

2009 SENATE NATURAL RESOURCES

SB 2141

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2141

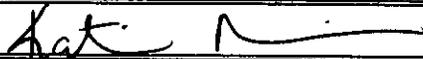
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 9, 2009

Recorder Job Number: 6737

Committee Clerk Signature



Minutes:

**Senator Lyson**, Chairman of the Senate Natural Resources Committee brought the committee to order.

Attendance was taken indicating all members of the committee were present.

**Senator Lyson** opened the hearing on SB 2141, relating to the damages to land surface caused by subsurface mineral extraction and related exploration.

**Lynn Helms**, Director of the Industrial Commission's Department of Mineral Resources, introduced SB 2141 (see attached testimony #1).

**Senator Lyson** wanted Lynn to clarify page 3, section 2, lines 3 and 4.

**Lynn Helms** responded that this section differs in language from the oil and gas law. The surface owner can request annual payments. If they request an annual payment that is the way they have to be paid. This is the number one complaint that we hear in our office from surface owners, that they requested annual payments and company doesn't want to do it that way. So in this statute we chose to set this out in state law and make it clear to both sides.

**Senator Triplett** wanted to know what would be included under the subsurface mineral definition on page 1, section 5.

**Lynn Helms** replied uranium, pot ash, germanium, molybdenum and there is also interest in sodium chloride. There is one place in the state where there are very low grade gold deposits located in some sand deposits that we will be looking at in a project that we are proposing this year.

**Senator Hogue** had a follow up question to Senator Triplett's regarding section 5. Your new division is intended to address all the elements that are covered under the provisions of 38-12, but when you go to 38-12 there is a different definition for subsurface minerals. Why is that?

**Lynn Helms** replied that he may have missed characterized when I talked about the definition section, because part 5 of section 1 of the bill says the definition will be what is in 38-12. We can change the wording if the committee would like.

**Senator Schneider** asked if we have anything to learn from the other states in terms of the legal regimen governing the extraction of subsurface minerals.

**Lynn Helms** responded that we certainly do. When we propagated the administrative rules or regulation of this type of operation we started with the Nebraska rules. We then found that South Dakota had reprocessed those rules, so we compared those two sets of rules. We started with the Nebraska rules, but went off the South Dakota rules and made some improvements off of them.

**Dave Glatt**, Chief of the Environmental Health Section for the North Dakota Department of Health, although we do not object to the majority of the bill as written, we wanted to present our concerns relating to Section 38-11.2-02 (see attached testimony #2).

**Senator Triplett** asked how you can say it will cost you nothing if you still do site visits and etc it seems to me there should still be some sort of fiscal impact.

**Dave Glatt** responded that there will be some impact. We have a responsibility to make sure that the environmental protection regulations are implemented and complied with across the

state so we have inspectors that go out and visit the site anyway. The big change is when we are required to do an investigation, subsurface and putting in our own wells, it is absorption of cost, a lot greater than what normally do now. It will add a little bit of extra cost to us but we already have the inspectors out there looking at environmental issues, so I am very confident that if we were to follow up on this it wouldn't cost us that much more.

Senator Triplett asked Dave to explain what an inspection all entails.

**Dave Glatt** replied interviewing the complaining party, checking data and files, and meeting with the operator.

**Senator Lyson** closed hearing on the bill and opened it up for committee discussion.

**Senator Hogue** suggest an amendment to subsection 2 so read that it will be an annual installment unless the developer and surface owner otherwise agree.

**Senator Schneider** agreed with Senator Hogue. I just don't understand the policy justification for taking away the land owner and the developer's right to contract.

**Senator Lyson** asked Levi Andrist, (intern) to draw up the amendment.

**Senator Hogue** wants to amend section 5 on page 1 so the subsurface mineral definition is repeated from section 38-12.01-7.

**Senator Lyson** asks Levi Andrist to draw up the amendment.

**Senator Triplett** requests that they keep the subparagraph format in the amendments.

Everyone agrees.

**Senator Lyson** closed the discussion on bill 2141.

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2141

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 22, 2009

Recorder Job Number: 7512

Committee Clerk Signature



Minutes:

**Senator Lyson** opened the discussion on 2141, relating to damages to land surface caused by subsurface mineral extraction and related exploration. All committee members were present.

**Senator Triplett** asked Lynn Helms to answer some questions on the amendments.

**Lynn Helms**, I talked with Levi Andrist (legal intern) earlier and found the amendments to be satisfactory. The first amendment implements what Mr. Glatt and the health department wanted to do with 38-11.2-02, inspect the well sites by the health department. The next one does in fact remove the existing language which requires annual payments and inserts the language from 38-11.1 which allows a negotiation between the surface owner and operator and if the owner desires annual payments they can request them. The final one deals with the issue of sand and gravel under the definitions that's on page 1 of the current bill, line 24. We over simplified the definition, and it is a benefit to insert the words rocks that will be crushed to produce the gravel.

**Senator Hogue** asked Senator Triplett what the reason for replacing investigation with site visit was, because she had questioned it during the hearing.

**Senator Triplett** I think it was the time on task and the money that they would have to spend do to a larger investigation as opposed to just a site visit.

**Lynn Helms**, We had a long discussion before the bill was presented. His concern was that an investigation has been interpreted in various court cases as actually drilling bore holes, doing long term monitoring, setting up equipment and dedicating man power and personnel. A site visit would be someone who is already employed going out and discussing, with the person making the complaint, their concerns and actually checking records on the site to see if they are in compliance with the permit. It could lead to a full blown investigation. The fiscal note tied to investigation goes to zero, if you change it to site visit.

**Senator Triplett** motions to pass amendments.

**Senator Hogue** seconds the motion.

Roll call (#1) was taken, 7 yeas-0 no, motion passed.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2141

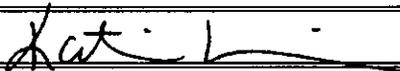
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 29, 2009

Recorder Job Number: 8178

Committee Clerk Signature



Minutes:

**Senator Lyson** opened the discussion on SB 2141.

Committee reviews the amendment.

**Senator Pomeroy** moved a Do Pass as amended.

**Senator Triplett** seconds the motion.

The bill received a Do Pass as amended on a vote of 7 to 0.

**FISCAL NOTE**  
 Requested by Legislative Council  
 02/02/2009

Amendment to: SB 2141

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$0		\$0	
Appropriations			\$0		\$0	

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Amendment to SB 2141 reducing the agency involvement to a site visit and evaluation of existing environmental data under laws and rules implemented by the agency will result in no fiscal impact.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Kathy J. Albin	<b>Agency:</b>	Health Department
<b>Phone Number:</b>	328.4542	<b>Date Prepared:</b>	02/02/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/06/2009

Bill/Resolution No.: SB 2141

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>						
<b>Expenditures</b>			\$200,000		\$200,000	
<b>Appropriations</b>			\$200,000		\$200,000	

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

38-11.2-02 Requires the state department of health, upon request, to conduct an investigation of environmental impacts at a mining well site. Also it would require the state to take necessary actions to ensure compliance with applicable environmental regulations.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The bill does not clarify who can request the department of health to conduct an investigation and is not limited to any one request. Also it does not clarify what the investigation could entail. It could be interpreted that the state would conduct all necessary and appropriate assessments.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

An investigation could include the assessment of the surface and subsurface geology requiring the collection of soil and water samples and installation of monitoring wells. Typical assessments or investigations requiring monitoring wells and sampling can range from \$5,000 to \$20,000 depending upon the complexity of the investigation and the time required for monitoring (i.e. months to a year). The estimated \$200,000 amount would allow for a minimum of ten investigations to be conducted during the biennium.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Funds for this project are not included in the Department's appropriation bill (SB 2004). The Department will need these funds appropriated to carry out this project.

<b>Name:</b>	Kathy J. Albin	<b>Agency:</b>	Health Department
<b>Phone Number:</b>	328.4542	<b>Date Prepared:</b>	01/08/2008

January 22, 2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2141

Page 1, line 24, remove the second "and" and after "gravel" insert ", and rocks crushed for sand and gravel"

Page 2, line 8, after "request" insert "of another state agency, the surface owner, or an adjacent landowner"

Page 2, line 9, replace "an investigation" with "a site visit", replace "take" with "evaluate site-specific environmental data as", and remove "measures"

Page 2, remove line 10

Page 2, line 11, remove "of the department as outlined in", after "applicable" insert "environmental protection", and after "Code" insert "which are under the jurisdiction of the department"

Page 3, line 3, replace "mineral developer shall pay damages to the surface owner for subsurface" with "surface owner may elect to be paid damages in annual installments over a period of time."

