the mines have shown the public what they have accomplished and the land is sold back to area farmers," said Link Reinhiller, Hazen, a farmer-rancher and Dakota Resource Council member. "They are getting further and further behind in this task."

Over 13,507 acres of land in the state has been reclaimed for 10 years or more but not released from final bond as of December 31, 2003, according to figures supplied by the Public Service Commission (PSC). Nearly 43 percent of these acres have been reclaimed for more than 15 years.

For example, the Falkirk mine, with nearly 30,000 acres under permit, has operated since 1978 and has released a total of 52 acres of agricultural land from final bond. Currently, almost 3,000 acres are fully reclaimed and could be released from bond.

State and federal law require a 10-year "liability period" to elapse before final bond release. Final bond release requires replacement of water supplies disturbed by mining and demonstration that farmland is at least as productive as it was before mining.

Most of the reclaimed land is currently being farmed.

As bond release is delayed, the amount of land owned by mines continues to mount. Mines now own over 57,000 acres of land in North Dakota—equivalent to about 44 average-sized farms. An exemption from the state's corporate law permits coal companies to own unlimited acres of land for an unspecified amount of time.

"Lack of planning for bond release is a big part of the problem," said Gene Wirtz, Underwood, a farmer near Falkirk Mine. "This law would ensure that mines plan ahead for timely bond release."

Neither state nor federal law requires companies to apply for bond release. The bill requires coal mines to indicate annually to the PSC how many acres of land they expect to release from final bond in the subsequent 12 months.

The bill is HB 1490, introduced by House Minority Leader Merle Boucher. It will be heard in the House Natural Resources Committee Thursday, February 3 at 10 am in the Pioneer Room.



## **Dakota Resource Council**

P.O. Box 1095, Dickinson, ND 58602-1095  
(701) 483-2851; [www.drcinfo.com](http://www.drcinfo.com)

### **Mounting Land Ownership by Coal Companies: Why It's Happening and What to Do**

#### **Bonding and Bond Release**

- Coal mines must obtain a bond on all land disturbed by mining as set by the Public Service Commission.
- The bond may be in the form of cash, but many companies use self-bonding—that is, they use their assets as surety.
- There is no state or federal requirement that mining companies apply for release of this bond.
- The PSC periodically calculates the entire bond for a mining operation based on the “worst case scenario” for state expenditures should a mining company default; specific bond amounts are no longer tied to specific parcels of land.
- The result is that mining companies get *de facto* bond release for some of their most expensive operations (regrading, respreading of topsoil, revegetation) without ever facing a public hearing.
- Two of the most critical elements of reclamation success—productivity and replacement of water supplies—are not required until final bond release.
- More than 12,000 acres of land in North Dakota have passed the required 10-year liability period and are eligible for final bond release application, and the amount is growing steadily.
- The state's largest mine has yet to apply for final bond release on a single acre of disturbed land that is slated for post-mining agricultural use.

#### **The Corporate Farming Exemption**

- Strip mines have an exemption from the Corporate Farming Law to own land as long as it is “reasonably necessary for mining”—a term not defined in statute.
- The only lawsuit brought in connection with this exemption resulted in a 1979 court decision that places no limits on how much land mines own, where they own it, and how long they hold it.
- Several years ago, an Attorney General's office representative told DRC that it was generally assumed that final bond release would signal that mine-owned land was no longer “reasonably necessary for mining.”

#### **Impacts of Growing Mine Ownership of Land**

- Mines can select lessees on the basis of their cooperation with the industry.
- Mines often rent out land at rates far below market value, creating a false economy by allowing larger farmers to pay higher rent on other tracts, thereby driving up land rents.

#### **Legislative Solutions**

- The 2001 legislature voted solidly against setting time limits for bond release application and establishing fines for non-compliance.
- DRC proposes a requirement that mines submit to the PSC periodic plans for final bond release on a target amount of acres.

Draft - 10-20-04

# North Dakota Permanent Program Permits

(As of Dec. 31, 2003 - For OSM's 2004 oversight report)

Mine	Disturbed area		Long	Active	Areas Graded		Phase I Bond		Areas Re-soiled	
	2,003	Total	Term	Mine	2,003	Total	Release	Total	2,003	Total
			facilities	Areas						
Beulah	91	4,675	1,010	876	145	2,789	136	605	158	2,708
Center	326	6,466	1,290	1,067	299	4,109	0	198	302	4,098
Falkirk	545	14,149	4,915	1,383	520	7,851	448	1,527	857	7,794
Freedom	810	17,210	4,650	3,273	458	9,287	361	656	458	8,883
Gascoyne	0	2,360	10	0	0	2,350	0	2,215	0	2,350
Glenharold	0	4,355	0	0	0	4,355	0	1,060	0	4,355
IndianHead	0	2,404	0	0	0	2,404	0	2,401	0	2,404
Larson	0	650	0	0	0	650	0	528	0	650
New Leipzig	0	25	0	0	0	25	0	25	0	25
Royal Oak-JK	0	105	0	0	0	105	0	89	0	105
Royal Oak	0	318	0	0	0	318	0	312	0	318
Velva	0	387	0	0	0	387	0	387	0	387
Totals	1,772	53,104	11,875	6,599	1,422	34,630	945	10,003	1,775	34,077

