

Dakota Counsel

HOEVEN: FAIR LIVESTOCK MARKETING RULES SHOULD GO FORWARD

The Senate Agriculture Appropriations Committee declined to block funding for federal fair livestock marketing rules this month, thanks in part to Senator Hoeven’s support for the rulemaking to go forward.

Hoeven serves on the committee.

“North Dakota’s cattle producers need strong advocates in Congress for open and competitive livestock markets that reward their investment and labor,” said Link Reinhiller, Hazen, chair of DRC’s Trade and Livestock Task Force, who said he appreciated Hoeven’s statement.

Reinhiller was in Washington DC with a Western Organization of Resource Councils lobby team when Hoeven made his decision.

The Senate agriculture appropriations bill went forward without an amendment to strike funding for the rulemaking, which was included in the House bill.

Final resolution of the matter could take place in conference committee, although it may be more likely that Congress will pass a continuing resolution on appropriations, in which case the question will slide.

By then, the Grain Inspection, Packers and Stockyards draft rules may be complete and go out for public comment.

Hoeven was still on the fence August 26 when he met in Dickinson with Reinhiller, WORC Regional Organizer Jeri Lynn Bakken and three other DRC livestock producers: Donald Nelson, Keene; Roger Brenna, New Town; and Chester Brandt, Hebron.

About 10% of DRC’s members responded to an action alert shortly after the meeting with e-mail or phone messages asking Hoeven to vote for funding for the rulemaking.

GIPSA undertook the rulemaking to comply with a directive legislated in the most recent farm bill.

The rules are expected to provide much-needed clarification to the 1921 Packers and Stockyards Act, which has seldom been adequately enforced.

“Right now competition and transparency are lacking,” said Reinhiller. “A handful of huge packing companies largely

control the price through insider trading on the futures market and forward contracts with no base price prior to delivery.”



DRC has been asking for rules to curb anti-competitive livestock procurement practices for over 20 years.

In 1996, DRC joined WORC in filing a petition for rulemaking to the U.S. Department of Agriculture to ban forward contracts without a base price under the Packers and Stockyards Act.

Legislation to accomplish this end has been introduced in Congress several times without ever having a hearing. Sen. Mike Enzi and Rep. Cynthia Lummis, both of Wyoming, have introduced such legislation in this Congress.



COMING SOON

DRC’s 34th annual meeting October 22 at the AMVETS Club in Bismarck featuring the “7 Wonders of 2011” celebration, DRC trivia, homemade soups, breads and desserts luncheon/contest and last but not least, a hearty roast and toast for retiring Staff Director Mark Trechock. Reserve your spot in the *soup line* now with an e-mail to aleta@drcinfo.com or give us a call at 483-2851.

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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NEVER DOUBT...

By DRC Board Chair Marie Hoff

It has been an honor and pleasure to serve as the DRC Board Chair for the past two years.

First, I want to urge you to attend our annual meeting in Bismarck October 22 to participate in electing new officers and celebrating DRC's accomplishments, sharing some great food, browsing silent auction items (for your early holiday shopping needs!) and visiting with new and old DRC friends.

Join other DRC members also in recognizing and thanking Staff Director Mark Trechock for his 18 years of excellent work as he prepares to retire.

Margaret Mead said, "Never doubt that a small group of people can change the world—it's the only thing that ever has." DRC is one of those small groups of extremely determined people—determined to protect the quality of life we enjoy in North Dakota, and to ensure fair markets and fair treatment for family farmers and landowners.

Though we have had some setbacks and financial challenges over the past several years, DRC and our affiliate organizations have also had some remarkable successes.

With our coalition partners, we have slowed down the proposed development of a coal mine at South Heart, just 13 miles from Teddy Roosevelt National Park. We have helped raise public awareness of the potential conflict of interest in this case for two of our Public Services Commissioners who have received substantial campaign funding from coal company executives associated with the mine.

We helped stop the Big Stone II coal-fired power plant and succeeded in preventing MDU from gaining full rate recovery (increased utility fees for consumers) for Big Stone II. We then surprised MDU by supporting their proposal for wind energy development before the Public Service Commission. We continue to advocate for clean energy alternatives to hydrocarbon sources and for more public support for energy efficiency improvements.

