

2013 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2341

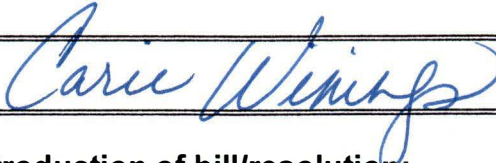
2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee
Missouri River Room, State Capitol

SB 2341
02/07/2013
Job Number 18542

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Bill for an Act to provide for an appropriation to the state historical society for archeological surveys.

Minutes:

Chairman Dever: Opened the hearing on SB 2341.

Senator Wardner, District 37: Testified as sponsor to explain the bill. (Gives the history of the Killdeer Mountain battlefield.)

(3:30) Chairman Dever: I was curious about the urgency and you mentioned the oil development and so that answers that question.

(4:10) Senator Triplett, District 18: Testified as sponsor and in support of the bill. See Attachment #1 for proposed amendment. I have two reasons for supporting this bill and one of them is similar to what Senator Wardner just said. First, the state is intending to celebrate its 125th anniversary in 2014. It happens that that year is also the 150th anniversary of the Battle of Killdeer Mountain. It seems to me that the state has an obligation to understand what happened there as much as can be ascertained at this late date. And to make an effort to join with the affected tribes to commemorate the incident before we celebrate statehood again. We have been remiss in the past and have not acknowledged what those who came before us have done. The Killdeer battle is a wonderful way of doing that. It did involve almost all of the tribes from across the state in

one way or another. Secondly, for supporting an archeological study at this point in time is the eminent encroachment of oil development within the study area around the battlefield. The American Battlefield Protection Program, which is a function of the Department of Interior, has already long sense defined a core area around the battlefield and then a larger study area but no study has actually been done. That group considers that the Killdeer Mountain area is the most critical Civil War battlefield in North Dakota for protection because of the encroachment of oil there. You may not think of North Dakota as having civil war battle sites, but the American Battlefield Protection Program does because this happened during the time of the Civil War. Whether the study proposed by this bill actually happens will depend on the willingness of private land owners allow archeologists on their land. Much of the land is privately owned. I am hopefully that some might be more willing than they have in the past because of the encroachment of oil development. The time has come that we can expect that oil development can co-exist with other surface values because of the flexibility of horizontal drilling. In a recent North Dakota Industrial Commission hearing Governor Dalrymple opined that it would be nice if someday the members of the Industrial Commission could know in advance where the sensitive areas are. This bill would provide that information at least for this one historically significant area.

(Explains the amendment)

(7:45)Chairman Dever: So historical and cultural are not necessarily inclusive in the word archeological?

Senator Triplett: Not necessarily. We have people here who can parse those words better than I can.

Chairman Dever: I am curious how large the area is and if that is public or privately owned land?

Senator Triplett: It is largely private land and it interspersed in with Section 16 and 36 that belong to the state. There are a couple of sections of publically owned land but it is largely private. Some of you may not know that the Killdeer Mountain area was once considered for inclusion in the Theodore Roosevelt National Park. This bill's success would depend on the cooperation of willing landowners. The land owners have, as I understand it, developed good relationships with tribal members who consider some of the areas to be sacred sites and allow people on the land that way. Senator Wardner told me that his wife when she taught up there routinely took classes up onto the mountain to show her students some of the cultural and historic sites.

(10:02) Merl Paaverud, Director of State Historical Society of North Dakota: Testified in support of the bill and introducing Fern Swenson to give our testimony. Only 3% of the area has been surveyed. See it as a benefit for both sides and noted that they are trying to facilitate everyone's best interest.

(12:07)Chairman Dever: Are the dollars and the time frame right?

Merl Paaverud: That would be for the biennium and I would hope that there might be some sort of an emergency clause in this as well so we can get started right away on contracting. Our staff cannot handle this on our own.

(13:00) Fern Swenson, Director of Archaeology and Historic Preservation Division, State Historical Society of North Dakota: See Attachment #2 for testimony in support of the bill.

(18:00) Senator Schaible: Can you explain if you are going to survey a site and obviously there are a lot of acres here? My concern is how do you find a spot in a field or obviously there has been some disruption of the land?

Fern Swenson: Surveys are conducted very systematically. The individuals are spaced at maybe 10 meters and 30 to 60 feet apart and you are basically walking over the land and looking at the surface looking for artifacts, looking for features in the ground, basically any evidence of human activity. Some of the historical research helps to anticipate where certain activities took place when you are talking about battlefields. On a survey this size you would have several people involved and there would always be one person that is permitted to work in the state that will be on site at all times to ensure the procedures.

Senator Schaible: It is quite labor intensive for such a large area and I would assume that some of that is done after you find an artifact.

Fern Swenson: There are areas this large that have been surveyed before. In the surveys across North Dakota, approximately 6% of the land has been surveyed. The US forest service manages over one million acres and they have actually surveyed 40% of their property that they manage over time. As you say, it is a difficult process and time consuming. But it is done.

Senator Cook: I had to get in my mind how big 17,000 acres is and it is about 24 square miles. I look at what has been surveyed already and you have not quite surveyed one square mile. You have a map here that shows the existing and proposed wells at 39, how many of them are existing?

Fern Swenson: We could not identify based on the information that was on the website. We would have to contact the state land department to find out. This comes from the data they have on their website.

Senator Cook: Have they built any roads yet to reach some of these well sites? It looks as though there are some roads that are already there?

Fern Swenson: There are some roads that are already in there. I am going to take a wild stab at this and say that at least half of the wells are already in.

Timothy Reed, Research Archeologist with the State Historical Society: That data comes from the oil and gas divisions geographic information data that is available on their website. I can get you the information on the percentage of the wells that are in existence.

Senator Cook: I am sure that some of these pads could be developed.

Timothy Reed: The majority have been developed.

Senator Marcellais: Have you been in contact with the three affiliated tribes?

Fern Swenson: I have talked to the tribal historic preservation officer stating that I would be testifying in support of this bill, but we have not received a resolution. We perceived working with the tribal historic preservation officer in order to do so.

Chairman Dever: Who does this type of work? Do you contract with a company?

Fern Swenson: We have about 46-49 permitted companies to work in North Dakota, and they have to meet general requirements such as a graduate degree in archeology, history, or in architectural history and then they have several people that work for them as well. Some have graduate degrees and some do not. There is a large community of people doing archeological and historical work in North Dakota at this time.

Chairman Dever: Would they hire college students in the summer? I am thinking of the emergency clause mentioned.

Fern Swenson: There are many students that go to universities and work for cultural resource firms throughout the state.

(26:30) Tom Isern, Founding Director, Center for Heritage Renewal, NDSU Professor of History: See Attachment # 3 for testimony in support of the bill.

(33:25) Marie Hoff, Bismarck Resident: See Attachment #4 for testimony in support of the bill.

(36:55) Aaron Barth, NDSU PhD student in Archeology: See Attachment #5 for testimony in support of the bill.

(39:58) Chairman Dever: I think that someone mentioned that the history of that area might go back 3000 years?

Aaron Barth: There is at least 12,000 years of human occupation of what is now North Dakota and I am getting a nod to 3000 years as far as Killdeer.

Chairman Dever: It sounds like the focus of the archeological study revolves around the battle.

Aaron Barth: Right.

(40:55) Waste' Win Young, Tribal Historic Preservation Officer, Standing Rock Sioux Tribe: See Attachment #6 for testimony in support of the bill.

