

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

NATURAL RESOURCES COMMITTEE

Wednesday, November 4, 2009
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Robert S. Erbele, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Robert S. Erbele, Arden C. Anderson, Bill Bowman, David Hogue, Ryan M. Taylor; Representatives Donald L. Clark, Stacey Dahl, Chuck Damschen, David Drovdal, Lyle Hanson, James Kerzman, Kenton Onstad, Todd Porter, Mike Schatz, Elwood Thorpe

Members absent: Senator Constance Triplett; Representatives Mike Brandenburg, Bob Hunskor, Bob Martinson, Shirley Meyer

Others present: See [Appendix A](#)

At the request of Chairman Erbele, committee counsel reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

WILDLIFE SERVICES STUDY

At the request of Chairman Erbele, committee counsel presented a memorandum entitled [Wildlife Services Study - Background Memorandum](#).

Mr. Phil Mastrangelo, State Director, United States Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services, presented testimony on the Wildlife Services program in North Dakota. He said no money from North Dakota goes to South Dakota. He said a few years ago he administered up to \$20,000 for the blackbird program in South Dakota. He said these funds were dedicated by Congress. He said he had addressed the performance audit recommendations. He said the billing process has been streamlined and there is more accountability. He said the Department of Agriculture, Game and Fish Department, and federal Wildlife Services agree that the new arrangement is working well.

In response to a question from Representative Hanson, Mr. Mastrangelo said money for blackbird control is federal earmarked money. He said the number of acres of sunflowers has decreased, but the workload of Wildlife Services has not decreased. He said there are not enough funds to address blackbird control.

In response to a question from Representative Onstad, Mr. Mastrangelo said coyote problems are addressed by request. He said the program is meant to address problem coyotes and not kill all coyotes. He said the number of coyotes appears to have

increased. He said Wildlife Services addresses confirmed or historic damage by coyotes.

In response to a question from Representative Onstad, Mr. Mastrangelo said when a producer calls during calving or lambing season, an immediate response is triggered by Wildlife Services.

In response to a question from Senator Taylor, Mr. Mastrangelo said Wildlife Services has not done any work with the Game and Fish Department in addressing coyotes killing native wildlife. He said Wildlife Services has a good relationship with the Game and Fish Department.

In response to a question from Senator Bowman, Mr. Mastrangelo said Wildlife Services has a response plan for mountain lions with the Game and Fish Department. He said the United States Fish and Wildlife Service is the management agency for wolves. He said if wolves were removed from the endangered species list, wolves would be under the control of the Game and Fish Department in the western part of the state. He said wolves are under the control of the Game and Fish Department in the eastern part of North Dakota.

In response to a question from Representative Porter, Mr. Mastrangelo said Wildlife Services does not conduct formal customer satisfaction surveys. He said most referrals to his agency come from another agency. He said Wildlife Services is the only agency in the state to address complaints with wildlife. He said it is a seldom occurrence to have a call from someone who is not happy. He said the greatest complaint is that the public wants more services. He said he receives input from commodity and livestock groups on a regular basis.

In response to a question from Representative Drovdal, Mr. Mastrangelo said some of the service is direct and some is the provision of advice or traps. He said he has nine field staff. He said he has seven part-time individuals working on blackbirds. He said it is impossible for Wildlife Services to go onsite in every case. He said raccoons can be easily trapped.

In response to a question from Representative Schatz, Mr. Mastrangelo said Wildlife Services shares rare and unusual sightings with the Game and Fish Department. He said people will report seeing evidence of a mountain lion or wolf and upon investigation Wildlife Services will find dog tracks or house cat tracks.

In response to a question from Representative Damschen, Mr. Mastrangelo said Wildlife Services

has a contingency plan with the United States Fish and Wildlife Service for wolves if the wolves have an impact on livestock or human safety. He said the United States Fish and Wildlife Service has made a good-faith effort to deregulate wolves.

In response to a question from Senator Erbele, Mr. Mastrangelo said Wildlife Services is unique in that state funds are given to a federal agency for a program.