DRC members engaged actively in the state legislative session to gain greater traction for landowners' financial interests in negotiations with oil and gas companies. We continue to work actively with and for North Dakota residents affected by the oil and gas boom in western North Dakota.

In the past two years we have worked diligently on food safety issues such as GMO crops, fairness in the livestock marketing industry, and greater safety requirements in oil and gas pipelines.

These are just a few of our major accomplishments and areas of effort over the past two years. I often reflect that we do a lot with our very dedicated DRC members. But, we could accomplish even more if we could double our membership.

Just think. If each member of DRC would recruit just one more person we could double our membership! This would bring us increased voice in public decision making and would also increase our financial independence and stability.

Please support our important work by coming to our annual membership meeting October 22—and by recruiting just one new member to join DRC in the next several months. Thanks again for the privilege of serving these past two years.



PUBLIC HEARING ON REGIONAL HAZE

Those concerned with clean air in North Dakota have an opportunity to speak their mind October 13-14 in Bismarck on implementation of federal regional haze enforcement, or to submit comments in writing.

The hearing comes in response to a federal court ruling that directs the U.S. Environmental Protection Agency to issue a final rulemaking in the matter by January 26.

The ruling settled legal action taken against EPA by the National Parks Conservation Alliance (NPCA), Wildearth Guardians and the Environmental Defense Fund.

State plans for compliance were originally due in 2007.

EPA is now under similar requirements in Montana, Colorado, and Wyoming.

Regional Haze standards were enacted by Congress in 1977 as amendments to the Clean Air act in order to curb pollution and improve visibility at 156 national parks and wilderness areas, including Theodore Roosevelt National Park.

The park had more than 600,000 visitors last year, provided 500 jobs and put \$27.4 million into the local economy.

NPCA estimates enforcement will cut health care costs in North Dakota by nearly \$500 million annually through decreased respiratory and heart illness.

The law “has been pushed aside for too long and must be made a top-tier priority,” said Stephanie Kodish, attorney for NPCA. Earlier this year, EPA targeted the Leland Olds Station, Stanton, and the Milton R. Young Station, Center, for pollution reduction.

Compliance could include installing improved pollution control equipment. It could also include transitioning to cleaner and more efficient energy production methods.

The hearings will be held Thursday, October 13, 1-5 and 7-9 p.m., and Friday, October 14, 8-noon and 1-5 p.m. at the state Department of Health’s Environmental Training Center, 2639 E. Main Ave., Bismarck.

AIR QUALITY MONITOR

Voters Support Carbon Reductions

A September poll says 71% of American voters support mandatory reductions in carbon dioxide emissions.

Fifty percent “strongly support” reductions and 21% “somewhat support” them, while 17% strongly oppose and 8% somewhat oppose.

Support is stronger among Democrats (89%) and independents (72%) than Republicans (55%).

Public Opinion Strategies, which conducted the poll, said support is “strong across a range of demographic and geographic sub-groups.”

Natural Gas No Help

Switching from coal to natural gas may not provide significant reductions in global warming, according to a study by the National Center for Atmospheric Research.

The problem is uncertainty about methane leaks. Methane is an especially potent greenhouse gas.

“Relying more on natural gas would reduce emissions of carbon dioxide, but

it would do little to help solve the climate problem,” says Tom Wigley, who supervised the study.

“It would be many decades before it would slow down global warming at all, and even then it would just be making a difference around the edges.”

Wigley found that a 50 percent reduction in coal and a corresponding increase in natural gas use would lead to a slight increase in worldwide warming for the next 40 years before gradually reducing the rate of global warming.

But he found that even then temperatures would drop by only a small amount compared to the 5.4 degrees Fahrenheit of increasing warming projected by 2100 under current energy trends.

Locally, fresh from its failure to complete the Big Stone II power plant in South Dakota, Montana-Dakota Utilities has applied for a permit for a new gas-fired electric generator in Mandan.

