

Dakota Counsel

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UNCONSTITUTIONAL!

DRC joined North Dakota Farmers Union and four farmers October 5 in suing the state for the unconstitutional direct funding of two trade associations.

If successful, the suit will throw out provisions of HB 1518, passed during the last state legislative session, which funnel part of the 1.5 cents per bushel wheat checkoff levy directly to the North Dakota Grain Growers Association and U.S. Durum Growers Association.

“It’s a question of accountability,” said DRC Chair Dean Hulse, Fargo. “Farmers who pay this tax deserve a say in how it is spent.”

Farmers must pay the wheat checkoff when they market their wheat. They can request a refund from the North Dakota Wheat Commission, which collects the tax, but they can’t get a partial refund for the allocations they disagree with.

Farmers elect Commission representatives at the county level, who then elect six of the seven Commissioners to four-year terms. The governor appoints the seventh Commissioner.

The Wheat Commission is a state agency with open meetings and open records. The two trade associations are private membership-based entities.

At issue, according to attorneys Sarah Vogel and Beth Baumstark, are three provisions of North Dakota’s state constitution:

- ❖ Its prohibition against giving money directly to any entity or person except for support of the poor or economic development;
- ❖ Its prohibition against special laws affecting only specified groups or persons;
- ❖ Its prohibition against laws that provide special benefits or privileges to only a few while excluding others.

There are no federal constitutional issues in play.

Although the Grain Growers and Durum Growers are not mentioned in the law, testimony on the bill made its intention clear. The bill’s sponsors were House Agriculture Committee Chair Gene Nicholas (R-Cando), Reps. Merle Boucher (D-Rolette), Mike Brandenburg (R-Edgeley), Phil Mueller (D-Wimbledon), Gerry Uglem (R-Northwood) and Sen. John Warner (D-Ryder).

The bill raised the checkoff tax by 50%, in part to help pay the Wheat Commission’s legal bills for a successful anti-dumping complaint against Canadian spring wheat imports..

Wheat Commission administrator Neal Fisher told the Associated Press the tariffs resulted in price benefits of more than \$200 million in the state.

DRC supported the anti-dumping complaint and was instrumental in winning the checkoff increase in 1999 that made it possible.

DRC and Farmers Union both lobbied against this year’s bill, however, because of its special funding provision for the Grain and Durum Growers.

The two-tenths of a cent set aside for the two groups amounts to about \$500,000 per year for “activities related to domestic wheat policy issues, wheat production, promotion and sales.”

DRC and Farmers Union are both active on wheat policy issues, but they and any other groups are made ineligible for state contract work under the law.

The farmers who joined the suit are James Teigen, Pierce County; Deb Lundgren, LaMoure County; Greg Svenningsen, Barnes County; and Casey Wells, Grant County.

The state would still be able to enter into contracts with the two groups, which it has often done, and the checkoff increase and other provisions of HB 1518 would be unaffected.



Sarah Vogel will be the keynote speaker at DRC's October 22 annual meeting, Minot (see page 3)

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 ACTIVE VOICE

By DRC Board Chair Dean Hulse

To attempt highlighting, in this space, the lessons I've learned during my two years as DRC chair would seem futile. But being an undaunted activist, I'll give it a try. One vital lesson is that we'll lose on the issues we choose to take on many more times than we'll win, but the victories are indeed sweet, and just—for reasons we often can't predict.

Of late, we've lost most notably on free trade, the beef checkoff and the federal energy bill. Meanwhile, we continue wrestling with issues such as captive supply in the cattle industry, concentrated animal feeding operations, the federally mandated and legislatively disabled Country of Origin Labeling, better accountability for economic development efforts, renewable energy expansion and, of course, a host of concerns about oil and gas drilling, coal mining and clean air, foremost at present being our fight regarding the Clean Air Act's Prevention of Significant Deterioration (PSD).

Like Jacob in the Old Testament, many of us may be limping when the PSD issue is resolved because the forces we oppose—the U.S. Environmental Protection Agency, the North Dakota Department of Health, Basin Electric Power Cooperative and the Lignite Energy Council—appear to possess limitless power. Despite these biblical odds, many of us are hopeful someday to reenact a secular cinematic drama: pulling away the curtain and exposing not the mighty Oz, but rather, an old man nearly asleep at the switch. The sunset for lignite coal, I hope and pray, will occur on a day I still walk this planet.

