

2023 SENATE ENERGY AND NATURAL RESOURCES

SB 2317

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2317
1/27/2023

A bill relating to the amalgamation of the underground storage of oil and gas; relating to amalgamating property interests; and to declare an emergency.
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2:49 PM Chairman Patten opened the meeting.

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

Discussion Topics:

- Landowners' rights
- Just compensation
- Eminent domain
- Energy projects

2:49 PM Senator Magrum introduced the bill and provided written testimony #17489.

2:52 PM Troy Coons, Chairman Northwest Landowners Association spoke in favor of the bill and provided written testimony #17768.

2:56 PM Derrick Braaten, Legal Counsel, Northwest Landowners Association spoke in favor of the bill.

3:08 PM Jerol Gohrick, rancher, spoke in favor of the bill.

3:10 PM Ron Ness, North Dakota Petroleum Council testified opposed to the bill and provided written testimony #17428.

3:19 PM Jason Pulver testified opposed to the bill and provided written testimony #17242.

3:32 PM Jeff Skaare, Sequestration Director of Land Legal and Regulatory Affairs, Summit Carbon Solutions, testified opposed to the bill and offered written testimony #17231.

3:31 PM Chairman Patten calls for a five-minute recess.

4:58 PM Chairman Patten asked if there was any further testimony, there was not. Chairman Patten closed the public hearing.

Additional written testimony:

Lynn Helms provided written testimony #17364.

David Degenstein provided written testimony #17346.

Jason Boher provided written testimony #17312.

Rebekah Oliver provided written testimony #15033.

Jerry Waswick provided written testimony #16771.

Ryan Carter provided written testimony #17136.

Joshua Teigen provided written testimony #17179.

Adam Dunlop provided written testimony #17237.

Jessica Pulver provided written testimony #17240

Bill Breimeier provided written testimony #17296

4:58 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 2317
2/10/2023

A bill relating to the amalgamation of the underground storage of oil and gas; relating to amalgamating property interests; and to declare an emergency.
--

9:30 AM Chairman Patten opened the meeting.

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

Discussion Topics:

- Committee action

9:30 AM Senator Magrum discusses amending the bill.

9:37 AM Senator Magrum moves to adopt amendment “80-90 percent range for counties” and change instances of 85 to 80. Motion dies due to a lack of a second.

9:39 AM Senator Magrum moves to adopt amendment language to 80-75%. Motion fails due to a lack of a second.

9:39 AM Senator Magrum moves to adopt an amendment language to 70%. Motion fails due to a lack of a second.

9:46 AM Senator Magrum moves to amend language to 55-70 % and take out county component. Senator Kannianen seconds the motion.

9:48 AM Roll call vote is taken.

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

Motion fails 3-3-0.

9:48 AM Senator Magrum moves to send the bill to the Senate floor with no committee recommendation. Motion dies due to a lack of a second.

9:49 AM Senator Kanniannen moves to Do Not Pass the bill.
Motion seconded by Senator Beard.

9:50 AM Roll call vote is taken.

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

Motion passed 5-1-0.

Senator Beard will carry the bill.

This bill does not affect workforce development.

9:50 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2317: Energy and Natural Resources Committee (Sen. Patten, Chairman) recommends **DO NOT PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2317 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

TESTIMONY

SB 2317

DO PASS - SB 2317

Members of the Senate Energy and Natural Resources Committee,

Please render a DO PASS on Senate Bill 2317. Thank you for your consideration of this important bill, and for your service to North Dakota.

Sincerely,

Rebekah Oliver

District 11

SB2317-Opposed

At maximum 51 percent should be imposed. Creates a "get rich quick" scheme for those that are familiar with the law, is this intentional? Also, Counties should stay out of the State Permitting process (And I say this as a 16 year County Commissioner). Quit adding Bureaucracy.

