

2023 SENATE ENERGY AND NATURAL RESOURCES

SB 2374

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2374
2/9/2023

A bill relating to jurisdiction of the industrial commission and payment for production from wells; relating to royalties; and to provide a penalty.

3:10 PM Chairman Larson opened the meeting.

Chairman Larson and Senators Boehm, Beard, Magrum, Kannianen, and Kessel are present.

Discussion Topics:

- Oil and gas operators
- Owners' interests
- Consumer's rights
- Oil companies
- Payments
- Transparency
- Expenses
- Fines and penalties

3:11 PM Senator Peipkorn Introduced the bill.

3:18 PM Shane Leverenz testified in favor of the bill and provided written testimony #20350, 20387.

3:40 PM Corey Dahl, Lobbyist, Williston Basin Royalty Owners, Carl Dahl testified in favor of the bill and provided written testimony #20159.

3:48 PM Troy Coons, Chairman, Northwest Landowners Association testified in favor of the bill and provided written testimony #20454.

3:51 PM Bob Skarbol, founder of the Williston Basin Royalty Owners, spoke in favor of the bill.

3:51 PM Lisa Olson spoke in favor of the bill and provided written testimony #19365.

3:55 PM Ron Ness, North Dakota Petroleum Council, testified opposed to the bill and provided written testimony #20294.

4:01 PM Kate Black Inland Oil and Gas, testified opposed to the bill and provided written testimony #20367.

4:12 PM Fred Catchpole, Superintendent Eighty-Eight Oil, testified opposed to the bill and offered written testimony #20370.

4:18 PM Jeff Herman spoke opposed to the bill.

4:22 PM Craig Smith, Attorney, Crowley Fleck Firm, spoke opposed to the bill and provided written testimony #20455.

4:44 PM Bruce Hicks, Assistant Director, Department of Mineral Resources, testified neutral provided written testimony #20292.

Additional written testimony:

Robert Sheldon provided written testimony #19845.

Eileen Kjorstand provided written testimony #19908.

Madeline Bugh provided written testimony #20182.

Bruce Larson provided written testimony #20280.

Jason Weddle provided written testimony #20297.

Carl Dahl provided written testimony #19173.

4:51 PM Chairman Patten closed the public hearing.

4:52 PM 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 2374
2/16/2023

A bill relating to jurisdiction of the industrial commission and payment for production from wells; relating to royalties; and to provide a penalty.
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10:29 AM Chairman Patten opened the meeting.

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

Discussion Topics:

- Amendments

10:28 AM The committee discussed amendments LC 23.1101.01002.

10:29 AM Doug Goehring, North Dakota Agriculture Commissioner, spoke on the bill and provided written testimony #21002.

Additional Written Testimony:

Senator Patten #21000, 21001

10:36 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 2374
2/16/2023

A bill relating to jurisdiction of the industrial commission and payment for production from wells; relating to royalties; and to provide a penalty

4:14 PM Chairman Patten opened the meeting.

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

Discussion Topics:

- Committee action

4:15 PM Doug Goehring, North Dakota Agriculture Commissioner, provided oral testimony and spoke to amendment 23.1101.01002, #21032.

4:16 PM Committee has discussion on amendment 23.1101.01002.

4:47 PM Senator Boehm moved to adopt amendment 23.1101.01002. Senator Kessel seconded the motion.

4:48 PM Roll call vote was 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.

4:49 PM Senator Boehm moves to Do Pass the bill as amended. Motion is seconded by Senator Kessel.

4:49 PM Roll call vote was 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.

Senator Boehm will carry the bill.

This bill does not affect workforce development.

Additional Written Testimony:

Senator Patten #21031

Senator Boehm #21179

4:50 PM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

February 16, 2023

24
2-16-23

PROPOSED AMENDMENTS TO SENATE BILL NO. 2374

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 4.1-01 of the North Dakota Century Code, relating to a postproduction royalty oversight program; and to provide a report to the energy development and transmission committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4.1-01 of the North Dakota Century Code is created and enacted as follows:

Postproduction royalty oversight program - Report.

1. The commissioner shall establish an ombudsmen program providing technical assistance and support to mineral owners, lease owners, and mineral companies relating to royalty payment issues.
2. The commissioner may contract for ombudsmen to be a resource for technical assistance and followup on royalty payment issues.
3. The program may provide technical education, support, and outreach on royalty payment-related matters in coordination with other entities.
4. The commissioner may contract with local individuals, deemed trustworthy by the mineral owners, lease owners, and mineral companies, to be ombudsmen. The commissioner is not subject to the provisions of chapter 54-44.4 when contracting for the services of ombudsmen.
5. The names of landowners, mineral owners, lease owners, and mineral companies that receive assistance under the program are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.
6. The commissioner shall submit expenses related to the implementation of the program to the industrial commission for reimbursement.
7. By June first of each even-numbered year, the commissioner shall provide a report to the energy development and transmission committee."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2374: 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 2374 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

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 4.1-01 of the North Dakota Century Code, relating to a postproduction royalty oversight program; and to provide a report to the energy development and transmission committee.

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3. The program may provide technical education, support, and outreach on royalty payment-related matters in coordination with other entities.
4. The commissioner may contract with local individuals, deemed trustworthy by the mineral owners, lease owners, and mineral companies, to be ombudsmen. The commissioner is not subject to the provisions of chapter 54-44.4 when contracting for the services of ombudsmen.
5. The names of landowners, mineral owners, lease owners, and mineral companies that receive assistance under the program are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.
6. The commissioner shall submit expenses related to the implementation of the program to the industrial commission for reimbursement.
7. By June first of each even-numbered year, the commissioner shall provide a report to the energy development and transmission committee."

Renumber accordingly

2023 HOUSE ENERGY AND NATURAL RESOURCES

SB 2374

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2374
3/17/2023

Relating to a postproduction royalty oversight program; and to provide a report to the energy development and transmission committee

9:59 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:

- Mineral rights
- Post-production costs
- Escalating costs
- Transparency
- Ombudsman
- Basic information
- Transparency
- Accountability

Sen Merle Piepkorn, District 44, introduced SB 2374, oral testimony
Doug Goehring, Commissioner, ND Department of Agriculture, Testimony #25700
Ron Ness, ND Petroleum Council, oral testimony
Troy Coons, Chairman, NW Landowners Association, oral testimony
Derrick Braaten, Attorney, NW Landowners Association, oral testimony
Corey Dahl, Lobbyist, Williston Basin Royalty Owners Association, Testimony #25646

10:33 AM Chairman Porter adjourned the hearing.

Kathleen Davis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2374
3/23/2023

Relating to a postproduction royalty oversight program; and to provide a report to the energy development and transmission committee
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9:34 AM Chairman Porter opened the hearing.

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 Dockter moved a Do Not Pass, seconded by Rep Ruby.

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

9-0-5 Motion carried. Rep Olson is carrier.

9:37 AM Chairman Porter adjourned the meeting.

Kathleen Davis, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2374, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends DO NOT PASS (9 YEAS, 0 NAYS, 5 ABSENT AND NOT VOTING). Engrossed SB 2374 was placed on the Fourteenth order on the calendar.

TESTIMONY

SB 2374

February 5, 2023

Honorable Dale Patten
Senate Energy and Natural Resources
North Dakota Legislative Council
State Capitol
600 East Boulevard
Bismarck, ND 58505-0360

Dear Senate Energy and Natural Resources, Senator Dale Patten, Chairman:

I am writing to voice my support for Senate Bill 2374. We the mineral acre owners in North Dakota should not struggle with getting information related to their royalties from oil companies. Legislators in past sessions have updated the Century Code for the benefit of the state and I would hope that you will now offer the same benefits for individual mineral owners like me.

I strongly encourage this committee to approve SB 2374 so we can receive better information related to our royalties from the oil companies. I prefer this Bill over the House Bill 1520, so I hope you will be on the committee to reconcile if they get passed.

My mineral acres are in Divide County. Thank you for your consideration.

Sincerely,

Carl H. Dahl, Jr.

221 E Owens Ave.

Bismarck, ND 58501

Senate Energy and Natural Resources
North Dakota Legislative Council
State Capitol
600 East Boulevard
Bismarck, ND 58505-0360

Dear Senate Energy and Natural Resources Committee Members,

I am writing in support of **SB 2374**. I live in Minot, but own minerals in Williams and Mountrail Counties. The minerals that I and my siblings own were inherited from our parents and grandparents. I have a copy of a lease, signed by my Grandfather in 1948, with Hunt Oil (bought out by Hess Corporation) that states:

In consideration of the premises the said lessee covenants and agrees:

- 1. To deliver to the credit of lessor, **free of cost**, in the pipeline to which lessee may connect his wells, the equal one-eighth part of all oil produced and saved from leased premises, or at the lessee's option, pay to the lessor for each one-eighth royalty, the market price for oil of like grade and gravity prevailing on the day such oil is run into the pipeline or into storage tanks.*
- 2. To pay lessor one-eighth, at the market price of the well for the gas soused, from the gas from each well where only gas is found, while the same is being used off the premises, and the lessor to have gas free of cost for all stoves and all inside lights in the principal dwelling house on said land during the same time by making his own connections with the wells at his own risk and expense.*
- 3. To pay lessor, for gas produced from any oil well and used off the premises or for the manufacture of of casing-head gas, one eighth, at the market price, at the well for the gas so used, for the time during which said gas shall be used, said payments to be made monthly.*

This lease cannot be changed or re-negotiated, yet companies, such as Hess have taken the liberty of deducting ever increasing owner deductions. The reasons for the deductions are not shared with royalty owners. **In January, the owner deductions, from Hess, equaled 37% of our royalty earnings.** This simply is not acceptable.

I am fully aware that SB 2374 does not specifically address the legality of owner deductions, but it does allow royalty owners, the same benefit as the State of North Dakota, the right to know why owner deductions are being taken and what costs they are covering. I will circle back to the lease my Grandfather signed, stating that no deductions would be taken, but that situation is likely for another day.

My hope and trust lies with my North Dakota legislators to right some wrongs that are occurring. My statements should not be heard as complaints against the Oil and Energy businesses in North Dakota, quite the opposite. Oil and Energy production has changed our lives, mostly for the good. I, along with thousands of mineral owners in our state, simply want to be treated fairly; to receive what Oil companies agreed to pay, through leases signed in the past. We request honesty and transparency from companies doing business in North Dakota.

Sincerely,

Lisa M. Olson

Minot ND

Lisa.Marie.Olson.7@gmail.com

Dear Senate Energy and Natural Resources,
Representative Dale Patten, Chairman:

I am writing to voice my support for Senate Bill 2374.
The mineral owners in North Dakota should not struggle with getting
information related to their royalties from oil companies.
Legislators in past sessions have updated the Century Code for
the benefit of the state and I would hope that you will now offer the
same benefits for individual mineral owners like me.

I strongly encourage this committee to approve SB 2374 so we
can receive better information related to our royalties from the
oil companies.

Sincerely,
Robert Sheldon

January 13, 2023

Honorable Dale Patten
Senate Energy and Natural Resources
North Dakota Legislative Council
State Capitol
600 East Boulevard
Bismarck, ND 58505-0360

Dear Senate Energy and Natural Resources, Representative Dale Patten, Chairman:

I am writing to voice my support for Senate Bill 2374. The mineral owners in North Dakota should not struggle with getting information related to their royalties from oil companies. Legislators in past sessions have updated the Century Code for the benefit of the state and I would hope that you will now offer the same benefits for individual mineral owners like me.

Specifically, I have had continual problems with Oasis Oil regarding production and payment information for the Jeanette Kjorstad Family Mineral Trust in Williams County. In 2022 they paid our Trust erroneously for another Kjorstad Trust (different name) in which we have no interest. I called them when we received the first payment and was assured everything was correct. Then 6 months later they completely reversed the payments without first sending new Division Orders. The revised Division Orders were eventually sent but my repeated calls and emails for an explanation were never answered or returned. To this date I have received no information however I do communicate with other family members and figured out for myself what was happening.

I strongly encourage this committee to approve SB 2374 so we can receive better information related to our royalties from the oil companies.

Sincerely,

Eileen Craven Kjorstad

Trustee, The Jeanette Kjorstad Family Mineral Trust

SB 2374 HEARING

TESTIMONY PROVIDED BY COREY J DAHL

A LITTLE ABOUT COREY

- Early Life & Education – Born in Crosby ND, Worked on farm until HS graduation, College at UND-Accounting Degree (Go Sioux!!)
- Career
 - Weber Spaulding (Minot) – Public Accounting
 - ANG Coal Gasification(Bismarck) – Listed Consortium
 - Gold Seal Company (Bismarck)– Private Company
 - Charles Bailly (Bismarck) – Public Accounting
 - Bobcat Company (Bismarck) – Listed Company (7 years)
 - CNH Industrial (Fargo) – Listed Company (17 years) CNH stands for Case – New Holland
 - Retired 2013

A LITTLE MORE ABOUT COREY

- Land owner in Divide County, North Dakota (land was homesteaded by my ancestors)
- Mineral Owner in Divide County, North Dakota
 - Have mineral ownership that is held under a lease which pays royalties.
 - Have mineral ownership that is producing under the terms of an unleased mineral interest pursuant to NDCC 38-08-08

TOPIC ONE – LEASED MINERAL INTERESTS

- Lease is for mineral ownership that covers three contiguous 1280 acre spacing units.
- Lease was negotiated for the benefit of parties that controlled > 50% of each spacing unit.
- Lease contains specific language that prohibits the operator from making any deductions whatsoever from the royalty payment.

North Dakota Board of University and School Lands: Minerals Policy Manual, Page 13

4. Lessee agrees that all royalties accruing to lessor under this policy shall be without deduction for the cost of producing, gathering, storing, separating, treating, dehydrating, vapor recovery, compressing, processing, transporting, conditioning, removing impurities, depreciation, risk capital, and otherwise making the oil, gas and other products produced hereunder ready for sale or use.

TOPIC TWO – UNLEASED MINERAL INTERESTS

- Similarities to Topic One
 - Mineral interests are contiguous to the three spacing units in topic one.
- Dissimilarities to Topic One
 - Mineral owners were unable to negotiate as a group that controlled >50% of the spacing unit.
 - Operator made several offers to lease which were determined by the remaining mineral owners' to be unacceptable offers and were rejected. In late August 2021 I met with a representative of the Operator in Bismarck and expressed our frustration with their tactics and their unwillingness to negotiate in good faith. (Note: During my tenure as Controller for Bobcat and CNH Industrial I was at the negotiating table for 4 Union Contracts, believe me I know what negotiating in good faith vs bad faith is).
 - At that meeting I was instructed by the Operator's representative to sign the lease they offered as it was their last and final offer.

AND NOW THE FUN STARTS

BIG BULLY OIL. LLC

P.O. Box 935

Bismarck, ND 58502-0935

Phone: (701) 255-5662 FAX: (701) 258-1562

Email: [REDACTED].com

Less than 10 days later

September 8, 2021

CORRECTED

RE: Well Proposal

[REDACTED]
T162N-R100W

Sec. 04 & 09: ALL Divide
Co., ND

Dear Owner:

[REDACTED] hereby proposes to drill the [REDACTED] as Three Forks formation horizontal well with a spacing unit described as Section 04: All and Section 09: All, Township 162 North- Range 100 West, Divide Co., ND. The surface location of the well will be 425' FSL, 1,450' FWL of Section: 33, Township 163 North, Range 100 West. The bottom hole location will be 50' FSL, 1,600' FWL of Section: 09, Township 162 North, Range 100 West with a total horizontal offset length of 11,000'. This well has been drilled but not completed with completions planned sometime this month.

██████████ would prefer to secure a lease on your minerals but in the alternative, you can elect to participate in the operation and pay your share of the drilling costs. After multiple unsuccessful lease negotiation attempts, our final lease offer to you is ██████████/acre for a █-year lease with a ██████ royalty on an approved Big Bully Oil, LLC ██████████ lease form.

According to the title information available, you own an unleased mineral interest of ██████████ net acres or a ██████████ working interest the proposed 1,280.16 spacing unit. ██████████ invites your participation in this well. The Title Opinion is being worked on for this well and your final working interest percentage and any resulting accounting change to your billings will be based on the opinion. As such, you should verify your interest in the proposed spacing unit prior to making your election as your election will be based on your full actual working interest in the spacing unit. Enclosed is a cost estimate (AFE) for the drilling (\$2,222,000) and completion (\$3,859,533) of this well; totaling \$6,081,533 gross. If you elect to participate, please provide this office with a signed AFE and payment for your estimated share of the AFE drilling and completion costs (\$950,239.53) based on our title information.

[REDACTED] would like to have your response as soon as possible, but at least within 30 days from receipt of this notice. Should you fail to make an election during that period, your interest may be subject to penalties under Joint Operating Agreement or force pooled under the applicable statutes of the state of North Dakota. In the event, your working interest will be subject to a risk

penalty as allowed by Section 38-08-08 of the North Dakota Century Code, as promulgated by the North Dakota Industrial Commission (NDIC). If you object to the risk penalty, then you have the right to respond in opposition to any petition for a risk penalty that [REDACTED] could file with the NDIC regarding this well. In the event no risk penalty petition is filed, you may file a petition with NDIC requesting a hearing on this matter.

Please indicate your participation election in the space below and return one executed copy of this letter to my attention at the address shown above. If your decision is to participate, return a signed copy of the AFE as well

If you elect to participate, please provide a check in the amount of **\$950,239.53** to the following:

[REDACTED]
Department #41404
P.O. Box 650823
[REDACTED]

EMAIL DATED APRIL 21, 2022

We have had a chance to review the first Royalty payments made by PHLLC on the below referenced well. We have several questions and I was wondering if you could take some time to address them. I am available to clarify the questions if you need further information or perspective. Feel free to call me at 701-306-3986.

Regards,
Corey

Questions regarding the Royalty Payments on UMI for MURPHY 162-100-4B-9-H (WELL#26059)

Volumes Royalty Paid On:

Below is the information PHLLC provided the State of ND. The Oil volumes seem to agree with the volumes on the Royalty Statement. The Casinghead Gas volumes do not seem to agree. The volumes paid on were significantly below the volumes produced. The understanding is that PHLLC owes the mineral owner a royalty on all gas produced. Please explain the discrepancy in gas produced vs gas paid on Royalty Statement.

Oil price used to determine royalty payment:

It appears that PHLLC is using a "Price after Deductions" to base the royalty calculation on. The understanding is that PHLLC should be using the "Gross Price Received" as the statutes call for a cost free royalty to be paid to the mineral owner. Please explain the term "Price after Deductions" and detail the deductions that are being taken to determine this value.

Casinghead Gas price same questions as Oil above.

Casinghead Gas Processing Fees:

Deductions were taken at a straight 25% for "Processing Fees". The statute calls for a cost free royalty to be paid to the mineral owner. What methodology is PHLLC using to make a 25% deduction from a price that already included deductions before calculating the royalty payment? Please explain in detail the calculation of the Casinghead Gas royalty.

Products:

Same situation and questions as the Casinghead gas category.

EMAIL DATED MAY 11, 2022

Can you provide a time line of when PHLLC will respond to the questions that were raised on the above referenced well?

