2023 HOUSE FINANCE AND TAXATION

HB 1286

2023 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Room JW327E, State Capitol

HB 1286
2/7/2023

A bill relating to the removal of triggered oil extraction tax rate changes.

Vice Chairman Hagert opened the hearing at 9:01AM.

Members present: Chairman Headland, Vice Chairman Hagert, Representative Anderson, Representative Bosch, Representative Dockter, Representative Fisher, Representative Grueneich, Representative Hatlestad, Representative Motschenbacher, Representative Olson, Representative Steiner, Representative Toman, Representative Finley-DeVille, and Representative Ista. No members absent.

Discussion Topics:
- Stability of tax environment
- Trigger removal
- Oil extraction tax rates

Chairman Headland verbally introduced the bill in support.

Ron Ness, President of North Dakota Petroleum Council, testified in support (#19505 and 19506).

Kate Black, Vice President of Inland Oil and Gas, testified in support (#19508).

Geoff Simon, Executive Director with Western Dakota Energy Association, testified in support (#19440).

Arik Spencer, Chief Executive Officer with the Greater North Dakota Chamber, verbally testified in support.

Fintan Dooley, Coordinator of Salted Lands Council, testified in opposition (#19527, 19529, and 19530).

Vice Chairman Hagert closed the hearing at 9:48AM.

Mary Brucker, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Room JW327E, State Capitol

HB 1286
2/14/2023

A bill relating to the removal of triggered oil extraction tax rate changes.

Chairman Headland opened the meeting at 10:01AM.

Members present: Chairman Headland, Vice Chairman Hagert, Representative Anderson, Representative Bosch, Representative Dockter, Representative Fisher, Representative Grueneich, Representative Hatlestad, Representative Motschenbacher, Representative Olson, Representative Steiner, Representative Finley-DeVille, and Representative Ista. Members absent: Representative Toman.

Discussion Topics:
- Proposed amendment 23.0830.01002
- Irrevocable votes
- Committee vote

Chairman Headland distributed a proposed amendment 23.0830.01002 (#20796).

Dee Wald, General Counsel with the State Tax Commissioner's Office, answered questions from the committee.

Mark Fox, Tribal Chairman for MHA Nation, answered questions from the committee.

Dee Wald, General Counsel with the State Tax Commissioner's Office, answered questions from the committee.

Representative Bosch moved the amendment 23.0830.01002.

Representative D. Anderson seconded the motion.

Roll call vote:

Representatives	Vote
Representative Craig Headland	Y
Representative Jared Hagert	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Lisa Finley-DeVille	Y
Representative Jay Fisher	Y
Representative Jim Grueneich	Y
Representative Patrick Hatlestad	Y
Representative Zachary Ista	Y

Representative Mike Motschenbacher	Y
Representative Jeremy Olson	Y
Representative Vicky Steiner	Y
Representative Nathan Toman	AB

Motion carried 13-0-1

Representative D. Anderson moved a Do Pass as Amended.

Representative Bosch seconded the motion.

Roll call vote:

Representatives	Vote
Representative Craig Headland	Y
Representative Jared Hagert	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Lisa Finley-DeVille	Y
Representative Jay Fisher	Y
Representative Jim Grueneich	Y
Representative Patrick Hatlestad	Y
Representative Zachary Ista	N
Representative Mike Motschenbacher	Y
Representative Jeremy Olson	Y
Representative Vicky Steiner	Y
Representative Nathan Toman	AB

Motion carried 12-1-1

Representative Olson is the bill carrier.

Chairman Headland adjourned at 10:20AM.

Mary Brucker, Committee Clerk

23.0830.01002
Title.02000

Prepared by the Legislative Council staff for
Representative Headland
February 13, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1286

Page 1, line 1, remove "and subsection 3 of section"

Page 1, line 2, remove "57-51.2-02"

Page 1, line 3, after "changes" insert "for wells located outside the exterior boundaries of a reservation"

Page 1, line 3, remove "to provide for application;"

Page 1, after line 7 insert "1."

Page 1, line 12, after "~~However~~" insert:

> "2. Subject to subsection 3, for a well located within the exterior boundaries of a reservation, a well located on trust properties outside reservation boundaries as defined in section 57-51.2-02, or a straddle well located on reservation trust land as defined in section 57-51.2-07.10"

Page 1, line 12, remove the overstrike over "~~, if the average price of a barrel of crude oil exceeds the trigger price~~"

Page 1, remove the overstrike over lines 13 through 23

Page 2, line 1, remove the overstrike over "~~For purposes of this~~"

Page 2, line 1, after "~~section~~" insert "subsection"

Page 2, line 1, remove the overstrike over "~~, "average price" of a barrel of crude oil means the monthly~~"

Page 2, remove the overstrike over lines 2 through 5 and insert immediately thereafter:

> "3. A tribe may make an irrevocable election to opt-out of the increased rate of tax provided in subsection 2 by providing written notice to the tax commissioner. If a tribe provides notice under this subsection, the rate of tax on oil extracted from taxable wells is equal to the rate of tax provided in subsection 1, beginning in the month of production after notice under this subsection is received by the tax commissioner."

Page 2, remove lines 6 through 13

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1286: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1286 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "and subsection 3 of section"

Page 1, line 2, remove "57-51.2-02"

Page 1, line 3, after "changes" insert "for wells located outside the exterior boundaries of a reservation"

Page 1, line 3, remove "to provide for application;"

Page 1, after line 7 insert "1."

Page 1, line 12, after "~~However~~" insert:

> "2. Subject to subsection 3, for a well located within the exterior boundaries of a reservation, a well located on trust properties outside reservation boundaries as defined in section 57-51.2-02, or a straddle well located on reservation trust land as defined in section 57-51.2-07.10"

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Page 2, line 1, remove the overstrike over "~~, "average price" of a barrel of crude oil means the monthly~~"

Page 2, remove the overstrike over lines 2 through 5 and insert immediately thereafter:

> "3. A tribe may make an irrevocable election to opt-out of the increased rate of tax provided in subsection 2 by providing written notice to the tax commissioner. If a tribe provides notice under this subsection, the rate of tax on oil extracted from taxable wells is equal to the rate of tax provided in subsection 1, beginning in the month of production after notice under this subsection is received by the tax commissioner."

Page 2, remove lines 6 through 13

Renumber accordingly

2023 SENATE FINANCE AND TAXATION

HB 1286

2023 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1286
3/8/2023

Relating to the removal of triggered oil extraction tax rate changes for wells located outside the exterior boundaries of a reservation.

9:45 AM Chairman Kannianen opened hearing.

Senators Present: **Kannianen, Weber, Patten, Rummel, Piepkorn, Magrum.**

Discussion Topics:
- Trigger agreement
- Trigger cost
- Commodity trigger

9:45 AM Representative Headland introduced bill. No written testimony.

9:48 AM Ron Ness, ND Petroleum Council, testified in favor. #22886

10:08 AM Kate Black, Vice President Inland Oil and Gas, testified in favor. #22887

10:11 AM Arik Spencer, President and CEO for Greater ND Chamber Bismarck, testified verbally in favor.

10:13 AM Shannon Fleisher, ND Tax Department, answered questions.

10:22 AM James Odermann, ND citizen, testified in opposition. #22915

10:28 AM Chairman Kannianen adjourned hearing.

Nathan Liesen, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1286
3/15/2023

Relating to the removal of triggered oil extraction tax rate changes for wells located outside the exterior boundaries of a reservation.

10:00 AM Chairman Kannianen opens meeting.

Senator Present: **Kannianen, Weber, Patten, Rummel, Piepkorn, Magrum.**

Discussion Topics:
- Mineral owners
- Tax Triggers
- Committee Action

10:27 AM Senator Patten moved Do Pass.

10:27 AM Senator Rummel seconded.

Roll call vote.

Senators	Vote
Senator Jordan Kannianen	Y
Senator Mark F. Weber	N
Senator Jeffery J. Magrum	N
Senator Dale Patten	Y
Senator Merrill Piepkorn	N
Senator Dean Rummel	Y

Failed 3-3-0

10:29 AM Senator Magrum moved a Do Not Pass.

10:29 AM Senator Peipkorn seconded.

Roll call vote.

Senators	Vote
Senator Jordan Kannianen	N
Senator Mark F. Weber	Y
Senator Jeffery J. Magrum	Y
Senator Dale Patten	N
Senator Merrill Piepkorn	Y
Senator Dean Rummel	N

Failed 3-3-0

10:29 AM Senator Magrum moved HB 1286 to the floor without committee recommendation.

10:30 AM Senator Piepkorn seconded.

Roll call vote.

Senators	**Vote**
Senator Jordan Kannianen	Y
Senator Mark F. Weber	Y
Senator Jeffery J. Magrum	Y
Senator Dale Patten	Y
Senator Merrill Piepkorn	Y
Senator Dean Rummel	Y

Passed 6-0-0

Chairman Kannianen will carry the bill.

10:30 AM Chairman Kannianen closed the meeting.

Nathan Liesen, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1286, as engrossed: Finance and Taxation Committee (Sen. Kannianen, Chairman) recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1286 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

TESTIMONY

HB 1286

WESTERN DAKOTA ENERGY ASSOCIATION

EXECUTIVE COMMITTEE

Trudy Ruland
President
Mountrail County

Supt. Leslie Bieber
Vice President
Alexander PSD

Zach Gaaskjolen
City of Stanley

Keith Harris
Dickinson PSD

Supt. Tim Holte
Stanley PSD

Shannon Holter
City of Bowbells

Lyn James
City of Bowman

Nick Klemisch
Garrison PSD
Coal Conversion Counties

David Montgomery
Williams County

Craig Pelton
Dunn County

John Phillips
Coal Conversion Counties

February 7, 2023

Testimony of:
Geoff Simon, Lobbyist #144
in support of HB 1286 – Remove the Oil Tax Trigger
House Finance and Taxation Committee

Chairman Headland and Committee members:

On behalf of the city, county and school district members of the Western Dakota Energy Association (WDEA), we wish to express our support for HB 1286 which would remove the trigger that raises the extraction tax rate when oil prices exceed a pre-set target price.

Our members receive no revenue share from extraction taxes, the lion's share of which are deposited in buckets that include the Legacy Fund, Resources Trust Fund, Common Schools Trust Fund, Foundation Aid Stabilization Fund and the General Fund. Hence, an increase in the extraction tax has no direct upside for our members in the oil-producing counties, but there is a serious downside at a time when North Dakota's oil producers are competing for capital investment with other oil plays that enjoy a more friendly winter climate.

I would call to your attention p. 2 of my testimony, a column written by WDEA President Trudy Ruland, that provides a wonderful analogy between the cost of producing a bushel of wheat to the investment required by the oil industry to produce a barrel of oil. Both ag and oil are subject to the whims of commodity prices which can fluctuate wildly from year to year, which means both can have highly profitable years, but both can also experience low prices and have years where they barely break even or experience a significant loss.

So why should North Dakota have a high-price trigger for the state's oil producers, which deliver more than half the state's general fund tax revenue, when there is no similar tax trigger on ag commodities when North Dakota farmers realize "windfall profits?" The answer should be obvious. Windfall profit taxes, a.k.a. high-price triggers, are unfair, and the existence of the trigger in North Dakota serves as a disincentive for industry investment.

State oil tax policy must be competitive with plays in other oil-producing states, but this trigger hanging over the heads of the industry has the opposite effect. WDEA urges the House Finance and Taxation Committee to give HB 1286 a strong Do Pass recommendation to remove this high-tax cloud hanging over our state's oil industry and would-be investors.

