

# Dakota Counsel

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Organizing • Research • Advocacy • Education

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## THREE STRIKES AGAINST MONSANTO

It's against the law to plant Roundup Ready alfalfa—and required under law to disclose all the places it has been planted.

This was the brunt of a May 3 federal court ruling—the latest of three straight setbacks for the genetically modified crop.

In the ruling, Judge Charles Breyer affirmed his February decision that the government should have better studied the impact of GM alfalfa on the environment.

Breyer's May 3 decision also made permanent his injunction against sales and planting of Roundup Ready alfalfa March 12.

A key part of the May ruling is to require Forage Genetics to provide the locations of all existing Roundup Ready alfalfa plots to the U.S. Department of Agriculture within 30 days.

The Judge ordered USDA to make the location of these plots “publicly available as soon as practicable” so that growers of organic and conventional alfalfa “can test their own crops to determine if there has been contamination.”

“The judge's order to make public the location of Roundup Ready alfalfa fields is a critical part of the decision,” said DRC member Blaine Schmaltz, Rugby, an organic alfalfa seed producer. “It allows GM-free and organic producers like me to make sound planting decisions.”

In his decision to impose a permanent injunction, Judge Breyer noted that contamination of natural and organic alfalfa by the GM variety has already occurred, and noted, “Such contamination is irreparable environmental harm. The contamination cannot be undone.”

Monsanto and Forage Genetics argued that farmers who wished to plant Roundup Ready alfalfa were harmed by the judge's March decision, but Breyer said their interests did not outweigh public interest in food safety, freedom to farm natural crops and environmental protection.

“If the farmers were not aware of the plaintiffs' challenge to Roundup Ready alfalfa, that is a matter to raise with Monsanto and Forage Genetics,” wrote Breyer.

“I'm hopeful that Judge Breyer's precedent-setting ruling will induce a rebirth of values at the USDA, in particular, and federal regulatory agencies generally,” said Dean Hulse, Fargo, an organic consumer and past chair of DRC. “The USDA's role with respect to regulating transgenic crops should be that of a watch dog, not a lap dog.”

Monsanto could still seek deregulation of Roundup ready alfalfa, but under Breyer's ruling, USDA would have to go through a rigorous Environmental Impact Statement that includes a significant role for public input.

DRC, the Center for Food Safety and several other groups and seed growers filed the suit last year, after USDA deregulated Roundup Ready alfalfa.

## STILL POWERFUL IN DC

Despite setbacks in federal court, Monsanto was still flexing its muscle in Washington as the federal farm bill debate opened.

Rep. Collin Peterson (D-MN), Chair of the House Agriculture Committee, pushed through subcommittee a law to prevent states from protecting themselves against damages from GM crops.

Section 123 of the bill would wipe out state and local rights with regard to any food determined by USDA to be “non-regulated.”

That poses a threat to laws enacted by 13 states, including Minnesota and South Dakota, which establish various state regulations applying to GM crops.

The section could also undermine the California Rice Certification Act, passed for the purpose of protecting rice growers after GM contamination cost Arkansas producers an estimated \$100 million in lost revenues from last year's harvest alone.

Market studies by Dr. Robert Wisner of Iowa State University predict annual losses of \$175 million in wheat production revenues if USDA deregulates GM wheat—or a contamination even occurs.

Section 123 would also nullify GM planting restrictions passed by voters in four California counties and two cities.

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

Average American consumers are a funny bunch. We complain about the loss of our manufacturing jobs, our intellectual property, and agricultural exports, and yet we line up at the “big box stores” to gather up the bargains like a drunken sailor on shore leave—that is, until imported pet food kills off Fluffy or Skippy.



A slew of Chinese exports recently have been banned or turned away by U.S. inspectors, including wheat gluten tainted with the chemical melamine that has been blamed for dog and cat deaths. China is the leading exporter of seafood to the United States and is raising most of its fish products in water contaminated with raw sewage, for which it tries to compensate by using dangerous drugs and chemicals that are banned here. Toothpaste made in China has been contaminated with a solvent known as diethylene glycol (DEG), a poisonous chemical used in antifreeze.

