

# Dakota Counsel

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Organizing • Research • Advocacy • Education

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## EMINENT DOMAIN STUDY REVIVED

The interim Legislative Management Committee reversed itself November 13 and voted, 7-6, to authorize study of eminent domain reform.

The vote came after DRC member Paul Mathews, Cogswell, described unethical practices he encountered by agents of TransCanada in obtaining an easement for the Keystone pipeline.

Voting to study were Reps. Jerry Kelsh (D-Fullerton) and Shirley Meyer (D-Dickinson), and Sens. Robert Erbele (R-Lehr), Joan Heckaman (D-New Rockford), Gary Lee (Casselton), Larry Robinson (D-Valley City) and Ryan Taylor (D-Towner).

Opposed were Reps. Al Carlson (R-Fargo), Don Vigesaa (R-Cooperstown), and Robin Weisz (R-Hurdsfield) and Sens. Rich Wardner (R-Dickinson), David Hogue (R-Minot) and Ray Holmberg (R-Grand Forks).

The study was referred to the interim Energy Development and Transmission Committee, chaired by Sen. Wardner, which held a hearing on it November 29.

Much of the hearing was devoted to a report from the Legislative Council summarizing state eminent domain law, but Mathews and his neighbor Bob Banderet also testified.

Others submitted written testimony stating that threats of eminent domain from TransCanada’s agents came well before the company received that right.

DRC submitted draft language for three amendments.

One would change state law to define common carriers to exclude pipelines that do not include structures for delivery or receipt of product in North Dakota.

Voters passed a state constitutional amendment in 2006 that excluded eminent domain for all privately-owned projects except utilities and common carriers. The amendment did not define common carriers.

DRC’s proposed legislation would also require the Public Service Commission to develop and distribute a guide for landowners who would be affected by a pending case in which eminent domain might be granted.

The proposed legislation would also allow victims of fraud, coercion or other illegal tactics in negotiations over easements to go directly to the PSC for a hearing, rather than have to prove their case in court first.

Chairman Wardner indicated there would be at least one additional committee hearing on eminent domain, but it has not yet been scheduled.

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## KEYSTONE XL DELAYED

The Obama administration announced November 10 it was delaying action on a permit for the TransCanada Keystone XL pipeline slated to send Alberta Tar Sands oil to the Gulf of Mexico through Montana, South Dakota, Nebraska and other states.

National protests over use of tar sands oil and local Nebraska concerns about possible contamination of the Ogallala Aquifer affected the decision.

TransCanada said November 14 it would reroute the pipeline to avoid the sensitive aquifer.

Republicans in Congress responded by introducing bills in both the House and Senate to force the administration to grant the permit without any further environmental review.

Sen. John Hoeven and Rep. Rick Berg are among the bill sponsors in their respective chambers.

Political and opinion leaders in the state continue to suggest that the Keystone XL pipeline will help move North Dakota oil, even though there is no indication that TransCanada is interested.

The proposed “Bakken Link” pipeline running south from southeastern Williams County was originally slated to meet Keystone XL at Fallon, Montana.

Since June, its filings with the Public Service Commission show the pipeline dead-ending at Fryburg, North Dakota, more than 30 miles from the Montana border.

Not a drop of North Dakota oil has flowed to market through the Keystone pipeline that now traverses the state from Manitoba to South Dakota.

It has also leaked 14 times on the U.S. side alone, the largest being 500 barrels near Cogswell, North Dakota.