(Note - Total disturbed areas, graded areas, and seeded areas include the disturbed acreage that has received final bond release)

By: Trechok, Pg 30 of 35

Phase III (veg. est.) Bond Release		Areas Seeded for 10 years *		Disturbed Lands Final Bond Release			Total Final Bond Release Acreage Undisturbed	
2,003	Total	2,003	Total	2,003	Total	Mine		
136	605	36	911	136	469	Beulah	655	50
0	198	253	1,794	0	198	Center	198	0
18	264	548	3,554	18	264	Falkirk	266	2
361	656	245	2,159	361	656	Freedom	823	167
0	586	37	600	0	586	Gascoyne	753	167
0	372	556	2,283	0	372	Glenharold	512	140
31	2,201	780	1,484	294	889	IndianHead	1,148	249
0	485	0	571	29	79	Larson	143	73
0	25	0	0	0	25	New Leipzig	35	10
0	86	27	79	0	10	Royal Oak-JK	10	0
0	177	13	72	0	237	Royal Oak	257	20
0	387	0	0	0	387	Velva	802	415
546	6,042	2,495	13,507	838	4,172	Totals	5,602	1,293

\* Does not include  
final bond release areas

# North Dakota Permanent Program Permits

(As of Dec. 31, 2003 - For OSM's 2004 oversight report)

## Postmining Land Use

Cropland	Hayland	Native Grassland	Tame Grassland	Recreational	Industrial	Woodland	Ponds	Residential
266	0	1	0	0	337	0	1	0
0	51	15	0	0	132	0	0	0
0	0	0	0	165	81	0	0	18
0	0	0	0	367	289	0	0	0
52	0	0	0	0	534	0	0	0
0	0	0	0	0	372	0	0	0
209	187	361	17	0	116	0	9	0
15	2	0	0	0	53	0	0	0
0	25	0	0	0	0	0	0	0
0	0	0	0	0	10	0	0	0
79	0	0	0	0	158	0	0	0
94	0	277	0	0	0	14	2	0
<b>715</b>	<b>265</b>	<b>654</b>	<b>17</b>	<b>532</b>	<b>2,082</b>	<b>14</b>	<b>12</b>	<b>18</b>

By: Trebeck, Pg 50 of 5

**Dakota Resource Council**  
**Testimony on HB 1490 to the House Committee on Natural Resources**  
**February 3, 2005**

My name is Mark Trechock. I am the Staff Director of Dakota Resource Council. DRC is an independent membership-based grassroots organization has been working with North Dakotans since 1978 for the purpose of organize to protect their interests and rights. About half our members are active farmers or ranchers.

When surface mining of coal began in North Dakota, mining operators did not have to reclaim the land, but simply mined the coal and moved their equipment to another location leaving the mined land unusable for agriculture. North Dakota was ahead of the rest of the nation in requiring land reclamation following mining, enacting a state reclamation law in the early 1970s. Later, North Dakota made its state laws more effective in compliance with the Surface Mining Control and Reclamation Act, passed by Congress in August 1977. North Dakota's reclamation laws remain among the best in the United States. Prior to final bond release mining operators must demonstrate that reclaimed agricultural land is at least as productive as it was before mining.

Like everyone in the state, DRC very much wants our surface mining reclamation program to be a success, and to see farmers and ranchers repopulating mined areas and successfully raising crops and livestock. Our members and others with whom we have contact in coal country generally believe that reclamation of agricultural land in the state is working in terms of productivity. We have no reason to suspect any systematic negligence on the part of coal companies in reclamation practices. Farmers and ranchers have incorporated most reclaimed land into existing farming operations.

What we are concerned about is the timely release of reclaimed agricultural lands back to the public. In placing permitted land under bond, mining operators enter into a relationship of trust with the public. Bond release hearings give the mines an opportunity to demonstrate to the public the success of their reclamation efforts. Mining operators incur their largest reclamation expenses during its early stages, when they return the land to its original contours, re-spread topsoil and re-establish vegetation. However, the most vital proofs of the success of reclamation are the productivity of agricultural lands and the replacement of water supplies affected by mining. Only at final bond release are the mining operators required to demonstrate publicly that they have met these standards. DRC believes the reclamation process can be judged complete and successful only when final bond release occurs and the reclaimed land is sold back to area farmers and ranchers.

