

# Dakota Counsel

## WORSE THAN NOTHING

Congress broke nearly five years of stalemate in late July and passed what DRC spokesperson Ron Saeger, Fargo called “a bloated and dangerous energy bill that is far worse than doing nothing at all.”

The conference bill passed both the House and Senate handily and has been signed into law by President Bush. The entire North Dakota delegation voted in favor of it.

The bill’s success was due to avoiding hot-button issues like oil drilling in the Arctic Wildlife Refuge that derailed similar bills in the past.

But the bill offers “20<sup>th</sup> century solutions to 21<sup>st</sup> century problems,” said Saeger, and “could be yet another obstacle in the fight to develop wind in North Dakota.”

The bill does extend the renewable electricity production tax credit, but only for two more years instead of the three years earlier approved by the Senate. It also dropped the Senate’s renewable energy standard (RES), which called for 10% renewable electricity throughout the United States by 2020.

Germany reached the 10% level this year, and 20 different states have enacted some form of RES.

Also missing from the bill was any improvement in fuel efficiency standards for U.S. cars and trucks, any concrete proposal to decrease U.S. reliance on oil, and any recognition of the problem of global climate change due to carbon dioxide emissions.

The bulk of the tax breaks and subsidies in the bill—estimates range upward from \$6 billion—go to fossil fuels, not renewable energy.

For example, shortly after the bill was signed into law, Minnesota utility Great River Energy announced it would seek new federal loan guarantees to try to turn coal into a liquid fuel for vehicles at a proposed new plant near Washburn.

Such projects “aren’t going to move forward without federal government support,” admitted Kirk Benson of Headwaters, Inc., GRE’s partner in the enterprise, according to the Associated Press.

In addition to tax breaks and subsidies, the bill included several provisions to weaken oil and gas regulation.



**The oil industry was the big winner in the energy bill**

Under the bill, oil and gas companies are exempt from the federal Safe Drinking Water Act when they risk water supplies by injecting benzene and other cancer-causing chemicals underground to force oil and gas out.

They also have a special exemption from the Clean Water Act allowing erosion and sedimentation that occurs from oil and gas drilling and construction activities to pollute water supplies.

Not only that, the bill requires the Bureau of Land Management to speed up its processing of oil and gas drilling permits—even though the Government Accountability Office recently concluded that the BLM is already so focused on issuing permits that it’s neglecting its environmental protection responsibilities.

“Our energy policy should promote a secure and diversified energy supply, encourage efficiency, protect human health and make energy companies liable for clean-up costs caused by irresponsible development,” said Saeger. “This bill fails to meet that test.”



**Mark this day on your calendar for DRC's 28th Annual Meeting in Minot.**

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**

I faulted two Republican state legislators for their hypocrisy in the June newsletter. Now, in the spirit of curmudgeonly bipartisanship, I'll focus on our Democratic congressional delegation's questionable support of the Energy Policy Act of 2005, larded with \$2.8 billion worth of tax incentives for the coal industry, as well as another \$1.8 billion in subsidies for the Clean Coal Power Initiative—mandating that 70 percent of these latter funds help develop coal-based gasification technologies.

In a news release Sen. Dorgan crows about the energy bill containing “significant boosts for North Dakota’s wind industry by extending for two years a production tax credit for renewable energy that has played a key role in tapping North Dakota’s vast wind resources.”

What an insult to the intelligence of informed North Dakotans. A truly significant boost for the state’s wind industry could have come in the form of a Renewable Energy Standard requiring utilities to generate at least 10 percent of electricity from renewable energy sources. Twenty states have demonstrated the foresight to adopt similar standards. But the Energy Policy Act of 2005, as negotiated by the conference committee on which Sen. Dorgan sat, contains no such provision.

After traveling recently to Underwood and touring the Falkirk mine (a subsidiary of NACCO Industries), Sen. Dorgan vowed, “I will continue to work in Congress to support the use of North Dakota’s coal resources and to help expand the role our state plays in supplying the nation’s energy.”

