

Dakota Counsel

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KEYSTONE GEYSER ERUPTS

A 50-foot plume from the TransCanada Keystone pipeline showered an estimated 400 barrels of tar sands crude oil over a farming area near Brampton in southeastern North Dakota May 7.

Local farmer Bob Banderet saw the plume and notified the company.

The spill was apparently caused by mechanical failure at a pumping station.

Subsequently, one federal agency temporarily shut down the pipeline and another issued a report sharply critical of the State Department’s environmental review of the proposed Keystone XL pipeline that would pass through Montana, South Dakota and several other states.

The spill was the second recorded over the past year on North Dakota segment of the Keystone pipeline, and the 11th overall. It was followed quickly by a 12th, which occurred in Kansas, also at a pumping station.

“When I heard about the [Brampton] spill, I thought to myself, that could have been my house,” Paul Mathews, Cogswell, told a crowd that gathered in Fargo June 18 to

voice concerns about pipeline safety.

TransCanada initially wanted to site the Keystone pipeline less than 200 feet from Mathews’ home, but he and his wife Tammy successfully negotiated an alternate route at a safer distance.

The company submitted the required risk analysis as part of the permitting process, but admitted after the spill that the analysis failed to take into account the possibility of pumping station failures.

Mathews noted that pumping stations pose the greatest risk of spills along a pipeline.

Mathews also criticized the company for relying solely on inspections conducted from aircraft.

“They shave expenses by acting like they’re on autopilot,” said Mathews, “but it’s at our expense.”

The state Public Service Commission, which permitted the pipeline and gave it eminent domain, has opened an investigation of the spill.

DRC intervened in the PSC’s original permitting process and retains the ability to participate in PSC hearings on the spill.

The federal permitting agency, the Pipeline and Hazardous Materials Safety Administration, lifted its temporary closure of Keystone but is demanding corrective actions to prevent further spills.

After the spill, the federal Environmental Protection Agency said the State Department’s environmental review of Keystone XL failed to address not only safety risks but also greenhouse gas emissions, damage to wetlands and migratory birds, and dangers to at-risk communities near the pipeline.

The agency had already given the State Department’s environmental review its lowest grade, “inadequate,” in 2010.

Sister Mari Stella, Fargo, of the Presentation Sisters, said she worried about impacts on the state’s farmland and people and was one of many to sign a petition to state officials at the Fargo event.

“It is the responsibility of our state agencies to uphold public health and safety,” she said. “That’s why we need them to enact measures that are thorough in protecting us”

“The PSC has been more of a cheerleader than a regulator,” said state Representative Ed Gruchalla (D-Fargo), who spoke at the event.



Paul & Tammy Mathews at Fargo Keystone event

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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MEMBERS STEP UP

By DRC Board Chair Marie Hoff

I have some bad news and some good news to share with you.

DRC is currently facing some financial constraints (the bad news).

The good news—as you can see from the articles in this issue of *Dakota Counsel*—is that DRC is still doing good work on the issues all our members care about!

And it gets better. By the middle of June, from you—our loyal members—and from local fundraising activities (“internal” money), we have received double the money we raised all of last year, and more than in any previous year.

You stepped up to the challenge of our rainy day!

You also helped us move toward a goal the Board set at its May 21 Strategic Planning meeting—to have a greater portion of our financial support come from our members, and thus reduce our dependence on outside grants.

For the time being, DRC has had to reduce staff hours for the summer because of increasing difficulty securing foundation grants (exactly the kind of dependency we hope to reduce).

Field Organizer Scott Skokos is on leave through September and most other staff working part-time.

But I’m optimistic we can weather the financial downturn based on the creative generosity of our leaders, staff and members.

Here’s one example of what I mean. A few generous people pledged in May they’d match gifts of \$100 or more on DRC’s second direct mail to members this year sent May 31.

As of June 21, members had sent donations of \$4,350 to meet the match

Matching has turned out to be popular. One member gave us a pledge of \$3,000 in April if we could match it with gifts of \$500 or more. Our members accomplished this in about two weeks. Thank you!

One couple we called about the match decided to give \$10,000 instead. They live in oil and gas country and value DRC’s work on those issues (see pp. 3-4).

And then there’s the automotive department. (See page 4.)

And a wonderful fund-raising event—the Wild and Scenic Film Festival in Grand Forks, which brought in \$2,500 in contributions and helped us introduce a lot of people to DRC.

