

Dakota Counsel

WATER ROBBERY

Whiskey is for drinking and water for fighting, and it’s all about water these days in western McKenzie County.

Over 90 people confronted the State Water Commission in Watford City September 26 over 21 pending well permits they think threaten their drinking water.

DRC submitted testimony urging the Commission not to give the permits to Zenergy, the oil company that has already caused the largest salt water spill in state history.

The hearing came about because DRC challenged a single Zenergy water well permit application earlier this year and asked for a public hearing.



Former Governor Art and Grace Link signing petition while MCETA member Peter Skedsvold looks on.

With many more such applications in the pipeline, the Commission decided to make a day of it.

About 80 petition signatures to hold the hearing in Alexander were instrumental in at least getting it as close as Watford City.

“These are not isolated wells,” said Donald Nelson, Keene, in DRC testimony, “but part of a single large oil and gas development effort affecting the Tongue River and Sentinel Butte aquifers, important McKenzie County water sources.”

“The entire scope of this development must be fully examined in order to investigate the impact such development will have,” Nelson added.

Nelson also noted that the long-debated federal management plan for the Little Missouri National Grasslands made no mention of permitting water wells for industrial use, and the subject was not reflected in the Environmental Impact Statement (EIS).

“Where are the Bureau of Land Management and the Forest Service?” Nelson asked during the recorded hearing. “They are completely absent, even though they are as much under the direction of the plan as the ranchers.”

“There needs to be a supplemental EIS in order to address water use of this type and magnitude,” he added.

The Commission previously issued Zenergy numerous

See Water Robbery p. 7

WATER WATER EVERYWHERE

But it’s salty water, so there’s not a drop to drink

It keeps coming to the surface at the Charbonneau Creek spill site after nine months of clean-up work—and the Health Department discovered in early September that some ground water contamination has occurred.

The clean-up strategy from the beginning has been to pump out a beaver pond on the creek to remove contaminated water, but the pond keeps filling up again.

During one excavation this fall, “several small, near-surface coal seams in the Sentinel Butte Formation were exposed, and it was discovered that the water flowing through some of them was contaminated with salt,” according to the Health Department.

Salty water again filled the pond this fall after it was pumped dry and reseeded, according to local residents.

It makes them wonder how far the contamination extends.

“It appears that the salt water contamination that got into the coal couldn’t move much to the north and is pretty limited in its spreading in the coals to the south,” the state claims.

Local rancher and DRC member Ned Hermanson isn’t so sure.

“There’s still not adequate sampling to show the full extent of the contamination,” he said. “We need to know where we stand.”

The Dakota Counsel is published six times a year by Dakota Resource Council, a nonprofit, grassroots activist organization. The mission of Dakota Resource Council is to form enduring, democratic local groups that empower people to influence decision-making processes that affect their lives. DRC is committed to preserving sustainable agriculture and natural resources.

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THE RAZOR'S EDGE

By DRC Board Chair Dean Remboldt

Here they come, descending into town from under every nook and cranny, making their way into almost every bar, elevator, feed store, and barbershop...the "observing nature winter weather forecaster." To learn about such matters one must enter into forbidden territory: the eerie realm of "old wives' tales." Warning: "do not attempt to do this yourself without consulting a trained professional."



Listening to these "observing nature winter weather forecasters" weave a somewhat plausible explanation of how they come to the conclusion of this inexact science is a treasure of generational storytelling handed down from at least as far back as their great grandpappy on their uncle's mother's side of the family.

My late father, like his father before him, fell into this category of "observing nature winter weather forecasters." Every year dad would look at the muskrat huts out in the sloughs around Gackle, judging by their size and distance from shore, would formulate a winter forecast. The theory being, the smaller the average hut and the shallower the water they are in...the milder the winter, and vice-versa. Of course during times of drought dad always had his back-up theory...the amount of fat on the opening season mallards.

