

2013 HOUSE ENERGY AND NATURAL RESOURCES

HB 1352

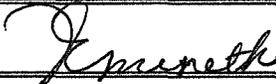
2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

HB 1352
January 31, 2013
18047

Conference Committee



Relating to mediation of mineral developer and surface owner disputes

Minutes:

1-4 Attachments

Rep. Porter: We will open the hearing HB 1352.

Rep. Hunskor: With the increased oil and gas activity there are also more surface owner and mineral owner disputes. Resolving those disputes has become a major problem because of that reason and it was for that reason in the last session HB 1427 was passed. HB 1352 which would provide an option; when one of the two parties refusing to participate when setting disputes between surface owners and mineral developers.

Rep. Schmidt: On line 11 the word that is written there is required and you said requested was there a difference there?

Rep. Hunskor: This was a mistake on my part.

Myron Hanson: President Northwest Landowners Association; This bill is simply an attempt to gain resolution in manner less costly and time consuming than resorting to the legal system.(Attachment 1) We would like to add an amendment to this bill that addresses the cost of this surface.

Rep. Froseth: Would you object to adding the amendment that Rep. Skarpol has before us?

Myron Hanson: No I would not. The intend of my comment was to insure that the mediation service or this portion of it for surface owner disputes for damages on well sites and things that is not lost in the mix of easement requirements.

Bethany Abrams: N.D. Administrator of the mediation program of the Dept. of Agriculture; I am here to answer any questions regarding the mediation service. In 2011 we were allowed to expand from being financial and credit based mediation service to include oil

and gas issues as well as deer depuration. With this piece of legislation we do have 3 pieces of concern (Attachment 2)

Rep. Porter: In regards to the fee the state of N.D. through the general fund is covering the portion of the oil and gas mediation services right now?

Bethany Abrams: Yes

Rep. Porter: Since it is for credit and financial mediations that the feds subsidize it then what happens with this language on the deer depuration?

Bethany Abrams: My understanding is that it wouldn't have any impact on that.

Brenda Jorgenson: I am representing the Box J Ranch; personal story (Attachment 3) we urge a do pass on this HB 1352

Alexis Brinkman: Representing the N.D. Petroleum Council; Making mediation mandatory is unnecessary, and we urge a do not pass on HB 1352.

Rep. Porter: We will close HB 1352.

2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

HB 1352
February 8, 2013
18613

Conference Committee

Emineth

Relating to the mediation of mineral developer and surface owner disputes

Minutes:

2 Attachment

Rep. Porter: We have HB 1352 in front of us.

Rep. Nathe: There is one amendment that we were given during the hearing by Rep. Skarphol pull that amendment out it is listed by 1355 we are going to put this in HB 1352. It is a notification that would require operators to provide information to mineral owners if the title was not correct.

Rep. Porter: We have a motion from Rep. Nathe to move the amendment 13.0364.01001 and a second from Rep. Hunskor. Voice vote carries.

Rep. Nathe: The next amendment is the one that came from the AG. Mediation it is the top half of the sheet they gave us that came out of the code. I move for a passage.

Rep. Porter: We have a motion from Rep. Nathe and a second from Rep. Keiser discussion

Rep. Hunskor: One of them may call the mediation board and the person in charge of the board would contact the party who fails to disagree and tries to convince that person to come and try to get the two together. If she fails in that effort or if the party that wouldn't agree to it; doesn't want to come they can't get together then it doesn't get any further.

Rep. Porter: Voice vote carries. We have a motion for a do pass as amended to HB 1352 from Rep. Nathe and a second by Rep. Silberangel.

Yes 12 No 0 Absent 1 Carrier: Rep. Hunskor

February 8, 2013

2/8/13
JTC

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1352

Page 1, line 1, after "38-11.1" insert "and a new section to chapter 47-16"

Page 1, line 2, after "disputes" insert "and resolution of title disputes"

Page 1, line 8, remove "require the parties to submit the matter to"

Page 1, replace lines 9 through 13 with "involve the North Dakota mediation service or other civil mediator. Involvement of a mediator may comply with Rule 8.8 of the North Dakota Rules of Court for purposes of alternative dispute resolution compliance. The cost of the mediator must be mediated between the parties. If the parties are unable to reach an agreement regarding the cost of the mediator through mediation, each party shall pay an equal portion of the mediator's compensation. The compensation of the mediator must be at least one hundred seventy dollars per hour."