In response to a question from Senator Bowman, Mr. Mastrangelo said Wildlife Services is a nonregulatory agency. He said as such, Wildlife Services has to work closely with other agencies.

In response to a question from Representative Thorpe, Mr. Mastrangelo said live traps are used on small animals like raccoons. He said Wildlife Services strongly recommends the person euthanize the animal after catching the animal. He said Wildlife Services uses lethal control on coyotes, foxes, and beavers.

In response to a question from Representative Drovdal, Mr. Mastrangelo provided handouts ([Appendix B](#)) of staff and location of Wildlife Services in this state.

In response to a question from Representative Porter, Mr. Mastrangelo said as for fur-bearers, there have been more complaints concerning fishers in recent history.

In response to a question from Senator Anderson, Mr. Mastrangelo said fishers are generally found in northern Minnesota and Manitoba. He said most calls concerning fishers are because of fear of the unknown. He said fishers look like a wolverine combined with a skunk. He said they do not attack.

In response to a question from Representative Hanson, Mr. Mastrangelo said 1080 was outlawed 30 years ago and is not registered as a toxin.

Mr. Douglas Goehring, Commissioner, Department of Agriculture, provided testimony to the committee. He said the Department of Agriculture has a good working relationship with Wildlife Services. He said that relationship is developing into a better relationship as a result of the performance audit. He said it is difficult to address the problem of 72 million blackbirds that pass through this state. He said blackbirds need to be addressed where they nest--Canada. He said blackbirds feed in North Dakota.

In response to a question from Senator Erbele, Mr. Goehring said there will need to be more resources focused on species that come into the state and cause problems.

Representative Kerzman said the agriculture producers in southwest North Dakota generally think that Wildlife Services provides an excellent response to complaints.

WEED CONTROL PROGRAMS OF THE ARMY CORPS OF ENGINEERS

At the request of Chairman Erbele, committee counsel presented a memorandum entitled [Weed](#)

[Control Programs of the Army Corps of Engineers on Federal Lands - Background Memorandum.](#)

Mr. Herbert H. Grenz, landowner, Linton, provided written testimony ([Appendix C](#)) on the problems with weed control by the Army Corps of Engineers (corps) around Lake Oahe. He said there is a narrow strip of land between the high-water mark and the take line. He said the corps will not build a fence or take care of the strip.

In response to a question from Senator Bowman, Mr. Grenz said the Emmons County Weed Control Board has good cooperation with the corps. He said one problem is that the weed board must submit a bill to get reimbursed and does not receive funding up front. He said the recent focus of the corps is on saltcedar, and as a result the thistle and leafy spurge have gotten much worse. He said if the corps allowed the weeds to be grazed earlier, the cattle would knock down the weeds and make the weeds more accessible and visible for control.

In response to a question from Senator Erbele, Mr. Grenz said there is an eight-year rotation of extremes from high water to low water. He said in his area, when the lake drops a little, a lot of land is exposed.

In response to a question from Senator Erbele, Mr. Grenz said agriculture is not represented in the management plan of the corps.

Mr. Glenn McCrory, farmer, Linton, presented testimony to the committee and provided pictures ([Appendix D](#)) of the weeds. He said his father sold 746 acres to the corps for the Lake Oahe project. He said his family leased the land back from the corps from the beginning. He said there were not any problems until the last few years when the corps changed the grazing date to July 15. He said the first year he ignored the change, and the corps threatened to revoke his lease if he did it again. He said not being able to graze the corps land until July 15 prevents him from grazing his own land because the two parcels are not separated by a fence. He said when the lake is full there is a sliver of corps land between the lake and his land. He said this sliver of land controls his land. He said it would require 30 cornerposts to fence over two miles of land adjacent to corps land due to the steep hills.

In response to a question from Senator Erbele, Mr. McCrory said he fences hot wires into the water. He said the rotational grazing required by the corps requires many fences. He said for grazing of Canada thistle to be effective as a control measure, the grazing needs to be done early. He said only a portion of the weeds would be grazed with a rotational grazing system. He said the corps also requires his cattle to be removed from his own land that borders corps land by a certain time. He said this prevents him from feeding cattle a long distance from the corps land in the winter. He said the corps does not take care of weeds even at the recreational area.