Now, I've shamefully digressed by not mentioning our sweetest victory. On May 10, 2004, Monsanto Co. decided to shelve its transgenic Roundup Ready wheat, at least for now. DRC members can be justifiably proud of the role they played in this outcome. Even so, this victory requires vigilance because groups such as Growers for Wheat Biotechnology Inc. (GWB) are determined to commercialize transgenic wheat.

Ironically, my response to an opinion piece by Jeff Topp of Grace City, N.D., a GWB member, provided my greatest lesson as DRC chair. My letter to the editor ran in the Sunday edition of *The Forum* and by 9:30 that morning I had received a telephone call from someone who chose not to identify himself. He told me that he'd given up trying to fight the powers-that-be in the biotech industry. And then, he thanked me for continuing to fight.

I'm thankful, too, because I've learned that all DRC's fights are rooted in justice. I'm thankful for Mark, Aleta, Kathy, Cindy, Margaret, Mary, Barb, Terry and Lynn. Grateful for the efforts of all those DRC members who've come before me. Appreciative of all those who will carry on after I've limped into my own sunset. Democracy's greatest natural resource is people committed to causes.

Keep fighting those good fights, and finally, please attend the DRC annual meeting!



ANNUAL MEETING PREVIEW

DRC members will hear from two long-time friends at the 28th Annual Meeting, October 22 at the International Inn, Minot.

Former DRC Staff Director Theresa Keaveny will kick off the meeting at 10:30 a.m. with a participatory session, "Voter Education: How and Why?"

Keaveny is founder and Director on the Montana League of Conservation Voters. She was on DRC's staff, from 1981 to 1987, and was staff director of Dakota Rural Action in South Dakota from 1988 to 1997.

Sarah Vogel, North Dakota's Agriculture Commissioner from 1989 to 1997 and now an attorney in private practice in Bismarck, will give the keynote speech at 1:15 p.m. Vogel will discuss litigation options for non-profit groups in an increasingly hostile legislative and administrative atmosphere.

Vogel has worked with DRC on many projects and served as DRC's lobbyist during the 1997 state legislative session.

The business meeting will start at 12:45 p.m. and

includes election of officers and at-large Board members for the coming year, an update on DRC affiliates and issue campaign work, plus resolutions on topics of interest to members.

A noon lunch buffet and 6 p.m. banquet will be free of charge to members and guests thanks to the generosity of DRC's Annual Meeting business sponsors.

The day will close on a light note at 6:45 with entertainment by the MiNotables, a local comedy improv group.

As usual, a silent auction will run throughout the day, featuring a wide variety of items. If you have something to contribute, please call Office Manager Aleta Hendricks at 483-2851.

That's the same number you should call to register for the meeting.



Theresa Keaveny

OIL AND COAL NOT SATISFIED

Not satisfied with some \$3 billion from the energy bill passed this summer, oil, coal and utility companies are trying to capitalize on Hurricane Katrina for even more handouts.

Helping them is Rep. Joe Barton (R-TX) and his proposed Gasoline for America's Security Act (H.R. 3893, which passed the House October 7, 212-210. Rep. Earl Pomeroy voted against it.

Section 109 of Barton's bill would also put off the day of reckoning for another part of the Clean Air Act that coal-fired utilities and other polluters don't want to obey—limits on ozone pollution.

By extending compliance deadlines, the bill would tell those suffering illness from ozone smog to wait longer for relief.

Abt Associates, EPA's own leading air pollution consulting firm, found that delaying action to meet the 8-hour ozone standard for even one year would result in:

- ♦ Over 387,400 asthma attacks;
- ♦ Almost 4,900 hospitalizations due to respiratory distress;
- ♦ Over 573,300 missed school days.

Sections 107 and 108 of Barton's bill would allow indefinite suspension of current public health restrictions on sulfur content and toxics like benzene in fuels—and would prohibit states from enacting better protections.

The bill would also place limits on citizen lawsuits against refineries.