SECTION 2. A new section to chapter 47-16 of the North Dakota Century Code is created and enacted as follows:

Resolution of title disputes.

If the mineral owner and mineral developer disagree over the mineral owner's ownership interest in a spacing unit, the mineral developer shall furnish the mineral owner with a description of the conflict and the proposed resolution or with that portion of the title opinion that concerns the disputed interest."

Renumber accordingly

Date: 2-8-2013
 Roll Call Vote #: #1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1352**

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Nathe Seconded By Rep. Hunskor

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter			Rep. Bob Hunskor		
Vice Chairman Chuck Damschen			Rep. Scot Kelsh		
Rep. Jim Schmidt			Rep. Corey Mock		
Rep. Glen Froseth					
Rep. Curt Hofstad					
Rep. Dick Anderson					
Rep. Peter Silbernagel					
Rep. Mike Nathe					
Rep. Roger Brabandt					
Rep. George Keiser					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: Voice vote carries
to move the amendment 13.0364.01001

Date: 2-8-2013
Roll Call Vote #: #2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1352

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep Nathe Seconded By Rep Keiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter			Rep. Bob Hunsakor		
Vice Chairman Chuck Damschen			Rep. Scot Kelsh		
Rep. Jim Schmidt			Rep. Corey Mock		
Rep. Glen Froseth					
Rep. Curt Hofstad					
Rep. Dick Anderson					
Rep. Peter Silbernagel					
Rep. Mike Nathe					
Rep. Roger Brabandt					
Rep. George Keiser					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: *Voice Vote Carried*
move for a passage of Amendment
13.0364.01001

Date: 2-8-2013
Roll Call Vote #: 1352

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1352

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep Nathe Seconded By Rep Silbernagel

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter	✓		Rep. Bob Hunsakor	✓	
Vice Chairman Chuck Damschen			Rep. Scot Kelsh	✓	
Rep. Jim Schmidt	✓		Rep. Corey Mock	✓	
Rep. Glen Froseth	✓				
Rep. Curt Hofstad	✓				
Rep. Dick Anderson	✓				
Rep. Peter Silbernagel	✓				
Rep. Mike Nathe	✓				
Rep. Roger Brabandt	✓				
Rep. George Keiser	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep Hunsakor

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

*Do pass as amended
13.0363.02001
title 03000*

REPORT OF STANDING COMMITTEE

HB 1352: Energy and 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). HB 1352 was placed on the Sixth order on the calendar.

Page 1, line 1, after "38-11.1" insert "and a new section to chapter 47-16"

Page 1, line 2, after "disputes" insert "and resolution of title disputes"

Page 1, line 8, remove "require the parties to submit the matter to"

Page 1, replace lines 9 through 13 with "involve the North Dakota mediation service or other civil mediator. Involvement of a mediator may comply with Rule 8.8 of the North Dakota Rules of Court for purposes of alternative dispute resolution compliance. The cost of the mediator must be mediated between the parties. If the parties are unable to reach an agreement regarding the cost of the mediator through mediation, each party shall pay an equal portion of the mediator's compensation. The compensation of the mediator must be at least one hundred seventy dollars per hour."

SECTION 2. A new section to chapter 47-16 of the North Dakota Century Code is created and enacted as follows:

Resolution of title disputes.

If the mineral owner and mineral developer disagree over the mineral owner's ownership interest in a spacing unit, the mineral developer shall furnish the mineral owner with a description of the conflict and the proposed resolution or with that portion of the title opinion that concerns the disputed interest."

Renumber accordingly

2013 SENATE NATURAL RESOURCES

HB 1352

2013 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

HB 1352
March 28, 2013
Job Number 20640 & 20657

Conference Committee

Veronica Spaulding

Explanation or reason for introduction of bill/resolution:

Relating to mediation of mineral developer and surface owner disputes and resolution of title disputes

Minutes:

attachments

Chairman Lyson opened the hearing for HB 1352.