Reclaiming land is a lengthy process. In those regions of the country like North Dakota where the annual average precipitation is twenty-six inches or less, federal law require that mine operator's assumption of responsibility and liability will extend for a period of ten full years after the last year of augmented seeding, fertilizing, or other related work. DRC's concern is that number of acres still under bond, which have been through the full ten-year period, is adding up steadily each year. Especially on active mines, final bond release applications simply have not been forthcoming.

Using annual report maps and figures we received from the Public Service Commission the total land that has gone through the full ten year period is 13,507 acres. Most of the land that has been released is classified as industrial, commercial, recreational, native grasses, with a very small part of the released land classified crop or hay land. For example, as of December 31, 2003, which is the last full report we have from the Public Service Commission, 3,553 acres at the Falkirk mine met the full ten-year liability period, but only 264 disturbed acres had gone through final bond release, and only none of those acres was being used for agriculture.

As of the same date, 13,507 acres were available state wide for final bond release. The number undoubtedly has grown since then, since it has been growing at rate of approximately 1,000 acres per year. From our standpoint, land reclamation is only complete when the land is released from final bond and sold back to the people. Our state laws reflect the conviction of our citizens that it is farmers and ranchers who should own

and operate farm and ranch land. Mines do have a special exemption from the corporate farm law as long as "the owning or leasing of lands used for farming or ranching is reasonably necessary in the conduct of the business of surface coal mining or related energy conversion." (Century Code 10-06.1-06.) However, after reclaimed land has gone through the full ten year period, "When the necessity for owning or leasing of lands used for farming or ranching no longer exists, the exception provided in this section ceases and the corporation or limited liability company owning or leasing such lands is subject to this chapter." (Century Code 10-06.1-06.)

As delays in final bond application continue, the amount of land that the mines own also continues to mount. During the past few months, DRC has gathered statistical information on how much land is owned in North Dakota by mining operators. According to county officials, mining operators own 57,826 acres in North Dakota with the majority of that land being owned in Mercer, McLean and Oliver counties. That is the equivalent of 90 sections of land, or 45 family farms (at two sections per farm). It seems likely to us that more timely bond release proceedings would serve to hasten the resale of mine-owned land to farmers and ranchers in the community.

However, there are several obstacles to timely final bond release. First, mining operators make money by mining and selling coal. There is no money to be made in releasing the reclaimed land. As a result, mining companies are actively engaged in planning their mining operations, but we do not see evidence that mining companies have prioritized planning for final bond release.

Also, many companies employ self-bonding, where the company puts up its own assets to cover the performance bond. Therefore when it comes time for final bond release there is little cash benefit to the company.

De facto bonding is also allowed, where the bond is no longer attached to a specific parcel of land. Performance bonding in North Dakota is now based on a "worst-case scenario" analysis over an entire permit area. The Public Service Commission determines the maximum obligation of the state in a case where the state would have to step in and complete reclamation if the company for some reason does not complete the job. There is good financial logic to this approach, but it means that mines in effect get credit against their overall bond without ever having to submit an application or present their reclamation accomplishments for public review.

In summary, completing final bond release application requires dedication of staff time, yet it currently offers few if any financial rewards to mining companies. Since there is no requirement in the law that mining operators ever apply for final bond release, companies can delay bond release application as long as it suits them, or even permanently. This is an unfortunate situation, since bonding is an essential component of the relationship of public trust established when companies receive permits to mine, and bond release applications provide an opportunity for the public to confirm its hope that the trust has been well-founded.

Historically, we at DRC have been better at identifying the problem of delayed bond release than we have been at identifying means of addressing the problem, but today we are offering a solution that we believe will be useful to the public. In the past we come before you to ask for the establishment of penalties for failing to apply for final bond release, but it was clear that the legislature did not want to proceed in that direction. This year we are asking for a very modest action: that coal companies incorporate in their annual planning process a plan for lands that will be released from final bond during that year. We are not dictating the amount of land to be released; that is to be determined by each mining operator. We are simply asking the mines to submit regularly to the PSC plans for final bond release at the same time they submit their annual mining plans. We believe this will ensure that mining companies begin planning for the final bond release applications and hearings that will complete their responsibilities under the trust granted to them by the public.