Not a single Democrat voted for the bill and characterized the bill as a sop to oil interests.

"Is this the House of a Banana Republic?" asked Rep. Henry Waxman (D-CA) according to the Associated Press.

Dropped at the last minute from Barton's bill was a provision to shift the focus of New Source Review away from pollution to efficiency, making it virtually impossible that any industry would ever have to install pollution controls, no matter how much more pollution it emitted.

The Bush administration has been trying for years to do away with this part of the Clean Air Act, designed to make older, exempted power plants clean up when they expand.

Meanwhile, according to the EPA, nearly 150 million Americans live in areas that fail minimum health standards for air quality.

The measure does nothing to lower gasoline prices.

HARVEST AT RISK

Markets are still not ready for genetically modified (GM) wheat, according to yet another report from a leading independent analyst.

“[Roundup Ready wheat] is a technology for which there is really no compelling need,” said Dr. Charles Benbrook, author of the study, *Harvest at Risk – Impacts of Roundup Ready Wheat in the Northern Great Plains*, published by WORC.

“Existing weed management systems are stable, the price of weed management is not increasing, and farmers are managing resistance to currently used herbicides,” said Benbrook.

WORC released the report at an August 30 teleconference while Benbrook was in Fargo for meetings with DRC leaders and a community forum at North Dakota State University, attended by about 50.

If Roundup Ready wheat is introduced, increased seed and herbicide costs and reduced wheat prices would outweigh the operating cost savings from Roundup Ready wheat’s simplified weed management by as much as \$37 per acre, the report concludes.

Farmers who do not plant Roundup Ready wheat would also face increased

costs and lower income, ranging from \$5.60 to \$18 per acre.

“Overall, the wheat industry could lose \$94 million to \$272 million,” Benbrook said.

WORC commissioned the study to answer questions about gene flow and contamination, weed resistance, disease problems and cost and returns, said Dena Hoff, WORC Chair, farmer, and member of Northern Plains Resource Council.

“There are other unanswered questions about the impacts on soil and water and human and animal health that should be studied,” Hoff said. “We’re going to have to work together so that we don’t put our harvest at risk.”

Benbrook said the wheat industry needs an in-depth and independent study of the factors and impacts of GM wheat so that the technology does not reduce farm income in the long run.

Harvest at Risk projects costs per bushel and per acre for farmers adopting Roundup Ready wheat and for non-adopters under a best-case scenario and a worst-case scenario. In either case, farmers would lose money from introduction and use of Roundup Ready wheat.

The report finds mostly negative effects from nine factors affecting the costs and benefits of growing Roundup Ready wheat: emergence of resistance, gene flow, disease pressure and related problems, impacts on seed plus herbicide expenditures, market rejection, dockage, yields, grain quality, and wheat prices.

“I don’t see any advantage to the farmer in the introduction of Roundup Ready wheat,” said Todd Leake, Emerado, a wheat farmer and chair of DRC’s Food Safety Task Force.

Monsanto indefinitely postponed development of Roundup Ready wheat

in May 2004, but that hasn’t stopped pro-biotech activists from agitating for its release (see p. 5).

WORC previously published reports by Dr. Robert Wisner that estimated that introduction of genetically modified wheat in the U.S. risks the loss of one-fourth to one-half of U.S. hard red spring and durum wheat export markets and up to a one-third drop in price.

For the full text of *Harvest at Risk*, go to the WORC website at www.worc.org.

DO NOT MERGE

National Association of Wheat Growers (NAWG) voted down a merger this month with U.S. Wheat Associates (USWA) and the Wheat Export Trade Education Committee (WETEC).

This is the second time this year that the proposal has failed.

The 18-11 vote came after changes in the proposal that many thought would ensure a yes vote this time around.

NAWG said a lack of consensus on how votes would be counted within the consolidated organization was the main reason for not approving the proposal this time around.

NAWG is a proponent of introducing genetically modified (GM) wheat (see p. 5).

USWA however, has expressed concerns in the past about protecting export market development from the disruptions GM wheat would cause.

This difference between the two groups on GM wheat has fostered many rumors regarding the previously failed merger attempts. Many speculate that that GM policy is the driving reason behind the inability to agree on a proposal that would be approved by a majority of the 29 states involved.