Representative Bob Hunsakor, District 6, introduced the bill. See attachment #1. Note the updated numbers in paragraph 6. (Ends at 05:45)

Senator Triplett felt there was a discrepancy in the reasons cited for bringing the bill forward. (Ends at 06:15) She also questioned the \$170.00 amount that was mentioned in the bill. (Ends at 07:16)

Myron Hanson, representing the Northwest Landowners, submitted written testimony #2. (Ends at 09:26)

Senator Triplett asked what this bill adds that isn't already in place.

Mr. Hanson understands that there has been a problem with one party or the other refusing mediation. This gives them authority to call up the other party and explain the service. Maybe they will be more inclined then to come to the table. Under the present law it is not clear what they are allowed to do. (Ends at 11:07)

Daryl Dukart, Dunn County Landowners organization, stood in support. See attachment #3. He feels this will clarify the process and increase the understanding. (Ends at 13:30)

Bethany Abrams, ND Mediation Service Administrator with ND Department of Agriculture, spoke in support. See attachment #4. She feels this bill will give guidance to the mediation program. It gives the mediation service a clear process to follow when the parties contact them. The ag mediation administrator must contact the parties and explain the program to them. Ms. Abrams also mentioned that the 70% of their funding that comes from the federal government will be going away. That is why they would need to increase the fees.

There was discussion about the proposed amount of \$170.00/hour. (17:00 to 18:20)

There was discussion about what Section 2 would add to the law. (18:30 to 19:20) There was also discussion about how the word "may" would be interpreted. (20:20 to 21:35) There was discussion about one year stated at the beginning (21:45 to 22:24)

Alexis Brinkman, ND Petroleum Council, spoke in favor of the bill.

Senator Triplett asked where the ND Petroleum Council stood on Section 2 of the bill.

Ms. Brinkman said they are in support of it because it assists in the process of the producer getting a clear title.

Opposition: None

Neutral: None

Chairman Lyson closed the hearing for HB 1352.

Senator Triplett asked for time to get an amendment to take out the \$170.00/hour and put in something more generic.

Chairman Lyson granted the request.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

HB 1352
April 4, 2013
Job Number 20882

Conference Committee

Veronica Spaulding

Explanation or reason for introduction of bill/resolution:

Relating to mediation of mineral developer and surface owner disputes and resolution of title disputes

Minutes:

attachment

Chairman Lyson opened the discussion of HB 1352 by mentioning that Senator Triplett had offered to bring amendments.

Senator Triplett made a motion to adopt amendment 13.0363.03001. See attachment #1.

Senator Laffen: Second

Senator Triplett explained why it is better not to have a precise dollar amount put into statute and explained that the Ag Mediation service is contracting this out so they do know the cost of the service.

The motion to adopt the amendment carried by voice vote.

Senator Triplett made a Do Pass motion on Engrossed HB 1352 as Amended.

Senator Murphy: Second

Roll Call Vote: 7, 0, 0

Carrier: Senator Triplett

April 3, 2013

4/4/13

TS

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1352

Page 1, line 14, replace "The" with "If the mediation is provided by the North Dakota mediation service."

Page 1, line 14, remove "at least one"

Page 1, line 15, replace "hundred seventy dollars per hour" with "the actual cost of the mediator to the North Dakota mediation service"

Renumber accordingly

Date: 4-4-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. eng. 1352

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider 13.0343.03001

Motion Made By Triplett Seconded By Laffen

Senators	Yes	No	Senators	Yes	No
Senator Lyson			Senator Triplett		
Senator Burckhard			Senator Murphy		
Senator Hogue					
Senator Laffen					
Senator Unruh					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*carried by
voice vote*

Date: 4-4-13
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1352

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended ^{as} Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Triplett Seconded By Murphy

Senators	Yes	No	Senators	Yes	No
Senator Lyson	✓		Senator Triplett	✓	
Senator Burckhard	✓		Senator Murphy	✓	
Senator Hogue	✓				
Senator Laffen	✓				
Senator Unruh	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Triplett

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

REPORT OF STANDING COMMITTEE

HB 1352, as engrossed: 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). Engrossed HB 1352 was placed on the Sixth order on the calendar.