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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#### Staff

##### Dickinson Office

P.O. Box 1095, 113 1st St. West  
Dickinson, ND 58602  
Phone: (701) 483-2851  
Fax (701) 483-2854  
[www.drcinfo.com](http://www.drcinfo.com)

Mark Trechock, Staff Director  
[mark@drcinfo.com](mailto:mark@drcinfo.com)  
Aleta Hendricks, Office Manager  
[aleta@drcinfo.com](mailto:aleta@drcinfo.com)  
Kathy Brackel, Adm. Asst.  
[kathy@drcinfo.com](mailto:kathy@drcinfo.com)

##### Bismarck Office

103 1/2 S. 3rd St., Bismarck, ND 58504  
Phone (701) 224-8587  
Fax (701) 224-0198  
Ashley Lauth, Organizer  
[ashley@drcinfo.com](mailto:ashley@drcinfo.com)

##### Fargo Office

118 Broadway, Ste. 801, Fargo, ND 58107  
Phone: (701) 298-8685  
Fax (701) 298-9044  
Lynn Wolff, Organizer  
[lynn@drcinfo.com](mailto:lynn@drcinfo.com)

## THE FUTURE

By DRC Board Chair Verle Reinicke



The future. Very often we talk about and plan for the future by starting with what already is, the present. The result is that the future is more about the present than a real future. The Synapse Report for 2011, "Toward a Sustainable Future," calls this "Business As Usual" (BAU).

(You can read the report at <http://www.civilsocietyinstitute.org/synapsereport/>.)

BAU is about an energy future that is merely a repackaged use of coal, gas and nuclear energy for decades to come. Its buzz word is "clean" coal: carbon capture, retrofitting existing plants, new generation plants as well as increased use of natural gas, liquefied natural gas (LNG) and continued use of nuclear fuels. In short, the future is merely more of the same!

"Toward a Sustainable Future," on the other hand, envisions a real future. It looks to the year 2050 and asks realistically what kinds of energy sources will be needed for energy production then.

At Underwood, North Dakota, is the Coal Creek power station. Thinking about 2050, this question comes to mind: "Factoring in increased cost of coal, future regulations for coal, construction costs for new plants, will that plant still exist in 2050?" Most likely not.

A sustainable future for electrical generation will mean a reliance instead on renewables, like wind and solar. Renewables have often been treated as the Cinderellas of the energy household. To realize a sustainable future for 2050, however, means that they must become the darling children.

The Synapse Report, published by the Civil Society Institute, makes the strong and credible argument that all coal-fired power plants can be phased out, replacing them with aggressive efficiency efforts and investing deliberately and intentionally in renewables.

The report is also stark in saying that moving toward efficiency and renewables as an energy source will be cheaper, yes, CHEAPER, than BAU. The costs for rebuilding coal, gas and nuclear generation are increasing, while the cost of solar technology, for instance, continues to drop.

There will be a net savings of \$83 billion dollars over 40 years, and as many as 300,000 new jobs will be created in the first 10 years.

Eliminating coal-fired power plants will also result in the reduction of 55,000 premature deaths due to pollution in future decades.

Efficient use of energy will reduce a consumer's monthly electric bill. We often hear that North Dakota has among the cheapest electricity rates in the country. However, North Dakota is also at the bottom of the list of efficient use, and North Dakota rate payers pay as much as or more than the neighboring states of Minnesota or Montana.

We can begin moving into the future right now. There is no need to wait for new technology breakthroughs, extensive research and development work. The technologies are already here.

# DRC TO EPA: CLEAN UP OUR AIR

DRC urged the U.S. Environmental Protection Agency to move forward with its plan to require North Dakota to come into compliance with regional haze standards in official comments submitted last month.

The standards were adopted in Clean Air Act amendments over 30 years ago and set time frames for reduction of sulfur dioxide and nitrous oxides pollution that impair visibility in national parks and other protected areas.

Reducing the pollution would also provide a health benefit. The cost of health impacts from dirty coal plants in North Dakota is estimated at nearly \$500 million per year.

Like many states, North Dakota fell behind schedule in developing a plan to address regional haze—and when it did offer a plan, it fell short of required emissions reductions.

It’s not the first time the state has sought to evade the Clean Air Act.

After the state’s own analysis found numerous violations of Prevention of Significant Deterioration (PSD) standards in 1998, North Dakota sought to fix the problem by

adopting non-standard methods of measuring PSD to make the violations artificially disappear.

