“Watchdogs of the Prairie”

Dakota Counsel

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A BIRD’S EYE VIEW OF OIL

Four oil and gas country residents got a bird’s eye view of oil impacts in Mountrail County April 19 thanks to LightHawk.

It wasn’t pretty.

Those making the overflight included state Rep. Kenton Onstad (D-Parshall) and *New Town News* editor Marvin Baker.

Also going on the flight were two members of the Landowners Association of Fort Berthold, Theodora Bird Bear of Mandaree and Bobbi Larson of Parshall.

DRC helped arrange their participation.

Pilot Chris Boyer was on assignment from LightHawk, and environmental protection group.

Bird Bear told the *New Town News* that her home area of Mandaree was the next hot spot for oil drilling, with 49 wells now pumping, 13 being drilled and perhaps 100 wells a year for the next five years.

“That’s going to have a cumulative impact on air, land and water,” she said.

Oil activity on the Fort Berthold Reservation has long lagged other nearby areas, but recent rule changes have allowed the industry easier access.

Arrow recently signed a pipeline deal to transport oil and gas out of the area, and others are in the works.

Left to right, Onstad, Bird Bear, Rae Ann Williams, Larson

Bird Bear said she would like to see a programmatic environmental assessment that measures the impact on the reservation.

See BIRD’S EYE VIEW, p 6

FEDS: OIL AND GAS BONDS TOO LOW

Federal oil and gas bonds are not enough to pay reclamation costs, according to a report released February 26 by the Government Accountability Office (GAO).

Adjusting the bonds for inflation would increase them by a factor of at least six, GAO concluded.

The report said the Bureau of Land Management (BLM) spent about $3.8 million since 1988 to reclaim 295 “orphaned” (inactive and abandoned) wells. BLM estimates the cost of reclaiming another 102 of 144 such remaining wells at $1.7 million.

“BLM should fix its bonding program so taxpayers and landowners won’t have to bail out oil companies that default and can’t clean up their own messes,” said Donald Nelson, Keene, a farmer-rancher and former DRC chair.

Nelson noted that the federal government requires hard rock and coal mining companies to post bonds based on clean-up costs.

“It’s unfair that oil and gas companies, in a very profitable industry, have much lower bonds,” he said.

“We’ve had oil and gas development on our place since exploration and drilling began in North Dakota during the 1950’s,” he said. “Now, we’re dealing with unreclaimed and abandoned wells and pipelines.”

Nelson’s ranch is a mixture of private and public surface and private and federal oil and gas holdings.

The 2005 termination of bonds for two Titan Oil Company wells in McKenzie County is another example of the failure of the bond program, said Nelson. The total costs of plugging and reclaiming the wells amounted to $62,690, double the posted amount of $30,000 for the two wells.

“Clearly, the current system isn’t working,” Nelson said.

GAO found the average cost of reclaiming orphaned wells nationally was $12,788 per well.

See BONDS, p 6

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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STABBED BY OUR OWN SWORD

By DRC Board Chair Marie Hoff

North Dakota electricity costs may increase significantly, due to the failed Big Stone II power plant.

Otter Tail Power and Montana-Dakota Utilities are asking the North Dakota Public Service Commission to recoup around $30 million of their sunk development costs through increased electric power rates.

Some responsibility for this must be placed with the power companies and the PSC, which earlier agreed the Big Stone II project was prudent.

But the underlying problem that brought about this situation is the state's outmoded and short-sighted "externalities" law, which basically forbids consideration of health or environmental costs when the PSC evaluates the costs and prudence of proposed public utility projects.

DRC brought expert testimony to the PSC in 2007 to show that Big Stone II was not prudent in light of increasing national and local concern with regulating and reducing emissions from coal-fired power plants, especially carbon dioxide.

By 2007, proposals for new coal-fired power plants were running into increasing trouble across the country. In fact, not a single new plant began operations in 2009.

In spite of the handwriting on the (national) wall, the PSC struck most of DRC's expert testimony from the record.

The Commissioners said they were unable to consider DRC's testimony because North Dakota Century Code 49-02-13 forbids the PSC from considering the potential cost impact of future regulation of carbon dioxide or other pollutants, as well as any other "externalities," such as environmental and human health costs.