Jerry Waswick

was@drtel.net

701-678-2431

Gwinner, ND



Tharaldson | Ethanol

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

January 25, 2023

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

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



Tharaldson | Ethanol

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

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

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

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

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



Tharaldson | Ethanol

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

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

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

Sincerely,

Ryan Carter and Brad Kjar

Co-Chief Operating Officers

Tharaldson Ethanol

3549 153rd Ave SE

Casselton, ND 58012



Testimony in Opposition of
House Bill No. 2317
Education and Environment Division of the House
Appropriations
January 27, 2023

TESTIMONY OF

Josh Teigen, Commissioner, ND Department of Commerce

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

I am here today in opposition of 2317 both as the Commissioner of Commerce and on behalf of the EmPower ND Commission as its chairman. The EmPower ND Commission was formed for the purpose of developing **ND's comprehensive energy policy for the state's diverse and growing energy industry**. The commission is made up of representatives from all the state's energy industries and is a model of how differing interests can come together for the good of an industry. Commerce exists to increase the overall wealth of the state and we do this primarily through the attraction of both capital and talent.

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

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

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

**Summit Carbon Solutions Testimony on Senate Bill 2317
January 27, 2023, 9:00 (10:30) A.M.
Senate Energy and Natural Resource Committee
Senator Dale Patten, Chairman**

**Jeff Skaare – Director of Land Summit Carbon Solutions
Opposition to SB 2317**

Chairman Patten, and fellow Senate Committee Members.

My name is **Jeffrey Skaare**. I am the **Sequestration Director of Land Legal and Regulatory Affairs** for **Summit Carbon Solutions**. I am an attorney by education, and a certified professional landman by trade. Born, raised and educated in North Dakota, I have dedicated the majority of my professional career to the development of ND's vast mineral resources. I have witnessed first-hand the need for, and the buildout of, the necessary infrastructure to develop North Dakota's vast natural resources. I have personally overseen the acquisition, build out and operation of over 300 miles of pipeline within North Dakota. In my past employment, I was involved in the acquisition, reclamation, and operation of those same pipelines. I became involved in the Summit Carbon Solutions project because I believe that the two most important industries to North Dakota, namely Agriculture & Energy, will need to find a carbon management solution to continue to thrive. We have reviewed proposed Senate Bill No. 2317 and we oppose for the following reasons:

- 1.) The enactment of this bill creates threshold percentage that fails to take into consideration the property rights of the vast majority of landowners who desire to develop their pore space.
- 2.) By allowing the County to increase the percentage threshold, the enactment of this bill creates uncertainty whether 100% consent is required (thus removing the right of Amalgamation altogether); and
- 3.) The North Dakota State Legislature, by codifying NDCC Chapter 38-22 entitled Carbon Dioxide Underground Storage created a framework for a new industry in the State.

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January 27, 2023, 9:00 (10:30) A.M.
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Jeff Skaare – Director of Land Summit Carbon Solutions

Opposition to SB 2317

I would like to address each of these points in turn.

First, proposed Senate Bill 2317 creates a threshold percentage that fails to take into consideration the property rights of the 84.99999999% of landowners who desire to develop their pore space. I am using 8 decimal places for a reason. It is common practice in land and title work to run title ownership out 8 decimals to properly account for each person's interest. There are two ways that property can be divided, and each has an infinite number of possibilities. Those two ways are known as divided tract ownership and undivided tract ownership.

A simple explanation of **divided tract** ownership includes a section, half section, quarter section, quarter quarter section, and so on. In addition, you can further divide tracts of land according to a metes and bounds description calling out the smallest of parcel of land imaginable.

A simple explanation of **undivided tract** ownership includes any number of the previously described **divided tracts** but each with multiple owners each owning a percentage (i.e. 10% each in 10 siblings). Each of these types of ownership can continue to be divided, smaller and smaller. What all Landmen have learned from running title to real property in the Williston Basin is that it is not uncommon to find significant division of both surface and mineral estates. Summit Carbon Solutions in its existing project has found **divided** surface tracts with ownership percentages as little as 4.16666667% with multiple owners, owning this same undivided percentage of the surface (and thus the pore space). Why is this important? The current law allows for pore space development when the majority of

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Opposition to SB 2317

landowner consent to the development of their property. To allow a super minority to control the rights of the super majority is unjust and unfair to those landowners. This brings me to my second point.

