

Dakota Counsel

SOUTH HEART ON LIFE SUPPORT

A South Heart coal mine and coal-fired power plant seem less likely after Great Northern Power Development LP withdrew its air quality permit application this month.

Other proposed plants in southwestern North Dakota also appear unlikely move forward.

"We have been skeptical that the plant would be built because of its proximity to Theodore Roosevelt National Park," said Neil Tangen, a South Heart area rancher and member of Badlands Area Resource Council.

"We figured that concerns about impacts to a Class I airshed would be just too great."

The proposed 500-megawatt South Heart plant has garnered national attention because of its proximity to the park. TRNP visitors surveyed said that the vistas are one of the top three reasons to visit.

"Frankly," stated Tangen, "Any disruption or impact to visibility and air quality in the park, our state's number one tourist attraction is unacceptable."



The National Park Service last month also voiced its opposition to a pending air quality permit for a proposed coal-fired power plant near Gascoyne.

The Park Service wrote to the state Health Department July 26 saying the 500-megawatt power plant about 55 miles from the TRNP's South Unit would impact visibility at the park up to 19 days of the year.

Citing its finding of "adverse impact," the Park Service asked that Westmoreland, the applicant, "investigate ways to reduce its emissions further and to see other ways to mitigate its impact on the park."

The U.S. Environmental Protection Agency told the state several years ago that it was over the limit of allowable sulfur dioxide levels in TNRP as well as other pris-

See SOUTH HEART p 5

HOUSE VOTES RENEWABLES, LANDOWNER PROTECTION

The U.S. House of Representatives passed a landmark energy bill August 4 that included a renewable electricity standard (RES) and new protections for Western landowners in the path of oil and gas extraction.

The vote marked the first time the House has passed an RES. The Senate has done so three times.

Under the requirement, utilities would have to obtain 15% of their power from a combination of energy efficiency and renewable sources such as wind energy by 2020.

Representatives passed the RES as an amendment to the committee bill by a vote of 220-190, and the final bill passed, 241-172.

Rep. Pomeroy voted in favor of both the amendment and the final bill.

The provision would reduce global warming pollution by 180 million metric tons per year by 2030—the equivalent of taking more than 29 million cars off the road, according to the Union of Concerned Scientists.

The bill also includes a package of landowner protections long advanced by DRC and the Western Organization of Resource Councils.

A key provision requires notification of surface owners prior to federal leasing.

The measure also includes bonding for surface reclamation and water replacement—something long demanded by federal coal mining law.

"This bill helps level the playing field for landowners as they deal with oil and gas operators in the West," said Donley Darnell, Wyoming, chair of WORC. "It's an encouraging step in the right direction."

The bill now faces reconciliation with a Senate bill passed earlier this year.

The Dakota Counsel is published six times a year by Dakota Resource Council, a nonprofit, grassroots activist organization. The mission of Dakota Resource Council is to form enduring, democratic local groups that empower people to influence decision-making processes that affect their lives. DRC is committed to preserving sustainable agriculture and natural resources.

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THE RAZOR'S EDGE

By DRC Board Chair Dean Remboldt

Worldwide weather extremes have been well outside the historical norm, according to the United Nation's World Meteorological Organization, and are a precursor to much greater weather variability as global warming transforms the planet. Climate change projections indicate it to be very likely that hot-cold extremes, heat waves and heavy precipitation events will continue to become more frequent.

In July a monsoon in South Asia dropped over 30 inches of rain in one day. Germany had its wettest May on record, and April was the driest there in a century. England and Wales reported the wettest May to July since record keeping began in 1766. Parts of the United States have been hit with record rains and flooding this summer yet many places that usually receive adequate moisture has been in drought.

Climate change is starting to take its human toll and the social ramifications brought on by the carnage. Climate change, like war, displaces people, and we need to be ready for the worldwide social upheaval.

We need to come together as a nation and stop the "me me me" attitude that is so prevalent in this country the last few years. It was appalling to see the "blame the victims first" and the backlash that was created by the have/have not groupthink reflected in the media following the wake of Hurricane Katrina. We still hear people spewing their ignorance and selfishness almost two years later.

