

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

NATURAL RESOURCES COMMITTEE

Tuesday, July 27, 2004

Mandan Room, 4 Bears Casino and Lodge
New Town, North Dakota

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

Members present: Representatives John Warner, Arden C. Anderson, LeRoy G. Bernstein, Tracy Boe, Glen Froseth, Lyle Hanson, Gil Herbel, Scot Kelsh, Darrell D. Nottestad, Todd Porter, Dorvan Solberg; Senators Bill L. Bowman, Robert S. Erbele, Ronald Nichols

Member absent: Senator Michael Polovitz

Others present: See Appendix A

It was moved by Representative Porter, seconded by Representative Solberg, and carried on a voice vote that the minutes of the April 19, 2004, meeting be approved as distributed.

COAL MINE RECLAMATION AND PERFORMANCE BOND STUDY

At the request of Chairman Warner, committee counsel distributed a packet of North Dakota Century Code (NDCC) Section 10-06.1-18 reports of corporations and limited liability companies not engaged in farming or ranching. Copies of the reports are on file in the Legislative Council office. Committee counsel said the packet contains reports for Dakota Westmoreland Corporation, The North American Coal Corporation, Coteau Properties Company, and Falkirk Mining Company. He said Section 10-06.1-18 requires any business or nonprofit corporation and any limited liability company not engaged in the business of farming or ranching which owns or leases a tract of land for farming or ranching which is larger than 20 acres in size to file with the Attorney General, within 12 months of any transaction involving the purchase, sale, or surface leasing of farmland or ranchland by that corporation or limited liability company, a report containing the name of the corporation or limited liability company and its place of incorporation or organization and, if a nonprofit corporation, a copy of its section 501(c)(3) exemption letter from the Internal Revenue Service; the address of the registered office of the corporation or limited liability company in this state and the name and address of its registered agent in this state; the acreage and location listed by section, township, range, and county of all such land in the state owned or leased by the corporation or limited liability company and used for

farming or ranching; and the date and method of acquisition or disposal of the farmland or ranchland. He said a representative of the Attorney General indicated the reports do not indicate there is any trading or exchange of farmland or ranchland by mining companies taking place.

Chairman Warner called on Mr. John W. Dwyer, President, Lignite Energy Council, who discussed the cost of reclamation bonds. A copy of his comments is attached as Appendix B.

At the request of Chairman Warner, committee counsel reviewed a bill draft relating to notice of release of surface coal mining performance bonds [50019.0200], a bill draft relating to release of surface mining reclamation performance bonds [50047.0100], and a bill draft relating to surface coal mining maps [50133.0100]. He said the bill draft relating to notice of release of surface coal mining performance bonds was approved for recommendation to the Legislative Council at the committee's last meeting.

At the request of Chairman Warner, Ms. Mary Mitchell, Dakota Resource Council, addressed the committee. A copy of her comments concerning the bill draft relating to surface coal mining maps is attached as Appendix C.

Chairman Warner called on Mr. Mark Trechock, Staff Director, Dakota Resource Council, Dickinson, who addressed the committee. Mr. Trechock said an increasing number of acres have been through the 10-year revegetation reclamation process and are eligible for final bond release. He said the bill draft would serve to notify the Public Service Commission as well as the public of this acreage and encourage mining companies to apply for final bond release as soon as possible in order that the land may be returned to farm and ranch operators. He said the exception to the corporate farming law that corporations engaged in surface coal mining may use agricultural property provided it is reasonably necessary for their mining operations is vague and too broad. He said the exception effectively allows corporations to use any amount of land for any period of time with the argument that it is reasonably necessary for mining operations. He said the bill draft provides a mechanism requiring mining companies to identify tracts of land that are eligible for final bond release.

In response to a question from Senator Bowman, Mr. Trechock said bonds are based on the total liability or worst-case scenario of a mining company not complying with the state's environmental laws. He said when a tract of land is released from bond, it does not necessarily mean that the company receives a corresponding amount of money by not being required to have that land covered under its bond. Thus, he said, obtaining bond release is not as large a financial incentive to a company as it would seem. He said the bill draft before the committee would encourage mining companies to examine their holdings and apply for final bond release in a more timely manner.

Chairman Warner called on Mr. Dwyer who addressed the committee. A copy of his comments concerning the bill draft is attached as Appendix D.