Secondly, proposed Senate Bill 2317, allows for the County Commission to set the percentage threshold above 85%. Nothing is stopping them from requiring 100%. This is an end run on opposition to proposed Senate Bill 2228, which requires 100%. Under this standard, project opponents, or property owners who are non-responsive, could shut down an entire prospect. Said differently, a landowner who is one of ten undivided owners of a parcel who with a 4.16666667% undivided interest could decide to “not consent”, stopping the pore space development of 95.83333333% of landowners.

Third, in **2009**, the North Dakota State Legislature, enacted NDCC Chapter 38-22 entitled Carbon Dioxide Underground Storage, and thus created the framework for a new industry in the State. I encourage the members of this committee to take a moment and re-read Section 38-22-01 entitled, Policy. In short, this section of code states that “**It is in the public interest to promote the geologic storage of carbon dioxide.**” This section of code explains that in addition to the State and Federal benefits of reducing our greenhouse gas emissions, that CO2 storage will ensure the viability of the state’s coal and power industries and further provide ready availability of a potentially valuable commodity for commercial or industrial uses. I have provided the full text below for your review.

The hard work of prior legislators would be undone by the enactment of Senate Bill 2317. It is for these reasons that we oppose the enactment of Senate bill number 2317 and request a recommendation of **DO NOT PASS**. Thank you.

**Summit Carbon Solutions Testimony on Senate Bill 2317
January 27, 2023, 9:00 (10:30) A.M.
Senate Energy and Natural Resource Committee
Senator Dale Patten, Chairman**

Jeff Skaare – Director of Land Summit Carbon Solutions

Opposition to SB 2317

38-22-01. Policy

It is in the public interest to promote the geologic storage of carbon dioxide. Doing so will **benefit the state and the global environment** by reducing greenhouse gas emissions. Doing so will help **ensure the viability of the state's coal and power industries**, to the economic benefit of North Dakota and its citizens. Further, **geologic storage** of carbon dioxide, a potentially valuable commodity, **may allow for its ready availability if needed for commercial, industrial, or other uses**, including enhanced recovery of oil, gas, and other minerals. *Geologic storage, however, to be practical and effective requires cooperative use of surface and subsurface property interests and the collaboration of property owners. Obtaining consent from all owners may not be feasible, requiring procedures that promote, in a manner fair to all interests, cooperative management, thereby ensuring the maximum use of natural resources.*

(emphasis added)



Testimony of Adam Dunlop, Executive Vice President of Midwest Ag Energy

North Dakota Ethanol Producers Association

Opposition of SB 2122, 2209, 2228, 2317, and 2314

January 27, 2023

Chairman Patten and members of the Senate Energy and Natural Resources committee,

I am Adam Dunlop, Executive Vice President of Midwest Ag Energy which owns and operates ethanol plants located in Underwood and Spiritwood. Midwest Ag Energy is a member of the North Dakota Ethanol Producers Association (NDEPA), which represents North Dakota's six ethanol plants, industry stakeholders and associated businesses. NDEPA is here today to oppose Senate Bills 2122, 2209, 2228, 2317, and 2314. These bills would be detrimental—and in some cases fatal—to the ethanol industry with respect to any future advancements in the carbon (CO₂) markets. North Dakota's legislature has diligently invested immense resources in research and development to advance the CO₂ markets and opportunities in ND, and it has spent 15 years creating a legal, tax, and regulatory regime to encourage investment in the CO₂ markets. Each of these bills could unilaterally undo the very thoughtful and at times groundbreaking work you have invested in safe and permanent CO₂ storage.

