2021 SENATE FINANCE AND TAXATION

SB 2217

2021 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2217
2/8/2021

A BILL for an Act to create and enact section 47-16-39.5 of the North Dakota Century Code, relating to oil and gas royalty leases, negative royalties, and arm's length transactions; and to provide a penalty.

Chair Bell calls the meeting to order. Chair Bell, Vice Chair Kannianen, Senators Meyer, J. Roers, Patten, Piepkorn, Weber are present. [10:00]

Discussion Topics:
- Post production costs
- Arm length and non-arm length transactions
- Audit
- Oil leases agreements
- Royalty payment deductions
- Taxes

Senator Bekkedahl, [10:01] City of Williston and ND Senate, introduces the bill, provides an amendment [LC 21.0130.03003] in favor #5743 and 5842.

Robert Skarphol, [10.06] Private Citizen, Founder-Registered Lobbyist, Williston Basin Royalty Owners Association in favor #5684 and 5685.

Mary Ellen Denomy, [10:45] CPA, Expert/Lobbyist, Williston Basin Royalty Owners Association in favor #5683.

Ron Ness, [10:59] President, North Dakota Petroleum Council in opposition #5840

Todd Kranda, [11:10] Lobbyist/Attorney, Kelsch Ruff Kranda Nagle & Ludwig Law Firm – North Dakota Petroleum Council in opposition #5738.

Todd Slawson, [11:19] President, Slawson Exploration Company, Inc in opposition #5831.

Barry Biggs, [11:56] Vice-President, Hess Corporation in opposition #5826.

Jeff Herman, [12:18] Land Manager, Petro Hunt orally in opposition.

Kent Blickensderfer, [12:21] KPB Consulting LLC representing Continental Resources orally in opposition.

Additional written testimony:

Holly Camilli, Vice President, XTO Energy Inc. in opposition #5823.

Taylor Reid, President and COO, Oasis Petroleum in opposition #5829.

Chair Bell adjourns the meeting. [12:24]

Joel Crane, Committee Clerk

#5743

Senate Finance and Taxation Committee

Honorable Senator Bell, Chair

SB 2217 February 8, 2021 Senator Brad Bekkedahl, District 1

Chair Bell and Committee Members,

SB 2217 is a bill that was requested to be submitted by oil and gas royalty owners. In the 2019 Session, study language was passed that would have had public hearings on royalty issues as well as industry input during the interim. Unfortunately, Legislative Management did not select this for an interim committee review subject. This bill seeks to address some of the issues that could have been reviewed in that process. With the introduction of this bill, it is hoped the result will be improved transparency and communication between industry operators and their royalty owners. Chair Bell, I appreciate you and your committee for providing this public hearing opportunity, taking testimony, and considering the bill before you.

I will now concisely lay out the provisions of the bill before you today. The bill begins in Section 1 with key word definitions that are used in context in subsequent sections. Section 2 is a provision that seeks to clarify when postproduction costs from royalty owners can and cannot be assessed. Section 3 differentiates between when arms-length and non-arms-length transactions occur and consequent pricing issues. Section 4 deals with limiting postproduction deductions to no more than the value of the product sold that month and a corresponding violation provision. Section 5 is an audit provision that upon proper request grants access to operator records for a royalty owner and stipulates that the burden for any requested audit be borne by that royalty interest owner. Section 6 sets out penalty provisions for a non-compliant party, including being subject to a civil penalty and allowing for recovery of underpaid royalties and potentially other expenses incurred.

Before completing my testimony, I would like to provide the committee with an amendment to section 3 of the bill that puts into better context that provision and recommends language for pricing in transactions that are determined to not be at arms-length between parties. Agreeing to this amendment puts the entire bill in the form it was intended. I request your consideration of the amendment prior to final consideration of the bill.

Chair Bell and Committee, I have sincerely appreciated the input and cooperation extended to me from both the royalty owners and the industry representatives in this bill discussion. I look forward to further input and the committee deliberation on these relevant matters. I will stand now for committee questions if there are any I can answer, understanding I may defer to others present if needed.

21.0130.03003
Title.

Prepared by the Legislative Council staff for
Senator Bekkedahl
February 3, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2217

Page 2, line 9, remove "The sale value upon which a royalty or overriding royalty is calculated must be based"

Page 2, remove lines 10 and 11

Page 2, line 12, replace "unless the oil and gas lease or overriding royalty contract explicitly allows otherwise" with "An oil and gas operator that does not sell minerals to an arm's-length purchaser shall use a published index price to value the minerals. The index price used must be one that is readily and publicly available to the oil and gas industry and reflects the closest indices to the production of the minerals. If an oil and gas operator makes any arms-length sales, the weighted average price received for any sales within the state must be used. If an arms-length sale is not made, the closest index price must be used to value the minerals and identified on the remittance to the royalty owner"

Renumber accordingly

Sixty-seventh
Legislative Assembly
of North Dakota

SENATE BILL NO. 2217

Introduced by

Senators Bekkedahl, Dwyer, Kannianen

Representatives Brandenburg, Kempenich, Zubke

1 A BILL for an Act to create and enact section 47-16-39.5 of the North Dakota Century Code,
2 relating to oil and gas royalty leases, negative royalties, and arm's length transactions; and to
3 provide a penalty.

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

5 **SECTION 1.** Section 47-16-39.5 of the North Dakota Century Code is created and enacted
6 as follows:

7 **47-16-39.5. Definitions - Royalty lease - Penalty.**

8 1. As used in this section:

9 a. "Arm's length transaction" means a transaction between parties with adverse
10 economic interests in which each party to the transaction is in a position to
11 distinguish its economic interest from that of the other party. The term does not
12 include a transaction made:

13 (1) By a corporation or other entity with itself, or a parent, subsidiary, or
14 interrelated corporation or entity;

15 (2) Between partners or co-joint venturers; or

16 (3) Between corporations or other entities having interlocking directorships or
17 close business relationships that may compromise their individual interests.

18 b. "Overriding royalty" means a right to oil, gas, and other minerals in place or as
19 produced which entitles the owner of the right to a specified fraction of production
20 without limitation to a specified amount of money or a specified number of units
21 of oil, gas, or other minerals.

22 c. "Royalty" means the mineral owner's share of production.

d. "Royalty owner" means a person that owns a royalty interest and is entitled to receive periodic royalty payments for a nonworking interest in the production of oil or gas or in the severance of other minerals from the mineral estate.

2. Except for taxes imposed under chapters 57-51 and 57-51.1, the deduction of postproduction costs from royalty payments is prohibited unless the lease contract explicitly allows for the deduction of postproduction costs. If an overriding royalty contract explicitly allows for the deduction of postproduction costs, the deduction only applies to the overriding royalty interest fraction.

3. ~~The sale value upon which a royalty or overriding royalty is calculated must be based upon an arm's length transaction. A non-arm's length transaction or a transaction in which a seller retains an interest beyond the purported sales point are disregarded unless the oil and gas lease or overriding royalty contract explicitly allows otherwise~~An oil and gas operator that does not sell minerals to an arm's-length purchaser shall use a published index price to value the minerals. The index price used must be one that is readily and publicly available to the oil and gas industry and reflects the closest indices to the production of the minerals. If an oil and gas operator makes any arm's-length sales, the weighted average price received for any sales within the state must be used. If an arm's-length sale is not made, the closest index price must be used to value the minerals and identified on the remittance to the royalty owner.

4. If a lease allows for deductions, the costs deducted from royalty or overriding royalty income may not exceed the income earned from the wells for the corresponding production month for the specific product. Costs in excess of income from a specific production month may not be carried forward or backward to any other production month. A violation of this subsection is a class B misdemeanor.

5. A royalty owner or overriding royalty owner may audit the records of the oil and gas operator obligated to pay royalties under the lease for compliance with the requirements of this section. Any audited records must be provided in accordance with section 47-16-39.2. The costs of auditing must be paid by the royalty or overriding royalty owner requesting the audit and the operator shall make all reasonable accommodations to provide documentation to verify the income and costs reflected in the royalty owner and overriding royalty owner payments.

1 6. A noncompliant party that violates this section is guilty of a class B misdemeanor for
2 each violation and is subject to a civil penalty. If the royalty owner or the royalty
3 owner's designated representative is successful in a proceeding brought under this
4 section, the district court shall allow the royalty owner or the royalty owner's
5 designated representative to recover all underpaid royalties, court costs, reasonable
6 costs, fees, disbursements, reasonable attorney's fees, and expenses incurred by the
7 royalty owner or the royalty owner's designated representative from the party obligated
8 to pay royalties under the lease. The district court also shall assess a civil penalty not
9 exceeding ten thousand dollars for each violation of this section.

#5684

DEDUCTIONS FROM
HESS BAKKEN INVESTMENTS
BEAVER LODGE ROYALTY OWNERS
SINCE 2004

MASTER LIMITED PARTNERSHIPS
AFFILIATED AGREEMENTS

Year	"Other Deduction" as a % of Gross Royalty	Taxes as % of Gross Royalty	Total Deductions %	Source-IRS
2004	0.000		5.620	1099
2005	0.000		5.620	1099
2006	0.000		7.190	1099
2007	0.000		9.920	1099
2008	0.000		9.200	1099
2009	5.790	3.290	9.080	1099
2010	2.666	9.054	11.720	1099
2011	2.217	8.908	11.125	1099
2012	1.845	10.161	12.006	1099
2013	2.451	9.463	11.915	1099
2014	2.615	10.301	12.917	1099
2015	20.675	7.039	27.714	1099
2016	35.533	6.533	42.066	1099
2017	37.480	5.832	43.312	1099
2018	29.895	6.437	36.332	1099
2019	34.800	6.420	41.220	1099
2020	37.060	4.520	41.580	Monthly statements

ROYALTY INTEREST PDF

DIANA SKARPHOL
PO BOX 725
TIOGA ND 58852-0725

HESS BAKKEN INVESTMENTS II, LLC
P.O. BOX 2040
HOUSTON, TX 77252
Owner Inquiry Toll Free
1-844-275-4377

CHECK NUMBER E009173711
CHECK AMOUNT [illegible]
CHECK DATE 5/25/19

OWNER # [illegible]
TAX ID / SS#

PROP/ST/CTY			GROSS INTEREST						OWNER INTEREST					
PROD MNTH	PROD CODE	TX	GROSS VOLUME	$ PRICE	$ GROSS VALUE	$ TAXES	$OTHER DEDUCTION	$ NET VALUE	DISB. DECIMAL	INT TYPE	$GROSS VALUE	$ TAXES	$OTHER DED	$ NET VALUE
04/2019	100		0.40	65.4500	26.18	2.10	2.32	21.76	0.00027902	RI 02	0.01	0.00	0.00	0.01
								PROPERTY SUB TOTAL			0.06	0.00	0.00	0.06
00100004	00087		BEAVER LODGE DEVON UT TR-0067			/ ND/ WILLIAMS			DOI		0.00781250			
04/2019	100		0.07	60.2857	4.22	0.33	0.34	3.55	0.00781250	RI 01	0.03	0.00	0.00	0.03
								PROPERTY SUB TOTAL			0.03	0.00	0.00	0.03
00100004	00138		BEAVER LODGE DEVON UT TR-0047			/ ND/ WILLIAMS			DOI		0.00223187			
10/2014	204		0.00	0.0000	0.00	103.19	412.52	515.71-	0.00223187	RI 01	0.00	0.23-	0.92-	1.15-
03/2019	204		0.04	0.0000	0.00	37.70	13,218.11	13,255.81-	0.00223187	RI 01	0.00	0.08-	4.87-	4.95-
03/2019	400		4,160.05	0.5687	2,365.84	0.00	145.80	2,220.04	0.00223187	RI 01	5.28	0.00	0.24-	5.04
								PROPERTY SUB TOTAL			5.28	0.31-	6.03-	1.06-
00100004	00139		BEAVER LODGE DEVON UT TR-0048			/ ND/ WILLIAMS			DOI		0.00195380			
10/2014	204		0.00	0.0000	0.00	103.09	412.10	515.19-	0.00195380	RI 01	0.00	0.20-	0.81-	1.01-
10/2014	204		0.00	0.0000	0.00	103.09	412.10	515.19-	0.00027912	RI 02	0.00	0.03-	0.12-	0.15-
03/2019	204		0.04	0.0000	0.00	37.66	13,204.71	13,242.37-	0.00195380	RI 01	0.00	0.07-	4.26-	4.33-
03/2019	204		0.04	0.0000	0.00	37.66	13,204.71	13,242.37-	0.00027912	RI 02	0.00	0.01-	0.61-	0.62-
03/2019	400		4,155.83	0.5687	2,363.44	0.00	145.65	2,217.79	0.00195380	RI 01	4.62	0.00	0.21-	4.41
03/2019	400		4,155.83	0.5687	2,363.44	0.00	145.65	2,217.79	0.00027912	RI 02	0.66	0.00	0.03-	0.63
								PROPERTY SUB TOTAL			5.28	0.31-	6.04-	1.07-
00100004	00140		BEAVER LODGE DEVON UT TR-0049			/ ND/ WILLIAMS			DOI		0.00195460			
10/2014	204		0.00	0.0000	0.00	104.08	416.06	520.14-	0.00195460	RI 01	0.00	0.20-	0.81-	1.01-
10/2014	204		0.00	0.0000	0.00	104.08	416.06	520.14-	0.00027923	RI 02	0.00	0.03-	0.12-	0.15-
03/2019	204		0.04	0.0000	0.00	38.03	13,331.66	13,369.69-	0.00195460	RI 01	0.00	0.07-	4.30-	4.37-
03/2019	204		0.04	0.0000	0.00	38.03	13,331.66	13,369.69-	0.00027923	RI 02	0.00	0.01-	0.61-	0.62-
03/2019	400		4,195.78	0.5687	2,386.16	0.00	147.05	2,239.11	0.00195460	RI 01	4.66	0.00	0.21-	4.45
03/2019	400		4,195.78	0.5687	2,386.16	0.00	147.05	2,239.11	0.00027923	RI 02	0.67	0.00	0.03-	0.64
								PROPERTY SUB TOTAL			5.33	0.31-	6.06-	1.06-
00100004	00141		BEAVER LODGE DEVON UT TR-0050			/ ND/ WILLIAMS			DOI		0.00146300			
10/2014	204		0.00	0.0000	0.00	104.59	418.10	522.69-	0.00146300	RI 01	0.00	0.15-	0.61-	0.76-
10/2014	204		0.00	0.0000	0.00	104.59	418.10	522.69-	0.00020900	RI 02	0.00	0.02-	0.09-	0.11-
03/2019	204		0.04	0.0000	0.00	38.21	13,396.93	13,435.14-	0.00146300	RI 01	0.00	0.06-	3.23-	3.29-
03/2019	204		0.04	0.0000	0.00	38.21	13,396.93	13,435.14-	0.00020900	RI 02	0.00	0.01-	0.46-	0.47-
03/2019	400		4,216.32	0.5687	2,397.84	0.00	147.77	2,250.07	0.00146300	RI 01	3.51	0.00	0.16-	3.35
03/2019	400		4,216.32	0.5687	2,397.84	0.00	147.77	2,250.07	0.00020900	RI 02	0.50	0.00	0.02-	0.48
								PROPERTY SUB TOTAL			4.01	0.24-	4.57-	0.80-
00100004	00155		BEAVER LODGE DEVON UT TR-0061			/ ND/ WILLIAMS			DOI		0.00183120			
10/2014	204		0.00	0.0000	0.00	91.91	367.41	459.32-	0.00183120	RI 01	0.00	0.17-	0.67-	0.84-
10/2014	204		0.00	0.0000	0.00	91.91	367.41	459.32-	0.00026158	RI 02	0.00	0.02-	0.10-	0.12-
03/2019	204		0.03	0.0000	0.00	33.58	11,772.75	11,806.33-	0.00183120	RI 01	0.00	0.06-	3.56-	3.62-
03/2019	204		0.03	0.0000	0.00	33.58	11,772.75	11,806.33-	0.00026158	RI 02	0.00	0.01-	0.51-	0.52-
03/2019	400		3,705.15	0.5687	2,107.14	0.00	129.86	1,977.28	0.00183120	RI 01	3.86	0.00	0.18-	3.68
03/2019	400		3,705.15	0.5687	2,107.14	0.00	129.86	1,977.28	0.00026158	RI 02	0.55	0.00	0.03-	0.52
								PROPERTY SUB TOTAL			4.41	0.26-	5.05-	0.90-
00100004	00156		BEAVER LODGE DEVON UT TR-0062			/ ND/ WILLIAMS			DOI		0.00098720			
10/2014	204		0.00	0.0000	0.00	28.38	113.46	141.84-	0.00098720	RI 01	0.00	0.03-	0.11-	0.14-
10/2014	204		0.00	0.0000	0.00	28.38	113.46	141.84-	0.00014101	RI 02	0.00	0.00	0.02-	0.02-
03/2019	204		0.01	0.0000	0.00	10.37	3,635.58	3,645.95-	0.00098720	RI 01	0.00	0.01-	0.59-	0.60-
03/2019	204		0.01	0.0000	0.00	10.37	3,635.58	3,645.95-	0.00014101	RI 02	0.00	0.00	0.08-	0.08-
03/2019	400		1,144.20	0.5687	650.71	0.00	40.10	610.61	0.00098720	RI 01	0.64	0.00	0.03-	0.61
03/2019	400		1,144.20	0.5687	650.71	0.00	40.10	610.61	0.00014101	RI 02	0.09	0.00	0.00	0.09
								PROPERTY SUB TOTAL			0.73	0.04-	0.83-	0.14-
00100004	00158		BEAVER LODGE DEVON UT TR-0064			/ ND/ WILLIAMS			DOI		0.00366220			
03/2019	400		2.82	0.5674	1.60	0.00	0.10	1.50	0.00366220	RI 01	0.01	0.00	0.00	0.01
								PROPERTY SUB TOTAL			0.01	0.00	0.00	0.01
00100004	00160		BEAVER LODGE DEVON UT TR-0067			/ ND/ WILLIAMS			DOI		0.00781250			
03/2019	204		0.00	0.0000	0.00	0.02	7.40	7.42-	0.00781250	RI 01	0.00	0.00	0.01-	0.01-
03/2019	400		2.33	0.5708	1.33	0.00	0.08	1.25	0.00781250	RI 01	0.01	0.00	0.00	0.01
								PROPERTY SUB TOTAL			0.01	0.00	0.01-	0.00

