

DAKOTA COUNSEL

Watchdogs of the Prairie

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ND Regulators are 'ALL IN' on Carbon Capture

In the second round of grant applications the North Dakota Clean Sustainable Energy Authority recommended government funding for 3 projects— notably— they are all related to Carbon Capture and Sequestration. The Industrial Commission accepted the recommendations from the authority and approved the funding for three projects: Commercial Deployment of Carbon Dioxide Capture & Geological Sequestration in McLean County for the Blue Flint Ethanol plant submitted by Carbon America Developments & Midwest Ag Energy which received a 15 million dollar loan. Internal Combustion Engine Carbon Capture and Sequestration submitted by Enerplus Resources which received a 1 million dollar grant. And lastly, Project Tundra, submitted by Minnkota, which received a 100 million dollar loan.

There were other energy projects proposed aimed at reducing flaring and promoting the development of Green Hydrogen— but notably, the authority only recommended funding for CCS projects. The Dakota Resource Council does not think that all CCS technology is inherently bad— but it is questionable that the authority would only fund this specific aspect of technology when there were several other solutions proposed to mitigate CO₂ emissions. It is even more clear that North Dakota Regulators are primarily funding 'Clean and Sustainable' projects to assist the fossil fuel industry as the energy industry shifts to renewables and battery storage. Perhaps the most egregious use of the authorities taxpayer funds relates to the funding of the Project Tundra project. Project Tundra aims to capture and sequester emissions from the Milton R Young coal-fired power plant. On the surface— this appears to be an admirable goal— but there are many concerns to be had about this project. History has shown that these projects are a waste of public investment. A recent report by the nonpartisan U.S Government Accountability Office recently found that the Department of

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Letter From the Chair



Perhaps you've been following the stories in AgWeek by Mikkell Pates about the land sale from the Campbell brothers of Grafton to billionaire Bill Gates. It is a curious case in which the North Dakota Attorney General's Office concluded that the sale of the land to a Gates' trust did not violate the Corporate Farming Law, but Sarah Vogel questioned whether the office had made the decision without having seen the Gate's trust documents. When questioned on Joel Heitkamp's News and Views radio program, Attorney General Wrigley said that the trust documents were either in the office or on their way to the office.

In case you haven't read the articles by Mikkell Pates, here's some of the highlights:

*According to an AgWeek article of June 13, 2022, last November, Bill Gates purchased 2100 acres of northern Red River Valley farmland for \$13.5 million from Campbell Farms of Grafton. The land was transferred to Red River Trust, with trustee Peter Headley, located in Lenexa, Kansas.

*An entity called Red River Trust was filed with the ND Secretary of State's office in February 2022 with an address the same as Campbell Farms. Matthew Thompson, Vogel Law Firm and attorney for Gates' Red River Trust said that this filing was made without the knowledge of my client." All three of the Campbell brothers were listed as partners under the trust filed February 15, 2022

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Citizens Local Energy Action Network, (CLEAN)

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(LETTER CONTINUED)

*In a letter dated June 21, 2022 to the Red River Trust, care of trustee Peter Headle, the ND Attorney General's office notified the trust that all corporations or limited liability companies are "prohibited from owning or leasing farmland or ranchland in the state of North Dakota," and from "engaging in farming or ranching. . . In addition, the law places certain limitations on the ability of trusts to own farmland or ranchland." The letter indicated that the ND Corporate or Limited Liability Company Farming Law has "certain exceptions, such as permitting registered family farms or allowing the use of the land for business purposes."

*On June 29, 2020, the attorney general's office ruled that Gates' Red River Trust purchase of Campbell Farms land did not violate the state anti-corporate and trust farming law because of a "lease-back". The attorney general's office wrote Matthew Thompson to say that the department had reviewed the information and were satisfied that the "Red River Trust's current ownership and lease of the land to Campbell Farms. . . is in compliance" with the law, adding, "Accordingly, we are deeming our inquiry file inactive."

*In a news article on July 8, 2022, Sarah Vogel characterized the attorney general's inquiry into a land deal between Campbell farms and a trust for Bill Gates as "A very shallow and insufficient investigation". She came to that conclusion after reading documents requested under an open records request from the attorney general's office after it went "inactive" on its inquiry about a land deal between Campbell Farms and Red River Trust. She said that ND Attorney General Wrigley and his department appeared to have simply "deemed" the same to comply with the law and little inquiry.

*In the same news article, Vogel said that the Campbell/Gates sale may or may not be legal, but she thinks that it would be impossible to determine that with the documents that the attorney general's office has on the topic. "Out of curiosity", she filed an open records request with the agency on July 1 after reading articles in AgWeek. "We just don't know," in the Gates/Campbell case, she said. "I think the attorney general's office should do a better job.

*On July 11, Vogel was a guest on Joel Heitkamp's News and Views radio show in which she argued

that the attorney general did not see the actual documents on the Gate's Red River Trust before making their decision that the sale did not violate the ND Corporate or Limited Liability Company Farming Law. The following day (July 12) on News and Views, Attorney General Wrigley told Joel Heitkamp and his listeners that the "Red River Trust document was "here [in the AG's office] or on its way."

Other than the legal question regarding the sale of the Campbell Brothers farmland to the Red River Trust, other issues surrounding it include farmers dislike of Bill Gate's opinions, the sale of farmland to absentee, out-of-state property owners, and the impact of absentee, out-of-state property owners on rural communities, ability of beginning farmers to access farmland, and the unsustainable farming practices of absentee landlords.

