

**2023 SENATE ENERGY AND NATURAL RESOURCES**

**SB 2251**

# 2023 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Room J216, State Capitol

SB 2251  
1/26/2023

A bill relating to the surveying process during eminent domain proceedings; and to declare an emergency.
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8:59 AM Chairman Patten opened the meeting.

Present are Chairman Patten and Senators Kannianen, Kessel, Beard, Magrum and Boehm.

### Discussion Topics:

- Surveying
- Landowners' rights
- Eminent domain
- Pipelines
- Energy projects

9:00 AM Senator Mangrum introduced the bill and provided written testimony #17068.

9:05 AM Pete Hanebutt, North Dakota Farm Bureau, testified in favor of the bill and provided written testimony #17182.

9:08 AM Troy Coons, Chairman of the Northwest Landowners Association, testified in favor of the bill and provided written testimony #17185.

9:10 AM Ronn Ness, North Dakota Petroleum Counsel, testified in favor of the bill and provided written testimony #17043.

9:11 AM Derrick Braaten, Attorney for the Northwest Landowners Association, spoke in favor of the bill.

9:15 AM Stephanie Dolittle testified in favor of the bill and provided written testimony #17186.

9:18 AM Susan Doppler testified in favor of the bill and provided written testimony #16978.

9:21 AM Gerald Gorick, Rancher and President of Sons of Liberty, spoke in favor of the bill.

9:22 AM Jeffrey Skaare, Sequestration Director of Land Legal and Regulatory Affairs for Summit Carbon Solutions, testified opposed to the bill and provided written testimony #17187.

9:26 AM Jason Benson, Cass County Engineer, testified opposed to the bill and provided written testimony #16922.

**Additional written testimony:**

Larry and Cheryl Stockert provided written testimony #15629.

Paul Brown provided written testimony #15802.

Julia Stramer provided written testimony #14897.

Rory Gabel provided written testimony #15103.

David Mock provided written testimony #16954.

Greg Schonert provided written testimony #16967.

Duane Dekrey provided written testimony, #16897 16898.

Lon Klusman provided written testimony# 16757, 14979.

Josh Teigen provided written testimony#17047.

Ryan Carter provided written testimony #17212.

Eliot Huggins provided written testimony #16993

11:04 AM Chairman Patten closed the meeting.

*Rick Schuchard, Committee Clerk*

# 2023 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2251  
1/26/2023

A bill relating to the surveying process during eminent domain proceedings; and to declare an emergency.
--

11:02 AM Chairman Patten opened the meeting.

Present are Chairman Patten and Senators Magrum, Boehm, Beard, Kannianen and Kessel.

### **Discussion Topics:**

- Surveying
- Landowners' rights
- Eminent domain
- Pipelines
- Energy projects

11:03 AM Chairman Patten opened the public hearing for further testimony.

11:03 AM Eliot Huggins, Dakota Resource Council, testified in favor of the bill and provided written testimony #16993.

11:04 AM Chairman Patten closed the public hearing.

11:05 AM Chairman Patten closed the meeting.

*Rick Schuchard, Committee Clerk*

# 2023 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2251  
2/10/2023

A bill relating to the surveying process during eminent domain proceedings; and to declare an emergency.
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9:00 AM Chairman Patten opened the meeting.

Present are Chairman Patten and Senators Kessel, Kannianen, Boehm, Beard and Magrum.

### Discussion Topics:

- Committee action

9:00 AM Senators have discussion on the bill.

9:02 AM Senator Magrum moves to adopt amendment to the bill, "Remove permission from the landowner".

9:05 AM Senator Magrum withdraws his motion.

9:05 AM Senator Magrum moves to adopt an amendment LC 23.0391.02002. Senator Boehm seconds the motion.

9:06 AM Roll call vote is taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passes 6-0-0.

9:07 AM Senator Boehm moves to Do Pass the bill as amended. Motion seconded by Senator Magrum.

9:07 AM Roll call vote is taken.

<b>Senators</b>	<b>Vote</b>
Senator Dale Patten	Y
Senator Jeffery J. Magrum	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passes 6-0-0.

Senator Magrum will carry the bill.

This bill does not affect workforce development.

9:08 AM Chairman Patten closed the meeting.

*Rick Schuchard, Committee Clerk*

AGx  
2-10-23  
(1-1)

PROPOSED AMENDMENTS TO SENATE BILL NO. 2228

- Page 1, line 15, remove the overstrike over "~~made a good faith effort to get~~"
- Page 1, line 15, remove "obtained"
- Page 1, line 17, remove the overstrike over "~~That the storage operator has obtained the consent of persons who own at least sixty~~"
- Page 1, remove the overstrike over line 18
- Page 1, line 19, remove the overstrike over "6."
- Page 2, line 1, remove the overstrike over "7."
- Page 2, line 1, remove "6."
- Page 2, line 3, remove the overstrike over "8."
- Page 2, line 3, remove "7."
- Page 2, line 4, remove the overstrike over "9."
- Page 2, line 4, remove "8."
- Page 2, line 6, remove the overstrike over "40."
- Page 2, line 6, remove "9."
- Page 2, line 8, remove the overstrike over "41."
- Page 2, line 8, remove "10."
- Page 2, line 9, remove the overstrike over "42."
- Page 2, line 9, remove "11."
- Page 2, line 12, remove the overstrike over "43."
- Page 2, line 12, remove "12."
- Page 2, line 15, remove the overstrike over "44."
- Page 2, line 15, remove the overstrike over "~~That all nonconsenting pore space owners~~"
- Page 2, line 15, after the stricken period insert "have received just compensation under chapter 32-15 and section 16 of article I of the Constitution of North Dakota or the district court has authorized the plaintiff to take possession under section 32-15-29."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2251: Energy and Natural Resources Committee (Sen. Patten, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2251 was placed  
on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 10, remove "or permission"

Renumber accordingly

**2023 HOUSE ENERGY AND NATURAL RESOURCES**

**SB 2251**

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2251  
3/17/2023

Relating to the surveying process during eminent domain proceedings; and to declare an emergency.
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9:10 AM Chairman Porter opened the hearing.

Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Olson, Roers Jones, and Ruby.

### Discussion Topics:

- Land surveys public access
- Landowner signatures
- Electronic signatures
- Supreme Court decision
- Out of state landowners
- Renters
- Precondemnation survey
- Court order
- Easements
- Just compensation
- Environmental impact

Sen Jeff Magrum, District 8, introduced SB 2251, Testimony #25692  
Troy Coons, Chairman, NW Landowners Association, Testimony #25696  
Derrick Braaten, Attorney, NW Landowners Association, oral testimony  
Merri Mooridian, Administrative Officer, Garrison Diversion District, Testimony #25649  
Eric Volk, Executive Direct, ND Rural Water Systems Association, Testimony #25661  
Dani Quissell, Executive Vice President of ND Water Users Association, Testimony #25627

### Additional written testimony:

Josh Teigen, Testimony #25636  
Pete Hannebutt, Testimony #25642

9:59 AM Chairman Porter closed the hearing.

*Kathleen Davis, Committee Clerk*

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2251  
3/23/2023

Relating to the surveying process during eminent domain proceedings; and to declare an emergency.
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10:14 AM Chairman Porter opened the meeting.

Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Marschall, Novak, Olson, Roers Jones, and Ruby.  
Absent: Representative Kasper

### Discussion Topics:

- Committee action

Rep Ruby moved to adopt an amendment (Testimony #26473), on Page 1 Line 8 after “cases” insert “except surveys undertaken for improvements to highways, streets, and roads”, seconded by Rep Heinert.

Representatives	Vote
Representative Todd Porter	N
Representative Dick Anderson	N
Representative Glenn Bosch	N
Representative Liz Conmy	AB
Representative Jason Dockter	N
Representative Jared Hagert	N
Representative Pat D. Heinert	Y
Representative Zachary Ista	N
Representative Jim Kasper	AB
Representative Andrew Marschall	Y
Representative Anna S. Novak	Y
Representative Jeremy Olson	Y
Representative Shannon Roers Jones	N
Representative Matthew Ruby	Y

**5-7-2 Motion failed.**

Rep Anderson moved a Do Not Pass, seconded by Rep Roers Jones.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Liz Conmy	AB
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	Y

Representative Jim Kasper	AB
Representative Andrew Marschall	N
Representative Anna S. Novak	N
Representative Jeremy Olson	Y
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	N

**9-3-2 Motion carried. Rep Anderson is carrier.**

10:20 AM Meeting adjourned.

*Kathleen Davis, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2251, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends DO NOT PASS (9 YEAS, 3 NAYS, 2 ABSENT AND NOT VOTING).** Engrossed SB 2251 was placed on the Fourteenth order on the calendar.