PRODUCT CODES: 1XX - OIL (BBLS) 2XX - GAS (MCF) 3XX - CONDENSATE (BBLS) 4XX - PLANT PRODUCTS (GALS) 5XX - JOINT VENTURE EXPENSES

ROYALTY INTEREST CSV

Heade	OwnerNu	CheckNum	CheckDate	PropNu	PropS	PropNar	Producti	Produ	TX	LeaseVo	Price	LeaseGr	LeaseTa	LeaseOtl	LeaseNe	Disburse	InterestT	Interest(	InterestT	IntrestO
1	14522601	E009173711	5/25/2019	100004	47	BEAVER L	42019	100		114.84	65.5159	7523.85	-601.51	-666.5	6255.84	0.002232	RI 01	16.79	-1.34	-1.44
1	14522601	E009173711	5/25/2019	100004	48	BEAVER L	42019	100		114.71	65.5237	7516.22	-600.93	-665.78	6249.51	0.001954	RI 01	14.69	-1.17	-1.26
1	14522601	E009173711	5/25/2019	100004	48	BEAVER L	42019	100		114.71	65.5237	7516.22	-600.93	-665.78	6249.51	0.000279	RI 02	2.1	-0.17	-0.17
1	14522601	E009173711	5/25/2019	100004	49	BEAVER L	42019	100		115.82	65.5196	7588.48	-606.7	-672.17	6309.61	0.001955	RI 01	14.83	-1.19	-1.26
1	14522601	E009173711	5/25/2019	100004	49	BEAVER L	42019	100		115.82	65.5196	7588.48	-606.7	-672.17	6309.61	0.000279	RI 02	2.12	-0.17	-0.17
1	14522601	E009173711	5/25/2019	100004	50	BEAVER L	42019	100		116.38	65.5235	7625.63	-609.66	-675.51	6340.46	0.001463	RI 01	11.16	-0.89	-0.96
1	14522601	E009173711	5/25/2019	100004	50	BEAVER L	42019	100		116.38	65.5235	7625.63	-609.66	-675.51	6340.46	0.000209	RI 02	1.59	-0.12	-0.14
1	14522601	E009173711	5/25/2019	100004	61	BEAVER L	42019	100		102.27	65.5239	6701.13	-535.74	-593.63	5571.76	0.001831	RI 01	12.27	-0.98	-1.05
1	14522601	E009173711	5/25/2019	100004	61	BEAVER L	42019	100		102.27	65.5239	6701.13	-535.74	-593.63	5571.76	0.000262	RI 02	1.75	-0.14	-0.15
1	14522601	E009173711	5/25/2019	100004	62	BEAVER L	42019	100		31.57	65.5496	2069.4	-165.44	-183.31	1720.65	0.000987	RI 01	2.04	-0.16	-0.16
1	14522601	E009173711	5/25/2019	100004	62	BEAVER L	42019	100		31.57	65.5496	2069.4	-165.44	-183.31	1720.65	0.000141	RI 02	0.29	-0.02	-0.01
1	14522601	E009173711	5/25/2019	100004	64	BEAVER L	42019	100		0.08	63.75	5.1	-0.42	-0.43	4.25	0.003662	RI 01	0.02	0	0
1	14522601	E009173711	5/25/2019	100004	65	BEAVER L	42019	100		3.26	65.4479	213.36	-17.05	-18.9	177.41	0.001953	RI 01	0.42	-0.03	-0.03
1	14522601	E009173711	5/25/2019	100004	65	BEAVER L	42019	100		3.26	65.4479	213.36	-17.05	-18.9	177.41	0.000279	RI 02	0.06	0	0
1	14522601	E009173711	5/25/2019	100004	66	BEAVER L	42019	100		0.4	65.45	26.18	-2.1	-2.32	21.76	0.001953	RI 01	0.05	0	0
1	14522601	E009173711	5/25/2019	100004	66	BEAVER L	42019	100		0.4	65.45	26.18	-2.1	-2.32	21.76	0.000279	RI 02	0.01	0	0
1	14522601	E009173711	5/25/2019	100004	67	BEAVER L	42019	100		0.07	60.2857	4.22	-0.33	-0.34	3.55	0.007813	RI 01	0.03	0	0
1	14522601	E009173711	5/25/2019	100004	138	BEAVER L	32019	204		0.04	0	0	-37.7	-13218.1	-13255.8	0.002232	RI 01	0	-0.08	-4.87
1	14522601	E009173711	5/25/2019	100004	138	BEAVER L	32019	400		4160.05	0.5687	2365.84	0	-145.8	2220.04	0.002232	RI 01	5.28	0	-0.24
1	14522601	E009173711	5/25/2019	100004	138	BEAVER L	102014	204		0	0	0	-103.19	-412.52	-515.71	0.002232	RI 01	0	-0.23	-0.92
1	14522601	E009173711	5/25/2019	100004	139	BEAVER L	32019	204		0.04	0	0	-37.66	-13204.7	-13242.4	0.000279	RI 02	0	-0.01	-0.61
1	14522601	E009173711	5/25/2019	100004	139	BEAVER L	32019	204		0.04	0	0	-37.66	-13204.7	-13242.4	0.001954	RI 01	0	-0.07	-4.26
1	14522601	E009173711	5/25/2019	100004	139	BEAVER L	32019	400		4155.83	0.5687	2363.44	0	-145.65	2217.79	0.001954	RI 01	4.62	0	-0.21
1	14522601	E009173711	5/25/2019	100004	139	BEAVER L	32019	400		4155.83	0.5687	2363.44	0	-145.65	2217.79	0.000279	RI 02	0.66	0	-0.03
1	14522601	E009173711	5/25/2019	100004	139	BEAVER L	102014	204		0	0	0	-103.09	-412.1	-515.19	0.000279	RI 02	0	-0.03	-0.12
1	14522601	E009173711	5/25/2019	100004	139	BEAVER L	102014	204		0	0	0	-103.09	-412.1	-515.19	0.001954	RI 01	0	-0.2	-0.81
1	14522601	E009173711	5/25/2019	100004	140	BEAVER L	32019	204		0.04	0	0	-38.03	-13331.7	-13369.7	0.001955	RI 01	0	-0.07	-4.3
1	14522601	E009173711	5/25/2019	100004	140	BEAVER L	32019	400		4195.78	0.5687	2386.16	0	-147.05	2239.11	0.001955	RI 01	4.66	0	-0.21
1	14522601	E009173711	5/25/2019	100004	140	BEAVER L	32019	400		4195.78	0.5687	2386.16	0	-147.05	2239.11	0.000279	RI 02	0.67	0	-0.03
1	14522601	E009173711	5/25/2019	100004	140	BEAVER L	102014	204		0	0	0	-104.08	-416.06	-520.14	0.001955	RI 01	0	-0.2	-0.81
1	14522601	E009173711	5/25/2019	100004	140	BEAVER L	102014	204		0	0	0	-104.08	-416.06	-520.14	0.000279	RI 02	0	-0.03	-0.12
1	14522601	E009173711	5/25/2019	100004	141	BEAVER L	32019	204		0.04	0	0	-38.21	-13396.9	-13435.1	0.001463	RI 01	0	-0.06	-3.23
1	14522601	E009173711	5/25/2019	100004	141	BEAVER L	32019	204		0.04	0	0	-38.21	-13396.9	-13435.1	0.000209	RI 02	0	-0.01	-0.46
1	14522601	E009173711	5/25/2019	100004	141	BEAVER L	32019	400		4216.32	0.5687	2397.84	0	-147.77	2250.07	0.001463	RI 01	3.51	0	-0.16

ROYALTY STATEMENT OVERVIEW

$2.34/MCF

Product	TX	Lease Volume	Price	Lease Gross Value	Lease Taxes	Lease Other Deductions	Lease Net Value	Disburse-ments	Interest Type
100 Total	Crude	117,268.35		7,683,870.67		-680,644.59		-5.800	BBLS
203 Total	Gas	29,576.35		88,985.31		-20,914.95		-0.710	MCF
204 Total	Gas	263,381.21		783,609.41		-3,421,632.22		-12.990	MCF
300 Total	Condensate	2,750.64		180,226.91		-15,964.73		-5.800	BBLS
400 Total	Plant Product	3,995,189.98		2,036,063.94		-144,435.15		-0.036	GALS
									575
						Price paid per MCF		$2.34	

Hess Midstream Partners Quarterly Report 8/14/2020

· Stable and growing cash flows supported by long-term, fee-based contracts.

Our commercial agreements with Hess provide us with an attractive and stable cash flow base with significant opportunities to grow our business. Our long-term, fee-based commercial contracts with Hess, a high-quality commercial counterparty, provide substantially all of our revenues. They are based on broad Bakken production dedications with minimum volume commitments, annual inflation escalators and fee recalculation mechanisms, all of which are intended to provide us with cash flow stability and growth, as well as downside risk protection.

HOW TO MAKE DEDUCTIONS FROM THE ROYALTY STREAM FOR POST-PRODUCTION EXPENSES

Minimizing Liability While Improving the Company's Bottom Line

By Marlin K. Brown, CPL

While oil and gas producing companies are required to pay costs of producing liquid and gaseous hydrocarbons, many oil and gas leases set out certain costs that should be shared between lessors (mineral rights owners who leased their land to oil companies) and lessees (the oil companies that bought the rights to explore, drill for and produce oil and gas).

Past issues of *The Landman* (May/June 1989, May/June 1998, January/February 2013 and others) have featured articles exploring the legal basis for making deductions for post-production expenses and taxes. The information in these articles is useful for landmen to gain knowledge about the adjudication in the states that influence this area. However, once a landman has a sense of what items may be deducted under the applicable case law, the question remains as to how to work with his employer or client to actually implement such deductions.

Most oil and gas leases currently in force have a provision that says the lessee pays all taxes on producing properties; then the lessee reimburses itself for the lessor's royalty share (equal to the royalty percentage) of such tax payments. Most companies use accounting software that includes one or more "slots" for inputting ad valorem taxes (local county property taxes, also called "school taxes") on producing minerals as well as a slot for local or state severance taxes. And virtually all leases specifically allow the lessee to deduct the lessor's royalty share of those taxes from the royalty stream. Many companies deduct for these taxes.

However, depending on the adjudication and statute law in a state, the language in the leases and the circumstances of production, there may be many other items that may legally and properly be deducted. This article lists steps that may be followed to first find out if more deductions are possible and then implement such additional deductions in a fair, consistent and defensible manner. It is recommended that you perform a study on your top five properties to determine feasibility.

There are seven steps in finding out how much your company can benefit by deducting for post-production expenses. Once this work is done and the decision is made to proceed, implementation can follow.

Feasibility Study

Adjudication

Review applicable case law and build a table for the state or states in which your properties are located. This table presents applicable rulings in a brief form (*see Table A*). This is a list of rulings for California. You may need to enlist the aid of an experienced oil and gas attorney to determine from adjudication (and statute law, if any) what items are deductible in your state.

Chart of Accounts

Review the company's chart of accounts and match line items with deductible expenses (*see Table B*). Use Table B as a go-by and be guided by your findings from Table A. Some "direct" costs (example: metering costs) may be for a particular lease while other "spreadable" costs (example: gas plant serving several properties) are spread among several leases.

Spreadable Expenses

If the company has both direct and allocated spreadable expenses, build a spreadsheet like the example shown in Table C (*see page 25*). Spreadable expenses are costs incurred at the field or regional level, which are split out (allocated) to individual properties. For example, the telephone bill for the office at which the management for a group of properties is done might be allocated out to each of those properties in the same

Issue: Lost North Dakota Tax Dollars

M.E. Denomy, CPA, MBA
Accredited Petroleum Accountant

Oil and Gas Companies Use Master Limited Partnerships and Affiliate Agreements to Divert Taxable Income away from North Dakota

1. Oil and Gas Companies have split their operations into categories, such as Production, Marketing, Gathering, Processing. Each "division" is often filed as a separate business, frequently using the form of a Master Limited Partnership.
2. The Master Limited Partnership is not taxed as a business in North Dakota.
3. The net income of the division is "passed through" to the owners of the Master Limited Partnership. Each owner will report their own share of the net income.
4. Oil and Gas Companies can use each of the separate divisions to reduce their taxable income to North Dakota by raising postproduction costs (PPC's) paid to divisions that have high expenses, like plants.
5. The PPC's are deducted from the royalty owners.
6. Royalty owners will pay less tax because the PPC's are deducted from gross royalties thereby reducing net royalties received.
7. The production company will also pay less tax on the oil and gas income by applying PPC's paid to affiliates.

Potential Dollars Overlooked:

Scenario 1: Basic assumptions-annual loss (current price and production)

Production per day=	1,200,000 barrels
Per barrel price=	$45
North Dakota average lease=	1/8 royalty
Average PPC=	10% (one major prod. is over 35%)

1,200,000 x 45 X 0.125 x 0.10 x 365 days = $246,375,000 ND income tax exempt

Scenario 2: Basic assumptions-annual loss (January 2020 price & production)

Production per day=	1,400,000 barrels
Per barrel price=	$60
North Dakota average lease=	1/8 royalty
Average PPC=	10% (one major prod. is over 35%)

1,400,000 x 60 x 0.125 x 0.10 x 365 days = $383,250,000 ND income tax exempt

The total postproduction costs to royalty owners (taken by the oil producers) for one year would be $383,250,000. It appears that only a ridiculously small amount of ND State income tax is paid on this wealth generated from ND oil production.

Attached is a graphic that provides a simplified picture of what the consequences are on 1,000,000 barrels of oil at $45 per barrel when a $5 PPC per barrel is charged. That equates to $312,000 per day or $113,880,000 per year in untaxed wealth at the current production of 1,200,000 barrels per day and $5 PPC rates.
I believe the $5 PPC per barrel is very conservative.

The second ND State Income Tax avoidance is due to the PPC's charged on produced natural gas. That difference may be deduced by subtracting the dollars in red in the previous paragraph from the previous dollars shown in red earlier in this correspondence.

