

2015 SENATE ENERGY AND NATURAL RESOURCES

SB 2341

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

SB 2341
2/13/2015
23847

- Subcommittee
 Conference Committee

Committee Clerk Signature

Kate Oiver

Explanation or reason for introduction of bill/resolution:

Relating to loss of production payments by surface owners.

Minutes:

6 Attachments

Chairman Schaible called the committee back to order and opened the hearing on SB 2341. Senator David Rust was on hand to introduce the bill.

Senator Rust: District 2. See attachment #1. (1:24-5:19)

Chairman Schaible: Is this retroactive to the agreements where they have a lump sum payment or is it for everything new.

Senator Rust: If you have already had a contract for a lump sum payment and it will stay as is. In my estimation it would be for new negotiations between an oil company and a land owner.

Senator Laffen: I do not understand why a future land owner wouldn't know that something happened and devalue the land. I would liken it to buying a car that is dented, if you sell it you will get less because of the dent?

Senator Rust: If you have a 1958 Corvette and that has a dent and you have 5 people who want to buy it, will the dent make a difference opposed to a car that is readily available? When you look at the land comes up for sale and when it does the people who want to buy the land know that there is this blemish but when you have multiple people who are interested the cost won't make a lot of difference to what they are going to buy it for. We have seen an explosion in land prices which is good for people but they do know that it is part of it, I am not sure it makes a lot of difference.

Senator Laffen: If there is a spill on a land and a lump sum payment is made if they do not like the price is there recourse for them?

Senator Rust: Spills are a totally different subject; you are dealing with the loss of production.

Bob Grant: Board Member, North West Landowners Association. See attachment #2.
(9:49-18:22)

Senator Laffen: If you are ranching and there is, I assume, separate mineral right owners and the oil company wants to drill a well there do you have the ability to say no?

Bob Grant: Since the law was passed in 2011 more of the companies are paying a yearly payment and some of them are using a formula for what it would amount to over the life of the well and base the lump sum on that. Over the life of the well and I am turning it over to my children and grandchildren I have taken away a continuing revenue source from them. The only option is take the money that the company offers or sue.

Chairman Schaible: Right now the option is there to take a lump sum or get an annual payment but you are telling us that companies only want to make lump sum payments.

Bob Grant: Yes, what happens in some instances is they will offer \$23,500 for a lump or \$500 a year. If the well is there for 46 years it is the same amount.

Chairman Schaible: Taking the \$500 versus \$23,000 is that negotiable?

Bob Grant: What I received in that instance was that they could either take the \$500 a year or \$23,500 payment. When the oil companies have been asked to participate in mediation they have said no.

Senator Hogue: Would your experience be typical?

Bob Grant: I have no wells on my land and no mineral rights so most of my experience is from my work on the board of the Northwest Landowners Association, from people I know in my area and they wanted us to do something to make the yearly payment would be automatic. It amounts to a heavy-handed way to take the lump sum no matter which way you want it.

Senator Triplett: Isn't this bill just a bit patronizing to landowners? Wouldn't the landowner have a chance to invest that money and use the return on the investment to make themselves whole on a regular basis? Isn't that an equally valid way of planning your life? Getting the money up front would give you more control on how you are going to use it.

Bob Grant: If it was an actual choice I would agree with you but it isn't a choice, they assume it is an annual agreement.

Senator Triplett: For those people who want it annually why can't they do it themselves? Why can't they go to an investment banker and help them set it up in an account that the earning on the investment come back to them on annual basis? What am I missing?

Bob Grant: When they have that money, what they are going to do is upgrade equipment, pay off some other debt; they are going to use it in some other way. The biggest problem is those that do want the annual payment are not always getting it.

Senator Laffen: What is to stop the oil company from offering \$500 annually and that is not enough and having to sue every year?

Bob Grant: That is why we put the part about mediation in. These things need to be settled between the company and the land owner or a third party.

Senator Armstrong: What about the people who want a lump sum payment? By solving one problem aren't you creating another one? The bill says that they cannot have a lump sum payment.

Bob Grant: By adding that lump sum payment it is causing a lot of problems. The landowner may want the money but it is not hurting them to get it annually.

Senator Armstrong: Isn't that his right to negotiate as the landowner?

Senator Triplett: This sounds like social engineering to me. There is nothing to stop a landowner from selling their land, putting the money in the bank and spending it as fast as possible. We shouldn't force your morality on others.

Bob Grant: What has been asked of us is to clear it up for those who have asked for the annual payment.

Senator Hogue: Relating to the phone calls that you get on this issue so, in the lawsuit scenario if you are organized and you have enough people who are not happy with the amount of the payment or if they are lump sum of annual payment it would seem that you would have the ability to organize those people and go to court, if you ask for a jury trial the people who decide will be your neighbors. Has that happened and if not why has it not happened?

Bob Grant: We are a volunteer group and we try to take the input from 450 people and make some say of what it is doing. We have suggesting that you get together with your neighbors and work on that. We are trying to help people and be a conduit for them.

Ted Hawbaker: Portal, North Dakota. See attachment # 3. I feel a yearly payment needs to be enforced. Part of the problem is absentee landowners; by far we rent from them. The intimidation that the oil companies bring to those people, mostly in their 80s or 90s. They use a land service and told one gentleman that they do not offer annual payments. Absentee landowners are easily intimidated and not very familiar with what is going on. In the summer of 2011 there was a well across from my house and a saltwater tank blew up from due to poor maintenance. They determined that they cannot get the fire put out so we deal with this all the time, they fire burned for 3 days so we constantly deal with these. We get no compensation because we own no mineral rights these full gas lines have no oversight, the industrial commission doesn't regulate gathering lines and they are unclear if Public Service Commission does. The same companies that had the explosion that well and leases have been sold 4 times since that. The oil company doesn't say that they sell the well when it happens. If we have some compensation that stays with the land in lieu of payment with the land, to me it would make sense. Last week a flow line broke 2 miles from

my house and when I contact the company they say that they will fix it but it doesn't need to be fixed it needs to be replaced. This spring it is going to break again as the frost comes out and trying to get compensation from these companies is like pulling teeth. A few miles north of my house, in Canada, which is a different company I realize but the industry is similar. For years they receive, in the neighborhood of, \$3,000-\$4,000, per site, per year plus any initial damage. These are some of the things that with the pipelines are not regulated and it is all the stuff that comes with the land site but when there is no compensation it is really hard to get along with them. (33:10-42.07)

Chairman Schaible: When you talk about tank explosions and pipe breaks those are different incidences because aren't they handled on a different scenario?

