

**HOUSE BILL NO. 1440**

Introduced by

Representatives Jones, Fegley, D. Johnson, Longmuir

Senators Kannianen, J. Roers

1 A BILL for an Act to amend and reenact section 38-11.1-06 of the North Dakota Century Code,  
2 relating to the protection of groundwater and other responsibilities of a mineral developer.

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

4 **SECTION 1. AMENDMENT.** Section 38-11.1-06 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **38-11.1-06. Protection of surface and ground water - Other responsibilities of mineral**  
7 **developer.**

8 1. If the domestic, livestock, or irrigation water supply of any person ~~who~~that owns an  
9 interest in real property within one-half mile [804.67 meters] of where geophysical or  
10 seismograph activities are or have been conducted or within one mile [1.61 kilometers]  
11 of an oil or gas well site has been disrupted, or diminished in quality or quantity by the  
12 drilling operations ~~and a certified water quality and quantity test has been performed~~  
13 ~~by the person who owns an interest in real property within one year preceding the~~  
14 ~~commencement of drilling operations,~~ the person ~~who~~that owns an interest in real  
15 property is entitled to recover the cost of making ~~such~~the repairs, alterations, or  
16 construction that will ensure the delivery to the surface owner of that quality and  
17 quantity of water available to the surface owner prior to the commencement of drilling  
18 operations.

19 2. Any person ~~who~~that owns an interest in real property ~~where~~and which obtains all or a  
20 part of that person's water supply for domestic, agricultural, industrial, or other  
21 beneficial use from an underground source has a claim for relief against a mineral  
22 developer to recover damages for disruption or diminution in quality or quantity of that  
23 person's water supply proximately caused from drilling operations conducted by the  
24 mineral developer.

- 1        3. Prima facie evidence of injury under this section may be established by a showing that  
2        the mineral developer's drilling operations penetrated or disrupted an aquifer in such a  
3        manner as to cause a diminution in water quality or quantity within the distance limits  
4        imposed by this section. An action brought under this section when not otherwise  
5        specifically provided by law must be brought within six years of the time the action has  
6        accrued. For purposes of this section, the claim for relief is deemed to have accrued at  
7        the time it is discovered or might have been discovered in the exercise of reasonable  
8        diligence.
- 9        4. A tract of land is not bound to receive water contaminated by drilling operations on  
10       another tract of land, and the owner of a tract has a claim for relief against a mineral  
11       developer to recover the damages proximately resulting from natural drainage of  
12       waters contaminated by drilling operations.
- 13       5. The mineral developer also is ~~also~~ responsible for all damages to person or property  
14       resulting from the lack of ordinary care by the mineral developer or resulting from a  
15       nuisance caused by drilling operations. This section does not create a cause of action  
16       if an appropriator of water can reasonably acquire the water under the changed  
17       conditions and if the changed conditions are a result of the legal appropriation of water  
18       by the mineral developer.
- 19       6. At least thirty days before the commencement of construction of any proposed oil or  
20       gas well site, tank battery site, access road, or underground gathering pipeline right of  
21       way, the mineral developer shall obtain samples from the top six inches [15.24  
22       centimeters] of topsoil and from between six to twenty-four inches [15.24 to 60.96  
23       centimeters] of the soil, and have the samples analyzed for chloride, sulphate, sodium,  
24       calcium, magnesium, bromide, potential of hydrogen, electroconductivity, and sodium  
25       adsorption rate.
- 26       a. For oil or gas well sites and tank battery sites, the mineral developer shall take at  
27       least one sample per two acres [0.0080 square kilometers] of land that will be  
28       disturbed.
- 29       b. For access roads and underground gathering pipeline rights of way, the mineral  
30       developer shall take at least one sample every three hundred feet [91.44 meters]  
31       and at both terminuses.

- 1           c. The written results of the sampling and analysis must be provided to the surface  
2           owner and filed with the industrial commission and placed in the well file or facility  
3           file.
- 4        7. The mineral developer shall conduct or have conducted an inventory of water wells  
5        located within one mile [1.61 kilometers] of any proposed seismograph exploration  
6        activity, oil or gas well site, tank battery site, access road, or underground gathering  
7        pipeline right of way.
- 8        a. For each well identified by this inventory, the mineral developer shall conduct or  
9        have conducted a water quality and flow rate test by a laboratory certified by the  
10       North Dakota environmental laboratory certification program within one year  
11       preceding the commencement of drilling operations or seismograph exploration  
12       operations.
- 13       b. The written results of the sampling and analysis must be provided to the surface  
14       owner and filed with the commission and placed in the well file or facility file.