3-27-2025

Testimony of Troy Coons on behalf of
Northwest Landowners Association
in opposition to
HOUSE BILL NO. 1459
Senate Energy and Natural Resources Committee
March 20, 2025

Chairman Patten and members of the committee, thank you for taking my testimony into consideration today.

My name is Troy Coons and I am the Chairman of the Northwest Landowners Association. Northwest Landowners Association represents hundreds of farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

We oppose HB 1459 because several provisions of this bill are unconstitutional. Our general legal counsel from the Braaten Law Firm reviewed the legislation and relevant law, and concluded that if HB 1459 "is enacted, it will be a massive unconstitutional taking of property and rights from North Dakota mineral owners and will subject the State to liability not only for passing an unconstitutional statute, but potentially a significant financial liability. Takings claims will likely be brought against the state for the lost revenues from mineral owners." I have attached to my testimony a legal memo explaining the constitutional problems with this bill.

We have always supported development and we do that through private contracts negotiated freely between the parties. This bill takes away our freedom to contract and imposes a contract on us we will not accept. The law is unconstitutional, and unAmerican. We oppose HB 1459 as an unconstitutional law and ask you for a do not pass recommendation.

Thank you,

Troy Coons
Northwest Landowners Association

NWLA Legal Memo re: Unconstitutionality of HB 1459

This memorandum contains the opinions of NWLA and its legal counsel regarding the unconstitutionality of House Bill 1459.

Legislatures cannot enact laws that impair contracts. The right to contract and the sanctity of existing contracts is protected by both the United States and North Dakota constitutions. "No State shall . . . pass any . . . Law impairing the Obligation of Contracts." U.S. Const. Art. I, § 10. "No law impairing the obligations of contracts shall ever be passed." N.D. Const. Art. I, § 10.

In at least three places, House Bill 1459 will impair coal leases issued by North Dakota landowners:

- Declaring that coal mining and coal leases include—whether or not the parties to the mining or lease had any such intent—"all critical minerals and rare earth minerals, unless specifically excluded by the lease."[1]

- Declaring that the coal owner's royalty on critical and rare earth minerals is two and one-half percent of the "net profits" mined and sold—even if the lease has no royalty provision for these minerals and even if the royalty rate in the lease is higher than two and one-half percent.[2]

- Declaring that a coal lease includes—even if the landowner issuing the lease had no such intent—critical and rare earth minerals found within a coal seam or deposit, unless such minerals were specifically excluded from the lease.[3]

In the applying the federal Contract Clause, the U.S. Supreme Court considers whether "the change in state law has operated as a substantial impairment of a contractual relationship."[4] Because the bill would define with finality what substances a lease covers without regard to what the parties to the lease intended and what royalty is to be paid without regard to, among other things, the lease's actual royalty rate, the bill strikes at the two fundamental features of any mineral lease, what it covers and what royalty the mineral owner is to receive. The substantial impairment is plain.

In addition to the contract clauses, the bill implicates the due process clauses in the federal and state constitutions, which prohibit the loss of rights without due process, U.S. Const. amend. XIV;

---

1 Page 3, lines 3-6 of HB 1459 (25.1038.02000).
2 Page 4, 14-21 of HB 1459 (25.1038.02000).
3 Page 7, lines 21-24 of HB 1459 (25.1038.02000).
4 *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 186 (1992) (internal quotes and citations omitted).

N.D. Const. Art. I, § 12, as well as the state constitution's prohibitions on giving "special privileges" and requiring "uniform operation" of general laws. N.D. Const. Art. I §§ 21, 22.[5]

The bill is not an abstract exercise. Coal leases are prevalent in North Dakota. It will affect hundreds of ongoing contractual relationships.

Whether these coal leases contain provisions granting "other minerals" or are limited to lignite coal, the scope of what the lease covers is an important interpretive question that must be answered based on the language of each lease, and done so by courts, not legislative fiat.

The North Dakota Supreme Court, in interpreting contracts, generally does not allow extrinsic evidence absent an ambiguity in the contract, whether that "evidence" is in a statute or otherwise.[6] The Court's contract interpretation standards, as well as the legislature's own standards set out in Chapter 9-07 of Century Code, make no room for statutes to masquerade as interpretive aids, as House Bill 1459 pretends to do.

The bill, if enacted, would *rewrite* all existing coal leases to include additional minerals and set a royalty rate, even if there was no mention of any of this by the parties to the lease.; and, furthermore, set a specific royalty rate in all future leases; even if the parties wanted a higher or lower one! These are astounding impairments of the right to contract. They purport to rewrite the contracts as a matter of law, regardless of whether the lease language or the parties' intent supports doing so. This would, in addition, prevent all mineral owners under those leases from signing new leases for developing critical and rare earth minerals, which is the real purpose of the legislation – to transfer mineral rights from mineral owners to developers, and do so retroactively.

If the bill is enacted, it will be a massive unconstitutional taking of property and rights from North Dakota mineral owners and will subject the State to liability not only for passing an unconstitutional statute, but potentially a significant financial liability. Takings claims will likely be brought against the state for the lost revenues from mineral owners.

The fate of House Bill 1459 will likely be the same—found unconstitutional—as that of a bill enacted by the 2019 legislature that sought to deprive landowners of their rights to underground pore space.[7]

---

5 *See, e.g. Christman v. Emineth*, 212 N.W.2d 543, 556 (N.D. 1973).

6 *Hallin v. Inland Oil & Gas Corp.*, 2017 ND 254, ¶ 15, 903 N.W.2d 61, 66 ("...it is unnecessary to go beyond the leases to discern the parties' intent. [The parties] have provided extrinsic evidence in the form of payment drafts purporting to show the parties' intent relating to the number of acres leased; however, because the leases are clear and unambiguous, that evidence is inadmissible to explain the leases."). *See also id.* ("When a contract's language is plain and unambiguous and the parties' intentions can be ascertained from the writing alone, extrinsic evidence is not admissible to alter, vary, explain, or change the contract. . . . If a contract is ambiguous, extrinsic evidence may be considered to determine the parties' intent, and the contract terms and parties' intent become questions of fact.").

7 *Northwest Landowners Ass'n v. State*, 2022 ND 150, 978 N.W.2d 150.