The sale has been controversial, especially up in Walsh and Pembina Counties, because of Gates' opinions about world population and beef production. North Dakota Agriculture Commissioner Doug Goehring, in an interview on June 25, 2022, said that he had received inquiries from constituents across the state, saying they don't want Bill Gates to be enriched by North Dakota farmland.

The editor of AgWeek gave three reasons why they reported about the sale:

First, rural residents have an interest in knowing who owns what land, especially when it involves land management issues such as noxious weeds or blowing soil. In those cases, they need to talk to the landowner, and that's why property ownership is a public record. Secondly, people believe that the anti-corporate farming law keeps large entities from owning farmland and keeps farmland in the control of family farms, but this sale indicates that there are workarounds that were unknown previously. Thirdly, landownership impacts rural residents, especially concerning community involvement, land utilization, ability of beginning farmers to access land, and outside investors buying land that they will never visit and may not care about the community in which they are not invested.

These issues raised by the editor of AgWeek have long been a concern of rural sociologists.

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(LETTER FROM THE CHAIR CONTINUED)

At the request of the North Dakota General's office, in preparation for a case challenging the anti-corporate farming law, I was asked to review the research literature regarding the impacts of industrialized agriculture on rural communities. With the help of my colleague, Linda Lobao, who had preciously summarized that literature for a case in another state, I updated her literature review in order to provide social justification for the law. We later had that summary published in a respected agricultural social science journal, and that article is among that journal's most cited articles. In my summary and in our published article, we indicated that we must examine farming in terms of scale (acres, sales), organization (vertically integrated, contract farming, absentee ownership, hired labor, farm managers); and legal status (family or non-family corporation).

We evaluated studies investigating the effects of industrialized farming on community well-being from the 1930s to the present. Using a pool of 51 studies, we document the research designs employed, evaluate results as to whether adverse consequences were found, and delineate the aspects of community life that may be affected by industrialized farming. Of these studies, 57% found largely detrimental impacts, 25% were mixed, finding some detrimental impacts, and 18% found no detrimental impacts. Adverse impacts were found across an array of indicators measuring socioeconomic conditions, community social fabric, and environmental conditions. Few positive effects of industrialized farming were found across studies. The results demonstrated that public concern about industrialized farms are warranted.

Although the sale of the Campbell Farms land to Red River Trust permitted the lease back to the Campbell Farms, it won't make much of a difference regarding impacts in the community that had not been already realized. Although it is a family partnership, Campbell Farms is, by all measures of scale and organization, industrialized farming. Most concerning for farmers in Walsh and Pembina counties is access to farmland, which the sale of Campbell Farms land to the Gates trust has precluded. My colleague, Paul Lasley, raised the questions whether the separation of ownership and operation of farms will result in increased tenancy and whether changing landownership patterns will affect the support of local economies and communities. He also noted that there are concerns that absentee farmland ownership may lead to more of an exploitive type of

farming as absentee owners encourage production practices that squeeze as much profit from the land as possible without regard to sustainability.

While the focus of the sale has been upon whether it violates the anti-corporate farm law, it also raises questions surrounding farmland ownership that have not been addressed in terms of public policy. At present, Scott Skokos, Sarah Vogel, attorney Derek Braaten, Scott Carlson of Farmers Legal Action Group, and I are examining the sale regarding its compliance with the anti-corporate farming law, but in the future Dakota Resource Council should pay attention to these other issues.

(ND Regulators 'All In' Continued)

Energy has invested \$684 million in 8 coal CCS projects resulting in only one operational facility. Coal CCS technology consistently decreases the efficiency of the plant by 31 percent. This loss in efficiency leads to more coal being mined and higher electrical rates. The additional energy used to capture the CO₂ also leads to higher emissions of other harmful toxins such as Sulfur Dioxide and Nitrogen Oxide. The Bank of North Dakota also declined a request to loan project Tundra \$250 million citing the terms of the investment as far too risky. The funding and creation of the CSEA was in large part due to the bank refusing to provide funding.

Adding insult to injury: The funding for Project Tundra will directly benefit the Summit Carbon Solutions Pipeline. Minnkota and Summit have agreed to jointly develop injection wells. The state funding Project Tundra is in turn a direct endorsement of this controversial pipeline project. While some small-scale CCS might have a role to play in the climate transition— the Burgum administration's vision of going "all in" on this unproven technology is misguided and an affront to our vulnerable rural communities who stand to be impacted by large CO₂ pipeline projects.

NO EASEMENT**NO EMINENT DOMAIN**

- Have you been asked to sign an easement for the Summit Carbon Pipeline? Join the North Dakota Easement team today.
- Get connected to collective legal representation and a community of landowners across the state. Together we will protect our property rights.
- www.northdakotaeasement.org or call (701) 997-5181

Ag and Food

Equity in water law: five reforms that would help ND landowners

Background:

In 2018 a group of Sargent County landowners (many DRC members) sued the state for not being notified properly for a 3.9 million dollar drainage project in Southeast North Dakota. In 2019 the ND Supreme Court ruled that the law clearly states that they had 30 days to appeal the decision regardless of if they knew about the project or not. The courts went on to note that ND law was inconsistent and even contradicting itself. They recommended in the rulings that the legislature fix the water laws in the 2021 session because the ruling was held as the 2019 session was coming to a close. As a result in 2021, SB 2208 was introduced as sweeping legislation to completely rewrite and reform water laws in North Dakota. That bill was then broken into smaller bills that were passed to correct the contradictions in the law, but the legislative body agreed that more reform was needed due to complaints from landowners. What was left of SB2208 was amended and passed as an interim study to gather feedback from water officials in the state to reform water law in North Dakota in 2023 session. DRC hopes that we can be helpful in ensuring much needed reforms do happen! Below are some reforms that DRC members and other impacted landowners would greatly benefit from.

