

Dakota Counsel

BIG STONE ZERO

Montana-Dakota Utilities closed the door and turned out the light on the Big Stone II coal-fired power plant project in South Dakota November 2.

DRC Treasurer Verle Reinicke, Bismarck, called it good news for himself and other MDU ratepayers.

“Now we won’t have to see our utility bills go up because of the cost of building an outmoded Big Stone plant, which won’t provide any electricity to North Dakota anyway,” said Reinicke.

Regulatory action in Minnesota would have protected ratepayers in that state from increased electricity costs by holding participating utilities to their cost estimates for construction and compliance with federal climate change regulations.

By contrast, North Dakota’s “externalities” law prohibits consideration of future regulatory costs in any Public Service Commission proceedings.

DRC unsuccessfully challenged official North Dakota endorsement of the plant in “pre-prudence” hearings before the PSC starting in 2007.

Much of DRC’s expert testimony on the likely effect on rates was not allowed because of the externalities law.

A Burleigh County court denied DRC’s appeal of the “pre-prudence” finding in August. The appeal said the externalities law denied ratepayers due process.

Otter Tail Power withdrew from the project in September leaving MDU the last major utility pushing the 550-megawatt, \$1.6 billion project.

MDU reported it was unable to find other investors to replace Otter Tail.

Otter Tail president Chuck MacFarlane told the Associated Press the plant failed because “the slumping national economy and uncertainty about future federal environmental legislation made it difficult to finance.”

EPA TO REGULATE CO2

As the Senate continued to delay action on climate change, the U.S. Environmental Protection Agency announced December 7 it would move forward with rules to control emissions of carbon dioxide.

The first rules to be issued will evidently cover emissions from cars and trucks beginning with model year 2012, under a plan to which automakers have already agreed, according to press reports.

Rules for coal-fired power plants and other stationary pollution sources could come by spring.

DRC Chair Marie Hoff applauded the move to address “one of the most urgent human health issues facing us today.”

“Every year the window of opportunity to prevent catastrophic climate change grows smaller,” said Hoff.

“The good news for North Dakota is that we have the clean wind energy that can help reduce greenhouse gas emissions and stimulate our economy,” she added.

State political leaders and the fossil fuel industry didn’t look on the bright side, however.

“A pre-emptive strike” at the coal industry is what John Dwyer, president of the Lignite Energy Council, called it.

All three Public Service Commissioners have spoken out against it.

Governor John Hoeven and Rep. Earl Pomeroy vowed to make common cause to fight the move by EPA. Ironically, Pomeroy voted against the House climate change bill, which would outlaw EPA governance of carbon dioxide if enacted.

See CO2, p 3



Roger Brenna passes the DRC Chair gavel to Marie Hoff

See Annual Meeting, p 5

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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CLIMATE CRISIS

By DRC Board Chair Marie Hoff

Global climate change is a *life* crisis. Unless we address it through sensible policies that reduce emissions of carbon dioxide and other “greenhouse gases,” our world may eventually be unlivable—or at least present seriously compromised conditions for people, animals and plants.

Global climate change is also a *political and policy* crisis. Fossil fuel industries are well-entrenched and highly resistant to needed change. This is true in North Dakota as much as anywhere in the world, as recent statements by our state’s industry and political leaders indicate.

Every crisis brings both a threat and an opportunity.

For poor areas close to sea level—and there are many such areas in the world—the threat comes in the form of sustaining life if global warming raises sea levels.

Basic human needs are at stake—shelter, food, water and livelihoods.

No wonder poor countries with a lot to lose are leveling criticism at President Obama and other international decision-makers for not doing enough to address the crisis.

In North Dakota, the threat looks quite different to many people.

Fossil fuel production generates lots of tax revenue here and provides some of the best working-class jobs in the state. Long travel distances and a harsh climate lead many to fear that global climate change policy will spike energy costs and ruin our economy.

So now many of our state’s political leaders in each party accuse the Obama administration with trying to do too much too fast—even though the reality of climate change has been known for at least two decades. North Dakota is not immune from the threats posed by global warming—more extreme and frequent weather events, drought, and increased pests that may undermine agricultural production.

It’s not smart to focus solely on short-term threats when devastating long-term threats are looming. But, it’s essential that we see the opportunity as well as the threats posed by both global climate change and the measures that can be taken to halt it. I believe many North Dakota citizens do see the opportunities for our state to actually benefit from needed changes in energy production and use.

The first opportunity is energy efficiency.

We need policies that promote good stewardship of our energy resources, instead of measuring our economic strength by the amount of energy we consume.