Page 1, line 14, replace "The" with "If the mediation is provided by the North Dakota mediation service."

Page 1, line 14, remove "at least one"

Page 1, line 15, replace "hundred seventy dollars per hour" with "the actual cost of the mediator to the North Dakota mediation service"

Renumber accordingly

2013 TESTIMONY

HB 1352



Mr. Chairman, members of the committee:

Myron Hanson, President Northwest Landowners Association,

Our organization stands in support of HB 1352.

During the 2011 legislative session we supported the language that allowed the North Dakota Mediation Service to enter into dispute resolution between surface owners and the oil and gas industry.

From conversations with people who have been involved with this process and from our perspective this has been quite successful.

However, we have some instances where one party, typically the industry side of the equation have refused to participate leaving the surface owner with no recourse other than to sue.



This bill simply is an attempt to gain resolution in manner less costly and time consuming than resorting to the legal system.

This process also provides the industry with this same course of action, if they feel that they have made a good faith offer of settlement and the landowner is just moving the goal post, they may avail themselves of this process to clear these disputes.

One thing I would like to point out that is that 1333 also provides for mediation, but it specifically refers to easements. This does not address surface owner issues and this needs to stand alone.

Additionally we would like to propose an amendment to this bill that addresses the cost of this service. Presently there is a limit of 25.00 dollars for this service because of the Federal funding policies for the Ag dept. We would propose an amendment that allows the Mediation service to charge 170.00 per hour which is the state wide average.



COMMISSIONER
DOUG GOEHRING



ndda@nd.gov
www.nd.gov/ndda

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

**Testimony of Bethany Abrams, North Dakota Mediation Service Administrator
North Dakota Department of Agriculture
House Bill 1352
House Energy and Natural Resources Committee
Pioneer Room
8:00 AM January 31, 2013**

Chairman Porter and members of the House Energy and Natural Resources Committee, I am Bethany Abrams, the North Dakota Mediation Service Administrator at the North Dakota Department of Agriculture (NDDA). I am here today on behalf of Agriculture Commissioner Doug Goehring to offer information regarding the North Dakota Mediation Services (NDMS) as it is relevant to HB 1352.

NDMS was started in 1984 to help financially distressed farmers and ranchers by providing assistance in credit and financial matters and resolving disputes. The 2011 legislative assembly expanded NDMS responsibilities to include dispute resolution of property issues related to energy development along with landowner disputes with the North Dakota Game and Fish Department related to deer depredation.

We believe mediation is important because it helps to avoid litigation, saves time and money, and improves communication between disputing parties. Mediation is voluntary and confidential.

There are three primary areas of focus from our perspective:

1. The proposed legislation provides for mandatory mediation. In part it states "either the mineral developer or surface owner may require the parties to submit the matter to mediation." One of the fundamental tenants of mediation is that it is a voluntary process

between two parties wishing to resolve an issue in a mutually agreeable way. The proposed language takes away the voluntary nature of mediation. In other areas of the law with similar “mandatory” mediation clauses, they have been interpreted to mean that each party must submit to a mediation interview which meets the requirement of the statute. If this is the intention of the legislation, then it becomes significantly less problematic.

2. The proposed legislation provides that each party shall pay an equal portion of the compensation of the mediator. As a point of technicality, the costs for our services at NDMS are “fees”, not compensation. Additionally, although many parties agree to divide the cost of mediation equally, it is often a subject best discussed in mediation. The parties can determine how the cost of the mediation will be divided, as often parties are not on equal economic footing.
3. Funding for NDMS is based upon the current case load, with the current staffing. Under prior statute, NDMS is only allowed to charge a \$25 per hour fee for mediation. This rate was set in 1985, in response to mediation regarding credit and lending. The expertise required for oil and gas mediation, along with the passage of nearly 30 years, necessitates an increase in the fee for these types of mediations. Our recommendation is for an amendment allowing NDMS to charge \$170 per hour fee for oil and gas mediations leaving the fee at \$25 per hour for credit and financial mediations.