Page 3, remove line 4

Renumber accordingly

Date: Jan 22, 2009

Roll Call Vote #: #1 2141

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number 98158.0101

Action Taken  Do Pass  Do Not Pass  Amended  Amendment

Motion Made By Sen. Triplett Seconded By Sen. Hogue

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	/		Senator Jim Pomeroy	/	
Senator David Hogue, Vice Chairman	/		Senator Mac Schneider	/	
Senator Robert S. Erbele	/		Senator Constance Triplett	/	
Senator Layton W. Freborg	/				

Total (Yes) 7 No 0

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Amendment only

Date: Jan 29, 2009

Roll Call Vote #: 2141

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Sen. Pomeroy Seconded By Sen. Triplett

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	/		Senator Jim Pomeroy	/	
Senator David Hogue, Vice Chairman	/		Senator Mac Schneider	/	
Senator Robert S. Erbele	/		Senator Constance Triplett	/	
Senator Layton W. Freborg	/				

Total (Yes) 7 No 0

Absent \_\_\_\_\_

Floor Assignment Sen. Triplett

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2141: Natural Resources Committee (Sen. Lyson, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2141 was placed on the Sixth order on the calendar.

Page 1, line 24, remove the second "and" and after "gravel" insert ", and rocks crushed for sand and gravel"

Page 2, line 8, after "request" insert "of another state agency, the surface owner, or an adjacent landowner"

Page 2, line 9, replace "an investigation" with "a site visit", replace "take" with "evaluate site-specific environmental data as", and remove "measures"

Page 2, remove line 10

Page 2, line 11, remove "of the department as outlined in", after "applicable" insert "environmental protection", and after "Code" insert "which are under the jurisdiction of the department"

Page 3, line 3, replace "mineral developer shall pay damages to the surface owner for subsurface" with "surface owner may elect to be paid damages in annual installments over a period of time."

Page 3, remove line 4

Re-number accordingly

2009 HOUSE NATURAL RESOURCES

SB 2141

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2141

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 2-26-09

Recorder Job Number: 9817

Committee Clerk Signature

*Nancy L. Gerhardt*

Minutes:

Chairman Porter – Open the hearing on SB 2141.

Lynn Helms – Industrial Commission Dept. Director – See **Attachments # 1 & 2** – This is an Industrial Commission bill coming from the Dept. O Mineral Resources. It creates a new

chapter in the Century Code that is designed to make sure the owners of the surface estate are properly compensated when we use their property for subsurface mineral production. The chapter is modeled after the oil & gas statute, which you've heard a lot about. It is a new chapter 38-11.2-01. In my opinion the oil & gas statute has worked extremely well for over 20 years, and that's the reason we used it as a model for what you see before you. Questions?

Rep. Pinkerton – On page 3 items 2 & 3; line 5 – The surface owner may elect to be paid for damages, but she was concerned this would really be loss of production. Are the damages the loss of production? How would you define that?

Mr. Helms – If you look at item 1 under 11.2-04 you see the loss of production actually is one of the type of damages you would be compensated for. You're correct, that would be the most common type you would get annual payments for. You would get an initial payment for building the road and the drilling pad and all of that, but then later on that facility gets smaller but there is a portion of your land that's going to be taken out of production. You can elect to

get paid in annual installments or you can figure out what that figure will be over 10 or 20 years and get 1 big check. The way we originally authored the legislation, it required annual installments, and we realized it restricted the surface owner's right to negotiate what they wanted. We didn't think it was right, after discussing it with the Senate Natural Resources, that we tie their hands and say it had to be in annual installments. It's the surface owner's choice. Rep. Pinkerton – In section 3, it says the surface owner must be compensated and in 2 it says may elect. Are they contradictions?

Mr. Helms – Part 3 deals with mineral exploration. This is the situation where they dig a few 10' holes or maybe drill some holes, as much as 200' exploring for the minerals. They are disturbing this very small piece of land, then going away and planning their production operation. What we're saying is, you can't require annual payments for this brief use of your surface to just explore for the minerals. If we come back to produce the minerals then that triggers # 2, where you get the big payment and annual installments. If they are just exploring you get a 1 dime payment. If they come back to produce you can get a 1 time or annual installments. So no they don't conflict. One is for production and the other is for exploration.

Rep. Keiser – On page 2 lines 16 through 18 – notice must be given in 20 days to the surface owner. A surface owner could have gone south for a month, and decide not to forward their mail. If this 20 days goes by and somebody comes in and starts drilling and they come home to find this going on. How can we strengthen the surface owner's rights a little bit in terms of the notification? We're going to have problems with this one based on our experience with WSI.

Mr. Helms – This has worked very well in the oil and gas industry, but perhaps there's something I'm unaware of. What we have required in our administrative rules is it has to be a written notice with a return receipt. It has to be sent with certified mail with return receipt

requested. You know, not the date you mailed the notice, but the date the party actually received it. If you are uncomfortable with us taking care of that in the rules, you can insert that here, but I can assure you that's the way we do it in oil and gas and that's the way we intend to do it here. It would be return receipt. You have to have a known date the individual got it in their hands. Not just the day it went into the mail.

Rep. DeKrey – If it's in their administrative rules, and then we put it into law, then we've created a different standard. My fear would be we would be opening something else. As long as it's covered in rules I think we would be better off to leave it all in rules.

Rep. Keiser – As long as it's covered. The way the law reads I guarantee there will be some landowner that will come back and say, "What's this doing on my property".

Dave Glatt – ND Dept. of Health – I'm here today to provide a brief amendment to the bill to ensure all implacable laws and regulations are considered when the dept. of health is requested to conduct a site visit. It has a little background. There is a desire from Mineral Resources Agency to have the Health Dept., upon request, to take a look at any complaints a landowner would have regarding the operation. We periodically may get complaints of spills or release that wasn't caught and so they would ask our agency to take a look at it. The amendment would make sure all our applicable laws would be considered when we go out to the site. I would propose section 38-11.2-02 Inspection of well site. See **Attachment # 3**.

#### Questions

Claus Lembke – ND Association of Realtors – I think this is a fine example of greater protection of surface owner without harming the industry. We support this bill and we urge the you to do the same.

Rep. Dave Drovdal – I'm here as the Representative for Dist. 36. A lot of my constituents own land that there has been oil drilling on, and of course uranium, which I think this bill addresses

more than oil. It is right next to my area, in fact I think some of it has been right in my area North of Belfield. I think this is a good step in the right direction. I commend the Industrial Commission for bring this forth. It is a beginning, I think it's a good beginning. A lot of this language is already in code for oil development. I would like to put a few words of reality into this situation. 1<sup>st</sup>, the notice of drilling operations, are required in uranium. In this bill they have been required for oil development for a number of years, but there are not teeth in them. If the oil company chooses not to notify you, what are you going to do? You go to a lawyer, you pay him \$ 300.00 an hour and pretty soon you've lost the farm because you are absolutely not on a level playing field with the oil companies. You may have lawyers all the time, they're good lawyers, they do it all the time, and I would like to see us put some teeth in that to give our landowners a little more protection. I'm not saying the landowners should have dominant power over it, but I believe we could do a little bit more for them. The offer of a written settlement, that's a great thing, but it's nice to put in this language. I can tell you from a person who's had to go through this it are just about impossible to get them to give you a written notice. They're going to make you offer after offer after offer until such point it would be very little chance you would be able to go to court and actually be able to get them. In most cases you've got a landowner that's never been in court in his life is sitting there looking down and it's just not a level playing field. If there is some way we could strengthen that a little more it would be great. Both for the uranium and for the oil. I really think this does pertain to both when you read the headline. If it doesn't it should. After 50 years of oil discovery in ND, I'm glad to see we're trying to strengthen some of our bills. 2<sup>nd</sup>, the Industrial Commission is not the place our surface owner should have to go to mediate with the oil field. They are good people in the Industrial Commission, they're hard working, but, they deal with the oil developers on a daily basis. They get to be good friends, they work together, you get a guy coming in and you're the

underdog when you go in front of that committee. You don't know how they operate, you don't know what kind of information to bring. They are used to working with those other people. We need to come up with a mediation board with a much more independent group. They'll sit there and listen to the difference between the landowner and the developer in all areas of mineral development. I am encouraged seeing this. I hope there is more work that can be done on this to give protection to the surface owner all over ND. Questions

Chairman Porter – Further testimony in support of SB 2141? Any opposition to 2141? Seeing none we will close the hearing on SB 2141.