Thomas and Friends wooden railway toys, made in China, have been recalled because of lead based paint used to paint the surface making them dangerous to children. Portable baby swings that entrap youngsters, swimming pool ladders that break, faulty baby carriers that result in babies falling out are all dangerous imported products that have been recently recalled. And the list goes on.

There was a time in this nation when we imported because of need—to obtain a strategic commodity, or to acquire product quality that our manufacturers could not achieve (like stainless steel from Germany). Now it seems that price is the determining factor in most purchases. Or is it?

About two years ago I went shopping for some six-pound sleeping bags. I found two with the same brand name, one made in China and the other made in the United States. The one made in China had a plastic zipper and the stitching was inferior with poor quality thread. On the other hand the one made in the United States had a metal zipper and the stitching and thread were top quality. Now one would think that the sleeping bag made in America would cost twice as much if the high cost of labor were the determining factor, however the difference in price was only \$2.00. Are we selling our country down the tube for the price of a couple of bucks?

I am sorry that it has taken something like the deaths of some of our dogs and cats or people being sickened or injured for us to wake up to the fact that globalization has drawbacks besides the loss of jobs and overall economic well-being. Somehow we need to put the genie back in the bottle and tell our corporate friends to cork it!

# GOOD START ON ENERGY BILLS

DRC and other responsible development allies won three early rounds in federal energy legislation in May and June, but the fight is far from over.

The Senate defeated a “sham” renewable energy standard that included nuclear power, and stopped an amendment that would have mandated production of liquid fuel from coal, while a House committee approved a bill to reform oil and gas drilling practices.

## Better Surface Rights

The House victory came on a 26-22 June 13 vote in the Natural Resources Committee on H.R. 2337, the Energy Policy Reform and Revitalization Act of 2007.

The bill would give new rights to “split estate” landowners who own land over federal oil and gas, require replacement of water resources damaged by oil and gas development, strengthen oil and gas reclamation and bonding standards, and reform the federal oil and gas program.

“In western North Dakota and across the country we are fighting to coexist with the oil and gas industry,” said Don Nelson, Keene, former DRC chair. “This bill reins in those oil and gas companies that are running roughshod over landowners and threatening our water resources.”

The bill would require companies to have a detailed water management plan that shows how they will protect water resources, and replace waters that are lost or damaged by oil and gas development.

It would also require oil and gas companies to sign agreements with private landowners whose land lies over federal minerals. Similar provisions have been passed by the states of Colorado, New Mexico and Wyoming, and are in place for federal coal and hard rock minerals.

The bill would also provide long-overdue updates to oil and gas bonding and reclamation standards, requiring land to be reclaimed so that it is capable of supporting the same uses it was capable of supporting prior to development, and imposing bond amounts that reflect actual reclamation costs.

H.R. 2337 would also protect the public’s involvement in oil and gas drilling on public lands by limiting federal ability to waive public review and give the Bureau of Land Management 90 rather than 60 days to act on federal oil and gas permit applications.

(R-WY) on a partisan, 11-10 vote, with Sen. Dorgan joining other Democrats in opposing the measure.

With the full Senate now debating the energy bill, however, a floor fight on coal-to-liquids (CTL) is likely.

The Bunning-Thomas bill would mandate 21 billion gallons of liquid fuels from coal by 2022.

The results would be costly to taxpayers and the environment, according to the Taxpayers for Common Sense. The group estimates that replacing just 10% of U.S. oil consumption with CTL would cost taxpayers \$70 million in construction costs alone.

The cost in water is also high. Estimates of water consumption in the CTL process range from 5 to 15 barrels of water per barrel of fuel produced.

In addition, CTL would more than double per gallon carbon dioxide global warming emissions—unless carbon sequestration is used. But that’s an unproven technology, and a single plant could cost upwards of \$6 billion to build and \$450 in million annual operating costs.

