

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

NATURAL RESOURCES COMMITTEE

Thursday, March 4, 2010
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Todd Porter, Vice Chairman, assumed the chair and called the meeting to order at 9:00 a.m.

Members present: Representatives Todd Porter, Mike Brandenburg, Donald L. Clark, Stacey Dahl, Chuck Damschen, David Drovdal, Lyle Hanson, Bob Hunskor, James Kerzman, Shirley Meyer, Kenton Onstad, Mike Schatz, Elwood Thorpe; Senators Arden C. Anderson, David Hogue, Ryan M. Taylor

Members absent: Representative Bob Martinson; Senators Robert S. Erbele, Bill Bowman, Constance Triplett

Others present: Rod Froelich, State Representative, Selfridge

See [Appendix A](#) for additional persons present.

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

MINERAL RIGHTS STUDY

Mr. Craig Smith, Vice Chairman, North Dakota Petroleum Council, provided information on dormant minerals and written examples ([Appendix B](#)) applying the pre- and post-2009 laws. He said dormant minerals place oil companies in the middle of a dispute between a surface owner and mineral owner. He said the oil industry likes certainty of title. He said before 2009 there was a problem with dormant mineral judgments because courts would set them aside. He said this did not provide certainty as to title. He said the changes last session provided certainty. He said Montana, Texas, and Wyoming do not have dormant mineral acts and so there is no taking of private property. He said there are dormant mineral acts in North Dakota and South Dakota. He said a dormant mineral statute is a balancing of what is truly abandoned and at what point does that abandonment justify a taking of private property. He said the majority of surface owners own some minerals, but most mineral rights are severed. He said this is because of the common practice of keeping half of the mineral rights on transfer, combined with passing mineral rights to children through probate. He said another reason mineral rights are severed is because of speculators who have purchased large quantities of mineral rights and have broken up and sold those rights. He said there may be as few as five or six mineral owners per well and in some counties, i.e.,

McKenzie County, there have been 300 to 400 mineral owners per well. He said this state's dormant mineral act is a second chance act. He said the owner must make reasonable inquiry to find the mineral owner. He said there were four major changes in the law in 2009. He said the person making a statement of claim must list from which person that person took mineral rights as an heir. He said the person that files a statement must file an affidavit under oath and provide documentation of being an heir. He said the reasonable inquiry standard was defined. He said judgments are deemed conclusive if there was not any fraud or misrepresentation. He said the act should stay in effect for a few years without change to monitor the effectiveness of the act.

In response to a question from Representative Kerzman, Mr. Smith said mineral rights may be transferred by layers of geologic formation.

In response to a question from Representative Porter, Mr. Smith said although mineral rights could be severed by geologic formation, this is rare. He said leases more typically define the formation in which oil exploration occurs.

In response to a question from Representative Kerzman, Mr. Smith said some financial institutions that resold foreclosed property kept none of the mineral interest, some kept half, and some reserved all for 25 years.

In response to a question from Representative Porter, Mr. Smith said mineral interest owners in a family should use a trust that stops the continual severance of mineral interests.

In response to a question from Representative Kerzman, Mr. Smith said a family could place mineral interests in an irrevocable trust to stop splitting.

In response to a question from Representative Onstad, Mr. Smith said dormant mineral acts typically require dormancy for 20 years to 30 years. He said if the period of time were reduced to 10 years, there would be more of an issue of taking. He said it generally is not difficult to find a person who owned an interest 10 years ago.

Mr. Daryl Dukart, Dunn County Energy Development, Dunn Center, presented written testimony ([Appendix C](#)) on the impact of oil development on surface owners. He said he was offered \$9,000 and sent the oil company production information showing he grosses \$140 per acre per year. He said there is a lack of education and

landowners are scared into not negotiating. He said he would like to see terms for leases of surface rights that are renewed on a regular basis. He said oil companies do not provide a term for the period of time in the lease of surface rights. He said there needs to be studies of the impact of dust on livestock, forage, crops, and people. He said without this evidence, it is difficult to bring a nuisance claim. He said North Dakota State University could do this research. He said there should be a pipeline easement for the drilling under an area in one spacing unit from a different spacing unit. He said the vertical and horizontal well to the property line should be compensated.

In response to a question from Representative Schatz, Mr. Dukart said the damage to infrastructure requires so much repair that it will take a long time before improvements to infrastructure are made.

In response to a question from Representative Hunskor, Mr. Dukart said loss of production would provide a fairer price. He said loss of production would provide him \$25,000 in the example previously mentioned.