What needs to be reformed?

1. Make water boundaries based on natural features and not county lines. Water doesn't care about political boundaries, this has always been the biggest challenge when trying to regulate drainage systems. When talking to some legislators an idea is currently
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DRC PODCAST

Catch the DRC Podast! The Dakota Resource Council podcast is an update with organization news, member profiles & interviews. We also talk with experts that are involved with issues that affect our members. You can download our podcast on iTunes, visit drcpodcast.buzzsprout.com, go to drcinfo.com and scroll to the bottom of the page or watch for updates on our Facebook Page!

(Water Law Continued)

being proposed to eliminate county water boards and replace the oversight of drainage to regions known as watersheds. The idea is to focus on where water bodies drain rather than political borders where rivers and streams are located.

2. Reform reporting laws to landowners and county papers for water projects

As the law is currently written, an ad in the county paper and notice to landowners affected need to be provided. This becomes a problem because some water projects usually affect multiple counties, not just the border where the project is conducted. DRC has testified in previous hearings notifying all landowners 10 miles downstream from any project regardless of county and being published in any country's official newspaper would be far more effective.

3. Eliminate the 30 day appeal and extend it to 90 days

Taken to its logical conclusion, the Supreme Court's decision requires concerned members of the public to attend every Water Board meeting, review every document at those meetings, understand all of the proceedings at those meetings, and appeal any unlawful decision, all very likely before having the opportunity to consult an attorney within 30 days of a meeting they might not even likely know about all while maintaining their jobs and family life. This is unacceptable and the timetables in North Dakota to appeal water board decisions need to be extended to at least 90 days.

4. Reform the law to take into account topography of the land being taxed.

DRC would also like to see a levy system that takes into account if your property will benefit from drainage. Landowners shouldn't be forced to pay special assessments to have their land flooded. Some landowners in Sargent County were saddled with as much as \$190,000 of special assessments making their flooded land unsellable. Instead of looking at a map of square county lines, decision makers should look at elevation and how much your land will benefit from the project to determine a proper assessment. Simply put, the current system of dividing the taxes equally on all pieces of land for a project is not fair as it looks on paper.

5. Make the railroads pay their fair share.

Some landowners are treated unequally. As it stands the railroads are exempt from a large percentage of these assessments paying a fraction of what farmers pay, yet they receive many of the benefits of the

drainage. It's time they paid their fair share of the taxes. Is it slightly more complicated than our current system? Yes, but it is definitely more equitable.

If you are interested in this subject and want to provide input at any interim committee meetings or be ready to testify when water issues are being brought up to the Legislative session next year. Contact Sam Wagner at sam@drcinfo.com

WORC sends representative to DC to testify at the House Committee meeting on Cattle Market Reform



Gilles Stockton

WORC recently sent Gilles Stockton to the US House Committee hearings on Price Transparency as our representative to testify. DRC's Cattle Committee was excited to see Gilles testifying in Congress because Gilles delivered the message that competition reforms in the beef markets are gravely needed.

At the hearing Gilles Stockton, spokesman for the Northern Plains Resource Council (DRC's Montana sister organization), discussed how the cattle markets have

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(WORC Testifies in DC Continued)

been shifting over the years. Specifically, he discussed how when he began ranching in 1975, “out of every dollar consumers spent on beef, 71.3 cents went to the ranchers or feedlots. Now that is 36.4 cents.” Gilles also discussed how the pandemic provided an opportunity for the “beef packing cartel” to take advantage and pay less for cattle.

Specifically Gilles said, “They (the packers) were using the excuse that their packing plants were under stress and not at full capacity because their workers were sick,” he said. “At the same time, there was a huge demand for beef, so prices skyrocketed. But this is not a one-off issue. In 2015, I was getting paid at \$2.50 per pound. It’s about \$1.70 now.”

Gilles and other independent ranchers went on to tell their stories about keeping their family farm while the four multinational meatpackers use their control of the market to squeeze cattle markets and consumers. “We’re losing an entire generation of young men and women from ranching,” Gilles said. “Unlawful practices by the corporate meatpackers are threatening the viability of family ranching, which leads to a wider hollowing out of rural economies.” DRC will continue to work with our partners like Northern Plains and the rest of the WORC network to level the playing field for ranchers.

DRC tables at the Red River Valley Market



On July 17th DRC members talked with residents of the Fargo Moorhead Community collecting over 140 postcards to send to Senator Cramer and Hoeven to urge them to support our policies of cattle issues and soil health.

Soybean plant in Casselton approved by all 3 zoning authorities. Residents pursue other options.

DRC members in Casselton were dealt a blow when the city officially green lighted the conditional use and zoning permit for North Dakota Soybean Processors (NDSP). The city council approved despite the large opposition in attendance and objections by Tharaldson Ethanol, who invoked a city charter law to require a supermajority vote to pass. NDSP offered a 15 year 100,000 dollar payment in lieu of annexation to stem criticism that the city would not receive any revenue from the plant.

