

Dakota Counsel

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GRASSROOTS RANCHERS OVERCOME COSTLY, INEFFECTIVE ANIMAL ID PROGRAM

After seven years, \$120 million and just 36% participation by cattle producers, the National Animal Identification System appears dead.

Secretary of Agriculture Tom Vilsack made the announcement in a speech to state agriculture commissioners February 5.

He said he would propose a new, simpler system that would apply only to animals sold in interstate commerce.

“It’s rewarding to see that the common sense voice of cattle producers has prevailed over an intrusive, cumbersome, and duplicative system proposed by the federal bureaucracy,” said Link Reinhiller, a Hazen rancher and chair of DRC’s Trade and Livestock Task Force.

Reinhiller said federal officials should address livestock health and food safety concerns by building on successful state brand inspection programs, while improving inspection of slaughterhouses.

Present identification systems in states like North Dakota are working well, said Reinhiller, “as evidenced by the fact that there has not been a contagious disease outbreak in U.S. cattle herds for decades.”

Reinhiller said consumers and ranchers alike want safe meat products, and the key is better federal inspection of slaughter facilities and greater attention to disease stemming from imported cattle.

“The present Hazardous Analysis and Critical Control Points rules largely prevent federal inspectors from first-hand inspection on the slaughterhouse floor,” noted Reinhiller.

“With inspectors confined to ‘critical control points,’ [under HACCP] plants were free to increase the speed of their disassembly lines, a profitable practice that unfortunately encourages a lot more feces, pus and other not insignificant unmentionables to ride down the line and out the door, stamped with a purple seal of approval,” writes Nicole Johnson in “History, HACCP and the Food Supply Con Job.” The U.S. Food and Drug Administration adopted HACCP standards in 1997.

Reinhiller also criticized federal import policies for making it easier to bring Canadian cattle infected with bovine spongiform encephalopathy (BSE, or “mad cow disease”) or Mexican cattle with tuberculosis into the United States.

“Our North Dakota identification system is practical, efficient and cost-effective, while providing excellent traceability,” said Reinhiller. “It should be a model for other states.”

“Animals leaving our state

for feedlots are healthy,” he added. “If diseases are contracted later, we don’t need to find out where the animal was born.”

Vilsack’s rancher-friendly action on NAIS raised hopes for other federal livestock reforms, including better regulation of livestock futures contracts.

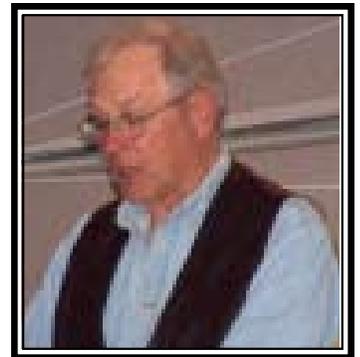
Within the next month, the agency is expected to draft rules on the “undue preference” clause of the Packers and Stockyards Act of 1921.

USDA and the Department of Justice have also scheduled a “workshop” on antitrust issues in the livestock industry August 26 in Fort Collins, Colorado.

Consolidation in the meatpacking industry has increased the share of the four largest firms from 35% to 90% in just 20 years, decreasing competition and making secret forward contracts without a base price the industry norm in fat cattle procurement.

In comments related to the August workshop, DRC joined the Western Organization of Resource Councils in calling for adoption of the “WORC” rule, proposed to USDA in 1996, but never acted on.

The WORC rule would require that all forward contracts be reported and carry a fixed, base price.



Reinhiller

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 ENERGY REVOLUTION

By DRC Board Chair Marie Hoff

An energy revolution is brewing in the United States and around the world. North Dakota—typically not in the forefront of news about revolutions of any kind—finds itself on the front lines of this one.

In a revolution of this kind—which involves new technologies and tools—people vary from the enthusiastic visionaries and “early adapters” to the reluctant and resistant “late adapters” and even a few die-hards who cling to their comfortable older methods, rather than accept the new way of doing things.

How North Dakota responds is still a question in the balance.