(48:11) The Standing Rock Sioux Tribe would like to offer support to conduct this archeological survey of the state lands on or near the Killdeer Mountain historical site. As Lakota and Dakota people and native nations of North and South Dakota, we are taught to honor the earth, to protect our children and to value the relationships with nature. This is something that we have in common as North Dakotans. This preservation of our life, ways, customs, and spirituality is a tenant that is important to all of us. We realize the importance of industry and energy development but at what cost? If we let the state's historic sites, homesteads, battle sites, and tribal ceremonial sites be destroyed because of oil development, when will the price be too high for the extraction of resources, murders and disappearances of individuals and kidnapping have started to be a common occurrence in the oil field. To allow the oil industry to indiscriminately choose locations for extraction in

such a historic and sacred place is shameful. This is our homeland and yours. If this bill can prevent further desecration by allowing an archeological survey that will identify important cultural sites then I urge that it be passed. It is a common goal that can be achieved.

(49:30) Chairman Dever: Is it your feeling that this project is moving forward in compliance with the resolution that you read?

Waste' Win Young: Yes, as long as the tribes are afforded the opportunity to participate. We have a lot of valuable people that can contribute to this.

Chairman Dever: Which tribes need to have input into this?

Waste' Win Young: I think that all of the tribes of North Dakota. It was a sacred place for a lot of us and still is.

(50:43) Ladonna Allord, Director of Tourism for Standing Rock Sioux Tribe: I come here first and foremost in the status of the tribal historian and to take about a descendant of the killdeer battle; to talk about the firsthand history of this site. (Talks in native tongue) In other words, North Dakota is my home and everything that happened in North Dakota affects every one of us. I have a love for the land just as every homesteader has a love for the land. My people have been here for a long, long time. We talk about this area, Killdeer, we talk about all of the tribes, and we all have a vested state in killdeer. We all went there to pray and ceremony. As the homesteaders came in, it became sacred to them. Every time we go into the Killdeer, these individual private land owners honor us and allow us to pray. There has always been that respect. One of the problems I see as the oil fields come in is that we don't have a definite area. Where is this area and how far does it go? What is really sacred? What is historic? What is archeological? There is nothing to define the area. A survey can help us to go forward and make correct decisions for our

future. A survey is so important for North Dakota. It helps us make better decisions. I have been on many surveys that are pretty large. We have 2.3 million acres and we have 100% surveying policy on Standing Rock and we are getting it done. My grandfather, Red Thunder, fought at Killdeer. His brother is Rain in the Face, Iron Horn, Shaved Head, Little Bear. I know about the tribal events that happened there with Sitting Bull and Bull Ghost. I know what they did on this battlefield and before that I also know who prayed there. I know that Dreamer of the Sun came in 1625 and had ceremony there. I can tell you the history of our people. The meeting places like this are considered sacred to all the people so we meet there in peace. Except for this instant where we had a battle, an important battle. As we get ready for the Civil War bicentennial, North Dakota has this to look at as our history and we need to preserve it. The way we preserve that is to find out where the boundaries are.

(55:35) Dakota Goodhouse, Resident: Testified in support of the bill. (Speaks in native language) (56:30) You have an idea of how important it is to our American Indian people. I would like to ask who has been to a Civil War battlefield and if you can recall what you felt like when you stepped onto the civil war battlefield. I would like to explain why it is a civil war battlefield and maybe it will matter a little more to you. There were six conflicts here in North Dakota (Goes through and explains part of that history. A few years ago you might have seen the news about Wal-Mart building a store just down the road from Gettysburg and all that was stopped. A lot of people felt very strongly about the historical integrity of that site. I like to equate Wal-Mart with the oil companies. We cannot do anything about the private landowners who want to put wells in place. I would have been in the ideal world if the state would have not allowed development in a state owned property out there in Killdeer. The site was so important to so many people. I want you to remember how you

felt when you stepped on a Civil War battlefield and that is how you should feel when you visit these sites in North Dakota. W

(1:01:45) Tamara St. John, Sisseton-Wahpeton Oyate, and Historian/Archivist, Tribal Historic Preservation Office: It has been a great pleasure to work with the state of North Dakota. I often tell others when I am out there and working with our history in other states and other tribes, that we have begun to develop a wonderful relationship with the state of North Dakota in working with our history. It has been precedent setting. The idea of doing a survey there, along with all of the other information already given, would be important because we have a valuable part to contribute to history to contribute. I have worked on other projects in the state and also with other states as well. There is a lot going on with civil war commemoration. We would very much like to work along with others on this.

(1:04:05) Rob Sand, Killdeer Mountain Resident: Testified in support of the bill. We are all family and I was honored when LaDonna recognized that we hold it sacred. I am in a sense representing the Killdeer Mountain Alliance. It is not just the people that live around there. It brought a lot of us together because it is so important to us. The Killdeer Mountains are a cultural heritage of the state and the nation. We are getting hit hard up there like everyone else that are being impacted by the oil. There is something about the Killdeer Mountain because of the history and the conflict being part of that history and the tradition of prayer and ceremony. Those of us, who live there, know that people were there. Summer was a time when the Natives came and gathered because of the Knife River flint. There was so much trading going on there. I want to encourage this and it is so important that we get this assessment. We are concerned about the whole mountain, but this is the south slope and it is important for us to understand before we go further. It is not that oil will not be developed. We asked to drill from further away when it came to the

school section. We know they can go three miles. That is what they are doing under our place.

(1:08:25) See Attachment #7A and #7B for information in testimony.

(1:09:00) Chairman Dever: Is it your hope that the study will determine where and how that oil will be developed?

Rob Sands: Yes, how it will be accessed. It is unreasonable to keep people from developing their oil. I think we ought to wait and find out all that we can. Maybe it is waiting for technology. I inherited some oil resources and I am glad to get what I get from oil land. I am not going to ask my neighbors to say they will block all oil development.

(1:10:37) Dr. Richard Rothaus, Resident: Testified in support of the bill. I am not an activist by nature. I am a cold heartless scientist by nature. I just want to make one brief comment that has not been pointed out in good North Dakota style. Killdeer Mountain battle is a big deal. It may be the largest battle between US forces and Native American forces both by number of participants and area ever in the US. It is a critically important battle. This is the battle where the US government comes and says in no uncertain terms, to the Lakota and all the plains Indians farther west that they were coming for them - that they could leave or be killed. In terms of national history and the importance of this battle, it is extremely important. I care a whole lot that the information about this battle is studied and preserved. There is an important amount of historic and archeological data out there.

(1:12:55) Kimball Banks, Culture Resource Manager and Archeologist: Testified in support of the bill. I want to emphasize what Richard said. This has national significance as well as state.