Thank you for the opportunity to testify on this important topic. Please see p. 2.

Geoff Simon

Western Dakota Energy Association
1661 Capitol Way, Bismarck ND 58501
www.ndenergy.org • 701-527-1832

From the Desk of the Western Dakota Energy Association's President

Trudy Ruland
President
Western Dakota Energy Association

What a difference a month can make! When we last visited in March, calving was going well but the extreme drought was still with us. As we were sorting off pairs to relocate in another yard, we were noting older mamas that would be the first to go if it didn't rain and wondering how long our hay would last if the pastures had no grass.

Then April happened and the extreme drought was broken by several extreme spring blizzards. For those of us who make a living outside, these storms created dangerous conditions with long, hard days of work. We were fortunate as we lost only a few calves and only went without electricity for a little over a day. Then, in the summer, the moisture from the storms set us up with greener pastures and decent crops.

Moisture and hard work are only part of the inputs we need to produce commodities like cattle and crops on the prairie. It has been said before that ranching / farming is a lifestyle, as it's difficult to make a living by it.

To illustrate, let's look at one acre of cropland put into spring wheat on our ranch this season.

This is the cost of investment per acre before any sale of wheat: rent $45, burn down chemical $25, seed $20, seed treatment $2, fuel $15, fertilizer $120, in-crop weed control $45, crop insurance $5, all added up for a total of $277. This doesn't even factor in the more difficult numbers to calculate, such as the cost of equipment, maintenance, repairs, and grain storage. Have you priced a tractor lately? Ouch!

We seeded about 300 acres of wheat this year and our average production for spring wheat is approximately 40 bushels per acre. At the current price of about $8.00 per bushel, the revenue for that acre is $320 or $96,000 for all the wheat. If we add barley, peas, soybeans, hay, and calves – WOW! – it looks like a windfall for the year.

Howdy from the Ruland Ranch!

Even the cattle at Ruland Ranch don't know what to make of the weather. Photo Credit: Trudy Ruland

But you also need to remember that we've already spent more than $83,000 to get that crop of wheat, which leaves just $13,000 for two annual salaries! And there are no guarantees because prices change.

Today the price of crude oil is about $100 per barrel and an average Bakken well produces about 70 barrels of oil per day, equalling up to $7,000 per day. That's nearly $2.6 million a year for one well! That's definitely a windfall, right?

But what is a 'windfall' exactly? According to Investopedia, 'windfall profits are large, unexpected gains resulting from lucky circumstances. Such profits are generally well above historical norms.'

Are you still thinking that oil is seeing a windfall? After all, the oil doesn't just jump out of the ground. In 2022, the average Bakken well cost more than $7.7 million just to get into production and the average operating cost is $13,000 per month.

Someone once told me that when you farm or ranch, you need to plan to lose money for three years, break even for three, make a little for three, and having one really good year to make up for all the others. This is also true for the oil industry in North Dakota, where several Bakken producers filed for bankruptcy during COVID-19 due to the low oil prices. In many ways, the industry needs high oil prices to pay down the record debt from the last five years of poor oil prices.

Ultimately, the ag industry needs the oil industry. Diesel technology is still the most efficient provider of the horsepower and long working hours needed by our tractors and combines. And the rest of y'all need us both. Hamburger on a bun, anyone?

ABOUT THE WDEA

The Western Dakota Energy Association (WDEA) is the trusted and unified voice for the betterment of the citizens of North Dakota and WDEA membership.

WDEA'S 2022 EXECUTIVE COMMITTEE SERVES WESTERN NORTH DAKOTA

President: Trudy Ruland, Mountrail County

Vice-President: Supt. Leslie Bieber, Alexander School District

Daryl Dukart, Dunn County

Zach Gaaskjolen, City of Stanley

Supt. Tim Holte, Stanley School District

Shannon Holter, City of Bowbells

Mayor Lyn James, City of Bowman

Nick Klemisch, Coal Conversion Counties Garrison

David Montgomery, Williams County

John Phillips, Coal Conversion Counties, Beulah

Education Position, Vacant

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House Bill 1286

Testimony of Ron Ness

House Finance and Taxation Committee

February 7, 2023

Chairman Headland and members of the Committee, my name is Ron Ness, president of the North Dakota Petroleum Council ("NDPC"). The North Dakota Petroleum Council represents more than 600 companies involved 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 support of House Bill 1286.

There is much discussion about the future of the Bakken and North Dakota's ability to sustain oil production at more than one million barrels of oil per day for the next decade and beyond. It has also been interesting to watch supporters of bill after bill testify before your Committee for tax exemptions or tax reductions on everything from income tax to property tax to grain bins. As a state, we are extremely fortunate to be in this position with a huge budget surplus. Good for us.

House Bill 1286 is a simple bill. It eliminates the high trigger on the oil extraction tax.

In the past few years, our country has experienced a renaissance in competing shale plays and survived a pandemic that resulted in economic devastation to our industry. Many Bakken producers and service companies filed for bankruptcy and went out of business. Eighteen months later, oil prices shot through the roof as a result of bad federal policy, the Russia/Ukraine war, and an economy that was ready to erupt. Just when Wall Street and financial markets were ready to re-invest in oil exploration and get oil producers back on their feet, North Dakota's version of a windfall profits tax kicked in and the oil extraction tax on North Dakota production was increased by twenty percent overnight. The Bakken has rebounded well, but we did not see the "big bounce" from $100 oil that would usually be expected with such a strong price point. That

could be the result of numerous issues, but increasing the tax rate certainly was not helpful. This trigger mechanism makes no sense for the following reasons:

- It is bad tax policy!
- It stymies investment when the market is eager to invest.
- Oil taxes are already indexed to the price of oil. The tax is levied on the gross value of the oil sold, so the state already receives a "windfall" when prices are high.
- The price trigger, although currently indexed to economic inputs, does not reflect the costs of production. As we have heard from the agriculture industry, the price of wheat is up – but so are the prices paid for fertilizer, fuel, labor, and services. Just like agriculture and banking, input costs of the oil and gas sector go up the same or more when inflation hits. The oil and gas industry strives on predictability.
- What other industry has an effective surcharge or twenty percent tax increase tacked on when the price of its commodity increases through world market impacts? Corn, Wheat, Steel, and Wind? – The answer is no, no, no, and no.

North Dakota's oil and natural gas industry and the roughly 150,000 North Dakota mineral and royalty owners are asking for a fair, competitive, and predictable tax structure. Our industry already pays more than half of all the taxes collected by the state in just production taxes alone. When we talk about returning the tax surplus to the people who have paid in, I think we all know who that is. At this time, the Bakken is still competitive and helping drive our economy. We urge this Committee to acknowledge the changes that have occurred in our world and simply eliminate an unnecessary trigger that we would undoubtedly oppose strongly if it were proposed today by the federal government.

Page 2, Section 3 clearly defines that this bill does not override the Tribal-State Oil Tax Agreement, which requires both parties to agree to any tax rate changes before it would impact the oil tax rate on minerals produced from within the Fort Berthold Indian Reservation (FBIR). To strengthen this bill, NDPC supports

an amendment making it even more clear that the extraction tax trigger will remain in effect on oil produced within the FBIR, including on-reservation trust and nontrust lands production from straddle wells.

NDPC urges your support for good tax policy and a **Do Pass recommendation** for House Bill 1286. I would be happy to answer any questions.

#19506

HB 1286 Testimony

Ron Ness, President

NORTH DAKOTA
PETROLEUM
COUNCIL

Trends in Oil and Gas Tax Collections

MILLIONS OF DOLLARS

FISCAL YEARS	OIL EXTRACTION TAX	GROSS PRODUCTION TAX
2012	865.1	795.7
2013	1,277.4	1,130.4
2014	1,754.8	1,493.0
2015	1,514.3	1,286.7
2016	732.9	750.5
2017	766.4	693.3
2018	1,003.8	1,073.0
2019	1,219.4	1,342.0
2020	958.6	1,079.9
2021	737.8	864.1
2022	1303.1	1494.5

$3,500 / $3,000 / $2,500 / $2,000 / $1,500 / $1,000 / $500 / $0

=$2.79 Billion

Source: 2022 North Dakota Office of State Tax Commissioner, Comparative Statement of Collections.

Office of State Tax Commissioner Net Collections
Fiscal Years 2013-2022

MILLIONS OF DOLLARS

$8,000
$7,000
$6,000
$5,000
$4,000
$3,000
$2,000
$1,000
$0

2013 2014 2015 2016 2017 2018 2019 2020 2021 2022

OTHER TAXES & FEES
MOTOR FUELS
COAL TAXES
GROSS PRODUCTION
OIL EXTRACTION
CORPORATE INCOME
INDIVIDUAL INCOME
SALES & USE

53%

TAX TYPE	2022
Sales & Use	$1,225.9
Individual Income	$458.6
Corporation Income	$223.7
Oil Extraction	$1,303.1
Gross Production	$1,494.5
Coal Taxes	$17.0
Motor Fuels	$179.9
Other Taxes & Fees	$404.3
Total Net Collections*	$5,307.0

Source: 2022 North Dakota Office of State Tax Commissioner, Comparative Statement of Collections.

Oil Taxes in the 15 Major Oil Producing States

STATE	SEVERANCE OR GROSS PRODUCTION TAX RATE	ANNUAL PRODUCTION (MILLION BARRELS)			
		2018	2019	2020	2021
Alaska	0 to 35.0%	174.8	169.9	163.9	159.6
California[1]		160.7	156.4	142.2	134.6
Colorado[2]	2 to 5%	169.2	192.2	171.6	153.4
Kansas[3]	8%	34.7	33.2	28.3	27.9
Louisiana	3.125 to 12.5%	48.1	45.9	36.7	34.7
Michigan	4 to 6.6%	5.5	5.2	4.1	4.3
Mississippi	0 to 6.0%	17.0	16.9	14.2	13.4
Montana[4]	.8 to 15.1%	21.6	23.0	19.1	19.0
New Mexico	3.75%	249.2	336.5	375.4	457.2
North Dakota[5]	10%	460.4	517.7	433.6	405.1
Oklahoma	1 to 7.0%	201.3	218.3	173.2	143.1
South Dakota	4.5	1.3	1.2	1.0	1.0
Texas[6]	0 to 4.6%	1612.4	1864.3	1773.1	1739.7
Utah[6][7]	0, 3 or 5%	37.1	36.9	31.0	35.5
Wyoming	2 to 6.0%	88.0	102.2	89.1	85.4

* Severance (or gross production) tax is in lieu of local property taxes on the oil.

Source: 2022 North Dakota Office of State Tax Commissioner, Comparative Statement of Collections.

Questions?

Ron Ness, President

NORTH DAKOTA PETROLEUM COUNCIL

House Bill 1286

Repeal of the Oil Extraction Tax Trigger
House Finance and Taxation Committee
February 7, 2023 | 9:00 am | Room 327E

Testimony by Kate Black, Vice President, Inland Oil & Gas

Good morning, Chairman Headland and members of the House Finance and Taxation Committee. My name is Kate Black, and I am here to testify in support of House Bill 1286.

I am the Vice President and am the third generation of Inland Oil and Gas, founded in 1967 by my grandad right here in Bismarck. Today, Inland is actively engaged as a non-operator and participates in drilling our company's leasehold and minerals in the Williston Basin. In contrast to an "operator," Inland seeks the "non-operating" or "working interest" role. Our objective is to acquire a minority share of the minerals or leases within a drilling spacing unit and participate alongside an operator in the drilling of a well by paying our proportionate share of the expenses while receiving our proportionate share of the income.