Ted Hawbaker: It is little different issue but it also ties into that location that we get no compensation for. To date that company that bought up my field, the fire department had to use it, a week and a half after the fire I had not heard from the oil company and there had been no report to NDIC.

Chairman Schaible: Can you explain the criteria for when a yearly or lump sum payment is made? Does the oil company offer an amount or do you negotiate that?

Ted Hawbaker: Generally it is landowners land or absentee landowners absentee at that. The few times I have tired to negotiate with oil companies they have refused to negotiate with me and then moved the wells to adjacent lands. They tell the absentee landowners that they are going to be rich because they are drilling a well on their land. That is a typical scenario and that is where we need some protection so the payment stays with the surface.

Senator Triplett: The relationship between tenants and landlords and I am not sure this bill can solve that problem for you. Damage to your land outside of a well pad, it is my understanding that the payment that is being made for the pad being there and if there is an incident that causes damage to your land above and beyond that I do not think is part of this agreement, that you should be allowed to receipt of damages, and the industrial commission should support you for a damage claim.

Ted Hawbaker: All of these issues come with every well. Our support from the industrial commission is next to nothing maybe on reclamation they will help.

Senator Triplett: My understanding that it is an agreement on the loss of the well pad, be it 5 acres or 14 acres, it is about that it is being taken out of production and you, as a landowner, are being compensated for the fact that it is going to be out of production for 40 or 50 years. If something else happens outside of the well patch that is an accident or an incident that causes additional damage to the surrounding area that seems to be not to be part of this this.

Ted Hawbaker: The taxes we pay for the land we don't use factors in as well. There needs to be an initial payment when they do drill the well and it should go to the current landowner, be they absentee or not.

John Haskins: Cabinet maker from Williston. See attachment # 4. (50:05-57:38)

Senator Triplett: I would like a copy of your damage assessment.

Mark Rykken: See attachment #5. (58:34-1:02:25)

Chairman Schaible: Did they just offer you a sum of money or is there a criteria that it is based on?

Mark Rykken: I do not remember and it was a onetime lump sum of money. When they threaten that they will come and drill without your consent I didn't realize that they could do that.

Thomas Wheeler: Northwest Landowner Association. The first well that they wanted to put on land that I own was 4-5 years ago and I was told the terms by a land man of a well that they wanted to install, the land man told me that they could drill without my permission. A lot of it is the operators, I have heard from the petroleum council that there are few landowners that are holdouts and that is the way that we see it. If the lump sum payment is allowed the future owner gets nothing forever and in my case there is no guarantee that my son will farm so I want whoever to buys the land to get it. An argument is that it is hard to adjust the price often, they have leases for the mineral owners, sometimes over 100 owners for one parcel of land, but they cannot adjust the payments. I get a lot of calls from people who have these issues, a neighbor of mine was fighting with an oil company, he had no mineral rights, they wanted to put a well pad on his land but they could not come up with an agreement. This went on for a little while and he got an injunction so production had to stop he didn't want to settle but no one will know what is happening and you cannot disclose the terms, if you sue and lose it is a bad deal. Sometimes the pad goes in and the pipeline goes in without leverage you have nothing. I have my own problems with limiting the person's right to take a lump sum payment. In some cases it would increase the value of the land for someone to own.

Ron Ness: North Dakota Petroleum Council. See attachment #6 (1:11:19-1:16:32)

Chairman Schaible: How are these lump payments determined?

Ron Ness: What we have found is they look at the valuation in the counties; historically the companies have looked at the highest value land and have paid that amount.

Chairman Schaible: It seems to me that we have some surface owners that do not have mineral rights but want an annual payments and the industry says no.

Ron Ness: I think that the law is very clear, if you take them to court and you win but I am not sure how to dictate that in statute. By and large we have to down to a few less instances.

Jeff Herman: Regional Manager for Hunt Oil, LLC. It is better for the surface owner to negotiate as he pleases; some want annual and some want a lump sum.

Chairman Schaible: Where is the negotiation if you refuse the annual payment?

Jeff Herman: That is the current law so if they are breaking it they need to litigate.

Senator Armstrong: There is a 2012 federal case on the issue that started in North Dakota, what is the name of it.

Jeff Herman: From our company standpoint we use a USDA values on a county level and pay them the top value for the county.

Chairman Schaible: You are getting an amount, what are you doing with an annual payment?

Jeff Herman: If it is a single pad we pay \$1,000 a year, \$2,000 for two and after that we go up.

There was no further discussion or testimony and Chairman Schaible closed the hearing on SB 2341.

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

SB 2341
2/19/2015
24129

- Subcommittee
 Conference Committee

Committee Clerk Signature

Kate Oliver

Explanation or reason for introduction of bill/resolution:

Relating to loss of production payments by surface owners.

Minutes:

Chairman Schaible: I have been trying to find a solution but nothing that I am satisfied with. I would like a little time to check out a few more things but I would like to know the committees feelings on it.

Senator Murphy: It seems to me to be somewhat reasonable that if you put a lump sum with an ending date it works. One of the primary concerns that we heard is that future generations have no say, I am not sure what the 20 or 25 year end on it and everyone knows that.

Chairman Schaible: I did consider that and I guess we were looking at a ballpark figure of wells life expectancy, it can be less than that or it can be more than that. Say you put a time period on it, what happens at the expiration of that time period, how you negotiate with the company.

Senator Murphy: It seems to me that some type of protracted projection would enter into that. I am not sure that it cannot be done.

Senator Armstrong: If it is a lump sum payment is for 30 years and it goes dry on year 11 is there a repayment option. This is putting an arbitrary number in there and when you get to the trigger date there are things that happen next.