The final zoning meeting was held on May 26th with the Casselton Township meeting to discuss the zoning change for the final southwest section of the project. The Project Passed 4-2 in a joint planning and zoning session and 2-1 by the township officers after the 3 hour joint meeting concluded. In the meeting the Township approved a much stricter conditional use permit adding an additional requirement that NDSP to cover the cost of road maintenance. The plat plan (the final engineering plan) still needs to be approved by the City of Casselton in order for NDSP to be ready to break ground. NDSP stated in a recent press release that they want to hold a groundbreaking ceremony on August 24th.

DRC members and members of the group formed to oppose the project, Casselton Citizens for Responsible Growth have not given up. The recent city council election changed the landscape slightly with two new city councilmen, the re-elected incumbent that voted against the project, and a new mayor the members of CCRG are talking with the new officials about their concerns and urging the new council to reject the plat plan and have organized a campaign to ban hexane, a hazardous material vital to the plant’s extraction process, within the city limits. CCRG is seeking legal advice to file suit against NDSP to stop the facility. Stay tuned for more updates on this campaign as the summer progresses.

DRC, WORC, IBAND, and R-CALF members meet with USDA FSA Administrator Zach Ducheneaux

DRC, WORC, IBAND, and R-CALF members met with USDA Farm Service Administration administrator Zach Ducheneaux on July 14th to talk about Beef and Soil issues affecting North Dakota. As the chief administrator of the FSA Zach talked about his plans to create a world that invests in producers. “Young people are not coming back to the farm because they know the struggle that they would inevitably face. We need to treat the farmers as asset managers and invest in them long term.” he stated. “I intend to fix that by working to change policy where I can give them the extra capital they need to invest back into their businesses because when producers get extra cash they can become economic engines in their communities.”

The coalition gave input with Ducheneaux about our specific issues that we face in North Dakota such as getting disaster relief for our state quickly and gave feedback about the effectiveness of federal programs regarding soil health. Ducheneaux stated that he is still willing to accept applications for aid from as late as 2019 if people have not yet received aid from any of the Crop, Covid, or Cattle relief packages made available in the last 3 years. He also made remarks that farm loan reform needs to be reformed and extended to give young farmers a larger security net.

Mr Ducheneaux concluded the call by saying that he will always be an email away if you have issues with your local FSA and that he’s going to make the most of the next two years he’s in this job. DRC and WORC will be meeting with him in the future.

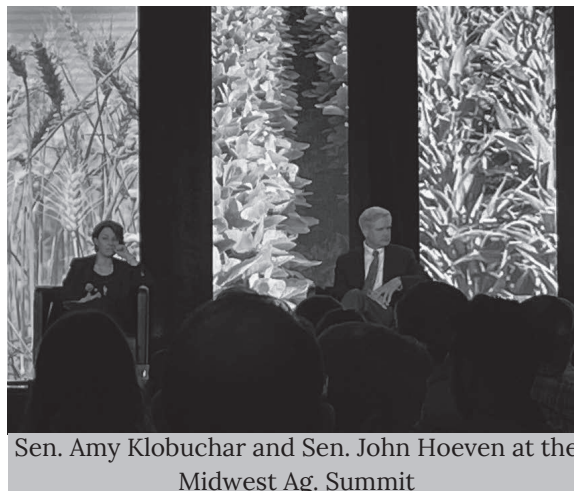
A Summary of the Midwest Ag Summit.

DRC members attended an agriculture summit put on by the ND Chamber of Commerce on June 28th. The purpose of the summit was to address ag issues impacting the tri-state area. Speaking at the conference were some fairly big names including Under Secretary of the USDA Robert Bonnie, Senator Amy Klobachar(D-MN), John Hoeven(R-ND), and Representative Michelle Fischbach(R-MN), FSA administrator Zach Ducheneaux, and a panel on Ag

innovation featuring officials from RDO Equipment, American Crystal Sugar, the ND Soybean Growers Association, and Microsoft. The topics were selected well and it was a well attended event overall. Despite all of this, it felt like the summit avoided talking about root causes of the issues facing farmers and ranchers in the region.

As the speakers talked about the challenges facing the ag industry such as climate change, labor shortages, inflation, war, and supply chain issues. Almost nobody in the room seemed to want to address where the majority of our problems come from, corporate greed and neglecting producers.

They spoke of automating farms because we have a labor shortage, but haven’t stopped to ask why we have a labor shortage. Senator Hoeven remarked that we have the best food system in the world and that Americans spend the least percentage of their budget on food anywhere in the world, but we ask how is this sustainable if we don’t pay our producers a living wage?



Sen. Amy Klobuchar and Sen. John Hoeven at the Midwest Ag Summit

They gushed about solutions making emergency relief funds easier to acquire for producers, but didn’t want to talk about why we are facing this climate crisis in the first place. Rep. Fischbach stated that we learned a lot with the avian flu crisis that has affect her state in the last few years causing 3 million birds to be put down, a drop from a crisis that happened in 2015 that led to the slaughter of 9 million birds in her state, but never once mentioned that we may need to rethink the factory farming model that is causing these crises to happen every 5-10 years?

Senator Klobachar talked about the struggles of inflation, supply chains being disrupted by the war in Ukraine, while mostly ignoring that corporations are recording record profits. When dealing with the Ukraine war Senator Klobachar commented that we

(Midwest Ag Summit Continued)

have a trade blueprint with the United States Mexico Canada Act (USMCA) that we can use to trade with other countries in the region, but never stopped to ask if free trade is really the most fair and equitable model out there?

Overall, the panels at the event offered solutions that don't disrupt the status quo. Automation, GMOs, Carbon Sequestration, and Technological solutions are hailed as the future of farming. DRC looks at these solutions as bandaids to cover gaping wounds. In our view we need to address the issues facing farmers at their roots.

