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Landowners Call for Fairness, Rights, and Independent Mediation Board

In the melee of oil and gas bills, SB 2274 addresses critical issues for surface rights

Bismarck, ND--- Two bills enter committee hearings this week on one of the most debated issues this session: surface rights protection. The single difference being an independent mediation board. The Surface Rights Board bill, SB 2274, introduced by Senator John Warner, establishes a mediation board specifically for surface disputes, a measure called for by Dakota Resource Council members and landowners statewide.

Currently, the only viable option for landowners to address oil and gas related problems is litigation. While laws exist that address surface damages, because of the low number of Oil and Gas Division staff for enforcement, surface owners are often forced to litigate to resolve surface disagreements.

“Landowners need more choices than either accepting an insufficient offer or filing a lawsuit,” states Derrick Braaten, attorney with Sarah Vogel Law Partners in Bismarck, ND. “It is unjust for landowners to be forced into years of litigation, at their own expense, simply to recover the damage compensation to which they’re legally entitled.”

The Surface Rights Board bill establishes a surface rights board to mediate disputes involving damages caused by oil and gas exploration and production. “It provides an avenue for surface owners to engage in equitable dialogue with oil and gas companies,” said Senator John Warner. It provides landowners a choice to mediate, serving as an alternative to litigation for surface-related disagreements.

“Landowners are on a limited budget, and might not be able to afford a lawyer, said Carmen Wold, Burlington. “It’s important to make a board to address grievances. Landowners are up against big odds.”

However, another proposal rivals the Surface Rights Board bill. In one section of agriculture bill HB 1462, a mediation service has been stipulated. To do so, the bill language specifically omits 'agriculture' out of 'agriculture mediation service.' The bill does not address specifically the mechanics of how the service will handle cases, including compensation or compliance.

“I think there is a qualitative difference between the work that Ag Mediation has traditionally done and the task that lies ahead,” stated Sen. Warner. “Ag Mediation deals with mutual agreements. Surface rights mediation is needed when the rights of the mineral owner allow a ‘takings’ of surface rights from the surface owner.”

As oil and gas development increases, surface disputes are projected to increase as well. DRC members have called on the state to establish a comprehensive vehicle for mediation to proactively resolve increasing surface disagreements. “I think a surface arbitration board would be an excellent way of settling disputes between landowners and oil companies if it is done fairly and equitably,” says Gary Sorenson Keene. “I think it should be an independent board and should be separate from any Commission.”

The Surface Rights Board bill, SB 2274, will be heard on Thursday, February 3, at 9:45am by the Senate Natural Resources Committee in the Fort Lincoln room.

Dakota Resource Council Dakota Resource Council is a nonprofit, grassroots activist organization. The mission of DRC is to form enduring, democratic local groups that empower people to influence decision-making processes that affect their lives. DRC works to protect North Dakota's land, air, water, rural communities and agricultural economy.

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