

2023 HOUSE JUDICIARY

HB 1510

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1510
2/8/2023

Relating to legal fees and costs a surface owner or mineral developer may be awarded in cases relating to the development of minerals

11:02 AM Vice Chairman Karls opened the hearing.

Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter. Absent: Rep. Cory

Discussion Topics:

- Procedure to access damages.
- Fair legal compensation to landowners.
- Proposed amendment.
- Litigation percentage.
- Small damage claims.

Rep. Klemin: Introduced the bill. Testimony #19859

Todd Kranda; Kelsh Ruff Kranda & Ludwig, Mandan, ND. Testimony #19752

Troy Coons, Chairman of NW Landowners Association: Testimony # 19885

Derrick Braaten, Braaten Law Firm: Testimony #19893

Hearing closed at 12:09 PM.

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1510
2/14/2023

Relating to legal fees and costs a surface owner or mineral developer may be awarded in cases relating to the development of minerals

9:05 AM Chairman Klemin opened the meeting. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter. Absent: Rep. Cory

Discussion Topics:

- Amendment.
- Christmas tree version.
- Clarifying the offer for attorney fees.
- Attorney fees cap.
- Surface owner rights.

Todd Kranda: Attorney for Kelsch Law Firm. Testimony # 20784
Went through the proposed amendment.

Rep. Olson moved amendment 23.0991.03001; and delete on page 1, line 2 or mineral developer.

Seconded by Rep. Vetter

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	Y
Representative Claire Cory	A
Representative Donna Henderson	N
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	N
Representative Steve Vetter	y

Roll Call Vote: 10 Yes 2 No 1 Absent

Rep. Vetter moved a Do Pass as Amended;
Seconded by Rep. Satrom

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	N
Representative Cole Christensen	Y
Representative Claire Cory	A
Representative Donna Henderson	N
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	N
Representative Lori VanWinkle	N
Representative Steve Vetter	Y

Roll Call Vote: 8 Yes 4 No 1 Absent Carrier: Rep. Olson

Meeting closed at 9:27 AM.

Delores Shimek, Committee Clerk

2/14/23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1510

Page 1, line 2, remove "or mineral developer"

Page 1, after line 7, insert:

"1."

Page 1, line 10, after the period, insert:

"2."

Page 1, line 11, after "owner" insert "before the start of the litigation"

Page 1, line 12, replace "deem" with "award"

Page 1, line 12, remove "the prevailing party that is entitled to"

Page 1, line 13, after the underscored period insert:

"3."

Page 1, line 14, after "developer" insert "to the surface owner before the start of the litigation"

Page 1, line 15, remove "as the prevailing party"

Page 1, line 15, remove "In addition to determining and awarding"

Page 1, line 16, remove "compensation"

Page 1, line 16, overstrike ", the court shall award the"

Page 1, line 16, remove "surface owner"

Page 1, line 17, overstrike "reasonable attorney's fees,"

Page 1, line 17, remove "and"

Page 1, line 17, overstrike "costs assessed by the court,"

Page 1, line 17, remove "not to exceed the total"

Page 1, line 18, replace "amount of compensation awarded by the court to the surface owner."
with:

"4. If the surface owner rejects an offer of settlement made by the mineral developer after the start of the litigation and the amount of compensation awarded by the court to the surface owner is greater than the offer of settlement, the surface owner is entitled to an award of reasonable attorney's fees and costs assessed by the court.

"5. Notwithstanding any provision of the North Dakota Rules of Civil Procedure, if the surface owner rejects an offer of settlement made by the mineral developer after the start of litigation, and the amount of compensation awarded by the court to the surface owner is less than the

2

offer of settlement, the surface owner is entitled to an award of reasonable attorney's fees and costs incurred by the surface owner before the date of the offer of settlement, but is not entitled to any award of reasonable attorney's fees and costs after the date the offer of settlement was made to the surface owner.

2-14-23

6."

Page 1, line 19, remove "over and above the amount offered by the"

Page 1, line 20, remove "mineral developer and"

Page 1, line 22, remove "If the mineral developer issues an offer of settlement under rule 68 of the North"

Page 1, remove lines 23 and 24

Page 2, remove lines 1 through 5

Renumber accordingly

2

REPORT OF STANDING COMMITTEE

HB 1510: Judiciary Committee (Rep. Klemin, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (8 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1510 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "or mineral developer"

Page 1, after line 7, insert:

"1."

Page 1, line 10, after the period, insert:

"2."

Page 1, line 11, after "owner" insert "before the start of the litigation"

Page 1, line 12, replace "deem" with "award"

Page 1, line 12, remove "the prevailing party that is entitled to"

Page 1, line 13, after the underscored period insert:

"3."

Page 1, line 14, after "developer" insert "to the surface owner before the start of the litigation"

Page 1, line 15, remove "as the prevailing party"

Page 1, line 15, remove "In addition to determining and awarding"

Page 1, line 16, remove "compensation"

Page 1, line 16, overstrike ", the court shall award the"

Page 1, line 16, remove "surface owner"

Page 1, line 17, overstrike "reasonable attorney's fees,"

Page 1, line 17, remove "and"

Page 1, line 17, overstrike "costs assessed by the court,"

Page 1, line 17, remove "not to exceed the total"

Page 1, line 18, replace "amount of compensation awarded by the court to the surface owner." with:

- "4. If the surface owner rejects an offer of settlement made by the mineral developer after the start of the litigation and the amount of compensation awarded by the court to the surface owner is greater than the offer of settlement, the surface owner is entitled to an award of reasonable attorney's fees and costs assessed by the court.
- "5. Notwithstanding any provision of the North Dakota Rules of Civil Procedure, if the surface owner rejects an offer of settlement made by the mineral developer after the start of litigation, and the amount of compensation awarded by the court to the surface owner is less than the offer of settlement, the surface owner is entitled to an award of

reasonable attorney's fees and costs incurred by the surface owner before the date of the offer of settlement, but is not entitled to any award of reasonable attorney's fees and costs after the date the offer of settlement was made to the surface owner.

6."

Page 1, line 19, remove "over and above the amount offered by the"

Page 1, line 20, remove "mineral developer and"

Page 1, line 22, remove "If the mineral developer issues an offer of settlement under rule 68 of the North"

Page 1, remove lines 23 and 24

Page 2, remove lines 1 through 5

Renumber accordingly

2023 SENATE ENERGY AND NATURAL RESOURCES

HB 1510

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1510
3/23/2023

A bill relating to legal fees and costs a surface owner may be awarded in cases relating to the development of minerals.
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10:35 AM Chairman Patten opened the meeting.