Chairman Porter and committee members, Commissioner Goehring is in favor of HB 1352 with the before mentioned points. I would be happy to answer any questions you may have.

Thank you.

COMMISSIONER
DOUG GOEHRING



3

ndda@nd.gov
www.nd.gov/ndda

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

July 23, 2012

Richard & Brenda Jorgenson
9645 76th St NW
Tioga ND 58852-9687

Dear Mr. & Mrs. Jorgenson:

The North Dakota Mediation Service received a request for mediation from you with Petro Hunt LLC.

This letter is to advise you that Petro Hunt LLC does not wish to participate in formal mediation.

You may now proceed with whatever action is deemed appropriate.

Sincerely,

A handwritten signature in cursive script that reads "Betty Nelson" with "for" written below it.

Ken Junkert
Acting Administrator

KJ:bn



REQUEST FOR MEDIATION
 NORTH DAKOTA DEPARTMENT OF AGRICULTURE
 MEDIATION SERVICE
 SFN 51122 (1-2012)

Return This Form To:
 ND Department of Agriculture
 Mediation Service
 600 E Boulevard Ave - Dept 602
 Bismarck, ND 58505-0020
 Telephone: 701-328-2061
 1-800-642-4752 (ND Only)
 Fax: 701-328-2240

SECTION 1. Mediation is being requested by:

Name Richard and Brenda Jorgenson	Company Box J Ranch		
Address (Street or Box) 9645 76th St NW	City Tioga	State ND	ZIP Code 58852-9687
Telephone Number (701) 464-5710	E-mail Address brendajorgenson@hotmail.com		

SECTION 2. Mediation is requested with:

Name of Primary Contact Person Jeff Herman and whoever is Jerry Haas', Landman, boss	Company Petro Hunt LLC		
Address (Street or Box) P O Box 935	City Bismarck	State ND	ZIP Code 58501-0935
Telephone Number (701) 226-5692	E-mail Address jherman@petro-hunt.com		

SECTION 3. Issues to be mediated:

(With property issues include legal description such as township, section, and range)

Petro Hunt LLC location 19223 - no payment, no surface-use agreement, buried waste, untested waste, dead and dying trees, etc. etc. in Bicker Township, Mountrail county, ND 158N-94W-11

Alliance Pipeline issue is in Bicker Township, Mountrail county, ND 158N-94W-11, 12, and 13

Baha Pipeline issue is in Bicker Township, Mountrail county, ND 158N-94W-11 and 12

Hess Corp is involved because we signed the original lease with them.

SECTION 4. (Please complete this and the Mediation Party Listing on the back side if mediation is requested.)

I, hereby request assistance under the provisions of NDCC Chapter 6-09.10, relating to the North Dakota Mediation Service which is certified by the United States Secretary of Agriculture as the State's Agricultural Mediation Service under the provisions of Section 501(c) of the Agricultural Credit Act of 1987 (public law 100-233), as amended.

The Credit Review Board has adopted a policy of confidentiality regarding all information and/or meetings associated with this request.

Signature of Person from Section 1 <i>Richard Jorgenson</i>	Company BOX J RANCH	Date 4/27/12
Signature of Person from Section 2 <i>Brenda Jorgenson</i>	Company	Date

SECTION 5. (Complete only if mediation is being rejected)

I, do not wish to participate in the mediation program. (Section 2 ONLY).

Signature	Company	Date
-----------	---------	------

COMMISSIONER
DOUG GOEHRING



ndda@nd.gov
www.nd.gov/ndda

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

May 22, 2012

Andy & Laura Huseby
7536 97th Ave NW
Tioga ND 58852

Dear Mr. & Mrs. Huseby:

The North Dakota Mediation Service received a request for mediation from you with Alliance Pipeline.

This letter is to advise you that Alliance Pipeline does not wish to participate in formal mediation.

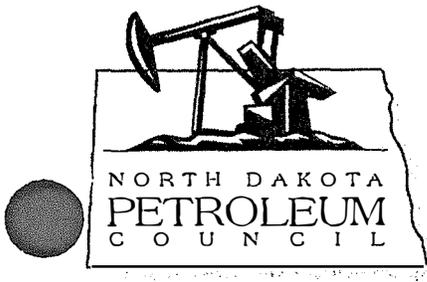
You may now proceed with whatever action is deemed appropriate.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom Silbermagel".