EPA never authorized these novel measurement methods, although it signed a memorandum of understanding and failed to take action to enforce PSD in the state.

The intent was obviously to foster construction of new coal-fired power plants in North Dakota.

That strategy backfired in 2007 when Undersecretary of the Interior David Verhey put thumbs down on a draft air quality permit for a proposed coal burner at Gascoyne.

His finding of “adverse impact” to Theodore Roosevelt National Park also caused Great Northern Power Development to withdraw a permit application for a coal-fired power plant near South Heart.

A mining permit for South Heart is still pending, but the company admits it currently has no market for the coal.

In its comments, DRC said compliance with air quality standards will help the state use wind energy and energy efficiency to maintain its role as a regional energy provider.

“It’s time for North Dakota to stop beating a dead horse by urging special treatment for coal-fired power plants,” said DRC in its comments.

## ..... :FUTURE (from p. 2)

The low-hanging fruit, the easiest, is efficiency. Replacing light bulbs, reinsulating, demanding that new construction of homes and businesses be more energy efficient is a no-brainer. And the cost savings can be extremely significant.

When it comes to energy generation and use, what kind of future are we looking for? The truth of the matter is that BAU, Business As Usual, is not sustainable. It’s becoming more and more a behemoth, whose costs will burden us dearly.

There are things all of us can do right now to help usher in a sustainable future, starting in our own homes. And, we need to be talking often to our leaders, locally, statewide and nationally about the need for them to invest in a real future, a future of energy efficiency and renewables.

## ..... A BROKEN SPIRITWOOD

Market forces have mothballed Great River Energy’s Spiritwood power plant near Jamestown, throwing sunk costs back onto rural electric ratepayers.

GRE closed the plant this fall a few weeks after it opened because it was losing money on every kilowatt when supplying power to the grid.

The plant was designed to be “clean,” or at least cleaner than other coal-fired plants, using coal processed to reduce mercury and sulfur dioxide.

It was also slated to share steam heat with adjacent facilities, but a new ethanol plant projected as a market for the heat never materialized.

On the other hand, the plant had no method of offsetting emissions of carbon dioxide, which would have put it in violation of Minnesota law had not the state eventually granted GRE a special exemption.

Supporters of the plant touted it as the most energy-efficient coal plant in the region, but GRE has not announced plans to reduce emissions from existing plants. So if Spiritwood does start up, it will not result in less pollution regionally.

GRE says it has budgeted \$30 million next year to maintain the plant, pay interest on bonds and cover depreciation. Co-op members will pay the bill.

# DRC ELECTS NEW BOARD MEMBERS

DRC members elected Verle Reinicke, Bismarck, as DRC's new chair at the October 22 annual meeting.

Reinicke is a retired Lutheran pastor who chairs Missouri Valley Resource Council and serves on DRC's Clean Energy Task Force. He also represents DRC on the board of the Western Organization of Resource Councils, along with Dean Hulse, Fargo.



Handing over the gavel!

Three new Board members were elected.

Gene Wirtz, a farmer from Underwood, was elected Assistant Treasurer. Wirtz has long been involved in mining reclamation issues.

Theodora Bird Bear, Mandaree, was elected as an at-large member. She is a journalist, a Mandaree School Board member, and a DRC Oil and Gas Task Force

member. She is also a member of the Landowners Association, which has helped educate native land and mineral owners on their rights. Another Oil and Gas Task Force member, Carmen Wold, Burlington, was also elected at-large, as were returning Board members Leo Walker of Maddock and Vicki Rosenau of Valley City.

DRC's new Vice-Chair is Linda Weiss, Belfield, chair of the Badlands Area Resource Council and active in opposition to the South Heart coal project.

Elected Secretary was Bette Stieglitz, Fargo, who chairs South Agassiz Resource Council. Terrence Kardong, Richardton, a Benedictine monk and editor, and Chair of the Clean Energy Task Force, will serve as Secretary.

Robert White, Emerado, a renewable energy advocate, a retired Air Force officer and school superintendent, was elected Treasurer.