Chairman Porter – We have a motion from Rep. DeKrey and 2<sup>nd</sup> from Rep. Pinkerton to move the health dept. amendment. Discussion? Seeing none all in favor unanimous voice vote – opposed none – motion carries.

Chairman Porter – Mr. Helms would you step back up there is just a couple things I was unclear of. The mediation he was talking about with the Industrial Commission – I don't see that anywhere.

Mr. Helms – The Industrial Committee doesn't mediate these disputes with the oil and gas industry nor with the mineral industry. They would be part of the negotiations between the surface owner and the mineral developer under this situation. If they were unable to resolve their differences their choice is to go to district court. That is what is in the bill. There is not mediation board or mediation group other than the court. I have talked to the oil and gas attorneys about that situation and we have had this in place since about 1986. About 22 years. There have been a number of cases that were actually appealed to district court, between 12 and 20, none of them have ever gone to trial. In every case, by hiring an attorney

and getting down to brass tacks they were able to reach agreements before they ever reached trial. While I understand it is a burden on the surface owner to hire an attorney and to go after that, if they think they are being wronged that is the right venue for them to take. That has been working. That is how they are mediated. What Rep. Drovdal was probably referring to, in regards to the Industrial Commission mediating things, is when it comes down to the pooling and the risk penalties and those sort of things, those are in chapter 38-08, and we do mediate those agreements, and they do come before us. We try to make the decision according to law. You've given us the test of, did they provide the proper notice; did they send out a ???? to participate; did they make a fair offer to lease and on down the line. If we can check off those boxes, we issue an order saying yes, or if we can't check them off we issue an order saying no.

Chairman Porter – The other area on page 2, section 3, subsection 4 talks about what teeth are in there for lack of notification. If there is a lack of notification, there isn't anything inside of your jurisdiction where you would charge them with an infraction of the law or something else that has to go back to the court system?

Mr. Helms – You are correct. If they fail to give that notification, there is nothing within our administrative authority to fine them or hold up their permit, or anything like that. What the law simply states is they are then eligible to receive punitive damages. In addition to their law suit. I think that's what is appropriate. Since this disagreement is going to be settled in district court, and they have punitive damages hanging over their head, I think they are going to make every effort to make sure that notice is given. The method of notice is dealt with in our administrative code and that was the source of discussion with Rep. Keiser about returning

????? and that sort of thing. We do have rules about how you get the actual physical methods

of giving the notice. As far as any fine or punishment for not giving it, that's covered under punitive damages. I think that's the right way.

Chairman Porter – Any questions for Mr. Helms?

Rep. Keiser – I think Rep. Drovdal has a legitimate point. I'm not sure if we have a solution. I do think we should have a discussion on whether or not there is an intermediate step before going to court. You do have a surface owner, and they may be relatively wealthy, I don't know, but going to court is not a pleasant experience. These companies have banks of attorneys. This is not too different, from WSI, where you have injured workers who have to go up against the system. They have the opportunity to go into the mediation. They can still go to district court. I can see where people are fearful of court, and they settle, just take whatever happens finally. That is a very difficult situation to be in. I think the fact the only remedy you have is to take them to court. I think they should lose their permit if they don't follow our procedures. I think that would put a lot more teeth into the rights of the landowners. If they had to pull the permit if they violate the rules. That's just my own perspective.

Mr. Helms – Rep. Keiser has a point and a big part of that point is, as you have heard in several of your hearings, there are not enough oil and gas attorneys. All living breathing oil and gas attorneys in ND are digging their way through banker's boxes of title records. Trying to get titles settled. There is a shortage of people who are qualified to take this case and do the negotiations with the oil company. Therein lays the difficulty. The second thing I would comment – is I do council surface owners regularly with regards to this. Frequently what I'll find out from them is there are going to be a number of wells drilled on their land, or a fairly area disturbed. I'll say, generally if they're not able to come to terms with the oil company, and they have a hard time justifying hiring a lawyer, I say, once you have 2 or 3 of these the critical mass is there and it is worth hiring an attorney and getting them to negotiate for you. If it is a 1

well situation, it is very difficult for the surface owner to hire legal help and take this on. Once it reaches 2 or 3 or more well there is enough critical mass there it is clearly in their interest to hire an attorney and follow it through to the end. I don't exactly have the solution for you either. I agree with Rep. Drovdal the Industrial Commission is the right place to mediate these. Chairman Porter – Inside of the rules for permitting, what part of any failure of these sections would cause you to suspend or pull somebody's permit?

Mr. Helms – As it stands right now, nothing here. Unless they refuse to do the proper reclamation. If they caused some damages and refused to do the proper reclamation. Even with that case, what we would do is freeze their bond. We would take their bond and set it up. I guess is you are contemplating doing something that is one thing that really gets their attention. They have a \$100,000 CD sitting at the Bank of ND typically allowing them to permit wells. We will just sit that's frozen. If you want to permit another well, let's see another \$100,000. That really gets their attention. That is a possible remedy to this. There may even be a recommendation in for a study about surface owner / mineral developer relations.

Rep. DeKrey – I just want to comment on Rep. Keiser's thought that there should be an interim before you went to court. I've have experience with the administrative process through the USDA, of course that's federal government, and that's a nightmare. I'd rather go right to court and settle it. If you get into their administrative process this guy makes a decision and then you have 30 days to appeal, then they send you 300 miles this way, to another board for a decision and you have 30 days to appeal that, then you can go to Washington, DC to appeal it there. Once you enter the administrative process it's all USDA people paid by USDA that will determine the guy that worked for the USDA you had the disagreement in the first palace is right or wrong.

Rep. Keiser – That is the perfect example of what not to do. As Rep. Drovdal said, why not have 3 legislators, or some combination of legislatures, health dept, and/or Lynn's dept. to go to.

Chairman Porter – Part of what this goes back to is the same issue we have when we are dealing with the wind and other energy areas. People see dollar signs, they don't read contracts and they sign and then regret their decision. They come back here and we're spelling out the whole condition of leases, and in wind energy you can't sign a lease for more than 5 years. You talk about taking away someone's personal property rights, if I own property and I want to sign a 10 year lease, you've told me I can't do that because I'm not smart enough to do it. You really dive into another whole area here. Once again, I don't know how more protective we can be for an individual than to allow them to use the Judicial branch of government the way it is intended to be used. It seems like the more reasons we try to protect an individual from the boggy man the deeper and deeper we get into it.

Rep. Pinkerton – On page 3 38-11.2-06 one way you could make this more difficult for the mineral developer is the amount of compensation awarded by the court is greater than that which had been offered by the mineral developer, the court shall award the person seeking compensation reasonable attorney's fees. You could put double

Rep. Keiser – triple

Rep. Pinkerton = or triple the attorney fees and reasonable costs. That would make the developer much more likely to reach reasonable settlement, rather than take the risk of paying triple fees. It's easy to do. You just insert one word and it would make the attorneys take the case.

Chairman Porter – Further comments? We'll hold this and you can sleep on it and see what you want to do. We'll close the hearing on SB 2141.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2141

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 3-5-09 Part 1 of Helms amendment

Recorder Job Number: 10314

Committee Clerk Signature

*Nancy L. Gerhardt*

Minutes:

Chairman Porter – Pull up SB 2141. Mr. Helms drafted these amendments in relationship to uranium, pot ash, and other minable minerals. In the process of the hearing Rep. Drovdal testified that there should be more teeth in the notification process and Rep. Keiser had some concerns regarding to failure to provide proper notice. This is what Mr. Helms came back to me with. See **Attachment # 1**. As long as we had a few minutes I thought I would pass this out so everyone could see what we were doing. Mr. Helms will be here right at 3 PM and we will take this bill up right away when he gets here.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2141

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 3-5-09

Recorder Job Number: 101317

Committee Clerk Signature

*Nancy L. Gerhardt*

Minutes:

Chairman Porter – Pull up 2141 and Mr. Helms drafted some amendments based on the concerns voiced during the first hearing.

Mr. Helms - See **Attachment # 1**. I'm not sure, is this a requirement? I'm getting into an area I'm not sure of. Would the legislative council be required to take this up as a study?

Rep. Keiser – It should say shall consider.