Inland, like the operator and other private mineral owners – many of which are North Dakota residents – pay a 5% extraction and 5% production tax on the *gross* value of the oil produced. That means one out of every ten barrels we produce goes to the State of North Dakota, free and clear of expense and risk. To illustrate this tax among other industries in our state, that would mean one out of every ten calves produced, one of every ten bushels of wheat, corn, or sunflowers harvested, one of every ten Bobcats manufactured would be due to the state. You get my drift. Our industry – operators, non-operators, and mineral owners – pay a significant amount of taxes, so significant that these two taxes alone (extraction and production) amount to *over half* of the tax revenue collected by our state. Now I understand the importance of these taxes and how they support North Dakota, but I'd like to point out the following:

- The tax is applied to our gross oil and gas revenue, and NOT our profits. This means we are paying these taxes whether we are profitable or not – most recently in 2020 and 2021 when oil prices were $20-40/bbl and we were still struggling to recoup our investments.

- A $380 million projected state surplus proves the state's economy is in good shape. But it is also an indication of over-taxation. Those taxpayers – the oil and gas mineral owners and working interest owners whose financial risk has built this surplus – should share in the tax relief you are considering this legislative term.

As a North Dakotan, I am grateful for the stability the oil and gas industry has afforded our state. It has provided us with ample funding to support all the functions of our state, as well as additional funding for water projects, education, and infrastructure – all while pouring billions of dollars into the Legacy Fund for our future growth and financial wellbeing.

You are fortunate to be able to consider proposed tax breaks due to this large surplus. As I see, the legislature has many tax reduction proposals to consider this session. Reducing property taxes and/or income taxes today means you are shifting even more burden and dependence on future oil taxes. It only seems prudent and fair to give the same relief to those who have built it and take this opportunity to stabilize the oil tax that brought in over half of our state's income. I would ask that you would consider removing the Oil Extraction Tax Trigger by voting YES on HB 1286.

Thank you for the opportunity to testify this morning. I'd be happy to answer any questions the committee might have.

For more information:

"Oil and Gas Tax Revenues Study" - www.TaxStudy.NDEnergy.org

SALTED LANDS COUNCIL

February 7, 2023

Salt Contaminated Land and Water Council Opposes HOUSE Bill 1286

We oppose the repeal of the Extraction Tax Trigger which *will mean that ND surface owners and taxpayers will bear the $8,167,458,789 burden of eventually plugging and reclaiming the 30,495 wells drilled since 1970.*

We rely upon Carbon Tracker's Flash Note dated 12/10/2021 entitled and here present one of its tables.

North Dakota P&A cost data is bad news for the taxpayers in oil-producing states.

https://cogcc.state.co.us/DAD.html

www.revivethedeadlands.org
findooley@gmail.com • Cell: 414-731-0520

and then release the minerals and produce more Beer, Bread, and Beef.

	WELLS	Liability Estimate	%
Producing	12,957	$3,745,190,641	46%
Stripper	5,009	$1,174,492,632	14%
Injection + Other	11,703	$3,056,601,700	37%
Temp. Abandoned	322	$80,036,489	1%
Zombie (LP<60)	504	$110,137,327	1%
TOTAL	30,495	$8,166,458,789	100%

Carbon Tracker analyzed 251 DMR records of condemned, 251 plugged, and 151 reclaimed wells and made the above **Liability Estimates**. Closer analysis Carbon Tracker's Flash Note supports our conclusion all the Stripper wells and most of the Injection, all the Temp. Abandoned and all of Zombie are properly described as abandoned because they are uneconomic , inadequately bonded and none of the operators of these wells, from first to most recent have held back funds to meet the statutory obligation called Asset Retirement. Do a hog house amendment of your law. Provide that all future trigger taxes are provided to the DMR and DEQ to plug and reclaim the 10,000 orphan wells. We trust them. They learned from the expenditure of $66 million of President Trump Cares Act Funds which funded discovery of orphans.

We agree with ND DEQ Director of Reclamation, Karl Rockeman, the amount now needed to reclaim abandoned wells is at least $2,500,000,000. We agree with DMR Director Lynn Helms that $2,500,000,000 will be needed to plug abandoned wells. We cannot rely upon Federal cares act funds. The $66 million is less than l% of ***$8,167,458,789.*** Existing ND law does not appropriate any portion oil production or extraction tax to plug bore holes or reclaim well sites.

Second, North Dakota has sacrificed its productive soil and breached its stewardship obligation.

Now is the time to invest in our land and our people. When the next trigger tax is paid, devote all to the care of the able staff at our DEQ and DMR. Utilizing the advances in soil science, big data management, and small-town oil industry well service operators and the sophistication of ND farmers, we can restore soil productivity, create a cadre of able folks who will revive dead soil. We can lead the world in reviving productivity of soil left poisoned burdening surface owners and taxpayers.

Donald Nelson
President & Founder

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#19529

FLASH NOTE
25/10/2021

Carbon Tracker Initiative

North Dakota P&A cost data is bad news for the taxpayers in oil-producing states

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Summary

As the Colorado Oil and Gas Conservation Commission's (COGCC) seeks to fulfill its statutory mandate to "require every operator to provide assurance that it is financially capable of fulfilling every obligation imposed" by the state's rules and regulations,1 it needs to figure out how much it will really cost to plug and abandon its wells. For evidence, it should look to North Dakota, where last year's CARES Act well plugging program has yielded actual receipts for 251 well plugs and 128 site reclamations.

Key takeaways from our analysis of North Dakota data:

- Plugging alone has averaged over $130,000 per well. Reclamation costs roughly double that total, bringing per-well retirement costs to over $250,000 on average. With around 50,000 wells in Colorado,1 that would come to $12.5 billion.
- The relatively high frequency of very-high-cost plug and reclamation projects suggest that states should consider implementing a risk-sharing system (e.g., a severance tax-funded stop-loss insurance program) to supplement surety bonds and improve incentives for timely well plugging by responsible parties.

Plugging Costs

Plugging a well entails cementing the borehole to ensure the isolation of the various subsurface strata—particularly hydrocarbon-bearing layers and water-bearing layers—to prevent communication between them and/or pollution at the surface. Plugging invoices from North Dakota's CARES Act plugging program, retrieved through a Freedom of Information Act (FOIA) request, shed light on the cost of this routine operation. As is shown in Table 1 below, we calculated the average per-well plugging cost for the 251 well invoices to be over $130,000.

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[1] *COGCC, Daily Activity Dashboard, page 2 of 9, 'Active Well Status Breakdown'. Accessible at:* https://cogcc.state.co.us/DAD.html

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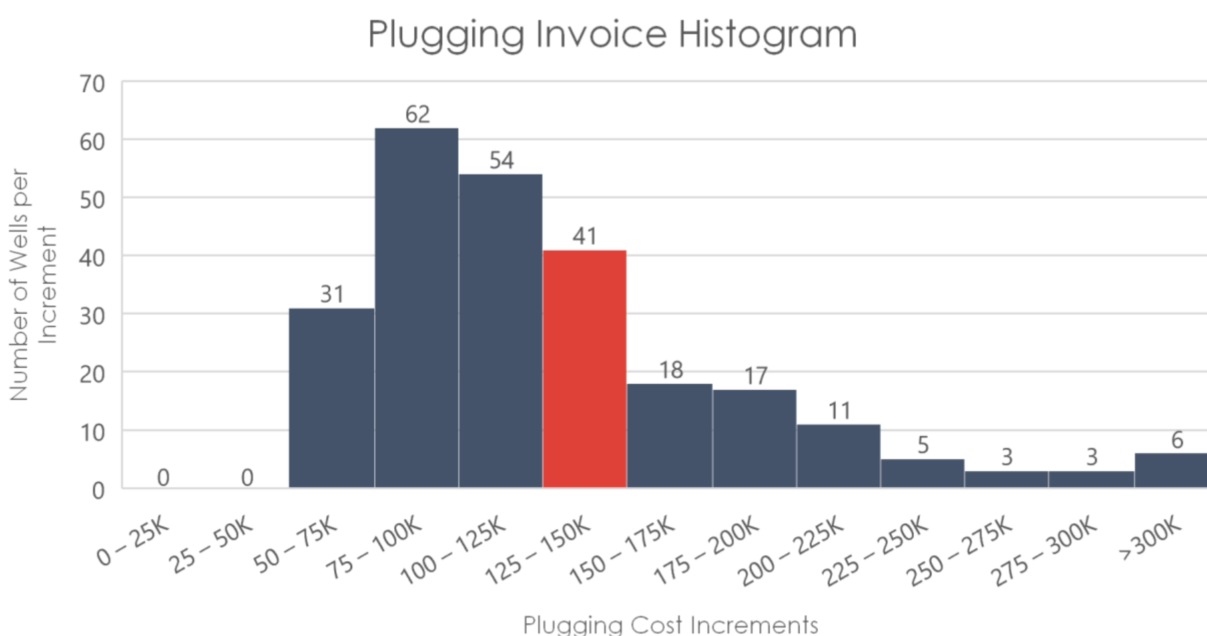
TABLE 1 - DESCRIPTIVE STATISTICS FOR NORTH DAKOTA CARES ACT WELL PLUG DATA FROM FOIA REQUEST, 251 RECORDS.

Well Plugging Cost (thousands of $) – Descriptive Statistics		
Total plugging cost in FOIA (A)	$	32,787.1
Count of plugged wells in FOIA (B)		251
Mean plugging cost (A / B)	$	130.6
Median plugging cost	$	113.7
Max cost	$	523.4
Min cost	$	51.2

Source: Well plugging invoices for ND CARES Act plugs, NDIC

Plug costs ranged widely, from a low of about $50,000 to over $500,000. The histogram in Figure 1 below shows the distribution of North Dakota plugging costs in $25,000 increments, with the number of wells in each increment at the top.

FIGURE 1. DISTRIBUTION OF WELL PLUGGING INVOICES, $25,000 INCREMENTS. THE MEAN PLUGGING COST LIES WITHIN THE RED BAR



Data: CARES Act plugging and reclamation program FOIA request

This distribution shows a long right tail, i.e., the plugging costs in this dataset are very skewed to the right, indicating a much larger range of costs above the median than below it. When it comes to well plugging, this makes perfect sense; there is a base price for labor and materials and anything more adds to the cost—unexpected downhole junk, well casing issues, surface or groundwater contamination, etc. These surprises can up the price to extravagant levels.

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Reclamation Costs Are Even More Skewed

Reclamation is an additional legal requirement for final well abandonment. Though there can be local intricacies and exceptions, reclamation generally means resetting the landscape to its pre-drilling condition, i.e., recontouring the land, removing access roads, and replanting native species or replacing topsoil for return to agricultural use. Remediation for previously unknown or undisclosed spills is also generally required where contamination is discovered. Reclamation costs are distributed a bit differently from plugs, but are similar in magnitude to plugging costs. Table 2 shows key facts for 128 sites, with an average reclamation cost of $123,869 per wellsite.2

TABLE 2. DESCRIPTIVE STATISTICS FOR NORTH DAKOTA CARES ACT WELL RECLAMATION DATA FROM FOIA REQUEST, 128 RECORDS.

Reclamation Cost (thousands of $) – Descriptive Statistics		
Total reclamation cost (A)	$	15,855.2
Count of sites reclaimed in FOIA (B)		128
Mean reclamation cost (A / B)	$	123.9
Median reclamation cost	$	86.6
Max cost	$	782.5
Min cost	$	1.4

Source: Site reclamation invoices, NDIC, Freedom of Information Act request.

