

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

NATURAL RESOURCES COMMITTEE

Wednesday, July 30, 2008
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Tim Flakoll, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Tim Flakoll, Arden C. Anderson, Tom Fischer, Joel C. Heitkamp, Stanley W. Lyson; Representatives Ole Aarsvold, Chuck Damschen, Duane L. DeKrey, Donald D. Dietrich, C. B. Haas, Lyle Hanson, Brenda Heller, Darrell D. Nottestad, Louis Pinkerton, Todd Porter

Others present: See [Appendix A](#)

Chairman Flakoll recognized Senator David O'Connell, Lansford, and Representative Rodney J. Froelich, Selfridge. Chairman Flakoll invited Senator O'Connell, as a member of the Legislative Council, to sit with the committee.

It was moved by Representative DeKrey, seconded by Representative Aarsvold, and carried on a voice vote that the minutes of the March 7, 2008, meeting be approved as distributed.

SEVERANCE OF HUNTING ACCESS STUDY

At the request of Chairman Flakoll, committee counsel reviewed a bill draft [\[90032.0200\]](#) relating to severance of the right of access for hunting access from the surface estate.

Chairman Flakoll recognized Mr. Roger Rostvet, Deputy Director, Game and Fish Department. Mr. Rostvet said the department has reviewed the bill draft and amendment incorporated by the Legislative Council staff into the bill draft and supports the bill draft as amended. He said the exemption for private land habitat and access improvement program easements is beneficial to the department.

Chairman Flakoll recognized Mr. Rodney J. Froelich, Selfridge. Mr. Froelich said he was appearing on his own behalf and not as a member of the Legislative Assembly. He said the bill draft relating to severance of the right of access for hunting access from the surface estate infringes on the rights of private property owners.

In response to a question from Representative Damschen, Mr. Froelich said if the Legislative Assembly prohibits the severance of the right of access for hunting access from the surface estate, it will decrease the value of property. He said other property interests can be severed, such as sand and gravel, coal, and oil and gas, and property owners should be able to sever hunting access rights as well.

In response to a question from Senator Heitkamp, Mr. Froelich said the issue is not a hunting access issue but a private property rights issue.

In response to a question from Representative Porter, Mr. Froelich said if an entity or organization were to purchase property, sell the property, and retain the hunting rights and prohibit hunting on that property, the subsequent landowner would be aware of that provision in the sale of the property and the property would be valued accordingly in the transaction.

Chairman Flakoll recognized Representative Hanson. Representative Hanson said the North Dakota Stockmen's Association and the North Dakota Farmers Union support the bill draft.

Chairman Flakoll recognized Representative Nottestad. Representative Nottestad said he had several concerns relating to the bill draft. First, he said, the bill draft restricts what a property owner can do with that individual's property. Second, he said, the bill draft has the potential to reduce property values.

It was moved by Representative Hanson, seconded by Representative Dietrich, and carried on a roll call vote that the bill draft relating to the severance of the right of access for hunting access from the surface estate be approved and recommended to the Legislative Council. Senators Flakoll, Anderson, Fischer, and Lyson and Representatives Aarsvold, Damschen, Dietrich, Haas, Hanson, Heller, and Porter voted "aye." Senator Heitkamp and Representatives Nottestad and DeKrey voted "nay."

MISSOURI RIVER, MASTER MANUAL REVIEW, AND 1944 FLOOD CONTROL ACT REVIEW STUDY AND OTHER WATER-RELATED COMMITTEE RESPONSIBILITIES

Chairman Flakoll recognized Mr. Dale Frink, State Engineer, State Water Commission. Mr. Frink discussed [\(Appendix B\)](#) indemnification for local water projects. He said the State Water Commission approved an interim, and possibly long-term, solution to the liability and indemnification issues regarding state cost-share contracts with local political subdivisions for water projects on April 23, 2008. He

said the commission has agreed that its agreements will only require an endorsement for the construction period of a project. He said the North Dakota Insurance Reserve Fund has agreed to provide this endorsement. He said the commission will continue to require full indemnification from project owners but without an insurance endorsement beyond the construction period. He said the commission is again entering agreements with political subdivisions.