In response to a question from Representative Thorpe, Mr. McCrory said the corps claims to have planned to move the grazing date to July 15 for years.

In response to a question from Senator Erbele, Mr. McCrory said although the county weed control board receives funding from the corps, the weed board is very short on funds.

In response to a question from Senator Taylor, Mr. McCrory said data showing grazing is good for weed control and for wildlife would not make any difference to the corps.

Mr. Durant Schiermeister, landowner, Hazelton, presented testimony on weed control problems on corps lands surrounding Lake Oahe. He said he is a seed farmer and grows high-value crops that need to be free from noxious weeds. He said he may be unable to raise seed due to the weed seeds created by the corps. He said weed seeds plug up machinery. He said the weed seeds of the corps require him to spend more money on chemical control of weeds. He said the corps is incompetent when spraying weeds. He said they have killed trees and applied too much chemical and have burned the soil. He said the land should go back to the landowners. He said the corps should sell the land. He said the landowners would take better care of the land than the corps.

Ms. Judy Carlson, Director, Plant Industries, Department of Agriculture, provided testimony on the study area. She said the Department of Agriculture has been meeting with Emmons County and the corps over the problem. She said the corps needs to expand biological control efforts.

In response to a question from Representative Onstad, Ms. Carlson said there are two different management plans--one for Lake Sakakawea and one for Lake Oahe.

In response to a question from Senator Bowman, Mr. Grenz said he was told he could put in a claim for damage but also was told he would not have much luck with his claim. He said the corps focuses more on endangered species than on weeds. He said if the efforts for endangered species, for example the piping plover and the least tern, were used on weeds, there would be good weed control.

Representative Damschen said this problem is not limited to the corps but also is a problem with the United States Fish and Wildlife Service. He said the best solution would be to give the land back to landowners; however, this would be the hardest solution to effectuate.

LEASING OF STATE LANDS STUDY

At the request of Chairman Erbele, committee counsel presented a memorandum entitled [Leasing of State Lands - Background Memorandum](#).

Dr. Michael Brand, Director, Surface Management, Land Department, presented written testimony ([Appendix E](#)) on the study.

In response to a question from Senator Erbele, Dr. Brand said the money raised from rentals goes to schools and is not kept in the trust fund. He said the

board has sold 80 percent of the original property. He said in 1998 the board worked with Northern Trust to see the impact keeping land had on the investment portfolio. He said Northern Trust said keeping the present level of land provided stability and reduced risk. He said Northern Trust recommended the board not sell any more land. He said Nebraska is an active sale state.

Dr. Brand said only 7 percent of producers rent land. He said providing a preference to the present lessee is unpopular except with a few lessees. He said there are tools used to fix and improve property. He said the Land Department provides assistance with wells, noxious weed control, dams and dugouts, and prairie dog control. He said lessees are protected on permanent improvements for 10 years. He said if the land is sold before the end of 10 years, the next lessee must pay the previous lessee for the improvement. He said people like access to school land. He said 99 percent of the school land is open to hunting and this does not impact most landowners. He said having the lease at five years allows the Land Department to lock the lease rate for that time period. He said if the lease term were longer, the lease rate would have to be adjusted during the term of the lease.

In response to a question from Senator Erbele, Dr. Brand said in the 1970s the Legislative Assembly requested by resolution that the board sell land. He said the board responded to the resolution by selling land. He said there was a public outcry and the Legislative Assembly said to stop selling land. He said the Legislative Assembly can encourage the sale of land; however, the board must consider the sale of land as a fiduciary of a trust.

In response to a question from Senator Taylor, Dr. Brand said every state is different in its portion of sold land. He said Kansas has sold most of its land. He said Nebraska has 40 percent left. He said Montana and Wyoming have 80 percent to 90 percent left. He said Minnesota has sold most of its land.

In response to a question from Senator Taylor, Dr. Brand said in relation to the recent economic downturn the fund was down 24 percent at the most and is now at about even.