North Dakota's ethanol industry contributes nearly \$1.7 billion annually to the state's economy and provides thousands of direct and indirect jobs. Thanks to North Dakota's innovative private sector and supportive state government, the state's ethanol production capacity is 550 million gallons per year, which is more than five times the production a decade ago. The plants produce 2.4 million tons of CO₂ annually. Red Trail Energy in Richardton has been capturing and storing the CO₂ it produces for about a year. They were the first Class VI injection well approved by a state regulator with EPA primacy. Midwest Ag Energy's Blue Flint plant has been working on its CO₂ project for the past several years and will have an operational CO₂ project this summer. Tharaldson Ethanol has signed onto the Summit Carbon Solutions pipeline which will be able to capture CO₂ from various Midwest ethanol plants and store it in central North Dakota.

There is a tremendous advantage to capturing and storing North Dakota's CO₂ emitted from the ethanol plants. There are a couple of powerful economic factors at play: (1) the ability to capture more revenue with low-carbon ethanol and (2) 45Q tax credits. The ethanol produced from these plants can be sold to developed and emerging low carbon fuels markets that are willing to pay a premium for low carbon fuel. Low carbon ethanol is often sold at a premium—around 20-30 cents more a gallon. Assuming a \$.20 lift in every gallon ethanol, at 550 million gallons of production in the state, assuming all CO₂ from ND's ethanol plants be permanently stored, that would amount to an additional \$110M (550M X \$.20) in increased annual revenue. That revenue supports North Dakota's agriculture economy. Those who permanently store carbon can also utilize the 45Q tax credit which is currently valued at \$85/ton. ND Ethanol plants produce 2.4 million tons CO₂ annually, the 45Q tax credit on this volume could generate \$204M per year in federal tax credits taken directly to the plant's bottom line (2.4M x \$85). The 45Q tax credit is available for 12 years. Also, lower carbon-intensity scores at a plant enables it to pay a higher price for corn in their area, which translates directly into a better economy for our farmers in ND. These are game-changing opportunities for ND agriculture.

With regard to the eminent domain bills, Senate Bill 2212 completely repeals common carrier status for CO₂ projects, Senate Bill 2209 creates an 85% threshold for eminent domain and gives county commissioners authority to set higher percentages, and Senate Bill 2314 gives the Public Service Commission (PSC) authority to determine common carrier status and eminent domain limitations. Our industry work extremely hard to be sure that landowners are treated fairly and appropriately- they are our suppliers for corn and customers for distillers grains. We all share benefits if we're able to successfully build and operate these projects. Eminent domain, simply put, is not a desired tool, but vocal small minorities of protestors should not be given veto power over any linear infrastructure that allows our state to compete and prosper.

Similarly, with regard to the amalgamation bills, Senate Bill 2228 repeals amalgamation for CO₂ storage, and Senate Bill 2317 creates an 85% threshold for amalgamation. Similar to eminent domain, NDEPA understands that amalgamation is never the first mode of action, but it is a tool that must be utilized at times avoid property rights of the minority outweighing the property rights of the majority on project development. Again, the industry aims for 100% consent from landowners on these projects but there are instances that amalgamation is the voice of the majority. Significantly raising this threshold would absolutely hinder all CO₂ projects across North Dakota.

Addressing a carbon-constrained future is a critical public purpose. Our two major industries, agriculture and energy, cannot survive and thrive without them. Additional, hindering projects for the ethanol industry would put the 550 million gallons of ethanol produced by home grown corn in North Dakota's at a disadvantage on the national level. Thank you for your time today and on behalf of NDEPA I respectfully urge a 'Do Not Pass' on SB 2212, 2209, 2228, 2317, and 2314.

Honorable Chairman Patten & members of the Energy and Natural Resources committee,

Thank you for the opportunity to testify on SB 2317. I am a fourth-generation landowner in Oliver County. SB 2317 threatens the property rights of the majority. Increasing the threshold to 85% consent is well beyond the majority. The current threshold is more equitable.

Additionally, it should not fall on the individual counties to be able to change the percentage required. This, again, threatens the property rights of the majority. It also creates inconsistencies that will certainly discourage economic development projects. Please vote no on this bill.

Sincerely,

Jessica Pulver Biesterfeld

My name is Jason Pulver, I live in Hazen and bought the land homesteaded by my great grandfather and other lands owned by my family for decades south of Beulah in Oliver County.