county	comments	acres
Adams	none	0
Barnes	none	0
Benson	none here	0
Billings	none	0
Bottineau	none here	0
Bowman		0
Burke	bni spoils 3 pieces deed never transferred	120
Burleigh	Falkirk -.009 Coteau - ; Basin - 53.63 all in city	0
Cass	none	0
Cavalier		0
Dickey	faxed letter	0
Divide	There is a pipeline owned by DGC	0
Dunn	Dak. Gasification pipeline; none	0
Eddy		0
Emmons		0
Foster	none here	0
Golden V	faxed	0
Grand Fo	none here	0
Grant	none	0
Griggs	none here	0
Hettinger	none	0
Kidder	none	0
LaMoure	none	0
Logan		0
McHenry	Basin-287.04, Truax Traer-15.88, see note	303
McIntosh		0
Mckenzie	first cont. sept 17	0
McLean	falkirk owns 22,000 acres	22000
Mercer	Cot 24153.47 Bell 504.61 Dak wes 515.43 NAC1495.78	26669
Morton	Basin Electric 7.34 ac industrial	7
Mountrail	Basin 1-58-88 no info	0
Nelson	none here	0
Oliver	Basin3791.18 BNI4598.89 DakWes318 Minnkota3633.74	8708
Pembina	none here	0
Pierce	none here	0
Ramsey	none here	0
Ransom	none	0
Renville	none here	0
Richland		0
Rolette	none here	0
Sargent		0
Sheridan	none here	0
Sioux	none	0
Slope	none	0
Stark	none	0

Total =  
57,861

county	comments	acres
Steele	none here	0
Stutsman	none	0
Towner	none here	0
Traill	none here	0
Walsh	none here	0
Ward	Basin owns 20 in Sundre Twp	20
Wells	none here	0
Williams	Dak Gas 3+ acres Geo R 47,000 sq ft, 34.26 acres	34



1490

Draft - 10-20-04

# North Dakota Permanent Program Permits

(As of Dec. 31, 2003 - For OSM's 2004 oversight report)

Mine	Disturbed area		Long	Active	Areas Graded		Phase I Bond Release		Areas Re-soiled and Seeded	
	2,003	Total	Term facilities	Mine Areas	2,003	Total	2,003	Total	2,003	Total
Beulah	91	4,675	1,010	876	145	2,789	136	605	158	2,708
Center	326	6,466	1,290	1,067	299	4,109	0	198	302	4,098
Falkirk	545	14,149	4,915	1,383	520	7,851	448	1,527	857	7,794
Freedom	810	17,210	4,650	3,273	458	9,287	361	656	458	8,883
Gascoyne	0	2,360	10	0	0	2,350	0	2,215	0	2,350
Glenharold	0	4,355	0	0	0	4,355	0	1,060	0	4,355
IndianHead	0	2,404	0	0	0	2,404	0	2,401	0	2,404
Larson	0	650	0	0	0	650	0	528	0	650
New Leipzig	0	25	0	0	0	25	0	25	0	25
Royal Oak-JK	0	105	0	0	0	105	0	89	0	105
Royal Oak	0	318	0	0	0	318	0	312	0	318
Velva	0	387	0	0	0	387	0	387	0	387
Totals	1,772	53,104	11,875	6,599	1,422	34,630	945	10,003	1,775	34,077

(Note - Total disturbed areas, graded areas, and seeded areas include the disturbed acreage that has received final bond release)

By: Trebeck  
Pg 5 of 7

Phase III (veg. est.) Bond Release		Areas Seeded for 10 years *		Disturbed Lands Final Bond Release		Mine	Total Final Bond Release Acreage Undisturbed	
2,003	Total	2,003	Total	2,003	Total			
136	605	36	911	136	469	Beulah	655	50
0	198	253	1,794	0	198	Center	198	0
18	264	548	3,554	18	264	Falkirk	266	2
361	656	245	2,159	361	656	Freedom	823	167
0	586	37	600	0	586	Gascoyne	753	167
0	372	556	2,283	0	372	Glenharold	512	140
31	2,201	780	1,484	294	889	IndianHead	1,148	249
0	485	0	571	29	79	Larson	143	73
0	25	0	0	0	25	New Leipzig	35	10
0	86	27	79	0	10	Royal Oak-JK	10	0
0	177	13	72	0	237	Royal Oak	257	20
0	387	0	0	0	387	Velva	802	415
546	6,042	2,495	13,507	838	4,172	Totals	5,602	1,293

\* Does not include  
final bond release areas

# North Dakota Permanent Program Permits

(As of Dec. 31, 2003 - For OSM's 2004 oversight report)