Reclamation costs run from as little as a few thousand to over three quarters of a million dollars. This wide range is likely due to a combination of factors including site topography, desired post-retirement surface use, and remediation for previously unreported spills, which can be a particularly impactful driver of reclamation cost.

[2] *According to the data, these sites are billed on a per-well basis. In other words, none of these sites include reclamation on multiple wells, which eliminates the challenge of disaggregating reclamation costs per well.*

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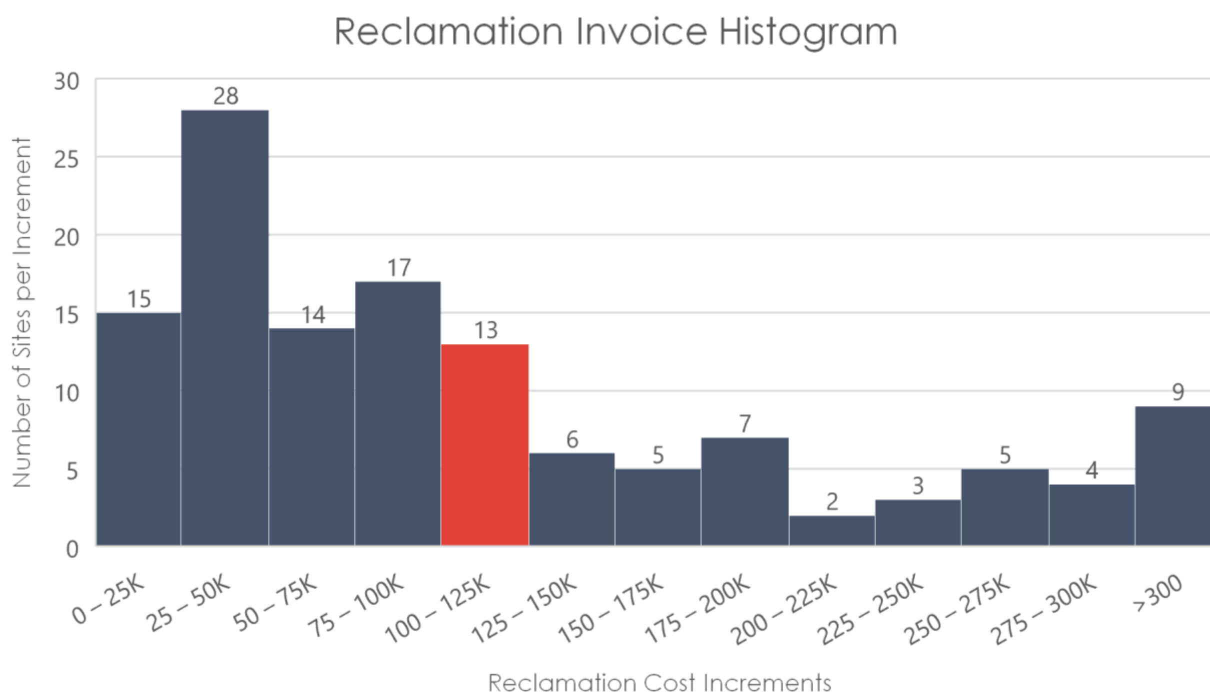
FIGURE 2. DISTRIBUTION OF RECLAMATION COSTS IN $25,000 INCREMENTS. THE MEAN RECLAMATION COST LIES WITHIN THE RED BAR.



Data: CARES Act plugging and reclamation program FOIA request

The histogram in Figure 2 above illustrates the long right tail in the reclamation data. Reclamation projects frequently require extensive work above and beyond the basic operations, evidenced by the fact that more than half (55%) of reclamation invoices were over $75,000, and over one in four (27%) exceeded $150,000. These costs are in addition to the cost to plug wells. At these frequencies, expensive reclamation projects should not be considered low probability, high-cost events, but rather high probability, high-cost events that require careful consideration when devising a full-cost financial assurance program.

Estimating the Bill at Closing Time

As we discussed extensively in It's Closing Time, forecasting well closure costs is challenging in large part because good quality, fully disaggregated data is hard to find.3 That said, North Dakota's CARES Act plugging costs far exceed the financial assurance requirements in most states, including Colorado, and adding on reclamation essentially doubles the price per well. These numbers eclipse the estimates coming out of state orphan well programs, which, for reasons discussed in It's Closing Time, are not likely to offer an accurate reflection of the full costs.

[3] *Despite this, the CTI cost model provides an estimate very similar in magnitude to the FOIA data. Applying the CTI cost model to the average adjusted depth of the North Dakota wells in the FOIA data (our model caps price at 10,000 ft TVD), our estimate for the total cost of the 280 North Dakota CARES Act wells is approximately $39 million, only about $1.8 million off from the total plugging cost quoted by Oil and Gas Division Director, Lynn Helms.*

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Implications for Colorado

North Dakota Shows How Little We Know

Are North Dakota costs perfectly representative of Colorado? Probably not. But as states have not opted to collect actual cost data from operators, we're left with guesswork based on models and isolated samples. North Dakota's rare set of competitively-bid project invoices should concern the COGCC, since it shows that the gap between actual costs and current bond requirements is likely worse than expected, and the incentive for industry to delay and avoid payment greater than realized. In order to fill this knowledge gap, Colorado regulators should collect full-cost plugging and reclamation data from operators to build a factual basis for financial assurance rules.

"Fulfilling Every Obligation"

Colorado's statutes require that companies provide assurances that they are financially capable of fulfilling every obligation imposed by the state. In North Dakota plugging plus reclamation costs would put that figure around $250,000 on average per well, but current proposals aren't even close to that. Someone will pay for the cost of doing business in the oil and gas industry, but without the implementation of a full-cost financial assurance system, it won't be the companies who carry that obligation under law.

Managing High Probability, High-Cost Events

North Dakota's data suggest that high-cost outliers should not be ignored—they are a feature of aging oilfields, in part because technology and regulation have changed dramatically since drilling first began. A full-cost financial assurance system must consider these high-probability, high-cost outcomes in order to protect the public from taking on private decommissioning costs and incentivize operators to plug wells. For many small operators, one very expensive well could be financially crippling, and the risk that any given plugging project could unexpectedly bankrupt the company is a strong disincentive for plugging non-economic wells. Regulators who want to develop a system that maximizes the number of wells plugged by industry and minimizes the cost to the public should be aware of these issues when developing policy. Surety bonds are not well suited to deal with these risk/incentive issues. A better mechanism would be a risk-sharing/insurance policy against high-cost plugging or reclamation costs that would provide protection for both operators in the normal course of well decommissioning and the state in the event an operator defaults.

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A New Theory of ARO Creditor Rights

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Analyst Note

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About Carbon Tracker

The Carbon Tracker Initiative is a team of financial specialists making climate risk real in today's capital markets. Our research to date on unburnable carbon and stranded assets has started a new debate on how to align the financial system in the transition to a low carbon economy.

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Contributors and Special Thanks

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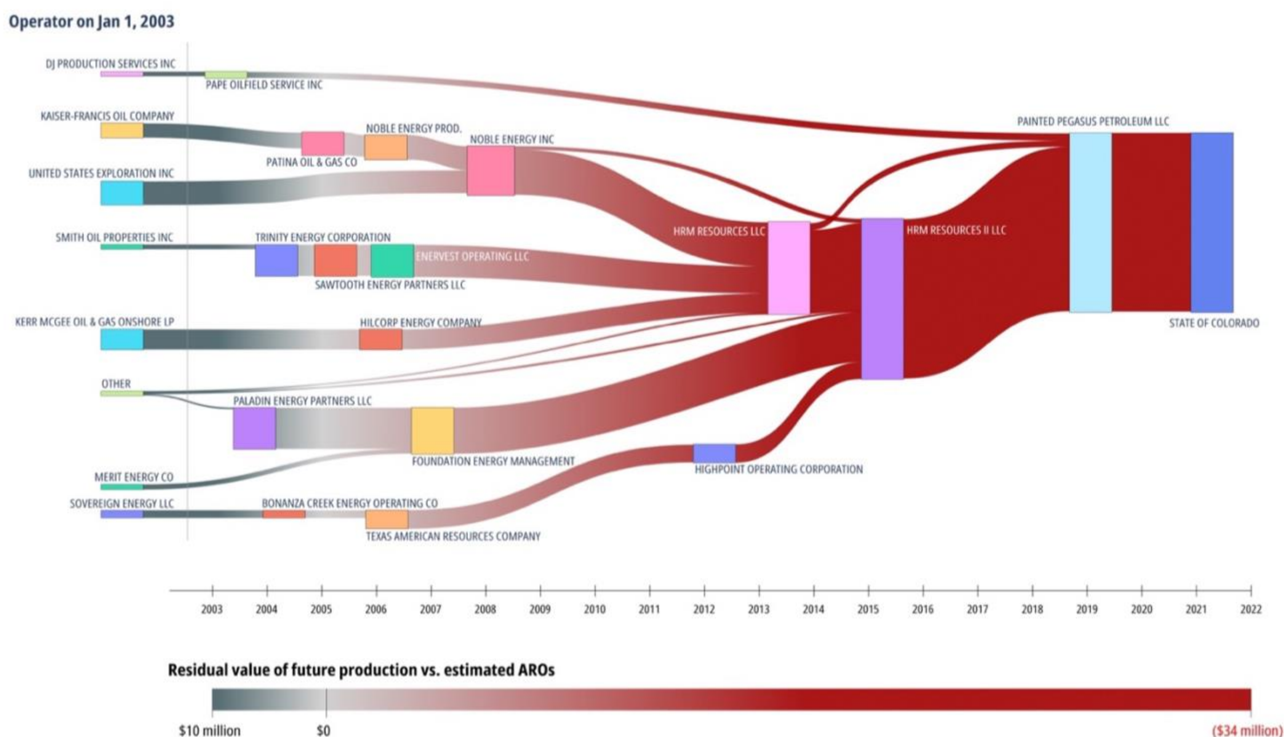
1 Key Findings

- An oil and gas well is "upside-down" when its ARO exceeds its future net cash flows from production. Oil and gas wells are often operated and sold to undercapitalized firms long past the point where future cash flows could be reasonably expected to fund AROs.
- The amount of financial assurance required by U.S. state and federal oilfield regulators is typically only a small fraction of estimated AROs. If settlement of AROs by undercapitalized firms cannot be funded from future cash flows, eventual default is predictable.
- A recent federal class action lawsuit asserts that landowners whose property is burdened by inactive wells are "creditors" with legal rights against operators for decommissioning costs.
- The suit could expose current *and former* operators to legal liability for AROs, reducing the incentives for late-life sales of upside-down wells to undercapitalized firms.
- A successful outcome for landowners could provide a significant source of funding for decommissioning wells that will otherwise become wards of the state.

FIGURE 0.1 - OWNERSHIP TIMELINE AND RESIDUAL VALUE OF PAINTED PEGASUS WELLS SINCE 2003.

Figure shows the approximate flow of well ownership for all Painted Pegasus wells, with declining residual value of the group indicated by color gradient.



Data: COGCC

2 Introduction

With approximately **2.1 million** abandoned wells across the U.S.,[1] there is growing concern about unfunded asset retirement obligations (AROs) to decommission oil and gas wells. Fueling the rise in abandoned and orphan wells are the perverse regulatory incentives for operators to strip the last remaining resources from mature wells before defaulting on AROs and filing bankruptcy. A recent class action lawsuit on behalf of West Virginia landowners offers a potential judicial solution to this regulatory failure. This paper describes the new theory of ARO creditors' rights asserted in the lawsuit and how it might be applied elsewhere.