Chairman and Committee Members, I oppose Bill 2317 which would require 85% consent among pore space owners as a permit requirement for oil and gas storage in an oil and gas reservoir, saline reservoir or aquifer or in a salt cavern. This bill would also allow individual counties to require even more than 85%.

85% is a very high threshold. It is nearly impossible if not impossible to reach that amount when multiple sections of land are involved. On top of getting 85% to agree, I can attest as a research landman over the past 15 years that even surface title can be messy with some tracts having multiple owners across many states along with estates that haven't been cleaned up or settled for decades, making it nearly impossible to obtain consent in those situations.

As a landowner, I want to exercise my right to monetize my pore space which can be done while still being able to utilize my surface as it always has been, while also benefitting the agriculture, coal and oil & gas industries in the long term.

Requiring 85% consent and even higher percentages by individual counties for multiple section projects potentially allows only one or a few large contiguous landowners to monetize their pore space while leaving behind smaller land owners. There is also the issue of pore space projects that potentially would cross county lines that would be subject to different thresholds.

It is for these reasons that I oppose the enactment of Senate Bill 2317 and ask you to forward a **DO NOT PASS** recommendation. Thank you.

Chairman Patten & members of the Energy and Natural Resources committee,

I support Carbon Capture and Sequestration as I feel it is vitally important to the future of North Dakota's two most important industries, agriculture and energy.

Summit Carbon Solutions is an innovation project which offers landowners an opportunity to develop their pore space as well as providing tax revenue for local government.

As a landowner in the project area, I believe Senate Bills 2209, 2213, 2212, 2228, 2317, and 2314 as well as House Bills 1384 and 1466 are short-sighted and interfere with my property rights. I urge you to vote NO on these bills.

Thank you for your consideration,
Bill and Norma Breimeier, landowners



January 27, 2023

Chairman Patten and Senate Energy and Natural Resources Committee Members,

On behalf of the members of the Lignite Energy Council, I am submitting testimony today in opposition of Senate Bill 2317. The Lignite Energy Council consists of over 250 members representing lignite mines, electric utilities, independent power producers and contractor suppliers in the Upper Midwest. The lignite industry accounts for over 13,000 direct and indirect jobs, over \$5.4 billion in economic development and millions in state, county and local tax revenue.

For the past two decades, the Lignite Energy Council has worked with the legislature, state agencies and stakeholders to create a legal, tax, and regulatory framework to support development of carbon capture technology for the electric power that would position North Dakota to lead the nation in CO2 development. There is a long list of legislation that has been thoughtfully designed, debated and passed into law that includes conformity with federal laws, the fee structure at the North Dakota Industrial Commission, the long-term accountability for CO2 storage, Class VI primacy for pore space and the critically important state investments into research, and development to name a few policies that our industry has helped place into law.

We are pursuing this technology because it has the potential to create another top five industry in North Dakota, and to preserve and enhance the coal industry in the new carbon economy. We have pursued this path because ever tightening federal regulations around carbon emissions threaten the longevity of the lignite industry and we now have a tremendous opportunity to mitigate that risk. In North Dakota, we are blessed not only with an 800 year supply of our lignite natural resources, but we also have some of the best geology in the whole world for the underground storage of carbon emissions. This combination provides the tremendous opportunity to lower our carbon emissions while providing us with economic and regulatory certainty in the future that we will be able to continue to deliver affordable and reliable energy to the citizens of our state.

The language found in SB2317 creates additional risk for power sector carbon capture projects. LEC believes that the laws that have been carefully crafted in the Century Code should not be repealed or changed before they have the opportunity to work. We are proud of the community relations that our power plants and mines have built over the many decades that our industry has been in operation. Strong landowner relationships are the only way that these projects move forward and we have achieved high levels of landowner support while coexisting with the current amalgamation laws. The future of our economy depends on moving the commodities we produce to market through critical infrastructure. The CO2 economy will provide public goods through the reduction of regulatory risk for the energy industry, the development of value added products made from CO2 and the ability to supply CO2 for enhanced oil recovery to continue the petroleum production that provides over 50% of our state's tax revenues.