Especially If We Flare It Off

Haste to exploit the Bakken forma-

tion has led to a giant increase in flaring off natural gas.

Flaring of natural gas has increased to about 33% from less than 10% before the Bakken boom, according to Justin Kringstad of the North Dakota Pipeline Authority.

Kringstad estimated the dollar cost per month of flaring at up to \$1 million.

A major factor in the waste appears to be the rush to hold mineral leases so companies will not have to go back and negotiate new leases.

“It’s a ‘haste makes waste’ situation,” said Wayne Schafer of the Sierra Club.

Gas processing facilities are in the works but are not yet up and running.

Senator Jerry Klein (R-Fessenden) and others introduced a bill to provide a \$6.6 million fund for installation of up to 22 natural gas discharge stations hooked up to gas-gathering systems.

The Senate changed the bill to a study resolution, and the House defeated it.

OIL CHANGES

BLM and Fracking

The federal Bureau of Land Management is “seriously considering” regulating hydraulic fracturing of oil and gas wells on federal lands, according to a September 27 report in a Wyoming newspaper.

BLM’s Wyoming Deputy Director told the press the agency’s round of public forums have led it to contemplate rules.

Former DRC Chair, Donald Nelson, Keene, spoke at the April BLM forum in Bismarck, attended by more than 100 people, many of whom raised concerns about fracking and other oilfield issues.

Wyoming has passed a state fracking fluids disclosure law, but a “trade secret” provision in the law has shielded much of the information from the public.

BLM manages 245 million acres and 700 mineral acres across the United States.

Nationally, the oil industry and other signers from around the country wrote President Obama September 20 saying state oil and gas rules were adequate to protect groundwater from fracking fluids.

The letter said new federal regulations that hamper hydraulic fracturing and natural gas development would hurt the U.S. economy by retarding natural gas development.

In North Dakota, however, it’s clear that the biggest obstacle to marketing natural gas is that oil and gas companies are flaring off one-third of it (see p. 3).

North Dakota Proposed Rules

The state Department of Mineral Resources is proposing new rules that would address fracking, oil reserve pits and other issues.

The rules technically eliminate reserve pits in favor of “drilling pits” that would contain only cuttings and other solid materials from drilling operations. An auxiliary pit to capture liquids would have to be emptied and covered when the drilling rig leaves the site, then “reclaimed” within 30 days.

Nearly 50 reserve pits overflowed in this year’s spring thaw, with some oily and salty water winding up in streams and other surface water.

The proposed rules on fracking involve numerous new technical regulations aimed at preventing fracking blowouts.

The rules also reportedly offer incentives to companies to report certain information on fracking practices on an industry-maintained website.

In addition, the DMR director would have authority to require remote shut-down equipment in cases of serious threats of pollution or injury.

Well bonding would improve somewhat under the rules, going from \$20,000 to \$50,000 for single-well bonds.

The draft rules also specify that a well site, access road and other facilities are generally to be reclaimed within one year after the well is plugged or the permit ends.

A hearing on the proposed rules is slated for 9 a.m. Tuesday, November 1, 1016 E. Calgary Ave., Bismarck

Oil and Poverty

Not everyone in the oil patch is getting rich. For some, in fact, things are getting worse.

In a *Fargo Forum* story August 14, Teri Finneman focused on McKenzie County, where the average wage is now fifth in the state (behind Oliver, Slope, Williams and Mercer), but the poverty rate is 12.8% compared to the state rate of 11.7%.

Rising costs, especially in housing, mean “it’s harder for people that aren’t wealthy to make it on their own,” said Holly Flatau of the Great Plains Food Bank.

The agency said about 200 of the estimated 1,700 residents of Watford City seek food assistance regularly.

Rents in Watford City have climbed from 100 to 1,000%, according to State Representative David Drovdal (R-Arnegard).

Killdeer City Commission President Dan Dolechek said he’s seen people living in cars and laundry hanging on trees to dry.

Un-Noticed

DRC received its first report this week of failure to notify a resident prior to staking a well. It occurred in Stark County.