## Postmining Land Use

Cropland	Hayland	Native Grassland	Tame Grassland	Recreational	Industrial	Woodland	Ponds	Residential
266	0	1	0	0	337	0	1	0
0	51	15	0	0	132	0	0	0
0	0	0	0	165	81	0	0	18
0	0	0	0	367	289	0	0	0
52	0	0	0	0	534	0	0	0
0	0	0	0	0	372	0	0	0
209	187	361	17	0	116	0	9	0
15	2	0	0	0	53	0	0	0
0	25	0	0	0	0	0	0	0
0	0	0	0	0	10	0	0	0
79	0	0	0	0	158	0	0	0
94	0	277	0	0	0	14	2	0
<b>715</b>	<b>265</b>	<b>654</b>	<b>17</b>	<b>532</b>	<b>2,082</b>	<b>14</b>	<b>12</b>	<b>18</b>

By: Trechok  
Pg 7 of 7  
Re: HB 1490

**H.B. 1490**

**Testimony on behalf of Public Service Commissioner Susan Wefald**

**Presented by:** Jim Deutch  
Director, Reclamation Division  
Public Service Commission

**Before:** House Natural Resources Committee  
Honorable Jon Nelson, Chairman

**Date:** February 3, 2005

Mr. Chairman and Members of the Committee, I am Jim Deutsch, director of the Public Service Commission's Reclamation Division. This testimony is presented on behalf of Commissioner Susan Wefald who is unable to attend today's hearing.

Commissioner Wefald's testimony is as follows:

I have been pleased that the issue of timely bond release has received attention from the legislature over the past biennium. Due to this legislative attention, companies are putting more attention on bond release and the Commission has approved over 3196 acres of land for final bond release in the past two years.

It would be very helpful to have a requirement in state law that serves to continue to focus the companies' attention on final bond release on a yearly basis. An annual map would provide helpful information to the Commission, and would provide a document that would be helpful to the public as well. The biennial report to the legislature would not be time consuming and could provide useful information for many parties. After listening to the concerns of the interim

committee this summer, I am suggesting a few clarifying amendments. (See the attachment). One of my suggested amendments is to replace the twelve month period with a three year period. The three year planning period would facilitate allowing companies to group bond release properties together in parcels that make sense. The changes proposed in HB 1490 and these amendments are simple and helpful, and should be non-threatening to the coal companies.

While the Commission may have the authority to promulgate a rule that would affect the same objective as this law, it would be quicker, and ensure that it is in place, to have this requirement enacted in law. With legislative attention on this topic, the companies have come in on a voluntary basis with this information this year, and that has worked well. However, this information is really needed on an annual basis, and this requirement in state law would ensure that the public and the commission have this information.

Why is it so important for companies to file applications for final bond release on acreage that has been reclaimed?

- First, it is important for the public to know that each company is meeting all performance standards for land reclamation. Meeting these standards, through the different stages of bond release, gives the public confidence that the land is being reclaimed in a responsible manner by the mining companies involved.
- Second, the mining companies have an obligation to demonstrate their commitment to North Dakota land through their mining practices. Their

job is not finished until they can demonstrate that they can meet the standards that they have helped establish.

- Third, waiting 15 or 20 years to apply for bond release on land that has been mined is not responsible corporate behavior. Some problems that are discovered at that time are almost impossible to solve, especially on native grasslands, without restarting the reclamation clock.

I agree that final bond release is occurring on mined lands in North Dakota, especially on inactive mines. For example, the Indian Head Mine, which finished active mining in 1992, completed bond release on all of its permitted land in 2004. Other inactive mines are progressing more slowly. For example, the Larson Mine, located in the North West part of the state, completed mining in 1986, and although about one-half of the permitted lands have final bond release, about 920 acres remain bonded. Another small inactive mine in south western North Dakota, the Gaylord Olson mine, finished mining and reclamation in 1980. Every year our staff has had to go and inspect this mine, taking time and resources. The ownership of this mine did not choose to put any resources into bond release activities until 2002.

Active mines have a very limited record of pursuing final bond release. For example, the Freedom Mine, with 43,000 acres under permit, has only 823 acres of land in final bond release.

This very simple law change should not be generating any opposition. It is helpful information for the Legislature and the Commission, and will facilitate timely bond release in the future.

I look forward to being able to report to you excellent bond release results in a few years from all of the mines in North Dakota. I am committed to working with the companies on these important bond release matters, and the amended proposed legislation would be very helpful in this effort.

Mr. Chairman, this concludes my testimony. I will be glad to answer any questions you may have.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1490

Page 1, Line 11, replace "a" with "an annual"

Page 1, Line 13, replace "twelve-month" with "three-year"

Line 15, after "council" insert "biennially"

Renumber accordingly



## House Bill 1490

### **Testimony on behalf of Public Service Commissioners Tony Clark and Kevin Cramer**

**Presented by:** Jim Deutsch  
Director, Reclamation Division  
Public Service Commission

**Before:** House Natural Resources Committee  
Representative Jon Nelson, Chairman

**Date:** February 3, 2005

Chairman Nelson and members of the committee, I am Jim Deutsch, Director of the Public Service Commission's Reclamation Division. This testimony is presented on the behalf of Commissioners Tony Clark and Kevin Cramer who were unable to attend today's hearing.

