

STATE OF NORTH DAKOTA

IN DISTRICT COURT

RECEIVED

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

MAY 03 2011

Dakota Resource Council,

Civil No. 08-10-C-02329

PUBLIC SERVICE COMMISSION

Appellant,

Agency Case No. RC-08-640

vs.

OAH File No. 2010-0122

North Dakota Public Service Commission,

McLean County, North Dakota

Department of Transportation, and North

Dakota Game and Fish Department and

Falkirk Mining Company,

Appellees.

REPLY BRIEF OF APPELLANT

I. Falkirk Mining Company Applies an Inappropriate Standard of Review in Its Brief.

Falkirk Mining Company (“Falkirk”) argues in its brief that Dakota Resource Council (“DRC”) has failed to meet its burden of proof by not submitting evidence to demonstrate that changing the postmining land use on this land to recreation is not a “higher or better use”. See Brief of Appellee the Falkirk Mining Company (“Falkirk Brief”), pp. 4-5. Falkirk’s argument, and indeed most of its brief, misses the point entirely.

The cases cited by Falkirk are inapposite. In Sjostrand v. North Dakota Workers Compensation Bureau, the Court explained it would

affirm the [agency's] decision unless its findings of fact are not supported by a preponderance of the evidence, its conclusions of law are not supported by its findings of fact, its decision is not supported by its conclusions of law, its decision is not in accordance with the law or violates the claimant's constitutional rights, or its rules or procedure deprived the claimant of a fair hearing.

2002 ND 125, ¶ 7, 649 N.W.2d 537. The Court in Sjostrand is relying on the scope of review provisions set forth at N.D.C.C. § 28-32-46. These standards are also directly quoted by Falkirk.

See Falkirk Brief, p.5. The ALJ in North Central Good Samaritan Center v. North Dakota Dept. of Human Services (cited by Falkirk), stated that “[a]s to the burden of proof... ‘it appears that there is no dispute of material fact and, therefore, there is no need to consider which party has the burden of proof.’” 2000 ND 96, ¶ 18, 611 N.W.2d 141.

As the North Dakota Public Service Commission (“Commission”) and the other intervening agencies correctly point out, “appellants base their appeal on subsections (1) and (6) of N.D.C.C. § 28-32-46, which provides that the Commission’s August 24, 2010 Order must be affirmed unless the court finds that: “(1) the order is not in accordance with the law; and ... (6) the conclusions of law and order of the agency are not supported by its findings of fact.” See Appellee North Dakota Public Service Commission Response Brief (“Commission Brief”), p.2; Brief of Appellees North Dakota Dept. of Transportation and North Dakota Game and Fish Dept. (“DOT/Game and Fish Brief”), p.2. Significantly, DRC has not alleged that “[t]he findings of fact made by the agency are not supported by a preponderance of the evidence” pursuant to N.D.C.C. § 28-32-46 (5). Consequently, the bulk Falkirk’s arguments, which relate to an inapplicable standard of proof, miss the mark entirely. As is recognized by the Commission and the other intervenors, DRC’s arguments are based on legal interpretation; so evidentiary or factual issues, and therefore Falkirk’s arguments, are irrelevant. “The interpretation and application of a statute is a question of law....” B.D.H. ex rel. S.K.L. v. Mickelson, 2010 ND 235, ¶ 4, 792 N.W.2d 169.

Additionally, the reliance by Appellees on the deferential review in Montana-Dakota Utilities Co. v. Public Service Commission, 413 N.W.2d 308, 312 (N.D. 1987), is misplaced. The interpretation of a statute is not a “highly technical” issue requiring the particular expertise of the Commission. It is, rather, an issue requiring the particular expertise of a court of law.

II. The Language in N.D.C.C. § 38-14.1-24(2) Is Ambiguous.

The Commission asserts that DRC argued “that the ‘higher and better’ use language in N.D.C.C. § 38-14.1-24(2) is ambiguous....” Commission Brief, p.4. This is simply untrue. DRC has not previously argued that the statute is ambiguous. DRC has argued that “it is clear that a recreational use is not a ‘higher or better’ use than an agricultural use, or more specifically, a cropland use. This is particularly true in the present case when the land at issue is going to *remain in use as cropland.*” Brief of Appellant, p.6 (emphasis in original). According to the Commission, a “simple reading of the statute indicates that the Commission is empowered to make postmine land use changes to any number of specifically listed categories (e.g. recreational). In doing so, the Commission is required to promulgate, and follow, a criterion associated with making postmine land use changes (i.e. N.D. Admin. Code § 69-05.2-23-03).” Commission Brief, p.5. Presumably, the Commission believes it complied with the requirements of N.D.A.C. § 69-05.2-23-03, and that if it does so, it may change the post-mine land use on any land as it sees fit. DRC disagrees and asserts that agriculture is always a “higher and better” use than recreational use based on the clear admonition in the statute that Falkirk must “ensure the restoration of affected lands designated for agricultural purposes to the level of productivity equal to or greater than that which existed in the permit area prior to mining.” N.D.C.C. § 38-14.1-01(5). DRC is not arguing that the Commission’s interpretation is irrational; the Commission’s interpretation is simply incorrect.