Who would pay? Taxpayers took a \$330 million hit from the nation’s first investment in synfuels, which resulted in the coal gasification plant near Beulah.

Even if the mandates of the Bunning-Thomas amendment fail, Congress could compromise by opening Uncle Sam’s pocketbook to the coal industry yet again.

The Wall Street Journal predicted June 15 that coal-to-liquids was “on its way to becoming the biggest corporate welfare scheme in U.S. history.”

## Real Renewable Energy

The battle over real renewable energy is raging in the Senate at this writing.

Sens. Conrad and Dorgan joined in defeating a renewable electricity standard proposed by Sen. Domenici (R-NM) that would have classified nuclear energy as renewable.

Domenici’s amendment to pending energy legislation failed, 56-39.

However, the Senate may need 60 votes to avoid a filibuster and pass legislation supporting a real renewable portfolio standard (RPS), which both Dorgan and Conrad support.

Both signed a bipartisan letter this year urging Energy Committee leadership to support an RPS for wind, solar, biomass and geothermal—but not nuclear. The Senate has passed an RPS three times, but it has never passed in the House.

# THE FARM BILL WE NEED

The next farm bill must address non-competitive markets and growing agribusiness concentration “to help independent farmers stay independent and viable,” DRC told Sen. Kent Conrad in official testimony presented by JeriLynn Bakken of Adams County at a fact-finding hearing in Bismarck May 14.

The “unprecedented level of market consolidation effectively eliminates free market competition to the detriment of independent family farmers and consumers,” said Bakken.

Price manipulations and discrimination become easy when so few companies control so many products, sometimes from the farm through the processing plant, according to DRC testimony.

DRC proposed an eight-point plan, supported by hundreds of farm organizations, for a competition title to the next farm bill.

Components of the plan are:

- ◆The Captive Supply Reform Act, currently co-sponsored by North Dakota’s entire delegation, which would eliminate contracts between packers and producers that require future delivery but lack a base price;

- ◆Prohibition on packer ownership of livestock, a practice that allows such packers as Tyson, Cargill and Smithfield to freeze independent producers out of markets: .....

## TRADE WARS NOT OVER

Fair trade concerns helped fuel the Democrats’ take-over of the House and Senate last year, but you wouldn’t know it from the bipartisan trade “deal” announced May 10 by Speaker of the House Nancy Pelosi and other key Congressional and Bush administration officials.

The purpose of the deal was evidently to grease the skids for passage of Bush-negotiated free trade agreements with Peru, Panama, Colombia and Korea as “fast-track” authority approaches its June 30 expiration date.

Because these agreements were signed prior to expiration, however, Congress will apparently have to consider them under fast-track rules that exclude amendments and sharply limit debate.

No union, consumer or small business group supports the “deal,” which does not address the off-shoring of U.S. jobs or the granting to investors of rights denied them under U.S. law.

See **TRADE WARS** p. 5

- ◆The Producer Protection Act, which would set minimum standards for contract fairness in agriculture;

- ◆A measure requiring meat packers to purchase at least 25% of their daily hog and cattle needs from the open market;

- ◆A measure specifically disallowing preferential contracts that provide unfair economic advantages to industrial-scale agricultural production;

- ◆Granting USDA for the first time power to bring enforcement action against poultry dealers as well as packers and livestock dealers.

- ◆Protection against retaliation by processors against producer organizations, and good faith bargaining protections;

- ◆Mandatory implementation of the country of origin labeling law passed in the 2002 Farm Bill but never enforced.

## CALL CONGRESS NOW...

Bills important to North Dakota are moving through Congress now.

