TESTIMONY

HOUSE BILL 1520

ENERGY AND NATURAL RESOURCES COMMITTEE

REPRESENTATIVE PORTER, CHAIRMAN

FEBRUARY 9, 2023

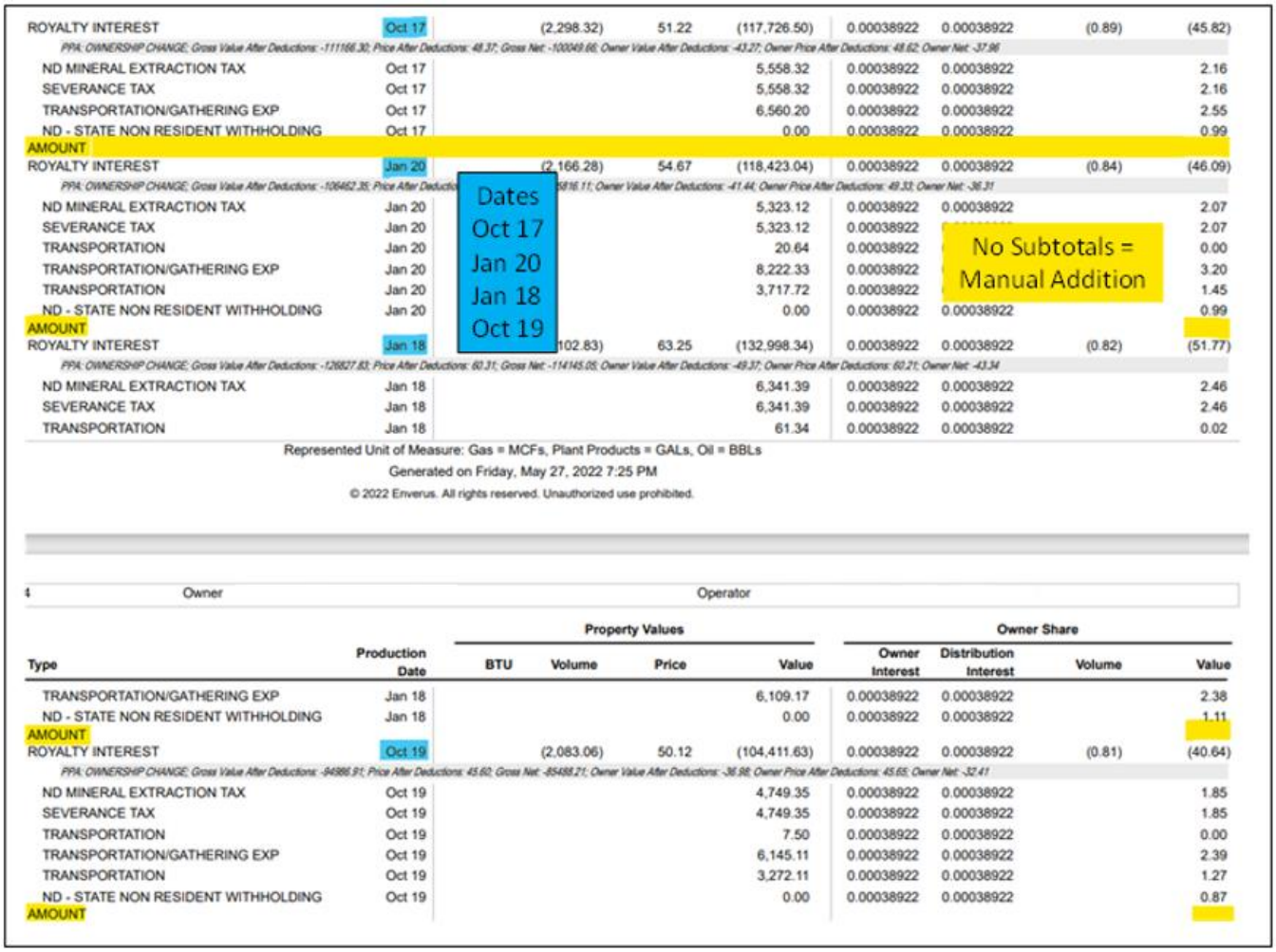
Chairman Porter, members of the Energy and Natural Resources Committee, thank you for the opportunity to testify before you today. My name is Shane Leverenz. I currently reside in Aubrey, TX and my family owns land and mineral rights in North Dakota. I am here in favor of House Bill 1520. My testimony will include examples to support each of the six provisions contained in the bill and provide background information for why royalty owners are asking for your support in passing House Bill 1520.