Because the “statute is susceptible to differing, but rational, meanings, it is ambiguous.” Hoffner v. Bismarck Public School Dist., 1999 ND 3, ¶ 7, 589 N.W.2d 195. The Commission supports its position by quoting an exchange between Commissioner Tony Clark and James Deutsch, Director of the Reclamation Division. Commission Brief, pp. 5-6. The Commission

conspicuously excises the conclusion of the exchange because it calls the Commission's position into doubt. The Commission cites the exchange because Commissioner Clark elicited from Mr. Deutsch the conclusion that the legislature could have, but did not, specify that agriculture is a higher or better use. See Commission Brief, pp. 5-6. Although this is true, the rest of the exchange is significant:

Commissioner Clark: Okay. Do you find the – the statute to be unclear, ambiguous, contradictory in any way, or do you simply find that the statute is written so that it allows the Commission a good deal of discretion in how it deals with these issues?

Director Deutsch: Well with – with the restoration of the productivity level on – on lands designated to agricultural use, the – the statute and the rules are very clear on that. With regard to other uses and defining the highest and best use, there -- I guess I'd have to – I think that's – there's a definition, but it still is not – not real clear. There's discretion that the Commission has in determining what would be the highest and best use.

And the same thing with going through the specific criteria that were mentioned. There's – there's not real clear guidance in deciding what is a – the highest and best use. It just says what needs to be met if you're looking at an alternative post-mine land use.

Transcript of Hearing, pp. 76-77 (emphasis added). Further testimony from Mr. Deutsch also indicates ambiguity in the statute.

Mr. Braaten: And you were asked a question, whether the law explicitly states that agriculture is a higher and better use, and you said no. Is that right?

Director Deutsch: That is correct.

Mr. Braaten: Does the law explicitly state that the Public Service Commission has the discretion (inaudible) higher or better use?

Director Deutsch: I think there's – there's some guidance in determining what's considered a higher and better use, but there again, as I – I think I indicated earlier, that that is not real specific

or proscriptive as far as what can be considered a higher and better use.

Transcript of Hearing, pp. 84-85. Mr. Deutsch is correct that there is guidance in determining what is considered a higher and better use. The statute requires Falkirk and the Commission to “ensure the restoration of affected lands designated for agricultural purposes to the level of productivity equal to or greater than that which existed in the permit area prior to mining.” N.D.C.C. § 38-14.1-01(5). The statute also requires Falkirk to “[r]estore lands affected by the surface coal mining operation which have been designated for postmining agricultural purposes to the level of productivity equal to or greater, under equivalent management practices, than nonmined agricultural lands of similar soil types in the surrounding area.” N.D.C.C. § 38-14.1-24(17). DRC’s interpretation of the statute is sound and consistent with the clear language of the statute. To the extent that this court considers the Commission’s interpretation to be reasonable, the “statute is susceptible to differing, but rational, meanings,” and it is therefore ambiguous. Hoffner v. Bismarck Public School Dist., 1999 ND 3, ¶ 7, 589 N.W.2d 195.

III. A Recreational Use Is Not a Higher or Better Use than an Agricultural Use.

When the provisions of N.D.C.C. ch. 38-14.1 are read in their entirety, it is clear that a recreational use is not a higher or better use than an agricultural use, and this is especially true when the land at issue will *remain in use as cropland*. DRC explained the rationale for its interpretation of the statute in its prior brief. See Brief of Appellants, pp. 5-9. To the extent that the Commission’s interpretation of the statute is reasonable, it creates an ambiguity in the statute.

The “primary objective in statutory interpretation is to determine the legislature’s intent.” Haugenoe v. Workforce Safety and Ins., 2008 ND 78, ¶ 8, 748 N.W.2d 378. “Statutes are construed as a whole and are harmonized to give meaning to related provisions...[The Supreme Court of North Dakota] follows the ‘cardinal rule’ of statutory construction that...[its]

interpretation must be consistent with legislative intent and done in a manner which will accomplish the policy goals and objectives of the statutes.” Rojas v. Workforce Safety and Ins., 2006 ND 221, ¶ 13, 723 N.W.2d 403 (internal quotes omitted). “When a statute is ambiguous, [a court] may look to the legislative history to discern that intent. Hamich v. State, 1997 ND 110, ¶ 13, 564 N.W.2d 640.