Clinging to the past remains much in evidence. The state remains committed to lignite coal development and is considering suing the State of Minnesota, over Minnesota’s new legislation to control carbon dioxide emissions. I think North Dakota’s tax money would be better spent on supporting our own research and policy measures to decrease carbon dioxide emissions.

Out west, the oil patch is “booming” with development of new wells and proposed new transmission pipelines for more efficient delivery of oil and gas products to refineries and markets. The state ranks fourth nationally in oil production, up from eighth only a year ago. A new oil refinery is being proposed on the Fort Berthold Reservation for Alberta Tar Sands oil, and the state is also studying a new refinery for North Dakota products.

This expansion has its impacts. The state experienced a record number of traffic deaths in 2009, and authorities reported that a disproportionate majority occurred in the northwestern part of the state, as the oil and gas industry vehicles have increased on roads not built for such intense traffic conditions.

One positive sign is that the state Water Commission is studying the depletion of aquifers due to the immense quantities of water used in the hydraulic fracturing process to extract oil from the Bakken formation, and has limited the use of the Killdeer Aquifer. Turning to Lake Sakakawea water appears in the offing, but this may raise other questions.

Many state leaders are up in arms about proposed new regulations for carbon dioxide and coal ash. They should also be concerned about preventing leakage of dangerous substances into the water supply. Coal ash goes unregulated nationally, with much of it dumped directly into the water table, even though it contains a large number of heavy metals and other toxic materials.

On a brighter note, wind energy development is picking up in North Dakota and holds genuine promises of both jobs and cleaner energy sources. The state just made the top ten nationally in wind energy production, which creates more jobs per kilowatt than coal-fired electricity.

Will North Dakota cling to its dirty energy past, or enthusiastically embrace the inevitable energy revolution occurring around the world and profit from our abundance of clean energy? The quality of life in North Dakota depends on our response.



BETTER ENERGY EFFICIENCY IN NORTH DAKOTA: THOUSANDS OF JOBS, MILLIONS IN SAVINGS

North Dakota could create up to 5,500 new jobs and save consumers over \$390 million by 2020 by improving how energy is used in the state, according to a report prepared for Plains Justice by Synapse Energy Economics.

The 5,500 new jobs and \$390 million in savings would be the result if Governor John Hoeven committed the state to the Midwestern Governors' Association goal of 2% per year annual energy savings, according to the report.

North Dakota ranks 49th among the states and the District of Columbia in energy efficiency nationally.

The state's lack of efficiency means residents don't get the full benefit of lower electricity rates.

North Dakota residents now pay an average of \$78.70 per month for electricity, compared with \$76.40 per month for Minnesota residents, even though the state's per kilowatt/hour cost is about 20% less than Minnesota's.

"Energy efficiency allows consumers to achieve the same or better performance from a process or an appliance while using less energy to do the job," said Plains Justice staff attorney and North Dakota native Jana Linderman.

"Residential consumers, businesses and industries all benefit from lower electricity bills, and the savings accumulate and build for many years, over the life of the energy saving measure," she added.

The report recommends that North Dakota develop its energy efficiency resources through programs that include more efficient lighting, better motors, and improved building design.

"If North Dakota puts these measures into place, the resulting energy savings will be greater than the amount of electricity produced by the state's largest power plant," said one of the report's authors, Synapse Senior Associate Chris James.

"North Dakota will minimize its risk and exposure to fuel price volatility, and to future regulations," he added.

You can find the full report at www.plainsjustice.org.



ENERGY CURRENTS

South Heart "Do-Over"

Great Northern Power Development submitted and then withdrew late last month what its spokesperson called a "do-over" zoning request to the Stark County Commissioners.

DRC successfully challenged Stark County's original zoning for a mine and coal gasification plant in court on the grounds that the county had submitted no findings to support its decision

Coming nearly two years after the initial zoning was granted, however, the request was not exactly a "do-over."

It specified a number of uses for the land, including a coal-fired power plant, a landfill, a fertilizer plant, hazardous materials storage and several

other uses not included in the original zoning decision.

About 20 DRC members and other interested parties showed up to testify at the scheduled February 1 hearing in Dickinson, but found that the application had been withdrawn, supposedly because GNPD thought a quorum of the Planning and Zoning Commission would not be present.