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

Discussion Topics:

- Landowners
- Damage compensation
- Oil and Gas Production Act
- Settlement offers

10:35 AM Representative Klemin introduced the bill.

10:45 AM Todd Kranda Lobbyist, North Dakota Petroleum Council, testified in favor of the bill and provided written testimony #26415.

11:04 AM Troy Coons, Northwest Landowners Association, testified opposed to the bill and provided written testimony #26453.

11:08 AM Derrick Braaten, General Counsel, Attorney for Northwest Landowners Association, spoke opposed to the bill.

11:28 AM Chairman Patten held the public hearing open.

11:28 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

HB1510
3/30/2023

A bill relating to legal fees and costs a surface owner may be awarded in cases relating to the development of minerals

9:01 AM Chairman Patten opened the meeting.

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

Discussion Topics:

- Landowners
- Damage compensation
- Oil and Gas Production Act
- Settlement offers

9:01 AM Chairman Patten reconvened the public hearing.

9:01 AM Thomas Wheeler, Farmer, testified opposed to the bill and provided written testimony #27050.

9:08 AM Kenton Onstad spoke opposed to the bill.

9:14 AM Ceela Murphy spoke opposed to the bill.

9:20 AM Troy Coons, President, Northwest Landowners Association, spoke opposed to the bill.

9:25 AM Donald Nelson spoke opposed to the bill.

Additional written testimony:

Tex Hall #27042

Ben Murphy #27053

Keith Rychner #27054

9:26 AM Chairman Patten closed the public hearing.

9:27 AM Senator Kessel moved to Do Not Pass the bill. Motion seconded by Senator Magrum.

9:27 AM 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 Kessel will carry the bill.

9:27 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1510, as engrossed: Energy and Natural Resources Committee (Sen. Patten, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1510 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

TESTIMONY

HB 1510

HOUSE BILL 1510
Testimony of Todd D. Kranda
House Judiciary Committee

- February 8, 2023 -

Chairman Klemin and members of the House Judiciary Committee, for the record, my name is Todd D. Kranda, I am an attorney with the law firm of Kelsch Ruff Kranda Nagle & Ludwig in Mandan, ND. I am appearing before you as a lobbyist on behalf of the North Dakota Petroleum Council.

The North Dakota Petroleum Council represents more than 600 companies in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota.

The North Dakota Petroleum Council is in support of HB 1510, as amended, which is the version that I will address, and which is currently before the committee. 1510 as amended is being introduced to clarify the language of the original Bill without changing the ultimate effect, which is to establish reasonable and fair guardrails on how attorneys' fees and court costs are awarded in litigation matters under the Oil and Gas Production Damage Compensation Act, Chapter 38-11.1 of the North Dakota Century Code. References in my testimony to HB 1510 shall, in all instances, be a reference to HB 1510 as amended.

HB 1510 specifically amends Section 38-11.1-09 which addresses the surface owner's rejection of the settlement offer made by the mineral developer, the commencement of a legal action and the award of legal fees and costs, as well as interest.

This statute being updated was enacted in 1979, forty-four (44) years ago. Since the enactment of this statute, not only has there been no legislative changes but there hasn't been a single case heard by the North Dakota Supreme Court involving a dispute of damages between a surface owner and an oil company. The purpose of the statute was to require a mineral developer to make an offer of settlement for damages caused by oil and gas drilling and exploration operations which disrupted the surface estate.

The statute encouraged settlement by requiring the operator to make a settlement offer to the surface owner at the same time when the notice of operations was provided which was twenty-days before commencement of drilling operations. If the settlement offer was unacceptable to the surface owner, then the surface owner could reject the offer and sue for damages. If the court awarded the surface owner greater damages than the offer made by the mineral developer, then the surface owner also was entitled to reasonable attorney's fees and costs, but the surface owner would not be awarded attorney's fees if the compensation determined by the court was less than the mineral developer's offer.

The North Dakota Supreme Court has subsequently ruled that this surface compensation statute, namely Section 38-11.1-09, also applies to claims involving pore space issues, pore space being a surface interest. However, the statute, when enacted 44 years ago, did not contemplate claims for anything but above ground or actual surface disturbance relating to drilling operations.

The issue with pore space claims is there may never have been an express offer for pore space alone, or there may be situations where the operator does not believe there is a pore space claim for damages. For example, under the statute as originally enacted, an adjacent pore space owner could sue claiming trespass or other claims without an opportunity for the operator to consider making an offer before such a lawsuit is commenced. Once the lawsuit is commenced, and no offer was made, then the pore space owner could be entitled to their attorney's fees and costs even if the Court only awarded \$1 in nominal damages since no offer had been presented.

The proposed amendment in HB 1510 for Section 38-11.1-09 retains the original intent and purpose, the operator must still make an offer for surface damages, and if the surface owner rejects the offer, sues, and receives an award greater than the offer, then the surface owner still is entitled to attorney's fees. Likewise, if the award is less than the offer, then the surface owner still is not entitled to attorney's fees.

What the amendment in HB 1510 changes for Section 38-11.1-09 is twofold. First, it limits the attorney's fees to no greater amount than the total damages awarded to the surface owner.

Second, it provides that if the surface owner rejects an offer of settlement made by the mineral developer after the commencement of litigation, and the compensation awarded by the court to the surface owner is greater than such offer, then the surface owner is entitled to attorney's fees and costs; but if the compensation awarded by the court to the surface owner is less than such offer of settlement, then the surface owner is not entitled to attorney's fees and costs.

These amendments in HB 1510 attempt to level the playing field, especially after litigation is commenced, and HB 1510 will encourage settlements rather than encourage litigation. As currently is in effect under Section 38-11.1-09, there is no incentive for a surface (or pore space) owner or their attorneys to settle during litigation if the mineral developer never made an offer prior to the surface owner commencing a lawsuit. The attorneys for the surface owner could run up several hundred thousand dollars in legal fees and only get an award of a few thousand dollars for the surface owner damages, and yet still be entitled to recover all of their legal fees from the mineral developer.

The changes requested under HB 1510 are reasonable, appropriate, and necessary for the damage compensation statute with the changes that have occurred since Section 38-11.1-09 was enacted in 1979, 44 years ago.