For these reasons, the Lignite Energy Council opposes SB2317 and we respectfully ask that the committee move to give this legislation a "Do Not Pass" recommendation.

Thank you for your consideration,
Jason Bohrer, President and CEO

1016 E. Owens Ave. | PO Box 2277 | Bismarck, ND 58502

📞 701.258.7117

🌐 www.lignite.com

@ LEC@lignite.com

**David & Vicki Degenstein
Written Testimony
Senate Energy and Natural Resources Public Hearing**

January 26, 2023

Dear esteemed members of the Senate Energy & Natural Resources Committee:

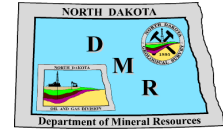
As longtime residents of Mercer County and landowners in Oliver County, we write to you today to share our enthusiastic support of carbon capture and utilization, as it is vitally important to two of North Dakota's most important industries--agriculture and energy. This legislative session is of critical importance to our ability as a state to be responsive to innovations that help our industries and in turn, help our people.

You will be reviewing proposed legislation that seeks to impede, damage and even cripple our ability as a state to be nimble and innovative and support trailblazing efforts that are at the very fiber of the roughrider spirit we as North Dakotans possess. As you consider Senate Bills 2209, 2313, 2212, 2228, 2317 and 2314, and House Bills 1384 and 1466, please know of our staunch opposition to each bill and our encouragement for you to stand in opposition. Your NO vote will demonstrate your commitment to a vibrant North Dakota that is committed to solutions that benefit our state and our people; and not to poor policy that is clearly motivated by greed and self-interest or worse, by ignorance.

Thank you for voting NO and representing your constituency well.

Best wishes for a productive session,

**David & Vicki Degenstein
Hazen, ND**



**Testimony of Lynn D. Helms
 Director, North Dakota Industrial Commission Department of Mineral Resources
 January 27, 2023
 Senate Energy and Natural Resources Committee
 SB 2317**

The North Dakota Industrial Commission (NDIC) Department of Mineral Resources (DMR) strongly urges a Do Not Pass on SB2317.

This bill represents the end of North Dakota's potential value-added petroleum industry. Development of a North Dakota value-added petroleum industry which includes Gas to Liquids, Hydrogen, Petrochemical Processing, Pure Product Storage, etc. requires underground storage with stable and predictable tax and regulatory policies.

The authority of the North Dakota Industrial Commission to ensure the protection of the correlative rights of property owners while preventing waste of our natural resources is almost 6 decades old. Initial attempts to follow the state of Texas model using only voluntary pooling and unitization resulted in very few units, half of which failed to increase recovery and all of which failed to achieve 100% ratification.

The NDIC and courts allowed voluntary units to proceed and include unsigned tracts, like a slice of Swiss cheese. Those unsigned tracts could not be used for fluid injection, so the Enhanced Oil Recovery process was disrupted, and production from the unsigned tracts had to be measured and marketed separately from unit production. As a result, the unsigned tracts pretty quickly reached economic limit and were shut in. The unsigned owners sued to get their leases back due to cessation of production and then leased their minerals to a small independent operator who could not maintain economic production and abandoned the wells. The NDIC ended up confiscating, plugging, and reclaiming the orphaned wells and sites.

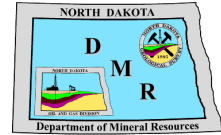
In 1953 the 33rd Legislative Assembly passed North Dakota's first compulsory pooling statute and in 1965 the 39th Legislative Assembly passed North Dakota's compulsory unitization statute with an 85% ratification requirement. Repeated failures to unitize new discoveries and the resulting waste of hundreds of millions of barrels of oil resulted in ratification requirement changes to 80% in 1983, 70% in 1991, 60% in 2001, and 55% in 2017. These statutes have been challenged in court and in several Legislative Assemblies but were found to not be a taking as long as all owners are equitably or justly compensated.