**TESTIMONY**

**SB 2251**

## **Committee Members**

This is in support of **SB 2251**.

### **Does one really own their property in ND?**

Summit Carbon Solutions is planning to cross our cropland with a pipeline that has no useful purpose or benefit for mankind. CO2 is a hazardous material that is dangerously unregulated in a pipeline. Untested with no previous pipeline history to learn from, Summit Carbon Solutions is planning to cross 5 states in order to pipe the CO2 underground in ND. Has ND become the dumping ground for the country? What will the future of ND look like if we allow this to happen?

The whole project is a federal money grabbing scheme. It is a make-work "Green Deal" invention for a select group of self serving bureaucrats in order to become billionaires at landowner's expense.

The first easement contract that we received from Summit Carbon Solutions in July of 2021 was an insult regarding compensation and terms. After taxes, my compensation amount figured to be about \$23.00 per year for 99 years. That is not even enough to pay the lawyer. We also received a letter from a Summit Carbon Solutions lawyer stating that we would be sued if we did not allow entrance to our property. The Summit Carbon Solutions agents have communicated with us using misinformation, confusion, misleading and contradictory language, and threats. We are now finding ourselves buried in paperwork and meetings, and paying a lawyer every month.

Our land is a 4th generation owned property. We do not want it to be held hostage for next 99 years. My Grandchildren should have the right use, protect and better the land without a toxic pipeline cutting through it.

We are asking you to help ND landowners. Please vote **YES** on **SB 2251**.

Thank you for the consideration.

Julia Stramer  
Hazelton, ND  
Emmons County

Mr. Chairman and Members of the Committee

My Name is Lon Klusmann

I am in support of SB 2251

No private landowner should be subject to any entity from entering private property for the purpose of conducting a land survey either on ground or by drone, without WRITTEN authorization by the LANDOWNER, not a court or another jurisdiction.

The landowner is THE OWNER it is his, and only his decision who he allows entry.

Summit Carbon Solutions SUED our family because we did not give them 'VOLUNTARY "Survey access.

That is just plain evil!

I urge a yes vote on SB2251

Thank you,

Rory Gabel

Valley City, ND

Testimony in Support of Senate Bill 2251  
House Energy and Natural Resources Committee

Mr. Chairman and members of the Committee, we are Larry and Cheryl Stockert, and live North of Bismarck in Burleigh County.

We support Senate Bill 2251.

It is time this law is updated as it makes good business and common sense to ensure property owners are notified when strangers are on their land conducting private surveys (business).

We are concerned about potential property owner liability. If the property owner is unaware someone is on their property and that unknown person is injured, legal issues could arise.

Please vote YES on Senate Bill 2251.

Thank you.

Good Morning Chairman Patten and members of the Energy and Natural Resources Committee. I am Paul Brown, a third generation farmer/rancher and landowner right east of Bismarck.

Over the past year we have been dealing with the proposed CO2 pipeline and the headache that has come with it. In July, I had to inform a survey crew that they were trespassing illegally onto my family's property. They responded by saying that "we thought this was a section line" when in fact, they were on my driveway which is a quarter-line. How does a survey crew not know the difference?

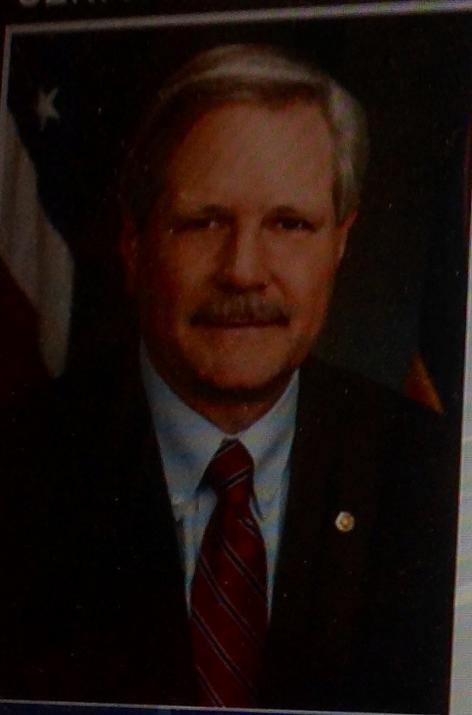
Come to find out, the crew was not even registered with the North Dakota State Board of Registration for Professional Engineers and Land Surveyors. More than once I had to confront them about trespassing and there was a complete lack of respect for the landowner and law. That is why I am asking you to support SB 2251.

Thank you for your consideration,

Paul Brown

12550 71st Ave. NE  
Bismarck, ND 58503  
Legislative District 8

# CARBON CAPTURE SEN. HOEVEN RAISES CONCERN



**"PRIVATE PROPERTY RIGHTS MUST BE RESPECTED AND PARTICIPATION IN THE SUMMIT CARBON SOLUTIONS PROJECT SHOULD BE VOLUNTARY, AND [I AM] CONCERNED ABOUT THE USE OF LITIGATION TO COMPEL ACCESS TO PRIVATE PROPERTY."**

**SEN. JOHN HOEVEN**  
(R) NORTH DAKOTA

## CARBON CAPTURE LAWSUIT

26, 2022 at 7:34 AM CDT



# College **SAVE**

Bank of North Dakota's 529 Plan

Tell them ab  
**\$100 match!**



**Testimony by Duane DeKrey  
General Manager  
Garrison Diversion Conservancy District**

**To the  
Senate Natural Resources Committee  
Senate Bill 2251 Hearing**

**Bismarck, North Dakota  
January 26, 2023**

Chairman Patten, members of the committee, I appreciate the opportunity to testify in opposition to Senate Bill (SB) 2251. My name is Duane DeKrey, General Manager of Garrison Diversion Conservancy District (Garrison Diversion). Garrison Diversion has significant experience in communication with landowners, as well as the requirements and processes involved in surveying, as we continue to move forward on the Red River Valley Water Supply Project (RRVWSP). SB 2251 is a well-intended piece of legislation, but I worry it will have unintentional impacts on the cost of implementing public projects, like the RRVWSP, and will ultimately do very little to change the processes we have in place.

Currently, if a governmental entity considers private property as a location for a public use, the governmental entity is allowed access in order to identify whether that property is actually suited for the public use being considered. When multiple project alignments or properties are being considered for a public use, it is necessary to conduct parcel examinations that may quickly eliminate the property from eligibility as a location without much additional time and effort.

Communication with the public is a high priority for Garrison Diversion and, as a matter of routine, notifies landowners when surveyors will be on their properties and

advises what types of surveys will be conducted. While we have certainly experienced project opposition from time-to-time regarding this initial access, we have not had complaints or concerns raised by landowners after the survey observation was conducted. In short, there is little disruption of the land, and we do our best to stay in close communication with the landowner regarding any need to access their property.

SB 2251 seeks to stop governmental entities from being able to conduct limited preliminary studies without initially going through landowner negotiations and/or initiating litigation to obtain a court order. If approved, SB 2251 would make public projects more time consuming and expensive. SB 2251 should be rejected for three reasons:

1. First and foremost, these surveys require no private property rights to be taken and no damage to property. The governmental intrusion is minimal, with superficial reviews such as identifying sensitive wetlands, endangered plant or animal species, teepee rings, checking groundwater depth, creating a map of the property or other project-specific needs. This is important information for project planning, yet does not require any taking or need for payment for property damage. Additional landowner protections are simply not needed since current law is sufficient. If there is an abuse by a rogue entity that would merit court action, it should not be thrust on all projects as a precursor to access.

2. SB 2251 will result in project delays. Certainly, landowners have private property rights to safeguard their interests. Yet, if landowners are opposed to a project, they should not be armed with a tool to cause undue delay to projects that are simply in the review and design phase. Oftentimes numerous properties or alignments are being

considered for a public use, with various reviews conducted to identify a property or route that makes the most sense from a constructability standpoint, that avoids disrupting sensitive grasslands, species or natural resources, and that can be constructed in a cost-effective manner without requiring any special construction standards given the terrain or hydrology on properties. The purpose in allowing this pre-condemnation access is to allow the governmental entity to make the best decision on a route or parcel. Garrison Diversion has engaged in landowner negotiation for Options and Easements, sometimes lasting years before an easement is signed or eminent domain would need to be initiated. It would unduly delay projects to add another layer of landowner negotiations, requiring a landowner signature for survey access. Certainly, landowners are entitled to notice, negotiation, and due process if any interests are to be taken. Since no interests are being taken, the approval rights being requested in SB 2251 will add months of negotiation and demands for compensation that will unduly delay projects, add expense and may limit the alignment or property selection.

