

NORTH DAKOTA SUPREME COURT CASELAW
AND LEGISLATIVE HISTORY EXCERPT



279 N.W.2d 406
(Cite as: 279 N.W.2d 406)

▷

Supreme Court of North Dakota.
Paul E. TRAUGER, Maryann I. Trauger, Rose Ann
Herrmann, Kenneth Trauger, Zella Trauger Zahn,
Margaret Zinke, Calvin Trauger, and Mildred Arc-
hambeau, Plaintiffs and Appellants,

v.

HELM BROS., INC., a corporation, Defendant and
Appellee.
Civ. No. 9530.

May 9, 1979.

Rehearing Denied June 18, 1979.

Owners of property subject to sand, gravel and rock lease brought action against lessee to quiet title. The District Court, Morton County, Lyle G. Stuart, J., dismissed suit, and owners appealed. The Supreme Court, Vande Walle, J., held that: (1) a provision excluding the right to use land for agricultural purposes is not required to be specifically stated in a lease before it is outside scope of statute barring leases of agricultural land for more than ten years; (2) instant lease was not within scope of such statute where reading of entire lease led to only one conclusion, that is, that lease was for mining and removing sand, gravel and rock and it did not authorize lessee to use the property for other purposes, and (3) evidence failed to establish that lease was unconscionable.

Affirmed.

West Headnotes

[1] Landlord and Tenant 233 ↪30

233 Landlord and Tenant

23311 Leases and Agreements in General

23311(A) Requisites and Validity

233k30 k. Limitation of Term. Most Cited Cases

Provision excluding right to use land for agriculture is not required to be specifically stated in a lease before it is outside scope of statute prohibiting leases of agricultural land for a longer period than ten years. NDCC 47-16-02.

[2] Mines and Minerals 260 ↪58

260 Mines and Minerals

26011 Title, Conveyances, and Contracts

26011(C) Leases, Licenses, and Contracts

26011(C)1 In General

260k58 k. Requisites and Validity. Most Cited Cases

Sand, gravel, and rock lease, which covered property used primarily for agriculture, was not within scope of statute prohibiting lease of agricultural land for more than ten years where a reading of entire lease led to only one conclusion, that it was for mining and removal of sand, gravel and rock and it did not authorize lessee to use the property for other purposes, such as agricultural purposes, and there was no evidence that lessee had ever attempted to use the property for anything other than mining and removal of sand, gravel and rock and purposes incidental thereto. NDCC 47-16-02.

[3] Landlord and Tenant 233 ↪37

233 Landlord and Tenant

23311 Leases and Agreements in General

23311(B) Construction and Operation

233k37 k. Application of General Rules of Construction. Most Cited Cases

Rules of construction relating to contract generally govern with reference to the construction of a lease.

[4] Landlord and Tenant 233 ↪39

233 Landlord and Tenant

23311 Leases and Agreements in General

23311(B) Construction and Operation

233k39 k. Leases and Written Contracts in General. Most Cited Cases

Intention of parties to a lease must be gathered from the entire instrument and not from isolated clauses.

[5] Mines and Minerals 260 ↪58

260 Mines and Minerals

26011 Title, Conveyances, and Contracts

26011(C) Leases, Licenses, and Contracts

26011(C)1 In General

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260k58 k. Requisites and Validity. Most Cited Cases

Fact that surface mining for sand, gravel, and rock is not governed by either Reclamation of Surface-Mined Lands or by Surface Owner Protection Act did not affect validity of lease governing mining and removal of sand, gravel and rock. NDCC 38-14-01 et seq., 38-18-01 et seq.

[6] Quieting Title 318 ↪27

318 Quieting Title

318H Proceedings and Relief

318k27 k. Form of Remedy. Most Cited Cases

An action to quiet title is an equitable action. NDCC 32-17-01 et seq.

[7] Quieting Title 318 ↪34(1)

318 Quieting Title

318H Proceedings and Relief

318k33 Pleading

318k34 Bill, Complaint, or Petition in General

318k34(1) k. In General. Most Cited

Cases

Although actions to quiet title are exempt from Rules of Civil Procedure insofar as there is a conflict, with statute setting forth form of complaint in a quiet title action, a pleading in such an action must still be sufficient to inform and notify both the adversary and the court of the cause of action. NDCC 32-17-01 et seq., 32-17-04; N.D.R.Civ.P., rule 81(a).

[8] Judgment 228 ↪252(1)

228 Judgment

228V1 On Trial of Issues

228V1(C) Conformity to Process, Pleadings, Proofs, and Verdict or Findings

228k247 Conformity to Pleadings and Proofs

228k252 Prayer for Relief in General

228k252(1) k. In General. Most Cited

Cases

Pleading 302 ↪72

302 Pleading

302H Declaration, Complaint, Petition, or State-

ment

302k72 k. Prayer for Relief. Most Cited Cases

Prayer for relief does not constitute part of the complaint or petition or statement of the cause of action or of the right to relief prayed for; however, the court may look to the prayer for relief as a means of clarifying the contentions of the parties and the issues raised, even though the prayer is not a part of the cause of action and would not control the relief in a contested case.

[9] Judgment 228 ↪252(1)

228 Judgment

228V1 On Trial of Issues

228V1(C) Conformity to Process, Pleadings, Proofs, and Verdict or Findings

228k247 Conformity to Pleadings and Proofs

228k252 Prayer for Relief in General

228k252(1) k. In General. Most Cited

Cases

Trial is not required to be limited to the pleadings and the prayer for relief. N.D.R.Civ.P., rule 54(c).

[10] Mines and Minerals 260 ↪58

260 Mines and Minerals

260H Title, Conveyances, and Contracts

260H(C) Leases, Licenses, and Contracts

260H(C)1 In General

260k58 k. Requisites and Validity. Most Cited Cases

Evidence in action to quiet title to property subject to sand, gravel and rock lease failed to establish that the lease was unconscionable.

*407 Steven L. Vogelpohl, Mandan, and Robert A. Birdzell, of Birdzell & Beauclair, Bismarck, for plaintiffs and appellants.

Malcolm H. Brown, of Bair, Brown & Kautzmann, Mandan, for defendant and appellee.

VANDE WALLE, Justice.

Paul E. Trauger, et al., plaintiffs ("the Traugers"), appeal from the district court's judgment dismissing an action to quiet title that they brought against Helm Bros., Inc. We affirm.

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The Traugers own property located three miles west of Mandan, North Dakota. They received title to this property as heirs of the previous title holder, N. S. Trauger, upon his death in 1972. One hundred sixty-five acres of this property is subject to a sand, gravel, and rock lease ("lease") executed in 1954 by Luetta and N. S. Trauger, as lessors, and Helm Bros., through its representative, as lessee.

Since 1954, Helm Bros. has stripped the topsoil from various parts of the leased property to explore for and remove the underlying sand, gravel, and rock. Thus far, it has confined this activity to parts of the southern 100 acres of the leased property. Helm Bros. has opened three pits for the removal of the sand, gravel, and rock,[FN1] and, in the excavation of these pits, has piled the topsoil therefrom in spoilbanks. The pits have not been refilled and the area surrounding them has not been returned to its natural state. In the course of its operations, Helm Bros. on occasion has explored for sand, gravel, and rock in other parts of the southern 100 acres through the use of a bulldozer. Holes opened by the bulldozer have been refilled, but the topsoil from these areas has not been replaced. At one point during its operations, Helm Bros. flooded a wooded coulee located on the property in order to wash the sand and gravel moved from the pits. According to the Traugers, Helm Bros. has also covered or knocked down some of the fences on the property and has not replaced them. The Traugers state that Helm Bros. has never imparted to them notice of, or plans for, future activity.

FN1. Paul Trauger testified at trial that these pits extend from east to west, that the eastern pit, opened in 1956, is approximately 30 feet deep and four acres in surface area; that the center pit, opened in 1965 or 1966, is 25 feet deep and approximately two to three acres in surface area; and that the western pit, opened in 1965, is 50 feet deep and two acres in surface area.

Before Helm Bros. began its operation, the property was used primarily for agriculture,[FN2] but since the inception of the lease, the Traugers have continued to farm only the northern 65 acres. They have attempted to use the southern 100 acres as pasture for livestock, including cattle and horses. The three pits, however, endanger the livestock and aggravate fencing problems. In addition, Helm Bros.'s activity has removed

so much vegetation in the southern 100 acres that it can sustain only a few horses and no "sizeable number of cattle."

FN2. Upon cross-examination at trial, however, Paul Trauger stated that prior to 1954 some gravel had been removed from the property.

Desiring now to void the lease, the Traugers instituted an action to quiet their title to this property. Their complaint, which named Helm Bros. as defendant, compiled with the statutory form required by Section 32-17-04, N.D.C.C.