Utilities can play a pivotal role here by establishing programs to save energy and vigorously promoting them.

Individual households must also do their part by finding creative ways to take advantage of existing programs and technology.



FEDERAL OIL AND GAS: STRONGER BONDS NEEDED

DRC and the Western Organization of Resource Councils went straight to the top of the U.S. Bureau of Land Management last month to press its request for bonds that will protect the public from cleaning up the oil and gas industry’s mess.

BLM last raised bond amounts in 1960.

In a meeting with BLM Director Bob Abbey, DRC Past Chair and McKenzie County farmer and rancher Roger Brenna showed pictures of the Zenergy 2006 saltwater spill along Charbonneau Creek as an example of inadequate bonding.

The clean-up isn’t finished, but Zenergy has already spent well over \$1 million.

If the company went out of business, Brenna pointed out, all the public would have to finish the job is Zenergy’s \$350,000 combined state and federal “blanket bonds.”

And that money would also have to finance reclamation of Zenergy’s dozens of additional wells.

Brenna asked Abbey to review two lower-level BLM decisions not to consider raising Zenergy’s bond.

The more recent of these decisions came in July from Gene Terland of the BLM Montana State Office in Helena, which oversees BLM work in North Dakota.

In both decisions, BLM officials claimed they could not increase Zenergy’s bond unless the company had a history of federal regulatory noncompliance, failed to pay royalties, or had too many inactive wells.

It evidently does not matter to BLM that the Zenergy spill was a violation of the federal Clean Water Act, enforced in North Dakota by the Department of Health, and nationally by the U.S. Environmental Protection Agency.

The spill did not occur on federal land or at a well extracting federal minerals.

In any case, BLM’s own regulations clearly allow the agency to increase bond if “the total cost of plugging existing wells and reclaiming lands exceeds the present bond amount based on the estimates determined by the authorized officer.”

The same regulations actually require BLM to review federal oil and gas leases for risk assessment and bond adequacy.

Eric Barlow, a Wyoming rancher and member of Powder River Basin Resource Council, told Abbey at the same meeting that oil and gas leases on his ranch are being assigned to ever smaller companies.

Barlow has also asked his state BLM director to raise bonds on these companies, but so far has gotten no response.

Abbey said BLM was looking at a series of reforms in its oil and gas program—including bonding.

Although he did not make a firm commitment, he said a rulemaking on bonding could result from the review.



CO2 from p 1

Cap and Dividend Introduced

The stalled Senate debate on climate change has led to a new initiative aimed at breaking the deadlock.

A “cap and dividend” was quietly introduced this month bill by Sen. Maria Cantwell (D-WA) and co-sponsor Sen. Susan Collins (R-ME).

The bill is a model of simplicity—less than 50 pages long compared to more than 1,500 pages for the Senate “cap and trade” bill sponsored by Sens. John Kerry (D-MA), Joe Lieberman (I-CT) and Lindsey Graham (R-SC).

DRC supports the major elements of the Cantwell-Collins bill.

The chief difference between the two is that Cantwell-Collins sets a cap on suppliers (like coal mines) rather than retailers (like utilities) and returns the money to taxpayers (75%) and public investments in energy (25%).

Kerry-Lieberman-Graham, like the bill passed earlier this year in the House gives away 85% of emissions allowances (which could be sold for cash) and sets up cap-and-trade system that allows utilities to claim (and sell) “offsets”—that is, schemes to sequester carbon dioxide that would otherwise be emitted.

It’s an approach that has come in for firm criticism from Sen. Byron Dorgan.

GM: MORE PESTICIDES, LESS PROFIT

Roundup Ready cropping systems are losing profitability and increasing pesticide use, according to a new report by agricultural economist Charles Benbrook.

Roundup Ready systems are the major factor in the net overall increase of 318 million pounds of pesticide active ingredients applied to U.S. farmland since 1996, according to the report issued November 17.

The rapid development of Roundup-resistant weeds is a major factor in the increase, according to the Benbrook report, with the result of declining profits and a move away from Roundup Ready systems.

“It’s a bottom line issue for farmers to look for alternatives to Roundup Ready systems,” said DRC member Todd Leake, an Emerado farmer, who called the report “a reality check to constant biotech seed industry hype.”

Soybean farmers may well see an \$79 increase in seed and chemical costs per acre in 2010, or one-third of gross income per acre, based on average yield (36 bushels per acre) and aver-

age market price (\$6.50 per bushel), according to the report.