3. Court processes take time and are expensive. Again, demanding a government entity seek a court order before accessing properties will require significant expenditures of public funds and add months of delay to work through the court system. In large pipeline construction projects, there can be hundreds of parcels impacted. If the design stage requires court orders before parcels can be accessed as candidates for a public use, this will unduly clog the court systems and judicial resources, as well as add months of delay.

For public projects like the Red River Valley Water Supply Project, there is no question that this project has a public purpose. Statute already demands that the surveys

be done with the least injury to property. Most projects work well with landowners to hear and accommodate concerns. Given those factors, there is nothing for a court to determine regarding access. Of course, the access will be allowed in a manner that will cause the least amount of injury to property. This is simply another hoop to jump through that is not needed to protect a landowner. If the property is actually selected for the public use, the landowner has ample opportunity to object to the taking and object to just compensation before the taking will occur, so no private property rights are lost.

I urge you to reject SB 2251 as there is no need to add additional preliminary obstacles for governmental project planning. Landowners are currently adequately protected, and they are fairly compensated for any damage done. Thank you for considering my testimony.

October 21, 2022



GARRISON DIVERSION  
CONSERVANCY DISTRICT  
P.O. Box 140  
CARRINGTON, N.D. 58421  
(701) 652-3194  
FAX (701) 652-3195  
gdcd@gdcd.org  
www.garrisondiversion.org



Dear [Redacted]

The Red River Valley Water Supply Project is under construction and steadily progressing. As you are aware, a parcel(s) of your land is included in the pipeline alignment. This letter is to advise you that our engineering team, namely Midwest Testing Services and Interstate Drilling, will begin to conduct geotechnical investigations on your property to gather necessary soil and groundwater data. Other engineering teams you may see in the field include Advanced Engineering & Environmental Services (AE2S) and Black & Veatch. We anticipate conducting the surveys between November 3, 2022, and March 1, 2023.

The studies will involve a drilling rig entering your property and drilling a 6" diameter boring roughly 15 to 30 feet deep at the locations shown on the enclosed exhibit(s). This boring may be left open for up to three days to monitor the water level. To gather the soil information, a tracked all-terrain drill rig will be on site to drill the borings and one or more pickups may be present in support of the drilling and sample collection.

Other activities will include soil sampling (localized pounding may be heard); groundwater level verification (a temporary PVC pipe installed that extends a few feet above ground); and soil resistivity testing (temporary metal pins inserted into the ground and measurements recorded) to gather data on the corrosivity of the soil. The information obtained will be used to design the proposed pipeline and to protect the buried pipe from corrosion for long-term service.

If the property is being farmed/operated by someone other than yourself, we kindly request that you contact your tenant to inform them of these studies. They may contact Garrison Diversion Conservancy District directly at 701-652-3194 if they would like to discuss the project studies.

We realize you may be in the midst of harvest season; therefore, we anticipate conducting these studies after the crops have been harvested to avoid any crop damage and to cause the least amount of disturbance to your operation. In the rare event that you suspect we inadvertently caused damages, we will send someone out to investigate the situation, and Garrison Diversion will reimburse you for, or repair, any damage or loss of production caused by these activities per the enclosed Crop Damage Payment Policy.

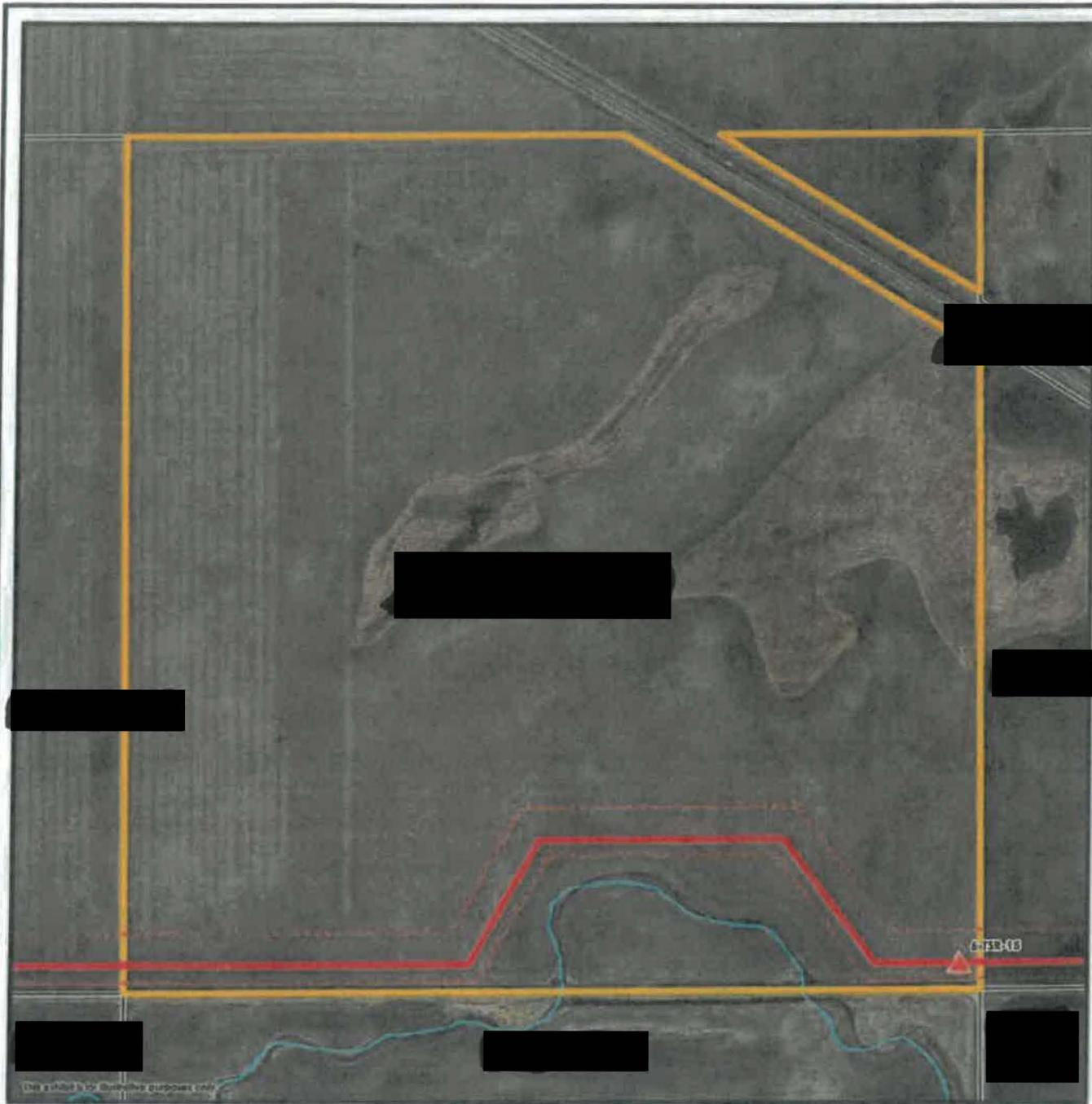
If you would like to be notified prior to our entry on to your property or would like these studies to be coordinated with your anticipated harvest schedule, please call Brent Erickson at AE2S at 701-595-6477 before October 31, 2022.

Wishing you a safe and successful harvest!

Sincerely,

Kip Kovar, PE  
District Engineer/Deputy Program Manager for RRVWSP Engineering

SLG  
Enclosures

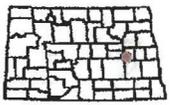


Owner: First Name Last Name [Redacted]	Parcel ID: G145061010001
Street Address: [Redacted]	County Parcel ID: GRIGGS 17000003670000
City, State, Zip: [Redacted]	Township, Range, Section: T145, R61, S10
Parcel Description: SE1/4 LESS 3.75 ACRES RR R/W	
<ul style="list-style-type: none"> <li><span style="color: red;">—</span> Proposed Pipeline</li> <li><span style="color: red;">- - -</span> Proposed Easement</li> <li><span style="color: red;">●</span> Borings</li> <li><span style="color: red;">⊙</span> Piezometers</li> <li><span style="color: red;">▲</span> In-Situ Topsoil Resistivity Testing Location (Not Boring)</li> </ul>	<ul style="list-style-type: none"> <li> Municipal Boundaries</li> <li> Highlighted Parcel</li> <li> Other Parcels</li> </ul>
Date: <b>Last Updated: 10/13/2022</b>	
Data Source: -Imagery 2016 GSI and 2021 NAIP -Parcels from County -Hydro Layers from National Hydrography Dataset -Municipal Boundaries from ND GIS Hub	



### RED RIVER VALLEY WATER SUPPLY PROJECT



N



0      220      440

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Feet

Testimony Prepared for the  
**Senate Energy and Natural Resources Committee**  
January 26, 2023  
By: Jason Benson, Cass County Engineer



**RE: Oppose SB 2251 - Landowner Permission for Survey**

Chairman Patton and Senate Energy and Natural Resources Committee members, thank you for the opportunity to provide testimony on SB 2251. I am Jason Benson, the Cass County Engineer, and I also serve on the legislative committee for the ND Association of County Engineers. I am here to oppose the bill as proposed.