The great thing about internal money (which basically comes from our members) is that we can use it for work on any issues DRC Board and membership decides on, whether or not a foundation cares.

So the more members provide of our financial support or local fundraising projects, the more independence DRC has, and the more creative we can be in responding to the pressing range of issues facing North Dakota in a time that is fraught with both opportunity and dangers.

We hope foundation money will be easier to find next year—if not next month!

But hard times can be a good teacher, and we are learning. Let me express my personal appreciation for your enthusiastic support. Let’s keep stepping forward together for our vision of a clean, safe, prosperous North Dakota.



BLM TAKES LEAD ON FRACKING

DRC Gets Spot on Public Forum Panel

North Dakota officials continue to defend keeping the contents of hydraulic fracturing fluids a secret, but a federal agency held an April 20 forum in Bismarck that showed wide public support for disclosure.

Former DRC Chair Donald Nelson, Keene, used his slot on the forum panel to advance the need for disclosure.

“With disclosure comes tracking,” Nelson told the Associated Press. “Then you can find out who caused the problem and who’s going to fix it.”

“Water is critical to life and the operations of farmers and ranchers,” said Myron Hanson of the Northwest Landowners Association, who was also on the panel.

“Protection should be the primary concern,” he added.

The federal Department of Interior said last November it was considering issuing a regulation to require the disclosure of fracturing chemicals.

About 90% of wells drilled on public lands now require hydraulic fracturing, the agency estimated.

The Bureau of Land Management conducted the Bismarck forum. About 25% of oil drilling in North Dakota occurs on federal or American Indian land where BLM has authority, an agency official said.

National BLM Director Bob Abbey said in March that companies using “fracking” should voluntarily disclose the chemicals they use to avoid a public “backlash.”

A federal law passed in 2005 exempted oil and gas companies from disclosing chemicals used in fracking.

DRC has supported federal legislation to lift the exemption.

In addition to BLM, another federal agency, the Environmental Protection Agency, is studying the possibility of disclosure. Its study is due next year, while the BLM expects to complete its study this fall.

BLM also is reportedly considering additional regulations that would ensure wells are built to prevent blowouts and keep fracking fluids from escaping into water supplies or underground aquifers. North Dakota has experienced several well blowouts that resulted in fracking fluids being spilled on the ground.

BLM is also involved in a federal environmental review of oil and gas activities on the Fort Berthold Reservation.

“I’m concerned about the unknown toxic chemicals utilized with other ingredients to drill on Fort Berthold and under Lake Sakakawea,” said tribal member Theodora Bird Bear, Mandaree, in comments submitted for the review.

“We don’t know for sure what the impact will be on our descendants from storing millions of gallons of toxic fracking fluid underneath Fort Berthold and under the lakebed,” she added.

AN END TO RESERVE PITS?

Massive oil and gas industry defiance of state safety warnings this spring has already led to \$3 million in fines for overflowing reserve pits and may spell the end of reserve pits altogether in North Dakota.

Lynn Helms, director of the state Department of Mineral Resources, told the Associated Press June 11 the agency was levying \$3 million in fines against 20 companies that ignored letters in March warning them to take action to prevent spills from pump reserve pits during the spring thaw.

Helms said spring runoff swamped 47 of the state’s approximately 500 pits.

Nearly half the fines went to a single company, Oil for America.

Dave Glatt of the State Health Department said he also planned to issue notices of violation.

The failure of so many reserve pits also has the state thinking about replacing them with closed-loop systems, according to a May 27 Associated Press story.

Waste pits kill about one million birds a year, according to the U.S. Fish and Wildlife Service, because the birds mistake the pits for ponds.

Close-loop systems allow for recycling liquid wastes, with only dry materials allowed to be stored on site.

New Mexico already bans oil reserve pits.

Helms said his agency is initiating a review that could result in rule changes as early as next year.

In the past, DRC has unsuccessfully urged the use of closed-loop systems for oil wells at the outskirts of Dickinson subject to the city siting ordinance.

Pits can pose a problem for new construction because of the liquid oil wastes they contain.

Some years ago excavation for a new home cut into an unmarked and undocumented reserve pit in Dickinson, causing damage and delay..

NEW RULES FOR OIL AND GAS

Surface and Mineral Owners Benefited

The state legislature addressed several longstanding oil and gas country surface and mineral owner concerns by passing landmark legislation this spring.

HB 1241, dubbed the “package deal” because it incorporated features of other bills, has been enacted into law.