Section 1 is a new subsection that addresses the Industrial Commission and its jurisdiction in comparison to a district court. After researching this topic and reviewing several court cases and commission documents, I support this addition to section 38-08-04 of the North Dakota Century Code. A direct quote from a letter I received March 18, 2022, from the Department of Mineral Resources stated, “The Commission does not have jurisdiction to enforce lease terms, division orders, or other agreements regarding the payment of royalties; that jurisdiction lies with a district court.” In the North Dakota Supreme Court ruling for Schank v. North American Royalties, Inc. 201 N.W.2d 419 (1972), the Court stated, “Furthermore, the Industrial Commission is an administrative agency and, as such, is not empowered by the statutes to determine the legal relationship between a lessor and a lessee. This is a matter for the courts in an appropriate action.” Adding this section to the Century Code will minimize claims that a mineral owner has not exhausted administrative remedies by clearly defining where these disputes belong and save the courts, and the commission, time.

Section 2 will provide an immense help for royalty owners by providing electronic data and information they need to contact an operator. While every royalty check comes with an information

statement as required in section 38-08-06.3 of the North Dakota Century Code, it is far from helpful for many reasons which I will illustrate in a moment. Requiring a portable document format and comma-separated values file, more commonly known as a PDF and Excel CSV file, is essential for a royalty owner to analyze their payment information. Paper statements we have received have been hundreds of pages with over 14,000 lines of data covering adjustments that go back ten years.

To illustrate how difficult it can be for a royalty owner to understand whether they are being paid correctly, I have pasted a page from a statement we received to show some of the challenges.



ROYALTY INTEREST	Oct 17	(2,298.32)	51.22	(117,726.50)	0.00038922	0.00038922	(0.89)	(45.82)
PPA: OWNERSHIP CHANGE; Gross Value After Deductions: -111166.30; Price After Deductions: 48.37; Gross Net: -100049.68; Owner Value After Deductions: -43.27; Owner Price After Deductions: 48.62; Owner Net: -37.96								
ND MINERAL EXTRACTION TAX	Oct 17			5,558.32	0.00038922	0.00038922		2.16
SEVERANCE TAX	Oct 17			5,558.32	0.00038922	0.00038922		2.16
TRANSPORTATION/GATHERING EXP	Oct 17			6,560.20	0.00038922	0.00038922		2.55
ND - STATE NON RESIDENT WITHHOLDING	Oct 17			0.00	0.00038922	0.00038922		0.99
AMOUNT								
ROYALTY INTEREST	Jan 20	(2,166.28)	54.67	(118,423.04)	0.00038922	0.00038922	(0.84)	(46.09)
PPA: OWNERSHIP CHANGE; Gross Value After Deductions: -106462.35; Price After Deductio		5816.11; Owner Value After Deductions: -41.44; Owner Price After Deductions: 49.33; Owner Net: -36.31						
ND MINERAL EXTRACTION TAX	Jan 20			5,323.12	0.00038922	0.00038922		2.07
SEVERANCE TAX	Jan 20			5,323.12	0.00038922			2.07
TRANSPORTATION	Jan 20			20.64	0.00038922			0.00
TRANSPORTATION/GATHERING EXP	Jan 20			8,222.33	0.00038922			3.20
TRANSPORTATION	Jan 20			3,717.72	0.00038922			1.45
ND - STATE NON RESIDENT WITHHOLDING	Jan 20			0.00	0.00038922	0.00038922		0.99
AMOUNT								
ROYALTY INTEREST	Jan 18	102.83)	63.25	(132,998.34)	0.00038922	0.00038922	(0.82)	(51.77)
PPA: OWNERSHIP CHANGE; Gross Value After Deductions: -126827.83; Price After Deductions: 60.31; Gross Net: -114145.05; Owner Value After Deductions: -49.37; Owner Price After Deductions: 60.21; Owner Net: -43.34								
ND MINERAL EXTRACTION TAX	Jan 18			6,341.39	0.00038922	0.00038922		2.46
SEVERANCE TAX	Jan 18			6,341.39	0.00038922	0.00038922		2.46
TRANSPORTATION	Jan 18			61.34	0.00038922	0.00038922		0.02

