

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

AGRICULTURE COMMITTEE

Wednesday, July 26, 2000
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative John M. Warner, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives John M. Warner, James Boehm, April Fairfield, Rod Froelich, Lyle Hanson, Gil Herbel, James Kerzman, Shirley Meyer, Phillip Mueller, Jon O. Nelson, Eugene Nicholas, Dennis J. Renner, Earl Rennerfeldt, Arlo E. Schmidt, Ray H. Wikenheiser; Senators Bill L. Bowman, Herb Urlacher

Members absent: Representatives Michael D. Brandenburg, Thomas T. Brusegaard, Keith A. Kempenich, Ed Lloyd, Robert E. Nowatzki; Senators Meyer Kinnoin, Terry M. Wanzek

Others present: See attached appendix

It was moved by Senator Urlacher, seconded by Representative Boehm, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

DAMAGE CAUSED BY WILD ANIMALS

Bill Draft

Committee counsel presented a bill draft previously presented that would prohibit the Game and Fish Department from discriminating against or penalizing a landowner in the deerproof hay yard program for entering a hunting for compensation agreement.

Testimony

Mr. Ron Hartman, Grassy Butte, provided testimony on fee hunting as compensation for depredation and as a secondary income. He said his ranch is located next to public land and deer and antelope come from the public land and eat his alfalfa during the summer. He said the deer return to the public land during the fall and winter. He said a deerproof hay yard program does not help him in this situation. He said a gratis tag is a courtesy to the landowner for owning land and the landowner should be able to decide how to use that gift. He said all gratis tags should be allowed to be sold or transferred by the landowner. He said this would allow ranchers to sell their gratis tags to cover the cost of summer depredation problems.

In response to a question from Representative Mueller, Mr. Hartman said he supported the bill draft. He said smaller farm and ranch operations may still

need a subsidy to build a deerproof hay yard, even if a fee is received for hunting.

In response to a question from Senator Bowman, Mr. Hartman said a small landowner may need a deerproof hay yard and may not be able to benefit from a transfer of a gratis tag.

In response to a question from Representative Meyer, Mr. Hartman said other states allow the transfer of gratis tags and some states allow more than one gratis tag based upon acreage.

In response to a question from Representative Nelson, Mr. Hartman said the transfer of a gratis tag should be allowed to be made to a resident or a nonresident hunter. However, he said, he would settle for limiting the transfer to residents of this state.

In response to a question from Representative Nelson, Mr. Hartman said the profit from his ranching enterprise is approximately \$80,000 per year and the profit from the first year of fee hunting was approximately \$11,000.

In response to a question from Representative Herbel, Mr. Hartman said he is licensed with the Game and Fish Department as a guide for a fee of \$100 a year. He said he carries insurance for his fee hunting operation. In addition, he said, he has a pheasant shooting preserve license that costs \$100 for 640 acres and 50 cents per acre thereafter.

In response to a question from Representative Schmidt, Mr. Hartman said he allows all turkey hunters to hunt for no fee and allows some free deer hunting.

Mr. Ron Wanner, Golden Valley, provided testimony on tourism and fee hunting as alternative sources of income in rural areas. He said he owns and manages the Knife River Ranch. He said the ranch is a working ranch that brings in tourists from all over the world. He said he enjoys the wildlife on the ranch and provides feed, which he began doing even before there were tourist activities, for the wildlife. He said this year was the first time he engaged in fee hunting.

Mr. Wanner said at times there are 200 turkeys in his hay yard. He said his son used the gratis tag for turkey on the ranch. He said there were so many turkeys his son did not shoot a turkey because it was not a challenge. He said one solution to the rising turkey population would be for the state to allow

nonresident hunters to hunt turkeys. He said he only receives one gratis tag for 7,000 acres. He said he should be allowed to receive more gratis tags and should be allowed to sell tags. He said it is difficult to sell a hunt when you cannot guarantee a tag. He said there should be incentives for landowners to manage the wildlife. In addition, he said the Game and Fish Department should reimburse ranchers for significant depredation loss.

In response to a question from Representative Herbel, Mr. Wanner said the state should increase the number of gratis tags based on the number of acres owned. He said adjustments could be made based upon the wildlife population. He said the wildlife population could be determined by surveys done by the Game and Fish Department and by working with landowners.