(1:13:55) Bryan Dvirnak, Battlefield Land Resident, Ranch Owner: Testified in opposition to the bill. It has been in our family since 1928. There have been three owners

of the ranch since the battle. There has been nobody that has spoken today that has told me why and how the study would be used. There are twelve wells on the south slope of the mountain. I went before the industrial commission in 2004 when the first wells were drilled. I asked for preservation help of the battlefield at that time. No one has done more to preserve the battlefield than my dad. No one has been a more staunch supporter of the Native Americans than my dad. He smoked the peace pipe with the Indians and he invited the Indians from Alberta, Montana, Wyoming, South Dakota, and North Dakota to come to the ranch. No one has done more to preserve the historical and cultural significance of that property than my family and they will continue to do so. My grandfather donated the acre of land that the state historical society manages. We are skeptical of what the study would do. Is it going to be to find the next native piece of grass that is endangered? Is it going to be the next bird or bug? There are tree huggers out there and environmentalists that will use these kinds of studies against the landowner. My family controls about 4,000 acres at one time and my grandfather had put together about 11,000 acres and the land was split between three families. My brother controls 4,000 of those today and the battlefield is on that. We are skeptical of what this study would do to the property. We are all for preserving the historical significance of the property. You talk about the land being owned by private owners and needing the cooperation of private owners to make this thing happen and you will have to convince my family that you have good intentions and that this study would not be used against them. We have a number of oil wells pumping on the place today and we have worked with the oil companies to preserve the battlefield. The battlefield sits north of our ranch buildings. The oil companies have worked well with us. We have a lot to protect everything that we can within our power. We have prohibited them from drilling on certain sections of the land because of the Native American cultural

significance of the area. I am not sure what this study will accomplish. When I went to the industrial commission 5 to 8 years ago, they wrung their hands and said there was nothing they could do for us. I am not sure what power it would give to the industrial commission. I am not sure how it would infringe on the private landowners rights. I wish I had of known more what this hearing was about because I would have come with a bunch of materials for you.

(1:19:15)Senator Schaible: What would you see as an acceptable way to handle this study?

Bryan Dvirnak: We are skeptical. "We are here from the government and we are here to help you." ... yeah right. We have been staunch supporters of the Native American community and my dad is no greater supporter.

Senator Schaible: The way I view this is if this is private land and a study was initiated, this would only be aside if the landowner would give permission. That is the way I take it. Do you think this is going to override that property right?

Bryan Dvirnak: We are skeptical. I would be very surprised if you get a lot of landowners to allow you onto their land to do a study; and they are going to want to know the ramifications to them. How is that going to affect me? I own the property, I pay the taxes and this is my livelihood. What does it mean for me? We have done more than anyone to protect the rights of that historical site.

Senator Cook: I assume the land owned by your family, you own both the mineral rights and the surface rights?

Bryan Dvirnak: Yes.

Senator Cook: You have good control then.

Chairman Dever: You have thrown a wrinkle into our process.

Bryan Dvirnak: I am not here to rain on your parade.

Chairman Dever: It is not my parade and I appreciate your being here because it is important to have all the perspectives. I don't know if there is a way for your concerns to be addressed and I am not sure if we can do it in the bill.

Bryan Dvirnak: The best thing that you can do is to talk to my brother.

Senator Cook: Has there been any communication from the state historical society with your family over what they would perceive doing with an archeological study?

Bryan Dvirnak: Not to my knowledge.

Senator Cook: That answers my question.

Bryan Dvirnak: If the study would just be limited and protect the integrity of the historical site and not infringe on the private landowners rights.

Chairman Dever: We can amend this bill if there is a way to do it to address your concerns. I appreciate you being here and sharing your prospective. Your rights as a landowner are recognized and what you say about your support of Native Americans also is recognized. That is part of the history of this area.

Bryan Dvirnak: I wish I had a written testimony but I don't.

Chairman Dever: I wish that we could deal with this bill next week instead of by tomorrow.

(1:23:00) Senator Triplett: As a co- sponsor of this bill, I want to repeat that it was not the intention of any of the sponsors to do anything that would be a violation of private property rights. I think that as part of my testimony, I said that this study will only succeed to the extent that the state historical society and their subcontracted archeologists develop a working relationship with private landowners. I may end up being a partial study if you approve it. There is no intention to deprive anyone of their private property rights. This has to be something that would be done in cooperation with willing landowners. Speaking for

myself, there is no ulterior motive to go further than to say that knowledge gained could be used as part of the official commemoration of the state's history as a way of the industrial commission to site future wells; those are the only two objectives that I have. I am aware that your family donated some of the artifacts found on the site to Dickinson State University and I have been out there and viewed those artifacts. I asked if they were formally interpreted in terms of historical relevance and they have not done that up to now. This could be part of what the money is spent for. It is about trying to understand the history to appreciate the history. I am willing to work with the Dvirnak family to make the bill better for them.

Chairman Dever: I think their concern is what the study is not just what the study is doing now but what it could possibly lead to in the future. I think we need to address that.

Senator Cook: What does an archeological survey mean to most people? Who owns the artifacts?

Merl Paaverud: It is a survey that would be scanning the land, walking over it, and relying on the landowner because they know the land better than anyone does. Especially if the landowner is as sensitive to those issues as the Dvirnak's are. That is a great help. Our intent is not to take anything away; I understand what Bryan is saying happens in the long term. Our hope is to save the resources from immediate destruction.

Senator Cook: Who owns the artifacts? Do the Dvirnak's?

Merl Paaverud: Yes. They have quite a museum collection. On state land we ask people not to do that; to leave it where it is. You rely on their good judgment.

Chairman Dever: On federal land they would fine you.

Vice Chairman Berry: With the family owning so much of the area and the battlefield ground itself, can anyone tell me why the family was not contacted?

Merl Paaverud: At this point the bill has come up and we are trying to see if it is going to happen and then we have had some contacts out there with national register properties in Killdeer Mountain area and there is ongoing interest there by the people as well as by us to try and look that this. We have not had formal contact with landowners at this point because of the progress of the bill. If it goes forward, the word would be sent out of the possibility.

Chairman Dever: Have you had similar kinds of surveys that involve private property and landowners?

(1:31:35) Fern Swenson: (Gives an example of one on earth lodge village sites and how they dealt with that) The landowners were skeptical at first but in the end it went very well and they were appreciated what we had done. We have never done anything without the landowner's permission.

Chairman Dever: I wonder if we could put a statement in the bill to that effect.

Fern Swenson: The purpose of the survey is for the information value. Private property remains private property; unless federal money was going to be spent on a project on that land.

Chairman Dever: I think the federal involvement is the concern.

Fern Swenson: When I say a federal undertaking, I mean like road projects, anything that involves a federal permit or federal money or on federal property. The oil wells are private property.

Senator Cook: Could you find out if there is any BLM land in that area?

Fern Swenson: I will do that.

Chairman Dever: I would like to see this move forward but only with respect to private property rights.

(1:36:20)Richard Rothaus: (Gives an example of a battlefield survey that was done with federal money on private property in Minnesota and the process that he had to go through to get landowners permission) It is dealt with frequently, but it would not hurt to point out in the bill.

Chairman Dever: Closed hearing on SB 2341.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee

Missouri River Room, State Capitol

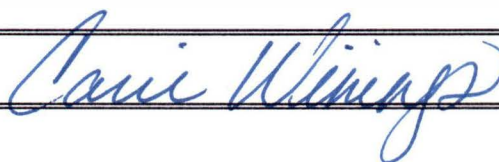
SB 2341

02/07/2013

Job Number 18596

Conference Committee

Committee Clerk Signature



Minutes:

Chairman Dever: Opened SB 2341 for committee discussion.

See Attachment # 1 for proposed amendment.

Senator Dever informs the committee of conversations with the Dvirnak family and the proposed amendment that will address most of their concerns. They really want to be able to tell the oil companies where they can drill and that is not in the scope of this bill. There was clarification of what the Dvirnak family's concerns really were. The biggest issue was that the families were not talked to about the bill. Private property owner rights are a primary concern.

Senator Schaible: Moved the Amendments (two separate into one 13.08727.01001 and Senator Dever).

Senator Marcellais: Seconded.

Senator Cook: Proposed that the appropriation amount be reduced so that the bill will go directly to the floor and not to appropriations so that as this goes through the process and some of the people involved get more on the same page and it is feasible then it can be brought back up. That way we are assured that this isn't the last time we see the bill.