Senator Triplett: I have a lot of sympathy for the landowners in these situations. I have heard three different conversations going on with the testimony that we heard and only one relates to the bill. One concern from someone who testified is about the external damage to the well pad if there is a blowout or spill and there is damage to their land that is not the point of these well pad damage agreements. If something accidental happens the regulations are in pretty good shape that require the operator whose facilities cause the damage to do reclamation and to pay for it. The second issue that I heard and think is not

relevant to the bill is the issue of absentee landowners on the part of people who rent land and the landowners are old and it is an effort to have control over that situation. If they are dealing with people who no longer understand what is going on. The issue of future purchaser somehow being disadvantaged is also irrelevant because any future purchaser is going to look at what it is they are buying and if they are buying a quarter section of land that has a well pad on it they will make an offer accordingly. When we get down to the meat of the bill it is about the compensation for the use of the land on which the well pad sits and the law already says that they are allowed annual payments or lump sum as a choice. If somebody and gets to the point of take it or leave it and I understand the problem and the state of the law as we have it is pretty balanced and when the oil companies are in violation of the law they are offering something that is more than annual payments. If they do not want the check or to cash it and we have set up programs through the ag dept. We will never be able to balance the playing field between oil company and the landowners. I do not think that this bill is the answer.

Senator Murphy It seems to me that a lot of this goes away they use the mediation programs. Can we look at that?

Senator Triplett: I think we just gave \$600,000 to the ag department to do more of this.

Vice Chair Unruh: Senator Triplett is correct, there is a bill out there that is more of a pipeline reclamation program and it allows mediation to be used for those purposes. I am unclear if the mediation services can be used for what is in front of us right now. Mr. Ness is in the back of the room and he is nodding his head saying yes it can be. I think that it is an important piece to this.

Chairman Schaible: It can be used right now but it is not a forced mediation. Either side can say no to mediation so unless both sides agree to it the mediation most likely won't happen.

Senator Murphy: Is there any benefit to bringing those parties together?

Chairman Schaible: You can do that but it will have adverse consequences.

Senator Armstrong: We are dealing with what people would deem a couple of companies that landowners are not following the spirit of the law. I am concerned if the solution causes more problems than the underlying problem is. What I do not want to see is a bunch of companies that have good relationships with landowners now being forced into mediation because it is available and creating situations that cause more problems than trying to solve the ones on the backside. If there is any remedy of that nature we need to be very careful of those types of situations, too.

Chairman Schaible: That discussion was exactly what I was looking for. I have a few more things that I would like to check out and I will try and get that done this morning.

There was no further discussion and Chairman Schaible adjourned the committee.

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

SB 2341
2/20/2015
24210

- Subcommittee
 Conference Committee

Committee Clerk Signature

Kate Oliver

Explanation or reason for introduction of bill/resolution:

Relating to loss of production payments by surface owners.

Minutes:

Senator Armstrong moved a do not pass on SB 2341 with a second by Vice Chair Unruh.

Chairman Schaible: I would like to give you a briefing on what I have done on this since the last talk. I had several visits with the Attorney General about what we can do without hindering the effects of what we were trying to do. The surface owners concerns on not being able to negotiate and getting basically a lump sum. Of all the options that we found none of them seem to fit the bill that we were trying to do. We could have forced to go to annual payments, maximums on the contracts, and a date on the life expectancy of the well. I think that better negotiation between annual contracts is also being submitted, I am in favor of the motion but I would strongly suggest that if our producers and landowners can't resolve this themselves that we might have to take a more serious look at this.

Senator Armstrong: I agree and if this is still an issue two years from now then people better get a different reaction from us as a committee. It is also important to note, from the testimony we heard, the vast majority of landowners and companies things have gotten better in the long term.

Senator Hogue: The fundamental unfairness from the landowner's perspective is that we are encouraging them to go down this road of negotiating the agreement.

There was no further discussion, roll was taken and the motion passed on a 6-0-1 vote with Chairman Schaible carrying the bill to the floor.

REPORT OF STANDING COMMITTEE

SB 2341: Energy and Natural Resources Committee (Sen. Schaible, Chairman)
recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
SB 2341 was placed on the Eleventh order on the calendar.

2015 TESTIMONY

SB 2341

Mr. Chairman and Members of the Energy and Natural Resources Committee:

1.1
2-13-15

For the record, I am David Rust, State Senator from District 2 in NW ND.

SB 2341 amends Section 38-11.1-08.1 of the NDCC relating to loss of production payments for surface owners.

The provisions of the bill include:

- 1) Requires yearly payments for loss of agriculture production and income caused by oil and gas production. (P. 1, line 10)
- 2) Eliminates the option for the surface owner to receive a lump sum payment. (P. 1, lines 14, 15)
- 3) Lists factors to be considered when determining yearly payments, one of which calls for an adjustment in the payment based on the cost of living index every one to three years. (P. 1, line 16 through P. 2, line 3)
- 4) Provides that mediation may be requested by the surface owner and the mineral developer.

Landowners thought the law required an annual payment--unless the surface owner elected to receive a lump payment (P. 1, line 14)--but evidently that isn't happening. I'll let those who follow explain that further.

1.2
With regards to a single lump sum payment, only one person benefits--the current landowner. Yearly payments would benefit both the present landowner and subsequent landowners.

The argument is made that subsequent landowners know that a lump sum has been paid and as a result the price of the land will be adjusted to account for that. We all know that doesn't happen.

I am told that land typically comes up for sale about once every 50 - 60 years. A farmer probably has one chance in his/her lifetime to purchase a particular parcel of land, and most of the time there are others who will compete for that same parcel of land. Do you really think the fact that a lump sum payment was received years before will make a difference on the price of the land? In most cases, it doesn't.

In addition, the farmer pays the property taxes on those parcels where an oil well sits. There is no exclusion for the acreage lost to farming. That's been happening for more than 60 years in our area with no real end in site. Annual payments would again be a benefit to subsequent landowners.

Annual payments are the right thing to do for the present landowner and for future landowners.

Further, I'm told that landowners in the 1950s received what would be considered a meager lump sum payment in relation to today's prices for the acreage on which a well was placed. Hence, the provision for adjustments to payments.

I urge you to give a "Do Pass" to SB 2341 and will stand for any questions you may have.

