

2009 HOUSE AGRICULTURE

HB 1026

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1026

House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: January 8, 2009

Recorder Job Number: 6719 & 6724

Committee Clerk Signature



Minutes:

**Anita Thomas:** HB 1026 is the rewrite of the noxious weed laws. **(Written testimony attached #1)**

**Chairman Johnson:** Any other support?

**Roger Johnson, Agriculture Commissioner:** Spoke in support of HB 1026. **(Written testimony attached #2a)** Also brought several amendments to pages 2, 7, and 8. **(Amendments attached #2b)**

I think it is important to address invasive species in here because it will give us some flexibility that would allow us to move very quickly. The dollars we receive through various programs, the LAP program, can only be used by folks who are controlling noxious weeds. You can't use them on other weeds. There are two kinds of noxious weed lists. The one that we issue and maintain on the state level and that's the one that everyone has to follow. Then if counties and cities have specific weeds they want to put on their list because they are a particular problem for their area, they may do that as well. If there is an invasive weed that isn't on any of those lists, that comes in and we discover it. We want to eradicate it. We either have to put it on the state list or the city or county has to put it on their list in order to be able to use those dollars to control it. So by providing the language we suggested in this amendment, it would allow us to

immediately go out and eradicate any invasive species. So that's really what the first of these two amendments does. The interim committee asked that if we had any substantive changes, that those changes would come in a separate bill as will be done with the Weed Seed Free Forage Bill which will be introduced shortly. The second amendment may be more controversial. I would propose that we eliminate the three mill levy requirement. This would be on page 8, remove lines 18-25. All the other changes here are just intended to deal with the invasive species issue. I would like to talk about the rationale for eliminating the three mill levy requirement. There is only one reason that I heard that has some merit for leaving the three mill levy requirement in place. That is, that it provides on the local level the local weed boards some political ammunition to go to the county commissioners/city commissioners and say you guys have to have a dedicated mill levy or else we can't get this cost-share assistance.

The rationale for getting rid of it: Well, let me describe what it is. The three mill levy requirement basically applies to the LAP program. There are two programs I described in testimony. The Target Assisting Grant program or the TAG program and the Landowner Assistance Program or the LAP program. The LAP program is available for landowners to get cost-share from their local jurisdictions to control noxious weeds. If you are in a county that does not have a dedicated three mills for noxious weed control, you are ineligible for LAP assistance. So landowners who happen to be in a county without the dedicated three mills are ineligible to receive that cost-share assistance. We have 7 counties that do not have a dedicated three mill levy requirement because they've got a very large budget. If they have a dedicated three mill levy requirement they would put more money into the whole operation than what would be needed for noxious weed control. So there's no reason for them to have a dedicated mill levy. They still require owner weed control. So if you are a landowner in one of

those jurisdictions you don't get cost share. We just think that's a fairness issue that needs to be resolved. Secondly, this is more from our office's standpoint. There's no practical affect that is achieved because what you see in these counties, that don't have the dedicated three mills levy, is that they do TAG proposals to get around it to come in and receive cost share from our office anyway. It's kind of a perverse incentive to do things to get around stuff. We think it doesn't make a lot of sense.

Two things to take from this testimony:

1. This bill is an enormous improvement over current statute.
2. The two ways you can improve it even further would be to amend this.

**Representative Mueller:** Referencing the three mill levy quandary: what it says is the amount equal to the revenue that could be raised by a levy. The county has to expend on weed control an amount equal to what three mills would generate. It really doesn't say they have to have three mills.

**Roger Johnson:** You are absolutely correct. What the interim committee did was come to a compromise position. The current law says it must be a dedicated three mills. The interim committee said for counties that don't want a dedicated three mills as long as you put as much money into the weed control effort as three mills would have raised, that's the same thing. We're fine with that. But it does not eliminate the two issues that I talked about. It does not solve the problem for a county that has a large budget where three mills would raise more money than what would be needed to control noxious weeds. For those guys, now you're saying you have to put more money into noxious weeds than what you really need in order for the landowners to eligible for assistance. That problem doesn't get addressed and it would if we got rid of the requirement.

**Representative Mueller:** The other question that might come up though is if in fact county doesn't have a need to do three mills or something equivalent and something less than three mills serves their purpose and they've got plenty of money to combat leafy spurge or whatever else comes along, could one assume that if you have enough money in your county to deal with these things, why would you need to come in and take up LAP funds from the commissioner's office.

**Roger Johnson:** The county or city may have all kinds of money, but it's the individual landowners who still are likely going to have noxious weeds on their property. But because of the situation that the county or city is in, they will not be eligible to receive those LAP cost share assistance dollars that anyone in any other county with that three mill provision in tact would be eligible for.

**Representative Mueller:** Why would the county/city not allow the landowner to access those funds that they have in excess to cost share. Why would you not let that landowner to use those funds to fix a weed problem.

**Roger Johnson:** That's the sort of perverse incentive that I talked about. What happens is they are clearly ineligible for LAP assistance under the law and even under the rewrite would remain ineligible in they are in that situation without the three mills either dedicated or part of the budget. So what the county may be inclined to do is to come with a different proposal and try and get assistance back to those producers. Not every county does that. So you're still going to end up with some circumstances will be unfairly treated relative to the rest of the state. There are some very strong feelings about the three mill levy requirement.

**Merlin Leithold, ND Weed Control Association South Central Area Director, Lobbyist, and Weed Officer in Grant County:** feels it's an excellent piece of legislation without any proposed amendments. (Written testimony attached #3)

**Myron Dieterle, Sheridan County Weed Board:** Urges a do pass of HB 1026. . (Written testimony attached #4)

**Representative Rust:** Your opinion of the three mills?

**Myron Dieterle:** In many instances counties would not get the cooperation of the local entity in getting the three mills unless this provision was in the law. No commissioner wants to raise taxes.

**Representative Rust:** In other words, you are in favor of the three mill levy.

**Myron Dieterle:** Yes I am.

**Representative Mueller:** Would having better access to the funds that might be LAP funds in this case help to take care of invasive weed species?

**Myron Dieterle:** Whether it's the commissioner or the association, we've always made it the priority when it comes to funding. Reducing the three mill requirement would generate less money at the local level so I think the invasive issue is still going to be the priority issue but you have less total dollars if you've got an invasive issue to deal with the other noxious weeds.

**Representative Mueller:** For those 7 counties that currently do not have a three mill effort and they all of a sudden have all kinds of invasive weed species they can't very well go then to a LAP program and get assistance to fix that problem.

**Myron Dieterle:** There are terms in the rewrite of the law, there are funds available to deal with these issues of an invasive weed. The county can declare it a noxious weed. We can access state funds to do it.

**Representative Mueller:** But not LAP funds.

**Myron Dieterle:** No, not LAP funds. But the funds that we can access are less restrictive in the contributions of the landowner. There is no need for the landowner as there is in the statute now to contribute the 20%. We can use state and county dollars to do it.

**Stan Wolf, Cass County Weed Control:** In Cass County we do not levy three mills. We levy two mills for noxious weed control. We do provide landowner assistance with the landowner providing 20% of the chemical and 80% covered by the weed board and we also provide a flat rate for the application cost. We initiated this out our own weed board budget.

We would still support the three mill requirement even though we have two mills.

**Terry Traynor, ND Association of Counties:** I'm here in support of the Interim Committee's rewrite. **(Written testimony attached #5)** Proposed an amendment **(Bottom of attachment #5)**

**Representative Mueller:** Would you be in a position to do a stand-alone bill on it?

**Terry Traynor:** If that is the committee's wish, we would do that.

**Representative Mueller:** It seems to me that's a pretty major departure from what the interim committee was set out to do. A rewrite to raise taxes doesn't make a whole lot of sense to me.

**Terry Traynor:** I will bow to the wisdom of the committee.

**Dennis Boyd, MDU Resources and Great Plains Natural Gas as well as Williston Basin Interstate Pipeline Co.:** My comments also reflect the opinion of Xcel Energy and Ottertail Power Co. **(Written testimony attached #6a)** We are not opposed to this bill, however, we do have some serious concerns about safety at certain secured sites. We object to the provisions which give authority to weed control officers to enter secured property.

Proposed amendments. **(Written testimony attached #6b)**

**Representative Mueller:** This is not new in the code. How did you handle this before?

**Dennis Boyd:** Section 4 appears to me to be a new amendment to the code.

**Representative Mueller:** All three of these sections were in state law before in some form.

**Dennis Boyd:** I'm unaware if that was the case. Regardless if it was there before or not, I would still like to offer our amendment because there really isn't any reason for anybody to go

onto those sites. You can stand outside the fence and look inside. It is potentially dangerous for someone to go in there who is unfamiliar with electricity and natural gas.

**Chairman Johnson:** Maybe bringing this bill to light gives an opportunity for everyone to see what has been in law. Would you be prepared to offer a bill to address your concerns rather than go through an amendment process?

**Dennis Boyd:** If that's your wishes.

**Representative Holman:** Which would take precedence, the sign posted on the property or this law.

**Dennis Boyd:** There could be somebody that can't read or they are around there in the evening.

**Representative Boe:** The intent of your amendment would exempt you from just the trespass part?

**Dennis Boyd:** Right, we just don't want anybody inside those secured fences.

**Representative Boe:** Would it help if they were accompanied?

**Dennis Boyd:** If you are going to go that route, we would ask that there would be a certain number of days where we would get notice in advance.

**Chairman Johnson:** So if there was a notification process of entrance, you would be comfortable with legislation of that nature.

**Dennis Boyd:** I don't know if we would need to have anything in law. If someone calls us, I would be fine with that.

**Chairman Johnson:** I suggest bringing another bill

**Bill Wocken, City of Bismarck:** The city supports HB 1026. **(Written testimony attached #7)** Proposed amendment. Section 19, page 9, line 5. After "shall" insert "act on its own behalf or." **(See attachment #7)** The other change is on page 17, line 25 change "official



newspaper of the county” to “official newspaper of the city” as this section refers to the governing body as the city.

**Herb Grenz, Emmons Co.—Linton landowner: (Written testimony attached #8)**

Explained problems of landowners adjacent to U.S. Army Corps of Engineer managed land associated with Lake Oahe. Proposed to amend by striking the provision in Section 35 calling for the repeal of 63-01.1-13(4)(5). Urged a do not pass.

**Vice Chairman Brandenburg:** Your concern is dealing with the federal language being taken out of the bill.

**Herb Grenz:** My idea of solving the problem is very simple—all excess land above elevation 1617 be sold back to adjacent landowners.

**Representative Belter:** Have you brought this to the attention of our congressional delegation?

As a state we have no control if this is a federal deal.

**Herb Grenz:** There is a lack of policy. There should be one person in the county just to work with the federal agency. You have to be on their case.

**Vice Chairman Brandenburg:** Herb Rear (sp?) has tried to work with the Corp along with the Ag Dept.

**Representative Belter:** The Corp is controlled by Congress and if you want to fix it, you need to deal with our Congressional delegation.

**Herb Grenz:** We used to run livestock from May 1. When the weeds are young, livestock does a good job of consuming them. Then came a new policy. You cannot run your livestock on this property until after July 15. My weed bill is going up \$300-400/year.

**Recess until 2:30 p.m.**

**Brian Kramer, ND Farm Bureau:** We support the efforts of those who put this bill together. Concern with the sections dealing with trespass— Section 4, 13, 24 which are on pages 3, 6, and 11. Under the power section, it allows the Ag. Commissioner, County Weed Officer, or City Weed Officer to enter land without being subject to any trespass or damages. We don't have any problem with that other than it would be nice if they could notify the landowner. Add language about written notice to landowner on each of those sections.

**Representative Belter:** What was the old language? Same thing as this?

**Brian Kramer:** Yes that was the language and is the language currently. We still think people should be notified before people are coming onto their property.

**Representative Mueller:** This would be substantial changes. I don't think people just wander onto the land. Usually the property owner has been notified. The weed experts can probably touch on that.

**Brian Kramer:** I would agree with you.

**Representative Belter:** Mr. Wolf, could you comment?

**Stan Wolf, Cass Co. Weed Control:** We respect property owner's rights. We ask or even invite the landowner to come with. When there is a complaint, I'll go out and drive by. If I can see it from the road that's as far as I will go or go to the fence line and then contact the landowner. I usually get good cooperation.