**Your Senators are:**

**Kent Conrad 1-202-224-2043**

**Byron Dorgan 1-202-224-2551**

**Your Representative is:**

**Earl Pomeroy 1-202-225-2611**

**TELL THEM...**

- aInsist on a strong competition title, including captive supply reform in the new farm bill (see this page)
- aVote against extending free trade “fast-track” authority (this page)
- aDon’t exempt destructive factory farms from the federal Superfund authority (page 8)
- aDon’t vote to prevent states from controlling market-destroying GM crops (page 1)
- aPass a renewable portfolio standard now to get North Dakota’s wind energy going (page 3)
- aDon’t vote for massive federal investment in highly pollution coal-to-liquids schemes (page 3)
- aSupport national protections for surface owners who live in oil and gas country (page 3)

## AFFILIATES IN ACTION

### Public Gardens for Bismarck

Soon Bismarck residents can use designated public land to do local food the old-fashioned way—by growing it themselves.

The new public gardens are the result of a Missouri Valley Resource Council initiative, which began last fall.

The Bismarck Parks and Recreation District agreed March 5 to provide land, but the project didn't move forward until local attorney and gardener Kent Morrow volunteered to serve as unpaid coordinator.

The gardens, which will provide at least 200 plots, each 10 feet square, are located west of the ball diamonds on the intersection of Front and Washington Streets.

Gardeners put down a \$25 fee and \$25 deposit to secure a plot, and get \$20 back if they leave it weedless and in good condition come October.

### Landfill's Last Gasp

The Grand Forks City Council voted unanimously May 7 not to appeal District Judge Joel Medd's decision that Turtle River Township was within its rights to deny the city a permit for a proposed landfill.

The vote put the icing on a seven-year campaign by Grand Forks County Citizens Coalition to prevent the landfill, which was slated for a sugar beet field with a high water table and a propensity for overland flooding.

By relying on its lawsuit to force the landfill on Manvel-area residents, Grand Forks appears to have painted itself into a corner and is now casting about for alternatives and predicting higher trash collection costs.

### TRADE WARS, from p. 4

The Canadian government won most recent investor-to-state complaint under the North American Free Trade Agreement, but so far 50 such challenges of federal, state and local laws under NAFTA have forced the payment of over \$36 million in taxpayer money to corporations.

In the Canadian case, a secret NAFTA tribunal rejected UPS's claim that Canada violate its investor rights by such heinous acts as providing public mailboxes.

Despite winning, the Canadian government had to pay its own legal costs with taxpayer money.

Sometimes just filing an investor-to-state complaint intimidates governments. U.S. borders reopened to Canadian cattle after a ginned-up industry group filed such a complaint in the wake of "mad cow" import restrictions a few years ago.

GFC3 recommends more recycling, high-temperature composting (now practiced in Rapid City, South Dakota), and conversion of waste to energy.

"Any of the more advanced technologies cost more money than sticking garbage in a pile," commented GFC3 chair Daryl Bragg.

"The problem with landfills is that over the long term they pollute our water sources," Bragg added.

### No Bull BBQ

McKenzie County Energies and Taxation Association will hold its annual "No Bull BBQ" Saturday, July 14, 7 pm CDT at the Eagles in Watford City.

Tickets are \$12 (or two for \$20) and are available from MCETA members or through the DRC Dickinson office.

This year's featured speaker is Eric Nelson, R-CALF's International Trade Committee Co-Chair.

The event is a fundraiser from MCETA, DRC

## "BIG BUCKS"

### RAFFLE WINNERS

#### \$50 Winners

Al Braun, Jamestown; Jordan Nodland, Mandan; Jim West, Thompson; C.A. Bina, Bismarck; Anita Sunde, Hawley, MN; Dylan Schaubman, Fargo; Jerry Torstenson, Dickinson; Austin Nodland,

Mandan; Rena Lohse, Watford City; Barbara White, Emerado; Ryan Taylor, Towner; Bob Snyder, Bismarck; Jana Jess, Fargo; Char McLaughlin, Bismarck; Dan Nodland, Mandan; Eddie Kostelecky, Dickinson; Kathy Brackel, Dickinson; Joy Martin, Sawyer; Gene Wirtz, Underwood

