

2011 HOUSE ENERGY AND NATURAL RESOURCES

HB 1241

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee Pioneer Room, State Capitol

HB 1241

01/27/2011

Job #13654

☐ Conference Committee

Committee Clerk Signature



Minutes:

Rep. Porter: We will open the hearing on HB 1241.

Rep. Kempenick: We have been trying to deal with this for the last 10 years. We are trying to figure out the problems that come to the surface owner. It is mainly with severed minerals and the surface owner. My testimony does explain the mechanics of HB 1241. (see attachment 1.) If the surface owner owns the mineral he will get something more than what the surface damages are. In the current law the negotiation is between the surface owner and mineral company. The surface owner can't deny access to the royalties. This sets up a minimum standard for the surface damages.

Rep. Porter: Are there any questions for Rep. Kempenick?

Rep. Drovdal: I am one of the cosponsors of the bill. North Dakota was one of the first states to a surface owner's rights bill into its constitution. To the surface owner it is his land that they can walk on without him having any input what so ever. This bill has a minimum value that can be negotiated. This bill is for the few businesses that walk over the surface owners. This law is to give a little better protection for the surface owners that live in North Dakota. The second part of the bill is for the long term loss.

Rep. Porter: Are there any questions for Rep. Drovdal?

Sheyna Strommen: I am with the North Dakota Stockmen's Association. We are here in support of the concept of HB 1241. Many of our members are surface owners. (see attachment 2)

Rep. Porter: Are there any questions for Sheyna Strommen?

Rep. Kasper: What is the amount that a landowner receives for these types of damages?

Sheyna Strommen: I would have to yield that question to someone else. I don't know the answer.

Rep. Porter: Are there any other questions? Is there further testimony in support? Is there any opposition for HB 1241?

Sandy Clark: I represent The North Dakota Farm Bureau. We are opposed to HB 1241. We do concur that there is a problem out there. Our position is that we believe in the free enterprise system and so we believe that this process should continue to be negotiation between the surface owner and the mineral owner.

Rep. Porter: Are there any questions for Sandy Clark?

Rep. Keiser: Is there any multiplier that your organization would support?

Sandy Clark: There may be one coming a little later this morning.

Ron Ness: I am the president of the North Dakota Petroleum Council. We represent more than 260 companies that are involved in all aspects of the oil and gas industry. I am in opposition to this bill. I think there are better solutions. One of the problems is if you put x factor into the law, that is what the industry will pay. Right now there is a variety of ways to compensate the surface owners. We recognize that there issues out there, we stand committed to work through this. Oil companies and their employees do not want disputes with surface owners.

Rep. Porter: Are there any questions for Ron Ness?

Rep Kasper: Is there a typical contract that the oil companies use to negotiate with the landowners?

Ron Ness: I don't think there is any typical contract. From our standpoint this is an antitrust issue. We cannot sit around and discuss what operators pay. The land values, pad the well and size of the pipes come into play. Operators are moving up as we settle into the Bakken play. The average settlement amount has gone up a fair amount.

Rep. Porter: Is there any further opposition to HB 1241?

Jim Crom: I am a petroleum engineer for a company called Ward Williston. How we measure the market price is thru negotiation. I am working on a 15 well development now. A 25 times multiplier with current land values, we can't do it. That kind of multiplier doesn't seem reasonable. What is reasonable, we have always found that thru negotiation. Negotiation has many different faces to it. We give them a number and ask them if it is fair or not, if they say no it is not then we go to the next number. The farmer is usually the indicator for us and where our values are going to go. What are we talking about in the area of damages? This example is much like the state we use RGIS which is a bulk sensing application for our engineering and land efforts. It is very accurate. (see attachment 3) The important thing is to be a good neighbor.

Rep. Porter: Are there any questions for Jim Crom? Is there further opposition for HB 1241? We will close the hearing on HB 1241.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee Pioneer Room, State Capitol

HB 1241
02/10/2011
14345

☐ Conference Committee

Committee Clerk Signature

Minutes:

Rep. Porter: We will open HB 1241

Rep. Nathe: I want to say Thank you to Rep. Hunskor and Rep. Kasper for helping out on the subcommittee. Things went well in the committee hearings. We heard from both the landowners and the oil industry. These three bills that we are combing are meant to help improve the lines of communication between the surface owners and the oil industry. We will combine elements of three bills and hog house them into HB 1241. Lets go through the amendments that were handed out. Section 3 is from the back page of HB 1387. The amendment would provide a clear separation of the payment of damages and a payment for production loss with the surface owner having the option to take the loss of production income in annual payments.

Rep. DeKrey: Does the surface owner have the option of taking annual payments? Is it his option or the company's option?

Rep. Nathe: It would be the surface owners option whether he wants an annual payment or not. Section 1 has to do with damage and disruption of payments. The underlined is from the front page of HB 1387. Section 2 are elements form HB 1324, that would require a seven day notice to the surface owner before entering the property for non surface activity such as measurements, staking, and surveys. We moved the notice from 5 days to a 7 day notice. In the amendment you will see what the notice must include. One of the things we added there was the plat showing the location of the proposed well. When the oil industry sits down with the surface owner, the surface owner has a say as to where the well will go. Amendment number 11.0043.01006 section 2 number 3 now says "receive 7 days after the mailing." Section 4 the obligation to pay royalties, what the amendments do is state the royalty owners do not have to request in writing the 18% that is due to the royalty owners after 150 days from the sale.

Rep. Porter: Are there any questions for Rep. Nathe?

Rep. Hunskor: In the 1950s oil was first discovered in our state and we had three players. There was a minimum of strained relationships. Then the Baaken oil came along and those relationships had extra pressure put on them. As a result the landowners organized and the battle lines were set. I am proud of the democratic process that we went through in coming up with this final bill draft. The credit needs to go to the oil industry and the surface

owners and their representation to be willing to sit down out of committee and resolve their differences. I found that remarkable.

Rep. Porter: Anything we do here can be disputed. There will be a place when we are done with this session that will set up for mediation between the surface owner and the operator or the mineral interest depending who the dispute is with.

Rep. Kelsh: On the bottom of page 1, on the notice of operations the 7 day notice "unless waived by mutual agreement by both parties" would that apply if they had been given a notice?

Rep. Porter: Because this notice is between the surface owner and the mineral developer that could be the mineral holder also.

Rep. Damschen: On page 2 subsection 2 of section 2 where it says "the mineral developer plans to commence drilling operations within twenty days of the termination date of the mineral lease, the required notice under this section may be given at any time before commencement of drilling operations." Could that be as little as a day?

Rep. Nathe: That is language that is already in code.

Rep. Porter: Because of the potential of the mineral lease expiring prior to the start of the process, there has to be a way to protect that lease for that developer. That is what that language addressed in the Century Code.

Rep. Nathe: I make a motion for the amendments.

Rep. Hunskor: Second

Rep. Porter: Is there any other discussion? Voice vote taken Motion carried

Rep. Nathe: I move a do pass for HB 1241 as amended.

Rep. Hunskor: Second.

Yes 13 No 0 Absent 2 Carrier: Rep. Nathe

Date: 2-10-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1241

House House Energy and Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep Nathe Seconded By Rep Hunskor

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Hanson		
Vice Chairman Damschen			Rep. Hunskor		
Rep. Brabandt			Rep. Kelsh		
Rep. Clark			Rep. Nelson		
Rep. DeKrey					
Rep. Hofstad					
Rep. Kasper					
Rep. Keiser					
Rep. Kreun					
Rep. Nathe					
Rep. Anderson					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*voice vote taken
motion carried*

VK
2/10/11
1083

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1241

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 38-11.1 and section 38-11.1-04.1 of the North Dakota Century Code, relating to notice of oil and gas drilling operations and compensation for loss of agricultural production and income caused by oil and gas production; and to amend and reenact sections 38-11.1-04 and 47-16-39.1 of the North Dakota Century Code, relating to damage and disruption payments for damages caused by oil and gas production and the obligation to pay oil and gas royalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

38-11.1-04. Damage and disruption payments.

The mineral developer shall pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner and the surface owner's tenant, if any, for ~~loss of agricultural production and income, lost land value, lost use of and access to the surface owner's land, and lost value of improvements caused by drilling operations.~~ The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. When determining damages damage and disruption payments, consideration must be given to the period of time during which the loss occurs and the surface owner ~~may elect to be paid damages in annual installments over a period of time; except that the surface owner~~ must be compensated for harm caused by exploration only by a single sum payment. The payments contemplated by this section only cover land directly affected by drilling operations. Payments under this section are intended to compensate the surface owner for damage and disruption; any reservation or assignment of such compensation apart from the surface estate except to a tenant of the surface estate is prohibited. In the absence of an agreement between the surface owner and a tenant as to the division of compensation payable under this section, the tenant is entitled to recover from the surface owner that portion of the compensation attributable to the tenant's share of the damages sustained.

SECTION 2. Section 38-11.1-04.1 of the North Dakota Century Code is created and enacted as follows:

38-11.1-04.1. Notice of operations.

1. Before the initial entry upon the land for activities that do not disturb the surface, including inspections, staking, surveys, measurements, and general evaluation of proposed routes and sites for oil and gas drilling operations, the mineral developer shall provide at least seven days' notice by registered mail or hand delivery to the surface owner unless waived by mutual agreement of both parties. The notice must include:

2083

- a. The name, address, telephone number, and, if available, the electronic mail address of the mineral developer or the mineral developer's designee;
 - b. An offer to discuss and agree to consider accommodating any proposed changes to the proposed plan of work and oil and gas operations before commencement of oil and gas operations; and
 - c. A sketch of the approximate location of the proposed drilling site.
2. Except for exploration activities governed by chapter 38-08.1, the mineral developer shall give the surface owner written notice by registered mail or hand delivery of the oil and gas drilling operations contemplated at least twenty days before commencement of drilling operations unless mutually waived by agreement of both parties. If the mineral developer plans to commence drilling operations within twenty days of the termination date of the mineral lease, the required notice under this section may be given at any time before commencement of drilling operations. The notice must include:
- a. Sufficient disclosure of the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property;
 - b. A plat map showing the location of the proposed well; and
 - c. A form prepared by the director of the oil and gas division advising the surface owner of the surface owner's rights and options under this chapter, including the right to request the state department of health to inspect and monitor the well site for the presence of hydrogen sulfide.
3. The notice required by this section must be given to the surface owner at the address shown by the records of the county treasurer's office at the time the notice is given and is deemed to have been received seven days after mailing by registered mail or immediately upon hand delivery.
4. If a mineral developer fails to give notice as provided in this section, the surface owner may seek appropriate relief in the court of proper jurisdiction and may receive punitive as well as actual damages.

