

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

NATURAL RESOURCES COMMITTEE

Tuesday, August 5, 2003

AmericInn Meeting Room, AmericInn Motel and Suites

2100 Second Avenue NW

Beulah, North Dakota

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

Members present: Representatives John Warner, Tracy Boe, Glen Froseth, Lyle Hanson, Gil Herbel, Darrell D. Nottestad, Todd Porter; Senators Bill L. Bowman, Robert S. Erbele

Members absent: Representatives LeRoy G. Bernstein, Scot Kelsh, Dorvan Solberg; Senators Ronald Nichols, Michael Polovitz

Others present: See Appendix A

At the request of Chairman Warner, committee counsel reviewed the Legislative Council supplementary rules of operation and procedure.

Chairman Warner said the Legislative Council has assigned two studies to the committee. He said the committee has been assigned a study of federal and state policies that discourage or prevent final bond release applications from being filed, Public Service Commission regulatory policies that could be implemented to encourage flexibility in proving reclamation success and reducing regulatory burdens necessary for bond release applications, and actions being undertaken by the mining companies to achieve final bond release as well as a study of proposed legislation permitting the Game and Fish Department to coordinate with game and fish programs conducted by tribal governments. In addition, he said, the Legislative Council has assigned the responsibility of overview of the Garrison Diversion Unit Project and related matters and any necessary discussions with adjacent states on water-related topics to the committee. He said he anticipates the committee will hold four or five meetings and that the next meeting would be held this fall in Devils Lake and emphasize the state-tribal game and fish issues study.

At the request of Chairman Warner, committee counsel reviewed a memorandum entitled *Release of Coal Mine Reclamation Performance Bonds - Background Memorandum*. Committee counsel also distributed a copy of 2003 House Bill No. 1470 [30724.0200].

Chairman Warner recognized Representative Pat Galvin, District 33. A copy of his written comments concerning the study of the release of coal mine reclamation performance bonds is attached as Appendix B.

In response to a question from Senator Bowman, Ms. Susan Wefald, Commissioner, Public Service Commission, said the Public Service Commission, mining industry, and landowners are in agreement that the mining companies are doing an excellent job of reclaiming mined lands and the study does not concern the quality or extent of reclamation. She said the study is designed to identify statutory and regulatory policies that may discourage or prevent final bond release applications from being filed by mining companies with the Public Service Commission.

At the request of Chairman Warner, Mr. James R. Deutsch, Director, Reclamation Division, Public Service Commission, addressed the committee. A copy of his written comments is attached as Appendix C. He reviewed the mine reclamation and bonding process, including a history of North Dakota's reclamation laws; suggested several changes for improving the bond release process; and discussed the activities of the Public Service Commission and the Lignite Energy Council Task Force on bonding issues.

In response to a question from Senator Bowman, Mr. Deutsch said North Dakota is ahead of Montana and Wyoming in the number of reclaimed acres that have been released from reclamation bonding.

In response to a question from Representative Nottestad, Mr. Deutsch said the federal Office of Surface Mining is the regulatory authority for coal mines on Indian reservations. Thus, he said, a mine operator on an Indian reservation would only have to comply with federal requirements and not state requirements. However, he said, there are no active coal mines on the state's Indian reservations.

In response to a question from Representative Warner, Mr. Deutsch said an appropriate tract of land for bond release purposes is 160 acres.

In response to a question from Senator Erbele, Mr. Deutsch said land ownership varies by mine. He said some mine operators prefer to purchase the surface over the area to be mined, while some mine operators prefer to lease the surface from the current landowner. For example, he said, at the Coteau Properties Company's Freedom Mine and the Falkirk Mining Company's Falkirk Mine, which are both owned by subsidiaries of the North American Coal

Corporation, the operators prefer to purchase the surface while some of the operators of other mines in the state prefer to lease the surface. For example, he said, most of the property at the Beulah Mine remains under private ownership.

At the request of Chairman Warner, Mr. John W. Dwyer, President, Lignite Energy Council, addressed the committee. A copy of his written comments is attached as Appendix D. He described the mining process, the industry bonding task force, and the recommended repeal of North Dakota Century Code Section 38-14.1-17(1)(b) concerning notification of subsurface mineral owners of bond release. He said the Lignite Energy Council endorses all of the Public Service Commission suggestions and issues relating to coal mine reclamation the commission is working on.

In response to a question from Representative Porter, Mr. Dwyer said mining companies prefer to purchase the surface they are planning to disturb as it saves them money in the reclamation process. He said if the surface is owned by numerous landowners, the topsoil and subsoil of each landowner must be removed, segregated, and stored separately, whereas if the mining company owns all of the disturbed land, the topsoil from the entire parcel can be mixed and stored together and the subsoil from the entire parcel can be mixed and stored together.

Chairman Warner recognized Mr. Troy Leingang, Senior Environmental Specialist, Falkirk Mining Company, who addressed the committee. A copy of the map used in his presentation is contained in Appendix D. He said mining at the Falkirk Mine was initiated in 1978. He said the mine has 23,000 acres under permit with 45 percent of the acreage undisturbed, 28 percent of the acreage reclaimed, and 27 percent of the acreage disturbed. As mines develop, he said, the permitted areas closest to the mine buildings and power plant are mined and reclaimed first. However, he said, facilities must be left in place on the reclaimed land that may be eligible for bond release in order to facilitate mining on land further from the mine buildings and power plant. Thus, he said, the mine operators cannot apply for bond release on this land because the land must be used for access to land being mined further from the mine buildings and power plants. At the Falkirk Mine, he said, there is not a complete quarter section that does not have an access road, haul road, or sedimentation pond on it, making these lands inappropriate for bond release applications.

