

2011 SENATE NATURAL RESOURCES

SB 2131

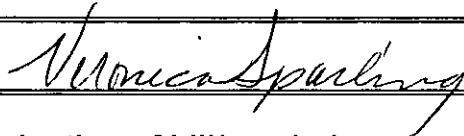
2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2131
January 14, 2011
12920

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to a surface access fee for oil and gas exploration and production

Minutes:

Testimony is attached.

Chairman Lyson: Opened the hearing on SB 2131.

Senator John Andrist, from District 2, presented testimony in favor of the bill. See Attachment #1.

Chairman Lyson: One of your last statements indicates that the surface owners are getting nothing. They are negotiating with the oil companies, so they are getting something; isn't that right?

Senator John Andrist: It is my understanding that the surface owner who doesn't have the mineral rights takes what the oil company offers him. The surface owner continues to pay taxes. There are lots of complaints about damage. This bill would provide payment to everybody in the spacing unit. The reason I drafted the bill this way is that we are getting into the era of eco pads. All of the farmers in this growing spacing unit share in the damages, the expenses. Compensation not only helps pay for the damages, it helps them accept some of the environmental problems that come with it.

Senator Schneider: Have you spoken with Legislative Council?

Senator John Andrist: Yes, most of them think if it is provided as an access fee it would stand the constitutional test.

Senator Triplett: You are aware that North Dakota has a surface damages act. Did you consider trying to amend that act?

Senator John Andrist: I was aware of it and I chose not to do it because we are finding so many instances of the oil companies not fulfilling their obligations under those right now. My approach was to help the farmers get a little compensation in case they had to do some of it themselves.

Senator Burckhard: I've gotten many emails on this bill. They were 40 to 1 asking for a Do Not Pass on this bill. Why have I not heard from more of the Do Pass people?

Senator John Andrist: I don't know. I was naïve when I first introduced this bill. I didn't know that so many mineral rights are institutionally owned. The oil companies have a huge investment in this and the mineral owners have a minimal investment. My main concern is to get some help to the surface owners who live in the dust and harvest all the problems.

Senator Freborg: If we pass this bill, the surface owner, if he had a contract for damages, would then get the 8% plus the damages he had negotiated?

Senator John Andrist: Yes, I presume so. This doesn't address the surface owner damage bill.

Representative Kenton Onstad, from District 4 (which encompasses a good share of the oil country, Dunn and Mountrail County) spoke in favor of the bill. He is a landowner and a mineral owner and can understand both sides of the issue. See **Attachment #2**. Only 40% of mineral owners are local in his area. Page 2 - 5 is explained on the audio tape at 18:20-21:00. He suggested putting money aside from the mineral trust fund into a surface owner protection fund. The landowners could then apply to that fund if they are being impacted.

Chairman Lyson: Is that a recommendation for an amendment to this bill?

Representative Kenton Onstad: It's an idea to discuss. I have had discussions with mineral owners and they ask why is it going to come out of their share and not the oil companies' share. I will agree, oil companies have made a huge investment into this region. We assess a tax to them and the state has an obligation. It is just an idea.

Senator Triplett: I understand that this bill is not duplicative of the surface owners damage act, it has a broader scope to also address the damages of surface owners in the surrounding area. You are aware that the governor's budget includes funding for improvement of roads, etc. Those bills haven't passed yet but there is bipartisan support for them. Have you discussed with the Dept. of Transportation about whether they have techniques to limit the dust?

Representative Kenton Onstad: I have not had that discussion. The governor's budget addresses the infrastructure question but it doesn't address the yield loss. The dust control measures generally do not last very long., whereas a 50% reduction in production has a long term effect on a landowner.

Senator Triplett: Are there techniques for rebuilding the roads and for long term dust control? Maybe the discussion needs to be with the Transportation Department. Is it the dust from last year that will continue to cause problems or is it that the dust will continue to be a problem?

Representative Kenton Onstad: The dust problem will be ongoing.

Senator Triplett: Aren't these problems for the whole rural community? It's not just a problem for the adjacent landowners, right? Is it not a region wide problem?

Representative Kenton Onstad: Yes it is, and if we don't address the impacts now I see a land war brewing. This bill is not perfect, but we need to solve the problem for the benefit of the state of ND.

Representative Glen Froseth from District 6 which includes Bottineau County, Renville County and the north half of Ward County spoke in favor of the bill. We are getting into the heart of the oil patch also in our area. There is a big concern developing in northwestern North Dakota. If nothing else, this bill will draw attention to the problems that are developing. Many minerals have been severed from the surface land; sometimes they were sold off to retain the ownership of the land during tough economic times. In mid-December he attended a landowners meeting in northwestern North Dakota. There were 50 landowners present to organize and address this problem. This is a western ND problem. It is not only about oil, in 3-5 years pot-ash development in Burke County may pose an even bigger impact than oil does. Maybe this bill isn't quite what we need but it will bring attention to it.

Chairman Lyson: Are you aware of Williams County working on the roads to keep the dust down? On a two mile stretch they put some chemicals down that is holding up better than black top and is keeping the dust down completely. Are you aware of that?

Representative Glen Froseth: Yes, I have heard about that process. It is being tested. There are a lot of roads out there that would need that chemical. Money from oil revenue is good for the state so we need to solve these problems that go along with developing this industry.

Representative David Rust is from District 2 and lives in Tioga: I want to first address the question about the chemical. My son-in-law is an independent trucker. He hauls water along that road. He tells me that chemical didn't make a difference. Maybe it was a matter of when it was applied, but it didn't make a difference.

Chairman Lyson: The Superintendent of the Williams County Highway Department says it does make a difference.

Representative David Rust: My concern is with the landowner. The tool pusher on the rig will make more in a week than a landowner will make in 40 years. I am in support of this bill, because it is a starting point to address some of the concerns that landowners have.