Tom Silbermagel
Administrator

TS:bn



120 N. 3rd Street • Suite 200 • P.O. Box 1395 • Bismarck, ND 58502-1395
Phone: 701-223-6380 • Fax: 701-222-0006 • Email: ndpc@ndoil.org

**Testimony of Alexis Brinkman
House Bill 1352
House Energy and Natural Resources Committee
January 31, 2013**

Chairman Porter and members of the Committee, my name is Alexis Brinkman, and I am representing the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 400 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. I appear before you today in opposition of House Bill 1352.

Mediation is a very helpful and significantly less expensive option than litigation, and we and our members are in full support of the program, including the proposed expansion in HB 1333 and increased funding for the program in the Ag Department's budget.

Since the passage of legislation in 2011 allowing mediation of oil and gas disputes, the North Dakota Mediation Service has successfully completed over 22 mediation cases. Following mediation, both landowners and producers have indicated that they believed the process was beneficial and were happy with the result. The program has been incredibly successful as is, and we believe will continue to be even more so as the program becomes more widely known.

Generally, one of the fundamental tenants of mediation is that it is a voluntary process. We are aware of only two instances where formal mediation has been refused, once by a company and once by a landowner. Making mediation mandatory is unnecessary, and we urge a Do Not Pass on HB 1352. I would be happy to answer any questions.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1355

Page 1, line 1, replace "a" with "two"

Page 1, line 1, replace "section" with "sections"

Page 1, line 2, after "operations" insert "and resolution of title disputes"

Page 1, after line 13, insert:

"SECTION 2. A new section to chapter 47-16 of the North Dakota Century Code is created and enacted as follows:

Resolution of title disputes.

If the mineral owner and mineral developer disagree over the mineral owner's ownership interest in a spacing unit, the mineral developer shall furnish the mineral owner with a description of the conflict and the proposed resolution or that portion of the title opinion that concerns the disputed interest."

Renumber accordingly

1

Good morning Chairman Lyson and members of the Senate Energy and Natural Resources Committee.

My name is Bob Hunsakor, Representative of District 6 which includes Bottineau, Renville and McHenry County.

With increased oil and gas activity in North Dakota, there has also been an increase in the number of disputes between surface owners and mineral developers.

Many of those disputes have gone unresolved, others have been settled in court and some have been settled by mutual agreement.

In attempting to provide a process for minimizing the negative effects of disputes, we passed HB 1347 last session. HB 1347 allowed the North Dakota Ag. Department Mediation Service to mediate disputes as they surfaced.

The Service has mediated ~~twenty-two~~²⁵ ~~(22)~~²⁵ cases with an ~~eighty-five~~^{eight} percent ~~(85%)~~⁸⁸ success rate in the past two years.

Since both parties had to agree to mediate their differences on a voluntary basis, some disputes were never settled since there was no mechanism in place in HB 1347 to bring both parties to the table.

The original version of HB 1352 was hog-housed and replaced with Engrossed Bill 1352. The bill before you is a joint effort of the Northwest Landowners, Petroleum Industry, State Oil and Gas Division and the Ag. Department.

Section 1 of the hog-housed bill states that within one year after a compensation offer has been made and rejected, either the mineral developer or the surface owner may involve the North Dakota Mediation Service or other civil mediator. The chosen mediator would then contact both parties and attempt to bring them to the bargaining table.

If the two parties agree to the mediation process, the cost of the mediation shall be mediated between the two parties. If the two parties are unable to reach an agreement regarding the cost of the mediator, each party shall pay an equal portion of the mediator's compensation. The compensation fee shall be no less than \$170 per hour.

Section 2

If there is a title dispute in a spacing unit, the mineral developer must furnish the mineral owner with a description of the conflict and the mineral developer's proposed resolution to the conflict or that portion of the title opinion that concerns the disputed interest.

Section 2 is an important part of Engrossed HB 1352 because there have been times when the mineral owner was not aware of a potential title dispute until it was time for his royalty payment.