Respectfully,

Bob Skarphol
Williston Basin Royalty Owners Association (WBROA)

COMPANY A OWNS BOTH THE
PRODUCTION COMPANY AND
A MAJORITY OF THE MASTER LIMITED PARTNERSHIP(MLP)
Marginal Tax Rate Max is 5.2% (2019 rate)

Company A Produces a $45
Barrel of Oil, 1,000,000
barrels
Value = $45,000,000
Full Tax would be
$2,340,000

Company A MLP Charges $5
for expense
Taxed in Texas

Company A pays Tax in North Dakota on the
net of $40.00 per barrel, Value = $40,000,000
Tax is $2,080,000

Lost Tax Revenue=
$260,000 per million
barrels

Gas Plant Postproduction Charges (PPC's)

("Other Deductions")

An Actual Gas Plant PPC in May 2019

May 2019 PPC per MCF= $12.99 per MCF

250,000 MCF per day X $12.99 per MCF X 365 Days = $1,185,337,500

$1,185,337,500

Annual Postproduction Charges

Postproduction costs deducted from Private Royalty Owners and Working Interest Royalty Owners

$1,185,337,500 X 1/8 lease = $148,167,187

$148,167,187

Annual PPC's deducted from Royalty Owners at just one plant of this size

How would you, as a Royalty Owner, spend these dollars if you received them as opposed to being withheld from your check?

Help fix this problem for Royalty Owners, join the Williston Basin Royalty Owners Association

Join Today at

wbroa.com

#5685

- Recognition of Chair Bell, Vice Chair Kannianen, and the Committee members
- Thank you for opportunity to address
- Identify self
- Explain dual role
- Statement of WBROA support of oil development but not at the expense of royalty owner interests
- WBROA members support passage with the proposed amendment to Section3.
- Intimidation of Legislative process and the lack of understanding of the extremely complex and incomplete royalty statements
- Royalty owners are very frustrated with the inability to receive understandable information and fear reprisal if they voice concerns
- NDIC rule changes on July 1, 2019 display their irreverence to state govt
- Where does the responsibility lie for the Postproduction costs being garnished from royalty owners.

SB 2217
Testimony

#5683

- Greetings to Chair, Vice-Chair, Committee
- Mary Ellen Denomy, CPA, MBA-introduction
- SB 2217 helps clarify the relationship between the oil and gas operator and the mineral owner
- Operators and representatives have expansive knowledge and experience in the oil and gas industry. Normally, a mineral owner does not.
- Leases are normally prepared by the operator.
- Mineral owners normally receive a royalty of 12.5% to 20%, while the operator receives 87.5% to 80% of the income from the minerals.
- Many operators are integrated companies-drill, produce, market, refine and directly sell to consumers.
- SB2217 states that if there is not specific language to allow deductions(other than taxes), none will be allowed. Aligned with ND Board of University School Lands v. Newfield Exploration Supreme Court Case(2019).
- SB2217 helps to define how a price is established to place a value to use for the royalty percentage.
- SB2217 limits the amount of allowed deductions to zeroing out income, not requiring mineral owners to pay the operator.
- SB2217 allows mineral owners to audit complicated information to insure that they are being paid properly: correct value, all volumes, proper taxes and allowed deductions.
- SB2217 provides an avenue for enforcement.

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#5840

Senate Bill 2217

Testimony of Ron Ness

Senate Finance and Taxation Committee

February 8, 2021

Chairman Bell and members of the Committee, my name is Ron Ness, president of the North Dakota Petroleum Council ("NDPC"). The North Dakota Petroleum Council represents more than 650 companies in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. I appear before you today in opposition to Senate Bill 2217.

Few may remember, but a little over a decade ago, natural gas prices were projected to reach $20 per thousand cubic feet, or MCF. Then came the shale revolution and fracking, dramatically increasing gas supply and plummeting gas prices to a point closer to $2 per MCF today. Just a few years ago, in the Bakken oil fields, we were flaring up to thirty-six percent of our gas. The industry, the State, our land and mineral owners, and the public at large all knew this could not continue – for many reasons, including preventing the waste of a natural resource and protection of our environment. Ultimately, the State, in consultation with industry, imposed gas capture targets to reduce flaring. However, North Dakota did not have the infrastructure in place to meet the gas capture targets. In response, industry invested $20 billion in gas capture infrastructure. As we meet today, we can say the State's mandates and industry's investment in infrastructure were successful in terms of reducing flaring. We can also proudly say we have met the targets set before us. However, this success has come with other unintended consequences. The past several years of low oil and natural gas prices, coupled with increased natural gas production nation-wide has resulted in gas capture economics being difficult and challenging to say the least, and have culminated in the understandable frustrations that have brought Senate Bill 2217 before us today.

In this market, there are no winners when commodity prices are low. Mandated gas capture requirements did reduce flaring, but they have created an enormous challenge for operators who have seen cost increases for easements, as well as rising costs of pipelines, processing plants, and export pipelines. Obviously, the economics get tough when prices are low, but we also face additional challenges now and in the future as costs and mandates continue to increase. We see oil operators frustrated with midstream companies, the North Dakota Department of Trust Lands wanting operators to cover all costs, working interest partners mad at their oil operator partners, and, of course, royalty owners upset about deductions from their royalty payments. The reaction to that frustration is Senate Bill 2217.

This is a complex and challenging issue for all parties involved in the oil exploration and production process. Revenue distribution varies as much as the contracts, language, and partnerships in private leases. NDPC has members on both sides of this issue, and we are committed to bringing parties together and ensuring open communication to every extent possible. We will work with our members in the weeks ahead to get the discussions started.

Years ago, we had a royalty owner section added to the NDPC website that was helpful in connecting mineral and royalty owners with companies. We will reexamine that tool and assess if it needs refreshing. However, it is important to recognize that most of this frustration, particularly in this low-price environment, is the result of private contacts, and the State should be cautious in its interference in private contracts.

Senate Bill 2217 is not the path to resolving this issue. As you will hear from our members testifying today, this bill will have drastic negative impacts on investment and development in the Bakken going forward. Make no mistake, our industry is under tremendous stress. Attacks from the new administration have just begun, there is an organized effort to cut off the financing of fossil fuel energy development, and every attempt possible is being made to limit or stop the marketing of oil and natural gas.

Testifying on behalf of NDPC today is Todd Kranda, attorney with Kelsch Ruff Kranda Nagle & Ludwig Law Firm in Mandan, Todd Slawson with Slawson Exploration, Jeff Herman with Petro-Hunt, and

Barry Biggs with the Hess Corporation. Also submitting written testimony only is Taylor Reid, President and Chief Operating Officer of Oasis Petroleum.

Chairmen Bell and members of the committee, Senate Bill 2217 has brought forth some serious and contentious issues within the oil and natural gas industry. However, I believe all impacted parties share the same goals of seeing our state's vast natural resources produced and ensuring all parties reap the economic benefits. This is a challenging issue, but it is one we feel is best resolved internally and not with more government mandates or interference. For these reasons, we urge you to defeat this bill. I would be happy to answer any questions.

#5738

Testimony in Opposition to

SENATE BILL NO. 2217

Senate Finance and Taxation Committee

February 8, 2021

Madam Chair Bell, Senate Finance and Taxation Committee members, for the record my name is Todd D. Kranda. I am an attorney with the Kelsch Ruff Kranda Nagle & Ludwig Law Firm in Mandan. I appear before you today as a lobbyist on behalf of the North Dakota Petroleum Council (NDPC) to oppose SB 2217 which deals with mineral royalties for the production of oil and gas.

NDPC represents more than 650 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipelines, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota, and has been representing the energy industry since 1952.

Royalties due mineral owners for the production and sale of oil and gas is governed by contract law, that is, the express oil and gas lease contract entered into between the mineral owner and the lessee. How royalties are calculated depends on the particular lease royalty clause. The royalty clause typically sets forth the point at which the value of the oil or gas is determined and what deductions may or may not be applicable. This can vary from lease to lease—and there are presently thousands of oil and gas leases in North Dakota. While there are many variations in the specific language of the royalty clauses, there are a couple clauses that are by far more prevalent than others in North Dakota, and those are described in a separate handout attached to this testimony.

First, it is important to understand that under the typical oil and gas lease, the mineral owner does not bear any costs relating to the drilling of the well, well completion including fracking, equipping the well, and operating the well. These costs are entirely borne by the operator and working interest owners. Once the product leaves the well site,

is transported, processed, enhanced or refined, these costs are considered "post-production" costs and may or may not be deducted depending upon the lease royalty clause.

Referring to the gas royalty clauses on the handout, the most common provisions provide that royalties due mineral owners are determined based upon the value of the gas "at the mouth of the well" or "the market value at the well". As will be explained by other speakers, gas is usually sold at the well to a gas processor, and then the gas is transported through its pipeline to a processing plant to separate the liquids like butane, propane and ethane from the natural gas which is methane. These separate products are sold at the tailgate of the processing plant, or downstream from the wellhead. The transportation and processing of the gas enhances the value of the gas and it has a higher value at the tailgate of a plant compared to its value at "the mouth of the well".

To determine the value of the gas "at the well", North Dakota has adopted the "work-back method", which is the majority rule in the oil and gas producing states. Under the work-back method, the lessee calculates the market value of the gas at the well "by taking the sales price that it received for its oil or gas production at a downstream point of sale and then subtracting the reasonable post-production costs" (including transportation, gathering, compressing and processing costs). Bice v. Petro-Hunt, L.L.C., 768 N.W.2d 496 (ND 2009). These post-production costs are shared proportionately by the working interest and royalty owners under the gas royalty clauses used in this example, but both the mineral owner and working interest owners likewise share proportionately in the enhanced value of the oil or gas from downstream sales.

A similar result occurs with the most common oil royalty clauses. In the attached examples, the lessor's interest is free of costs, meaning the cost of drilling, completion,

etc., but the value of the oil for royalty purposes is determined "at the wells", or at the point where the wells are connected to a pipeline, and not at some point far downstream from the wells. The long-standing law in other oil and gas states, and the practice in North Dakota, has been that post-production costs are allowed under these royalty provisions. For the committee's information, there are cases pending in the North Dakota federal courts specifically relating to the first oil royalty clause attached hereto. On November 30, 2020, the federal court certified a question to the North Dakota Supreme Court asking the Supreme Court if this oil royalty provision "is interpreted to mean the royalty is based on the value of the oil "at the well:" The case is still pending before the North Dakota Supreme Court.

Referring to the last royalty clause on the handout, the North Dakota Supreme Court held this provision prohibits the lessee from taking deductions for transporting, processing, and so forth from the mineral owner. Therefore, as previously stated, whether deductions are permitted is a matter of contract law and negotiation between the mineral owner and lessee. SB 2217, as introduced, would completely overturn the rights set forth in thousands of existing oil and gas contracts. Attempting to do so, not only would be dangerous policy and precedent, but it would implicate serious constitutional "contract clause" concerns.

In conclusion, NDPC urges your **opposition** to **SB 2217** and respectfully requests a **Do Not Pass** recommendation. Thank you and I would be happy to try to answer any questions.

Common gas royalty clauses in North Dakota

- To pay Lessor for gas produced from any oil well and used of the premises or in the manufacture of gasoline or any other product a royalty of 1/8 the proceeds, at the mouth of the well, payable monthly at the prevailing market rate.

- Lessee shall pay royalties to Lessor the market value at the wells of 1/8th of the gas produced from the land and sold.

Common oil royalty clauses in North Dakota

- To deliver to the credit of Lessor, free of cost, in the pipe line to which Lessee may connect wells on said land, the equal one eighth part of all oil produced and saved from the leased premises.

- Lessee shall pay royalties to Lessor (a) 1/8th of the oil produced and saved from said land, to be delivered at the wells or to the credit of Lessor into the pipeline to which the wells may be connected; Lessee may, at any time or times, purchase any royalty oil, paying the market value in the field on the day it is run to the storage tanks or pipelines.

- On oil, 1/8 of the produced and saved from said land, same to be delivered free of cost at the wells or to the credit of lessor in the pipeline in which the wells may be connected.

Royalty clause – No deductions permitted

Lessee shall pay Lessor the market value at the well for all gas (including all substances contained in such gas) produced from the leased premises and sold by lessee . . .; provided however, that there shall be no deductions from the value of Lessor's royalty of any required processing, cost of dehydration, compression, transportation, or other matter to market such gas. Kittleson v. Grynberg Petroleum Co., 876 N.W.2d 443 (ND 2016).

#5831

Senate Bill 2217

Testimony of R. Todd Slawson

Senate Finance and Taxation Committee

February 8, 2021

Chairman Bell and members of the Senate Finance and Taxation Committee, my name is Todd Slawson, President of Slawson Exploration Company based in Wichita, Kansas. I am a Petroleum Engineer and lived in North Dakota in the early 1980s but now reside in Denver, Colorado. Slawson Exploration, founded in 1957, is a privately held company that is self-funded with no board of directors or hedge fund investors. Slawson has drilled over 4,000 wells in 10 states in its career and has drilled and operated wells in North Dakota since 1975. We are about the 13th largest oil producer in the State. Slawson drilled its first horizontal Bakken Shale well in 1989. We are proud to have participated in the Bakken play since its beginning and to have helped advance the technology to make North Dakota the second largest oil producing state. We would like to keep it that way. I appear before you in opposition of Senate Bill 2217.

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I have had the pleasure to meet via Zoom with one of the sponsors of SB 2217 and heard him talk of the frustrations of his constituents concerning perceived excessive post-production costs that take the proceeds of the gas negative and those negative proceeds are deducted from the positive proceeds of oil sales on their monthly checks. Their belief is that the non-arm's length midstream transactions are the culprit and must be prohibited. It is also their belief that all post-production costs whether arm's length or non-arm's length for both the oil or gas products must not be deducted from the royalty calculation and the best way to do that is to introduce a bill that changes the language of well-established contracts between the lessee and lessor of an oil and gas lease. As told to me, this is all exacerbated by the unwillingness of certain oil companies to communicate with the upset royalty owners and non-operating working interest owners to explain the situation.

I know throughout my career that lack of knowledge of a situation and lack of communication leads to suspicion of wrongdoing. However, this bill is killing the fly with an atomic bomb plus it is attempting to change tens of thousands of contracts between two willing parties that have complied with the terms sometimes for decades. This is legally troubling.

I want to address the three parts of this bill that concern me most. I do not think a noncompliant party should be guilty of a Class B misdemeanor, but that is not one of the three.

1) Changing all oil and gas lease contracts to prohibit the deductions of post-production costs from both oil and gas,
2) Not allowing non-arm's length post-production costs to be deducted from the royalty calculation, and
3) Not allowing negative proceeds from the sales of either oil or gas to be deducted from the royalty check or even carried forward to be debited against a future month in which the proceeds become positive.

Post-Production Costs

A vast majority of the oil and gas leases in North Dakota state that the royalties due the mineral owners are to be calculated "at the wellhead" or "into the pipeline;" both of which are legally defined as on the leased premises which is the wellsite or location. Slawson has almost 5,000 current oil and gas leases in North Dakota and only one of those leases states post-production costs cannot be deducted for gas. It allows post-production costs for oil, however. Therefore, the intent in the negotiations with 99.98% of our lessors was that the oil and gas products are to be priced at the location and not at the tailgate of the gas processing plant or at the tailgate of the oil refinery.

Well established case law in many oil and gas producing states is clear on how royalties are to be calculated when the lease is like those in North Dakota. The law is also clear on how the post-production costs are to be handled when the oil company enhances the value of the oil or gas by selling it farther downstream rather than on the location. The lessee/oil company has the duty to deliver a marketable product at the leased premises at no cost to the royalty owner. Once done, the lessee's duties and obligations have been fulfilled and do not extend beyond that. Any sale past that location is an enhancement of the value of that product and costs to do such enhancement are shared between the lessee and the royalty owner.