Kristian Sorum, a farmer from Burke County who owns some farm land and rents some farmland: There have been wells in his area for 50-60 years. He spoke of the problems he has had to deal with such as spray drift, and mowing damages. The oil company mowed 15' into the standing crop. The oil company parked their tractor out in his standing durum and left it there overnight. Salts have washed off every well site which reduced yields. Trash is left behind and left for the landowner to deal with. They have left ruts in the fields and have even driven over standing grain. He has had damage to machinery headers, and air drills from the ruts left by the oil companies. As a surface owner he is having to recoup

the damages just to get whole again. He can't stop the mineral owner from recouping the minerals. Why can they stop the farmer from making money from the land without compensation? Land values go down with well sites on them. The surface owner still has to pay the property taxes on the land. As a township officer he has had to make the decision to not even blade some of the roads. They have to pick and choose because they can't afford to do all of them.

You asked why there were phone calls 40 to 1 in opposition to this bill; I never knew about this bill until the last minute. The oil companies alerted the mineral owners and that is who you heard from. They have the resources to do that. Landowners don't know about it. You will find there is a lot more support for this than you think.

Senator Hogue: What has been the process of negotiations? Did you negotiate? Did you set a higher fee?

Kristian Sorum: There are no wells on his land that he has the mineral rights to right now. We are on the edge of it right now. One well was drilled, went for a yearly amount. He was naïve and should have asked for more. There are 4 new wells on land he rents. They say it will take 5 acres, it takes a lot more; plus it packs the soil so hard that it takes 5-7 years to recover the land to the point where it will produce the yields it did prior to the well. Inputs on the land are increased because of going around the oil wells. I am still going around the wells, some of them have been there 50-60 years. They were drilled in the 50's. The amount of money they paid in the 50's is a drop in the bucket compared to what it has cost us every year to go around those wells. Another issue is the oil companies don't ask what to do with the snow. They push it wherever they want. It takes some of the piles of snow three weeks to melt down. It causes water to pool from the pushed up snow.

Chairman Lyson: As a renter, if we pass this bill the money would go to the land owner, not the renter.

Kristian Sorum: Yes. On the property where I had the agreement for annual payments, the well has been there 4-5 years and I have never yet been paid on time.

Chairman Lyson: Would you rather have this bill or an annual payment?

Kristian Sorum: This bill. It pays everybody in the section of land for damages.

Senator Hogue: The surface damage act we have now doesn't limit which surface owners can seek redress. The neighboring surface owners have a right to bring a claim for damages. Are surface owners asserting claims and getting paid for damages?

Kristian Sorum: I've never been paid for damage to my crops, not for spray drift issues, not for mowing damages. It is up to us to try to get those. I don't think it's fair that I have to be constantly working to get whole again.

Ted Hawbaker from Portal in northwest North Dakota: Several old wells have been there 40- 50 years on his land. He has had to go around them. A few of the issues have been: run off from well sites, money spent in double seeding and double fertilizing due to the size of equipment. Many mineral rights in the area are severed from the surface. The land the

well is on has been reclassified as industrial for tax purposes and these increased taxes are paid by the surface owners, not the oil company. Some other issues are runoff from them pushing snow, and salt. To get compensation from an oil company we have to take them to court. That costs us more than the compensation would be. Why does the state allow them to dig salt water pits? Nothing grows there for years. In Canada just two miles north they haven't dug a salt water pit for 10 years, they use tanks. We get no compensation. The oil company gives an offer and that is what the farmer has to take, yet we are mandated to pay taxes at an industrial rate. We are not happy to see an oil well come. The State of ND is a large mineral owner. I would like to see some compensation.

Senator Triplett: Once that tax rate has been changed, you could work the increased tax into the agreement.

Ted Hawbaker: That will work for agreements going forward, but on the wells that have been there for 40 years there is no annual payment and yet we have to pay the taxes at the industrial rate. Ted turned in a letter he wrote to an oil company that detailed his expenses. See **Attachment #3**.

Todd Kranda, with Kelsch Law Firm, spoke in opposition to SB 2131. See **Attachment #4 and Attachment #5**. There were comments about environmental stress and damages. Chapter 38-14 provides for reclamation of surface mined land. There are laws in place for dealing with any environmental concerns and reclaiming the land. Further, the chemical treatment project the chairman referred to was funded by the ND Petroleum Council oil companies. We are active in addressing these issues. Then the question of taking companies to court if they can't be resolved. The statute provides for that as an alternative if they can't negotiate. The oil companies or the developers are required to pay the court costs according to 38-11.109

There was some discussion about the chart regarding surface damage cases.

Chairman Lyson: How many complaints has the Petroleum Council received?

Todd Kranda: I will get those statistics to you if they are available.

Senator Hogue: Can you describe the Ag mediation process?

Todd Kranda: The Ag Commissioner Department already has a mediation process in place. We have talked to the Ag Commissioner about expanding that.

Senator Hogue: Does the industry support binding mediation before the Ag Commissioner or his mediators?

Todd Kranda: I am not privy to consensus from the industry.

Senator Schneider: Concerning complaints from landowners, in what % of cases were landowners represented by council?

Todd Kranda: I don't know.

Steve Pine, president of Great Northern Energy , spoke in opposition to the bill. There are a lot of rules in place to make sure the surface owners are adequately compensated. You can't make it punitive for the mineral rights owners. The oil companies are willing to buy the land at fair market value, use it for those years and deed it back to the current surface owner. It is not only the oil companies that are ruining the roads, grain trucks, Rural Electric and everyone who travels that road adds to it too. The mineral owners pay the production and extraction taxes. The North Dakota Industrial Commission has been proactive to watch out for the rights of the surface owners and the mineral owners. That is the regulatory agency you should go to to resolve it. With the 8% that is mentioned, it would not work to get the 8% from the state or federal government in the cases where the state or federal government is the mineral rights owner.