Regards,
Corey

EMAIL DATED MAY 11, 2022

Good Afternoon, Mr. Dahl,

I will address part of your email, but the explanation of the deductions and payout statements are not my department. I will discuss the statutory royalty and “cost-free” issue below:

Under North Dakota law, unless an **oil and gas lease has a specific provision** restricting certain costs from being deducted from royalty payments on production, an operator may deduct certain costs associated with marketing, processing, transportation, etc. **This has been established numerous times in the ND courts including the case Petro-Hunt v. Bice. Petro-Hunt's deductions on royalty payments are within the boundaries of the law.**

Also under ND law, statute doesn't provide a “cost-free royalty” in the sense of gross proceeds at the wellhead. However, your statutory royalty of 16% (or average weighted royalty in the unit per operator's choice) does not bear the costs to drill, complete, or operate the well; the 84% **PHLLC** receives does. As a non-consent unleased mineral owner, you are not responsible for the costs associated with drilling and completion the well until the well pays out 150% of those costs to drill/complete. During this non-consent penalty period, **PHLLC** carries the liabilities and costs to operate while receiving an operational cost bearing 84% royalty to cover the non-consent costs your whole interest bears. Also under the law, the operator has certain lien rights if costs are not paid by partners in the well, which provides the operator a royalty percentage of non-consent unleased owners to recoup those costs.

PHLLC deducts what is allowed under law and you are paid a royalty on the same basis as **PHLLC** post deductions. You are being treated as any other non-consent mineral owner under the force pool statutes of North Dakota. Should you have any other issues regarding deductions, you should reach out to your attorney for advice. **PHLLC** is deducting what is allowable under the law and will continue to do such.

Kevin will have to address the more specific deductions and payout information. **However, I can tell you that the state's website is not always up to date.** Also, produced vs. sold comes into play. Just because it was produced, doesn't mean we sold the product yet. That's where there could be some discrepancy on volumes v sold.

Thank you,

Derick J. Rollet, Esq
Professional Landman

Type	Production Date	Property Values			
		BTU	Volume	Price	Value
Property: 118*23513		ORLYNNE 2-3H, State: ND, County: DIVIDE			
CASINGHEAD GAS					
ROYALTY INTEREST	Nov 22		464.59	4.52	2,101.05
<i>Price After Deductions: 3.39; Property Value Less Deductions: 1575.79; [REDACTED] Original</i>					
SEVERANCE TAX	Nov 22				(83.52)
OIL SALES					
ROYALTY INTEREST	Dec 22		356.76	79.47	28,351.04
<i>Price After Deductions: 77.35; Property Value Less Deductions: 27593.88; [REDACTED] Original</i>					
SEVERANCE TAX	Dec 22				(1,379.69)
ROYALTY INTEREST	Dec 22		356.76	79.47	28,351.05
<i>Price After Deductions: 77.35; Property Value Less Deductions: 27593.89; [REDACTED] Original</i>					
SEVERANCE TAX	Dec 22				(1,379.69)
PRODUCTS					
ROYALTY INTEREST	Nov 22		8,154.28	0.59	4,802.46
<i>Price After Deductions: 0.12; Property Value Less Deductions: 948.61; [REDACTED] Original</i>					

Interesting math: Severance tax on Casinghead gas is 3.397515% which is a number found nowhere in ND Statute. Per NDCC 57-51-02.2 the Production Tax should be .0905 cents per MCF. Thus $464.59 * .0905 = \$42.04$ Royalty is paid on Gross Value. Severance Tax is paid on Net Value. $(356.76 * 79.47 = 28,351.04)$ $(28351.04 * 5\% = 1,417.52)$ $(356.76 * 77.35 = 27,595.54)$ $(27,595.54 * 5\% = 1379.69)$

CASINGHEAD GAS

UNLEASED MINERAL INTEREST	Nov 22	2,061.10	4.52	9,321.09	0.0
<i>Price After Deductions: 3.39; Property Value Less Deductions: 6990.22;</i>					
SEVERANCE TAX	Nov 22			(516.18)	0.0
PROCESSING FEE	Nov 22			(2,330.87)	0.0
<i>Transaction Code Interest Type Summary Code: Processing</i>					

Amount is exactly 25% of Revenue

OIL SALES

Property Values

Type	Production Date	BTU	Volume	Price	Value
UNLEASED MINERAL INTEREST	Dec 22		6,174.69	77.41	477,971.03
<i>Price After Deductions: 77.41; Property Value Less Deductions: 477971.03;</i>					
SEVERANCE TAX	Dec 22				(23,898.55)
EXTRACTION TAX	Dec 22				(23,898.55)

Amount is 71% of Revenue

PRODUCTS

UNLEASED MINERAL INTEREST	Nov 22	42,978.78	0.63	27,205.22	0.0
<i>Price After Deductions: 0.18; Property Value Less Deductions: 7877.34;</i>					
PROCESSING FEE	Nov 22			(19,327.88)	0.0
<i>Transaction Code Interest Type Summary Code: Processing</i>					

More Interesting math: Severance tax on Casinghead gas is 5.53776% which is a number found nowhere in ND Statute. Per NDCC 57-51-02.2 the Production Tax should be .0905 cents per MCF. Thus $2061.1 * .0905 = \$186.52$.

[REDACTED]
 DETAIL PAYOUT STATEMENT
 Period End Date
 As of 12/31/2021

Date Range
12/31/2021 - 12/31/2021

Owner Number:
Payout Master ID: [REDACTED] 150%

Description	Volume Current Month/Range	Current Month/Range	Inception to Date	Fctr/ Penlt%	Payout Amount
REVENUE					
OIL	30,053.19	2,220,521.19	2,220,521.19		
LESS: TAXES & DEDUCT		222,052.12	222,052.12		
LESS: ROYALTY/ORRI	5,509.75	366,386.01	366,386.01		
WORK INT OIL PRICE	24,543.44 73.89	1,632,083.06	1,632,083.06	100	1,632,083.06
CASINGHEAD GAS	4,654.91	26,270.82	26,270.82		
LESS: TAXES & DEDUCT		7,143.95	7,143.95		
LESS: ROYALTY/ORRI	853.40	3,506.59	3,506.59		
WORK INT CASINGHEAD GAS PRICE	3,801.51 5.64	15,620.28	15,620.28	100	15,620.28
PRODUCTS	96,285.93	85,165.54	85,165.54		
LESS: TAXES & DEDUCT		48,765.72	48,765.72		
LESS: ROYALTY/ORRI	17,652.42	6,673.30	6,673.30		
WORK INT PRODUCTS PRICE	78,633.51 0.88	29,726.52	29,726.52		29,726.52
TOTAL REVENUE		1,677,429.86	1,677,429.86		1,677,429.86

TOTAL REVENUE	1,011,423.00	1,011,423.00		1,011,423.00
EXPENSE				
PROD LEASE WIP - IDC				
PROD LEASE WIP - IDC	17,858.50	1,786,341.53	150	2,679,512.30
	-----	-----		-----
TOTAL 807	17,858.50	1,786,341.53		2,679,512.30

Payout Master ID: [REDACTED] 150%

Description	Volume Current Month/Range	Current Month/Range	Inception to Date	Fctr/ Penlt%	Payout Amount
INTANGIBLE COMPLETION COST					
INTANGIBLE COMPLETION COST		61,872.89	2,794,242.14	150	4,191,363.21
		-----	-----		-----
TOTAL 808		61,872.89	2,794,242.14		4,191,363.21
DRILLING EQUIPMENT - ACP - TCC					
DRILLING EQUIPMENT - ACP -		42,094.72	1,074,643.55	150	1,611,965.33
		-----	-----		-----
TOTAL 810		42,094.72	1,074,643.55		1,611,965.33
DRILLING EQUIPMENT - BCP - TDC					
DRILLING EQUIPMENT - BCP -			493,328.05	150	739,992.08
		-----	-----		-----
TOTAL 809		0.00	493,328.05		739,992.08
LEASE OPERATING EXPENSE - LOE					
LEASE OPERATING EXPENSE - L		114,812.47	121,036.26	100	121,036.26
		-----	-----		-----
TOTAL 905		114,812.47	121,036.26		121,036.26
GEN LIABILITY INSURANCE					
GEN LIABILITY INSURANCE		59.65	178.95	100	178.95
		-----	-----		-----
TOTAL GLI		59.65	178.95		178.95
OEE INSURANCE					
OEE INSURANCE		10.39	31.17	100	31.17
		-----	-----		-----
TOTAL INS		10.39	31.17		31.17
OVERHEAD - COMBINED FIXED RATE					

Owner Number:
Payout Master ID: [REDACTED] 150%

Description	Volume Current Month/Range	Current Month/Range	Inception to Date	Fctr/ Penlt%	Payout Amount
OVERHEAD - COMBINED FIXED R		1,403.38	4,210.14	100	4,210.14
TOTAL OH		1,403.38	4,210.14		4,210.14
WORKOVER EXPENSE - WIP		570.25	7,262.61	150	10,893.92
WORKOVER EXPENSE - WIP					
TOTAL 938		570.25	7,262.61		10,893.92
TOTAL EXPENSE		238,682.25	6,281,274.40		9,359,183.36
Payout Balance					-7,681,753.50

Please Direct Inquires
Concerning this Statement to:

[REDACTED]

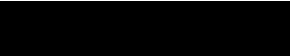
Address is a PO box in TX

EMAIL DATED MAY 17, 2022

Mr. Dahl,

Please see attached payout statement for the well's 100% payout and 150% non-consent penalty period. As of this statement, the remaining balance for 150% payout is over \$7.6 million dollars. This will take some time to recoup but feel free check back in a year for an update on payout.

Sincerely,

, Esq

Professional Landman

EMAIL DATED AUGUST 25, 2022

Gentlemen,

It has been awhile since I sent my first inquiries to you and I must say I was not overwhelmed by your response. I was expecting a little more of a professional response from [REDACTED], but on the other hand given our history the response seemed fitting. I was looking for a detailed payout statement for only my share of the drilling costs which is obviously not in the 7.6 million range. Thus I have been forced to "run the numbers" on my own based on the partial deck that I am privy to . Please see attached the results of my assessment of the well data through the month of June for oil and May for the casinghead gas and products. In a nutshell the data would indicate that the well has reached payout for [REDACTED] and that my share of the drilling of the well has a couple of months left at the current rate of production. This would seem to be a far cry from the "check back in a year for an update". Thus we seem to once again have a disconnect that may or may not blossom into a trust issue depending on [REDACTED] reply to this inquiry. I know that [REDACTED] keeps meticulous records on all aspects of the operation of each well. Therefore it should be no great burden for you to share that information with me as a participant in this endeavor.

With respect to the issues surrounding the deductions from our royalty portion of the well's operations I will defer them to a later date as to not overburden [REDACTED], but do not consider them dropped. I will point out that your reference to PHLLC vs Bice does not convince me, as it is clearly a lease term dispute. As you will recall we do not have a lease between us and I have already stated [REDACTED] does not have the power to unilaterally establish the terms by which we will do business. I would prefer to establish those terms in a businesslike manner as opposed to letting a bunch of attorneys go back and forth trying to figure out what the legislature intended. If you feel so inclined feel free to reach out to me to discuss the options that we may have to resolve these differences of opinion.

Regards,

ACCOUNT	AFE	ACTUAL	DIFFERENCE	TOTAL UMI
				0.15625
118.807	1,859,700.00	1,786,341.53	(73,358.47)	418,673.80
118.808	2,677,362.00	2,794,242.14	116,880.14	654,900.50
118.809	362,300.00	493,328.04	131,028.04	115,623.76
118.810	1,182,171.00	1,074,643.55	(107,527.45)	251,869.58
	6,081,533.00	6,148,555.26	67,022.26	1,441,067.64
	950,239.53			490,828.11
118.905		121,036.26		18,911.92
GLI		178.95		27.96
INS		31.18		7.31
OH		4,210.14		657.83
118.938		7,262.61		1,702.17
		132,719.14		21,307.19
TOTAL		6,281,274.40		1,462,374.83

Cost represents 23% of the cost to drill

TOTAL PRODUCTION \$	OIL	\$10,852,325.01
	GAS	164,200.81
	PRODUCTS	477,792.73
		<u>\$11,494,318.55</u>
Royalty Simple math ($11,494,318.55 * .15625 * 16\% = 287,357.93$)		
Actual Royalty		258,190.60

13 months of production – 122491 bls of oil sold at an average price of \$89.33. Yet the well has not “paid out”.

Life to date of well-Owners of the mineral rights under 15.625% of the spacing unit have received a little over 2% of the total proceeds.

SB 2374 HEARING

TESTIMONY PROVIDED BY COREY J DAHL

HOUSE BILL 1203 APPROVED APRIL 14, 1983

House Bill No. 1203
Before the Senate Natural Resources Committee

Testimony of
Douglas L. Johnson
Assistant Attorney General
Oil and Gas Division
North Dakota Industrial Commission

TO: North Dakota Gas Producers and Purchasers

FROM: North Dakota Office of State Tax Commissioner

SUBJECT: Notification of Gas Tax Rate for Fiscal Year 2023

DATE: June 1, 2022

In keeping with the provisions of North Dakota Century Code (N.D.C.C.) § 57-51-02.2, the Tax Commissioner has determined that the gas tax rate for the fiscal year beginning July 1, 2022, through June 30, 2023 is \$.0905 per mcf. The gross production tax on gas produced during this time period must be calculated by taking the taxable production in mcf times the \$.0905 tax rate.

House Bill No. 1203 amends Subsection 1 of Section 38-08-08 of the North Dakota Century Code to provide that when the Industrial Commission force pools a spacing unit unleased mineral owners are to be treated as royalty owners as to 1/8 of their interest and are to be treated as working interest owners as to the other 7/8 of their interest. As everyone may not understand the terms "spacing" and "pooling" I will briefly explain the terms.....

The problem that House Bill 1203 addresses is what happens to an unleased mineral owner when a spacing unit is force pooled.....

Putting this into actual dollar figures, assume that the well drilled by Gulf cost \$2 million to drill and complete and produced 60,000 barrels of oil before being plugged. Assume that the oil sold for an average of \$30 per barrel for a total revenue of \$1.8 million. In other words the well does not pay out.

Under the Industrial Commission's order, the money from the sale of the oil would have been divided as follows:

N/2 of the Section

Mr. Smith — $1/8 \times 1/2 \times \$1,800,000 = \$112,500$

Gulf----- $7/8 \times 1/2 \times \$1,800,000 = \$787,500$

y

S/2 of the Section

Mrs. Black — $1/8 \times 1/2 \times \$1,800,000 = \$112,500$

Gulf----- $7/8 \times 1/2 \times \$1,800,000 = \$787,500$

\$1,800,000

If Mrs. Black's unleased minerals are treated entirely as a working interest, as some oil companies want, the proceeds from the 60,000 barrels of oil would be divided as follows:

N/2 of the Section

Mr. Smith — $1/8 \times 1/2 \times \$1,800,000 = \$112,500$

Gulf..... $7/8 \times 1/2 \times \$1,800,000 = \$787,500$

S/2 of the Section

Mrs. Black -- 0

Gulf $8/8 \times 1/2 \times \$1,800,000 = \$900,000$

$\$1,800,000$

The Industrial Commission has felt that It is "just and reasonable" to include a 1/8 - 7/8 provision in its pooling orders because such a provision is necessary to ensure that all mineral interest owners received their 'just and equitable share" of production. The Industrial Commission does not feel that it is ever just and equitable for a mineral owner to receive nothing from a well that produces close to \$2 million worth of oil when the mineral owner owns half the minerals under the well.

North Dakota Board of University and School Lands: Minerals Policy Manual, Page 11

Royalties. If a sale of gas, carbon black, sulfur, or any other products produced or manufactured from gas produced and marketed from the leased premises, including liquid hydrocarbons recovered from such gas processed in a plant, does not constitute an arm's length transaction, the royalties due lessor shall be as follows:

1. On any gas produced and marketed (except as provided herein with respect to gas processed in a plant for the extraction of gasoline, liquid hydrocarbons or other products), the royalty, as determined by the Board, shall be based on the gross production or the market value thereof, at the option of the lessor, such value to be based on the highest market price paid for gas of comparable quality and quantity under comparable conditions of sale for the area where produced and when run, or the gross proceeds of sale, whichever is greater; provided that the maximum pressure base in measuring the gas under this lease contract shall not at any time exceed 14.73 pounds per square inch absolute, and the standard base temperature shall be sixty (60) degrees Fahrenheit, correction to be made for pressure according to Boyle's Law, and for specific gravity according to a test made by the Balance Method or by the most approved method of testing being used by the industry at the time of testing.
2. On any gas processed in a gasoline plant or other plant for the recovery of gasoline or other liquid hydrocarbons, the royalty, as determined by the Board, is based on the residue gas and the liquid hydrocarbons extracted or the market value thereof, at the option of the lessor. All royalties due herein shall be based on eighty percent or that percent accruing to lessee, whichever is greater, of the total plant production of residue gas attributable to gas produced from the leased premises, and on forty percent or that percent accruing to lessee, whichever is greater, of the

North Dakota Board of University and School Lands: Minerals Policy Manual, Page 12

total plant production of liquid hydrocarbons attributable to the gas produced from the leased premises; provided that if a third party or parties are processing gas through the same plant pursuant to arm's length transaction and one such transaction accounts for an annual average of ten percent or more, or all such transactions collectively account for an annual average of thirty percent or more of the gas being processed in such plant, the royalty shall be based on the gross proceeds of sale that would accrue to lessee if the gas were processed under the terms of the most remunerative third party transaction for processing gas in such plant. Respective royalties on residue gas and on liquid hydrocarbons where the requirements for using third party transactions cannot be met shall be determined by

- a. The highest market price paid for any gas (or liquid hydrocarbons) of comparable quality and quantity under comparable conditions of sale in the general area F.O.B. at the plant after processing;
- b. The gross proceeds of sale for such residue gas (or the weighted average gross proceeds of sale for the respective grades of liquid hydrocarbons), F.O.B. at the plant after processing; or
- c. The gross proceeds of sale paid to a third party processing gas through the plant, whichever is greater. Lessee shall furnish copies of any and all third party gas processing agreements pertaining to the plant upon lessor's request.

Testimony of Madeline Bugh on Behalf of Dorchester Minerals, L.P.

Senate Bill No. 2374

Energy and Natural Resources Committee

Senator Patten, Chairman

February 9, 2023

Chairman Patten and members of the Energy and Natural Resources Committee, thank you for the opportunity to testify before you today in support of Senate Bill 2374. My name is Madeline Bugh, and I am in-house counsel for Dorchester Minerals, L.P. (“Dorchester”), which is located in Dallas, Texas. Dorchester actively owns and manages minerals, or some form of working interest or royalty interest associated with minerals located in roughly 37 counties in North Dakota. Dorchester has experienced many of the issues that Senate Bill 2374 seeks to address. My testimony, on behalf of Dorchester, is in favor of Senate Bill 2374 and will provide some key examples and explanations for the importance of the proposed amendments.