**Chairman Johnson:** Close the hearing and continue work with it next week.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1026

House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: January 15, 2009

Recorder Job Number: 7060

Committee Clerk Signature

*Re Mae Kach*

Minutes:

**Chairman Johnson:** We'll go to back HB 1026 and that'll be the noxious weed rewrite.

On 1026 we also had different groups here that offered amendments. Mr. Boyd and Anita with Legislative Council is working with him to create a stand-alone bill that we may not even hear in our committee. It may end up in Judiciary Committee or wherever.

**Representative Belter:** On page 3, line 1, what does "each person do all things necessary to control" mean.

**Anita Thomas, Legislative Council:** "Doing all things necessary and proper" is a legal euphemism. We need to start somewhere. That is the general legal coverall.

**Representative Uglem:** Roger Johnson proposed to include invasive species.

**Anita Thomas:** Invasive takes it beyond the realm of noxious weeds.

**Chairman Johnson:** I believe the Commissioner is comfortable with that.

**Vice Chair Brandenburg:** I can't support it.

**Representative Mueller:** Addressing Representative Belter's concern, we need to go back to our charge for the rewrite of the Ag. Law. No laws were changed in the rewrite.

**Representative Schatz:** How was the utilities objection handled?

**Chairman Johnson:** Dennis Boyd, MDU, is working with Legislative Council to come up with another bill. His concerns are being worked on. It may be in another committee.

The chair is open for a motion on this bill.

**Representative Boe moved Do Pass on HB1026.**

**Representative Belter seconded.**

A Roll Call vote was taken: **Yes: 10, No: 2, Absent: 1** (Representative Froelich)

**Representative D. Johnson will carry the bill.**

**FISCAL NOTE**  
**Requested by Legislative Council**  
12/08/2008

Bill/Resolution No.: HB 1026

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This proposed legislation, which clarifies and streamlines noxious weed law, has no fiscal impact.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Jeff Weispfenning	Agency:	Agriculture
Phone Number:	328-4758	Date Prepared:	12/16/2008

Date: 1/15/09Roll Call Vote #: 12009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1026House Agriculture Committee☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ AmendedMotion Made By Rep. Boe Seconded By Rep. Belter

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair	✓		Tracy Boe	✓	
Mike Brandenburg, Vice Chair		✓	Rod Froelich	✓	AB
Wesley R. Belter	✓		Richard Holman	✓	
Joyce M. Kingsbury	✓		Phillip Mueller	✓	
David S. Rust	✓		Benjamin A. Vig	✓	
Mike Schatz		✓			
Gerry Uglem	✓				
John D. Wall	✓				

Total (Yes) 10 No 2Absent 1Bill Carrier Rep. Johnson

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1026: Agriculture Committee (Rep. D. Johnson, Chairman) recommends DO PASS**  
(10 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1026 was placed on the  
Eleventh order on the calendar.

2009 SENATE AGRICULTURE

HB 1026



## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1026

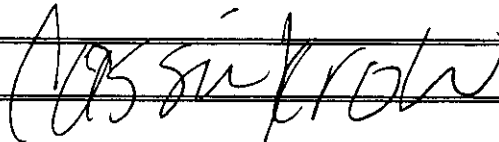
Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: February 27, 2009

Recorder Job Number: 9788

Committee Clerk Signature



Minutes:

**Sen. Flakoll** opened the hearing on HB 1026, a bill relating to noxious weed control and pest control. All members were present.

**Rep. Mueller**, district 24, testified in favor of the bill. Went over bill and the changes with the committee (00:29-6:29)

**Anita Thomas**, Legislative Council, went over the changes in the bill with the committee. See attachment #1.

**Sen. Wanzek**- we did not make any major shifts in direction in this, it was more of an effort to clean up and clarify the bill correct?

**Anita Thomas**- yes that would be correct.

**Ladd Erickson**, McLean County States attorney, testified in favor of the bill. Proposed amendment, see attachment#2.

**Herb Grenz**, self landowner, testified in favor of the bill.

**Herb Grenz**- we have a major problem with this in our area, I brought pictures to talk about with the committee to better explain our problem. See attachment #3, (41:38-48:33)

**Ron Krebsbach**, Mclean county commissioner, testified in favor of the bill.

**Ron Krebsbach-** I have been trying to work with the Corp of Engineers for the last 20 years on this problem. I think working with the state would help work with this easier. So I urge you to support this bill.

**Judy Carlson,** NDDA, testified in favor of the bill. See attached testimony, attachment #4.

**Sen. Klein-** are we creating a big concern by rewriting it this way by not being able to address the concern with the corp?

**Judy Carlson-** I don't think that it has created a problem, we asked our attorney and this is the information that he gave us. See attachment #5.

**Merlin Leithold,** ND Weed Control Association's South-Central Area director, testified in favor of the bill. See attached testimony, attachment #5.

**Terry Traynor,** ND association of counties, testified in favor of the bill.

**Terry Traynor-** The county commissioners are generally very pleased with this bill, this really simplifies things greatly and makes it a lot more understandable for them and their roll to the relationship to the weed board as well. We are also in support of the amendment that was presented and as for a do pass.

**Bill Wocken,** City of Bismarck, testified in favor of the bill. See attached testimony, attachment #6.

**Myron Dieterle,** representing the Sheridan County Weed Board, testified in favor of the bill. See attached testimony, attachment #7.

No opposition to the bill.

**Sen. Flakoll** closed the hearing.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No.1026

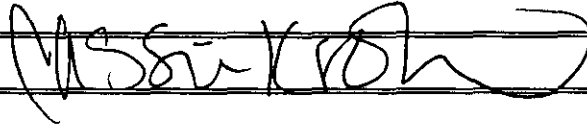
Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: February 27, 2009

Recorder Job Number: 9804

Committee Clerk Signature



Minutes:

**Sen. Flakoll** opened discussion on HB 1026.

**Sen. Wanzek** motioned for a Do Pass and was seconded by **Sen. Taylor**, roll call vote 7 yea,  
0 nay, 0 absent.

**Sen. Heckaman** was designated to carry the bill to the floor.

Date: 2.26.09  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1026

Senate Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken DO PASS

Motion Made By Wanzek Seconded By Taylor

Senators	Yes	No	Senators	Yes	No
Tim Flakoll-Chairman	X		Arthur Behm	X	
Terry Wanzek-Vice Chairman	X		Joan Heckaman	X	
Jerry Klein	X		Ryan Taylor	X	
Joe Miller	X				

Total (Yes) 7 No 6

Absent 0

Floor Assignment Sen. Heckaman

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
February 26, 2009 4:41 p.m.

**Module No: SR-34-3692**  
**Carrier: Heckaman**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1026: Agriculture Committee (Sen. Flakoll, Chairman) recommends DO PASS**  
**(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1026 was placed on the**  
**Fourteenth order on the calendar.**

2009 TESTIMONY

HB 1026

1026  
Anita Thomas  
1/8/09

A ①

1

Anita Thomas  
House Bill No. 1026 Testimony  
January 8, 2009

House Bill No. 1026 is the rewrite of the noxious weed laws. Again, it was not the intent to change state policy with respect to the control of noxious weeds. The goal was to make the chapter clearly understandable so that those who had to enforce it and those who were impacted by it would have due notice of the law.

I'll try to highlight for you what was done and why.

### **SECTION 1 (Page 1)**

This section is a cross reference reconciliation

### **SECTION 2 (Page 2)**

Several of the definitions were changed.

In current law, we reference both the control and eradication of noxious weeds. The committee determined that while eradication was conceptually an ultimate goal, in reality, achieving it was almost impossible. Consequently, the committee defined control as the legally required activity. Control includes suppression as well as destruction.

Current law references "control authorities." Sometimes a control authority is the commissioner. At other times it is a county weed board, a county weed control officer, a city weed board, or a city weed control officer. It just depends on the context. The interim committee did away with this all purpose but confusing definition and decided that we should say what we mean and mean what we say. If we mean a county weed officer, that's who we should reference.

Current law also includes definitions that the committee did not feel needed to be included. Therefore, House Bill 1026 does not include the definition of a "highway, street, or road" or a "landowner." Both were self evident. The committee also eliminated the definition of an operator because that term was more colloquial than legal. Is it a landowner? A tenant? An employee?

The committee likewise eliminated the definition of a "pest." It was decided that this was a noxious weed chapter and that pest control was addressed in another chapter.

### **SECTION 3 (Page 3)**

Current law provides that "every person in charge of or in possession of land in this state, whether as landowner, lessee, renter, or tenant, under statutory authority or otherwise, shall control or eradicate noxious weeds on those lands."

That was a wonderful lofty goal and the committee understood what the drafters of that language were trying to do. The problem was that it established legal requirements that were inappropriate in many circumstances. Generally, the onus with respect to meeting legal requirements is on the landowner. He in turn can require certain actions of his tenants, but the law must look to the landowner as the responsible party when it comes to care and maintenance of property. Likewise, as you will see later on, some landowners, such as the federal government, are under no obligation to abide by state laws.

#### **SECTIONS 4 & 5 (Page 3)**

In these two sections, we looked at the current law and tried to articulate that which the agriculture commissioner was authorized to do and that which he was mandated to do. He is authorized to enter upon land, take specimens, and enforce the Act.

As for the list of duties, the interim committee shortened it somewhat. The committee wanted the agriculture commissioner to maintain a state noxious weed list, make sure the cities and the counties didn't stray too far with respect to their individual lists, and to call an annual meeting of the state's weed control officers.

Current law also contains directives that the committee determined were either not sufficiently definable or really didn't need to be in the Code. These include "cooperating" with others and "encouraging" others to disseminate information.

#### **SECTION 6 (Page 3)**

One thing that is a little bit different comes in subsection 2. Under current law, the Agriculture Commissioner is to compile and keep a list of noxious weeds. In order to ensure that the list does not become stale, the interim committee built in a mandatory review process at least every five years. At that time, county and city weed boards are to be given notice of the time and place at which the list will be reviewed, and afterward, they are notified of any changes to the state list.

#### **SECTION 7 (Page 3)**

This next part of the bill deals with county weed boards. Current law requires that boards of county commissioners establish weed board member areas. The rewrite recognizes that we have a sparsely populated state and an aging population. That combination often makes it a challenge to find weed board members. So, the committee included an option allowing the boards of commissioners to appoint weed board members at large. Whereas current law allows for a 5 or 7 member board, the rewrite for the reasons just mentioned, also allows a 3 member board.

#### **SECTIONS 9 & 10 (Pages 4-5)**

Spell out the powers and duties of county weed boards

#### **SECTION 11 (Page 5)**



This section maintains the ability of county weed boards to extend the state list of noxious weeds, if approved by the commissioner and it requires the county weed boards to remove any weed when directed to do so by the commissioner. It also requires a review of the list, at least once every five years.

#### **SECTION 12 (Page 6)**

This section parallels current law with respect to county weed officers being permitted to be members of their employing weed boards and to serve as the weed control officer for more than one board simultaneously.

#### **SECTIONS 13 & 14 (Page 6)**

These two sections clean up the powers and the duties of county weed officers.

#### **SECTION 15 (Page 7)**

This parallels the current law with respect to mill levy authority for the control of noxious weeds. A county weed board may certify two mills and so may the board of county commissioners.

#### **SECTION 16 (Bottom of Page 7)**

This is a fairly short section and, again, it clarifies what is already in current law -- i.e. -- that the commissioner is to consult with the county weed boards and develop a method for distributing dollars that the state makes available for noxious weed control. A county can receive only 50% of what it expends. However, the commissioner can waive this limit if a weed is seriously endangering areas of the county or the state.

#### **SECTION 17 (Page 8)**

This section articulates the landowner assistance program. The commissioner is to develop the distribution formula in conjunction with county and city weed boards. For these moneys, a county or a city must expend for noxious weed control the equivalent of that raised by 3 mills and a landowner must contribute 20%. This contribution may be made as payment in kind.

#### **SECTIONS 18 -26 (Pages 8 -12 )**

If a city that has a population of at least 3,000 wants to have a weed control program independent of the county, it can do so. This authority exists under current law. In this bill draft, we cleaned up the language and paralleled what had already been done for county weed programs. We address the terms of city weed board members, their powers and duties, the development of a city weed list, city weed control officers, and the tax assessment to fund the city programs.