SECTION 3. A new section to chapter 38-11.1 of the North Dakota Century Code is created and enacted as follows:

Loss of production payments.

The mineral developer shall pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner and the surface owner's tenant, if any, for loss of agricultural production and income caused by oil and gas production and completion operations. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. When determining damages for loss of production, consideration must be given to the period of time during which the loss occurs and the damages for loss of production must be paid annually unless the surface owner elects to receive a single lump sum payment. Payments under this section are intended to compensate the surface owner for loss of production. Any reservation or assignment of such compensation apart from the surface estate, except to a tenant of the surface estate, is prohibited. In the

absence of an agreement between the surface owner and a tenant as to the division of compensation payable under this section, the tenant is entitled to recover from the surface owner that portion of the compensation attributable to the tenant's share of the damages sustained.

SECTION 4. AMENDMENT. Section 47-16-39.1 of the North Dakota Century Code is amended and reenacted as follows:

47-16-39.1. Obligation to pay royalties - Breach.

The obligation arising under an oil and gas lease to pay oil or gas royalties to the mineral owner or the mineral owner's assignee, or to deliver oil or gas to a purchaser to the credit of the mineral owner or the mineral owner's assignee, or to pay the market value thereof is of the essence in the lease contract, and breach of the obligation may constitute grounds for the cancellation of the lease in cases where it is determined by the court that the equities of the case require cancellation. If the operator under an oil and gas lease fails to pay oil or gas royalties to the mineral owner or the mineral owner's assignee within one hundred fifty days after oil or gas produced under the lease is marketed and cancellation of the lease is not sought or if the operator fails to pay oil or gas royalties to an unleased mineral interest owner within one hundred fifty days from initial oil or gas production from the unleased mineral interest owner's mineral interest, the operator shall pay interest on the unpaid royalties, without the requirement that the mineral owner or the mineral owner's assignee request the payment of interest, at the rate of eighteen percent per annum until paid, except that the commissioner of university and school lands may negotiate a rate to be no less than the prime rate as established by the Bank of North Dakota plus four percent per annum with a maximum of eighteen percent per annum, for unpaid royalties on minerals owned or managed by the board of university and school lands. Provided, that the operator may remit semiannually to a person entitled to royalties the aggregate of six months' monthly royalties where the aggregate amount is less than fifty dollars. The district court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought pursuant to this section. The prevailing party in any proceeding brought pursuant to this section is entitled to recover any court costs and reasonable attorney's fees. This section does not apply when mineral owners or their assignees elect to take their proportionate share of production in kind, in the event of a dispute of title existing that would affect distribution of royalty payments, or when a mineral owner cannot be located after reasonable inquiry by the operator; however, the operator shall make royalty payments to those mineral owners whose title and ownership interest is not in dispute."

Renumber accordingly

Date: 2-10-11
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1241

House House Energy and Natural Resources Committee

Legislative Council Amendment Number 11.00430006 Title 6200

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep Nathe Seconded By Rep. Hunske

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Hanson	✓	
Vice Chairman Damschen	✓		Rep. Hunske	✓	
Rep. Brabandt	✓		Rep. Kelsh	✓	
Rep. Clark	✓		Rep. Nelson	✓	
Rep. DeKrey	✓				
Rep. Hofstad	✓				
Rep. Kasper					
Rep. Keiser					
Rep. Kreun	✓				
Rep. Nathe	✓				
Rep. Anderson	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep Nathe

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

REPORT OF STANDING COMMITTEE

HB 1241: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1241 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 38-11.1 and section 38-11.1-04.1 of the North Dakota Century Code, relating to notice of oil and gas drilling operations and compensation for loss of agricultural production and income caused by oil and gas production; and to amend and reenact sections 38-11.1-04 and 47-16-39.1 of the North Dakota Century Code, relating to damage and disruption payments for damages caused by oil and gas production and the obligation to pay oil and gas royalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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38-11.1-04. Damage and disruption payments.

The mineral developer shall pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner and the surface owner's tenant, if any, for ~~loss of agricultural production and income, lost land value, lost use of and access to the surface owner's land, and lost value of improvements caused by drilling operations.~~ The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. When determining ~~damages~~ damage and disruption payments, consideration must be given to the period of time during which the loss occurs and the surface owner ~~may elect to be paid damages in annual installments over a period of time; except that the surface owner must be compensated for harm caused by exploration only by a single sum payment.~~ The payments contemplated by this section only cover land directly affected by drilling operations. Payments under this section are intended to compensate the surface owner for damage and disruption; any reservation or assignment of such compensation apart from the surface estate except to a tenant of the surface estate is prohibited. In the absence of an agreement between the surface owner and a tenant as to the division of compensation payable under this section, the tenant is entitled to recover from the surface owner that portion of the compensation attributable to the tenant's share of the damages sustained.

SECTION 2. Section 38-11.1-04.1 of the North Dakota Century Code is created and enacted as follows:

38-11.1-04.1. Notice of operations.

1. Before the initial entry upon the land for activities that do not disturb the surface, including inspections, staking, surveys, measurements, and general evaluation of proposed routes and sites for oil and gas drilling operations, the mineral developer shall provide at least seven days' notice by registered mail or hand delivery to the surface owner unless waived by mutual agreement of both parties. The notice must include:
 - a. The name, address, telephone number, and, if available, the electronic mail address of the mineral developer or the mineral developer's designee;
 - b. An offer to discuss and agree to consider accommodating any proposed changes to the proposed plan of work and oil and gas operations before commencement of oil and gas operations; and
 - c. A sketch of the approximate location of the proposed drilling site.

2. Except for exploration activities governed by chapter 38-08.1, the mineral developer shall give the surface owner written notice by registered mail or hand delivery of the oil and gas drilling operations contemplated at least twenty days before commencement of drilling operations unless mutually waived by agreement of both parties. If the mineral developer plans to commence drilling operations within twenty days of the termination date of the mineral lease, the required notice under this section may be given at any time before commencement of drilling operations. The notice must include:
 - a. Sufficient disclosure of the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property;
 - b. A plat map showing the location of the proposed well; and
 - c. A form prepared by the director of the oil and gas division advising the surface owner of the surface owner's rights and options under this chapter, including the right to request the state department of health to inspect and monitor the well site for the presence of hydrogen sulfide.
3. The notice required by this section must be given to the surface owner at the address shown by the records of the county treasurer's office at the time the notice is given and is deemed to have been received seven days after mailing by registered mail or immediately upon hand delivery.
4. If a mineral developer fails to give notice as provided in this section, the surface owner may seek appropriate relief in the court of proper jurisdiction and may receive punitive as well as actual damages.

SECTION 3. A new section to chapter 38-11.1 of the North Dakota Century Code is created and enacted as follows:

Loss of production payments.

The mineral developer shall pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner and the surface owner's tenant, if any, for loss of agricultural production and income caused by oil and gas production and completion operations. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. When determining damages for loss of production, consideration must be given to the period of time during which the loss occurs and the damages for loss of production must be paid annually unless the surface owner elects to receive a single lump sum payment. Payments under this section are intended to compensate the surface owner for loss of production. Any reservation or assignment of such compensation apart from the surface estate, except to a tenant of the surface estate, is prohibited. In the absence of an agreement between the surface owner and a tenant as to the division of compensation payable under this section, the tenant is entitled to recover from the surface owner that portion of the compensation attributable to the tenant's share of the damages sustained.

SECTION 4. AMENDMENT. Section 47-16-39.1 of the North Dakota Century Code is amended and reenacted as follows:

47-16-39.1. Obligation to pay royalties - Breach.

The obligation arising under an oil and gas lease to pay oil or gas royalties to the mineral owner or the mineral owner's assignee, or to deliver oil or gas to a purchaser to the credit of the mineral owner or the mineral owner's assignee, or to pay the market value thereof is of the essence in the lease contract, and breach of the obligation may constitute grounds for the cancellation of the lease in cases where it is

determined by the court that the equities of the case require cancellation. If the operator under an oil and gas lease fails to pay oil or gas royalties to the mineral owner or the mineral owner's assignee within one hundred fifty days after oil or gas produced under the lease is marketed and cancellation of the lease is not sought or if the operator fails to pay oil or gas royalties to an unleased mineral interest owner within one hundred fifty days from initial oil or gas production from the unleased mineral interest owner's mineral interest, the operator shall pay interest on the unpaid royalties, without the requirement that the mineral owner or the mineral owner's assignee request the payment of interest, at the rate of eighteen percent per annum until paid, except that the commissioner of university and school lands may negotiate a rate to be no less than the prime rate as established by the Bank of North Dakota plus four percent per annum with a maximum of eighteen percent per annum, for unpaid royalties on minerals owned or managed by the board of university and school lands. Provided, that the operator may remit semiannually to a person entitled to royalties the aggregate of six months' monthly royalties where the aggregate amount is less than fifty dollars. The district court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought pursuant to this section. The prevailing party in any proceeding brought pursuant to this section is entitled to recover any court costs and reasonable attorney's fees. This section does not apply when mineral owners or their assignees elect to take their proportionate share of production in kind, in the event of a dispute of title existing that would affect distribution of royalty payments, or when a mineral owner cannot be located after reasonable inquiry by the operator; however, the operator shall make royalty payments to those mineral owners whose title and ownership interest is not in dispute."

Renumber accordingly

2011 SENATE NATURAL RESOURCES

HB 1241

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee Fort Lincoln Room, State Capitol

HB 1241
March 10, 2011
Job #15257

☐ Conference Committee

Committee Clerk Signature

Veronica Sparling

Explanation or reason for introduction of bill/resolution:

Relating to notice of oil and gas drilling operations and compensation for loss of agricultural production and income caused by oil and gas production; relating to damage and disruption payments for damages caused by oil and gas production and the obligation to pay oil and gas royalties.

Minutes:

Testimony Attached

Chairman Lyson opened the hearing on HB 1241.

Representative Mike Nathe, District 30, presented written testimony in favor of HB 1241. See **Attachment #1**. He also proposed some amendments to HB 1241. See **Attachment #2**. He assured the committee that both sides are in agreement with the amendments he proposed.

Representative Keith Kempenich, District 39, pointed out that the problems are arising on properties where the mineral rights have been severed. HB 1241 clarifies how the negotiations will get worked out. He recommends a Do Pass on HB 1241.

Senator Schneider: Will the damages be punitive as well as actual if a surface owner doesn't receive notification? What do you anticipate the punitive damages to be?

Representative Keith Kempenich: It would be a matter of the court deciding.

Senator Schneider: Would you be opposed to a damages provision of a certain amount?

There was discussion about the merits of a set amount or not.