ARO Overview

Asset retirement obligations (AROs) are legal obligations associated with the retirement of long-lived assets. AROs specific to the oil and gas industry include the statutory obligation of current well operators to decommission oil and gas wells at the end of their useful life. Decommissioning includes down-hole plugging and surface reclamation.

AROs generally arise from government regulations. However, the "reasonably prudent operator" standard of care recognized in some states may create a constructive ARO in favor of lessees and landowners. Regardless, the failure to fulfill decommissioning obligations in a timely manner may harm landowners as well as government interests. Inactive and low producing oil and gas wells are often improperly maintained. Such wells may leak brine, oil, methane, and hydrogen sulfide. These releases can impair agricultural land, harm livestock, pollute groundwater, and sicken residents. Derelict wells can restrict property use and diminish property values, especially where mineral rights have been severed from the surface estate. If regulators don't require operators to decommission such wells, what legal rights, if any, do landowners have? A new lawsuit suggests they may have rights as "ARO creditors".

ARO Creditor Rights

The term "creditor rights" is a generic term for a collection of legal rights that a creditor has to collect outstanding debts from a debtor. A federal class action lawsuit filed by West Virginia landowners seeks to recover decommissioning costs from the current and former operators of inactive wells on their property. The plaintiff-landowners assert that they are properly *creditors* because they hold claims for relief against the debtor-operators for damages resulting from trespass, nuisance, and negligence. They assert that, as creditors, they have all the rights afforded to creditors under federal bankruptcy law and state fraudulent conveyance statutes.

The lawsuit threatens the common industry practice of transferring upside-down wells to ever smaller entities and distributing production cash flows to owners, without adequate holdback for AROs. It is routine for major operators to drill wells, profit from the best years of production, and then sell them as their value-to-ARO ratio declines. AROs follow assets, and former operators generally have no financial responsibility to decommission previously owned wells. So, the transfer of upside-down wells makes economic sense for sellers. But how does it make economic sense for buyers?

In Section 3, we examine the novel theory of ARO creditors' rights asserted in the West Virginia lawsuit. This section is intended for a legal audience. For non-lawyers, the key take-away is that landowners whose property is burdened by inactive and upside-down wells may have previously unrecognized legal rights to hold current and former operators financially responsible for AROs.

In Section 4, we provide a case study involving a small bankrupt operator in Colorado to show how this new theory of ARO creditors' rights might be replicated on a large scale.

[1] *April 2018 Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2016: Abandoned Oil and Gas Wells. US Environmental Protection Agency.*

3 The Diversified Suit

3.1 Overview

In July 2022, West Virginia landowners on behalf of a proposed class of similarly situated landowners filed a federal lawsuit in the U.S. District Court for the Northern District of West Virginia against Diversified Energy Company Plc and EQT Production Company. *McEvoy et al v. Diversified Energy Company PLC et al*, Case 5:2022cv00171 (N.D. W. Virginia) (the "Diversified Suit").

The case centers on thousands of inactive gas wells in West Virginia operated by Diversified, some of which were acquired from EQT. Diversified is a public limited corporation incorporated in the United Kingdom and headquartered in Alabama.

The plaintiffs are members of a proposed class of landowners whose properties are burdened by these wells. The complaint asserts common law claims for trespass, nuisance, and negligence on grounds that: (a) state law requires operators to decommission wells that remain inactive for one year; and (b) inactive wells are hazardous to human health, damage the environment, contribute to climate change by leaking significant amounts of methane, interfere with plaintiffs' use and enjoyment of their property, and impair plaintiffs' property values.

The complaint states that Diversified owns 23,309 wells in West Virginia, including more than 2,000 wells acquired from EQT in two separate transactions in 2018 and 2020. Plaintiffs assert that Diversified has an obligation to plug more than 2,000 wells in West Virginia that are abandoned or otherwise not productive.

The suit aims in the first instance to enforce the landowners' common law right to have inactive wells decommissioned by Diversified in accordance with state law. The case also asserts that the acquisitions of wells from EQT were fraudulent and should be voided.

Below we provide an overview of Alabama creditor rights law upon which the landowners' claims are based.

3.2 Alabama creditor rights laws

It is a foundational principle of corporate and bankruptcy law that creditors have priority over owners. A transfer by a debtor to owners or others may be fraudulent if made with 'actual intent' to defraud creditors or if it is 'constructively' fraudulent as to a specific creditor. In this case, landowners whose property is burdened by inactive wells are the creditors, and Diversified is the debtor.

Under both the Alabama Uniform Fraudulent Transfers Act (UFTA) and its successor statute, the recently passed Alabama Uniform Voidable Transactions Act (UVTA),[2] a creditor (e.g., landowners) who can establish that a transaction by a debtor (e.g., Diversified) was either an actual fraudulent transfer or a constructive fraudulent transfer can void the transaction. A party commits an actual fraudulent transfer when it transfers assets or incurs liabilities with the intent to hinder, delay, or defraud its creditors' claims. In determining actual intent, consideration may be given to, among other things, whether:

1. the transfer was to an insider;
2. the debtor retained possession or control of the property transferred after the transfer;
3. the transfer was concealed or not disclosed;
4. before the transfer was made, the debtor had been sued or threatened with suit;
5. the transfer was of substantially all the debtor's assets;
6. the debtor absconded;
7. the debtor removed or concealed assets;
8. the value of the consideration received by the debtor was not reasonably equivalent to the value of the asset transferred;
9. the debtor was insolvent or became insolvent shortly after the transfer was made;
10. the transfer occurred shortly before or shortly after a substantial debt was incurred; and

[2] *Ala. Code §§ 8-9A-5 and 8-9B-5.*

11. the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.

A party commits a constructive fraudulent transfer when it fails to receive reasonably equivalent value for assets transferred or obligations incurred, and it is "insolvent" at the time of the transfer or becomes so shortly after the transfer was made.

3.3 The Complaint

The pending second amended *Diversified* complaint[3] asserts that the value of the consideration received by Diversified in two transactions with EQT was not reasonably equivalent to the amount of the obligations Diversified incurred. Plaintiffs ask the court to void the EQT transfers and seek damages for decommissioning costs as well as compensation for their lost use of the property and the annoyance, inconvenience, and aggravation associated with the undecommissioned wells.

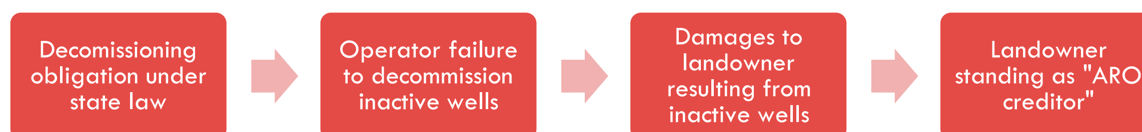
3.3.1 A new legal theory applied to a familiar fact pattern

It is common practice in the oil and gas industry to package inactive and low producing wells with a few good wells and sell them to a smaller, often undercapitalized company as a way to offload AROs. Each company in the chain strips the remaining assets until it's no longer profitable to do so. At that point – when no savings or cash flows are available for decommissioning – producers dump their AROs onto the lap of landowners and taxpayers.

The transfer of oil wells with declining and ultimately negative value benefits all parties up the chain of title, each of whom hopes to escape financial responsibility for decommissioning. Each transfer allows the seller to cleanse its balance sheet of low-quality assets and associated AROs. AROs follow well ownership, and sellers usually have no trailing liability for formerly owned wells. Each transfer places more legal distance and reputational space between the seller and future ARO default.

Unlike the fact pattern, which is well-worn, the legal theory in the Diversified case is novel. First, it asserts a new theory of creditor rights: ***Common law claims for damages arising from inactive wells can create a debtor-creditor relationship between operators and landowners***. As service obligations, AROs are not typically "debts" within the meaning of bankruptcy law and fraudulent conveyance statutes. However, a common law claim for relief is a "debt" because it can be reduced to a monetary payment for damages. This imbues landowners with legal standing as "ARO creditors" against debtor-operators (Figure 1.1).

FIGURE 1.1 - THEORY OF ARO CREDITOR RIGHTS FOR LANDOWNERS



Second, the lawsuit posits that, as "creditors," landowners can hold current *and former* operators accountable for transferring wells without adequate consideration for AROs.

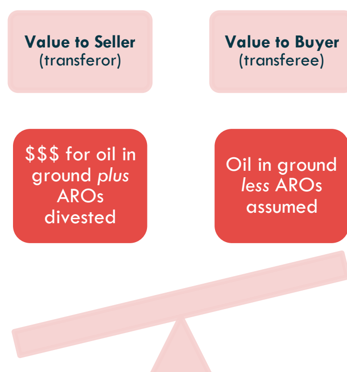
3.3.2 Reasonably equivalent value

A key concept in creditor rights law is the notion of "reasonably equivalent value". As shown in Figure 1.2, in a transfer of wells the value received by the seller includes the sales proceeds plus the fair value of AROs transferred to the buyer. The value received by the buyer includes the fair value of recoverable hydrocarbons (less production and transportation costs) minus the fair value of AROs assumed. If a well is upside-down – i.e., the value of the ARO assumed by the buyer exceeds the value of the hydrocarbons

[3] *The plaintiffs' second amended complaint is pending court approval to replace the first amended complaint.*

acquired – the seller must pay the buyer for the difference. Otherwise, the values exchanged by the parties are not reasonably equivalent. If a buyer (transferee) assumes AROs without receiving reasonably equivalent value to settle them, the transaction may be voided, returning liability for decommissioning to the seller (transferor).

FIGURE 1.2 - REASONABLY EQUIVALENT VALUE



If landowners whose property is burdened by nonproducing wells are "creditors" within the meaning of these laws, operators that distribute property to owners or others before adequately provisioning for AROs may be accountable.

For landowners seeking to hold operators accountable for AROs, time is of the essence, because the limitations period for fraudulent transfers is generally **four years** after the transfer when the creditor's claim arose before the transfer was made.[4] Each transfer starts a new four-year limitations period further insulating from liability prior operators who are more likely to have the ability to pay. From the operator perspective, frequent transfers are desirable with the last one taking place at least four years before ARO default.

3.4 Unlawful dividends

Although not alleged in the Diversified Suit, in addition to claims for fraudulent conveyance, landowners may have claims against corporate directors and shareholders for unlawful dividends. **Dividends and other distributions to owners made when a corporation is insolvent, or which render a corporation insolvent, are unlawful under state corporation laws**. This harkens back to the principle that creditors must be repaid before equity holders.

Importantly, in this context, **a debt owed to a creditor need not yet be due** in order to challenge unlawful distributions. The Delaware Court of Chancery recently considered this issue, answering whether to have standing as a "creditor" a party must have been a judgment creditor at the time of the challenged dividends. The court answered 'no', holding that it is sufficient that a party have a claim against the corporation at the time of the challenged dividends, whether or not reduced to a judgment.[5]

3.5 Scope of the class

The proposed class in the Diversified Suit is limited to nonproducing wells and wells that had been inactive for one year or more at the time of the lawsuit.[6] A much larger class would include all upside-down wells, whether active or inactive, for the reason that they are likely to be accompanied by fraudulent conveyances, unlawful dividends, and latent landowner claims for trespass, nuisance, and negligence arising from poor maintenance and improper operation.