Mr. Helms – Shall consider – OK – that's what I wondered. Does this create a hard and fast requirement.

Rep. Keiser – If you want it to be not hard & fast.

Chairman Porter – That language would work in a resolution, but once it's placed in a bill and it says that then they have to do it.

Mr. Helms – Once it's in a bill then a shall is a shall. While it's in a resolution a shall is a shall consider. OK We should insert the word consider there I think. The study of alternatives to damages and disruption payment settlements. Those are the 3 amendments discussed at the hearing. The Industrial Commission would support amending Engrossed SB 2141 with this additional insertion of the word "consider".

Rep. Keiser – The reason we suggested increasing the attorney penalties is the oil companies have banks of attorneys. They come in and assign attorneys. The landowner has to go out and find an attorney. This is kind of leveling the playing field. Saying you better think about just flying in one of your big hotshots.

Rep. DeKrey – I move the Helms amendment.

Chairman Porter - Rep. Drovdal had a meeting to go to and he asked we wait for him to get back.

Rep. Keiser – Do you want a discussion about the 3<sup>rd</sup> one, whether you want it “shall consider studying” or

Rep. DeKrey – That would be my amendment to put shall consider in there.

Chairman Porter – I’m all for the shall consider.

Rep. Keiser – OK so it should be “shall consider studying”.

Mr. Helms – I would agree Rep. Keiser, on the 2<sup>nd</sup> one, where we talked about double attorney's fees. I really brought it up to you that there is a shortage of oil and gas attorneys in the state. Anybody who practices oil and gas laws is busy doing title opinions and all that. They are already employed. For a surface owner to find someone knowledgeable in this area, it might require they get the money to pay them the normal fee. This would go another step in terms of leveling that playing field between an international mineral developers with those banks of attorneys vs. the guy that has to hire a local attorney who has to come up to speed.

Chairman Porter – Thank you Mr. Helms. Any more questions for Mr. Helms? We will close the discussion on SB 2141.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2141

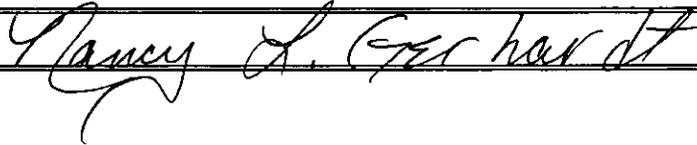
House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 3-6-09

Recorder Job Number: 10380

Committee Clerk Signature



Minutes:

Rep. DeKrey – I move the Helms amendment.

Chairman Porter – Just to be clear on the motion Rep. DeKrey we have the language on the study saying “shall consider studying”.

Rep. DeKrey – Yes – add the words “shall consider”.

Chairman Porter – We have a motion from Rep. DeKrey to move the Helms amendments. Is there a 2<sup>nd</sup>?

Rep. Drovdal – 2<sup>nd</sup>

Chairman Porter – 2<sup>nd</sup> from Rep. Drovdal – discussion – seeing none all in favor unanimous unison voice vote – opposed – none – motion carries.

Rep. DeKrey – I move Do Pass As Amended.

Chairman Porter – We have a motion from Rep. DeKrey for a Do Pass As Amended SB 2141 is there a 2<sup>nd</sup>?

Rep. Hofstad – 2<sup>nd</sup>.

Chairman Porter – 2<sup>nd</sup> from Rep. Hofstad – discussion.

Rep. Drovdal – I want to thank the Industrial Commission for bringing this bill forward for the surface owners. I hope the committee will keep this in mind when we come back in 2 years

and we can maybe look for some of these same provisions in the oil and gas industry for surface owners in that area also.

Chairman Porter – Further discussion? Seeing none the clerk will call the roll for a Do Pass As Amended on SB 2141.

Yes 12 No 0 Absent 1 Carrier Rep. DeKrey

March 6, 2009

VR  
3/6/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2141

Page 1, line 3, after "exploration" insert "; to provide for a legislative council study; and to provide for a penalty"

Page 2, line 13, replace "articles in the North Dakota Administrative Code which are" with "laws and regulations relating to air, water, and land management"

Page 2, line 15, after "operations" insert "- Penalties"

Page 2, line 18, after the underscored period insert "Service of the notice of drilling operations must conform to personal service provisions in rule 4 of the North Dakota Rules of Civil Procedure. If the mineral developer fails to provide the proper notice, the surface owner may petition the industrial commission to fix a date for a hearing and give notice. Following the notice and hearing, the commission, as provided for in sections 38-08-16 and 38-08-17, may conduct investigations, restrain from further violation, and impose civil and criminal penalties."

Page 3, line 29, replace "reasonable" with "double"

Page 5, after line 19, insert:

**"SECTION 2. LEGISLATIVE COUNCIL STUDY - ALTERNATIVES TO SETTLEMENTS WHEN REJECTED.** During the 2009-10 interim, the legislative council shall consider studying alternatives to damage and disruption payment settlement if the person seeking compensation rejects the offer of the mineral developer. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly

Date: 3-6-09  
Roll Call Vote #: \_\_\_\_\_

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2141

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  As Amended

Motion Made By DeKrey Seconded By Hofstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hanson	✓	
Vice Chairman Damschen	✓		Rep Hunskor	✓	
Rep Clark	✓		Rep Kelsh	✓	
Rep DeKrey	✓		Rep Myxter	✓	
Rep Drovdal	✓		Rep Pinkerton	✓	
Rep Hofstad	✓				
Rep Keiser					
Rep Nottestad	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment DEKREY

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

SB 2141, as engrossed: Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2141 was placed on the Sixth order on the calendar.

Page 1, line 3, after "exploration" insert "; to provide for a legislative council study; and to provide for a penalty"

Page 2, line 13, replace "articles in the North Dakota Administrative Code which are" with "laws and regulations relating to air, water, and land management"

Page 2, line 15, after "**operations**" insert "**- Penalties**"

Page 2, line 18, after the underscored period insert "Service of the notice of drilling operations must conform to personal service provisions in rule 4 of the North Dakota Rules of Civil Procedure. If the mineral developer fails to provide the proper notice, the surface owner may petition the industrial commission to fix a date for a hearing and give notice. Following the notice and hearing, the commission, as provided for in sections 38-08-16 and 38-08-17, may conduct investigations, restrain from further violation, and impose civil and criminal penalties."

Page 3, line 29, replace "reasonable" with "double"

Page 5, after line 19, insert:

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Re-number accordingly

2009 SENATE NATURAL RESOURCES

CONFERENCE COMMITTEE

SB 2141

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2141

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: 4-16-2009

Recorder Job Number: 11916

Committee Clerk Signature

Minutes:

*Troy Schuchard*

**Senator Lyson:** Opened the Committee Hearing on SB 2141. Senators Hogue & Triplett, Representatives Keiser, DeKrey, & Hunskor present.

**Representatives Keiser:** The first concern I have, pg 1 line 3, addresses the fact that towards the bottom on the last one we were suggesting, given the increase interest in this general area, it would be appropriate to recommend a Legislative Council study relative to the alternatives to settlements when rejected. Five years ago before the oil activity took off, we didn't have any and we have a lot of new issues this session that have not been in previous sessions because of all the activity. We feel having the opportunity during the interim to look at this would be very worthwhile. Page 2, line 13 applies to applications we feel appropriate.

**Senator Lyson:** Let's look at these individually.

**Representatives Keiser:** OK

**Senator Lyson:** I don't see a purpose in this study because we have been going through this since 1953 and it is pretty well set on how these things work, I just don't see a purpose for this.

**Senator Triplett:** It is a "shall" consider, so it could be inferred by LC.

**Senator Lyson:** On the second one, page 2, line 13; I don't have any heartburn on that one, does anybody else?

**Senators Hogue:** No heartburn here

**Representatives Keiser:** Page 2, line 15 after "operations", insert "penalties". I am not desertion really our committee's action vs. a technical amendment that was offered when the amendments were drafted. I can't remember any discussion about inserting that language on Pg 2, line 15.

**Senator Lyson:** I would think that language was added because of what your amendment says the last word of the amendment.

**Representatives Keiser:** Page 2, Line 18 comes back into. From our perspective, the House is not concerned with defining who or what the penalties are. We think they are already in code, but this section was added relative to the service of knows. How do inform the parties properly that there is action being entered into, relative to the rules of civil procedure. This language was taken from many other sections from the code. Rule #4 Notifications.