Chairman Dever: Let's vote on the current proposed amendments and further amend.

A Roll Call Vote Was Taken: 7 yeas, 0 nays, 0 absent.

Senator Cook: Moved to amend \$250,000 to \$4999.

Senator Schaible: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 1 nay, 0 absent.

Senator Cook: Moved a Do Pass As Amended.

Senator Schaible: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 1 nay, 0 absent.

Senator Schaible: Carrier.

2/11/13
TD

PROPOSED AMENDMENTS TO SENATE BILL NO. 2341

Page 1, line 6, replace "\$250,000" with "\$4,999"

Page 1, line 7, after "conducting" insert "historical, cultural, and"

Page 1, line 11, after the period insert "The state historical society may not survey the private property without a written agreement with the private landowner which defines the scope of the survey and the conditions of access to the property and provides any artifacts discovered are the property of the landowner. Following the survey, any preservation of the site is in the discretion of the landowner."

Re-number accordingly

Date: 2/8

Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2341

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

*Dever & Berry
Both 13.08227.
01001
Amendments into
one*

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Schaible Seconded By Senator Marcellais

Senators	Yes	No	Senator	Yes	No
Chariman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais	✓	
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Date: 2/8

Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2341

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment *Further*
 Rerefer to Appropriations Reconsider *\$250,000 → \$4999*

Motion Made By Senator Cook Seconded By Senator Schaible

Senators	Yes	No	Senator	Yes	No
Chairman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais		✓
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment _____

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

Date: 9/8
Roll Call Vote #: 3

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2341

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Cook Seconded By Senator Schaible

Senators	Yes	No	Senator	Yes	No
Chairman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais		✓
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman	✓				

Total (Yes) 4 No 1

Absent 0

Floor Assignment Senator Schaible

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

REPORT OF STANDING COMMITTEE

SB 2341: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2341 was placed on the Sixth order on the calendar.

Page 1, line 6, replace "\$250,000" with "\$4,999"

Page 1, line 7, after "conducting" insert "historical, cultural, and"

Page 1, line 11, after the period insert "The state historical society may not survey the private property without a written agreement with the private landowner which defines the scope of the survey and the conditions of access to the property and provides any artifacts discovered are the property of the landowner. Following the survey, any preservation of the site is in the discretion of the landowner."

Renumber accordingly

2013 TESTIMONY

SB 2341

13.0827.01001
Title.

Prepared by the Legislative Council staff for
Senator Triplett

February 7, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2341

Page 1, line 7, after "conducting" insert "historical, cultural, and"

Re-number accordingly

Senate Bill 2341
Government and Veterans Affairs Committee
February 7, 2013

Mr. Chairman and members of the Committee, my name is Fern Swenson, and I am the director of the Archaeology and Historic Preservation Division at the State Historical Society of North Dakota.

The State Historical Society supports Senate Bill 2341.

The Killdeer Mountain study area comprises 17,433 acres with a core area of 5,421 acres. Only 569 acres or 3.26% have been surveyed for cultural resources (Figure 1) within this study area. There are 28 sites currently identified in the study area where surveys (569 acres) have been conducted. The cultural resource surveys conducted in the area are generally linear in nature and are the result of transmission lines, highway/road surveys, pipeline surveys, and oil well pads. From the sites currently recorded in this area, it is clear that Native Americans have used this area for at least 3,000 years.

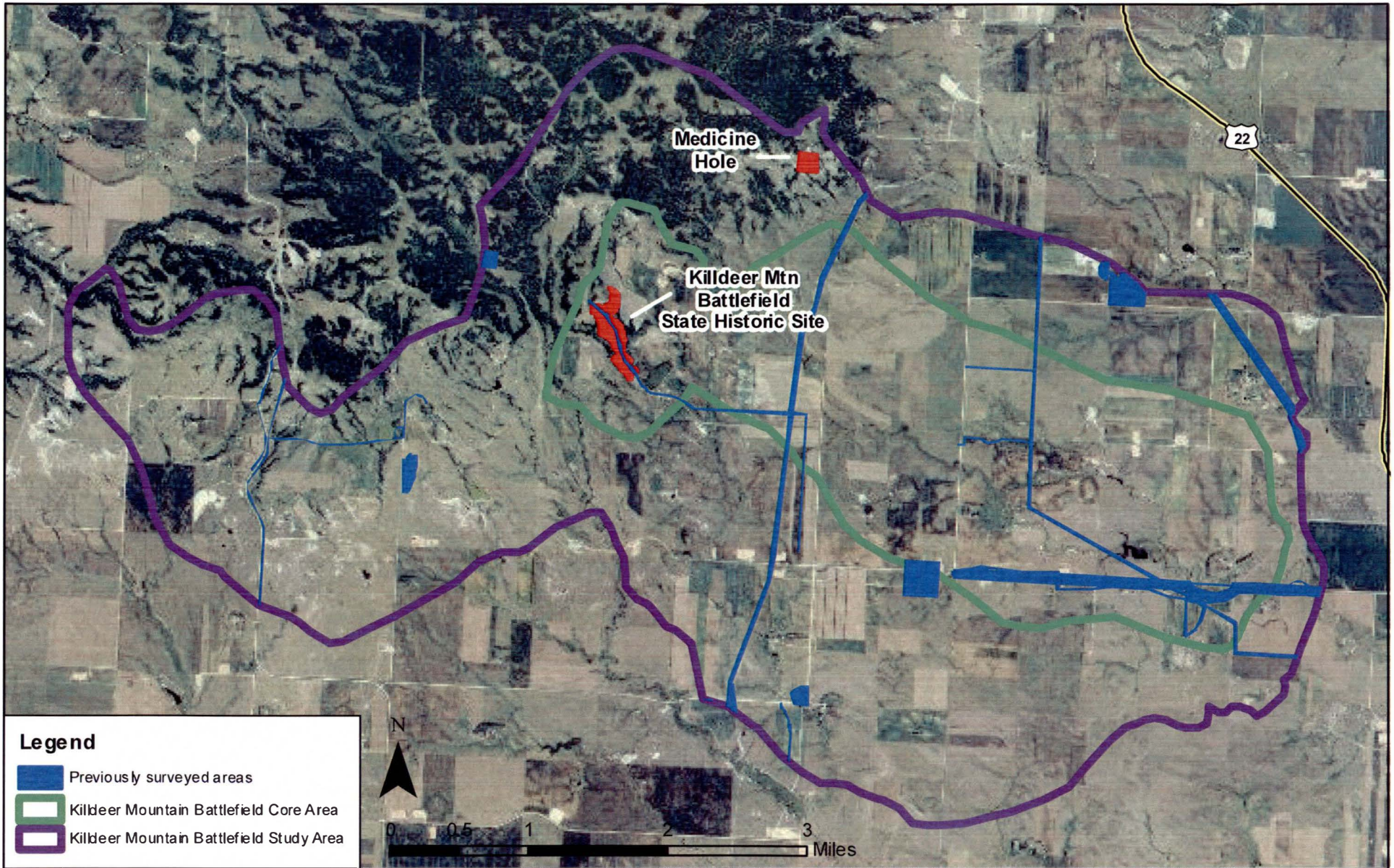
In the proposed study area, there are 39 existing or proposed wells (Figure 2), to date. Due to the rapid development in this area it is imperative for the area to be surveyed for cultural resources so that informed decisions can be made regarding ways to avoid or minimize impacts to significant cultural resources and their landscapes.