New legislation took effect in August requiring companies to give surface owners seven days notice in person or by registered letter prior to any “activities that do not disturb the surface, including inspections, staking, surveys, measurements and general evaluation of proposed routes and sites for oil and gas drilling operations.”

The law specifically allows the surface owner to seek relief in court for actual and punitive damages.

Surface owners should also notify the Oil and Gas Division (328-8020) if these activities have taken place on their land without notice.

OILFIELD SPILLS AND CHILLS LOG (ii)

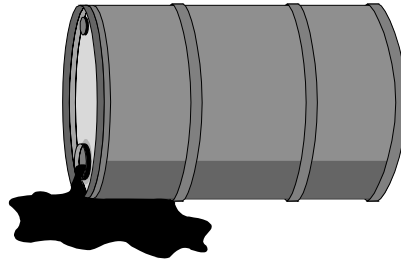
August 23. The North Dakota Highway Patrol and federal Motor Safety Administration announced that an inspection found one in four trucks in oil country had safety violations serious enough to put them out of service. The vast majority were oil trucks.

Besides equipment violations, 26 of the 234 trucks inspected were overweight.

August 26. The federal government announced it was filing charges under the Migratory Bird Treaty Act against seven oil companies for killing migratory birds that died when they landed in oilfield pits or wastewater disposal facilities.

Regulators cited the loss of 28 birds between May 6 and June 20. Fines of up to \$15,000 per count are possible.

August 31. Six oil companies said



they would sign an agreement to form a Sakakawea area spill response team.

A Petro-Hunt well north of Keene spilled five barrels of oil and 100 barrels of saltwater into the lake April 2.

The lake was still ice-covered at the time. A Ryan Exploration well found itself floating in Missouri River floodwaters in July and spilled at least 20 barrels of oil into the water.

September 14. Two oil workers died of burns when an oil well exploded in McKenzie County, and two others were injured.

McKenzie County Sheriff Ron Rankin said road construction on U.S. Highway 85 delayed medical response. Personal vehicles had to be used to deliver the victims to an ambulance.

Oilfield deaths so far in 2011 stood at five, compared with three in 2010. Injuries jumped from 747 to 1,897.

BAKKEN LINK—TO WHAT?

State and local officials are considering permits for the Bakken Link pipeline and an apparently related loading facility near Fryburg this month.

Local residents in Fryburg have lots of questions, not least about what the Bakken Link is linked to.

The proposed pipeline between Williams County and Fryburg is a shadow of its former self.

The original plan for the pipeline, submitted last year, was to skirt Fryburg, go south of Belfield and then head west to Fallon, Montana to meet the Keystone XL.

That plan was altered in June.

The reason for the change was evidently delay in construction of the controversial TransCanada Keystone XL pipeline, whose proposed route is from Canada through Montana and then to South Dakota and other states further south.

That hasn't stopped the North Dakota Industrial Commission from expressing support for Keystone XL—

on the basis that it will help move Bakken oil production.

Montana Governor Brian Schweitzer echoed these sentiments at an energy symposium at Dickinson State University September 19 while passing lightly over this summer's oil pipeline spill into the Yellowstone River.

TransCanada's plans are still in doubt.

The entire project encountered a snag last month when Nebraska Governor Dave Heineman yielded to public opposition and urged President Obama and Secretary of State Hilary Clinton to deny the Keystone XL pipeline, citing concerns about contamination of the Ogallala Aquifer.

"This resource is the lifeblood of Nebraska's agricultural economy," said Heineman. "I am concerned that the proposed pipeline will have potentially detrimental effects on this valuable natural resource and Nebraska's economy."

TransCanada said in a press release August 5 it was dropping its request to

federal regulators to allow operation at a "higher pressure than current federal regulations for oil pipelines in the United States."

In the same release, it said it "will continue to work with U.S. producers in the Bakken and broader Williston Basin area to provide needed transport for growing production in Montana and the Dakotas."

Meanwhile, the state Public Service Commission is holding a hearing October 25 in Watford City for a bi-directional Bakken Link pipeline that terminates well short of Montana or South Dakota, let alone the proposed Keystone XL line.