Representative Bob Hunsakor, District 6, He gave an overview of how the two sides had arrived at this bill. The two sides resolved their differences and the result was HB 1241. See **Attachment #3**.

Representative David Drovdal, District 39, presented written testimony in favor of HB 1241. See **Attachment #4**.

Senator Triplett: On your third point, are you suggesting that we use the point at which a drilling rig is on site as a beginning point?

Representative David Drovdal: There are four choices: One, when they level the ground; two, when they drill a rat hole; three, when they put the first piece of pipe in the ground; four when they have a rig capable of drilling to the depth of the permit. That to me would be when they are actually drilling. That is a decision your committee will have an opportunity to address.

Myron Hanson presented written testimony on behalf of the Northwest Landowners in favor of HB 1241. See **Attachment #5**. During his spoken testimony he mentioned that the sixth paragraph of his testimony should be deleted because just this morning someone had clarified it for him. He reiterated that this bill was a cooperative effort between all the parties involved in the situation. He knows it needs to be tweaked but HB 1241 is important to move forward at this time.

Representative Glen Froseth, District 6, felt Representative Drovdal's concern is real and should be considered carefully. He cautioned that if any amendment is made, it should be made with the approval of all parties so the bill can move forward. He urged the committee to recommend a Do Pass.

Ron Ness, North Dakota Petroleum Council, presented written testimony in favor of HB 1241. See **Attachment #6**. HB 1241 is a good compromise; it improves communications and provides surface owners the right to an annual payment. They will be paid for damages and for production loss. He likes the 7-day notice. It will go a long way toward making the process work. He encouraged a Do Pass because everyone is on board with this bill.

Senator Lyson: Are you in favor of these amendments that were passed out by Representative Nathe?

Ron Ness: Yes

Todd Kranda presented written testimony in favor of HB 1241. See **Attachment #7**. He explained the amendments and the fact that some of the corrections were just cleanup.

Senator Schneider: What are the actual damages for not receiving notice?

Todd Kranda: It would be a case by case basis. How far did they go before serving notice, etc. He stressed that everyone is on board with this as it is written.

Senator Triplett: Is this a combination of 3 bills or 4 bills?

Todd Kranda: HB 1241 is one of the 4 that was combined to make the bill as it now stands.

Bruce Hicks: presented written testimony in favor of HB 1241. He addressed a few issues that he has heard about from constituents. See **Attachment #8** and **Attachment #8-B**.

Ashley Lauth, Oil and Gas Organizer for Dakota Resource Council presented written testimony in support of HB 1241. See **Attachment #9**.

Sandy Clark, ND Farm Bureau, stood in support of HB 1241 and in support of the amendments presented by Representative Nathe. Farm Bureau wanted to maintain the negotiation process and this bill does that. It covers one time damages and on-going losses.

Julie Ellingson, ND Stockmens Association, presented written testimony in support of HB 1241. See **Attachment #10**.

Woody Barth, NDFarmers Union, stood in support of HB 1241. They were part of the working group; they came up with a good solution, a good compromise.

Mike McEnroe, ND Chapter of the Wildlife Society, presented written testimony in favor of HB 1241. See **Attachment #11**.

Curly Haugland, a ranch owner in McKenzie County, spoke to the bill. He leases land from the US Forest Service and the Forest Service gave permission to an oil company to drill on the land he leases. The bill addresses loss of production but in this case he as the lessee is the one who experiences the loss, not the Forest Service. He would like to see that addressed in the bill.

Senator Lyson: The Forest Service should reduce your lease price, shouldn't they?

Curly Haugland: If I complain too much they just may not lease it to us. Maybe the language could be strengthened so the lessee can be compensated when he is the loser. I don't know the answer, I do know the problem.

Gary Sorenson, a farmer from Keene, ND, expressed concern with the inequity of the payments oil companies are making to landowners.

Chairman Lyson closed the hearing on HB 1241.

Senator Triplett: I would like to see this bill with the amendments in it before we make a decision on the bill.

Senator Triplett: I move we adopt the Nathe amendments 11.0043.02001

Senator Schneider: Second

Amendment 11.0043.02001 was adopted by voice vote.

Senator Triplett: I move we also adopt the amendment proposed by Mr. Hicks.

Senator Schneider: Second

Senator Triplett explained Mr. Hicks' amendment. The smiley faces are just his explanation of the amendment.

Senator Uglem: Would landowners be opposed to this amendment? Maybe Ron Ness could give us an indication if he thinks there would be opposition.

Ron Ness: There are ambiguities with this bill, but the parties have agreed on the bill and on only the one amendment.

Senator Lyson: Would you check with all parties and see what they think and get back to us tomorrow?

Ron Ness: I will do that.

Senator Lyson: We will set this aside until tomorrow.

Myron Hanson: In reference to Representative Drovda's comments, he raises some valid concerns but our organization would really like to see this legislation move forward as it is structured. We can tweak it next session, but it would give relief to the surface owners right now.

Senator Uglem: My concern is that some are paying interest back to day one. With this new amendment they will pay interest now only after 150 days, will that be a concern to some of your landowners?

Myron Hanson: I don't believe so. As long as there is a definite date for the payments to start, that will satisfy the members. They will know what will happen and communication will move forward.

A voice vote was taken on Mr. Hicks' amendment. Motion carried.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee Fort Lincoln Room, State Capitol

HB 1241
March 17, 2011
Job # 15555

☐ Conference Committee

Committee Clerk Signature

Vernon Spaulding

Explanation or reason for introduction of bill/resolution:

Relating to notice of oil and gas drilling operations and compensation for loss of agricultural production and income caused by oil and gas production; relating to damage and disruption payments for damages caused by oil and gas production and the obligation to pay oil and gas royalties.

Minutes:

Attachment

Chairman Lyson opened the discussion on HB 1241.

Chairman Lyson: It is available to see in the "mock-up engrossed" form so we can consider it.

Senator Schneider: Does this include both amendments, including Bruce Hicks' amendment?

Chairman Lyson: Yes.

Chairman Lyson: I don't recall any opposition.

Senator Triplet: I think Representative Drovdal wanted us to do more than what this bill does. I don't recall any opposition but in section five, line five of the copy we have (see Attachment #1) "when determining damages for loss of production consideration must be given to the period of time during which the loss occurs and the damages for loss of production must be paid annually unless the surface owner elects to receive a single lump sum payment." Given that we don't know how long a well is going to be in place I don't know how anyone is going to figure out what the appropriate amount for damages is going to be in order to request that lump sum payment. By leaving that lump sum payment option in there we are really asking to get ourselves back into the same problem twenty or thirty years out when a new landowner is saying well that was the old landowner that got that payment and I'm not getting anything. It seems we are inviting trouble down the road. Maybe there would be some value in just requiring an annual payment.

Chairman Lyson: They wanted it in there

Senator Triplett: I know they wanted it but I think by leaving it in there it will cause problems. That leaves the tenant farmers out and subsequent owners out.

Chairman Lyson: As an owner I would like to have my options.

Senator Triplett: If the protagonists here are happy, I will let it go.

There was some discussion about the "mock-up" engrossed version of the bill.

Chairman Lyson: I like to leave them their options.

Senator Triplett: I feel it gives the landowners more negotiating power. Say the land use changes in the future. They can then say their losses are worse than expected and get more compensation.

Senator Uglem: I would agree with Senator Triplett on a great portion of that. I have sold wheat for \$2.50/ bushel and for \$20.00/bushel and there is no way to predict that 20 years down the road. But I don't know if we should mess with the bill since everybody seems to agree on it the way it is.

Senator Uglem: The Landowner and the tenant are two different people and the tenant is not being compensated even though he is the one experiencing the loss. It sounds good right now but 10-20 years from now, it may not.

Senator Schneider: I like the language as it is. I think it does empower the landowner to make a choice. They can make the decision that is right for them. If they did take a lump sum payment, they would have to consider whether that would affect their ability to resell the land. Would someone else want to buy it considering that loss of production? It does put the ball in the court of the landowner to make the decision.

There was discussion that both amendments have been approved.

Senator Uglem: Do Pass as Amended

Senator Triplett: Second

Roll Call Vote: 6-0-1

Carrier: Senator Schneider

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1241

Page 1, line 4, remove the first "and"

Page 1, line 4, after "sections" insert "38-11.1-02,"

Page 1, line 4, after "38-11.1-04" insert ", 38-11.1-08,"

Page 1, line 6, after "production" insert ", agreement with offer of settlement,"

Page 1, line 6, after "royalties" insert "; to repeal section 38-11.1-05 of the North Dakota Century Code, relating to notice of oil and gas drilling operations; and to provide an effective date"

Page 1, after line 7, insert:

"SECTION 1. AMENDMENT. Section 38-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

38-11.1-02. Purpose and interpretation.

It is the purpose of this chapter to provide the maximum amount of constitutionally permissible protection to surface owners and other persons from the undesirable effects of development of minerals. This chapter is to be interpreted in light of the legislative intent expressed herein. Sections 38-11.1-04 and ~~38-11.1-05~~38-11.1-04.1 must be interpreted to benefit surface owners, regardless of whether the mineral estate was separated from the surface estate and regardless of who executed the document which gave the mineral developer the right to conduct drilling operations on the land. Sections 38-11.1-06 through 38-11.1-10 must be interpreted to benefit all persons."

Page 3, after line 9, insert:

"SECTION 4. AMENDMENT. Section 38-11.1-08 of the North Dakota Century Code is amended and reenacted as follows:

38-11.1-08. Agreement - Offer of settlement.

Unless both parties provide otherwise by written agreement, at the time the notice required by ~~section 38-11.1-05~~subsection 2 of section 38-11.01-04.1 is given, the mineral developer shall make a written offer of settlement to the person seeking compensation for damages when the notice required by ~~section 38-11.1-05~~subsection 2 of section 38-11.1-04.1 is given. The person seeking compensation may accept or reject any offer so made."

Page 4, after line 24, insert:

"SECTION 7. REPEAL. Section 38-11.1-05 of the North Dakota Century Code is repealed.

SECTION 8. EFFECTIVE DATE. Sections 2 and 5 of this Act become effective for drilling operations commenced after July 31, 2011."

Renumber accordingly

Date: 3-10-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1241

Senate Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Triplet Seconded By Schneider
11.0043.02001

Senators	Yes	No	Senators	Yes	No
Chairman Lyson			Senator Schneider		
Vice-Chair Hogue			Senator Triplett		
Senator Burckhard					
Senator Freborg					
Senator Uglem					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Voice Vote
Carried*

#8-13

Proposed Amendment to HB 1241

Page 4, line 8, replace "from initial" with "after"

Page 4, line 8, after "production" insert "is marketed"

Page 4, line 9, after "shall" insert "thereafter"

Date: 3-10-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1241

Senate Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider
Mr. Hicks amendment.