Senator Bowman said the lease of land is unfair to low population school districts. He said if the land were sold it would be taxed and that money would go to local schools. He said large counties, like Cass County, in the east receive taxes from the land, which has mostly been sold, and receive a per student payment from the state school trust fund, which is funded through land leased mostly in the west.

In response to a question from Senator Bowman, Dr. Brand said the money from the lease of state land goes to the Legislative Assembly to decide which districts receive which amounts.

In response to a question from Representative Hanson, Dr. Brand said in the last five years the rental rates have increased 30 percent to 40 percent.

In response to a question from Senator Erbele, Dr. Brand said other sections besides 16 and 36 became school land if those sections were already settled before the survey. He said the state was given the alternative of choosing unsettled land in the county. He said approximately 60,000 acres of state land are from foreclosures in the 1930s.

In response to a question from Representative Drovdal, Dr. Brand said there is about an 8 percent turnover of lessees. He said the Land Department pays for roads and bridges same as the landowners.

In response to a question from Senator Erbele, Dr. Brand said when the board adopted minimum bids, there became less competition because there was less spite bidding to prevent a neighbor from getting the land cheap. He said the holding of land provides long-term stability to the trust, which is not subject to the stock market.

In response to a question from Representative Porter, Dr. Brand said the lessee owns the fence and all other improvements are owned by the state. He said the lessee can sell the fence or remove the fence at the end of the lease.

In response to a question from Representative Porter, Dr. Brand said the Land Department has paid a portion of fencing as part of the environmental quality improvement program (EQIP) so that the lessee does not have more into the fence than the lessee will get out of the fence. He said the Land Department works with the lessee and participates in EQIP.

In response to a question from Representative Porter, Dr. Brand said the Natural Resources Conservation Service does not have a problem with lessees taking the fence at the end of the lease.

In response to a question from Representative Onstad, Dr. Brand said the issue of trading land has been placed before the people at least three times as a constitutional question. He said the Land Department can trade land with other governmental entities. He said it is rare to receive a request to sell land because people know the board is not selling.

In response to a question from Senator Hogue, Dr. Brand said there have been two recent situations in which the board has tried to sell land. He said one parcel was east of Bismarck and one was on the west side of Minot. He said this land was high-value development property.

In response to a question from Senator Taylor, Dr. Brand said most county Natural Resources Conservation Service offices do not care that the lessee does not have control of the land for five years when funding rotational grazing fences.

In response to a question from Representative Clark, Dr. Brand said the allowable sale of state land has moved from none to 5 percent to 50 percent to 100 percent of reserved mineral interests.

Ms. Julie Ellingson, Executive Vice President, North Dakota Stockmen's Association, provided testimony on the study. She said she sees the

benefits and problems with a long-term lease. She said she supports the study.

MINERAL RIGHTS STUDY

At the request of Chairman Erbele, committee counsel presented a memorandum entitled [Severed and Abandoned Minerals - Background Memorandum](#).

Mr. Ron Ness, President, North Dakota Petroleum Council, provided testimony on the study. He provided handouts on royalty owner information which are on file in the Legislative Council office. He said the recent bill on the termination of mineral interests will provide certainty. He said the recent state auction of mineral interests for 60,000 acres netted \$71.6 million for the common schools trust fund. He said in May the state became the fourth largest oil-producing state. He said a number of backlogged frac jobs have been completed this summer. He said frac jobs have become more complicated. He said some frac jobs occur in 28 stages over three days. He said this provides a more consistent and uniform fracture. He said there are 18 wells on trust land. He said there are 70 companies hiring people from Dickinson. He said the oil tax is collecting 149 percent above projections.

In response to a question from Senator Erbele, Mr. Ness said a well is two miles down and two miles out. He said huge sections of land are tied up with who owns the high-water mark. He said there will need to be a court determination.

In response to a question from Representative Onstad, Mr. Ness said companies do not discuss what they pay surface owners because this would be a violation of antitrust laws. He said the amounts paid to surface owners have escalated due to the market. He said it would be better if minerals were with the surface owner; however, if the surface owner were required to sell the minerals as part of any surface sale, farmers would never be able to purchase the property.

