

2021 SENATE ENERGY AND NATURAL RESOURCES

SB 2339

2021 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2339
2/4/2021 PM

A BILL for an Act to amend and reenact subsection 1 of section 38-08-04 of the North Dakota Century Code, relating to the jurisdiction of the industrial commission and single-well bonds.

Chairman Kreun called the hearing to order at 3:20pm
Senators Piepkorn, Patten, J. Roers, Bell, Kreun, and Schaible present

Discussion Topics:

- Existing jurisdiction and how this would change
- Bonding for wells

Troy Coons, Northwest Landowners Association, Chairman, testified in favor #5387 (3:22pm)

Brady Pelton, North Dakota Petroleum Council, Director of Government Affairs, testified opposed #5489 (3:30pm)

Chairman Kreun called the hearing to a close at 3:46pm

Dave Owen, Committee Clerk

Troy Coons
Northwest Landowners Association
Energy and Natural Resources
Testimony for SB 2339
February 4, 2021



Good afternoon, Chairman Kreun and members of the committee, thank you for taking my testimony into consideration today. My name is Troy Coons and I am the Chairman of the Northwest Landowners Association. Northwest Landowners Association represents over 560 farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

The Northwest Landowners Association urges a “do pass” on SB 2339. This bill is intended to require the Industrial Commission to move wells from blanket bonds to single well bonds whenever an operator has a well that is confiscated by the Commission. Blanket bonds cover numerous wells and will not cover the cost of plugging and reclaiming all of the wells covered by the blanket bond. Single well bonds are based on the cost of plugging and reclaiming a specific well.

The problem with abandoned wells is not limited to wells from decades ago. There are new wells that are ending up abandoned because operators become insolvent, and it is usually the operators who are least solvent that end up owning the older and less productive wells. This problem will only get worse with time. The use of close to \$50 million in CARES Act funding in just a few months last summer indicates the size of this looming problem. We have asked for increased funding to the abandoned well fund, but it should not be the North Dakota taxpayers who pay to reclaim these old wells, and it should not be the landowners either.

Thank you for taking the time to consider our comments.

Sincerely,

A handwritten signature in black ink, appearing to be "Troy Coons".

Troy Coons, Chairman
Northwest Landowners Association

Attachment: Prior comments regarding CARES Act funds and bonding submitted to NDIC

Northwest Landowners Association
Comments to NDIC Division of Mineral Resources
May 10, 2020

ND Industrial Commission
Division of Mineral Resources
Lynn Helms, Director
100 E Calgary Ave
Bismarck, ND 58501
Via Email to: brkadrmas@nd.gov



Re: June 10th Confiscation Hearing Testimony of Northwest Landowners Association in Case No. 28495

Dear Division of Mineral Resources:

Northwest Landowners Association (“NWLA”) writes to provide comments on the June 10th, 2020 confiscation hearing with case number 28495. In this case, NDIC has proposed to confiscate almost 400 abandoned wells and to use \$33.1 million of CARES act funds to plug these wells. NWLA has a long history of providing input and comments to the NDIC and the Legislative Assembly on issues related to bonding and reclamation. In 2016 and 2019, NWLA weighed in on administrative rule changes, both times expressing concern over the insufficiency of well bonds. In the 2019 Legislative Session, NWLA supported a bill that would require bonding to ensure reclamation success, and the NDIC actually testified in opposition to that, claiming that it had a handle on bonding and abandoned wells.

Some of the wells slated for confiscation are directly on NWLA members’ land. Because this action will have the greatest impact on North Dakota’s landowners and will affect multiple NWLA members directly, NWLA is providing comments on NDIC’s proposal.