How do we fight this messaging?

We need organizations and our members to come together to continue to pressure policy makers to address problems facing farmers and ranchers like promoting more regenerative agriculture, rethinking and eliminating the factory farm business model, and working with farmers and ranchers to help solve the climate crisis through incentivizing healthy soil practices that keep carbon in the ground. The 2023 farm bill will be arriving soon and we must work together to provide a clear message to our representatives. A system that invests in producers rather than corporate agriculture. A system that can add income from renewable energy sources and incentivise letting their less productive land go back into conservation. We need to dismantle our system of "go big or go home" agriculture by breaking up oligarchies and vertical integration in our industry and incentivizing local and regional production. Invest in our labor force by treating producers and workers fairly, paying them thriving wages and making sure that they have access to quality health insurance. Only then can we say that we're truly investing in the idea of a true family farm.

DRC members needed to organize on the 2023 Farm Bill

Former house representative Colin Peterson once joked to his fellow representatives not to sweat the farm bill too much, only 10 people really know what the bill means, and 9 of them live in North Dakota.

If you are one of those 9 people, or you simply want your voice heard, contact Sam Wagner at sam@drcinfo.com to learn more about helping with the 2023 farm bill.

Oil and Gas The Struggle for Comprehensive EPA and BLM Methane Rules Continues

Oil and gas operators across the U.S. waste over 16 million metric tons of methane every year. That translates into \$2 billion of wasted natural gas, more air pollution and lost revenues to landowners, royalty holders and tribes. Stopping this waste and pollution is overwhelmingly cost-effective, and both EPA and BLM are currently advancing federal rules that would require oil and gas operators to cut their methane emissions. Strong EPA and BLM rules to cut methane would carry significant benefits, especially for those living closest to oil and gas production sites.

EPA Methane

Last year, the Environmental Protection Agency (EPA) took an important step forward in reducing methane and other harmful air pollutants from new and existing sources in the oil and gas industry by introducing a proposed Clean Air Act (<https://www.epa.gov/newsreleases/us-sharply-cut-methane-pollution-threatens-climate-and-public-health>) to cut climate-warming methane and health-harming pollutants from new and existing oil and gas operations.

While this initial proposal includes important safeguards, like phasing out intentionally polluting equipment by requiring zero emitting pneumatic controllers, it does not go far enough to address pollution from unlit flares (vents) or require frequent enough inspections of sources.

In addition to finalizing their proposed rule, EPA must also work quickly to issue a supplemental rule that will enact a ban on routine flaring and eliminate potential loopholes that allow smaller wells with leak-prone equipment to forgo regular inspections. Doing so will be an important next step in addressing these sources of pollution.

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(Methane Continued)

EPA must also use the supplemental rulemaking to follow through on their commitment to community monitoring programs and work to incorporate emission monitoring results generated by community groups. This important step would allow the agency to accept and prioritize monitoring results from communities and ensure major leaks that are harming nearby communities are fixed more quickly. However, EPA seems to be concerned about how these programs would be used to aid with enforcing the rules.

Living near oil and gas wells is associated with higher risk of cardiovascular disease, impaired lung function, anxiety, depression, preterm birth and impaired fetal growth.

Air pollutants from the oil and gas supply chain also contribute to the ozone smog pollution that blankets the U.S. in the warmer months. Volatile organic compounds (VOCs) and methane vented and leaked from the oil and gas supply chain and nitrogen oxides (NOx) generated by gas flaring and engines at natural gas facilities react together in the presence of sunlight to form ozone smog. What's more, methane pollution from oil and gas facilities worsens climate change, resulting in hotter weather and stagnant air conditions that make ozone smog levels worse.

When inhaled, ozone smog can impair lung function, trigger asthma attacks, and aggravate diseases such as bronchitis and emphysema, in some cases leading to premature death. Children, the elderly, and people with existing respiratory conditions are the most at risk from ozone smog pollution.

Communities like Fort Berthold Reservation are disproportionately impacted by oil and gas development. Living in proximity to oil and gas wells is associated with higher risk of cardiovascular disease, impaired lung function, anxiety, depression, preterm birth, and impaired fetal growth.

Methane has more than 80 times the warming power of carbon dioxide over the first 20 years after it reaches the atmosphere. Even though CO₂ has a longer-lasting effect, methane sets the pace for warming in the near term.

Slowing today's unprecedented rate of warming can help avert our most acute climate risks, including wildfires and extreme weather.

Methane pollution from the oil and gas sector is accelerating the pace of climate change and harming the health of our families and communities and it is a problem that is only getting worse.

BLM Methane and Waste Prevention Rule

A new draft rulemaking for the BLM's Methane and Waste Prevention Rule is due to be released in the next month or so, after which a public comment period will; open. The BLM's Methane and Waste Prevention Rule is designed to curb natural gas waste and pollution on American public and tribal lands. The BLM rule applies to both new and existing wells within the BLM's jurisdiction, such as those on Fort Berthold Reservation.