**Senator Lyson:** Here are the flaws that I think; 1<sup>st</sup> are the requirements to give notice, under rule 4: The service will be made by the sheriff or disinterested party. I think what we should really look at are the requirements of this whole thing, in the oil company a land man goes out and deals with the landowners. There is no question there will be surface damages, so 98-99% of the time they clean up the mess. The notice I think is flawed. The other thing I think about is the industrial commission can provide for civil and criminal penalties. As far as I know, nobody can issue civil or criminal penalties if they are not a judge. An industrial commission doesn't have any authority to add penalties, certainly not criminal, may have something for civil.

**Representatives Keiser:** The bill makes reference to 38-08-16 & 38-08-17 and those penalties can only be imposed as they relate to those two sections. So either those sections have that ability to do it or they don't and again, we have lawyers draft this and based on those two subsections of the code, they could do those things, if they can't that's fine, but...

**Senators Hogue:** I think your both right, the section 38-08-16 specifies if you engage in this type of conduct, you are guilty of a class c felony. The section does go on to point out that the criminal penalty can only be imposed by a court of competent jurisdiction, so that particular issue would have to be referred to District Court to impose penalties and sentences involved.

**Representatives Keiser:** As this reads, it is correct because it states “as provided in those sections”

**Senator Triplett:** With all due respect, the language does actually say that. It does reference the sections. At the very best it is confusing.

**Senators Hogue:** The commission can impose civil penalties. I think the problem we are running into is it says “impose civil and criminal penalties” and then the act as the law is written says “only a court can impose the criminal penalty”.

**Representatives Keiser:** If the industrial commission determines a criminal penalty is to be imposed, isn't it then turned over to the Attorney General to take action in the court on their behalf. Is that the way this really works?

**Continued discussion with regards to being served and negotiating.**

**Representative Hunskor:** If there is no agreement between the 2 parties, does this help protect the landowner to pursue.

**Senator Lyson:** They can do that now without anything. And they do, if there is land damage, the owner can take action against the company who is responsible, if they don't agree with the settlement.

**Representative Hunskor:** So you are saying this section doesn't benefit anything at all.

**Senator Lyson:** I don't see the purpose of it at all.

**Representative Hunskor:** I remember our committee discussion and the reason we put that in there is that when the landowner is dealing with the oil company, the oil company holds all the

cards: they have the stable full of attorneys and the landowner may not even be able to afford an attorney to look into this on their behalf. So the second amendment, the reason we replace "reasonable" with "double" was to put the land owner on equal footing with the oil company because if the oil company didn't come to terms and offer a fair settlement and the landowner took him to court and found out the settlement was not fair, and the court ordered more money, then the attorney would be out double, which we felt would be an added protection for the landowner who was at a disadvantage with the oil company.

**Discussion continued pertaining to statute and references to Century Code, attorney fees, etc.**

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2141

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: April 22, 2009

Recorder Job Number: 12065

Committee Clerk Signature



Minutes:

**Senator Lyson** opened the conference committee on SB 2141 relating to damages to land surface caused by subsurface mineral extraction and related exploration.

**Ed Murphy, State Geologist with the Department of Mineral Resources:** I am here to respond to any question you have. There were several amendments made on the House side and I can respond to that.

**Senator Lyson:** That was one of the things that concerned us. Lynn drew these amendments up.

**Ed Murphy:** I know that Lynn did do a draft but whether after going through the clerk of the committee and Legislative Council there may have been some word changes. I spoke to our attorney before coming here on page 2, lines 19-25; and she thought there were things in here that we didn't have jurisdiction for. For example, the last sentence talks about the commission imposing civil and criminal penalties. The commission cannot impose criminal penalties. Also a question on where it talks about refraining from further violation and again she didn't think the commission had the authority to do that as it is worded. The intent from what I recall in the House Natural Resources was that the complaint from a surface owner is that they do not have enough legal recourse and they were looking for the commission to step in on their behalf.

That was the intent of this section that was expanded from the Senate version. She also questioned were we sight rule four of the ND Rules of Civil procedure and she thought we would have been better using the wording from 38-08-11, which does not site specifically rule four because she said that might turn to another number. Better off with general language. Maybe some of this could be covered in the Legislative Council study.

**Rep. Keiser:** I want to clarify some things that were said at our first meeting. At the end of the meeting Rep. Dekrey pointed out that Lynn Helms did bring these amendments to the House. Rep. Drovdal who serves on the House Natural Resource committee but not on the conference committee expressed a lot of problems that he was hearing from surface owners. I participated in that conversation and Lynn did draw up amendments that addressed Rep. Drovdal's concerns. Lynn drafted these in a response of the conversation that occurred in our committee and I don't think that meant that he necessarily supported them. Although Lynn did testify in committee that he to in his department was getting lots of calls regarding land issues and notification issues.

**Ed Murphy:** There were questions that came related to oil & gas. The subsurface mineral program deals with virtually everything but oil & gas. It deals with everything except coal exploration and oil & gas. It touches more on coal exploration type drilling than oil & gas. I have been involved with the program since 1977 and I am very hard pressed to come up with complaints.

**Senator Lyson:** Is it possible that this bill is made up so that it puts the strong language in there so that it may be picked up by oil & gas and others.

**Ed Murphy:** As I recall the accounts were made by Rep. Drovdal and they were all directed to oil & gas.

**Senator Lyson:** And this bill is not oil & gas?

**Ed Murphy:** That is correct.

**Rep. Keiser:** That is part of the problem; it was taken and modeled directly from the oil & gas division. So if it is the template for legislation in this other area, so if the oil & gas section has had problems then it is not unreasonable to assume perhaps this area could have problems because of the model.

**Ed Murphy:** I work on the geological survey side so I really can't speak to the oil & gas division. We do meet once a week and I am not aware of many surface owners' complaints.

**Senator Triplett:** Lynne Helms did say that on the oil and gas side they have had very few complain at the fuel and gas division. I could only recall to serious complains over the last ten years. It almost seems like we are searching for a problem here at some level.

**Rep. Keiser:** Handed out a list of people with their problems to the committee. They generated this list in less than six hours. It is more than two.

**Senator Lyson:** Said there were two serious complaints. There are always going to be other complaints that have been taken care of.

**Rep. Keiser:** Most of these complaints are notification complaints which is the section of the bill that we are trying to address.

**Senator Lyson:** Again we are working on a bill that is not an oil & gas bill. Why do we continue to bring up the oil & gas?

**Senator Triplett:** I think I brought it up last time to the extent that we make changes in this bill that are general changes and not specific. Next session, similar changes might be suggested relative to the oil & gas surface damages. I think we should keep this as close as possible to the existing oil & gas bill.

**Senator Lyson:** I am not sure we should pass a bill with the study. We already have laws. Do we not?

**ED Murphy:** This actually goes further. Subsurface mineral owners really don't have any surface owner protection built in.

**Senator Lyson:** But we do have some laws on the subsurface. I am saying, wouldn't we better off changing this to a study without the bill?

**Ed Murphy:** We would be happiest to go back to the Senate version with a study in there. And look at the notice part and see if we need to go beyond what is working for the oil & gas.

**Senator Triplett:** Do you have expectation that there might be any significant amount of uranium or potash exploration done in ND in the next two years?

**Ed Murphy:** It has been 30 years since we have had uranium drilling and this fall we had 400 holes drilled in Billings and Slope counties.

**Rep. Hunskor:** I understand this is not an oil & gas issue but there are significant parts of the states that are having problems. In my district there has not been problems so in page 2, line 18 the rule 4, I cannot support.

**Senator Hogue:** Under the House amendments I didn't feel that service under rule 4 would be necessary. I would rather model it after the notice in 38-11.1. I don't think this is an issue that warrants a study. Suggestion on the attorney fees I would suggest something that I think is fair between the landowner and the developer. That is rather than have double attorney fees that we make that provision the same as we do for eminent domain cases and leave it up to the district court. In their desecration they may award attorney fees. I would throw that out as a compromise.

**Rep. Hunskor:** Going back to the study, complaints are going to be there in the future, would a study help take care of future complaints so we would not have to deal with it down the road?

**Senator Hogue:** passed out his amendments. We need to add on the chapter that deals with oil & gas and the chapter that is now dealing with everything but oil, gas, coal, and gravel to keep them on parallel tracks and amend the attorney fee in both so they are the same.

**Senator Tripplett:** The purest in me would like to see the procedure the same. I don't have heartburn if this carries over to the next session.