At the beginning of the trial in district court, the attorney for the Traugers filed a trial brief in which he enumerated three *408 theories upon which the Traugers would proceed: first, that the lease violated Section 47-16-02, N.D.C.C., because it was a lease of agricultural land extending for a longer period than ten years; second, that the lease violated Section 47-16-02, N.D.C.C., because it removed the property from agricultural use and thereby threatened or destroyed the long-term productivity of the property; and, third, that the lease was unconscionable.

Paul Trauger, the only witness testifying on behalf of himself and the other plaintiffs, described the facts set forth above and stated that he desires to irrigate and farm the 165 leased acres, but hesitates to do so lest Helm Bros.'s operations would interfere. After Paul Trauger's testimony, the Traugers rested. The attorney for Helm Bros. called no witnesses. He moved that the Traugers' complaint be dismissed pursuant to, we believe, Rule 41(b), N.D.R.Civ.P. The district court granted this motion and, in its findings of fact and conclusions of law, stated:

"FINDINGS OF FACT

"1

"The plaintiffs are the owners of the following described real property located in Morton County, North Dakota:

The S1/2NW1/4 and the NE1/4 of Section 25, Township 139, Range 82, less Auditor's Lot D of the S1/2NE1/4 of Section 25, Township 139, Range 82,

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subject however, to a sand, gravel and rock lease dated November 29, 1954, between the plaintiffs' predecessors in title and the defendant's predecessors in title, providing for the defendant's exclusive right of mining, exploring and operating, for all sand, gravel and rock located on said S1/2NW1/4 and the NE1/4 of Section 25, T. 139, R. 82, as more fully set out in said sand, gravel and rock lease.

“II

“Pursuant to the terms of said sand, gravel and rock lease, the defendant has been producing sand, gravel and rock from said property from November of 1954, through today, and have been paying the plaintiffs as royalties therefor, the amount specified in said lease.

“III

“The plaintiffs have failed to prove that they have been damaged in any manner by the actions of the defendant for the removal of materials from said property, and have failed to prove that they have been damaged by reason of the withholding of any royalties properly due to the plaintiffs.

“CONCLUSIONS OF LAW

”I

“The plaintiffs are the owners of the following described property located in Morton County, North Dakota:

The S1/2NW1/4 and the NE1/4 of Section 25, Township 139, Range 82, less Auditor's Lot D of the S1/2NE1/4 of Section 25, Township 139, Range 82,

subject to all easements, leases, conveyances and mortgages of record as of the date of entry of judgment herein.

“II

“Said property as described above is further subject to the sand, gravel and rock lease dated November 29, 1954, and all of its terms and conditions as set forth in said lease, and said sand, gravel and rock lease is a

valid lease between the plaintiffs and the defendant, subject to its terms and conditions.”

The Traugers have appealed to this court the district court's dismissal of their action.[FN3] They raise two issues:

FN3. After the district court dismissed their action, the Traugers moved for a new trial pursuant to Rule 59, N.D.R.Civ.P., and for relief from the judgment pursuant to Rule 60, N.D.R.Civ.P. The district court denied both of these motions, but the Traugers have not appealed the order denying these motions.

*409 1. Whether the district court erred in finding and concluding that the lease was not a lease of “agricultural land reserving (a) rent or service . . . for a longer period than ten years . . .” (Sec. 47-16-02, N.D.C.C.), and

2. Whether the district court erred in failing to find and conclude that the lease was “oppressive, unfair, illegal or unconscionable.”

I

To determine the Traugers' first issue it is necessary to consider Section 47-16-02, N.D.C.C., which the Traugers claim invalidates the lease. Section 47-16-02, N.D.C.C., provides:

“Limitations on leases. No lease or grant of agricultural land reserving any rent or service of any kind for a longer period than ten years shall be valid. No lease or grant of any city lot reserving any rent or service of any kind for a longer period than ninety-nine years shall be valid.”

The Traugers concede that this court construed Section 47-16-02, N.D.C.C., in Berry-Iverson Co. of North Dakota, Inc. v. Johnson, 242 N.W.2d 126 (N.D.1976). In Berry-Iverson, the successors in interest to the original lessors defended against an action for breach of the terms of a twenty-year lease by arguing that the lease was invalid as a violation of Section 47-16-02, N.D.C.C. This court rejected that argument:

“We believe that such contention of the Lockens is

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wholly without merit. The statutory prohibition restricts the lease of agricultural lands to a period of ten years. The land in the instant case, however, was not leased for agricultural purposes. Rather, the predecessors in interest to Berry-Iverson specifically leased the four-acre tract of land for use as a site for a radio transmitter tower and associated equipment, including the subsurface placement of a network of wires. The evidence is uncontradicted that the use of the entire site for such purpose continues. The Supreme Court of South Dakota, in *Ryan v. Sioux Gun Club*, 68 S.D. 345, 2 N.W.2d 681 (1942), considered a statutory prohibition similar to the restriction placed upon a lease of agricultural land by s 47-16-02, N.D.C.C. and concluded that such prohibition did not apply to land leased for use as a gun club. After reviewing the historical interpretation placed upon similar provisions in other jurisdictions, the South Dakota Supreme Court concluded in *Ryan*, supra (,) 2 N.W.2d at 683:

‘The lease with which we are here concerned expressly provides the purposes for which the property is leased, and by these express terms “agricultural purposes” are excluded. It might well be that under the evidence submitted the leased land was agricultural land, in the broad conception of that term, but this fact is not decisive. We believe the reasoning of the New York, Montana, and Michigan courts is sound, and that the statute should be constructed so as not to apply to leases of land even though suitable for agriculture, when leased for a purpose other than agriculture, and exclusive of the right of agriculture.’ “ [FN4] 242 N.W.2d at 131-132.

FN4. The decision of the South Dakota court in *Ryan* includes an extensive discussion of the source of these statutes and the decisions construing similar statutes and constitutional provisions of other States.

[1] Trauger, however, attempts to distinguish the facts and conclusion in *Ryan* from those in this case. He points out, correctly, that the lease in this instance, unlike the lease in *Ryan*, does not contain a specific exclusion as to the use of the property for agricultural purposes. It is also true that the South Dakota Supreme Court in *Ryan* held that the South Dakota statute was not applicable to leases of land even though the land was suitable for agriculture “when leased for a purpose other than agriculture, and exclusive of the right to agriculture.” Yet we do not understand that the

provision excluding the right to use *410 the land for agriculture must be specifically stated in the lease. There is no indication that the lease in *Berry-Iverson* contained such a specific exclusion, but the trial court had found that the leased property was not intended to be used and never was used for agricultural purposes during the period of the lease.

In *Lerch v. Missoula Brick & Tile Co.*, 45 Mont. 314, 123 P. 25 (1912), cited by the South Dakota Supreme Court in *Ryan*, a lease for “clay, earth, and other material” for use by Missoula Brick & Tile Company in its business of “manufacturing brick, tile, etc.,” was challenged under a statute substantially similar to that of both South Dakota and North Dakota. The Montana court noted that the parent State of this type of statute was New York and reviewed a series of decisions from the courts of New York construing that State’s provision.[FN5] The Montana court then stated:

FN5. This court also concluded that the North Dakota statute had its origin in the New York Constitution. See *Wegner v. Lubenow*, 12 N.D. 95, 95 N.W. 442 (1903).

“Again, it is contended that, in order that the lease be valid, there must be an express prohibition of use for agricultural purposes, and the Massachusetts Bank Case is cited as authority for the contention. If by this is meant that the lease must contain an express provision, in terms, that the lessee may not use the land for agricultural purposes, we cannot agree with counsel. If the terms of the lease disclose that the land may not be used for agricultural purposes by the lessee, and do not permit the use of the land by him for such purposes, we think it can be upheld as a valid lease by authority of both *Odell v. Durant*, supra (62 N.Y. 524), and *Massachusetts Nat. Bank v. Shinn*, supra (163 N.Y. 360, 57 N.E. 611). In other words, if a fair interpretation of the lease as written discloses the fact that the right of the lessee to use the land was strictly limited to other than agricultural purposes, then the lease is not invalid. When a lease of land is made ostensibly for purposes other than agricultural and the land so leased cannot by the terms of the lease, either express or implied, be put to agricultural uses by the lessee, the purpose of the statute has been satisfied, and the land in effect ceases to be agricultural land within the meaning of the law, although susceptible of use for agricultural purposes.” 45 Mont. at 323-324, 123 P. at 27.

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The Montana court, after examining the lease, concluded that it “amounted in effect to a sale of so much of the soil as might become necessary from time to time for the purpose of manufacturing brick and tile, and a lease of sufficient surface ground, within the limits described, to carry on its operations, and no more; and that the lessee is, partly by express agreement and partly by necessary implication, prohibited from using any portion of the ground for agricultural purposes.” 45 Mont. at 325, 123 P. at 28. The court noted that California had amended its statute to read “no lease of land for agricultural purposes” instead of “no lease of agricultural land” and stated that it regarded the amendment as simply an attempt to more clearly define the original intent of the Legislature. We agree with the reasoning of the Montana court in its construction of the statute and turn to the lease here at issue to determine the nature of the lessee's use thereunder.