At the request of Chairman Flakoll, committee counsel distributed a copy of United States S. 3258 making appropriations for energy and water development and related agencies for the fiscal year ending September 30, 2009, which is on file in the Legislative Council office. Committee counsel said Section 108 of the bill would authorize the Secretary of the Army to conduct a study of the projects located within the Missouri River Basin at a total cost of \$25 million with the express purpose to review the original project purpose based on the 1944 Flood Control Act, as amended, and other subsequent relevant legislation and judicial rulings to determine if changes to the authorized project purposes and existing federal water resource infrastructure may be warranted.

At the request of Chairman Flakoll, committee counsel reviewed a letter ([Appendix C](#)) from Mr. David L. Pope, Executive Director, Missouri River Association of States and Tribes, concerning the study called for in S. 3258.

Chairman Flakoll recognized Mr. Terry Steinwand, Director, Game and Fish Department. Mr. Steinwand discussed ([Appendix D](#)) Missouri River issues and the need to review the operation of the Missouri River main stem reservoir system.

Chairman Flakoll recognized Mr. Mike McEnroe, North Dakota Chapter, The Wildlife Society. Mr. McEnroe discussed ([Appendix E](#)) the need for the committee to request the North Dakota Congressional Delegation to call for appropriate studies to amend the 1944 Flood Control Act to meet the contemporary needs of the Missouri River Basin.

Chairman Flakoll recognized Mr. Thomas Graves, Executive Director, Mid-West Electric Consumers Association, Wheat Ridge, Colorado. Mr. Graves discussed ([Appendix F](#)) the operation and management of the Missouri River main stem reservoir system and hydropower generation. He also distributed information ([Appendix G](#)) concerning Missouri River main stem reservoir system runoff and water use, Pick-Sloan Missouri Basin program firm power rate history, and hydroelectric generation in the Pick-Sloan Missouri Basin eastern division.

It was moved by Representative DeKrey, seconded by Senator Fischer, and carried on a roll call vote that the committee send a letter of support requesting that the Senate Committee on Appropriations include Section 108 of S. 3258 authorizing the Secretary of the Army to conduct a study of the Missouri River projects located within the Missouri River Basin with the express purpose

to review the original project purpose based on the 1944 Flood Control Act, as amended, and other subsequent relevant legislation and judicial rulings to determine if changes to the authorized project purposes and existing federal water resource infrastructure may be warranted in the federal Energy and Water Development appropriation bill. Senators Flakoll, Anderson, Fischer, Heitkamp, and Lyson and Representatives Aarsvold, Damschen, DeKrey, Dietrich, Haas, Hanson, Heller, Nottestad, Pinkerton, and Porter voted "aye." No negative votes were cast.

DRAINAGE STUDY

At the request of Chairman Flakoll, Mr. William Schuh, Water Appropriation Division, State Water Commission, reviewed a summary ([Appendix H](#)) of *The Potential Effects of Subsurface Drainage on Water Appropriation and the Beneficial Use of Water in North Dakota*. A copy of the report is on file in the Legislative Council office.

OIL AND GAS

At the request of Chairman Flakoll, Mr. Brad Bekkedahl, Williston city Finance Director and past president of the North Dakota Association of Oil and Gas Producing Counties, presented a PowerPoint presentation detailing why the Bakken boom is different from past oil booms and opportunities presented. A copy of Mr. Bekkedahl's PowerPoint presentation is on file in the Legislative Council office.

ONE-CALL EXCAVATION NOTICE SYSTEM CIVIL PENALTY STUDY

At the request of Chairman Flakoll, committee counsel reviewed a bill draft [\[90031.0200\]](#) relating to enforcement of one-call excavation notice system provisions.

Chairman Flakoll recognized Ms. Illona A. Jeffcoat-Sacco, General Counsel, Public Service Commission. Ms. Jeffcoat-Sacco discussed ([Appendix I](#)) the proposed bill draft relating to enforcement of the one-call excavation notice system. She said the Public Service Commission is willing to handle the responsibility of enforcing any civil penalty provisions for one-call violations that the Legislative Assembly may enact. However, she said, the commission has substantial concerns with the language of the bill draft. She said the commission must have these concerns addressed before it can support the bill draft.