To: Senator Schaible
Members of the Senate Energy and Natural Resources Committee

From: Robert (Bob) N. Grant –
Farmer / Rancher /// Member of Northwest Landowners Association board

2.1
2-13-15

RE: Support for Senate Bill # 2341

Chairman Schaible and members of the committee –

I am Bob Grant, farmer and rancher from Mountrail County and a board member of Northwest Landowners Association. I live on the family farm and have farmed and ranched all of my life.

I am here today in support of Senate Bill # 2341.

In 2011 House Bill 1241 was passed which gave the surface landowner yearly compensation for loss of production. The intent of that bill was to make the surface landowner/operator whole each year for the hassle and loss of production until the land is reclaimed and productive once more. The intent of the bill has been sidestepped by a number of developers. They will only make a lump sum payment for any losses and the easement is open ended. In other words, there is no date for the end of the easement, only a clause—“This payment covers all loss of production until the well is no longer producing”. If the well pad and roads are in place for 40 – 50 – 60 years or more the landowner is not entitled to anymore compensation, even if multiple wells are drilled on that site. That lump sum payment only helps that producer for that year, not the future. If the land is sold or passed down to succeeding generations, the intent of the law will not be followed and the new owner is left out in the cold.

The following is taken from the Attorney General Opinion letter dated March 13, 2007 to Mr. Lynn Helms (Director, Oil and Gas Division) ----

(The oil and gas company) usually, but not always ... makes a one time offer to the surface owner for actual surface damage. In the event of a dry hole the compensation may be fair ... but in the event of production which may be for 20 or 30 years or (sic) more, the surface owner gets no consideration unless the producer volunteers or the surface owner has to sue in each instance and prove his claim ...

We are reluctant to be operating under present practices where the surface owner has to sue in every instance where he feels he has been damaged, and must prove his claim ...

The trouble with one time settlement is that there is no way to determine years in advance what actual damage, let alone intangible damages might be. For instance, odor in the air, management practices, working around oil equipment, danger to health of humans and livestock, loss of water wells and springs. Then too, salt and oil spills, corrosion on metal buildings, machinery and wire by hydrogen sulfide gas, loss of use of the surface, cattle passes, roads, pipelines and traffic, flair (sic) outs, fires, pollution, trespassing and depreciated value of the surface. (4) 2.2

(4) Hearing on H. B. 1198 before the House Comm. On Natural Resources, 1979 N. D. Leg (Jan 18) (Statement of Rep. Murphy). See also id. (Statement of Joyce Byerely, McKenzie County Grazing Association).

This opinion letter has some profound statements that should be considered with any yearly compensation package and a strong statement that landowners should not have to go court to reach settlements. This Opinion Letter from the Attorney General is the basis for Senate Bill #2341.

Everything changes over time, especially over the lifetime of the well sites and access roads. According to Oil and Gas – The typical Bakken well should produce for 46 years, with current technology. I believe the sites and roads will be there much longer --- Innovation, efficiencies, multiple wells on each site, to name a few things that will lengthen the need for the site. Look at the innovation that has been applied in just the past 8 years. The oil industry has always been very forward with innovation and applying new technologies to create more efficiency and get the last drop.

I will use my own farm/ranch as an example of the changes over the past 40 plus years to get more revenue out of each acre of land. In the early 70's wheat production was 20-24 bushels per acre which was sold for \$1.10/bu. Today that same land produces 45-50 bushels/acre which has a value of \$5.00/bu. In the 70's I needed 10 acres of pasture to run one 900# cow and her calf for the summer. I sold that 400# calf for \$90. Today – 6 acres for one 1400 # cow and calf. We sold our 700# steers this past November (directly off the cow) for \$1,775 each. **No one locks in the future selling price of their product for today's price --- especially if the future is the rest of your life or 50+ years.** That is why there needs to be adjustments in the payments that are linked to CPI. Yearly adjustments would be the best, but no longer than three (3) years. If payments are made yearly until land is again productive, the landowner can remain whole each year.

The ability to settle differences through mediation could change the attitudes some people have with the oil and gas industry. When the option is: take what is offered or sue us – almost everyone takes the offer (while grumbling and cussing). The cost of court proceedings even with a

win would probably be a losing proposition in loss of time and money. The oil industry knows that individual landowners have very little appetite for law suits. That is not in their realm of thinking.

2.3

The State of North Dakota has the responsibility to see that all surface owners are protected and compensated for all that he (she) gives up for the production of oil / gas or the disposal of waste water, etc, on his (her) property. It should not be the responsibility of the surface owner to use his time and funds to go to court when companies do not follow existing legislation. He (she) is already forced to let the mineral developer to use his surface for their production. Why should he (she) be the only loser in this oil/gas scenario? Land values depreciating, use of the land is limited, access is curtailed, inefficiencies in the use of adjoining land, and just a lot of hassle from traffic, dust, and 24 hr vehicles, and people on or near their property.

I am a 4th generation family farmer/rancher that continues on the family farm because I love what I am doing. I love the life style and the quality of life I have enjoyed. I did not become a farmer/rancher to become rich. I strongly believe that is the reason most families are still farming in western North Dakota. We want the ability to continue to live and work here and raise our families for generations to come. We know life is changed for us, but give us the chance to adapt. Don't sacrifice us because of the money and notoriety of the economic situation of the state. We are asking that the landowner be treated fairly and with respect. The landowner is the biggest loser – possible loss of ability to continue the operation – A definite loss of Quality of Life. Just as the generations before us that made it through all sorts of hardships and continued to serve their communities and their state – North Dakota. Given the chance – We will too!

I'd be happy to answer any questions.