Mr. Gene Harris, rancher, Killdeer, made a presentation ([Appendix D](#)) on impacts on surface owners. He said the positives from oil development greatly outweigh any negative. He said he is a landowner with no mineral rights. He said it is difficult to negotiate for the lease of surface rights.

In response to a question from Senator Taylor, Mr. Harris said he could bring a lawsuit against a small oil company that does not have much money for the purposes of cleaning up a saltwater and oil spill.

In response to a question from Representative Porter, Mr. Harris said he could go after the bond, but the bond is released only when the well is done.

In response to a question from Senator Anderson, Mr. Harris said sulfite gas deteriorates wire.

In response to a question from Representative Thorpe, Mr. Harris said complexity is added to the process due to large spacing units that involve multiple oil company partnerships.

In response to a question from Representative Porter, Mr. Harris said he works with multiple companies and one company pays annual payments and is a good steward. He said other companies will not make annual payments. He said some companies give the 20-day notice and start building. He said these companies make a one-time take-it-or-leave-it offer.

In response to a question from Representative Porter, Mr. Harris said most companies do not deviate from the take-it-or-leave-it position.

In response to a question from Representative Onstad, Mr. Harris said oil wells do more than take property. He said oil wells devalue the surrounding property. He said oil wells reduce the aesthetic value that is of great value in the Badlands. He said the negative impacts of oil wells will be felt much more severely as the Bakken Formation is developed.

In response to a question from Representative Hunskor, Mr. Harris said the State Department of Health does not have authority as to the surface. He said the State Department of Health monitors air quality. He said in one case, violations of air quality resulted in removal of the air monitor. He said the Oil and Gas Division does not have authority to force a cleanup, it only has the authority to issue permits.

Mr. Dean Knutson, rancher, Dunn Center, presented information on the impacts of oil development. He said it is very difficult to come to an agreement with an oil company for surface rights. He said the company he deals with, Marathon, will not negotiate. He said he would like an annual payment.

In response to a question from Representative Meyer, Mr. Knutson said he has offered to take a yearly payment from the oil company.

In response to a question from Representative Onstad, Mr. Knutson said he was offered \$1,500 an acre. He said the site was six acres and the total amount offered was \$9,000.

In response to a question from Representative Porter, Mr. Knutson said the land would sell for \$400 to \$600 an acre. He said some of the land has aesthetic beauty that would add to its value.

Mr. Casey Fredericks, rancher, Dunn Center, provided information on the impacts of oil development. He said he purchased his property in 2000 and knew he did not get any mineral rights. He said he attempted to use the dormant mineral act, but the heirs were found in Florida. He said the agreements offered for his land are for six acres in the middle of his property. He said fairness requires that all companies offer annual payments. He said in his instance, the company was able to move off his property and drill under it. He said he had to borrow money to purchase land that has aesthetic value. He said oil development lessens aesthetic value and he is deprived of that value. He said he should be paid for all impacts to his land.

In response to a question from Representative Clark, Mr. Fredericks said a one-time payment is not fair because some wells last for 60 years.

In response to a question from Representative Damschen, Mr. Fredericks said a fair price would include surface use, loss of use, and lost value. He said the biggest problem is that he is told what is fair by the company making the offer. He said the agreements offered by the oil company absolve the oil company from liability.

In response to a question from Senator Hogue, Mr. Fredericks said he is not aware of any nuisance actions brought against oil companies. He said oil development has impacts on his lifestyle. He said the amount of dust is a huge impact. He said there are positive impacts as well.

In response to a question from Representative Porter, Mr. Fredericks said farmland in the area rents for \$25 to \$30 per acre and pastureland rents for \$15 to \$20 per acre. He said Badlands property can bring \$800 per acre in his area.

In response to a question from Representative Onstad, Mr. Fredericks said comparing the per acre price for large quantities of land to six-acre parcels is not a fair comparison. He said he would not sell a small portion of his land under ordinary circumstances.

Mr. Richard Baer, attorney, provided information to the committee. He said he represents a client in a lawsuit in which an oil company offered \$8,000 for surface rights. He said the offer contained no term of duration. He said the oil company will dig waste pits and dump diesel fuel, benzene, and other hazardous substances on the soil. He said oil companies should be required to clean up the site. He said it is difficult to find experts to testify for landowners. He said the State Department of Health said the fluid in the pits is a hazardous waste if moved, but not if buried on the site. He said it is difficult to take on an oil company over \$8,000. He said a trial has been scheduled for five days.