Represented Unit of Measure: Gas = MCFs, Plant Products = GALs, Oil = BBLs

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4 Owner Operator

Type	Production Date	Property Values BTU	Volume	Price	Value	Owner Share Owner Interest	Distribution Interest	Volume	Value
TRANSPORTATION/GATHERING EXP	Jan 18				6,109.17	0.00038922	0.00038922		2.38
ND - STATE NON RESIDENT WITHHOLDING	Jan 18				0.00	0.00038922	0.00038922		1.11
AMOUNT									
ROYALTY INTEREST	Oct 19		(2,083.06)	50.12	(104,411.63)	0.00038922	0.00038922	(0.81)	(40.64)
PPA: OWNERSHIP CHANGE; Gross Value After Deductions: -94986.91; Price After Deductions: 45.60; Gross Net: -85488.21; Owner Value After Deductions: -36.98; Owner Price After Deductions: 45.65; Owner Net: -32.41									
ND MINERAL EXTRACTION TAX	Oct 19				4,749.35	0.00038922	0.00038922		1.85
SEVERANCE TAX	Oct 19				4,749.35	0.00038922	0.00038922		1.85
TRANSPORTATION	Oct 19				7.50	0.00038922	0.00038922		0.00
TRANSPORTATION/GATHERING EXP	Oct 19				6,145.11	0.00038922	0.00038922		2.39
TRANSPORTATION	Oct 19				3,272.11	0.00038922	0.00038922		1.27
ND - STATE NON RESIDENT WITHHOLDING	Oct 19				0.00	0.00038922	0.00038922		0.87
AMOUNT									

This is one of 98 pages for the payment on a single well that had adjustments that spanned nearly eight years from May 2014 through March 2022.

The blue highlighted box is to call attention to how the production dates are not in any sort of chronological order which forces you to search page by page for other adjustments tied to the same date. On this particular check there were multiple adjustments related to oil production in October 2017. These adjustments appeared on pages 39, 53, 62, 75 and 76 with no apparent rhyme or reason for being scattered throughout the statement. If this data were provided in an Excel format it would take seconds to sort the data by the date and see exactly what all the adjustments were.

The yellow highlighted areas illustrate how there is no total included for each date of production so those figures would need to be manually calculated by the royalty owner. I point these things out to illustrate how time consuming it is to reconcile the information statement and how unrealistic it is to expect a royalty owner to be subject to manually calculating the data contained on paper copies in today's digital age.

Most operators have moved their reporting to a third party such as EnergyLink where costs to download an Excel file can be $80 or more for each statement. These reports were available free of charge from many oil companies in the past. The North Dakota Trust Lands Revenue Compliance Division stipulates that the only accepted form for submitting royalty data is Excel. There is no reason the industry should oppose providing royalty data to private mineral owners in Excel as well. We should not have to pay an oil company, or their third-party administrator, for our royalty data so we can determine what is included in our payment and verify it is accurate.