I'll provide a little background on how this study area was defined. In a National Park Service Report on the Nation's Civil War Battlefields (2010) there are five battlefields identified in North Dakota (Big Mound, Dead Buffalo Lake, Killdeer Mountain, Stony Lake, and Whitestone Hill). The study areas are defined based on historic accounts and terrain analysis and includes maneuvering, deployment before, during, and after combat, and the possible location of the associated village. While the core represents the areas thought to be the battlefield itself.

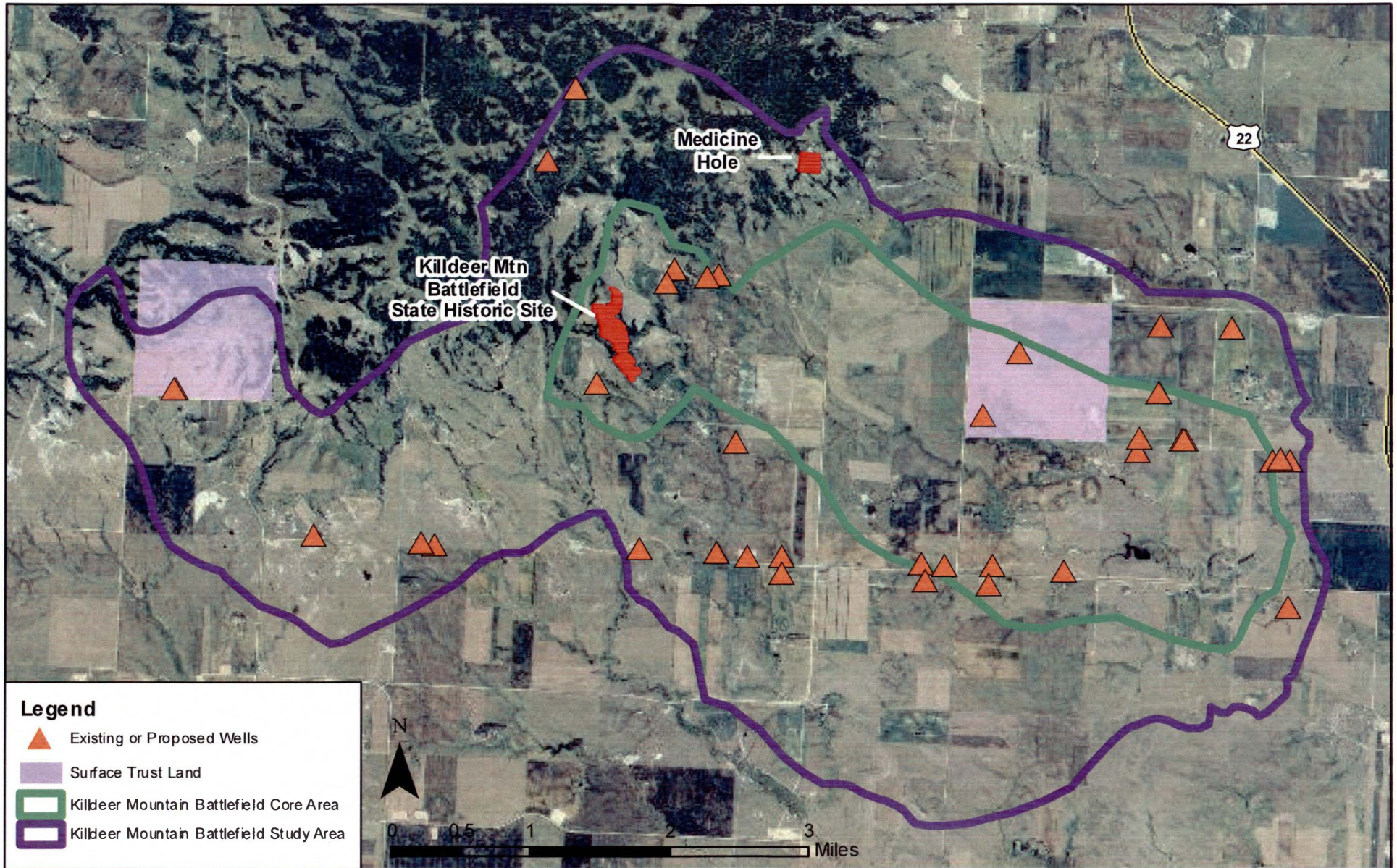
The State Historical Society manages one acre at the Killdeer Battlefield State Historic Site that commemorates the battle fought on July 28, 1864, between troops commanded by General Sully and the Tetons, Yanktonais, and Dakotas. The battle occurred along the southern base of Killdeer Mountain.

Another well-known site within this proposed study area is the Medicine Hole. Medicine Hole is sacred to the Three Affiliated Tribes and relates to oral traditions where the first bison emerged onto the plains. This is a place known to have a strong spiritual significance where tribal members go to fast, meditate, and acquire knowledge. For the Dakota, it is believed to be the escape route for the people that survived the battle with General Sully in 1864. The area is frequently visited today, where offerings of tobacco are left, and spiritual ceremonies continue to be held.




Thank you.



Previously conducted cultural resource surveys within the Killdeer Mountain Battlefield Study Area, in relation to Killdeer Mountain Battlefield State Historic Site and Medicine Hole. SHSND 2/6/2013



Legend

-  Existing or Proposed Wells
-  Surface Trust Land
-  Killdeer Mountain Battlefield Core Area
-  Killdeer Mountain Battlefield Study Area

N

0 0.5 1 2 3 Miles

Existing or proposed wells and Surface Trust Lands within the Killdeer Mountain Battlefield Study Area, in relation to Killdeer Mountain Battlefield State Historic Site and Medicine Hole. SHSND 2/6/2013

Testimony on SB 2341

Before the Government and Veterans Affairs Committee
7 February 2013

Tom Isern, Founding Director
Center for Heritage Renewal, North Dakota State University
Professor of History / University Distinguished Professor

My thanks to the committee for the opportunity today to bring both some modest professional insights and some sober personal thoughts into the consideration of this bill for a cultural resource study of the Killdeer Mountain region.

This is a subject to which I have given considerable thought in recent months, for two reasons. First, public concerns have arisen as to the ramifications of petroleum development on the very slopes of Killdeer Mountain, on account of the heritage significance of this landmark and the adjacent landscape; this has caused me to look into the matter as a scholar concerned with the conservation of heritage resources. Second, with my collaborator, Richard Rothaus of Trefoil Cultural and Environmental, I have initiated—through my research center, the Center for Heritage Renewal—a program of applied research on the Dakota War of 1862-65; as you no doubt are aware, the Battle of Killdeer Mountain, in 1864, was the climactic event in that conflict.

This is not the first time I have addressed publicly the heritage value of Killdeer Mountain and the fate of its heritage resources in a time of mineral resource development. On Tuesday of this week I was a guest editorialist of the *Bismarck Tribune*, contributing an essay describing how historical and archeological resources figured in, or perhaps did not figure in, a recent well-permitting decision rendered by the State Industrial Commission. My analysis did not lay blame on persons, but rather perceived faults in our established process for conserving antiquities on state lands under development. On the same day, Tuesday of this week, Prairie Public Radio broadcast my essay, more reflective in tone, proposing that as we people of the plains emerge from a long era of consolidation into a new generation of growth, we need to attend more assiduously than before to the conservation of heritage resources. These two essays, the one for the *Tribune* as well as the one for Prairie Public, are appended to my testimony here.