#### **SECTION 27 (Page 12 )**

This section touches on an issue I know many of you feel passionately about - and that is weed control on governmental land. In the rewrite, we specify that each state agency is to control weeds on land within its jurisdiction and if it does not, the county weed board can, with the approval of the commissioner, go in, control the weeds, and bill the state agency.

Under current law, we provide that the commissioner shall attempt to arrange a noxious weed control program with all state and federal agencies. The interim committee opted to remove this language. The commissioner does not need statutory authority to "attempt to arrange" or "encourage" weed control programs.

Current law also requires federal agencies to develop management plans for controlling weeds. If they don't do this, current law directs that they show cause why they are not controlling the weeds. The ultimate hammer under current law is that the commissioner may hold a public hearing.

The interim committee again concluded that, as a state, we cannot dictate requirements to the federal government. As for holding a public hearing, the agriculture commissioner is free to do that on his own. He does not need legislative authority.

#### **SECTION 28 (Page 12 )**

This section was also a rework of current law. The law presently provides that the highway patrol, county sheriffs, and the truck regulatory division, which no longer exists, shall cooperate with a local weed control authority and may enforce one section of the law which requires that equipment be cleaned to prevent the spread of weeds.

The interim committee thought that that was a bit unusual and directed that the law require law enforcement agents of whatever branch to cooperate with the agriculture commissioner, weed boards, and weed control officers in enforcing the Act.

#### **SECTION 29 (Page 12 )**

This section is the step by step directive governing what happens when a landowner decides not to control weeds on his property.

We began with the county situations -- the service of notice on the landowner, and what the notice must entail -- i.e. the minimum remedial requirements -- the time to comply -- the penalties that could be imposed -- the cost to the landowner if he doesn't comply -- and the ability of the landowner to request a hearing before the county weed board.

If the landowner is aggrieved by the decision of the county weed board, there is an appeal process to the board of county commissioners. Whatever they decide is final. The appeal process was added by the interim committee to ensure that a landowner had adequate due process.

Parallel provisions were inserted governing city situations.

#### **SECTION 30 (Page 15 )**

This section was one that was of great concern to the Commissioner. Under current law, if there is a determination that an area is infested with noxious weeds and if materials or farm products from that area are liable to spread noxious weeds into other areas to the injury of others, the commissioner must declare a quarantine. Similarly, if noxious weeds are likely to be introduced into this state by the importation of materials or farm products, the commissioner must declare a quarantine.

The commissioner is also statutorily required to declare a quarantine when requested to do so through a resolution adopted by a two-thirds majority of the weed board having jurisdiction over the area to be quarantined. This gives the commissioner no say-so in the matter.

How to impose a quarantine, how to lift a quarantine, how to provide due process for anyone affected by the quarantine, are all topics which are not addressed under current law.

The interim committee wanted to ensure that the ability to impose a quarantine was maintained and also to ensure that it was done according to hoyle. What the committee came up with was the following:

If the commissioner determines that a quarantine is necessary, the commissioner must schedule, give notice of, and hold a public hearing. If after that, the commissioner decides to order a quarantine, the order must include the date by which or the circumstances under which the quarantine will be lifted.

If an emergency situation exists, the commissioner may order a quarantine for no longer than 14 days. During that 14 day period, the commissioner must hold a public hearing and determine whether a regular quarantine, like the one I just described needs to be ordered.

If a person violates a quarantine, it's a class B misdemeanor -- That's a maximum of 30 days, \$1000 fine, or both.

### **SECTION 31 (Page 16 )**

Several sections of the current law referenced activities which were not to be engaged in and this section tried to pull those activities together and articulate exactly what was being prohibited.

The first is that one cannot transport material containing noxious weeds down the road in a manner that allows for dissemination of the weeds. i.e. If whatever you are hauling is spewing weeds - you can still haul it -- just put a tarp on it.

The second thing is that you may not willfully drive or transport any equipment, on a public road, in a manner that allows for the dissemination of noxious weeds. i.e. clean your equipment.

The third thing is that you may not dispose of any material containing noxious weed seeds or propagating parts in a manner that allows for the dissemination of noxious weeds. Depending on what it is -- bury it -- burn it -- or get rid of it in a way that doesn't cause regeneration.

### **SECTION 32 (Page 16 )**

The interim committee retained the current civil penalty provisions -- i.e. up to \$80 per day with a \$4000 annual maximum.

### **SECTION 33 (Page 17 )**

If you'll remember a few years ago, a section was put in stating that if an individual complained to his local weed board and felt that the matter had not been addressed satisfactorily within 21 days, the individual could complain to the local governing authority. If another three weeks passed and he still wasn't happy, he could notify the Agriculture Commissioner. The Commissioner then had to investigate and if the Commissioner believed that things which should have happened didn't happen, the Agriculture Commissioner could then enforce the chapter.

The second part of that was if the local weed board believed it couldn't enforce the chapter because of a conflict of interest, (for example - It's the weed officer's brother-in-law who is not controlling his weeds) -- the board could ask the ag commissioner to intervene.

While this solution might have addressed some concerns, it also raised several others. The first was that the agriculture commissioner does not have the authority to go in and function in place of the local weed board. The second was - who would be responsible for the costs.

The interim committee took a different approach.

If an individual files a signed complaint with the county weed board and if the individual believes the complaint has not been satisfactorily addressed within 21 days, the individual may request a hearing in front of the board of county commissioners.

The board of county commissioners has to hold the hearing within 21 days and has 14 days after the hearing within which to render a decision. Their decision is final.

There is a similar mechanism for city issues.

The interim committee simply decided that these were the entities charged with the job of controlling weeds. If they didn't do their jobs, there was an election process that the constituents could use to express approval or disapproval. It truly is local control.

Of the remaining two sections, one is a cross reference reconciliation and the other repeals the current noxious weed chapter. This bill, if you enact it, would form another chapter within the new Title 4.1.

One section which is in the current law, but did not make it to the rewrite is the section governing weed free gravel and forage.

The present law authorizes the commissioner to adopt rules for certifying that gravel, scoria, or sand surface mining operations and land producing hay for sale or for resale are not contaminated with weeds. It then directs that the rules must identify the extent to which weeds are allowed with certification.

That was the first problem. We were requiring certification that there were no weeds and then we were talking about permissible levels of weeds.

To add further confusion, we authorized boards to certify that gravel, scoria, or sand surface mining operations and land producing hay for sale or for resale were not contaminated with weeds.

Current law allowed the commissioner to adopt a schedule of fees that weed boards and the extension service may charge for inspecting, testing, analyzing, and certifying gravel, scoria, or sand surface mining operations and hay land. The committee wasn't sure what the role of NDSU extension was with respect to charging fees or inspecting - testing - analyzing, etc and the committee wasn't able to get answers.

In the end, the interim committee decided that this was a convoluted section and it wasn't getting clear direction regarding how it should work. The committee therefore decided that the section would be eliminated from the rewrite and that those for whom it was important could work together and come up with an independent solution for introduction during this session.

The other sections that are missing are those that still pertain to pest control and eradication. Some years back, weed boards were given the authority to address pests as well as weeds.

The interim committee determined that the Century Code already contained provisions pertaining to pests. Since this did not seem to be a focus for the weed boards, pests were left to their own devices and not included within the noxious weed chapter rewrite.

Roger Johnson  
Agriculture Commissioner  
www.agdepartment.com



Phone (701) 328-2231  
Toll Free (800) 242-7535  
Fax (701) 328-4567

600 E Boulevard Ave., Dept. 602  
Bismarck, ND 58505-0020

**Testimony of Roger Johnson**  
**Agriculture Commissioner**  
**House Bill 1026**  
**Agriculture Committee**  
**Peace Garden Room**  
**11:00 a.m., Thursday, January 8, 2009**

1026  
Roger Johnson  
#2a  
1/8/09

Chairman Johnson and members of the House Agriculture Committee, I am Agriculture Commissioner Roger Johnson. I am here today in support of House Bill 1026, which would rewrite North Dakota's noxious weed control law.

Noxious weed law was the first area of agriculture law that the Interim Agriculture Committee reviewed. It has been my pleasure to work with the interim committee, chaired by Representative Phil Mueller. I am pleased to testify in support of this bill and have a couple of suggested amendments which I think will improve upon a very good bill.

At the first interim committee hearing, held on October 16, 2007, I testified that my goal in working with the Interim Agriculture Committee was to have easily understood law that

maximizes state and local efforts to control weeds. I also identified several areas in the law that needed further clarification or revision, including:

1. **Responsibility for controlling weeds** – House Bill 1026 appropriately clarifies that it is the duty of each person to control the spread of noxious weeds (Page 3, Section 3, lines 1-2). Current law (NDCC § 63-01.1-01) requires that every person in charge of or in possession of land in this state, whether as landowner, lessee, renter, or tenant, shall control or eradicate noxious weeds on those lands. This bill broadens the responsibility of controlling weeds to include any person conducting activities that may spread noxious weeds; including, but not limited to, construction activities, seed sales, custom combining, and haying.
2. **Enforcement** – During the interim process, I testified in support of clarifying and strengthening the noxious weed enforcement authority for the agriculture commissioner (NDCC § 63-01.1-03). House Bill 1026 provides authority for the agriculture commissioner to enter onto land in order to assess situations and take samples without being subject to any action for trespass or damages (Page 3, Section 4, lines 3-7).

House Bill 1026 also revises the following enforcement authorities:

- **Enforcement responsibilities of other agencies** (Page 12, Section 28, lines 23-25) – It provides a general statement that law enforcement agencies “shall” cooperate with weed control authorities to enforce the noxious weed law. Current law (NDCC § 63-01.1-14) directs the state patrol, county sheriffs, and the truck regulatory division to cooperate with weed control authorities and includes a provision that these law enforcement agencies “may” enforce NDCC § 63-01.1-12(2) if machinery, commodities, or articles are being moved on highways and roads and are contributing to the dissemination of noxious weeds.
- **Quarantine** (Page 15, Section 30, lines 15-31, continuing on page 16, lines 1-2) – This bill clarifies quarantine authority and provides for the imposition of an emergency quarantine and a penalty for any person violating a quarantine order. It also clarifies due process. Current law (NDCC § 63-01.1-12.1) only provides the agriculture commissioner with authority to declare a quarantine when requested to do so through a resolution adopted by two-thirds majority vote of the weed board having jurisdiction. In fact, current law seems to “direct” the agriculture commissioner to declare the quarantine, before even determining if sufficient grounds exist to do so.
- **Preventing the dissemination of noxious weeds** (Page 16, Section 31, lines



3-12) – The bill also provides for a penalty and clarifies restrictions on transporting material or equipment that may disseminate noxious weeds.

Current law (NDCC § 63-01.1-12) has no specific penalty for individuals who willfully transport or dispose of materials that disseminate noxious weed seeds or propagating parts.

- **Action on complaints** (Page 17, Section 33, lines 4-29) – The bill further establishes the board of county commissioners or the governing body of the city as the final authority regarding noxious weed complaint investigations.

Current law (NDCC § 63-01.1-18) provides for a cumbersome appeals process potentially involving weed boards, county or city commissions, and the agriculture commissioner.

3. **Funding** – I encouraged the Interim Agriculture Committee to keep the law describing funding simple, equitable, and with sufficient flexibility to direct funds to address the needs of local officials struggling to control weeds. The current bill clearly separates law authorizing the Targeted Assistance Grant (TAG) (Page 7, Section 16) and the Landowner Assistance Program (LAP) (Page 8, Section 17).

The TAG Program targets local weed control needs and provides a cost-share opportunity to county and city weed boards to meet those needs. TAG proposals describe a noxious or invasive weed problem within the county or city weed

boards' jurisdiction and proposes a management strategy.

LAP provides weed boards with cost-share assistance for landowner noxious weed control. Weed boards must levy at least three mills for noxious weed control or eradication to be eligible to receive LAP funds. Historically, a majority of weed boards have provided landowners with herbicide cost-share assistance with these funds. Eligible county and city weed boards are responsible for developing a LAP cost-share program for their areas.

Attached are proposed amendments which would do two things: 1) they would specifically provide for the use of our funds for controlling "invasive" weeds; and 2) they would eliminate the three mill requirement.