What an irony that even Otter Tail Power itself eventually admitted Big Stone II was not economically prudent last fall when it announced it was withdrawing from the project!

This law needs to be repealed.

It was passed back in 1995 by a legislature that responded to scare tactics from the lignite industry. The industry's testimony at that time included a comparison of costs for building new wind and lignite-powered facilities, with and without regulation of carbon dioxide.

The title to the graphics submitted as testimony: "With Externalities, Lignite Loses; Without Externalities, Lignite Wins."

Since then, ironically, North Dakota's wind energy has blossomed, while coal has struggled.

The bottom line is that environmental and related human health effects are *real* costs of any economic undertaking and should be an internal not an "external" factor in estimated financial costs of energy and electricity development.

The PSC exists to protect the public, not the energy industry.

In the case of Big Stone II, we North Dakotans are most likely going to be *stabbed by our own sword*—hit badly in our pocketbooks by our own poorly-conceived state law.

SOUTH HEART: DOUBLETALK AND CONFUSION

It's been over six years since South Heart Coal leased up its current lignite holdings in Stark County, but it's still not clear what the company plans to do with it—if they can mine it in the first place.

The county's actions in early April may have clouded the issue further.

The county granted a land use change two years ago, but a court later threw it out on the grounds that the county provided no rationale for its decision.

Since the Planning and Zoning Commission said at that time that it had no environmental expertise and would defer to the experts at state and federal agencies, Linda Weiss, Belfield, in DRC's testimony urged them to hold off on the land use change until those experts had spoken.

At this point, South Heart Coal has a state mining permit pending but none for air quality. (It submitted the mining permit hard on the heels of the Public Service Commission's decision to deny DRC's complaint against the GTL Energy coal drying facility for conducting mining operations without a permit.)

The commission wound up on April 5 unanimously recommended rezoning as "industrial" more than 5,600 acres near South Heart, and the County Commission accepted their recommendation the next day.

Allowed uses ranged from mining to a solid waste landfill to a coal-fired power plant.

But there were conditions. The company had to get the required permits first.

Whether they have to get all the permits first—including an air quality permit—remains somewhat unclear, but at least two of the County Commissioners indicated that was their view.

The coal company argued they had to get county permits before state permits, but local resident Mary Hodell exposed that lie at the meeting by presenting the Commissioners with correspondence to the contrary from the PSC Reclamation Division.

The big unknown is what South Heart Coal will do with the lignite if they ever get to mine it.

At various times the company has said publicly it would build a coal-fired power plant, a coal gasification plant or a coal-to-hydrogen-to-electricity plant.

Who the customers would be is unclear.

Another possibility is that the company is relying on GTLE's experimental coal drying process to enable them to ship the lignite out by rail.

If so, the promised 350 jobs at the completed facility would shrink to 50 or so.

DRC ADDS TWO NEW ORGANIZERS

DRC hired its first two new staff members since 2005 in March and April.

Rae Ann Williams began work March 1 as DRC's half-time Fort Berthold organizer.

She is working with the Landowners Association of Fort Berthold, an independent group of native landowners that got its start working on the impacts of the Garrison Dam and has been around for more than 50 years.

Williams, an accountant by training, grew up on the reservation but lived and worked in Kansas for many years before moving back two years ago. She is working out of her home in New Town.

Williams

Current issues for the Fort Berthold group include retention of land and mineral rights by individual owners, fair mineral and grazing lease practices and other oil and gas impacts.

The group met with federal officials in New Town March 11 to provide input on a major Army Corps of Engineers study of the Missouri River basin.

Scott Skokos started work April 5 as DRC's new full-time clean energy organizer and is working out of the Bismarck office.

A Michigan native, Skokos has worked as an Americorps volunteer and last year received a master's degree in resource law from the University of Denver.

His experience in community organizing includes a stint with Environment Colorado, where he worked on a campaign to reform federal hard rock mining law.

One of Skokos' first assignments is to work with DRC's Clean Electricity Task Force to design and implement town meetings on energy efficiency.

Skokos

GM FLAX THREAT

Flax growers in North Dakota face a strange new market threat from genetic modification.

The appearance of GM Triffid flax in Canada this winter put a halt to Canadian flax exports to its primary overseas market, the European Union.