#### \$100 Winners

Jeff Wolenetz, Billings, MT; Ron Hendricks, Dickinson; Steve Parmer, Fargo; Melvin Roemmich, Jamestown; Carson Steiner, Dickinson; Brad Nesheim, New Town; Ned Hermanson, Cartwright; Phil Baker, Eufaula, OK; Pete Novotny, Sentinel Butte; Ben Aull,

Bismarck

#### \$200

Katie Severson, Dickinson

# LAND FOR OIL

TransCanada Keystone Pipeline wants to take land from about 600 different North Dakota landowners to help it move Alberta tar sands oil through the state on the way to the refinery.

The Public Service Commission (PSC) is contemplating approval of the pipeline route and a determination of public necessity and convenience, which carries with it the right to take private land through eminent domain.

Voters approved an addition to the state constitution last year that forbids private companies from taking land—except for a public utility or common carrier such as a pipeline.

Some landowners along the proposed pipeline oppose it. As so often, the most immediate concern is water.

The pipeline “will be placed about

three miles from the aquifers on which so many people and cities depend for drinking water,” wrote John and Janie Capp, Lankin, in a May 2 letter to the editor of the Fargo Forum. “What about a leak?”

At the other end of the pipe in Canada there is opposition as well.

Tar sands oil extraction in northern Alberta has meant cutting down a forest, digging what amounts to a strip mine, and heating the oil enough to remove it from the ground.

The pipeline will reportedly move the oil at a steady temperature of 74 degrees, with pumping stations every 20 miles along the route.

Canadian opposition group Tar Sands Watch says this production method results in three times more glo-

bal warming pollution as conventional drilling.

The group says extraction is driven by a NAFTA proportionality clause that requires Canada to keep its oil exports to the United States at a continuous level.

In the United States, the pipeline requires a federal Environmental Impact Statement, prepared by the State Department. Scoping hearings were held last year, and a draft EIS is expected soon.

The PSC is holding public hearings July 23 at Valley City and July 24 at Park River, both at 1 p.m. CDT with an opportunity for the public to present its concerns.

PSC staff indicated that the agency must make a decision on eminent domain no later than early November.

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## PSD: BAD SCIENCE GOES NATIONAL

The other shoe finally dropped May 24 in DRC’s long battle with state and federal regulators over air quality measurement.

The U.S. Environmental Protection Agency is proposing to make North Dakota’s model for measuring Prevention of Significant Deterioration (PSD) the national standard.

This is the model the state Health Department had to tweak 14 times before it yielded the desired result—no violations.

PSD measures the amount of new pollution introduced into an affected area over time against “increment” limits set by federal law. If pollution levels exceed the allowed increment limits, the state’s “implementation plan” for complying with the Clean Air Act has failed and must be revised.

Increment allowances are much smaller in “Class I” areas, such as

Theodore Roosevelt National Park, where most of the violations discovered in a 1998 state study were found.

To eliminate violations, regulators need a “baseline” year with as much pollution as possible and measure it against a later year with as little pollution as possible. The “no violations” North Dakota model facilitates this by allowing regulators to pick their own baseline year.

The model further facilitates the “no violations goal” by allowing states to use current emissions rates averaged over an entire year rather than worst case emissions over a 3-hour or a 24-hour period as previously required, and by relying on a handful of air quality monitors rather than exhaustive modeling that takes into account all locations and complete meteorological data.

EPA Region VIII, which confirmed that PSD sulfur dioxide violations were

ongoing in North Dakota, initially opposed North Dakota’s “no violations” modeling plan but was overruled by the more politically sensitive national EPA Office of Air and Radiation.

All air quality permits approved or pending in the last few years in North Dakota use the state’s controversial model and naturally predict no PSD violations to occur.

These include the permits granted for the Richardton ethanol facility and a 175-megawatt coal plant at Gascoyne. (There are no current plans to build it.)

Pending permits for South Heart and a larger Gascoyne facility also make use of the North Dakota model.