The North Dakota Petroleum Council strongly supports the passage of HB 1510, as amended, and urges a **Do Pass Recommendation**. Thank you for the opportunity to provide this information. I would be happy to answer any questions.

HOUSE BILL 1510 (AS AMENDED) ATTORNEY'S FEES SCENARIOS

(NOTE: The dollar numbers in the following hypotheticals are purely for illustrative purposes, actual numbers could be much higher or lower depending upon the facts and circumstances of each case.)

I. Company tenders offer for surface damages prior to litigation, mineral owner rejects offer and sues for increased damages award:

- Assume Company offers \$40,000 for damages. Surface owner rejects offer and sues Company. Company does not counteroffer during litigation. Court awards surface owner \$50,000 in damages. **Surface owner is entitled to attorney's fees and costs up to \$50,000, in addition to the \$50,000 in damages, plus interest on damages from day drilling is commenced.**
- Assume Company offers \$40,000 for damages. Surface owner rejects offer and sues Company. Company does not counteroffer during litigation. Court awards surface owner \$30,000 in damages, \$10,000 less than Company's offer. **Surface owner is not entitled to attorney's fees or costs, but does get \$30,000 in damages, plus interest on damages from day drilling is commenced.**

II. Surface Owner claims a subsurface pore space trespass has occurred. Company either denies a trespass has occurred and refuses to provide an offer or Company tenders offer for surface damages after litigation has commenced, mineral owner rejects offer and has sued for increased damages.

- Surface owner sues for subsurface pore space trespass. Company either (1) does not make a settlement offer during litigation, or (2) made a settlement offer during litigation of \$10,000. Court awards surface owner \$20,000. **Surface owner is entitled up to \$20,000 in attorney's fees and costs, in addition to the \$20,000 in damages, plus interest on damages from day drilling is commenced.**
- Surface owner sues for subsurface pore space trespass. During litigation, Company tenders a settlement offer of \$25,000. Court awards surface owner \$15,000. **Surface owner is not entitled to attorney's fees or costs, but does get \$15,000 in damages, plus interest incurred on damages from day drilling is commenced.**

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Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1510
(AS AMENDED)

Introduced by

Representatives Klemin, Cory, Karls, J. Olson

Senator Sickler

1 A BILL for an Act to amend and reenact section 38-11.1-09 of the North Dakota Century Code,
2 relating to legal fees and costs a surface owner or mineral developer may be awarded in cases
3 relating to the development of minerals.

4

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

6

7 **SECTION 1. AMENDMENT.** Section 38-11.1-09 of the North Dakota Century Code is
8 amended and reenacted as follows:

9

10 **38-11.1-09. Rejection – Legal action – Fees and costs.**

11 1. If the ~~person~~ surface owner seeking compensation rejects the offer of the mineral
12 developer made in accordance with section 38-11.1-08, that ~~person~~ the surface owner may
13 bring an action for compensation in the court of proper jurisdiction.

14 2. If the amount of compensation awarded by the court to the surface owner is greater than
15 that which had been offered by the mineral developer to the surface owner prior to the
16 commencement of litigation, the court shall award the surface owner reasonable attorneys'
17 fees and costs assessed by the court.

18 3. If the amount of compensation awarded by the court to the surface owner is less than that
19 which had been offered by the mineral developer to the surface owner prior to the
20 commencement of litigation, the surface owner shall not be entitled to any attorneys' fees
21 or costs assessed by the court.

22 4. If the surface owner rejects an offer of settlement made by the mineral developer after the
23 commencement of litigation, and the amount of compensation awarded by the court to the
24 surface owner is greater than the offer of settlement, the surface owner shall be entitled
25 to an award of reasonable attorneys' fees and costs assessed by the court.

CHAPTER 38-11.1
OIL AND GAS PRODUCTION DAMAGE COMPENSATION

38-11.1-01. Legislative findings.

The legislative assembly finds the following:

1. It is incumbent on the state to protect the public welfare of North Dakota which is largely dependent on agriculture and to protect the economic well-being of individuals engaged in agricultural production, while at the same time preserving and facilitating exploration through the utilization of subsurface pore space in accordance with an approved unitization or similar agreement, an oil and gas lease, or as otherwise permitted by law.
2. Exploration for and development of oil and gas reserves in this state interferes with the use, agricultural or otherwise, of the surface of certain land.
3. Owners of the surface estate and other persons should be justly compensated for injury to their persons or property and interference with the use of their property occasioned by oil and gas development.
4. This chapter may not be construed to alter, amend, repeal, or modify the law concerning title to pore space under section 47-31-03.

38-11.1-02. Purpose and interpretation.

It is the purpose of this chapter to provide the maximum amount of constitutionally permissible protection to surface owners and other persons from the undesirable effects of development of minerals. This chapter is to be interpreted in light of the legislative intent expressed herein. Sections 38-11.1-04 and 38-11.1-04.1 must be interpreted to benefit surface owners, regardless of whether the mineral estate was separated from the surface estate and regardless of who executed the document which gave the mineral developer the right to conduct drilling operations on the land. Sections 38-11.1-06 through 38-11.1-10 must be interpreted to benefit all persons.

38-11.1-03. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Agricultural production" means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, including farmed elk, whether or not the animals are to be sold commercially.
2. "Drilling operations" means the drilling of an oil and gas well and the production and completion operations ensuing from the drilling which require entry upon the surface estate and which were commenced after June 30, 1979, and oil and gas geophysical and seismograph exploration activities commenced after June 30, 1983.
3. "Land" means the solid material of earth, regardless of ingredients, but excludes pore space.
4. "Mineral developer" means the person who acquires the mineral estate or lease for the purpose of extracting or using the minerals for nonagricultural purposes.
5. "Mineral estate" means an estate in or ownership of all or part of the minerals underlying a specified tract of land.
6. "Minerals" means oil and gas.
7. "Pore space" means a cavity or void, naturally or artificially created, in a subsurface sedimentary stratum.
8. "Surface estate" means an estate in or ownership of the surface of a particular tract of land.
9. "Surface owner" means any person who holds record title to the surface estate on which a drilling operation occurs or is conducted.

is deemed to have been received seven days after mailing by registered mail or immediately upon hand delivery.

4. If a mineral developer fails to give notice as provided in this section, the surface owner may seek appropriate relief in the court of proper jurisdiction and may receive punitive as well as actual damages.

38-11.1-05. Notice of drilling operations.

Repealed by S.L. 2011, ch. 265, § 7.