**Northwest Landowners Association v. State, et al. 2022
 Langved v. Continental Resources, Inc., et al 2017
 Hanson v. Indus. Comm'n, 466 N.W.2d 587, 594 (N.D. 1991)
 Texaco Inc. v. Indus. Comm'n, 448 N.W.2d 621, 623 (N.D. 1989)
 Hystad v. Indus. Comm'n, 389 N.W.2d 590, 595-96 (N.D. 1986)**

Bruce E. Hicks
 ASSISTANT DIRECTOR
 OIL AND GAS DIVISION

Lynn D. Helms
 DIRECTOR
 DEPT. OF MINERAL RESOURCES

Edward C. Murphy
 STATE GEOLOGIST
 GEOLOGICAL SURVEY



In the absence of pore space amalgamation North Dakota value added petroleum operators will have no options, since they are not common carriers or public utilities as required by the Constitution of North Dakota.

If a value-added petroleum operator somehow managed to qualify as a common carrier or public utility pore space owner compensation would be determined by a series of jury trials. As an example of how this is likely to work, I summarize the most recently completed case in which the courts have determined just compensation for a saltwater disposal well. After 4 years of litigation the surface / pore space owner of the land upon which the well is located was awarded approximately \$20,000 in a jury trial for past, present, and future damages while in a separate action the judge awarded their legal counsel approximately \$340,000 attorney's fees. The neighboring owners have not yet received anything and will have to litigate their cases. Of course, attorneys are urging them to do so. Since this is the current common law definition of just pore space owner compensation, the NDIC urges you to give SB2317 a Do Not Pass and retain equitable compensation under NDCC 38-25-05.

Thank you for your time and consideration,

A handwritten signature in blue ink that reads "Lynn D Helms".

Lynn D. Helms, PhD
Director

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Senate Bill 2317
Testimony of Ron Ness
Senate Energy and Natural Resources Committee
January 27, 2023

Chairman Patten and members of the Committee, my name is Ron Ness, President of the North Dakota Petroleum Council. 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 2317.

Senate Bill 2317 is an attempt to amend certain sections of Chapter 38-25 of the North Dakota Century Code. Chapter 38-25 was enacted by the Legislative Assembly in 2021 in order to establish a regulatory structure for the geologic storage of oil and gas under the jurisdiction of the North Dakota Industrial Commission (“Commission”). The legislation enacted as Chapter 38-25 was the product of many discussions between lawmakers, the Commission, pore space owners, mineral owners, and industry developers, and it was meant to advance North Dakota’s gas capture goals, reduce emissions, and demonstrate North Dakota’s commitment to developing cleaner energy.

Senate Bill 2317 will amend Chapter 38-25 to require the consent of 85% of the pore space owners in order to permit an underground natural gas storage facility. The Legislative Assembly that enacted Chapter 38-25 recognized that underground storage of oil and gas is all but impossible if the storage facility operator was required to obtain the consent of 85% of the pore space owners within the proposed storage facility. This understanding was likely a result of the Commission’s experience with oil and gas unitization. Historically, the statute governing unitization of oil and gas interests required the approval of at least 80% of the interest owners within the unit. When the Little Knife Field located in parts of Billings, McKenzie, and Dunn Counties

was proposed, the operator was unable to obtain the approval of 80% of the owners and the unit was never created. At the time, the operator estimated that approximately 50 million barrels of oil was left unrecovered because the field was not unitized. This prompted the Legislative Assembly to reduce the threshold for unitization from 80% to 70%. Later, when the 70% threshold could not be secured for Cedar Hills Field located in Bowman County, the Commission was forced to restrict production in the field until the Legislative Assembly further reduced the threshold from 70% to 60%. More recently, the threshold was reduced to 55%, which has resulted in many additional secondary recovery units being formed which has greatly increased the ultimate recovery of oil and gas in the State.