Mr. Wayne E. Johnson, Northwest Landowners Association, presented information to the committee. He said landowners are intimidated and want to be treated fairly. He said if there is no term of duration in the lease, the lease could last forever. He said a one-time payment limits the ability to sell the land. He said annual payments would allow for the transfer of that payment to a new landowner to cover taxes.

In response to a question from Representative Onstad, Mr. Johnson said although a neutral arbitration board may be useful, it may be difficult to find individuals who are neutral as to mineral interests in this state. He said one solution would be for the taxation of mineral interest. He said no one would keep two acres for 60 years if there were a cost. He said mineral owners get the prosperity but not the burden.

Mr. Steven Hoff, landowner, Parshall, presented information to the committee. He said he was offered \$8,000 for a well site and \$900 a year for five years, renewable at the end of the five years, for a pipeline. He said the oil and pipeline company is owned by the same entity.

Mr. Randy Nichols, Stanley, presented information to the committee. He said reclaiming dormant mineral acres can be costly. He said it took a private investigator three years to find mineral owners.

Mr. Troy Kuntz, Mountrail County, provided information to the committee. He said he owns surface and mineral rights. He said everyone makes good money with oil except the surface owner. He said the surface owner is left with a liability.

Mr. Roger Harstad, Stanley, provided information to the committee. He said leases with oil companies are not solely about the money but about protecting the property for the future.

Mr. Chris Zacher, Parshall, presented information to the committee. He said he owns surface rights but not mineral rights. He said he has not entered an agreement while an oil company has been on his

property for three years. He said any offer to the oil company is not responded to or is rejected.

In response to a question from Representative Onstad, Mr. Zacher said he has given the oil company loss of value and income figures. He said the oil company's response is that the money it is offering is more than market value.

WEED CONTROL STUDY

Mr. Blake Schaan, Noxious Weed Specialist, Department of Agriculture, presented written testimony ([Appendix E](#)) on recent activities of the Agriculture Commissioner with the United States Army Corps of Engineers (corps). In addition, he provided a comparison of the master plan ([Appendix F](#)) for Lake Oahe and Lake Sakakawea, a summary of South Dakota Department of Game, Fish, and Parks piping plover management plan ([Appendix G](#)), and a document on early season grazing strategies ([Appendix H](#)).

Mr. Herbert H. Grenz, landowner, Linton, provided information to the committee. He said the take line is close to the high-water mark on Lake Oahe. He said it is difficult to enter managed grazing with the Natural Resources Conservation Service because he has four and one-half miles of shoreline in a 106-acre pasture. He said the take land has a steep angle. He said this steep angle could cause erosion if cattle were forced to graze the take area.

Mr. Grenz said there has been better cooperation with the corps lately. He said money is the issue. He said if the corps receives enough money to control the weeds and then does not receive enough funding in one year, the problem starts over. He said the locks in Mississippi have to be replaced and this will compete with weed control. He said landowners are the caretakers of the land and of the wildlife. He said there should be flexibility and if the corps does not receive funding in time, cattle should be allowed in earlier so the weed board can treat the weeds later when the money arrives.

Mr. Paul Coughlin, Wildlife Lands Program Administrator, South Dakota Department of Game, Fish, and Parks, Pierre, South Dakota, provided written testimony ([Appendix I](#)) on invasive species control and Title VI lands in South Dakota.

In response to a question from Representative Porter, Mr. Coughlin said it is impossible to limit grazing to the high-water mark, so livestock are allowed to graze all the way to the water.

In response to a question from Representative Kerzman, Mr. Coughlin said the department manages the take land for wildlife purposes. He said grazing is used as a management tool.

In response to a question from Representative Brandenburg, Mr. Coughlin said transfers of recreation areas from the federal government to South Dakota began in 1999, immediately after the passage of the federal law transferring the land to South Dakota.

In response to a question from Representative Brandenburg, Mr. Coughlin said there are approximately 100 leases for grazing. He said the department stresses a personal relationship with leaseholders. He said the department meets with each leaseholder every year and the lease system works well. He said there is not a fence between the private land and the public land and the department cannot dictate how an adjoining landowner can graze a landowner's own property.

In response to a question from Representative Meyer, Mr. Coughlin said the department is funded for weed control through money in a trust fund created by Congress.

In response to a question from Representative Porter, Mr. Coughlin said before the federal legislation, the relationship between the department and the corps was amicable.