38-11.1-06. Protection of surface and ground water - Other responsibilities of mineral developer.

If the domestic, livestock, or irrigation water supply of any person who owns an interest in real property within one-half mile [804.67 meters] of where geophysical or seismograph activities are or have been conducted or within one mile [1.61 kilometers] of an oil or gas well site has been disrupted, or diminished in quality or quantity by the drilling operations and a certified water quality and quantity test has been performed by the person who owns an interest in real property within one year preceding the commencement of drilling operations, the person who owns an interest in real property is entitled to recover the cost of making such repairs, alterations, or construction that will ensure the delivery to the surface owner of that quality and quantity of water available to the surface owner prior to the commencement of drilling operations. Any person who owns an interest in real property who obtains all or a part of that person's water supply for domestic, agricultural, industrial, or other beneficial use from an underground source has a claim for relief against a mineral developer to recover damages for disruption or diminution in quality or quantity of that person's water supply proximately caused from drilling operations conducted by the mineral developer. Prima facie evidence of injury under this section may be established by a showing that the mineral developer's drilling operations penetrated or disrupted an aquifer in such a manner as to cause a diminution in water quality or quantity within the distance limits imposed by this section. An action brought under this section when not otherwise specifically provided by law must be brought within six years of the time the action has accrued. For purposes of this section, the claim for relief is deemed to have accrued at the time it is discovered or might have been discovered in the exercise of reasonable diligence.

A tract of land is not bound to receive water contaminated by drilling operations on another tract of land, and the owner of a tract has a claim for relief against a mineral developer to recover the damages proximately resulting from natural drainage of waters contaminated by drilling operations.

The mineral developer is also responsible for all damages to person or property resulting from the lack of ordinary care by the mineral developer or resulting from a nuisance caused by drilling operations. This section does not create a cause of action if an appropriator of water can reasonably acquire the water under the changed conditions and if the changed conditions are a result of the legal appropriation of water by the mineral developer.

38-11.1-07. Notification of injury - Statute of limitations.

Any person, to receive compensation, under sections 38-11.1-08 and 38-11.1-09, shall notify the mineral developer of the damages sustained by the person within two years after the injury occurs or would become apparent to a reasonable person. Any claim for relief for compensation brought under this chapter must be commenced within the limitations period provided in section 28-01-16.

38-11.1-08. Agreement - Offer of settlement.

Unless both parties provide otherwise by written agreement, at the time the notice required by subsection 2 of section 38-11.1-04.1 is given, the mineral developer shall make a written offer of settlement to the person seeking compensation for damages when the notice required by subsection 2 of section 38-11.1-04.1 is given. The person seeking compensation may accept or reject any offer so made.

Testimony of Troy Coons on behalf of
Northwest Landowners Association
in opposition to
HOUSE BILL NO. 1510
House Judiciary Committee
February 7, 2023

Chairman Klemin 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 oppose HB 1510 because the attorneys' fees reimbursement provisions of this statute were set up to ensure that it is economic for individual landowners to bring claims related to oilfield uses against large oil companies with significant resources. Litigation is expensive and the claims that exist under the surface damage act are not always claims with a value high enough to justify litigation. The purpose of the provision granting the landowner their fees is to ensure that claims for oilfield uses on small acreages are economic to litigate if the offer from the developer is unreasonable. As of right now, we do not hear of a lot of landowners needing to litigate under this provision.

Amending the law in this way will make it uneconomic for landowners to litigate claims under the surface damage act, and the result will be landowners receiving far less compensation in the oilfield. In general we believe many operators pay reasonable compensation right now in order to avoid litigation specifically because of this attorneys' fees provision. With this change, it will be in the operator's interest to engage in litigation and we will see fewer landowners receiving reasonable compensation. This change is unnecessary and it strips landowners of rights they have long held under the surface damage act. Please do not remove these crucial protections for landowners, and vote do not pass on HB 1510.

Thank you,

Troy Coons
Northwest Landowners Association

Testimony of Derrick Braaten
in opposition to
HOUSE BILL NO. 1510
House Judiciary Committee
February 8, 2023

Chairman Klemin and members of the committee, my name is Derrick Braaten, and I am an attorney in Bismarck, ND. I was one of the attorneys who represented Rick and Rosella Fisher in the litigation brought against them by Continental Resources, Inc. I am here to speak on my own behalf as an attorney who represents surface owners under this law, and also to use the experience the Fisher's had over the past several years as an illustration of why the law should not be changed.

The Fishers first sued Continental in 2013 over a saltwater disposal well constructed on their property. Their litigation was settled in 2016 as to the surface damages, and they and Continental agreed to reserve their dispute about compensation for pore space for if and when Continental ever began using the disposal well. Before that settlement, however, the courts had ruled that Continental had a legal obligation under NDCC chapter 38-11.1 to pay compensation for use of pore space to the Fishers if it used the well.

In fall of 2018, Continental began using the disposal well, and it sued Rick and Rosella Fisher. Continental's lawsuit asked for a declaration from the court that it had no legal obligation to pay the Fishers compensation for use of their pore space for the disposal well. This was confusing since the court had already ruled, and when asked how Continental could take this position the Fishers were assured the law would change.

Shortly after that in 2019 Senate Bill 2344 was passed and it appeared it would remove the Fisher's right to compensation. The Northwest Landowners Association brought a legal challenge to the newly enacted law, and the federal court in the Fisher case was forced to address how the new law impacted the case, as well as how the initial district court ruling from the state courts impacted the case.

Compounding all of this complexity, Continental pushed argument after argument, filing serial motions for summary judgment. The court pointed out that Continental "could have agreed that some compensation was owed and only contested the compensation evidence. Finally, even in contesting liability, it could have limited the arguments to those made based on the facts it claimed could not be disputed and not made other arguments with respect to liability that were non-starters and/or simply a re-argument of what had the court had already decided in Fisher I."

Testimony of Derrick Braaten
in opposition to
HOUSE BILL NO. 1510
House Judiciary Committee
February 8, 2023

The court went on to call Continental's characterization of an earlier order of the court "absurd on its face."