---

[4] *A one-year limitations may apply when the action is brought by a creditor whose claim arose after the transfer was made. See Ala. Code § 8-9A-9. Section 174 of the Delaware General Corporation Law provides for director liability at any time within six years after paying such unlawful dividend.*

[5] Chancery Decides Questions of First Impression Regarding Statutory Claims for Unlawful Dividends and Fraudulent Transfers, *Morris James (August 2019).*

[6] *Plaintiffs assert that West Virginia Code § 22-6-19 establishes that Diversified owes them a duty to "promptly" plug any wells on Plaintiffs' properties once those wells are abandoned, i.e., have not produced oil or gas for twelve consecutive months.*

4 Painted Pegasus case study

The Diversified Suit involves two public corporations including one of the largest owners of onshore wells in the U.S. However, there are millions of onshore wells and thousands of private operators, often owning merely hundreds of wells. These companies are too small to participate in the public capital markets but with hundreds of wells and potentially tens of millions in liability, they could nonetheless be subject to legal actions like those in the Diversified Suit. This would be of concern for those companies, their shareholders and directors, and prior operators in the chain of title.

To illustrate the broad potential application of the *Diversified* theory of ARO creditors' rights, we next present a case study on a small, recently bankrupt Colorado operator—Painted Pegasus Petroleum LLC.

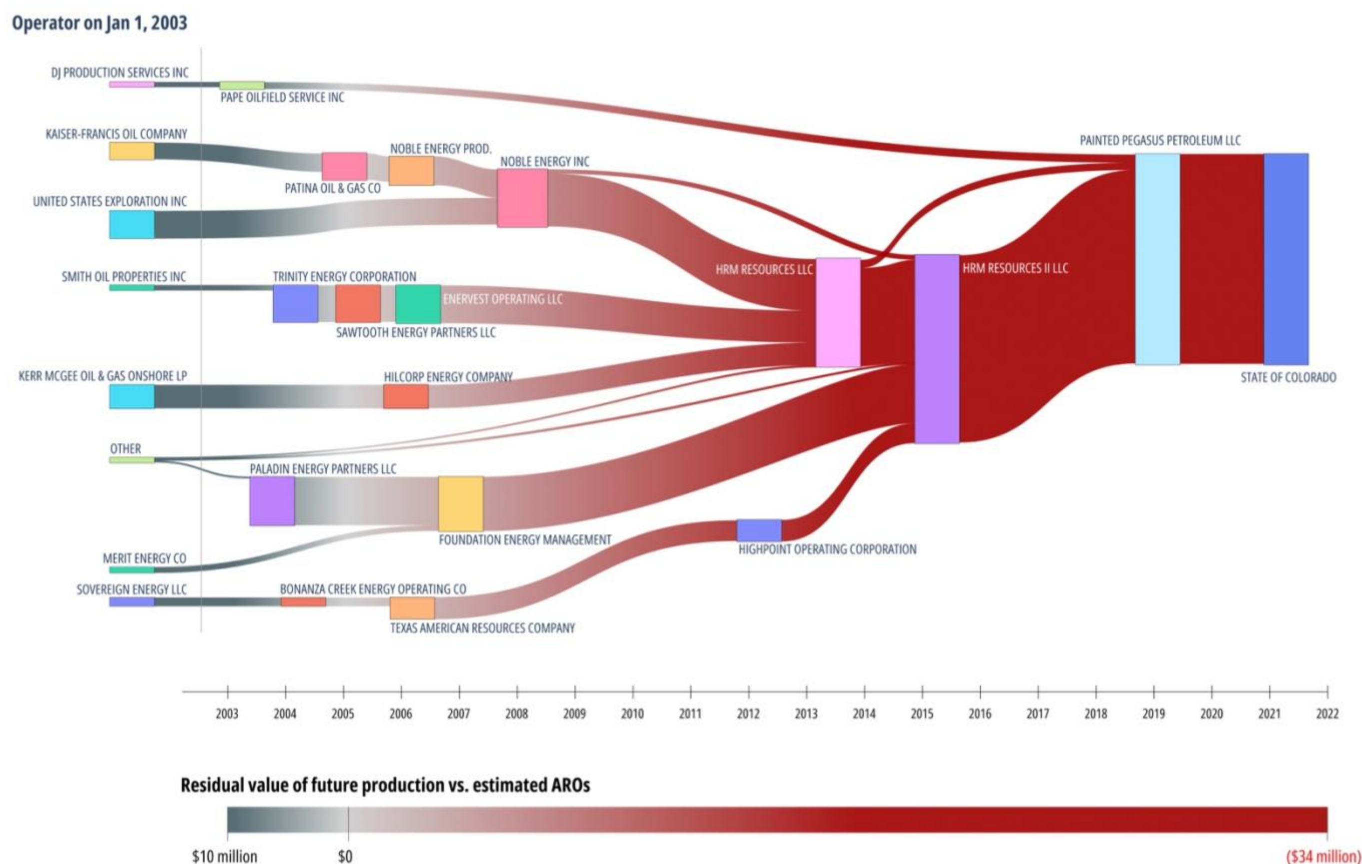
Painted Pegasus – Description of Operator

The Colorado Oil & Gas Conservation Commission's (COGCC) Orphan Well Program lists Painted Pegasus Petroleum as the current operator of 196 sites and 189 inactive conventional oil wells in the Denver-Julesburg basin in Weld and Adams counties in Colorado.[7] The wells, which were drilled between 1957 and 2011, have a median age of 41 years.

Figure 2.1 shows the many transfers of ownership between the original drillers and interim operators of these wells before they landed in the hands of Painted Pegasus.

[7] COGCC Orphan Well Program data.

FIGURE 2.1 – OWNERSHIP TIMELINE AND RESIDUAL VALUE OF PAINTED PEGASUS WELLS SINCE 2003. THE FIGURE SHOWS THE APPROXIMATE FLOW[8] OF WELL OWNERSHIP FOR ALL PAINTED PEGASUS WELLS, WITH DECLINING RESIDUAL VALUE OF THE GROUP INDICATED BY COLOR GRADIENT.



Data: COGCC

In June 2018, the Third Creek gathering pipeline that transported oil from the Painted Pegasus wells to market shut down.[9] The wells on the Third Creek system produce mainly oil and a little bit of gas, but the oil can't be produced unless something is done with the gas. The Third Creek line gathered those small amounts of natural gas and sold them into an interstate pipeline.

In September 2018, three months after the gathering pipeline closed, Painted Pegasus took ownership of 189 wells from HRM Resources.[10] The wells have produced an average of only 0.4 boe/day each since the date of transfer.[11] By taking ownership of the wells, Painted Pegasus assumed financial responsibility for decommissioning under state law. The legal and financial terms of the transfer are not publicly available.

[8] *To simplify the visualization, some minor transactions were grouped together. For operators on the receiving end of multiple transactions, timeline location is roughly the average receiving transaction date.*

[9] *Anadarko Permanently Shutters One DJ Basin Gas Gathering System*, Natural Gas Intelligence (June 1, 2018).

[10] *COGCC Daily Activity Dashboard: "Export of Data": Operator Change Tab*

[11] *Derived from COGCC production reports*

4.1 Well status

Today, all of the Painted Pegasus wells are enrolled in the Colorado Orphan Well Program. The COGCC has commenced decommissioning 14 of the wells. Based on costs incurred to date of $1.4 million,[12] we estimate the total cost to decommission all of the Painted Pegasus wells to be $18 million.

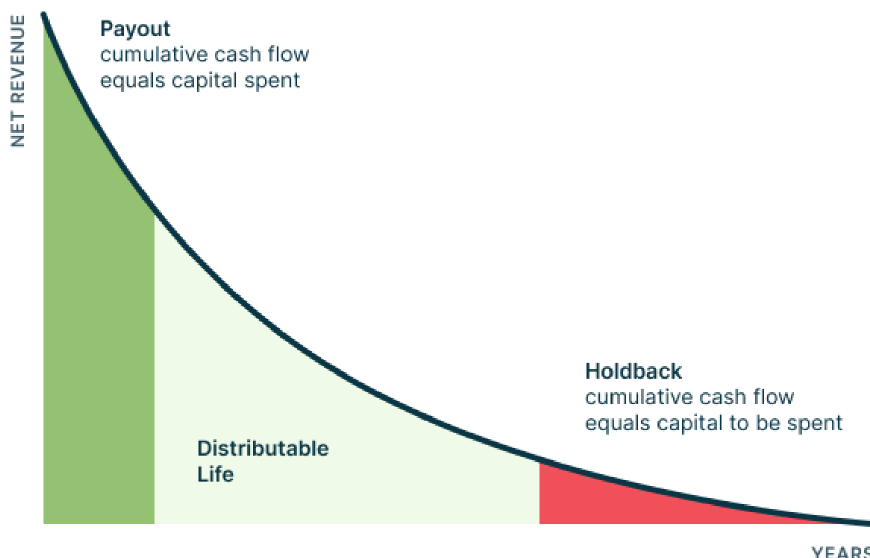
98% of AROs fall to the state

The Painted Pegasus AROs are secured by $305,000 in surety bonds.[13] Assuming total decommissioning costs of $18 million, the average bond coverage ratio (surety bonds divided by decommissioning costs) for the Painted Pegasus wells is under two percent (<2%). That leaves the State of Colorado and its taxpayers unsecured for over 98% of estimated decommissioning costs.

4.2 Cash flow analysis

When operators defer saving for AROs by instead distributing cash flows to owners, the liabilities accumulate. Meanwhile production, and expected future cash flows, decline. As illustrated in Figure .2 below, *holdback* is the estimated time to fund AROs from cash flow in the final years of a well's life. **The holdback period begins when cumulative cash flows from remaining production equal AROs. It is the point just when a well turns upside-down.**

FIGURE 2.2 – PHASES IN THE ECONOMIC LIFE OF A WELL



Holdback is the end-of-life analogue to payout. During payout, upfront capital expended on exploration and drilling is recovered from early cash flow. The payout period is followed by a period of distributable cash flows that represent a return on the initial capital investment. During holdback, 100% of cash flows must be withheld for future decommissioning costs.[14] Distribution of cash to owners or others during holdback violates the principle that creditors have priority over owners.

[12] *The COGCC's average per well cost to date to decommission 14 wells orphaned by Painted Pegasus began in 2021 is $96,000. The final cost to complete the work and the full scope of work to be completed is not known at this time. Our estimate of downhole plugging costs using our depth-based cost model is $178,000 per well.*

[13] *COGIS surety information for Painted Pegasus and COGCC Orphan Well Program data.*

[14] *The holdback model is not the optimum method of managing cash flow for decommissioning—rather, the framework enables clear assessment of ARO management and risk on a sound cash flow basis.*

4.3 Painted Pegasus - Analysis

We performed a cash flow analysis of the Painted Pegasus wells to identify the point in time at which they turned upside-down.

To estimate the historical cash flows from the wells, we started with actual data for the two most important figures: production volumes as reported in regulatory filings since 1999 and spot market prices for the commodities sold. We assumed price differentials, taxes, and royalty burdens based on local trends. A range of operating costs were estimated using professional judgment and tested under several alternative scenarios.

Most Painted Pegasus wells traded hands three to five times just in the last 20 years while the properties were producing and, mostly, generating positive cash flows, but in an amount too low to fund future decommissioning. For each generation of sale, the large majority of the wells were active and producing "stripper" well levels which exempted them from paying severance taxes.[15] Production quantities declined slowly but prices increased part of the time, extending the life of the wells.

Viewed in hindsight, all generations of trades since 2005 occurred when the wells were upside-down – i.e., no longer financially capable of funding their AROs from future cash flow.