Motion Made By Triplett Seconded By Schneider

Carried by Voice Vote

Senators	Yes	No	Senators	Yes	No
Chairman Lyson			Senator Schneider		
Vice-Chair Hogue			Senator Triplett		
Senator Burckhard					
Senator Freborg					
Senator Uglem					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Mr. Hicks
proposed amendment
attachment # 8, para 3
and attachment # 8-B*

Date: 3-17-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1241

Senate Natural Resources Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended^{as} ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Uglen Seconded By Triplett

Senators	Yes	No	Senators	Yes	No
Chairman Lyson	✓		Senator Schneider	✓	
Vice-Chair Hogue			Senator Triplett	✓	
Senator Burckhard	✓				
Senator Freborg	✓				
Senator Uglen	✓				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Schneider

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

REPORT OF STANDING COMMITTEE

HB 1241, as engrossed: Natural Resources Committee (Sen. Lyson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1241 was placed on the Sixth order on the calendar.

Page 1, line 4, remove the first "and"

Page 1, line 4, after "sections" insert "38-11.1-02,"

Page 1, line 4, after "38-11.1-04" insert ", 38-11.1-08,"

Page 1, line 6, after "production" insert ", agreement with offer of settlement,"

Page 1, line 6, after "royalties" insert "; to repeal section 38-11.1-05 of the North Dakota Century Code, relating to notice of oil and gas drilling operations; and to provide an effective date"

Page 1, after line 7, insert:

"SECTION 1. AMENDMENT. Section 38-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

38-11.1-02. Purpose and interpretation.

It is the purpose of this chapter to provide the maximum amount of constitutionally permissible protection to surface owners and other persons from the undesirable effects of development of minerals. This chapter is to be interpreted in light of the legislative intent expressed herein. Sections 38-11.1-04 and ~~38-11.1-05~~ 38-11.1-04.1 must be interpreted to benefit surface owners, regardless of whether the mineral estate was separated from the surface estate and regardless of who executed the document which gave the mineral developer the right to conduct drilling operations on the land. Sections 38-11.1-06 through 38-11.1-10 must be interpreted to benefit all persons."

Page 3, after line 9, insert:

"SECTION 4. AMENDMENT. Section 38-11.1-08 of the North Dakota Century Code is amended and reenacted as follows:

38-11.1-08. Agreement - Offer of settlement.

Unless both parties provide otherwise by written agreement, at the time the notice required by ~~section 38-11.1-05~~ subsection 2 of section 38-11.1-04.1 is given, the mineral developer shall make a written offer of settlement to the person seeking compensation for damages when the notice required by ~~section 38-11.1-05~~ subsection 2 of section 38-11.1-04.1 is given. The person seeking compensation may accept or reject any offer so made."

Page 4, line 8, overstrike "from initial" and insert immediately thereafter "after"

Page 4, line 8, after "production" insert "is marketed"

Page 4, line 9, after "operator" insert "thereafter"

Page 4, after line 24, insert:

"SECTION 7. REPEAL. Section 38-11.1-05 of the North Dakota Century Code is repealed.

SECTION 8. EFFECTIVE DATE. Sections 2 and 5 of this Act become effective for drilling operations commenced after July 31, 2011."

Renumber accordingly

2011 TESTIMONY

HB 1241

Attachment 1

House bill 1241

This bill is introduced to address a problem that arises from severed minerals and damages to the surface land.

The minimum would set a standard for surface damage. The 25 times might be too high but these issues have very little to do with the actual damage but the lost of private use of the land involved and that the royalty owner can egress without invitation and use for the next 20 to 30 years. I propose to drop the multiplier down to 7 times the value. The 25 multiplier would work out something like this approx 5 acres would be involved @ 500 appraised value times 25 would come to 50,000.

The 7 multiplier would work out this way 5 acres times 500 times 7 would work out to 17500.

At a higher value would work out 5 acres @ 1000 times 7 would be 35000.

This would not take care of all the problems but would set a standard formula to work from.

North Dakota



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HB 1241

Good morning, Chairman Porter, and House Natural Resources Committee members. For the record, my name is Julie Ellingson and I represent the North Dakota Stockmen's Association.

We rise this morning in support of the concept behind HB 1241. Many of our members are surface owners in the thriving oil country of western North Dakota. Many of those members are also experiencing challenges related to the incredible growth of this important industry, including problems achieving adequate compensation for surface damage due to mineral development.



In a Surface Damages Compensation resolution passed at our convention back in 2008, our members call for a fair compensation plan for surface owners that better reflects the lost productive value of the land.

While the 25-times-the-appraised-value formula used in this bill is probably not a realistic figure, the goal of the bill – to enhance surface damage compensation – is something necessary to pursue to address these surface owner impacts and foster better relations in the oil patch. I don't know what the figure might be, but surface



owner and oil industry stakeholders should work together to come up with a reasonable amount to move this idea forward.

Thank you for this opportunity to share our concerns. I'd be happy to answer any questions you may have.