Leaving the Board after several years of service were Steve Merrill, Minneapolis; Travis Schulz, Bismarck; and Roger Brenna, New Town.

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Link Reinhiller (l) & Art Sickler sharing a moment at the annual meeting

# RESOLUTIONS PASSED AT DRC ANNUAL MEETING

DRC members considered and approved seven policy resolutions at the 2011 annual meeting on issues that members have been involved in during the past year.

**State Constitutional Amendment on Farming Practices.** DRC’s resolution opposes the Farm Bureau’s attempt to amend the constitution to prevent any laws from being enacted to “abridge the right of farmers and ranchers to employ agricultural technology, modern livestock production and ranching practices.” Members agreed the measure is too vague, fails to consider that some farming and ranching practices may injure neighboring residents, and limits the zoning rights of counties.

**Eminent Domain Reform.** The resolution calls for adoption of amendments to state eminent domain, as described on p. 1.

**Coal-Mining Bond Release.** The members urged the state Public Service Commission to retract Policy Memorandum No. 18, which allows coal mines to gain bond reductions without a public hearing or public comment.

**Regional Haze Standards.** Members agreed DRC should back federal enforcement of the Clean Air Act. See p. 3.

**Oil and Gas Bonuses.** Members urged state lawmakers to correct a February state Supreme Court opinion, *Irish Oil v. Riemer*, which essentially allows oil companies to secure and retain leases without ever paying the bonus agreed to in the contract.

**Oilfield Waste Disposal Rules.** The resolution urged the Oil and Gas Division to strengthen its pending rule changes by increasing bonds further, fully disclosing the contents of hydraulic fracturing chemicals, and moving to a fully closed-loop waste disposal system.

**Keystone XL Pipeline.** Members opposed construction of the pipeline and expressed the intent to continue to work jointly with opponents in the directly affected areas.

If you’d like a full text of any or all of the resolutions, contact the Dickinson office at 483-2851, or e-mail Staff Director Mark Trechock at [mark@drcinfo.com](mailto:mark@drcinfo.com).



DRC Trivia Winner Donny Nelson with his “authentic booty” prize.

Sing Along  
**Sixteen Times**  
(with apologies to  
Tennessee Ernie Ford)



Chorus

You try 16 times till the numbers say  
No violations to the EPA.  
Well, it’s science be damned,  
let the breather beware.  
We can’t afford to clean up our air.

Verse One

I was born in North Dakota,  
it was smoggy and cool.  
I picked up my inhaler,  
rode the bus to school,  
Breathed the sulfur dioxide  
from the coal smokestacks,  
And the pulmonary doctor said,  
“These are the facts.”

Verse Two

The big shots say coal poses no threats.  
The more they burn it,  
the cleaner it gets.  
We can quote the Clean Air Act night and day.  
They provide jobs, so they don’t have to obey.

Verse Three

I took my troubles to the EPA.  
I said, won’t you clean up my air today.  
They said, we can’t interfere  
with your fair state.  
We don’t enforce the law, we just negotiate.

## Our Fearless Leader’s Farewell Roast & Toast



# BABY STEPS TOWARD SAFER OIL DRILLING

Rules now pending before the state Oil and Gas Commission inch safety forward a bit, but leave a lot to be desired, according to DRC’s Oil and Gas Task Force.

In comments on the draft rules, DRC generally applauded rules increasing bonds and applying them to commercial waste disposal, reducing the number of reserve pits, governing hydraulic fracturing and requiring automatic shut-down equipment at some sites.

But DRC urged separate bonding and permitting procedures for saltwater disposal lines.

Such lines failed at Charbonneau Creek in 2006 and in Bottineau County this summer with disastrous results.

Some 30 million gallons of surface and ground saltwater have been removed from the Charbonneau Creek site over the past six years, but chloride levels remain from 200 to 2,500 times the normal level.

The Bottineau County spill contaminated 28 acres of farmland, and the Health Department has not yet settled on a reclamation strategy.