4.3.1 Painted Pegasus acquired wells when they were already upside-down and losing money

When Painted Pegasus acquired the wells in 2018, the wells were already operating at a loss assuming low-side operating costs. It may have been possible to eke out some free cash flow by cutting costs and maintenance, but our analysis shows that there could not have a reasonable expectation of settling AROs (see Figure 2.3 below). In 2021, less than three years later, the company filed for bankruptcy.

Painted Pegasus acquired the properties from HRM Resources which assembled the collection in six transactions from 2013 to 2015, mostly from larger companies like Noble Energy.

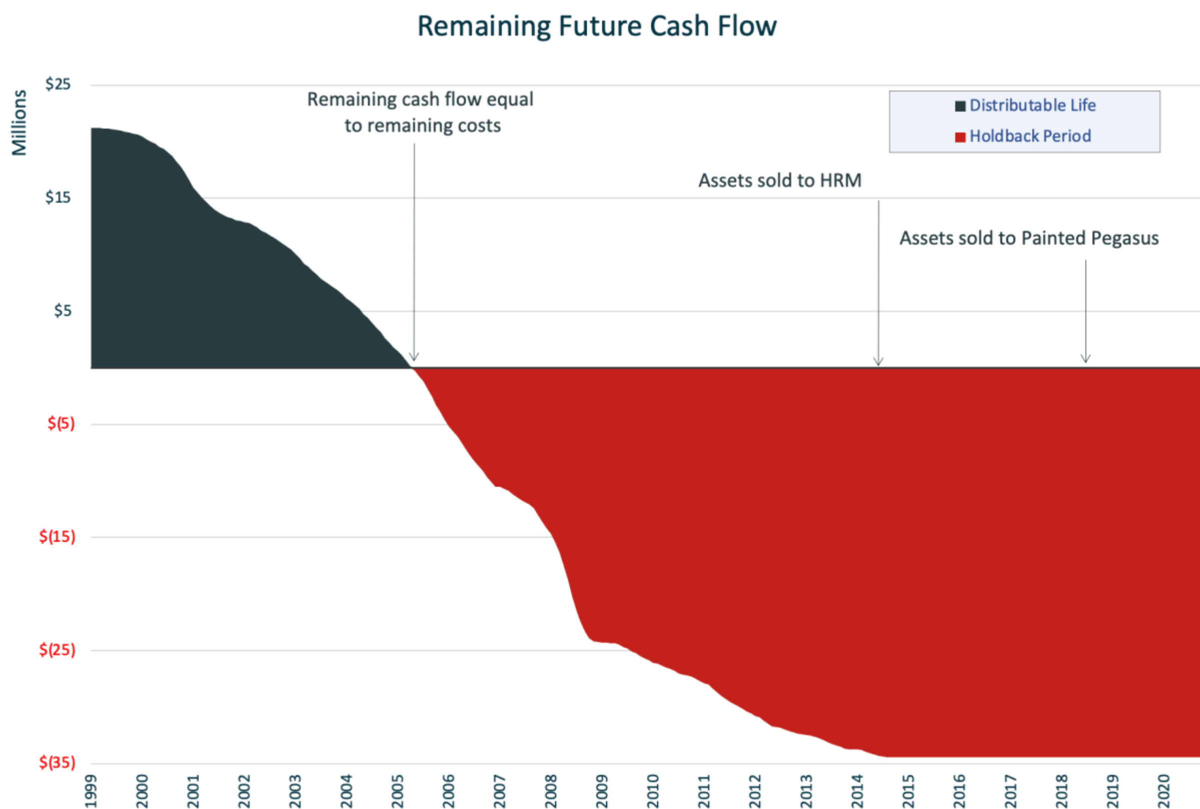
To conduct this holdback analysis, we used 2015 as a proxy date for the transactions, forecasted production as could have been expected at the time, and held recent prices constant for the forecast at $94 per barrel. Even projecting these extraordinarily high oil prices, we estimate that at least four and possibly all six packages were already operating at a loss given normal operating costs. As with its successor Painted Pegasus, the operator likely planned to profit from the wells by cutting costs for things like maintenance – and deferring decommission costs indefinitely.

The previous generation of transactions occurred as eight sales between 2003 and 2006. Operating costs were changing rapidly during this period, but we estimate that the wells were likely cash flow positive. Nonetheless, these wells were still upside-down with regard to decommissioning costs during this time period.

Even given the buoyant oil prices from the mid-2000s to 2015, decommissioning costs likely exceeded all cash flow generated since the 2005 sales. These properties thus changed hands three or more times while they were upside-down. Bond coverage on the wells is less than 2 percent. Now the state orphan well program must bear the cost and/or the landowners must live with the blight of unplugged orphaned wells.

[15] Colorado Stripper Well Exemption from Oil & Gas Severance Tax.

FIGURE 2.3 – TIME SERIES OF ESTIMATED RESIDUAL VALUE OF THE PAINTED PEGASUS WELLS SINCE 1999



Data: COGCC

Painted Pegasus provides is an extreme illustration of common industry practice. The case is extreme due to the self-evident absence of economic substance in the company's acquisition of wells after the shut-in of a gathering line needed to transport production to market. Painted Pegasus assumed insufficiently bonded AROs with little or no associated asset value. Yet our analysis of well histories in Colorado indicate that the case is largely representative of the oil and gas industry's version of the Peter Principle: Once drilled, wells tend to be transferred to the operator with the least ability pay.

5 Conclusion

The Diversified Suit signals that landowners whose property is burdened by upside-down and inactive wells may have standing as *creditors* – with rights against current and former operators – under laws designed to protect creditors against fraudulent conveyances and unlawful dividends. This legal development has the potential to threaten the pervasive industry practice of transferring mature oil and gas wells as a means to evade financial responsibility for AROs.

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2/14/23

23.0830.01002

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1286

Introduced by

Representatives Headland, D. Anderson, Bosch, Lefor, Nathe, Porter, Vigesaa

Senators Bekkedahl, Hogue, Kessel, Patten, Rummel

1 A BILL for an Act to amend and reenact section 57-51.1-02 ~~and subsection 3 of section~~
2 ~~57-51.2-02~~ of the North Dakota Century Code, relating to the removal of triggered oil extraction
3 tax rate changes for wells located outside the exterior boundaries of a reservation; ~~to provide for~~
4 ~~application;~~ and to provide an effective date.

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

6 **SECTION 1. AMENDMENT.** Section 57-51.1-02 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **57-51.1-02. Imposition of oil extraction tax.**

9 1. There is hereby imposed an excise tax, to be known as the "oil extraction tax", upon
10 the activity in this state of extracting oil from the earth, and every owner, including any
11 royalty owner, of any part of the oil extracted is deemed for the purposes of this
12 chapter to be engaged in the activity of extracting that oil. The rate of tax is five
13 percent of the gross value at the well of the oil extracted. ~~However~~
14 2. Subject to subsection 3, for a well located within the exterior boundaries of a
15 reservation, a well located on trust properties outside reservation boundaries as
16 defined in section 57-51.2-02, or a straddle well located on reservation trust land as
17 defined in section 57-51.2-07.10, if the average price of a barrel of crude oil exceeds
18 the trigger price of ninety dollars for each month in any consecutive three-month
19 period, then the rate of tax on oil extracted from all taxable wells is six percent of the
20 gross value at the well of the oil extracted until the average price of a barrel of crude
21 oil is less than the trigger price of ninety dollars for each month in any consecutive
22 three-month period, in which case the rate of tax reverts to five percent of the gross
23 value at the well of the oil extracted. By December thirty-first of each year, the tax
24 commissioner shall determine an indexed trigger price under this section by applying

to the current trigger price an adjustment equal to the percentage rate of change of the producer price index for industrial commodities as calculated and published by the United States department of labor, bureau of labor statistics, for the twelve months ending June thirtieth of that year and the indexed trigger price so determined is the trigger price for the following calendar year. For purposes of this ~~section~~subsection, "average price" of a barrel of crude oil means the monthly average of the daily closing price for a barrel of west Texas intermediate cushing crude oil, as those prices appear in the Wall Street Journal, midwest edition. When computing the monthly average price, the most recent previous daily closing price must be considered the daily closing price for the days on which the market is closed.

3. A tribe may make an irrevocable election to opt-out of the increased rate of tax provided in subsection 2 by providing written notice to the tax commissioner. If a tribe provides notice under this subsection, the rate of tax on oil extracted from taxable wells is equal to the rate of tax provided in subsection 1, beginning in the month of production after notice under this subsection is received by the tax commissioner.

~~**SECTION 2. AMENDMENT.** Subsection 3 of section 57-51.2-02 of the North Dakota Century Code is amended and reenacted as follows:~~

~~3. The state's oil extraction tax under chapter 57-51.1 as applied to oil and gas production attributable to trust lands on the reservation and on trust properties outside reservation boundaries may not exceed six and one-halffive percent but may be reduced through negotiation between the governor and the tribal governing body.~~

~~**SECTION 3. APPLICATION.** Section 2 of this Act applies to agreements entered under chapter 57-51.2 after June 30, 2023.~~

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2023.

2/14/23

23.0830.01002
Title.

Prepared by the Legislative Council staff for
Representative Headland
February 13, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1286

Page 1, line 1, remove "and subsection 3 of section"

Page 1, line 2, remove "57-51.2-02"

Page 1, line 3, after "changes" insert "for wells located outside the exterior boundaries of a reservation"

Page 1, line 3, remove "to provide for application;"

Page 1, after line 7 insert "1."

Page 1, line 12, after "~~However~~" insert:

> "2. Subject to subsection 3, for a well located within the exterior boundaries of a reservation, a well located on trust properties outside reservation boundaries as defined in section 57-51.2-02, or a straddle well located on reservation trust land as defined in section 57-51.2-07.10"

Page 1, line 12, remove the overstrike over "~~, if the average price of a barrel of crude oil exceeds the trigger price~~"

Page 1, remove the overstrike over lines 13 through 23

Page 2, line 1, remove the overstrike over "~~For purposes of this~~"

Page 2, line 1, after "~~section~~" insert "subsection"

Page 2, line 1, remove the overstrike over "~~, "average price" of a barrel of crude oil means the monthly~~"

Page 2, remove the overstrike over lines 2 through 5 and insert immediately thereafter:

> "3. A tribe may make an irrevocable election to opt-out of the increased rate of tax provided in subsection 2 by providing written notice to the tax commissioner. If a tribe provides notice under this subsection, the rate of tax on oil extracted from taxable wells is equal to the rate of tax provided in subsection 1, beginning in the month of production after notice under this subsection is received by the tax commissioner."