County officials say they expect GNPD to re-submit its application, but do not anticipate scheduling a hearing until April.

Meanwhile, the state Public Service Commission still has made no ruling on DRC's challenge to the construction of the GTL Energy coal preparation plant

adjacent to the proposed mining site near South Heart.

Nor has GTLE begun operations at the site.

Based on the discussion at a January PSC work session, however, it does not appear that the Commissioners will agree to schedule oral arguments in the case, which DRC requested.

Regional Haze

DRC joined the Plains Justice, National Parks Conservation Alliance and several other groups in formal comments in January urging the state Department of Health to do a better job of protecting air quality in Theodore Roosevelt

See Energy Currents, p 6

COAL ASH RULES DELAYED

Industry lobbyists have bottled up proposed federal rules to regulate coal ash with over 2,300 pages of documents and furious meetings with the U.S. Office of Management and Budget.

The U.S. Environmental Protection Agency proposed rule on coal ash has been under review by OMB since October 16.

At issue is whether coal ash should be subject to hazardous waste characterization under the federal Resource Conservation and Recovery Act (see p. 2).

OMB has held 23 meetings to discuss the proposed rules since receiving them—19 of those meetings being held with industry representatives.

The industry is saying toxic materials in coal ash are not present in high enough concentrations to be regulated as “hazardous.”

It also says federal rules on coal ash would negatively impact the companies that produce the waste and threaten its reuse in construction and agriculture, and that new rules would trigger litigation, according to *OMB Watch*.

Details of the proposed regulation remain unpublished as the OMB review continues.

The United States generates 130 million tons of coal ash each year. There are 584 coal ash ponds across the country filled with enough coal ash to flow continuously over Niagara Falls for three days straight, according to Earthjustice.

An equal amount of the toxic ash is buried in unlined and unmonitored landfills and millions of additional tons are being dumped in mines and quarries with no safeguards.

“Improperly managed, coal ash can pollute water tables, rivers and streams with arsenic, lead and other toxic chemi-

icals,” Allen Hershkowitz, senior scientist with Natural Resources Defense Council.

Coal ash gained national attention in December, 2008, when a billion pounds of coal ash sludge from the Tennessee Valley Authority’s Kingston Power Plant burst through a dam in Tennessee. It swamped houses, filled rivers and covered 300 acres of land.

In a 2007 case, Maryland residents settled for \$54 million in damages from Constellation Energy over contamination of their drinking water from billions of tons of coal ash into an unlined gravel quarry.

Improve
Your Bottom Line
on the farm
using efficiency and renewables

 **Hear**
first hand how you too can improve your bottom line

See
for yourself the way to accomplish this

Feel
better informed after attending this workshop

Washburn City Hall
March 2, 2010
Registration~11:30 a.m. cst
Lunch~noon (free will offering)
Presentation~12:30 p.m.
Bus Tour~1:30 p.m.
Gene & Kim Wirtz Family Farm



A DRC Project

MILESTONES

DRC mourned the passing early this year of two long-time leaders.

Jerry Torstenson, who died January 13, was from a farm family in the Watford City area and served on the statewide DRC Board of Directors from 1983 to 1989, and again in 1998. He chaired DRC in 1986 and 1987.



Torstenson also served as Staff Director of DRC from 1990 to 1993.

He brought to the job experience in farm, livestock and oil and gas policy. During his tenure as Staff Director, DRC began organizing work around the Sawyer landfill.

Teresa Buzalsky, who died January 5, was a member of the former DRC affiliate, the Bowman-Slope Resource Council. She had ranched in Slope County but spent her later years in Bowman.

Buzalsky served on the statewide DRC Board of Directors in 1980, 1984-89, and 1991-92.



GM WHEAT: STILL A MARKETING DISASTER

Introduction of genetically modified (GM) wheat would drastically drop the price of wheat for farmers in the United States, according to a report released in January by the Western Organization of Resource Councils (WORC).