Sandy Clark, with the ND Farm Bureau, stood in opposition to SB 2131. We understand there are issues but we feel SB 2131 would not be the answer. Surface damages are the discussion here today. They can go to the oil company for damages. If you put a formula in the law, that is all a surface owner will get. It is better to negotiate. We would support annual payments so the amounts can change with the times.

Senator Triplett: Is this something where the ND Farm Bureau could assist landowners in educating them to use the reconciliation process.

Sandy Clark: We are doing it right now, putting together a surface owner information packet.

Jeb Oehlke with ND Chamber of Commerce spoke in opposition for reasons previously stated.

Ben Larson, an independent land man and a mineral owner, spoke in opposition to the bill. You don't think that oil companies will be affected but they will be. You will see royalties increase and that will affect it to the level of the oil company and it starts to become uneconomical and things slow down. Surface prices will skyrocket.

Chairman Lyson: Closed the hearing on SB 2131.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2131
1/20/11
13142

☐ Conference Committee

Committee Clerk Signature

Veronica Spurling

Explanation or reason for introduction of bill/resolution:

Relating to a surface access fee for oil and gas exploration and production

Minutes:

No Attachments

Chairman Lyson: Opened discussion on SB 2131. I can't see how amendments will even clean this up. It would be too complicated to figure out who to compensate and who to get the compensation from.

Senator Hogue: I agree, the bill has constitutional problems and logistical problems. You could put it into an impact fund and allow people to access the public funds. This bill raises practical problems about how you would do it. There are problems for surface owners who are being harmed by the drilling activity, but I don't think this bill is the right mechanism to correct that. I make a motion to Do Not Pass.

Senator Triplett: Second. In my opinion it is clearly unconstitutional. I think a big part is educational, helping the land owners to understand what their rights are under the existing surface owners damage act. It is among the best surface owners protection act in oil producing states. The problem could be addressed in another bill.

Chairman Lyson: I understand that there are other bills in the House that address this issue.

Senator Schneider: Echoed concerns about the bill. I would like to see changes to the surface owners protection act to facilitate arbitration. Right now the land owners and the oil companies are not in a good bargaining position when it comes to discussing the impacts. I think we have a chance to help land owners. I haven't seen the other bills.

Senator Uglem: Landowners do have a serious problem. I think just the fact that this bill has been brought forward will take care of it. I can't support this bill.

Chairman Lyson: I agree that there are problems out there, but the people who testified were from Burke County and those problems are from wells established 50 years ago. There was no one from the Bakken area. It seems to be dust and roads and that is a local problem. The state gives money to the counties for the roads.

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Roll Call Vote: 7-0-0

Carrier: Senator Lyson

Date: 1-20-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2131

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 Hogue Seconded By Triplett

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

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Lyson

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

REPORT OF STANDING COMMITTEE

SB 2131: Natural Resources Committee (Sen. Lyson, Chairman) recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2131 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

SB 2131

#1

Senate Bill 2131 Testimony
John M. Andrist, State Senator District 2
Senate Natural Resources Committee January 14, 2011

I decided to introduce this bill after the August oil field tour for legislators in Mountrail County. On a long ride to a frac site in the Parshall area I saw fields of withering sunflowers and other crops, covered in dark gray dust, clearly stunted in the first week of August. And I talked to one landowner who sold off a nice herd of cattle because his pasture was on one of those roads, and he said, "they simply cannot put on weight in that dust".

Broken, destroyed roads are another manifestation. Some of these roads have been built by farmers paying real estate taxes for decades, with no contribution from mineral owners.

In my part of the oil patch minerals have not been included in the sale of any land for more than 50 years. So who does own the minerals? Most of them have been passed on through inheritance, in which there has been no investment. The rest are owned by investors who have picked them up (sometimes at fire sale prices) from heirs who sold them because their interest was too small to be significant or they needed the money. A majority of minerals have out-of-state owners, I believe.

I have no quarrel with mineral owners. I'm a free market guy and applaud their entrepreneurship. I just happen to believe that their right to harvest minerals should include some compensation for the guy that owns the door.

Is it constitutional? I think it is. Everything is constitutional until some court decides otherwise.

Is 8 percent a fair amount? For me it was a starting point. Based on a typical well in my area I estimate it would produce perhaps \$15 or \$20 a day for each quarter of land in the spacing unit.

Could there be better approaches to providing something for surface owner compensation?

I've also had numerous suggestions that instead of taking a dab from mineral owners we mandate oil companies to pay more compensation to the surface owners. Or since North Dakota's extraction tax is among the highest in the nation, we could lower it by a percentage point and mandate that an equivalent amount be paid as surface owner compensation.

But it was my sense that oil companies have the big-time investment, pay significant production taxes, and provide the capital that is running this engine and producing the "billions". I didn't want to fight with them. Mineral owners have no skin in the game. They pay zero for the infrastructure that produces their revenue.

I will support any change that this committee feels will better address the problem. My whole point is that surface owners are being hurt while everyone else is participating in the harvest – producers, the state, mineral owners tradesmen, landmen, truckers. It is the surface owner who has to deal with environmental stress and damage.

Every month something like 150 new producing wells come on-line in the oil patch. The number of impacted land owners keeps growing. Oil companies and mineral owners would be wise to recognize that we are going to face rebellion or insurrection from non-mineral owning surface owners if we continue to trample on them or let our system trample on them.

I own some minerals, and frankly I'm offended by the suggestion that when the oil derricks come and I become a partner to sucking oil through someone's surface he should get nothing in return – except the problems.

8% is less than one-twelfth of the royalty payment. If they were sucking it from your back yard wouldn't you think that's reasonable?

SB 2131 Testimony

Mr. Chairman and Members of the Natural Resources Committee

Representative Kenton Onstad, District 4, Parshall

SB 2131 creates an access fee to Surface Owners

The Process starts with a mineral owner signing a lease with an Oil Development Company. That Mineral owner may or may not be the surface owner.