The report estimates an average of more than \$200 per acre operating costs for Roundup Ready soybean farmers, “leaving just \$34 to cover land, labor, management, debt, and all other fixed costs,” leaving “little or no room for profit.”

“It’s turned out to be a good thing Monsanto backed away from Roundup Ready wheat in 2004, freeing North Dakota wheat farmers from the added seed costs that Roundup Ready systems are imposing on crops like corn and soybeans,” said Leake.

Benbrook’s report notes that Roundup Ready soybean acreage fell 1% this year, the first decline since the seed was introduced, but that conventional seed was in short supply.

“Monsanto’s control in both the seed and pesticide markets poses a double whammy for soybean farmers like me,” said Leake. “We need more competition in these markets and renewed public breeding programs to get farmers reasonably priced seed with

the good yield and the disease package they are calling for.”

Growing weed resistance to Roundup has resulted in increased use of additional over-the-top herbicides and will further increase the amount of pesticide applied to U.S. farmland, according to the report.

The response of Monsanto and other industry giants is “the development of crops that will either withstand higher rates of glyphosate applications, or require applications of additional pre-plant, post plant or over the top herbicides, or both,” the report said.

This “more of the same” approach amounts to “pouring gasoline on a fire,” according to Benbrook.

Benbrook is Chief Scientist for the Organic Center and previously served as Executive Director, Subcommittee on Department Operations, Research, and Foreign Agriculture, U.S. House of Representatives, and Executive Director, Board on Agriculture, National Academy of Sciences.

You can read the entire report at www.organic-center.org.



...AND MORE CONTROL

Another report issued this month suggests Monsanto is building an anti-competitive level of control in the seed industry that is costing farmers.

Seeds with Monsanto-owned biotechnology traits are now grown on more than 90% of U.S. soybean acreage, and more than 80% of corn acreage, according to Farmer to Farmer’s report, Out of Hand.

“Farmers are facing fewer choices and significantly higher prices in seed,” said Kristina Hubbard, author of the report.

The report blames the situation on weak federal antitrust enforcement and Supreme Court decisions allowing the patenting of GM seeds.

“Most of the conventional varieties I can find are 10 to 12 years old,” said Todd Leake.

“Their disease resistance and yield have fallen well behind Roundup Ready varieties,” Leake added, because of the disappearance of conventional breeding programs.

The focus of public breeding programs has changed under Monsanto’s

influence. The latest genetics for yield and disease resistance are generally reserved for expensive patented GM crops, Leake noted.

The report urges close U.S. Department of Justice scrutiny of anti-competitive conduct in the seed industry.

Farmer to Farmer is working with DRC and the Western Organization of Resource Councils to write comments for a DOJ/USDA “workshop” on the seed industry to be held in Iowa in June.

You can read the entire report at www.farmertofarmercampaign.org.

ANNUAL MEETING REVIEW

DRC celebrated its 32nd annual meeting in Devils Lake October 24 by electing a new chair, Marie Hoff, passing new resolutions on several issues and hearing about health concerns related to factory farming.

Hoff, Bismarck, is a retired educator and non-profit administrator who still teaches part-time at the University of Mary.

She has been active on DRC's Clean Electricity Task Force and in Missouri Valley Resource Council.

Newcomers to the Board are South Agassiz Resource Council chair, Bette Stieglitz, Fargo; retired soil scientist Steve Merrill, Bismarck; and Jan Trautman, Maddock. Bob White, Emerado, returns to the Board after a year's absence.

Leaving the Board after completing their terms are Past Chair Dean Remboldt, Ted Reinert, R.J. Stohler, and Dean Hulse, although Hulse will continue on the Board as SARC's affiliate representative.

Holdovers on the Board are Past Chair Roger Brenna, Vice-Chair Leo Walker, Secretary Terrence Kardong, Treasurer Verle Reinicke, Assistant

Secretary Travis Schulz and Assistant Treasurer Linda Weiss.

DRC members approved amending the dues structure beginning January 1. (See page 2.)

Members also passed a resolution that prohibits DRC from accepting grants from units or agencies of government, with the exception of educational programs on renewable energy "until such time as another non-governmental organization duplicates or assumes this function."

Members also passed a resolution calling for the Finance Committee to formulate a process for evaluating new sources of funding prior to application.