They believe HB 1490 is unnecessary and recommend a "do not pass" vote. While the language in lines 11 through 14 that would require mining companies to file annual maps showing final bond release plans for the following 12-month period is not all that objectionable, it is not necessary.

In the past year the Commission's Reclamation Division set up meetings with most of the mining companies to discuss their bond release plans for the next several years. None of the mining companies objected to these meetings and the Reclamation Division will schedule similar meetings again this year after the annual mine maps are submitted. We plan to continue these annual meetings in future years as well. If companies refuse to come in and discuss bond release plans when requested, the Commission already has the rulemaking authority to require mining companies to file such plans if we deem that necessary.

With regard to the last sentence in lines 14 through 16 that would require the Commission to submit a bond release progress report to Legislative Council, this is also not needed in law since such a report can be requested at any time.

This bill is similar to one that was considered by the Interim Natural Resource Committee last July and that committee did not recommend introducing such a bill. HB 1490 seems to seek a solution for a problem that does not exist. There is no evidence to suggest that North Dakota's coal companies are keeping reclaimed lands under bond longer than needed. While there are reclaimed lands still under bond for more than the minimum ten-year liability period, we have found that there are almost always sound reasons for the land not being released from bond. In many cases, these reclaimed lands are irregular shaped parcels that were reclaimed over a number of years. It is not reasonable to expect bond release until a larger tract becomes eligible for release based on the last area that was reclaimed and seeded. In other cases, reclaimed land is held under bond because future mine plans may necessitate further use of the land or the reclaimed tract may be located between active haul roads.

There is nothing wrong with the current requirements and final bond release is occurring. Since January 1, 2003, the Commission has approved final bond release for nearly 3200 acres of land. Based on the meetings that the Reclamation Division had with mining companies last year to discuss their bond release plans, these companies have plans to collect the required vegetation data on logical farming or grazing units that are or will become eligible for final bond release over the next several years. It appears mining companies will be pursuing bond release on logical units in order to return reclaimed lands to the full control of private landowners. Attached to this testimony is a spreadsheet listing the acreage that has been bond released by mine and land use.

Mr. Chairman, that concludes the testimony on behalf of Commissioners Clark and Cramer. Thank you.

# North Dakota Final Bond Releases for Lands Permitted or Re-permitted after July 1, 1979

(as of January 1, 2005)

	Total Final Bond Release Acreage	Undisturbed	Cropland	Hayland	Native Grassland	Tame Grassland	Recreational	Industrial	Trees/ Woodland	Ponds	Residential
<b>Mine</b>											
Beulah	655	50	266	-	1	-	-	337	-	1	-
Center	404	11	-	51	90	-	-	252	-	-	-
Falkirk	266	3	-	-	-	-	165	82	-	-	16
Freedom	823	167	-	-	-	-	367	289	-	-	-
Gascoyne	753	167	52	-	-	-	-	534	-	-	-
Glenharold	512	140	-	-	-	-	-	372	-	-	-
IndianHead**	3,085	710	895	281	1,040	17	-	118	6	18	-
Larson	143	73	15	2	-	-	-	53	-	-	-
New Leipzig**	35	10	-	25	-	-	-	-	-	-	-
Royal Oak-JK	10	-	-	-	-	-	-	10	-	-	-
Royal Oak	257	20	79	-	-	-	-	158	-	-	-
Velva**	802	415	94	-	277	-	-	-	14	2	-
GeoResources*	40	5	-	-	-	-	-	35	-	-	-
<b>Totals</b>	<b>7,785</b>	<b>1,771</b>	<b>1,401</b>	<b>359</b>	<b>1,408</b>	<b>17</b>	<b>532</b>	<b>2,240</b>	<b>20</b>	<b>21</b>	<b>16</b>

Total Acreage of Final Bond Releases Approved since January 1, 2003 - 3,196 acres

## Final Bond Release for Lands Permitted before July 1, 1979

Mine	Acreage
Beulah	518
Center	871
Falkirk	27
Freedom	21
Gascoyne	17
Glenharold	1,833
IndianHead**	1,483
Larson	748
Royal Oak	63
Velva**	117
GeoResources*	30
10 small mines**	22
<b>Total</b>	<b>5,750</b>

\* Leonardite Mines

\*\* Mines totally bond released

## Current Acreage under Permit

Mine	Acreage
Beulah	5,882
Center	9,737
Falkirk	29,669
Freedom	43,126
Gascoyne	2,377
Glenharold	7,085
Larson	916
Royal Oak	193
American Colloid*	281
Bentonite*	59
GeoResources*	50
<b>Total</b>	<b>99,375</b>

