

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

NATURAL RESOURCES COMMITTEE

Monday, April 19, 2004
Auditorium, 15 Main Street South
Garrison, North Dakota

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

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

Members absent: Representatives LeRoy G. Bernstein, Scot Kelsh; Senator Michael Polovitz

Others present: See Appendix A

It was moved by Representative Nottestad, seconded by Senator Bowman, and carried on a voice vote that the minutes of the December 3, 2003, meeting be approved as distributed.

COAL MINE RECLAMATION AND PERFORMANCE BOND STUDY

Representative Warner distributed a copy of the February 2004 edition of *The Furrow*. He said *The Furrow* is a United States edition of the worldwide farm magazine published by Deere and Company and the February 2004 edition is a special water issue. At the request of Chairman Warner, committee counsel distributed a summary of the *Missouri River Final Environmental Impact Statement Master Water Control Manual Review and Update*. Copies of the magazine and this document are on file in the Legislative Council office.

At the request of Chairman Warner, committee counsel reviewed a memorandum entitled *Legislative History of the Coal Mining Exception to the Corporate Farming Law*. The memorandum discusses the legislative history of the coal mining exception to the corporate farming law.

At the request of Chairman Warner, committee counsel distributed a memorandum sent to mine operators and other interested parties from Mr. Jim Deutsch relating to draft policies on bond release issues and side-by-side comparison of federal and state provisions that pertain to bond release, a summary of the October 15, 2003, meeting with the Lignite Energy Council Task Force III and the Public Service Commission Reclamation Division on bond release, and a copy of the annual evaluation summary report for North Dakota prepared by the Office of Surface Mining Reclamation and

Enforcement. A copy of the memorandum is attached as Appendix B and copies of the summary of the bond release meeting and the Office of Surface Mining report are on file in the Legislative Council office.

Chairman Warner called on Mr. Jim Deutsch, Director, Reclamation Division, Public Service Commission, who updated the committee on the commission's activities involving bond release on reclaimed coal mined lands. A copy of Mr. Deutsch's written comments is attached as Appendix C.

In response to a question from Senator Bowman, Mr. Deutsch said the Public Service Commission has denied at least one bond release application. However, he said, if problems are identified in the bond release process the usual practice is for the application to be withdrawn so that the problem that may lead to denial of the application may be remedied.

In response to a question from Representative Porter, Mr. Deutsch said there is no minimum acreage requirement for bond release applications.

In response to a question from Representative Froseth, Mr. Deutsch said North Dakota's first reclamation law was enacted in 1969 and thus areas that were mined before that date are not subject to the state's reclamation or bonding requirements.

Concerning the comparison of federal and state laws and rules pertaining to bond release for surface coal mining operations contained in Appendix C, Mr. Deutsch said North Dakota provisions require that the bond release notice be published in the official county newspaper and a daily newspaper of general circulation in the locality of the mine. However, he said, federal provisions only require the notice to be published in a newspaper of general circulation in the locality of the mine. Therefore, he said, North Dakota's provisions place an additional requirement on mining companies to publish the notice in two newspapers rather than one. He said this issue is addressed in a bill draft that will be considered by the committee. He said North Dakota provisions on the letters that mining companies must send to property owners and government agencies on plans to seek bond release include more owners and state agencies than the counterpart federal provisions. He said state law requires the letters be sent to the surface and subsurface owners within the permit area proposed

for bond release and the state agencies that are listed as advisory committee members under another section of state reclamation law. He said the requirement that subsurface owners within the permit area proposed for bond release be notified is deleted in a bill draft that will be considered by the committee.

Mr. Deutsch said revegetation parameters are some of the primary measures in determining whether reclamation has been successful for the purpose of final bond release. He said provisions in North Dakota's reclamation law for revegetating lands affected by surface coal mining operations are more stringent than the federal law. He said state law specifically requires that the productivity of agricultural lands be restored to a level equal to or greater than the surrounding lands with similar soil types. He said North Dakota's law also requires that this be demonstrated by comparing the productivity on the reclaimed lands to that on similar undisturbed lands in the surrounding areas using equivalent management practices. He said federal statutory language is more general in nature; however, except for prime farmland, federal rules require the production of reclaimed land be at least equal to 90 percent of the approved standard.

At the request of Chairman Warner, committee counsel presented a bill draft [50019.0200] relating to notice of release of surface coal mining performance bonds. He said the bill draft amends North Dakota Century Code Section 38-14.1-17(1)(a) and (b) to delete the requirement that the request for bond release be published in other daily newspapers of general circulation in the locality of the surface coal mining operation in addition to the official newspaper of the county and that subsurface owners within the permit area proposed for bond release be notified.