[2] The Traugers urge that the lease as written cannot be construed as strictly limiting the use of the land to purposes other than agricultural purposes. Their contention is that by the language of the lease Helm Bros. has leased the land from them together with the exclusive right to remove sand, gravel, and rock. But, they argue, Helm Bros.'s use of the leased property is not strictly limited to the removal of sand, gravel, and rock and incidental use thereto; rather, the lease limits Helm Bros.'s use of the surface for other purposes only in the event that the Traugers are making use of, or renting, the surface and then only if the Traugers' purpose is other than the removal of sand, gravel, and rock. We do not so construe the lease.

*411 [3][4] The rules of construction relating to contracts generally govern with reference to the construction of a lease. See, e. g., Drees Farming Association v. Thompson, 246 N.W.2d 883 (N.D.1976). The intention of the parties to a contract must be gathered from the entire instrument and not from isolated clauses. See, e. g., Bjerken v. Ames Sand and Gravel Company, 189 N.W.2d 366 (N.D.1971). This rule of construction has been applied to leases. See, e. g., Bjerken v. Ames Sand and Gravel Company, supra; Anderson v. Blixt, 72 N.W.2d 799 (N.D.1955).

In examining the lease we find that it is entitled “SAND, GRAVEL AND ROCK LEASE.” The continuation of the lease beyond the initial term is condi-

tioned upon the production of sand and gravel from the premises. Payment for the lease is measured by the production of sand and gravel. The lessors (Traugers) reserve the right to use or to rent the surface but such use does not affect the rights of the lessee “for mining and removing said sand, gravel and rock, together with the right of the Lessee to use and occupy so much of the surfact (Sic) of such lands as may be necessary for entry, dumps, buildings, tramways, railways, road beds, power lines, wells, or other uses in the Mining, removing, hauling and shipping of said sand, gravel and rock mined and removed thereon and therefrom.” (Emphasis added.) The right of ingress, egress, and regress is limited to the purpose of “mining and removing said sand, gravel and rock with men, trucks, tools, machinery and supplies and all things necessary in the mining and removal of said sand, gravel and rock.”

A reading of this entire lease leads us to only one conclusion the lease is for the mining and removal of sand, gravel, and rock, and does not authorize Helm Bros. to use the leased property for other purposes, such as agricultural purposes. Furthermore, there is no evidence in the record that Helm Bros. has ever attempted to use the property for anything other than the mining and removal of sand, gravel, and rock and purposes incidental thereto, nor is there any evidence in the record that Helm Bros. has ever asserted any additional right to use the property for other purposes, such as agricultural purposes.

[5] The Traugers also point out that in Lerch v. Missoula Brick & Tile Co., supra, and cases cited therein, the particular leases at issue contained provisions for restoration of the premises, but the lease herein considered contains no such provision. We do not find that the decisions in those cases were predicated upon restoration provisions in the leases. The Traugers further note that surface mining for sand, gravel, and stone is not governed by Chapter 38-14, N.D.C.C. (Reclamation of Surface-Mined Lands), or by Chapter 38-18, N.D.C.C. (Surface Owner Protection Act). The fact that surface mining for sand, gravel, and rock is not governed by those Acts does not, however, affect the validity of the lease between the Traugers and Helm Bros. Many leases involving surface mining for various minerals or substances were executed before and after those Acts became effective, and the validity of those leases is not dependent upon provisions for restoration of the premises in the lease or legislation

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requiring such restoration. The Legislature deemed it necessary to enact certain statutes involving the surface mining of coal, and, in so doing, limited the application of those Acts to coal. Whether it is necessary for the Legislature to enact similar legislation for the surface mining of sand, gravel, and rock is a decision for the Legislature. See, e. g., Olson v. Dillerud, 226 N.W.2d 363 (N.D.1975).[FN6]

FN6. In Olson v. Dillerud, because of the possible consequences of inadequate restoration of the surface following strip-mining of coal, this court urged the Legislature to take whatever steps might be reasonably necessary to ensure that the surface was restored for agricultural and ranching purposes. An examination of Chapter 38-14, N.D.C.C. (Reclamation of Surface-Mined Lands Act), reveals that substantial changes were made by the Legislature in 1975 and 1977 and it is our understanding that further changes have been made by the 1979 Legislative Assembly. See, e. g., H.B. 1252, 46th Legis. Assembly.

*412 We conclude that the lease does not violate the provisions of Section 47-16-02, N.D.C.C.

II

[6][7][8] The Traugers' second issue is that the district court erred in failing to find and conclude that the lease is of no effect on the equitable grounds that an oppressive, unfair, illegal, or unconscionable agreement will not be given effect. We agree with the Traugers that an action to quiet title as provided in Chapter 32-17, N.D.C.C., is an equitable action. See, e. g., Fiebiger v. Fischer, 276 N.W.2d 241 (N.D.1979). Helm Bros., however, urges that the complaint did not comport with Rule 8(a), N.D.R.Civ.P., in that it did not frame the issues between the parties. But Rule 81(a), N.D.R.Civ.P., provides that actions to quiet title and determine claims to real estate under Chapter 32-17, N.D.C.C., are excepted from the Rules of Civil Procedure insofar as they are inconsistent or in conflict with the procedure and practice provided in those rules. Section 32-17-04, N.D.C.C., sets forth the form of complaint in a quiet-title action and provides in part that the complaint "may be substantially in the following form, . . ." Nevertheless, a pleading must be sufficient to in-

form and notify both the pleader's adversary and the court of the pleader's cause of action. See, e. g., Adamsen Construction Company v. Altendorf, 152 N.W.2d 576 (N.D.1967). The prayer for relief does not constitute part of the complaint or petition or statement of the cause of action or of the right to the relief prayed for. See, e. g., In re Murray, 145 N.W.2d 899 (N.D.1966). But the court may look to the prayer for relief as a means of clarifying the contentions of the parties and the issues raised, even though the prayer is not a part of the cause of action and would not control the relief in a contested case. See, e. g., Rank v. Krug, 90 F.Supp. 773 (S.D.Cal.1950). The pertinent parts of the complaint in this action, insofar as the issues before this court are concerned, are found in Paragraph III of the complaint. That paragraph and the prayer for relief state:

"III.

"That the defendant, substitute for the 1954 lessee of real property in said Section 25 hereinbefore described, claims certain estates or interests in or encumbrances upon said real property or portions thereof adverse to the plaintiffs burdening and damaging the plaintiffs in their use and enjoyment of and profit from said real property used and useable for farming and agriculture.

"Wherefore, plaintiffs pray:

"1. That the defendant be required to set forth all its adverse claims to the property above described, and that the validity, superiority, and priority thereof be determined.

"2. That the same be adjudged null and void, and that defendant be decreed to have no estate or interest in, or lien or encumbrance upon, said property, or any part thereof.

"3. That this title be quieted in plaintiffs as to such claims, and that defendant be forever barred and enjoined from further asserting the same.

"4. That plaintiffs have and recover possession of the premises described exclusive of and without interference from defendant.

"5. That plaintiffs have and recover of the defendant

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compensatory damages for all component materials of said property heretofore removed therefrom by defendant, less proper credit for amounts paid to and received by plaintiffs therefor, namely, Nine Thousand Five Hundred Dollars (\$9,500.00).

“6. That plaintiffs have such other general relief as may be just, together with costs and disbursements.”

At the trial of this matter the attorney for the plaintiffs submitted a brief, mentioned above, setting forth three “theories” upon which the plaintiffs should be entitled to relief. The first two of those theories concern Section 47-16-02, N.D.C.C., which we have already discussed. The third theory advanced was that equity courts have *413 recognized the principle that oppressive or unconscionable agreements will not be enforced.

After the introduction of testimony and evidence by the Traugers, counsel for Helm Bros. moved for dismissal on the grounds that the Traugers had introduced no evidence of the invalidity of the lease. The trial court granted the motion. Rule 41(b), N.D.R.Civ.P., provides, in part:

“After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.”

The record on appeal to this court reveals considerable confusion on the part of the Traugers' counsel about whether the decision of the trial court disposed of his third “theory.” [FN7] The Traugers raised the issue of reformation as well as cancellation of the lease before the trial court. The order of dismissal issued by the trial court from the bench and as contained in the

transcript of the proceedings does not specify that the dismissal operates as anything other than an adjudication on the merits.

[FN7] This is reflected by letters between the Traugers' counsel and the trial court, and a motion for new trial and motion for relief from judgment by counsel, which were denied by the trial court.