The first day of duck season, before I could clean my ducks, dad would want me to bring the ducks to him and he would see how much fat they had on their bellies and backs...a lot of fat = tough winter and less fat = easy winter. Of course I was thinking, "OK, the ducks are flying south before winter so why would that have any bearing on our winter weather." But who am I to question this proven theory?

I never did have the heart to remind dad that from the time the "duck fat" theory was passed down to him from my grandpa, that the barley and wheat harvest was about six weeks later and the ducks were grain feeding earlier than when the theory was passed onto me...perhaps requiring some slight technical adjustments.

My dad never did get a chance to tell me what would happen if in the same year his two theories didn't jibe. Knowing him, he would have come up with some catastrophic event that would have made the 1966 blizzard a picnic in the park.

After rejecting other "observing nature winter weather forecaster's" tripe, I have passed my inherited weather forecasting knowledge down to my son and his sons. Besides what in the world does pig spleens, onion-skins, or woolly caterpillars have to contribute to weather forecasting, especially when you factor in global warming, and you have the exact science that only muskrats can provide.

With that, I will make my winter weather forecast: Most days will be partly sunny all day, getting dark toward evening.

POOR MARKS ON GM WHEAT

North Dakota State University did not get a good grade when DRC issued a report on its handling of genetically modified (GM) wheat September 12.

The report summarized major findings from three separate DRC open records requests over the past several years.

DRC said NDSU left North Dakota wheat farmers open to the potential of market-destroying contamination and crushing liability due to Roundup Ready wheat, and must improve its decision-making on plant breeding.

The report called for creation of a new decision-making body composed of farmers, consumers, economists, grain dealers and others in the wheat industry to guide NDSU plant research to prevent another trip “to the brink of losing [the state’s] most valuable foreign markets.”

The report also said NDSU must improve its efforts to prevent biotech contamination, safeguard public ownership of the germplasm used to develop new varieties and take steps to protect the state against liability arising from contamination.

“We look at what’s happened to rice and can’t help thinking, ‘That could have been us,’” said Todd Leake, a wheat farmer from Emerado and chair of DRC’s Food Safety Task Force.

The price of rice fell sharply in late August after unapproved genetically modified varieties were discovered in overseas shipments.

“This contamination event confirms what a federal inspector general said last winter—that federal biotech policies aren’t working,” said Leake. “NDSU should take the lead in protecting farmers, not just follow USDA’s bad example.”

DRC received documents from its

final request—to North Dakota State University Research Foundation—late last year.

NDSURF claimed it was not a public entity, and initially provided the documents “voluntarily,” but an opinion by Attorney General Wayne Stenehjem early this year upheld DRC’s claim that NDSURF is subject to state disclosure laws.

“The university would serve the public better by becoming a more open, public institution rather than deepening its ties with private industry,” said Leake. “That’s what our proposal would do.”

Leake said that unfortunately the university seems intent on moving toward more secrecy, citing a study commissioned by the North Dakota Commerce Department and the State Board

of Higher Education, which calls for—among other things—overturning the Attorney General’s opinion through legislation.

Sen. Rick Berg (R-Fargo) brought legislation to do just that to an interim committee October 16.

The bill would prevent the public from obtaining “information received from a private business that has entered an agreement with a public entity to conduct research, manufacture or create a product for potential commercialization.”

Like GM wheat, for example.

For now, the committee has dropped this language from the proposed bill at the request of State Commerce Commissioner Shane Goettle.

GM ALFALFA GUIDE

WORC released *A Guide to Genetically Modified Alfalfa* October 3.

The guide presents information for both producers and consumers on weed resistance, costly contamination of organic and export crops, and other potential problems with GM alfalfa.

It also provides an analysis of Monsanto’s Technology Use Agreement for Roundup Ready alfalfa and other GM seeds.

“We hope alfalfa growers will review the information in this guide and think twice about the risks of planting Roundup Ready alfalfa,” said WORC Chair and Keene farmer and rancher, Donald Nelson.

“We’re asking extension agents and crop advisors not to recommend genetically modified alfalfa to alfalfa growers until the open questions about contamination, liability, and the spread of glyphosate resistant weeds are answered,” Nelson added.

