

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2211

Introduced by

Senators Bekkedahl, Dwyer, Unruh

Representatives Keiser, Porter

1 A BILL for an Act to create and enact a new subsection to section 61-33.1-03 of the North
2 Dakota Century Code, relating to the determination of the ordinary high water mark; and to
3 amend and reenact sections 61-33.1-04 and 61-33.1-05 of the North Dakota Century Code,
4 relating to the ownership of mineral rights of land inundated by Pick-Sloan Missouri basin
5 project dams.

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

7 **SECTION 1.** A new subsection to section 61-33.1-03 of the North Dakota Century Code is
8 created and enacted as follows:

9 Upon adoption of the final review findings by the industrial commission, the board of
10 university and school lands may contract with a qualified engineering and surveying
11 firm to analyze the final review findings and determine the acreage on a quarter-
12 quarter basis or government lot basis above and below the ordinary high water mark
13 as delineated by the final review findings of the industrial commission. The acreage
14 determination is final upon approval by the board.

15 **SECTION 2. AMENDMENT.** Section 61-33.1-04 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **61-33.1-04. Implementation. (Retroactive application - [See note](#))**

- 18 1. Within six months after the adoption of the ~~final review findings~~acreage determination
19 ~~by the industrial commission~~board of university and school lands:
- 20 a. Any royalty proceeds held by operators attributable to oil and gas mineral tracts
21 lying entirely above the ordinary high water mark of the historical Missouri
22 riverbed channel on both the corps survey and the state phase two survey must
23 be released to the owners of the tracts, absent a showing of other defects
24 affecting mineral title; and

- 1 b. Any royalty proceeds held by the board of university and school lands attributable
2 to oil and gas mineral tracts lying entirely above the ordinary high water mark of
3 the historical Missouri riverbed channel on both the corps survey and the state
4 phase two survey must be released to the relevant operators to distribute to the
5 owners of the tracts, absent a showing of other defects affecting mineral title.
- 6 2. Upon adoption of the ~~final review findings~~acreage determination by the ~~industrial-~~
7 ~~commission~~board of university and school lands:
- 8 a. The board of university and school lands shall begin to implement any acreage
9 adjustments, lease bonus and royalty refunds, and payment demands as may be
10 necessary relating to state-issued oil and gas leases. The board shall complete
11 the adjustments, refunds, and payment demands within two years after ~~the date~~
12 ~~of adoption of the final review findings~~approving the acreage determination.
- 13 b. Operators of oil and gas wells affected by the ~~final review findings~~final acreage
14 determination immediately shall begin to implement any acreage and revenue
15 adjustments relating to state-owned and privately owned oil and gas interests.
16 The operators shall complete the adjustments within two years after ~~the date of~~
17 ~~adoption of the review findings~~the board approves the acreage determination.
- 18 Any applicable penalties, liability, or interest for late payment of royalties or
19 revenues from an affected oil or gas well may not begin to accrue until the end of
20 the two-year deadline. The filing of an action under section 61-33.1-05 tolls the
21 deadline for any oil and gas well directly affected by the action challenging the
22 review finding or final acreage determination.

23 **SECTION 3. AMENDMENT.** Section 61-33.1-05 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **61-33.1-05. Actions challenging review findings or final acreage determinations.**
26 **(Retroactive application - [See note](#))**

- 27 1. An interested party seeking to bring an action challenging the review findings or
28 recommendations or the industrial commission actions under this chapter shall
29 commence an action in district court within two years of the date of adoption of the
30 final review findings by the industrial commission. The plaintiff bringing an action under
31 this section may challenge only the final review finding for the section or sections of

1 land in which the plaintiff asserts an interest. The state and all owners of record of fee
2 or leasehold estates or interests affected by the finding, recommendation, or industrial
3 commission action challenged in the action under this section must be joined as
4 parties to the action. A plaintiff or defendant claiming a boundary of the ordinary high
5 water mark of the historical Missouri riverbed channel which varies from the boundary
6 determined under this chapter bears the burden of establishing the variance by clear
7 and convincing evidence based on evidence of the type required to be considered by
8 the engineering and surveying firm under subsection 3 of section 61-33.1-03.

9 2. An interested party seeking to bring an action challenging the final acreage
10 determination under this chapter shall commence an action in district court within two
11 years of the date the acreage determinations were approved by the board of university
12 and school lands. The plaintiff bringing an action under this section may challenge
13 only the acreage determination for the section or sections of land in which the plaintiff
14 asserts an interest. The state and all owners of record of fee or leasehold estates or
15 interests affected by the final acreage determination challenged in the action under
16 this section must be joined as parties to the action. A plaintiff or defendant claiming a
17 determination of the acreage above or below the historical Missouri riverbed channel
18 which varies from the final acreage determination under this chapter bears the burden
19 of establishing the variance by clear and convincing evidence based on evidence of
20 the type required to be considered by the engineering and surveying firm contracted
21 by the board of university and school lands under subsection 2 of section 61-33.1-04.

22 3. Notwithstanding any other provision of law, an action brought in district court under
23 this section is the sole remedy for challenging the final review, recommendations, and
24 determination of the ordinary high water mark, and final acreage determination under
25 this chapter, and preempts any right to rehearing, reconsideration, administrative
26 appeal, or other form of civil action provided under law.