I. In general, NWLA welcomes additional funds to plug wells.

As a general matter, NWLA supports additional funding to plug abandoned wells and to reclaim wells in North Dakota. In light of the gross underfunding of the abandoned well fund and inadequacy of bonds to ensure that sites will be plugged and reclaimed, NWLA has little choice but to support NDIC’s use of CARES funds to confiscate equipment at abandoned wells and to plug these wells, as outlined in this proceeding. However, this support should not be taken as support of NDIC’s overall approach in this area. To the contrary, as discussed in this comment letter, the fact that NDIC had to obtain federal emergency funds is the direct result of inadequate planning and is a bright-red warning signal that NDIC needs a different and more aggressive approach going forward. It is well-known that the oil industry is an extremely cyclical business. Oil booms happen, and so do busts. Planning for both is required. Indeed, NWLA has repeatedly expressed this concern to both the NDIC and the Legislative Assembly, but not nearly enough has been done to ensure that sites will be plugged and reclaimed.

As the size of our state's oil production capacity and total number of wells has grown, so too has the potential liability of orphan abandoned wells. Currently, North Dakota has over 18,000 wells. More than 2,161 of those wells were listed as inactive in the most recent Director's Cut report. The number of inactive wells rose by 170 wells from February to March of 2020 alone. In a May 14, 2020 article, Director Lynn Helms told US News that 549 wells have been identified as "abandoned" in North Dakota's oil-producing region. In this proceeding, NDIC proposes to confiscate approximately 368 wells, which is just a fraction of the wells that NDIC identified as "abandoned," and an even smaller fraction of wells that are inactive.

II. Simply plugging the wells is not enough – reclamation to restore the land to productive agriculture is required.

In this proceeding, NDIC proposes to confiscate approximately 368 wells and to use CARES funds to plug these wells. That is progress, but it is not enough. Reclamation of these sites is also required so that the land can be returned to productive use. NWLA has not had the chance to determine the cost of reclaiming each of these sites, but in general, it is NWLA's experience that well sites that are abandoned are well sites that have been neglected. These locations often have had additional problems such as spills or leaks. Based on NWLA's members' own experiences, reclaiming these sites can cost hundreds of thousands of dollars.

III. More transparency is needed.

NWLA believes that additional transparency regarding the use of these funds is critical to ensure that NDIC remains accountable to the public that it serves, including landowners, and that these funds are expended in a thoughtful manner. NWLA specifically requests additional transparency in two key areas. First, NWLA has reviewed the entire case file for this Case No. 28495. Nowhere in this file is there any indication as to why certain wells were chosen for confiscation but other wells were not. NWLA believes that this information likely exists at NDIC. This information, including both the criteria developed to select the wells chosen for confiscation, as well as the details as to how those criteria have been applied to each well, should be made public and readily accessible.

Second, NWLA specifically requests a detailed accounting of how the \$33.1 million federal dollars is spent, and a statement by well for the amount obtained from confiscation. NWLA would like to see figures regarding how much money is spent on each plugging and reclamation of each well, how many workers are involved with plugging and reclamation of each well, and how long this work takes, with quarterly status updates. This information should be posted publicly on NDIC's website for all to see so that the public can understand exactly how these funds have been expended. This, in turn, will provide valuable information that NDIC, NWLA, the oil industry, and other interested stakeholders can use to determine what future changes to bonding requirements, the abandoned well fund, etc. may be required to ensure that North Dakota's well sites are fully reclaimed upon completion of oil production. Additionally, if the federal funding and amounts obtained through confiscation are not sufficient to plug and reclaim the listed wells, NWLA asks that NDIC include in its reports a statement of where the additional funding comes from, whether from agency funds, the ND general fund, or another source.

IV. A long-term, comprehensive plan to address orphan wells is desperately needed—relying on spotty one-time federal funding is not sufficient.

Transparency with the use of this \$33.1 million one-time funding allocation is essential because it provides a spring-board to long-term planning. It is a well-known problem in North Dakota that orphan abandoned wells are increasing in number. Landowners in particular risk becoming saddled with significant liabilities unless NDIC and the Legislature can develop a long-term plan to address this problem. In general, bonding needs to be increased, as does the amount of money in the abandoned well fund.