One question in my mind is: What part will the polluters play once they have been forced to acknowledge their footprint in regard to climate change? Will they continue to exploit Mother Earth and its people, or will they step up to the plate and willingly offer changes needed to make non-polluting energy a reality?

The socioeconomic future can look bright if we start making changes toward a non-fossil fuel economy. Many studies report that the job growth can be tremendous and the resulting efficiency brings many financial rewards.

In North Dakota we are in a good position to make a positive contribution toward a clean energy economy. If the projects to use wind power to make hydrogen work out as expected we could put fossil fuels behind us as an energy source and start a growth period in this state that would be akin to the industrial revolution. As we move forward with this industry we must make sure that the capitol investment comes from within North Dakota to take full advantage of the economic rewards.

The oil and coal industries, through their well-financed disinformation campaign, are trying to foster opposition to change, but speaking truth to power will overcome disinformation every time... even in the power industry.



AG & TRADE ROUNDUP

New Alfalfa Hotline

Alfalfa producers can now find out how close to home Roundup Ready alfalfa has been grown by calling 1-866-724-6408 toll-free.

The U.S. Department of Agriculture provided the number August 6 under court order by U.S. District Court Judge Charles Breyer.

Breyer's order said notice must be given to alfalfa farmers who live within the same county or an adjacent county to Roundup Ready alfalfa farms.

The order stemmed from Breyer's decision earlier this year that USDA was arbitrary and capricious when it failed to conduct an environmental impact study prior to allowing Roundup Ready seed to be sold. The possible contamination of non-Roundup Ready alfalfa was one of the reasons.

DRC joined the Center for Food Safety and a number of other groups and individuals in bringing the suit that led to Breyer's decision.

"The introduction of genetically engineered alfalfa poses the potential of destroying our industry," said Phil Geertson, a Washington alfalfa seed grower and party to the lawsuit.

"Even the perception of contamination can create significant problems in our ability to market our seeds."

Breyer officially vacated the USDA decision to deregulate Roundup Ready alfalfa, but it was legal to plant the genetically modified crop until March 30.

Monsanto filed an appeal of Breyer's ruling August 15.

House Passes Farm Bill

The U.S. House of Representatives passed a farm bill July 27 that could have been worse—but also a good deal better.

The best news in the bill for DRC is that it does not gut country-of-origin

labeling and actually improves the provision by allowing the U.S. Department of Agriculture to audit retailers and suppliers.

On the other hand, the bill has no competition title and does nothing to prevent the lion's share of Environmental Quality Incentives Program money from going to factory farms.

On the plus side, the bill did not include Section 123, which House Agriculture Committee Chair, Rep. Collin Peterson (D-MN) advocated.

Section 123 would have banned state and local governments from controlling any seeds or foods (such as genetically modified crops) approved by USDA.

The Senate is expected to take up a farm bill after the August recess.

Cattle Disease Shell Game

WORC's Trade Team urged federal trade administrators July 16 to tighten controls on diseased livestock entering the United States.

The letter, addressed to U.S. Trade Rep. Susan C. Schwab, called for a halt to a kind of shell game that allows U.S. trading partners to transship to the U.S. livestock from third party countries with major disease problems.

WORC also urged Schwab to oppose USDA's efforts to declare "disease free" regions if it "weakens animal health or food safety standards concerning importation of cattle or beef into the United States."

The letter cited Argentina and Brazil as examples of large beef producing countries with disease problems. The United States currently prohibits beef imports from these countries, but WORC said U.S. ranchers are concerned about their ability to "pass disease on to domestic herds or contaminate our food supply" through transshipment.

WORC cited the recent purchase of Swift and Company, the third largest U.S. packing company, by a Brazilian firm, indicating that countries like Brazil "are taking full opportunity of trade liberalization to move their potentially tainted meat into larger markets."

The letter also criticized multinational corporations that "search the world to find the lowest cost inputs and lowest paying jobs so they can sell their product back into the U.S. for an exorbitant profit."