Chairman Warner recognized Mr. Joe Friedlander, Environmental Manager, Freedom Mine, Coteau Properties Company. A copy of the map used in his presentation is contained in Appendix D. He said the tracts at the Coteau Properties Company Freedom Mine that have been reclaimed for more than 10 years are located nearest the power plant and the coal gasification plant because these lands were

mined first. However, he said, the company must maintain access to these lands to ship coal from the more recently mined areas to the power plant and the coal gasification plant. In addition, he said, reasons for not applying for bond release include the irregular shape of the tracts, the difficulty of access, and the fact that the tracts are within an active mine. However, he said, the lands that have been reclaimed for more than 10 years are being farmed. He said bond release applications will be applied for tracts on the eastern edge of the mine that are not located between the active mine and the power and gasification plants as soon as they achieve 10 years because they are not needed for access to the active mine.

Chairman Warner recognized Mr. Dave Schouweiler, Manager of Engineering, Center Mine, BNI Coal, Ltd. A map used by Mr. Schouweiler in his presentation is contained in Appendix D. He said BNI Coal has approximately 10,000 acres under permit at the Center Mine. He said BNI Coal mines approximately 200 acres per year at the Center Mine and reclaims approximately 200 acres per year at the Center Mine. He said the practice of BNI Coal at the Center Mine is to lease land from the surface owners for the mine and to pay a surface lease payment and a coal royalty to the mineral owners. Due to the configuration of the Center Mine, he said, the mining operation is moving east to west across sections in strips. He said BNI Coal prefers to wait until an entire field is reclaimed for the 10-year period before applying for bond release on that field.

Chairman Warner recognized Mr. Michael G. Altavilla, Manager-Engineering and Environmental, Beulah Mine, Dakota Westmoreland Corporation. A copy of the map used in his presentation is contained in Appendix D. He said the Beulah Mine is the smallest of the four large active mines in the state. He said the mine produces approximately three million tons of lignite per year and supplies the Coyote Station and the Heskitt Plant in Mandan. He said the mine disturbs approximately 125 acres per year and reclaims a similar number of acres each year. He said Dakota Westmoreland Corporation has applied for bond release on the one area of the mine that comprises a contiguous 160-acre tract that has been reclaimed for 10 years. The other areas, he said, that have been reclaimed for 10 years lie along access roads or contain stockpiles or sedimentation ponds and it would be difficult to apply for bond release on these tracts because they are necessary for mining operations.

In summary, Mr. Dwyer said the Lignite Energy Council and the mining companies do not see any need for legislation, except for the deletion of the requirement that mineral owners be notified of bond release applications. He said the Lignite Energy Council and the mining companies will continue to work with the Public Service Commission on regulatory initiatives to streamline the performance bond

release process. He said the Lignite Energy Council and mining companies will continue to report to the committee concerning the Public Service Commission and Lignite Energy Council Task Force on performance reclamation bonds. He also distributed a packet of material concerning the difficulty of obtaining reclamation bonds, which is on file in the Legislative Council office.

Chairman Warner recognized Mr. Link Reinhiller, Dakota Resource Council, Beulah. He said the Dakota Resource Council, the Lignite Energy Council, and the mining companies are in agreement that reclamation being done by the mining companies is of high quality and successful. He said the focus of the study is whether some method can be found to encourage or require mine operators to release reclaimed lands as soon as the 10-year reclamation period expires. However, he said, the committee must be careful not to weaken the reclamation requirements or the bond release process. He said mining companies should be encouraged to develop mining plans that do not leave areas within reclaimed areas to justify the delay of bond release applications.

In response to a question from Senator Erbele, Mr. Reinhiller said farmers and ranchers would like to regain ownership of their land as soon as possible as it facilitates their long-range planning for their farming or ranching operations.

Chairman Warner recognized Mr. Jeff Reinke, Center. A copy of his written comments is attached as Appendix E. He discussed the release of coal mine performance reclamation bonds and said a method should be found to encourage mining companies to apply for performance bond release as soon as the 10-year reclamation period expires.

Chairman Warner recognized Ms. Mary R. Mitchell, Dakota Resource Council. A copy of her written comments concerning the release of coal mine reclamation performance bonds is attached as Appendix F.

Chairman Warner recognized Mr. Mark Trechock, Dakota Resource Council, Dickinson. He said the Dakota Resource Council staff has held meetings with representatives of the Attorney General's office to discuss the exemption to the corporate farming restrictions for mining companies using property reasonably necessary for mining purposes. He said

the term "reasonably necessary for mining" is not easily defined and the one court that has had occasion to address the issue gave the term broad meaning to allow the mine operator in question to retain property bonds for mining purposes.

STAFF DIRECTIVES

Representative Warner requested that the Legislative Council staff invite representatives of the North Dakota Farm Bureau and the North Dakota Farmers Union to a future meeting to address the issue of release of coal mine reclamation performance bonds.

Representative Froseth requested that the Legislative Council staff review the legislative history of the corporate farming exemption for coal mine operators at a future meeting.

Representative Warner requested that the Legislative Council staff prepare a bill draft based on the suggestions presented by the Public Service Commission staff and the Lignite Energy Council that applicants for release of reclamation performance bonds not be required to notify the mineral owner of the application.

Representative Warner requested that the Public Service Commission be requested to notify the committee of any future Public Service Commission and industry meetings concerning the release of coal mine reclamation bonds.

Senator Bowman requested that the Legislative Council staff review the liability of mine operators and farmers on mine property at a future meeting.

No further business appearing, Chairman Warner adjourned the meeting at 12:50 p.m.

Following the meeting the committee conducted a tour of Dakota Westmoreland Corporation's Beulah Mine.

Jeffrey N. Nelson
Committee Counsel

ATTACH:6