With the history of oil and gas unitization in mind, the Legislative Assembly included within Chapter 38-25 a procedure that allows the Commission to amalgamate or “unitize” the pore space of nonconsenting owners within a proposed natural gas storage facility as long as the storage operator obtains the consent of at least 55% of the pore space owners within the proposed storage facility area. This number recognizes that a majority of owners must decide, but also provides additional assurance of more widespread support amongst the owners for the project. It should also be noted that Chapter 38-25 requires that the nonconsenting pore space owners whose interests are amalgamated to be compensated for the use of their pore space the same as all the owners who signed pore space leases. Therefore, there is no taking of private property rights.

SB 2317 should also be viewed as a hinderance to the State’s aggressive flaring goals for the oil and gas industry. Many operators view the underground storage of oil and gas as a means to reduce flaring until the necessary infrastructure is put in place to capture and process the natural gas produced at the wellhead. SB 2317, if enacted, would all but eliminate the underground storage of natural gas as a viable option to reduce flaring. With a threshold of 85%, it is entirely possible that a single pore space owner within a proposed storage facility could prevent an underground storage project from proceeding even if the remaining pore space owners within the proposed storage facility area have consented. Furthermore, any special interest entity or person who opposes a proposed underground natural gas storage facility could purchase a small, minority

surface interest within the proposed storage facility area strictly for the purpose of stopping the project. For these reasons, the Legislative Assembly has put in place approval thresholds that reflect majority approval, but which are not so high as to deter the proper and orderly development of the State's natural resources.

If you believe that energy development is important to North Dakota, defeat this bill. SB 2228 is a mirror image of SB 2317 except that SB 2228 requires 100% approval for amalgamation of pore space interest the for the underground storage of carbon dioxide. The North Dakota Petroleum Council strongly opposes Senate Bill 2317 and urges a **Do Not Pass Recommendation**.

I would be happy to answer any questions.

Testimony of Senator Jeff Magrum
in favor of
SENATE BILL NO. 2317
Senate Energy and Natural Resources Committee
January 27, 2023

Chairman Patten and members of the committee,

I sponsored Senate Bill 2317 because I have received a very large number of calls and emails from landowners asking for my help. I am happy to speak up on behalf of the landowners and to bring this bill forward so that they can have their issues heard and discussed.

I have worked with the Northwest Landowners Association on this language, and Troy Coons and their legal counsel can speak to the specifics of the bill. Our goal was to find a constitutional path forward that allows project development and also protects the landowners and their property rights. We feel we have come up with a reasonable solution for all of the stakeholders and I ask for your support and a do pass vote on SB 2317.

Thank you,

Senator Jeff Magrum

Testimony of Troy Coons on behalf of
Northwest Landowners Association
in favor of
SENATE BILL NO. 2317
Senate Energy and Natural Resources Committee
January 27, 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 2317 because it is a constitutional path for these projects to occur. I have been asked by many people: "What is the right percentage?" When you amalgamate any amount of property owners, it is a taking, and for them, it is a 100% taking. So we cannot agree that there is a certain percentage that allows something that is unconstitutional.

But we were also asked how these projects could happen if that is true, and so we tried to find a way, and that is what legislation does. Amalgamation proceedings before the North Dakota Industrial Commission are actually permit proceedings before Lynn Helms and the Oil and Gas Division. Our concern with this is that Mr. Helms testified in 2019 in favor of SB 2344, and said it was necessary to remove the ability of landowners to receive compensation based on an example of the economics for gas storage. *See* Legislative History of SB 2344, p. 4, (2019) (<https://www.legis.nd.gov/files/resource/66-2019/library/sb2344.pdf>). He explained the point of his illustration, stating "I bring that up because you can see this project stores and reproduces the gas at \$2.96, which means it can't endure any additional burden from having to compensate for pore space being temporarily used for the storage of natural gas." *Id.*

This law as it stands requires landowners to go before this same regulator to determine the amount of "equitable" compensation they will receive. That is not fair. That is not "just" compensation. Article One, Section Sixteen of the North Dakota Constitution says that for a taking, the landowner "may have a jury trial, unless a jury be waived, to determine the damages, which damages the owner may choose to accept in annual payments as may be provided for by law."