[9] The trial court in correspondence with counsel for the Traugers indicated that the trial was held on the pleadings involved, that there was no prayer for cancellation of the lease, and that no evidence was produced to show that the lease was unconscionable. We disagree with the trial court that the trial should have been limited to the pleadings and the prayer for relief. Under Rule 54(c), N.D.R.Civ.P., except for a default judgment, “every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.” The prayer for relief is not a part of the cause of action. In *re Murray, supra*. It is apparent, however, that a complaint which succinctly alleged the facts upon which the Traugers based their cause of action would have more clearly delineated the issues the trial court was expected to determine. *Adamsen Construction Company v. Altendorf, supra*. Had the issues been more clearly defined in the pleadings rather than in the Traugers' brief to the trial court, the resulting confusion could have been avoided.

[10] We do agree, however, with the trial court that there was insufficient evidence to show that the lease was unconscionable. We apparently are asked to conclude that the terms of the lease, of themselves, are unconscionable. In *Fiebiger, supra*, we considered an action brought to quiet title in which a lease with an option to purchase was at issue. We stated:

“Nothing prohibits one from raising issues such as rescission or cancellation of a contract, or forfeiture of rights under a contract in an action which prays for removal of a cloud and quieting title. See footnote 1, *Supra*. However, if cancellation of an existing contract is involved, it must be shown that proceedings comply with the requirements of Chapter 32-18, NDCC, and the general contract law. Chapter 9-09, NDCC, governing extinction, rescission, alteration and cancellation also applies, and it becomes necessary to allege and prove unconscionable mistake, duress, menace,

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fraud, or undue *414 influence. Chapter 9-03 and s 9-09-02, NDCC; Schaff v. Kennelly, 61 N.W.2d 538 (N.D.1953). See also Chapter 31-11, NDCC Presumptions, Maxims and Estoppels. This court quoted with approval from 12 C.J.S. Cancellation of Instruments s 38, in Daniel v. Hamilton, 61 N.W.2d 281, 288 (N.D.1953):

‘Where a party, with knowledge of facts (entitling) him to rescission of a contract or conveyance, afterward, without fraud or duress, ratifies the same, he has no claim to the relief of cancellation. An express ratification is not required in order thus to defeat his remedy; any acts of recognition of the contract as subsisting or any conduct inconsistent with an intention of avoiding it, have the effect of an election to affirm. Indeed, it has been declared that since the remedy of rescission or cancellation is not held in high esteem by the courts even slight circumstances showing a purpose or intent to waive it will preclude the allowance of such relief.’

“Where an action sounds in contract, invocation of equity powers of court is inappropriate in absence of showing of unjust enrichment, fundamental unfairness, or miscarriage of law requiring intervention of equitable principles. See Cargill, Inc. v. Kavanaugh, 228 N.W.2d 133 (N.D.1975). See also MacMaster v. Onstad, 86 N.W.2d 36, 43 (N.D.1957), where this court inferred that where a special and extraordinary remedy (such as reformation) is sought, facts must be set forth which entitle one to that remedy.

“The Fiebigers argue that the consideration was insufficient to support the option. Apparently, the value of the property increased substantially after the option was negotiated. Ordinarily, the fairness of an option agreement is to be judged under the conditions which prevail at the time the option is given. Petersen v. Olson, 253 Iowa 469, 112 N.W.2d 874, 881 (1962); 91 C.J.S. Vendor and Purchaser s 6. In absence of overreaching or unconscionability, fluctuations in the market price after the option is entered into is a risk to be assumed by the parties. All contracts of purchase and sale are made in contemplation of future fluctuations in value. In the event there is a rise in market price, the purchaser reaps the benefit of the increase. Petersen v. Olson, 112 N.W.2d at 882. *Supra*.

“Here, the Fiebigers have not made any showing of unconscionability nor have they otherwise demon-

strated that they were in an unequal bargaining position when the option was negotiated. They are not, therefore, entitled to the contractual remedies of cancellation, rescission, or reformation. A partial summary judgment was appropriate under the circumstances.” 276 N.W.2d at 246-247.

In this instance we do not have a lease with an option to buy. A motion to dismiss under Rule 41(b), N.D.R.Civ.P., was granted instead of a partial summary judgment. Nevertheless, we believe the rationale of Fiebiger is applicable.

The trial court, in accordance with Rule 41(b), N.D.R.Civ.P., made findings as provided in Rule 52(a), N.D.R.Civ.P. Under Rule 52(a), findings of fact shall not be set aside unless clearly erroneous. Based on the record before us, we cannot conclude that the findings of the trial court are clearly erroneous.

The judgment of the district court is affirmed.

ERICKSTAD, C. J., and PEDERSON, PAULSON and SAND, JJ., concur.
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END OF DOCUMENT

38-12.1-06. PROCEDURE.) The provisions of section 38-12-04 shall be applicable to the provisions of this chapter.

38-12.1-07. ACTION TO RESTRAIN VIOLATION OR THREATENED VIOLATION.) Whenever it appears that any person is violating or threatening to violate any provision of this chapter, or any rule, regulation, or any order of the commission, the commission shall bring suit against such person in the district court of any county where the violation occurs or is threatened, to restrain such person from continuing such violation or from carrying out the threat of violation. In any such suit, the court shall have jurisdiction to grant to the commission, without bond or other undertaking, such prohibitory and mandatory injunctions as the facts may warrant.

38-12.1-08. PENALTY.) Any person who fails to perform any act required by this Act or any person who reports information required by this Act falsely or any person violating any of the rules, regulations, or orders promulgated under this Act shall, upon conviction, be guilty of a class A misdemeanor.

Approved March 19, 1975

CHAPTER 318

SENATE BILL NO. 2095
(Stroup)

RECLAMATION OF STRIP MINED LAND

AN ACT to create and enact section 38-14-02.1 of the North Dakota Century Code, relating to soil surveys, and to amend and reenact sections 38-14-01, 38-14-02, 38-14-03, 38-14-04, 38-14-04.1, 38-14-05, 38-14-05.1, 38-14-07, and 38-14-12 of the North Dakota Century Code, relating to policy, definitions, licensing of mining operations, notice of intention to mine, duties of the operator, limitations in granting permits, bond of the operator, and providing a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 38-14-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-01. DECLARATION OF POLICY AND INTENT.) It is declared to be the policy and intent of this state to provide, after surface mining operations are completed, for reclamation of affected lands to encourage productive use including but not limited to: the planting of forests; the seeding of grasses and legumes for grazing purposes; the planting of crops for harvest; the enhancement of wildlife and aquatic resources; the establishment of recreational, home, and industrial sites; and for the conservation, development, management, and appropriate use of all of the natural resources of such areas for compatible multiple purposes; to aid in maintaining or improving the tax base; and protecting the health, safety, and general welfare of the people, as well as the natural beauty and aesthetic values, in the affected areas of this state.

It is also the intent of reclamation practices required by this chapter to restore mined areas designated for agricultural purposes to the level of inherent productivity equal to or greater than that which existed in the permit area prior to mining.

SECTION 2. AMENDMENT.) Section 38-14-02 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-02. DEFINITIONS.) Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

1. "Reclaimed" or "reclaim" means conditioning areas affected by surface mining to make them suitable for any uses or purposes consistent with those enumerated in the statement of policy.

17. "Soil amendments" means those materials added by the operator to the replaced overburden or suitable plant growth material, or both, to improve the physical condition of the soil in its relation to plant growth capability.
18. "Coal" means a dark-colored compact and earthy organic rock with less than forty percent inorganic components, based on dry material, formed by the accumulation and decomposition of plant material. The term shall include lignite in both oxidized and nonoxidized forms as well as any coal bodies enriched in radioactive materials.
19. "Limited mining plan" means a detailed statement setting forth the matters specified in paragraph (1) of subdivision a of subsection 1 of section 38-14-04, and covering those years of mining included in the permit term.
20. "Extended mining plan" means a detailed written statement setting forth the matters specified in paragraph (1) of subdivision a of subsection 1 of section 38-14-04, and covering not less than ten years immediately succeeding the date of its making or the date of any amendments made thereto. The purpose of such plan shall be to inform the commission of conditions existing in the area proposed for mining sufficiently in advance of the commencement of operations so as to allow the commission to more accurately assess the effects of such proposed operations.
21. "Soil classifier" means a professional soil classifier as defined in subsection 2 of section 43-36-01.
22. "Soil survey" means the identification and mapping of all soil materials lying within the proposed permit area as well as the identification and location of those soil materials which can be used as suitable plant growth material.

SECTION 3.) Section 38-14-02.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-14-02.1. SOIL SURVEY REQUIRED.) Every operator desiring to engage in the surface mining of coal shall submit a soil survey of the soil material overlying the deposits of coal described in the limited mining plan. If not otherwise available, the survey shall be made by a professional soil classifier as described in subsection 2 of section 43-36-01. A report of the soil survey shall be given to the commission in accordance with subparagraph (e) of paragraph (1) of subdivision a of subsection 1 of section 38-14-04.