A Review of the Potential Market Impacts of Commercializing GM Wheat in the U.S. concludes that wheat buyers in Europe, Japan, and other Asian countries are likely to switch to GM-free wheat from other countries if GM wheat is introduced in this country.

As a result, the price of U.S. hard red spring wheat would fall 40%, and the price of durum wheat would drop 57%.

“Consumer attitudes in the European Union and Japan are not ready for GM wheat,” according to the report, authored by Dr. Neal Blue.

“In addition, Asian countries such as South Korea and Taiwan are leery about importing GM wheat,” said Blue. “Major customers of U.S. wheat, particularly the EU and Japan, have labeling and traceability requirements that make it difficult to sell GM wheat.”

In 2004, Monsanto withdrew its application to introduce GM hard red spring wheat because of strong consumer resistance by foreign consumers to genetically modified organisms.

Despite that consumer resistance, a coalition of some wheat industry stakeholders in Australia, Canada, and the United States agreed in 2009 to pursue commercialization of wheat with GM traits. The coalition includes some wheat grower groups, the National Association of Millers, and technology providers.

“Some in the wheat industry seem intent on pushing genetically modified wheat,” said Todd Leake, a member

of the Dakota Resource Council, who grows wheat, soybeans, and edible beans south of Emerado. “This report strongly suggests they should be very cautious and listen to the customer.”

The Blue report is the latest update of an October 2003 paper, *Market Risks of Genetically Modified Wheat*, by Iowa State University Economics Professor Dr. Robert Wisner.

In 2006, Wisner updated his original report and found that introduction of GM wheat would not reverse the declining market share of U.S. wheat exports, nor would it reverse the downward trend of wheat acres planted.

The Wisner and Blue reports both found that crop acreage is declining because of changing U.S. agricultural policy and increased production of crops suitable for ethanol and biodiesel production (corn and soybeans).

Blue’s report found that over the past three years 55% of U.S. hard red spring wheat was exported, mostly to

countries that label GM food and where consumers can refuse to buy food containing GM ingredients. Only 28% of U.S. exports go to countries that do not label GM products.

Meanwhile wheat export shares for the former Soviet Union rose from 10% to 30% from 2001 to 2008, suggesting that if the United States approves GM wheat, the European Union would buy more wheat from Russia and Ukraine.

For durum, 75% of U.S. exports went to the EU, Japan, Taiwan and North Africa, countries likely to reject or curtail imported GM products.

On the bright side, no GM wheat is near commercial release. Syngenta recently announced the company was not pursuing GM wheat because of consumer resistance.

A grain market consultant and former research economist at Ohio State University, Dr. Blue is President of Neal Blue Consulting in Columbus, Ohio.

His report is available on WORC’s website, www.worc.org. A printed copy may be requested by calling DRC.

MORE GM NEWS

DOJ Seed Workshops

Changing patent law would be the best way to even the playing field between farmers and seed companies, according to comments DRC and WORC submitted to the U.S. Department of Justice.

Utility patents for GM seeds has resulted in almost no new conventional seed development bred by land-grant universities to meet local soil and climate conditions, according to Todd Leake, Emerado, DRC Food Safety Task Force chair

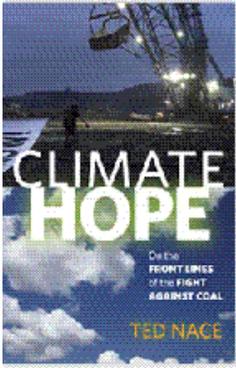
The seed industry has used the “mechanism of proprietary seed to force American farmers to purchase seed from a few companies at inflated prices.”

Leake noted that 162 of 180 soybean varieties listed in the 2009 North Dakota Certified Seed Guide were for Monsanto’s patented Roundup

See GM NEWS, p 8

TED NACE'S NEW BOOK SEES GRASSROOTS HOPE FOR OUR CLIMATE

Despite Congressional inaction, momentum to address climate change is building from the grassroots, according to former DRC staffer Ted Nace's new book, *Climate Hope*.



This momentum is not about grand strategies for overhauling our nation's energy system, but raw struggles to stop coal plants and save communities.

Its leadership comes primarily from local residents who are or stand to be directly affected by the

mining and burning of coal.