Attachment 3
Drilling vs. Production Location
Horner 32-42 - NDIC: 16399



Area
3.13 Acres

HORNER 32-42
NDIC: 16399
Spud Date 10/24/2006

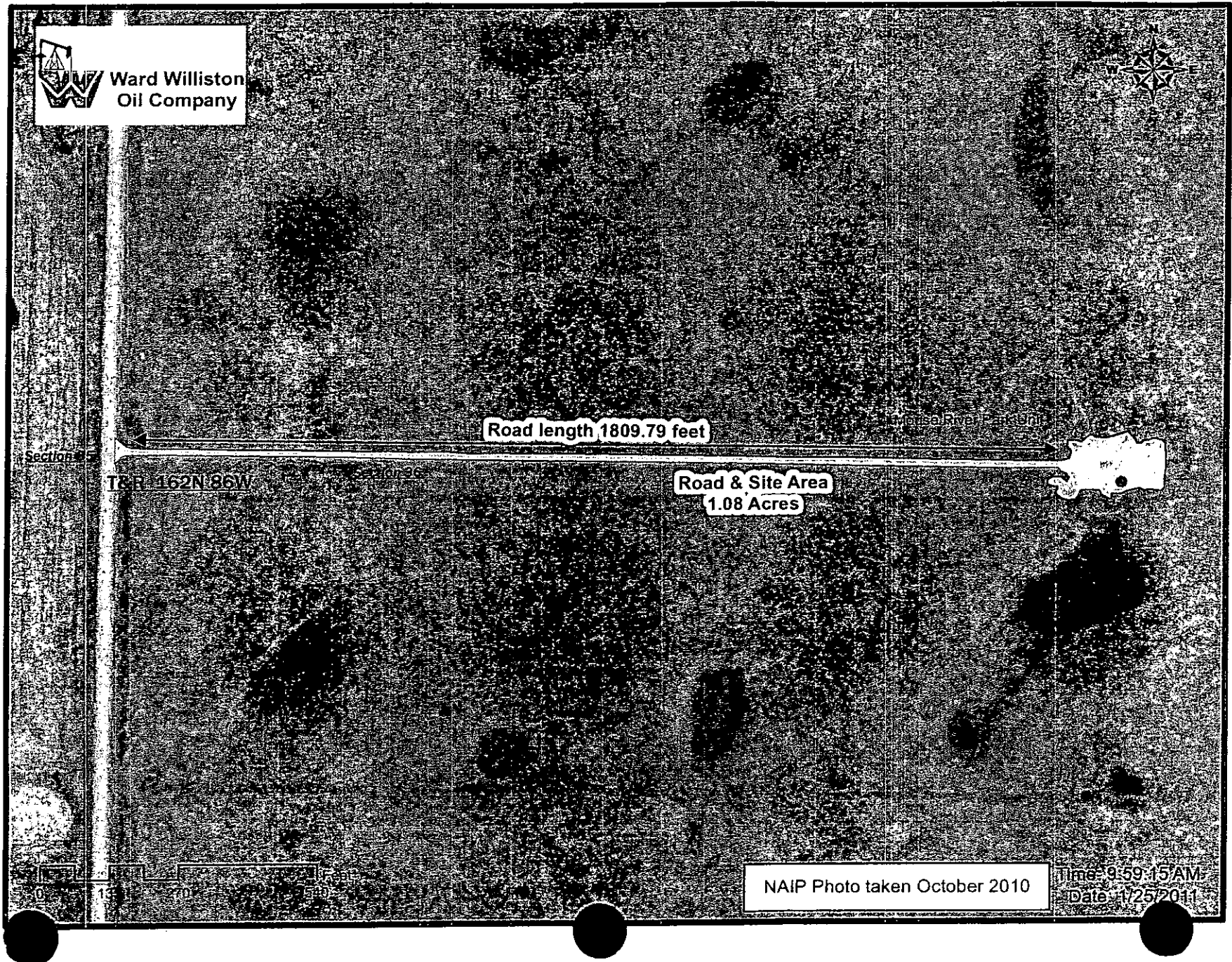
Area
0.66 Acres

Road length 666.58 feet

Area
0.5 Acres

NAIP Photo taken October 2010

Production Location
State of North Dakota 1 - NDIC: 12892



Production Location
Strand 30-2 - NDIC: 3662



Ward Williston
Oil Company



STRAND 30-2
NDIC: 3662
Spud Date 8/11/1964

Road & Site Area
0.46 Acres

Road length 527.67 feet



Section 30

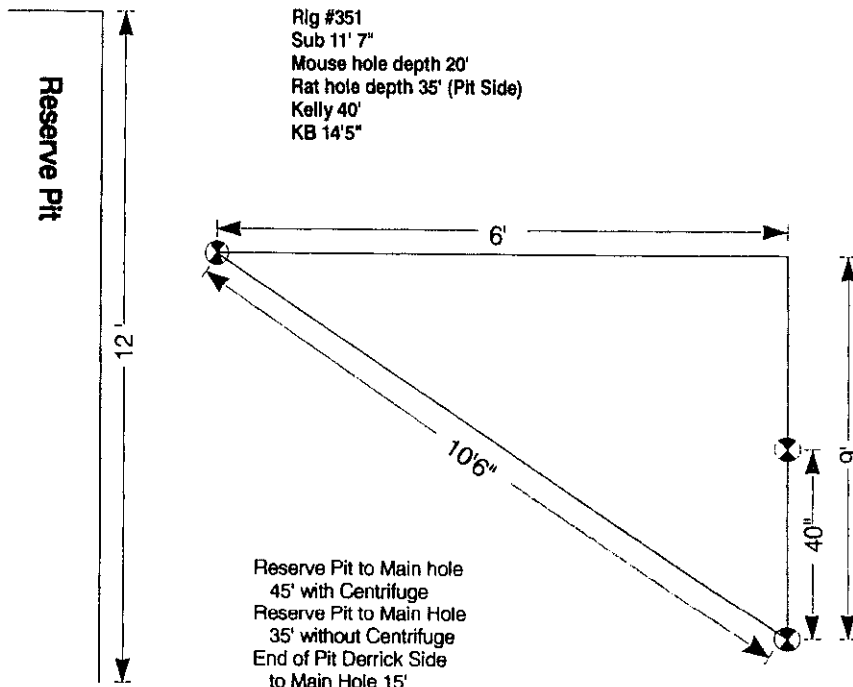
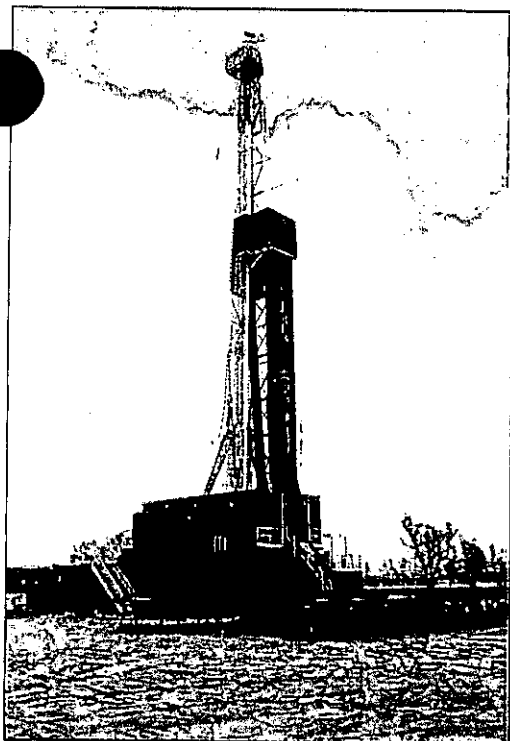
NAIP Photo taken October 2010

Time: 10:08:36 AM
Date: 11/25/2011

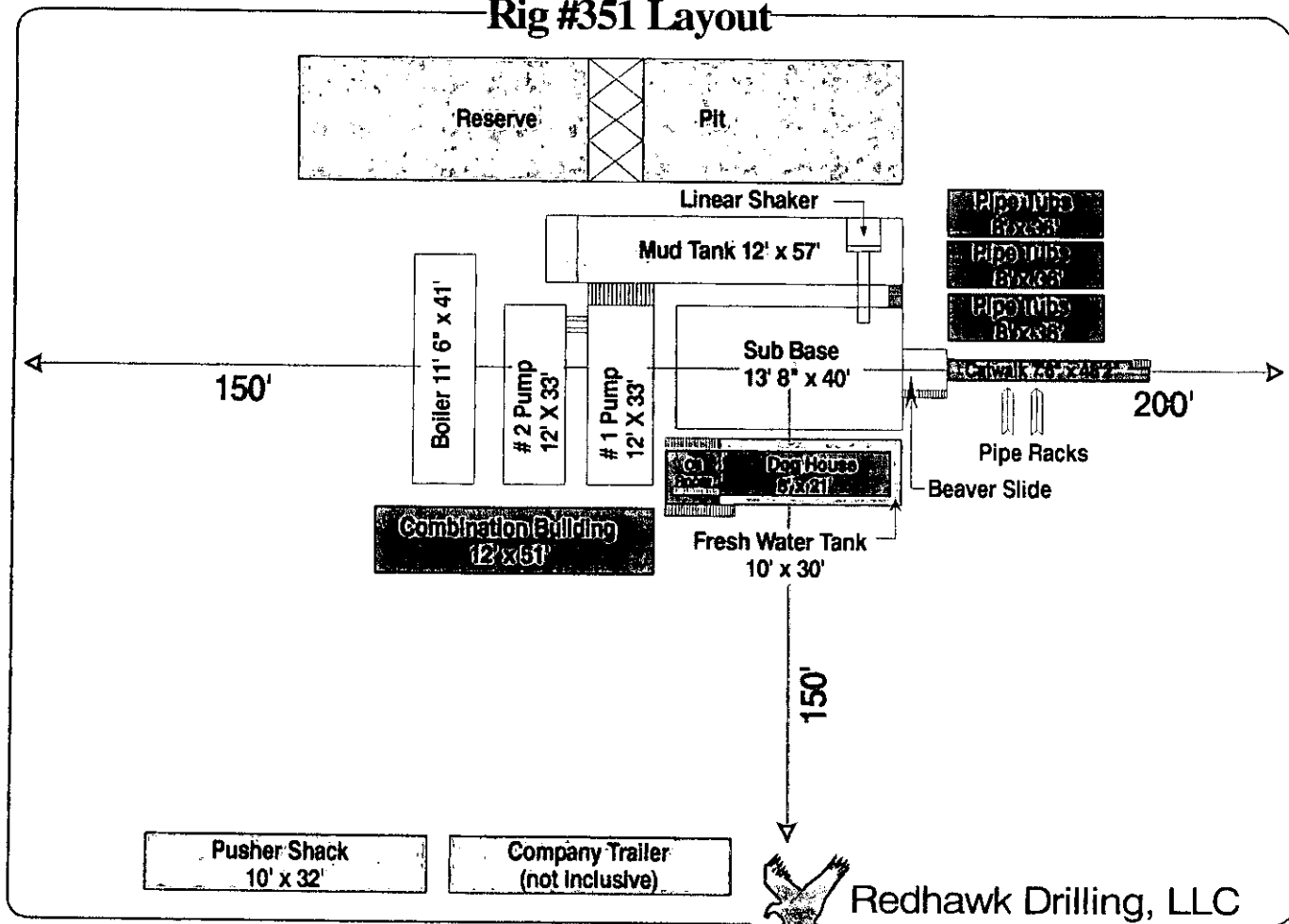
Redhawk Drilling Rig #351

Rating 6500'

Rig #351
Sub 11' 7"
Mouse hole depth 20'
Rat hole depth 35' (Pit Side)
Kelly 40'
KB 14' 5"



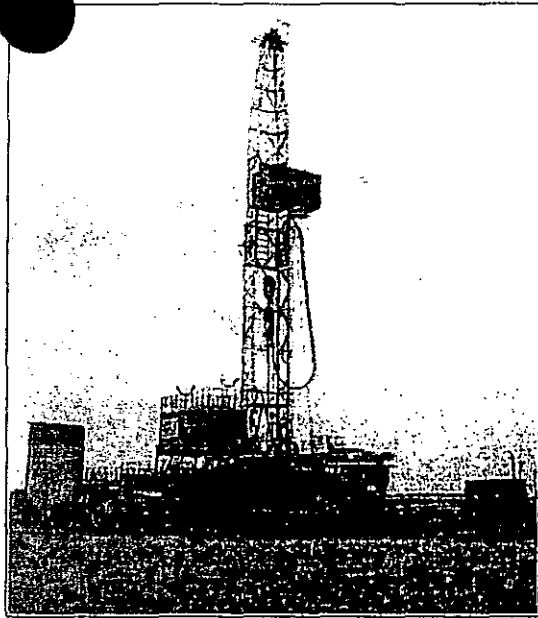
Rig #351 Layout



Redhawk Drilling, LLC

Redhawk Drilling Rig #354

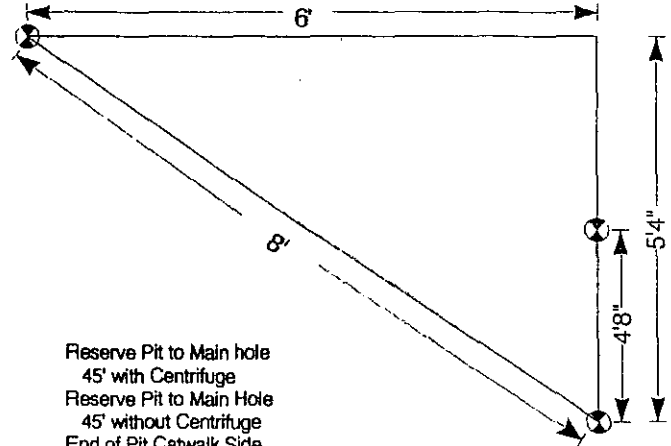
Rating 10500'



Reserve Pit

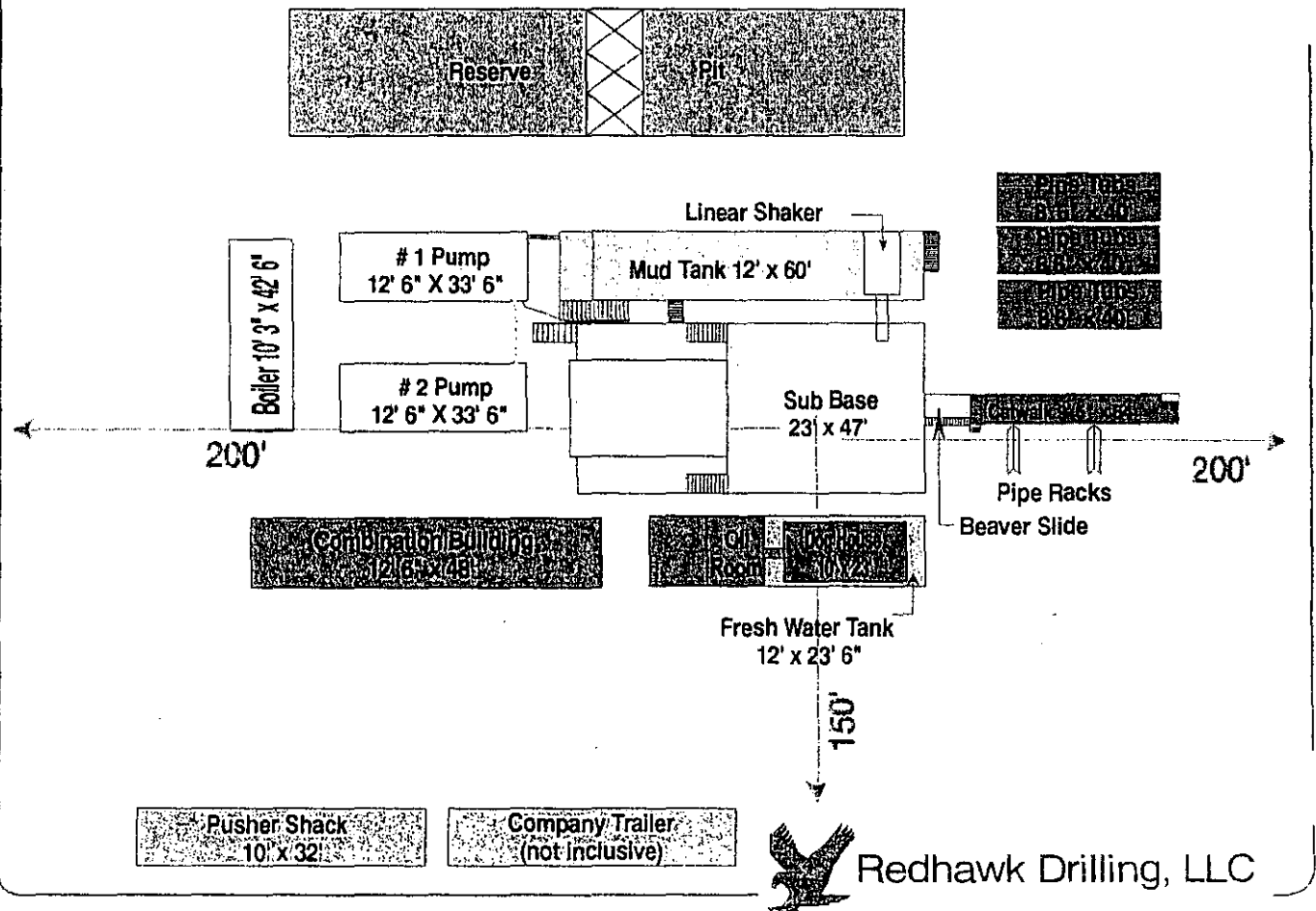
12'