> "The lessee's …duty is fulfilled by delivering a marketable product at the leased premises, and that costs incurred after this duty is fulfilled may be allocated proportionately to the royalty interest." Mittelstaedt v. Santa Fe Minerals Inc., 954 P.2d 1203 (Okla. 1998), 84977
>
> "When a lease provides for royalties based on the…sale of gas at the well, and the gas is sold at the well, the operator's duty to bear the expense of making the gas marketable does not, as a matter of law, extend beyond the geographical point to post-sale expenses. In other words, the duty to make gas marketable is satisfied when the operator delivers the gas to the purchaser in a condition acceptable to the purchaser in a good faith transaction. When calculating royalty, the post-production, post-sale processing expenses deducted by the third-party purchasers are shared." Fawcett v Oil Producers, No. 108.666, 2015 WL, 4033549

This next Oklahoma ruling might say it best concerning post-production cost sharing.

> “However, we conclude that the lessor must bear a proportionate share of such costs if the lessee can show (1) that the costs enhanced the value of an already marketable product, (2) that such costs are reasonable, and (3) that actual royalties revenues increased in proportion with the costs assessed against the nonworking interest.” Mittelstaedt v Santa Fe Minerals, Inc.

This allows the oil companies to take the oil and gas as far downstream as they can to add value to both itself and the royalty owner in proportion as long as the three criteria are met – one of which is the reasonable cost test.

I have provided in Exhibit 1, a photograph of a North Dakota Bakken wellsite with production equipment labeled. This is how oil companies deliver marketable oil and gas products on location, free of costs to the royalty owners.

A stream of oil, gas and water is pumped from the well into a heater treater that uses heat and gravity to separate the oil, gas and water. The oil is stored in tanks then metered through a Lease Access Custody Transfer meter (LACT) and pumped through a series of pipelines to a refinery for processing into gasoline, diesel, jet fuel, lubricants, asphalts etc. The oil is sold and the transfer of custody occurs at this LACT, which is owned by the pipeline company.

Exhibit 3 shows how far those refineries are from North Dakota and why our oil transportation cost is so high compared to oil produced in Texas.

The heater treater also separates and dehydrates the gas which is then immediately sold to the gas processor through its gas meter. From there it is transported via the gas processor's pipeline, to its processing plant. Custody and ownership of the gas changed hands at that sales meter.

I want to stress that gas does not need to be processed at the processing plant to have value and become "marketable." Slawson currently is selling gas on one of its locations, not to a gas processor, but rather to a crypto currency company who uses the unprocessed gas to fuel a generator to power the computer's processors. However, it would make more money to have the gas processed because the liquids such as butane and propane are valuable, but this location does not have a gas pipeline.

SB 2217 would greatly increase the percentage royalty the royalty owner would make in proportion to the oil company, who is the one that invested the money. Although this might sound like an attractive deal at first to the royalty owner, it would cause the oil company to take many drastic measures to mitigate its losses. I have looked at my actual gas statements from two different wells in December 2019 when oil and gas prices were high and calculated the results as if post-production costs were not allowed. I used a royalty interest of 20% for easy math.

Example 1 is a newer, higher volume well. The royalty owner and oil company proportionately shared 97 cents for each mcf (1000 cubic feet) of gas sold at the location. If no post-production costs were allowed in the royalty calculation, the royalty owner would now receive $3.44 for each mcf sold rather than 97 cents while the oil company would receive 36 cents versus the 97 cents. The effective royalty rate increased from 20% to 70% - 3.5x higher, while the oil company's share dropped from 80% to 30%.

Example 2 is a well several years older than well 1 and thus at a lower volume, so the gas did not receive as much value due to the costs of the processing. The royalty owner and oil company both shared 11 cents for each mcf sold on location. However, after removing the post-production costs, the royalty owner received $4.24 versus 11 cents/mcf while the oil company went from receiving 11 cents/mcf to now paying 91 cents/mcf. All the royalty owner's gains came out of the oil company's pocket while the gas processor's money stayed the same in both examples.

The oil company not only does not make money trying to enhance the value of the product, it loses a lot of money each month doing so. The enhancement only enhanced one party—the royalty owner. Now rather than the oil company and royalty owner being aligned in a win-win situation they are now in an adverse position to each other in a win – lose situation.

The oil company could do one of two things to mitigate its losses.

1) Shut in the well until the courts correct this new law or the state legislation corrects it in 2023. This would mostly hurt the State's tax base in the meantime.

2) Revise the gas purchase contract so that the gas purchaser gets the gas for free at the location. This solves the gas capture issue, solves the post-production cost issue, and would still allow the oil company to sell the oil which is by far the more lucrative product. Now the oil company, the royalty owner and the North Dakota treasury have lost and the gas purchaser has won. It is no longer a win-win situation for everyone.

The oil company cannot just flare the gas to avoid its monthly loss because North Dakota's 2014 Gas Capture Rule will not allow it. The gas contract between the gas purchaser states that the oil company must sell it all the gas it produces because the gas purchaser made the enormous investment to install the pipeline to the location and build a plant big enough to handle all the gas. Gas processors have indeed made an enormous investment in our state and everyone is glad they have. Twelve years ago, about 160 million cubic of gas per day was being processed. Now 2.6 billion cubic feet per day are. That is a 16 times increase. The investment needed was not minimal and they expect a return on their investment also.

The proposed SB 2217 does not limit post-production cost adjustments to just the downstream gas processing; so therefore, this bill would prohibit these adjustments on oil value enhancements as well. That would be a disaster. How does

the oil company even know what those oil post-production costs are and how many people touched that product each month before it reached the end user? So many products are made from Bakken oil. The gasoline from just one of our wells might end up in 100 different filling stations and it might take several months to get there but the royalty must be paid quickly. A barrel of oil originating in North Dakota might receive over $5,000 in revenue from all the end users and the costs of each downstream company transporting, processing, marketing, and profiting from the myriad of products might be $4,000. How could one justify deducting $4,000 of post-production costs from the royalty equation when the oil sold for only $50 on the North Dakota location. One might say that will never happen but there are plaintiff attorneys out there that would love to try that case on contingency with a law like this.

Beware of the unintended consequences of this bill. It would eliminate the incentive for the oil company to try to sell the product farther downstream to make more money for everyone. It will actually cause lower revenue for everyone, shorten the economic life of the well, be almost impossible to administer, and could very possibly stop the State's oil production immediately—leaving the oil in the ground. The new federal administration will be proud of what North Dakota accomplished before they could.

Non-Arm's Length Deductions

The royalty owners should want oil companies to own downstream assets versus letting them be owned by a third party.

Most oil companies operating in this basin own some downstream asset. Slawson included. Remember that one of the three criteria for a lessee to deduct post-production costs for downstream product enhancement is the reasonable test. It did not say that post-production costs could not be charged if the oil company owns the downstream assets, it just says costs must be reasonable.

In Slawson's case, we own the pipeline system that gathers oil from the locations and delivers it to a major pipeline leading to a refinery. We did not intend to own this gathering system and even took bids from many pipeline companies, but we did not like the terms they demanded such as minimum production commitments. We would have had to drill up our field at a fast pace and produce high volumes to meet their monthly production minimums for 10 years regardless of the oil price or pay hefty penalties. We could not accept those conditions. Oil companies want to maintain control and flexibility over their own oil production. Slawson built its own crude oil gathering system, charged the same tariff and did not require any production commitments.

It turned out that oil prices in years 2015, 2016, 2017 and 2020 were not good and Slawson greatly curtailed its production in those years. Slawson intentionally

had zero oil sales in May 2020 and many non-operating owners and royalty owners praised us for not selling their oil for $8/bbl.

If SB 2217 becomes law, it will force Slawson to sell its oil gathering system to a third party. That third party would probably charge more than we did and put on minimum volume commitments to ensure a quick payout of its new investment. Now the non-arm's length situation is removed, and post-production costs would be deducted from the royalty calculation. The royalty owner did not gain anything. Slawson would have forfeited its ability to curtail production during low oil price time periods, so we all lose including the State. Only the new owner of the gathering system wins.

I strongly discourage you from potentially making oil companies sell their downstream assets. If it appears an oil company is being unreasonable with their post-production costs, there are other remedies to address that. Federal and Tribal leases even allow reasonable costs for off location gas processing and non-arm's length transportation.

No Negative Proceeds

The rash of negative gas proceeds is due to recent low petroleum commodity prices plus unintended consequences of North Dakota's Gas Capture Rule. Several

operators deduct these negative gas proceeds from the positive oil proceeds at the angst of some check recipients.

In my opinion, you must take the good with the bad. You cannot make the oil company eat the loses due low commodity pricing periods but happily accept the high commodity prices. Nothing in the oil and gas leases say the royalty owners get that cherry-picking benefit and nothing says that oil companies cannot deduct negative proceeds of one product from the positive proceeds of the other.

The percent of proceeds (POP) contracts the oil companies had with gas processors for generations were changed to "fixed fee" contracts after the Gas Capture Rule was enacted which drastically limits the amount of gas an oil company can flare each month. Gas Capture took away the free market negotiations between the oil company and the gas processor forcing oil companies to have to accept "fixed fee" contracts. The oil company could not just flare the gas to avoid entering these long-term contracts. With a fixed cost fee, if the sales proceeds of the methane, propane and butane was not enough to cover the fixed fee, then the proceeds to the oil company were negative and that deficit was passed on to all parties.

The old POP contracts could not go negative since the oil company simply received a percentage of the proceeds rather than having to have the revenue be enough to exceed the fixed cost hurdle. In better pricing times this will not be a

problem and we are in higher pricing times now. This might just be a 2020 low pricing problem that no one expected.

It is common knowledge that the oil revenue is about 95% of the total revenue with gas making up the remaining 5%. The oil company's view is that selling the gas for nothing or at a small loss is an acceptable practice to keep the oil flowing. So, in low commodity pricing times, everyone just must grin and bear it to keep the oil flowing and hope for better pricing.

I think all parties involved should share in the unintended consequences due to the State's Gas Capture Rule to help the State's environment. The royalty owners and non-operating working interest owners cannot throw 100% of the consequences on the operator who did not cause it.

Oil companies operating in this State who also have assets in Texas are already voting with their feet and increasing their drilling activities there and not here. The rig count in North Dakota is not increasing. There is too much uncertainty in this state with the ND Trust lands issue, the lack of case law, federal lands issues with the new administration and potential DAPL pipeline issues.

Please do not drop an atomic bomb to kill a fly.

I urge a Do Not Pass on Senate Bill 2217.

I hope my testimony has been helpful. I would be happy to answer any questions.

Exhibit 1
Typical North Dakota Bakken Well Pad

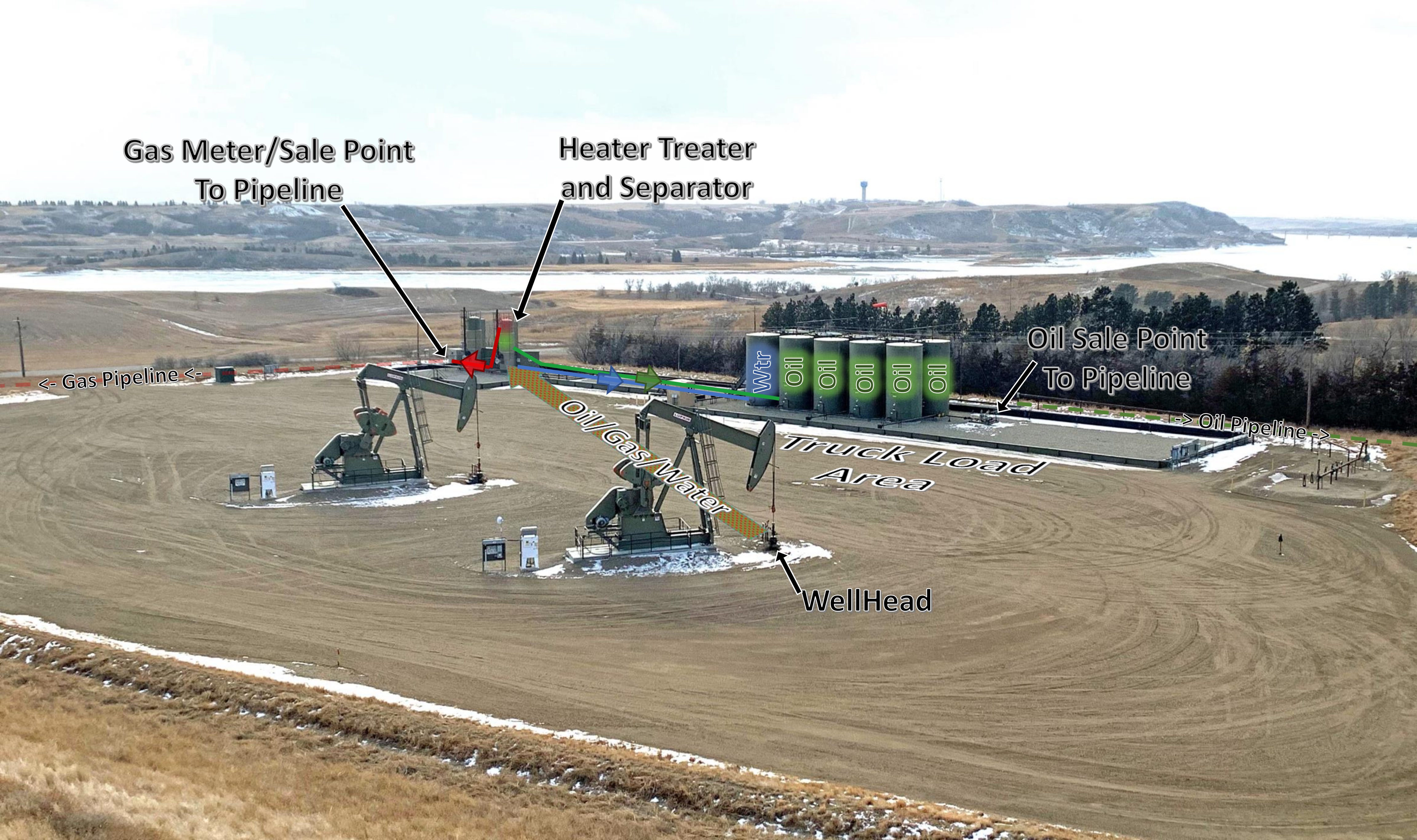

Exhibit 2

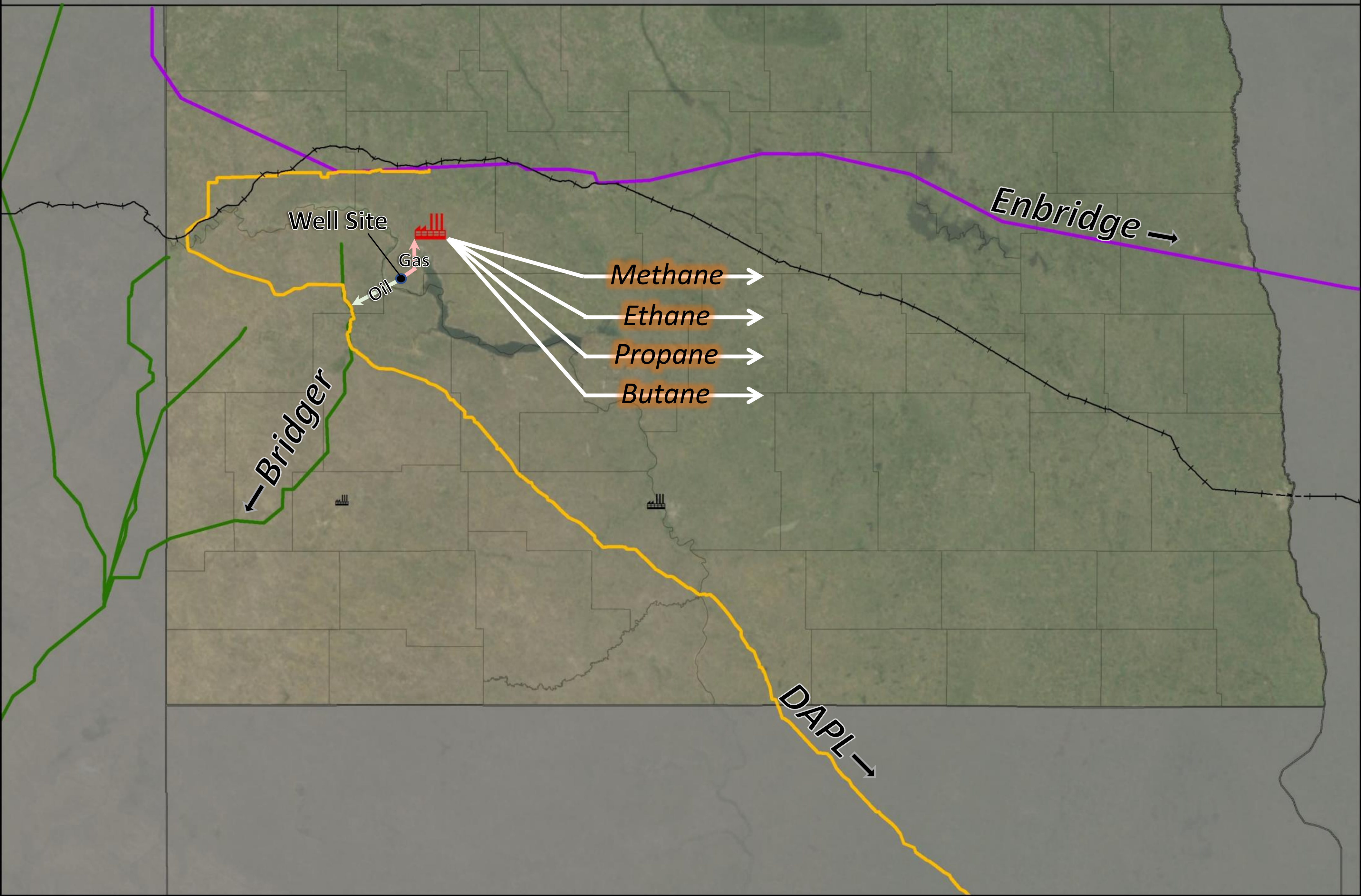

Exhibit 3
Enbridge
Bridger
DAPL
Cushing, OK
Oil Tanker Shipment
WA
OR
ID
MT
WY
ND
SD
NE
MN
WI
MI
IA
IL
IN
OH
PA
NY
VT
NH
MA
CT
NJ
MD
DC
DE
NV
UT
CO
KS
MO
KY
WV
VA
CA
OK
TN
NC
AR
AZ
NM
TX
MS
AL
GA
SC
LA
FL
Esri, Garmin, GEBCO, NOAA NGDC, and other contributors

#5826

North Dakota Industrial Commission
Hearing February 8, 2021

Thank you, madam chairman and members of the Committee. Good morning, my name is Barry Biggs and I am a Vice President at Hess Corporation. I want to thank the committee for giving Hess the opportunity to appear at this hearing. I appear today before the Committee in opposition to Senate Bill 2217.