All this leaves Fryburg residents wondering about whether the rail loading facility will be needed. They also have concerns about safety issues both on the site and on local roads.

The Billings County Commission is scheduled to rule on a zoning change to accommodate the rail loading facility October 13.

GM SPROUTS

No GM Wheat Market

The Canadian Wheat Board said in September it doesn't expect genetically modified (GM) wheat seed any time soon, simply because there is no market for it.

The statement came in response to an announcement that the British government approved GM wheat trials starting next year.

"In the current climate there's an argument to be made that the people who aren't testing GM wheat may be further ahead in the game," CWB spokesperson Maureen Fitzhenry told the Canadian publication *Money*.

Proponents of GM wheat frequently cite the need for an increasing food supply as the rationale for developing pest- or herbicide-resistant GM wheat.

But a 2009 report by the Union of Concerned Scientists, *Failure to Yield*, reviewed two dozen academic studies of corn and soybeans and concluded Roundup Ready soybeans and corn have not increased yields.

Fitzhenry noted that GM wheat is not grown anywhere in North Dakota, and that the world's top consumers, including Japan and the European Union, retain very strong objections to GM products.

She said Canadian wheat farmers are not pushing for GM wheat because there is simply no market for it.

Wheat is one of Canada's top exports.

But Here at Home...

In the Monsanto-dominated world of U.S. agribusiness, however, wheat industry leaders are singing a different tune.

Dana Peterson of the National Association of Wheat Growers told an Australian audience she expected GM wheat to be grown in the United States within seven to 10 years, according to the Australian publication, *The Land*.

OIL CHANGES (from p. 4)

Notifying your state legislators would also be a good idea. The state legislature passed the law unanimously in both houses.

Let DRC know also, so that we can track compliance with this law, which also requires that notification 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 [their] commencement."

The main thrust of Peterson's argument was the familiar complaint that corn and soybeans are "pulling a lot of acres" away from wheat because they "boosted productivity."

(UCS research found that argument untrue—see above—and Peterson evidently made no mention of how the federal farm program has pushed increased production of corn and soybeans.)

Peterson outlined the NAWG pro-GM wheat strategy of "employing four growers to act as grower spokespersons for biotechnology" and "getting the components of the export chain...to have a conversation around defining the tolerances for handling GM wheat."

Peterson called GM wheat research investments "robust," with six to eight private companies investing millions over the past two years.

As GM proponents often do, Peterson emphasized GM traits that would appeal to consumers, such as low-calorie, high-fiber strains of wheat and adjustments to gluten protein to address allergies.

Biotech companies have yet to market any such GM products, but have focused on herbicide resistance that facilitates large-scale farming but entangles farmers in the responsibility for protecting the company's patents.

Alfalfa Appeal

Attorneys for DRC and other plaintiffs filed a motion for summary judgment September 22 in its challenge to federal deregulation of Roundup Ready alfalfa.

The motion included declarations citing expected environmental effects of RR alfalfa, including harm to wildlife and further expansion of "superweeds" resistant to glyphosate, the weed-killer in Roundup.

"Globally, no weed control tools are as good as glyphosate, and its potential widespread loss because of resistance is a looming threat to global cropping and food production," wrote weed scientist Stephen Powles in *Proceedings of the National Academy of Sciences*.

Declarations also cited already reported instances of RR alfalfa contamination, along with studies showing that "confinement of novel traits in commercially produced alfalfa would be very difficult because of alfalfa's outcrossing nature, the fact that it is insect pollinated, and its perennial nature," in the words of Canadian scientist R. C. Van Acker.

At least two DRC members submitted declarations for the lawsuit.

TRANSCANADA'S SPILL SPIN

By Bob Banderet

This letter is in reference to TransCanada's spokesman James Millar on the Keystone spill. I have a different perspective as I was the local landowner and eyewitness who reported the North Dakota spill to TransCanada's hotline.

Millar's September 18 statement that "the oil was confined to our property" seems to be contradicted by the final Environmental Impact Statement for Keystone XL, which says, "In that incident, most of the oil was contained within the pump station, but 210 gallons discharged from the station to adjacent land."