DRC supported the bill.

Under the law, oil and gas companies must now negotiate with surface owners for annual production loss payments as well as a one-time ingress fee.

Until now, companies were required only to offer a single “good faith” payment to surface owners to cover damages for the life of the well, which could be 50 years or more.

The amount of these one-time payments varies, but \$10,000 has been typical in recent years.

By contrast, the loss of six acres of cropland with an average price of \$7 per bushel and an average yield of 30 bushels over 50 years is \$63,000.

The new law still allows a one-time payment for production loss, but gives

surface owners new bargaining leverage that would come closer to covering actual losses.

The law also includes improved notice requirements for surface owners prior to oil and gas activity on their land.

Until now, surface owners often found out a well was going to be drilled on their land when surveyors showed up and started staking the pad.

That made it difficult for surface owners to negotiate with the company about possible changes to accommodate farm or ranch operations.

Surface owners now must be notified in person or by certified mail seven days prior to any activities that “do not disturb the surface,” including surveying.

The notice must include an “offer to discuss and agree to consider accommodating any proposed changes to the proposed plan of work and oil and gas operations before commencement of oil and gas operations.”

A similar notice must be given again at least 20 days prior to drilling.

Mineral owners also will benefit from the law, which clarifies that oil and gas companies must pay the 18% penalty on late payments, whether or not the mineral owner requests payment.

Companies retain a five-month grace period after oil is marketed before the 18% penalty applies.

An amendment proposed by Sen. John Andrist (R-Crosby), to curtail the industry practice of using lease extensions to avoid negotiating new terms, was defeated in committee, however.

Andrist’s amendment would have specified that “drilling” means “that an actual drilling rig, capable of drilling the well to the total proposed depth...is on location and actively drilling before the expiration of the primary term of the lease.”

For action on other bills related to oil and gas, as well as other bills supported or opposed by DRC, see the “Legislative Report Card” insert.

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STILL WAITING FOR FAIR LIVESTOCK MARKETS

Livestock producers from DRC and throughout the nation are calling the White House in June to demand that his administration move forward with rules to make livestock markets fairer.

Meanwhile, corporate agribusiness succeeded passing a rider to the U.S. House of Representatives 2012 agriculture appropriations bill that could stop reform in its tracks.

At issue are pending Grain Inspection, Packers and Stockyards Administration (GIPSA) "undue preference" rules that mark an important first step in achieving a fair and competitive livestock market.

It's not exactly a new issue.

Congress required the rules as part of the farm bill. That was three years ago.

GIPSA has actually drafted the rules and sent them out for comment. That was a year ago.

The rules generated over 60,000 comments, overwhelmingly supportive.

Despite this, the U.S. House Agriculture Appropriations Committee voted to eliminate funds for the rulemaking to go forward after Rep. Jim Costa (R-CA) circulated a letter to his colleagues urging that funding be pulled.

North Dakota's sole Representative Rick Berg, did not sign the letter. DRC wrote him urging him not to sign.

Berg is not on the committee, so he did not vote on the rider.

Three years is a long time to wait for the GIPSA rules, but livestock producers have now waited 90 years for the Packers and Stockyards Act to get any meaningful enforcement.

And it's been 15 years since DRC and the Western Organization of Resource Councils submitted a petition for rulemaking, asking then-Secretary of Agriculture Dan Glickman to require a fixed base price on all livestock forward contracts.

USDA never took action on the petition, but several bills have been introduced in the last decade to accomplish the same purpose.

This year's version is sponsored by Sens. Mike Enzi (R-WY) and Tim Johnson (D-SD). DRC has urged Sen. John Hoeven to become a co-sponsor but has yet to receive a response.

Even though the House knocked out the funding for GIPSA rules, the Senate could reinstate it.

And if GIPSA will get a move on, it can still finalize the rules it drafted.

If you haven't made your call to the White House yet, do it now.

Call 202-456-1111 to tell the Obama administration it must take a strong leadership role to make sure that the GIPSA rules are enacted to make livestock markets more fair to producers.