DRC, WORC, four other farm and consumer groups, and two alfalfa producers sued the United States Department of Agriculture in February, challenging the federal government’s approval of Roundup Ready alfalfa.

The suit said USDA did not examine the environmental risks of Roundup Ready alfalfa, the first GM perennial crop to be commercialized.

Federal District Judge Charles Breyer has ordered a briefing schedule this fall, and will hear oral arguments in the case on January 17, 2007. A decision in the case is expected in early winter.

To obtain a free guide, call the DRC office or download it from www.worc.org.

HOG LOG

No Pigs For Griggs

Another proposed hog factory bit the dust in mid-September in the face of intense local opposition in Griggs County, and local residents are taking steps to protect their communities through zoning.

The last straw for Willow Grove Sow Farm evidently came when key Mabel Township landowners changed their minds about contracts allowing manure from the lagoon to be spread on their land.

Earlier, opponents of the project got signatures from 141 of 143 township residents urging the Griggs County Commission to turn down the project's permit application.

Dover Township, just south of Mabel, met October 9 to establish a one year moratorium on factory farm permit applications and set up a Planning and Zoning Commission.

Mabel Township meets October 31 for the same purpose.

Fly-By-Night Pigs

DRC research indicates Viking Feeders and other animal factory developers are bending state and local laws to keep their activities secret.

The partnerships that run Viking Feeders near Edmore and Turtle Mountain Pork near Bottineau both have authorization to operate from the state, which requires that them to be registered with the Secretary of State's office.

They aren't.

Viking Feeders was registered but let its registration lapse. The other partnership has never registered.

Partnership filings are important because they disclose who the partners are—and whether they meet kinship requirements under the state's corporate farming law.

DRC is asking the state's Attorney General to look into the matter—as well as irregularities in Prospect Township, which hastily set up zoning earlier this year to give a permit to Viking Feeders after it refused to submit a full permit application under the Ramsey County ordinance.

Documents provided by Prospect Township indicate that the township failed to provide proper notice to residents both when the zoning was set up and when the permit was granted.

Not only that, some of the township meetings where the permit was discussed took place in private homes where proponents of the project lived, rather than in public settings.

DRC asked Ramsey County Commissioners October 17 to issue a cease and desist order on Viking Feeders' construction and declare Prospect Township Zoning invalid. Commissioners did not take immediate action.

Big Pork Gets Bigger

DRC joined National Farmers Union (NFU) and 13 other groups September 28 in calling for a U.S. Justice Department investigation of the merger of the nation's two largest pork producers.

Smithfield Foods plans to purchase Premium Standard Farms, a move that NFU says "could lead to the potential manipulation of consumer retail prices for pork and beef products."

Sen. Byron Dorgan has joined the call for an investigation, noting that North Dakota has lost 78% of its independent hog

operators in the last 15 years.

They have been replaced by vertically-integrated animal factories that exploit workers, endanger ground water and eliminate profit at the production level.

If the sale goes through, Smithfield will own roughly 20% of the nation's sows and will be able to produce over 50% of the pigs it slaughters.

Attorney General Alberto Gonzalez has not said whether he will investigate.

A federal inspector general last year found that antitrust enforcement within the U.S. Department of Agriculture was a sham, with Packers and Stockyards Administration staff counting hundreds of routine phone calls as "investigations."

Federal Anti-Zoning Vote

The U.S. House of Representatives voted 231-181 September 29 in favor of a law that could overrule local zoning for factory farms and many other developments.

The measure would allow property owners to bring disputes over local zoning ordinances and state laws directly into federal court.

No Senate action on the bill has taken place.

The bill could come to the Senate during the "lame duck" session following the election.

The Senate has failed to pass similar legislation in previous years.

Rep. Earl Pomeroy was not present to vote on the bill.