Section 1: Amendment to Section 38-08-04

Section 38-08-04 as currently written has caused confusion regarding whether issues of post-production deductions and various other issues regarding oil and gas royalty payments are properly within the jurisdiction of the North Dakota courts or whether they are within the jurisdiction of the North Dakota Industrial Commission (“NDIC”). The specific language of 38-08-04(b)(1) granting the NDIC the power to regulate “all other operations for the production of oil or gas” is confusing and misleading. In my own experience the current wording of this statute has caused both a delay in time and additional expense trying to determine proper jurisdiction. This is the crux of the issue. Whether a claim is within the jurisdiction of the NDIC versus the courts should be clear. The amendment as proposed would clear up much of this unnecessary confusion with regards to where jurisdiction is proper, thus saving mineral owners collectively an undoubtedly large amount of both time and money.

Section 2: Amendment to Section 38-08-06.3

Dorchester supports the proposed amendments to Section 38-08-06.3, which seek to provide valuable information to minerals owners via electronic means rather than cumbersome paper checks. On their own, revenue checks are nearly impossible to determine the actual value attributable to a single well's monthly production. It is common to see reversals and rebooks going back several years—sometimes as much as eight or more years. When reversals and rebooks occur on a monthly basis, stretching back over the span of almost a decade, it becomes impossible to calculate what you are actually being paid for each month's production. Dorchester is fortunate to have an accounting system that puts together the “puzzle pieces” of each month's reversals and rebooks to see the full picture, but herein lays the issue: a fancy accounting system should not be necessary to see what you are getting paid. Further, it is egregious to expect mineral owners to pay for a service such as EnergyLink, when instead they could undoubtedly be provided this same information from the operator in excel format.

Additionally, Dorchester supports the amendment to Section 38-08-06.3 requiring an operator to keep its contact information current with the NDIC, as well as the associated penalty for non-compliance. Through my experience in dealing with operators, unfortunately, the general trend seems to be that operators are not concerned with compliance unless a penalty is associated with non-compliance.

Section 3: Amendment to Section 38-08-06.6

The creation of Section 38-08-06.6 as proposed is particularly important for mineral owners to verify that their ownership in a well is being calculated and paid correctly. Currently, there are no requirements that operators provide this necessary information, nor are there any penalties if an operator fails to respond to these inquiries. Thus, there is no incentive for operators to be responsive, because they have no liability or accountability for failure to respond. And unfortunately, this seems to be the modus operandi. Recently, Dorchester inquired with an operator regarding several Division of Interest (“DOI”) calculations contained on a composite Division Order which did not match Dorchester's understanding of

its ownership, as analyzed by various Professional Landmen. Despite sending several emails requesting assistance, the only response Dorchester received merely stated that the operator forwarded Dorchester's inquiry:

We have forwarded your inquiry to the respective geographical analyst to review and respond. If additional information is needed, the analyst assigned will be in contact with you. We are experiencing an increase in inquiries so your patience is appreciated.

Should you have any further questions, please visit our new

[ASSISTANCE FOR OWNERS SITE](#)

Sincerely,

However, nearly five months after this reply, despite sending several more emails, Dorchester still had yet to receive a substantive response from the operator. In fact, the only reason this issue was resolved (after more than nine months), was due to an unrelated mineral interest (located in a different state) for which the operator needed Dorchester's consent to assign a lease. Over the course of nine months, no progress was made in what Dorchester can only assume was the operator's error in calculating the DOI—Dorchester still has not been told why the DOI calculations had severely decreased Dorchester's interest. Unfortunately, this is not a single occurrence. This is a common issue, for which there is no redress under the current statute. The creation of Section 38-08-06.6 as proposed in this bill will provide much needed protection for the common mineral owner who does not have the added protection of an unrelated mineral interest to force an operator to fix an issue that is solely within their power to control and is their fault to begin with. This is why the creation of Section 38-08-06.6 is so important, particularly the penalty provision, without which leaves little incentive for operators to comply with the statute.

Section 4: Amendment to Section 47-16-39.1:

The proposed amendments to Section 47-16-39.1 seek to redress multiple issues with the current language of the statute. The first of which is the exclusion of Overriding Royalty Interest ("override") owners in the protections allotted by this statute, namely, the right to receive interest on wrongly withheld royalty payments. Currently, the case *Sunbehm Gas, Inc. v. Equinor Energy, LP*, No. 1:19-CV-94, 2020 WL 2025355 (D.N.D. Apr. 27, 2020) stands for the proposition that Section 47-16-39.1 does not apply to the holder of an override. But I implore you to ask yourself, why override owners are excluded from this

same protection allotted to royalty owners? Yes, an override is different from a royalty interest because it is carved out of a lease rather than the mineral estate directly. However, an override, just like a royalty interest, is paid to the owner directly by the operator/payor and in the same manner as a royalty. Why then can an operator hold onto the override owner's "royalty" interest free for years upon years but not a royalty owner's? Dorchester has unfortunately run into this issue frequently. Most recently, an operator failed to make payments to Dorchester for approximately 10 years for no apparent reason, yet due to current case law of this statutory language, was not entitled to any interest for the wrongly withheld revenue. As you can imagine, such interest *would* have amounted to tens of thousands of dollars. Although an override stems from a different part of the minerals estate than a royalty interest, there is no logical reason why an override owner should be excluded from receiving interest on late payments that have been wrongfully withheld by the operator/payor.

The second issue this amendment accomplishes is providing much needed clarity regarding what the applicable statute of limitations is for interest on late royalty payments. Recently, Dorchester commenced an action against an operator for failure to pay interest on late royalty payments. The operator argued that the applicable statute of limitations is 3 years, but if not, then it is 6 years from the time that the royalty payment was *due*, not when the (late) royalty payment was actually paid. The Court's opined that a determination regarding which statute of limitations applied was unnecessary because Dorchester's claims were not barred under either. However, the applicable statute of limitations for the time in which a royalty owner has to bring suit should be known. It should not be a guessing game for the mineral owner, much less the judiciary branch. This simple amendment stating that "a claim for relief for compensation brought under this chapter must be commenced within the limitations period provided under Section 28-01-15" will provide much needed clarity to mineral owners and alleviate the need for a judicial determination as to which limitations period applies.

The third issue this amendment seeks to address is the outright refusal and denial by operators that interest on late royalty payments are due upon rendering the late royalty payment. This is a very common

issue that Dorchester faces. Despite the clear statutory language mandating the payment of interest on late royalty payments—"*without the requirement of needing to request the interest*"—even upon such request, operators/payors will flat out refuse to pay interest. Another common argument operators/payors will employ is that the statute of limitations for interest begins to run when the late royalty payment was *missed* (rather than when it was actually paid). This means that if a royalty owner gets paid 10 years late, the royalty owner would have lost all claims to interest, *before they even receive the late royalty payments*. This is great for operators/payors because they can avoid liability for interest on late royalty payments by merely waiting until after the limitations period has run out, and just like magic, they have absolved themselves from any liability for their own malice.

As you can see, due to operators blatant disregard for the statutory mandate of interest on late royalty payments, as well as the confusion regarding when the statute of limitations begins to accrue and for how long it continues, the suggested amendments to Section 47.16.39.1 are necessary in affording minerals owners the intended protections of this statute.

Section 5: Amendment to Section 47-16-39.2:

The proposed amendments to Section 47-16-39.2 are needed in order to resolve multiple issues that have in essence defeated the intent of this statute. The intent of 47-16-39.2 was undoubtedly to protect mineral owners by forcing operators to provide transparency through mandatory audits. However, the statute fails to provide the protection for which it was created due to several issues.

The first issue is that the current language does not allow an unleased owner to inspect the production and payment records of the operator/payor. The proposed amendment would provide unleased mineral owners with the same rights as a leased mineral owner under this statute. This amendment is justified because unleased mineral owners are entitled to a statutory royalty under the North Dakota Century Code, yet with the statute as written, have no right to audit the records to ensure they are being paid correctly. The proposed amendments will eliminate an operator's/payor's ability to refuse audits merely

because the mineral owner is unleased. Regardless of whether a mineral owner is leased or not, if they are receiving royalties from the operator, then the right to audit is essential to providing the transparency and protection this statute intended to provide.

Second, the current language has created uncertainty regarding whom the lessor can audit. Operators have claimed that the statute as currently written only allows the mineral owner to audit its lessee. This interpretation is especially problematic. What happens when the operator, who is responsible for paying your royalties, is not your lessee? You have no recourse available to audit their records, even though they are paying your royalties. Dorchester has encountered this issue on more than one occasion. Below is an excerpt of a response to Dorchester's demand to audit the operator's records. Even though Dorchester was leased, the current statutory language provided a loophole through which the operator was able to avoid the audit requirement, merely because the operator was not Dorchester's lessee:

...rights against the lessee, those audit rights do not apply to Petro-Hunt, as the company is not a party to the contract. No statute or law in North Dakota provides a royalty owner with a right to audit the records of a well operator in the absence of a lease or other contractual arrangement that establishes that right. That said, your client's monthly royalty statements from Petro-Hunt

As you can see, the intent of the statute has been completely circumvented, thus rendering this statute essentially useless.

The final issue with this section is that the audit procedure is unduly burdensome because it requires the mineral owner to go to the physical location and look through the documents. Especially when the documents are already in a digital format. Companies routinely use this as a means to discourage audits. Thus, the requirement to provide the electronic versions, when available, is a crucial amendment.

In summary, Dorchester supports Senate Bill 2374 for the reasons previously stated. Thank you for the opportunity to testify before you today.



Kraken Operating

9805 Katy Freeway – Ste.300. Houston. TX 77024

To Whom it May Concern,

Kraken Operating LLC (“Kraken”) has been an operator of oil and gas wells in North Dakota since 2016. We currently operate ~450 wells and have drilled more than 180 wells in the state. As I am sure is the same with most operators in North Dakota, we place tremendous value on our relationship with all of our partners. As we develop our leased mineral interests, we always endeavor to treat everyone in a fair and honest manner.

After more than seven years of operating, I am proud to say that I can count on one hand the number of times I have been made aware of any issues related to the payment of royalties or other interests associated with our minerals under lease.

The State of North Dakota currently has very robust rules that control the content, timing and distribution of notices and payments. The current rules have worked very well for operators, such as Kraken, to establish workflows and processes to make sure we maintain compliance and our partners remain satisfied with our performance. If you ask around, I am confident you will find that Kraken has a good reputation and is well known as a good operator. Our track record should speak for itself.

If there are operators in North Dakota who are not treating their partners fairly by paying or responding in a timely manner, let me start by saying, “Shame on them.” I am not here to defend bad actors or bad deeds, and am in full support of taking the necessary steps to eliminate any undesired practices.

However, the current Senate Bill No. 2374 (“SB 2374”) will have serious repercussions on how we, as a reputable oil and gas operator in the State of North Dakota, do business going forward. Some specific examples are included in Exhibit A. The list is long and the potential impact on our ability to operate are real.

The State of North Dakota currently has very robust rules and regulations and a body of case law which address many of the issues contemplated by SB 2374. We believe that the amendments proposed, in particular the award of attorney’s fees for a prevailing plaintiff (and not a successful defendant) and the newly proposed civil penalties will entice a feeding frenzy for plaintiff’s attorneys and class action lawyers to launch frivolous suits. This will result in countless lawsuits that will likely overwhelm the North Dakota judicial system which is already heavily burdened. We ourselves were named in a recent class action lawsuit along with numerous other operators in North Dakota and even though the royalty payments we had made to the plaintiff were only ~\$11,000, we incurred over \$250,000 of legal fees to defend the suit before it was dismissed by the plaintiff. At the very least, both parties should share in the risk to reduce the likelihood of frivolous lawsuits and any prevailing party should be entitled to recover their reasonable attorney’s fees.

I appreciate your time to consider these comments. As stated previously, Kraken would love to be part of a broader solution that looks at ways to eliminate or penalize specific companies that fail to pay or respond to legitimate concerns in a timely manner. I believe the majority of oil and gas companies are like Kraken and operate with honor and integrity in the best interest of all stakeholders. After reviewing our comments, we hope you will determine that passing SB 2374 in its current form is not the best path forward for the regulation of all oil and gas operators.

Sincerely,

Bruce Larsen
President

EXHIBIT A – SPECIFIC COMMENTS TO SB 2374

Section 38-06-06.3 Information Statement to accompany payment to royalty owner.

- 38-08-06.3 (1). This subsection applies to the information statement that is required to be sent to a royalty owner. However, the first proposed change in 38-08-06.3 (1) potentially expands the requirement from an owner of a royalty interest to an owner of an interest in the land which exceeds the scope of 38-08-06.3 and is difficult to predict how that may be interpreted.
- 38-08-06.3 (1). The additional language "including a portable document format and comma-separated value file which are unlocked and editable by the recipient free of charge" would require these items to be included in all royalty owner statements. This would be an added expense and incredible burden on every operator in the State of North Dakota. We currently process approximately ~5,800 revenue payments per month. Of these, approximately ~3,300 are electronic and ~2,500 are physical. For all physical payments we have asked such owners if they would prefer to receive their payments electronically, which they have denied. For such owners (receiving physical checks and statements) this additional language would require us to include a thumb drive, cd, zip drive or floppy disk with each physical royalty payment and statement? In addition, we have no way of knowing what software a royalty owner has and whether it allows them to edit a portable document format. Any offense would be a class B misdemeanor and this places enormous risk on the operators in North Dakota.
- 38-08-06.3 (5) New subpart (5) allows for a prevailing plaintiff in a proceeding under this section to be awarded attorney's fees. The penalty for non-compliance with this section is a Class B misdemeanor, which is a criminal offense, not a monetary penalty against the operator which would be a civil matter. There should be no attorney's fees awarded in a criminal matter, this is not a civil action.

Section 38-06-06.3 Information Statement to accompany payment to royalty owner.

- 38-08-06.6 (2). The second sentence of 38-08-06.6 (2) requires an operator (upon request) to provide the relevant document number or book and page number of any recorded document and the county in which it was recorded which relates to the owner's decimal interest. This requirement is overly broad and will require significant time and expense of every single operator in North Dakota. We assume that the reference to an "owner's decimal interest" refers to a mineral owner's ownership interest in the minerals included in a spacing unit. The ownership of the vast majority of mineral owners are derived from an original patent obtained from the United States Government, in instances dating back to the 1800s. There is then a subsequent chain of record title from that original patent to the present mineral owners. Sometimes this chain of title covers more than one hundred and fifty years and countless conveyance documents. The requirement in this subpart of 38-08-06.6 would require an operator to include the recording information of every such document as they all relate to the ownership interest of a mineral owner. This requirement is too broad and will likely be unworkable for the majority of independent operators in North Dakota. The information is publicly available, and this task could be handled more effectively at the state level by creating a state managed and county staffed network working in connection with the local county courthouses who maintain the applicable indexes to help those mineral owners being mistreated by hopefully a very limited number of bad operators. This service could be offered free of charge.

Section 47-16-39.1 Obligation to pay royalties

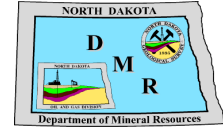
- 47-16-39.1 (1) The inclusion of overriding royalty interest owner in this section should be removed. We wonder if the State wants to allow an overriding royalty interest owner (who is presumably not receiving revenue perhaps for a good reason) the ability to bring a claim to cancel an oil and gas lease even if the mineral owner (who is the lessor under the lease) has been paid their royalty. The oil and gas lease is a contract between the lessor and the

lessee and it may be problematic to allow an overriding royalty interest owner (whose interest is derived from the working interest and not from the underlying mineral interest) to unilaterally cancel the lease.

Section 47-16-39.2 Inspection of production and royalty payment records.

- As a general comment, any notice sent by a royalty owner under this section should be required to be written notice sent via certified mail. In addition, the records should be limited to only those that are applicable to the royalty owner who has requested such access.
- Some of the records to be disclosed are going to be governed by a contract between the operator and the purchaser of the oil or gas. These contracts are sometimes voluminous and include confidentiality provisions in them, which would restrict disclosure of the contracts themselves, the statements from the purchaser and other purchaser information. To disclose such information to a royalty owner in such scenario would require prior written consent from the purchaser. If such consent is not obtained and the operator nevertheless discloses such information, then the operator is in breach of their contract and could be liable to the purchaser. If the purchaser does not grant their consent or does not timely reply, the operator would then be stuck with making a decision to either be in breach of their contract or in breach of this provision. At a minimum, these proposed revisions should be limited to non-confidential or non-privileged records in the operator's possession and place an obligation on the operator to use commercially reasonable efforts to obtain consent to disclose applicable confidential and/or privileged information.

47-16-39.2(2). Proposed amendment: "The district court shall assess a civil penalty of two thousand dollars per day for any period the court determines royalty record payment records requested under this section were wrongfully withheld." The proposed amendment is unjustifiably punitive and invites plaintiff's attorneys and class action lawyers into the state to file countless frivolous suits. The proposed amendment does not specify on which date the penalty shall start from or whether every calendar day is counted or just business days. Nor does it set forth any threshold royalty amount in question to which this subpart would apply. Under 47-16-39.1 an operator is not even obligated to pay revenue to an owner monthly if the amount is less than \$50.00. We (as all operators should be) are open and receptive to a penalty being assessed against an operator who willfully withholds information that a royalty owner is entitled to, however, the proposed penalty in SB 2374 is severe and alarming in the lack of prescriptive procedures associated with it.



Senate Bill 2374

Date of Testimony: 2-09-2023

Good afternoon Chairman Patten and members of the Senate Energy and Natural Resources Committee. I offer the following for informational purposes only:

Page 2, Lines 4-5—Section 2: Amends 38-08-06.3 (Information Statement to Royalty Owner)

- Any person in violation with the section is guilty of a class B misdemeanor.
 - After the sentence ending in “misdemeanor”, add the following sentence: “The criminal penalty provided for in this subsection may only be imposed by a court of competent jurisdiction.”

Page 2, Lines 6-9—Section 2: Amends 38-08-06.3 (Information Statement to Royalty Owner)

- The proposed addition requires the “court” to award reasonable attorney’s fees and “court” costs.
 - Commission is not a “court” and we should not be awarding attorney’s fees and determining actual costs.

Page 3, Lines 2-4— Section 3: Amends 38-08-06.6 (Ownership Interest Information Statement)

- The proposed addition allows the “court” to award reasonable attorney’s fees and “court” costs.
 - Commission is not a “court” and we should not be awarding attorney’s fees and determining actual costs.

Page 3, Lines 8-9—Section 3: Amends 38-08-06.6 (Ownership Interest Information Statement)

- The Department of Mineral Resources shall make orders and cases searchable by well name and legal description free of charge.
 - Cases are not searchable—they can contain hundreds (some thousands of pages).
 - Cases and orders do not contain well names or all spacing units, therefore this ask is nearly impossible.
- We could modify our website to include the well spacing unit as proposed (Page 3, Lines 4-7), although it is already available to our website subscribers with Basic Service.

Please let us know if you have any questions or comments.

Sincerely,
 Bruce E. Hicks
 Assistant Director
 NDIC-DMR-OGD



100 West Broadway, Ste. 200 | P.O. Box 1395 | Bismarck, ND 58501-1395
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Senate Bill 2374

Testimony of Ron Ness

Senate Energy and Natural Resources Committee

February 9, 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 opposition of Senate Bill 2374.