Hess Corporation and its affiliates have a long history of operating in North Dakota. We drilled our first oil well here in 1951. Today, Hess holds more than 500,000 net acres in the Bakken with more than 1,650 active wells producing about 120,000 barrels of crude oil per day. Hess companies and contractors employ nearly 1,500 people across the state, and Hess companies are among the largest private employers in the state. Moreover, Hess companies have invested tens of millions of dollars in North Dakota community initiatives in the past 5 years. We are proud to be invested here and proud to say that generations of Hess employees have called, and will continue to call, North Dakota home.

Hess has paid almost two billion dollars in royalties to North Dakota royalty owners since early 2014. The vast majority of this royalty revenue is from oil, because, as you've heard, the Bakken is primarily an oil play—one of the best in the world. But when you produce oil in the Bakken, you also get gas. Capturing that gas requires significant investment and cost. The alternative is simply flaring the gas, but that runs contrary to government regulations and to Hess's commitment to environmental stewardship. The simple fact is that without significant investment in infrastructure that can handle the gas produced along with the oil, North Dakota will never realize the full benefit of its great oil resources.

Against that background, Hess urges the committee to reject Bill 2217 for several practical reasons. First, the bill would reduce investment in North Dakota. Second, the bill would result in lower royalties to royalty owners and lower tax revenue for the State. Third, the bill would reduce overall oil production, further reducing royalty revenue and tax payments. Fourth, the bill would interfere with the contracts that the parties bargained for in their oil and gas leases. At bottom, this bill would have negative ramifications for everyone—operators, royalty owners, working interest owners, the state of North Dakota and the people of North Dakota— while also discouraging investment by integrated operators like Hess.

To my first point, Bill 2217 undermines the goals that North Dakota's leaders have set for increased investment by companies like Hess. For example, in a 2018 press release, Governor Burgum said that "additional private-sector capital investment for gas capture and value-added processing is exactly what we need to simultaneously grow our economy and protect our environment." Just last November, North Dakota Pipeline Authority director Justin Kringstad, in a call for additional private investment in the state, said that the "infrastructure we have today is not adequate for the long term." Department of Mineral Resources director Lynn Helms has also talked of the need for additional investment, noting in September 2020 that future gas capture requires "a monumental effort" and billions of dollars in infrastructure investments. We agree that infrastructure investments are critical. But Bill 2217 would undermine these goals by discouraging producers and midstream companies from making additional infrastructure investments.

To be clear, as part of Hess's long-term strategy in North Dakota, and consistent with North Dakota's goals, Hess companies have made substantial investments in order to operate on their current scale. Hess operates in North Dakota through various affiliates, and since 2012, Hess companies have invested more than $14.4 billion in North Dakota. Nearly $2.9 billion of that investment has been in midstream infrastructure through Hess Midstream, a publicly traded partnership between Hess Corporation and Global Infrastructure Partners formed in 2015. Hess Midstream's assets and investments include oil and gas gathering pipeline systems and compression facilities; processing plants and associated storage facilities like the Tioga Gas Plant north of the river and the Little Missouri 4, or LM4, Gas Plant south of the river; as well as terminaling and export facilities like the Ramburg Terminal Facility and Tioga Rail Terminal.

Hess's goal is to obtain the best possible price for itself and its royalty owners when it sells oil and gas. Today, Hess produces oil and gas and pays royalties pursuant to tens of thousands of oil and gas leases in North Dakota. As I stated earlier, since 2014 Hess has paid out almost $2 billion in revenue to royalty owners. Hess has been able to pay this sum by moving oil and gas out of North Dakota to be sold in locations where the price is higher, which benefits Hess and royalty owners alike, rather than selling to a third-party at the wellhead. To be clear, Hess can sell oil at the wellhead to an unaffiliated third-party. But instead, Hess has invested in infrastructure that gives it the flexibility to move the oil and gas, while our affiliate, Hess Trading Corporation, has a team of people devoted to analyzing downstream markets. This allows us to determine the best available methods of transporting volumes to those markets in an effort to

obtain a relatively high price at a relatively low cost. And royalty owners share in that higher downstream price without shouldering the marketing costs Hess incurs to secure those higher prices.

There are, of course, transportation costs involved in moving oil or gas from the wellhead to downstream markets. These costs—which are for activities like gathering, transportation, processing, and compression—are typically referred to as post-production costs. The lease between Hess and the royalty owner determines whether those post-production costs are shared on a pro rata basis, often by specifying whether royalties are to be based on the value of oil and gas at the well. When the lease permits a sharing of post-production costs on a pro rata basis, it allows Hess to recover some of the extensive investment that it has made to transport oil and gas in and out of North Dakota.

Under current market conditions, the gas produced from the Bakken alongside the oil is rarely profitable. But both because of Hess's commitment to environmental stewardship, and because federal and state regulations limit flaring at the well pad, gas must be gathered and pipelines must therefore be built to capture and gather gas at the well pad. This, too, requires substantial investment from producers and midstream operators. Gas is gathered from the wellhead; compressed to move through the pipe; and processed to separate gas products for marketing and sale. Sometimes the costs of processing and transporting the gas exceed the value of the gas. But in those situations, under the Hess cost of service model, Hess does not take royalty owners negative on the combined gas stream.

As our 70-year track record shows, Hess is in it for the long haul here in North Dakota. Hess has made substantial investment in North Dakota to be well-positioned for the long-run. To be sure, there are down years for oil—like 2020, when the price of oil dropped steeply in the early days of the global pandemic. But the market has somewhat recovered and we hope that recovery will continue over the next few months. We strongly believe that Hess and our royalty owners are well-positioned for this recovery in oil prices based on our long-term commitment to, and investment strategy in, North Dakota. As the price has recovered, oil production in North Dakota has recently been increasing, with previously shut-in wells returning to production and additional drilling rigs coming online.

Looking ahead to 2021 and beyond, Hess has already invested in the gas infrastructure it needs to be able to increase oil production without fear of substantial curtailment to accommodate flaring limitations. Notably, Hess Midstream provides Hess with a "firm" level of service, meaning Hess has first priority in the pipeline system when capturing gas. This is in contrast to many gas gathering operations in North Dakota, which are "interruptible"—meaning that in determining how much gas can be captured, producers are at the mercy of whatever pipeline capacity remains. While interruptible service may be cheaper, it makes it more difficult for producers to gather gas, and could in turn force some producers to curtail oil production in a higher-priced environment. Given our existing infrastructure, Hess is less subject to these limitations than most producers and has already begun to increase drilling with an additional rig that just came online this month.

All of this brings me back to why this committee should reject Bill 2217. First, the bill would reduce midstream investment in North Dakota. No responsible business would make investments knowing a material portion of such investments would be unrecoverable. Here, Hess, together with its partner and public investors, has invested in midstream assets that cost billions of dollars, and these investments are not fully recoverable when those costs cannot be shared, on a pro rata basis, with royalty owners who benefit equally from those services and whose leases permit such cost-sharing.

Second, for similar reasons, the bill would incentivize producers to sell oil to unaffiliated third parties at the wellhead, rather than in downstream markets, which would result in lower royalties. If Hess companies are forced to bear 100% of post-production costs and cannot recover any of them even when their leases allow them to, the incentive for incurring those costs substantially diminishes, and instead operators would be incentivized to sell oil to third parties at the wellhead at reduced prices. That, of course, would result in lower overall revenues to both royalty owners and operators.

Third, the bill would harm royalty owners and lower North Dakota tax revenues by reducing the number of profitable wells and curtailing oil production. Royalty owners receive royalty payments only if oil is being produced and sold from their wells. But operators and midstream companies will invest in oil production only if it is economically advantageous to do so. If Bill 2217 makes certain existing or potential wells uneconomic by raising net costs beyond net

income, then operators will simply no longer drill and produce such wells. That, of course, eliminates royalty income as well as tax revenues to North Dakota.

Fourth, the bill would interfere with the rights and obligations of contracts that were freely negotiated between producers and royalty owners, and thus would likely trigger litigation as to whether those contracts can be amended by legislation after they were entered into. Negotiation of each lease is a give and take, where the parties trade off on terms until they finally reach a set of terms that are mutually agreeable. As I stated earlier, Hess has tens of thousands of leases in North Dakota, and these are contracts that the parties negotiated and freely entered into. Hess believes that it honors the language of each lease based on North Dakota law, and we respectfully ask that this Committee not interfere with those agreements with this legislation.

Thank you for the opportunity to participate today. I am happy to answer any questions the Committee may have.

#5823

Testimony in Opposition to

SENATE BILL NO. 2217

Senate Finance and Taxation Committee

February 8, 2021

Chairman Bell and Senate Finance and Taxation Committee members, my name is Holly Camilli. I am a Vice President of XTO Energy Inc., responsible for development and operations in the Bakken, Argentina, and the Central United States. XTO currently operates approximately 463,000 acres of oil and gas development in North Dakota and safely and responsibly produces approximately 75,000 barrels of oil and 192 million cubic feet of gas per day. I write the committee today in opposition of SB 2217, which would fundamentally reverse the manner in which post-production costs are treated under North Dakota law, to the detriment of producers and royalty owners alike.

The bill would dramatically disrupt the settled expectations and understanding about the meaning and requirements of existing leases – leases that were negotiated in good faith by both producers and royalty owners based on well-understood principles of North Dakota law. Retroactively changing the meaning and requirements of those leases is neither warranted nor good policy.

For decades, the common requirement in oil and gas leases that royalty be calculated "at the well" has been understood to allow for post-production deductions from royalty. The royalty owner receives their negotiated share of production valued at the point of production – the wellhead. When the value of that production is enhanced - to the benefit of both the producer and the royalty owner - by selling it downstream of the wellhead, the expectation of all parties has been that the royalty owner would share in those post-production expenses. This foundational premise of royalty law has been confirmed by the North Dakota Supreme Court in the *Bice* and *Kittleson* decisions and relied upon by producers when making decisions to purchase leases, drill wells, and market the hydrocarbons. If a lessor did not want post-production deductions, they have always been free to negotiate for "no deductions" language in the royalty clause.

Thousands of leases have been negotiated based on the well-understood fact that royalty owners would bear post-production expenses unless the lease specifically stated otherwise.

Senate Bill 2217 would reverse this basic understanding, requiring that leases explicitly allow for post-production deductions or they cannot be deducted. Even more troublingly, it would operate *retroactively*: turning upside down the long-standing economic assumptions upon which exploration and production decisions have been made. Legislatively changing the terms of a contract after negotiation effectively deprives both parties of the benefit of their bargain, impairing the value of decades of contracts negotiated in good faith. It would also change the economic analysis producers made when entering into new leases.

Annually, XTO remits over $110 million in royalties to private leaseholders for production from the State of North Dakota, with approximately $30 million in post-production deductions. Those post-production deductions represent transport, processing, gathering, and other charges incurred after production and after the point at which the royalty owners agreed to value their share of production. These charges are incurred in order to secure a sale at the best price available for both producer and royalty owner. The royalty owner shares in those additional costs, but also benefits from the increased value of the product. Without the ability to share costs via post-production deductions, producers are incentivized to make sales closer to the wellhead in order to minimize their costs, reducing the value received by royalty owners. As written, the bill negatively impacts the economic viability of the North Dakota Bakken resource compared to other producing basins in the United States and around the world.

The audit right created in SB 2217, which would now become a matter of criminal penalty, is neither necessary nor appropriate. The North Dakota check stub statute requires that specific information be provided to royalty owners with monthly payments, including the amount of deductions taken. N.D. Admin. Code § 43-02-06-01. The royalty owner may request additional information and direct questions to the producer via certified mail with an answer required within thirty days of receipt. In addition, royalty owners already have the right to inspect and copy royalty payment records of their lessees. N.D. Cent. Code Ann. § 47-16.39.2. These provisions address the same issues as the audit right proposed by SB 2217, but

without introducing additional ambiguity in the process, let alone making it a matter of criminal penalty. Royalties are a matter of contract, not criminal law. It is wholly inappropriate for a royalty accounting issue to result in criminal charges, such the class B misdemeanor requested within SB 2217.

Adopting SB 2217 would reverse years of North Dakota oil and gas law and up-end the understanding with which producers entered into oil and gas leases. Even if applied only prospectively, it would disadvantage royalty owners by discouraging producers from incurring costs to transport, process, and market products. Instead of being a leader, North Dakota would be an outlier amongst major oil and gas producing states.

In conclusion, XTO urges your opposition to SB 2217 and respectfully requests a Do Not Pass recommendation.

February 8, 2021

#5829

Sixty-seventh Legislative Assembly of North Dakota
Senate Committee on Finance & Taxation

Re: Hearing on Senate Bill No. 2217
Written testimony of Taylor Reid, President, Oasis Petroleum
Provided by Ron Ness, President, North Dakota Petroleum Council

Esteemed members of the committee,

I write today in opposition of Senate Bill no. 2217. As one of the largest oil and gas producers in the Bakken, we are concerned that this bill will have adverse effects both on our industry and the economy of North Dakota by creating unintended consequences for future capital investment in the state.

Since its founding in 2007, Oasis has spent over a billion dollars on a gas capture and processing network, including two gas plants outside of Watford City. We've done this not only because it makes good business sense under current law, but also because it is the right thing to do to meet the flaring challenge. It is because of these investments that we meet, and often exceed, gas capture targets established by the Department of Mineral Resources, as well as grow the economy in the state for the benefit of all stakeholders. Unfortunately, this bill would add additional costs to all operators in the state, making investments less competitive and impacting the state's ability to attract new capital going forward.

We understand the concerns raised by proponents but do not feel that this bill is the answer. We strongly urge the members of the committee to vote "no" on Senate Bill 2217.

Respectfully,

Taylor Reid
President & COO

1001 Fannin, Suite 1500 • Houston, Texas 77002 • Phone (281) 404-9500 Fax: (281) 404-9501

2021 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2217
2/9/2021

A BILL for an Act to create and enact section 47-16-39.5 of the North Dakota Century Code, relating to oil and gas royalty leases, negative royalties, and arm's length transactions; and to provide a penalty.