A word, then, about what happened in the consideration of petroleum leases and well permits on state trust lands adjacent to Killdeer Mountain. I bring this consideration forward both because it is the circumstance that prompts the bill under consideration today and because an analysis of what happened discloses why the bill is necessary and appropriate. Essentially, as I detail in my piece for the *Tribune*, what happened was not the working of some sinister scheme or the rapacity of heedless capitalism. What happened was a breakdown in the data support system of heritage conservation. As the state moved to transact leases and permit wells, it lacked the essential research base to assess risk to heritage resources, historical and archeological, and to guide petroleum development in prudent and feasible ways.

Why do we lack the data on file at the State Historical Society of North Dakota for making decisions about conservation and development? Not because of any fault of the society, but rather because we never have invested in the research required to compile it. This deficiency, then, is what SB 2341 proposes to redress. And Killdeer Mountain is the pressure point where we should begin. I offer praise to the authors and sponsors of this bill for responding sensibly to a rapidly unfolding situation.

I have one modest suggestion to make in regard to the bill. The research base required for Killdeer Mountain is both historical and archeological, whereas the bill speaks only of archeological work. It may be that the necessity for historical research is considered to be understood, for the practice of archeology requires historical research as a guide and basis. Personally, I think it would be better to refer in the bill to “historical and archeological” work, not just archeological, but then, I am a professional historian and perhaps overly sensitive.

More important, we should pay attention to those offering testimony as to the profound significance of Killdeer Mountain as a cultural landmark and a heritage landscape. They inform us that Killdeer Mountain is a site of religious and cultural importance to several native peoples of the region. It was the site, too, in 1864, of one of the most significant military engagements in the history of Indian-white conflict on the northern plains. And its environs are known, are documented, to be rich in archeological material.

This bill is not about stopping development. It is about intelligent development. It is about conservation of resources and recognition of our heritage. As an established scholar whose commitment to North Dakota is both fervent and palpable, I commend this bill to you without reservation. Thank you, again.



Killdeer Mountains threatened by process

By TOM ISERN Fargo

It is time for more light and less heat on the issue of petroleum development in northern Dunn County.

The leasing by the state of certain school trust lands in the Killdeer Mountains locality for petroleum development has sounded alarms among historians, archaeologists and all friends of antiquities.

Those questioning the development make three points:

First, the Killdeer Mountains area is a site of religious and cultural importance to several native peoples of the region. Second, it was the site, in 1864, of one of the most significant military engagements in the history of Indian-white conflict on the northern plains. Third, the Killdeer Mountains environs are known to be rich in archeological material. Heedless development, thus, may imperil irreplaceable heritage resources.

Is this, then, heedless development? It is not, but neither is it well considered. Public scrutiny prompted by the proximity of development to such a noteworthy site as the Killdeer Mountains has exposed problems with the processes for conserving our heritage.

The state trust lands at issue are school lands, a legacy of federal frontier land policy, granted to the state for the support of public schools. The Department of Trust Lands, under direction of the Board of University and School Lands, manages them for revenue that the Legislature then appropriates for education. We are fortunate to have these lands. We have been wise to retain them.

The process with reference to heritage resources on the state lands works this way: Before the land board lists tracts for potential leasing, it calls for the Historic Preservation Office of the State Historical Society to provide records of historic and archeological resources known to be present. Land Commissioner Lance Gaebe takes these records into account as leases are bid and negotiated, and again, especially, when the Land Board negotiates with an oil company the surface damage agreement that will govern how development proceeds and collateral damage is compensated. The Land Board has considerable leverage at this point in the process.

Agreements with the Land Board in hand, the oil company still has to go through the well-permitting process with the state. The Department of Mineral Resources' Oil and Gas Division has a hearing (done last October for the Killdeer Mountains land) and makes a recommendation to the state Industrial Commission. On Jan. 24, the commission adopted the recommendation by Mineral Resources Director Lynn Helms to proceed with permitting on the state trust lands in the Killdeer Mountains.

In addressing the issue of heritage resources on state trust lands, there is a need for reasonable good will by state officials and by the public. We, the public, need to want to solve these problems, not exploit them for some perceived advantage.

There are two obvious issues illustrated by how the Killdeer Mountains situation has unfolded.

First, Helms, in public statements and personal communications, does not take cognizance of state law (55-10-09 of the state Century Code), which requires all state agencies to cooperate with the state Historical Society in the preservation of historic and archeological sites. The law is imperative, and it is crystalline. It is qualified somewhat by a 1988 opinion of Attorney General Nick Spaeth, but that opinion by no means absolves any agency of its obligations under the law

Second, and in the long run more important, there is a hole in the process at the leasing stage. The information that the Land Board gets from the State Historical Society is incomplete to nonexistent. This is not the fault of either the Land Board or the Historical Society. Information exists only if some previous, likely federal, development has generated earlier cultural resource survey work. There is no provision in the process, as there should be, for physically going over the ground to determine what heritage resources are there. Consequently, leases and agreements can be concluded that directly threaten significant heritage resources. This happened, despite technical adherence to law by all parties involved, in the matter of the Killdeer Mountains.

With respect to a heritage site as profoundly significant as the Killdeer Mountains, we should move deliberately, reset if necessary, and address public concerns. As for the general process _ that wants reform, which requires legislative attention.

(Tom Isern is professor of history, university distinguished professor, and director of the Center for Heritage Renewal at North Dakota State University. Opinions here expressed are not necessarily those of NDSU.)

http://bismarcktribune.com/news/columnists/killdeer-mountains-threatened-by-process/article_1797841e-6ed9-11e2-ab42-0019bb2963f4.html

5 February 2013

Plains Folk

Wind at Our Back

By Tom Isern

All sorts of things are happening on the Great Plains that I never expected to see in my lifetime, or at best, expected to see only dimly in my dotage. Prosperity is the big one, with the attendant phenomena of repopulation and redevelopment.

Now comes this new report from the Center for Geospatial Technology at Texas Tech University. The title is *The Rise of the Great Plains*, and the author is Joel Kotkin.

Kotkin is a provocative writer, and his new report is a significant work, to which I will give focused attention on another day. For now, let me just quote from the introduction.

For much of the past century, the vast expanse known as the Great Plains has been largely written off as a bit player on the American stage. . . . Much of the media portray the Great Plains as a desiccated, lost world of emptying towns, meth labs, and Native Americans about to reclaim a place best left to the forces of nature. . . . Our research shows that the Great Plains, far from dying, is in the midst of a historic recovery. . . . Once forlorn and seemingly soon-to-be abandoned, the Great Plains enters the 21st century with a prairie wind at its back.

With the wind at our back, as Kotkin puts it, it seems to me we have to learn some new habits of thought. For example, I just finished writing an op-ed piece for one of our major daily newspapers. It has to do with the situation at Killdeer Mountain, where petroleum development threatens to destroy irreplaceable treasures of history and archeology.

I argue that there is no need to destroy one resource, the heritage resource, in order to develop the other, the mineral resource. Granted, what I have just stated is a facile generality, and things are more complicated on the ground, but fundamentally I think my position is sound.

More to the point at the moment, it is a position to which I am unaccustomed. Sure, I am a historic preservationist. I come by this honestly, as the son of a farmer-conservationist whose creed was to leave your world better than you found it.

But for most of my life, rampant development has not been the problem. The great threat to our heritage resources has been not development, but decay. Think of a country church withering away on the prairie, or a prairie town business district boarded up and rotting from the inside.

As a historic preservationist, I am accustomed to making the argument that we need to hang on, keep up what we have, save what we can for the sake of an uncertain future. I have awaited the day when a new cohort of vigorous newcomers would come to the plains and help carry this burden. Now, we have to think about another problem: how to guide the regional redevelopment that is taking place.

