

Sixty-sixth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2211

Introduced by

Senators Bekkedahl, Dwyer, Unruh

Representatives Keiser, Porter

1 A BILL for an Act to create and enact a new subsection to section 61-33.1-03 of the North  
2 Dakota Century Code, relating to the determination of the ordinary high water mark; ~~and~~ to  
3 amend and reenact sections 61-33.1-02, 61-33.1-04 ~~and~~, 61-33.1-05, and 61-33.1-07 of the  
4 North Dakota Century Code, relating to the ownership of mineral rights of land ~~inundated~~subject  
5 to inundation by Pick-Sloan Missouri basin project dams; to provide a contingent appropriation;  
6 and to declare an emergency.

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

8 **SECTION 1. AMENDMENT.** Section 61-33.1-02 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **61-33.1-02. Mineral ownership of land ~~inundated~~subject to inundation by Pick-Sloan**  
11 **Missouri basin project dams. (Retroactive application - [See note](#))**

12 The state sovereign land mineral ownership of the riverbed segments ~~inundated~~subject to  
13 inundation by Pick-Sloan Missouri basin project dams extends only to the historical Missouri  
14 riverbed channel up to the ordinary high water mark. The state holds no claim or title to any  
15 minerals above the ordinary high water mark of the historical Missouri riverbed channel  
16 ~~inundated~~subject to inundation by Pick-Sloan Missouri basin project dams, except for original  
17 grant lands acquired by the state under federal law and any minerals acquired by the state  
18 through purchase, foreclosure, or other written conveyance. Mineral ownership of the riverbed  
19 segments ~~inundated~~subject to inundation by Pick-Sloan Missouri basin project dams which are  
20 located within the exterior boundaries of the Fort Berthold reservation and Standing Rock Indian  
21 reservation is controlled by other law and is excepted from this section.

22 **SECTION 2.** A new subsection to section 61-33.1-03 of the North Dakota Century Code is  
23 created and enacted as follows:

1           Upon adoption of the final review findings by the industrial commission, the board of  
2           university and school lands may contract with a qualified engineering and surveying  
3           firm to analyze the final review findings and determine the acreage on a quarter-  
4           quarter basis or government lot basis above and below the ordinary high water mark  
5           as delineated by the final review findings of the industrial commission. The acreage  
6           determination is final upon approval by the board.

7           **SECTION 3. AMENDMENT.** Section 61-33.1-04 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9           **61-33.1-04. Implementation. (Retroactive application - [See note](#))**

- 10           1. Within six months after the adoption of the ~~final review findings~~acreage determination  
11           by the ~~industrial commission~~board of university and school lands:
- 12           a. Any royalty proceeds held by operators attributable to oil and gas mineral tracts  
13           lying entirely above the ordinary high water mark of the historical Missouri  
14           riverbed channel on both the corps survey and the state phase two survey must  
15           be released to the owners of the tracts, absent a showing of other defects  
16           affecting mineral title; and
- 17           b. Any royalty proceeds held by the board of university and school lands attributable  
18           to oil and gas mineral tracts lying entirely above the ordinary high water mark of  
19           the historical Missouri riverbed channel on both the corps survey and the state  
20           phase two survey must be released to the relevant operators to distribute to the  
21           owners of the tracts, absent a showing of other defects affecting mineral title.
- 22           2. Upon adoption of the ~~final review findings~~acreage determination by the ~~industrial-~~  
23           ~~commission~~board of university and school lands:
- 24           a. The board of university and school lands shall begin to implement any acreage  
25           adjustments, lease bonus and royalty refunds, and payment demands as may be  
26           necessary relating to state-issued oil and gas leases. The board shall complete  
27           the adjustments, refunds, and payment demands within two years after the ~~date-~~  
28           ~~of adoption of the final review findings~~approving the acreage determination.
- 29           b. Operators of oil and gas wells affected by the ~~final review findings~~final acreage  
30           determination immediately shall begin to implement any acreage and revenue  
31           adjustments relating to state-owned and privately owned oil and gas interests.

1           The operators shall complete the adjustments within two years after the date of  
2           ~~adoption of the review findings~~the board approves the acreage determination.  
3           Any applicable penalties, liability, or interest for late payment of royalties or  
4           revenues from an affected oil or gas well may not begin to accrue until the end of  
5           the two-year deadline. The filing of an action under section 61-33.1-05 tolls the  
6           deadline for any oil and gas well directly affected by the action challenging the  
7           review finding or final acreage determination.