In other action, DRC passed resolutions that:

- ◆ Called for federal regulation of hy-



Treasurer Verle Reinicke (l) visits with new board member Steve Merrill at the Annual Meeting

draulic fracturing fluids used in oil and gas exploration;

- ◆ Urged improved federal protections for private landowners above federal oil and gas reserves;

- ◆ Expressed support for federal climate legislation with no free allowances, not based on a "cap and trade" system, but returning revenues to taxpayers and renewable energy projects, granting no funds for fossil fuel development, but including improved efficiency standards, a federal renewable energy standard for all utilities, long-term extension of the renewable energy tax credit, and non-interference in U.S. Environmental Protection Agency regulation of carbon dioxide;

- ◆ Called for improved federal oversight of genetically-modified crops;

- ◆ Urged investigation of steep wheat protein discounts;

- ◆ Supported federal food safety legislation that does not unnecessarily burden local foods producers and processors; and

- ◆ Expressed support for keeping Missouri River Correctional Center lands in the public domain.

Keynote speaker Dr. Donna-Wong Gibbons, a disease researcher for Plains Justice, outlined the health impacts and lax regulation of factory farms.

She cited an Iowa study that found children living near factory farms had a high incidence of asthma due to poor air quality, and noted health risks to workers and consumers springing from the rise of antibiotic-resistant diseases spread by factory farms.

She also said the Clean Water Act is not effectively utilized in addressing the 500 million tons of manure generated annually by factory farms, despite half a million documented spills over the past five years.

CLIMATE CRISIS from p 2

Heat pumps, insulation, more fuel-efficient vehicles, on-farm production of biofuels, and use of small wind turbines and other renewable energy methods are everybody's friend. They save both energy and money while directly addressing the threat of global warming.

The second opportunity is North Dakota's unmatched wind energy.

North Dakota has already embraced utility-scale wind generation, and wind energy has been by far the leader in new energy production and related manufacturing in the state during the last decade.

Embracing this opportunity means increasing wind on the wires while decreasing coal—an outcome that will keep North Dakota in the energy game even as we play a vital role in addressing global warming.

The threats are real, but so are the opportunities. All we need are strong citizen voices to demand imagination and commitment by our state's leadership to clean, renewable and affordable energy.

COAL ASH IN THE HOPPER

It's never been regulated under federal law, but the ash from coal-fired power plants appears headed for greater scrutiny after publication of a major federal report in late October.

The 230-page report, issued by the U.S. Environmental Protection Agency, said toxic pollutants from coal ash can concentrate in large amounts in both surface and ground water.

These pollutants include arsenic, cadmium, cobalt, lead, mercury, selenium and other heavy metals that represent "a human health risk" according to the report.

The report documents cases of fish kills and well contamination attributable to coal ash disposal in water.

DRC joined the Environmental Integrity Project and many other groups in August comments calling on EPA to set "effluent limitation guidelines" under the Clean Water Act for heavy metals,

and also signed a group letter in October asking EPA to phase out coal ash impoundments.

The coal ash issue came to national prominence last December when a coal ash pond collapsed and flooded Kingston, Tennessee with over a billion gallons of toxic sludge.

This year EPA published a list of 584 such coal waste ponds in 35 states.

The "beneficial use" of coal ash also came under investigation this year by the EPA Office of Inspector General, which published a report in November calling for further study about why EPA was promoting re-use of coal ash before determining whether such commercial applications were safe.

The report echoes concerns raised about coal ash commercialization over many years by Public Employees for Environmental Responsibility.

EPA has not yet drafted regulations for coal ash disposal, despite saying in October they expect to issue regulations by the end of the year.

Reportedly, internal draft rules are under consideration at the federal Office of Management and Budget—along with a report from the Electric Power Research Institute saying the rules could result in shutting down up to 411 coal-fired power plants.

The coal industry is expected to use the report to try to convince EPA not to act.

"There's not one of my plants that could meet the proposed limits being talked about by EPA without massive investment," utility executive Caryl Pfeiffer recently told an industry conference according to press reports.

Pfeiffer called the Kingston spill "the coal-fired power industry's Three Mile Island."



NEW SOUTH HEART APPEAL

DRC and South Heart area landowners filed suit again October 29 to overturn Stark County's rezoning of agricultural land to accommodate GTL Energy's proposed coal preparation plant.

"Why change more land to industrial for a single operation when there is an industrial area just west of Dickinson with power, water, natural gas, and easy access to the freeway?" asked Gordy Krance, South Heart, who lives near the GTLE construction site.

The suit argues that the rezoning should be overturned because it is illegal "spot zoning," which singles out a small area for treatment that is discriminatory, or different from the treatment accorded similar surrounding land.

The land rezoned by the county is about five miles southwest of South Heart.