RIP Fast-Track

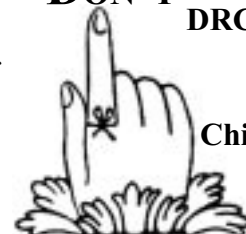
Presidential Trade Promotion Authority, or "fast-track," quietly expired June 30 without a Congressional vote.

Fast-track aided the passage of the North American Free Trade Agreement and other international trade deals by limiting Congressional debate on them and disallowing Congressional amendments.

With public and Congressional opposition to U.S. trade policy growing over the past few years and the trade deficit at an all-time high, free trade boosters in Congress chose not to bring fast-track to a vote.

However, fast-track remains in force for deals that have already been negotiated but not yet approved by Congress, including bilateral agreements with Peru and Panama. A showdown over one or both may come later this year.

DON'T



FORGET

**DRC's Annual Meeting
October 27
at the
Chieftain Conference
Center
in
Carrington**

WILL BIG STONE SINK?

Big Stone II offers North Dakota nothing except the risk of rapidly rising utility bills, DRC told the state Public Service Commission at “pre-prudence” hearings June 26-28.

The proposed 630-megawatt South Dakota coal plant “exposes North Dakota ratepayers to an enormous downside when Congress passes carbon regulation,” said one of DRC’s attorneys, Carrie LaSeur of Plains Justice, in her opening statement.

“Without getting into any numeric costs or quantified values, we can show a strong probability that carbon costs will be part of this plant’s future,” said LaSeur.

The question of “numeric costs or quantified values” hung over the entire hearing, since a 1995 North Dakota law specifically forbids the PSC from considering them.

This law prevented DRC expert witness David Schlissel from presenting the full conclusions of his study of Big Stone II’s electricity rate impacts.

North Dakota customers of Montana-Dakota Utilities and Otter Tail Power, two of the largest partners in the Big Stone project, would help shoulder those costs.

The project has obtained all necessary permits from South Dakota, but in Minnesota no final decision has been made.

An administrative law judge recently wrote an opinion in favor of the plant, but the state’s Public Utilities Commission

has yet to rule. Minnesota’s Attorney General is also opposed to Big Stone.

MDU and Otter Tail don’t need North Dakota permits because they won’t be mining or building in North Dakota, but are seeking a determination of “pre-prudence” from the PSC to help secure financial backing.

The PSC could grant prudence for all or part of the utilities’ participation in the plant, ask for modifications in their plans for serving North Dakota customers, or simply deny the prudence application.

PSC Commissioners and staff showed interest during the hearing in the fact that Big Stone provides no North Dakota jobs, coal taxes, or coal royalties.

They also raised questions about the reliability of coal supply. Big Stone II would burn coal from the Powder River Basin.

The plant’s impact on North Dakota’s ability to develop its wind energy resource also came up.

The plant “stands more or less in the transmission pathway between the country’s best wind resource...and markets to the southeast,” noted La Seur.

“Common sense says that if your product is at point A, the market is at point C, and someone manages to produce the same produce in large quantities at point B, you’re going to lose out,” she added.

A decision by the PSC is expected by early September.

ND HOME OF DIRTY POWER

Five of the seven North Dakota coal-burning power plants rank among the 50 dirtiest in the nation, according to a national report released July 26.

The report, “Dirty Kilowatts,” by the Environmental Integrity Project (EIP), Washington DC, ranks plants for emissions of nitrogen oxides, mercury, sulfur dioxide and carbon dioxide.

“This report is the ‘canary in the coal mine,’” said Dean Hulse, Fargo, of DRC’s Clean Electricity Committee. “It points out serious problems that require immediate attention.”

The EIP report notes that power plants that provide electricity to run our homes, businesses, and factories account for 40 percent of carbon diox-

ide, roughly two thirds of sulfur dioxide, 22 percent of nitrogen oxides, and roughly a third of all mercury emissions in the United States

Sulfur dioxide and nitrogen oxides are pollutants that trigger asthma attacks and contribute to lung and heart disease, while mercury, a neurotoxin, is harmful to children and developing fetuses.