Every day I feel at my back that prairie wind of which Kotkin writes. It is an exhilarating wind, a powerful wind that will carry us to a prosperous future. Our heritage resources, though, many of them at least, are not borne along with the wind, and they are too brittle to stand against it.

Those of us with voice, or with power, or just with willing hands: let us resolve to make up for lost time. This prairie wind at our back can be a force for incalculable good. It need not strip us of our heritage.

Broadcast 6 February 2013, Prairie Public Radio
<http://www.prairiepublic.org/radio/radio-programs-a-z/plains-folk?post=47331>

Senate Bill 2341

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION - STATE HISTORICAL SOCIETY - ARCHEOLOGICAL

SURVEYS. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$250,000, or so much of the sum as may be necessary, to the state historical society for the purpose of conducting archeological surveys in the Killdeer battlefield study area, for the biennium beginning July 1, 2013, and ending June 30, 2015. The state historical society shall reduce its expenditures relating to the general fund appropriations provided under this section by any grant funds received by the state historical society for the purposes identified in this section.

February 7, 2013

Testimony by Marie D. Hoff, 911 N. Mandan Street, Bismarck, ND 58501

member of Dakota Resource Council

Thank you for the opportunity to comment on this proposed legislation. I fully support the approval of Senate Bill 2341. The Killdeer Mountain area is one of the most important in the state of North Dakota. It is superbly beautiful and has great historical significance and is held as sacred ground by the Native American peoples of the area. This appropriation for archeological survey of the area should be approved. Moreover, I also feel strongly that any activity connected to leasing and drilling for natural gas and oil should be halted at least until the survey is completed. The public should be informed of the findings and should be offered meaningful, timely opportunity to comment on any proposed future uses of these lands, based on thoroughly researched study.

In general, I feel oil and gas drilling has proceeded entirely too fast to keep up with the needs for physical and social infrastructure. Certainly we should take our time and be extremely cautious about selling our birthright for a mess of pottage. The Killdeer Mountain area, particularly the public lands there, deserve careful stewardship oversight by our elected officials. I hope the State will ultimately be persuaded to fully protect the public lands there from drilling.

Thank you for your thoughtful consideration.

conserve our natural + historical precious sites

mdhoff25

From: "Rogge, Mary E" <mrogge@utk.edu>
To: "Pace, Paul R." <ppace@naswdc.org>
Cc: "Hoff Marie" <mdhoff25@bis.midco.net>; <dng3040@live.unc.edu>
Sent: Thursday, November 08, 2012 11:02 AM
Subject: Re: NASW News interview questions

Good morning, Paul,

My apologies for the delay — I'll complete the responses this evening while I'm flying to DC for the CSWE APM.

Please allow me to email-introduce you and Marie Hoff and Dee (Dorothy) Gamble, with this email. Marie is quite interested in talking with you. I hope to see Dee at the APM — Dee, I hope this "cold call" connection with Paul is okay with you!

Best to each of you,
Mary

Mary E. Rogge, MSSW, PhD
Assc. Professor
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College of Social Work
225 Henson Hall
Knoxville TN 37996-3333 USA
ph (865) 974-7500
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em: mrogge@utk.edu
UTK Center for the Study of Social Justice (<http://cssj.utk.edu/>)
CSWE Commission on Global Social Work Education (<http://www.cswe.org>)

From: <Pace>, "Paul R." <ppace@naswdc.org>
Date: Thursday, November 1, 2012 8:43 AM
To: Mary Rogge <mrogge@utk.edu>
Subject: NASW News interview questions

Hello Mary:

Please let me know if you will be able to respond to these questions I had sent earlier.

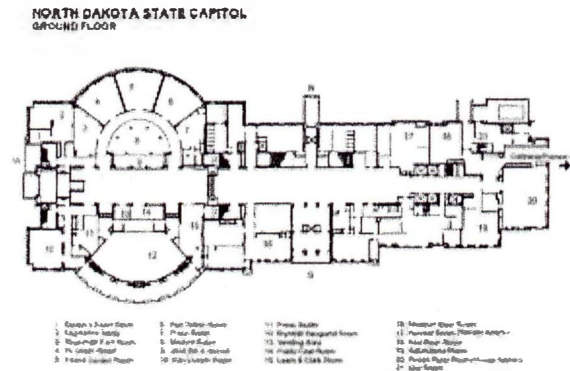
- <!--[if !supportLists]-->1. <!--[endif]-->How have you promoted the importance of environmental justice as a social work educator?
- <!--[if !supportLists]-->2. <!--[endif]-->What inspired you to advocate for EJ as it relates to social work?
- <!--[if !supportLists]-->3. <!--[endif]-->Why is it important that social workers have an

11/8/2012

02/06/2013

Killdeer Mountains 150 Years Later: Rescuing the Fallen and Forgotten Veterans from the Past

By Aaron Barth

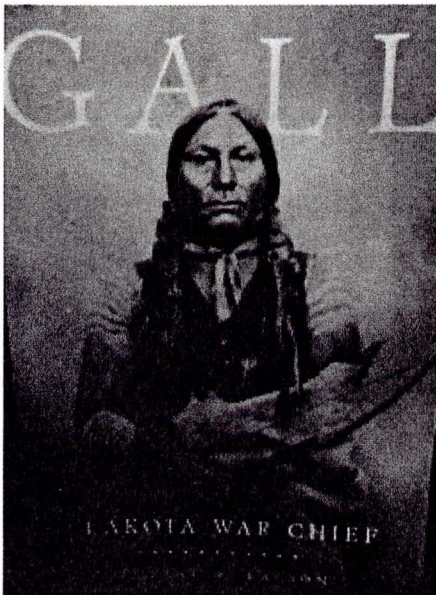


(<http://theedgeofthevillage.files.wordpress.com/2013/02/missouri-river-room-16.jpg>)

North Dakota State Capitol meeting room locations. Missouri River Room is #16, bottom-center of map.

Tomorrow, Thursday, February 7, 2013, at 1400 hours (CST), [North Dakota Senator Connie Triplett](http://www.legis.nd.gov/assembly/63-2013/members/senate/senator-connie-triplett) (District 18, Grand Forks) (<http://www.legis.nd.gov/assembly/63-2013/members/senate/senator-connie-triplett>) will collaboratively sponsor SB 2341, a bill that seeks to carry out an archaeological and historic-archaeological study on the Killdeer Mountains in Dunn County, western North Dakota. I'll be attending this hearing (it will take place before the Senate Government & Veteran's Affairs Committee in the Missouri River Room), and Triplett has circulated an e-mail asking historians, landowners, archaeologists, Natives and others for testimonies to support this bill. The Killdeer Mountains figure into our nation's history and the US-Dakota Wars that spanned from 1862 in the Minnesota River Valley, and carried on through 1864 at Killdeer Mountains in western North Dakota.

What we know right now about Killdeer from 1864 is limited (the [State Historical Society of North Dakota](http://history.nd.gov/historicsites/kmb/index.html) has a nice and thoughtful write up of it here (<http://history.nd.gov/historicsites/kmb/index.html>)), and further archaeological and historical research is needed. It was an action between the Union Army and various Dakota nations, and some key players involved were Sitting Bull, Inpaduta, Gall (among others), and General Alfred Sully and his Union soldiers. In many ways, just as this nation recognizes and respects fallen Union and Confederate combatants and non-combatants, this nation owes it to honor the Dakota soldiers and non-combatants killed in Dakota Territory during the Civil War. To extend this honor requires and necessitates a deliberate and culturally sensitive systematic archaeological and historical study like



<http://theedgeofthevillage.files.wordpress.com/2013/02/gall.jpg>

Taken from the cover of Robert W. Larson, "Gall: Lakota War Chief" (Norman: University of Oklahoma Press, 2007).

the one proposed in SB 2341. We understandably honor Americans that have fought and died in 21st century warfare, and we ought to also be honoring and rescuing those fallen and forgotten from the Killdeer Mountains from July 1864.