Chairman Warner called on Ms. Susan Wefald, Commissioner, Public Service Commission, who addressed the committee. A copy of her comments concerning the bill draft is attached as Appendix E.

Chairman Warner called on Mr. Tony Clark, President, Public Service Commission, who addressed the committee. A copy of his comments is attached as Appendix F.

In response to a question from Senator Nichols, Mr. Clark said the Public Service Commission has the requisite tools under current law to address the timely release of reclamation bonds.

TRIBAL GAME AND FISH COORDINATION STUDY

At the request of Chairman Warner, committee counsel presented a bill draft relating to transportation of game and fish taken on Indian trust lands [50017.0100].

Chairman Warner called on Mr. Paul Danks, Natural Resources Administrator, Three Affiliated Tribes, New Town. Mr. Danks presented the remarks of Mr. Tex G. Hall, Chairman, Three Affiliated Tribes, New Town, concerning the bill draft. A copy of the remarks is attached as Appendix G.

In response to a question from Representative Warner, Mr. Steve Kelly, Attorney, Three Affiliated Tribes, New Town, said one solution to the problem presented by representatives of the Turtle Mountain Band of Chippewa Tribe at a prior meeting would be to define "Indian reservation" as including trust lands located outside the external boundaries of a reservation.

In response to a question from Representative Porter, Mr. Kelly said the proposed bill draft would not impact non-Indian landowners within the external boundaries of a reservation because the section still specifies that game must be legally tagged and thus a non-Indian taking game from non-trust land or non-Indian-owned land within the external boundaries of a reservation must still have a state-issued game license.

Chairman Warner called on Mr. Todd Hall, Fish and Wildlife Director, Three Affiliated Tribes, New Town, who addressed the committee. Mr. Hall said the term "Indian trust land" as used in the bill draft is too restrictive while the term "Indian reservation" as suggested by Mr. Danks, is too broad. He suggested the term tribal lands, defined as any land within the reservation owned or controlled by the tribe, be used in the bill draft.

Chairman Warner called on Mr. Roger Rostvet, Deputy Director, Game and Fish Department, who addressed the committee. Mr. Rostvet said the bill draft is an attempt to clarify the issue of tribal members transporting game and fish off reservation but providing that properly tagged game legally taken out of state or taken on Indian trust land may be possessed, transported, or shipped in state is confusing in that the bill draft does not clarify who is entitled to take game and fish on Indian trust land. He said if the bill draft is interpreted to mean anyone may take game and fish on Indian trust land and nonmembers may take game and fish on Indian trust land without a state permit, it would be a shift in state policy. He said if the bill draft provided that members or enrolled members may take game and fish on Indian trust land, it would clarify the issue for the department.

In response to a question from Representative Porter, Mr. Rostvet said tribes have the right to set game and fish seasons for tribal members on tribal lands. However, he said, if the bill draft is interpreted to mean that nonmembers do not need a state-issued license to take game on Indian trust land, it will make the management of the state's game and fish resources more difficult.

In response to Mr. Rostvet's comments, Mr. Kelly said he interpreted the bill draft to mean that nonmembers must still have a state-issued game and fish license but clarifies that they could transport the game and fish off the reservation.

Mr. Hall addressed the committee. He said he opposed inserting language in the bill draft allowing transportation of properly tagged game off Indian trust land by enrolled members. He said he prefers that the regulation be based on the status of the land rather than the status of the individual hunting on that land.

Chairman Warner called on Mr. Archie Fool Bear, Standing Rock Sioux Tribe, Fort Yates, who addressed the committee. Mr. Fool Bear said the bill draft is based upon suggestions presented by representatives of the Standing Rock Sioux Tribe at a prior meeting. Upon further reflection, he said, the term "and allotted lands within any Indian reservation" should be added to the bill draft. He agreed with Mr. Hall that the bill draft should refer to the status of land rather than the status of the individual hunting on that land.

Chairman Warner called on Ms. Alma Mentz, Standing Rock Sioux Tribe, Fort Yates, who addressed the committee. She said the state should not attempt to regulate game and fish on reservations as the tribes are sovereign nations.

Chairman Warner said although there are several questions concerning the bill draft, he said he would like to see the bill draft move forward. He said the bill draft will receive at least two more hearings during the upcoming Legislative Assembly before final enactment which will give both opponents and proponents of the bill draft an opportunity to refine their recommendations. However, he said, if the committee is to conclude its work today, the bill draft should be approved for recommendation to the Legislative Council in its current form.