The legislative history of N.D.C.C. ch. 38-14.1 could not make clearer the overriding importance of agricultural lands in the statutory scheme. As the North Dakota Supreme Court explained: “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.” Trauger v. Helm Bros., Inc., 279 N.W.2d 406, 411 n.6 (N.D. 1979) (emphasis added). In 1979, the North Dakota Legislative Assembly repealed the aforementioned Chapter 38-14 and replaced it with the present statute, N.D.C.C. ch. 38-14.1. See House Bill 1252, 46th Legis. Assembly. The focus of the statute on preserving agricultural lands and soil productivity, however, remained. See, generally N.D.C.C. ch. 38-14.1.

As Reclamation Director James Deutsch explained, the strong admonitions in North Dakota’s reclamation laws to restore the pre-mine productivity of agricultural remained a part of the law through all the above-noted changes. See Transcript of Hearing, pp. 83-84. From the beginning, the proponents of North Dakota’s reclamation law have focused on the primacy and

importance of North Dakota's agricultural lands and proving restoration of soil productivity on these lands.

In a letter to the Natural Resources Committee in 1975, when North Dakota's reclamation laws were first passed, Governor Arthur A. Link wrote:

Like our country's founders 200 years ago, North Dakota is an agrarian society with nearly 85 percent of our economy based on 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.

Hearing on S.B. 2095 before the Senate Natural Resources Committee, 44th N.D. Legis. Sess. (Jan. 24, 1975) (written testimony of Governor Arthur A. Link) (“Hearing on S.B. 2095”) attached as Exhibit A. The Commissioner of Agriculture in 1975, Myron Just, also wrote to the Natural Resources Committee during its consideration of Senate Bill No. 2095. Commissioner Just underlined the language stating the intent of the bill, which remains in the North Dakota Reclamation law at N.D.C.C. § 38-14.1-01(5) as follows: “to ensure the restoration of affected lands designated for agricultural purposes to the level of productivity equal to or greater than that which existed in the permit area prior to mining.” See Hearing on S.B. 2095 (Written testimony of Commissioner Myron Just) attached as Exhibit A. Commissioner Just explained: “I support and wholeheartedly endorse the intent of this bill.” Id. Governor Link and Commissioner Just would be surprised that the current Commission believes that recreation is a higher and better use than cropland. And they would be baffled by the Commission's decision to designate cropland,

which will be used as cropland, as a recreational use simply to relieve the mining company of its obligation to prove post-mining productivity and get an early bond release.

IV. Federal Law Is Not Helpful in Resolving the Ambiguity in N.D.C.C. § 38-14.1-24.

The Commission and Falkirk both point to the federal provisions upon which many of North Dakota's provisions are based. Commission Brief, p.6; Falkirk Brief, pp. 10-12. An exchange between Commissioner Kalk and Reclamation Director James Deutsch makes it clear that the federal law is not helpful in interpreting North Dakota's reclamation laws.

Commissioner Kalk: Tony and Kevin both talked about the law a little bit, but it's my understanding that North Dakota is well ahead of the rest of the country in our mine reclamation laws and we continue to be the model that the federal government looks at. I'm just curious to hear your thoughts about that.

Director Deutsch: Well, with -- with regard to our law and that, as -- as mentioned earlier in the DRC testimony, our law is -- is more stringent than the federal law with regard to restoration of productivity on -- on agricultural lands.

Commissioner Kalk: Just in general, North Dakota law, on land reclamation, is -- is, in general, the strictest in the country?

Director Deutsch: With regard to our program, I think it's in high regard with -- with regard to the federal regulations through the Office of Surface Mining.

Transcript of Hearing, pp. 78-79. Because North Dakota's reclamation laws are more stringent than the federal laws, particularly with regard to restoration of productivity on agricultural lands, the fact that the language of the federal laws is similar to North Dakota's is unhelpful in interpreting North Dakota's laws. The key difference is precisely that relied upon by DRC for its interpretation: North Dakota's laws are far more stringent with respect to agricultural lands. The fact that the North Dakota program is held in high regard is more than a point of pride for our

state, though. It is the guiding light in interpreting the statute and understanding the importance it places on restoring agricultural lands.

V. Appellees Fail to Distinguish between Benefits Flowing from a Land Deal and Benefits Flowing from a Post-Mine Land Use Revision.