In response to a question from Representative Brandenburg, Mr. Coughlin said the master plan is not very relevant to the department because the department owns the take land. He said the department has an interest in the flood pool which is corps land and comments on the master plan as it relates to that property.

Representative Froelich presented information to the committee. He said Lake Oahe took the best land out of production for flood control. He said any discussions relating to weed control should include the Standing Rock Sioux Tribe. He said if the take land is returned to the state or landowners, the corps should provide damages for the control of existing noxious weeds. He said the corps has not controlled weeds for a long time.

Mr. Glenn McCrory, farmer, Linton, provided information for the committee. He said the corps does not work closely with leaseholders. He said the corps sends a letter as a means of communication. He said the corps controls private land with corps policies. He said he has five acres in a calving pasture that is corps land. He said the corps says he cannot put cattle in the pasture until July. He said he does not use the pasture except for calving. He said it is difficult to make rules fit when the rules are broad. He said wildlife does not care where the property lines are and farmers and ranchers provide more habitat for wildlife than the corps. He said the Natural Resources Conservation Service has rules that are too broad. He said every situation is different and the rules do not always fit the situation.

Mr. Kenny Graner, landowner, Morton County, provided information to the committee. He said the corps has neglected the weeds and trees and has created an inferno waiting to happen in Morton County. He said all the land above the flood line should go the landowners. He said the North Dakota Game and Fish Department and the corps work nine to five, while he lives on the land 24 hours a day 7 days a week. He said access could be addressed through easements, and parks could stay if the land was returned to the landowners.

In response to a question from Representative Meyer, Mr. Graner said he was never allowed to graze corps land. He said the land was given to the Game and Fish Department and he can farm the land but cannot graze the land.

Mr. Richard Bendish, Morton County, provided information to the committee. He said the land was taken at below value in 1964. He said land was leased back from the corps for cash rent. He said the amount of cash rent has paid for the amount paid for the land. He said there is full payment in lieu of taxes from the federal government to counties. He said this took a lot of time to become reality. He said the taxes are based on the takings price, which is based on average property values. He said the land that was taken was the land of highest production. He said if the land were sold at private sale and taxed by the county, the county would receive five times the payment in lieu of taxes. He said the present land does not have much value because it is being used as a noxious weed patch.

Mr. David Kalberer, Vice Chairman, Emmons County Weed Control Board, Hazelton, provided information to the committee. He said he supports early grazing. He said it is impossible to spray the weeds unless there is access and early grazing makes better access. He said the calls the board receive are from adjacent landowners. He said adjacent landowners may incur \$2,000 to \$4,000 per year to control weeds. He said landowners want reimbursement.

In response to a question from Representative Brandenburg, Mr. Kalberer said the board has a pretty good relationship with the corps. He said previously the board did not receive funding from the corps until the spraying was completed. He said recently the board began receiving funding in advance. He said the corps had never turned down the board in the past but the corps only provided \$5,000 to \$10,000 at one time.

Mr. Kevin Schmidt, Vice Chairman, Morton County Weed Board, Mandan, provided information to the committee. He said land in Morton County was taken by the corps and given to the Game and Fish Department. He said weed control on cropland is done by the landowner and the Game and Fish Department controls the weeds elsewhere. He said the lands should go the landowner. He said if the land is not farmed, the land goes to weeds.

Mr. Victor Kraft, Sioux County Weed Control, Linton, provided information to the committee. He said the weed control board has a good relationship with the corps. He said the corps provides funding to the board and, without the funding, the board would be unable to do much.

In response to a question from Representative Kerzman, Mr. Kraft said tribal land mostly borders corps land in Sioux County.

Mr. Merlin Leithold, North Dakota Weed Control Association, Elgin, provided information to the committee. He said it would be better if the land

around Lake Oahe were in private hands for the purposes of weed control. He said the weed board can go after a landowner that does not control weeds, but does not have jurisdiction over federal land. He said Grant County has a good relationship with the Bureau of Reclamation. He said land needs to be grazed to control weeds. He said there is more wildlife if there is some grazing. He said a person can do a better job of spraying weeds if there is some grazing. He said grazing allows the driver to see the weeds and see where to drive.

Mr. Everett J. Iron Eyes Sr., Standing Rock Sioux Tribe, Fort Yates, provided information to the committee. He said the tribe is working with the corps to control weeds.