**Benbrook (l) with DRC
GM Wheat Activist
Tom Wiley**

SCAB AND BEATING DEAD HORSES

The only news from GM wheat proponents lately has been the frenzied call for beating dead horses—and a deafening silence about the relationship between Roundup overuse and fusarium head blight, or scab.

A four-year study from Canada showed that applications of glyphosate (the active ingredient in Roundup) were linked with increased incidence of scab.

The peer-reviewed study, published in September by Myriam Fernandez and other scientists in *Crop Choice*, showed that glyphosate application was the only crop production factor related to higher scab levels, and that it was stronger than any environmental factors.

The scientists recommended further study to determine the cause of the relationship between glyphosate and scab.

The study corroborated concerns expressed by Dr. Charles Benbrook in *Harvest at Risk* (see p. 4) about negative effects of Roundup Ready technology on grain quality.

Despite these findings, pro-biotech activists continued to press for Roundup Ready wheat.

One complained in a widely-published opinion piece that GM wheat has been “stymied by a few Chicken Littles who have squawked about the cost of testing and segregating

biotech wheat, or losing export sales to a few buyers who don’t want [it].”

Those “few buyers” include some of the most reliable customers for North Dakota’s hard red spring wheat in Asia and Europe.

Professor Joe Cummins worried that Roundup Ready technology “may be like the sale of cigarettes, where public relations have prevailed over rationality.”

Biotech seed manufacturers themselves expressed caution at North Dakota State University’s recent Crop Biotechnology Update Conference in Fargo.

Monsanto representatives said they were not working on any biotech wheat projects at present, and Syngenta estimated its much-touted scab-resistant wheat would not be ready until at least 2008 and maybe later.

Meanwhile, there remains little doubt that pollen flow would spread any GM wheat rapidly. Joel Ransom told the conference that pollen flow can occur at distances of 150 feet—the longest distance measured by researchers.

Despite the mounting evidence of trouble on the horizon, National Association of Wheat Growers President Sherman Reece told Reuters it was “time to move forward” with biotech wheat.



AG ROUNDUP

Captive Supply Reform. Rep. Earl Pomeroy told DRC this month he will again sponsor legislation to outlaw formula-price forward contracts this year.

Reps. Stephanie Herseth (D-SD) and Barbara Cubin (R-WY) have expressed an interest in co-sponsorship.

Sen. Mike Enzi (R-WY) introduced a similar bill in the Senate April 29. Sen. Byron Dorgan co-sponsored the measure.

The bill would open competition in the beef and pork markets by requiring packers to bid on supply contracts. It would end secretly negotiated forward contracts and marketing agreements.

The bill would enact into law rules first proposed in a petition for rulemaking by DRC and WORC to then U.S. Secretary of Agriculture Dan Glickman in 1996. USDA has never acted on the petition.

Moratorium. Griggs County became the latest county to place a moratorium on large animal feeding operations in September while it considers an ordinance to require bonding, manure management plans and other measures to protect

both natural resources and the public.

Towner and Ramsey Counties have adopted similar ordinances in the last two years.

Ramsey County is facing a challenge to its ordinance from Viking Feeders, which is balking at submitting a complete application for its proposed hog facility near Edmore.

The county has requested an opinion from Attorney General Wayne Stenehjem to confirm that its ordinance does not violate state law.

Open Records. Is North Dakota State University Research Foundation a public entity subject to the state’s Open Records Law?

Attorney General Wayne Stenehjem informed DRC August 29 that he would review this question and issue an opinion. No word yet.

Stenehjem responded rapidly to DRC’s August 24 complaint after NDSURF “voluntarily” turned over some documents related to biotech projects but continued to claim immunity from the Open Records Law.

LESS SNOW, LESS WATER

A new analysis of government data found for the first time that the West's major river basins—including the Missouri—are getting warmer, at exactly the time of year water needs to be stored as snow to meet the region's water needs.

The Clear the Air report—*Less Snow, Less Water*—finds trends that go beyond occasional or seasonal drought, showing a steadily declining snowpack in the Rocky Mountains, which could mean a shortage of water flowing into rivers and communities.