Despite DRC's explanation of the distinction between benefits flowing from a post-mine land use revision and from a proposed land deal, Appellees turn a blind eye to the obvious. Ignoring the distinction does not, however, make it go away. If there is not actual change in post-mine land use, it is arbitrary and contrary to law to change the designation for purposes of the reclamation standards. There is simply no justification to changing the post-mine land use on this cropland when the record makes it abundantly clear that it will remain in use as cropland.

The Commission admits in its brief that Falkirk benefits from early bond release if the Revision is granted. Commission Brief, p.7. It also states that "Falkirk is not the only party to benefit, specifically as it relates to expediency. Due to the compliance timelines associated with NDDOT's no mow obligations, timing is critical." *Id.* The Commission goes on to list a number of public benefits such as allowing "NDDOT to reduce their no mow obligations, with 1271 acres in McLean County alone." *Id.*

As DRC has taken pains to point out, the NDDOT's ability to mitigate no mow acreage does not flow from changing the 86 acres of cropland to recreational use, particularly because the land is going to remain in use as cropland. The creation of a wildlife area and other benefits listed by the Commission flow from the contractual land transfer between Falkirk and NDDOT; not from the Revision of the 86 acres at issue to a recreational use. The 86 acres were designated as cropland prior to mining and they will be used as cropland after mining. All of the parties support the use of these 86 acres as cropland. The inescapable conclusion is that cropland is the

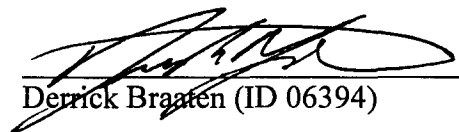
highest and best use of the 86 acres at issue. It is arbitrary and capricious to designate it for another use knowing full well that it will be used as cropland.

VI. Conclusion

Pursuant to N.D.C.C. ch. 38-14.1, cropland is a higher and better use than recreation. This is particularly so in the present case where the land at issue will actually be used as cropland. Because the land will be used as cropland, it is necessary for the cropland reclamation standards to be met prior to any bond release. Further, the Commission's Findings related to a potential recreation area, and its desire to refrain from causing any contractual complications for a land deal between Falkirk and NDDOT, do not support its conclusion that a recreational use is a higher or better use than a cropland use for the 86 acres at issue. For all the above reasons, Appellant respectfully requests that this court reverse that portion of the Order of the Public Service Commission that changes the post-mining land use for the 86 acres at issue.

Dated this 2nd day of May, 2011.

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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 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.

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 end, 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.

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.)

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, homestead, 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 backslapping 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) RE 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) RE 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)

(CONTINUED)

- 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 0098
- 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 0811
- 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.

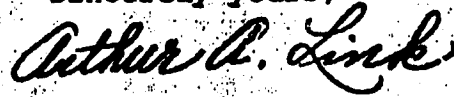
The results of this Group's research can and have been utilized in the preparation of legislation to strengthen our present surface mine reclamation laws. We must strengthen these laws, and we must continue to fund reclamation research and to upgrade our reclamation laws based on additional scientific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

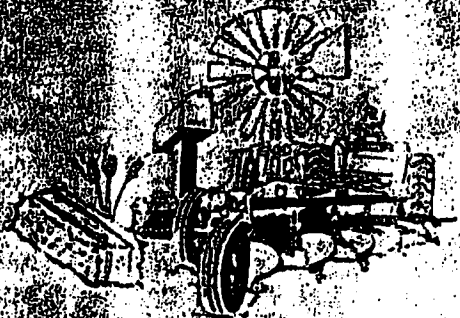
Sincerely yours,



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:

"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 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

-2-

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

CERTIFICATE OF SERVICE

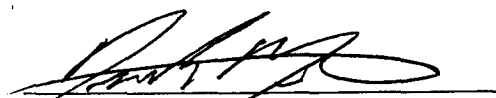
I hereby certify that a true and correct copy of the foregoing **REPLY BRIEF OF APPELLANT with Exhibit A** was on May 2, 2011, served via U.S. Mail on the following:

ND Public Service Commission ✓
Mark Gruman
600 East Boulevard, Department 408
Bismarck, ND 58505-0480
*Attorney for ND Public Service
Commission*

Brian R. Bjella (ID 03549)
Crowley Fleck
400 East Broadway, Suite 600
Bismarck, ND 58501
Attorney for Falkirk Mining Company

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State Capitol
600 E. Boulevard Ave.
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*Attorney for North Dakota Game and
Fish Department and North Dakota
Department of Transportation*

Ladd Erickson
McLean County State's Attorney
P.O. Box 1108
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Derrick Braaten