1. **TAG Program funding to include control of invasive species** – The addition of the invasive species definition would provide weed control authorities flexibility in receiving funding through the TAG Program to provide for early detection and rapid response of invasive species. Current law (NDCC §§ 63-01.1-06, 63-01.1-07.6) only allows state funds to control noxious weeds. We need to have the ability to quickly and aggressively attack invasive weeds that pose a threat to the control of noxious weeds. We also need to have the ability to quickly and

aggressively attack invasive weeds that pose a threat to the environment and/or human health. This amendment will allow county and city weed boards to request TAG funds to control invasive weeds without going through the time-consuming process of placing weeds on their county or city lists or for my office to place the weeds on the state noxious weed list. My intent is to eliminate the bureaucratic red tape and provide a rapid response to invasive weed problems (see attached amendments: note: the proposed definition of "invasive species" is taken from the USDA National Invasive Species Information Center).

2. **LAP funding to eliminate the mill levy requirement** - Current law requires counties and cities to levy at least three mills to access LAP funding (NDCC §§ 63-01.1-06, 63-01.1-07.6). The mill levy is a long-standing requirement, serves no purpose at the state level, and creates a barrier preventing many landowners in the state from being able to qualify for herbicide cost-share depending on whether a county or city commission has "dedicated" at least three mills for noxious weed control.

I understand that supporters of retaining the three mill levy requirement use this to gain local political support for noxious weed control funding. Current bill language (Page 8, Sections 17, lines 18-25) allows weed boards to designate an amount equal to the revenue that could be raised by a levy of three mills. This

change reflects a compromise with those who advocate for the three mill provision, but it only partly addresses the problem.

There is a fundamental fairness issue for landowners not being able to qualify for LAP funding depending on county or city determined mill levies dedicated to noxious weed control. All landowners across North Dakota should have the same opportunity to access noxious weed control funds. Further, there is a perverse incentive for counties that are not eligible for LAP to develop TAG proposals in an effort to get around this "requirement" (see attached amendments).

4. **Noxious weeds: definitions, purpose, and listing** – I also support the current bill's provisions which provide for a review of the state, county, and city weed lists and provides the authority for the agriculture commissioner to approve all listings (Sections 11 and 22, pages 5 and 10). Current law (NDCC §§ 63-01.1-04.4, 63-01.1-07.4) only provides the agriculture commissioner with the authority to remove weeds from a list but doesn't provide for a periodic review of all state, county, and city weed listings. This bill appropriately does so.

Chairman Johnson and committee members, I urge the House Agriculture Committee to adopt the amendments as presented and urge a "do pass" recommendation for HB 1026.

Testimony of Agriculture Commissioner Roger Johnson  
January 8, 2009  
Page 8

I appreciate your hard work as you move forward in strengthening weed control efforts across the state. I would be happy to answer any questions.

**Testimony and amendments submitted by:**  
**Roger Johnson**  
**Agriculture Commissioner**

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1026

1026  
Roger Johnson  
#26  
1/8/09

Page 2, after line 19, insert:

8. "Invasive species" means a species whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

Page 7, line 29, after "weed" insert "or invasive species"

Page 8, line 3, after "weed" insert "or invasive species"

Page 8, line 10, after "weed" insert "or invasive species"

Page 8, line 15, after "to" remove "eligible"

Page 8, line 16, after "and" remove "eligible"

Page 8, remove lines 18-25

Renumber accordingly.

1/8/09

1026  
Merlin Leithold  
#3



**NORTH DAKOTA WEED CONTROL ASSOCIATION**  
**3196 119<sup>th</sup> Ave SE, Valley City, ND 58072**  
[www.ndweeds.homestead.com](http://www.ndweeds.homestead.com)

Derrill Fick  
NDWCA President  
P.O. Box 5005  
Minot, ND 58702-5005  
701-852-1970  
[wcweeds@ndak.net](mailto:wcweeds@ndak.net)

Bruce Fagerholt  
NDWCA 1st Vice-President  
7591 Hwy 18  
Hoople, ND 58243  
701-894-6292

Stan Wolf  
NDWCA 2<sup>nd</sup> Vice-President  
1201 West Main Ave  
West Fargo, ND 58078  
701-298-2388  
[wolfs@casscountynod.gov](mailto:wolfs@casscountynod.gov)

Becky Schroeder  
Executive Secretary  
3196 119<sup>th</sup> Ave SE  
Valley City, ND 58072  
701-570-3545 (cell) 701-845-1081  
[schroeder.becky@yahoo.com](mailto:schroeder.becky@yahoo.com)

**TESTIMONY OF MERLIN LEITHOLD**  
**LOBBYIST # 177**  
**HB 1026**  
**HOUSE AGRICULTURE COMMITTEE**

**JANUARY 8<sup>TH</sup>, 2009**

Good morning Chairman Johnson and members of the House Agriculture Committee.

My name is Merlin Leithold. I am the ND Weed Control Association's South-Central Area director, the association's lobbyist, and I am also the weed officer in Grant County.

First of all, on behalf of our association, I would like to thank Representative Mueller and the interim committee for allowing our association's input in the drafting of this bill. Also, thank you to Representative Mueller for taking the time to come last January to Fargo to speak to our association concerning these proposed changes to the law.

HB 1026, we feel is an excellent piece of legislation.

Remaining in this legislation is the requirement that in order for a county to receive state funds through the landowner assistance program, that county must levy three mills. This helps to insure that some rural counties continue to receive county tax funding equivalent to three mills. Without this requirement, we would see some counties fall below three mills, severely impacting their county programs. Also, under HB1026 those counties that do not receive three mills would remain eligible for other programs through the Agriculture Departments noxious weed division.

C

Another part of the existing law that this bill defines more clearly, is the area in which a complaint is acted upon with a landowner's failure to control their noxious weeds. In the 59<sup>th</sup> Legislative session, the law was changed setting a timetable for weed boards to act upon the complaint, and a timetable for the complainant to appeal the process. HB 1026 redefines this section, simplifying the process.

The ultimate goal for us is to have a document that not only is easily understood, but a document that will work when we take it into the field. We believe that HB 1026 is such a document.

On behalf of the ND Weed Control Association, I urge a do pass on HB 1026.

Thank-you



1/8/09

1026

Myron Dieterle

#4

Testimony of Myron Dieterle

Sheridan County Weed Board

House Agriculture Committee

January 8, 2009

Good Morning Chairman Johnson and members of the House Agriculture Committee.

My name is Myron Dieterle. I am a member of the Sheridan County Weed Control Board, and I had the privilege of serving as the ND Weed Control Association President in 2007.

I greatly appreciated the opportunity afforded the association in working with the Interim Ag Law Re-write Committee, Legislative Council, and the Agriculture Department in formulating the document you have; House Bill 1026.

On behalf of the Sheridan County Weed Board, I urge a do pass of HB 1026. Thank You!

Are there any questions?

1026  
1/8/09

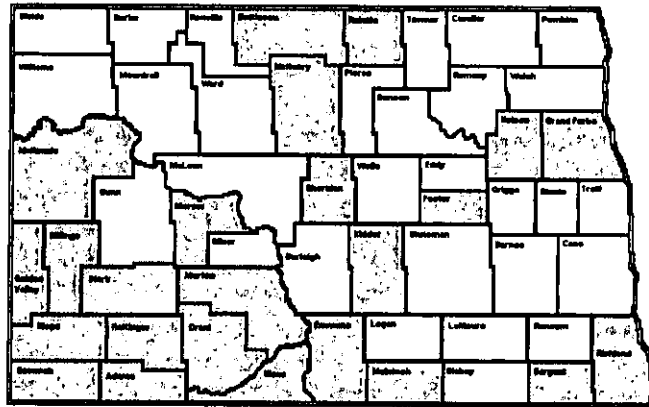
Terry Traynor  
#5

**Testimony To The  
HOUSE AGRICULTURE COMMITTEE  
Prepared January 8, 2009 by the  
North Dakota Association of Counties  
Terry Traynor – Assistant Director**

**REGARDING HOUSE BILL 1026**

Chairman Johnson and members of the Committee, the North Dakota Association of Counties is supportive of the efforts to streamline the statutes governing weed control in North Dakota. We are particularly pleased with the language in section 17 which clarifies that the threshold for matching funds is the "amount equal" to what can be raised by three mills – indicating that if other funds are available, unneeded property taxes will not be forced.

The County Commissioners Association, at their annual convention, passed a resolution urging the Legislature to consider increasing the levy authority for weed control matching funds. With the cost of chemical and fuel, weed control has become increasingly expensive and 24 of our 53 counties are currently levying the maximum allowed by law – and finding it difficult to adequately address their weed control issues.



Counties levying the maximum for 2008 budgets

Our Association therefore requests the committee's consideration of the amendment below, permitting a Board of County Commissioners to levy up to an additional 2 mills if needed. This would raise the maximum available from the current 4 mills to 6 mills.

\*\*\*\*\*

**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1026**

Page 7, line 14, replace "two" with "four"

Renumber accordingly

1/8/09 Dennis Boyd  
HB 1026  
#6a

Testimony on HB 1026  
Dennis Boyd, MDU Resources Group, Inc.  
Bismarck, ND  
January 8, 2009

Good Morning, Mr. Chairman and members of the committee. For the record, my name is Dennis Boyd. I am appearing this morning on behalf of MDU Resources Group, and our utility divisions Montana-Dakota Utilities and Great Plains Natural Gas Company, as well as Williston Basin Interstate Pipeline Co. My comments also reflect the opinions of Xcel Energy and Ottertail Power Co. My testimony is short, and I will be brief. We are not opposed to this bill, however, we do have some serious concerns about safety at certain secured sites such as utility substations, town/city border stations, and natural gas compressor stations.

The electric and natural gas service area of my companies literally stretches to all corners of the state, and we have hundreds of electric substations, town or city border stations, and natural gas compressor stations throughout North Dakota. Those sites could be quite dangerous for someone unfamiliar with electricity or natural gas to enter, and we don't want anyone except an employee or an authorized person to enter those sites. Consequently, virtually all of those sites are fenced, gated, and locked in the interests of public safety. An obvious example is the electric substation MDU operates on the very north end of the Capitol grounds as you enter Divide Avenue.

Currently, we contract with outside companies to spray those sites for noxious weeds, and I don't believe there have been any problems or complaints about our property. I believe our contractors use a sterilant inside those secure sites, and I don't believe you would find much of anything growing inside those secure areas..

We object to the provisions of Sections 4, 13, and 24 which give the Agriculture Commissioner, the county weed control officer, and the city weed control officer respectively the authority to enter our secured property to perform "duties" and to exercise "powers", without our consent and without being subject for trespass or

damages. I realize the language says "provided reasonable care is exercised", but what exactly is "reasonable care"? I could well imagine a weed control officer somewhere hiring some high school kids to spray weeds during the summer. Maybe that kid is told to spray an electric substation site, and he is running behind schedule. When confronted by a locked gate, what if he decides to cut the lock or climb the fence, and having cut a lock, how does he secure the site when he leaves? Hopefully nothing like that would happen, but if it did, it could well be the recipe for a tragic accident.

As a result of these concerns for public safety and because we already contract with professionals to spray our weeds, I respectfully offer an amendment to Sections 4, 13, and 24 which essentially exempts public utilities and interstate pipeline companies from the provisions of those sections.

#### HAND OUT AMENDMENT AND REVIEW FOR COMMITTEE

That concludes my testimony, Mr. Chairman and members of the committee. I respectfully ask you to accept and adopt my amendment.

1/8/09

Dennis Boyd  
HB 1026  
#6B

**Dennis Boyd**  
Government Affairs

Cell: (701) 391-9621  
Res: (701) 258-3649  
e-mail: dennisboyd@bis.midco.net

**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1026**

Page 3, line 7, after Aexercised.@ add AThis section shall not apply to any public utility where its  
property is designated as a secure area not accessible by the general public.@

OR interstate  
pipeline  
company

Page 6, line 18, after Aexercised.@ add AThis section shall not apply to any public utility where  
its property is designated as a secure area not accessible by the general public.@

OR interstate  
pipeline  
company

Page 11, line 10, after Aexercised.@ add AThis section shall not apply to any public utility where  
its property is designated as a secure area not accessible by the general public.@

OR interstate  
pipeline  
company

Renumber Accordingly

1/8/09

Bill Wocken  
HB 1026  
#7

PROPOSED AMENDMENT TO HOUSE BILL 1026  
Presented by Bill Wocken, City of Bismarck

The City of Bismarck supports House Bill 1026 but wishes to propose an amendment to clarify the language in Section 19 of the bill.

The proposed amendment is on Line 5, Page 9 of the bill. After "shall" insert "act on its own behalf or".