Ted Hawbaker
SB 2341
3.1
2-13-15

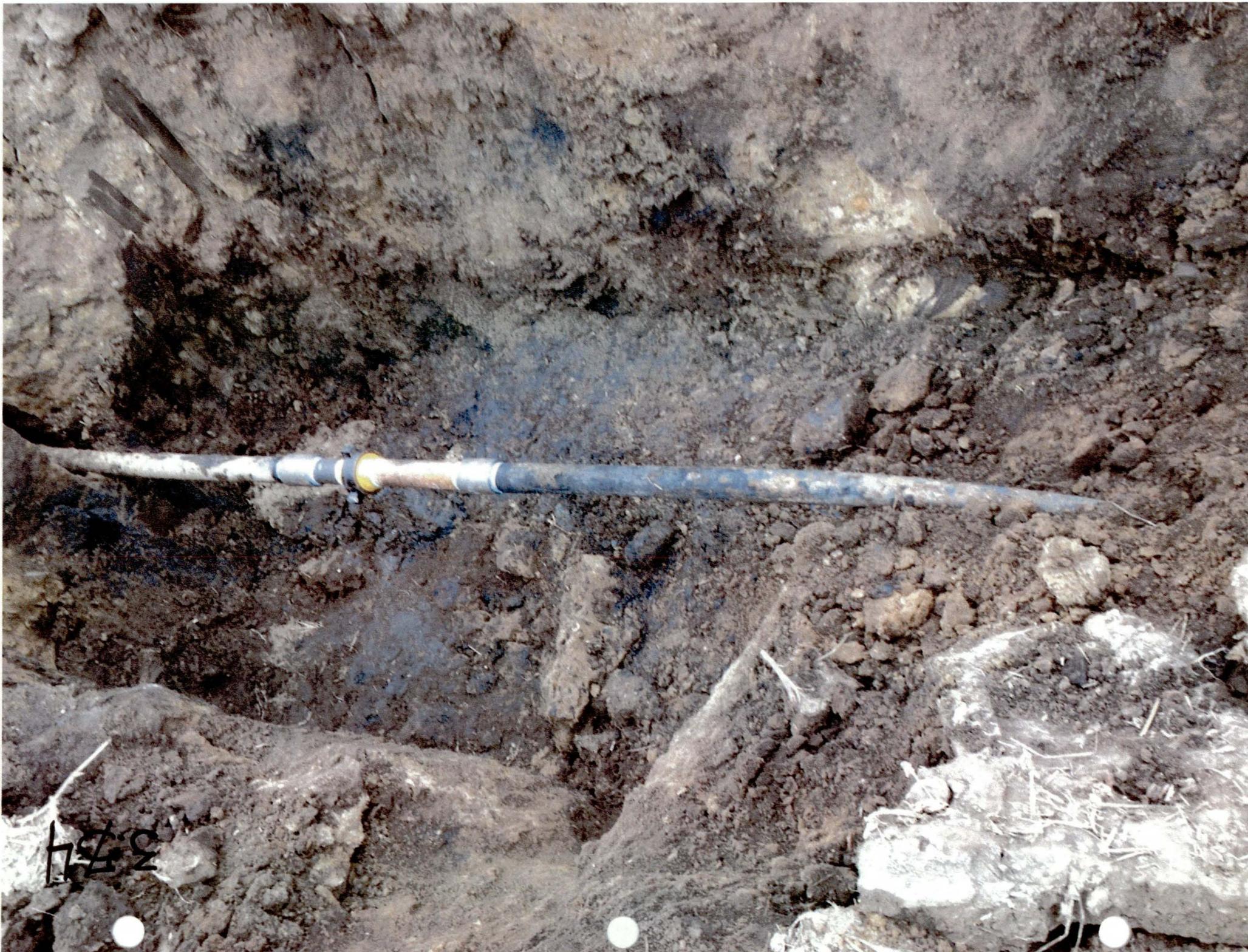


3.2



3.43





This line Broke 3 different times in The Spring. 2014

This is a flow line that is over 50 years old,
it carries Oil, Saltwater + Gas.

3.65

The Company (Silver Thread) won't put in a new line
NDIC won't shut the well down as long as they fix
the leaks as they break.

There has been NO compensation for crop
damage or surface damage.