Mr. Eric Stasch, Operating Project Manager for Lake Oahe, Army Corps of Engineers, Pierre, South Dakota, made a presentation based on handouts ([Appendix J](#)). He said the corps must manage the land for wildlife. He said grazing is a management tool. He said in 2004 a task force was created to address the noxious weed problem. He said the task force included members from the state, counties, and private individuals. He said weeds are a large problem. He said as a result of the task force, the corps focused on saltcedar. He said the corps now focuses on other species. He said the corps spends \$300,000 to \$350,000 for noxious weed control. He said the corps funds counties for weed control because the counties are experts for their area. He said Morton and Burleigh Counties do not cooperate with the corps. He said in Morton and Burleigh Counties, the corps uses contractors. He said the largest problem with weed control is that there are very few companies that do spraying. He said there are two bidders on the projects. He said Lake Sakakawea and Lake Oahe use the same contractor. He said the contractor is very busy and has too much work. He said the corps is in compliance with the law, has a viable program, and is addressing the problem. He said even with more money there may be no one to do the work in some areas. He said it is difficult to budget for weed control because when the lake is up, there is no problem and when the lake is down, there is a large problem. He said the corps has to budget two to three years out. He said the corps just completed the budget for 2012. He said the corps receives baseline funding and nonroutine funding which are dependent on the President and Congress. He said the corps may not spend funds until Congress appropriates the funds. He said the corps does not require fencing and the leases go to the waterline.

In response to a question from Representative Porter, Mr. Stasch said Morton and Burleigh Counties chose not to cooperate with the corps. He said the North Dakota Game and Fish Department must control weeds on tracts it leases from the corps. He said the corps does not give the Game and Fish Department any funds.

In response to a question from Representative Kerzman, Mr. Stasch said the land for Lake Oahe was

purchased in three different tracts. He said the property line is not tight with the waterline everywhere around the reservoir. He said the land was purchased for flooding and erosion.

In response to a question from Senator Taylor, Mr. Stasch said the corps will listen to any plan for grazing. He said the corps has data that shows that the earlier the grazing, the more conflicts with wildlife. He said conflicts with wildlife depend on the grazing intensity. He said the corps will work with local ranchers.

In response to a question from Representative Damschen, Mr. Stasch said although the corps could request more funds, at present the corps is overtaking the spraying contractors. He said the water has gone up this year to within three feet of the high-water mark. He said the only land left is the side slopes of cut banks, which do not grow that many weeds. He said the corps is not looking to purchase property.

In response to a question from Representative Brandenburg, Mr. Stasch said there is substantial information on the negative effects of grazing and overgrazing on wildlife. He said there is information from the agriculture community that grazing is beneficial. He said determining the proper amount of grazing is a balancing act.

In response to a question from Representative Brandenburg, Mr. Stasch said the corps understands the negative impacts the weeds have on landowners and will work with landowners to make the future better.

In response to a question from Representative Meyer, Mr. Stasch said the largest problem with biocontrol is that below the high-water mark there is a risk of loss of the control because of flooding. He said the corps supports anything that controls the weed problem as recommended by county weed boards.

In response to a question from Representative Porter, Mr. Stasch said the corps will evaluate any plan offered by a landowner and take into account the topography and exceptions to broad rules.

In response to a question from Representative Porter, Mr. Grenz said he has suggested May 23 as his grazing date. He said he has heard that June 15 and June 1 have not been rejected as grazing start dates.

Mr. Phillip Brown, Lake Manager, Lake Sakakawea, Army Corps of Engineers, Riverdale, provided information for the committee. He said for the acres above the flood line, 30 percent are managed for grazing. He said the majority of these acres are grazed by the Bureau of Indian Affairs. He said the remaining acres are managed for grazing through 50 to 100 leases. He said the lands are made available using the best management practices and for the benefit of wildlife. He said the corps works collaboratively with lessees. He said the corps provides an offset for fencing, food plots, and weed control. He said the funding for weed control was \$25,000 in 2001 and \$645,000 last year. He said the routine budget provides \$125,000 per year. He said

nonroutine funding provided the remainder up to \$645,000. He said nonroutine funding has to compete with higher priorities. He said the corps does have a few proprietary leases with original owners or spouses. He said these leases do not allow grazing every year. He said grazing is not an authorized purpose and grazing is used as a management tool for wildlife.

In response to a question from Representative Meyer, Mr. Brown said grazing was never an authorized purpose. He said he knows of no other reservoir that has grazing as an authorized purpose.

No further business appearing, Vice Chairman Porter adjourned the meeting at 2:15 p.m.

Timothy J. Dawson
Committee Counsel

ATTACH:10