**Rep. DeKrey:** The Senate's position is to go back to the Senate version with the study? Then we shouldn't deal with attorney fees now because that would be in the study.

**Senator Lyson:** We could still deal with it and after the study if it needs changing we can deal with it next session.

**Senator Hogue:** Said he was not suggesting a study. As he reads the study it is to study the disruption payments settlements if the person seeking compensation rejects the offer of the mineral developer. A civil court process could deal with this.

**Rep. Hunskor:** How many complaints are out there?

**Senator Lyson:** There are two significant complaints. In the handout, these are probably not significant complaints.

**Rep. Keiser:** The majority of these complaints on the larger page deal with non notification which is what this bill deals with.

**Senator Lyson:** Sometimes there is not notification because of dirty titles.

**Rep. Keiser:** These are surface land owners and not mineral rights owners who did not receive notification.

**Senator Lyson:** If that is the case, the Industrial Commission could handle on a civil matter.

**Ed Murphy:** That is correct. There have not been significant complaints.

**Senator Lyson:** This is about one issue.

**Senator Tripplett:** This does say they are required to give 20 days' notice.

**Senator Hogue:** If the developer under 38.11.1 fails to give that notice there is a hefty penalty under that section that allows the surface owner to recover punitive damages.

**Rep. DeKrey:** I move the House recede from House amendments.

**Senator Triplett:** seconded.

Roll call vote: 6-0-0

**Senator Hogue:** moved 98158.0204

**Senator Triplett:** seconded.

Roll call vote: 5-1-0

Senator Hogue will be the carrier.

Date: 4/16/09

Roll Call Vote #: \_\_\_\_\_

**2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES**

BILL/RESOLUTION NO. 2141 as (re) engrossed

Senate Natural Resources Committee

Check here for Conference Committee

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

Senate/House Amendments on SJ/HJ pages(s) \_\_\_\_\_

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

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Senators			Representatives					
	4/16		Y	N		4/16	Y	N
			e	o			e	o
			s				s	
Senator Lyson-Chair	✓				Representative Keiser	✓		
Senator Hogue	✓				Representative DeKrey	✓		
Senator Triplett	✓				Representative Huoskor	✓		

Vote Count \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ Absent

Senate Carrier \_\_\_\_\_ House Carrier \_\_\_\_\_

LC NO. \_\_\_\_\_ of amendment

LC NO. \_\_\_\_\_ of engrossment

Emergency clause added or deleted \_\_\_\_\_

Statement of purpose of amendment \_\_\_\_\_

Date: 1/21/09

Roll Call Vote #: 1

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2141 as (re) engrossed

Senate Political Subdivisions Committee

Check here for Conference Committee

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

Senate/House Amendments on SJ/HJ pages(s) \_\_\_\_\_ -- \_\_\_\_\_

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

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

Motion Made By DeKrey Seconded By Hunskor

Senators				Representatives			
	1/21	Y e s	N o		1/21	Y e s	N o
Senator Lyson	✓	✓		Rep. Keiser	✓	✓	
Senator Hogue	✓	✓		Rep. DeKrey	✓	✓	
Senator Triplett	✓	✓		Rep. Hunskor	✓	✓	

Vote Count 6 Yes 0 No 0 Absent

Senate Carrier \_\_\_\_\_ House Carrier \_\_\_\_\_

LC NO. \_\_\_\_\_ of amendment

LC NO. \_\_\_\_\_ of engrossment

Emergency clause added or deleted \_\_\_\_\_

Statement of purpose of amendment \_\_\_\_\_

April 20, 2009

#1

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2141

That the House recede from its amendments as printed on page 791 of the Senate Journal and pages 859 and 860 of the House Journal and that Engrossed Senate Bill No. 2141 be amended as follows:

Page 2, line 13, replace "articles in the North Dakota Administrative Code which are" with "laws and regulations relating to air, water, and land management"

Page 3, line 27, replace "If the amount of compensation awarded by the" with "The"

Page 3, line 28, remove "court is greater than that which had been offered by the mineral developer, the" and replace "shall" with ", in its discretion, may"

Renumber accordingly

Date: 4/21/00

Roll Call Vote #: 12

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2141 as (re) engrossed

Senate Political Subdivisions Committee

[X] Check here for Conference Committee

- Action Taken  SENATE accede to House Amendments
- SENATE accede to House Amendments and further amend
- HOUSE recede from House Amendments
- HOUSE recede from House amendments and amend as follows  
Senate/House Amendments on SJ/HJ pages(s) \_\_\_\_\_ -- \_\_\_\_\_
- Unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

Motion Made By Hogue Seconded By Triplett

Senators				Y	N	Representatives				Y	N
				e	o					s	o
				s							
Senator Lyson					/	Rep. Keiser				/	
Senator Hogue				/		Rep. DeKrey				/	
Senator Triplett				/		Rep. Hunskor				/	

Vote Count 5 Yes 1 No 0 Absent

Senate Carrier Hogue House Carrier \_\_\_\_\_

LC NO. \_\_\_\_\_ of amendment

LC NO. \_\_\_\_\_ of engrossment

Emergency clause added or deleted \_\_\_\_\_

Statement of purpose of amendment \_\_\_\_\_

**REPORT OF CONFERENCE COMMITTEE**

**SB 2141, as engrossed:** Your conference committee (Sens. Lyson, Hogue, Triplett and Reps. Keiser, DeKrey, Hunskor) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 791, adopt amendments as follows, and place SB 2141 on the Seventh order:

That the House recede from its amendments as printed on page 791 of the Senate Journal and pages 859 and 860 of the House Journal and that Engrossed Senate Bill No. 2141 be amended as follows:

Page 2, line 13, replace "articles in the North Dakota Administrative Code which are" with "laws and regulations relating to air, water, and land management"

Page 3, line 27, replace "If the amount of compensation awarded by the" with "The"

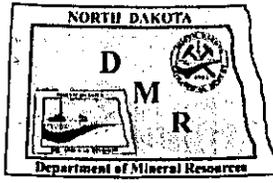
Page 3, line 28, remove "court is greater than that which had been offered by the mineral developer, the" and replace "shall" with ", in its discretion, may"

Renumber accordingly

Engrossed SB 2141 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

SB 2141



**SENATE BILL NO. 2141**

Senate Natural Resources Committee  
January 9, 2009

Testimony of Lynn D. Helms, Director

The Industrial Commission's Department of Mineral Resources (DMR) has jurisdiction over subsurface mineral production in NDCC 38-12-01 through 38-12-05.

**Summary** – Senate Bill 2141 creates a new chapter in the North Dakota Century Code to make sure owners of the surface estate are justly compensated for the use of their property occasioned by subsurface mineral production. This chapter is modeled after the oil and gas compensation statute that has served our state and its citizens extremely well for over 20 years.

**Section 38-11.2-01** – contains the definitions needed to properly understand and interpret the chapter. It should be noted that these definitions clearly limit the application to this new chapter.

**Section 38-11.2-02** – provides for surface owners to request an investigation by the department of health to ensure compliance with health and environmental laws, regulations, and orders.

**Section 38-11.2-03** – sets out the requirements for the mineral developer to properly notify the surface owner of contemplated mineral exploration and production activities.