Chair Bell calls the meeting to order. Chair Bell, Senators Meyer, J. Roers, Patten, Piepkorn, Weber are present. Vice Chair Kannianen absent. [9:26]

Discussion Topics:
- Retroactivity
- Lease/contract terms
- Post production charges
- Communication between stakeholders
- Ombudsman program

Chair Bell adjourns the meeting. [09:46]

Joel Crane, Committee Clerk

2021 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2217
2/16/2021

A BILL for an Act to create and enact section 47-16-39.5 of the North Dakota Century Code, relating to oil and gas royalty leases, negative royalties, and arm's length transactions; and to provide a penalty.

Chair Bell calls the meeting to order. Chair Bell, Vice Chair Kannianen, Senators Meyer, J. Roers, Patten, Piepkorn, Weber are present. [9:33]

Discussion Topics:
- Royalties vs post production charges
- Oil production deduction
- Recovery of losses

Senator Patten [9:33] Introduces Amendment [LC 21.0130.03007] #6751.
Senator Patten [9:52] moved amendment
Senator Weber second
Motion Passed [9:53] verbally 6-1-0

Senator Patten [9:53] moved DO PASS as Amended
Senator Kannianen Second

Senators	Vote
Senator Jessica Bell	Y
Senator Jordan Kannianen	Y
Senator Scott Meyer	N
Senator Dale Patten	Y
Senator Merrill Piepkorn	N
Senator Jim Roers	N
Senator Mark Weber	Y

Motion Passed [9:55] 4-3-0
Senator Patten carries

Chair Bell adjourns the meeting. [09:46]

Joel Crane, Committee Clerk

Prepared by the Legislative Council staff for
Senator Patten
February 15, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2217

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 47-16 of the North Dakota Century Code, relating to the deduction or recovery of losses incurred in the sale or disposition of natural gas from the proceeds of oil production; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-16 of the North Dakota Century Code is created and enacted as follows:

Certain deductions prohibited - Breach.

1. The deduction or recovery of losses incurred in the sale or disposition of natural gas produced under an oil and gas lease from the proceeds of oil production attributable to royalty interests or overriding royalty interests under the lease is prohibited unless expressly and unambiguously provided otherwise by the lease, provided the losses:
   a. May be offset or applied against a subsequent net gain in the sale or disposition of natural gas in accordance with the lease;
   b. May not be offset by the gains from one well to another well; and
   c. May not be carried forward from one well to the gains or losses of another well.
2. A person found to be in violation of subsection 1, if lease cancellation is not sought, shall pay interest at the applicable annual rate set by the state court administrator pursuant to section 28-20-34 on the portion of oil or gas royalties that were not timely paid to the owner of the royalties on account of the violation until paid. The district court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought under this section. The prevailing party in any proceeding under this section is entitled to recover any court costs and reasonable attorney's fees.

SECTION 2. LEGISLATIVE MANAGEMENT STUDY - POSTPRODUCTION COST DEDUCTIONS. During the 2021-22 interim, the legislative management shall consider studying deductions for postproduction costs under oil and gas leases.

1. The study must include:
   a. Consideration of the methods used to calculate the value of oil and gas, the point of sale used to determine the value, oil and gas sales in the absence of an arm's-length contract, any deductions or incentives applied to the value, and the methods used to report any deductions or incentives on mineral royalty statements;

b. Input from representatives from the oil and gas industry, representatives from an organization representing royalty owners, the department of mineral resources, the department of trust lands, and the attorney general's office; and

c. An analysis and review of state-mandated natural gas capture targets, federal land permitting restrictions, the effectiveness of using onsite flare mitigation technologies and the infrastructure necessary to enhancing oil and natural gas value.

2. The study may include consideration of the desirability and feasibility of expanding the use and market access of natural gas, including value-added energy opportunities within the state.

3. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-eighth legislative assembly."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2217: Finance and Taxation Committee (Sen. Bell, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2217 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 47-16 of the North Dakota Century Code, relating to the deduction or recovery of losses incurred in the sale or disposition of natural gas from the proceeds of oil production; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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Certain deductions prohibited - Breach.

1. The deduction or recovery of losses incurred in the sale or disposition of natural gas produced under an oil and gas lease from the proceeds of oil production attributable to royalty interests or overriding royalty interests under the lease is prohibited unless expressly and unambiguously provided otherwise by the lease, provided the losses:

   a. May be offset or applied against a subsequent net gain in the sale or disposition of natural gas in accordance with the lease;

   b. May not be offset by the gains from one well to another well; and

   c. May not be carried forward from one well to the gains or losses of another well.

2. A person found to be in violation of subsection 1, if lease cancellation is not sought, shall pay interest at the applicable annual rate set by the state court administrator pursuant to section 28-20-34 on the portion of oil or gas royalties that were not timely paid to the owner of the royalties on account of the violation until paid. The district court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought under this section. The prevailing party in any proceeding under this section is entitled to recover any court costs and reasonable attorney's fees.

SECTION 2. LEGISLATIVE MANAGEMENT STUDY - POSTPRODUCTION COST DEDUCTIONS. During the 2021-22 interim, the legislative management shall consider studying deductions for postproduction costs under oil and gas leases.

1. The study must include:

   a. Consideration of the methods used to calculate the value of oil and gas, the point of sale used to determine the value, oil and gas sales in the absence of an arm's-length contract, any deductions or incentives applied to the value, and the methods used to report any deductions or incentives on mineral royalty statements;

   b. Input from representatives from the oil and gas industry, representatives from an organization representing royalty owners, the department of mineral resources, the department of trust lands, and the attorney general's office; and

c. An analysis and review of state-mandated natural gas capture targets, federal land permitting restrictions, the effectiveness of using onsite flare mitigation technologies and the infrastructure necessary to enhancing oil and natural gas value.

2. The study may include consideration of the desirability and feasibility of expanding the use and market access of natural gas, including value-added energy opportunities within the state.

3. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-eighth legislative assembly."

Renumber accordingly

#6751

21.0130.03007
Title.

Prepared by the Legislative Council staff for
Senator Patten
February 15, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2217

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 47-16 of the North Dakota Century Code, relating to the deduction or recovery of losses incurred in the sale or disposition of natural gas from the proceeds of oil production; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-16 of the North Dakota Century Code is created and enacted as follows:

Certain deductions prohibited - Breach.

1. The deduction or recovery of losses incurred in the sale or disposition of natural gas produced under an oil and gas lease from the proceeds of oil production attributable to royalty interests or overriding royalty interests under the lease is prohibited unless expressly and unambiguously provided otherwise by the lease, provided the losses:

    a. May be offset or applied against a subsequent net gain in the sale or disposition of natural gas in accordance with the lease;

    b. May not be offset by the gains from one well to another well; and

    c. May not be carried forward from one well to the gains or losses of another well.

2. A person found to be in violation of subsection 1, if lease cancellation is not sought, shall pay interest at the applicable annual rate set by the state court administrator pursuant to section 28-20-34 on the portion of oil or gas royalties that were not timely paid to the owner of the royalties on account of the violation until paid. The district court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought under this section. The prevailing party in any proceeding under this section is entitled to recover any court costs and reasonable attorney's fees.

SECTION 2. LEGISLATIVE MANAGEMENT STUDY - POSTPRODUCTION COST DEDUCTIONS. During the 2021-22 interim, the legislative management shall consider studying deductions for postproduction costs under oil and gas leases.

1. The study must include:

    a. Consideration of the methods used to calculate the value of oil and gas, the point of sale used to determine the value, oil and gas sales in the absence of an arm's-length contract, any deductions or incentives applied to the value, and the methods used to report any deductions or incentives on mineral royalty statements;

b. Input from representatives from the oil and gas industry, representatives from an organization representing royalty owners, the department of mineral resources, the department of trust lands, and the attorney general's office; and

c. An analysis and review of state-mandated natural gas capture targets, federal land permitting restrictions, the effectiveness of using onsite flare mitigation technologies and the infrastructure necessary to enhancing oil and natural gas value.

2. The study may include consideration of the desirability and feasibility of expanding the use and market access of natural gas, including value-added energy opportunities within the state.

3. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-eighth legislative assembly."

Renumber accordingly

2021 HOUSE ENERGY AND NATURAL RESOURCES

SB 2217

2021 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau AB Room, State Capitol

SB 2217 9 AM
3/18/2021

Relating to the deduction or recover of losses incurred in the sale or disposition of natural gas from the proceeds of oil production and to provide for a legislative management study.

9:00 AM

Chairman Porter opened the hearing. Roll call was taken. Present: Representatives Porter, Anderson, Bosch, Devlin, Heinert, Keiser, Lefor, Marschall, Roers Jones, Zubke, Guggisberg, and Ista. Absent: Rep Damschen and M. Ruby.

Discussion Topics:

- Royalties
- Amendment 04001
- Deductions
- Post production deductions

Testimony:
#9928, #10004 Sen Bekkendahl, District 1- testimony and amendment 04001
Oral testimony Ron Ness, ND Petroleum Council

Additional written testimony:
#9920, #9921 Bob Skarphol
#9915 Gary Hagen

9:15 AM hearing closed.

Kathleen Davis, Committee Clerk

House Energy and Natural Resources Committee

Honorable Rep. Porter, Chair SB 2217 March 18, 2021

Senator Brad Bekkedahl, District 1

Chairman Porter and Committee Members,

SB 2217 is a bill that was requested to be submitted by oil and gas royalty owners. In the 2019 Session, study language was passed that would have had public hearings on royalty issues as well as industry input during the interim. Unfortunately, Legislative Management did not select this for an interim committee review subject. This bill seeks to address some of the issues that could have been reviewed in that process. With the introduction of this bill, it is hoped the result will be improved transparency and communication between industry operators and their royalty owners. Chairman Porter, I appreciate you and your committee for providing this public hearing opportunity, taking testimony, and considering the bill today.

Originally, the bill had 6 sections. Section 1 had key word definitions that were used in context in subsequent sections. Section 2 was a provision that sought to clarify when postproduction costs from royalty owners can and cannot be assessed. Section 3 differentiated between when arms-length and non-arms-length transactions occurred and consequent pricing issues. Section 4 dealt with limiting postproduction deductions to no more than the value of the product sold that month and a corresponding violation provision. Section 5 was an audit provision that upon proper request granted access to operator records for a royalty owner and stipulated that the burden for any requested audit be borne by that royalty interest owner. Section 6 set out penalty provisions for a non-compliant party, including being subject to a civil penalty and allowing for recovery of underpaid royalties and potentially other expenses incurred.

In consideration in the Senate Finance and Tax committee, they engaged with industry representatives to work out provisions they felt amenable to their members in the bill. What you see before you today is the result of their recommendations to the bill. As the prime sponsor, I was afforded the opportunity to see the changes in consideration and offer my input. Unfortunately, the substantive changes I sought in language to preserve some of the original intent of the bill were not accepted, and as such I would request the committee consider an amendment I have prepared to offer to the committee today that removes Section 1 of the bill and retains only Section 2, which is the study portion. Input I have had with some of the industry representation is that they are supportive of this amendment as well.

Chairman Porter and Committee, I sincerely appreciate the input and cooperation extended to me from both the royalty owners and the industry representatives in this bill discussion. Please agree to the amendment and recommend a Do Pass on Senate bill 2217 as amended. The study will provide an opportunity for the issues to be debated in the interim and bring the public and industry testimony opportunities necessary for resolution to the issues originally brought forth in the bill.

21.0130.04001
Title.

Prepared by the Legislative Council staff for
Senator Bekkedahl
March 10, 2021

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2217

Page 1, line 1, remove "create and enact a new section to chapter 47-16 of the North Dakota"

Page 1, remove line 2

Page 1, line 3, remove "of natural gas from the proceeds of oil production; and to"

Page 1, line 4, after "study" insert "of postproduction cost deductions"

Page 1, remove lines 6 through 23

Renumber accordingly

Chairman Porter, Vice Chairman Damschen and committee members,

For the Record, my name is Bob Skarphol from Tioga, North Dakota.

I am here today representing my wife's royalty interest comments and in my capacity as the founder of the Williston Basin Royalty Owners Association. I am a registered lobbyist for the Williston Basin Royalty Owners Association with badge number 1089.

My wife's royalty interests originate from one of the earliest unitization projects in North Dakota, the Beaver Lodge Royalty unit first developed by Amerada Petroleum Corporation in 1958. Then expanded in 1962 to include additional formations. 100% of the unit members, royalty owners and operators, were required to sign the original agreements. We have letters written to my wife's mother, signed by Amerada leadership, that assured her there would be no costs assessed to royalty owners for participating in the unitization.

Starting a citizen movement is difficult during normal times but it is nearly insurmountable in the middle of a pandemic. It is interesting to be able to relay to you that we have, without the advantage of going to the

constituents in public meetings, in excess of 200 members with a commitment to pursue corrective actions of abuses by the industry of royalty owner rights. I can assure you that you have some very frustrated and motivated voters waiting for action. And WBROA fully intends to grow the size of the membership with statewide meetings during the following interim.

I need to be perfectly clear that WBROA, and royalty owners, are NOT anti-development, they are very pro-development. The frustration for your constituents is that the only recourse they have to voice their objections is to hire an attorney and go to court. There has never been a legislative study of the issues, and a two-hour hearing is not adequate for the complexities involved. There may be solutions, but the opportunity to find them does not exist in today's environment.

Present slides:

Closing comments.

Request DO PASS as amended

DEDUCTIONS FROM HESS BAKKEN INVESTMENTS BEAVER LODGE ROYALTY OWNERS SINCE 2004

MASTER LIMITED PARTNERSHIPS

Year	"Other Deduction" as a % of Gross Royalty	Taxes as % of Gross Royalty	Total Deductions %	Source-IRS
2004	0.000		5.620	1099
2005	0.000		5.620	1099
2006	0.000		7.190	1099
2007	0.000		9.920	1099
2008	0.000		9.200	1099
2009	5.790	3.290	9.080	1099
2010	2.666	9.054	11.720	1099
2011	2.217	8.908	11.125	1099
2012	1.845	10.161	12.006	1099
2013	2.451	9.463	11.915	1099
2014	2.615	10.301	12.917	1099
2015	20.675	7.039	27.714	1099
2016	35.533	6.533	42.066	1099
2017	37.480	5.832	43.312	1099
2018	29.895	6.437	36.332	1099
2019	34.800	6.420	41.220	1099
2020	37.060	4.520	41.580	Monthly statements