From this point on it is now in the hands of the Oil and Gas exploration company, Where they build a location, build a service road to the site. The surface is not legally notified until 20 days prior to operations. ^{owner}

Horizontal drilling as increased the unit by 8-times or more. The usual 40 and 80 acrea spacings are not 640- 1280 and as large as 2560 That is 4 sections.

Currently only the Surface Owner with the well location is paid damages. The damages expand further than that.

The impacts of Dust, Lower yields along the service road, safety, Roads are poorly maintained. They all affect not only the surface owner with the well site but everone property owner along the way to access the well site.

We have a surface owner suing an oil company He has lost 6-7 cows and calves. Cause Dust Pnuemonia

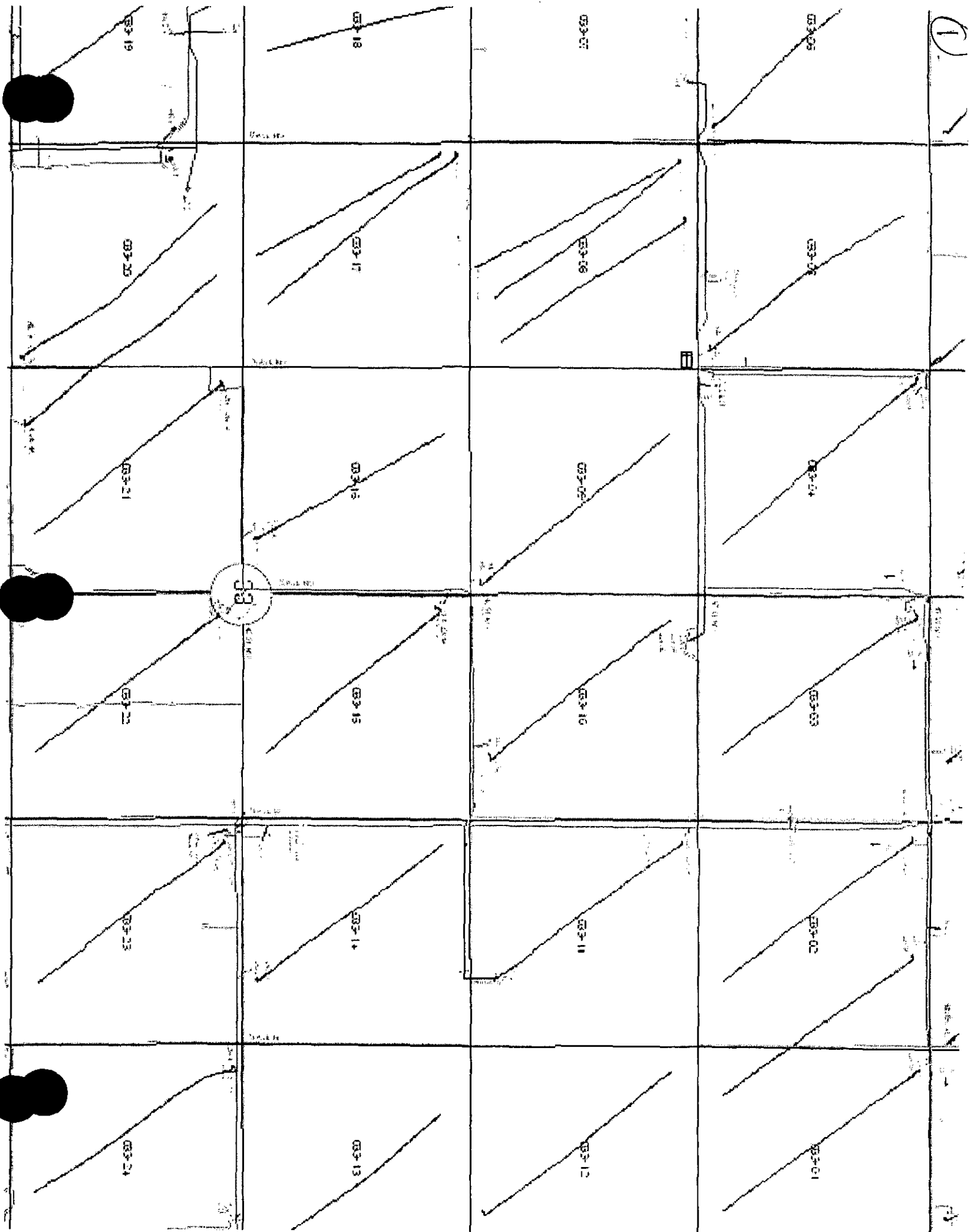
Surface owners are seeing losses of up to 40% not on the first round but 8-10 rods into the field. Both crop yields and hay land .

Are them impacted, Yes they are. Is there an answer

I have enclosed several examples.

Mr. Chairman and members of the Committee, It is a difficult situation, not a clear answer to provide reimbursement, I feel the mineral owner does have some responsibility to the surface owner. Thank you