Chairman Warner called on Ms. Susan Wefald, Commissioner, Public Service Commission. Ms. Wefald said the commission supports the bill draft.

In response to a question from Representative Warner, Mr. Deutsch said surface owners are the property owners who are most affected by the bond release application.

Chairman Warner called on Mr. John W. Dwyer, President, Lignite Energy Council. Mr. Dwyer said the Lignite Energy Council supports the bill draft.

It was moved by Representative Nottestad, seconded by Representative Solberg, and carried on a roll call vote that the bill draft relating to notice of release of surface coal mining performance bonds be approved and recommended to the Legislative Council. Representatives Warner, Anderson, Boe, Froseth, Hanson, Herbel, Nottestad, Porter, and Solberg and Senators Bowman, Erbele, and Nichols voted "aye." No negative votes were cast.

At the request of Chairman Warner, committee counsel presented a bill draft [50047.0100] relating to

release of surface mining and reclamation performance bonds. He said a bill identical to this bill draft was considered by the 2003 Legislative Assembly and he distributed the legislative history of that bill. He said the bill draft provides that for reclaimed tracts that are 80 acres or larger and have an agricultural postmining land use, the permittee must prepare for final bond release by beginning vegetation measurements for proving reclamation success no later than the eighth year of the 10-year period of revegetation responsibility. He said the beginning of the 10-year responsibility period for this requirement must be based on the latest date that any area within the tract was initially planted; however, the permittee must also apply for any variances that are available to expedite the final bond release process. Once the vegetation measurements show that the reclamation success standards are met in the 10-year responsibility period has ended, he said, the permittee must submit an application for final bond release during the growing season of the following year. If the permittee does not submit an application for final bond release, he said, the Public Service Commission is required to assess the permittee an annual fee. He said the fee is \$25 per acre the first year that eligible lands are not bond-released and the fee increases \$5 per acre for each successive year until final bond release is obtained.

Chairman Warner called on Ms. Mary Mitchell, Dakota Resource Council, who discussed the bill draft and final bond release issues. A copy of her comments is attached as Appendix D.

Chairman Warner called on Mr. Dwyer who discussed the bill draft. A copy of his comments is attached as Appendix E.

In response to a question from Representative Hanson, Mr. Dwyer said property taxes are paid by the mining companies throughout the mining process. When the land is being actively mined, he said, the company pays property taxes at an industrial rate and while the property is being reclaimed, property taxes are paid at an agricultural rate.

In response to a question from Senator Bowman, Mr. Dwyer said land that has been reclaimed may still not be eligible for bond release because it is being used by the mine for ponds, haul roads, spoil piles, and other mining uses. He said reviews undertaken by the Public Service Commission's staff indicate that almost all land eligible for bond release has been released.

In response to a further question from Senator Bowman, Mr. Dwyer said mining companies typically allow the surface owner or lessee to continue farming until the mining process actually begins.

In response to a question from Senator Bowman, Mr. Joe Friedlander, Environmental Manager, Freedom Mine, Coteau Properties Company, agreed that landowners may farm the land up until active mining starts. Once reclamation is completed, he

said, the land is returned to the surface owner for farming and if the mine had purchased the land, it is returned to landowners in the area to be placed back into agricultural production.

In response to a question from Representative Froseth, Mr. Dwyer said the current law works well and the reclamation process in North Dakota works well.

In response to a question from Representative Herbel, Mr. Dwyer said it is not unusual that certain land may be held longer than the 10-year reclamation period because that land may be necessary in the mining process.

Chairman Warner called on Mr. Deutsch who presented the joint testimony of Public Service Commissioners Tony Clark and Kevin Cramer relating to the bill draft, a copy of which is attached as Appendix F.

Chairman Warner called on Ms. Wefald who discussed the bill draft relating to release of surface mining and reclamation performance bonds. A copy of her comments is attached as Appendix G.

STAFF DIRECTIVES

Representative Warner requested that the Legislative Council staff review the issue of mining companies exchanging or swapping property for mining purposes.

Senator Nichols requested that the Legislative Council staff provide information on the cost of reclamation bonds at the committee's next meeting.

No further business appearing, Chairman Warner adjourned the meeting at 11:45 a.m.

Following the meeting, the committee conducted a tour of Fort Stevenson State Park, Fort Stevenson Marina, deTrobriand Bay, and the new blockhouse at Fort Stevenson State Park. The committee also inspected the water intake system for the municipal water supply for the City of Garrison.

Jeffrey N. Nelson
Committee Counsel

ATTACH:7