The purpose of this proposed amendment will be to allow a city governing body to accomplish the purposes of this section and to establish an effective weed control program without needing to appoint another committee for this purpose. Our belief is that the accomplishment of the purposes of this chapter should be more of the focus of this legislation than the method in which those accomplishments are delivered.

1/8/09

HB 1026  
Herbert  
Grenz  
#8

**RESOLUTION 09-1-1**

**BE IT RESOLVED** by the Emmons County Commission, which is the governing body of the County of Emmons, North Dakota;

**WHEREAS**, House Bill No. 1026 provides for legislation concerning the control of noxious weeds within the State; and

**WHEREAS**, Emmons County has the largest number of acres of land adjacent to U.S. Army Corps of Engineer managed land associated with Lake Oahe in North Dakota; and

**WHEREAS**, the U.S. Army Corps of Engineer has repeatedly and continually failed to properly manage and control noxious weeds on the managed property; and

**WHEREAS**, noxious weeds are spreading from U.S. Army Corps of Engineer managed lands to adjacent privately owned acres resulting in additional costs for the control of noxious weeds to landowners and Emmons County; and

**WHEREAS**, if a federal agency does not control and eradicate noxious weeds and does not develop a management plan for controlling or eradicating noxious weeds, NDCC §63-01.1-13(4)(5) provides that the State Weed Control Office shall notify the agency and require the agency to provide a report to the control authorities detailing the methods used by the federal agency and showing cause why the federal agency is not controlling or eradicating the noxious weeds and if the federal agency fails to control or eradicate noxious weeds, the North Dakota Agriculture Commissioner may hold a public hearing to determine the reason for the failure; and

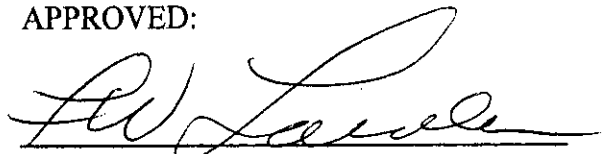
**WHEREAS**, House Bill No. 1026 provides for the repeal of NDCC §63-01.1-13(4)(5), which provides for action by the North Dakota Agriculture Commissioner for failure of federal agencies to manage and control noxious weeds.

IT IS HEREBY RESOLVED that the Emmons County Commission encourages the North Dakota Legislature to amend House Bill No. 1026 to strike the provision in Section 35 calling for the repeal of NDCC §63-01.1-13(4)(5); and

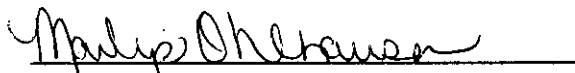
BE IT FURTHER RESOLVED that House Bill No. 1026 be amended to require the North Dakota Agriculture Commissioner to take the appropriate action provided in NDCC §63-01.1-13(4)(5) to further encourage the control of noxious weeds on federal agency managed lands.

Dated this 6<sup>th</sup> day of January, 2009, in Linton, North Dakota.

APPROVED:

  
Francis W. Lawler, Chairman  
Emmons County Commission

ATTEST:

  
Marlys Ohlhauser  
County Auditor

(SEAL)

ADOPTED the 6<sup>th</sup> day of January, 2009.



L. Anita Thomas, J.D., LL.M.

North Dakota Legislative Council

House Bill No. 1026 Testimony

February 26, 2009

**2007 SENATE BILL NO. 2139**

The legislative council shall study during the 2007-08 interim, the provisions of the North Dakota Century Code which relate to agriculture for the purpose of eliminating provisions that are irrelevant or duplicative, clarifying provisions that are inconsistent or unclear in their intent and direction, and rearranging provisions in a logical order.

**2009 HOUSE BILL NO. 1026**

**SECTION 1 (Page 1)**

This section is a cross reference reconciliation.

This section refers to chapter 63-01.1 and that is the chapter that is being repealed in HB 1026 - So we need to ensure that we do not have any continuing references to that chapter in the Code.

The committee took care of a couple of small language changes - but -- the rest will be dealt with when that particular chapter of the law is rewritten.

**SECTION 2 (Page 2)**

Several of the definitions in this section were changed.

The current law defines both "control" and "eradication" of noxious weeds. The committee determined that while "eradication" was conceptually an ultimate goal, in reality, achieving it was almost impossible. Consequently, the committee decided that the legal obligation should be the "control"

of noxious weeds and it defined control as including suppression as well as destruction.

I also see that there is a typo on line 15 and we will catch that in the E & E process.

Current law references "control authorities." Sometimes the phrase "control authority" means the Commissioner. At other times it means a county weed board, a county weed control officer, a city weed board, or a city weed control officer. It just depends on the context. The interim committee did away with this "all purpose" but sometimes confusing definition and decided that the statute should say what it means and mean what it says. If it was the intent that a county weed officer do something, that is who is now referenced.

Current law also includes definitions that the committee did not feel needed to be included. Therefore, House Bill 1026 does not include the definition of a "highway, street, or road" or a "landowner." Both were determined to be self evident.

The committee also eliminated the definition of an "operator" because that term was more colloquial than legal. Is it a landowner? A tenant? An employee?

The committee likewise eliminated the definition of a "pest." It was decided that this was a noxious weed chapter and that pest control was addressed in another chapter.

### **SECTION 3 (Page 3)**

Current law provides that "every person in charge of or in possession of land in this state, whether as landowner, lessee, renter, or tenant, under statutory authority <sup>(i.e. agency of government)</sup> or otherwise <sup>(contract)</sup>, shall control or eradicate noxious weeds on those lands."

Again, that was a wonderful goal and the committee understood completely what the drafters of that language were trying to do. The problem was that it established legal requirements that were inappropriate in many circumstances. Generally, the onus with respect to meeting legal requirements is on the landowner. He in turn can require certain actions of his tenants, but the law must look to the landowner as the responsible party when it comes to care and maintenance of property. Likewise, as you will see later on, some landowners, such as the federal government, are under no obligation to abide by state laws.

The committee, therefore, determined that the appropriate phraseology would be to require each person to do all things necessary and proper to control the spread of noxious weeds.

### **SECTIONS 4 & 5 (Page 3)**

In these two sections, the committee looked at the current law and tried to articulate that which the Agriculture Commissioner was authorized to do and that which he was mandated to do. The Agriculture Commissioner is authorized to enter upon land, take specimens, and enforce the Act.

As for the list of duties, the interim committee shortened it somewhat. The committee wanted the Agriculture Commissioner to maintain a state noxious weed list, make sure the cities and the counties didn't stray too far with respect to their individual lists, and call an annual meeting of the state's weed control officers.

Current law also contains directives that the committee determined were either not sufficiently definable or really didn't need to be in the Code. These include "cooperating" with others and "encouraging" others to disseminate information.

### **SECTION 6 (Page 3)**

One thing that is a little bit different comes in subsection 2. Under current law, the Agriculture Commissioner is to compile and keep a list of noxious weeds. However, the current law does not address how to remove a weed once it is on the state list. Current law doesn't even suggest that the Commissioner occasionally review the list to see if it is still relevant. It is just silent.

In order to ensure that the list does not become stale, the interim committee built in a mandatory review process at least every five years. At that time, county and city weed boards are to be given notice of the time and place at which the list will be reviewed, and afterward, they are notified of any changes to the state list.

### **SECTION 7 (Page 3)**

This next part of the bill deals with county weed boards. Current law requires that boards of county commissioners establish weed board member areas. The Committee was told that North Dakota is a sparsely populated state with an aging population and that combination often makes it a challenge to find weed board members. So, the committee included an option allowing the boards of commissioners to appoint weed board members "at large."

Whereas current law allows for a 5 or 7 member board, the rewrite for the reasons just mentioned, also allows a 3 member board.

### **SECTIONS 9 & 10 (Pages 4-5)**

Spell out the powers and duties of county weed boards

### **SECTION 11 (Page 5)**

Much like the state noxious weed list, counties are authorized to compile their own noxious weed list. The county list must include all weeds on the state list. Current law provides that the Commissioner can require a county to remove a noxious weed from its list. But, it is silent with respect to the county deciding on its own that a weed should be removed.

This section maintains the ability of county weed boards to extend the state list of noxious weeds, if approved by the Commissioner and just like under current law, it requires the county weed boards to remove any weed when directed to do so by the Commissioner. It also requires that the county weed board review its list, at least once every five years and authorizes it to remove a weed by majority vote.

### **SECTION 12 (Page 6)**

This section parallels current law with respect to county weed officers being permitted to be members of their employing weed boards and to serve as the weed control officer for more than one board simultaneously.

### **SECTIONS 13 & 14 (Page 6)**

These two sections clean up the powers and the duties of county weed officers. At the request of the Agriculture Department, the committee did add one duty. On page 6, line 24, the bill provides that the county weed officer must meet the pesticide certification requirements of chapter 4-35. Current law has a rather unclear directive telling the Commissioner to adopt "certification categories" for weed control officers. The Commissioner's staff indicated that the intent of the section was to ensure compliance with the pesticide certification requirements. The committee felt that while the addition seemed fairly self evident, it was a "heads-up" reminder that weed control officers are subject to all the pesticide use requirements otherwise in law.

#### **SECTION 15 (Page 7)**

This parallels the current law with respect to mill levy authority for the control of noxious weeds. A county weed board may certify two mills and so may the board of county commissioners.

#### **SECTION 16 (Bottom of Page 7)**

This is a fairly short section and, again, it clarifies what is already in current law -- i.e. -- that the Commissioner is to consult with the county weed boards and develop a method for distributing dollars that the state makes available for noxious weed control. A county can receive only 50% of what it expends. However, the Commissioner can waive this limit if a weed is seriously endangering areas of the county or the state.

The Senate has already passed SB 2371, which would make some changes to this section with respect to raising the limit from 50% to 75%, including city weed boards, and referencing invasive species. If the House agrees with those changes, they would be considered an amendment to this section and incorporated in the 2009 laws.

#### **SECTION 17 (Page 8)**

This section articulates the landowner assistance program. The Commissioner is to develop the distribution formula in conjunction with county and city weed boards. For these moneys, a county or a city must expend for noxious weed control the equivalent of that raised by 3 mills and a landowner must contribute 20%. This contribution may be made as payment-in-kind.

#### **SECTIONS 18 -26 (Pages 8 -12 )**

If a city that has a population of at least 3,000 wants to have a noxious weed control program independent of its county, it can do so. This authority exists under current law. In this bill, the committee cleaned up the language and paralleled what had already been done for county weed programs. These several sections address the terms of city weed board members, their powers and duties, the development of a city weed list, city weed control officers, and the tax assessment to fund the city programs.

#### **SECTION 27 (Page 12 )**

This section touches on an issue many feel passionately about - and that is weed control on governmental land. In the rewrite, the committee maintained the current law - which is that each state agency is to control weeds on land within its jurisdiction and if it does not, the county

weed board can, with the approval of the Commissioner, go in, control the weeds, and bill the state agency.

Under current law, the Commissioner is directed to "attempt to arrange a noxious weed control program with all state and federal agencies." The interim committee opted to remove this language. It's rationale was that the Commissioner does not need statutory authority to "attempt to arrange" or to "encourage" weed control programs.

Current law also requires federal agencies to develop management plans for controlling weeds. If they don't do this, current law directs that they show cause why they are not controlling the weeds. The ultimate hammer under current law is that the Commissioner may hold a public hearing.

The interim committee again concluded that, as a state, North Dakota cannot dictate requirements to the federal government. As for holding a public hearing, the Agriculture Commissioner is free to do that on his own. He does not need legislative authority.

#### **SECTION 28 (Page 12 )**

This section was also a rework of current law. The law presently provides that the highway patrol, county sheriffs, and the truck regulatory division, which no longer exists, shall cooperate with a local weed control authority and may enforce one section of the law which requires that equipment be cleaned to prevent the spread of weeds.

The interim committee thought that that was a bit unusual and directed that the rewrite require law enforcement agents of whatever branch to cooperate with the Agriculture Commissioner, weed boards, and weed control officers in enforcing the Act.

#### **SECTION 29 (Page 12 )**

When a landowner decides not to control his weeds, certain things have to fall in place. Under current law, the steps are set forth in a very large disorganized section containing a subsection with 7 lines, and then two subsections consisting of 27 line paragraphs. For comparison, your bills contain approximately 30 lines per page. The effect was a glazing over of the eyes, long before one could wade through the details. To make it just a little bit more challenging, the committee found that all the steps were there, they were just not in chronological order.