SECTION 4. AMENDMENT.) Section 38-14-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-03. NECESSITY OF PERMIT.) It shall be unlawful, after January 1, 1970, for any operator to engage in surface mining of coal without first obtaining from the commission a permit so to do, in such form as is hereinafter provided.

SECTION 5. AMENDMENT.) Section 38-14-04 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-04. APPLICATION FOR PERMIT - MINING PLANS - BOND - FEE.)

2. "Overburden" means all of the earth and other materials, with the exception of suitable plant growth material, which lie above natural deposits of coal and also means such earth and other materials, with the exception of suitable plant growth material, disturbed from their natural state in the process of surface mining.
3. "Surface mining" relates to the mining of coal by removing the soil material lying above natural deposits thereof, and mining directly from the natural deposits thereby exposed.
4. "Operator" means any person, firm, association, cooperative, corporation, any department, agency, or instrumentality of the state, or any governmental subdivision thereof engaged in and controlling a surface mining operation.
5. "Pit" means a tract of land, from which overburden, or coal, or both, has been or is being removed for the purpose of surface mining.
6. "Final cut" means the last pit created in a surface-mined area.
7. "High wall" and "end wall" mean those sides of the pit adjacent to unmined land.
8. "Affected land" means the area of land from which overburden has been removed for surface mining of coal or upon which overburden or refuse has been deposited, or both.
9. "Refuse" means all waste material directly connected with the cleaning and preparation of coal mined by surface mining.
10. "Ridge" means a lengthened elevation of overburden created in the surface mining process.
11. "Peak" means a projecting point of overburden created in the surface mining process.
12. "Commission" means the public service commission, or such department, bureau, or commission as may lawfully succeed to the powers and duties of that commission.
13. "Permit term" means a period of time beginning with the date upon which a permit is given for surface mining of lands under the provisions of this chapter, and ending with the expiration of the next succeeding three years, plus any extension of the permit granted under this chapter.
14. "Original contour" means a terrain resembling and similar in nature to the terrain existing prior to commencement of mining operations.
15. "Rolling topography" means backfilled and graded at an angle not exceeding that of the approximate original grade of the land.
16. "Suitable plant growth material" means that portion of the soil material (normally the A and, in some cases, the upper portion of the B horizon) lying above the coal which, based upon a soil survey, is found by the commission to be acceptable for respreading on the surface of regraded areas to provide a medium for plant growth.

1. Any operator desiring to engage in surface mining of coal shall make written application to the commission for a permit. Application for such permit shall be made upon a form furnished by the commission. Included in the application shall be:
 - a. Both a limited and an extended mining plan, each of which shall:
 - (1) Include a description of the tract or tracts of land to be affected by surface mining by the operator during the period for which the plan is written. The description of the land shall include, in such form and detail as the commission may require, the following information:
 - (a) A legal description of the land, so that it may be identified and distinguished from other lands.
 - (b) The identity of the owner of record of the surface rights and subsurface mineral rights.
 - (c) The source of the operator's legal right to mine any such lands.
 - (d) Hydrologic data, and geologic, topographic, and soils maps.
 - (e) The report of the results of a soil survey as required by section 38-14-02.1.
 - (2) State the approximate number of tons of coal to be removed from the land described in the plan.
 - (3) Describe the location and composition of the coal to be mined from the land described in the plan.
 - (4) Include such other information as the commission may require.
 - b. A bond or security to attach to the described lands from and after the time a permit is granted which shall aid in meeting the requirements of section 38-14-07; and a fee computed as follows: A non-refundable filing fee in the amount of two hundred fifty dollars plus the sum of ten dollars per acre or fraction of an acre for all lands included within the permit which will be affected by mining during the permit term. Such ten dollar an acre fee shall be refunded to the operator in the event that his application or any amendments thereto, for which such fee is required, is rejected by the commission.
 - c. A reclamation plan, in such form and detail as the commission shall require, covering the land described in the limited mining plan.
2. Upon the receipt of such application, a bond or security and all fees due from the operator, along with the reclamation plan, mining plans, and other data required to be filed herein, the commission may issue a permit to the operator which shall entitle him during the permit term to engage in surface mining on the land therein described.

3. An operator desiring to have his permit amended to cover additional land under either mining plan shall file an amended application, along with amendments to the appropriate mining plan, the reclamation plan, and other data required to be filed herein, with the commission. Upon receipt of the amended application, and plans, and such additional filing fee, acre fee and bond or security as may be required under the provisions of this chapter, the commission may issue an amendment to the original permit covering the additional land described in the amended application.
4. An operator may withdraw any land described in either mining plan, excepting affected land, by notifying the commission thereof. If land covered by the permit term is so withdrawn, the penalty of the bond or security filed by such operator pursuant to the provisions of this chapter shall be reduced proportionately.
5. Where acreage for which a permit has been in effect is not mined, or where mining operations have not been completed thereon during the permit term, the permit as to such acreage shall, upon application, be extended by the commission for up to three years on a year-to-year basis without payment of any additional fee. Thereafter, the permit may be extended for up to two years on a year-to-year basis, for cause shown, without payment of any additional fee.
6. Other provisions of this section notwithstanding, an operator shall be required to amend his extended mining plan yearly so that such plan shall reflect all mining operations proposed to be conducted within not less than the succeeding ten years.
7. The application for a permit, or extension thereof, shall be deemed approved if not denied within sixty days after the filing thereof. If the permit is not approved, the commission shall state its reasons for disapproval, together with the requirements for approval.

SECTION 6. AMENDMENT.) Section 38-14-04.1 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-04.1. NOTICE.) Upon the filing of an application for a permit, or amendment thereto, as provided for by section 38-14-04, the commission shall serve notice of opportunity for hearing on such application by publication thereof to be printed in the official newspaper of each county wherein land to be included within the permit area lies. In addition, the commission shall cause copies of such notice of opportunity for hearing to be sent by certified mail to the owner of the surface rights of the land to be included within the permit area and to the county auditor of each county wherein land to be included within the permit area lies. The names and post-office addresses of those surface owners specified herein shall be determined from the records of the county register of deeds of each county wherein land to be included within the permit area lies. The commission shall fix a reasonable period of time within which any person desiring to be heard may file a protest or petition for a hearing, which period of time shall not be less than twenty days. Upon the expiration of such period of time in the absence of a protest or a request for hearing, the commission may forthwith dispose of the matter upon the basis of the application and of the submittals and all other factors under consideration. When a petition for a hearing has been made, and good cause has been shown therefor, the commission shall set a time and place for a hearing on the question of whether the permit should be granted. Notice of such hearing shall be given to the operator and to any party previously filing protest or petition for hearing.

SECTION 7. AMENDMENT.) Section 38-14-05 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-05. DUTIES OF THE OPERATOR.) After approval of the reclamation plan by the commission, the operator may engage in surface mining of coal during the permit term upon the lands described in the permit upon the performance of and subject to the following requirements with respect to such lands:

1. The operator shall regrade the area to approximately the original contour or topography unless a different contour or topography shall be required by the commission in order to carry out the purposes and intent of this Act.
2. The operator shall, in such a manner as shall be required by the commission, save, segregate, and respread, suitable plant growth material within the permit area up to a maximum of five feet; provided, however, that if up to five feet of such material is not available within the permit area, all suitable plant growth material that is available shall be spread over the regraded area as prescribed by the commission. In the interest of achieving the maximum reclamation provided for in this chapter, the operator may, or at the direction of the commission shall, utilize such soil amendments as described in subsection 17 of section 38-14-02.
3. The operator shall impound, drain, or treat all runoff water so as to minimize soil erosion, damage to agricultural lands, and pollution of streams and other waters.
4. All final cuts, high walls, and end walls must be backslotted to an angle not exceeding thirty-five percent from the horizontal; provided, however, that an operator may propose alternative plans other than backslotting where a water impoundment or other special topographic feature is desired, if such restoration will be consistent with the purposes of this chapter.
5. The operator shall remove or bury all metal, lumber, equipment, or other refuse resulting from the operation. No operator shall throw, dump, or pile, or permit the throwing, dumping, piling, or otherwise placing of any overburden, stones, rocks, coal, particles of coal, earth, soil, dirt, debris, trees, wood, logs, or other materials or substances of any kind or nature beyond or outside the area of land which is under permit and for which bond has been posted; nor shall any operator place any of the foregoing substances in such a way that normal erosion or slides brought about by natural causes will permit the same to go beyond or outside the area of land which is under permit and for which bond has been posted.
6. After backslotting or backfilling, or both, surface mining operations shall not approach property lines, established right-of-way lines of any public roads, streets, or highways closer than a distance of twenty feet.
7. The operator shall submit to the commission no later than the twenty-fifth day of October during each year of the permit term, a map in a form acceptable to the commission showing the location of the pit or pits by section, township, range, and county, with such other description as will identify the land which the operator has affected by surface mining during such permit term and has completed mining operations thereon, with a legend upon such map showing the number of acres of affected land.