The ultimate jury award in the Fisher case was low, but this is not the entire story. As the court explained:

First, the resources expended by both parties in terms attorney time and experts appears at first glance to be inordinate given the jury award and what was Continental's maximum exposure when the case was submitted to the jury. As recounted earlier, the jury returned a verdict of \$22,440.25, which appears to be an award of \$.05 per barrel of injected saltwater. Also, the high end of the evidence and the most the Fishers stated during the trial that they were seeking was \$.10 per barrel, which, if awarded by the jury, would have been a verdict of just under \$45,000. **What is important to understand, however, is the complexity of this case, both legally and factually, and the lack of any relevant precedent.** Further, neither party at the commencement of the case argued for it being limited to compensation for injections of saltwater up to the date of trial with the Fishers being entitled to bring successive actions for future injections of saltwater that used and occupied their subsurface. Rather, Continental in initiating the case sought a declaration the Fishers were entitled to not one penny for use of the subsurface. The Fishers, who were concerned they might have one shot at seeking compensation, sought to recover for future injections. Here, **in considering the degree of success as a factor, the court concludes it is appropriate to consider not only that the Fishers obtained an award but also the court's conclusion that they could bring successive action for future injections contrary to Continental's initial claim that the court should declare that nothing was owed—ever.**

Continental also had the option of setting the litigation at any point and refused. The Fishers were seeking \$0.10/bbl, which by the time of trial equated to around \$40,000. The Fishers offered to settle for that amount and even half that amount, which is what they ultimately recovered. Continental refused to settle at that amount with the Fishers unless they waived any and all claims for attorneys' fees. Remember that it was Continental that sued the Fishers. And it was Continental who refused to settle and demanded that the case be tried to a jury. As the federal court noted, "while Continental complains that the Fishers' requested fees and costs are excessive in relation to the size of the jury verdict, it had the option of offering compensation in an amount that would have completely voided any request by the Fishers for fees and costs."

Testimony of Derrick Braaten
in opposition to
HOUSE BILL NO. 1510
House Judiciary Committee
February 8, 2023

Additionally, I represented the Fishers on a contingency basis because I was representing the Northwest Landowners Association in its challenge to SB 2344, and because all of those issues and the very litigation itself overlapped with the Fisher litigation, I agreed to take on the Fisher litigation. I took it on using the same fee agreement as their prior attorneys to help smooth out the transition. Because it is a contingency agreement by which I agreed to take 33% and the Fishers 67% of the total pot, the way it works out in this case is that I get 33% of the \$22,000 award the Fishers obtained and they receive 67% of the fee recovery we obtained. And I think that's fair, because the Fishers were put through a massive amount of stress as Continental's test case and it was not fair to them that their property became ground zero for a massive legal fight over pore space ownership and compensation. But they stood up for their land and for themselves and in the end, I am totally confident that if you read the court's opinions and look at the same evidence the jury considered, you would reach the same conclusions that our judge and jury in the litigation reached. And if you do, you will agree that we do not need to make the changes embodied in HB 1510 and for that reason I ask you to vote do not pass.

Thank you,

Derrick Braaten

23.0991.03001
Title.

Prepared by the Legislative Council staff for
Representative Klemin
February 10, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1510

Page 1, after line 7, insert:

"1."

Page 1, line 10, after the period, insert:

"2."

Page 1, line 11, after "owner" insert "before the start of the litigation"

Page 1, line 12, replace "deem" with "award"

Page 1, line 12, remove "the prevailing party that is entitled to"

Page 1, line 13, after the underscored period insert:

"3."

Page 1, line 14, after "developer" insert "to the surface owner before the start of the litigation"

Page 1, line 15, remove "as the prevailing party"

Page 1, line 15, remove "In addition to determining and awarding"

Page 1, line 16, remove "compensation"

Page 1, line 16, overstrike ", the court shall award the"

Page 1, line 16, remove "surface owner"

Page 1, line 17, overstrike "reasonable attorney's fees,"

Page 1, line 17, remove "and"

Page 1, line 17, overstrike "costs assessed by the court,"

Page 1, line 17, remove "not to exceed the total"

Page 1, line 18, replace "amount of compensation awarded by the court to the surface owner."
with:

- "4. If the surface owner rejects an offer of settlement made by the mineral developer after the start of the litigation and the amount of compensation awarded by the court to the surface owner is greater than the offer of settlement, the surface owner is entitled to an award of reasonable attorney's fees and costs assessed by the court.
5. Notwithstanding any provision of the North Dakota Rules of Civil Procedure, if the surface owner rejects an offer of settlement made by the mineral developer after the start of litigation, and the amount of compensation awarded by the court to the surface owner is less than the offer of settlement, the surface owner is entitled to an award of reasonable attorney's fees and costs incurred by the surface owner before the date of

the offer of settlement, but is not entitled to any award of reasonable attorney's fees and costs after the date the offer of settlement was made to the surface owner.

6."

Page 1, line 19, remove "over and above the amount offered by the"

Page 1, line 20, remove "mineral developer and"

Page 1, line 22, remove "If the mineral developer issues an offer of settlement under rule 68 of the North"

Page 1, remove lines 23 and 24

Page 2, remove lines 1 through 5

Renumber accordingly

Introduced by

Representatives Klemin, Cory, Karls, J. Olson

Senator Sickler

1 A BILL for an Act to amend and reenact section 38-11.1-09 of the North Dakota Century Code,
2 relating to legal fees and costs a surface owner or mineral developer may be awarded in cases
3 relating to the development of minerals.

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

5 **SECTION 1. AMENDMENT.** Section 38-11.1-09 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **38-11.1-09. Rejection - Legal action - Fees and costs.**

- 8 1. If the ~~person~~surface owner seeking compensation rejects the offer of the mineral
9 developer, ~~that person~~the surface owner may bring an action for compensation in the
10 court of proper jurisdiction.
- 11 2. If the amount of compensation awarded by the court to the surface owner is greater
12 than that which had been offered by the mineral developer to the surface owner before
13 the start of the litigation, the court shall deem award the surface owner the prevailing
14 party that is entitled to reasonable attorney's fees and costs.
- 15 3. If the amount of compensation awarded by the court to the surface owner is less than
16 that which had been offered by the mineral developer to the surface owner before the
17 start of the litigation, the surface owner is not entitled to attorney's fees and costs as
18 the prevailing party. In addition to determining and awarding compensation, the court
19 shall award the person seeking compensations surface owner reasonable attorney's
20 fees, any and costs assessed by the court, and not to exceed the total amount of
21 compensation awarded by the court to the surface owner.
- 22 4. If the surface owner rejects an offer of settlement made by the mineral developer after
23 the start of the litigation and the amount of compensation awarded by the court to the