The second request in this section is the requirement for an operator to provide their contact information to the commission and royalty owners. Unfortunately, it is not as easy as it should be to find contact information for many companies. Lynn Helms, Director, North Dakota Industrial Commission Department of Mineral Resources, in his testimony for Senate Bill 2194 on January 20, 2023, made the following statement regarding requests from mineral owners, "The most common

concern is the inability to find and maintain a consistent and helpful contact within the operator's mineral owner department."

Recently I sent certified mail with a return receipt on three separate occasions to a company only to have each letter returned to me as undeliverable. The address that was on paperwork filed with the commission, which was found in the well file located on the Department of Mineral Resources website, should have been valid. I spoke with someone at the Department of Mineral Resources who told me that the department also struggles with obtaining valid contact information for some companies. I am definitely in favor of adding a penalty for any company that does not maintain valid contact information with the department and specifying that they must make the information available to the commission.

Section 3 relates to the verification of a royalty owners' interest in a well and the calculation used by the operator to pay the correct amount of royalty for the oil and gas produced. When a royalty owner finds a discrepancy in the decimal interest being paid, they must have a way of contacting the company to resolve the dispute which is another reason it is important to require the contact information contained in Section 2 of the bill. I have spent the past several years working through decimal interest disputes with many companies. There are some companies that are very easy to work with and willing to update their records when they realize the title work that was completed when the well was drilled was incorrect. But there are many more companies that have shown little interest in resolving a valid dispute and either will not answer a request or will not provide information even when you have provided copies of every deed recorded back to the patent for the mineral rights you own. Below are portions of correspondence with various companies:

- "I really have no other information to give you. **We are not obligated to mail each owner a calculation as to how their interest was calculated**,"

- "**I apologize that only the WI owners seemed to be in the loop in regard to the allocation, but there is not more I can tell you**, except the acreage noted when the allocation well was set up."
- "There is no spreadsheet to provide. **The computer took separate wells that were already set up, and pulled in certain percentages and created the numbers for us.**"
- "If you're still under the impression that the acres are wrong, **we would have to know who we need to be taking acres "away from" in order to give it to you**"

Companies have the information that was used to calculate the interest for a royalty owner. When there is a dispute over the decimal interest being paid, they should provide the relevant information to the royalty owner so the issue can be resolved amicably. When companies are unwilling to do so it creates distrust because there is no transparency. If a mineral owner's only recourse is to take the matter to court and the court finds information was wrongfully withheld, then the court should have the ability to assess a penalty.

The final request in this section is equally important. There are three components to determining the decimal interest used to pay a royalty. The number of mineral acres owned, the percentage agreed to on the lease and the spacing unit determined by the commission. A royalty owner is responsible for knowing what acres they own and the lease they signed but they have no control or input over the spacing unit even though that must be known to calculate their interest. The Department of Mineral Resources maintains a robust website that has an incredible amount of information. However, there are essential pieces of information that are not accessible unless a subscription is paid for. This includes the spacing unit and any orders or cases that the commission used in determining the spacing unit. An individual mineral owner should not be required to pay for access to this information because without it they have no way of verifying if they are being paid correctly. The Department of Mineral Resources told me that the legislature approved charging a fee in

1985. I have not been able to find that information but believe the fee would be appropriate for accessing certain portions of the website though not appropriate for the spacing information.

Section 4 is a straightforward request to hold industry accountable for paying the royalties they owe in a timely manner as defined in Section 47-16-39.1 of the North Dakota Century Code. Something that should be taken for granted is painfully not adhered to by many companies. The requirement is for companies to pay interest on unpaid royalties without the mineral owner having to request the interest be paid. Not only do companies fail to comply with this requirement, they outright ignore making the interest payment when they are asked to do so. Hiring an attorney to send a demand letter to a company requesting the payment of interest can cost more than the interest that is owed. And taking the matter to court is even more expensive. For these reasons, I agree with the language stipulating that the mineral owner is entitled to recover court costs and reasonable attorney's fees if the company chooses to ignore what they are required to do so there will be a consequence for not complying with the statute.