8. The commission's approval or modification of the operator's reclamation plan shall include consideration of the advice and technical assistance of the state soil conservation committee, the state game and fish department, the state forester, the state geologist, the state engineer, and those state agencies versed in soils, agronomy, ecology, geology, and hydrology, and other agencies and individuals experienced in reclaiming surface-mined lands. In addition, the operator and the commission shall have the landowner designate his preference for a land use plan covering his affected land. The operator's plan shall designate which parts of the affected land shall be reclaimed for forest, pasture, crop, horticultural, homesite, recreational, industrial, or other uses including food, shelter, and ground cover for wildlife, and shall show the same by appropriate designation on the reclamation map. The plan shall be deemed approved if not disapproved or modified by the commission within sixty days of its receipt thereof. If the plan is disapproved or modified, the commission shall state the reasons for such disapproval or modification, together with the requirements for approval.
9. The operator shall sow, set out, or plant upon the affected land described in the reclamation plan and map or maps, seeds, plants, cuttings or trees, shrubs, grasses, or legumes as shall be approved in writing by the commission.
10. All reclamation provided for hereunder shall be carried to completion by the operator prior to the expiration of three years after termination of the permit term. Where, in the judgment of the commission, affected land fails to support approved perennial plant species or annual crop production, at the end of three years, the commission shall, at the request of the operator, extend the reclamation period from year to year for a period of five years from the termination of the permit term on the land in question. If further extension of the reclamation period is necessary to accomplish acceptable reclamation, such extension shall be made at the discretion of the commission, or the commission shall declare forfeiture of the surety bond or security on such land not satisfactorily reclaimed.
11. If the operator is unable to acquire sufficient planting stock of desired tree species from state nurseries or any nursery within the state, or acquire such tree species elsewhere at reasonable prices, the commission shall grant the operator an extension of time until planting stock is available to plant such land as originally planned, or shall permit the operator to select an alternate method of reclamation in keeping with the provisions of this chapter.
12. Upon the application of the operator, the commission in its discretion may allow, or upon its own motion may order, the modification of an approved reclamation plan, provided the modified plan will carry out the purposes of this chapter.
13. Until reclamation has been accomplished to the satisfaction of the commission, control of the affected lands shall remain in the commission, and the commission may allow use of the land which is not inconsistent with reclamation.
14. If the surface owner's domestic or livestock water supply has been disrupted, or diminished in quality or quantity by surface mining operations,

the operator shall, at no cost to the surface owner, make such repairs, alterations, or construction as will ensure the delivery to the surface owner of that quality and quantity of water available to such surface owner prior to mining. Repairs, alterations, or construction required herein shall be considered to be a part of reclamation for the purposes of subsection 3 of section 38-14-07.

15. The operator shall keep a book containing the following information concerning the permitted mine or mines:

- a. Its name;
- b. Its location;
- c. Date when it began business;
- d. Name of the owner;
- e. Name of the operator;
- f. Number of tons of coal mined therein;
- g. Number of men employed therein; and
- h. Price received for coal sold.

In addition, the operator shall annually make a verified report of the foregoing to the commission. The commission shall not make public the price received for coal sold at any individual mine, but may make public the total valuation of all coal sold in the state.

SECTION 8. AMENDMENT.) Section 38-14-05.1 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-05.1. LIMITATIONS.)

1. The legislature finds that there may be certain areas in the state of North Dakota which are impossible to reclaim either by natural growth or by technological activity, and that if surface mining is conducted in these certain areas, such operations may naturally cause stream pollution, landslides, flooding, the permanent destruction of land for agricultural purposes without approved rehabilitation for other uses, the permanent destruction of consequential aesthetic values, the permanent destruction of consequential recreational areas and the future use of the area and surrounding areas, thereby destroying or impairing the health and property rights of others, and, in general, creating hazards dangerous to life and property so as to constitute an imminent and inordinate peril to the welfare of the state, and that such areas shall not be mined by the surface mining process. Therefore, in such instances, authority is hereby vested in the commission to delete certain areas from all surface mining operations; to reject the application, or any part of such application; to require the operator to amend any application for a permit, or any part of such application, including any mining plan; or to require any combination of the foregoing.

2. No application for a permit or any part of such application shall be approved by the commission if there is found on the basis of the information set forth in the application or from information available to the commission

and made available to the applicant that the requirements of this chapter or rules and regulations hereafter adopted will not be observed or that there is not probable cause to believe that the proposed method of operation, backfilling, grading, or reclamation of the affected area can be carried out consistent with the purposes of this chapter.

3. If the commission finds that the overburden on any part of the area of land described in the application for a permit is such that experience in the state of North Dakota with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in stream beds, landslides, water pollution, or permanent destruction of land for agricultural purposes without approved rehabilitation for other uses cannot feasibly be prevented, the commission may delete such part of the land described in the application upon which such overburden exists or take any other action set forth in subsection 1 of this section necessary to protect the water or land from impairment or destruction.
4. If the commission finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public or private property other than property subject to a coal lease, then it may delete such areas from the permit application before it can be approved or take any other action set forth in subsection 1 of this section necessary to protect such buildings, roads, or waters from impairment or destruction.
5. The commission shall not give approval to surface mine where the operation will adversely affect state, national, or interstate parks, or any historical, archaeological, or paleontological site, unless adequate screening and other measures as approved by the commission are incorporated into the permit application.
6. Whenever the commission finds that ongoing surface mining operations are causing or are likely to cause any of the conditions set forth in subsection 1 of this section, it may order immediate cessation of such operations and take such other action or make such changes in the permit as it may deem necessary to avoid such described conditions.

SECTION 9. AMENDMENT.) Section 38-14-07 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-07. BOND OF OPERATOR - AMOUNT - SUFFICIENCY OF SURETY - VIOLATIONS - COMPLIANCE.) Any bond herein provided to be filed with the commission by the operator shall be in such form as the commission shall prescribe, payable to the state of North Dakota, conditioned that the operator shall faithfully perform all requirements of this chapter and comply with all rules of the commission made in accordance with the provisions of this chapter. Such bond shall be signed by the operator as principal, and by a good and sufficient corporate surety, licensed to do business in North Dakota, as surety. The penalty of such bond shall be one thousand five hundred dollars for each acre or portion thereof of land to be affected by surface mining for the ensuing year. However, a larger bond may be required if the commission shall determine that the cost of reclamation may exceed one thousand five hundred dollars. In lieu of such bonds, the operator may deposit cash or government securities or both with the commission in an amount equal to that of the required surety bond on conditions as above prescribed. The penalty of the bond or amount of cash and securities shall be increased or reduced from time

to time as provided in this chapter. Such bond or security shall be in effect and subject to forfeiture in accordance with this chapter from and after the time a permit is granted by the commission until the mined acreages, or portions thereof, have been reclaimed, approved, and released.

A bond filed as above prescribed shall not be canceled by the surety unless it shall give not less than ninety days' notice to the commission, and in no event shall a bond be canceled on lands that at the time of cancellation have become affected lands under the provisions of this chapter.

If the license to do business in North Dakota of any surety upon a bond filed with the commission pursuant to this chapter shall be suspended or revoked, the operator, within thirty days after receiving notice thereof from the commission, shall substitute for such surety a good and sufficient corporate surety licensed to do business in North Dakota. Upon failure of the operator to make substitution of surety as herein provided, the commission shall have the right to suspend the permit of the operator until such substitution has been made.

The commission shall give written notice to the operator of any violation of this chapter or noncompliance with any of the rules and regulations promulgated by the commission hereunder and if corrective measures, approved by the commission, are not commenced, or agreed to within ninety days, the commission may proceed as provided in section 38-14-09 to request forfeiture of the bond or security. The amount of forfeiture shall be one thousand five hundred dollars, or the amount prescribed in the permit, for each acre or portion thereof of affected land. Such forfeiture shall fully satisfy all obligations of the operator to reclaim the affected land under the provisions of this chapter. However, any operator who refuses or willfully fails to comply with the provisions of this chapter shall be ineligible for any further mining permits, and shall cease all mining operations in this state within thirty days after the forfeiture.

The commission shall have the power to reclaim, in keeping with the provisions of this chapter, any affected land with respect to which a bond has been forfeited.

Whenever an operator shall have completed all requirements under the provisions of this chapter as to any affected land, he shall notify the commission thereof. If the commission determines that the operator has completed reclamation requirements on any portion of the affected land and achieved results thereon appropriate to the use for which the area was reclaimed, the commission shall release the operator from further obligations regarding any such affected land and the penalty of the bond shall be reduced proportionately.