Testimony of John W. Dwyer  
President, Lignite Energy Council  
Before the House Industry, Business and Labor Committee  
HB 1490  
February 3, 2005

- I. Background: Natural Resources Committee studied two mine bonding proposals during the interim.
  - A. Both proposals would have required changes to the existing bonding procedures – adding to mining costs and eliminating flexibility in mining and reclamation operations.
  - B. The Natural Resources Committee toured mines and met three times.
  - C. The Natural Resources Committee took no action on either bill.
- II. Solution: The Public Service Commission reclamation specialists and the mining company representatives worked out changes to facilitate bonding releases, including revising a policy memo and issuing a new one addressing bond release issues.
- III. Results: Since September 2003, approximately 3,100 acres of mined land have been released from bond.
  - A. Indian Head Mine – 1,946 acres
  - B. Falkirk Mine – 20 acres
  - C. Beulah Mine – 136 acres
  - D. Center Mine – 206 acres
  - E. Freedom Mine – 508 acres
  - F. Larson Mine – 327 acres
  - G. At the present time, 420 acres at the Falkirk Mine have been partially released.
- IV. LEC Opposed: The Lignite Energy Council is opposed to HB 1490 as the bill is not needed and does **not** fix or address any problem that exists.
- V. Finally, PSC has regulatory authority to require matters contained in legislation.

2/3/05 Laver - got this from Bud Price  
Delivered copies to all  
Committee members  
Pg 1 of 2

**Dakota Resource Council**  
P.O. Box 1095, Dickinson, ND 58602-1095  
701-483-2851; [www.drcinfo.com](http://www.drcinfo.com)  
Bismarck office: 701-224-8587  
Fargo office: 701-298-8685

Follow up notes from HB 1490 hearing

- Note that John Dwyer's testimony was self-contradictory. He said that companies had financial incentive to get bond released yet also pointed out (as we had) that it was a costly process for them. This "costly process" is just part of doing business which any good business owner should have planned for.
- The argument that PSC can do what we are asking without legislation begs the following questions: Why haven't they? What guarantee do we have that they will?
- John Dwyer's testimony on the above point was misleading. He pointed out that PSC was given significant discretion under the law to require submission of materials such as maps and reports. True enough. However, he neglected to point out that the law itself—including the section we propose to amend—also specifically requires the submission of maps and reports. In other words, what we are asking is not unprecedented.

The law also states:

38-14.1-14. Permit applications - Mining and reclamation plans.

1. m. The anticipated or actual starting and **termination dates of each phase of the mining operations.**
  2. Each applicant for a permit shall submit as part of the permit application a reclamation plan that must include, in the degree of detail necessary to demonstrate that reclamation as required by this chapter can be accomplished, a statement of:
    - k. **A detailed estimated timetable for the accomplishment of each major step in the reclamation plan.**
- It is good that an increased number of acres have been release in the past two years, but how much of that is on abandoned mines and how long past the 10-year minimum period did the companies wait? It doesn't change the fact that active mines are dragging their heels.

According to the Final Bond Release Table handed out by the PSC:

Total Acres released	7,785
Undisturbed acres	1,771
Crop/hay land (abandoned mines)	1,391
Crop/hay land (active mines)	369

**Crop/hay land acres from active mines is only 5% of released acres.**

Although land from all the abandoned mines needs to be released as soon as possible, **it is the land from the active mines that is of great concern to the local farmers.**

- Dwyer also stated that parcels of land available are small and "odd-shaped". The supposed "odd-shaped and small parcels" (which really aren't so odd-shaped or small according to the maps that the mines have submitted to the PSC) are currently incorporated (gladly) into existing farming operations. As shown by the maps that have been highlighted as to how many years land has been reclaimed, there are parcels of land that cover close to whole sections in size and many parcels that are half sections in size. As to "odd shapes" farmers are used to farming odd shaped parcels of land and in fact most of the so-called "odd shaped" parcels are now being farmed.
- Dwyer also indicated that land between the haul roads cannot be released. Assuming that this is for safety issues – all that is needed for safety along the haul roads is the width of the ditches on either side of the road, not the acres of land between the roads. In most cases the land between the haul roads is currently being farmed by an outside farmer. Why can't this land then be released from bond? Mines answer to this question saying that when the haul road is finally reclaimed the production numbers have to be included with the acres around it. However, the road data can be separated from the land around it. This may be more costly, but once again it is the cost of doing business and should be planned for accordingly.
- Dwyer indicated that the productivity records are taken after the 10-year liability period, however the productivity records are taken **during the 10-year period**.
- Seems like planning is the key word here – any good business plans for all aspects of the business including how to complete the business. Final bond release is the completion of the mining process. Until land is released from final bond the job is not completed. Some of the land has been reclaimed for over 15 years with no indication as to when it will be released from final bond. According to our research Falkirk has 1,279 acres (with several parcels over 100 acres in size) that have been reclaimed for 15+ years; and Coteau has 602 acres reclaimed over 15 years (with several parcels of 100+ acres);
- Dwyer said that companies have no interest in holding land, but we all know that land ownership brings with it certain powers and influence, which are a benefit to any landowner. Many of the mining companies tend to use the power of owning land to intimidate the communities in which they own land.
- DRC supports the amendments offered by PSC Commissioner Wefald.