3.716

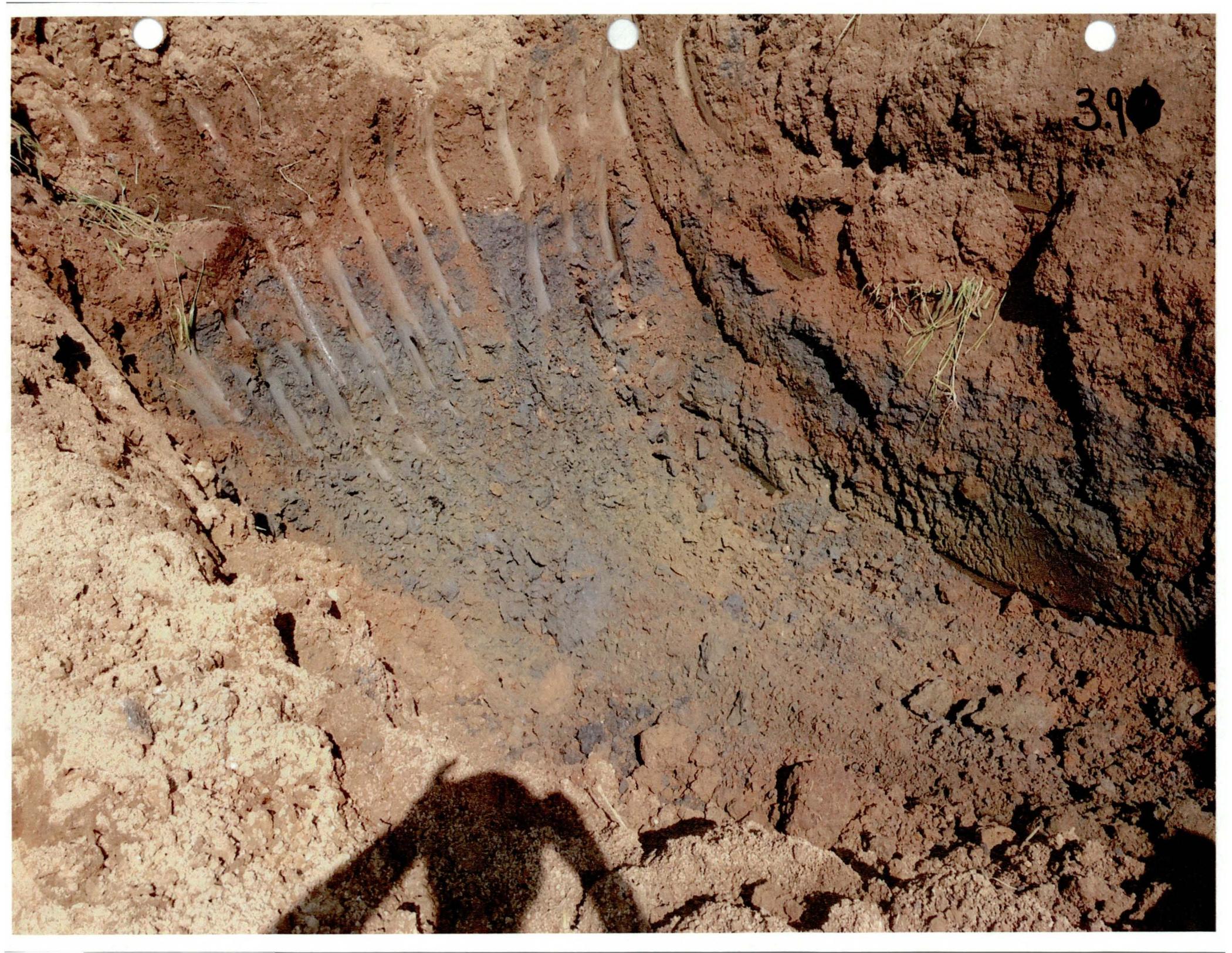




B3



390



3.10



This is The sight of a gas line leak in The 3. 
Middle of one of my fields, mid summer 2014. It is
~~the~~ owned by (OneOK Partners). It is a gathering
line from oil wells to a gas plant in Signite N. Dak.

Their Valves don't work, so they couldn't shut off the
gas for days, until they hired a company to come up and
dig another hole in my field and pinch the line off.

NDIC tells me it is unclear who regulates these lines
(it is clear no one does, or some agency would make sure

OneOK's valves and other equipment worked.)

We are still trying to get compensation for crop
and surface damages.

To: Senator Schaible
Members of the committee

From: John Haskins
Cabinet maker

RE: Support for Senate Bill #2341

4.1
2-13-15

Chairman Schaible and members of the committee -

I am a surface owner in McKenzie County directly south of Williston bordering the Corp of Engineers land at Lake Sakakawea. This property was purchased in 2010 without mineral as the previous surface owner didn't own the minerals. The property is very rough and a true example of some of the finest badlands around as well as an outstanding view of the river bottoms and Williston. In September 2011 I received a notice that Continental Resources intended to build a road thru my land approximately 1/2 mile long and make a well site basically right in the middle of my property. With the extreme rough land it was estimated that they would move well over 100,000 yards of dirt and vegetation. I pleaded with them to find another location but they refused. The site and road were built in 2011 and the well drilled. They offered me a lump sum settlement of \$26,192.40 for the site and road but refused to give me any annual payment even though I repeatedly asked for one. I have the "Damage Settlement and Road Use Agreement Todd 1-6H" received 12/27/2011. I had been asking for an annual payment primarily because I felt that when the well was depleted they would be more likely to abandon the well and reclaim the site quicker knowing if they didn't they would have ongoing annually payments to make to me. Finally in June 2013 after several attempts to get an annual payment I received 2 offers, which I also have. One was for a lump sum settlement of \$26,192.40 as before and the other for a lump sum of \$9,692.40 plus \$200.00 per year annual payment. To accept the offer with the annual payment and lump sum combination it would take 82 1/2 years to get the same damage payments as the original lump sum offer plus they were only going to give \$400.00 per acre instead of \$3,700.00 per acre for future operations expansion. Obviously they were not even trying to negotiate in good faith, and only made the miniscule annual payment offer to say that they had made an offer for annual payments.

A neighboring surface owner, only 1 mile away from me had 1/4 mile of road built thru his very similar terrain property. The road went thru his land to a well site on a neighbors land. Oasis Petroleum is giving him \$1,500.00 per year annual lease for half the length of my road. Another surface owner, with identical property and land use as mine that is only 10 miles away from mine was given \$3,000.00 annual payment for 1/2 mile of road in addition to \$30,000.00 for the well site from Hess

Corp. I could go on about others that received fair offers with the identical circumstances from other oil companies for annual leases and site settlement, however, Continental has decided to simply bully me into accepting what they want to give with their terms and stipulations. Because they know it could possibly cost me a lot of money to litigate. I went to an attorney in Bismarck who specializes in oilfield matters, Derrick Braaten. He basically said Continental attorneys are very difficult. Continental has deep pockets and it would be very expensive to sue to get what I felt would be a fair settlement, and that I should be prepared to fork out a lot of money to pay for the attorney fees should I not be successful. At this point I have not settled with Continental and am hopeful that something can be done on the state level to force these unreasonable oil companies to be fair. 4.2

It just doesn't seem right that these very large oil companies like Continental should be able to dictate to surface owners what they are going to pay and terms of the agreements. Individual surface owners don't have the resources, time or effort required to take on these huge companies.

I was approached by a pipeline company, Hiland to have a gas and oil pipeline installed. They were reasonable with their offer and allowed almost as much in compensation for 2 lines underground that I couldn't even see as I was offered by Continental for destroying a large portion of my badlands property. When I asked Continental where the justice was in their meager offer they said you don't have to allow a pipeline, but by law you can't stop us from drilling or building a road thru your land so we don't need to pay you as much!

In closing I'd like for you all to consider this scenario. Let's say you wanted to build your new home on the outskirts of your community and found some property with a beautiful view of your community and decide to purchase say 80 or 160 acres so no one would build in front of you to block your view and keep your property quiet. Shortly after purchase an oil company sends you a letter saying they are going to build a road right in front of your home site and drill a well in front of your home. They will stay 500' back from your home and they will give you 3 times the going per acre rate that you paid for our land for the 8 or 9 acres they will use for the road right thru the center of your property. Hundreds of semi trucks and vehicles will pass in front of your home and you will hear and smell the well for many years. How would you feel! Shouldn't there be annual payments for disruption of your property and ongoing noise, dust and smells created by the well activity?