In Section 5 there is a simple requirement for records to be sent electronically upon request if a royalty owner asks to inspect the oil and gas production and royalty payment records. It also adds a provision for a penalty if the district court finds a company did not comply with the requirements. This additional language for the benefit of royalty owners matches the same protections afforded the board of university and school lands in subsections 3 and 4 which was passed by the legislature in the 2019 session as Senate Bill 2212. Since the industry is required to provide records electronically to the state, there should be no hardship for them to provide the same information to those of us that own mineral rights in North Dakota. As for the penalty provision, Chair Unruh stated in the 2019 Senate Standing Committee Minutes, "Every other state has some type of penalty for these types of violations. I think

it's appropriate for us to have something in code." It would be appropriate to have something in code to protect individual mineral owners as well as the state, which is why I support this addition.

In Section 6 the bill adds the provision for a penalty when a company does not comply with the requirement to provide information to the royalty owner to help resolve spacing unit ownership disputes. My support for this portion of the bill is to provide a consequence for noncompliance as mentioned in earlier sections. With this addition, the court will determine what the fine should be for wrongfully withheld information.

I want to leave the committee with some final thoughts. In 1983 the legislature was asked for the first time to require that certain information be provided on royalty statements. There were some comments captured in the minutes related to that bill that I feel are important to share with the committee today. In a Letter from Shell Oil Company to Allen I. Olson, Governor, State of North Dakota, "Testimony offered by Representative Jack Murphy and other royalty owners at the hearing indicated that their main concern was the lack of meaningful communication between the royalty owner and producer when the royalty owner posed a question regarding his royalty payment. Representative Murphy testified that many times he would have to wait long periods of time for a response to his royalty-related inquiries and, in some instances, he testified he never received a reply." Royalty owners still face this same issue today. I would submit to the committee that the reason for this dilemma is the absence of any consequences or remedies when an oil company chooses to ignore current statutes. Adding a penalty to the century code will make it difficult for a company to ignore these statutes in the future.

In a Letter from Rocky Mountain Oil & Gas Association, Inc., "Until recently, the industry had perceived North Dakota as a state which welcomed exploration and development of this and other industries. Unfortunately, the regulations being considered now by the Industrial Commission further

damage this perception and will, I fear, have a further chilling effect in the consideration of North Dakota as a choice for exploration whenever alternatives exist. …..many purchasers will find the paperwork to be unjustified, and….will undoubtedly direct their crude oil purchases out of State. Secondly, the expense of maintaining these per well records, will undoubtedly result in the decision to eliminate purchases of small quantities from stripper and marginal wells with the result we predict with certainty the plugging of many of these wells, with the resultant loss of production and loss of tax revenue to the State as well as income to the royalty owner."

The oil industry did not plug wells or cease production in the state because they were required to provide information to royalty owners in 1983 and they will not do so if the initial version of House Bill 1520 passes in this session. If industry representatives testify in opposition to House Bill 1520 today, or in future hearings, I hope you will question their reasons for doing so because similar requirements are already in the Century Code or required by the board of university and school lands. The individuals who own mineral rights in North Dakota respectfully ask you to provide the same rights to verify their royalty payments that the state has given itself.

Finally, there have been several occasions during hearings or on the floor when legislators have commented that royalty owners should simply settle disputes in court. This is a baffling response considering the overwhelming advantage a multibillion-dollar corporation has over an ordinary royalty owner in North Dakota. I would hope that in the future, legislators would keep in mind that numerous families own their mineral rights because they homesteaded in North Dakota or were farmers and ranchers that settled in western North Dakota decades ago. There may be some Jed Clampetts that could pack up the family and move to Beverly Hills but for many of the rest who may receive a few hundred or few thousand dollars a year from royalties it would cost them far more in attorney fees

than they are paid to take an oil company to court. Passing House Bill 1520 will provide royalty owners access to their information, so they do not need to go to court to request it.

Thank you for the opportunity to present testimony today. I welcome any questions the committee may have, and I ask for your favorable consideration of House Bill 1520.