Millar states that after a warning that something was wrong, they monitored the situation for the next 21 minutes. What he fails to mention is that during that 21 minutes, oil was spewing 60 feet into the air and continued to do so for an additional 20 minutes.

Lastly, he contends that after the aforementioned monitoring, "we made the decision to shut the line at 6:26 a.m. CDT." According to TransCanada's accident report to the North Dakota Public Service Commission and my phone records, 6:26 is the time my phone call reached the oil control center informing them of the leak.

Either that is a huge coincidence or my phone call prompted the pipeline shutdown.

The federal Pipeline and Hazardous Materials Safety Administration seems to agree as it states in its Corrective Action Order on Keystone I, dated June 3, "After being notified of the leak by a local citizen, Keystone initiated shutdown of the pipeline."

If the public is to make an informed decision on pipeline risk, they need accurate information, not PR spin and sugarcloated news releases.

(Banderet is a Cogswell rancher. His letter was published in the Billings Gazette October 1.)



I'D LIKE TO SUPPORT DRC ENCLOSED PLEASE FIND:

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- ___ \$250 • Sustaining
- ___ \$100 • Century Club
- ___ \$ 55 • Household
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- ___ \$ 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___

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WHAT'S THE HURRY?

by Melvin Wisdahl

It was discouraging to hear Lynn Helms put oil company financial interests above those of North Dakota mineral owners in the September 9 issue of the *Minot Daily News* ("More wells needed").

We know it benefits the oil companies to drill before leases expire, but it hurts mineral owners, who would profit from re-leasing.

The oil companies take their benefits out of state, but at least some of the mineral owners are in state and spend and invest their money here.

As director of the North Dakota Department of Mineral Resources, Helms works for the people of North Dakota, not the oil industry.

His rush to get more wells drilled would be more understandable if our oil industry was in a lull, but just the contrary is true.

He and his department and other state and local governments can't handle what we have now, as the explosions, spills, fatal accidents and housing crunch continue to get worse each day.

Helms should focus on solving these problems, not enhancing the oil industry's bottom line.

(Melvin Wisdahl is a long-time DRC member from Corinth.)

SOUTH HEART FARGO ‘MOCK HEARING SET FOR OCTOBER 19

The Public Service Commission denied a request from DRC and its allies to hold a session of the informal conference on the South Heart mine permit in Fargo.

But the show will go on.

DRC, Neighbors United and the Sierra Club will hold a ‘‘mock’’ hearing October 19, 7 p.m., at the Fargo Public Library to give eastern North Dakota residents an opportunity to share their views on the mine, which would be located less than 20 miles from Theodore Roosevelt National Park, the state’s leading tourist destination.

The request for a Fargo session was made August 31 and denied September 16 by Administrative Law Judge Allen C. Hoberg, who is presiding over the case.

Hoberg said the request came too late, and that ‘‘statute and custom have required the location of informal conferences to be either in the locality of the proposed mining or in Bismarck.’’

Perhaps not coincidentally Hoberg’s decision came one day after he received a letter from a coal company attorney opposing the Fargo session.

The *Fargo Forum* said Hoberg’s decision was ‘‘not necessarily a wise call’’ in an October 2 editorial.

‘‘The potential for air quality and other problems with a mine near the park is more than enough reason to offer residents in eastern North Dakota an opportunity to weigh in,’’ said the *Forum*.

It noted that the proposed South Heart mine was ‘‘a matter of statewide interest’’ because of its proximity to the national park, and urged the PSC to reconsider.

The *Forum* said the groups holding the ‘‘mock’’ hearing ‘‘will be doing what the PSC and/or the judge should be doing regarding a project that is as important in Fargo as it is in South Heart.’’

In a related matter, the U.S. Office of Surface Mining has not yet made a decision on whether Commissioners Kevin Cramer and Brian Kalk will be allowed to vote in any PSC decision on the mining permit.

Both Commissioners received significant campaign contributions from company executives but have refused to step down voluntarily.

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