

SENATE BILL NO. 2211

Introduced by

Senators Bekkedahl, Dwyer, Unruh

Representatives Keiser, Porter

1 A BILL for an Act to create and enact a new subsection to section 61-33.1-03 of the North
2 Dakota Century Code, relating to the determination of the ordinary high water mark; and to
3 amend and reenact sections 61-33.1-04 and 61-33.1-05 of the North Dakota Century Code,
4 relating to the ownership of mineral rights of land inundated by Pick-Sloan Missouri basin
5 project dams.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1.** A new subsection to section 61-33.1-03 of the North Dakota Century Code is
8 created and enacted as follows:

9 Upon adoption of the final review findings by the industrial commission, the board of
10 university and school lands may contract with a qualified engineering and surveying
11 firm to analyze the final review findings and determine the acreage on a quarter-
12 quarter basis or government lot basis above and below the ordinary high water mark
13 as delineated by the final review findings of the industrial commission. The acreage
14 determination is final upon approval by the board.

15 **SECTION 2. AMENDMENT.** Section 61-33.1-04 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **61-33.1-04. Implementation. (Retroactive application - [See note](#))**

- 18 1. Within six months after the adoption of the ~~final review findings~~acreage determination
19 by the ~~industrial commission~~board of university and school lands:
- 20 a. Any royalty proceeds held by operators attributable to oil and gas mineral tracts
21 lying entirely above the ordinary high water mark of the historical Missouri
22 riverbed channel on both the corps survey and the state phase two survey must
23 be released to the owners of the tracts, absent a showing of other defects
24 affecting mineral title; and

- 1 b. Any royalty proceeds held by the board of university and school lands attributable
2 to oil and gas mineral tracts lying entirely above the ordinary high water mark of
3 the historical Missouri riverbed channel on both the corps survey and the state
4 phase two survey must be released to the relevant operators to distribute to the
5 owners of the tracts, absent a showing of other defects affecting mineral title.
- 6 2. Upon adoption of the ~~final review findings~~acreage determination by the ~~industrial-~~
7 ~~commission~~board of university and school lands:
- 8 a. The board of university and school lands ~~may contract with a qualified-~~
9 ~~engineering and surveying firm to analyze the final review findings and determine-~~
10 ~~the acreage on a quarter-quarter basis or government lot basis above and below-~~
11 ~~the ordinary high water mark as delineated by the final review findings of the-~~
12 ~~industrial commission. The acreage determination is final upon approval by the-~~
13 ~~board. After approving the acreage determination, the board~~ shall begin to
14 implement any acreage adjustments, lease bonus and royalty refunds, and
15 payment demands as may be necessary relating to state-issued oil and gas
16 leases. The board shall complete the adjustments, refunds, and payment
17 demands within two years after ~~the date of adoption of the final review-~~
18 ~~findings~~approving the acreage determination.
- 19 b. Operators of oil and gas wells affected by the ~~final review findings~~final acreage
20 determination immediately shall begin to implement any acreage and revenue
21 adjustments relating to state-owned and privately owned oil and gas interests.
22 The operators shall complete the adjustments within two years after the ~~date of~~
23 ~~adoption of the review findings~~the board approves the acreage determination.
24 Any applicable penalties, liability, or interest for late payment of royalties or
25 revenues from an affected oil or gas well may not begin to accrue until the end of
26 the two-year deadline. The filing of an action under section 61-33.1-05 tolls the
27 deadline for any oil and gas well directly affected by the action challenging the
28 review finding or final acreage determination.

29 **SECTION 3. AMENDMENT.** Section 61-33.1-05 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **61-33.1-05. Actions challenging review findings or final acreage determinations.**

2 **(Retroactive application - [See note](#))**

3 1. An interested party seeking to bring an action challenging the review findings or
4 recommendations or the industrial commission actions under this chapter shall
5 commence an action in district court within two years of the date of adoption of the
6 final review findings by the industrial commission. The plaintiff bringing an action under
7 this section may challenge only the final review finding for the section or sections of
8 land in which the plaintiff asserts an interest. The state and all owners of record of fee
9 or leasehold estates or interests affected by the finding, recommendation, or industrial
10 commission action challenged in the action under this section must be joined as
11 parties to the action. A plaintiff or defendant claiming a boundary of the ordinary high
12 water mark of the historical Missouri riverbed channel which varies from the boundary
13 determined under this chapter bears the burden of establishing the variance by clear
14 and convincing evidence based on evidence of the type required to be considered by
15 the engineering and surveying firm under subsection 3 of section 61-33.1-03.

16 2. An interested party seeking to bring an action challenging the final acreage
17 determination under this chapter shall commence an action in district court within two
18 years of the date the acreage determinations were approved by the board of university
19 and school lands. The plaintiff bringing an action under this section may challenge
20 only the acreage determination for the section or sections of land in which the plaintiff
21 asserts an interest. The state and all owners of record of fee or leasehold estates or
22 interests affected by the final acreage determination challenged in the action under
23 this section must be joined as parties to the action. A plaintiff or defendant claiming a
24 determination of the acreage above or below the historical Missouri riverbed channel
25 which varies from the final acreage determination under this chapter bears the burden
26 of establishing the variance by clear and convincing evidence based on evidence of
27 the type required to be considered by the engineering and surveying firm contracted
28 by the board of university and school lands under subsection 2 of section 61-33.1-04.

29 3. Notwithstanding any other provision of law, an action brought in district court under
30 this section is the sole remedy for challenging the final review, recommendations, ~~and~~
31 determination of the ordinary high water mark, and final acreage determination under

- 1 this chapter, and preempts any right to rehearing, reconsideration, administrative
- 2 appeal, or other form of civil action provided under law.