- 1 surface owner is greater than the offer of settlement, the surface owner is entitled to
2 an award of reasonable attorney's fees and costs assessed by the court.
- 3 5. Notwithstanding any provision of the North Dakota Rules of Civil Procedure, if the
4 surface owner rejects an offer of settlement made by the mineral developer after the
5 start of litigation, and the amount of compensation awarded by the court to the surface
6 owner is less than the offer of settlement, the surface owner is entitled to an award of
7 reasonable attorney's fees and costs incurred by the surface owner before the date of
8 the offer of settlement, but is not entitled to any award of reasonable attorney's fees
9 and costs after the date the offer of settlement was made to the surface owner.
- 10 6. The court shall award interest on the amount of the final compensation ~~over and~~
11 ~~above the amount offered by the mineral developer and~~ awarded by the court from the
12 day drilling is commenced. The rate of interest awarded must be the prime rate
13 charged by the Bank of North Dakota on the date of the judgment. ~~If the mineral~~
14 ~~developer issues an offer of settlement under rule 68 of the North Dakota Rules of~~
15 ~~Civil Procedure, the offer must be the offer for purposes of determining who is the~~
16 ~~prevailing party for the period after the settlement offer. The prevailing party for the~~
17 ~~earlier period is entitled only to reasonable attorney's fees and costs incurred by the~~
18 ~~prevailing party on and after the date the settlement offer was made and the prevailing~~
19 ~~party for any earlier period is entitled only to reasonable attorney's fees and costs~~
20 ~~incurred by the prevailing party before the settlement offer was made with the net~~
21 ~~award of attorney's fees and costs not to exceed the limits in this section.~~

ENGROSSED HOUSE BILL 1510
Testimony of Todd D. Kranda
Senate Energy and Natural Resources Committee

- March 23, 2023 -

Chairman Patten and members of the Senate Energy and Natural Resources Committee, for the record, my name is Todd D. Kranda, I am an attorney with the law firm of Kelsch Ruff Kranda Nagle & Ludwig in Mandan, ND. I am appearing before you as a lobbyist on behalf of the North Dakota Petroleum Council.

The North Dakota Petroleum Council represents more than 600 companies in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota.

The North Dakota Petroleum Council (NDPC) is in support of Engrossed HB 1510, which was amended by the House Judiciary after the hearing to address concerns that were mentioned by landowners. If there are additional concerns, NDPC is more than willing to review and consider any further changes that promote and encourage reasonable offers to be provided to landowners involved in any legal matter covered by this damage compensation statute.

1510 was introduced to clarify the damages compensation statute without changing the ultimate intent and effect, which is to establish reasonable and fair guardrails on how attorneys' fees and court costs are awarded in litigation matters under the Oil and Gas Production Damage Compensation Act, Chapter 38-11.1 of the North Dakota Century Code. 1510 specifically amends Section 38-11.1-09 which addresses the surface owner's rejection of the settlement offer made by the mineral developer, the commencement of a legal action and the award of legal fees and costs, as well as interest.

This statute being updated was enacted in 1979, forty-four (44) years ago. During that period since the enactment of this statute, there hasn't been a single case heard by the

North Dakota Supreme Court involving a dispute of damages between a surface owner and an oil company. There was a Federal Court case in 1983 that confirmed the constitutionality of the statute recognizing the underlying purpose of encouraging and promoting good-faith settlement offers as a rational basis. The purpose of the original statute was for compensation issues relating to actual drilling operations, actual operations by an oil and gas company which disrupted the surface estate and caused damage by the location of a well site and associated facilities.

The purpose of the statute was to require a mineral developer to make an offer of settlement for damages caused by oil and gas drilling and exploration operations which disrupted the surface estate.

The statute encouraged settlement by requiring the operator to make a settlement offer to the surface owner at the same time when the notice of operations was provided which was twenty-days before commencement of drilling operations. If the settlement offer was unacceptable to the surface owner, the surface owner could reject the offer and sue for damages. If the court awarded the surface owner greater damages than the offer made by the mineral developer, then the surface owner also was entitled to reasonable attorney's fees and costs, but the surface owner would not be awarded attorney's fees if the compensation determined by the court was less than the mineral developer's offer.

The North Dakota Supreme Court has subsequently ruled that this surface compensation statute, namely Section 38-11.1-09, also applies to claims involving pore space issues, pore space being a surface interest. However, the statute when enacted 44 years ago did not contemplate claims for anything but above ground or actual surface disturbance relating to drilling operations.

The issue with pore space claims is there may never have been an express offer for pore space alone, or there may be situations where the operator does not believe there is a pore space claim for damages. For example, under the statute as originally enacted, an

adjacent pore space owner could sue claiming trespass or other claims without an opportunity for the operator to consider making an offer before such a lawsuit is commenced. Once the lawsuit is commenced, and no offer was made, then the pore space owner could be entitled to their attorney's fees and costs even if the Court only awarded \$1 in nominal damages since no offer had been presented and the opportunity to do so is not provided for under the statute.

1510 does not change the original process contemplated under Section 38-11.1-09, but retains that original intent and purpose, the operator must still make an offer for surface damages, and if the surface owner rejects the offer, sues, and receives an award greater than the offer, then the surface owner still is entitled to attorney's fees.

What 1510 changes is the opportunity to present an offer of settlement after the commencement of litigation which would then be treated the same as the original process for awarding attorney's fees and costs with an offer before commencement of drilling. The surface owner may reject an offer of settlement made by the mineral developer after the commencement of litigation, and if the compensation awarded by the court to the surface owner is less than such offer of settlement, then the surface owner is only entitled to reasonably attorney's fees and costs incurred by the surface owner prior to the date the offer of settlement was made. On the other hand, if the surface owner rejects an offer of settlement made by the mineral developer after the commencement of litigation, and the compensation awarded by the court to the surface owner is greater than the offer of settlement, then the surface owner is entitled to reasonably attorney's fees and costs incurred both prior to and after the commencement of litigation.

1510 attempts to provide for a degree of fundamental fairness. 1510 updates and partially levels the playing field, especially after litigation is commenced by allowing offers for settlement after the commencement of litigation. 1510 will encourage settlements, rather than encourage litigation.

As is currently in effect under Section 38-11.1-09, there is no incentive for a surface (or pore space) owner or their attorneys to settle during litigation if the mineral developer never made an offer prior to the surface owner commencing a lawsuit. Therefore, 1510 attempts to provide for and encourage settlement and resolution which ultimately benefits both surface owners and mineral developers.