It's a "swarm," as Nace calls it, and for which he named his anti-coal Wikipedia website, www.CoalSwarm.org. (You can also order the book there.)

And it's working. Nace cites the U.S. Department of Energy list, published in the spring of 2007, of 151 "coal plants in various stages of completion, from initial proposal to operation." Within a year, 59 of those plants were dead, and the number continues to rise.

This period also saw the waning of leadership by some of the large, established national environmental organizations, whose approach was based on striking deals with the coal industry to get support for federal climate legislation. (The major exception to this has been the Sierra Club, which developed an aggressive campaign to stop individual coal plants.)

Nace's book pays tribute to the accomplishments of grassroots opponents of new coal plants, including DRC, and finds in this movement hope that humanity can solve the climate crisis by "thinking on its feet."



ENERGY CURRENTS from p 3

National Park and other protected areas in the region by improving its draft Regional Haze Plan.

The National Park Service has also submitted critical comments.

"The plan will have effects that go far beyond park boundaries and North Dakota," said Nicole Shalla, staff attorney at Plains Justice.

The comments ask the state to lower the amount of haze-causing sulfur dioxide, nitrogen oxides, and particulate matter coal-fired power plants would be allowed to emit in order to comply with federal regulations.

Pollution knows no state boundaries, and emissions from North Dakota sources contribute to haze in national parks from the Dakotas to Michigan.

The Clean Air Act requires that Class I areas (like national parks) be

protected from haze so that the public can enjoy them in their natural state and without health risks.

County Oil Regulation

Counties have almost no authority to control oil and gas activity locally, according to a February 5 opinion by state Attorney General Wayne Stenehjem.

Mountrail County State's Attorney Wade Enget had requested the opinion, stating that the county would like to require that "all oil, gas or salt water wells be zoned industrial" and surface owners petition for a change of zoning, which the County Commission would decide whether or not to grant.

Stenehjem's opinion said that the state has given the Industrial Commission "broad control over the location of wells, the disposal of salt water, and

over many other aspects of the oil and gas field."

While counties also have "broad general authority to regulate land use," according to Stenehjem, "there are no specific statutes that give counties, or any other political subdivision, authority over determining the location of oil, gas, or saltwater wells."

Stenehjem cited a state Supreme Court ruling (*Mountrail v. Hoffman*, 2000), which said that "a political subdivision, since it is an agent of the state, cannot act contrary to the state."

The comprehensiveness of state regulation on oil and gas "is an indication of the intent to preempt local regulatory authority," said Stenehjem.

The opinion leaves county governments little opportunity to control whatever oil and gas activities the state should choose to allow.

CLIMATE LEADERSHIP NEEDED

by Terrence Kardong

Stabilizing the world's climate is of vital importance to the nation and the world, and North Dakota has a huge role to play in it.

Our state has a lot of carbon dioxide being emitted from coal projects which needs to be curtailed. And it has a lot of wind energy that could replace it.

With a weak climate change bill stalled in the Senate, what North Dakota needs is courageous leadership in Congress to help find a better solution.

Unfortunately, all we have from Rep. Earl Pomeroy is a bill that would simply keep the U.S. Environmental Protection Agency from regulating greenhouse gas emissions, H.R. 4396.

I hope you'll join me in urging Rep. Pomeroy to withdraw it, and instead consider support for a cap and dividend approach to passing climate legislation.

Rep. Pomeroy's bill does nothing to address the fundamental problem of climate change and only further delays action to address it.

Like Rep. Pomeroy, we opposed the American Clean Energy and Security Act (ACES). The basis of our opposition to ACES is that it we do not believe it will achieve the timely reduction of greenhouse gases that is imperative if our nation is to avoid the most devastating consequences of global warming. We also do not believe that its framework for controlling greenhouse gas emissions is fair to all segments of the American public.

It now appears increasingly unlikely that the Senate will pass a bill similar to ACES. It is therefore incumbent upon Congress as a whole to find alternatives to ACES.