In the rewrite, the interim committee wanted a clearly defined - step-by-step process.

The section begins with the county situations -- the service of notice on the landowner, and what the notice must entail -- i.e. the minimum remedial requirements -- the time to comply -- the penalties that could be imposed -- the cost to the landowner if he doesn't comply -- and the ability of the landowner to request a hearing before the county weed board.

If the landowner is aggrieved by the decision of the county weed board, the proposed language provides for an appeal process to the board of county commissioners. Whatever the commissioners decide is final.

Under current law, if the landowner does not want the county weed board to control weeds, and he requests that the county weed board not control the weeds, the county weed board may not control the weeds until the county weed board is authorized to control the weeds by a majority vote of the county weed board.

I am not making that up!

The interim committee found this to be somewhat perplexing. That's why the interim committee specifically authorized a hearing before the county weed board and then an appeal to the board of county commissioners. The interim committee felt it was important to provide a landowner with due process.

Just as in current law, the provisions that govern county situations are paralleled for city situations.

### **SECTION 30 (Page 15 )**

This section was one that was of great concern to the Commissioner. Under current law, if there is a determination that an area is infested with noxious weeds and if materials or farm products from that area are liable to spread noxious weeds into other areas to the injury of others, the Commissioner must declare a quarantine. Similarly, if noxious weeds are likely to be introduced into this state by the importation of materials or farm products, the Commissioner must declare a quarantine.

The Commissioner is also statutorily required to declare a quarantine when requested to do so through a resolution adopted by a two-thirds majority of the weed board having jurisdiction over the area to be quarantined. This gives the Commissioner no say-so in the matter.

How to impose a quarantine, how to lift a quarantine, how to provide due process for anyone affected by the quarantine, are all topics that are not addressed under current law.

The interim committee wanted to ensure that the ability to impose a quarantine was maintained and also to ensure that it was done according to hoyle. What the committee came up with was the following:

If the Commissioner determines that a quarantine may be necessary, the Commissioner must schedule, give notice of, and hold a public hearing. If after that, the Commissioner decides to order a quarantine, the order must include the date by which or the circumstances under which the quarantine will be lifted.

If an emergency situation exists, the Commissioner may order a quarantine for no longer than 14 days. During that 14 day period, the Commissioner must hold a public hearing and determine whether a regular quarantine, like the one I just described needs to be ordered.

If a person violates a quarantine, it's a class B misdemeanor -- That's a maximum of 30 days, \$1000 fine, or both.

### **SECTION 31 (Page 16 )**

Several sections of the current law referenced activities that were not to be engaged in and this section tried to pull those activities together and articulate exactly what was being prohibited.

The first is that one cannot transport material containing noxious weed seeds or propagating parts down the road in a manner that allows for dissemination of the weeds. i.e. If whatever you are hauling is spewing weed seeds or parts - you can still haul it -- just put a tarp on it.

The second thing is that you may not willfully drive or transport any equipment, on a public road, in a manner that allows for the dissemination of noxious weeds. i.e. clean your equipment.

The third thing is that you may not dispose of any material containing noxious weed seeds or propagating parts <sup>(grain screenings)</sup> in a manner that allows for the dissemination of noxious weeds. Depending on what it is -- bury it -- burn it -- or get rid of it in a way that doesn't cause regeneration.

If a person violates this section, it's again a class B misdemeanor. <sup>(30 days, \$1000 fine, or both)</sup>

### **SECTION 32 (Page 16 )**

The interim committee retained the current civil penalty provisions -- i.e. up to \$80 per day with a \$4000 annual maximum.

### **SECTION 33 (Page 17 )**

If you'll remember, in 2005, a section was put in stating that if an individual complained to his local weed board and felt that the matter had not been addressed satisfactorily within 21 days, the individual could complain to the local governing authority. If another three weeks passed and he still wasn't happy, he could notify the Agriculture Commissioner. The Commissioner then had to investigate and if the Commissioner believed that things which should have happened didn't happen, the Agriculture Commissioner could then enforce the chapter.

The second part of that was if the local weed board believed it couldn't enforce the chapter because of a conflict of interest, (for example - It's the weed officer's brother-in-law who is not controlling his weeds) -- the board could ask the Agriculture Commissioner to intervene.

While this solution might have addressed some concerns, it also raised several others. The first was that the Agriculture Commissioner does not have the statutory authority to go in and function in place of the local weed board. The second was - who would be responsible for the costs?

The interim committee took a different approach.

If an individual files a signed complaint with the county weed board and if the individual believes the complaint has not been satisfactorily addressed within 21 days, the individual may request a hearing in front of the board of county commissioners.

The board of county commissioners has to hold the hearing within 21 days and has 14 days after the hearing within which to render a decision. The board's decision is final.

There is a similar mechanism for city issues.

The interim committee simply decided that these were the entities charged with the job of controlling weeds. If they didn't do their jobs, there was an election process that the constituents could use to express approval or disapproval. The committee indicated this is in fact local control.

Of the remaining two sections, one is a cross reference reconciliation and the other repeals the current noxious weed chapter. This bill, if enacted, would form another chapter within the new Title 4.1.

One section which is in the current law, but did not make it to this rewrite bill is the section governing weed free gravel and forage. The interim committee determined that this was a convoluted section and it wasn't getting clear direction regarding how it should work. The committee therefore decided that the section would be eliminated from the rewrite and that those to whom it was important could work together and come up with an independent solution for introduction during this session. That was done through HB 1270.

The other sections of the current noxious weed chapter that were not included in the rewrite are those that pertain to pest control and eradication. Some years back, weed boards were given the authority to address pests as well as weeds.

The interim committee determined that the Century Code already contained provisions pertaining to pests and it was unnecessary to duplicate those provisions in the noxious weed chapter rewrite.



Amendments to HB1026.

1. On page 12, lines 17-22 replace the all provisions in Section 27 with:

**63-01.1-13. Publicly owned land - Noxious weed control or eradication.**

1. The commissioner shall attempt to arrange a noxious weed control or eradication program with all state and federal agencies owning, controlling, or having jurisdiction over land within the state.

2. Weed control officers shall attempt to arrange a noxious weed control or eradication program with political subdivisions owning or controlling public land within each weed control officer's jurisdiction.

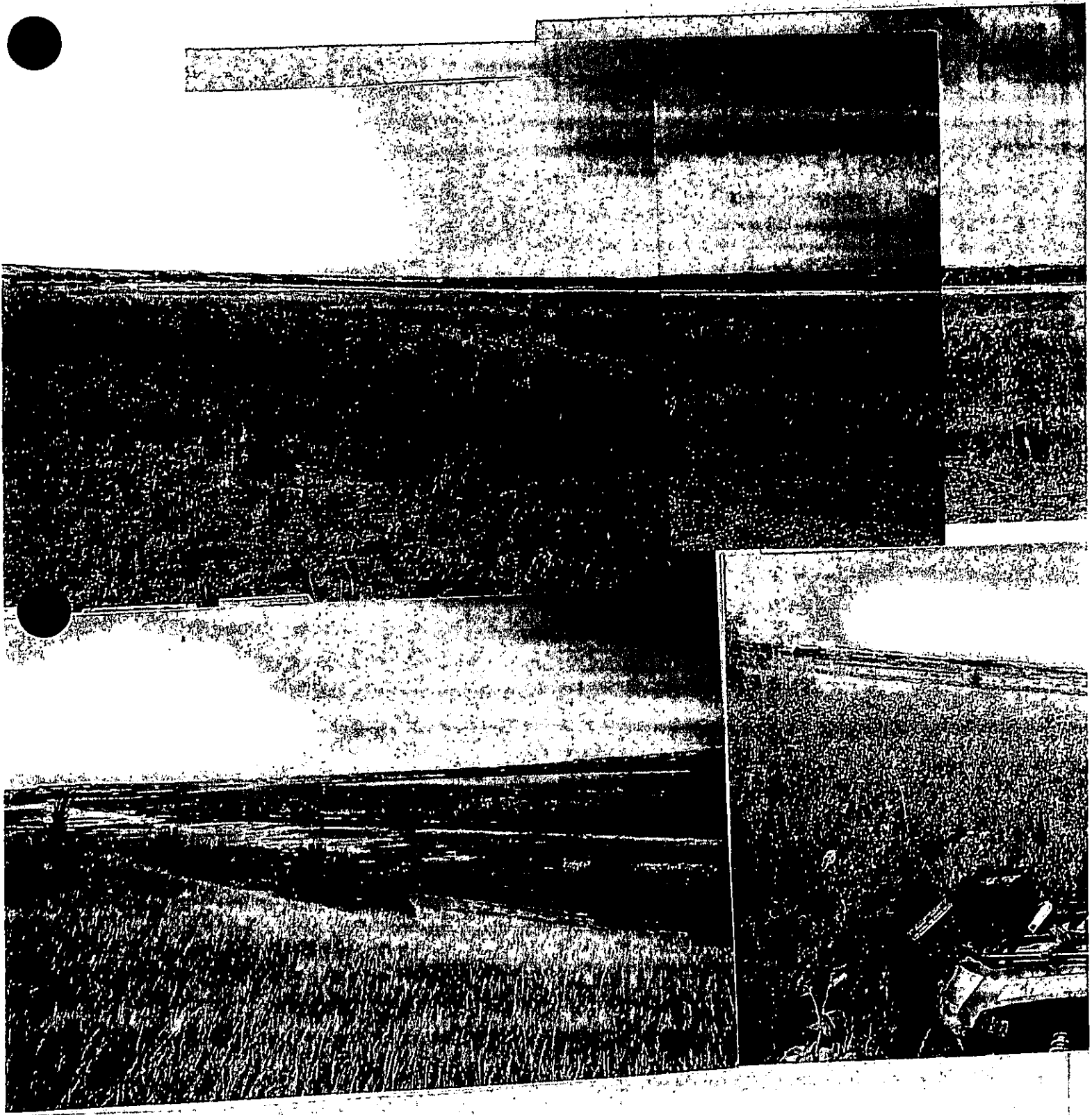
3. Each state agency shall provide for the control or eradication of noxious weeds on any land within its jurisdiction. If a state agency fails to control or eradicate noxious weeds on land under its jurisdiction, the weed board for the county in which all or a portion of the land is located, upon approval of the commissioner, may enter upon the land to control or eradicate the noxious weeds. The state agency shall reimburse the county weed board for expenses incurred in the control or eradication of the noxious weeds within thirty days after the agency receives the bill.