①



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BLUFF 1-03H

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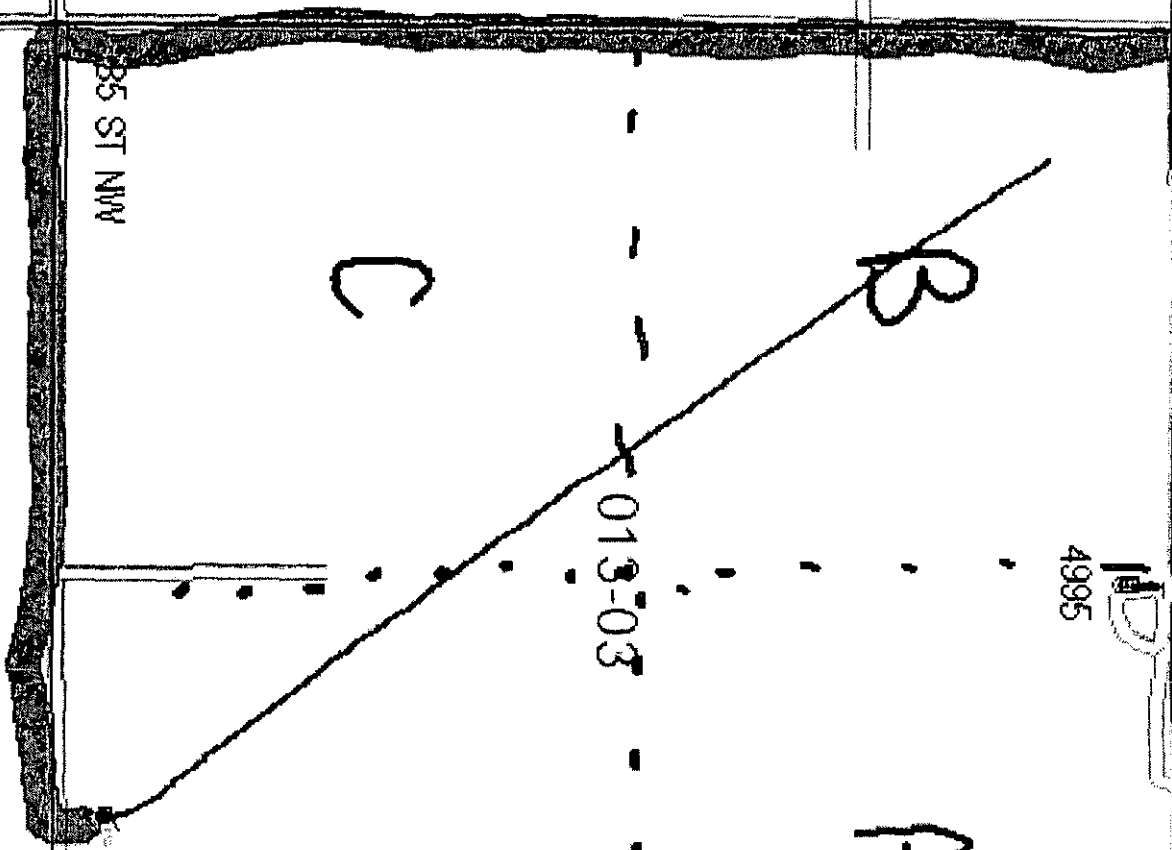
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*This is a letter I wrote to Cornerstone Natural Resources
an oil company that was planning to drill an oil
well on surface that I owned. This explains #3
Some of the Extra Expenses + lost production*

April 18, 2008

Ted

Dear Mr. Hinton,

I did an approximate measurement of the proposed well site on my land. The drill site for the first year would be about 5.5. acres, if the black dirt can be stored within that location. If set up properly a finished well could probable be located on about 3 ½ acres. (There would be areas that I couldn't farm in wet years due to being wet and the well site or road would cut off access.)

I drew an illustration of the site to better help show the loss of production, income, and the extra expenses I will have to incur, due to double seed, fuel and fertilizer, seed treatment, weed spray, and other expenses. Not to mention the extra time and inconvenience.

I am doing this because you had asked that my offer be tied to the loss of production, and extra expenses, loss of land value, and access as it states in the North Dakota century code chapter 38-11.1.

As you stated on the phone, your offer was tied to what you had paid in Burke County in years past. It should be as the century code states.

As I researched this issue I found that my offer for \$15,000 initial damage and loss, and \$3500 per year is probably too low.

Many of the increased expenses I am having to pay, are directly related to the increased price of your product. Such as -fuel, fertilizer, seed treatment, herbicides, fungicide. As they are petroleum based.

Some of the loss I would have is production loss. The durum wheat we raise will yield 45-50 bushels per acre. I sold my 2007 durum at \$23 per bushel. That is over \$1,000 an acre per year loss, 5-6 acres the first year 3-4 acres each year after. If the life of the well is 40 to 50 years that price of grain and yield should increase as they have in the past 40 years.

Now it is my assumption that in 20 years your company, or the company you sell the well to, won't offer me more just because you are nice people. But it would be nice to have a clause where we renegotiate each 3 to 5 years, as to our expenses, losses and inflation change.

The area on the attached page in yellow is the area doubled with the seed drill and is just over 12 acres. That area is also doubled with the combine, the yellow and green areas together are what will be doubled with the sprayer, this area is over 20 acres. My additional expenses at today's prices would be at least:

Seed - \$60 per acre X 12 acres =	\$720
Seed treatment - \$2 per acre X 12 =	\$24
Diesel fuel - \$10 per acre X 12 =	\$120
Fertilizer - \$85 per acre X 12 =	\$1020
Combine loss due to turning empty don't know =	0
Time - I will donate for the good of your company =	0
Herbicide \$25 per acre X 20 acres =	\$500
Fungicide \$15 per acre X 20 acres =	\$300
Total less time and combine loss =	<u>\$2684</u>

If we add my extra expenses with the production loss of over \$1,000 per acre the yearly rental should be in the \$6,000 a year range.

If the initial damage payment is to cover:

- Lost land value
- Inconvenience
- Lost use
- Real estate taxes on land cornerstone uses
- Damage to the surface
- Lost access to other low areas in wet years

Then the initial first year payment of \$15,000 is really not enough either.