In response to a question from Representative Rennerfeldt, Mr. Wanner said in the last four years he has paid for his deer tag and has not received his first choice. He said other family members use the gratis tag. He said as a matter of good will and considering his acreage, he should receive enough gratis licenses for his family.

In response to a question from Representative Hanson, Mr. Wanner said he allows public hunting. He said he allows friends to hunt and allows free doe hunting. He said road hunters are a serious problem.

In response to a question from Senator Urlacher, Mr. Wanner said he knows the wildlife on the ranch better than anyone else. He said he should have the opportunity to manage the wildlife to provide for quality hunts.

Mr. Wade Moser, North Dakota Stockmen's Association, provided testimony in support of the bill draft. He said the program is not a high-cost program. He said farm families need opportunities to find extra income from on-farm sources. He said the long-term lease for the deerproof hay yard program scares off some landowners even if they do not have fee hunting or plan on fee hunting in the future.

In response to a question from Senator Urlacher, Mr. Moser said he would prefer the passage of the bill draft over leaving the issues raised in the bill draft to Game and Fish Department policymaking.

Mr. Dean C. Hildebrand, Director, Game and Fish Department, provided testimony in opposition to the bill draft. He said the contract for the deerproof hay yard program does not allow fee hunting because the supplies used for the hay yard are paid for by sportsmen's dollars. He said a landowner may purchase back the hay yard to engage in fee hunting. He said the Game and Fish Department has increased the number of deer licenses to about 100,000 for this year. He said the Game and Fish Department has increased the number of turkey licenses from 1,200 to 1,400 this year.

Mr. Hildebrand said he is proposing a new program to begin in Emmons County which would

allow the Game and Fish Department to lease an easement that would provide for trees, dense nesting, and food for wildlife on 20 acres of land. The price would be set through competitive bidding by landowners. The area included within the easement would be open to public hunting. He said landowners would receive payment at the beginning of the lease. He said the funding for the easement program comes from the federal government and 20 percent from the Game and Fish Department. He said only 20 acres is bound by the easement. He said the program would involve a willing buyer and seller and at minimum would provide more trees in this state.

In response to a question from Representative Herbel, Mr. Hildebrand said the new easement program would be for 30 years and would not contain provisions for a landowner to remove that landowner's property from the program before the end of the 30 years.

In response to a question from Senator Urlacher, Mr. Hildebrand said at one time 85 percent of farmers accepted hunting. He said most farmers do allow hunting; however, hunting is limited where there is a high concentration of game.

Representative Meyer said more and more land is posted as a protest against the Game and Fish Department.

In response to a question from Senator Bowman, Mr. Hildebrand said the Game and Fish Department cannot provide extra gratis licenses by rule. He said the Game and Fish Department has by rule allowed landowners to receive a gratis permit up to hunting season.

In response to a question from Representative Meyer, Mr. Hildebrand said compensation for depredation is difficult to administer. He said the Game and Fish Department would have to become an insurance company. He said the only way to control deer is with a bullet.

In response to a question from Representative Nicholas, Mr. Hildebrand said 10 percent of the land in North Dakota is public land open to public hunting. He said six percent of this land is covered by water.

Committee Discussion

In response to a question from Representative Herbel, committee counsel said the bill draft would not affect current contracts.

Representative Meyer said the idea for the bill draft came from complaints of constituents. She said that if the Game and Fish Department's deer eat hay owned by her, the Game and Fish Department should pay her to protect that hay from the Game and Fish Department's deer. She said the deerproof hay yard program should have nothing to do with fee hunting. She said the Game and Fish Department presented the contract after delivering the materials to build the hay yard. She said landowners did not appreciate this tactic on being told what to do on their own land.

She said it appears the Game and Fish Department has over \$1 million to spend on depredation and will not spend it. She said it is a control issue and the Game and Fish Department wants too much control over others' land.

Representative Froelich said a good solution for deer and turkey depredation is to allow the sale of gratis tags. He said the problem with trapping and moving turkeys is that they become somebody else's problem. He said he personally does not need to make money off the hunting of turkeys. He wants the turkeys gone.

Representative Meyer said increasing the number of gratis licenses may not provide much of a solution to the damage being done by turkeys. She said five gratis tags will not get rid of 200 turkeys; however, the sale of those licenses would compensate the landowner for the damage done.