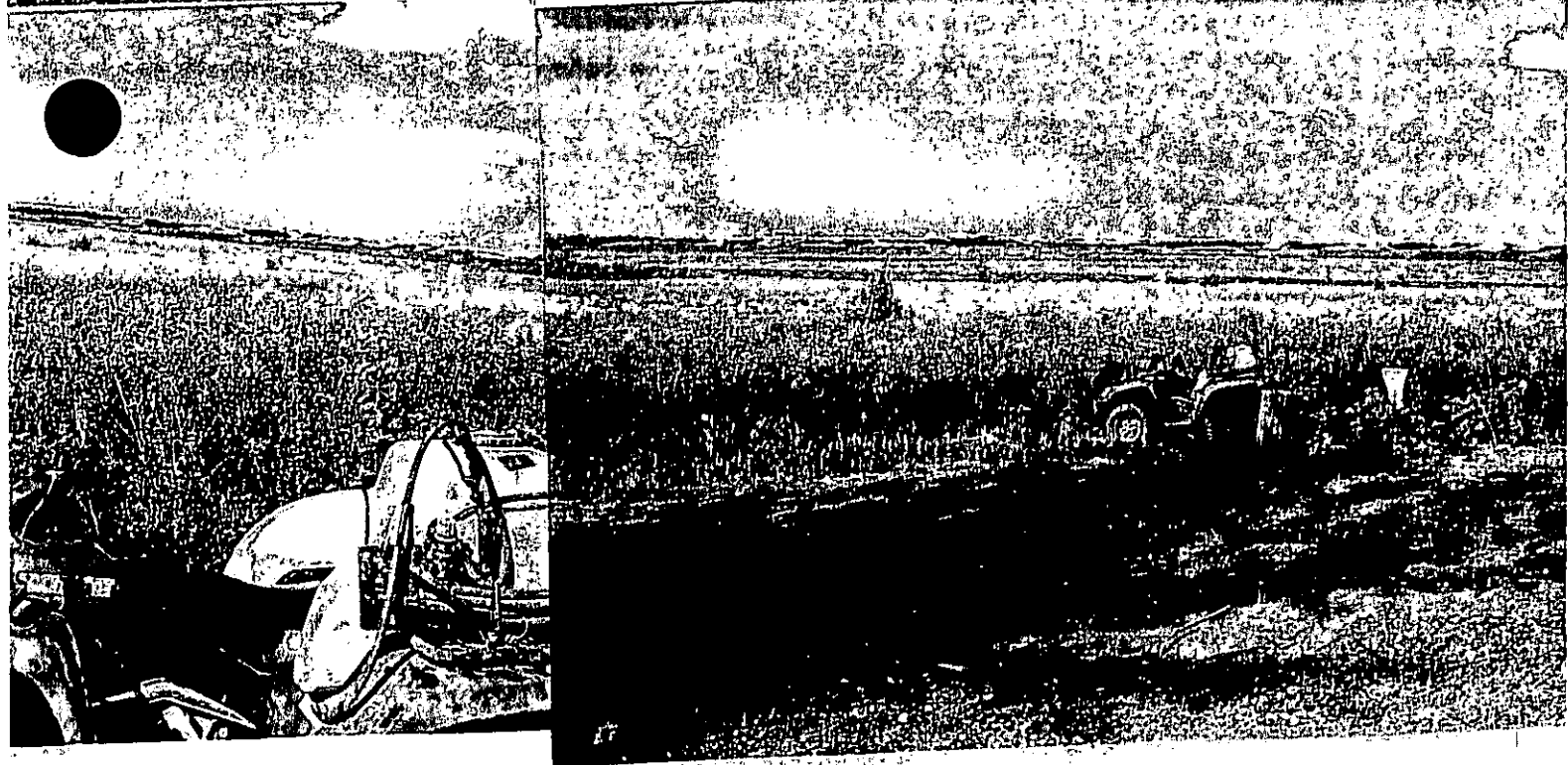
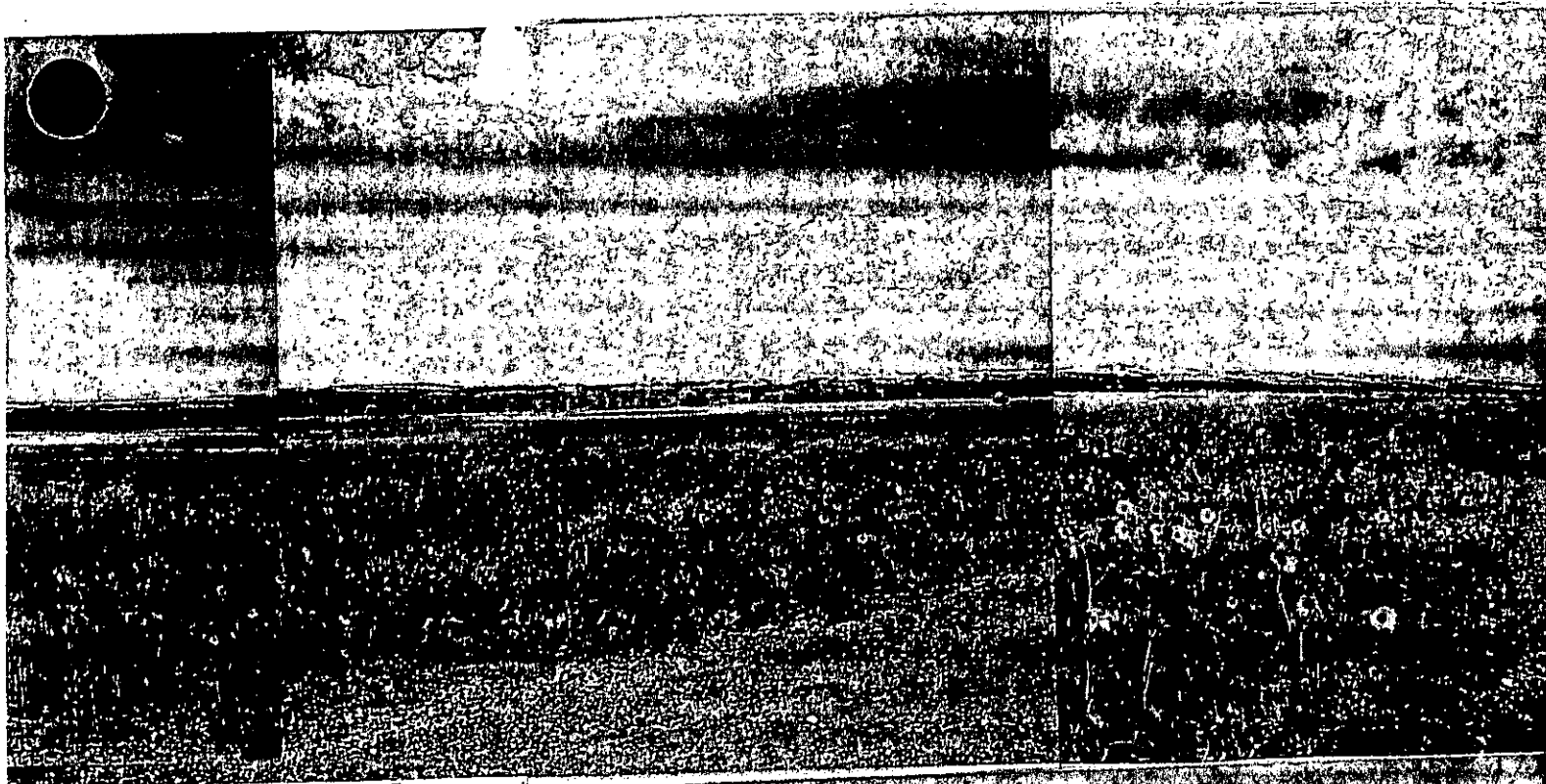
4. Each federal agency shall develop a management plan for controlling or eradicating noxious weeds on land under the agency's jurisdiction. If a federal agency does not control or eradicate the noxious weeds and does not develop a management plan for controlling or eradicating the noxious weeds, the weed control office shall notify the agency as provided in section 63-01.1-08. The federal agency shall provide a report to the control authorities detailing the methods used by the federal agency and showing cause why the federal agency is not controlling or eradicating the noxious weeds. The commissioner may specify the forms on which the federal agency report must be submitted.

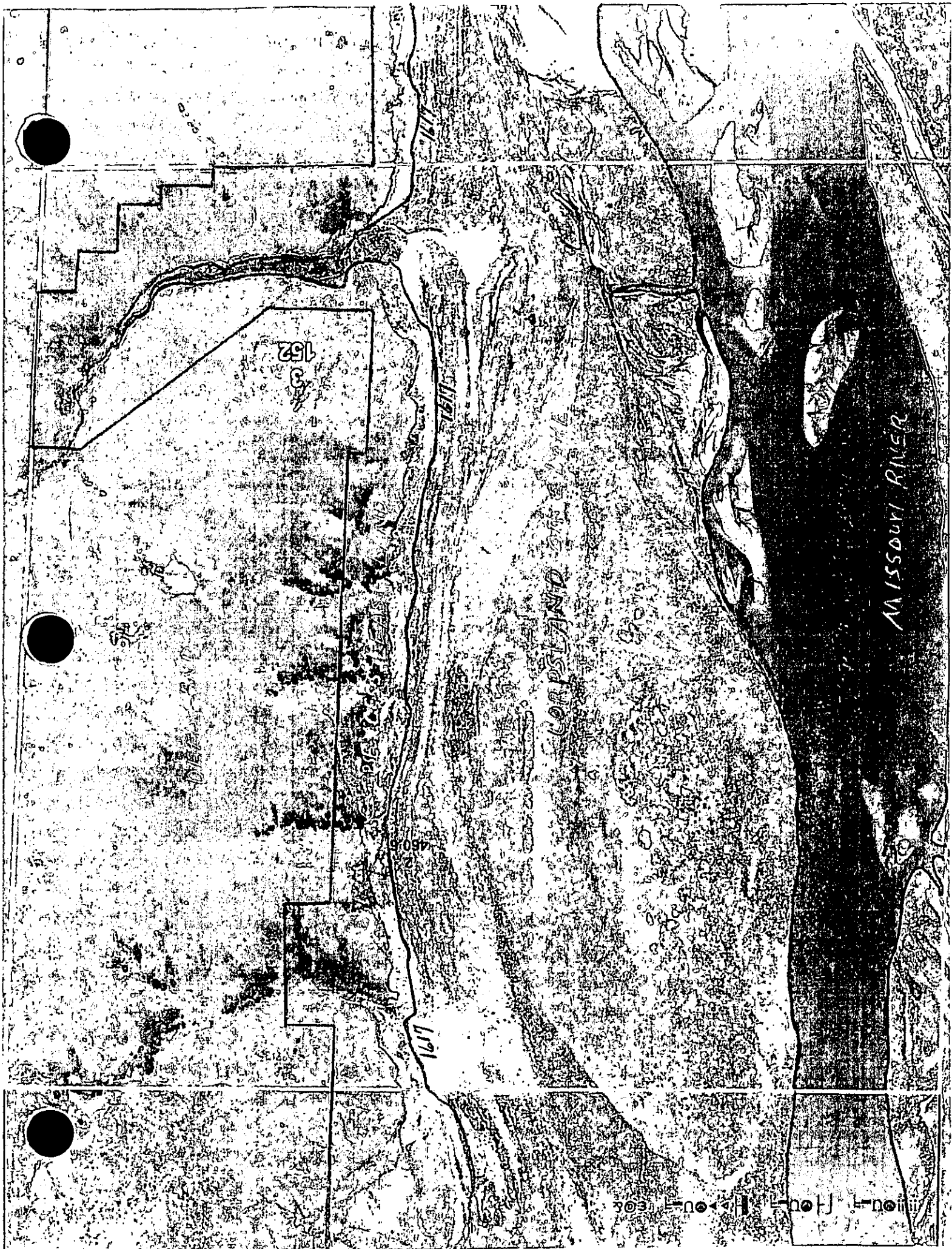
5. Upon being notified by a weed board of the federal agency's failure to control or eradicate noxious weeds, the commissioner may hold a public hearing to determine the reason for the failure.

2. Attach a study of weed control programs of the U.S. Army Corps of Engineers on federal land under its control, including: 1) Whether the Corps is in compliance with federal and any applicable state weed control laws; 2) Whether the Corps sufficiently budgets funds to address weed control on Corps lands; 3) Whether Congress provides proper funding for weed control on Corps lands.

# Attachment #3









600 E Boulevard Ave., Dept. 602  
Bismarck, ND 58505-0020

**Testimony of Judy Carlson  
Program Coordinator  
House Bill 1026  
Agriculture Committee  
Roosevelt Room**

**10:15 a.m., Thursday, February 26, 2009**

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Chairman Flakoll and members of the Senate Agriculture Committee, I am Judy Carlson, a Program Coordinator at the department of agriculture. I am here today in support of House Bill 1026, which would rewrite North Dakota's noxious weed control law.

Noxious weed law was the first area of agriculture law that the Interim Agriculture Committee reviewed. It has been our pleasure to work with the interim committee, chaired by Representative Phil Mueller. I am pleased to testify in support of this bill.

At the first interim committee hearing, held on October 16, 2007, Commissioner Johnson testified that his goal in working with the Interim Agriculture Committee was to have easily understood law that maximizes state and local efforts to control weeds. He also identified several areas in the law that needed further clarification or revision, including:

1. **Responsibility for controlling weeds** – House Bill 1026 appropriately clarifies that it is the duty of each person to control the spread of noxious weeds (Page 3, Section 3, lines 1-2).

Current law (NDCC § 63-01.1-01) requires that every person in charge of or in possession of land in this state, whether as landowner, lessee, renter, or tenant, shall control or eradicate noxious weeds on those lands. This bill broadens the responsibility of controlling weeds to include any person conducting activities that may spread noxious weeds; including, but not limited to, construction activities, seed sales, custom combining, and haying.

2. **Enforcement** – During the interim process, the commissioner testified in support of clarifying and strengthening the noxious weed enforcement authority (NDCC § 63-01.1-03). House Bill 1026 provides authority for the agriculture commissioner to enter onto land in order to assess situations and take samples without being subject to any action for trespass or damages (Page 3, Section 4, lines 3-7).