In this particular circumstance, North Dakota was hit with a predictable downturn in the oil economy. It is well-known that oil prices are highly cyclical, and prices tend to fluctuate significantly over time depending on supply and demand. While a pandemic-caused demand shock may not have been easily predicted, the fact that some type of demand shock or supply shock would *eventually* occur is easily predictable—it has happened time and again over the last fifty years.

This time, North Dakota got lucky and was able to obtain federal emergency funds to plug wells through the CARES Act. However, relying on luck is not a long-term solution to a problem that is well-known. The fact that so many wells now need to be plugged and reclaimed by companies that may be insolvent was completely predictable, and the fact that the state was not prepared for this predictable event and had to obtain emergency funds from the federal government indicates a severe lack of planning. The list of wells to be confiscated includes wells that NWLA and its members have warned NDIC about for years. For example, 31 Operating and Cobra Oil & Gas Corporation are obvious examples. The fact that NWLA's members were able to identify these problem wells, but NDIC was either unwilling or unable to step in to prevent sale of these problem wells to operators whose insolvency was predicted, is troubling, to say the least.

The wells included in this case account for just 2% of all wells in North Dakota, and the funds are *only* for plugging these wells and not for reclamation. The remaining 98% of wells are an even bigger issue—one which requires planning right now.

V. The Cobra wells are indicative of the need for transparency and a long-term plan.

The list of wells to be confiscated includes approximately 100 Cobra Oil & Gas wells (these wells make up more than 25% of all wells on the confiscation list). These are wells that NWLA and its members have repeatedly warned NDIC and the Legislative Assembly about. There were clear warning signs indicating that this company might be insolvent and unable to manage the liabilities associated with plugging and reclaiming these wells. At the last legislative session, NDIC specifically told the legislature that NDIC planned to increase bonds on some of these wells. Based on the letter from Mr. Bender in the case file for this docket, this apparently never occurred—single well bonds have *still* not been required for these wells. Moreover, Mr. Bender's letter does not indicate one way or another whether Cobra has attempted to obtain these single

well bonds or is financially able to pay for these bonds. Rather, Mr. Bender indicates that the CARES act funds might “moot” the need for Cobra to obtain these single well bonds. In other words, NWLA warned NDIC and the Legislature about these wells, NDIC promised that it would step in to do something about these wells, that still has not happened, and now the only action that NDIC is taking is to provide federal *taxpayer* dollars to bail out Cobra from its well-known liabilities. This is nothing short of a gift to a bad actor and a reward for bad behavior. At the bare minimum, NDIC needs to explain why Cobra cannot pay for the bonds that were promised last year before providing millions of dollars in federal aid to this company.

VI. NDIC must use companies’ existing bonds and take legal action against companies if it confiscates equipment.

The fact that NDIC now has to use \$33.1 million dollars of federal taxpayer aid and confiscate equipment indicates that these wells were mismanaged. NWLA believes that NDIC has a duty to obtain bonds from all companies on the confiscation list to pay for NDIC’s costs associated with this confiscation. NWLA also believes NDIC has a duty to take legal action against all companies on the confiscation list to recover costs associated with plugging these wells. Recovery of these funds—both from bonds and legal action—would allow NDIC to pursue additional plugging and reclamation at other sites. It also would avoid the use of taxpayer dollars that should, in fairness, be coming from the operators who have left these wells to rust and decay on the land of North Dakota citizens.

VII. Conclusion

Thank you for the opportunity to provide comments on this important issue. NWLA looks forward to continuing to advocate on these issues and requests that NDIC keep NWLA updated on the status of each of the wells on the confiscation list so that it can keep its members apprised of the status of NDIC’s progress on these wells. Additionally, NWLA intends to independently track progress at as many of these sites as possible.

Sincerely,

Northwest Landowners Association
Troy Coons, Chairman

A handwritten signature in black ink, appearing to be "Troy Coons", written in a cursive style.