Representative Meyer said it is unreasonable for sportsmen to be upset with a landowner selling a gratis tag. She said it should not matter to sportsmen who uses the gratis tag. She said selling tags would provide for better relationships between the hunting public and landowners.

Representative Hanson said a bill in the last session which allowed for the transferability of a gratis elk license failed to pass. He said the Game and Fish Department shipped 200 elk out of state. He said the state should have kept the elk and allowed landowners to sell gratis tags to hunt elk.

Representative Herbel said a landowner should be able to have the option of participating in the deerproof hay yard program, fee hunting, and the sale of gratis licenses.

Representative Nelson said the committee should not recommend the bill draft with amendments relating to gratis tags. He said further amendments would create more controversy.

Representative Hanson said farmers and ranchers bear some responsibility for the wildlife on their property. He said allowing deerproof hay yards to be placed on land where there is fee hunting would provide a subsidy for farmers and ranchers at the expense of sportsmen.

It was moved by Representative Meyer, seconded by Representative Nelson, and carried on a roll call vote that the bill draft relating to prohibiting the Game and Fish Department from discriminating against or penalizing a landowner in the deerproof hay yard for entering a hunting for compensation agreement be approved and recommended to the Legislative Council. Representatives Warner, Fairfield, Froelich, Herbel, Kerzman, Meyer, Mueller, Nelson, Nicholas, Renner, Rennerfeldt, and Wikenheiser and Senators Bowman and Urlacher voted "aye." Representative Hanson voted "nay."

CREDIT-SALE CONTRACT PROTECTION

Mr. Jon Mielke, Executive Secretary, Public Service Commission, presented testimony on the progress of the pamphlet on credit-sale contracts. He said the pamphlet will be distributed through the county extension offices, be sent to elevators and farm groups, be the subject of news releases, and be posted on the World Wide Web. A copy of the pamphlet is on file in the Legislative Council office.

In response to a question from Representative Warner, Mr. Mielke said there is no data to confirm whether companies buying troubled elevators would be less willing to pay outstanding credit-sale contracts to keep the farmers' good will than in the past. He said not much money was made in the grain trade in the last year. He said there will be a loss of a dozen elevators for the next year.

AGRICULTURAL MARKETING STUDY

Trade Policy

Mr. Chris Shaffer, Immediate Past Chairman of the Board and World Trade Representative, United States Wheat Associates, provided testimony on trade policy regarding wheat. He discussed trade with China and United States-Canada trade disputes. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Warner, Mr. Shaffer said that within the Uruguay Round Agreement there is a "peace clause" that allows countries to have time to implement the agreement. He said certain trade actions may not be taken until 2003.

Mr. Shaffer said the Freedom to Farm Act lived up to what this country agreed to in the Uruguay Round Agreement. He said Europe has not implemented its agreement.

In response to a question from Representative Warner, Mr. Shaffer said there is a bill in Congress to allow trade with Cuba. He said the bill excludes this country from providing credit for the purchase of our products by Cuba.

In response to a question from Representative Warner, Mr. Shaffer said although the sugar industry may be damaged by trade with Cuba, the sugar industry has a bigger battle in Washington, D.C. He said the sugar industry also has problems within the World Trade Organization.

In response to a question from Senator Bowman, Mr. Shaffer said profitability to producers is provided within the current system for the marketing of agricultural products. He said state trading export enterprises have given away quality at no extra cost to receive market share. He said the marketing focus for the sale of United States wheat is on selling specific quality wheat for specific end uses. He said it is difficult to profit if other countries give away quality. He said spring wheat growers are working as a multistate group to sell direct.

In response to a question from Representative Mueller, Mr. Shaffer said the problem with this country providing donations of grain is that in certain countries, e.g., Russia, the grain is not distributed to the people who need the food. He said donations will have no impact on price unless world stocks go down. He said old stocks used to be scattered around the world and now are held by the five major exporting countries. He said most stocks are held by the United States and that does not benefit farmers in this country.

In response to a question from Representative Froelich, Mr. Shaffer said the state is working with the federal government on testing procedures that will better recognize banned chemicals on agricultural products imported into this country.

In response to a question from Representative Nicholas, Mr. Shaffer said the wheat industry is getting its influence into trade agreements. He said the wheat industry did not have enough influence in the North American Free Trade Agreement and took a beating at the expense of financial institutions.