ROYALTY STATEMENT PDF

DIANA SKARPHOL
PO BOX 725
TIOGA ND 58852-0725

HESS BAKKEN INVESTMENTS II, LLC

P.O. BOX 2040
HOUSTON, TX 77252
Owner Inquiry Toll Free
1-844-275-4377

CHECK NUMBER E009173711
CHECK AMOUNT [illegible]
CHECK DATE 5/25/19

OWNER # [illegible]
TAX ID / SS#

PROP/ST/CTY			GROSS INTEREST						OWNER INTEREST					
PROD MNTH	PROD CODE	TX	GROSS VOLUME	$ PRICE	$ GROSS VALUE	$ TAXES	$OTHER DEDUCTION	$ NET VALUE	DISB. DECIMAL	INT TYPE	$GROSS VALUE	$ TAXES	$OTHER DED	$ NET VALUE
04/2019	100		0.40	65.4500	26.18	2.10	2.32	21.76	0.00027902	RI 02	0.01	0.00	0.00	0.01
								PROPERTY SUB TOTAL			0.06	0.00	0.00	0.06
00100004	00087		BEAVER LODGE DEVON UT TR-0087			/ ND/ WILLIAMS			DOI		0.00781250			
04/2019	100		0.07	60.2857	4.22	0.33	0.34	3.55	0.00781250	RI 01	0.03	0.00	0.00	0.03
								PROPERTY SUB TOTAL			0.03	0.00	0.00	0.03
00100004	00138		BEAVER LODGE DEVON UT TR-0047			/ ND/ WILLIAMS			DOI		0.00223187			
10/2014	204		0.00	0.0000	0.00	103.19	412.52	515.71	0.00223187	RI 01	0.00	0.23-	0.92-	1.15-
03/2019	204		0.04	0.0000	0.00	37.70	13,218.11	13,255.81-	0.00223187	RI 01	0.00	0.08-	4.87-	4.85-
03/2019	400		4,180.05	0.5687	2,365.84	0.00	145.80	2,220.04	0.00223187	RI 01	5.28	0.00	0.24-	9.04
								PROPERTY SUB TOTAL			5.28	0.31-	6.03-	1.08-
00100004	00139		BEAVER LODGE DEVON UT TR-0048			/ ND/ WILLIAMS			DOI		0.00195380			
10/2014	204		0.00	0.0000	0.00	103.09	412.10	515.19-	0.00195380	RI 01	0.00	0.20-	0.81-	1.01-
10/2014	204		0.00	0.0000	0.00	103.09	412.10	515.19-	0.00027912	RI 02	0.00	0.03-	0.12-	0.15-
03/2019	204		0.04	0.0000	0.00	37.66	13,204.71	13,242.37-	0.00195380	RI 01	0.00	0.07-	4.26-	4.33-
03/2019	204		0.04	0.0000	0.00	37.66	13,204.71	13,242.37-	0.00027912	RI 02	0.00	0.01-	0.61-	0.62-
03/2019	400		4,155.83	0.5687	2,363.44	0.00	145.65	2,217.79	0.00195380	RI 01	4.62	0.00	0.21-	4.41
03/2019	400		4,155.83	0.5687	2,363.44	0.00	145.65	2,217.79	0.00027912	RI 02	0.66	0.00	0.03-	0.63
								PROPERTY SUB TOTAL			5.28	0.31-	6.04-	1.07-
00100004	00140		BEAVER LODGE DEVON UT TR-0049			/ ND/ WILLIAMS			DOI		0.00195460			
10/2014	204		0.00	0.0000	0.00	104.08	416.06	520.14-	0.00195460	RI 01	0.00	0.20-	0.81-	1.01-
10/2014	204		0.00	0.0000	0.00	104.08	416.06	520.14-	0.00027923	RI 02	0.00	0.03-	0.12-	0.15-
03/2019	204		0.04	0.0000	0.00	38.03	13,331.66	13,369.69-	0.00195460	RI 01	0.00	0.07-	4.30-	4.37-
03/2019	204		0.04	0.0000	0.00	38.03	13,331.66	13,369.69-	0.00027923	RI 02	0.00	0.01-	0.61-	0.62-
03/2019	400		4,195.78	0.5687	2,386.16	0.00	147.05	2,239.11	0.00195460	RI 01	4.66	0.00	0.21-	4.45
03/2019	400		4,195.78	0.5687	2,386.16	0.00	147.05	2,239.11	0.00027923	RI 02	0.67	0.00	0.03-	0.64
								PROPERTY SUB TOTAL			5.33	0.31-	6.08-	1.06-
00100004	00141		BEAVER LODGE DEVON UT TR-0050			/ ND/ WILLIAMS			DOI		0.00146300			
10/2014	204		0.00	0.0000	0.00	104.59	418.10	522.69-	0.00146300	RI 01	0.00	0.15-	0.61-	0.76-
10/2014	204		0.00	0.0000	0.00	104.59	418.10	522.69-	0.00020900	RI 02	0.00	0.02-	0.09-	0.11-
03/2019	204		0.04	0.0000	0.00	38.21	13,396.93	13,435.14-	0.00146300	RI 01	0.00	0.06-	3.23-	3.29-
03/2019	204		0.04	0.0000	0.00	38.21	13,396.93	13,435.14-	0.00020900	RI 02	0.00	0.01-	0.46-	0.47-
03/2019	400		4,216.32	0.5687	2,397.84	0.00	147.77	2,250.07	0.00146300	RI 01	3.51	0.00	0.16-	3.35
03/2019	400		4,216.32	0.5687	2,397.84	0.00	147.77	2,250.07	0.00020900	RI 02	0.50	0.00	0.02-	0.48
								PROPERTY SUB TOTAL			4.01	0.24-	4.57-	0.80-
00100004	00155		BEAVER LODGE DEVON UT TR-0061			/ ND/ WILLIAMS			DOI		0.00183120			
10/2014	204		0.00	0.0000	0.00	81.91	367.41	459.32-	0.00183120	RI 01	0.00	0.17-	0.67-	0.84-
10/2014	204		0.00	0.0000	0.00	81.91	367.41	459.32-	0.00026158	RI 02	0.00	0.02-	0.10-	0.12-
03/2019	204		0.03	0.0000	0.00	33.58	11,772.75	11,806.33-	0.00183120	RI 01	0.00	0.06-	3.66-	3.62-
03/2019	204		0.03	0.0000	0.00	33.58	11,772.75	11,806.33-	0.00026158	RI 02	0.00	0.01-	0.51-	0.52-
03/2019	400		3,705.15	0.5687	2,107.14	0.00	129.86	1,977.28	0.00183120	RI 01	3.86	0.00	0.18-	3.68
03/2019	400		3,705.15	0.5687	2,107.14	0.00	129.86	1,977.28	0.00026158	RI 02	0.55	0.00	0.03-	0.52
								PROPERTY SUB TOTAL			4.41	0.26-	5.05-	0.90-
00100004	00156		BEAVER LODGE DEVON UT TR-0062			/ ND/ WILLIAMS			DOI		0.00098720			
10/2014	204		0.00	0.0000	0.00	28.38	113.46	141.84-	0.00098720	RI 01	0.00	0.03-	0.11-	0.14-
10/2014	204		0.00	0.0000	0.00	28.38	113.46	141.84-	0.00014101	RI 02	0.00	0.00	0.02-	0.02-
03/2019	204		0.01	0.0000	0.00	10.37	3,635.58	3,645.95-	0.00098720	RI 01	0.00	0.01-	0.58-	0.60-
03/2019	204		0.01	0.0000	0.00	10.37	3,635.58	3,645.95-	0.00014101	RI 02	0.00	0.00	0.08-	0.08-
03/2019	400		1,144.20	0.5687	650.71	0.00	40.10	610.61	0.00098720	RI 01	0.64	0.00	0.03-	0.61
03/2019	400		1,144.20	0.5687	650.71	0.00	40.10	610.61	0.00014101	RI 02	0.09	0.00	0.00	0.09
								PROPERTY SUB TOTAL			0.73	0.04-	0.83-	0.14-
00100004	00158		BEAVER LODGE DEVON UT TR-0064			/ ND/ WILLIAMS			DOI		0.00366220			
03/2019	400		2.82	0.5674	1.60	0.00	0.10	1.50	0.00366220	RI 01	0.01	0.00	0.00	0.01
								PROPERTY SUB TOTAL			0.01	0.00	0.00	0.01
00100004	00163		BEAVER LODGE DEVON UT TR-0067			/ ND/ WILLIAMS			DOI		0.00781250			
03/2019	204		0.00	0.0000	0.00	0.02	7.40	7.42-	0.00781250	RI 01	0.00	0.00	0.01-	0.01-
03/2019	400		2.33	0.5708	1.33	0.00	0.08	1.25	0.00781250	RI 01	0.01	0.00	0.00	0.01
								PROPERTY SUB TOTAL			0.01	0.00	0.01-	0.00

PRODUCT CODES: 1XX - OIL (BBLS) 2XX - GAS (MCF) 3XX - CONDENSATE (BBLS) 4XX - PLANT PRODUCTS (GALS) 9XX - JOINT VENTURE EXPENSES

ROYALTY STATEMENT CSV

Heade	OwnerNur	CheckNum	CheckDate	PropNur	PropS	PropNar	Producti	Produc	TX	LeaseVol	Price	LeaseGro	LeaseTax	LeaseOtl	LeaseNe	Disburse	InterestT	Interest(	InterestT	IntrestO
1	14522601	E009173711	5/25/2019	100004	47	BEAVER LC	42019	100		114.84	65.5159	7523.85	-601.51	-666.5	6255.84	0.002232	RI 01	16.79	-1.34	-1.44
1	14522601	E009173711	5/25/2019	100004	48	BEAVER LC	42019	100		114.71	65.5237	7516.22	-600.93	-665.78	6249.51	0.001954	RI 01	14.69	-1.17	-1.26
1	14522601	E009173711	5/25/2019	100004	48	BEAVER LC	42019	100		114.71	65.5237	7516.22	-600.93	-665.78	6249.51	0.000279	RI 02	2.1	-0.17	-0.17
1	14522601	E009173711	5/25/2019	100004	49	BEAVER LC	42019	100		115.82	65.5196	7588.48	-606.7	-672.17	6309.61	0.001955	RI 01	14.83	-1.19	-1.26
1	14522601	E009173711	5/25/2019	100004	49	BEAVER LC	42019	100		115.82	65.5196	7588.48	-606.7	-672.17	6309.61	0.000279	RI 02	2.12	-0.17	-0.17
1	14522601	E009173711	5/25/2019	100004	50	BEAVER LC	42019	100		116.38	65.5235	7625.63	-609.66	-675.51	6340.46	0.001463	RI 01	11.16	-0.89	-0.96
1	14522601	E009173711	5/25/2019	100004	50	BEAVER LC	42019	100		116.38	65.5235	7625.63	-609.66	-675.51	6340.46	0.000209	RI 02	1.59	-0.12	-0.14
1	14522601	E009173711	5/25/2019	100004	61	BEAVER LC	42019	100		102.27	65.5239	6701.13	-535.74	-593.63	5571.76	0.001831	RI 01	12.27	-0.98	-1.05
1	14522601	E009173711	5/25/2019	100004	61	BEAVER LC	42019	100		102.27	65.5239	6701.13	-535.74	-593.63	5571.76	0.000262	RI 02	1.75	-0.14	-0.15
1	14522601	E009173711	5/25/2019	100004	62	BEAVER LC	42019	100		31.57	65.5496	2069.4	-165.44	-183.31	1720.65	0.000987	RI 01	2.04	-0.16	-0.16
1	14522601	E009173711	5/25/2019	100004	62	BEAVER LC	42019	100		31.57	65.5496	2069.4	-165.44	-183.31	1720.65	0.000141	RI 02	0.29	-0.02	-0.01
1	14522601	E009173711	5/25/2019	100004	64	BEAVER LC	42019	100		0.08	63.75	5.1	-0.42	-0.43	4.25	0.003662	RI 01	0.02	0	0
1	14522601	E009173711	5/25/2019	100004	65	BEAVER LC	42019	100		3.26	65.4479	213.36	-17.05	-18.9	177.41	0.001953	RI 01	0.42	-0.03	-0.03
1	14522601	E009173711	5/25/2019	100004	65	BEAVER LC	42019	100		3.26	65.4479	213.36	-17.05	-18.9	177.41	0.000279	RI 02	0.06	0	0
1	14522601	E009173711	5/25/2019	100004	66	BEAVER LC	42019	100		0.4	65.45	26.18	-2.1	-2.32	21.76	0.001953	RI 01	0.05	0	0
1	14522601	E009173711	5/25/2019	100004	66	BEAVER LC	42019	100		0.4	65.45	26.18	-2.1	-2.32	21.76	0.000279	RI 02	0.01	0	0
1	14522601	E009173711	5/25/2019	100004	67	BEAVER LC	42019	100		0.07	60.2857	4.22	-0.33	-0.34	3.55	0.007813	RI 01	0.03	0	0
1	14522601	E009173711	5/25/2019	100004	138	BEAVER LC	32019	204		0.04	0	0	-37.7	-13218.1	-13255.8	0.002232	RI 01	0	-0.08	-4.87
1	14522601	E009173711	5/25/2019	100004	138	BEAVER LC	32019	400		4160.05	0.5687	2365.84	0	-145.8	2220.04	0.002232	RI 01	5.28	0	-0.24
1	14522601	E009173711	5/25/2019	100004	138	BEAVER LC	102014	204		0	0	0	-103.19	-412.52	-515.71	0.002232	RI 01	0	-0.23	-0.92
1	14522601	E009173711	5/25/2019	100004	139	BEAVER LC	32019	204		0.04	0	0	-37.66	-13204.7	-13242.4	0.000279	RI 02	0	-0.01	-0.61
1	14522601	E009173711	5/25/2019	100004	139	BEAVER LC	32019	204		0.04	0	0	-37.66	-13204.7	-13242.4	0.001954	RI 01	0	-0.07	-4.26
1	14522601	E009173711	5/25/2019	100004	139	BEAVER LC	32019	400		4155.83	0.5687	2363.44	0	-145.65	2217.79	0.001954	RI 01	4.62	0	-0.21
1	14522601	E009173711	5/25/2019	100004	139	BEAVER LC	32019	400		4155.83	0.5687	2363.44	0	-145.65	2217.79	0.000279	RI 02	0.66	0	-0.03
1	14522601	E009173711	5/25/2019	100004	139	BEAVER LC	102014	204		0	0	0	-103.09	-412.1	-515.19	0.000279	RI 02	0	-0.03	-0.12
1	14522601	E009173711	5/25/2019	100004	139	BEAVER LC	102014	204		0	0	0	-103.09	-412.1	-515.19	0.001954	RI 01	0	-0.2	-0.81
1	14522601	E009173711	5/25/2019	100004	140	BEAVER LC	32019	204		0.04	0	0	-38.03	-13331.7	-13369.7	0.001955	RI 01	0	-0.07	-4.3
1	14522601	E009173711	5/25/2019	100004	140	BEAVER LC	32019	400		4195.78	0.5687	2386.16	0	-147.05	2239.11	0.001955	RI 01	4.66	0	-0.21
1	14522601	E009173711	5/25/2019	100004	140	BEAVER LC	32019	400		4195.78	0.5687	2386.16	0	-147.05	2239.11	0.000279	RI 02	0.67	0	-0.03
1	14522601	E009173711	5/25/2019	100004	140	BEAVER LC	102014	204		0	0	0	-104.08	-416.06	-520.14	0.001955	RI 01	0	-0.2	-0.81
1	14522601	E009173711	5/25/2019	100004	140	BEAVER LC	102014	204		0	0	0	-104.08	-416.06	-520.14	0.000279	RI 02	0	-0.03	-0.12
1	14522601	E009173711	5/25/2019	100004	141	BEAVER LC	32019	204		0.04	0	0	-38.21	-13396.9	-13435.1	0.001463	RI 01	0	-0.06	-3.23
1	14522601	E009173711	5/25/2019	100004	141	BEAVER LC	32019	204		0.04	0	0	-38.21	-13396.9	-13435.1	0.000209	RI 02	0	-0.01	-0.46
1	14522601	E009173711	5/25/2019	100004	141	BEAVER LC	32019	400		4216.32	0.5687	2397.84	0	-147.77	2250.07	0.001463	RI 01	3.51	0	-0.16

ROYALTY STATEMENT OVERVIEW

$2.34/MCF

Product	TX	Lease Volume	Price	Lease Gross Value	Lease Taxes	Lease Other Deductions	Lease Net Value	PPC's	Interest Type
100 Total	Crude	117,268.35		7,683,870.67		-680,644.59		-5.800	BBLS
203 Total	Gas	29,576.35		88,985.31		-20,914.95		-0.710	MCF
204 Total	Gas	263,381.21		783,609.41		-3,421,632.22		-12.990	MCF
300 Total	Condensate	2,750.64		180,226.91		-15,964.73		-5.800	BBLS
400 Total	Plant Product	3,995,189.98		2,036,063.94		-144,435.15		-0.036	GALS
									575
*PPC's = Post Production Costs						Price paid per MCF		$2.34	

Hess Midstream Partners Quarterly Report 8/14/2020

· Stable and growing cash flows supported by long-term, fee-based contracts.

Our commercial agreements with Hess provide us with an attractive and stable cash flow base with significant opportunities to grow our business. Our long-term, fee-based commercial contracts with Hess, a high-quality commercial counterparty, provide substantially all of our revenues. They are based on broad Bakken production dedications with minimum volume commitments, annual inflation escalators and fee recalculation mechanisms, all of which are intended to provide us with cash flow stability and growth, as well as downside risk protection.