Why is Sen. Dorgan, along with Sen. Conrad and Rep. Pomeroy, so committed to promoting North Dakota’s lignite coal industry via federal legislation? One answer can be found in a Public Citizen analysis of a section from the coal title tucked within the energy bill.

Public Citizen reports, “The most likely beneficiaries of this provision are North Dakota-based Basin Electric Power Cooperative and Ohio-based Nacco Industries. Basin Electric Power Cooperative owns the Great Plains Synfuels facility in Beulah, N.D., an alternative fuels plant originally financed mostly by the federal government and later sold to the Cooperative for a fraction of the amount invested in the plant. The plant gasifies lignite coal to produce synthetic natural gas as well as fertilizers and other chemicals. Nacco Industries [supplies] Basin Electric with lignite from the nearby Freedom Mine, which Nacco owns. In addition, Basin Electric and Nacco Industries co-own the Antelope Valley Station, a coal-fired power plant at the same location as the Great Plains Synfuel Plant and the Freedom Mine. Since 2001, Basin Electric and Nacco Industries have contributed over \$100,000 to federal politicians. . . .”

The promise of “clean coal” technology is an utter fabrication. Burning lignite coal releases more pounds of carbon dioxide than the coal itself weighs. And so, like their nuclear energy counterparts, lignite coal enthusiasts are loading the problem of CO2 sequestration onto the backs of succeeding generations. What a legacy.



## AFFILIATES IN ACTION

**GFC3.** The site of the proposed new Grand Forks city landfill was under water in early July, and Grand Forks County Citizens Coalition members took photos and showed them to City Council members.

“Please keep in mind that the city is proposing to build a dry-tomb landfill, meaning the garbage inside the landfill is supposed to remain dry,” GFC3 member Jason Schaefer told the Council July 11.

Older GFC3 members recall water skiing on the site many years ago and have long maintained the site is unsuitable.

Instead, GFC3 is urging the city to explore other sites and focus on waste reduction.

The city has reportedly already spent more than \$750,000 on the proposed site.

“To pour more money into a questionable project that may never see the light of day is irresponsible, wasteful and negligent,” said Schaefer.

Township officers in Turtle River Township, where the site is located, are considering the city’s permit application and expected to rule on it later this year.



**Water covers the proposed Grand Forks landfill site earlier this summer**

**MVRC.** About 25 attended the Missouri Valley Resource Council tour of energy-efficient homes in Bismarck

July 30. One of the homes belongs to MVRC members Ardyce and Joe Haugen. Built in 2003 with four geothermal wells, the house stays cool in the summer and warm in the winter with low utility bills—topping out at \$80 per month in the coldest month.

Capital Electric told the Bismarck *Tribune* about 50 of their customers per year are adopting this energy-efficient and money-saving technology. Other buildings on the tour included the Ducks Unlimited and Workforce Safety and Insurance buildings, both of which also use geothermal systems; John Maddock’s home, which uses solar panels; and Roys and Elaine Willenbring’s earth home.

Homebuilder Roger Kjonaas kicked off the tour with an introduction to energy-efficient building options.

**BARC.** The Badlands Area Resource Council plans its annual Albert E. Hlebechuk Memorial Kite-a-Thon Sunday, September 11, 1 p.m. CDT at John Steiner Park, Belfield.

As usual, the event features kite-flying, an informal talk on wind energy and a raffle of more than a dozen specialty kites donated by local merchants and members.

Raffle tickets are \$1 each and six for \$5 and are available by calling the DRC Dickinson office.

**SARC.** About 50 attended a South Agassiz Resource Council public forum on global climate change July 19 at Moorhead State University.

SARC will host a Fargo City Commission Candidate Forum Wednesday, August 31, 7 p.m. at the NDSU Downtown Campus at 8th Street North and NP Avenue. All four candidates have agreed to participate: Frank Anderson; Dave Engebretson; Dr. Timothy Mahoney; and Brad Wimmer.