In response to a question from Representative Nicholas, Mr. Shaffer said because of the World Trade Organization there needs to be a farm bill that supports farmers in new ways. He said this country needs to look at other countries and see what they are doing to make new programs.

In response to a question from Representative Nicholas, Mr. Shaffer said what the wheat industry spends on research and development and on policy is a lot less than what other industries invest. He said generally producers are not willing to spend money for marketing. He said in Washington the apple growers spend \$1.50 per box on a \$6 box of apples for marketing. He said the United States Wheat Associates does the best it can with what it has to spend.

In response to a question from Representative Nicholas, Mr. Shaffer said the wheat industry is making progress; however, there are many issues that need to be addressed, including federal policy, surpluses, and transportation issues.

In response to a question from Representative Fairfield, Mr. Shaffer said the agriculture agreement that the World Trade Organization began in Seattle is scheduled to be completed by 2003. He said implementation of that agreement will take a longer time.

In response to a question from Representative Rennerfeldt, Mr. Shaffer said to obtain a larger market share, producers need to produce a product for a specific end user in another country. He said the federal government needs to level the playing field by addressing state trading export entities and European subsidies. He said this country needs to expand exports to South America. He said there needs to be a reduction of the South American import tax of 30 percent. He said there will not be overnight changes.

In response to a question from Senator Bowman, Mr. Shaffer said for 30 years up until 1996 the federal farm policy was that the federal government would give \$4 for wheat no matter what. He said the issues of cleanliness and quality were not addressed in the federal farm policy. He said producers have a mindset that producing more is better. He said that thinking combined with poor prices has contributed to the present farm crisis. He said because of the freedom to farm bill, he has become better at marketing because of necessity. He said freedom to farm required a change in thinking. He said for agricultural producers to control the industry they need to control the capital. He said agricultural producers do not control the capital.

Mr. Neal Fisher, Administrator, Wheat Commission, answered questions from the committee. In response to a question from Representative Nelson, Mr. Fisher said export credits are awarded based on commercial banking standards. He said commercially viable countries do not use them and extremely poor countries are not awarded them. He said the commercial credit program guarantees 98 percent of the loan.

In response to a question from Representative Nelson, Mr. Shaffer said the sanctions on Iran have been lifted, but there are few exports going to Iran. He said Iran will not accept imports unless it can export rugs and nuts. In addition, there is no credit being offered from the United States because of terrorist links.

In response to a question from Representative Warner, Mr. Shaffer said there are trade offices for wheat in Asia--Tokyo, Taipei, Hong Kong, Korea, the Philippines, Singapore, and Beijing. He said trade offices are the link between what a crop is and what the buyer wants. He said trade offices engage in a constant educational process by providing milling and baking schools. He said trade offices do trade servicing, i.e., finding out what buyers want. He said trade offices also solve problems with shipments.

Antitrust

Mr. Dave Huey, Assistant Attorney General, Consumer Protection and Antitrust Division, Attorney General's office, provided testimony on antitrust law. He reviewed federal and state antitrust law and reviewed enforcement actions by this state with a focus on agriculture. A copy of his testimony is on file in the Legislative Council office.

Representative Fairfield said many multinational corporations are larger than some countries in the size of their budget. She said there needs to be enforcement of antitrust laws against large corporations. She said transnational corporations control the markets.

In response to a question from Representative Fairfield, Mr. Huey said the review of mergers by the Department of Justice follows a definite

procedure--companies with combined sales over a certain threshold must provide the Department of Justice with premerger notification; the department has a limited time to file an action; and the burden of proof is on the Department of Justice. He said there are two markets for a product--the product market and the geographic market. He said in the merger of Continental and Cargill they had a product market share of 18 percent; however, it was all in one geographic market. He said some divestiture was required in certain geographic markets.

In response to a question from Senator Bowman, Mr. Huey said there are two main theories of economic thought. He said during the 1980s the Chicago school of thought which preferred globalization was in vogue. He said this was a time when there was major concentration of agribusinesses. He said it is difficult to change what has already been done. He said at that time states did not have the laws or resources to challenge the mergers.