The Oil and Gas Commission still does not require flow gauges to monitor saltwater lines. Gauges would assist in early detection of a spill and limit damage.

DRC suggested blanket bonds much higher than the \$100,000 now required.

DRC opposed exempting wells more shallow than 5,000 feet from new rules that limit reserve pits.

DRC objected to changes that limit the number of parties that can issue complaints about violations and expect a response. Under the proposed rules, DRC and other oil and gas interest groups would no longer have the right to a complaint response.

For a copy of DRC’s comments on the rules, contact Mark Trechock at 483-2851 or mark@drcinfo.com

## OILFIELD SPILLS AND CHILLS LOG (iii)

**September 28.** New Town Mayor Dan Uran told state Commerce Department officials he didn’t know how the city could complete scheduled major repairs on Main Street in 2012 due to the volume of traffic. City officials estimated that 2,200 semis go through New Town each day.

**September 29.** A chemical spill from a truck crash blocked traffic for most of the day at the corner of Highways 23 and 37 near Parshall.

Some of the chemicals were hazardous materials, including potassium hydroxide, and some were flammable, according to the Parshall Fire Department.

**October 2.** The *Minot Daily News* reported that state Workforce Safety and Insurance received 1,897 claims during the past fiscal year from oil and gas workers, compared with 247 six years ago. Federal Occupational Safety and Health Administration Area Director Tom Deutscher said he needed three times the personnel to be “in response mode.”

**October 11-14.** The state highway Patrol inspected 151 commercial vehicles in northwest North Dakota and found 40 (26%) with defects that required removal from services.

Of the vehicle drivers, 15% had violations that disqualified them from commercial driving.

**October 27.** The State Health Department said it planned to charge Superior Well Services with dumping contaminated liquids into a ditch in Williams County. Officials said they thought the spill was intentional.

**November 1.** The Health Department formally charged Continental Resources for reserve pit spills in Williams and Divide Counties, which occurred in April. Combined, the spills involved 12 barrels of oil and drilling mud.

**November 11.** A saltwater tank exploded near Williston. There were no reported injuries.

**November 13.** *The Bismarck Tribune* reported that the state Health Department fined Hunt Oil and two other companies \$10,000 each for allowing fly ash from coal-fired power plants to blow across farmland in Dunn County earlier this year.

Additional \$40,000 fines for each were suspended, provided they comply with air quality and dust suppression rules.

Fly ash is often used to stabilize oil in waste pits, but is “not benign,” said Steve Tillotson of the Health Department. “It’s a waste material going from one regulated activity...to another.”

**November 22.** The Turtle Mountain Tribal Council passed a resolution banning hydraulic fracturing on the reservation. The tribe also asked the federal Bureau of Indian Affairs to halt a lease sale for 45,000 mineral acres in Rolette County.

**December 6.** Kadrmas, Lee and Jackson publicized survey results that show two-thirds of North Dakota oilfield residents believe quality of life had “somewhat worsened” or “significantly worsened” due to the oil boom.

# FRACKING SUIT: WE PAY FOR BOTH SIDES

By Donald Nelson

As a taxpayer, I now face the prospect of bankrolling both sides in a frivolous lawsuit over hydraulic fracturing (or "fracking") regulation thanks to amendments to state "disaster" legislation.

The federal Environmental Protection Agency is rightly studying fracking after reports of contaminated drinking water near oil and gas installations from across the country.

Current federal laws allow the industry to keep the contents of fracking fluids a secret. That's a real roadblock to finding out the cause of contamination and solving the problem.

Lynn Helms of the Department of Natural Resources says the state has regulated fracking for many years, yet he and many lawmakers have argued that if EPA regulates fracking it will drastically reduce oil production.

Frankly, it wouldn't be bad if oil production slowed down just a bit. In

terms of housing, roads, police, and state inspection, those of us in oil and gas country have got way more than we can handle already.