County Highway Departments across North Dakota routinely acquire strips of land adjacent to roads and bridges. It is not uncommon for a six-mile reconstruction project to require an additional 15 or 20 feet of right of way or easement to improve the road to today's highway standards. A project like this may require working with 30 to 50 landowners along the corridor.

Reaching out to this many landowners to get written permission for a surveyor to walk 15 feet into a field with a survey rod will place an undue burden and cost to Counties. A more concerning issue is the amount of time necessary to identify, call, email, and send letters to landowners to get their written permission. In the case of the many family trusts owning land, this process could add months to a project to track down the members of the trust to get approval.

Project planning and survey work for a road or bridge project often starts six to 18 months before final plans are developed and the project being ready to bid. This new burden would add another six to 12 months to this survey work and planning process to account for getting permission. Finally, without an incentive to grant the County permission to survey, many landowners may hold out and not grant permission. You may think that landowners will be incentivized because they will have a better road or bridge to drive on. However, out of state or distant landowner have no incentive to allow the County to survey or improve the road since they rarely travel on the road being improved. This would further delay the project and cost Counties even more money.

Chairman Patton and committee members, I want to reiterate that NDACE opposes the bill as written. Approving these changes will add significant time and cost to the survey and design processes for County road and bridge improvement projects. I think North Dakota taxpayers would rather see their hard-earned tax dollars spent on asphalt or concrete and not on more administrative burdens.

**MEMBERS OF THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE**

I am in strong support of **SB 2251**, which supports obtaining written permission to come onto a property owners land to survey.

In the Fall of 2021 before I had even heard of the pipeline, Summit Carbon Solutions had already come onto my land to survey without my permission. In 2022 Summit Carbon Solutions returned again to continue surveying my land. This time I was there to speak to them first. The people doing the work were not certified surveyors. They were just workers hired by Summit Carbon Solutions.

A question I have for the members of the committee is this:

How can the PSC issue a building permit for this pipeline if they are not following North Dakota law for surveying?

I am providing information on different surveying century codes for the state of North Dakota.

NDCC 47-05-02.1

Administrative code: Chapter 28-02.1-13-01

NDCC 43-19.1-30

Attorney General Opinion 2017-L-3

May 12, 2017

I hope this information will help with your research on this matter.

Thank you for your support of a **YES** vote on **SENATE BILL 2251**.

David Moch

Hazleton, ND

Emmons County

Good evening Chairman Patten and members of the Natural Resources Committee,

Thank you for the opportunity to submit testimony on SB 2251. I will try to keep this short as I know you are all very busy. I urge a "do pass" recommendation on SB 2251. Private property rights are constantly under attack, and this bill puts the ball back in the landowner's court. If a project truly is "for the greatest public benefit" then there should be no problem getting permission to survey someone's property, and if permission is not given - let the courts decide. Unfortunately, many of these projects often fail to disclose how they devalue, disturb, and fragment land that is invaluable to people of North Dakota. Summit Carbon Solutions proposed project is a prime example.

As things stand, someone can enter your property (even if legally posted for no trespassing) at any time to survey for a project that you are completely unaware of, to further said project that will "take" your land, all without input or permission from the landowner! What a slick deal that is for everyone except landowners. The current law goes against the simple principles of private property rights, which are the foundation of prosperity and freedom upon which America was built on. Please pass this bill and strengthen property rights for North Dakotans.

Thank you,

Greg Schonert

Good Morning, Committee Chairman Senator Patten and committee members I'm here to testify regarding SB2251 -

My name is Susan Doppler, I'm here for myself and other family members. We are landowners in Burleigh County. We are in support of SB2251.

The vagueness of the current "entry for making surveys" law provides little protection for a landowner to deny access to his/her land. SB2251 requires that the corporations or surveyor must contact landowners to receive verbal or written permission from the owner; along with providing corporations or surveyor with an opportunity to have their case heard in court if access is denied. In the future whomever wants to survey our property for any reason will have a less aggressive and respectful behavior.

This is only an assumption on our part, but a sign posted, specifically stating No Trespassing Summit Carbon Solutions, was removed at a time when we were notified by neighbors of Summit Carbons Solutions presence in our neighborhood. South Central Water's Keaver booster butte underground booster site is located on our land, and was in direct line with the proposed pipeline route. In a short time after our sign was removed we received a notice of route change, which now goes through the middle of 115 acres of cropland. In the future SB2251 would require corporations of any kind to not disregard landowners NO to survey.

This bill is very personal to us; we are being taken to court because the law in place is so vague it strips landowner's rights to deny access to our property. A private for gain company should not have the ability to survey at will. Our family has owned this land for generations (more years than any of us in this room has lived) and we should have the ability to deny access to anyone trespassing on our private property.

In closing, I'm requesting you provide landowners of ND with the protection over land in their ownership by passing SB2251. Thank you.

Susan Doppler  
5412 Superior Drive  
Bismarck ND 58503  
701-955-0439

Testimony of Dakota Resource Council

SB 2251

January 25, 2023

Chairman Patten, Vice-Chairman Magrum, and members of the committee:

My name is Eliot Huggins and I am testifying on behalf of the Dakota Resource Council and our members. Thank you for allowing me to submit written testimony in support of SB 2251.

Dakota Resource Council and our members view this as a common sense Bill. This Bill would not fundamentally change how the survey process is conducted in ND— it simply cleans up archaic language that implies any surveyor for any company at any time can enter private property. As currently written— the language implies private companies have unfettered access to private property to conduct any type of land survey. This is in clear violation of the right to exclude— a fundamental private property right. The majority of survey work in ND is done voluntarily— this Bill would not fundamentally affect this process either. In the limited instances where a landowner denies a company access to survey: this Bill still allows for a court process for a company to make their case as to why access to the land is necessary. I respectfully request the committee to recommend a DO PASS on SB 2251. Thank you for your consideration.



100 West Broadway, Ste. 200 | P.O. Box 1395 | Bismarck, ND 58501-1395  
701.223.6380 | ndpc@ndoil.org | www.NDOil.org

**Senate Bill 2251**  
**Testimony of Ron Ness**  
**Senate Energy and Natural Resources Committee**  
**January 26, 2023**

Chairman Patten 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 600 companies involved 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 support of SB 2251.

Over the past fifteen years, our members have built about 20,000 miles worth of gathering and transmission pipelines in the Bakken and across North Dakota to transport oil, natural gas, and produced water. If there is one critical aspect we have learned, and sometimes learned the hard way, you must treat your owners along the right-away with the “Golden Rule.” That is to treat them as you would want to be treated in regard to their property rights. The best practice is to use land agents and other folks who are from North Dakota. They typically understand the importance of respecting property rights and working with the landowner to adjust the pipeline location to meet their needs. Senate Bill 2251 makes sense. It essentially codifies the common practice that most pipeline companies are utilizing. Senate Bill 2251 does not prohibit a handshake and signed personal agreement to get the survey done, but what it does do is ensure that when you come home from town, there are not a bunch of trucks on your property. That situation typically results in frustration and a poor start to a relationship that will be in place for decades. For these reasons, NDPC supports SB 2251, and we urge a Do Pass recommendation.

I would be happy to answer any questions.



Testimony in Opposition of  
**House Bill No. 2251**  
**Education and Environment Division of the House**  
**Appropriations**  
January 26, 2023

TESTIMONY OF

**Josh Teigen, Commissioner, ND Department of Commerce**

Mr. Chairman and members of the committee. My name is Josh Teigen and I have the privilege of serving as the Commissioner for the ND Department of Commerce and by statute also the chair of the EmPower ND Commission.

I am here today in opposition of 2251 both as the Commissioner of Commerce and on behalf of the EmPower ND Commission as its chairman. The EmPower ND Commission was formed for the purpose of developing **ND's comprehensive energy policy for the state's diverse and growing energy industry**. The commission is made up of representatives from all the state's energy industries and is a model of how differing interests can come together for the good of an industry. Commerce exists to increase the overall wealth of the state and we do this primarily through the attraction of both capital and talent.

ND prides itself on a being a business-friendly state. A state with a favorable regulatory environment, low taxes, and an approach that innovation trumps regulation. This bill directly flies in the face of the principles that we have used to build our state as a great place to invest and do business.