Other Western states that want to build new coal plants find the model inviting also.

National environmental groups are not expected to like it, and the inevitable court battle seems likely.

# PROTECT OUR WATER

by Tom Irgens

**Whiskey is for drinking  
and  
water is for fighting**



*(Tom Irgens is a farmer and At-Large DRC Board member from Springbrook. Zenergy's water permits are still on hold, pending the outcome of DRC's administrative challenge. No hearing date has been set in the case.)*

The North Dakota Water Commission wants to give millions of gallons of groundwater to an oil company who will use it for production purposes and abuse it for dilution of salts produced in oil and then dump it far underground, never to be seen again.

The truly sad part is that the Attorney General's office supports this attack on the water that is being used by farmers and ranchers.

In 2005, Zenergy, Inc., the very same company who is responsible for contaminating Charbonneau Creek and the surrounding groundwater in McKenzie County with saltwater, applied for 21 groundwater appropriations permits for 5-acre feet each. Their plan is to drill one well for every oil well in the Foreman Butte field, which could be dozens.

The state gave them temporary groundwater permits without consulting any landowners in the area. They did not need to tell them, but one by one they found out.

Now the state is saying that those ranchers have no say; they are not aggrieved parties and will not be damaged by such water loss, even though they have submitted comments through Dakota Resource Council, and have been parties of record through this entire pro-

cess. One expert states that the amount and scope of this water use could be up to 15% of the total groundwater use in McKenzie County. Fifteen percent used by one company? That is an alarming prospect.

A June 4 article in the U.S. News & World Report says "the real crisis is not a lack of water but a lack of water management." According to the article the United Nations predicts that by 2025, 3 billion people will be scrambling for water. Do we want to be among them?

Our water belongs to the people of North Dakota. If the Water Commission and the Attorney General hand it over to a private corporation whose purpose is profits rather than the public good, it is the start of North Dakotans losing their access to fresh groundwater.

Zenergy (and the Water Commission) will argue that this scope and type of use is beneficial to the people of North Dakota. I ask, who in McKenzie County besides Zenergy will benefit from wasted water?

**Plan to attend**

**DRC's Annual Meeting**

**October 27**

in

**Carrington**

**30 YEARS**

**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\_\_\_

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# SPECIAL TREATMENT FOR FACTORY HOGS

## More Hogs for Towner County?

A state Health Department “informational session” left no opportunity for the public to speak June 14, but DRC members say the state should let county and township authorities complete their work before proceeding with state permitting for a new area hog production facility.

“This is putting the cart before the horse,” said Towner County landowner Candace Jackson. “The legislature said no to taking away county zoning, and the state shouldn’t take any steps that cast doubt on local authority.”

Both Towner County and Coolin Township, where the proposed facility would be located, have zoning ordinances for concentrated animal feeding operations, but no permit applications have been received.

Closure bond is the number one issue at stake, according to Jackson.

“Lots of these pig factories go broke every year all over the country,” she said. “If there’s no bond in place, it’s up to the public to clean them up with tax money. That’s not right.”

Jackson noted the state does not require a bond, nor

does it do soil tests to trace the impact of manure on soil quality.

“The state won’t do anything, so it’s up to us to protect ourselves,” said Jackson.

## Exemption from Superfund

Not satisfied with funneling the lion’s share of Environmental Quality Incentives Program (EQIP) funds to pig and dairy factories, some in Congress also want to give them a free pass to leave their toxic waste behind.

Sen. Lincoln (D-AR) and others are threatening to introduce an amendment to energy legislation to exempt all animal waste from federal laws that grant public access to information about toxics and provide funds to protect the public from toxic pollution.

The Comprehensive Environmental Response Compensation and Liability Act already has a specific exemption for “normal field application of fertilizer.”

Lincoln’s amendment would only protect factory farms that fail to manage their waste responsibly and allow it to pollute drinking water with excess nutrients, disease-causing pathogens, antibiotics and heavy metals.

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