Notwithstanding the foregoing requirements, the operator may secure a decrease in the penalty herein provided per acre in the following fashion:

1. Upon completion of the backslipping and grading, forty percent of the per-acre penalty will be released;
2. Upon completion of the respreading of suitable plant growth material as required herein, an additional thirty percent of the penalty per acre may be released; and
3. The remaining thirty percent of the penalty will remain in effect until reclamation has been accomplished as provided herein.

SECTION 10. AMENDMENT.) Section 38-14-12 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-12. PENALTIES.) Any person required by this chapter to have a permit who engages in surface mining without previously securing a permit to do so as prescribed by this chapter, is guilty of a class B misdemeanor. Each day of operation without the permit required by this chapter shall be deemed a separate violation.

Any person who knowingly and willfully violates any regulation issued or approved pursuant to this chapter or makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or who willfully falsifies, tampers with, or knowingly and willfully renders inaccurate, any monitoring device or method required to be maintained under this chapter, shall be guilty of a class A misdemeanor.

Notwithstanding any other provision of this chapter, the commission may by injunctive procedures, without bond or other undertaking, proceed against any operator found to be surface mining without a permit or in violation of the provisions of this chapter, or the rules and regulations promulgated thereunder. No liability whatsoever shall accrue to the commission or its authorized representative in proceeding against any operator pursuant to this section.

Approved April 8, 1975

(CONTINUED)

ARE SOLD FOR NONPAYMENT OF TAXES.

01/07 SENATE- 01) INTRODUCED, FIRST READING, REFERRED TO FINANCE AND TAXATION -SJ 0044- 02) COMMITTEE HEARING 01/08
 02/17 SENATE- 03) REPORTED BACK AMENDED, AMENDMENT PLACED ON CALENDAR -SJ 0506
 02/18 SENATE- 04) AMENDMENT ADOPTED, PLACED ON CALENDAR -SJ 0528- 05) ENGROSSED - SJ 0571
 02/19 SENATE- 06) SECOND READING, PASSED AS AMENDED, YEAS 047 NAYS 003 -SJ 0598
 02/20 HOUSE- 07) RECEIVED FROM SENATE -HJ 0871
 02/21 HOUSE- 08) INTRODUCED, FIRST READING, REFERRED TO FINANCE AND TAXATION- 09) COMMITTEE HEARING 02/26
 02/26 HOUSE- 10) RETURNED -HJ 0975- 11) REFERRED TO JUDICIARY -HJ 0975
 02/28 HOUSE- 12) COMMITTEE HEARING 03/03
 03/03 HOUSE- 13) REPORTED BACK AMENDED, AMENDMENT PLACED ON CALENDAR -HJ 1036
 03/04 HOUSE- 14) AMENDMENT ADOPTED, PLACED ON CALENDAR -HJ 1052
 03/05 HOUSE- 15) SECOND READING, PASSED AS AMENDED, YEAS 077 NAYS 001 -HJ 1081- 16) RETURNED TO SENATE
 03/06 SENATE- 17) RECEIVED FROM HOUSE -SJ 0936
 03/07 SENATE- 18) CONCURRED -SJ 0950- 19) PLACED ON CALENDAR -SJ 0950- 20) SECOND READING, PASSED AS AMENDED, YEAS 046 NAYS 000 -SJ 0950
 03/17 SENATE- 21) ENROLLED -SJ 1117- 22) SIGNED BY PRESIDENT -SJ 1150
 03/18 HOUSE- 23) SIGNED BY SPEAKER -HJ 1380
 03/18 SENATE- 24) SENT TO GOVERNOR -SJ 1155
 03/20 SENATE- 25) SIGNED BY GOVERNOR -SJ 1261

SB 2094 BY STROUP

ACT TO PROVIDE FOR A SEVERANCE TAX UPON COAL; TO PROVIDE PROCEDURES FOR THE IMPOSITION, COLLECTION, AND ADMINISTRATION OF SUCH TAX; TO PROVIDE FOR THE DEPOSIT OF THE PROCEEDS OF SUCH TAX IN A SPECIAL COAL DEVELOPMENT FUND IN THE STATE TREASURY; AND TO PROVIDE A PENALTY.

01/07 SENATE- 01) INTRODUCED, FIRST READING, REFERRED TO FINANCE AND TAXATION -SJ 0044
 01/13 SENATE- 02) COMMITTEE HEARING 01/14
 02/18 SENATE- 03) REPORTED BACK INDEFINITELY POSTPONED, PLACED ON CALENDAR -SJ 0537
 02/19 SENATE- 04) LAID OVER ONE LEGISLATIVE DAY -SJ 0575
 02/20 SENATE- 05) INDEFINITELY POSTPONED -SJ 0637

SB 2095 BY STROUP

ACT RELATING TO POLICY, DEFINITIONS, LICENSING OF MINING OPERATIONS, NOTICE OF INTENTION TO MINE, DUTIES OF THE OPERATOR, LIMITATIONS IN GRANTING PERMITS, BOND OF THE OPERATOR, PROVIDING AN APPROPRIATION, AND PROVIDING A PENALTY.

01/07 SENATE- 01) INTRODUCED, FIRST READING, REFERRED TO NATURAL RESOURCES -SJ 0044
 01/20 SENATE- 02) COMMITTEE HEARING 01/24
 01/24 SENATE- 03) COMMITTEE HEARING 01/31
 02/17 SENATE- 04) REPORTED BACK AMENDED, AMENDMENT PLACED ON CALENDAR -SJ 0506
 02/18 SENATE- 05) AMENDMENT ADOPTED, PLACED ON CALENDAR -SJ 0528- 06) ENGROSSED - SJ 0571- 07) REFERRED TO APPROPRIATIONS -SJ 0528
 02/20 SENATE- 08) REPORTED BACK AMENDED, AMENDMENT PLACED ON CALENDAR -SJ 0646
 02/21 SENATE- 09) AMENDMENT ADOPTED, PLACED ON CALENDAR -SJ 0670- 10) ENGROSSED - SJ 0694
 02/22 SENATE- 11) AMENDMENT PROPOSED -SJ 0702- 12) AMENDMENT FAILED -SJ 0703- 13) SECOND READING, PASSED AS AMENDED, YEAS 051 NAYS 000 -SJ 0703- 14) MOTION TO RECONSIDER LAID ON TABLE -SJ 0703
 02/24 SENATE- 15) RECONSIDERED -SJ 0723- 16) AMENDED ON FLOOR -SJ 0723- 17) AMENDMENT ADOPTED -SJ 0723- 18) RE-ENGROSSED -SJ 0723- 19) PASSED AS FURTHER AMENDED, YEAS 046 NAYS 000 -SJ 0723
 02/24 HOUSE- 20) RECEIVED FROM SENATE -HJ 0926
 02/25 HOUSE- 21) INTRODUCED, FIRST READING, REFERRED TO NATURAL RESOURCES -HJ 0959
 03/07 HOUSE- 22) COMMITTEE HEARING 03/13
 03/17 HOUSE- 23) REPORTED BACK AMENDED, AMENDMENT PLACED ON CALENDAR -HJ 1339
 (CONTINUED ON NEXT PAGE)

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03/19 HOUSE- 24) AMENDMENT ADOPTED, PLACED ON CALENDAR -HJ 1439- 25) RECONSIDERED -HJ 1439- 26) RE REFERRED TO NATURAL RESOURCES -HJ 1439- 27) REPORTED BACK AMENDED, AMENDMENT PLACED ON CALENDAR -HJ 1467- 28) AMENDMENT ADOPTED, PLACED ON CALENDAR -HJ 1469- 29) MAJORITY REPORT ADOPTED -HJ 1469

03/20 HOUSE- 30) SECOND READING, PASSED AS AMENDED, YEAS 098 NAYS 004 -HJ 1522- 31) RETURNED TO SENATE

03/20 SENATE- 32) RECEIVED FROM HOUSE -SJ 1278

03/22 SENATE- 33) CONCURRED -SJ 1348- 34) PLACED ON CALENDAR -SJ 1348- 35) SECOND READING, PASSED AS AMENDED, YEAS 046 NAYS 000 -SJ 1348

SB 2096 BY SANDS

ACT TO AMEND SECTION 1-03-02 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO WHEN A DAY FOLLOWING A HOLIDAY SHALL BE A HOLIDAY.