2011 BIG BUCKS WINNERS

\$

\$50 Winners

Larry Odegaard, West Fargo; Zachary Nodland, Dickinson; Daryl Bragg, Manvel; John Kloeckner, Dilworth, MN; Pat Barnhart, Dickinson; James Kambeitz, Bismarck; Bekkie Hlibichuk, Belfield; Bill Chapin, Jamestown; Doug Ketcham, Fargo; Jerry Jernberg, Fargo; Wanda Fisher Rose, Bismarck; Laura Jagenow, West Fargo; Sharon Norstog, Watford City; Dee Olson, Fargo; Benjamin Merrill, St. Paul, MN; Dave Vernon, Dickinson; Gwen Thompson, Bismarck; Link Reinhiller, (2) Hazen; Renee Maus, Los Angeles, CA

\$100 Winners

Marie Hoff, Bismarck; Gwen Thompson, Bismarck; Janeen Nichols, Dickinson; John Kloeckner, Dilworth, MN; Bette Stieglitz, Fargo; Ron Hendricks, Dickinson; Barb White, Emerado; Gwen Thompson, Bismarck; Gail Reiersen, Fargo; Link Reinhiller, Hazen

GRAND PRIZE \$200
Diane Reiersen, Fargo

\$

\$

\$

SOUTH HEART CONFLICT OF INTEREST

Two PSC Commissioners Got Campaign Contributions

DRC this month joined other South Heart mine opponents in challenging the impartiality of two PSC Commissioners who received campaign contributions from the mining company.

Kevin Cramer received at least \$11,150 and Brian Kalk \$5,500 in contributions from parties directly involved in the mine project.

DRC, Neighbors United, Sierra Club and the National Parks Conservation Association said the two Commissioners should recuse themselves from permit application proceedings, which begin with hearings June 28 in Dickinson.

“If I gave someone \$10,000 I would expect something in return,” Mary Hodell, Dickinson, one of the letter’s signers, told the *Dickinson Press*.

State policy says conflict of interest arises when a Commissioner, family member or business partner “has a financial or other interest directly and substantially affected by the commission decision.”

Kalk received 3% of his 2008 campaign contributions from Corbin Robertson, a managing partner of the entity that owns Great Northern Power Development, whose subsidiary, South Heart Coal, is applying for the permit.

“To put this in perspective, a supporter who contributed the same percentage of Obama’s 2008 campaign funds would have donated over \$25 million,” noted the letter to Kalk.

Both Commissioners claimed the contributions would not affect their decision-making.

This month’s hearings are the start of a long permitting road for the PSC, which may not make a final determination until next year.

The PSC’s “technical review” of the permit application found nearly 400 deficiencies.

DRC and other opponents are submitting comments challenging many aspects of the permit, including hydrological impacts and soil reclamation provisions.

SOMETHING IN THE AIR

North Dakota’s foot-dragging on Clean Air Act compliance led the U.S. Environmental Protection Agency to take over the state’s air quality program in April because of the state’s failure to comply with Regional Haze rules.

This month EPA settled a lawsuit filed by environmental groups that will require the agency to adopt plans for compliance by 2012.

The Regional Haze rule is meant to clean up pollutants including nitrous oxide (NOx) and sulfur dioxide (SO2) that contribute to haze in national parks.

Taking over a state program is “rare,” according to Monica Morales of the EPA’s Denver regional office. “We did not make this decision lightly,” she told the *Bismarck Tribune*.

The EPA’s focus is on two plants—Milton R. Young Station in Center and Leland Olds Station in Stanton.

Its intent is to reduce NOx by 65,000 tons a year and SO2 by 106,000 tons a year.

The problem is not just cosmetics but health, said DRC Clean Electricity Task Force chair Terrence Kardong, Richardton.

He cited a 2010 study by Abt Associates quantifying health effects and mortality associated with particulate matter from power plants caused by NOx emissions.

Using the study’s calculations, NOx emissions from North Dakota plants would have been responsible for 207 deaths and \$1.5 billion in medical costs.

“The state Health Department has been hiding from the brutal reality that North Dakota coal plants are indeed killing people,” said Kardong.

The state went to bat for the lignite industry a decade ago by adopting unauthorized methods of measuring SO2 emissions after its own study showed violations of federal Prevention of Significant Deterioration standards.

PSD standards limit new pollution that can be spewed into the air in areas not already violating the law.

The state’s methods call for averaging pollution readings annually from its few monitoring stations rather than identifying pollution spikes—as if a motorist tried to dodge a speeding ticket by claiming his average speed over the year was still within the limit.

The strategy backfired when Undersecretary of Interior David Verhey told the department its unauthorized methods would result in “adverse impact” on Theodore Roosevelt National Park if a new power plant was built at Gascoyne.