Thank you for your time,

John Haskins

SB2341

5.1

2-13-15

Chairman Schaible, and members of the committee,

My name is Mark Rykken, live on a family farm 11 miles from the Canadian border in Burke County.

I am here to testify in support of Senate Bill 2341. I own a parcel of land with 50 % of the mineral acres. I have had several lease offers in the past and in the lease I have requested an annual or yearly loss of payment. In an event of a well being drilled on this property, they have denied my offer and stated " they did not have to pay an annual payment."

To my understanding, the current law states they are required to make annual payments. At this point negotiation have stalled and told me that because they have the remaining 50% of the mineral acres leased they will come in and put the well or wells anywhere without my consent.

Thank you the opportunity and I will hopefully answer any questions.



Senate Bill 2341
Testimony of Ron Ness
House Natural Resources Committee
February 13, 2015

Senator Schaible and members of the committee, my name is Ron Ness, president of the North Dakota Petroleum Council. The North Dakota Petroleum Council (NDPC) represents more than 550 companies directly employing 65,000 employees in North Dakota 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 Senate Bill 2341.

As many of you may recall, this was a major issue several years ago and probably the single biggest complaint many of us heard from landowners. The 2011 Legislature dealt effectively with the request by landowners in HB 1241 (attached – along with my analysis for my members). Since that time, I've heard virtually no complaints, other than a company or two that chooses to pay more through a lump-sum than through annuals, but to me the law is very clear. If the landowner does not accept the offer, they can litigate, and if successful get their legal fees paid by the operator. It's been addressed, it must be paid annually unless the landowner agrees to a lump sum (which by the way – most still want a lump sum).

SB 2341 does a number of things – we oppose them all:

- Requires annual payments – prohibits lump sum
 1. This is contrary to what most landowners want, we may all think it helps down the road but it's not what I hear they want (renters may like it).
- Removes the payment for loss of production (damage payment is covered in another chapter of law) and replaces it with the following formula:
 1. Loss of use of the land to produce revenue (very subjective)
 2. Cost to the surface owner for maintenance (what?)
 3. Additional nuisance, inconvenience, air and noise pollution and weeds (good luck agreeing on that)
 4. Limitations on adjoining land use – (impossible to define in monetary terms)
 5. Decrease in value and adjoining property
 6. Cost of Living index every three years
 7. Mediation (already allowed)

We hope you recognize the substantial changes you made in 2011 have worked. This is a total re-write of those provisions and will ensure the battles between landowners and companies that were addressed in HB 1241 will begin again. What you did made sense, and it has worked. We hope you will defeat this bill.

Legislature Approves Changes in Surface Damage Law, Creates Mediation Option, Clarifies Independent Landman Status, and Authorizes Fee for Electronic Documents.

HB 1241 is a compromise with surface owners to offer clarity on surface use damage payments for damages and crop loss. The bill also seeks to improve communication between surface owners and industry by requiring a notice of staking seven days before entering the property for staking. The law will be effective for drilling operations commenced after July 31, 2011. The full statute can be found at N.D.C.C. Section 38-11-04.

Three Main Changes in HB 1241:

a) Requires seven days' notice, by registered mail or hand delivery, to the surface owner unless waived by mutual agreement of both parties, before initial entry on the land for activities that do not disturb the surface, including inspections, staking, surveys, measurements, and general evaluation of proposed routes and sites for oil and gas drilling operations.

The notice must include:

- (1) The name, address, telephone number, and, if available, the electronic mail address of the mineral developer or the mineral developer's designee;
- (2) An offer to discuss and agree to consider accommodating any proposed changes to the proposed plan of work and oil and gas operations before commencement of oil and gas operations; and
- (3) A sketch of the approximate location of the proposed drilling site.

b.) Requires the mineral developer to pay the surface owner for damages for lost land value, lost use of and access to the surface owner's land, and lost value of improvements caused by drilling operations. The payment for this portion of damages must be a lump sum.

c.) Requires a mineral developer to pay a separate payment for production loss. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. When determining damages for loss of production, consideration must be given to the period of time during which the loss occurs, and the damages for loss of production must be paid annually unless the surface owner elects to receive a single lump sum payment. Payments under this section are intended to compensate the surface owner for loss of production.

d.) Finally, HB 1241 also amends Section 47-16-39.1 of the Code relating to royalty payments. The amendment clarifies that, if applicable, the operator shall pay a rate of eighteen percent per annum after one hundred fifty days from when the initial oil or gas production is marketed. In addition, the section is amended to clarify that interest, if applicable, must be paid and that the mineral owner or the mineral owner's assignee is not required to first request the payment of interest.

6.3

**Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011**

HOUSE BILL NO. 1241
(Representatives Kempenich, Drovdal, Steiner)
(Senators Andrist, Wardner)

AN ACT to create and enact a new section to chapter 38-11.1 and section 38-11.1-04.1 of the North Dakota Century Code, relating to notice of oil and gas drilling operations and compensation for loss of agricultural production and income caused by oil and gas production; to amend and reenact sections 38-11.1-02, 38-11.1-04, 38-11.1-08, and 47-16-39.1 of the North Dakota Century Code, relating to damage and disruption payments for damages caused by oil and gas production, agreement with offer of settlement, and the obligation to pay oil and gas royalties; to repeal section 38-11.1-05 of the North Dakota Century Code, relating to notice of oil and gas drilling operations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

38-11.1-02. Purpose and interpretation.

It is the purpose of this chapter to provide the maximum amount of constitutionally permissible protection to surface owners and other persons from the undesirable effects of development of minerals. This chapter is to be interpreted in light of the legislative intent expressed herein. Sections 38-11.1-04 and ~~38-11.1-05~~ 38-11.1-04.1 must be interpreted to benefit surface owners, regardless of whether the mineral estate was separated from the surface estate and regardless of who executed the document which gave the mineral developer the right to conduct drilling operations on the land. Sections 38-11.1-06 through 38-11.1-10 must be interpreted to benefit all persons.

SECTION 2. AMENDMENT. Section 38-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

38-11.1-04. Damage and disruption payments.