Since the contamination occurred, Canadian imports to the United States quadrupled, according to a report published March 15 by grain markets analyst John Duvenaud in *Agweek*.

"More Canadian flax coming into North Dakota means a greater chance of contamination of my seed crop," said flax seed producer Troy Coons, Donnybrook.

Canada took steps to destroy all Triffid flax, a herbicide-tolerant product, in 2001 to protect its flax farmers from European market losses.

But this year the GM flax has turned up in about 10% of samples tested in Canada. The contamination was reportedly widespread geographically and extended to foundation seed stock.

No contamination has been found to date in the United States, although it is not clear how much testing has been done.

North Dakota typically raises over 90% of the flax grown in the United States.

DRC wrote to North Dakota Seed Commissioner Ken Bertsch and Agriculture Commissioner Doug Goehring March 23 asking Bertsch to issue a stop-sale order and Goehring to work with federal authorities to control flax at the border.

Both declined.

Senator Kent Conrad has, however, initiated inquiries with the U.S. Department of Agriculture to see what else can be done.

A complicating factor is that the USDA deregulated Triffid flax in 1998, meaning it is perfectly legal to sell or plant in the United States, although there is no seed for sale and it could only enter the country now through unauthorized contamination.

Canada originally registered Triffid for planting but withdrew registration in 2001, making it illegal to plant in that country.

FEDS HEAR ABOUT SEED CONCENTRATION

The U.S. Departments of Justice and Agriculture got an earful from farmers in March about growing concentration in the seed industry—and shrinking choices of what to plant—largely due to biotechnology.

"There's basically nothing else available," said Todd Leake, Emerado, DRC's Food Safety Task Force Chair, who traveled to Iowa with his brother Lonnie to speak out at the first of five workshops on agricultural markets held by the two agencies.

The Leake brothers at the Iowa meeting

"You have to use their seeds and pay their prices," Leake told the *Los Angeles Times*.

As recently as a decade ago, the Leakes could choose from as many as 50 seed companies competing to sell them soybean seed.

Now there are four companies in their area, all marketing beans with traits patented and licensed by the world's largest seed company, Monsanto.

It's part of a national trend, with only about 100 seed companies left in the country—down from 300 in the last decade—and four companies controlling 50% of seeds for major crops.

At the top of the ladder is Monsanto, whose products are grown on 85% of U.S. corn acres and 92% of soybeans, according to a report issued by Farmer to Farmer.

Not surprisingly, seed costs are up—56% over the last four years according to USDA.

USDA and the Justice Department will follow up the Iowa meeting with additional workshops throughout the year focused on possible antitrust violations in the grain, dairy, poultry and livestock markets.

Agribusiness has faced little scrutiny of its anti-competitive practices since the 1920's, when Congress passed the Packers and Stockyards Act to regulate cattle markets, but that may be changing.

"There's a growing sentiment in this White House administration that competition, and the lack of it, is getting to be a serious problem in the food sector," Neil Harl, retired Iowa State University economics professor told the press. "The question will be whether the government will, after these hearings, take a more active approach."

RENEWABLES, EFFICIENCY AND THE BOTTOM LINE

Renewable energy can improve your bottom line, according to DRC member and farmer Gene Wirtz, who talked about his farm energy project at a March 2 town meeting.

Dr. Cole Gustafson of North Dakota State University talked about developments in renewable energy and climate change policy, and Martin Dahl of McLean County Electric described the new Basin Electric wind farm south of Minot.

Checking out Wirtz's solar panels

Wirtz described what he is doing on his farm west of Underwood to control costs and become more energy self-sufficient.

The oldest part of his project is his Econair 5-ton heat pump, purchased from Capital Electric and installed when the Wirtz house was built in 1997.

A heat pump transfers heat from ground water into the home heating system in the winter and reverses the process in warm weather.

Wirtz says the average winter heating bill for the 2,800 square foot home is $80 per month, while average monthly summer air conditioning costs are about $15.

More recently Wirtz added a 500-watt TLG wind generator, installed on a 55-foot tower north of the house, as well as batteries for electricity storage.

Another recent addition was a set of two 210-watt solar panels.

Wirtz expects the generator and solar panels to provide enough electricity to run all home lighting and small appliances.

Tax credits of 30% of cost were available for both the wind generattor and solar panels.