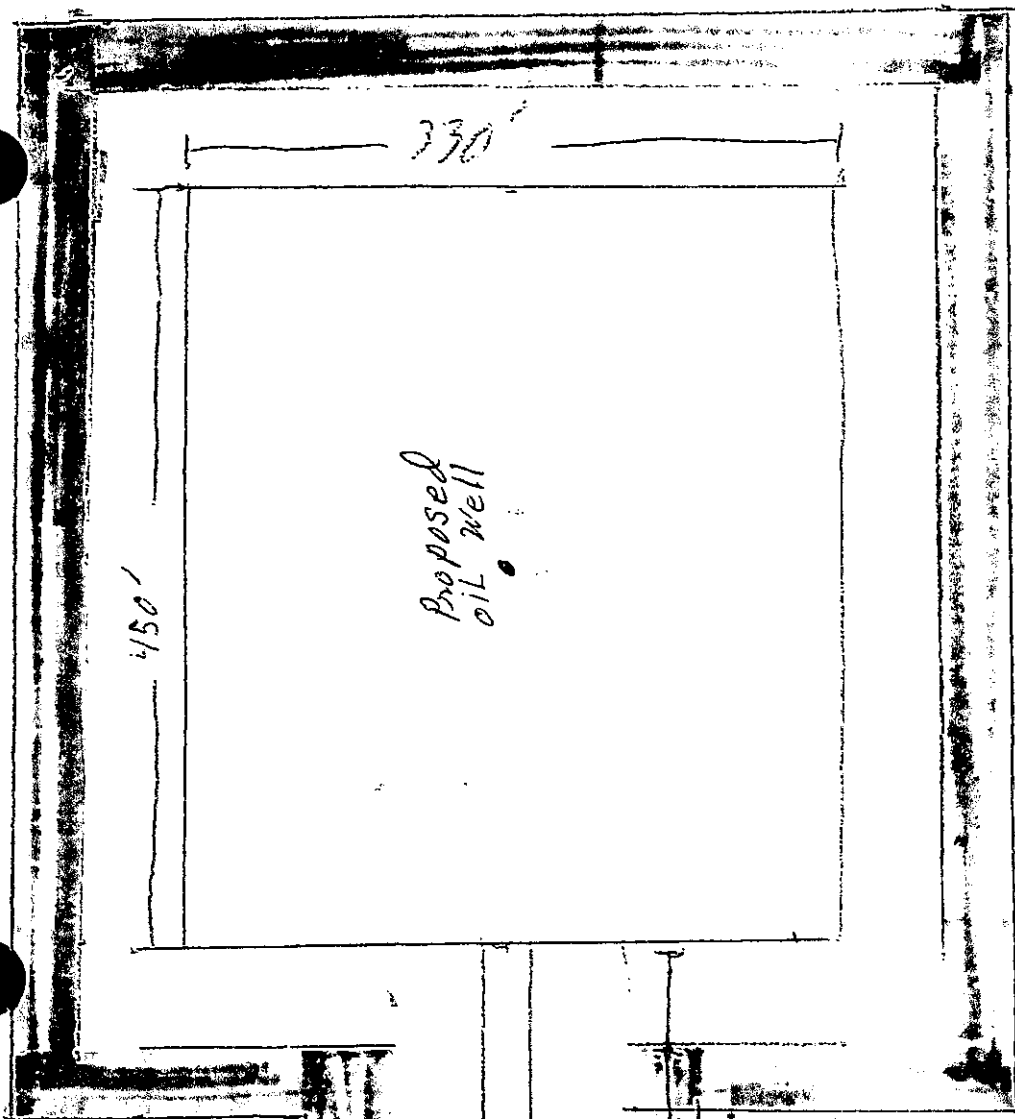
If you would like to compare these prices to 25 years ago when my land lord and other's received \$5,500 the first year and \$500 a year after that. My expenses have increased more than 5 times. I would use less seed, fertilizer, and chemical if I could go straight through the well sight. My production loss is more than 5 times what it was 25 years ago because the price of grain is now over \$20 per bushel instead of \$3 per bushel. Also your proposed well sight is much larger than they built 25 years ago. So your compensation rate needs to be brought up to date.

Also the price of the product you produce has increased from \$15 - \$20 per barrel to over \$100 per barrel. So this is a very workable situation.

I would be happy to visit with you about these or other concerns you may have.

Thank You

Ted Hawbaker
10741 Hwy 52
Portal, ND 58772
Phone: 701-933-2869



Yellow is area
doubled with Drill
Seed
Seed Treatment
Fertilizer
Fuel
Time

Yellow also
Represents the
area doubled with
the Combine as
we need 3 passes
with a 40' Header
for a Headland
Time
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loss from running
combine empty
as we turn

Yellow & Green is the area
doubled with the Sprayer

Herbicide
Fungicide
Fuel
Time

Testimony in Opposition to
SENATE BILL NO. 2131
Senate Natural Resources Committee
January 14, 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 oppose SB 2131. As some of you may know, the North Dakota Petroleum Council represents more than 250 companies involved in all aspects of the oil and gas industry and has been representing the industry since 1952.

The North Dakota Petroleum Council is opposed to SB 2131 because it is an unconstitutional taking of property rights of the mineral owners. There is no corresponding relationship to the payment that is being required from the mineral owners interest nor is there any justification for this legislation. Furthermore, SB 2131 is likely unconstitutional because of the inappropriate interference with existing private contracts.

The laws of North Dakota already provide for a fair and reasonable compensation of the surface owner with regard to the use of the surface and the activities on the property by the mineral owner. Chapter 38-11.1 of the North Dakota Century Code provides for oil and gas production damage compensation. The mineral developer is required to pay the surface owner for the amount of damages and disruption sustained by the surface owner. (Copy of Chapter 38-11.1 NDCC attached).

A straight percentage of the royalties of the mineral estate as provided for under

SB 2131 is not a reasonable nor rational method of determining the appropriate and fair compensation to the surface owner for damage and disruption that may be sustained by the surface owner. Also, most surface owners either own part of the minerals or their immediate family members or relatives own a portion of the mineral rights. Even in those situations in which the surface owner does not own any of the minerals there was reasonable compensation provided when those rights were transferred and the surface owner likely paid less for obtaining the surface rights only when the property was acquired.