## NO BULL BBQ

**John Hagen, McKenzie County Energies and Taxation Association member, “fiddles around” (above) at the group’s annual No Bull BBQ in Watford City July 15, as David & Carolyn Nelson (below) cut a rug. The event featured a U.S.**

**born, raised and slaughtered beef dinner, a raffle and auction, music and dancing, and words of hope and encouragement for ranchers. Proceeds benefited R-Calf, MCETA and DRC**



# BORDER REOPENS

An appeals court panel lifted the U.S. District Judge Richard Cebull's March 2 injunction against live cattle imports from Canada July 14, and within four days the U.S. Department of Agriculture had the border open to cattle 30 months old or younger.

USDA banned all live cattle imports from Canada in May 2003 because of the threat of bovine spongiform encephalopathy (BSE), but planned to reopen the border March 7 until Cebull issued his injunction.

In Montana, Governor Brian Schweitzer responded to the border reopening by ordering inspections of imported feeder cattle to see that they meet the 30-month exclusion.

Secretary of Agriculture Mike Johanns told the Associated Press June 10 that reopening the border would "normalize the beef trade worldwide."

But the border reopening "makes our efforts to regain export markets a steeper hill to climb," state Farmers Union President Robert Carlson told the Associated Press.

Japan, historically the biggest importer of U.S. beef, has not accepted any since late 2003 when BSE was found in a Washington state dairy cow.

Johanns also drew the ire of many ranchers by saying beef prices had gotten too high since the border was closed.

"That is news to me," said Link Reinhiller, Hazen, chair of DRC's Trade Task Force. "For the first time in years I am able to make a small profit on my cows."

The injunction resulted from a suit filed by R-CALF challenging a USDA plan to reopen the border. DRC weighed in on the case as a "friend of the court."

The appeals court said Cebull's injunction decision overstated the potential harm from reopening the border.

It also appeared to be swayed by arguments against the injunction by groups like the National Cattlemen's Beef Association and American Meat Institute, construing them as a "broad coalition of industry members."

The appeals court ruling only directly affects the injunction, and the case itself is still before Judge Cebull.

## JOHANNS GETS AN EARFUL

Several DRC members joined other critics of Mike Johanns' policies when the Secretary of Agriculture appeared at the State Fair in Minot July 26.

Johanns was seeking input on the federal farm bill, due for reauthorization in 2007, but he got a lot of input on trade issues from a generally critical audience.

On the farm bill, former DRC chair Donald Nelson, Keene, pointed out that Johanns hadn't even gotten around

to enforcing the 2002 bill yet, at least in terms of country-of-origin labeling (COOL).

A recent poll by Public Citizen found that 85% of consumers favor COOL, and 74% thought that Congress should be responsible for requiring country of origin labeling for food.

However, Congress again delayed the implementation of COOL again earlier this summer.

## ROUNDUP UNREADY

The U.S. Department of Agriculture released another Roundup Ready seed variety June 2—alfalfa—without fully studying its potential effects.

The DRC Board August 13 approved joining the Center for Food Safety in suing for an injunction to stop seed sales pending further study.

DRC, CFS and several other groups earlier this year petitioned USDA for an EIS prior to a deregulation decision—the same process DRC had urged for wheat.

Despite deregulation, alfalfa experts say only about 1,000,000 pounds of seed will be planted on 75,000 acres this summer—only .3% of total U.S. alfalfa acreage.

Many cattle producers don't use a broadleaf herbicide, since they seed it along with other forage crops.

On the other hand, the spread of Roundup Ready alfalfa may make it more costly to "burn down" alfalfa at the end of

its stand life.

In addition, more Roundup use means more Roundup-resistant weeds. Arkansas will spend a reported \$500 million this year alone to control them.

Immediate risks in North Dakota will be greatest for certified organic beef producers, who cannot feed biotech forage—and organic growers generally, who rely on alfalfa to replenish nitrogen in the soil and provide valuable feed between cropping seasons.

Hay exporters are also worried.