With renewable fuels likely to increase in demand, Wirtz has also put a small field into switchgrass and is saving seeds to clean for sale. Similar projects could be eligible for carbon offset credits.

GM ALFALFA BAN IN JEOPARDY

DRC submitted comments on the court-ordered federal Environmental Impact Statement (EIS) on Roundup Ready alfalfa, but a case pending before the U.S. Supreme Court could short-circuit the process.

The EIS fails to "analyze the 'real life' impact of the deregulation of GM alfalfa" according to DRC and the Western Organization of Resource Councils.

It ignores problems of contamination that can affect growers who rely on non-GM markets.

It also paints an unrealistic scenario for controlling gene flow from Roundup Ready alfalfa to neighboring growers, assuming that alfalfa will be harvested prior to blossom and contamination therefore prevented.

The real life experiences of farmers don't match this scenario.

Duane Boehm, an organic farmer-rancher and DRC member from Richardton noted that there are eight locations within 20 miles of his farm where GM alfalfa is grown.

He also has no control over contamination from the interstate highway, county roads and railroads that run near his alfalfa fields.

Another organic grower and DRC member, Blaine Schmaltz, Rugby, reports that he has already had a large overseas seed shipment canceled over fear of contamination.

The comments also note that Conservation Reserve Program practices use alfalfa in seed mixes and generally may not be hayed or grazed during the nesting season for many wild birds—which occurs long after pollination.

Steve Merrill, Bismarck, a DRC Board member and retired USDA research soil scientist, predicted that GM alfalfa will follow the same course as other Roundup Ready crops and add to the explosion of glyphosate-resistant weeds—and in turn to increased pesticide application.

Meanwhile, the Supreme Court is reviewing the original court decision halting Roundup Ready alfalfa sales and planting and will hear oral arguments April 27.

An adverse opinion could largely prevent courts from addressing GM crop regulatory issues in the future.

BIRD'S EYE VIEW, from p 1

Onstad noted that many wells are in pristine areas of the state, and he didn't want the natural beauty to disappear.

Regarding drilling under Lake Sakakawea, he wondered, "Are there enough safeguards in place for the environment [and] drinking water," and what the effects would be on fishing and other recreation.

Farming and the oil industry-- a little too close for comfort?

Eight semis on a short stretch of road in Mountrail County

The view from the air also accentuated the sheer volume of workers, trucks and other machinery on farms and roadways.

Onstad noted that not everyone benefits from oil royalties but rents and retail prices have risen for everyone.

Of particular interest to Onstad is fair compensation to area surface owners and protection of their rights.

"When the drilling goes away, so does 90 percent of the workforce," said Onstad. "There's a lot of wealth out there. Let's keep some of it here."

BONDS from p 1

Minimum bond amounts for oil and gas projects were set in the 1950s and 1960s and have not increased since.

Although the agency has the authority to require larger bonds, it bases bonds on minimum amounts, not full reclamation costs.

BLM allows oil and gas companies to post bonds of at least $10,000 per lease, no matter how many wells will be drilled on a lease, or a $25,000 blanket bond for all wells on federal leases in a state, or a $150,000 blanket bond for all wells on leases nationwide.

Statewide and nationwide blanket bonds represent 76% of 3,879 oil and gas bonds currently administered by BLM.

Most oil and gas producing states require higher bond amounts than the BLM minimum. The State of North Dakota increased its single well bond to a minimum of $20,000 in 2005.

"That was a start, but it's not enough to protect taxpayers and landowners," Nelson said.

In 2006, DRC, the Western Organization of Resource Councils and other groups submitted a rulemaking petition to the BLM that would require the oil and gas industry to reclaim land damaged by drilling and to provide financial assurance bonds to protect taxpayers and landowners from having to pay for restoration costs. The agency took no action on the petition.

DRC has also tried unsuccessfully to get BLM to increase bonds in North Dakota on Zenergy, the company responsible for the state's largest saltwater spill, which is still not fully cleaned up.

The GAO report, *Oil and Gas Bonds – Bonding Requirements and BLM Expenditures to Reclaim Orphaned Wells*, is available at http://www.gao.gov/new.items/d10245.pdf.

You can also find the WORC report on federal bonding shortfall, Filling the Gaps, on the WORC website at www.worc.org.