LANDMARK RENEWABLE VOTE NOVEMBER 7

On the campaign trail

With the fall election fast approaching, local and statewide public figures have been busy choosing up sides on the municipal renewable energy initiatives in Fargo and Grand Forks.

Both will be on the ballot November 7, and a simple majority vote would make them the first municipality in the United States to enact renewable energy standards to a ballot measure.

The measures call for utilities serving each city to provide 20% renewable electricity by 2020 and 30% by 2030.

One statewide contest where the initiatives have become an issue is the race for Public Service Commission (PSC).

Challenger Cheryl Bergian, Fargo, supports the initiatives, but incumbent Tony Clark, who previously served as a state legislator from Fargo, opposes them.

Bergian told the Grand Forks *Herald* she has heard the talk about the initiatives being mandates, but “at some point, the consumers get to say what they want, and these absolutely are consumer-driven decisions.”

Clark joined the two other sitting Commissioners in “moderating” a public forum on the Fargo initiative October 12, but he told those attending he would vote against the measure if he could.

The forum itself was very out of balance, with five panelists opposing and only one in favor.

One state legislator who has announced his support for the measures is Rep. Jon Nelson (R-Wolford), who co-wrote an opinion piece for the *Herald* with Bill Grant of the Izaak Walton League.

“Investing in renewable energy

makes good economic sense,” said Grant and Nelson. “Most people also know that it’s the right thing to do.”

On the other hand, discussion at an October 18 work session suggested the Grand Forks City Council would likely vote to oppose the initiative.

Let’s talk money

Chambers of Commerce in both cities have opposed the measures, despite a plea from Warren Ault, National Account Manager of LM Glasfiber, which expects to be the largest manufacturing employer in Grand Forks by the end of the year.

“A mandatory requirement is the surest path to provide renewable generation at the lowest landed cost,” said Ault.

“While this will add job stability for our work force,” he added, “there are substantial additional local benefits to be considered, such as royalties to land owners.”

Opponents say that if the measures win, electricity rates could go sky high, scaring away businesses.

In reality, renewable energy standards in other communities have had a negligible effect on rates.

A study of 26 standards across the country by the U.S. Department of Energy found that the median impact on a monthly bill was 44 cents.

Utilities opposing the measure say a ready choice through programs.

Xcel this month announces to make its Windsourc

program available to North Dakota consumers for the first time.

Ironically, the Colorado Public Utilities Commission moved earlier in the month moved to abolish the premium for the Windsourc green pricing program, since spreading the costs of the program among all ratepayers would create a “negligible” increase in rates—a small fraction of one percent.

Windsourc power was actually \$10 per month cheaper than Xcel’s conventional power during a two-month period in 2005. The net savings to Xcel was \$9.75 million.

As the Colorado PUC told the press, “Charging a small group of (Windsourc) customers a price premium... makes little sense.”

Nevertheless, Xcel has told to the PSC that it plans to charge North Dakota Windsourc customers over five cents per kilowatt hour.

Will the lights go out?

Denmark now gets 20% of its electricity from wind. Its lights haven’t gone out.

And Denmark doesn’t have wind like North Dakota has wind.

According to John Dunlop of the American Wind Energy Association, Denmark’s average power output from wind turbines is 24% of what it would be if the wind blew constantly at optimum speed.

It’s more like 41% from existing North Dakota wind farms, according to off-the-record reports.

Dunlop points out that “load,” or the amount of electricity used, is a variable all utilities have to deal with.

He says enough “back-up” power already exists on virtually all utility systems to add at least 20% wind energy

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PEOPLE WANT WIND

More than 80% of North Dakotans want a state law requiring utilities to provide 10% of their electricity from renewable sources, according to polling results made public by North Dakota Renewable Energy Partnership (NDREP) September 13.

Nearly 70% would support a law adding an additional charge to electric bills to promote renewable energy products.

No North Dakota legislator has ever put forward a bill to enact either policy.

Polling results showed broad support for both renewable electricity and renewable fuels.

“More than 90% of North Dakotans surveyed believe that renewable energy should be a priority in our state legislature,” said Mike Clemens, NDREP chairman.