His finding led to the withdrawal of the Gascoyne air quality permit application, as well as a similar application for a power plant at South Heart.

TIME TO RAMP DOWN COAL

By DRC's Clean Electricity Task Force

It is time for North Dakota's energy industry to ramp down its coal generation to meet environmental standards.

Ramping down will increase room for renewable energy on the grid, while protecting our North Dakota energy industry.

This solution will create jobs, instead of the alternative we now face—shutting down coal power plants.

For the coal industry, the current Environmental Protection Agency intervention regarding regional haze is just the tip of the iceberg. As the United States moves into the 21st Century, the EPA will begin to enforce stricter standards to clean up the energy industry.

North Dakota may have cheap electricity, but it is generated by particularly dirty coal.

North Dakota's coal power plants are continually ranked as some of the dirtiest in the country. Among these dirty coal burners are Milton R. Young and Leland Olds, which are both being targeted by the EPA to reduce nitrous oxide, or NOx a precursor to particulate matter, which causes health problems including asthma and heart disease.

To reduce NOx the EPA may require both plants either to install pollution equipment or risk being shut down.

DRC's stance is that there is a much more pragmatic solution to this

problem. The solution we propose is to begin and industry-wide effort among North Dakota utilities and cooperatives to ramp down coal generation in order to meet environmental standards.

While coal burners ramp down, more and more renewables such as wind and solar would be given a chance to be part of the energy grid. In this way, North Dakota will become a national leader in renewable energy jobs.

Let's be honest. North Dakota lignite is of poor quality. The University of North Dakota, for example, purchases coal from Westmoreland Mining, which produces coal in both North Dakota and Montana.

Yet UND buys the Montana coal because North Dakota lignite has low BTU content and too much water for it to be profitably shipped.

In the past, opponents of wind energy argued it was not practical.

This is no longer the case. As of this year, all North Dakota utilities produce at least 10% of their energy portfolios through renewable wind energy.

The ramp-down solution mirrors what has already been accomplished in the state of Washington, where an agreement was reached between the state and the energy industry to phase out TransAlta's 1400-megawatt Centralia coal burner by 2005.

Ramping down will provide economic benefits to all North Dakotans,

not just those who live in "coal country" or "oil country."

The alternative we face is much worse, so let's ramp down.



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**New & Improved
DRC Annual Meeting
in Bismarck, October 22.
Plan to attend now~you won't
want to miss this one!**



EQUAL RIGHTS FOR WIND

Wind energy won equal rights with coal power this month thanks to intervention in a Montana-Dakota Utilities rate case by DRC affiliate Missouri Valley Resource Council.

The decision came on a 2-1 vote June 8 at the Public Service Commission, with Commissioner Kevin Cramer dissenting.

MVRC Chair Verle Reinicke testified for DRC at the rate hearing.

By its vote, the PSC affirmed that MDU could recover costs for wind energy built to comply with renewable energy objectives in North and South Dakota and Montana’s renewable energy standard.

The vote meant MDU ratepayers will not see a “renewable rider” on their utility bills. Instead, MDU’s wind turbines will be treated the same as all other power sources.

The intervention was the final act in DRC’s campaign against construction of the Big Stone II coal-fired power plant in South Dakota.

DRC lost its bid to have the PSC deny “advance determination of prudence” for the proposed plant in 2008, but plans for the plant were scrapped anyway because of rising costs and uncertainties about federal regulation.

North Dakota’s “externalities clause” worked against DRC’s original challenge to the proposed plant.

The clause prohibits the PSC from considering “environmental externalities,” including the cost of pending federal regulation in determining the prudence of building new plants.

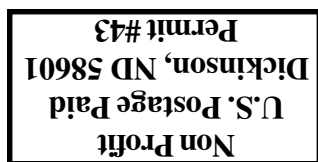
Decisive in killing the plant was the Minnesota Public Utilities Commission’s ruling that Otter Tail Power, a Minnesota utility, could not raise rates if the costs of construction or environmental compliance exceeded their estimates.

MDU was the last Big Stone II partner to throw in the towel, but testified in this year’s rate hearing that it would not build new coal power “any time soon.”

The utility also testified to how wind energy helps it manage its power portfolio and save ratepayers money.

MVRC circulated a petition last year to demonstrate public opposition to paying for the ill-considered Big Stone II project.

Ratepayers still must pay some of the costs for the failed project, but DRC’s intervention was instrumental in reducing rate hikes by \$1.2 million.



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