DRC and POWER have been working for better and more comprehensive rules since POWER became an affiliate in 2014. We are hoping that the rules that come out this time are better able to stand the test of time...as well as the test of litigation. Here's a brief timeline for this rule:

- November 18, 2016, the Obama Administration BLM issued a final rule concerning, among other things, the waste of Federal and Indian gas through venting, flaring, and leaks, the 2016 Methane Waste Prevention Rule. **(This legislation would not have been passed if POWER had not convinced the MHA Tribal Business Council to write a letter to H.Heidtkamp expressing their support of the rule.)**
- April 4, 2018, due to industry petitions for judicial review of the 2016 rule in US District Court of WY the court stayed implementation pending the Trump Administration BLM's voluntary review of the rule. WORC and co-plaintiffs defended the 2016 rule in the WY court, but a decision would not be made as long as the 2018 rules were being written or in effect.
- Sept. 28, 2018, the Trump Administration BLM issued a final rule substantially revoking and replacing the 2016 rule.
- September 2018, WORC and co-plaintiffs filed in the US District Court for the Northern District of California challenging the 2018 rule revision
- July 15, 2020, the Northern District of CA court ruled that the Trump Administration's 2018 Revision Rule be vacated due to violations of the Administrative Procedures Act.
- July 21, 2020, the U.S. District Court for the District of Wyoming lifted the stay in the case challenging the 2016 Waste Prevention rule, to consider whether the 2016 Rule was legal and enforceable. **(Continued on Page 11)**

(Methane Continued)

- October 8, 2020, the District of WY court found that the BLM exceeded its statutory authority and acted arbitrarily in promulgating the 2016 Waste Prevention Rule. The court ordered that the rule be vacated, except for certain severable provisions.

With both the 2016 and 2018 BLM rules struck down by District courts, Biden 's Department of the Interior (DOI) communicated to the WY court that they intended to write new rules, rather than appeal the Wyoming Court's decision. We and our co-litigants reluctantly agreed to not appeal as well, for fear of bad precedent in the 10th District or Supreme Court. Instead we have decided to pressure BLM to follow through on its commitment to have strong, legally defensible waste (flaring) prevention language in the upcoming rulemaking. The case is in administrative closure, and DOI requests regular extensions from the court every few months. WORC and co-litigants (including DRC/POWER) retain the right to object to further administrative closure and appeal the case. BLM is expected to release a new draft methane waste rule in the summer or fall 2022.

Flaring, venting, and leaking methane from oil and gas development not only contributes to climate change and has serious health implications for nearby populations. It's also a waste of taxpayer money and resources. While oil and gas companies are reaping record profits, the American people are seeing the fastest-rising inflation rate since 1981. Energy sources, including gasoline, have become less affordable. A compounding factor to this economic setback is the loss of methane through wasteful practices and unchecked equipment. Studies like a recent report from [Rystad Energy](#) confirms that there are widely available and low-cost solutions to avoid venting and flaring.

Our members want an end to routine venting and flaring which will benefit taxpayers, the health people living near flares and vents as well as the environment. North Dakota flares more than 7% of its natural gas which is more than 7x the amount flared in either New Mexico, Colorado or Texas. North Dakotans should not waste this natural resource costing us money and the wellbeing of our health and our environment.



DRC and POWER members have been actively working to make sure EPA and BLM methane rules are strong and long lasting. By speaking to decision-makers, submitting comments, LTEs, and national op-eds we are demanding that people are put over profits. Our members are tired of seeing decades of hard work vanish because these and other rules are treated like a political football rather than the urgent health, environmental, and climate crisis emergency that they are. It's time for every one of us to demand that the people and our environment are the top priority of those that represent us in government.

DRC Joins Legal Challenge of Biden's Return to Lease Sales on Public Lands

Shortly after taking office Biden signed a ban on federal lease sales (although, tribal lands were exempted due to pressure from tribal leaders including Mark Fox Chairman of MHA nation on Fort Berthold Reservation). That ban was then challenged by Industry and a Trump appointed judge in US District Court for the Western District of Louisiana placed an injunction on the ban establishing that the 10 states challenging the leasing ban "...would suffer injury from the pause on new oil and gas leases." Biden's Department of the Interior (DOI) said it would proceed with new leases while the District Court's decision is being appealed.

DRC is the lead plaintiff on a lawsuit challenging the Biden administration's resumption of oil and gas leasing on public lands. The lawsuit challenges BLM's approval of oil and gas lease sales across 128,510 acres of public land in Colorado, Montana, **(Continued on Page 12)**

(Public Lands Lawsuit Continued)

Nevada, New Mexico, North Dakota, Oklahoma, Utah and Wyoming.

The lawsuit cites a failure of the U.S. Interior Department and BLM to uphold their responsibility under the Federal Land Policy and Management Act, which requires Interior to prevent “permanent impairment” and “unnecessary or undue degradation” of public lands from oil and gas development.

Concern that limiting lease sales would inhibit US fossil fuel production, just as gas prices are high (though we have seen a steady decrease since the middle of June) is a false flag. Around half of the leases that were sold before Biden’s ban have not been developed, so more leases would not increase production. Increased supply is not what the industry wants, low supply and high prices are. More lease sales would lock us into decades more extraction when it is well understood that fossil fuel production and use contributes to climate change. We are fast approaching the tipping point of 1.5 degrees Celsius and though Biden has called for science to be applied over the interests of industry, this is not that.

Climate change is affecting everyone around the globe but frontline communities, who are largely marginalized communities, get doubly harmed. First those communities, like MHA nation, suffer the effects of extraction, transportation, refining, etc on their health and their environment. Secondly, frontline communities are hit by extended droughts, fires, loss of habitats and biodiversity directly associated with fossil fuel extraction.