But the reality is that the industry will quickly find a way to address any new EPA regulations, get on with production, and then brag about their compliance with the regulations as if it had all been their idea in the first place.

However, whipped into a panic, our legislators stampeded the state into suing EPA to the tune of \$1 million, and I'll have to pay for lawyers on both sides.

Too bad they couldn't pass a law for disaster relief without creating a new disaster along the way.

A better use of that \$1 million would be to test groundwater here in the oil producing counties for chemicals commonly used in fracking.

That way landowners would have a true baseline test for possible fracking

contamination, rather than the usual testing for solids, nitrates, sulfates, and so on, and could prove fracking contamination if it occurs.

*(Donald Nelson, Keene, is chair of DRC's Oil and Gas Task Force.)*



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## THANK YOU, TIM MATHERN

Sen. Tim Mathern (D-Fargo) provided a voice for common sense against the state legislature's rush to bankroll a lawsuit against EPA over fracking.

"It's baloney," Mathern told the Associated Press regarding the amendment to the \$1 million allocated for the suit as part of disaster relief legislation enacted at the North Dakota legislature's November special session.

Mathern was also the only legislator to support DRC's position and vote against a law approved in March that declared hydraulic fracturing was "an acceptable recovery process" for oil and gas production.

Lynn Helms of the state Department of Mineral Resources claimed during the special session that EPA regulations "could easily stop 95% of North Dakota drilling for 18 to 24 months, according to the Minot Daily News.

Jim Martin, EPA Region VIII administrator, clarified later in November that "EPA does not have a plan or the authority to stop oil and gas production," but has the duty to make sure that oil and gas drilling "doesn't pollute water supplies or impact public health."

EPA announced December 6 that it had for the first time linked fracking with groundwater contamination. The conclusion was reached in a study at Pavillion, Wyoming, where well water reeks of chemicals.

# INSIDER DEALS AND MYSTERY MEAT

## *Bad News for Ranchers and Consumers*

November brought a double whammy for both ranchers and beef consumers.

The U.S. Department of Agriculture left cattle out of its meat industry reform rules, and a World Trade Organization panel ruled the U.S. country-of-origin law violates international trade laws.

USDA's Grain Inspection Packers and Stockyards Administration earlier gave indications it would restrict buyers to working for only one packer and put restrictions on packer-to-packer cattle sales.

Instead, the interim final rules say nothing about fair cattle marketing and don't come anywhere close to DRC's original goal that all cattle to be sold in an open, competitive market or under contracts that list a fixed base price.

Worse yet, the U.S. Senate went on to adopt the House version of an agriculture appropriations bill that limits further funding for new rules.

New rules on livestock marketing were required by the 2008 Farm Bill. USDA has said it plans to work toward additional rules but has given no timetable for doing so.

"Enforcement over the years of the Packers and Stockyards Act of 1921 would have kept market concentration lower and prices higher," said Link Reinhill, Hazen, Chair of DRC's Trade and Livestock Task Force.

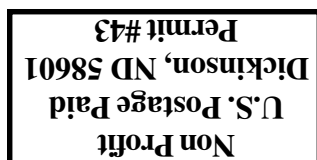
Meanwhile, the WTO found on November 18 that the U.S. country-of-origin labeling law is a "Technical Barrier to Trade," or TBT, under WTO rules, and a violation of international agreements.

A TBT is a regulation, standard or procedure that creates "unnecessary obstacles" to trade and ensures that laws are not created simply to limit trade.

The WTO decision came in response to a case brought by Canada and Mexico. The panel said the U.S. law gave less favorable treatment to meat from Canadian cattle and hogs than to domestic products.

It also found that the U.S. law did not fulfill the allowed objective of providing consumer protection.

The U.S. Trade Representative has not yet decided whether to appeal the ruling or to work with Congress to make changes to the law.



ADDRESS SERVICE REQUESTED

Dakota Resource Council  
 P.O. Box 1095  
 113 W. First Street  
 Dickinson, ND 58602-1095