DRC's Clean Energy Task Force favors a Congressional cap and dividend approach to climate change, as exemplified in bills introduced by Rep. Van Hollen (D-MD) in the House and by Sens. Cantwell (D-WA) and Collins (R-ME) in the Senate.

These bills take the helpful tack of addressing greenhouse gas emissions at their original source.

They also allow the market to set a price for these emissions, rather than creating a cumbersome and ineffective system of allowances and offsets that is likely to result in a new round of highly speculative trading in derivative markets.

Finally, they also collect revenue to be used to assist the American public in coping with higher energy costs, and also in fostering projects that will reduce greenhouse gas emissions.

The cap and dividend framework is the most promising method of achieving the goals of meaningful greenhouse gas emissions reductions and maximum equity for all segments of the American public in bearing the costs.

I would like to see a final bill that also addresses impacts on particular populations, especially American farm families.

North Dakota is rich in the low carbon and no-carbon sources of energy that are of critical importance in making the transition to the clean energy economy of the future.

Failure to regulate and price carbon will put North Dakota's rich renewable energy assets at a disadvantage while the rest of the world moves forward in developing new energy industries, infrastructures and economic capacity.

We need Mr. Pomeroy and the rest of the Congressional delegation to take

leadership in crafting climate change legislation rather than simply blocking action.

(Kardong, Richardton, is chair of DRC's Clean Energy Task Force.)

I'D LIKE TO SUPPORT DRC ENCLOSED PLEASE FIND:

General Membership

___ \$500 • Watchdog of the Prairie

___ \$250 • Sustaining

___ \$100 • Century Club

___ \$ 55 • Household

___ \$ 35 • Individual

___ \$ 15 • Student/Low Income

BARC/DRC Membership

Household \$60___ Individual \$40___

GFC3/DRC Membership

Household \$60___ Individual \$40___

MCETA/DRC Membership

Household \$65___ Individual \$ 45___

MVRC/DRC Membership

Household \$60___ Individual \$40___

SARC/DRC Membership

Household \$75___ Individual \$ 45___

SVC/DRC Membership

Household \$60___ Individual \$40___

Name _____

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City, State _____

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GM NEWS from p 5

Leake's comments were in response to the DOJ's solicitation of comments for its workshop on concentration in the seed industry to be held March 12 in Ankeny, Iowa.

DRC members Louis Kuster, Stanley, and Gene Wirtz, Underwood also submitted individual comments.

Kuster, who also serves on the state Wheat Commission, raised concerns that Monsanto's purchase of Westbred, a private plant breeding firm in Montana, and apparent interest in once again pursuing GM wheat, will further consolidate the seed industry and jeopardize public breeding programs in wheat.

Kuster noted that according to USDA figures, 70% of hard red spring wheat acres and 88% of durum acres in North Dakota were planted in seed publicly released through North Dakota State University.

Wirtz said the dominance of GM canola convinced him to quit raising it rather than face increased problems in volunteer control, weed resistance and risk of litigation.

"Monsanto has a history of treating the volunteers from the previous year's crop the same as if they were planted with saved seed in violation of the farmer's contract," said

Wirtz. "If we had any level of competition in the canola seed industry, this type of intimidation could not be undertaken."

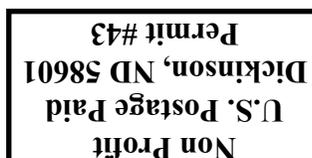
GM Alfalfa to the Supreme Court

The U.S. Supreme Court decided January 15 to review the 2006 9th District federal court decision overturning USDA's deregulate of Monsanto's Roundup Ready alfalfa.

Simultaneously, USDA has opened a comment period on its court-ordered Environmental Impact Statement on Roundup Ready alfalfa. DRC and WORC are preparing comments for the March 3 deadline.

Some of the flaws of the EIS, according to the Center for Food Safety, are that:

- ♦ It assumes that consumers will accept GM contamination of organic alfalfa if it is unintentional;
- ♦ It refuses to consider any options to prevent contamination and loss to farmers who rely on markets that do not accept GM products;
- ♦ It assumes that increased use of herbicides will not be significant, even though the vast majority of U.S. alfalfa is grown without any herbicides at all.



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