Both Commerce and EmPower ND believe this bill to be harmful to the future of our economy. There is so much opportunity on the horizon and by enacting policies such as this, we signal to the world that ND is changing course and taking a stance of regulation over innovation. The passage of this bill will cause us to lose critical investments that will contribute to a better quality of life and economic opportunity for all citizens of ND.

Mr. Chairman and members of the committee, on behalf of EmPower ND and the ND Department of Commerce, I strongly urge you to vote no on this bill.

Testimony of Senator Jeff Magrum  
in favor of  
SENATE BILL NO. 2251  
Senate Energy and Natural Resources Committee  
January 26, 2023

Chairman Patten and members of the committee,

I sponsored SB 2251 because I heard from many landowners who have had developers coming onto their property to conduct surveys without permission. I understand that under recent decisions from our United States Supreme Court, this kind of pre-condemnation access is not constitutional. This bill makes changes to the existing survey law so that the law is constitutional, and it would require developers to get permission in order to access a landowner's property.

These surveys are significant because they can uncover things like endangered species habitat or other issues on a landowner's property against their will and over their objection. That is not right, and I ask you to vote do pass on this bill so we can fix the existing law.

Thank you,  
Senator Jeff Magrum

## ARTICLE I DECLARATION OF RIGHTS

**Section 1.** All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness; and to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreational, and other lawful purposes, which shall not be infringed.

**Section 2.** All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have a right to alter or reform the same whenever the public good may require.

**Section 3.** The free exercise and enjoyment of religious profession and worship, without discrimination or preference shall be forever guaranteed in this state, and no person shall be rendered incompetent to be a witness or juror on account of his opinion on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

**Section 4.** Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege. In all civil and criminal trials for libel the truth may be given in evidence, and shall be a sufficient defense when the matter is published with good motives and for justifiable ends; and the jury shall have the same power of giving a general verdict as in other cases; and in all indictments or informations for libels the jury shall have the right to determine the law and the facts under the direction of the court as in other cases.

**Section 5.** The citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the powers of government for the redress of grievances, or for other proper purposes, by petition, address or remonstrance.

**Section 6.** Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state.

**Section 7.** Every citizen of this state shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor.

**Section 8.** The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

**Section 9.** All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay. Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct.

**Section 10.** Until otherwise provided by law, no person shall, for a felony, be proceeded against criminally, otherwise than by indictment, except in cases arising in the land or naval

THE  
REVISED CODES

OF THE  
STATE OF NORTH DAKOTA

1895

*TOGETHER WITH*

THE CONSTITUTION OF THE UNITED STATES AND OF THE  
STATE OF NORTH DAKOTA

*WITH THE AMENDMENTS THERETO*

---

*BY AUTHORITY OF THE LEGISLATIVE ASSEMBLY*

---

5. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines; also outlets, natural or otherwise, for the flow, deposit or conduct of tailings or refuse matter from mines; also milldams.

6. By-roads leading from highways to residences and farms.

7. Telegraph and telephone lines.

8. Sewerage of any incorporated city, or of any village or town, whether incorporated or unincorporated, or of any settlement consisting of not less than ten families, or of any public buildings belonging to the state, or to any college or university.

9. Cemeteries and public parks.

§ 5957. **What estate subject to be taken.** The following is a classification of the estates and rights in lands subject to be taken for public use:

1. A fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams and permanent flooding occasioned thereby, or for an outlet for a flow or a place for the deposit of debris or tailings of a mine.

2. An easement, when taken for any other use.

3. The right of entry upon and occupation of lands and the right to take therefrom such earth, gravel, stones, trees and timber as may be necessary for a public use.

§ 5958. **What property may be taken.** The private property which may be taken under this chapter includes:

1. All real property belonging to any person.

2. Lands belonging to this state; or to any county, incorporated city, village or town not appropriated to some public use.

3. Property appropriated to public use; but such property shall not be taken unless for a more necessary public use than that to which it has been already appropriated.

4. Franchises for toll roads, toll bridges, ferries and all other franchises; but such franchises shall not be taken unless for free highways, railroads or other more necessary public use.

5. All rights of way for any and all the purposes mentioned in section 5956 and any and all structures and improvements thereon and the lands, held or used in connection therewith shall be subject to be connected with, crossed or intersected by any other right of way or improvement or structure thereon. They shall also be subject to a limited use in common with the owner thereof when necessary; but such uses, crossings, intersections and connections shall be made in the manner most compatible with the greatest public benefit and the least private injury.

6. All classes of private property not enumerated may be taken for public use, when such taking is authorized by law.

§ 5959. **What must appear before property taken.** Before property can be taken it must appear:

1. That the use to which it is to be applied is a use authorized by law.

2. That the taking is necessary to such use.

3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

§ 5960. **Entry for making surveys, etc.** In all cases when land is required for public use the person or corporation, or his or its agents, in charge of such use may survey and locate the same; but it must be located in the manner which will be compatible with the greatest public benefit and the least private injury and subject to the

provisions of section 5964. Whoever may be in charge of such public use may enter upon the land and make examinations, surveys and maps thereof, and such entry shall constitute no cause of action in favor of the owner of the land except for injuries resulting from negligence, wantonness or malice.

§ 5961. **Proceedings by civil action.** All proceedings under this chapter must be prosecuted by civil action brought in the district court of the county in which the property, or some part thereof, is situated.

§ 5962. **What complaint must contain.** The complaint must contain:

1. The name of the corporation, association, commission or person in charge of the public use for which the property is sought, who must be styled plaintiff.

2. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.

3. A statement of the right of the plaintiff.

4. If a right of way is sought, the complaint must show the location, general route and termini and must be accompanied with a map thereof so far as the same is involved in the action or proceeding.

5. A description of each piece of land sought to be taken and whether the same includes the whole or only a part of an entire parcel or tract. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of parties.

§ 5963. **Who may defend.** All persons in occupation of, or having or claiming an interest in any of the property described in the complaint or in the damages for the taking thereof, though not named, may appear, plead and defend, each in respect to his own property or interest, or that claimed by him in like manner as if named in the complaint.

§ 5964. **Power of court.** The court shall have power:

1. To regulate and determine the place and manner of making connections and crossings, or of enjoying the common use mentioned in the fifth subdivision of section 5960.

2. To hear and determine all adverse or conflicting claims to the property sought to be condemned and to the damages therefor.

3. To determine the respective rights of different parties seeking condemnation of the same property.

§ 5965. **Assessment of damages.** The jury, or court or referee, if a jury is waived, must hear such legal testimony as may be offered by any of the parties to the proceedings and thereupon must ascertain and assess:

1. The value of the property sought to be condemned and all improvements thereon pertaining to the realty and of each and every separate estate or interest therein; if it consists of different parcels, the value of each parcel and each estate and interest therein shall be separately assessed.

2. If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff.



## MEMORANDUM

**To:** Members of the Energy and Natural Resources Committee  
**From:** North Dakota Farm Bureau

NDFB has several issues in our policy book pertinent to legislation before you in committee this week.

### Easements

We support the development of a land owner's bill of rights regarding the process of easement procurement by entities wishing to purchase or lease land for roads, bridges, powerlines, pipelines and other projects that require an easement through privately owned property in North Dakota. #801.02

No entity may purchase or attempt to purchase easements of private property until the agency approving the project has been formally notified of the project. Notice of proposed project should be published in all current methods of public information, such as official county newspapers. #801.03

Landowners must be informed of their right to legal or financial counsel when approached with a proposed easement. Signed proof of this information should be part of the easement. #801.04

### Eminent Domain

We support changes to the quick take eminent domain process to allow property owners to have negotiation rights in regard to price and any special circumstances that the property owner needs to be considered. #802.01

North Dakota government entities should not have eminent domain authority outside their geographical boundaries, including extra territorial jurisdiction. #802.02

We oppose local water boards having quick take eminent domain authority. #802.03

### Private Property

We support the repeal of NDCC 38-22 referring to amalgamation authority over non-consenting landowners. #804.06

If you have any questions regarding our NDFB policies, please free free to contact our Director of Public Policy, Pete Hanebutt (701) 371-0027 or [pete@ndfb.org](mailto:pete@ndfb.org).