Page 2, remove lines 6 through 13

Renumber accordingly

#22886

HB 1286 Testimony

Ron Ness, President

NORTH DAKOTA PETROLEUM COUNCIL

North Dakota State Tax Revenues

	2021	2022
Oil Taxes Combined	$2.25 Billion	$3.39 Billion
Percent of Total ND Taxes	49%	55%

Millions

$7,000
$6,000
$5,000
$4,000
$3,000
$2,000
$1,000
$-

26% 28% 23% 27%

	Sales and Use Tax	Individual Income Tax and Withholding	Corporate Income Tax	Oil Gross Production Tax	Oil Extraction Tax	Coal	Motor Fuels	All Other Taxes	Total All Tax Types
2021	$1,030,986,645	$522,618,320	$201,109,240	$1,184,952,480	$1,066,024,751	$28,269,113	$181,877,171	$388,505,197	$4,604,342,916
2022	$1,192,309,059	$702,880,767	$273,954,738	$1,743,313,159	$1,649,425,735	$15,980,955	$186,733,753	$427,613,787	$6,192,211,952

2021 2022

Source: ND Office of State Tax Commissioner Feb 2023

OIL TAX ALLOCATIONS Biennium to Date - Jan 31, 2023 (in millions)			
	Orig 2021 Leg. Forecast	Actual	Incr (Dcr)
Political Subdivisions	$401.8	$632.3	$230.5
Tribes	$371.1	$553.9	$182.8
Legacy Fund	$740.7	$1,221.6	$480.9
General Fund	$400.0	$400.0	$0.0
Education Funds	$242.0	$386.8	$144.8
Resources Trust Fund	$243.9	$392.3	$148.4
Budget Stabilization Fund	$0.0	$9.6	$9.6
Tax Relief Fund	$200.0	$200.0	$0.0
Municipal Infrastructure	$0.0	$115.0	$115.0
County Town Infrastructure	$0.0	$115.0	$115.0
Strategic Investment Improvement Fund	$162.4	$494.5	$332.1
Airport Infrastructure	$0.0	$20.0	$20.0
Other Allocations	$72.9	$77.0	$4.1
Total	**$2,834.8**	**$4,618.0**	**$1,783.2**

Source: ND Management and Budget Feb 2023

Trends in Oil and Gas Tax Collections

MILLIONS OF DOLLARS

FISCAL YEARS	OIL EXTRACTION TAX	GROSS PRODUCTION TAX
2012	865.1	795.7
2013	1,277.4	1,130.4
2014	1,754.8	1,493.0
2015	1,514.3	1,286.7
2016	732.9	750.5
2017	766.4	693.3
2018	1,003.8	1,073.0
2019	1,219.4	1,342.0
2020	958.6	1,079.9
2021	737.8	864.1
2022	1303.1	1494.5

$3,500 · $3,000 · $2,500 · $2,000 · $1,500 · $1,000 · $500 · $0

=$2.79 Billion

Source: 2022 North Dakota Office of State Tax Commissioner, Comparative Statement of Collections.

OFFICE OF STATE TAX COMMISSIONER NET COLLECTIONS
FISCAL YEARS 2013-2022

MILLIONS OF DOLLARS

$8,000
$7,000
$6,000
$5,000
$4,000
$3,000
$2,000
$1,000
$0

2013 2014 2015 2016 2017 2018 2019 2020 2021 2022

OTHER TAXES & FEES
MOTOR FUELS
COAL TAXES
GROSS PRODUCTION
OIL EXTRACTION
CORPORATE INCOME
INDIVIDUAL INCOME
SALES & USE

53%

TAX TYPE	2022
Sales & Use	$1,225.9
Individual Income	$458.6
Corporation Income	$223.7
Oil Extraction	$1,303.1
Gross Production	$1,494.5
Coal Taxes	$17.0
Motor Fuels	$179.9
Other Taxes & Fees	$404.3
Total Net Collections*	$5,307.0

Source: 2022 North Dakota Office of State Tax Commissioner, Comparative Statement of Collections.

Oil Taxes in the 15 Major Oil Producing States

STATE	SEVERANCE OR GROSS PRODUCTION TAX RATE	ANNUAL PRODUCTION (MILLION BARRELS) 2018	2019	2020	2021
Alaska	0 to 35.0%	174.8	169.9	163.9	159.6
California[1]		160.7	156.4	142.2	134.6
Colorado[2]	2 to 5%	169.2	192.2	171.6	153.4
Kansas[3]	8%	34.7	33.2	28.3	27.9
Louisiana	3.125 to 12.5%	48.1	45.9	36.7	34.7
Michigan	4 to 6.6%	5.5	5.2	4.1	4.3
Mississippi	0 to 6.0%	17.0	16.9	14.2	13.4
Montana[4]	.8 to 15.1%	21.6	23.0	19.1	19.0
New Mexico	3.75%	249.2	336.5	375.4	457.2
North Dakota[5]	10%	460.4	517.7	433.6	405.1
Oklahoma	1 to 7.0%	201.3	218.3	173.2	143.1
South Dakota	4.5	1.3	1.2	1.0	1.0
Texas[6]	0 to 4.6%	1612.4	1864.3	1773.1	1739.7
Utah[6][7]	0, 3 or 5%	37.1	36.9	31.0	35.5
Wyoming	2 to 6.0%	88.0	102.2	89.1	85.4

* Severance (or gross production) tax is in lieu of local property taxes on the oil.

Source: 2022 North Dakota Office of State Tax Commissioner, Comparative Statement of Collections.

Oil taxes are hard to compare state to state. Some states have local taxes.

Questions?

Ron Ness, President

NORTH DAKOTA
PETROLEUM
COUNCIL

HB 1286

Repeal of the Oil Extraction Tax Trigger
Senate Finance and Taxation Committee
March 8th, 2023 | 9:45 am | Fort Totten Room

Testimony by Kate Black, Vice President, Inland Oil & Gas

Good morning, Chairman Kannianen and members of the Senate Finance and Taxation Committee. My Name is Kate Black and I am here to testify in support of HB 1286.

I am the Vice President and am the third generation of Inland Oil and Gas, founded in 1967 by my grandad right here in Bismarck. Today, Inland is actively engaged as a non-operator and participates in drilling our company's leasehold and minerals in the Williston Basin. In contrast to an "operator" Inland seeks the "non-operating" or "working interest" role. Our objective is to acquire a minority share of the minerals or leases within a drilling spacing unit and participate alongside an operator in the drilling of a well by paying our proportionate share of the expenses while receiving our proportionate share of the income.

Inland, like the operator and other private mineral owners – many of which are North Dakota residents, pay a 5% extraction and 5% production tax on the *gross* value of the oil produced. That means one out of every ten barrels we produce goes to the state of North Dakota, free and clear of expense and risk. To illustrate this tax among other industries in our state, that would mean one out of every ten calves produced, one of every ten bushels of wheat, corn or sunflowers harvested, one of every ten Bobcats manufactured would be due to the state. You get my drift. Our industry – operators, non-operators and mineral owners - pay a significant amount of taxes, so significant that these two taxes alone (extraction and production) amount to *over half* of the tax revenue generated by our state. Now I understand the importance of these taxes and how they support our state, but I'd like to point out the following:

- The tax is applied to our gross oil and gas revenue, and NOT our profits. This means we're paying these taxes whether we're profitable or not – most recently in 2020 and 2021 when oil prices were $20-40/bbl and we were still struggling to recoup our investments.

- This tax is BEFORE we pay all of our corporate income or personal income taxes and it is in ADDITION to all of the sales tax we pay in conjunction with the tangibles purchased to drill and develop a well.

- A $380 million projected state surplus proves the state's economy is in good shape but is also an indication of over-taxation. Those taxpayers – the oil and gas mineral owners and working interest owners whose financial risk has built this surplus should share in the tax relief you're considering this legislative term.

As a North Dakotan, I am grateful for the stability the oil and gas industry has given our state. It has provided us with ample funding to support all the functions of our state, as well as providing additional funding for water projects, education, infrastructure all while pouring billions of dollars into the Legacy Fund for our future growth and financial wellbeing.

We are fortunate to be able to consider proposed tax breaks due to this large surplus – as I see the legislature has many tax reduction proposals to consider this session. Reducing property taxes and/or income taxes today means you're shifting even more burden and dependence on future oil taxes. It only seems prudent and fair give the same relief to those who have built it – and take this opportunity to stabilize the oil tax that brought in over half of our state's income. I would ask that you would consider removing the Oil Extraction Tax Trigger by voting YES on HB 1286.

Thank you for the opportunity to testify this morning. I'd be happy to answer any questions the committee might have.

For more information:

"Oil and Gas Tax Revenues Study" - www.TaxStudy.NDEnergy.org

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SHARING THE GOOD WORD ABOUT NORTH DAKOTA

March 8, 2023

Thank you, Mr. Chairman and members of the committee.

For 82 years, the oil industry has been part of the North Dakota landscape. The relationship has endured some bumps in the road but, at least from the outside looking it, both parties have done quite well: the North Dakota government treasury has some reserve and the oil companies have even bigger reserves.

I live in Billings County and I am here on my own dime and my own time to speak against House Bill 1286 because I see no rhyme or reason for us to continue to visit this issue. I believe the 1% trigger tax is good policy that was established in 2017, and "triggered" only one time since becoming law.

I ask you to consider the following:

1. Why was the original HB 1286 amended to allow the "trigger" tax to be levied on wells located within the exterior boundaries of a reservation, a well located on trust properties outside reservation boundaries as defined in section 57 - 51.2 - 02, or a straddle well located on reservation trust land as defined in section 57 - 51.2 - 07.10. This is perplexing and leaves unanswered the question: "Does the MHA nation and leadership know something that rest of us do not?"

2. The oil companies are not in North Dakota because they get a good suntan, appreciate the walleye fishing in Lake Sakakawea or enjoy the Medora Musical. They are here because they are making money—lots of money. As an independent business person, I do not begrudge the oil companies earning a living. And, I am happy they are doing well because we are all doing well.

3. I do, however, take issue with the rollback of the "trigger" tax. In 2022, $135,600,000 was collected by the 1% trigger tax (https://www.ndlegis.gov/assembly/68-2023/regular/fiscal-notes/23-0830-01000-fn.pdf), which means oil company revenues in the same time were roughly about $13,560,000,000—that is $13.56 Biillion, with a "B". This was collected on about 155 million barrels of oil, which costs roughly $6.2 billion to produce (including royalties)—a difference of $7.3 billion.

4. If you want to extrapolate that a little further and "pay the taxes "of 11%--5% gross production, 5% extraction and 1% trigger—you still have a margin of almost $6.5 Billion, or about $1.3 Billion per month when the trigger tax was being collected. Friends, that is more than 40 times the amount of money paid in taxes.

5. Since 1951, North Dakota has produced over 6.4 million barrels of oil (https://www.dmr.nd.gov/oilgas/stats/historicaloilprodstats.pdf).

6. The US Energy Information Administration has published West Texas Intermediate crude oil prices (https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=F003048623&f=M) since October 1993. During that time, North Dakota has produced nearly 5.3 million barrels of oil, valued at about $325 billion using EIA West Texas Crude Oil prices.

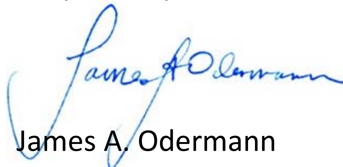
7. Historically, North Dakota has a good working relationship with oil companies. Oil companies have invested heavily in North Dakota but at the same reaping tremendous rewards.

8. It is my opinion that the current law is working and only impacts the oil industry when they are experiencing opportunities for very generous profits. The “trigger” tax for 2023, as set by the North Dakota Tax Department in accordance with N.D.C.C. § 57-51.1-02, (https://www.tax.nd.gov/sites/www/files/documents/newsletters/oil-gas/annual-oil-trigger-price-adjustment.pdf) is $115.55 per barrel, almost $40 above the current trading price. The irony here is that $40 has been mentioned as the benchmark cost of production.

9. I invite a thorough examination and discussion of the information presented. In the end, however, the decision is to make sure that North Dakotans are justly compensated for the withdrawal of a non-renewable resource. We only get one chance in life to do it right. You are elected leaders. You get to make the decision. This is a situation where both sides can win and I urge you to think long and hard before changing the current law. You hold the power in your hands to protect the citizens of North Dakota.

Thank you.

Respectfully,



James A. Odermann