8           **SECTION 4. AMENDMENT.** Section 61-33.1-05 of the North Dakota Century Code is  
9           amended and reenacted as follows:

10          **61-33.1-05. Actions challenging review findings or final acreage determinations.**  
11          **(Retroactive application - [See note](#))**

- 12          1. An interested party seeking to bring an action challenging the review findings or  
13          recommendations or the industrial commission actions under this chapter shall  
14          commence an action in district court within two years of the date of adoption of the  
15          final review findings by the industrial commission. The plaintiff bringing an action under  
16          this section may challenge only the final review finding for the section or sections of  
17          land in which the plaintiff asserts an interest. The state and all owners of record of fee  
18          or leasehold estates or interests affected by the finding, recommendation, or industrial  
19          commission action challenged in the action under this section must be joined as  
20          parties to the action. A plaintiff or defendant claiming a boundary of the ordinary high  
21          water mark of the historical Missouri riverbed channel which varies from the boundary  
22          determined under this chapter bears the burden of establishing the variance by clear  
23          and convincing evidence based on evidence of the type required to be considered by  
24          the engineering and surveying firm under subsection 3 of section 61-33.1-03.
- 25          2. An interested party seeking to bring an action challenging the final acreage  
26          determination under this chapter shall commence an action in district court within two  
27          years of the date the ~~acreage determinations were approved~~payments were made by  
28          the board of university and school lands. The plaintiff bringing an action under this  
29          section may challenge only the acreage determination for the section or sections of  
30          land in which the plaintiff asserts an interest. The state and all owners of record of fee  
31          or leasehold estates or interests affected by the final acreage determination

1 challenged in the action under this section must be joined as parties to the action. A  
2 plaintiff or defendant claiming a determination of the acreage above or below the  
3 historical Missouri riverbed channel which varies from the final acreage determination  
4 under this chapter bears the burden of establishing the variance by clear and  
5 convincing evidence based on evidence of the type required to be considered by the  
6 engineering and surveying firm contracted by the board of university and school lands  
7 under subsection 2 of section 61-33.1-04.

8 3. Notwithstanding any other provision of law, an action brought in district court under  
9 this section is the sole remedy for challenging the final review, recommendations, ~~and~~  
10 determination of the ordinary high water mark, and final acreage determination under  
11 this chapter, and preempts any right to rehearing, reconsideration, administrative  
12 appeal, or other form of civil action provided under law.

13 **SECTION 5. AMENDMENT.** Section 61-33.1-07 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **61-33.1-07. State engineer regulatory jurisdiction. (Retroactive application - [See note](#))**

16 This chapter does not affect the authority of the state engineer to regulate the historical  
17 Missouri riverbed channel, minerals other than oil and gas, or the waters of the state, provided  
18 the regulation does not affect ownership of oil and gas minerals in and under the riverbed or  
19 lands above the ordinary high water mark of the historical Missouri riverbed channel  
20 ~~inundated~~subject to inundation by Pick-Sloan Missouri basin project dams.

21 **SECTION 6. APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS**  
22 **FUND - REIMBURSEMENT OF LEGAL EXPENSES.**

- 23 1. There is appropriated out of any moneys held in reserve in the strategic investment  
24 and improvements fund for mineral title disputes, not otherwise appropriated, the sum  
25 of \$750,000, or so much of the sum as may be necessary, to the commissioner of  
26 university and school lands for the purpose of reimbursing legal expenses as provided  
27 in subsection 2, for the biennium beginning July 1, 2019, and ending June 30, 2021.
- 28 2. The commissioner of university and school lands shall use funds appropriated in  
29 subsection 1 to reimburse actual legal and expert fees incurred and requested by any  
30 private mineral owner, or the owner's successors in interest, who reserved the mineral  
31 rights, through deed or condemnation order from the court, when the United States

1           acquired the owner's property as part of the land acquisitions for Garrison Dam and its  
2           reservoir, Lake Sakakawea, and who filed a lawsuit against the state of North Dakota  
3           after December 31, 2011, but before December 31, 2016, and which lawsuit was  
4           pending as of February 1, 2017, claiming title to reserved mineral rights. The legal and  
5           expert fees may not be reimbursed until the final adjudication, settlement, or other  
6           resolution of the lawsuit for which they were incurred.

7           **SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.