#### Fargo

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#### Bismarck

4900 Ottawa St. | PO Box 2793, Bismarck, ND 58502-2793  
 Phone: 701-224-0330 | 1-800-932-8869

Testimony of Troy Coons on behalf of  
Northwest Landowners Association  
in favor of  
SENATE BILL NO. 2251  
Senate Energy and Natural Resources Committee  
January 26, 2023

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

My name is Troy Coons and I am the Chairman of the Northwest Landowners Association. Northwest Landowners Association represents over 525 farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

We support SB 2251 because it is not right to allow invasions of a landowner's property only because they are temporary. According to our legal counsel, the United States Supreme Court issued the *Cedar Point Nursery v. Hassid* decision in 2021, and under that ruling it is considered an automatic taking if a law authorizes physical access to a landowner's property without just compensation. In that case, a California labor union was allowed to go onto a farmer's property under a California labor law, so that the labor union could organize the farm workers. The United States Supreme Court said that forcing the farmer to allow the organizers onto his land "appropriates a right to invade the growers' property and therefore constitutes a *per se* physical taking." 141 S. Ct. 2063, 2072 (2021). This law allows companies to access our property to conduct their surveys, some of which might determine that we are hosts to things like Dakota Skipper habitat. It is unfair to force us to accept these unwanted guests just as it was unfair for California to require farmers to host labor organizers. If the government or a developer wants to access private property for a public project, there are appropriate legal mechanisms for doing that, but allowing this access without condemnation or payment of just compensation should not be allowed.

Thank you,

Troy Coons  
*Northwest Landowners Association*

January 26, 2023

Good morning Chairman Patten and Senate Committee members.

My name is Stephanie Doolittle. I am a resident from District 8 and here in support of **SB2251** introduced by Senators Magrum, Boehm and Larsen and Representative Ruby.

Legislation introduced to protect the rights of property owners is of great importance and the foundation we all rely on. Several bills concerning property rights will be debated this legislative session. The constituents of North Dakota are appreciative of the time and consideration put forth to strive for better protection for all citizens.

Our farming family who resides in Emmons County have been on the receiving end of tactics Summit Carbon Solutions have used against landowners because of our lax and outdated laws. They have steamrolled their way into ND with sights set on BIG profit with little regard as to how their 2000 mile pipeline affects those living in the footprint. Secrecy with no transparency is their motive. The pipeline will travel through 37 miles of Emmons County and is carrying hazardous materials at high pressure that could have safety concerns and most of our residents have no idea this project is even being proposed.

We were forced into a lawsuit by Summit Carbon Solutions to protect our private property rights and have also been threatened with eminent domain. If our land is taken by eminent domain, this law would ensure that Summit Carbon Solutions would need written consent to survey and to give details of the process including a location. Summit Carbon Solutions and other entities would be required to be transparent with the landowner.

Our family asks for your support on SB2251 and the Property Protection Bills introduced by Senator Magrum. We must be strong and stand together to strengthen our laws to protect all private property owners from out-of-state interests.

Thank you for your time and consideration.

**Summit Carbon Solutions Testimony on Senate Bill 2251  
January 26, 2023, 9:00 (9:00) A.M.  
Senate Energy and Natural Resource Committee  
Senator Dale Patten, Chairman**

**Jeff Skaare – Director of Land Summit Carbon Solutions  
In Favor of SB 2251**

Chairman Patten, and fellow Senate Committee Members.

My name is **Jeffrey Skaare**. I am the **Sequestration Director of Land Legal and Regulatory Affairs** for **Summit Carbon Solutions**. I am an attorney by education, and a certified professional landman by trade. Born, raised and educated in North Dakota, I have dedicated the majority of my professional career to the development of ND's mineral resources. I have witnessed first-hand the need for, and the buildout of, the necessary infrastructure to develop North Dakota's vast natural resources. I have personally overseen the acquisition, build out and operation of over 300 miles of pipeline within North Dakota. In my past employment, I was involved in the acquisition, reclamation, and operation of those same pipelines. I became involved in the Summit Carbon Solutions project because I believe that the two most important industries to North Dakota, namely Agriculture & Energy, will need to find a carbon management solution to continue to thrive. We have reviewed proposed Senate Bill No. 2251 and we are supportive for the following reasons:

- 1.) In my professional experience, landowner permission or in lieu thereof, a court order for survey permission, is a generally accepted practice in pipeline development; and
- 2.) As it is written, it is consistent with the actions of Summit Carbon Solutions

It is for these reasons that we can support the enactment of Senate bill number 2251 and are comfortable with a DO PASS recommendation. Thank you.



**Tharaldson | Ethanol**

Ryan Carter & Brad Kjar  
Co-Chief Operating Officers  
Tharaldson Ethanol  
3549 153rd Ave SE  
Casselton, ND 58012

January 25, 2023

The Honorable Dale Patten  
Chairman  
Senate Energy and Natural Resources Committee  
North Dakota Legislature  
600 E. Boulevard Avenue  
Bismarck, North Dakota 58505

**RE: SB 2251 – OPPOSE**  
**SB 2313 – OPPOSE**  
**SB 2212 – OPPOSE**  
**SB 2209 – OPPOSE**  
**SB 2228 – OPPOSE**  
**SB 2317 – OPPOSE**  
**SB 2314 – OPPOSE**



## Tharaldson | Ethanol

Dear Mr. Chairman and members of the Senate Energy Committee,

Our names are Ryan Carter and Brad Kjar, and we have the privilege of serving as co-Chief Operating Officers for Tharaldson Ethanol in Casselton. As you may know, our facility is the ninth largest ethanol manufacturing facility in the United States and produces a high-octane, clean burning fuel that reduces our nation's dependence on foreign oil, while utilizing our locally grown, renewable agricultural resources. In total, our plant produces 175 million gallons of ethanol every year.

I am writing today to express our opposition to several bills that have been proposed this legislative session, including SB 2251, SB 2313, SB 2212, SB 2209, SB 2228, SB 2317, and SB 2314. These bills, along with others that may be proposed this year, would fundamentally alter North Dakota's regulatory landscape, shift the state away from its traditional pro-business, pro-growth approach to public policy, and prevent North Dakota from continuing to be the national leader in an emerging industry that will benefit our economy long-term.

Tharaldson Ethanol is one of 32 plants across the Midwest that joined Summit Carbon Solutions carbon capture, transportation, and storage project. This multi-billion-dollar private infrastructure investment will allow Tharaldson and Summit's other partners to sell their product at a premium in the growing number of states and countries that have adopted low carbon fuel standards. While opinions may vary on these types of policies, the ability of ethanol manufacturers to access these markets is absolutely vital to ensuring the long-term viability of the industry as a whole. Some renewable fuel leaders in the Midwest have even characterized carbon sequestration as "a matter of life and death" for ethanol manufacturers. We agree.

The ethanol industry contributes \$640 million to North Dakota's GDP every year, supports 10,000 jobs in the state, and, critically, purchases approximately half the corn grown in North Dakota. The stronger the ethanol industry, the better it is for corn growers here in our state and the broader ag economy that is so critical to our way of life. However, the flip side of that coin is true as well. If the industry is not able to access low carbon fuel markets in the years to come, it will undermine the competitiveness of the industry and put all those benefits at risk. And simply put, we believe the bills cited in this testimony would likely produce that outcome.



## Tharaldson | Ethanol

For years, existing businesses in North Dakota and businesses considering investing in the state have enjoyed a predictable regulatory environment and the confidence that the rules would not change in the middle of the game. Summit Carbon Solutions developed a business model based on those rules and rightfully should be able to expect the state won't now, two years later, undertake a complete overhaul of the regulations around infrastructure projects.

With more than 30,000 miles of pipeline already in operation in North Dakota and policymakers across the political spectrum supporting efforts to permanently and safely store carbon dioxide, it's important now more than ever that we maintain the state's regulatory process that is rigorous, comprehensive, and has consistently worked for all stakeholder groups. Despite what some may say, landowners are embracing this project. Hundreds of North Dakota landowners have signed easement agreements with Summit Carbon Solutions, accounting for 85% of the area where the company will safely sequester CO2 and more than 58% of the proposed pipeline route, with many additional landowners currently considering agreements.

Thank you for your consideration on these issues and please don't hesitate to contact me if you have any questions.

Sincerely,

Ryan Carter and Brad Kjar

Co-Chief Operating Officers

Tharaldson Ethanol

3549 153rd Ave SE

Casselton, ND 58012



*DEDICATED TO PROTECTING, DEVELOPING, AND MANAGING NORTH DAKOTA'S WATER RESOURCES*

PO Box 2254, Bismarck, ND 58502-2254      701-223-4615 • 701-223-4645 (Fax)

**SB 2251**  
**Testimony of Dani Quissell**  
**House Energy and Natural Resources**  
**Committee**

Chairman Porter and members of the House Energy and Natural Resources Committee, I am Dani Quissell, the Executive Vice President of the ND Water Users Association. The Water Users Association is the state-wide member organization dedicated to protecting, developing, and managing North Dakota's water resources. We have more than 150 members including local, statewide and regional organizations in North Dakota who have an active interest in water.

The North Dakota Water Users Association has concerns with SB 2251 as currently drafted. The Association has concerns with how these new requirements would impact the construction of vital infrastructure built with public funds. While there has been much discussion regarding infrastructure owned by private entities, the bill as written would also impact infrastructure built using public dollars, such as water pipelines.