We estimate that there are somewhere between 150,000 and 200,000 mineral and royalty owners in the Williston Basin who receive monthly royalty checks related to their mineral interests. It is not uncommon for a single Bakken operator to have between 7,000 to 15,000 payments to process on a monthly basis. If you count all interest owners, including overriding royalty owners and working interest owners, the larger operators have 15,000 or more owners in their accounting pay deck systems. And that is only those in North Dakota. The responsibility for the correct payment and distribution of proceeds related to oil and gas production falls with the operator. Based on the Economic Petroleum Study conducted by the North Dakota State University in 2021, operators in our state are responsible for the annual payment and distribution of approximately \$1.4 billion in royalties to private mineral and royalty interests and \$3.77 billion in total royalties. **Total gross private royalties paid in 2021 were \$4.1 billion.** This is a big task, and our companies do it quite well. With the sheer number of parties involved, however, there are bound to be disputes.

As you can imagine, this is a complex issue, with title and ownership under a given drilling spacing unit that could include from one to fifteen hundred owners. Operators must take the time to get payments and distributions of proceeds done right and not pay the wrong party at the expense of another party. The royalty distribution process is not going to keep everyone happy – that is simply an impossible task. At times, the

process will be delayed and even reset on account of the sale or transfer of mineral interests or the death of a mineral or royalty owner. We have an expert in the room who can describe in greater detail the complexity of this process if the Committee would like that testimony.

The issue of contention sought to be resolved with this bill has been before this body numerous times. As you are likely aware, private contract interpretation and reformation does not fall under the purview of the legislature, and such issues must be decided by the courts. It may be true that the bill sponsor acknowledges that changing lease contracts and the terms of the lease contracts dating back to the 1940s is not in the purview of the legislature. However, the issues relating to SB 2374 must also be decided in a court of law. Currently, I know of at least four cases relating to this issue that are now in court, and many of the parties advocating for this bill are involved in those cases. I urge this body to let the courts decide what are reasonable post-production deductions and what are not. Each operator and midstream company has a unique contractual lease agreement establishing what will generate the best value for the commodity being sold. Additionally, each royalty owner, overriding royalty owner, and working interest owner also has a unique contract establishing value and payment. It is impossible to derive a single process or formula that works for all the various parties and lease agreements. This bill, as proposed, shifts the focus from that of a contractual dispute to a process that will require unreasonable timelines, massive penalties, and litigation costs that will necessarily lead to court intervention.

The North Dakota Industrial Commission made substantial changes to the Administrative Code a few years ago that were intended to improve the clarity and accessibility of data relating to royalties. The parties advocating for this bill did not engage in that process. In my opinion, some changes to the regulations made at that time were positive. However, others resulted in substantial changes to royalty statements that only served to confuse mineral and royalty owners. This process is simply too complex to create a one-size-fits-all formula, a situation very similar to what you may see in your investment statements.

There are some parties that are never going to be satisfied, regardless of the amount of data or communication they receive. This is because it is the bottom line with which they are unhappy. We believe that the majority of mineral and royalty owners simply want a place where they can seek support. This Committee has passed Senate Bill 2194, which creates a Royalty Owner Ombudsman Program within the Department of Agriculture. We have seen this type of program prove highly successful in resolving issues related to pipelines and wind farms. The Petroleum Council supported that bill with the understanding there is a critical role for an ombudsman to serve. There are also businesses like Mineral Tracker in North Dakota that provide support for mineral owners and help track owners' production and royalties, a service not unlike using an accountant for taxes or an attorney for legal issues. This type of expertise is invaluable.

Finally, the various disputes that may occur between mineral owners and operators are often couched as "David versus Goliath" type situations, with many in favor of shifting liability and costs towards the operator. However, I know firsthand that many of our member operators and working interests owners are local individuals and companies that do not have the financial resources or wherewithal of the larger operators. You will hear directly from some of those individuals today and how this bill, if enacted, will make it impossible for them to continue to thrive as a small operator in this state.

The North Dakota Petroleum Council urges your support and a **Do Not Pass recommendation** for Senate Bill 2374. I would be happy to answer any questions.



1001 Fannin Street, Suite 1500
Houston, TX 77002
O 281.404.9500

February 9, 2023

Senate Energy and Natural Resources Committee

RE: Comments Regarding SB 2374 Proposed Amendments

Dear Senators:

I am writing on behalf of Chord Energy Corporation and its subsidiaries (collectively, "Chord") to support the concept of an ombudsman program currently contemplated in SB 2194, as well as to address our concerns regarding adverse potential consequences of the proposed amendments to SB 2374. As a long-standing operator and the largest acreage holder in the Williston Basin, we appreciate the opportunity to lend our perspective to the conversation relating to these important bills.

Chord operates approximately 3,100 wells across its holdings of nearly one million Williston Basin acres. The company produces more than 100,000 gross barrels of oil per day and paid approximately \$660 million to more than 20,000 royalty owners in 2022 alone. At this scale, we are deeply familiar with the process of distributing royalties and the incredible benefits that those distributions provide to our neighbors, our communities, and the State of North Dakota.

We acknowledge that no industry and no company is perfect. Mistakes are sometimes made despite the best of intentions and efforts, but we work hard to identify them when they happen, fix them promptly and to not repeat them. To assist in the identification and resolution of any such issues, we are supportive of the proposed ombudsman program concept contemplated in SB 2194, which we feel would serve to establish a more tailored-made approach to address real and sometimes complex issues. Such a program could also limit the ability for bad actors to impugn the reputation of the vast majority of operators that share Chord's values and standards relating to royalty owners.

While we think SB 2194 is on the right path, proposed amendments to SB 2374, while purporting to provide royalty owners with certain standard information, impose a one-size-fits-all approach and may not ultimately provide the information unique to each royalty owner's situation. Additionally, while intended to benefit royalty owners, we believe the true beneficiaries of the proposed amendments to SB 2374 would be misguided plaintiff's and class-action attorneys seeking to bog down an otherwise efficient industry by forcing compliance with the non-standard and overly intrusive regulations in the pursuit of the punitive penalties contemplated in the proposed amendments. As a result, we feel strongly that the proposed amendments to SB 2374 would make operating in the Williston Basin a less economic and higher-risk endeavor at the expense of the many stakeholders referenced above.

Certain limitless requirements and unreasonable timelines contained in the proposed amendments to SB 2374, such as the requirement to supply lengthy title documents upon any requests for same (reasonable or not), are out of touch with how the industry operates and would cause companies like ours to structurally change the way they operate and are staffed in order to comply. Further, certain information contained in these documents is proprietary in nature and often extremely expensive to acquire. In many cases, such information is drafted subject to attorney-client privilege and not intended for public or other third party consumption. The requirements in the proposed amendments lend themselves to manipulation by plaintiff attorneys that could easily overwhelm companies with frivolous requests for the sole purpose of collecting the punitive penalties contemplated for delayed reporting relative to the rapid response requirements in the proposed amendments.

As an industry, and certainly as a company, we strive to uphold our end of the bargain in the symbiotic relationship between operators and royalty owners. Without the leases we own and operate, there would be no opportunity to harness the world-class resource that has blessed the State of North Dakota and its citizens. Similarly, without the technical expertise and capital investment of the operators, that resource would be produced in a far less efficient manner, if at all. These relationships are governed not only by mutual respect, but by oil and gas leases and other agreements that set forth the contractual obligations of each party to the other. There is no need for legislation to override a well-established operating environment and doing so in the manner proposed would materially alter the economic equation that has made the Williston Basin such an attractive place to operate during our company's long history here.

In closing, Chord Energy, the second largest producer and the largest acreage holder in the Williston Basin, respectfully requests your consideration to move in support of the ombudsman concept currently contemplated in SB 2194 and against supporting the proposed SB 2374 amendments.

We are happy to make ourselves available to discuss further should that be of interest to you or any of your colleagues.

Sincerely,



Jason Weddle
Land Director

TESTIMONY
SENATE BILL NO. 2374
ENERGY AND NATURAL RESOURCES COMMITTEE
SENATOR PATTEN, CHAIRMAN
FEBRUARY 9, 2023

Chairman Patten, members of the Energy and Natural Resources Committee, thank you for the opportunity to testify before you today. My name is Shane Leverenz. I currently reside in Aubrey, TX and my family owns land and mineral rights in North Dakota. I am here in favor of Senate Bill 2374. My testimony will include examples to support each of the six provisions contained in the bill and provide background information for why royalty owners are asking for your support in passing Senate Bill 2374.

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

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

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

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

ROYALTY INTEREST	Oct 17	(2,298.32)	51.22	(117,726.50)	0.00038922	0.00038922	(0.89)	(45.82)	
<i>PPH: OWNERSHIP CHANGE: Gross Value After Deductions: -111166.30; Price After Deductions: 48.37; Gross Net: -10049.66; Owner Value After Deductions: -43.27; Owner Price After Deductions: 48.62; Owner Net: -37.96</i>									
ND MINERAL EXTRACTION TAX	Oct 17			5,558.32	0.00038922	0.00038922		2.16	
SEVERANCE TAX	Oct 17			5,558.32	0.00038922	0.00038922		2.16	
TRANSPORTATION/GATHERING EXP	Oct 17			6,560.20	0.00038922	0.00038922		2.55	
ND - STATE NON RESIDENT WITHHOLDING	Oct 17			0.00	0.00038922	0.00038922		0.99	
AMOUNT									
ROYALTY INTEREST	Jan 20	(2,166.28)	54.67	(118,423.04)	0.00038922	0.00038922	(0.84)	(46.09)	
<i>PPH: OWNERSHIP CHANGE: Gross Value After Deductions: -106462.30; Price After Deductions: 49.16; Gross Net: -11415.05; Owner Value After Deductions: -41.44; Owner Price After Deductions: 49.33; Owner Net: -36.31</i>									
ND MINERAL EXTRACTION TAX	Jan 20			5,323.12	0.00038922	0.00038922		2.07	
SEVERANCE TAX	Jan 20			5,323.12	0.00038922	0.00038922		2.07	
TRANSPORTATION	Jan 20			20.64	0.00038922	0.00038922		0.00	
TRANSPORTATION/GATHERING EXP	Jan 20			8,222.33	0.00038922	0.00038922		3.20	
TRANSPORTATION	Jan 20			3,717.72	0.00038922	0.00038922		1.45	
ND - STATE NON RESIDENT WITHHOLDING	Jan 20			0.00	0.00038922	0.00038922		0.99	
AMOUNT									
ROYALTY INTEREST	Jan 18	(102.83)	63.25	(132,998.34)	0.00038922	0.00038922	(0.82)	(51.77)	
<i>PPH: OWNERSHIP CHANGE: Gross Value After Deductions: -126677.83; Price After Deductions: 60.31; Gross Net: -11415.05; Owner Value After Deductions: -49.37; Owner Price After Deductions: 60.21; Owner Net: -43.34</i>									
ND MINERAL EXTRACTION TAX	Jan 18			6,341.39	0.00038922	0.00038922		2.46	
SEVERANCE TAX	Jan 18			6,341.39	0.00038922	0.00038922		2.46	
TRANSPORTATION	Jan 18			61.34	0.00038922	0.00038922		0.02	
Represented Unit of Measure: Gas = MCFs, Plant Products = GALs, Oil = BBLs									
Generated on Friday, May 27, 2022 7:25 PM									
© 2022 Enverus. All rights reserved. Unauthorized use prohibited.									
4	Owner	Operator							
		Property Values				Owner Share			
Type	Production Date	BTU	Volume	Price	Value	Owner Interest	Distribution Interest	Volume	Value
TRANSPORTATION/GATHERING EXP	Jan 18				6,109.17	0.00038922	0.00038922		2.38
ND - STATE NON RESIDENT WITHHOLDING	Jan 18				0.00	0.00038922	0.00038922		1.11
AMOUNT									
ROYALTY INTEREST	Oct 19	(2,083.06)	50.12	(104,411.63)	0.00038922	0.00038922	(0.81)	(40.64)	
<i>PPH: OWNERSHIP CHANGE: Gross Value After Deductions: -94886.91; Price After Deductions: 45.60; Gross Net: -85488.71; Owner Value After Deductions: -36.98; Owner Price After Deductions: 45.65; Owner Net: -32.41</i>									
ND MINERAL EXTRACTION TAX	Oct 19				4,749.35	0.00038922	0.00038922		1.85
SEVERANCE TAX	Oct 19				4,749.35	0.00038922	0.00038922		1.85
TRANSPORTATION	Oct 19				7.50	0.00038922	0.00038922		0.00
TRANSPORTATION/GATHERING EXP	Oct 19				6,145.11	0.00038922	0.00038922		2.39
TRANSPORTATION	Oct 19				3,272.11	0.00038922	0.00038922		1.27
ND - STATE NON RESIDENT WITHHOLDING	Oct 19				0.00	0.00038922	0.00038922		0.87
AMOUNT									

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The oil industry did not plug wells or cease production in the state because they were required to provide information to royalty owners in 1983 and they will not do so if the initial version of Senate Bill 2374 passes in this session. If industry representatives testify in opposition to Senate Bill 2374 today, or in future hearings, I hope you will question their reasons for doing so because similar requirements are already in the Century Code or required by the board of university and school lands. The individuals who own mineral rights in North Dakota respectfully ask you to provide the same rights to verify their royalty payments that the state has given itself.

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

than they are paid to take an oil company to court. Passing Senate Bill 2374 will provide royalty owners access to their information, so they do not need to go to court to request it.

Thank you for the opportunity to present testimony today. I welcome any questions the committee may have, and I ask for your favorable consideration of Senate Bill 2374.

SB 2374

Senate Energy & Natural Resources
February 9, 2023 | 2:30 pm | Peace Garden

Testimony by Kate Black, Vice President, Inland Oil & Gas

Good afternoon chairman Patten and members of the Senate Energy and Natural Resources committee. My name is Kate Black and I am here to testify in opposition to SB 2374.

I am the Vice President and am the third generation of Inland Oil and Gas founded in 1967 by my granddad. Inland was founded as a full-service land brokerage company to develop prospects, manage the leasing and title curative on behalf of our clients. Since then, Inland has developed and operated our own shallow gas wells and today we focus on managing and growing our portfolio of working and royalty interests. In addition to managing our own assets, we provide consulting services to assist mineral owners, accountants, tax professionals, and attorneys with appraising, auditing and managing minerals in North Dakota.

Inland has assets operated by over 40 different Bakken operators. In contrast, most private mineral owners have one, or possibly two or three different operators operating wells they have an interest in. As a professional mineral owner, we have frequent exposure to their landowner relations departments from transfers of ownership, verification of division orders and inquiries regarding revenue statements or joint interest billing statements. I will attest that some operators are more responsive or have better customer service than others – but we almost always get to the bottom of our issue with a few correspondences back and forth.

Now, managing minerals is not an innate skill that is inherited with the minerals that may be passed down to family members. Managing minerals is much more complex than one might imagine – hence why it can often be challenging for me to explain exactly what I do for a living.

In our consulting work, we see firsthand the common (and not so common) errors or misconceptions mineral owners may have regarding their minerals including calculation of their decimal interests, determination of spacing units – or overlapping spacing units, prior reservations or conveyances that have clouded title, etc. Correctly assessing all available information has taken me years to learn and develop my skills.

Mineral rights aren't "mailbox money". They are very **valuable assets** that deserve skilled or even professional management. If you were to inherit Johnson & Johnson, Coca-Cola or John Deere stock, you wouldn't be calling their "owner relations" department to be sure that your dividend check was an appropriate distribution of company profits or that their stock buy back or issuance of new stock affected your disbursement. You'd enlist a stock broker or financial professional to advise you if those distributions were allocated correctly and help handle any transactions you might be looking to make with that stock. It's not Johnson & Johnson, Coca-Cola or John Deere's responsibility to show you how to calculate your

distribution, provide you with the chain of ownership on how came to own the stock or advise you on how to manage it. That’s your responsibility as a stockholder – and it should be no different for mineral owners.

As I read through this bill, I’m confident that I could answer or obtain 90% of the information mineral owners are requesting by accessing county records on NDRIN, iDoc or MCVV; by identifying spacing units via the NDIC well files, scout ticket, GIS or pooling orders; determining gross acreage in spacing unit via the BLM’s GLO records. Making this information free and readily available is necessarily not the obligation of the operator, but rather a courtesy when they are able. The majority of this information is already publicly available and easily accessible if you know where to look and what questions to ask.

Don’t profess a problem without also supplying a solution. Fortunately for us, the solution has already been introduced as SB 2194. SB 2194 provides an Ombudsmen program facilitated by the state that I foresee being a cure to most issues that this bill seeks to address. I see the ombudsmen program as being a filter or funnel:

Mineral owner inquiries, requests, etc will come to the ombudsmen. In many cases I see them troubleshooting and **educating** the mineral owners on why their calculations are they way they are or how they were derived, and assisting with any curative or suspense that may be causing an issue. In circumstances where they are unable to correctly derive interests or troubleshoot irregularities they would serve as an **advocate** for mineral owners by asking the right questions of the right people to find a solution.



This seems like a middle ground that would achieve meaningful results for mineral owners and efficiencies for operators.

North Dakota prides itself on being a business-friendly state. Requiring the operators who do business in our state to manage the mineral owners’ assets with threat of penalties, excessive fines or regulations is anything but – and will certainly dissuade further development.

Let’s let the ombudsmen program work its magic – I’m confident it will be able to resolve 90% if not more of the concerns addressed in this bill. Additionally, the Ombudsman’s work will create an unbiased track record of which operators are repeatedly causing or unable to resolve reasonable owner relations issues that could eventually be addressed on a larger scale. It would be in the best interest of all operators to proactively engage with this proposed program in an effort to better serve their mineral owners.

As a mineral owner we too see some operators lacking in their owner relations department, but overall most are very responsive and willing to help address reasonable requests. This bill is not the answer and will not provide the result it's seeking by imposing large and egregious penalties on the operators who are investing the capital to produce our state's biggest asset – the oil and gas reserves of the Bakken.

Thank you for the opportunity to testify this afternoon. I'd stand for any additional questions.

Additional context:

Deductions

You will hear a lot about “deductions” as it has become a buzzword in the industry. Attempting to negotiate a lease with a “no deduction clause” is like asking for the cornflakes price when your farmer is just selling the corn. All of the costs employed to improve your product to yield a higher price are deducted from both the mineral owner AND the operator's gross income/bbl. Without those improvements both the mineral owner and operator would yield a lower price. The mineral owner and operator both yield the same price. If they want no deductions, they would retrieve a lower price at the mouth of the well. It should not be at the operator's expense to improve your oil alongside theirs (simultaneously achieving a better price for all).

A mineral owner can lease their minerals to whomever they choose. It does not necessarily need to be the operator. ND's statutes provides an adequate royalty for the mineral owners should they be unable to come to an agreement to lease their minerals.



Senate Bill 2374
Testimony of Fred Catchpole
Senate Energy and Natural Resources Committee
February 9, 2023

Good Afternoon Chairman and Members of the Committee,

My name is Fred Catchpole, and I am the Superintendent of Eighty-Eight Oil. I appear before you today in opposition of Senate Bill 2374.