“Clearly, North Dakota residents want to be the leaders in renewable energy and not wait around for someone else

to decide what should be done,” he added.

Both the Senate and House defeated measures in 2005 to fund a state renewable energy office for research and marketing, and to establish renewable energy goals for state government purchases.

The Lignite Energy Council lobbied hard to kill the bipartisan measure in the House.

Only 13% of North Dakotans favored fossil fuels for new electricity if they had to choose only one source, while 80% preferred conservation and wind or other renewables.

Over 90% of North Dakota’s electricity is now produced with coal.

“Clearly state government is out of sync with the electorate on this issue,” said Bob White, Emerado, chair of DRC’s Renewable Energy Task Force.

The University of North Dakota Bureau of Government Affairs conducted the poll for NDREP.



IN BRIEF

Air quality. DRC joined Environmental Defense in submitting comments this month in opposition to the proposed South Heart power plant’s air quality permit application.

The comments to the state Health Department said developers failed to address global warming pollutants and to implement the best available emissions control technology.

They also objected to the use of the state’s “scientifically unsound” model for measuring pollution.

The plant would be located less than 11 miles from the South Unit of the Theodore Roosevelt National Park—one of the locations where the state found multiple violations of Prevention of Significant Deterioration sulfur dioxide standards in 1998.

Checkoff abuse. Farmers have the right to sue the state for passing unconstitutional legislation to channel wheat checkoff receipts directly to the North Dakota Grain Growers and U.S. Durum Growers, according to District

Court Judge Thomas J. Schneider’s October 6 ruling.

The ruling asserted that taxpayers have the right to sue whenever “it is alleged that public funds are being unlawfully expended.”

Schneider ruled, however, that DRC and North Dakota Farmers Union do not have standing because they do not pay the wheat checkoff tax.

The case is expected to go to trial in late February.

Landfill Rejected. GFC3 members helped turn out a crowd to vote against a proposed landfill in an area prone to overland flooding in Lakeville Township northwest of Grand Forks.

The non-binding vote rejected the landfill 31-13, despite the developers’ offer to pay in full the property taxes of all township residents.

Developers said they would not follow through with a permit application if residents voted against the landfill.

Lakeville Township’s zoning is similar to that of Turtle River Township,

which rejected the city of Grand Forks’ application to put a landfill on land also prone to overland flooding. The city is now suing the township.

Peru Free Trade. Republican leaders in the U.S. House of Representatives say they intend to hold a floor vote on the Peru Free Trade Agreement during the “lame duck” session after the election.

The Peru agreement follows the same failed model as the North American and Central America Free Trade Agreements—including the right of investors to challenge the laws of other countries in the agreement over alleged loss of profit.



MARKINGS

by Staff Director Mark Trechock

If ethanol and other biofuels can help farmers, local economies and the environment, that's compelling.

What we're seeing happen so far on the ground in North Dakota isn't.

For the heat required to make ethanol, the fuel of choice is fast becoming coal, with Richardton and Spiritwood leading the way.

Industry analyst Robert McIlvaine predicted earlier this year that 100% of the 190 plants then planned or under construction would use coal, according to *Grist*.

If so, the result would be no decrease in greenhouse gas emissions, according to a study by the University of California at Berkeley, published earlier this year in *Science*.

Meanwhile, EPA is again trying to end crime by redefining it.

According to the *Chicago Tribune*, EPA found out many Midwest ethanol plants were emitting more cancer-causing chemicals than they reported.

The solution? A new rule that ethanol plants are not considered "major sources" of pollution unless they emit 250 tons of air pollution a year. The standard used to be 100 tons.

OK, you say, but what about the economic benefits?

Corn prices are up and actually pushing above the cost of production, something rarely seen in the non-competitive marketplace agribusiness has created for itself.

What about farmer investment? There is some at Richardton, none at Spiritwood or Underwood.

