



Chairman Keiser and members of the subcommittee:

On behalf of Troy Coons and the Northwest Landowners Association, we are writing to ensure that we have stated clearly what we consider to be necessary for SB 2065 to be constitutional. It must provide for a jury trial on the issue of the amount of compensation. It must provide “just” compensation for nonconsenting owners of pore space. Our proposed language to fix these constitutional problems is below. The Department of Trust Lands has proposed using an Oklahoma law that allows for an appeal to a jury when condemnation powers are used for gas storage. We would also support taking this approach if the Dept. of Trust Lands is willing to work on the Oklahoma law. We are comfortable with this because as with North Dakota, Oklahoma’s constitution requires a jury trial in this context as well. Oklahoma’s constitution says: “Any party aggrieved shall have the right of appeal, without bond, and trial by jury in a court of record.” Okla. Const. art. II, § 24.

Our language based on other statutes is below:

38-25-11. Appeal for determination of equitable compensation.

1. Any nonconsenting surface or pore space owner may appeal any decision of the Commission on the issue of the amount of equitable compensation owed to that owner for use of the owner’s surface or pore space. The appeal may be taken to the district court for the county in which the property affected by the order is located or if the property is located in or underlies more than one county, to the district court for any county in which the property is located.
2. The owner must file a notice of appeal with the district court within sixty (60) days of notice of the Commission’s decision. The notice of appeal will specify the decision or compensation determination appealed from and describe the real property valued. The notice of appeal must also be served on the storage operator via certified U.S. Mail.
3. In all such proceedings under this section where an appeal is taken to the district court from the decision or award of the Commission on the issue of the amount of equitable compensation owed to the owner, the owner will be entitled to a jury trial. Such appeal may be noticed for trial and tried as in the case of a civil action and the court may direct that issues be framed, and require other parties to be joined and to plead therein when necessary for the proper determination of the questions involved. The owners shall go forward with the evidence and have the burden of proof as in any other civil action, with the right to open and close. The court or jury trying the case shall reassess the damages de novo and apportion the same as the evidence and justice may require.
4. The court may, in its discretion, after a verdict has been rendered on the trial of an appeal, allow attorney fees and expenses to the owner as allowed by N.D.C.C. ch. 32-15.

5. The remedy provided in this section is cumulative and does not replace the right to appeal provided in N.D.C.C. 38-08-14 or under N.D.C.C. ch. 28-32. Appeals under this section are limited to the issue of the amount of equitable compensation owed to any nonconsenting surface or pore space owner whose property is being amalgamated under this chapter. The Commission's decision will remain in full and force and effect when an appeal is taken under this section.

Additionally, the law must provide "just" compensation. Right now, it provides "equitable" compensation, but no one knows what that means. It's not a legal term of art like "just compensation," and is not defined anywhere. We have proposed the following definition: "Equitable compensation" includes as a minimum just compensation, and may also include any damages as allowed under N.D.C.C. ch. 38-11.1." The first part of this cures the constitutional problem. The second part references 38-11.1, which is the surface damage act that allows for compensation to landowners for oilfield development. That is what we, as landowners, feel is appropriate here as we have argued for years. We have included both in our definition.

Again, we are compromising as much as possible, but when it comes to constitutional rights, it is not even in our power to negotiate them away for any amount of money. We are just pointing out where this legislation violates the constitution, and attempting to offer constructive proposals on how to overcome these obstacles. If the proposal from the Dept. of Trust Lands will get this legislation across the finish line, we are ready to do whatever we can to help with that effort.

Sincerely,

Troy Coons, Chairman

Dave King, Vice Chairman

Amy Shelton, Executive Director