Eighty-Eight Oil is a crude oil marketing company that purchases crude oil production in North Dakota and pays thousands of royalty owners each and every month. We've been purchasing crude oil in North Dakota for decades, and we take seriously our obligations of paying our royalty and tax payments accurately, legally, and promptly. Ultimately, we believe the proposed legislation is unnecessary, imposes exorbitant fees and penalties, creates confusion, potentially exposes royalty owners to cybercrimes, and ultimately fails to aid the royalty owner. In short, we do not support the proposed legislation.

Each month, we send out thousands of royalty checks to owners from our North Dakota production purchases. Each check includes specific check details such as the lease name and location, volume, price, total deductions, date, taxes, and royalty payment amount. This is the source document that provides the royalty owner the information and details outlining the royalty check payment amount. To date, we have not had any additional requests for additional check detail information. Providing an additional, editable document will likely confuse royalty owners. Intentional or unintentional manipulation of data in the CSV file can change payment detail amounts and cause confusion, as it is not the primary, source document. Additionally, not all royalty owners can receive – nor desire – a portable document. The process of adhering to this legislation is ill-defined, unduly cumbersome, and unrealistic to achieve within the specified timeline. From experience working at Eighty-Eight, most owners only desire the hardcopy check and its accompanying check details. This legislation is unhelpful to them. Finally, in this day of heightened cyber security concerns, conveying payment information and interest ownership into unsecured personal email accounts opens electronic and financial vulnerabilities to royalty owners.

Moreover, the proposed legislation would significantly impact our lease purchasing operations in North Dakota and would likely curtail any purchases in which we couldn't pay the operator/producer 100% of taxes and royalties. The administrative burden, penalty amounts, and misdemeanor convictions induce a level of cost and risk that Eighty-Eight is not comfortable assuming. Additionally, the \$2,000 per day penalty regarding university and school lands is exorbitant. A company could accumulate a \$60,000 penalty in a single month. This poses too great a risk for companies such as Eighty-Eight Oil.

Thus, given the onerous administrative processing requirements and severe penalties, including criminal misdemeanor convictions, Eighty-Eight would likely not purchase from producers/operators who aren't paid 100%. This will significantly impact our business – and producer business – in North Dakota. From a wider perspective, this bill will likely also disproportionately impact smaller operators/producers, which would likely ultimately hurt royalty owners. We do not support this proposed legislation as it ultimately does more harm than good to royalty owners.

I urge your support and a Do Not Pass Recommendation for SB 2374. I would be happy to answer any questions. Thank you for your time and consideration.

**SENATE BILL 2374
ENERGY AND NATURAL RESOURCES COMMITTEE
FEBRUARY 9, 2023**

TESTIMONY FROM A NORTH DAKOTA LAND & MINERAL OWNER

SENATE BILL 2374

North Dakota Century Code Updates and Additions

- ❑ Six main provisions in the bill
 - 1) Clarify Industrial Commission's relationship between a lessor and lessee
 - 2) Provide revenue statements in an electronic format
 - 3) Resolution for disputes involving how royalties are calculated
 - 4) Clarifies the obligation to pay royalties and interest
 - 5) Provide production and royalty records in electronic format
 - 6) Specifies information to be provided to royalty owner in spacing unit disputes
- ❑ SB 2374 brought forth to address noncompliance with existing statutes

SENATE BILL 2374 – SECTION 1

38-08-04 of the North Dakota Century Code

New subsection addressing the Industrial Commission

Regarding disputes between a Lessor (mineral owner) and a Lessee (oil company)

- ❑ Clearly defines where the Commission does not have jurisdiction to minimize claims that a mineral owner has not exhausted administrative remedies
- ❑ **Statement from Commission letter:**
“The Commission does not have jurisdiction to enforce lease terms, division orders, or other agreements regarding the payment of royalties; that jurisdiction lies with a district court.”
- ❑ **North Dakota Supreme Court ruling for Schank v. North American Royalties, Inc. 201 N.W.2d 419 (1972):**
“Furthermore, the Industrial Commission is an administrative agency and, as such, is not empowered by the statutes to determine the legal relationship between a lessor and a lessee. This is a matter for the courts in an appropriate action.”
- ❑ Adding subsection will save time for the courts and the Commission

SENATE BILL 2374 – SECTION 2

38-08-06.3 of the North Dakota Century Code

Information statement to accompany payment to royalty owner - Penalty

SB 2374 will require that statements be provided in Excel format:

- ❑ Issues with paper copies and PDF files:
- ✓ Data not easy to review
- ✓ Single well with adjustments spanning 98 pages from May 2014 – March 2022
- ✓ Blue pop out box shows dates not printed in any chronological order
 - Adjustments for Oct 2017 production on pages 39, 53, 62, 75 & 76
- ✓ Yellow highlighted area - amounts are not totaled leading to manual calculations
- ✓ Excel would take seconds to sort and tabulate data

ROYALTY INTEREST	Oct 17	(2,298.32)	51.22	(117,726.50)	0.00038922	0.00038922	(0.89)	(45.82)	
<i>PPA OWNERSHIP CHANGE: Gross Value After Deductions: 11158.30; Price After Deductions: 48.37; Gross Net: 10294.60; Owner Value After Deductions: 43.27; Owner Price After Deductions: 48.62; Owner Net: 37.80</i>									
ND MINERAL EXTRACTION TAX	Oct 17			5,558.32	0.00038922	0.00038922		2.16	
SEVERANCE TAX	Oct 17			5,558.32	0.00038922	0.00038922		2.16	
TRANSPORTATION/GATHERING EXP	Oct 17			6,560.20	0.00038922	0.00038922		2.55	
ND - STATE NON RESIDENT WITHHOLDING	Oct 17			0.00	0.00038922	0.00038922		0.99	
AMOUNT									
ROYALTY INTEREST	Jan 20	(2,166.28)	54.67	(118,423.04)	0.00038922	0.00038922	(0.84)	(46.09)	
<i>PPA OWNERSHIP CHANGE: Gross Value After Deductions: 12642.30; Price After Deductions: 49.18; Gross Net: 11445.05; Owner Value After Deductions: 41.44; Owner Price After Deductions: 49.33; Owner Net: 38.31</i>									
ND MINERAL EXTRACTION TAX	Jan 20			5,323.12	0.00038922	0.00038922		2.07	
SEVERANCE TAX	Jan 20			5,323.12	0.00038922	0.00038922		2.07	
TRANSPORTATION	Jan 20			20.64	0.00038922	0.00038922		0.00	
TRANSPORTATION/GATHERING EXP	Jan 20			8,222.33	0.00038922	0.00038922		3.20	
TRANSPORTATION	Jan 20			3,717.72	0.00038922	0.00038922		1.45	
ND - STATE NON RESIDENT WITHHOLDING	Jan 20			0.00	0.00038922	0.00038922		0.99	
AMOUNT									
ROYALTY INTEREST	Jan 18	(102.83)	63.25	(132,998.34)	0.00038922	0.00038922	(0.82)	(51.77)	
<i>PPA OWNERSHIP CHANGE: Gross Value After Deductions: 12527.00; Price After Deductions: 60.21; Gross Net: 11445.05; Owner Value After Deductions: 49.37; Owner Price After Deductions: 60.21; Owner Net: 41.34</i>									
ND MINERAL EXTRACTION TAX	Jan 18			6,341.39	0.00038922	0.00038922		2.46	
SEVERANCE TAX	Jan 18			6,341.39	0.00038922	0.00038922		2.46	
TRANSPORTATION	Jan 18			61.34	0.00038922	0.00038922		0.02	
Represented Unit of Measure: Gas = MCFs, Plant Products = GALS, Oil = BBLs									
Generated on Friday, May 27, 2022 7:25 PM									
© 2022 Enerus. All rights reserved. Unauthorized use prohibited.									
1	Owner	Operator			Owner Share				
Type	Production Date	BTU	Volume	Price	Value	Owner Interest	Distribution Interest	Volume	Value
TRANSPORTATION/GATHERING EXP	Jan 18				6,109.17	0.00038922	0.00038922		2.38
ND - STATE NON RESIDENT WITHHOLDING	Jan 18				0.00	0.00038922	0.00038922		1.11
AMOUNT									
ROYALTY INTEREST	Oct 19	(2,083.06)	50.12	(104,411.63)	0.00038922	0.00038922	(0.81)	(40.64)	
<i>PPA OWNERSHIP CHANGE: Gross Value After Deductions: 3488.91; Price After Deductions: 48.60; Gross Net: 3548.21; Owner Value After Deductions: 37.98; Owner Price After Deductions: 48.60; Owner Net: 32.41</i>									
ND MINERAL EXTRACTION TAX	Oct 19				4,749.35	0.00038922	0.00038922		1.85
SEVERANCE TAX	Oct 19				4,749.35	0.00038922	0.00038922		1.85
TRANSPORTATION	Oct 19				7.50	0.00038922	0.00038922		0.00
TRANSPORTATION/GATHERING EXP	Oct 19				6,145.11	0.00038922	0.00038922		2.39
TRANSPORTATION	Oct 19				3,272.11	0.00038922	0.00038922		1.27
ND - STATE NON RESIDENT WITHHOLDING	Oct 19				0.00	0.00038922	0.00038922		0.87
AMOUNT									

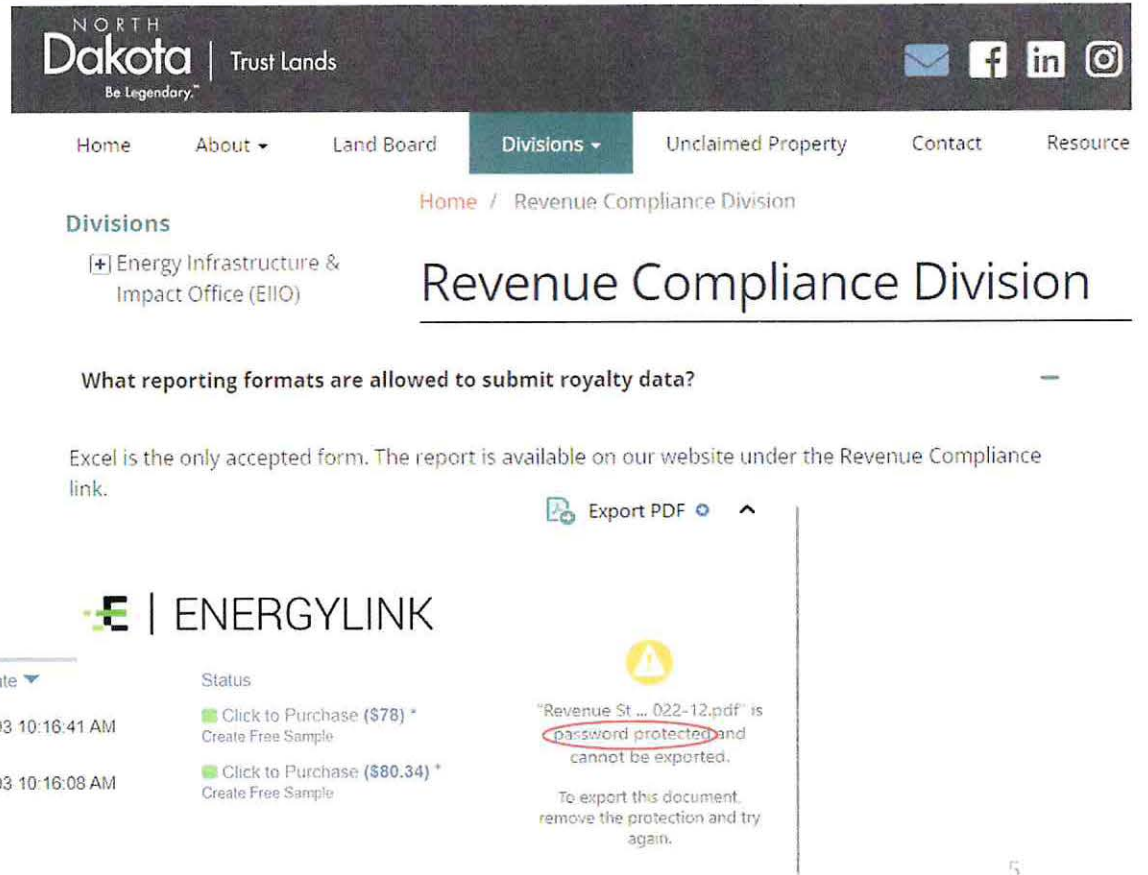
SENATE BILL 2374 – SECTION 2

38-08-06.3 of the North Dakota Century Code

Information statement to accompany payment to royalty owner - Penalty

Excel is required by North Dakota Trust Lands Revenue Compliance Division:

- ❑ Excel reports were provided free prior to companies moving to EnergyLink
- ❑ Vast majority of industry now uses EnergyLink for reporting
- ❑ Companies can easily send similar Excel data to individual royalty owners
- ❑ Data should be unlocked and editable with no password required



Revenue Compliance Division

What reporting formats are allowed to submit royalty data?

Excel is the only accepted form. The report is available on our website under the Revenue Compliance link.

File Type	Description	Create Date	Status
Excel Report	Data Analysis Revenue XLS for E570187359	2023-02-03 10:16:41 AM	Click to Purchase (\$78) * Create Free Sample
Excel Report	Data Analysis Revenue XLS for E570203599	2023-02-03 10:16:08 AM	Click to Purchase (\$80.34) * Create Free Sample

Export PDF

"Revenue St ... 022-12.pdf" is password protected and cannot be exported.

To export this document, remove the protection and try again.

SENATE BILL 2374 – SECTION 2

38-08-06.3 of the North Dakota Century Code

Information statement to accompany payment to royalty owner - Penalty

SB 2374 adds requirement that mailing addresses be made available to the commission:

- There is no current requirement for industry to provide contact information
- No penalty or recourse when certified mail is undeliverable
- Director Lynn Helms provided the following testimony on January 20, 2023, for SB 2194:
 - “The most common concern is the inability to find and maintain a consistent and helpful contact within the operator’s mineral owner department.”
- The commission and royalty owners should have easily obtainable, up-to-date contact information for all companies to address concerns



SENATE BILL 2374 – SECTION 3

38-08-06.6 of the North Dakota Century Code

Resolution for disputes involving how royalties are calculated

Commission role and requirements

- ❑ **Three components in determining a decimal interest which is used to pay royalties:**
 - 1) The number of mineral acres owned
 - 2) The royalty percentage agreed to on the lease
 - 3) The spacing unit information
- ❑ **Mineral owner responsible for:**
 - Knowing what they own, i.e., copies of the mineral deeds and leases
- ❑ **Commission responsible for:**
 - Determining the spacing unit
 - Issuing cases and orders related to spacing units
 - Currently no search function for specific wells or land descriptions
 - The information is behind a paywall but should be made available for free to individuals
 - Department said legislation in 1985 requires them to charge a fee

SENATE BILL 2374 – SECTION 3

38-08-06.6 of the North Dakota Century Code

Do companies comply with existing requirements to resolve disputes?

Individual mineral owners can research data at the county courthouse

T-R	Sec	Doc No	Doc Date
149-97-17	SW4, SE4	35669	2/14/1916
149-97-17	S2	83982	6/16/1924
149-97-17	S2	102356	2/28/1929
149-97-17	S2	124253	7/26/1945
149-97-17	S2	125097	3/29/1946
149-97-17	S2	128030	3/29/1948
149-97-17	S2	134689	7/20/1951

Or they can hire a company to do the research

	DECIMAL INTEREST	NET ACRES	LEASE STATUS
<u>Tract 21-5</u> 154-100-21: W2SE4, NE4SE4		120.00 gross	
	.007576	0.91	Citation et al HBP Exp. 1/4/85 Book 257M, Page 1

Note: The wells are located in NE4NW4-21, SW4SW4-22, NE4SW4 & NE4NE4-23-154-100

Industry completes a title opinion for ownership in well

OWNERSHIP

Our examination of the aforesaid records and documents of title reflect that, as of _____, _____, at 8:00 a.m. CST, record title to the captioned land, consisting of **640.00 acres**, more or less, was vested as follows, subject to the Comments and Requirements hereinafter set forth:

SURFACE

Joe Allen Mixon et ux, Gayla J. Mixon

FRACTION

8/8

INTEREST

1.00000000

OIL AND GAS: LEASED

OWNER / FRACTION

Geneva Ashby Smith
(1/2 x 3/4)

INTEREST

.37500000

NET ACRES

240.0000

LEASE ROYALTY

1/6

LEASE

L1

Robert H. Ashby
(1/2 x 3/4)

.37500000

240.0000

1/6

L2

Sherry G. Lundberg
(1/2 x 1/4)

.12500000

80.0000

1/6

L3

Joe Allen Wilson et ux, Gayla J. Wilson
(1/2 x 1/4)

.12500000

80.0000

1/6

L4

1.00000000

640.0000

SENATE BILL 2374 – SECTION 3

38-08-06.6 of the North Dakota Century Code

Example of constructive dialogue and resolution of dispute

❑ Initial response – company sticking by the title opinion:

Our title opinion captured all of the documents in your write up, however, it appears there were previous conveyances which would have lowered the amount of interest which Minnie had available to convey. For starters, the tract was only 160 acres as opposed to the 240 that was reflected in the conveyances. The opinion credits [REDACTED].

Reg.	LANDOWNER ROYALTY INTERESTS ("LOR")	Tract Lease(s)	Address	Lease Recording	Mineral Interest Covered by Lease(s)	Lease Royalty	Tract Acres	Unit Acres	NPRI Burden	Tract LOR	TRACT FEE MINERAL ACRES ("FMA")	TOTAL UNIT LOR	UNIT NET MINERAL ACRES ("NMA")	Type of Interest
	[REDACTED]	8	8/22	[REDACTED]	0.0205777	0.2	160	1280		0.0040000	3.333	0.0002000	0.666	LOR

❑ Follow-up response after relevant information was pinpointed:

Yes, we are planning on making the updates in February for the February check write, we are having to review who all through the chain needs to be updated as we will follow the dates in the chain of title for the increase/decreases in interest.

❑ What caused the discrepancy?

- The data in the title opinion showed 10 mineral acres for all three deeds conveying mineral acres to other parties
- Incorrect because one of the deeds was for 5 mineral acres

of Epping, North Dakota
 hereinafter called Grantee (whether one or more) an undivided 10/240 (ten mineral acres) interest in and under and that may be produced from the following described lands situated in Burke County, State of North Dakota:
 Township 161 North, Range 92 West of the 5th P.M.
 Section 34: SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$
 Section 35: SW $\frac{1}{4}$
 It is the intent of the grantor to convey ten mineral acres.

of Epping, North Dakota
 hereinafter called Grantee (whether one or more) an undivided 10/240 (ten mineral acres) interest in and under and that may be produced from the following described lands situated in Burke County, State of North Dakota:
 Township 161 North, Range 92 West of the 5th P.M.
 Section 34: SE $\frac{1}{4}$ NE $\frac{1}{4}$; NE $\frac{1}{4}$ SE $\frac{1}{4}$
 Section 35: SW $\frac{1}{4}$
 It is the intent of the grantor to convey ten mineral acres.
 Grantor reserves unto himself all gravel rights on this property.

of Epping, North Dakota
 hereinafter called Grantee (whether one or more) an undivided 5/240 (five mineral acres) interest in and under and that may be produced from the following described lands situated in Burke County, State of North Dakota:
 Township 161 North, Range 92 West of the 5th P.M.
 Section 34: SE $\frac{1}{4}$ NE $\frac{1}{4}$; NE $\frac{1}{4}$ SE $\frac{1}{4}$
 Section 35: SW $\frac{1}{4}$
 It is the intent of the grantor to convey five mineral acres.
 The grantor reserves unto himself all gravel rights on this property.