The changes requested under 1510 are reasonable, appropriate, and necessary for the damage compensation statute with the changes that have occurred since Section 38-11.1-09 was enacted in 1979, 44 years ago.

The North Dakota Petroleum Council strongly supports the passage of Engrossed **HB 1510** and urges a **Do Pass Recommendation**. Thank you for the opportunity to provide this information. I would be happy to answer any questions.

Testimony of Troy Coons on behalf of
Northwest Landowners Association
in opposition to
HOUSE BILL NO. 1510
Senate Energy and Natural Resources
March 23, 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 oppose HB 1510 because the attorneys' fees reimbursement provisions of this statute were set up to ensure that it is economic for individual landowners to bring claims related to oilfield uses against large oil companies with significant resources. Litigation is expensive and the claims that exist under the surface damage act are not always claims with a value high enough to justify litigation. The purpose of the provision granting the landowner their fees is to ensure that claims for oilfield uses on small acreages are economic to litigate if the offer from the developer is unreasonable. As of right now, we do not hear of a lot of landowners needing to litigate under this provision.

Amending the law in this way will make it uneconomic for landowners to litigate claims under the surface damage act, and the result will be landowners receiving far less compensation in the oilfield. In general we believe many operators pay reasonable compensation right now in order to avoid litigation specifically because of this attorneys' fees provision. With this change, it will be in the operator's interest to engage in litigation and we will see fewer landowners receiving

reasonable compensation. This change is unnecessary and it strips landowners of rights they have long held under the surface damage act.

We have included a proposed amendment to the bill that would address our primary concern with how this bill impacts the settlement dynamics. Our attorney will explain this amendment and how it addresses our concerns. We feel that the attached proposed amendment addresses these concerns, but also believe that this law works well as it was written and intended and that the changes brought forth by HB 1510 are unnecessary and are an attack by some members of the industry on one of the few tools we as landowners have to protect our land and its value.

Thank you,

Troy Coons

Northwest Landowners Association

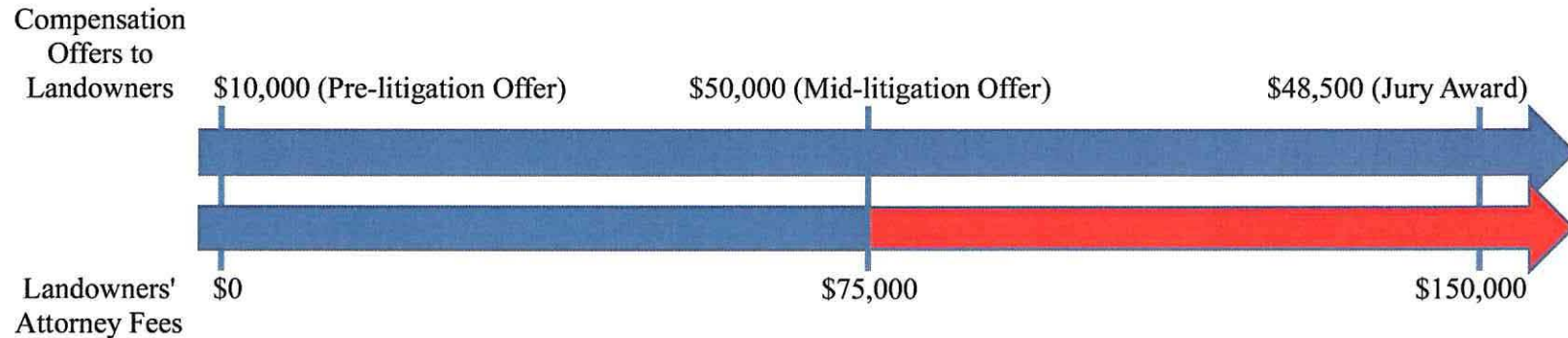
PROPOSED AMENDMENTS TO SENATE BILL NO. 1510

Page 2, lines 1-7, delete "5. Notwithstanding any provision of the North Dakota Rules of Civil Procedure, if the surface owner rejects an offer of settlement made by the mineral developer after the start of litigation, and the amount of compensation awarded by the court to the surface owner is less than the offer of settlement, the surface owner is entitled to an award of reasonable attorney's fees and costs incurred by the surface owner before the date of the offer of settlement, but is not entitled to any award of reasonable attorney's fees and costs after the date the offer of settlement was made to the surface owner"

And replace with

- "5. If the surface owner accepts an offer of settlement made by the mineral developer after the start of litigation in an amount greater than that which had been offered by the mineral developer to the surface owner before the start of the litigation, the court shall award the surface owner the reasonable attorney's fees and costs incurred by the surface owner before the date of the offer of settlement.
6. If the surface owner rejects an offer of settlement made by the mineral developer after the start of litigation, and the amount of compensation awarded by the court to the surface owner together with the reasonable attorney's fees and costs incurred by the surface owner before the date of the offer of settlement is less than the offer of settlement, the surface owner is entitled to an award of reasonable attorney's fees and costs incurred by the surface owner before the date of the offer of settlement, but is not entitled to any award of reasonable attorney's fees and costs after the date the offer of settlement was made to the surface owner."

Landowner's opinion of damages = \$50,000



- If the landowner accepts the \$50,000 mid-litigation offer, but has already paid \$75,000 in fees, he will incur an out-of-pocket *loss* of **\$25,000**. ($\$50,000$ mid-litigation offer - $\$75,000$ in mid-litigation fees = $\$-25,000$). In effect, the landowner has received \$50,000 for damages which makes them whole on damages, but because the offer does not include prior fees the landowner's net loss is **\$75,000**.
- If the landowner declines the \$50,000 mid-litigation offer and is awarded just \$1,500 less than the offer and his opinion of damages at trial, the landowner loses \$75,000 in fees, making the landowner's out-of-pocket loss **\$26,500**. ($\$48,500$ jury award - $\$75,000$ post mid-litigation offer fees = $\$-26,500$). And again, because the landowner cannot recover the fees after the mid-litigation offer, the landowner is made whole by the \$48,500 from the jury, but again has a net loss of **\$75,000** to pay the fees to get there.

Tex Hall Testimony on HB 1510
March 30, 2023

Dosha (Hello), Senator Dale Patten, Chairman

My name is Tex Hall, a Landowner from Mandaree, ND, and Chair of the Fort Berthold Landowners Association. We have several thousand oil wells and many pipelines located on Fort Berthold and majority of landownership is from individual landowners. Our Association advocates on behalf of those landowners that request our assistance.