In response to a question from Senator Bowman, Mr. Huey said agrarian policy principles must be brought into antitrust law. He said he is working with a group on protection for producers in production contracts. He said the group is trying to prevent vertical integration based upon disparate power between large corporations and producers.

In response to a question from Representative Warner, Mr. Huey said there are multistate working groups through the National Association of Attorneys General which work on antitrust matters. He said the lead state in the group is dependent upon the issue. He said this state participates with personnel, funding, research, and legal work. He said this state benefits greatly from being in multistate groups.

In response to a question from Representative Warner, Mr. Huey said two ways to strengthen anti-trust actions in this state are:

1. To create a revolving fund initially funded with \$500,000 to \$1 million for pursuing anti-trust actions.
2. To give the Attorney General additional investigative power in state actions by removing the requirement of showing reasonable cause for a violation to a district court before the issuance of a subpoena.

In response to a question from Representative Warner, Mr. Huey said the revolving fund could be replenished with attorney's fees won in actions and could be increased by adding civil penalties.

In response to a question from Representative Hanson, Mr. Huey said any price fixing being done in the gasoline market is most likely being done upstream from gas stations. He said gasoline is a fungible product advertised on the street. Under the circumstances it is normal to expect that prices would track each other in a competitive market.

Mill and Elevator

Mr. Vance Taylor, General Manager, Mill and Elevator, provided testimony on past and present marketing strategies of the Mill and Elevator. A copy of his testimony is on file in the Legislative Council office. He reviewed marketing of durum, spring wheat flour, family flour, and organic flour. He said in the past, durum products were marketed to large pasta companies. He said the Mill and Elevator is focusing sales toward smaller pasta companies that buy in bags. He said the future marketing plan is to expand sales in branded bags.

Generally, Mr. Taylor said, the marketing of flour has been in smaller amounts over time. For example, he said, Dakota Maid flour was sold in 25- and 50-pound bags in grocery stores throughout North Dakota, but now is sold in 5-, 10-, and 25-pound bags in 11 states. In the future, he said, marketing will focus on large retail chains and the products will have to offer the consumer speed and convenience.

In response to a question from Representative Warner, Mr. Taylor said different buyers of organic flour have different requirements. He said the mill does not need dedicated facilities. He said there are different requirements as to the cleanup required before milling organic flour.

In response to a question from Representative Mueller, Mr. Taylor said there is no problem with competition from value-added facilities within this state. He said the Mill and Elevator's location and contacts combined with the ability to source the highest quality grain will ensure continued profitability.

In response to a question from Senator Bowman, Mr. Taylor said the Mill and Elevator does segregate some varieties that demand a higher price.

In response to a question from Representative Kerzman, Mr. Taylor said the Mill and Elevator covers sales with purchases on the futures market.

In response to a question from Representative Schmidt, Mr. Taylor said 90 percent of the grain received at the Mill and Elevator is transported by semitruck. He said the Mill and Elevator uses very little grain off the Minneapolis Grain Exchange. He said 95 to 98 percent of the grain comes from North Dakota.

Transportation

Mr. Gene Griffin, Director, Upper Great Plains Transportation Institute, North Dakota State University, presented testimony on transportation issues. He said the major policy issues are:

1. How will transportation impact processing?
2. Who will bear the increased infrastructure costs, the farmer or the state?
3. How will we maintain low-volume roads?
4. How will we change our status as a residual supplier (a supplier that can be used as a backup to fill excess capacity)?
5. How can we regain lost market power?

In response to a question from Representative Nicholas, Mr. Griffin said the closest intermodel facilities for Dakota growers are in Thief River Falls and Duluth, Minnesota; and Billings, Montana.

Grain Grading

Representative Meyer said a constituent told her that there are differences in the grades obtained from different federal laboratories. She said the destination grade is always less than the origination grade when there has been a difference for this constituent.

In response to a question from Representative Meyer, Mr. Mielke said the state does not have jurisdiction over federal laboratories. He said grain buyers require the grain grade to be determined at the destination.

In response to a question from Senator Bowman, Mr. Mielke said he thought grain elevator managers would support a federal law that would require grading at the origination point. He said it would require a federal law.

Mr. Mielke said there is a field office for the federal grading service in Grand Forks. He said that office may be contacted with any complaints.

Chairman Warner adjourned the meeting at 5:00 p.m.

Timothy J. Dawson
Committee Counsel

ATTACH:1