Power plants are also major contributors to global warming, emitting billions of tons of carbon dioxide (CO2) each year.

“In addition to the pollution discussed in this report, the mining of coal damages land and water and moves farmers and ranchers off the land,” said Hulse.

A recent report by the Union of Concerned Scientists says that if a national standard were enacted requiring 20% of the nation’s electricity to come from renewable sources by the year 2020, North Dakota could gain 3,680 new jobs, \$617 million in new capital investment, \$46 million in new income for farmers and rural landowners and \$10 million in new local tax revenues.

Consumer savings on electricity and gas bills would add up to \$22 million by 2020 and \$47 million by 2030.

“The waste, in terms of missed economic-development opportunities, is staggering,” said Hulse. “Our rural communities are languishing while state politicians strive to resuscitate a dinosaur.”

WATER RAID OK'D

The state can give water well permits to oil companies on the basis of an oil lease, an administrative judge ruled in July.

Judge Allen Hoberg's decision cleared the way for the State Water Commission to give 21 water well permits in McKenzie County to a company responsible for the worst saltwater spill in state history.

"In the future, this decision will probably be seen as one of the most damaging water decisions ever made for the future availability of water in western North Dakota," stated Tom Irgens, Springbrook, of DRC's Oil and Gas Task Force.

The company applying for the permits is Zenergy, which caused the 2006 contamination of Charbonneau Creek, also in McKenzie County.

The ruling upheld the state's contention that the proposed use of water is beneficial to the state of North Dakota, and that there is no proof of injury to the parties involved.

"For the state to say that this is a beneficial use of water is ridiculous. This is just a shameful waste of our most scarce

and precious natural resource," said Irgens.

Another implication of the ruling is that an oil lease itself confers enough "interest" in land to allow the Water Commission to grant a water right, even if the landowner has not specifically agreed to allow a water well to be drilled.

"We will continue to be concerned that water levels will be diminished and the primary water rights of those in the area will be damaged," said Irgens. "The saddest part is, by the time there is proof of damage to the water, it will be too late."

Zenergy first applied for the water permits in May 2005. It would use millions of gallons of water annually for the dilution of salts in produced oil.

One bright spot in the ruling was that Hoberg upheld DRC's standing in the matter.

"DRC has organizational standing because its members would otherwise have standing to request a hearing in their own right," ruled Holberg.

Standing would allow DRC to challenge Hoberg's ruling in an appeal.

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SOUTH HEART ON LIFE SUPPORT, from p.1

tine areas of the state, designated as Class I airsheds. That dispute has not been fully resolved (see page 6).

A second Gascoyne permit application, for a 175-megawatt coal-fired plant, will expire by the end of August unless Montana-Dakota Utilities acts on a previously-granted extension.

A lack of customers may also have factored in the decision to pull the South Heart air quality permit application.

The Lignite Energy Council's General Counsel, Sandi Tabor admitted July 31 before the interim legislative Energy Development and Transmission Committee that neither of the larger proposed plants has customers for its electricity.

On the other hand, there are nearly 200 megawatts of wind on line in North Dakota and many hundreds more in the planning.

"Clearly, wind energy is in demand, and coal is not," said Tangen. "People are increasingly becoming aware of how their electricity is produced, and they are demanding clean, renewable sources."

HOME -GROWN

About 40 attended a workshop on small-scale biodiesel production, hosted by McKenzie County Energies and Taxation Association (MCETA) and DRC, June 28 during the County Fair in Watford City.

The event included actual demonstrations on oil seed screw pressing and small-scale production by Curt Rangeloff, Tappen, and Ron Strand, Abercrombie, respectively.



John Nowatzki, NDSU Extension Service, Fargo, gave a presentation on small-scale biodiesel processing. Andrew Swenson from the same office spoke on biodiesel usage and effects on machinery, storage and emissions.

EMINENT DOMAIN IMMINENT?

The state should hold off on giving a private pipeline company the right to condemn land, DRC told the state Public Service Commission in hearings July 23 and 24.