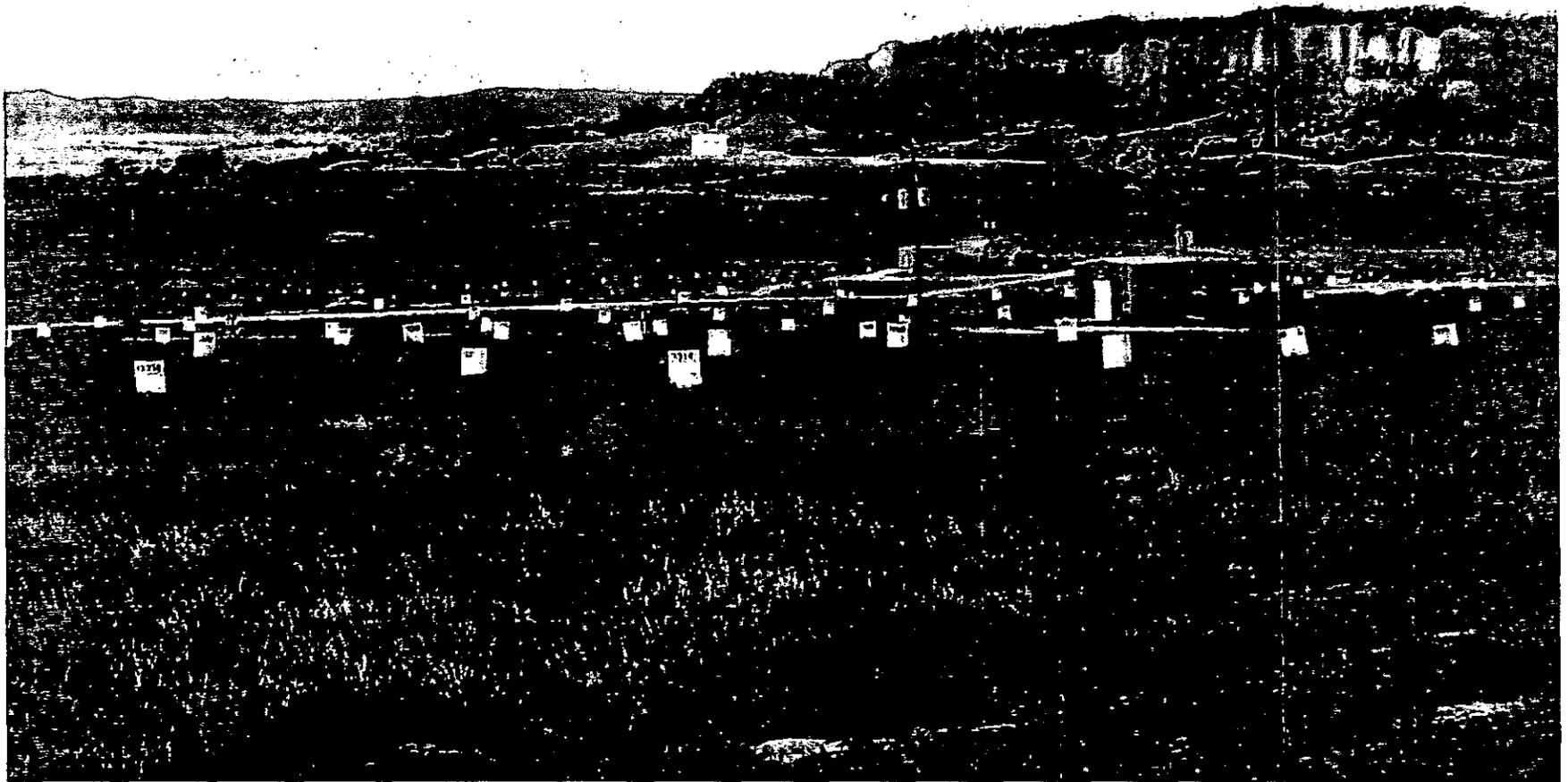
**Section 38-11.2-04** - establishes what damages should be compensated, how payments should be scheduled, to whom payments should be made, and the time limit for surface owners to notify the mineral developer of damages sustained.

**Section 38-11.2-05** - establishes when the initial written offer of settlement must be provided to the surface owner by the mineral developer.

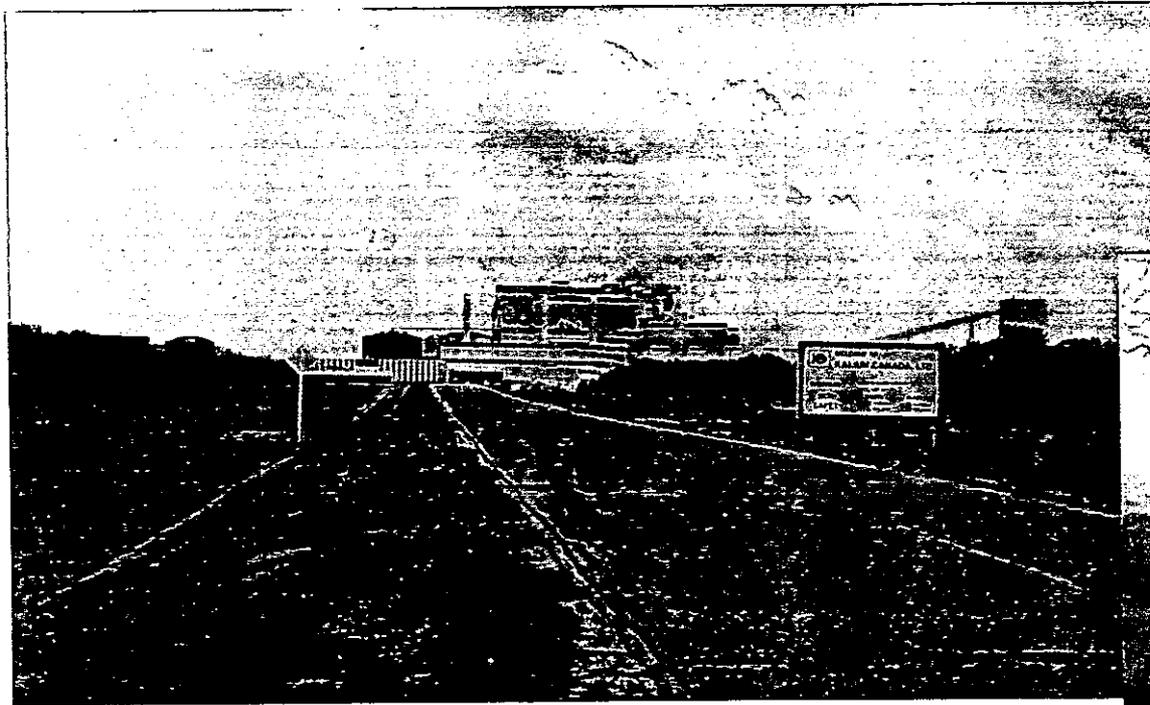
**Section 38-11.2-06** – establishes the process for final settlement of the amount of compensation if the parties can not reach agreement. The potential awarding of legal fees, court costs, and interest has historically assured that settlement offers are reasonable.

**Section 38-11.2-07** - establishes the process for identifying and protecting the surface and ground water near subsurface mineral exploration or production activities and the time limit for notification of the mineral developer of damages sustained.

**Section 38-11.2-08** – provides for the same option to seek other legal remedies and exclusion of motor vehicles operating on state highways as the oil and gas damages statute.



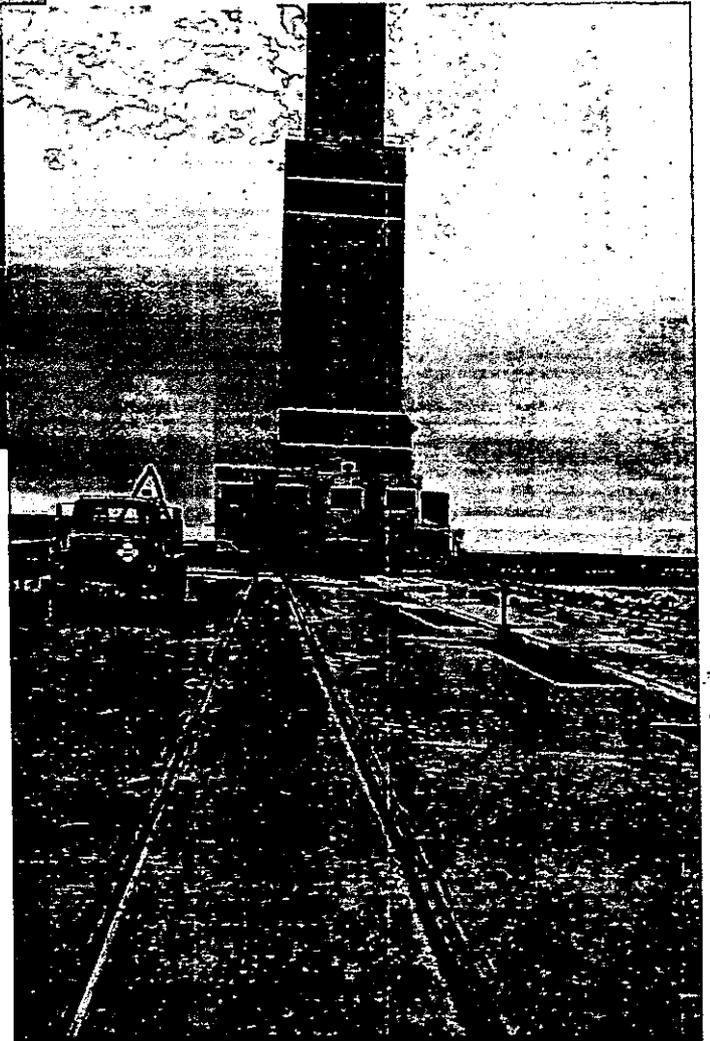
Crow Butte in situ leach uranium mine  
Chadron, Nebraska



Potash One plant  
Belle Plaine, Saskatchewan

Drilling rig mounted on a locomotive chassis and moved around the well field on railroad tracks.