Rig #354
Sub 15' 6"
Mouse hole depth 20'
Rat hole depth 32' (Pit Side)
Kelly 40'
KB 16' 6"



Reserve Pit to Main hole
45' with Centrifuge
Reserve Pit to Main Hole
45' without Centrifuge
End of Pit Catwalk Side
to Main Hole 12'

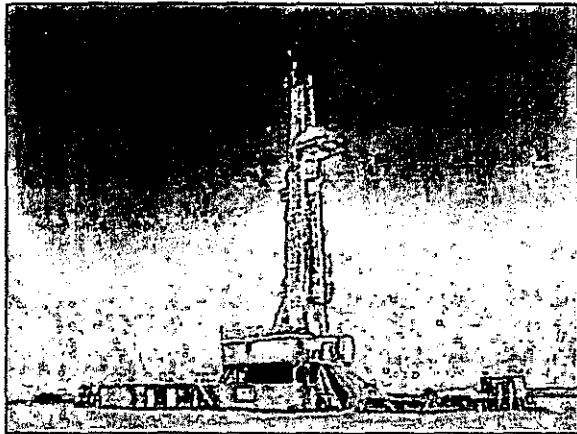
Rig #354 Layout



Redhawk Drilling, LLC

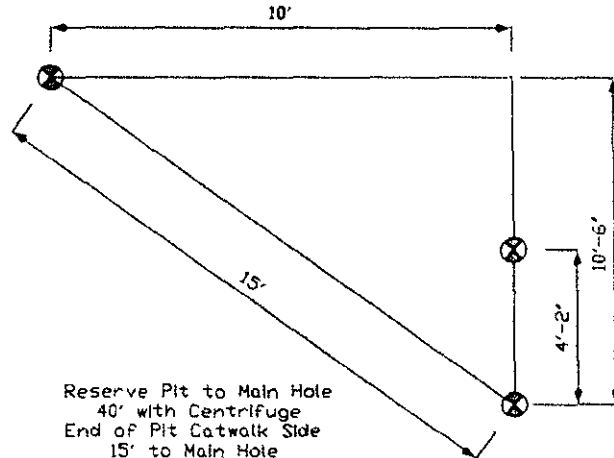
Redhawk Drilling Rig #357

Vertical Depth 10,000'
MD with 4" Pipe 14,000'

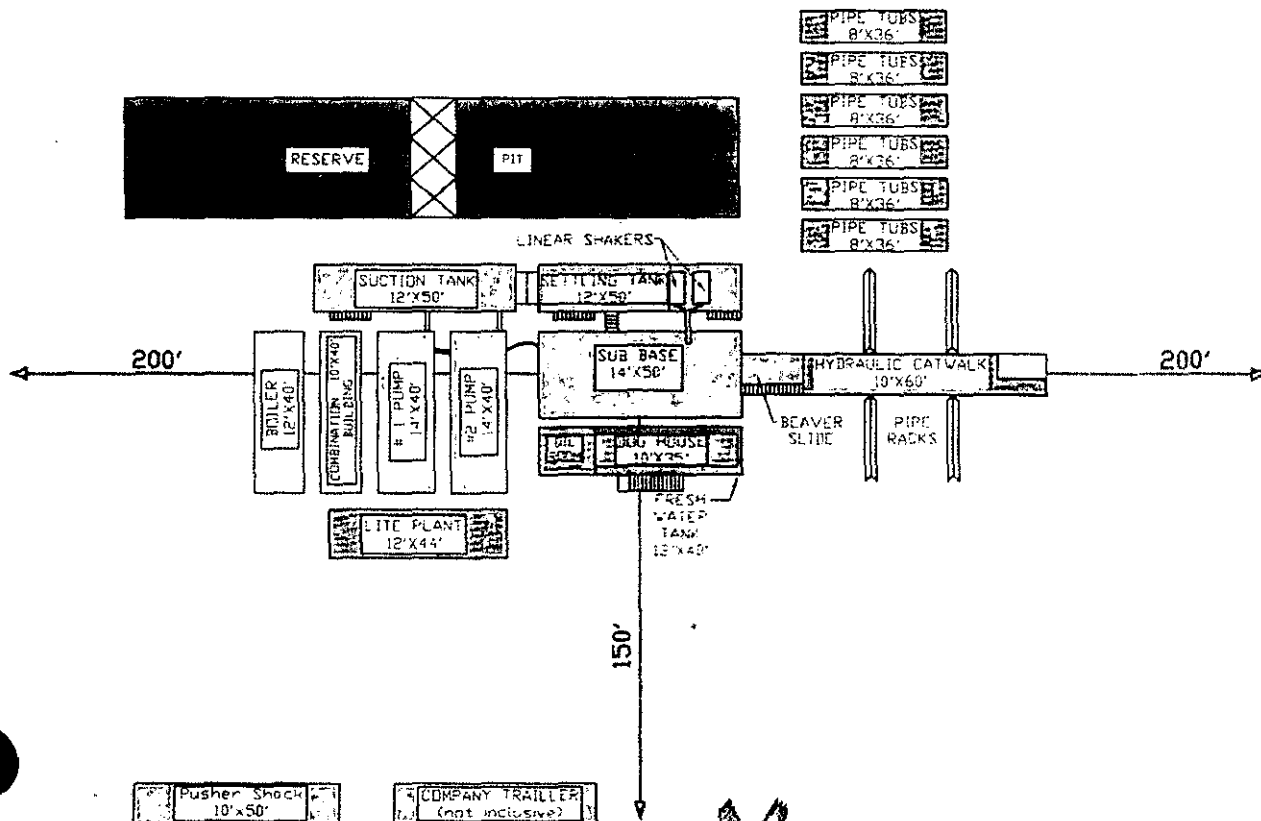


RESERVE PIT

Rig #357
Sub 16'
Mouse hole depth 18'
Rat hole depth 25'
Kelly 40' 4-1/4" Square
KB 17' with Kelly Bushings
Rat Hole is on Pit Side



Rig #357 Layout



Redhawk Drilling, LLC

#1

Mr. Chairman and members of the committee, my name is Rep. Mike Nathe Dist 30 Bismarck and I am here today in support of HB 1241.

HB 1241 is a hoghouse bill that has to do with surface owners and the oil industry, this bill is intended to improve communications between both parties and hopefully decrease disputes relating to surface use.

Sect 1 adds the term "disruption payments" when considering compensation for the surface owners.

Sect 2 would require a 7 days' notice to the surface owner before initially entering the property for activities such as well staking, surveying, and measurements to name a few. Also added to the notice was the requirement of a plat map showing the location of the proposed well for the surface owners information and input.

Sect 3 provides a clear separation of the payment for damages and a payment for production loss with the surface owner having the option to take the loss of production income portion in annual payments.

Sect 4 clarifies that royalty owners do not have to request in writing the 18% that is due to royalty owners after 150 days from the first sale.

Mr. Chairman over the past couple of years surface owner issues have become a significant issue of concern for the legislature. This bill is meant to improve the lines of communication between the surface owners and the oil industry. We saw evidence of this improvement during the sub-committee hearings that we held in the House. Demonstrating the willingness of both sides to give up a little ground for better relations in the future. This is truly an example of cooperation we all hope to see in the oil patch for years to come.

GOOD MORNING CHAIRMAN LYSON AND MEMBERS OF THE SENATE NATURAL RESOURCES COMMITTEE. FOR THE RECORD MY NAME IS BOB HUNSKOR, STATE REPRESENTATIVE, DISTRICT SIX (6).

OIL WAS FIRST DISCOVERED IN NORTH DAKOTA IN 1951

SINCE THAT TIME LANDOWNERS AND THE OIL INDUSTRY HAVE, AT TIMES, HAD STRAINED RELATIONS.

ISSUES SUCH AS DISRUPTIVE PAYMENTS TO SURFACE OWNERS, NOTICE PRIOR TO COMMENCEMENT OF DRILLING OPERATIONS, PAYMENT OF ROYALTIES IN A TIMELY MANNER AND CLEANUP AROUND ABANDONED WELL SITES HAVE BEEN A SOURCE OF IRRITATION.

IN MOST SITUATIONS, THE OIL INDUSTRY HAS BEEN RESPONSIBLE, RESULTING IN HEALTHY RELATIONS WITH SURFACE AND MINERAL OWNERS. AT THE SAME TIME, THERE HAVE BEEN SITUATIONS IN WHICH RELATIONSHIPS HAVE BEEN STRAINED AND LANDOWNERS FRUSTRATED. IN THOSE CASES, LANDOWNERS FELT IT WAS A LOSING BATTLE AGAINST OIL COMPANIES THAT HAD ACCESS TO MORE RESOURCES.

IN 2010, LANDOWNERS IN SEVERAL NORTH CENTRAL COUNTIES MET WITH LANDOWNERS FROM WESTERN COUNTIES IN THE BAKKEN TO DISCUSS THEIR COMMON ISSUES.