Strong, forward looking leadership is what’s required. There are pathways to more sustainable, less harmful energy production but it requires a real commitment to taking away handouts to fossil fuel producers and instead listening to science and making sure that the health and well-being of our people and our planet are safeguarded rather than the profit margin of the oil and gas industry. These public lands belong to the people and it’s high time for them to be protected.

National Environmental Policy Act Rulemaking Hits a Snag

Since it was established by the Nixon Administration in 1970, the National Environmental Policy Act (NEPA) has required federal agencies to engage in a review process to identify significant environmental, economic, social or health impacts a federal project may have before decisions are made and construction begins. It is also an important mechanism for civic engagement. This is particularly true in Indian Country as NEPA is often the only way tribal citizens and governments can get information and provide input regarding projects on tribal land.

Blaming it for slowing down projects with “red tape” the Trump Administration gutted the long standing rule. After taking office President Biden directed the White House Council on Environmental Quality (CEQ) to begin the process to restore NEPA. In April of 2022, “Phase 1” NEPA rulemaking was issued. Phase 1 is meant to restore the most critical pieces removed by the Trump Administration including consideration of climate change and the cumulative impacts that a project might have on communities. A draft Phase 2 rulemaking will hopefully be released before the end of 2022. It will work to improve the federal environmental review process.

Just last month, in July, a joint resolution of disapproval under the Congressional Review Act (CRA) was introduced. A CRA is a law enacted by Congress under House Speaker Newt Gingrich. The law empowers Congress to review new federal regulations issued by government agencies and to overrule a regulation. If a rule is repealed through a CRA, the rule cannot be reissued in the same form unless another law passed by Congress specifically authorizes it. Politicians play politics while real people and our environment continue to get harmed.

It is unlikely that this CRA will pass although folks on both sides of the aisle and some well known reporters have been bad mouthing NEPA for delaying critical projects. The truth of the matter, as shown in multiple studies conducted by the Congressional Research Service, is that local/state agency priorities, lack of funding, and changes in scope are some of the

(Continued on Page 13)

(Rulemaking Hits Snag Continued)

biggest impediments to seeing projects started and completed.

NEPA was not perfect but as mentioned, it is the main mechanism for tribal citizens and governments to weigh in on projects in Indian Country. As such, POWER has long been a champion of NEPA and thorough NEPA review. Better communication with people, particularly those with poor or no internet access, those who have a language barrier is needed.

There are real improvements to be made to NEPA but now, we are fighting to keep this essential tool for civic engagement and environmental protection from being completely undermined. If the CRA for Phase 1 passes, it will hurt Phase 2's chances as well as other important agency regulations.

Coal Country

Landowner Petition Effort

North Dakota landowners successfully engage County Commissions to oppose eminent domain for the Summit Carbon Solutions Pipeline:

Origins of the Organizing Effort:

The amazing grassroots effort by North Dakota landowners should not go unnoticed. As word continues to spread about the Summit Pipeline across the state—landowners are taking action to oppose eminent domain for the project within their own communities. When this project first came to light several months ago there were many uncertainties regarding how landowners could successfully take action to oppose this project. Summit at the time (and currently) had yet to file a permit with the Public Service. After closely monitoring the project and collaborating with landowners, organizers, and allies in other affected states it quickly became clear that action at the local level in the interim of the permit being filed would be the best course of action. It also became clear that crafting a petition focused on preventing eminent domain would garner the broadest support statewide.

How has DRC helped with this effort:

In close consultation with landowners regarding what would most likely gain traction at the local level—DRC drafted petition language that has been passed within each County the pipeline is trying to cross. DRC has been involved in educating landowners about all aspects of the project so that landowners have more information when voicing their concerns at these County Commission Meetings. Ahead of the meeting in Burleigh County, where the DRC office is based, DRC was on the ground collecting signatures and connecting landowners who are collecting signatures within Burleigh County to information about the project.

Concrete Petition Actions:

Landowners have done amazing grassroots work collecting signatures in Richland, Sargent, Dickey, and Burleigh County. In the first 3 mentioned counties, landowners were able to collect between 130-160 signatures to present to the commission—a truly remarkable feat given the rural nature of these areas. In Burleigh County, more than 300 signatures were presented to the commission. From there—landowner concerns were voiced and conveyed to the various county commissions with an official spot on the meeting agenda. The result? A unanimous vote of 5-0 in each of these county's in opposition to eminent domain for the Summit Pipeline. This is due to tireless efforts from hardworking landowners throughout the state who feel unheard and cast aside by the Burgum Administration.

Landowners across the pipeline route are staying united and looking out for each other. It's been amazing to watch people take action within their own communities. DRC is proud to spread awareness about this project and DRC is also proud to stand up for the rights of North Dakota's hardworking farming and ranch communities. Whenever the permit is filed here in North Dakota we will be geared up and ready to go. If you are a landowner along the proposed route and would like to be connected to legal representation, you can learn more and sign up at:

<https://www.northdakotaeasement.org/>.

DOUG BURGUM'S CLIMATE CRISIS PLAN: WILL IT HELP? IS IT GOING TO WORK?

*Contributed by DRC member Madeline Luke
(Originally published in the High Plains Reader on
June 18th, 2022)*

Sonja Kaye, of CLEAN in Fargo gave the third of four talks on climate change issues specific to North Dakota for the "What in the World Series," in Valley City on April 5.

While the topic of the event was Project Tundra, a carbon sequestration project proposed to operate at the Milton Young Coal Station, Sonja's information introduced the audience to the science, finances, and possible limitations of this technology which is the cornerstone of Gov. Burgum's response to the climate crisis.