TransCanada has the eminent domain petition pending before the PSC for its proposed Keystone Pipeline, as well as a petition for the approval of its route.

The pipeline would carry Alberta tar sands oil through eastern North Dakota on its way to an undisclosed out-of-state refinery. The affected area in North Dakota lies along a fairly straight line running north and south from Valley City.

Tar sands oil is heavy, lower quality oil that must be extracted in strip-mining fashion and constantly heated to keep it flowing through the pipeline. Significant Canadian opposition has arisen to tar sands extraction, and now opposition is emerging in South Dakota, Nebraska and other states.

TransCanada's will be the first high-profile case under North Dakota's new eminent domain law, which voters enacted in the 2005 election as a state Constitutional amend-

The law denies eminent domain to any private entity—except a “public utility” and “common carrier.”

DRC members don't see how pipeline designed without access to North Dakota oil or refining capacity can be considered a “common carrier.”

In testimony at the hearings, DRC members and legal counsel urged the PSC to delay action until at least after the draft federal Environmental Impact Statement is released. EIS scoping meetings were held last year, but the draft EIS has not yet been made public.

The biggest concern for landowners along the line is the possibility of a spill, which could contaminate both the land and water supply. Even without a spill, farmers along the route worry that keeping the pipeline at 72 degrees as required to move the oil may keep the soil too dry to grow crops.

The PSC has closed the hearing on “public convenience and necessity,” which would confer eminent domain. The siting and routing permit hearing will take place September 5 in PSC chambers in Bismarck.

ment.

ENERGY BURSTS

➡ **Coal stock sinking.** Citibank downgraded coal stocks July 18 for reasons that North Dakota is forbidden by law from considering (see p. 4).

The financial giant cited the industry's failure to address climate change and charged it was delaying advanced coal technologies with carbon capture.

Said Citibank, “prophecies of a new wave of coal-fired generation have vaporized, while clean coal technologies...remain a decade away, or more.”

Citibank also predicted that “election politics are likely to turn progressively more bestial to coal,” and said that coal's national image was becoming the “landscape-disfiguring global warming bad guys.”

➡ **Allies on air quality.** DRC and numerous national and regional allies submitted comments to the U.S. Environmental Protection Agency August 6 to

keep the agency from effectively destroying a key federal air quality protection law.

The new rules proposed by EPA June 6 would have “drastic consequences,” illegally rewrite federal statute, represent “extreme deviations” from accepted rules, and allow significant deterioration of air quality to go unchecked, according to the comments.

The rules also represent a significant deterioration of the federal agency.

Eight years ago it was urging the state to adopt a new plan to come into compliance with federal Prevention of Significant Deterioration (PSD) law.

Now it wants to set up as the law of the land the North Dakota “solution” whose sole purpose was to avoid reducing emissions by measuring PSD differently. The solution took 14 drafts before the state found one that would work.

The new proposal “reflects virtually all the deviations from longstanding

policy” set up by North Dakota. DRC began fighting the “North Dakota plan” over five years ago and now has many allies including national environmental groups like Environmental Defense, Natural Resources Defense Council, Sierra Club and the National Parks Conservation Association. If EPA approves the rules, legal action is likely.

➡ **Kidwind.** DRC and Missouri Valley Resource Council co-sponsored the fourth KidWind teacher workshop to be held in North Dakota, August 7-8 at Bismarck State College with about 25 teachers attending.

The college and North Dakota Farmers Union and Bismarck State co-sponsored the event, and funding was provided by the state Department of Commerce.

Kidwind workshops have trained more than 1100 teachers around the nation.

ANOTHER SIDE OF THE PIPELINE STORY

Last month, Tom Dennis of the Grand Forks *Herald* wrote an editorial about the Keystone pipeline in which he pointed out the favorable aspects of such a line, such as giving revenue to landowners, providing needed oil for the country and reducing our dependency on Mideast oil, all very true (“N.D. should react, not overreact, to pipeline,” Page 4A, July 26).