Three-fourths of the water used in the West starts as snow.

DRC released the report in North Dakota September 21. The Rocky Mountain Climate Organization wrote the report, based on data from the National Oceanic and Atmospheric Association.

Among the findings of the report were:

Increased Temperatures —In the upper Missouri River basin, 2000-2004 was 1.5°F warmer than the historic average.

Winter Warming — The warming seen in the Missouri River basin has not been random throughout the year.

The monthly pattern of increased temperatures between 1995 through 2004 shows that warming has been greatest in January, February, and March—a “fingerprint” of global warming.

This is also when warming has the greatest potential to reduce the amount of precipitation that falls as snow.

Reduced Snowpack — Government snowpack-measurement records going back to 1961 indicate that snowpack levels have been below average for 14 of the last 16 years in the Missouri River basin.

Dr. Rodney Stroh, a ground water specialist with the North Dakota Rural Water Systems Association, noted that Parshall and Garrison have already had drinking water problems because of low water levels in the Missouri.

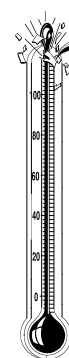
“City, rural, and tribal water systems utilizing this water resource are concerned about the future availability of Missouri River water,” said Stroh.

The report concludes that with all the West has at stake, the region has good reason not only to deal with climate disruption, but to be a leader in showing the rest of the nation and world what can be done.

The solution is greater reliance on clean, renewable energy, according to DRC chair Dean Hulse. “Our power plants rely heavily on lignite coal, the dirtiest fossil fuel on the planet. Burning one pound of lignite produces 1.4 pounds of carbon dioxide,” he pointed out. “Clearly, this is an unsustainable practice.”

North Dakota's carbon dioxide emissions exceed those of 212 different countries.

It is critical to take action sooner rather than later to reduce the carbon dioxide emissions, so that their effects “peak” sooner, said Dr. Chad Heinzl, a geology instructor at Minot State University.



“Even if we were to stop carbon dioxide production today...the effects of carbon dioxide in the atmosphere will continue for hundreds of years,” said Heinzl.

Heinzl added that effects of global warming could be severe, noting that the difference in average worldwide temperature between today's climate and the ice age is just seven degrees.

IN BRIEF

◆ Grand Forks County Citizens Coalition held a public meeting at the University of North Dakota September 27, where GFC3 member Kevin Harrison presented research on conversion of wind energy to hydrogen.

◆ Field Organizer Cindy Klein received a scholarship to attend the SPIN Project's SPIN academy media training in California, August 17-21.

◆ Staff Director Mark Trechock begins a three-month sabbatical, October

31. He will attend the State Environmental Leadership Conference annual conference in West Virginia in November. He will also build on research done by Field Organizer Barb Price to produce a report on the results of strip-mining in North Dakota 30 years after Mike Jacobs' well-known work, *One-Time Harvest*.

◆ Mark Trechock and Energy Coordinator Mary Mitchell joined senior staff from other WORC states for a re-

treat, September 16-18. Guests included consultant Tom Novick and Amy Klauke of RAFI-International, which works extensively with farm contract workers

◆ Barb Price attended a wind energy conference in Brookings, South Dakota, September 11-13, and Field Organizer Terry Schaunaman attended a planning conference in Chicago for supporters of farm bill renewable energy programs, September 20-21.

POLLUTION + SPIN = CLEAN AIR

by Ron Martin



Spin. We have all heard of it. It's putting a "spin" on something in order to color people's perception.

The state of North Dakota has been "spinning" out of control with their claims about the air quality in the state's Class I areas.

You may have thought that you are living in North Dakota, but actually, this is the state of Sad Affairs. Think of the old adage, "Figures don't lie, liars figure," and you will be well on the way to understanding what is happening in Bismarck and beyond.

Here is the story:

1999: Minnkota Power Cooperative files an application with the state health department to increase production at the Milton R. Young power plant near Center.

2000: The state Department of Health does a computer model of the state's pollution to see if there is 'room' for additional sulfur dioxide (SO2) pollution under the Clean Air Act, because there are limits on pollution from sources built since the Act took effect. (Computer modeling is the only practical way of determining this, since it is too costly to put enough air quality monitors on the ground to provide a complete picture.)