"Some of our Japanese hay customers are asking us to sign documents saying no genetically modified products will be coming over," said California producer Jeff Ploured of El Toro Export.

Farmers should also expect another round of Monsanto copyright infringement lawsuits.

# GM DOCUMENT WARS

DRC this week is reviewing documents provided by North Dakota State University Research Foundation related to its contracts with Monsanto—but the question whether NDSURF is a public entity that *must* make the documents public is still up in the air.

“It is our understanding that [NDSURF] concedes that it is a public entity,” Assistant Attorney General Mary Kae Kelsch wrote to Dale Zetocha, NDSURF Executive Director, July 26.

NDSURF attorney Michelle M. Donarski wrote back August 1 to say that no such concession was made, but that the foundation merely “determined that it would not challenge [DRC’s] request for information.”

DRC requested the documents in May. NDSURF initially refused to hand over documents but changed its mind after DRC requested an Attorney General’s opinion.

DRC’s request pointed out several reasons why NDSURF is a public entity:

- ◆ Its website is part of NDSU’s website;
- ◆ It was established to support NDSU’s teaching, research and public service missions;

- ◆ Its financial activities are blended with NDSU’s;
- ◆ NDSU officials comprise and appoint a majority of its board of directors;
- ◆ NDSU policies require all patentable discoveries to be assigned to NDSURF.

The controversy goes back several years to NDSU’s partnership with Monsanto to research Roundup Ready wheat in secret test plots around the state. Monsanto eventually suspended the research in response to rejection by end users in many countries—and strong farmer concern about contamination of crops and loss of markets.

DRC Chair Dean Hulse said one thing he would like to find out is who would represent NDSU in legal action that might be filed against North Dakota farmers for alleged patent violations.

Monsanto has filed at least 90 lawsuits against farmers for alleged copyright infringement and collected over \$15 million in damages, according to the Center for Food Safety.

One of those, Rodney Nelson, Amenia, told CFS he spends over \$12,000 per year taking precautions against being sued again.



# HOG FIGHT IN RAMSEY

Viking Feeders still hasn’t come up with a complete permit application, but the battle is already raging in Ramsey County over whether to let them build a 20,900-hog operation near Edmore.

At stake is the integrity of the county’s feedlot zoning ordinance, adopted 14 months ago and now being tested for the first time.

Proponents of the hog facility contend that a state law that went into effect August 1 overrules the ordinance. County Commission chair Pam Brekke has asked the Ramsey County States Attorney to seek an Attorney General’s opinion in the matter.

Brekke, who apparently favors the hog facility, began an August 1 public hearing on the permit by complaining about “a lot of misinformation put out by environmental groups” regarding hog facilities.

County Planning and Zoning member Joe Lawson defended the ordinance and told the Devils Lake *Journal* the hearing itself was out of order since Viking Feeders has not submitted a complete permit application.

“All we asked them to do was make their application be in alignment with our ordinance,” he said. “They refused to do it.”

The county’s Planning and Zoning Commission voted 5-3 on July 25 to deny Viking Feeders’ permit application.

Ramsey County Commissioner Joe Belford, who serves on the Planning and Zoning Commission, told the Devils Lake *Journal* that Viking Feeders had not provided all the information required and that he would “vote no until that information is presented to us.”

Concerns centered around potential contamination of surface and ground water from the proposed facility’s lagoon which will produce an estimated 15 million gallons of waste per year, according to Charles Linderman, an agricultural engineer hired by Ramsey County.

Citizens at the meeting also expressed concerns about how to prevent surface applications of manure from the lagoons from causing an overload of phosphorus in the soil.

North Dakota Farm Bureau’s Eric Aasmundstad and Jim Tilton of the Livestock Alliance of North Dakota attended the hearing to voice support for Viking Feeders.

Maple Leaf Foods is promoting Viking Feeders and other factory-style hog production facilities in northeastern North Dakota to assist expansion of its Brandon, Manitoba slaughter plant.