*Same harbour  
given to House.*



## Testimony

### Senate Bill 2141

#### Natural Resources Committee

Friday, January 9, 2009; 9 a.m.

#### North Dakota Department of Health

Good morning, Chairman Lyson and members of the Natural Resources Committee. My name is L. David Glatt, and I am chief of the Environmental Health Section for the North Dakota Department of Health. I am here today to provide testimony regarding the potential impacts Senate Bill 2141 would have on the Department of Health and to propose an amendment to the bill to address our concerns.

The department does not object to the majority of the bill as written, but we would like to point out our concerns relating to Section 38-11.2-02 Inspection of well site. As currently written, this section states:

“Upon request, the state department of health shall conduct an investigation and take necessary measures to ensure compliance with environmental impact issues relating to air, water and land management under the jurisdiction of the department as outlined in applicable articles in the North Dakota Administrative Code.”

The department has two primary concerns with the existing language:

- 1) It does not specify or limit who can request an investigation by the department.
- 2) The term “investigation” can be broadly interpreted to include surface and subsurface sample collection and monitoring. This could require the department to expend a considerable amount of state dollars to conduct an investigation of environmental impacts; these dollars are not currently reflected in the department’s budget. It is important to note that the fiscal note indicating a \$200,000 biennial impact is a rough estimate that may be high or low, depending upon the complexity and number of required investigations.

To address our concerns, we propose the following amendment to Section 38-11.2-02 of Senate Bill 2141:

38-11.2-02. Inspection of well site. Upon request of another state agency or the surface owner or adjacent landowner, the state department of

health shall conduct ~~an investigation~~ a site visit to ~~take necessary measures~~ evaluate site-specific environmental data as necessary to ensure compliance with ~~environmental impact issues relating to air, water and land management under the jurisdiction of the department~~ applicable environmental protection articles in the North Dakota Administrative Code under the jurisdiction of the department.

Adopting this amendment will eliminate the \$200,000 fiscal impact to the Department of Health presented in the fiscal note for this bill.

The North Dakota Department of Health is committed to protecting the environment through the implementation of existing laws and the utilization of best available science. We believe the amendment as proposed will allow the department to continue that commitment.

This concludes my testimony. I am happy to answer any questions you may have.

## Health Department Fiscal Note

The following fiscal note has been requested to be completed by Legislative Council. Please complete and e-mail to Kathy Albin in the next few days. There is only a 5 day turnover so your prompt response is necessary.

Bill Number	SB 2141
Amendment Number	
Date of Request	1-26-09 (amendment)

1A. **State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$0		\$0	
Appropriations						

1B. **County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters.)

Amendment to SB 2141 reducing the agency involvement to a site visit and evaluation of existing environmental data under laws and rules implemented by the agency will result in no fiscal impact.

**B. Fiscal Impact Sections:** Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

**A. Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

**B. Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

**C. Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriations is also included in the executive budget or relates to a continuing appropriations.

Funds for this project are not included in the department's appropriation bill (SB 2004). The department will need these funds appropriated to carryout this project.

<b>Name:</b>	Dave Glatt	<b>Division</b>	Env Chief's Office
<b>Phone Number:</b>		<b>Date Prepared:</b>	1-29-2009

Attachment 1



**SENATE BILL NO. 2141**

House Natural Resources Committee  
February 26, 2009

Testimony of Lynn D. Helms, Director

The Industrial Commission's Department of Mineral Resources (DMR) has jurisdiction over subsurface mineral production in NDCC 38-12-01 through 38-12-05.

**Summary** – Senate Bill 2141 creates a new chapter in the North Dakota Century Code to make sure owners of the surface estate are justly compensated for the use of their property occasioned by subsurface mineral production. This chapter is modeled after the oil and gas compensation statute that has served our state and its citizens extremely well for over 20 years.

**Section 38-11.2-01** – contains the definitions needed to properly understand and interpret the chapter. It should be noted that these definitions clearly limit the application to this new chapter.

**Section 38-11.2-02** – provides for surface owners to request a site visit and evaluation by the department of health to ensure compliance with environmental protection laws.

**Section 38-11.2-03** – sets out the requirements for the mineral developer to properly notify the surface owner of contemplated mineral exploration and production activities.

**Section 38-11.2-04** - establishes what damages should be compensated, how payment schedules shall be decided, to whom payments should be made, and the time limit for surface owners to notify the mineral developer of damages sustained.

**Section 38-11.2-05** - establishes when the initial written offer of settlement must be provided to the surface owner by the mineral developer.

**Section 38-11.2-06** – establishes the process for final settlement of the amount of compensation if the parties can not reach agreement. The potential awarding of legal fees, court costs, and interest has historically assured that settlement offers are reasonable.

**Section 38-11.2-07** - establishes the process for identifying and protecting the surface and ground water near subsurface mineral exploration or production activities and the time limit for notification of the mineral developer of damages sustained.

**Section 38-11.2-08** – provides for the same option to seek other legal remedies and exclusion of motor vehicles operating on state highways as the oil and gas damages statute.

Attachment #2



Crow Butte in situ leach uranium mine  
Chadron, Nebraska

**Testimony  
Senate Bill 2141  
Natural Resources Committee  
Thursday, February 26, 2009; 2:30 p.m.  
North Dakota Department of Health**

Good afternoon, Chairman Porter and members of the Natural Resources Committee. My name is L. David Glatt, and I am chief of the Environmental Health Section for the North Dakota Department of Health. I am here today to provide a brief amendment to the bill to ensure that all applicable laws and regulations are considered when the Department of Health is requested to conduct a site visit.

We propose the amendment as follows:

**38-11.2-02 Inspection of well site.** Upon request of another state agency, the surface owner, or an adjacent landowner, the state department of health shall conduct a site visit and evaluate site-specific environmental data as necessary to ensure compliance with applicable environmental protection ~~articles in the North Dakota Administrative Code which are~~ laws and regulations relating to air, water and land management under the jurisdiction of the department.

This concludes my testimony. I am happy to answer any questions you may have.

**NDLA, Intern 01**

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**From:** Helms, Lynn D.  
**Sent:** Wednesday, March 04, 2009 8:34 AM  
**To:** Porter, Todd K.; NDLA, Intern 01  
**Subject:** SB2141 amendments

Todd and Pam,

Following is our 1<sup>st</sup> draft of amendments to Senate Bill 2141:

1) Deals with Representatives Drovdal and Keiser concerns regarding failure to provide proper notice. This will point mineral developers to the correct notice procedure (which may change from time to time) and provide an administrative appeal avenue for surface owners who feel they didn't get proper notice without creating a huge burden on the DMR to track every notice.

Page 2, line 18, after "parties." insert "Service of the notice of drilling operations must conform to personal service provisions in Rule 4 of the North Dakota Rules of Civil Procedure. If the mineral developer fails to provide the proper notice the surface owner may petition the industrial commission to fix a date for a hearing and give notice. Following such notice and hearing, the commission shall have authority to conduct investigations, restrain from further violation, and impose civil and criminal penalties provided for in sections 38-08-16 and 38-08-17."

2) Deals with Representative Pinkerton's suggestion regarding leveling the legal playing field between surface owners and mineral developers. This will penalize mineral developers who don't negotiate in good faith. Klaus Lembke indicated that problems with landlords withholding rent deposits were cured by requiring treble damages NDCC 47-16-07.1 part 3.

Page 3, line 29, overstrike "reasonable" and insert "double"

3) Deals with Representative Keiser's thoughts on settlement of damage claims without going to court. This will request a Legislative council study of possible alternatives to district court for settlement of disputed payments..

Page 5, after line 19, insert "The Legislative Council shall study alternatives to damage and disruption payment settlement if the person seeking compensation rejects the offer of the mineral developer;

and report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.”

enumber Accordingly

*Lynn D. Helms*  
Director  
North Dakota Industrial Commission  
Department of Mineral Resources  
Phone (701) 328-8020  
Fax (701) 328-8022