**Enforcement responsibilities of other agencies** (Page 12, Section 28, lines 23-25) – It provides a general statement that law enforcement agencies “shall” cooperate with weed control authorities to enforce the noxious weed law. Current law (NDCC § 63-01.1-14) directs the state patrol, county sheriffs, and the truck regulatory division to cooperate with weed control authorities and includes a provision that these law enforcement agencies “may” enforce NDCC § 63-01.1-12(2) if machinery, commodities, or articles are being moved on highways and roads and are contributing to the dissemination of noxious weeds.

**Quarantine** (Page 15, Section 30, lines 15-31, continuing on page 16, lines 1-2) – This bill clarifies quarantine authority and provides for the imposition of an emergency quarantine and a penalty for any person violating a quarantine order. It also clarifies due process. Current law (NDCC § 63-01.1-12.1) only provides the agriculture commissioner with authority to declare a quarantine when requested to do so through a resolution adopted

by two-thirds majority vote of the weed board having jurisdiction. In fact, current law seems to “direct” the agriculture commissioner to declare the quarantine, before even determining if sufficient grounds exist to do so.

**Preventing the dissemination of noxious weeds** (Page 16, Section 31, lines 3-12) – The bill also provides for a penalty and clarifies restrictions on transporting material or equipment that may disseminate noxious weeds. Current law (NDCC § 63-01.1-12) has no specific penalty for individuals who willfully transport or dispose of materials that disseminate noxious weed seeds or propagating parts.

**Action on complaints** (Page 17, Section 33, lines 4-29) – The bill further establishes the board of county commissioners or the governing body of the city as the final authority regarding noxious weed complaint investigations. Current law (NDCC § 63-01.1-18) provides for a cumbersome appeals process potentially involving weed boards, county or city commissions, and the agriculture commissioner.

3. **Funding** – we encouraged the Interim Agriculture Committee to keep the law describing funding simple, equitable, and with sufficient flexibility to direct funds to address the needs of local officials struggling to control weeds. The current bill clearly separates law authorizing the Targeted Assistance Grant (TAG) (Page 7, Section 16) and the Landowner Assistance Program (LAP) (Page 8, Section 17).

The TAG Program targets local weed control needs and provides a cost-share opportunity to county and city weed boards to meet those needs. TAG proposals describe a noxious or invasive weed problem within the county or city weed boards’ jurisdiction and proposes a management strategy.

LAP provides weed boards with cost-share assistance for landowner noxious weed control. Weed boards must levy at least three mills for noxious weed control or eradication to be eligible to receive LAP funds. Historically, a majority of weed boards have provided landowners with herbicide cost-share assistance with these funds. Eligible county and city weed boards are responsible for developing a LAP cost-share program for their areas.

We offered amendments to SB 2371 that specifically provides for the use of state funds for controlling “invasive” and noxious weeds.

4. **Noxious weeds: definitions, purpose, and listing** – We also support the current bill’s provisions which provide for a review of the state, county, and city weed lists and provides the authority for the agriculture commissioner to approve all listings (Sections 11 and 22, pages 5 and 10). Current law (NDCC §§ 63-01.1-04.4, 63-01.1-07.4) only provides the agriculture commissioner with the authority to remove weeds from a list but doesn’t provide for a periodic review of all state, county, and city weed listings. This bill appropriately does so.

Chairman Flakoll and committee members, I urge a “do pass” recommendation for HB 1026.

I appreciate your hard work as you move forward in strengthening weed control efforts across the state. I would be happy to answer any questions.



**PRIVELEGED – ATTORNEY WORK PRODUCT –**  
**ATTORNEY-CLIENT COMMUNICATION**

**MEMORANDUM**

**TO:** Ken Junkert, ND Dept of Ag  
**FROM:** Maggie Olson, AAG  
**RE:** N.D.C.C. § 63-01.1-13 – Federal Preemption  
**DATE:** September 5, 2007

You asked me about the enforceability of N.D.C.C. § 63-01.1-13, which addresses weed control on federal and state-owned land. Portions of this statute implicate the supremacy clause – which provides that in the event of conflict, federal law trumps state law. In particular, N.D.C.C. § 63-01.1-13(4) appears to conflict with federal law and, therefore, is likely unenforceable.

- Subsection 1: This subsection states that the commissioner “shall attempt to arrange weed control or eradication program” with state and federal agencies that own land in North Dakota. Because it doesn’t impose any requirements on federal agencies, it doesn’t implicate the supremacy clause.
- Subsection 2: This subsection is similar to subsection 1, but is directed at political subdivisions. There are no supremacy clause issues here.
- Subsection 3: This subsection is directed at state agencies, so there are no supremacy clause issues here.
- Subsection 4: This subsection is directed at federal agencies and does implicate the supremacy clause. Please review the attached AG Opinion, 2003-L-62, addressing the duty of the Corps of Engineers to control weeds on its land. This opinion states that federal law imposes requirements on federal agencies to control noxious weeds, but that these laws “do not provide mechanisms allowing states to enforce state noxious weed laws against federal agencies.” This opinion suggests that the duties subsection 4 seeks to impose on federal agencies conflict with federal law and, therefore, exceed state authority. These duties are as follows:
  - “Each federal agency shall develop a management plan”: This effort to direct the feds what to do is likely unenforceable because it appears to exceed state authority.
  - If a federal agency doesn’t control weeds or develop a management plan, “the weed control office shall notify the agency as provided in section 63-01.1-08.”: Although a mere notification is probably ok, the notification of N.D.C.C. § 63-01.1-08 includes directives and other measures to control weeds. These directives

and other measures are likely unenforceable because they appear to exceed state authority.

- "The federal agency shall file a report": This directive is likely unenforceable because it appears to exceed state authority.
- Subsection 5: This subsection permits the commissioner to hold a public hearing to determine the reason for a federal agency's failure to control weeds. This subsection does not seek to impose any duties on the feds. For example, the federal agency is not required to participate in the hearing. Therefore, there are no supremacy clause issues here.



**NORTH DAKOTA WEED CONTROL ASSOCIATION**  
**3196 119<sup>th</sup> Ave SE, Valley City, ND 58072**  
[www.ndweeds.homestead.com](http://www.ndweeds.homestead.com)

Derrill Fick  
NDWCA President  
P.O. Box 5005  
Minot, ND 58702-5005  
701-852-1970  
[wcweeds@ndak.net](mailto:wcweeds@ndak.net)

Bruce Fagerholt  
NDWCA 1st Vice-President  
7591 Hwy 18  
Hoople, ND 58243  
701-894-6292

Stan Wolf  
NDWCA 2<sup>nd</sup> Vice-President  
1201 West Main Ave  
West Fargo, ND 58078  
701-298-2388  
[wolfs@casscountynd.gov](mailto:wolfs@casscountynd.gov)

Becky Schroeder  
Executive Secretary  
3196 119<sup>th</sup> Ave SE  
Valley City, ND 58072  
701-570-3545 (cell) 701-845-1081  
[schroeder.becky@yahoo.com](mailto:schroeder.becky@yahoo.com)

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**TESTIMONY OF MERLIN LEITHOLD**  
**LOBBYIST # 324**  
**HB 1026**  
**SENATE AGRICULTURE COMMITTEE**

**FEBRUARY 26<sup>th</sup>, 2009**

Good morning Chairman Flakoll and members of the Senate Agriculture Committee.

My name is Merlin Leithold. I am the ND Weed Control Association's South-Central Area director, the association's lobbyist, and I am also the weed officer in Grant County.

First of all, on behalf of our association, I would like to thank those of you who were on the interim committee for allowing our association's input in the drafting of this bill. Representative Mueller came to our state convention in January, 2008, in Fargo, to speak to our group on this interim rewrite. A lot of issues were discussed.

HB 1026, we feel is an excellent piece of legislation.

Remaining in this legislation is the requirement that in order for a county to receive state funds through the landowner assistance program, that county must levy three mills. This helps to insure that some rural counties continue to receive county tax funding equivalent to three mills. Without this requirement, we would see some counties fall below three mills, severely impacting their county programs. Also, under HB1026 those counties that do not receive three mills would still remain eligible for other programs through the Agriculture Departments noxious weed division.

Another part of the existing law that this bill defines more clearly, is the area in which a complaint is acted upon with a landowner's failure to control their noxious weeds. In the 59<sup>th</sup> Legislative session, the law was changed setting a timetable for weed boards to act upon the complaint, and a timetable for the complainant to appeal the process. HB 1026 redefines this section, simplifying the process.

The ultimate goal for us is to have a document that not only is easily understood, but a document that will work when we take it into the field. We believe that HB 1026 is such a document.

On behalf of the ND Weed Control Association, I urge a do pass on HB 1026.

Thank-you

Testimony on House Bill 1026  
Senate Agriculture Committee  
February 26, 2009  
Bill Wocken, City of Bismarck

The City of Bismarck has reviewed HB 1026 and wishes to support it with several clarifications. We initially thought about submitting amendments to the bill but now feel, after consultation with our attorneys and Legislative Council, that legislative intent will be sufficient to our purposes.

Section 17 on Page 8 of the bill discusses the landowner assistance program and levies for the same. The city is of the understanding from previous testimony that this program is voluntary to cities and that the levy mentioned on Lines 23-25, Page 8 applies only to those voluntarily enrolled in the program. If our understanding is in error we would not favor this provision.

Section 19 on Page 9 of the bill discusses city weed board membership. We believe this language allows the city to appoint a subset of its commissioners to serve as the weed board with any appeals being able to be decided by the full City Commission. We wish to do this to avoid appointment of another committee to handle what is currently a minor problem in our city.

With these clarifications the City of Bismarck supports HB 1026.

February 26, 2009

Sheridan County Weed Board

Good morning, Mr. Chairman, members of the committee.

For the record, my name is Myron Dieterle. I am here representing the Sheridan County Weed Board. I am a farmer, weed board member, and in our county, we are also designated to be weed officers in another portion of the county. We are in support of House Bill 1026.

Current state noxious weed law: 63-01.1-08, "Any control authority or its agent may enter upon land within its jurisdiction.....without the consent of the landowner.....without being subject to any action for trespass or damages.....if reasonable care is exercised."

This section of the law has been in place since the State Noxious Weed Law was first rewritten and took effect in July of 1981, and is found in HB 1026. Legislation and amendments have been offered to HB 1026 to in effect remove this section without giving a legal written notice before entry. During the hearing on 1026, in the House Agriculture Committee, concern was expressed that weed sprayers would enter utility company enclosed fences without permission to spray weeds and could be injured.

Does crawling across the top of a mesh fence with barb wire constitute "reasonable care?"

In Sheridan County we send letters to landowners explaining our spray program, ask them if they want to participate, and if they want to be present when the spraying is done. Some letters are returned and some are not. No spraying is done without a signed return letter, a confirmation call, or a personal contact documented on the initial letter copy. None of this would qualify as an official notice since none of it is done via certified mail, return receipt documenting time and date received.

In Sheridan County we have sent "notices to control." These are the letters sent to individuals where a written complaint or history of non-control of noxious weeds has occurred. Each of these letters are required to be sent certified mail, return receipt, or delivered by law enforcement.

In 2006 we sent 27 letters, 2007- 18 letters, and 2008- 10 letters. Each letter required an inspection of the problem and associated documentation, plus a follow up inspection and documentation. This last year the official letter cost us \$5.32 in postage. The associated other costs without the postage were \$133.45 per letter. This does not include the cost of law enforcement attempting to deliver a letter.

The situation involving the undeliverable letter via certified mail and law enforcement involved a 320 acre tract of a solid infestation of canada thistle with lesser amounts of other weeds blowing on to adjacent landowners. A hearing was held without the landowner present as we were unable to locate him. A fine was assessed, and a lien was filed against the land. We as a board question if we were taken to court by the individual and a sharp lawyer whether the lien would stand up since we never were legally able to notify to do the control.

In Sheridan County there are over 6000 taxed parcels and over 750 landowners. If HB 1026 was amended to remove this right of entry without official prior notice, we question whether you would want us to spend our 4 mills and approximately \$27,000.00 for weed control work on all maintained roads and private land spraying, or under an amendment, are we to spend it on official notices, fines, and liens and associated weed officer costs.

Do you like to get certified mail that you have to sign for, or would you rather get an information letter?

Thank you Mr.Chairman and committee members. Are there any questions?