# OIL BOND SHORTAGE

North Dakota taxpayers could be hit with millions of dollars in reclamation costs if there is a large influx of claims on the state's bond reclamation fund, according to a report released August 16 by DRC and WORC.

"Existing financial assurance for oil and gas sites, known as blanket bonds, falls far short of actual clean-up needs," said James Kuipers, of Kuipers and Associates, author of the study, *Filling the Gaps, How to Improve Oil and Gas Reclamation and Reduce Taxpayer Liability*.

"The overall industry-wide liability is estimated in the billions of dollars, and just a few bad actor companies could saddle taxpayers and landowners with millions of dollars of clean-up liability," said Kuipers

"We have long known that bonding is inadequate," said Tom Irgens, Springbrook, member of DRC's Oil and Gas Task Force. "With the high price of oil and the increase in exploration in North Dakota and nationally there is really no reason that appropriate bonds cannot be posted to insure that proper reclamation occurs when production is completed."

North Dakota requires a \$15,000 bond for a single well, \$50,000 for a blanket bond covering 10 wells or less, or \$100,000 for unlimited wells in North Dakota.

North Dakota's Oil and Gas Division of the Industrial Commission is proposing an increase to \$25,000 for the single well bond.

"This is a step in the right direction,

but the road to responsible development has a lot of curves and turns," said Irgens, "The way to "doing it right" is to have companies post bonds that reflect the actual costs of reclamation."

The report recommends the following actions to address regional oil and gas bonding and reclamation problems.

- ◆ Land management agencies should have clear, specific reclamation requirements and standards.
- ◆ BLM and states should require reclamation plans tailored for specific sites and update them yearly.
- ◆ Professional engineers—not oil and gas industry executives—should prepare reclamation cost estimates.
- ◆ Bonds should cover reclamation costs and potential liabilities.



# NEW WIND BLOWING

New wind projects are pending in four different North Dakota counties this month with a total "nameplate" capacity of over 300 megawatts.

Fittingly, this month's issue of *National Geographic* honored the wind-pioneering sisters at Sacred Heart Monastery, Richardton, with a photo in their cover story, "After Oil: Powering the Future." The sisters were the first in North Dakota to erect a commercial-scale wind project.

The biggest of the new wind farms is slated for Pierce County, north of Rugby, with a projected 100 turbines. PPM Energy Inc. of Portland, Oregon is the developer.

The project is the first large enough to require approval under North Dakota's utility siting laws. The Public Service Commission held hearings on

the project in late July, and some local opposition has surfaced.

The PSC has already approved a new 4.4-mile power line for a new FPL Energy project in Burleigh County 49.5-megawatt wind project.

North of Velva, an 18-turbine installation by Global Renewable Energy Partners is under construction.

Another FPL Energy project in Dickey County has also drawn controversy.

Concerns about fair siting of turbines prompted Spring Valley Township to establish setbacks from property lines to make sure that neighboring landowners do not lose the ability to have turbines placed on their land.

The Minnesota Public Utility Commission is studying whether Otter Tail Power, which is buying the power

from the Dickey County project, can count the 70.5 megawatts toward their objective of 10% renewable energy by 2015.

Minnesota regulators also seem concerned about Otter Tail's plan to sell all the wind energy produced to pipeline company Enbridge.

This arrangement could prevent Otter Tail's other customers from benefiting from cost-effective North Dakota wind energy and force them to foot more of the bill for more expensive power that Otter Tail plans to provide from partnership in the proposed Big Stone II coal-fired plant in South Dakota.

Completion of all these projects would bring nearly a six-fold increase in North Dakota wind energy production.

# MARKINGS

by Staff Director Mark Trechock

Secretary of Agriculture Mike Johanns devised six questions for his farm bill forums and said he would “welcome input from across the nation.”

Here’s my two cents.

**1. How should farm policy address any unintended consequences that discourage the next generation of farmers from entering production agriculture?**

Actually, any profits in the production sector of agriculture are the real unintended consequences of U.S. farm policy. That’s why Johanns was so concerned about getting the Canadian border reopened. The wrong people—producers—were starting to make money.