HOW TO MAKE DEDUCTIONS FROM THE ROYALTY STREAM FOR POST-PRODUCTION EXPENSES

Minimizing Liability While Improving the Company's Bottom Line

By Marlin K. Brown, CPL

While oil and gas producing companies are required to pay costs of producing liquid and gaseous hydrocarbons, many oil and gas leases set out certain costs that should be shared between lessors (mineral rights owners who leased their land to oil companies) and lessees (the oil companies that bought the rights to explore, drill for and produce oil and gas).

Past issues of *The Landman* (May/June 1989, May/June 1998, January/February 2013 and others) have featured articles exploring the legal basis for making deductions for post-production expenses and taxes. The information in these articles is useful for landmen to gain knowledge about the adjudication in the states that influence this area. However, once a landman has a sense of what items may be deducted under the applicable case law, the question remains as to how to work with his employer or client to actually implement such deductions.

Most oil and gas leases currently in force have a provision that says the lessee pays all taxes on producing properties; then the lessee reimburses itself for the lessor's royalty share (equal to the royalty percentage) of such tax payments. Most companies use accounting software that includes one or more "slots" for inputting ad valorem taxes (local county property taxes, also called "school taxes") on producing minerals as well as a slot for local or state severance taxes. And virtually all leases specifically allow the lessee to deduct the lessor's royalty share of those taxes from the royalty stream. Many companies deduct for these taxes.

However, depending on the adjudication and statute law in a state, the language in the leases and the circumstances of production, there may be many other items that may legally and properly be deducted. This article lists steps that may be followed to first find out if more deductions are possible and then implement such additional deductions in a fair, consistent and defensible manner. It is recommended that you perform a study on your top five properties to determine feasibility.

There are seven steps in finding out how much your company can benefit by deducting for post-production expenses. Once this work is done and the decision is made to proceed, implementation can follow.

Feasibility Study

Adjudication

Review applicable case law and build a table for the state or states in which your properties are located. This table presents applicable rulings in a brief form *(see Table A)*. This is a list of rulings for California. You may need to enlist the aid of an experienced oil and gas attorney to determine from adjudication (and statute law, if any) what items are deductible in your state.

Chart of Accounts

Review the company's chart of accounts and match line items with deductible expenses *(see Table B)*. Use Table B as a go-by and be guided by your findings from Table A. Some "direct" costs (example: metering costs) may be for a particular lease while other "spreadable" costs (example: gas plant serving several properties) are spread among several leases.

Spreadable Expenses

If the company has both direct and allocated spreadable expenses, build a spreadsheet like the example shown in Table C *(see page 25)*. Spreadable expenses are costs incurred at the field or regional level, which are split out (allocated) to individual properties. For example, the telephone bill for the office at which the management for a group of properties is done might be allocated out to each of those properties in the same

Issue: Lost North Dakota Tax Dollars

M.E. Denomy, CPA, MBA
Accredited Petroleum Accountant

Oil and Gas Companies Use Master Limited Partnerships and Affiliate Agreements to Divert Taxable Income away from North Dakota

1. Oil and Gas Companies have split their operations into categories, such as Production, Marketing, Gathering, Processing. Each "division" is often filed as a separate business, frequently using the form of a Master Limited Partnership.
2. The Master Limited Partnership is not taxed as a business in North Dakota.
3. The net income of the division is "passed through" to the owners of the Master Limited Partnership. Each owner will report their own share of the net income.
4. Oil and Gas Companies can use each of the separate divisions to reduce their taxable income to North Dakota by raising postproduction costs (PPC's) paid to divisions that have high expenses, like plants.
5. The PPC's are deducted from the royalty owners.
6. Royalty owners will pay less tax because the PPC's are deducted from gross royalties thereby reducing net royalties received.
7. The production company will also pay less tax on the oil and gas income by applying PPC's paid to affiliates.

Potential Dollars Overlooked:

Scenario 1: Basic assumptions-annual loss (current price and production)

Production per day=	1,200,000 barrels
Per barrel price=	$45
North Dakota average lease=	1/8 royalty
Average PPC=	10% (one major prod. is over 35%)

1,200,000 x 45 X 0.125 x 0.10 x 365 days = $246,375,000 ND income tax exempt

Scenario 2: Basic assumptions-annual loss (January 2020 price & production)

Production per day=	1,400,000 barrels
Per barrel price=	$60
North Dakota average lease=	1/8 royalty
Average PPC=	10% (one major prod. is over 35%)

1,400,000 x 60 x 0.125 x 0.10 x 365 days = $383,250,000 ND income tax exempt

The total postproduction costs to royalty owners (taken by the oil producers) for one year would be $383,250,000. It appears that only a ridiculously small amount of ND State income tax is paid on this wealth generated from ND oil production.

Attached is a graphic that provides a simplified picture of what the consequences are on 1,000,000 barrels of oil at $45 per barrel when a $5 PPC per barrel is charged. That equates to $312,000 per day or $113,880,000 per year in untaxed wealth at the current production of 1,200,000 barrels per day and $5 PPC rates.
I believe the $5 PPC per barrel is very conservative.

The second ND State Income Tax avoidance is due to the PPC's charged on produced natural gas. That difference may be deduced by subtracting the dollars in red in the previous paragraph from the previous dollars shown in red earlier in this correspondence.

Respectfully,

Bob Skarphol
Williston Basin Royalty Owners Association (WBROA)

COMPANY A OWNS BOTH THE
PRODUCTION COMPANY AND
A MAJORITY OF THE MASTER LIMITED PARTNERSHIP(MLP)
Marginal Tax Rate Max is 5.2% (2019 rate)

Company A Produces a $45
Barrel of Oil, 1,000,000
barrels
Value = $45,000,000
Full Tax would be
$2,340,000

Company A MLP Charges $5
for expense
Taxed in Texas

Company A pays Tax in North Dakota on the
net of $40.00 per barrel, Value = $40,000,000
Tax is $2,080,000

Lost Tax Revenue=
$260,000 per million
barrels

Gas Plant Postproduction Charges (PPC's)

("Other Deductions")

An Actual Gas Plant PPC in May 2019

May 2019 PPC per MCF= $12.99 per MCF

250,000 MCF per day X $12.99 per MCF X 365 Days = $1,185,337,500

$1,185,337,500

Annual Postproduction Charges

Postproduction costs deducted from Private Royalty Owners and
Working Interest Royalty Owners

$1,185,337,500 X 1/8 lease = $148,167,187

$148,167,187

Annual PPC's deducted from Royalty Owners
at just one plant of this size

How would you, as a Royalty Owner, spend these dollars if you received them as opposed to being withheld from your check?

Help fix this problem for Royalty Owners, join the Williston Basin Royalty Owners Association

Join Today at

wbroa.com

Senate Bill 2217
Testimony of Gary Hagen, North Dakota Mineral Owner
March 15, 2021

My name is Gary Hagen and my family owns mineral rights in McKenzie County, North Dakota.
I come before you to testify in favor of the original version of SB2217 as submitted by Senator Brad Bekkedahl.

Historically, the percentage of our gas royalties deducted as post-production expenses averaged in the mid-forties. Then between January 2019 and July 2019, the deduction amounts jumped from 46.54% to 105.83%, more than doubling in a seven month period. Since then, virtually all of our gas royalties have been taken through post-deduction "processing fees" or "service fees". In some months where the fees exceed 100% of the gas royalties, the oil company takes further deductions from our oil royalties to cover the "losses" that they claim to sustain from the gas operations.

Every testimony from the oil industry lobby in opposition to SB2217 contains some variation on the theme of "we invested a lot of money in North Dakota blah blah blah but if you don't let us stick the mineral owners as much as we want, we might take our ball and go home, the state will receive less in tax revenues and everyone loses. We are enhancing the value of the gas by selling it farther downstream so the mineral owner benefits, etc."

From a mineral owner's point of view, if we already receive nothing for our gas royalties because the oil company offsets all of the revenues with post-production expenses, and they continue to take it all even if they get a higher price by laundering the sales farther downstream through a third party/Master Limited Partnership scheme, then what benefit did we the owners really receive? Sure, the oil company made more money on the deal but our net income is still nothing. The company gets to avoid the arms-length transaction laws and may also receive profitable kickbacks in various other forms such as ownership of pipeline shares.

The oil executives say that the mineral owners have an obligation to "share" in the costs. Sharing implies a mutual benefit or a mutual shouldering of a burden. It isn't sharing when we are forced to give up all of our asset to cover their costs, but we don't share in the profits. They are taking most or all of the money they made from selling the gas and sometimes garnishing the oil royalties on top of that. Without an audit, who knows if some that money is really paying for infrastructure expenses or marketing blunders or geopolitical risks or other costs of doing business that have nothing to do with transporting and marketing the product?

The lobbyists further claim that it is okay for them to do what they are doing because the leases are contracts that were entered into freely and in good faith by both parties. I guess they forgot the part of the contract where the lessee agreed to take on the cost of developing and marketing the resource in exchange for 80% or more of the production. The leases don't say that the lessee agrees to 80% but feel free to come back years later and take more, because you think you can and there aren't any laws to stop you.
Additionally, I would argue that a lease contract isn't negotiated in good faith when an oil company or a landman knowingly offers a lease that is written in impenetrable legalese and heavily loaded with clauses in favor of the lessee. Ten to fifteen years ago when the majority of the privately owned acreages were leased, the normal industry practice was to acquire the acreage at the most lowball price possible and then drill a single well to hold it all by production. If the mineral owner didn't know what

a Pugh clause is, too bad. If the mineral owner “trusted the landman” to give them a fair deal, only to find out later that the landman may have lied, made verbal promises that were not included in the lease document, or otherwise cheated them on the lease terms, too bad.
If the drilling unit was force pooled and unitized, so the mineral owner felt forced to sign a bad lease because the only alternative under North Dakota law is to sell the minerals or become a non-consenting co-tenant, too bad.

The oil companies deliberately took advantage of a lot of people and the State let them do it because the State wanted the money. Good faith and fair dealing were rarely part of the relationship, at least in my experience and that of every mineral owner I have ever met.

Even today, the county courthouses are recording new leases containing detailed language that allows the deduction of post-production costs. How many of the people who are signing those leases understand what it means or take the time to run it by an expensive oil and gas attorney? Do the landmen helpfully explain to them that by the way, this clause here means you get nothing for your gas royalties plus we can eat up your oil royalties too?

So I ask:
Why should an oil company have the exclusive right to decide that extra deductions are “permitted” by a lease, only because they were not specifically denied by the lease?

As some of you may know, the North Dakota Supreme Court in Newfield Exploration Co. v. State of North Dakota, et al., (2019 ND 193, July 11, 2019) held that royalties were illegally deducted using post-production deductions based on net vs gross proceeds, concluding that
“Gross proceeds from which the royalty payments under the leases are calculated may not be reduced by an amount that either directly or indirectly accounts for post-production costs incurred to make the gas marketable.”

Of course these days, even Supreme Court decisions may not be final. It seems like there is always some technicality or angle that was not specifically addressed in the court opinion, that requires the case to be reheard. In the meantime, the oil companies (or the State) get to keep all the money. Unfortunately, mineral owners don’t have the unlimited resources enjoyed by the State and the oil lobby when it comes to legal costs. That is why we need a new law that protects us with detailed, unambiguous language as proposed in the original version of SB2217. We also need the right to audit where the gas was sold and under what terms, so they can’t hide the shell games.

I am very disappointed that the Senate Finance and Taxation committee completely gutted the SB2217 bill and replaced it with a call for a study. That action, or lack of action, is nothing but a green light for the oil companies to go ahead with business as usual.

As one of the hundreds of mineral owners who had their mineral rights stolen by the State of North Dakota’s “Ordinary High Watermark” (OHWM) scam, I don’t have much faith in studies as a legitimate problem-solving tool, particularly when the real purpose of the study is to stall for time or to justify theft, as was done with the Bartlett/West and Wenck studies. Eleven years later, the State is still enjoying the benefit of using hundreds of millions of dollars in stolen royalties as an interest-free loan, while the lawsuits and studies go on forever.

In one of these failed lawsuits, the Sorum/Nelson case (which also sought to steal all of my mineral rights and give them to the State), Justice Tufte wrote in the Supreme Court opinion that “The State has a moral obligation to deal fairly with the people”. I submit to you that the legislature also has a moral obligation to own up to its failures of the past and stop running away in a blind panic every time the Petroleum Council threatens to take away your magic money trough. We the people who actually own the minerals that you tax at thirteen percent right off the top without our consent, have a right to be represented too.

In closing, I request that SB2217 be restored in its original form and built upon with specific language that legally codifies what post-production deductions are or are not allowed.

Thank you for this opportunity to testify.

2021 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Coteau AB Room, State Capitol

SB 2217 11:34 AM
3/18/2021

Relating to the deduction or recover of losses incurred in the sale or disposition of natural gas from the proceeds of oil production and to provide for a legislative management study.

11:34 AM

Chairman Porter opened the hearing. Present: Representatives Porter, Anderson, Bosch, Devlin, Damschen, M. Ruby, Lefor, Marschall, Roers Jones, Zubke, Guggisberg, and Ista. Absent: Rep Keiser

Discussion Topics:
Committee work

Rep Zubke moved to adopt the amendment 21.0130.04001, seconded by Rep Lefor. Voice vote. Motion carried.

Rep Zubke moved a Do Pass as Amended, seconded by Rep Heinert.
Roll call vote:

Representatives	Vote
Representative Todd Porter	Y
Representative Chuck Damschen	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Bill Devlin	Y
Representative Ron Guggisberg	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	Y
Representative George Keiser	AB
Representative Mike Lefor	Y
Representative Andrew Marschall	Y
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	Y
Representative Denton Zubke	Y

Motion carried. 13 – 0 – 1 Rep Zubke is carrier.

11:35 AM hearing closed.

Kathleen Davis, Committee Clerk

21.0130.04001
Title.05000

Prepared by the Legislative Council staff for
Senator Bekkedahl
March 10, 2021

3/18/21

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2217

Page 1, line 1, remove "create and enact a new section to chapter 47-16 of the North Dakota"

Page 1, remove line 2

Page 1, line 3, remove "of natural gas from the proceeds of oil production; and to"

Page 1, line 4, after "study" insert "of postproduction cost deductions"

Page 1, remove lines 6 through 23

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2217, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2217 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "create and enact a new section to chapter 47-16 of the North Dakota"

Page 1, remove line 2

Page 1, line 3, remove "of natural gas from the proceeds of oil production; and to"

Page 1, line 4, after "study" insert "of postproduction cost deductions"

Page 1, remove lines 6 through 23

Renumber accordingly

2021 CONFERENCE COMMITTEE

SB 2217

2021 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 2217
4/13/2021
Conference Committee

A BILL for an Act to amend and reenact subsection 36 of section 57-02-08 of the North Dakota Century Code, relating to a property tax exemption for property leased for the provision of early childhood or adult day care services; and to provide an effective date.

Chair Patten calls the meeting to order. Senators Patten, Kannianen, Bell and Representatives Zubke, D. Anderson, Bosch are present. [9:34]

Discussion Topics:
- Adult day care
- Early childhood day care

Senator Kannianen [9:34] moved Senate Accede to the House Amendments
Senator Bell seconds

Motion passed 6-0-0
Senator Kannianen and **Representative Zubke** carry.

Chair Patten adjourns the meeting. [9:40]

Joel Crane, Committee Clerk

Date: 4/13/2021
Roll Call Vote #: 1

2021 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2217 as engrossed

Senate Finance and Taxation Committee

Action Taken
☒ **SENATE accede to House Amendments**
☐ **SENATE accede to House Amendments and further amend**
☐ **HOUSE recede from House amendments**
☐ **HOUSE recede from House amendments and amend as follows**

☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Senator Kannianen Seconded by: Senator Bell

Senators				Yes	No		Representatives				Yes	No
Chair Patten				X			Zubke				X	
Kannianen				X			D. Anderson				X	
Bell				X			Bosch				X	
Total Senate Vote				3			Total Rep. Vote				3	

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Kannianen House Carrier Zubke

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2217, as engrossed: Your conference committee (Sens. Patten, Kannianen, Bell and Reps. Zubke, D. Anderson, Bosch) recommends that the **SENATE ACCEDE** to the House amendments as printed on SJ page 1217 and place SB 2217 on the Seventh order.

Engrossed SB 2217 was placed on the Seventh order of business on the calendar.