As has been testified to, the requirements contemplated in SB 2251 will add time delays and additional costs to projects funded with public funds.

For these reasons, the ND Water Users Association asks that you give SB 2251 a 'do not pass recommendation'.

Thank you for the opportunity to testify this morning. I'd be happy to stand for any questions.



Testimony in Opposition of  
**Senate Bill No. 2251**  
House Education and Environment Division  
March 17, 2023

TESTIMONY OF

**Josh Teigen, Commissioner, ND Department of Commerce**

Mr. Chairman and members of the committee. My name is Josh Teigen and I have the privilege of serving as the Commissioner for the ND Department of Commerce and by statute also the chair of the EmPower ND Commission.

I am here today in opposition of 2251 both as the Commissioner of Commerce and on behalf of the EmPower ND Commission as its chairman. The EmPower ND Commission was formed for the purpose of developing **ND's comprehensive energy policy for the state's diverse and growing energy industry**. The commission is made up of representatives from all the state's energy industries and is a model of how differing interests can come together for the good of an industry. Commerce exists to increase the overall wealth of the state and we do this primarily through the attraction of both capital and talent.

ND prides itself on being a business-friendly state. A state with a favorable regulatory environment, low taxes, and an approach that innovation trumps regulation. This bill directly flies in the face of the principles that we have used to build our state as a great place to invest and do business.

Both Commerce and EmPower ND believe this bill to be harmful to the future of our economy. There is so much opportunity on the horizon and by enacting policies such as this, we signal to the world that ND is changing course and taking a stance of regulation over innovation. The passage of this bill will cause us to lose critical investments that will contribute to a better quality of life and economic opportunity for all citizens of ND.

Mr. Chairman and members of the committee, on behalf of EmPower ND and the ND Department of Commerce, I strongly urge you to vote no on this bill.



**House Energy and Natural Resources - SB 2251**

**Pete Hanebutt, NDFB Public Policy Director**

**Meghan Estenson, NDFB Legislative Counsel**

**March 17, 2023**

Chairman Porter and members of the committee,

North Dakota Farm Bureau supports SB 2251.

NDFB is a grassroots organization. Our members bring issues to their county Farm Bureaus, then to their district meetings, and finally to the NDFB Annual Meeting to be voted on by fellow Farm Bureau members. These issues are then compiled to make up our member driven Farm Bureau Policy Book. NDFB has many policies pertaining to eminent domain and private property rights, but our below policy speaks to this bill.

No activities related to right of way purchases, such as surveying on purposed right of way easements, may be performed without landowner's prior written permission. A penalty of \$25,000 and 30 days in jail will be recommended per occurrence– ID # 2156/23

NDFB respectfully requests a "Do Pass" recommendation on SB 2251.

**Fargo**

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Phone: 701-298-2200 | 1-800-367-9668

**Bismarck**

4900 Ottawa St. | PO Box 2793, Bismarck, ND 58502-2793

Phone: 701-224-0330 | 1-800-932-8869

**Testimony by Merri Mooridian, Administrative Officer  
Garrison Diversion Conservancy District  
House Energy and Natural Resources Committee  
SB 2251  
Bismarck, North Dakota – March 17, 2023**

Chairman Porter, members of the committee, I appreciate the opportunity to testify in opposition to Senate Bill (SB) 2251. My name is Merri Mooridian, Administrative Officer of the Garrison Diversion Conservancy District (Garrison Diversion). While SB 2251 is a well-intended piece of legislation, I worry it will have unintentional impacts on implementing public infrastructure projects like the Red River Valley Water Supply Project (RRVWSP). State law already provides significant protection to landowners regarding surveys and requires surveys for public use projects be done with the least injury to property. If approved, SB 2251 would make public infrastructure projects more time consuming and put an additional cost burden on the already limited state and local resources.

Currently, if a governmental entity considers private property as a location for a public use, the governmental entity is allowed limited access in order to identify whether that property is actually suited for the public use being considered. When multiple project alignments or properties are being considered for a public use, it is necessary to conduct parcel examinations that may quickly eliminate the property as a location without much additional time and effort.

SB 2251 seeks to stop public entities from conducting even preliminary evaluations without obtaining written consent from every landowner potentially impacted and/or obtaining a court order. SB 2251 should be rejected for three reasons:

1. First and foremost, these preliminary surveys are important for project planning. The governmental intrusion is minimal, and these surveys require no private property rights to be taken and no damage to property.

2. The requirement to obtain written consent in SB 2251 will result in project delays. Allowing preliminary access enables the governmental entity to make the best decision on a route or parcel. While landowners have private property rights to safeguard their interests and are entitled to notice, negotiation, and due process if any interests are to be taken, requiring a landowner signature for survey access would unduly delay projects. These delays become especially impactful when dealing with absentee landowners where even initial contact can be time consuming and expensive.

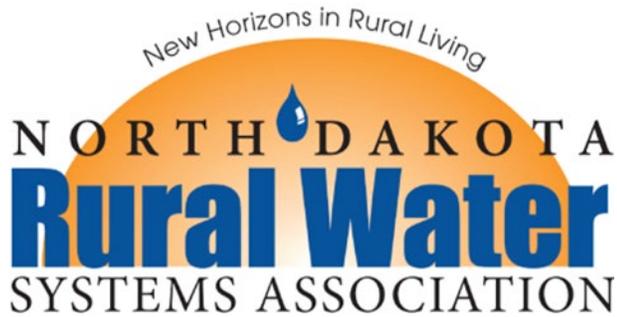
3. Court processes take time and are expensive. Demanding a government entity to seek a court order if written landowner approval isn't obtained before accessing properties will require significant expenditures of public funds and add months of delay to work through the court system. In large pipeline construction projects, there can be hundreds of parcels impacted. If the design stage requires court orders before parcels can be accessed as candidates for a public use, the court systems and judicial resources will be unduly clogged.

Communication with the public is a high priority for Garrison Diversion and, as a matter of routine, notifies landowners when surveyors will be on their properties and advises what types of surveys will be conducted. While we have experienced project opposition from time-to-time regarding this initial access, we have not had complaints or concerns raised by landowners after the survey observation was conducted. In addition, oftentimes these initial surveys provide valuable information that greatly reduces the

number of landowners impacted in the future by quickly informing a project alignment or route. In short, there is little disruption of the land, and we do our best to stay in close communication with the landowner regarding any need to access their property.

I urge you to reject SB 2251 as landowners are currently adequately protected.

Thank you for considering my testimony.



**Eric Volk, Executive Director**

**ND Rural Water Systems Association**

**In Opposition of Senate Bill 2251**

**House Energy & Natural Resources Committee**

**March 17, 2023**

Chairman Porter and members of the House Energy & Natural Resources Committee, my name is Eric Volk. I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA). Our vision is to ensure all of North Dakota has access to affordable, ample, and quality water. NDRWSA is committed to completing and maintaining North Dakota's water infrastructure for economic growth and quality of life. Today, I am submitting testimony in opposition of Senate Bill 2251 which seeks to limit governmental entities and political subdivisions of the state, like Rural Water Districts, the ability to conduct limited, preliminary studies (e.g., pipeline alignment justification and a cultural resources survey) without initially going through landowner negotiations and/or initiating litigation to obtain a court order.

Rural/Regional Water development began in North Dakota in the late 60's and early 70's. Today, there are over 41,000 miles of Rural Water lines in every county of the state. Systems provide water to 266 of the state's 355 incorporated cities and have over 71,000 connections statewide. In total, they serve approximately 300,000 residents with affordable, ample, and quality water. Interacting with landowners is an essential process of Rural Water development. The Rural Water Industry fully understands the importance of the rights of the landowner and try to balance those with project timing and keeping costs affordable for the end users.

*Section 32-15-06. Entry for making surveys*, allows consultants in the planning phases of a project the ability to determine the correct route a pipeline. This gives further direction on what easements will be needed for construction. This section also allows for the completion of state and federal cultural resources requirements. These requirements normally require a walk of the purposed route. Those walks are time and weather sensitive. Finalizing the route, collecting signed easements, completing the cultural

resources survey, keeping the project timing on schedule, and providing service at affordable levels is a delicate balancing act.

Below are two project scenarios. The first scenario illustrates how a project is normally completed and the second scenario (collection of 100% of easements) shows how this bill would adversely affect the completion of the same project.