In response to a question from Representative Nottestad, committee counsel said copies of the bill draft were sent to all the tribes in North Dakota prior to the meeting. In response to a further question from Representative Nottestad, committee counsel said he had not received a response from tribal representatives other than those appearing at today's meeting.

Senator Bowman said if there are problems with the bill draft, the committee should attempt to resolve them.

Representative Froseth said at least two proposed amendments to the bill draft have been suggested by proponents. He said one or the other amendment could be incorporated into the bill draft and it could be introduced by an individual legislator during the upcoming legislative session.

In response to a question from Representative Froseth, Representative Warner said if the committee does not recommend the bill draft to the Legislative Council, it will appear that the committee determined that no problem exists in this area and there is no need for legislation.

In response to Representative Warner's comments, Representative Porter said he disagrees that the Legislative Assembly would look unfavorably on any bill draft introduced by an individual legislator on this issue in the upcoming legislative session in light of the different amendments that have been put before the committee. He said a bill introduced during the Legislative Assembly indicates that not all the questions concerning the study have been answered. He said it is apparent that there is a substantial difference between the executive branch and the tribes concerning regulation of game and fish on the state's Indian reservations. He said the executive branch should be allowed to pursue negotiations with the individual tribes to develop agreements with tribes that address different issues on the different reservations. He said there are ongoing negotiations between the executive branch and the tribes and if the committee recommends this bill draft, it is in effect stepping into the process and may detrimentally affect these negotiations. Once these negotiations are

complete and if legislation is necessary to implement them, he said, the Game and Fish Department could introduce an agency bill or an individual legislator could introduce a bill to implement the recommendations. He said by adopting the bill draft in its current form, the committee is in essence passing on the differences that exist between the interested parties to the Legislative Assembly.

In response to Representative Porter's comments, Senator Bowman said the interim has been a learning process for the committee but the committee should recommend the bill draft in its current form to the Legislative Council. He said the bill draft will provide a vehicle for the Legislative Assembly to address this issue and in the meantime the various interested parties can work on resolving their differences.

It was moved by Representative Kelsh, seconded by Representative Solberg, and carried on a roll call vote that the bill draft relating to transportation of game and fish taken on Indian trust lands be approved and recommended to the Legislative Council. Representatives Warner, Anderson, Bernstein, Boe, Herbel, Kelsh, and Solberg and Senators Bowman, Erbele, and Nichols voted "aye." Representatives Froseth, Hanson, Nottestad, and Porter voted "nay."

GARRISON DIVERSION PROJECT

Chairman Warner called on Mr. David Johnson, District Engineer, Garrison Diversion Conservancy District, Carrington, who presented an update of the Garrison Diversion Project and related matters. A copy of his comments is attached as Appendix H and a copy of the 2003 Garrison Diversion Conservancy District's annual report is on file in the Legislative Council office.

FOUR BEARS BRIDGE CONSTRUCTION PROJECT

Chairman Warner called on Mr. Grant Levi, Deputy Director for Engineering, Department of Transportation, who addressed the committee. Mr. Levi presented an overview of the Four Bears Bridge construction project. He said the Four Bears Bridge construction project is the largest construction project ever undertaken by the Department of Transportation. He said the project was authorized because the existing structure is obsolete. He said the existing bridge is 20 feet wide and rusting and it would not be economically feasible to recondition the bridge. He said the total cost of the project is \$55 million, including \$35 million of federal funds that did not require a state match, \$5 million in funding the Three Affiliated Tribes obtained from the federal government, and the remaining share coming from highway funds, including \$5.6 million of state funds.

Chairman Warner called on Mr. Greg Semenko, Project Engineer, Department of Transportation, who

presented a PowerPoint overview of the Four Bears Bridge construction project.

It was moved by Representative Herbel, seconded by Representative Froseth, and carried that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Council.

It was moved by Representative Herbel, seconded by Representative Froseth, and carried that the meeting be adjourned sine die. Chairman Warner adjourned the meeting sine die at 1:30 p.m.

Following the meeting, the committee conducted a tour of the Four Bears Bridge construction site.

Jeffrey N. Nelson
Committee Counsel

ATTACH:8