He mentioned that there are some landowners objecting to the line, that they are being assisted by the Dakota Resource Council, also quite true. The landowners are concerned about the damage to a scenic part of the state, possible harm to cropland and the unpleasant thought of eminent domain being used.

In all this discussion, one issue about Keystone was left out, perhaps because it isn't about the line itself but about the oil that the line will transport. I think readers should know about that issue.-

The crude oil being transported comes from the oil sands of Alberta. There are two methods for extracting this oil. One way is by drilling down through this very thick mixture, called

by **Bob White**



bitumen, forcing high-pressure steam down the shaft to melt the oil from the sand. This process requires great quantities of water for the steam and great quantities of natural gas to heat that water into steam. This process emits a lot of greenhouse gases into the air, and of course, there will be more greenhouse gases when that crude oil is refined and then burned.

The other process uses huge power shovels to dig up the bitumen, load it on some of the biggest trucks in the world, then haul it to a plant that uses huge amounts of water and natural gas to separate the oil from the bitumen. After extraction processes the crude oil, it must be heated along the pipeline to 72 degrees so it will flow. Thus, all along the pipeline, there will need to be heat added to keep the oil at the required temperature. Some type of heater, electric or natural gas, will use significant amounts of energy getting that oil to the refineries, more than 1,000 miles away.

So, we are left to wonder if this oil is such a good deal. From an economic point of view, it may be profitable as long as the price of oil is high, about \$70 a barrel. And you all know what the price of gasoline will be when crude oil costs \$70 a barrel. From an environmental point of view, they're burning fossil fuel to extract a fossil fuel, which then will be burned, totaling far more carbon dioxide than conventional practices. And again, you all know what greenhouse gases are doing to our

atmosphere, to our climate, to our world. Is this pipeline, this oil sands oil, a really great deal?

Bob White, Emerado is DRC's treasurer and serves on the Grand Forks Planning and Zoning Commission



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MCETA/DRC Membership
Family \$55 ___ Individual \$ 35 ___

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Family \$55 ___ Individual \$ 30 ___

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Looking for creative DRC members to submit LOGO designs

The Communications Committee is looking for a creative logo that will visually describe what and who DRC is. The winning logo will be used on all of DRC's letterhead, web page, brochures and more.

All submissions should be sent to the Bismarck office by September 30, 2007. Submissions will be displayed at the annual meeting in October.

UNDERMINED RECLAMATION

Strip-mining reclamation across the country is not succeeding according to *Undermined Promise*, a report released August 3 by WORC and the Natural Resources Defense Council.

The report found the rate of reclamation “shockingly slow.” It also found very low rates of inspection and enforcement.

For example, during the 10-year period covered by the report, 22,906 acres were released from all three phases of bonding, achieving successful reclamation as set out in SMCRA.

That is just under six percent as much land as was disturbed by mining during the same period, roughly 400,000 acres.

In North Dakota, final bond release has not occurred on a single acre of land designated for post-mining agricultural land use at either of the state’s two largest mines, Falkirk, near Underwood, or Freedom, near Beulah.

Nearly 15,000 agricultural acres statewide have gone through the 10-year liability period, required by federal law for Western lands, yet no bond release has been filed.

That number increases by about 1,000 acres per year.

Meanwhile, mines own about 90 sections of farm land in North Dakota—and that figure too is mounting.

One reason for the lack of bond release is that the state “rolls” the surety bonds from one area of a mine to another without requiring a bond release hearing, leaving the company little incentive to file.

On the other hand, to obtain final bond release, the company must prove the land is as productive and the water is as pure and abundant as when mining began.

“These are the most vital proofs of the success of reclamation,” said DRC member Gene Wirtz, Underwood.

Wirtz says the reclamation process can be judged complete and successful only when final bond release occurs and the reclaimed land is sold back to area farmers and ranchers.

The problem is finding the water to replace what has been destroyed by mining.

“Although we don’t have mountaintop removal in the West, we do have aquifer removal,” said Nick Golder, a Montana rancher “Water is a serious matter in the West.”

**Plan to attend
DRC’s Annual Meeting
October 27 at the
Chieftain Conference Center
in Carrington**

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