**Current Approach:**

Obtain preconstruction funding	April 2023
Start Preliminary Engineering Report (PER)	April 2023
Complete PER	May 2023
Begin cultural resources walk	May 2023
Begin collecting easements	May 2023
Walk complete	June 2023
Report for walk complete	July 2023
State Historic Preservation Office (SHPO) concurrence	September 2023
ND Dept. of Environmental Quality (DEQ) 30-days in paper	October 2023
Bid project	November 2023
Obtain 95% of the easements	November 2023
Collect remaining 5% of the easements	April 2024
Begin construction	May 2024

**100% Easement Approach:**

Obtain preconstruction funding	April 2023
Start PER	April 2023
Start pipeline routing	April 2023
Complete PER	May 2023
Draft easements	May 2023
Mail easements	June 2023
Obtain 95% of easements	November 2023
All easements secured	April 2024
Begin cultural resources walk	May 2024
Walk complete	June 2024
Report for walk complete	July 2024
Receive SHPO concurrence	September 2024
ND DEQ 30-days in paper	October 2024
Bid project	November 2024
Begin construction	May 2025

Thank you for giving me the opportunity to provide testimony on behalf of the members of the NDRWSA. Eric Volk, [ericvolk@ndrw.org](mailto:ericvolk@ndrw.org).

# North Dakota Senate

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**COMMITTEES:**  
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Energy and Natural Resources

03/17/23

Good morning Chairman and committee members,

I sponsored SB2251 because I heard from several landowners who have had surveyors going onto their land to survey without permission. I understand that under a recent US Supreme Court decision this kind of pre-condemnation access is not constitutional. This bill will change the existing survey law so that the law is constitutional. Surveyors would be required get written permission to access a landowners property.

Surveys are significant because they can uncover things on a landowner's property against their will and over their objections. I ask for a due pass and I will stand for questions.

THE  
REVISED CODES

OF THE

STATE OF NORTH DAKOTA

1895

*TOGETHER WITH*

THE CONSTITUTION OF THE UNITED STATES AND OF THE  
STATE OF NORTH DAKOTA

*WITH THE AMENDMENTS THERETO*

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*BY AUTHORITY OF THE LEGISLATIVE ASSEMBLY*

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5. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines; also outlets, natural or otherwise, for the flow, deposit or conduct of tailings or refuse matter from mines; also milldams.

6. By-roads leading from highways to residences and farms.

7. Telegraph and telephone lines.

8. Sewerage of any incorporated city, or of any village or town, whether incorporated or unincorporated, or of any settlement consisting of not less than ten families, or of any public buildings belonging to the state, or to any college or university.

9. Cemeteries and public parks.

**§ 5957. What estate subject to be taken.** The following is a classification of the estates and rights in lands subject to be taken for public use:

1. A fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams and permanent flooding occasioned thereby, or for an outlet for a flow or a place for the deposit of debris or tailings of a mine.

2. An easement, when taken for any other use.

3. The right of entry upon and occupation of lands and the right to take therefrom such earth, gravel, stones, trees and timber as may be necessary for a public use.

**§ 5958. What property may be taken.** The private property which may be taken under this chapter includes:

1. All real property belonging to any person.

2. Lands belonging to this state; or to any county, incorporated city, village or town not appropriated to some public use.

3. Property appropriated to public use; but such property shall not be taken unless for a more necessary public use than that to which it has been already appropriated.

4. Franchises for toll roads, toll bridges, ferries and all other franchises; but such franchises shall not be taken unless for free highways, railroads or other more necessary public use.

5. All rights of way for any and all the purposes mentioned in section 5956 and any and all structures and improvements thereon and the lands, held or used in connection therewith shall be subject to be connected with, crossed or intersected by any other right of way or improvement or structure thereon. They shall also be subject to a limited use in common with the owner thereof when necessary; but such uses, crossings, intersections and connections shall be made in the manner most compatible with the greatest public benefit and the least private injury.

6. All classes of private property not enumerated may be taken for public use, when such taking is authorized by law.

**§ 5959. What must appear before property taken.** Before property can be taken it must appear:

1. That the use to which it is to be applied is a use authorized by law.

2. That the taking is necessary to such use.

3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

**§ 5960. Entry for making surveys, etc.** In all cases when land is required for public use the person or corporation, or his or its agents, in charge of such use may survey and locate the same; but it must be located in the manner which will be compatible with the greatest public benefit and the least private injury and subject to the

provisions of section 5964. Whoever may be in charge of such public use may enter upon the land and make examinations, surveys and maps thereof, and such entry shall constitute no cause of action in favor of the owner of the land except for injuries resulting from negligence, wantonness or malice.

**§ 5961. Proceedings by civil action.** All proceedings under this chapter must be prosecuted by civil action brought in the district court of the county in which the property, or some part thereof, is situated.

**§ 5962. What complaint must contain.** The complaint must contain:

1. The name of the corporation, association, commission or person in charge of the public use for which the property is sought, who must be styled plaintiff.

2. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.

3. A statement of the right of the plaintiff.

4. If a right of way is sought, the complaint must show the location, general route and termini and must be accompanied with a map thereof so far as the same is involved in the action or proceeding.

5. A description of each piece of land sought to be taken and whether the same includes the whole or only a part of an entire parcel or tract. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of parties.

**§ 5963. Who may defend.** All persons in occupation of, or having or claiming an interest in any of the property described in the complaint or in the damages for the taking thereof, though not named, may appear, plead and defend, each in respect to his own property or interest, or that claimed by him in like manner as if named in the complaint.

**§ 5964. Power of court.** The court shall have power:

1. To regulate and determine the place and manner of making connections and crossings, or of enjoying the common use mentioned in the fifth subdivision of section 5960.

2. To hear and determine all adverse or conflicting claims to the property sought to be condemned and to the damages therefor.

3. To determine the respective rights of different parties seeking condemnation of the same property.

**§ 5965. Assessment of damages.** The jury, or court or referee, if a jury is waived, must hear such legal testimony as may be offered by any of the parties to the proceedings and thereupon must ascertain and assess:

1. The value of the property sought to be condemned and all improvements thereon pertaining to the realty and of each and every separate estate or interest therein; if it consists of different parcels, the value of each parcel and each estate and interest therein shall be separately assessed.

2. If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff.

## ARTICLE I DECLARATION OF RIGHTS

**Section 1.** All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness; and to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreational, and other lawful purposes, which shall not be infringed.

**Section 2.** All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have a right to alter or reform the same whenever the public good may require.

**Section 3.** The free exercise and enjoyment of religious profession and worship, without discrimination or preference shall be forever guaranteed in this state, and no person shall be rendered incompetent to be a witness or juror on account of his opinion on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

**Section 4.** Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege. In all civil and criminal trials for libel the truth may be given in evidence, and shall be a sufficient defense when the matter is published with good motives and for justifiable ends; and the jury shall have the same power of giving a general verdict as in other cases; and in all indictments or informations for libels the jury shall have the right to determine the law and the facts under the direction of the court as in other cases.

**Section 5.** The citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the powers of government for the redress of grievances, or for other proper purposes, by petition, address or remonstrance.

**Section 6.** Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state.

**Section 7.** Every citizen of this state shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor.

**Section 8.** The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

**Section 9.** All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay. Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct.

**Section 10.** Until otherwise provided by law, no person shall, for a felony, be proceeded against criminally, otherwise than by indictment, except in cases arising in the land or naval

Testimony of Troy Coons on behalf of  
Northwest Landowners Association  
in favor of  
SENATE BILL NO. 2251  
House Energy and Natural Resources Committee  
March 17, 2023

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

My name is Troy Coons and I am the Chairman of the Northwest Landowners Association. Northwest Landowners Association represents over 525 farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

We support SB 2251 because it is not right to allow invasions of a landowner's property only because they are temporary. According to our legal counsel, the United States Supreme Court issued the *Cedar Point Nursery v. Hassid* decision in 2021, and under that ruling it is considered an automatic taking if a law authorizes physical access to a landowner's property without just compensation. In that case, a California labor union was allowed to go onto a farmer's property under a California labor law, so that the labor union could organize the farm workers. The United States Supreme Court said that forcing the farmer to allow the organizers onto his land "appropriates a right to invade the growers' property and therefore constitutes a *per se* physical taking." 141 S. Ct. 2063, 2072 (2021). This law allows companies to access our property to conduct their surveys, some of which might determine that we are hosts to things like Dakota Skipper habitat. It is unfair to force us to accept these unwanted guests just as it was unfair for California to require farmers to host labor organizers. If the government or a developer wants to access private property for a public project, there are appropriate legal mechanisms for doing that, but allowing this access without condemnation or payment of just compensation should not be allowed.

Thank you,

Troy Coons  
*Northwest Landowners Association*

PROPOSED AMENDMENTS TO SENATE BILL NO. 2251

Page 1, Line 8, after "cases" insert "except surveys undertaken for improvements to highway, street or roads as defined by section 24-01-01.1,"

Renumber accordingly