AS A RESULT, SEVERAL BILL DRAFTS ADDRESSING LANDOWNER CONCERNS WERE PROCESSED IN THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE. A SUBCOMMITTEE WAS GIVEN THE TASK OF WORKING WITH MYRON HANSON, PRESIDENT OF THE NORTHWEST LANDOWNERS AND RON NESS WITH THE PETROLEUM COUNCIL TO MOLD ALL BILL DRAFTS INTO ONE. THESE TWO MEN REPRESENTED THEIR INTERESTS WITH A SPIRIT OF GREAT COOPERATION AND WERE ABLE TO RESPECTFULLY NEGOTIATE A BILL THAT WILL RESOLVE MANY OF THE ISSUES THE LANDOWNERS AND OIL INDUSTRY HAVE STRUGGLED WITH OVER THE YEARS.

NO POLITICS – NO NEGOTIATIONS BEHIND CLOSED DOORS. TRUTH WAS THE ESSENCE OF THE DAY.

CURRENTLY, THERE ARE 169 ACTIVE RIGS OPERATING IN NORTH DAKOTA WITH AN EVER INCREASING NUMBER IN THE NEAR FUTURE. THERE WILL BE MORE PROBLEMS BETWEEN LANDOWNERS AND OIL COMPANIES, BUT THE NEGOTIATION PROCESS IN CRAFTING HB 1241 WILL BE AN EXAMPLE AND A STEPPING STONE IN SOLVING FUTURE STRESSFUL SITUATIONS IN THE OIL PATCH.

CHAIRMAN LYSON AND MEMBERS OF THE SENATE NATURAL RESOURCES COMMITTEE, THANK YOU FOR ALLOWING ME TO SHARE THIS SCENARIO WITH YOU. I WOULD RESPECTFULLY ASK YOU TO ACKNOWLEDGE THE GOOD WORK OF THE OIL INDUSTRY AND LANDOWNERS BY GIVING HB 1241 A STRONG DO PASS RECOMMENDATION.



NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative David Drovdal
District 39
2802 131st Avenue NW
Arnegard, ND 58835-9127
Residence: 701-586-3761
Cell: 701-770-4226
ddrovdal@nd.gov

Speaker of the House

Chairman Lyson and members of the Senate Natural Resource Committee, for the record I am Rep. David Drovdal from District 39 in Western North Dakota and I am one of the co-sponsors of HB 1241.

As legislator we are elected to promote North Dakota and to protect the citizens of this great state. When it come to the development of oil and gas we appreciate the developers that provide good paying jobs, large tax checks to the state, nice leases to mineral owners and nice royalty checks to those lucky enough to have some minerals. We also must be aware that they are here for one reason and that's to make money, not because they like us or that there good citizens or good neighbors, even though many are. There here to make money. Our duty is to encourage development and to protect the rights of landowners. Many of our landowners today do not own minerals and receive very little benefits from the development of oil & gas.

From experience let me tell you that when a developer come to your door they tell you only what they want to and not always the rest of the story. An example I know is that in Mountrail County one developer was telling landowners that North Dakota Century Code stated that settlement for damages had to be either lump sum or annual payments but not both. When I heard that I obtained an Attorney Generals' opinion that stated damages could be either lump sum or both. Their answer was that a Montana court ruled they only had to pay lump sum and only for actual

value of site. If you read only section one this law, as written, it appears to say that very same thing.

I have three items that I wish you would consider as you work on this bill.

First the language on line 17 which indicates that the period of time during which the loss occurs must be compensated only by a single payment. How do you determine the value when you don't know how long it site will be there. It could be for 6 months or 40 years. Language for the period of time should only be listed in Section 3 of the bill.

Second item is the language on line 20 which states only cover land directly affected by drilling operations. Let me show you an aerial picture of a well that was drilled in 1981 and is still producing today. You will notice that the site is about 4.5 acres, which is average; it is located in a 24.8 acre field. The location has lessened the value of the whole field because of difficulty in farming around the site with today's large equipment. This well has H₂S gas and the residents that lived within 1000 yards had to abandon the farmstead because of the danger. Even if the well did not have H₂S gas it would still lower the value of any family resident and remember that under North Dakota law a well can be located 500 yards from a residence. All that and more should be considered in determining the loss of value for damage claims. I know that if the well site was located in a large pasture that wouldn't be a problem but remember this law is written for all circumstances and must cover the worst case scenario.

The third item that I hope the Chairman lets me explain is not currently in the bill but has to do with surface/mineral owner rights and I feel should be address by this session is when is a developer actively exploring for oil and gas which would determine when a lease is tied up. As was

explained to me several months ago that sputing is when a drilling rig capable of completing a well, as per the permit, was in place and starting to drill then it was considered started. I became aware of a case that was taken out of state to a federal court and the court stated in that particular case the development was started when a rat hole was dug and casing was in place that drilling would be considered started and that would hold a lease. I also was told that the state is using a more strict guide line to determine starting date than what private citizens use. This comes in play when leases are expiring. Some developers are having water drilling rigs start, what they call a rat hole, and placing a short pipe in the ground and stating this is the start of drilling so they can hold a lease. That rat hole and pipe could be done by a shovel or back hoe and neither of these can drill an oil well. This can be done and still it could be 5 months before a drilling rig capable of drilling 2 mile down and 2 mile out is located at the site. That has happened. Should North Dakota, as a solvent state, determine our laws and not some court? Should the rule be the same for private citizens as it is the state? If we don't address this now it will be two years before it can be addressed and I feel that will be too late. The choices are simple, when they level the land, when they drill the rat hole, when they put some casing in the ground or when they have a rig capable of drilling to the depth of the permit.

If you make these changes then we have truly served the landowners of North Dakota and I don't think we have restricted any developers from continuing drilling in this state. Thank you for your time and consideration and I would yield to any questions.

Rep. David Drovdal



To see all the details that are visible on the screen, use the "Print" link next to the map.



Mr. Chairman, members of the committee, my name is Myron Hanson here on behalf of the Northwest Landowners. I am here in support of HB 1241 .

This bill that you have before you here today, in particular the sections dealing with the notification of drilling operations, exploration damages and yearly crop loss payments is the result of what our organization feels was a good faith cooperative effort by the surface owners, oil and gas representatives and the House Energy and Natural resources committee.

This bill is already having a positive effect on the negotiations between surface owners and mineral development companies. I have anecdotal reports of companies that previously refused to discuss annual crop loss payments already honoring what we feel is the legislative intent of this bill.

We are aware of and feel that there are some language concerns that may need to be addressed and clarified. The impact of the intense exploration activity now taking place can not be understated or all the impacts on the farmers and ranchers of this state anticipated. Continuous evaluation of this activity will be required.

I understand that there are some amendments required to clean up some of the language and to provide for an effective date. We would support these changes.

delete explained to him { There is one amendment to repeal a section on the 20 day notification. We would ask that instead of repealing that notice, that it be written to retain that notice in addition to the 7 days notice of surveying. We feel that this additional level of communication among the parties could serve to alleviate conflicts that might arise.

I would ask that the committee strongly support this legislation with a do pass recommendation.



Ron Ness
President

Marsha Reimnitz
Office Manager

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House Bill 1241
Senate Natural Resources Committee
March 10, 2011

Chairman Lyson and members of the committee. My name is Ron Ness and I am the president of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents 280 companies involved in all aspects of the oil and gas industry and has been representing the industry since 1952. Our members produced nearly 98% of the 113 million barrels of oil produced in North Dakota in 2010. We also represent 47 of the top 50 oil producers in the state. I appear before you today in support of HB 1241.

HB 1241, as described, is the combination of four House bills and one big compromise between surface owners, agricultural organizations and the oil and gas industry. The bill is intended to improve communication and provide clarity on several items and ensure that parties have a chance to iron out differences. The Petroleum Council supports the bill as passed by the House; although, there are a few technical amendments that were missed in the House when combining so many sections of law and Todd Kranda will walk through those amendments.

We have seen numerous bills dealing with surface owners this session and this legislation should be an effective tool for addressing some of the valid concerns. The fact remains, many of the complaints we are hearing in regard to regulatory issues are from older well facilities that were in place or plugged and abandoned before many of the rules and laws in place today. This is unfortunate, but we cannot go back in time, as is the case with many issues in life. All things are not fair.

However, HB 1241 is a big step in the right direction. It ensures more communication between parties on a number of fronts and clearly provides the option for surface owners to take an annual crop damage payment. These are the two biggest requests I have heard from surface owners over the past few years. This bill does the following:

- 1.) Creates a new seven-day notice provision before entering property the first time. Usually, this is when the company comes out to survey and stake the well. This provides an opportunity for discussion about locating the well in a preferred location if possible.
- 2.) Clarifies the surface owner is entitled to annual payments for loss of production income unless he waives it and elects lump sum, clearly making that option available to the surface owner.
- 3.) Puts into law that the mineral owner does not have to request in writing interest due that begins after 150 days after the initial oil or gas is marketed.

The Petroleum Council and our members are committed to “doing it right” and working toward positive solutions on key issues. Our Oil Can! Program is an example of our efforts to listen to the public and work to provide education and identify solutions. Our Surface Owner Information Center at www.ndoil.org also provides educational information along with frequently asked questions that we have collected at Town Hall Meetings, phone calls, and emails we receive. We are planning additional outreach efforts in the future to keep the public in the communities where oil and gas activity occurs updated and provide opportunities for dialog on hot topics.

This bill along, with HB 1462, which provides a mediation option for those parties not able to reach an agreement, provides an excellent package to help reduce communication problems and help parties find common ground. The oil and gas industry wants to have good relationships with landowners. Many times the dollars are not the biggest issue - it's the way the parties came to the table. We urge you to pass HB 1241 as proposed in the first engrossment with the technical amendments as agreed upon by all the parties.

Testimony in Support of
ENGROSSED HOUSE BILL NO. 1241
Senate Natural Resources Committee - March 10, 2011

Chairman Lyson, Senate Natural Resources Committee members, for the record my name is Todd D. Kranda. I am an attorney with the Kelsch Law Firm in Mandan and I appear before you today as a lobbyist on behalf of the North Dakota Petroleum Council to support Engrossed House Bill 1241 as presented and to explain the Proposed Amendments that are being requested.

As you may know, the North Dakota Petroleum Council represents more than 260 companies involved in all aspects of the oil and gas industry and has been representing the industry since 1952. The North Dakota Petroleum Council membership produced 98% of North Dakota's 113 million barrels of oil in 2010. Additionally, 47 of the top 50 oil producers in North Dakota are members of our association.

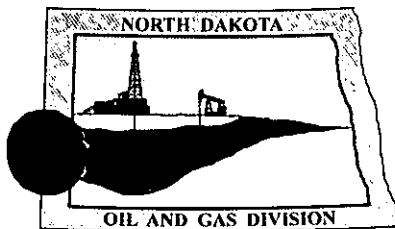
With regard to HB 1241, the North Dakota Petroleum Council is in support of the bill as amended by the House but also supports the request that further amendments be approved to clean up and clarify a few items noticed after the hoghouse amendment for HB 1241 was already approved. The Proposed Amendments were prepared for and are submitted by Representative Nathe (reference no. 11.0043.02001).