MARKINGS

by Staff Director Mark Trechock

DRC is now in its 33rd year of operation—a full generation in human terms.

The deaths of three long-time DRC leaders since March accentuate this generational transition.

The latest was that of Marian Lefor, a Dickinson resident for several years, but one of the Dunn County farmers who provided a major part of DRC's original base.

Marion served eight one-year terms on the DRC Boad of Directors between 1984 and 1995.

It was oil, gas and coal extraction issues that prompted DRC's original organizing work, of which Marion was a part. Those issues have come back with a vengeance, but the context is not exactly the same.

The present contours of coal mining and processing were well established within DRC's first decade. Opponents of mining near South Heart now face the same concerns that led to DRC's formation and can build on the organization's experience (see page 3).

DRC's early skepticism about the success of reclamation has been borne out.

After 36 years of mining, Falkirk has yet to win final bond release on a single acre of agricultural land and has taken ownership of huge tracts of farmland.

Its latest gimmick for avoiding agricultural productivity standards is to sell more than 400 acres of "reclaimed" land east of Underwood to the state for "recreation." The tract includes 86 acres of once productive cropland.

The Public Service Commission gave the project its blessing in March, and DRC has called for a formal hearing to challenge the change in post-mining land use.

Threatening coal's expansion plans is global climate change—something not on DRC's radar screen in 1978.

This concern may also affect oil and gas extraction (see page 8), but has done nothing to impede the spectacular rise of oil production in the Bakken formation.

The Bakken play is in its boom stage (see pages 1 and 7) and has attracted national attention, including a film crew from the Discovery Channel.

Housing is expensive, labor short, roads are disintegrating, and hundreds of farmers, many with nothing to gain, are trying to do business in an industrial zone.

It is not a question of whether but when the bust will come and rural communities will have to pick up the pieces—again.

When coal and oil expansion were on the wane, DRC turned its attention to the broader issues of food production across the state, starting with commodity markets chronically depressed by growing agribusiness consolidation.

It was a natural development reflecting concern for the economic and social well-being of our rural state.

After years of banging at the gates of justice, cattle producers have new hope of cattle market reform in the first federal administration since the New Deal that shows any interest in restoring leverage to producers.

Since the 1990s, however, a new threat to farmers and consumers alike has arisen in the form of genetically modified crops and foods (see page 4).

Meanwhile, a promising consumer movement toward local foods is rising fast. More of us are getting to know our farmers, which has to be good--and a carbon-constrained future makes it imperative.

Here's to another generation of DRC organizing. There's plenty to do.

OIL, GAS AND CLIMATE CHANGE

The oil industry got its first challenge on climate change grounds in April when a federal agency announced it was suspending lease sales in the region in response to a protest filed by three environmental groups.

The Bureau of Land Management put on hold pending federal leases on 91,000 acres in Montana and North and South Dakota April 8.

The protest was filed by Earthworks Oil & Gas Accountability Project, WildEarth Guardians and the Montana Environmental Information Center. A similar lawsuit is pending on 70,000 acres of proposed leasing in New Mexico.

BLM told the Associated Press it would study how oilfield activities contribute to climate change but is still figuring out how to do so.

The U.S. Environmental Protection Agency estimates that oil and gas operations account for 23 percent of annual methane emissions and 2 percent of total greenhouse gas emissions.

That's not including the emissions coming out of tailpipes across the country.

CO2 and Enhanced Oil Recovery

Scientists have also cast doubt on the benefits of using carbon dioxide captured from power plants to help recover oil that would otherwise not be pumped.

Three Carnegie Mellon University professors published an article last fall analyzing several "sequestration" projects, including the one at Weyburn, Saskatchewan which receives carbon dioxide from Beulah for enhanced oil recovery (EOR).

Previous studies estimated that such projects would reduce carbon dioxide emissions.

"This claim…ignores the fact that oil…is produced and 93% of the carbon in petroleum is refined into combustible products emitted into the atmosphere," wrote scientists Paulina Jaramillo, W. Michael Griffin and Sean T. McCoy..

They concluded that EOR projects are "primarily motivated by the economic benefits of increased oil recovery" and actually result in a "significant" increase in net emissions.

The article was published in Environmental Science and Technology, volume 43, number 21.

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