U.S. farm policy for years has aimed at increasing the size of operations and reducing the number of producers, and it’s working very well.

Johann’s question is just an illustration of how clever people can lie even while they’re asking questions.

**2. How should farm policy be designed to maximize U.S. competitiveness and our country’s ability to effectively compete in global markets?**

It shouldn’t. “Competitiveness” is just a code word for low commodity prices. If farmers in North Dakota got any more competitive, they’d be starving to death.

The number one priority of our farm policy should be growing enough food for our own nation’s needs and making sure those who grow it can make a living.

Dismantling our free trade agreements with Mexico, Canada and other countries would be a good first step toward achieving this priority. Enforcement of anti-trust laws against price-fixing by the grain and livestock cartels would be a second.

Finally, quality rather than low price

should be the marketing strategy promoted by USDA. As a consumer, I’d appreciate that level of respect.

**3. How should farm policy be designed to effectively and fairly distribute assistance to producers?**

USDA is currently like the disaster agency FEMA, except that unlike FEMA, USDA actually creates the disasters itself—economic ones, in this case. Let’s stop doing it, and we can take this question off the table.

**4. How can farm policy best achieve conservation and environmental goals?**

Big agribusiness, which now runs USDA, has no such goals, but environmental degradation is the natural outcome of the goals it does have.

A focus on quality and a fair return for production agriculture would go a long way toward reducing the use of toxic chemicals in our food, soil and water. Sustained fair cattle prices would do more to encourage turning marginal cropland into healthy grasslands than CRP. Banning lagoon-based manure management is the only rational approach to preventing ongoing surface and ground water contamination.

**5. How can federal rural and farm programs provide effective assistance in rural areas?**

See question 3.

**6. How should agricultural product development, marketing, and research-related issues be addressed in the next farm bill?**

Give the land-grant universities back to the public. Fund them with public money. Put real farmers and consumers on their decision-making boards. We have turned our agricultural schools into agribusiness subsidiaries that are often restrained from doing independent scientific inquiry. So now we know how

to insert bacteria genes into several crops to make them resistant to Roundup, but we have no idea how to control the spread of the gene—or what use it will be in another 10 years or so when Roundup overuse has rendered it obsolete.



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# CAFTA SQUEAKS BY

The Dominican Republic-Central America Free Trade Agreement passed by an eyelash in the U.S. House of Representatives July 31, committing the nation to expanding the job outsourcing and declining farm commodity prices brought about by the passage of the North American Free Trade Agreement more than a decade ago.

The House's 217-215 vote followed the Senate's earlier 54-45 approval of the agreement.

North Dakota's Congressional delegation voted unanimously against the pact.

Governor Hoeven, North Dakota Farmers Union and the state's Farm Bureau—going against its national organization—all expressed opposition, yet the North Dakota Wheat Commission gave CAFTA its endorsement.

Congressional approval came despite news early in June that the U.S. Department of Labor stifled for over a year a report it commissioned which showed the poor working conditions and lack of worker rights in CAFTA countries.

Democrats united more strongly against CAFTA than

previous trade agreements. One interesting “no” vote was that of Sen. Hilary Clinton (D-NY), whose husband, then President Clinton, pushed NAFTA through Congress more than 10 years ago.

DRC got anti-CAFTA resolutions passed in Mercer, Oliver and Ward Counties, stressing that its “investor-to-state” provisions, like NAFTA's, would allow corporations and other private investors to bring complaints before secret tribunals with the goal of nullifying the laws, rules or court decisions of other nations.

“It's just another step in giving corporations more power than people,” said DRC member Ron Martin, Sawyer.

A NAFTA tribunal settled one high profile investor-to-state complaint in the public's favor this summer, rejecting a Methanex challenge to a 1999 California ban on a methanol gasoline additive that was polluting drinking water. At least 16 other states subsequently followed California's lead.

CAFTA now waits for approval by three additional nations—Costa Rica, Nicaragua and the Dominican Republic—before taking effect.

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