

**FIRST ENGROSSMENT
with House Amendments
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; to amend
3 and reenact sections 61-33.1-02, 61-33.1-04, 61-33.1-05, and 61-33.1-07 of the North Dakota
4 Century Code, relating to the ownership of mineral rights of land subject to inundation by
5 Pick-Sloan Missouri basin project dams; to provide a contingent appropriation; and to declare
6 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 payments were made by the board of university and school
28 lands. The plaintiff bringing an action under this section may challenge only the
29 acreage determination for the section or sections of land in which the plaintiff asserts
30 an interest. The state and all owners of record of fee or leasehold estates or interests
31 affected by the final acreage determination challenged in the action under this section

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

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

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

14 **61-33.1-07. State engineer regulatory jurisdiction. (Retroactive application - [See note](#))**

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

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

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

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

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