A judge threw out a previous rezoning change on the same land because the county failed to follow its own zoning law and prepared no written findings to support the change in zoning.

The county also dealt with another potential zoning law violation by changing the law September 1 to remove a requirement that adjoining landowners approve a land use change to industrial.

Community members proposed conditions on the rezoning to hold GTLE accountable to promises on road use, pollution and employment, but the county did not adopt them.

"The county is turning a farming and ranching community into an industrial zone for the benefit of a foreign company with no track record here," said Krance. "That's no way to treat farmers and ranchers who are the heart of our whole regional economy."

DRC and several landowners also have a pending complaint before the state Public Service Commission against GTL Energy for building a coal preparation plant without a mining permit.

The PSC is still sorting out procedures for handling the complaint, which was filed 11 months ago.

THE SOUTH HEART CHAMELEON

by Linda Weiss

The South Heart coal conversion project apparently isn't getting any of this year's federal money.

The U.S. Department of Energy this month announced the year's last recipients of money for "advanced coal" projects. They are in Alabama, Ohio and Washington. Not North Dakota.

We'll see what happens in 2010—and what Great Northern Project Development cooks up next.

The coal project at South Heart has been chameleon-like—changing its colors repeatedly since GNPD secured its coal leases several years ago.

First, it was to be a coal-fired power plant. Who would buy the electricity it produced was never clear.

What was clear was that it posed a threat to air quality in Theodore Roosevelt National Park. GNPD withdrew its proposed air quality permit in 2007.

Then came the coal gasification proposal. Again, it was unclear who would buy the synthetic natural gas.

GTL Energy showed up in late 2008 and started building its coal preparation plant to dry coal for the conversion project—without the mining permit such plants normally require.

GNPD submitted a mining permit, which didn't mention the coal preparation plant.

When DRC challenged GTLE's lack of a mining permit before the state Public Service Commission, the two companies began claiming they had no relationship to one another—even though GTLE built on land leased by GNPD.

GNPD withdrew its mining permit and hasn't submitted another one.



This August the chameleon changed colors again. Now it is supposed to be a "coal-to-hydrogen electrical generation plant" built with hoped-for federal dollars.

Again, who will buy the electricity is a mystery.

Now the latest turn of events is that GTLE says it will test lignite coal shipped from New Zealand.

What's the carbon footprint of that?

So the federal dollars aren't available, at least not yet, and those of us who live near the chameleon are wondering what color it will turn next.

The coal is still there, from the point of view of GNPD just going to waste. For them, it's all about the coal they got for nothing from the federal government over a century ago.

But across the country, coal projects are dropping like flies, including the now-defunct Big Stone II proposal (see page 1). We have to move beyond coal.

I hope western North Dakota will remain an area where energy produces income and bolsters our local economy.

With one of the best wind energy resources in the world, my home area has the potential to remain an energy-producing dynamo long after fossil fuels go the way of high-button shoes.

It's high time the chameleon turned green.

(Linda Weiss lives near Belfield and serves as DRC's Assistant Treasurer and the chair of Badlands Area Resource Council.)



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BAYER MUST PAY FOR RICE CONTAMINATION

A federal court in St. Louis ordered Bayer CropScience LP this month to pay about \$2 million to two Missouri farmers whose crops were contaminated by an experimental variety of genetically modified rice in 2006.

Rice farmers have filed more than 1,000 other cases for damages from the same event.

The next one scheduled for trial involves Arkansas and Mississippi farmers and is to begin January 11, also in St. Louis.

About 30% of U.S. rice lands were contaminated by the unauthorized release.

The rice variety, LLRICE601, had never been legally grown outside test plots overseen by the U.S. Department of Agriculture, and had not been grown at all since 2001.

USDA had not approved the rice variety for human consumption at the time of the release, and Bayer evidently had no plans for further research on the crop.

Bayer claimed in the trial that it had employed containment protocols that were “equal to or exceeded industry standards,” according to press reports.

“Even the best practices can’t guarantee perfection,” said Bayer’s lawyer, Mark Ferguson.

The jury nevertheless decided Bayer had been lax in the handling of the experimental seed and awarded compensatory damages.

However, jurors did not award the \$80 million in punitive damages sought by the plaintiffs, saying they hadn’t proved that Bayer deliberately allowed the contamination.

When the contamination occurred, market losses were immediate. The European Union, for example, requires all imported U.S. long-grain rice to be GM-free.

Plaintiffs estimated market losses from the contamination at \$150 million, but the Arkansas Rice Growers Association earlier estimated losses at greater than \$1 billion.



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