There is not a major problem that is trying to be addressed or solved by this legislation. In fact, a majority of surface owners are able to negotiate a settlement and reach a resolution under existing laws. A recent survey by the North Dakota Petroleum Council showed that less than 3% of surface damages were unsettled and not able to be negotiated and resolved with the surface owner. (See attached Outline). Accordingly, there is not a serious problem that this bill is trying to address.

If this bill was passed there could be significant consequences. This bill could in effect be creating a new interest in purchasing surface ownership. Out of state investors would likely become active and interested in purchasing surface land interests to speculate on the possibility of receiving a portion of the royalties of the mineral estate.

Although there are several thousand surface use agreements that have been resolved over the past several years, we understand there are situations where, for one reason or another, a ND farmer or rancher got a raw deal or was not communicated with properly. The Petroleum Council established a Surface Owner Committee more than a year ago, created a Surface Owner Information Center which has thousands of hits since June 2010, and has held 25 Town Hall Meetings. In addition, oil companies want to get along with the parties with whom they will have operations on their land for decades to come. We are looking for solutions, however, this bill is not the right approach. We have worked with the Commissioner of Agriculture on a mediation process and have been meeting with surface owner and agriculture groups. We are working on a few bills together that may help improve communications and maintain that ability for private contracts and negotiations to continue.

Don't forget that more than 97% of the surface damages are settled. There might be room for fixes but it can't be all that bad if less than 3% of the agreements aren't resolved. We are committed to doing it right. SB 2131 is not the answer.

Accordingly, I would urge a **DO NOT PASS** recommendation for **SB 2131**. I would be happy to try to answer any questions.

Surface Damages Cases

	Number of	Number of	Unsettled	Unsettled
<u>OPERATOR</u>	<u>Locations</u>	<u>Settled Damages</u>	<u>Surface Damages</u>	<u>%</u>
EOG Resources	328	311	17	5%
Marathon	205	198	7	3%
ConocoPhillips	100	97	3	3%
XTO	72	71	1	1%
Newfield Exploration	69	63	6	9%
Continental Resources	250	245	5	2%
Whiting Petroleum	190	190	0	0%
Hess Corporation	261	259	2	1%
TOTAL	1475	1434	41	2.7%

CHAPTER 38-11.1

OIL AND GAS PRODUCTION DAMAGE COMPENSATION

38-11.1-01. Legislative findings. The legislative assembly finds the following:

1. It is necessary to exercise the police power of the state to protect the public welfare of North Dakota which is largely dependent on agriculture and to protect the economic well-being of individuals engaged in agricultural production.
2. Exploration for and development of oil and gas reserves in this state interferes with the use, agricultural or otherwise, of the surface of certain land.
3. Owners of the surface estate and other persons should be justly compensated for injury to their persons or property and interference with the use of their property occasioned by oil and gas development.

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 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.

38-11.1-03. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Agricultural production" means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, including farmed elk, whether or not the animals are to be sold commercially.
2. "Drilling operations" means the drilling of an oil and gas well and the production and completion operations ensuing from the drilling which require entry upon the surface estate and which were commenced after June 30, 1979, and oil and gas geophysical and seismograph exploration activities commenced after June 30, 1983.
3. "Mineral developer" means the person who acquires the mineral estate or lease for the purpose of extracting or using the minerals for nonagricultural purposes.
4. "Mineral estate" means an estate in or ownership of all or part of the minerals underlying a specified tract of land.
5. "Minerals" means oil and gas.
6. "Surface estate" means an estate in or ownership of the surface of a particular tract of land.
7. "Surface owner" means any person who holds record title to the surface of the land as an owner.

38-11.1-03.1. Inspection of well site. Upon request of the surface owner or adjacent landowner, the state department of health shall inspect and monitor the well site on the surface owner's land for the presence of hydrogen sulfide. If the presence of hydrogen sulfide is indicated, the state department of health shall issue appropriate orders under chapter 23-25 to protect the health and safety of the surface owner's health, welfare, and property.

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, 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.

38-11.1-05. Notice of drilling operations. Except for exploration activities governed by chapter 38-08.1, the mineral developer shall give the surface owner written notice of the drilling operations contemplated at least twenty days prior to the commencement of the operations, unless waived by mutual agreement of both parties. If the mineral developer plans to begin 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 prior to commencement of drilling operations. This notice must be given to the record surface owner at that person's address as shown by the records of the county recorder at the time the notice is given. This notice must sufficiently disclose 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. Included with this notice must be 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 the chapter, including the right to request the state department of health to inspect and monitor the well site for the presence of hydrogen sulfide. If a mineral developer fails to give notice as provided under this section, the surface owner may seek any appropriate relief in the court of proper jurisdiction and may receive punitive as well as actual damages.

38-11.1-06. Protection of surface and ground water - Other responsibilities of mineral developer. If the domestic, livestock, or irrigation water supply of any person who owns an interest in real property within one-half mile [804.67 meters] of where geophysical or seismograph activities are or have been conducted or within one mile [1.61 kilometers] of an oil or gas well site has been disrupted, or diminished in quality or quantity by the drilling operations and a certified water quality and quantity test has been performed by the person who owns an interest in real property within one year preceding the commencement of drilling operations, the person who owns an interest in real property is entitled to recover the cost of making such repairs, alterations, or construction that will ensure the delivery to the surface owner of that quality and quantity of water available to the surface owner prior to the commencement of drilling operations. Any person who owns an interest in real property who obtains all or a part of that person's water supply for domestic, agricultural, industrial, or other beneficial use from an underground source has a claim for relief against a mineral developer to recover damages for disruption or diminution in quality or quantity of that person's water supply proximately caused from drilling operations conducted by the mineral developer. Prima facie evidence of injury under this section may be established by a showing that the mineral developer's drilling operations penetrated or disrupted an aquifer in such a manner as to cause a diminution in water quality or quantity within the distance limits imposed by this section. An action brought under this section when not otherwise specifically provided by law must be brought within six years of the time the action has accrued. For purposes of this section, the claim for relief is deemed to have accrued at the time it is discovered or might have been discovered in the exercise of reasonable diligence.