Section 2 is a simple early notification of a potential problem to the mineral owner so that the problem can be resolved.

Mr. Chairman, this concludes my testimony and I would ask your committee to give Engrossed H.B. 1352 a DO PASS.

Mr. Chairman, members of the committee:

For the record, Myron Hanson, representing the Northwest Landowners.

We stand in support of HB 1352.

The Northwest Landowners feel that any alternative method of dispute resolution should be available to both parties regarding the settlement of damage claims arising from the development activity currently taking place in North Dakota.

This program has proven to be quite successful since the mediation service was authorized in the last session to participate in areas other than credit mediation. In the past two years they have worked on ~~twenty-two~~²⁵ cases related to landowner/energy development disputes with over an ~~eighty~~^{88%} percent resolution rate. Additionally the landowner participants I have talked with are very satisfied with the process.

This bill is a means of refining the process by allowing the mediation service to intercede at the request of one party, explain the service and in that way get both parties to the table.

We feel that this approach would lead to lower cost, more efficient means of resolving disputes between landowners and energy companies and urge the committee to give a do pass recommendation to HB 1352.

#3

March 28th, 2013

Testimony for HB 1352

Senate Natural Resources committee;

Chairman Senator Lyson:

Dunn County Energy Development Organization support HB 1352.

We have had members of our organization (DCED) use Ag Mediation in the past and it has always worked out very well for them. The change offered in this bill allow the process to happen sooner, while in the past the normal process always took two years of allowing time to hope the energy company and the disputing landowner could work things out. Some of the problem I seen with the older mediation program was over time as growth happened and the challenges from energy development changed faster than either party wished for.

The one year will help but parties in achieving a reasonable settlement without a reasonable time frame.

I have sat in on one mediation settlement and have helped out from the outside on two others. In all three cases I felt the landowner was awarded fairly and the system designed for mediation of energy disputes between landowners and energy companies worked.

We encourage a Do Pass from the Senate Finance and Taxation committee:

Thank you,

Daryl Dukart

Representative for DCED

COMMISSIONER
DOUG GOEHRING



#21
ndda@nd.gov
www.nd.gov/ndda

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

Testimony of Bethany Abrams, North Dakota Mediation Service Administrator
North Dakota Department of Agriculture
House Bill 1352
Senate Natural Resources Committee
Fort Lincoln Room
9:45 AM March 28, 2013

Chairman Lyson and members of the Senate Natural Resources Committee, I am Bethany Abrams, the North Dakota Mediation Service Administrator at the North Dakota Department of Agriculture (NDDA). I am here today on behalf of Agriculture Commissioner Doug Goehring to offer information regarding the North Dakota Mediation Services (NDMS) as it is relevant to HB 1352.

NDMS was started in 1984 to help financially distressed farmers and ranchers by providing assistance in credit and financial matters and resolving disputes. The 2011 legislative assembly expanded NDMS responsibilities to include dispute resolution of property issues related to energy development.

We believe mediation is important because it helps to avoid litigation, saves time and money, and improves communication between disputing parties. Mediation is voluntary and confidential.

There is one primary areas of focus from our perspective:

1. Funding requests currently pending for NDMS is based upon the current case load, with the current staffing. Under prior statute, NDMS is only allowed to charge a \$25 per hour fee for mediation. This rate was set in 1985, in response to mediation regarding credit and lending. The expertise required for oil and gas mediation, along with the passage of

nearly 30 years, necessitates an increase in the fee for these types of mediations. Our recommendation is for an amendment allowing NDMS to charge \$170 per hour fee for oil and gas mediations leaving the fee at \$25 per hour for credit and financial mediations.

Chairman Lyson and committee members, Commissioner Goehring is in favor of HB 1352 as currently written.

Thank you.

#1

13.0363.03001
Title.

Prepared by the Legislative Council staff for
Senator Triplett

April 3, 2013

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1352

Page 1, line 14, replace "The" with "If the mediation is provided by the North Dakota mediation service."

Page 1, line 14, remove "at least one"

Page 1, line 15, replace "hundred seventy dollars per hour" with "the actual cost of the mediator to the North Dakota mediation service"

Renumber accordingly