The mineral developer shall pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner and the surface owner's tenant, if any, for ~~loss of agricultural production and income~~, lost land value, lost use of and access to the surface owner's land, and lost value of improvements caused by drilling operations. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. When determining ~~damages~~ damage and disruption payments, consideration must be given to the period of time during which the loss occurs and the surface owner ~~may elect to be paid damages in annual installments over a period of time; except that the surface owner~~ must be compensated for harm caused by exploration only by a single sum payment. The payments contemplated by this section only cover land directly affected by drilling operations. Payments under this section are intended to compensate the surface owner for damage and disruption; any reservation or assignment of such compensation apart from the surface estate except to a tenant of the surface estate is prohibited. In the absence of an agreement between the surface owner and a tenant as to the division of compensation payable under this section, the tenant is entitled to recover from the surface owner that portion of the compensation attributable to the tenant's share of the damages sustained.

SECTION 3. Section 38-11.1-04.1 of the North Dakota Century Code is created and enacted as follows:

6.4

38-11.1-04.1. Notice of operations.

1. Before the initial entry upon the land for activities that do not disturb the surface, including inspections, staking, surveys, measurements, and general evaluation of proposed routes and sites for oil and gas drilling operations, the mineral developer shall provide at least seven days' notice by registered mail or hand delivery to the surface owner unless waived by mutual agreement of both parties. The notice must include:
 - a. The name, address, telephone number, and, if available, the electronic mail address of the mineral developer or the mineral developer's designee;
 - b. An offer to discuss and agree to consider accommodating any proposed changes to the proposed plan of work and oil and gas operations before commencement of oil and gas operations; and
 - c. A sketch of the approximate location of the proposed drilling site.
2. Except for exploration activities governed by chapter 38-08.1, the mineral developer shall give the surface owner written notice by registered mail or hand delivery of the oil and gas drilling operations contemplated at least twenty days before commencement of drilling operations unless mutually waived by agreement of both parties. If the mineral developer plans to commence drilling operations within twenty days of the termination date of the mineral lease, the required notice under this section may be given at any time before commencement of drilling operations. The notice must include:
 - a. Sufficient disclosure of the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property;
 - b. A plat map showing the location of the proposed well; and
 - c. A form prepared by the director of the oil and gas division advising the surface owner of the surface owner's rights and options under this chapter, including the right to request the state department of health to inspect and monitor the well site for the presence of hydrogen sulfide.
3. The notice required by this section must be given to the surface owner at the address shown by the records of the county treasurer's office at the time the notice is given and is deemed to have been received seven days after mailing by registered mail or immediately upon hand delivery.
4. If a mineral developer fails to give notice as provided in this section, the surface owner may seek appropriate relief in the court of proper jurisdiction and may receive punitive as well as actual damages.

SECTION 4. AMENDMENT. Section 38-11.1-08 of the North Dakota Century Code is amended and reenacted as follows:

38-11.1-08. Agreement - Offer of settlement.

Unless both parties provide otherwise by written agreement, at the time the notice required by ~~section 38-11.1-05~~ subsection 2 of section 38-11.1-04.1 is given, the mineral developer shall make a written offer of settlement to the person seeking compensation for damages when the notice required by ~~section 38-11.1-05~~ subsection 2 of section 38-11.1-04.1 is given. The person seeking compensation may accept or reject any offer so made.

SECTION 5. A new section to chapter 38-11.1 of the North Dakota Century Code is created and enacted as follows:

Loss of production payments.

The mineral developer shall pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner and the surface owner's tenant, if any, for loss of agricultural production and income caused by oil and gas production and completion operations. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. When determining damages for loss of production, consideration must be given to the period of time during which the loss occurs and the damages for loss of production must be paid annually unless the surface owner elects to receive a single lump sum payment. Payments under this section are intended to compensate the surface owner for loss of production. Any reservation or assignment of such compensation apart from the surface estate, except to a tenant of the surface estate, is prohibited. In the absence of an agreement between the surface owner and a tenant as to the division of compensation payable under this section, the tenant is entitled to recover from the surface owner that portion of the compensation attributable to the tenant's share of the damages sustained.

SECTION 6. AMENDMENT. Section 47-16-39.1 of the North Dakota Century Code is amended and reenacted as follows:

47-16-39.1. Obligation to pay royalties - Breach.

The obligation arising under an oil and gas lease to pay oil or gas royalties to the mineral owner or the mineral owner's assignee, or to deliver oil or gas to a purchaser to the credit of the mineral owner or the mineral owner's assignee, or to pay the market value thereof is of the essence in the lease contract, and breach of the obligation may constitute grounds for the cancellation of the lease in cases where it is determined by the court that the equities of the case require cancellation. If the operator under an oil and gas lease fails to pay oil or gas royalties to the mineral owner or the mineral owner's assignee within one hundred fifty days after oil or gas produced under the lease is marketed and cancellation of the lease is not sought or if the operator fails to pay oil or gas royalties to an unleased mineral interest owner within one hundred fifty days ~~from initial~~ after oil or gas production is marketed from the unleased mineral interest owner's mineral interest, the operator thereafter shall pay interest on the unpaid royalties, without the requirement that the mineral owner or the mineral owner's assignee request the payment of interest, at the rate of eighteen percent per annum until paid, except that the commissioner of university and school lands may negotiate a rate to be no less than the prime rate as established by the Bank of North Dakota plus four percent per annum with a maximum of eighteen percent per annum, for unpaid royalties on minerals owned or managed by the board of university and school lands. Provided, that the operator may remit semiannually to a person entitled to royalties the aggregate of six months' monthly royalties where the aggregate amount is less than fifty dollars. The district court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought pursuant to this section. The prevailing party in any proceeding brought pursuant to this section is entitled to recover any court costs and reasonable attorney's fees. This section does not apply when mineral owners or their assignees elect to take their proportionate share of production in kind, in the event of a dispute of title existing that would affect distribution of royalty payments, or when a mineral owner cannot be located after reasonable inquiry by the operator; however, the operator shall make royalty payments to those mineral owners whose title and ownership interest is not in dispute.

SECTION 7. REPEAL. Section 38-11.1-05 of the North Dakota Century Code is repealed.

SECTION 8. EFFECTIVE DATE. Sections 2 and 5 of this Act become effective for drilling operations commenced after July 31, 2011.