I will now try to explain the amendments that are being proposed. As you are aware, HB 1241 was a result of the combination of several bills (namely HB 1264, HB 1324 and HB 1387) which were all defeated in the House after the hoghouse amendment for HB 1241 was approved. HB 1241 incorporated the different aspects of the other individual bills through the hoghouse amendment. HB 1241 as amended includes the

provisions worked out and agreed to between the interested parties involved in the House Energy and Natural Resources subcommittee process.

However, when the hoghouse amendment was created there were a couple areas missed and that is the reason for the Proposed Amendments that are being offered today. By way of further explanation, the first five lines of changes listed on the Proposed Amendments for page 1 lines 4 and 6 are simply changes to the description in the title of the bill. The change at the bottom of the Proposed Amendments for page 4 after line 24 includes two items: the repeal of Section 38-11.1-05 which is the current notice of drilling statute and an effective date provision for implementation. The repealed provision has been replaced by a new notice of operations statute, namely Section 38-11.1-04.1 included within HB 1241. The effective date provision was added for the implementation of the new statutory damage and disruption payments and the obligation to pay royalties provision. Since well operations and negotiations are on-going there was a need to identify a starting date. The final changes on the Proposed Amendments are the two new sections being amended on page 1 after line 7 and page 3 after line 9, namely sections 38-11.1-02 and 38-11.1-08, because there is a cross reference made in each to the repealed notice statute (38-11.1-05) which is replaced with the new notice provision as created in HB 1241. The Proposed Amendments have been circulated and explained to all interested parties who were involved with the agreement on the hoghouse bill in the House and no one has indicated any objection to the amendments.

In conclusion, I would urge a **DO PASS** recommendation for **HB 1241 with the Proposed Amendments (.02001)**. I would be happy to try to answer any questions.



Oil and Gas Division

HB 1241 #8

Lynn D. Helms - Director

Bruce E. Hicks - Assistant Director

Department of Mineral Resources

Lynn D. Helms - Director

North Dakota Industrial Commission

www.dmr.nd.gov/oilgas

House Bill No. 1241

Senate Natural Resources Committee

Fort Lincoln Room

March 10, 2011

Testimony by

Bruce E. Hicks

Assistant Director

Oil and Gas Division

Department of Mineral Resources

North Dakota Industrial Commission

Chairman Lyson and members of the Senate Natural Resources Committee, my name is Bruce Hicks. I am the Assistant Director of the Oil and Gas Division of the North Dakota Industrial Commission.

HB1241 amends North Dakota Century Code Section 47-16-39.1 (Obligation to pay royalties—Breach). The Industrial Commission supports this bill but we offer the following:

Page 4, Lines 4-9:If the operator under an oil and gas lease fails to pay oil or gas royalties to the mineral owner or the mineral owner's assignee within one hundred fifty days after oil or gas produced under the lease is marketed and cancellation of the lease is not sought or if the operator fails to pay oil or gas royalties to an unleased mineral interest owner within one hundred fifty days ~~from initial~~ after oil or gas production is marketed from the unleased mineral interest owner's mineral interest, the operator shall thereafter pay interest on the unpaid royalties,....

- ⊗ **current rule:** does not treat leased and unleased mineral interest owners the same
 - requires leased owners to be paid within 150 days of “marketing” oil or gas
 - requires unleased owners to be paid within 150 days of “producing” oil or gas
- ☺ **amendment:** 150 days should be from date oil or gas is “marketed”
 - is possible to take months to produce enough oil to sell if well production is low
- ⊗ **current rule:** it is unclear when 18% interest starts
 - one company paid 18% interest from date oil or gas was marketed, only to change their mind and later pay 18% interest only beyond the 150-day “grace” period
- ☺ **amendment:** adding “thereafter” in line 9 removes the ambiguity
 - if a 150-day grace period is allowed, then the statute should be clear

The Oil & Gas Division believes this bill is a huge step in the right direction and is good for landowners and industry.

Testimony for Ashley Lauth, Oil and Gas Organizer for Dakota Resource Council, in Support of HB 1241
Senate Natural Resource Committee, March 10th, 2011

Chairman and members of the Committee, for the record my name is Ashley Lauth, I am the oil and gas organizer for Dakota Resource Council. I work with farmers, ranchers, landowners, and mineral owners on responsible oil and gas development issues in North Dakota.

Dakota Resource Council urges a 'Do Pass' recommendation for HB 1241 because of the bill's initiatives to address surface and mineral owner rights issues.

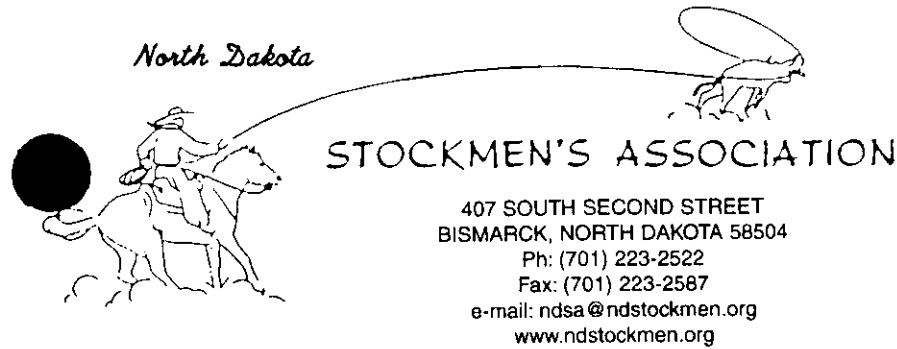
The four major landowner rights bills that were introduced in the House earlier this session have been engrossed into HB 1241. Those bills tackled the top surface and mineral rights issues supported by Dakota Resource Council. Some of these issues include damage and disruption compensation, payment of royalty interest without landowner request, advanced notification of drilling by way of notification before the time of staking, ability of landowners to hold negotiations with companies, open dialogue between involved parties concerning placement effect of drilling, lost production compensation, and annual payments.

However, Dakota Resource Council would like to officially note that we maintain HB 1241 is only a step in the right direction. We hold that there are many more landowner issues that still must be addressed, such as tying up leases for unreasonable lengths of time, adequate waste disposal systems and reclamation, thorough site safety precautions, well pad density and increasing unit size, and certainly an issue not in the least is the enforcement of the measures articulated in this bill.

Furthermore, should this bill fail to pass in the Senate, then all the aforementioned measures fail, and hence, surface and mineral owners will receive nothing and see so positive change for responsible development.

Therefore, Dakota Resource Council urges a 'Do Pass' recommendation for HB 1241.

North Dakota



HB 1241

Good morning, Chairman Lyson and Senate Natural Resources Committee members. For the record, my name is Julie Ellingson and I represent the North Dakota Stockmen's Association.

The Stockmen's Association rises in strong support of HB 1241. As you know, many of our members are surface owners in the thriving oil country of western North Dakota. While the incredible growth of this important industry is undoubtedly helping our state flourish, it is also creating challenges, particularly for those surface owners who are contending with the damage and disruption to and loss of production on their private property.

In a resolution passed at our convention in 2008, our members call for a fair compensation plan for surface owners that better reflects the lost productive value of the land, an idea mirrored in Sections 1 and 3 of this bill. What's key in this bill to surface owners is that the period of time during which the loss occurs must be considered and surface owners must be paid annually unless they elect to receive a simple lump sum payment. Furthermore, in cases where the land is being farmed or ranched by a tenant, he or she is also entitled to recover a portion of the compensation to reflect his or her damages occurred.

We also appreciate the expanded notification requirements relating to both time and details disclosed. Of course, a major frustration by many surface owners is that they feel left out in the dark, not really knowing what is going on in their neighborhoods and, in some cases, on their own property until the stakes are in the ground and the project is well on its way.

They seek to know what is happening earlier in the process, so they can plan accordingly and be engaged in the early stages, so they can have more input in well siting and more opportunity to dialogue and develop a relationship with the oil company and its contractors.

We likewise agree that mineral owners awaiting royalty payments should not have to initiate interest payments for what is due to them, which is reflected in Section 4. That burden should fall on those who owe the interest in the first place.

As you know, the concepts included in HB 1241 were the foundation for a host of bills heard in the House during the first half of the session. This and HB 1462, which would enhance mediation services through the Department of Agriculture to aid in surface owner/oil and gas company disputes, are really the only two vehicles alive to support surface owners this session now, so your favorable consideration of it is especially important to farm and ranch families across the state.

Providing equitable compensation and consideration for those who are dealing directly with the challenges of oil development is not only what's right, but what is long overdue. It's also the best way to ensure that energy can flourish in North Dakota for years to come.

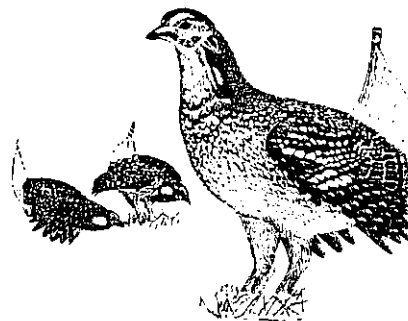
We ask that you please support North Dakota surface owners and give this bill a do-pass recommendation.



North Dakota Chapter

THE WILDLIFE SOCIETY

P.O. BOX 1442 • BISMARCK, ND 58502



**TESTIMONY OF MIKE McENROE
NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY
ON HB 1241
SENATE NATURAL RESOURCES COMMITTEE
MARCH 10, 2011**

Chairman Lyson and members of the Senate Natural Resources Committee:

My name is Mike McEnroe and I represent the North Dakota Chapter of The Wildlife Society. The Chapter is a professional organization made up of over 320 biologists, land managers, university educators, and law enforcement officers in the wildlife and natural resource field.

The Chapter supports HB 1241, especially Section 2 on Notice of Operations. In testimony on another similar bill (HB 1324) we supported notice to the surface owner 30 days prior to application for a drilling permit. HB 1241 gives 7 days notice before entrance on the land for activities such as surveys and staking. We believe this requirement would provide additional safeguards for the surface owner, whether farmer or rancher or public land manager. We also believe these requirements do not add more time to the drilling and production process; they only alter when in the time frame that notice is given to the surface owner.

We would also suggest an amendment that would extend this notification to "other parties holding a publicly recorded property interest in the surface estate." This would extend the proposed improvements in prior notice to holders of utility or pipeline rights-of-way or conservation easements. We believe this also can be done during the title search process already being done by the mineral developer's land men and cause no delay in the drilling process.

Thank you for the opportunity to comment on HB 1241. I will answer any questions the committee may have.