The state finds that not only is there no room, there have already been times when there was too much SO2 in the Class I areas of Theodore Roosevelt National Park and Lostwood Wildlife Refuge, and Ft. Peck Indian Reservation and Medicine Lake Wilderness Area in Montana. The state denies the Minnkota permit.

Meanwhile, the Industrial Commission announces grants of up to \$10 million each for power plant feasibility studies and permitting as part of the Lignite

Vision 21 program—which cranks up pressure on the Department of Health to make the violations go away. Three grants are awarded—one of them later given back.

2001: EPA Region 8 also does a model and concurs with North Dakota's findings—that there have been exceedances of SO2. Says Region 8 EPA air quality manager Larry Svoboda, "When we saw some of these numbers, frankly, we were miffed. It's significant enough that we need to do something about this."

Also in 2001, EPA Region 8 grants more time to North Dakota to assess the SO2 problem. The state begins working on a different model. It jacks up estimates of emissions from the 1970s—to narrow the gap between older levels of pollution and new ones. It also averages pollution levels over time instead of taking spikes (exceedances) into account.

2002: Finally, after trying 14 different combinations of data, the state comes up with an outcome that shows no violations. It holds two days of hearings to unveil its findings. Region 8 stands by its position that North Dakota is in violation.

2003: Region 8 and the state reach agreement to reduce pollution on paper by reducing the emissions caps on permits but keeping them well above normal pollution levels. At a May hearing, Region 8 and the state are still at odds over whether violations exist. Senators Conrad and Dorgan meet with

Bush administration appointees and EPA officials in Washington D.C. in an effort to bypass (and silence) Region 8. Politics begins to trump science.

See POLLUTION, p.8

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- General Membership
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- ___ \$100 • Patron Membership
- ___ \$ 75 • Contributing Membership
- ___ \$ 45 • Family Membership
- ___ \$ 25 • Individual Membership
- ___ \$ 10 • Student/Low Income

BARC/DRC Membership
Family \$50___ Individual \$30___

GFC3/DRC Membership
Family \$50___ Individual \$30___

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

MVRC/DRC Membership
Family \$50___ Individual \$30___

SARC/DRC Membership
Family \$55___ Individual \$ 30___

SVC/DRC Membership
Family \$50___ Individual \$30___

SC3/DRC Membership
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POLLUTION, from p. 7

2004: A February memorandum of understanding between EPA and the state leaves the door open for the state's questionable pollution measurement procedures without actually endorsing them. Professional air quality modelers from all other regions condemn the MOU.

2005: The State Health Officer declares North Dakota in compliance with the Clean Air Act. EPA has yet to be heard from, but in Washington the fix appears to be in. Region 8, of course, with its politically unacceptable science, will never be heard from again. The only hope for law enforcement would seem to be a citizen lawsuit.

So there you have it. The state has spun its way into compliance with the law, not by obeying it but by changing it—without the benefit of Congress or any formal rulemaking.

The losers are North Dakota residents who deserve cleaner air and honest government. The winners? Owners of coal-fired power plants—who can further delay cleaning up and meanwhile build more plants.

(Ron Martin, Sawyer, is a DRC and SVC member.)

WINNERS!

The 7th annual Albert Hlebechuk Kite-a-Thon was held September 11 at the John Steiner Park in Belfield.

Approximately 30 people of all ages attended. Free kites were distributed to the children and door prizes, refreshments and nice weather were enjoyed by all.

The following is a list of kite winners:

Genevive Franchuk, Jeri Lynn Bakken, Art Sickler, Devin Logalbo, Ole Linnell, Aleta Hendricks, Jerry Mayer, Orrin Burch, Phylis Roth, Tim Beaudoin, Abraham Sticka and Shelby Hutton.

Kite sponsors included Dan Porter Motors, West Plains Electric, Second Nature Greenhouse, American State Bank, G & G Recycling, Touch of Health, Nelson's Jewelry, Belfield Dairy Queen, Belfield Super Pumper, Andrus Sports and the Weiss Family.

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