SENATE BILL 2374 – SECTION 3

38-08-06.6 of the North Dakota Century Code

Examples of companies unwilling to help resolve disputes

- ❑ **Too many companies refuse to provide information or ignore requests altogether** even though 47-16-39.4 requires them to help resolve disputes:
 - “I really have no other information to give you. **We are not obligated to mail each owner a calculation as to how their interest was calculated,**”
 - “**I apologize that only the WI owners seemed to be in the loop** in regard to the allocation, but there is not more I can tell you, except the acreage noted when the allocation well was set up.”
 - “**The computer took separate wells that were already set up, and pulled in certain percentages and created the numbers for us.**”
 - “**If you’re still under the impression that the acres are wrong, we would have to know who we need to be taking acres “away from” in order to give it to you**”
- ❑ When companies will not respond or refuse to provide relevant information it creates distrust
 - There needs to be a remedy to cross check documents and verify where the discrepancy lies
- ❑ If the only remaining recourse is to go to court, then the court can assess a penalty for wrongfully withheld information

SENATE BILL 2374 – SECTION 4

47-16-39.1 of the North Dakota Century Code

Obligation to pay royalties – Breach.

- ❑ Legislature previously declared companies are obligated to pay royalties within 150 days and if they fail to do so must pay interest on the unpaid royalties without the mineral owner having to request it
 - Many companies do not comply with the statute and ignore requests for payment of the interest
- ❑ Clarifies that payment of the royalty does not relieve liability for unpaid interest
- ❑ Provides the relevant section of the Century Code related to the limitations period
- ❑ Inserts a penalty for noncompliance
 - Current statute has no recourse or remedy when it is ignored
 - Hiring an attorney to send a demand letter can cost more than the interest owed

SENATE BILL 2374 – SECTION 5

47-16-39.2 of the North Dakota Century Code

Inspection of production and royalty payment records – Penalty.

- ❑ Section 5 adds individual mineral owners to the existing statute
- ❑ Senate Bill 2212 was passed in the 2019 Session
 - The updates requested today are the same that were added in 2019 for the board of university and school lands
 - Requires records be made available in electronic format
 - Adds a penalty for wrongfully withheld information
 - Chair Unruh stated, “Every other state has some type of penalty for these types of violations. I think it’s appropriate for us to have something in code.”
 - Individual mineral owners in North Dakota respectfully request the same rules be applied for them

SENATE BILL 2374 – SECTION 6

47-16-39.4 of the North Dakota Century Code

Resolution of spacing unit ownership disputes - Penalty

- ❑ Section 6 adds additional language to the existing statute
- ❑ Provides clarity for the information companies are required to provide to help resolve disputes
- ❑ Adds a penalty for noncompliance or wrongfully withheld information which the court can determine

SENATE BILL 2374 – FINAL COMMENTS

- ❑ Legislature required certain information be provided on royalty statements in 1983
- ❑ Comments from the minutes related to the 1983 legislation:
 - Letter from Shell Oil Company to Allen I. Olson, Governor, State of North Dakota, “Testimony offered by Representative Jack Murphy and other royalty owners at the hearing indicated that their main concern was the **lack of meaningful communication** between the royalty owner and producer when the royalty owner posed a question regarding his royalty payment. **Representative Murphy testified that many times he would have to wait long periods of time for a response to his royalty-related inquiries and, in some instances, he testified he never received a reply.**”
- ❑ Royalty owners still face these same issues today
- ❑ There are no consequences or remedies in the Century Code when companies choose to ignore statutes
- ❑ The proposed penalties in SB 2374 are either already in the Century Code for the board of university and school lands or are similar amounts that other states impose

SENATE BILL 2374 – FINAL COMMENTS

- ❑ Additional comments from the minutes related to the 1983 legislation:
 - Letter from Rocky Mountain Oil & Gas Association, Inc., “Until recently, the industry had perceived North Dakota as a state which welcomed exploration and development of this and other industries. Unfortunately, the regulations being considered now by the Industrial Commission further damage this perception and will, I fear, have a further **chilling effect in the consideration of North Dakota as a choice for exploration whenever alternatives exist.many purchasers will find the paperwork to be unjustified, and....will undoubtedly direct their crude oil purchases out of State.** Secondly, the expense of maintaining these per well records, will undoubtedly result in the decision to eliminate purchases of small quantities from stripper and marginal wells with the result we predict with certainty the plugging of many of these wells, with the resultant loss of production and loss of tax revenue to the State as well as income to the royalty owner.”
- ❑ Industry did not leave the state as a result of the legislation that was passed to protect mineral owners
 - If industry opposes the changes requested in SB 2374 today, then what is their solution for solving the issue of companies not complying with current statutes?

SENATE BILL 2374 – FINAL COMMENTS

Perceptions can distort reality

- ❑ Royalty owners should just litigate these issues and have the courts resolve the disputes
 - A multi billion-dollar corporation has an overwhelming advantage
- ❑ Numerous families own mineral rights because they homesteaded in North Dakota or were farmers and ranchers that settled in western North Dakota decades ago
 - Many receive a few hundred or few thousand dollars a year in royalty payments
 - Costs far more to hire an attorney than they receive in royalties
- ❑ Senate Bill 2374 will provide royalty owners access to their information, so they do not need to go to court to request it

Thank you for the opportunity to present testimony today.
I respectfully ask for your favorable consideration of Senate Bill 2374.

Testimony of Troy Coons on behalf of
Northwest Landowners Association
in favor of
SENATE BILL 2374
Senate Energy and Natural Resources
2/9/2023

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 2374 because something should be done to address this growing issue. We have heard from our members in growing numbers that they are seeing higher and higher deductions on their royalty paystubs. At our recent annual meeting, we surveyed our membership and asked what issues they felt were important. Although our organization focuses on surface estate issues, more of our members asked us to support legislative efforts to address this deductions issue than any other issue. This is a complicated issue but it is clear that mineral owners need real solutions.

Please vote do pass on SB 2374.

Thank you,

Troy Coons
Northwest Landowners Association

SENATE BILL 2374
Testimony of Craig C. Smith
Senate Energy and Natural Resources Committee

- February 9, 2023 -

Chairman Patten and members of the Senate Energy and Natural Resources Committee, for the record, my name is Craig Smith, I am an attorney with the law firm of Crowley Fleck, Bismarck, ND and have been with the firm since 1988, practicing exclusively in oil and gas law for the past 34 years. I am appearing before you in my capacity as an oil and as attorney and on behalf of the North Dakota Petroleum Council.

I believe it is fair to say the public is quite familiar with oil and gas development in North Dakota by now--specifically as it relates to the general knowledge of oil and gas drilling rigs, horizontal well and fracing technology, oil and gas pipelines, gas processing plants and so forth. However, one area that is often taken for granted in oil and gas development is the complexity of oil and gas title and ownership issues, all of which must be addressed before, during and after drilling and production operations occur. The complexity of title ownership issues is directly relevant to many of the proposed changes to existing royalty information statement laws and new penalties as proposed in SB 2374. I would like to take the opportunity today to address some of the specific provisions in SB 2374, but first I would like to provide some general background for the Committee relating to the title complexity issues.

I. TITLE EXAMINATION:

The typical abstract and surface title opinion for an agricultural parcel of property can take a matter of hours to prepare and cost in the hundreds of dollars. Abstracts are usually a couple hundred pages or less, title opinions 7-10 pages. Not so with oil and gas abstracts and title opinions. At the beginning of my career in the late 1980s, most wells were drilled on 80, 160 or 320 acre spacing units. Abstracts were 300-2000 pages long, and oil and gas title opinions took only a few days or a couple weeks to complete. However, over the last few decades mineral title has become extremely fractured. Today's Bakken spacing units are much

larger and typically consist of 1280 acres or 2560 acres. In my experience, today, the abstracts range from 10,000 pages to 140,000 pages (or 58 Banker's boxes containing 2,500 pages each) and the completed title opinions may range between 200 pages and 1,000 pages long and will take anywhere from three months to a year to prepare a single title opinion.

Due to the title complexity, Operators typically must plan their drilling schedules anywhere from 6 months to a year or more ahead of drilling recognizing that just the title ownership review timeline will take a couple months to prepare the abstract, four or more months for the title opinion to be prepared, and two months to incorporate the title opinion data into their internal Land and Division Order records software programs. The costs of the abstracts and title opinions frequently exceed \$200,000 for each spacing unit, sometimes far in excess of that amount, which costs are borne entirely by the Operator and its working interest partners.

What type of information is shown or required by Operators in the typical oil and gas title opinion? The title opinion schedules show all owners of the surface tracts, all mineral and royalty owners and their respective oil and gas leases, overriding royalty owners, assignments of leases, the identity and percentage of the working interest owners, easements, and mortgages affecting all interest owners. The schedules will include the net mineral acres owned by each mineral owner, and the corresponding eight decimal figure owned by each owner, which information is currently required by NDIC Administrative Rule and used by the company to notify the mineral owners of the interest we believe they own. For example, our division of interest for a mineral owner who owns 40 net mineral acres in a 1280 acre spacing unit and subject to a 3/16 royalty clause in its oil and gas lease would show:

Mineral Owner "A"

40/1280 x 3/16 = .00585938 Net Acres: 40.000000

The title opinion will also set forth any title defects that affect all owners. If there are 150 mineral owners in a spacing unit, it can vary widely, but anywhere from 5-10% or 50% or more of the mineral owners may have title defects which require title curative measures prior to

releasing production proceeds. Title defects can be anything from conflicts or errors in mineral deeds, to the lack of probate proceedings and proper identity of the rightful heirs. The title opinion also designates those owners who do not have title defects and who may be placed immediately in pay status by the Operator.

Once the Company receives the final title opinion and the well(s) is being drilled or completed, the Company's Land and Division Order departments are incorporating the opinion's ownership information into their software programs. Obviously, given the 18% late payment statute, priority is given to place all mineral owners without title defects into pay status within the first 150 days of any sale of production. Attention is then focused on title curative and working with mineral owners on obtaining proper title curative, which can be as simple as obtaining an Affidavit of Identity on name variances, to as complex as the necessity of quiet title litigation to resolve a title conflict between mineral owners themselves.

After a well has been completed and the initial ownership has been set up in the system, title is not frozen in time. Transfers of mineral ownership, working interest ownership, and overriding royalties continue to change throughout the life of the well and the Company must continually update their internal pay records as these transfers take place going forward.

What type of information is *not shown* in a title opinion? While the opinion does show each mineral owner, their net mineral acres, oil and gas lease, and decimal interest in the well, we do not set forth the complete title chain for each mineral owner. In other words, we do not prepare schedules that would show, for each owner, every deed or conveyance relating to that specific mineral owner. In reviewing a 60,000 page abstract, to prepare such schedules for each of the 150 owners would increase the time and costs by indefinable amounts.

II. TITLE RELATED ROYALTY OWNER INQUIRIES:

The complexity of and the number of title related inquiries can vary widely. Some inquiries are very straight forward and can easily be resolved within 30 days, such as a simple inquiry as to "how did you calculate my 8 decimal number interest?" and the mineral owner

owns 40 acres under one lease as in the example I discussed above. Other inquiries may be much more complex, where the mineral owner disputes the number of acres owned, or where there are serious title defects requiring attorney consultation. In addition to complexity affecting a Company's response time to inquiries, the number of and the timing of inquiries also varies greatly throughout any given year. As an example, where a company has completed a four well drilling pad and then sends out 300 division orders at the same time to all of the owners in these four new producing wells, the company may be inundated over a very brief time period with a large number of inquiries not only from mineral owners, but other interest owners in the wells including overriding royalty and working interest owners. On the other hand, there may be days or weeks where there are very few inquiries. In any event, the number and timing of inquiries also impacts the response time in addition to title complexity issues.

III. ANALYSIS OF SOME OF THE KEY PROVISIONS OF SB 2374:

Now, turning to the Bill itself, I have a few comments on some of the key provisions:

1) **Page 1: Lines 9 and 10: Section 1: The commission may not determine the legal relationship between a lessor and a lessee or enforce lease terms or division orders.**

COMMENTS: The proposed amendment as drafted is overly broad and should be deleted. The Commission, through its regulatory powers, often exercises its jurisdiction relative to spacing, pooling, flaring and other matters. The fact is, the Commission's orders may directly or indirectly affect lessors and lessees and their "legal relationships". However, in my career, the NDIC has never asserted jurisdiction over contractual lease provision disputes between lessors and lessees such as title disputes or interpretation of lease termination issues. As proposed, this language could be interpreted such that any mineral owner, or an operator for that matter, if dissatisfied with the NDIC could assert the particular matter relates to lessor/lessee legal relationship and the NDIC does not have regulatory jurisdiction.

2) **Page 1: Lines 16-18. Section 38-06-06.3 Information Statement to accompany payment to royalty owner.** Proposed amendment *requires* that in addition to the currently

required royalty statement information, the operator/payor must provide “a portable document format and comma-separated values file which are unlocked and editable by the recipient free of charge”

This proposed amendment has resulted in extensive comments and opposition from Company members, including but not limited to the following:

- 1) Statutes and NDIC regulations recently adopted already provide highly detailed information which must be provided with royalty payments, an undertaking that took over two years with input from both industry and royalty owners, and was at a significant financial cost to industry with major software upgrades;
 - (2) Many Bakken operators have 7,000 or more mineral owners just in their North Dakota databases. Providing additional electronic data for each royalty owner and on a monthly basis will be incredibly burdensome and costly,
 - 3) Most companies’ software programs are not designed to easily provide electronic data, such as Excel format.
 - (4) many royalty owners do not prefer royalty information via electronic means and in fact prefer that confidential financial information not be sent to their email accounts, yet this proposal would mandate electronic data be sent;
 - (5) providing “unlocked” accounting detail could lead to abuse and confusion creating issues with original version control;
 - (6) electronic data files can be extremely large and rejected by typical email servers. Are companies liable for penalties if the mineral owner changes email address, or the email server rejects the email?
 - (7) Smaller operators in the Williston Basin often contract with third-party purchasers to handle royalty payment and check detail requirements. This excess burden of mandatory monthly electronic data requirements may not even be realistically possible to comply.
 - (8) Electronic data files in Excel format are already available to mineral owners (and working interest owners) through a third-party vendor, EnergyLink. See www.energylink.com.
- 3) Page 2: Lines 1-3. Section 38-08-06.3(3). Information Statement to accompany payment to royalty owner.** Adds the following information on the royalty statements: “The name, address, telephone number, electronic mail address, and, if available, facsimile number of the oil and gas operator and its designee must be made available by the operator or designee to the industrial commission.”

COMMENTS: Operators are already required to provide contact information on Royalty statements:

ND Admin Code Section 43-02-06-01.1(12) provides: "An address where additional information may be obtained and any questions answered. If information is requested by certified mail, the answer must be mailed by certified mail within thirty days of receipt of the request."

To the extent this proposed amendment adds additional contact info such as a contact name and email addresses, we believe this type of additional information would be best handled through the proposed Royalty Owner Ombudsman Program proposed in Senate Bill 2194--more discussion on that later.

4) **Page 2, Lines 13-19. Section 38-08-06.6(1)- Ownership Interest Information Statement:** Proposed Amendment: Within one hundred twenty days after the end of the month of the first sale of production from a well or change in the spacing unit of a well or a decimal interest in a mineral owner, the operator or payor shall provide the mineral owner with a statement identifying the spacing unit for the well, and the effective date of the spacing unit change or decimal interest change if applicable, the net mineral acres owned by the mineral owner, the gross mineral acres in the spacing unit, and the mineral owner's decimal interest that will be applied to the well.

COMMENTS: This entire provision is duplicative of existing law and is unnecessary. This provision is already contained-word for word-in ND Administrative Code Section 43-02-06-01.1 and codifying the regulation may deprive the NDIC flexibility to make future adjustments through rulemaking.

5) **Page 2, Lines 20-28. Section 38-08-06.6(2) Ownership Interest Information Statement:** Proposed Amendment: An address provided under section 38 - 08 - 06.3 also must provide where additional information may be obtained regarding how the operator or payor has calculated the mineral owner's decimal interest and for any questions pertaining to the information provided on the statement. Upon request of the mineral owner, *the operator, payor, or the operator's or payor's agent must provide the relevant document number or book and page number of any recorded document and the county in which it was recorded which relates to the owner's decimal interest. If information is requested by certified mail, the answer must be mailed by certified mail within thirty days of receipt of the request* (emphasis added).

COMMENTS: Company members strongly oppose lines 23-28 requiring the furnishing of potentially limitless title information. In the event of a title dispute or if a mineral owner's interest has a title defect requiring payment suspense, current law, NDCC Section 47-16-39.4, already requires an operator to provide certain title information:

“[t]he mineral developer shall furnish the mineral owner with a description of the conflict and the proposed resolution or with that portion of the title opinion that concerns the disputed interest.”

This proposed amendment greatly expands the requirements of Section 47-16-39.4 and should be deleted. There is no limitation in the amendment of what the operator must provide, and the amendment can be interpreted that the operator must provide the complete list of all possible documents from the abstract of title literally from the issuance of original government patent to all documents recorded subsequent relating to the mineral owner's interest. As previously testified, oil and gas abstracts are often tens of thousands of pages, title opinions do not include a schedule of all mineral owner transfers in the chain of title for each royalty or mineral interest, and to do so would be cost prohibitive and delay review of title and implementation of royalty payments. There would be an increased risk of being materially late and triggering penalties if a mineral developer had to conduct this research with each request. Further, the time to respond and the penalties for failure to timely provide such an abstract would be impossible to comply and would likely incentivize class action plaintiffs law firms to coordinate exhaustive title document requests.

6) **Page 3, Lines 14, 21 and 28. Section 47-16-39.1 Obligation to pay royalties.** Proposed amendment to include “the owner of an overriding royalty interest” as being entitled to 18% interest.

COMMENTS: NDPC strongly opposes the inclusion of overriding royalty interests in this statute. Even in today's higher interest rate environment, the 18% rate is three times prime rate and punitive in nature. Second, the statute was adopted in part to protect mineral owners, the theory being there exists an unequal bargaining power between a mineral owner and oil company. An overriding royalty owner should not be confused with a “mineral owner” or “royalty owner”. An overriding royalty interest is fundamentally different from a mineral interest and is a carve out of the company's

working interest in a lease, and not a carve out of a mineral owner's interest. Overriding royalty owners' interests are created by contract with working interest owners and not from mineral owners, nor do they have a right to the minerals themselves. Overriding royalty owners are most often industry "pros" or professional investors. They are rarely "mineral owners." If the legislature feels compelled to include overriding royalty owners within this statute, the punitive 18% interest rate should be amended and reduced to prime rate for both mineral and overriding royalty owners.