Representative Onstad said the surface owner is burdened with many of the impacts of oil development, including road traffic, loss of production, and many other little things.

In response to a question from Representative Onstad, Mr. Ness said there are impacts that result in little compensation, such as impacts from wind turbines or the building of a bridge. He said the surface use is getting less and less. He said traditional-style development was for 40 acres or 80 acres. He said one well now reaches two miles from the well site. He said with new super sites there will be even fewer wells. He said it would be unconstitutional to take revenue from person A and give it to person B.

In response to a question from Senator Hogue, Mr. Ness said the Bakken and Three Forks are both part of the Bakken pool. He said the Three Forks is in play where the Bakken is not successful.

In response to a question from Senator Bowman, Mr. Ness said what is paid to surface owners is part of

private negotiations. He said the general rule is to determine the value of the land and multiply it by three.

In response to a question from Representative Thorpe, Mr. Ness said no company wants to drill if there is a nonparticipating or unknown mineral owner.

Mr. Bob Harms, President, Northern Alliance of Independent Producers, presented testimony on the study. He said the changes to mineral termination law came from the legislative process and not the industry. He said the bill resolved much uncertainty that resulted from the old law. He said under the old law a surface owner could follow the law and could not lease the mineral rights. He said the taxation of severed mineral interests is not workable because of the large number of mineral owners. He said it would place an undue burden on the county to find and update mineral owners. He said surface owners have an equal right to fair compensation. He said new pads will drill up to eight wells from one site. He said this will reduce surface owner problems. He said it will make less traffic. He said there are at least seven of these pads coming into the state.

In response to a question from Representative Onstad, Mr. Harms said negotiations with surface owners may last for months and in his experience companies work with surface owners.

In response to a question from Representative Thorpe, Mr. Harms said he understands the potential upside of a database of mineral owners. He said the records to create it largely exist at present. He said the practical problem is the work cannot be done by county officials.

In response to a question from Representative Thorpe, Mr. Harms said no mineral owner wants to pay taxes on valueless mineral interests.

In response to a question from Senator Hogue, Mr. Harms said there is a level of frustration at county courthouses. He said books are passed in some counties from landman to landman. He said it is easier to do mineral owner searches where the records are digitized.

Mr. Claude Sem, Farm Credit Services, presented testimony on the study. He said mineral development has affected farmers and ranchers. He said farmers and ranchers cannot move machinery unless at night or on Sunday in some places. He said the roads are unbelievably rough. He said the impact money is not enough to address all the issues. He said if oil

production is going to greatly increase in this state there needs to be more impact funding for roads and for surface owners.

Representative Drovdal said the purpose of the study is to make the process simpler to get mineral interests, especially if the mineral interest is small and it does not pay to hire an attorney.

OIL DISCOUNT STUDY

Mr. Justin J. Kringstad, Director, North Dakota Pipeline Authority, provided a presentation ([Appendix F](#)) on pipeline capacity and the discount for oil. He said in the short term the pipeline capacity will be tight; however, in the long term things look good.

In response to a question from Representative Thorpe, Mr. Kringstad said the discount in September was \$2.09.

In response to a question from Senator Taylor, Mr. Kringstad said there are many refineries in Texas.

In response to a question from Senator Hogue, Mr. Kringstad said the industry is addressing pipeline capacity. He said there are two challenges--quantifying the need for space and time. In short, he said, building a pipeline is the process of building the right size at the right time. He said all projects for pipelines are expansions and not new pipelines.

In response to a question from Representative Drovdal, Mr. Kringstad said the purchase price at the well is a private sale and there is fluctuation. He said there is a set price for pipelines and refiners pay the posted price. He said marketers find the oil and get it to the refinery. He said some of the discount goes to the marketer.

In response to a question from Representative Onstad, Mr. Kringstad said sour and sweet crude oils are transported in the same pipeline; however, the oils are separated in the pipeline. He said in North Dakota there is no oil sands oil in the pipelines.

No further business appearing, Chairman Erbele adjourned the meeting at 3:00 p.m.

Timothy J. Dawson
Committee Counsel

ATTACH:6