Conversations with farmers tell me many are weary of failed investment schemes and skeptical of new ones. Many would be happy to have back their original investment in ProGold or Spring Wheat Bakers.

Jobs? We're in the construction phase, and I don't have anything to go by except what local people tell me. So far I have heard about one skilled worker with a union job—and reports in every location of large groups of workers brought in from far afield.

Energy and farm economics form the basis for almost every statewide issue DRC has worked on.

These two themes coincide on the issue of biofuels and ethanol, and it's hard to imagine DRC staying on the sidelines of the debate.

It's also obvious that our role needs to be more sophisticated than "we support everything."

We're going to do ethanol and biofuels. As usual, DRC's role will be to see that it's done right.

**I'D LIKE TO SUPPORT DRC
ENCLOSED PLEASE FIND:**

- General Membership
- ___ \$200 • "200 Club" Membership
- ___ \$100 • Patron Membership
- ___ \$ 75 • Contributing Membership
- ___ \$ 45 • Family Membership
- ___ \$ 25 • Individual Membership
- ___ \$ 10 • Student/Low Income

BARC/DRC Membership
Family \$50___ Individual \$30___

GFC3/DRC Membership
Family \$50___ Individual \$30___

MCETA/DRC Membership
Family \$55___ Individual \$ 35___

MVRC/DRC Membership
Family \$50___ Individual \$30___

SARC/DRC Membership
Family \$55___ Individual \$ 30___

SVC/DRC Membership
Family \$50___ Individual \$30___

SC3/DRC Membership
Family \$55___ Individual \$35___

Name _____

Address _____

City, State _____

Zip _____

Phone _____

e-mail _____

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WATER ROBBERY from p. 1

temporary "emergency" permits for water, sometimes extending them beyond the 12-month limit set by state law The Commission issues temporary permits with no opportunity for public input.

Rep. Shirley Meyer (D-Dickinson) asked for a state Attorney General's ruling on the extensions. The opinion, drafted by Julie Krenz of the Attorney General's office, said the extensions were new permits, and the 12-month limit "did not foreclose the State Engineer from issuing additional temporary use permits from the same source to the same applicant."

DRC also asked for a groundwater monitoring system to be set up in the Tongue River aquifer, noting that no adequate monitoring system exists at the depth where Zenergy wants to extract groundwater.

The state should make a decision on the permits later this fall.

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for increased power needs without affecting reliability. Australian engineering professor Peter Freere says experiments with wind and diesel suggest that 70% is fine.

Building for the future

Wind is probably the cheapest source of new electricity now, and it will only look more favorable in the future.

Wind can't compete with the cost of long-established coal or hydropower plants, but no one is building new dams, and new coal can't come close to old coal's low price.

Besides likely increases in fuel, transportation and construction costs, new environmental regulations are likely to jack up the cost of coal.

It's hard to imagine Congress delaying action to limit carbon dioxide emissions for the 50-year lifetime of a new coal plant. So ratepayers will have to pick up the costs of carbon sequestration.

Wind doesn't emit carbon dioxide.



Unfortunately, state law makes it difficult for the PSC to make prudent decisions on rates because it disallows considering any "externalities," including not only health effects but the anticipated costs of future regulations.

Fargo and Grand Forks residents could save themselves a lot of money in the long run by passing municipal renewable energy standards.

(Parts of this article come from the DRC report, Renewable Cities, funded by the Energy Foundation, and now available at www.drcinfo.com.)



KITE WINNERS

The 8th annual Albert Hlebechuk Kite-a-Thon was held September 17 at the John Steiner Park in Belfield.

Approximately 40 people of all ages attended. Free kites were distributed to the children and door prizes, refreshments and windy weather were enjoyed by all.

The following is a list of kite winners:

Keith Dukart, Greta Privratsky, Anthony Dukart, Phillip Dukart, Ed Duletsky, Marie Kling, John Knopik, David Dukart, Harlin Kling, Derryn Johnson, Asha Bree Smith, Shelby Hutton, Rodney Hendricks, Naomi Thorson

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