Senate Bill 2339
Testimony of Brady Pelton
Senate Energy and Natural Resources Committee
February 4, 2021

Chairman Kreun and members of the Senate Energy and Natural Resources Committee, my name is Brady Pelton, general counsel and director of government affairs for the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 650 companies 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 to Senate Bill 2339.

Requiring single-well bonds, which may cost as much as \$100,000 per well in certain cases, for situations where a more cost-effective blanket bond will suffice is unnecessary and duplicative. Though there may never be a good time for overregulation and unnecessary expense requirements in a business-friendly environment, now is certainly a time when such impactful policies create needless potential liabilities for oil and gas operators in the state. The type of regulatory change addressed in this bill does drive business decisions on where to position capital and should not become policy.

Senate Bill 2339 creates a new subparagraph in the North Dakota Century Code mandating the North Dakota Industrial Commission (the “Commission”) to require non-abandoned-well status wells covered by a blanket bond subject to forfeiture to be placed on a single-well bond. In short, this bill as written is understood to require a single-well bond on non-abandoned wells that are no longer covered by a blanket bond. Pursuant to its authority derived from N.D.C.C. section 38-08-04, the Industrial Commission already provides for comprehensive well bonding requirements through administrative rule (*see* N.D.A.C. 43-02-03-

15). Well bond amounts set by the Industrial Commission are \$50,000 when a single well is sought for approval and \$100,000 when applied to more than one well. These bonds may only terminate after plugging and reclamation of the well has been approved by the Commission.

In a logical scenario envisioned as one intended to be addressed by this bill, imagine there are ten wells covered by a blanket bond. Two reach a point in time when they have not produced oil or gas in paying quantities for one year. These two wells are subject to being placed by the Commission into abandoned-well status. The NDIC currently has the authority to require each of those two wells be placed immediately on a single-well bond equal to the cost of plugging each well and reclaiming each respective well site. Should those two wells not return to production within one year of being in abandoned-well status and action is not taken by the well owners to plug and reclaim the wells, the single-well bonds covering each are subject to forfeiture. Note in this scenario that it is the single-well bonds covering the abandoned-well status wells that are subject to forfeiture and *not* the blanket bond covering the remaining eight wells. Under this scenario, the need for each of the remaining eight active wells to be covered by a single-well bond is completely absent. Costs for plugging and reclaiming those wells remain covered by the existing blanket bond.

In the event of any well becoming abandoned with no principal bond holder capable of covering plugging and reclamation costs, additional protections exist in the Abandoned Oil and Gas Well Plugging and Site Reclamation Fund (“AWPSRF”). This Fund sits with a healthy current fund balance and is replenished through allocations from the state’s oil and gas gross production tax distribution formula and fees paid to the North Dakota Department of Mineral Resources, among other sources.

Given the unnecessary bonding coverage this bill seeks to require and the substantial costs to industry that may result, the North Dakota Petroleum Council urges a **Do Not Pass** on Senate Bill 2339. I would be happy to try to answer any questions.

2021 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2339
2/5/2021 AM

A BILL for an Act to amend and reenact subsection 1 of section 38-08-04 of the North Dakota Century Code, relating to the jurisdiction of the industrial commission and single-well bonds.

Chairman Kreun called the committee work to order at 9:36am
Senators Schaible, Roers, Piepkorn, Bell, Patten, Kreun all present

Discussion Topics:

- Single well bonds
- Multi Well bonds

Senator Roers moved DO NOT PASS (9:37am)

Senator Patten seconded DO NOT PASS (9:37am)

DO NOT PASS	Vote
Senator Curt Kreun	Y
Senator Jim P. Roers	Y
Senator Dale Patten	Y
Senator Merrill Piepkorn	N
Senator Donald Schaible	Y
Senator Jessica Unruh Bell	Y

Motion Passed 5-1-0

Senator Schaible will carry

Chairman Kreun called the committee work to a close at 9:38am

Dave Owen, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2339: Energy and Natural Resources Committee (Sen. Kreun, Chairman)
recommends **DO NOT PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB
2339 was placed on the Eleventh order on the calendar.