A tract of land is not bound to receive water contaminated by drilling operations on another tract of land, and the owner of a tract has a claim for relief against a mineral developer to

recover the damages proximately resulting from natural drainage of waters contaminated by drilling operations.

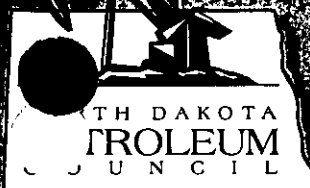
The mineral developer is also responsible for all damages to person or property resulting from the lack of ordinary care by the mineral developer or resulting from a nuisance caused by drilling operations. This section does not create a cause of action if an appropriator of water can reasonably acquire the water under the changed conditions and if the changed conditions are a result of the legal appropriation of water by the mineral developer.

38-11.1-07. Notification of injury. Any person, to receive compensation, under sections 38-11.1-08 and 38-11.1-09, shall notify the mineral developer of the damages sustained by the person within two years after the injury occurs or would become apparent to a reasonable person.

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 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 is given. The person seeking compensation may accept or reject any offer so made.

38-11.1-09. Rejection - Legal action - Fees and costs. If the person seeking compensation rejects the offer of the mineral developer, that person may bring an action for compensation in the court of proper jurisdiction. If the amount of compensation awarded by the court is greater than that which had been offered by the mineral developer, the court shall award the person seeking compensation reasonable attorney's fees, any costs assessed by the court, and interest on the amount of the final compensation awarded by the court from the day drilling is commenced. The rate of interest awarded must be the prime rate charged by the Bank of North Dakota on the date of the judgment.

38-11.1-10. Application of chapter. The remedies provided by this chapter do not preclude any person from seeking other remedies allowed by law. This chapter does not apply to the operation, maintenance, or use of a motor vehicle upon the highways of this state as these terms are defined in section 39-01-01.



NORTH DAKOTA OIL FACTS

Did You Know?

- ▶ **North Dakota is the fourth largest oil producing state.** The state's average production in 2009 was more than 218,000 barrels of oil per day, totaling nearly 80 million barrels for the year, up more than 17 million from 2008.
- ▶ All-time production of crude oil in North Dakota amounts to more than 1.7 billion barrels.
- ▶ At the end of 2009, there were 5,200 wells capable of producing oil and gas in North Dakota. The average North Dakota well produced approximately 47 barrels per day.
- ▶ During 2009, **92.5 billion cubic feet of natural gas were produced** and 56.4 billion cubic feet of natural gas were processed in North Dakota.
- ▶ The drilling rig count, a prime barometer for measuring new oil and gas activity, averaged 52 rigs a day in 2009. The peak year for drilling rigs was 1981, with an average monthly rig count of 119. The all-time high was in October of 1981, with 146 operating rigs.
- ▶ There were 627 drilling permits issued during 2009, down 319 from 2008. Approximately 517 wells were completed in 2009.
- ▶ **Horizontal, or directional, drilling accounted for 95% of the new wells drilled in 2009** and 84.7% of the state's total oil production.
- ▶ The success ratio for new wells in existing fields in 2009 was 99% and for wildcat wells was 94%. A wildcat well is a new well drilled at least one mile from existing production. The overall industry success rate for new wells in North Dakota for 2009 was 98%.
- ▶ The deepest vertical well drilled in North Dakota in 2008 was 13,805 feet. **The average depth for a North Dakota well in 2009 was 17,035.** The longest horizontal well drilled in North Dakota in 2008 was 22,174 feet.



- ▶ The average cost of completing an oil well in North Dakota was approximately **\$5.6 million** during 2009. The average cost of completing a well in 2008 was about \$5.4 million.
- ▶ There were **17 counties in the state in 2009 with commercial oil production**. Oil and gas exploration has occurred at some point in every county in the state except Traill County.
- ▶ **Mountrail County** was the top-producing county in 2009, accounting for 37% of the state's oil production. The other top-producing counties were Bowman, McKenzie, Dunn and Williams.

Employment

- ▶ The state averaged more than **5,508 North Dakotans** at work in the oil patch in fiscal year 2008-09. Peak oil field employment occurred in late 1981, when more than 10,000 people were working in the oil patch.
- ▶ **Each drilling rig results in approximately 120 direct and indirect jobs.**
- ▶ Other sectors of the petroleum industry include refineries, gas plants, pipelines, retail gasoline stations, wholesalers, and transporters. The industry altogether employed approximately 12,747 people in North Dakota during fiscal year 2008-09.
- ▶ In 2008, Job Service North Dakota reported the average yearly wage in the oil and gas extraction industry was **\$82,803**. That wage is 132.5% above the statewide average wage of \$35,618.

Oil Tax Revenues

- ▶ Production tax revenues for 2009 were more than \$392.9 million, representing a 25% decrease from 2008.
- ▶ Over the past 57 years, **the State of North Dakota has received more than \$791 million from oil and gas leases, bonuses, royalties and rentals on state land**. During 2009, more than \$36.4 million went to the Lands and Minerals Trust and more than \$120 million to the Board of University and School Lands Trust.
- ▶ U.S. Forest Service administered lands in the Little Missouri National Grasslands provided federal oil and gas revenues of \$34,184,078 during fiscal year 2009. Of that amount, one fourth, or \$8,546,019, was returned to McKenzie, Billings, Golden Valley and Slope Counties for schools and roads. In addition, Bureau of Land Management administered land produced \$54,067,250 during fiscal year 2009. Approximately half of that amount, \$26,492,948 (adjusted for new receipts sharing), was returned to the state's general fund and is the first money expended for education statewide.