7) **Page 4, Lines 20-21. Section 47-16-39.1(7) Obligation to pay royalties.** Proposed amendment: A claim for relief for compensation brought under this chapter must be commenced within the limitations period provided under section 28 - 01 - 15

COMMENTS: For the committee's information, the statute of limitations period referenced in Section 28-01-15 is ten years. We obviously strongly oppose. As previously noted, the 18% interest penalty is already punitive in nature. This proposed amendment would effectively amend the applicable statute of limitations period from three years to **ten** years thereby allowing a punitive 18% interest rate to accrue for ten years without the mineral owner ever bringing a claim for allegedly unpaid royalties.

8) **Page 4, Line 31 through Page 5, Line 2. Section 47-16-39.2 Inspection of production and royalty payment records.** Proposed amendment: "Upon request of a royalty owner, records available in an electronic format must be electronically transmitted to the royalty owner."

COMMENTS: NDCC Section 47-16-39.2 already provides that a royalty owner is "entitled to inspect and copy the oil and gas production and royalty payment records" at the company's "customary place of business." To the extent this amendment expands that right to include an obligation to provide electronic pdf copies, NDPC companies do not necessarily object, however, if adopted, NDPC notes requiring the Company to provide electronic "pdf" records versus only making records available for inspection increases costs and increases the amount of time needed to timely respond—thirty days is not reasonable, nor are the proposed penalty provisions.

9) **The proposed attorney's fees provisions and excessive penalties in Senate Bill 2374 are unreasonable, punitive, and would incentive class action lawsuits.**

Throughout the proposed Bill are multiple proposed provisions awarding attorney's fees and severe penalties imposed for responses not made with 30 days, regardless of whether the Company was in breach of any contractual or payment obligations. As examples, *see*:

Page 2, Lines 29-31: "A person who fails to comply with the requirements of this section is liable to the affected owner...in the amount of five hundred dollars for each violation and an additional five hundred dollars for each month the court determines the person was not in compliance with this section [38-08-06.6]..." (emphasis added).

Page 5, Lines 22-25: "The district court shall assess a civil penalty of two thousand dollars per day for any period the court determines royalty payment records requested under this section [47-16-39.2] were wrongfully withheld." (emphasis added).

Page 6, Lines 24-28: "A mineral developer shall pay the mineral owner five hundred dollars per day for each day the court determines the mineral developer was not in compliance with this section [47-16-39.4] or wrongfully withheld information under this section. If a mineral owner brings an action to enforce this section and prevails, the court shall award reasonable attorney's fees and court costs." (emphasis added).

NDPC strongly opposes the attorney's fees provisions and, most concerning, are the \$500 and \$2000 per day penalties. To illustrate the extreme absurdity and punitive nature, the Bill would impose a mandatory \$2000 per day penalty for each day past 30 days that a company does not respond to a mineral owner request for royalty payment records. Under this proposed amendment, a mineral owner could file ten separate requests on ten different wells. If the company responds to nine of the ten requests within 30 days, but the tenth one is not responded to for any reason, under this amendment the mineral owner (and/or their attorneys) could wait three years to file an action and be entitled to a \$2.19 million dollar penalty (1095 days times \$2000 per day). This is so even if the Company is in 100% compliance with its lease and royalty payment obligations to the lessor. These excessive and unlimited penalties contained in this Bill, together with the attorney's fees provisions, will incentivize class action firms to recruit plaintiffs to file multiple simultaneous requests with the goal of overwhelming operators who are unable to respond timely.

It rewards plaintiffs and plaintiffs' firms based on a "technicality" regardless of whether the underlying claim has any validity or not.

IV. CONCLUSION:

NDPC opposes Senate Bill 2374 and respectfully requests a DO NOT PASS recommendation from the Senate Natural Resources Energy Committee. However, while we oppose the Bill, we recognize that there are legitimate royalty owner concerns and communication efforts between operators and mineral owners can be improved. In that regard, the NDPC strongly supports the Royalty Owner Ombudsman Program as proposed in Senate Bill 2194. We believe this program would be of great value in enhancing better education among royalty owners and even more importantly enhance better and more efficient communications between the royalty owners and operators.

23.1101.01002
Title.

Prepared by the Legislative Council staff for
the Senate Energy and Natural Resources
Committee

February 16, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2374

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 4.1-01 of the North Dakota Century Code, relating to a postproduction royalty oversight program; and to provide a report to the legislative management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4.1-01 of the North Dakota Century Code is created and enacted as follows:

Postproduction royalty oversight program - Report.

1. The commissioner shall establish a program providing technical assistance and support to mineral owners, lease owners, and mineral companies relating to royalty payment issues.
2. The commissioner may contract for ombudsmen to be a resource for technical assistance and followup on royalty payment issues.
3. The program may provide technical education, support, and outreach on royalty payment related matters in coordination with other entities.
4. The commissioner may contract with local individuals, deemed trustworthy by the mineral owners, lease owners, and mineral companies, to be ombudsmen. The commissioner is not subject to the provisions of chapter 54-44.4 when contracting for the services of ombudsmen.
5. The names of landowners mineral owners, lease owners, and mineral companies that receive assistance under the program are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.
6. The commissioner shall submit expenses related to the implementation of the program to the industrial commission for reimbursement.
7. The ombudsmen may act as a central point of contact on inquiries from mineral owners, lease owners, or mineral companies relating to royalty payment issues. Upon receipt of an inquiry from a mineral or lease owner, the ombudsman shall gather the appropriate information and contact history from the royalty owner and gather the information necessary from the oil and gas operator to connect the parties or determine what information is needed to resolve the inquiry or determine the facts.
8. The ombudsman shall maintain a list of key contacts for each oil and gas operator with active wells in the state, including the name, address, telephone number, and electronic mail address of the individual. A royalty

payor shall verify the accuracy of the payor's key contact information and update the ombudsmen in the event of a change in key contact information.

9. The commissioner shall maintain a royalty owner information website that may include contact information of royalty payors, information on general royalty ownership and the royalty payment process, and frequently asked questions related to royalty issues.
10. By June first of each even-numbered year, the commissioner shall provide a report to the legislative management. The report may include:
 - a. A summary of the nature of the inquiries and resolutions received through the program.
 - b. Timeliness of responses received by ombudsmen from royalty payors.
 - c. Key issues that have been identified as common communication challenges between royalty owners and operators.
 - d. Areas where education and awareness of the oil and gas industry processes relating to royalty payment and royalty statements, division orders, ownership calculation, and title defects and opinions may be useful.
 - e. An assessment on the type, quality, and validity of royalty owner inquiries.
 - f. Any barriers to access to information for royalty owners.

Renumber accordingly

23.1101.01002

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2374

Introduced by

Senators Piepkorn, Bekkedahl, Rust

Representatives Hatlestad, Longmuir, J. Olson

1 A BILL ~~for an Act to create and enact a new subsection to section 38-08-04 and section~~
2 ~~38-08-06.6 of the North Dakota Century Code, relating to jurisdiction of the industrial~~
3 ~~commission and payment for production from wells; to amend and reenact sections 38-08-06.3,~~
4 ~~47-16-39.1, 47-16-39.2, and 47-16-39.4 of the North Dakota Century Code, relating to royalties;~~
5 ~~and to provide a penalty.~~ for an Act to create and enact a new section to chapter 4.1-01 of the
6 North Dakota Century Code, relating to a postproduction royalty oversight program; and to
7 provide a report to the legislative management.

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

9 ~~SECTION 1.~~ A new subsection to section 38-08-04 of the North Dakota Century Code is
10 created and enacted as follows:

11 ~~The commission may not determine the legal relationship between a lessor and a~~
12 ~~lessee or enforce lease terms or division orders.~~

13 ~~SECTION 2. AMENDMENT.~~ Section 38-08-06.3 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 ~~38-08-06.3. Information statement to accompany payment to royalty owner -- Penalty.~~

16 ~~1.~~ Any person who ~~that~~ makes a payment to an owner of a royalty ~~an~~ interest in land in
17 this state for the purchase of oil or gas produced from that royalty interest shall provide
18 with the payment to the royalty owner an information statement that, ~~including a~~
19 ~~portable document format and comma-separated values file which are unlocked and~~
20 ~~editable by the recipient free of charge, which will allow the royalty owner to clearly~~
21 ~~identify clearly~~ the amount of oil or gas sold and the amount and purpose of each
22 deduction made from the gross amount due.

23 ~~2.~~ The statement must be on forms approved by the industrial commission and contain
24 the information that the commission prescribes by rule.

1 ~~3. The name, address, telephone number, electronic mail address, and, if available,~~
2 ~~facsimile number of the oil and gas operator and its designee must be made available~~
3 ~~by the operator or designee to the industrial commission.~~

4 ~~4. A person who~~that fails to comply with the requirements of this section is guilty of a
5 ~~class B misdemeanor.~~

6 ~~5. If the mineral owner, mineral owner's assignee, or the owner of an overriding royalty~~
7 ~~interest prevails in a proceeding under this section, the mineral owner, mineral owner's~~
8 ~~assignee, or the owner of an overriding royalty interest is entitled to recover court~~
9 ~~costs and reasonable attorney's fees.~~

10 ~~**SECTION 3.** Section 38-08-06.6 of the North Dakota Century Code is created and enacted~~
11 ~~as follows:~~

12 ~~**38-08-06.6. Ownership interest information statement – Penalty.**~~

13 ~~1. Within one hundred twenty days after the end of the month of the first sale of~~
14 ~~production from a well or change in the spacing unit of a well or a decimal interest in a~~
15 ~~mineral owner, the operator or payor shall provide the mineral owner with a statement~~
16 ~~identifying the spacing unit for the well, and the effective date of the spacing unit~~
17 ~~change or decimal interest change if applicable, the net mineral acres owned by the~~
18 ~~mineral owner, the gross mineral acres in the spacing unit, and the mineral owner's~~
19 ~~decimal interest that will be applied to the well.~~

20 ~~2. An address provided under section 38-08-06.3 also must provide where additional~~
21 ~~information may be obtained regarding how the operator or payor has calculated the~~
22 ~~mineral owner's decimal interest and for any questions pertaining to the information~~
23 ~~provided on the statement. Upon request of the mineral owner, the operator, payor, or~~
24 ~~the operator's or payor's agent must provide the relevant document number or book~~
25 ~~and page number of any recorded document and the county in which it was recorded~~
26 ~~which relates to the owner's decimal interest. If information is requested by certified~~
27 ~~mail, the answer must be mailed by certified mail within thirty days of receipt of the~~
28 ~~request.~~

29 ~~3. A person who fails to comply with the requirements of this section is liable to the~~
30 ~~affected owner of an interest, except for the working interest, in the amount of five~~
31 ~~hundred dollars for each violation and an additional five hundred dollars for each~~

1 ~~month the court determines the person was not in compliance with this section or~~
2 ~~wrongfully withheld information under this section. If a mineral owner brings an action~~
3 ~~to enforce this section and prevails, the court shall award reasonable attorney's fees~~
4 ~~and court costs.~~

5 ~~4. The department of mineral resources shall make spacing information available,~~
6 ~~including any orders or cases pertaining to the spacing unit, free of charge on its~~
7 ~~website, to allow any individual mineral owner to verify the information provided on the~~
8 ~~statement. The department shall make orders and cases searchable by well name and~~
9 ~~legal description.~~

10 ~~SECTION 4. AMENDMENT.~~ Section 47-16-39.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 ~~47-16-39.1. Obligation to pay royalties -- Breach.~~

13 ~~1. The obligation arising under an oil and gas lease to pay oil or gas royalties to the~~
14 ~~mineral owner or, the mineral owner's assignee, or the owner of an overriding royalty~~
15 ~~interest, to deliver oil or gas to a purchaser to the credit of the mineral owner or the~~
16 ~~mineral owner's assignee, or to pay the market value thereof of the oil or gas is of the~~
17 ~~essence in the lease contract, and breach of the obligation may constitute grounds for~~
18 ~~the cancellation of the lease in cases in which it is determined by the court that the~~
19 ~~equities of the case require cancellation.~~

20 ~~2. If the operator under an oil and gas lease fails to pay oil or gas royalties to the mineral~~
21 ~~owner or, the mineral owner's assignee, or the owner of an overriding royalty interest~~
22 ~~within one hundred fifty days after oil or gas produced under the lease is marketed and~~
23 ~~cancellation of the lease is not sought or if the operator fails to pay oil or gas royalties~~
24 ~~to an unleased mineral interest owner within one hundred fifty days after oil or gas~~
25 ~~production is marketed from the unleased mineral interest owner's mineral interest, the~~
26 ~~operator thereafter shall pay interest on the unpaid royalties, without the requirement~~
27 ~~that the mineral owner or, the mineral owner's assignee, or the owner of an overriding~~
28 ~~royalty interest request the payment of interest, at the rate of eighteen percent per~~
29 ~~annum until paid. If the aggregate amount is less than fifty dollars, the operator may~~
30 ~~remit semiannually to a person entitled to royalties the aggregate of six months'~~

1 ~~monthly royalties. Payment of a claim for unpaid royalties does not relieve liability for~~
2 ~~unpaid interest and a separate action may be maintained for the interest.~~

3 ~~3. The district court for the county in which the oil or gas well is located has jurisdiction~~
4 ~~over any proceeding brought under this section. The prevailing party in any~~
5 ~~proceeding brought under this section is entitled to recover court costs and reasonable~~
6 ~~attorney's fees. If the mineral owner, mineral owner's assignee, or the owner of an~~
7 ~~overriding royalty interest prevails in any proceeding brought under this section, the~~
8 ~~mineral owner, mineral owner's assignee, or the owner of an overriding royalty interest~~
9 ~~is entitled to recover court costs and reasonable attorney's fees.~~

10 ~~4. This section does not apply if mineral owners or their assignees elect to take their~~
11 ~~proportionate share of production in kind, in the event of a dispute of title existing that~~
12 ~~would affect distribution of royalty payments, or if a mineral owner cannot be located~~
13 ~~after reasonable inquiry by the operator; however, the operator shall make royalty~~
14 ~~payments to those mineral owners whose title and for any ownership interest that is not~~
15 ~~in dispute.~~

16 ~~2.5. This section does not apply to obligations to pay oil and gas royalties under an oil and~~
17 ~~gas lease on minerals owned or managed by the board of university and school lands.~~

18 ~~6. Payments made under this section must identify interest and royalty amounts~~
19 ~~separately.~~

20 ~~7. A claim for relief for compensation brought under this chapter must be commenced~~
21 ~~within the limitations period provided under section 28-01-15.~~

22 ~~**SECTION 5. AMENDMENT.** Section 47-16-39.2 of the North Dakota Century Code is~~
23 ~~amended and reenacted as follows:~~

24 ~~**47-16-39.2. Inspection of production and royalty payment records -- Penalty.**~~

25 ~~1. A royalty owner, a royalty owner's assignee, an unleased mineral interest owner, or a~~
26 ~~designated representative, upon written notice, is entitled to inspect and copy the oil~~
27 ~~and gas production and royalty payment records for the lease of the person obligated~~
28 ~~to pay royalties under the lease or division order as required by section 47-16-39.1.~~
29 ~~The person obligated to pay royalties under the lease shall make that person's oil and~~
30 ~~gas royalty payment and production records available for inspection and copying at~~
31 ~~that person's usual and customary place of business within the United States. Upon~~

1 ~~request of a royalty owner, records available in an electronic format must be~~
2 ~~electronically transmitted to the royalty owner. A royalty owner may bring an action to~~
3 ~~compel the person obligated to pay royalties to allow inspection and copying of oil and~~
4 ~~gas production royalty payment records. In order for the royalty owner to prevail in~~
5 ~~such an action, the royalty owner must establish that:~~

6 ~~— a. — The royalty owner or the royalty owner's assignee complied with the notice~~
7 ~~requirements of this section;~~

8 ~~— b. — The notice specified the lease/lands involved, the time period under review and~~
9 ~~the records requested;~~

10 ~~— c. — The royalty owner notified the person obligated to pay royalties at the address~~
11 ~~printed on the information statement as prescribed by rules adopted by the~~
12 ~~industrial commission pursuant to section 38-08-06.3; and~~

13 ~~— d. — The person obligated to pay royalties denied inspection of the records or failed to~~
14 ~~respond within thirty days of service of the notice.~~

15 ~~— 2. — The district court for the county in which the oil or gas well is located has jurisdiction~~
16 ~~over all proceedings brought pursuant to this section. If the royalty owner or the royalty~~
17 ~~owner's assignee is successful in any proceeding brought pursuant to this section, the~~
18 ~~district court shall allow the royalty owner or the royalty owner's assignee to recover~~
19 ~~court costs; reasonable costs, fees, disbursements, and expenses incurred by the~~
20 ~~royalty owner or the royalty owner's assignee or a designated representative in~~
21 ~~inspecting and copying the oil and gas production and royalty payment records of the~~
22 ~~person obligated to pay royalties under the lease; and reasonable attorney's fees. The~~
23 ~~district court shall assess a civil penalty of two thousand dollars per day for any period~~
24 ~~the court determines royalty record payment records requested under this section~~
25 ~~were wrongfully withheld.~~

26 ~~— 3. — If a royalty owner, a royalty owner's assignee, or a designated representative is the~~
27 ~~board of university and school lands:~~

28 ~~— a. — The records in subsection 1 must be sent electronically, or in a manner~~
29 ~~acceptable to the board, to a location designated by the board.~~

1 ~~_____ b. Notwithstanding subsection 2, at the discretion of the board, a proceeding~~
2 ~~brought under this section may be brought in the district court of Burleigh County~~
3 ~~or in the county in which the oil or gas well is located.~~

4 ~~_____ 4. If the board of university and school lands is successful in any proceeding brought~~
5 ~~under this section, the district court shall allow the board to recover court costs;~~
6 ~~reasonable costs, fees, disbursements, and expenses incurred by the board in~~
7 ~~inspecting theand copying the oil and gas production and royalty payment records of~~
8 ~~the person obligated to pay royalties under the lease; and reasonable attorney's fees.~~

9 ~~_____ a. The district court also shall assess a civil penalty of two thousand dollars per day~~
10 ~~for each day the person obligated to pay royalties under the lease failed to send~~
11 ~~the oil and gas royalty payment and production records to the board in~~
12 ~~accordance with subsection 1.~~

13 ~~_____ b. The civil penalty under subdivision a ceases to accrue on the date the~~
14 ~~proceedings are initiated under subsection 1.~~

15 ~~_____ **SECTION 6. AMENDMENT.** Section 47-16-39.4 of the North Dakota Century Code is~~
16 ~~amended and reenacted as follows:~~

17 ~~_____ **47-16-39.4. Resolution of spacing unit ownership interest disputes - Penalty.**~~

18 ~~_____ 1. If the mineral owner and mineral developer disagree over the mineral owner's~~
19 ~~ownership interest in a spacing unit, the mineral developer shall furnish the mineral~~
20 ~~owner with a description of the conflict including the document number or book and~~
21 ~~page number of any recorded documents relevant to the dispute and the proposed~~
22 ~~resolution oralong with that portion of the title opinion that concerns the disputed~~
23 ~~interest, if available to the mineral developer.~~

24 ~~_____ 2. A mineral developer shall pay the mineral owner five hundred dollars per day for each~~
25 ~~day the court determines the mineral developer was not in compliance with this~~
26 ~~section or wrongfully withheld information under this section. If a mineral owner brings~~
27 ~~an action to enforce this section and prevails, the court shall award reasonable~~
28 ~~attorney's fees and court costs.~~

29 **SECTION 1.** A new section to chapter 4.1-01 of the North Dakota Century Code is created
30 and enacted as follows:

Postproduction royalty oversight program - Report.