01/07 SENATE- 01) INTRODUCED, FIRST READING, REFERRED TO STATE AND FEDERAL GOVERNMENT

01/13 SENATE- 02) COMMITTEE HEARING 01/13

01/14 SENATE- 03) REPORTED BACK, DO PASS, REPORT ADOPTED, PLACED ON CALENDAR -SJ 009P

01/17 SENATE- 04) LAID OVER ONE LEGISLATIVE DAY -SJ 0151

01/20 SENATE- 05) SECOND READING, PASSED, YEAS 048 NAYS 003 -SJ 0167

01/21 HOUSE- 06) RECEIVED FROM SENATE -HJ 0225- 07) INTRODUCED, FIRST READING, REFERRED TO STATE AND FEDERAL GOVERNMENT -HJ 0242

02/24 HOUSE- 08) REPORTED BACK, DO PASS, PLACED ON CALENDAR

02/25 HOUSE- 09) SECOND READING, PASSED, YEAS 097 NAYS 002 -HJ 0956- 10) RETURNED TO SENATE

02/27 SENATE- 11) RECEIVED FROM HOUSE -SJ 0P11

03/10 SENATE- 12) ENROLLED -SJ 0985

03/11 SENATE- 13) SIGNED BY PRESIDENT -SJ 1014

03/11 HOUSE- 14) SIGNED BY SPEAKER -HJ 1206

03/12 SENATE- 15) SENT TO GOVERNOR -SJ 1022

03/13 SENATE- 16) SIGNED BY GOVERNOR -SJ 1077

SB 2097 BY L. CHRISTENSEN

ACT ESTABLISHING A DEPARTMENT OF NATURAL RESOURCES; PROVIDING FOR THE DUTIES AND AUTHORITY OF THE COMMISSIONER, AND THE DEPARTMENT'S OPERATION, PERSONNEL, POWERS AND DUTIES; AND THE TRANSFER OF POWERS AND DUTIES FROM OTHER DEPARTMENTS AND AGENCIES; AND DECLARING AN EMERGENCY.

01/07 SENATE- 01) INTRODUCED, FIRST READING, REFERRED TO NATURAL RESOURCES -SJ 0044

01/20 SENATE- 02) COMMITTEE HEARING 01/23

02/14 SENATE- 03) COMMITTEE HEARING 02/17- 04) REPORTED BACK AMENDED, AMENDMENT PLACED ON CALENDAR -SJ 0478

02/17 SENATE- 05) AMENDMENT ADOPTED, PLACED ON CALENDAR -SJ 0499- 06) ENGROSSED- 07) RE REFERRED TO APPROPRIATIONS -SJ 0499

02/20 SENATE- 08) REPORTED BACK AMENDED, AMENDMENT PLACED ON CALENDAR -SJ 0646

02/21 SENATE- 09) AMENDMENT ADOPTED, PLACED ON CALENDAR -SJ 0670- 10) ENGROSSED - SJ 0694

02/22 SENATE- 11) SECOND READING, PASSED AS AMENDED, YEAS 027 NAYS 024 -SJ 0703- 12) MOTION TO RECONSIDER LAID ON TABLE -SJ 0704

02/24 HOUSE- 13) RECEIVED FROM SENATE -HJ 0926

02/25 HOUSE- 14) INTRODUCED, FIRST READING, REFERRED TO NATURAL RESOURCES -HJ 0959

03/03 HOUSE- 15) COMMITTEE HEARING 03/06

03/07 HOUSE- 16) REPORTED BACK INDEFINITELY POSTPONED, PLACED ON CALENDAR -HJ 1139

03/11 HOUSE- 17) INDEFINITELY POSTPONED -HJ 1182- 18) RETURNED TO SENATE

03/12 SENATE- 19) RECEIVED FROM HOUSE -SJ 1050

SB 2098 BY J. SCHULTZ

AN ACT TO AMEND AND REENACT SUBSECTION 21 OF SECTION 57-38-01 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO INCOME TAX DEFINITIONS, AND PROVIDING AN EFFECTIVE DATE. (CONTINUED ON NEXT PAGE)

STATE OF NORTH DAKOTA

EXECUTIVE OFFICE

BISMARCK

ARTHUR A. LINK
Governor

January 21, 1975

The Honorable J. Garvin Jacobson
North Dakota State Senator
Chairman, Natural Resources Committee
Senate Chambers
Bismarck, North Dakota 58505

Dear Senator Jacobson:

This is in support of Senate Bill 2095, presently before your Committee, concerning the regulation of surface mine reclamation.

I believe this Legislative Assembly should take positive steps to improve and strengthen our reclamation law. This belief was recently stated in my message to the Legislature:

Like our country's founders 200 years ago, North Dakota is an agrarian society with nearly 85 percent of our economy based upon agriculture and related services. We are stewards of this legacy of land--it is our responsibility to preserve and enhance this agrarian inheritance.

As stewards of the land, our first responsibility is to protect the very soil from which we earn our living and feed the world. Surface mining for another North Dakota resource, lignite, will increase in the next several years. We cannot afford to lose valuable productive agricultural land. To protect our land, we must have proper surface mine reclamation legislation. We must provide for adequate enforcement of this legislation.

The Mined Land Planning Group was established through the efforts of my representative on the Old West Regional Commission. This unit has done much to secure information necessary to implement proper reclamation techniques.

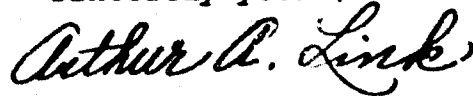
The results of this Group's research can and have been utilized in the preparation of legislation to strengthen our present surface mine reclamation laws. We must strengthen these laws, and we must continue to fund reclamation research and to upgrade our reclamation laws based on additional scientific information from research.

Senate Bill 2095 would make needed improvements in the reclamation law. I commend Senator Stroup for the efforts he has made to work with all concerned to develop the bill as written.

The Honorable J. Garvin Jacobson
January 21, 1975
Page Two

I urge your favorable consideration of Senate Bill 2095.

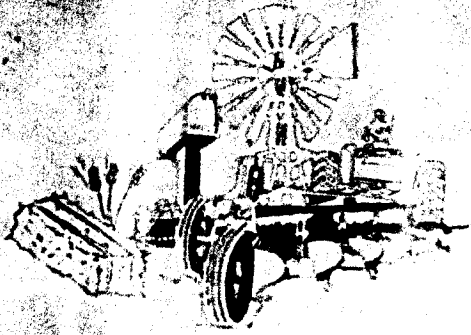
Sincerely yours,



ARTHUR A. LINK
Governor

AAL:mg

cc: Members, Natural Resources Committee



State of North Dakota

Department of Agriculture

State Capitol
BISMARCK, NORTH DAKOTA 58501

January 29, 1975

Myron Just

Commissioner of Agriculture

Honorable Garvin Jacobson, Chairman
Natural Resources Committee
And Members of the Committee
State Capitol
Bismarck, North Dakota 58501

Dear Senator Jacobson & Senators:

I am sorry I could not be with you today in person to testify in regard to SB 2095, the so-called "reclamation" bill. I am very pleased with your declaration of policy and intent on this bill and am generally supportive of the bill, and commend you for your endeavor to substantially improve North Dakota's reclamation laws.

In the declaration of policy and intent, the bill states:

"58-14-01. DECLARATION OF POLICY AND INTENT.) It is declared to be the policy and intent of this state to provide, after surface mining operations are completed, for reclamation of affected lands to encourage productive use including but not limited to: the planting of forests; the seeding of grasses and legumes for grazing purposes; the planting of crops for harvest; the enhancement of wildlife and aquatic resources; the establishment of recreational, home, and industrial sites; and for the conservation, development, management and appropriate use of all the natural resources of such areas for compatible multiple purposes; to aid in maintaining or improving the tax base; and protecting the health, safety and general welfare of the people, as well as the natural beauty and aesthetic values, in the affected areas of this state.

"It is also the intent of reclamation practices required by this chapter to restore mined areas designated for agricultural purposes to a level of productivity equal to or greater than that which existed in the permit area prior to mining."

I support and whole-heartedly endorse the intent of this bill. The additional suggestions which I would like to offer, which I think would help to carry out the intent of this bill, is in regard to the reclamation plan, line 11, page 8. It is my hope that the local soil

Honorable Garvin Jacobson
and Members of the Committee
Natural Resources

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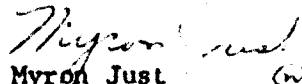
January 29, 1975

conservation districts in North Dakota where the strip mine is to be located would be included in the preparation and final approval of a reclamation plan.

I think that no one knows better the combination of conditions which will reestablish vegetation and produce a crop than the farmers who farm in a local area, and particularly those who may be members of the local soil conservation district. To have them exercise some judgment in approval or disapproval of a reclamation plan would, I think, provide us with a better chance of achieving the intent which was spelled out in the declaration of policy and intent of this bill.

As every farmer knows, different types of soil conditions prevail in areas often not very far apart. Farmers know how deep to plow; how the top soil and subsoil is; what the average rainfall is; and the kinds of crops that grow best. It is for these reasons, I think it is imperative that, together with broad general guidelines for reclamation, in each local area we utilize the farmers and their skill and judgment to achieve a final approval or disapproval of a reclamation plan.

Sincerely,


Myron Just
Commissioner of Agriculture

MJ/nt