I write this testimony in opposition to HB 1510 as it will make it more difficult for the surface landowner and family to have to pay for legal fees for those who are in litigation. This will make it more difficult to obtain easements and avoid litigation which will have negative impacts on mineral development. The bill language of items 2 and 3 whereby the amount of compensation to the surface owner is greater than or less than or before the start of litigation creates an unfairness to landowner and advantage to mineral developer. The court should determine attorney fees not this Bill and lets the mineral developer off the hook from paying legal fees. Furthermore, this creates a hindrance from a landowner right to sue and obtain fair market compensation and have to accept a lower compensation to avoid paying legal fees.

This Bill is not in the best interest of the landowner and family as it creates this unfairness and I am opposed to it. .

Maa zagidaz (Thank you) for the opportunity to provide testimony on this very important Resolution.

Tex Hall, Fort Berthold Landowners Association

Chairman Patten and committee members,

I'm Thomas Wheeler, Fourth generation Farmer at Ray, ND. My family lives on the homestead my Great Grand parents started in 1902. I am not representing any association or any other entity. I am not only here representing myself but the many, many surface owners who share my view on these issues. Please vote NO on HB 1510. Some companies are running over surface owners now. HB 1510 will make it easier for more landowners to get run over especially those without the means to fight back.

I have examples of what can and does happen now with the current law in place. The Williston Research and Extension center is west of Williston right along highway 2. It is part of the North Dakota State University system and thus State Of North Dakota property. An oil company wanted to put an oil well pad on WREC property along highway 2. WREC did not want to lose any acreage. WREC can't replace any acres lost. Industry didn't care. Sometimes industry will move a pad to the other side of a road. In this case they couldn't as the land on that side was being developed, being sold by the square foot. Industry made an offer for the well site property. The offer was the same as offers being made for pads ten miles out in the country. No adjustment for research property. No adjustment for land right next to property selling by the square foot. Industry gave the twenty-day notice and drilled the well. Zero compensation. Some months later the oil company filed bankruptcy. A different company owns the well now. To date WREC has not received any compensation. Looks like it will be Zero compensation for forever to Williston Research and Extension Center. Industry wins again.

A classmate of mine since first grade has some property inside the extraterritorial line of Williston. An oil company wanted a well pad on his land. My classmate passed away and his daughter has the property now. Again this oil company only offered the same as they would offer out in the country , away from Williston. There are commercial buildings right across the property line south of wellsite and my friends had sold some property on the eastside of wellsite to developers. Oil company resisted fair location compensation. Oil company did give 20-day notice with a small offer May of 2022. As of last week, they had still not settled but no dirt has been moved. Industry hasn't won yet, but are definitely in charge of the direction this issue takes.

I feel lucky. Hess has the oil lease on all the land we own and most of the farm land we rent. They have been fair to deal with and have addressed issues promptly. We have recently rented some new land that has wells on it operated by Krakken. Krakken also has been very good about any issues that pop up.

Yes, there are a number of good companies but there are always the scoundrels that care zero about the surface owner or the Williston Research and Extension Center or the state of North Dakota. They only want to take every dollar they can out of our great state. Monkey see, monkey do. When do the "good" companies look at this and say Wow, we could save \$50,000 per pad on 39 pads is almost \$2 million. History shows oil industry is driven by profits. Nothing wrong with profits. Every industry needs to make a profit. But when profits come at the expense of North Dakota residents, that is wrong!

Value of property is usually determined when there is a willing buyer and a willing seller. Sometimes the buyer is willing to run over the unwilling seller.

I am pro oil production. I am pro pipelines. I get it. Our North Dakota is in good financial shape because of our oil. Estimates of \$1.2 billion have been mentioned for reclamation. Where do those funds come from?

Most bills brought to North Dakota legislature have a benefit to people of North Dakota. HB 1510 only benefits those in the oil industry. We need a bill that prevents taking of property without having to use the court system.

Please vote no on HB1510.

Thanks for your time.

Thomas Wheeler

Farmer and surface owner in oil country

Will try to answer any questions

Testimony of Ben Murphy
in opposition to
HOUSE BILL NO. 1510
Senate Energy and Natural Resources
March 30, 2023

Chairman Patten and members of the committee, my name is Ben Murphy and I am a landowner in Dunn County. I am writing to ask you to vote against HB 1510, which is a direct attack on landowner rights in North Dakota. I have negotiated dozens of easements, surface agreements, and other contracts for oilfield uses on my property. I am supportive of the industry and have allowed most kinds of development on my property.

We have serious concerns about produced water pipelines and spills, though. We are in a dispute with a major operator over a produced water line that we did not want. We asked them to bore it and they refused. They offered us \$25/rod for the pipeline when we are receiving hundreds and recently over \$1,000/rod for pipelines. So we sued, and two years into the litigation the company finally sent us an offer for the amount we had asked for initially, but it would not reimburse our attorneys' fees. That would have left us going backwards on compensation. This new law would have allowed the company to force us to lose what we gained in compensation by having to pay attorneys' fees. Companies should not be able to change the settlement dynamic and fee recovery dynamic in the middle of the game like this. The real reason for this legislation is to stop litigation under the surface damage act. The removal of the cap on fees at the level of the verdict was a good step, but the bill as it is still written is wrong and offensive to landowners. I urge you to vote DO NOT PASS on HB 1510 and stand with the landowners.

Thank you,
Ben Murphy

Testimony of Keith Rychner
in opposition to
HOUSE BILL NO. 1510
Senate Energy and Natural Resources
March 30, 2023

Chairman Patten and members of the committee, my name is Keith Rychner and I am a rancher in Dunn County. I am writing to ask you to vote against HB 1510, which is a direct attack on landowner rights in North Dakota.

We are currently in the middle of a legal battle with a major oilfield company over surface damages. Their original offer was much lower than competing companies in our same area for the same thing. They didn't want to negotiate, so the only options we had at that point were to roll over or sue them. We sued.

1510 would make that impossible as a couple years of lawyer's fees are going to be far higher than any settlement. That's taking away the only tool you have to negotiate against an implied easement. I believe the real reason for this legislation is to stop litigation under the surface damage act.

I urge you to vote DO NOT PASS on HB 1510 and stand with the landowners.

Thank you,
Keith Rychner