CO2 is the main but not sole greenhouse gas causing global warming. The burning of fossil fuels is a major source of excess CO2 in the atmosphere.

Coal-fueled electrical power plants were a major source of power in the last century, but they produce the most CO2 of all the fossil fuels. Measures necessary to reduce pollution of all kinds from burning coal, abundant supplies of cheaper and cleaner gas, and high costs of maintaining aging units have led to the closure of many coal-generated power plants in the U.S.

N.D. state leadership, however, has decided to support the local coal industry with a favorable regulatory framework and generous taxpayer subsidies. Kaye states that Carbon Capture and Sequestration (CCS) is a false solution to the CO2 problem as well as a bad financial investment for Minnkota Power, citing:

CCS Is the Worst Option To Decarbonize Electricity

Coal extraction itself uses fossil-derived fuels; one ton of ND coal produces 11.2 cubic feet of methane (25 times more potent than CO2). The sequestration plant itself requires an enormous amount of steel, again requiring fossil fuels.

The plant produces 6 million metric tons of CO2, yet the plans are to capture only four million tons – even though the stated target goal is 90% capture.

Two projects (PetroNova in Texas and Kemper in Mississippi) closed after operating unsuccessfully. Plants in Canada, Australia, and Wyoming are reaching between 1.8 % and 79% of capture targets.

In the Q and A period, Kaye stated that no carbon capture plant has reached its target goal to date.

CCS Is Not Environmentally Friendly

The CO2 does not disappear. The estimated 4 million tons would require a 6-mile x 6-mile x 1-meter-thick volume of empty space (pore space) every year. Depending on the amount of sand in the injection space the required volume would increase by three to tenfold. If the pore space does not leak, how long will there be suitable pore space? Leakage will relieve the space problem, but Operation Tundra is but one project and what might be safe at 100 tons may not be at 48 million tons.

Sonja Kaye states that industry has thus far not addressed the possibilities of leakage of pressurized CO2 at the injection site, into adjacent pore spaces, nor the possibility of the caprock, the layer which is supposed to keep the pressurized CO2 in place, cracking or heaving.

CO2 sites will need to be monitored for leaks long after the project is terminated, as it takes millennia for CO2 to solidify. N.D., along with Wyoming, has been given the sole authority to regulate CO2 injection wells and this responsibility has been given to Minnkota, which has no experience in this field.

High Levels of CO2 Can Acidify the Water Table

Coal-burning already produces heavy metal-containing ash; CCS adds 300-1000 tons of amine solvent to the hazardous waste stream.

High levels of CO2 can be fatal and the process of CCS, involving chemicals and pressure, can be poisonous, explosive, and corrosive. A pipeline rupture at Sartartia, Mississippi sent 49 people to the hospital. Pressurized CO2 releases rapidly in a

(Continued on Page 15)

heavy powder that displaces air, making internal combustion engines inoperative; and freezes steel to a point so cold that it becomes brittle and breakable.

CCS Impedes the Development of Renewable Energy and Lower-Carbon Options

Kaye states that the new electrical grid has access to more flexible and lower-cost ways of generating electricity, but companies heavily invested in coal plants resist changes to preserve the value of their existing assets.

The Lignite Energy Council spent \$1.2 million promoting coal in 2019 alone. Their narrative is that coal is necessary for baseload generation, more than 30% renewables is impossible, and the grid is not reliable without coal.

However, the grid problem in Texas last winter was not because of wind and solar failure, according to various energy officials, but rather transmission line capacity, heavy energy use, failure to weatherize facilities, and coal plant outages.

South Australia went for a week in January 2022 using only wind and solar.

In 2021, the Clean Sustainable Energy Authority (CSEA) was created and given the authority to bypass the legislature when giving funds from the Legacy Fund to spend on energy projects. Voting members are the lieutenant governor, the Western Dakota Area Energy Association, four from the fossil fuel industry, and two from the renewable sector with one representing agriculture.

CCS Makes Electricity Less Affordable

Energy-requiring steps in CCS are: Flue gas pumped to scrubber to remove impurities and cool; flue gas pumped to the absorber where amine absorbs CO₂; amine-CO₂ complex pumped to regeneration unit where heat strips CO₂; amine is pumped back for reuse; CO₂ is pressurized for storage (between 1500 and 2100 PSI); pressurized CO₂ is pumped 1-2 miles underground, under pressure.

Estimates are that 30 to 50% of power from the plant will be needed for CCS; during winter peak needs, CCS will be stopped. Minnkota has received another \$5.5 million to study this problem in

addition to the \$50 million already spent on the completed injection well.

Kaye estimates that over the next 12 years, this will be a \$4 billion project, including \$1.45 billion for the construction cost.

What else could \$1.45 billion buy? The Milton Young plant generates 735 megawatts (MW) of electricity. \$1.45 billion would buy 1000 MW of wind, 1205 MW of gas, 1460MW of solar OR 100-200 MWH of battery storage

Why Do This??

Minnkota thinks this is a risky proposition and will not fund more than 10% of the project. Bank of North Dakota, Bank of America and Goldman Sachs have all declined. Minnkota has asked the CSEA for a \$150 million loan from the Legacy Fund.

The Answer? The Tax Credit for Carbon Sequestration (Section 45Q), called 45Q tax credits. Federal tax credits will pay \$50 per ton to sequester CO₂, and this may go up to \$85 per ton. And this is the beginning of the story for the State of North Dakota Summit Carbon Solutions project.



**Good luck to all of our
farmers
for the upcoming
harvest!!**

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