February 10, 2005

HB 1490

By John Dwyer 2/10/05

via Rep Nottestad

JOHN W. DWYER, President

jdwyer@lignite.com

1016 E. Owens Avenue

P.O. Box 2277

Bismarck, ND 58502

Tel (701) 258-7117

Fax (701) 258-2755

RE: HB 1490

**SERVING:**

Dear House Natural Resources Committee Members:

**MINNESOTA**

Great River Energy

Minnesota Power

Minnkota Power Cooperative

Otter Tail Power Co.

Xcel Energy

**NORTH DAKOTA**

Basin Electric Power Cooperative

BNI Coal, Ltd.

Coteau Properties Company

Dakota Gasification Company

Dakota Westmoreland Corporation

Falkirk Mining Co.

Minnkota Power Cooperative

Montana-Dakota Utilities Co.

Otter Tail Power Co.

Xcel Energy

**SOUTH DAKOTA**

Basin Electric Power Cooperative

Montana-Dakota Utilities Co.

Otter Tail Power Co.

Xcel Energy

**MONTANA**

Basin Electric Power Cooperative

Dakota Westmoreland Corporation

Montana-Dakota Utilities Co.

**CANADA**

Luscar Ltd.

SaskPower

I received a copy of the Dakota Resource Council communication attached (undated and unsigned) that was apparently distributed to the House Natural Resources Committee Members. Thus, I will briefly respond:

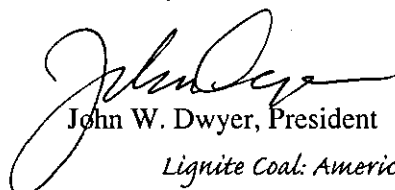
(1) First, my testimony was not contradictory. Bond release is a costly process with lots of paperwork and lots of data gathering to prove equal or better productivity. And yes, there is no financial incentive for the mining company to hold the land as the bond liability ends up on a company's balance sheet under self-bonding, or results in annual premiums for the bond liability under a surety program. Those facts are not contradictory;

(2) Second, the PSC has the authority to do what the DRC is asking for in HB 1490. I am not misleading anybody by pointing that out. Both PSC Commissioners Clark and Cramer confirmed that point in their written testimony in opposing HB 1490;

(3) And finally, the Interim Natural Resources Committee of the Legislative Council had just completed a two-year study of the bonding release process. Every reclamation manager from each of the lignite operations reviewed their reclamation plans and bond release tracts in detailed maps with the Interim Natural Resources Committee members. Representative Lyle Hanson, Representative Todd Porter, Representative Darrell Nottestad, and Representative Dorvan Solberg were a part of that Legislative Council's House Natural Resources Committee. The bottom line is that there are logical, sound operational reasons why tracts of land are not being released. PSC and OSM reviews have confirmed these situations. I refer you to the hearing record of August 5, 2003. I would also like to point out that after a detailed two year study of the bonding release process in 2003 and 2004, the Legislative Council's Interim Natural Resources Committee decided that no additional statutory changes were necessary.

Finally, we are making good progress in obtaining final bond release. Over 3,000 acres have been released since the last Legislative Session and applications will continue to be made in the future. I will be happy to provide the Committee with any additional information on HB 1490.

Sincerely,

  
John W. Dwyer, President

*Lignite Coal: America's Abundant Energy Resource*  
[www.lignite.com](http://www.lignite.com)

**PUBLIC SERVICE COMMISSION  
STATE OF NORTH DAKOTA**

*Contact  
PSC  
for copy of  
this document*

**Laws**

**Governing**

**Surface Mining and Reclamation Operations**

**August 1, 1999**

**BRUCE HAGEN, President**

**SUSAN E. WEFALD, Commissioner**

**LEO M. REINBOLD, Commissioner**

**JON H. MIELKE, Executive Secretary**

**JAMES R. DEUTSCH, Director  
Reclamation Division**

**PUBLIC SERVICE COMMISSION  
600 East Boulevard Ave.  
Bismarck, North Dakota 58505-0480**

**701-328-2400**