In response to a question from Representative Haas, Ms. Jeffcoat-Sacco said if the North Dakota One-Call Board is satisfied with the existing penalty provisions the Public Service Commission is authorized to implement, legislation would not be necessary as the Public Service Commission already has sufficient authority to enforce the one-call excavation notice system.

Chairman Flakoll recognized Mr. Chad Olson, Director of Education and Public Relations, North Dakota One Call. He said the North Dakota One-Call Board supports the imposition and assessment of a civil penalty for violation of the one-call excavation notice system. In light of the Public Service Commission's testimony, he said, the One-Call Board will review the authority of the Public Service Commission and it appears that the One-Call Board would support having the Public Service Commission enforce the one-call excavation notice system. The primary concern, he said, is a penalty provision be developed to encourage better compliance with the excavation notice system.

Chairman Flakoll recognized Mr. Todd Kranda, Kelsch Law Firm, Mandan. Mr. Kranda said he is representing Alliance Pipeline and Keystone-Trans-Canada Pipeline. He said the companies support the efforts of the North Dakota One-Call Board to implement a civil penalty and they are encouraged that the Public Service Commission is willing take on this role.

Chairman Flakoll recognized Mr. Allen C. Hoberg, Director, Office of Administrative Hearings. Mr. Hoberg commented ([Appendix J](#)) that much of the new language in Section 4 of the bill draft is unnecessary because there is already law and procedures within the statutes and rules governing the Public Service Commission for doing much of what is proposed.

Chairman Flakoll recognized Mr. David Crothers, North Dakota Association of Telecommunications Cooperatives. Mr. Crothers said the North Dakota Association of Telecommunications Cooperatives is not opposed to the concept of civil penalties for the one-call excavation notice system and will continue to work with all interested parties on this issue.

In response to a question from Senator Heitkamp, Mr. Crothers said there is no legislation needed from the Natural Resources Committee.

In response to a question from Senator Flakoll, Mr. Crothers said pending further review, it appears that the Public Service Commission has the requisite authority. However, he said, existing penalties may not be sufficient for the Public Service Commission to access fully federal grant dollars under pipeline safety programs.

In response to a question from Senator Flakoll, Ms. Jeffcoat-Sacco said the Public Service Commission is willing to be the entity to enforce a civil penalty for the one-call excavation notice system.

HUNTER SAFETY EDUCATION REPORT

Chairman Flakoll recognized Mr. Rostvet. Mr. Rostvet reviewed a report ([Appendix K](#)) regarding the Game and Fish Department's findings and recommendations resulting from a study of hunter safety education requirements and hunter safety for all ages of hunters. In conducting the study, he said, the department reviewed existing hunter safety education requirements, the minimum hunting age requirements of other states, the hunter education age requirements of other states, and noted that the department is conducting an ongoing study of the recruitment and retention of hunters in North Dakota. He said the department has several considerations under review. These include, he said, removing barriers to hunting, such as the families afield initiative, hunter education in schools, and outdoor programs.

It was moved by Representative Porter, seconded by Representative Haas, and carried that the chairman and staff of the Legislative Council be requested to prepare a report and the bill draft recommended by the committee and to present the report and recommended bill draft to the Legislative Council. Senators Flakoll, Anderson, Fischer, Heitkamp, and Lyson and Representatives Nottestad, Aarsvold, Damschen, Dietrich, Haas, Hanson, Heller, and Porter voted "aye." No negative votes were cast.

It was moved by Senator Lyson, seconded by Senator Anderson, and carried on a roll call vote that the committee be adjourned sine die subject to recall by the chairman until October 1, 2008, to consider a bill draft relating to a civil penalty for the one-call excavation notice system. Senators Flakoll, Anderson, Fischer, Heitkamp, and Lyson and Representatives Nottestad, Aarsvold, Damschen, Dietrich, Haas, Hanson, Heller, and Porter voted "aye." No negative votes were cast.

No further business appearing, Chairman Flakoll adjourned the meeting at 3:30 p.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:11