1. The commissioner shall establish a program providing technical assistance and support to mineral owners, lease owners, and mineral companies relating to royalty payment issues.
2. The commissioner may contract for ombudsmen to be a resource for technical assistance and followup on royalty payment issues.
3. The program may provide technical education, support, and outreach on royalty payment related matters in coordination with other entities.
4. The commissioner may contract with local individuals, deemed trustworthy by the mineral owners, lease owners, and mineral companies, to be ombudsmen. The commissioner is not subject to the provisions of chapter 54-44.4 when contracting for the services of ombudsmen.
5. The names of landowners, mineral owners, lease owners, and mineral companies that receive assistance under the program are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.
6. The commissioner shall submit expenses related to the implementation of the program to the industrial commission for reimbursement.
7. The ombudsmen may act as a central point of contact on inquiries from mineral owners, lease owners, or mineral companies relating to royalty payment issues. Upon receipt of an inquiry from a mineral or lease owner, the ombudsman shall gather the appropriate information and contact history from the royalty owner and gather the information necessary from the oil and gas operator to connect the parties or determine what information is needed to resolve the inquiry or determine the facts.
8. The ombudsman shall maintain a list of key contacts for each oil and gas operator with active wells in the state, including the name, address, telephone number, and electronic mail address of the individual. A royalty payor shall verify the accuracy of the payor's key contact information and update the ombudsmen in the event of a change in key contact information.
9. The commissioner shall maintain a royalty owner information website that may include contact information of royalty payors, information on general royalty ownership and the royalty payment process, and frequently asked questions related to royalty issues.

- 1 10. By June first of each even-numbered year, the commissioner shall provide a report to
2 the legislative management. The report may include:
3 a. A summary of the nature of the inquiries and resolutions received through the
4 program.
5 b. Timeliness of responses received by ombudsmen from royalty payors.
6 c. Key issues that have been identified as common communication challenges
7 between royalty owners and operators.
8 d. Areas where education and awareness of the oil and gas industry processes
9 relating to royalty payment and royalty statements, division orders, ownership
10 calculation, and title defects and opinions may be useful.
11 e. An assessment on the type, quality, and validity of royalty owner inquiries.
12 f. Any barriers to access to information for royalty owners.

COMMISSIONER
DOUG GOEHRING



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NORTH DAKOTA
DEPARTMENT OF AGRICULTURE
STATE CAPITOL
600 E. BOULEVARD AVE. – DEPT. 602
BISMARCK, ND 58505-0020

Testimony of Doug Goehring
Agriculture Commissioner
Senate Energy and Natural Resources
Peace Garden Room
February 16, 2023

Chairman Patten and members of the Senate Energy and Natural Resources Committee, I am Agriculture Commissioner Doug Goehring. I am here today in support of SB 2374 as amended.

My office currently operates two ombudsmen programs offering support to landowners in pipeline restoration and reclamation and wind energy restoration and reclamation. Through these programs we contract with independent ombudsman, who assesses the on-site impacts and work with both energy industry and the landowners to resolve the issues in a timely and satisfactory manner.

I would like to suggest changes to item 3 of the proposed amendment to change ombudsmen in the section to commissioner. We do not want a contract employee to be the repository for such information and that information should be maintained with my office.

I believe my office can effectively work with royalty owners and the oil and gas industry to help bring clarity and resolution to the issue before the matters end up in court. I will work together with the industry and royalty owners to provide outreach and education to resolve future matters.

Chairman Patten and committee members, I thank you for the opportunity to testify. I would be happy to answer any questions.



23.1101.01002
Title.

Prepared by the Legislative Council staff for
the Senate Energy and Natural Resources
Committee

February 16, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2374

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 4.1-01 of the North Dakota Century Code, relating to a postproduction royalty oversight program; and to provide a report to the legislative management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4.1-01 of the North Dakota Century Code is created and enacted as follows:

Postproduction royalty oversight program - Report.

1. The commissioner shall establish a program providing technical assistance and support to mineral owners, lease owners, and mineral companies relating to royalty payment issues.
2. The commissioner may contract for ombudsmen to be a resource for technical assistance and followup on royalty payment issues.
3. The program may provide technical education, support, and outreach on royalty payment related matters in coordination with other entities.
4. The commissioner may contract with local individuals, deemed trustworthy by the mineral owners, lease owners, and mineral companies, to be ombudsmen. The commissioner is not subject to the provisions of chapter 54-44.4 when contracting for the services of ombudsmen.
5. The names of landowners mineral owners, lease owners, and mineral companies that receive assistance under the program are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.
6. The commissioner shall submit expenses related to the implementation of the program to the industrial commission for reimbursement.
7. ^{Commissioner} ~~The ombudsmen~~ may act as a central point of contact on inquiries from mineral owners, lease owners, or mineral companies relating to royalty payment issues. Upon receipt of an inquiry from a mineral or lease owner, the ~~ombudsman~~ shall gather the appropriate information and contact history from the royalty owner and gather the information necessary from the oil and gas operator to connect the parties or determine what information is needed to resolve the inquiry or determine the facts.
8. ^{commissioner} ~~The ombudsman~~ shall maintain a list of key contacts for each oil and gas operator with active wells in the state, including the name, address, telephone number, and electronic mail address of the individual. A royalty

Commissioner

payor shall verify the accuracy of the payor's key contact information and update the ~~ombudsmen~~ in the event of a change in key contact information. *commissioner*

9. The commissioner shall maintain a royalty owner information website that may include contact information of royalty payors, information on general royalty ownership and the royalty payment process, and frequently asked questions related to royalty issues.
10. By June first of each even-numbered year, the commissioner shall provide a report to the legislative management. The report may include:
 - a. A summary of the nature of the inquiries and resolutions received through the program.
 - b. Timeliness of responses received by ~~ombudsmen~~ from royalty payors. *commissioner*
 - c. Key issues that have been identified as common communication challenges between royalty owners and operators.
 - d. Areas where education and awareness of the oil and gas industry processes relating to royalty payment and royalty statements, division orders, ownership calculation, and title defects and opinions may be useful.
 - e. An assessment on the type, quality, and validity of royalty owner inquiries.
 - f. Any barriers to access to information for royalty owners.

Renumber accordingly

PROPOSED AMENDMENTS TO AMENDMENT 23.1101.01002

of

SENATE BILL NO. 2374

Page one Item one: insert word ombudsmen after "establish a".

Page one: remove item number 7, 8.

Page two: remove item 9, 10.

Renumber accordingly



PIPELINE RESTORATION AND RECLAMATION OVERSIGHT PROGRAM

The North Dakota Department of Agriculture's pipeline restoration and reclamation oversight program connects landowners and tenants experiencing pipeline reclamation and restoration issues with an independent ombudsman, a third party resource to help reach a reasonable resolution.

The program also provides educational outreach to help landowners/tenants consider things such as pipeline pathways, type of pipeline installation, soil impacts, type of vegetation being reestablished, timelines and other issues before signing agreements.

Vision Statement

The ombudsmen are the recognized lead facilitators for promoting fairness when resolving pipeline reclamation and restoration issues, concerns, and disputes.

Mission Statement

To enhance landowner trust and cooperation in North Dakota's energy development future by providing timely, effective, and impartial complaint management between surface owners/tenants and pipeline companies.

Values

These values guide activities and actions of the program. They demonstrate the agriculture commissioner's belief that the manner in which the program is administered must be purposeful in progressing the goals North Dakota is trying to achieve by creating the program.

The program values:

- Fairness
- Integrity
- Respect
- Equity

This program also values a working environment that fosters innovation and collaboration.



Agriculture Commissioner
Doug Goehring

PROGRAM PROCESS

The ombudsmen proceed by way of independent and impartial examinations initiated upon complaints by surface owners/tenants. The ombudsman's objective is to develop a service culture characterized by fairness, dedication, openness, and accountability. The ombudsmen may use informal facilitation or recommend mediation to avoid actions that can be costly and damaging to the surface owner/tenant and the pipeline company.

NDDA will:

Establish methods for surface owners/tenants to issue complaints

Complaints will be taken by:

Phone

Email

Web

Personal interview

Establish a method to track and assign complaint cases to an ombudsmen

Prepare periodic reports to the agriculture commissioner regarding program activity

Contract with qualified ombudsmen

The ombudsman will:

Make initial contact with the surface owner/tenant within 48 hours of receiving the complaint

Conduct a site examination with the surface owner/tenant and document all issues associated with the complaint

Meet with surface owner/tenant and pipeline company on site to review reclamation/restoration issues

Work with surface owner/tenant and pipeline company to develop a plan and timeline to address the complaint

Periodically monitor agreed upon reclamation/restoration site work

Provide final report to the agriculture commissioner



Site prior to reclamation



Same site after reclamation

THE OMBUDSMAN

Ombudsman

Noun [om•buds•man]

Definition: One who investigates, reports on, and helps settle complaints.

The ombudsman will manage complaint cases by receiving, reviewing, and attempting to resolve complaints from surface owners/tenants. In addition, the ombudsman will analyze complaint data and provide the agriculture commissioner with recommendations for the improvement of the program. The ombudsman will have frequent contact with surface owners/tenants, and representatives from pipeline companies by conducting outreach and managing complaints.

Knowledge, Skills, and Abilities

To be an effective ombudsman, the individual must have the following attributes:

- Concern for fairness
- Effective consensus-building and facilitator skills
- Good listening skills
- Established analytical ability
- Effective stress management skills
- General knowledge of subject matter
- Keep professionally current by pursuing continuing education and training

Primary Functions

An ombudsman has the following primary functions:

- Problem prevention
- Conflict resolution
- Communication facilitation

Functional Description

The ombudsman will:

- Serve as a designated neutral resource for surface owners and tenants to raise concerns and request assistance to informally resolve conflicts and problems
- Monitor and track inquiries, complaints, and disputes
- Seek to provide effective and equitable conflict resolution
- Focus on customer service to provide an identifiable and accessible process for receiving complaints and resolving disputes
- Direct surface owners/tenants to the correct process or agency (outside the ombudsman program) when appropriate
- Make recommendations to the agriculture commissioner if a general problem trend is identified

NDDA will not:

Release the names of surface owners or tenants who receive assistance through this program

The ombudsman will not:

Provide legal counsel or assistance in negotiating an easement

Interfere with or supersede any agreements between surface owners/tenants and pipeline companies

Conduct any regulatory functions

Investigate any pipeline installed before January 1, 2006

Investigate any pipeline regulated by the Public Service Commission under North Dakota Century Code Title 49

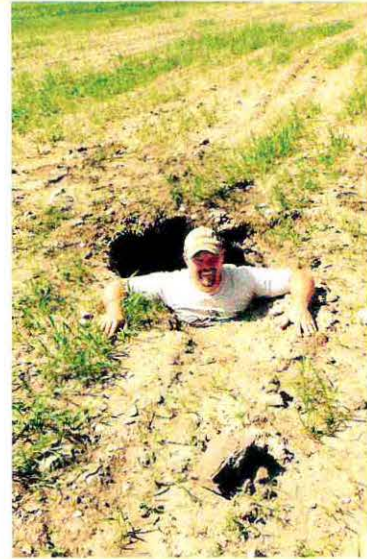
PROGRAM GOALS

1 Recognized Resource
We are a resource that can evaluate issues and identify options after an impartial review of the complaint

2 Create Trust
Create surface owner/tenant trust in working with pipeline companies by creating a venue to address concerns and enhance communication

3 Save Resources
Save valuable resources by preventing disputes and resolving them in a timely manner in place of costly litigation

4 Balanced Approach
Support surface owners/tenants and the energy industry by using a non-regulatory approach to balance land use needs and foster the relationship between land stakeholders



PROGRAM OBJECTIVES

- Pipeline reclamation and restoration problems addressed in the early stages have a higher degree of resolution and can often be resolved before further erosion of confidence by the surface owner/tenant and before loss of productivity by both parties
- Effective education of key stakeholders regarding the goals of the program will create buy-in and cooperation
- The ombudsman does not necessarily have to identify the solution to a problem but will be most successful by helping surface owners/tenants and pipeline companies identify and carry out solutions
- The ombudsman must be an effective consensus-builder and facilitator

PROGRAM ASSESSMENT

NDDA will use customer satisfaction surveys and stakeholder interviews to complete an annual program assessment.

FOR FURTHER INFORMATION

North Dakota Department of Agriculture
600 E. Boulevard Ave., Dept. 602
Bismarck, ND 58505-0020
701-328-2231 or 800-242-7535
www.nd.gov/ndda

The North Dakota
Department of Agriculture
is an equal opportunity
employer and provider.

Sept. 2018

23.1101.01003
Title.02000

Adopted by the House Energy and Natural
Resources Committee
February 16, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2374

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 4.1-01 of the North Dakota Century Code, relating to a postproduction royalty oversight program; and to provide a report to the energy development and transmission committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4.1-01 of the North Dakota Century Code is created and enacted as follows:

Postproduction royalty oversight program - Report.

1. The commissioner shall establish an ombudsmen program providing technical assistance and support to mineral owners, lease owners, and mineral companies relating to royalty payment issues.
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3. The program may provide technical education, support, and outreach on royalty payment-related matters in coordination with other entities.
4. The commissioner may contract with local individuals, deemed trustworthy by the mineral owners, lease owners, and mineral companies, to be ombudsmen. The commissioner is not subject to the provisions of chapter 54-44.4 when contracting for the services of ombudsmen.
5. The names of landowners, mineral owners, lease owners, and mineral companies that receive assistance under the program are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.
6. The commissioner shall submit expenses related to the implementation of the program to the industrial commission for reimbursement.
7. By June first of each even-numbered year, the commissioner shall provide a report to the energy development and transmission committee."

Renumber accordingly

Senate Bill 2374
Testimony of Corey Dahl
House Energy and Natural Resources Committee
March 17, 2023

Chairman Porter and members of the Committee, my name is Corey Dahl, lobbyist for the Williston Basin Royalty Owners Association. I appear before you today to testify in favor of Senate Bill 2374 though it no longer resembles what was initially introduced by constituents.

The first version of SB 2374 was brought forth to address concerns from royalty owners regarding their interaction with the industry. Testimony provided by the industry on February 9, 2023, concurred with what royalty owners have been saying for years:

Bruce Larson, President, Kraken Operating:

* "Kraken would love to be part of a broader solution that looks at ways to eliminate or penalize specific companies that fail to pay or respond to legitimate concerns in a timely manner."

* "We (as all operators should be) are open and receptive to a penalty being assessed against an operator who willfully withholds information that a royalty owner is entitled to"

Craig Smith, Attorney, Crowley Fleck:

* "...we recognize that there are legitimate royalty owner concerns and communication efforts between operators and mineral owners can be improved"

Jason Weddle, Land Director, Chord Energy

* "We acknowledge that no industry and no company is perfect. Mistakes are sometimes made"

Kate Black, Vice President, Inland Oil & Gas

* "I will attest that some operators are more responsive or have better customer service than others"

While the industry agreed there is an ongoing issue, they must have felt threatened by the request for transparency and accountability because they worked with senators to hoghouse the bill brought forth by mineral owners. Not a single word of the original bill remained in the amended version that was passed by the Senate Energy and Natural Resources committee that is before you today.

For the record, constituents brought forth an amended version that addressed industry concerns but there was no opportunity for discussion with the Senate Energy and Natural Resources committee. The decision had already been made to move forward with language the industry provided and was in the hands of Legislative Council for drafting.

It is indefensible that a multibillion-dollar industry can manipulate legislation without the knowledge or input of those who originally created the bill. When an industry can completely change a bill brought forth by constituents, and mold it in their favor, it sends a clear message who yields power and influence in the Capitol.

The Bismarck Tribune Editorial on March 13, 2023 gave a thumbs down based on what has happened with Senate Bill 2374 and noted that, "There's a perception among some North Dakotans that the Legislature is much too willing to bend to the powerful oil industry. The outcome of Senate Bill 2374 won't do anything to change that. Mineral owners asked lawmakers for greater transparency and accountability from oil companies when it comes to disputed fees. But senators instead advanced industry-backed proposals that would establish an ombudsman program to help sort out payment issues between royalty owners and oil companies. The House will now consider the legislation. Hopefully representatives will give serious thought to the request of mineral owners. Asking for more information doesn't seem unreasonable."

The Bismarck Tribune is right that the ombudsman program does not address key concerns in the original bill. Without legislative action, companies will continue ignoring current laws and face no consequences when they fail to comply.

Without penalties for noncompliance there are no remedies the ombudsman can turn to, any more than royalty owners can, to enforce current laws.

The House Energy and Natural Resources committee has an opportunity to do the right thing by amending version 23.1101.02000 of Senate Bill 2374 so the ombudsmen program will be able to help solve issues and not just collect statistics. Language should be included in the bill that will compel oil companies to comply with current statutes and require them to provide transparent information in an electronic format to royalty owners.

Industry testimony during this session said that providing Excel files to royalty owners is either not possible, incredibly burdensome and costly or will lead to cybersecurity threats. This testimony was disingenuous. Excel files are available to download for free from select company websites today and they were readily available to download from most operators for free in the past prior to a single company becoming the dominant repository of oil and gas statements.

It is simply not true that going to a company website to download electronic versions of hard copy royalty statements in the form of an Excel spreadsheet is dangerous or difficult. Why does the industry oppose royalty owners having Excel copies of their royalty statements? The likeliest answer is that they do not want royalty owners to more easily analyze the information provided on their paper statements.

The Williston Basin Royalty Owners Association would support the effort to create an ombudsman program under the Agriculture Commission. However, the association strongly urges the committee to address the issues brought forth in the original version of Senate Bill 2374 for the program to be successful. If companies can continue ignoring current statutes because there are no consequences or remedies to compel them to do so, the ombudsman program will only kick the can down the road another two years to the detriment of the citizens of North Dakota.

The Williston Basin Royalty Owners Association asks for your favorable consideration of Senate Bill 2374.

COMMISSIONER
DOUG GOEHRING



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NORTH DAKOTA
DEPARTMENT OF AGRICULTURE
STATE CAPITOL
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BISMARCK, ND 58505-0020

Testimony of Doug Goehring
Agriculture Commissioner
House Energy and Natural Resources
Coteau Room
March 17, 2023

Chairman Porter and members of the House Energy and Natural Resources Committee, I am Agriculture Commissioner Doug Goehring. I am here today in support of SB 2374.

My office currently operates two ombudsmen programs offering support to landowners in pipeline restoration and reclamation and wind energy restoration and reclamation. The ombudsman assesses the on-site impacts and work with both energy industry and the landowners to resolve the issues in a timely and satisfactory manner.

I believe my office can effectively work with royalty owners and the oil and gas industry to help bring clarity and resolution to the issue before the matters end up in court. I will work together with the industry and royalty owners to provide outreach and education to resolve future matters.

Chairman Porter and committee members, I thank you for the opportunity to testify. I would be happy to answer any questions.