Note: according to Sioux County Veterans Service Officer Roster, today in 2013 Standing Rock has a veteran population of 357. (<http://www.nd.gov/veterans/officers/43.html>)

This entry was posted on Wednesday, February 6th, 2013 at 6:02 pm and tagged with Connie Triplett, Gall, Inkpaduta, Killdeer Mountains, North Dakota, Sitting Bull, Veterans and posted in Uncategorized. You can follow any responses to this entry through the RSS 2.0 feed.

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NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians
Resolution #SAC-12-044



TITLE: Support for Tribal Inclusion in National Historic Preservation Act Processes

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the sacred places of Tribal Nations are a continued source of spiritual renewal and important assets for all Tribal Nations, and it is vitally important to preserve those sacred places and ensure that they remain unspoiled, untouched by development as they have been for thousands of years; and

WHEREAS, as stewards of these sacred lands, Tribal Nations want to ensure that these areas will be available for their citizens, their children and grandchildren; as free from destructive development as possible; and

WHEREAS, a critical tool that can be used to protect sacred places and sacred lands are Tribal Historic Preservation Offices (THPO), established by many Tribal Nations, that help keep the Tribe and its leaders aware of current developments and upcoming projects that could adversely impact sacred places and lands; and

WHEREAS, the National Historic Preservation Act (NHPA), allowed for the establishment of Tribal Historic Preservation Offices in 1992, and NHPA affirmed that each Indian Tribe should retain jurisdiction over its own cultural, historic and sacred places, and affords Tribes the opportunity to consult on projects which will impact any area on which our Tribe places religious and/or cultural significance; and

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Chickasaw Nation

FIRST VICE-PRESIDENT

Juana Majel Dixon
Pauma Band of Mission Indians

RECORDING SECRETARY

Edward Thomas
*Central Council of Tlingit & Haida
Indian Tribes of Alaska*

TREASURER

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Jamestown S'Klallam Tribe

REGIONAL VICE-PRESIDENTS

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*Central Council of Tlingit & Haida
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Cherokee Nation

GREAT PLAINS

Robert Shepherd
Sisseton Wahpeton

MIDWEST

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NORTHEAST

Lance Gumbs
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Don Arnold
Scotts Valley Band of Pomo Indians

ROCKY MOUNTAIN

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Lumbee Tribe

SOUTHERN PLAINS

George Thurman
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SOUTHWEST

Joe Garcia
Ohkay Owingeh

WESTERN

Ned Norris, Jr
Tohono O'odham Nation

EXECUTIVE DIRECTOR

Jacqueline Johnson Pata
Tlingit

NCAI HEADQUARTERS

1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

WHEREAS, the Tribal Historic Preservation Officer of each Tribe is a designated representative who consults on undertakings which impact historic properties and (or) traditional cultural properties, and in response, under the NHPA, the Federal government has a legal and financial responsibility to comply with the requirements of the NHPA and to assist Tribes to preserve cultural and spiritually significant sites and lands; and

WHEREAS, the process under NHPA for Indian Tribes pursuant to Section 106 of NHPA requires that there be identification of historic properties, an assessment of adverse effects, an effort to resolve the adverse effects, coordination with the National Environmental Policy Act, review of Section 106 Compliance, as well as creation of standards for review and documentation, providing for emergency situations and post-review discoveries; and

WHEREAS, section 101(d)(6)(B) of the act requires the agency official to consult with any Indian Tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking, a requirement that applies regardless of the location of the historic property; and

WHEREAS, the mandate of the NHPA as it is applied to Indian Tribes is not being adequately fulfilled by federal agencies, and hundreds of sites are being destroyed daily because of a lack of Tribal participation in identification of the sacred places within any particular undertaking as defined by the NHPA; and

WHEREAS, often non-Indian archeologists and scientists are used to assess a particular site and do not have the expertise that Tribal practitioners, surveyors and monitors do to properly identify and assess our sites, particularly because these individuals do not know what to look for or how to recognize a particular sacred place; and

WHEREAS, current regulations mandate that Federal agencies subject to the NHPA should carry out their responsibilities pursuant to a government-to-government relationship with Tribes; and each agency official subject to NHPA should consult with the representative designated or identified by the Tribal government or the governing body, which generally would be the THPO.

NOW THEREFORE BE IT RESOLVED, that the NCAI recognizes that meaningful government to government consultation only occurs if the Section 106 process of the National Historic Preservation Act (NHPA) has been completed with an individual THPO for the affected Tribes, and urges federal agencies to comply with all aspects of the NHPA and its implementing regulations, including proper consultation and identification of historic properties under 36 CFR 800; and

BE IT FURTHER RESOLVED, that the NCAI urges that each Tribe's cultural experts be afforded the opportunity to participate in identification of historic properties and assessing their eligibility as allowed by the NHPA and the regulations pursuant to 36 CFR 800.4 (c) (1); and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2012 Annual Session of the National Congress of American Indians, held at the Sacramento Convention Center from October 21-26, 2012 in Sacramento, California, with a quorum present.


President

ATTEST:


Recording Secretary

Killdeer Mountain (ND005)

Location	Dunn County
Campaign	Sully's Expedition against the Sioux in Dakota Territory (1864)
Battle Date(s)	July 28-29, 1864
Principal Commanders	Brigadier General Alfred Sully [US]; Chief Inkpaduta [I]
Forces Engaged	Army detachments of 8 th Minnesota Infantry, 2 nd Minnesota Cavalry, 3 rd Minnesota Battery, Brackett's Minnesota Battalion of Cavalry, 6 th Iowa Cavalry, 7 th Iowa Cavalry, Dakota Cavalry Regiment, Nebraska Scouts, Pope's Prairie Battery [US]; Santee Sioux (Wahpekute), Teton Sioux (Hunkpapa, Miniconjou, Sans Arc, and Sihasapa [Blackfeet]), and Yankton-Yanktonai Sioux (Pabaksa [Cuthead] and Yanktonai) [I]
Results	Union victory
Study Area	17,339.64 acres The 1993 Study Area boundary was redefined in the northwest and southwest to exclude areas that were not historically associated with the battle. In the west, the Study Area was expanded to include the route of the Sioux advance. To the north and northeast, the Study Area was enlarged to include the full extent of U.S. and Sioux movements. In the southeast, the boundary was expanded to include the entire engagement area.
Potential National Register Lands	17,339.64 acres
Protected Lands	1.00 acres State Historical Society of North Dakota, fee simple
Publicly Accessible Lands	1.00 acres Killdeer Mountain State Historic Site, State Historical Site of North Dakota
Management Area(s)	Killdeer Mountain State Historic Site
Friends Group(s)	None
Preservation Activities Since 1993	<ul style="list-style-type: none"> Advocacy Cultural Resource Surveys and Inventories Fundraising ✓ Interpretation Projects Land or Development Rights Purchased Legislation Planning Projects Research and Documentation
Public Interpretation Since 1993	<ul style="list-style-type: none"> Brochure(s) Driving Tour Living History ✓ Maintained Historic Features/Areas Visitor Center ✓ Walking Tour/Trails

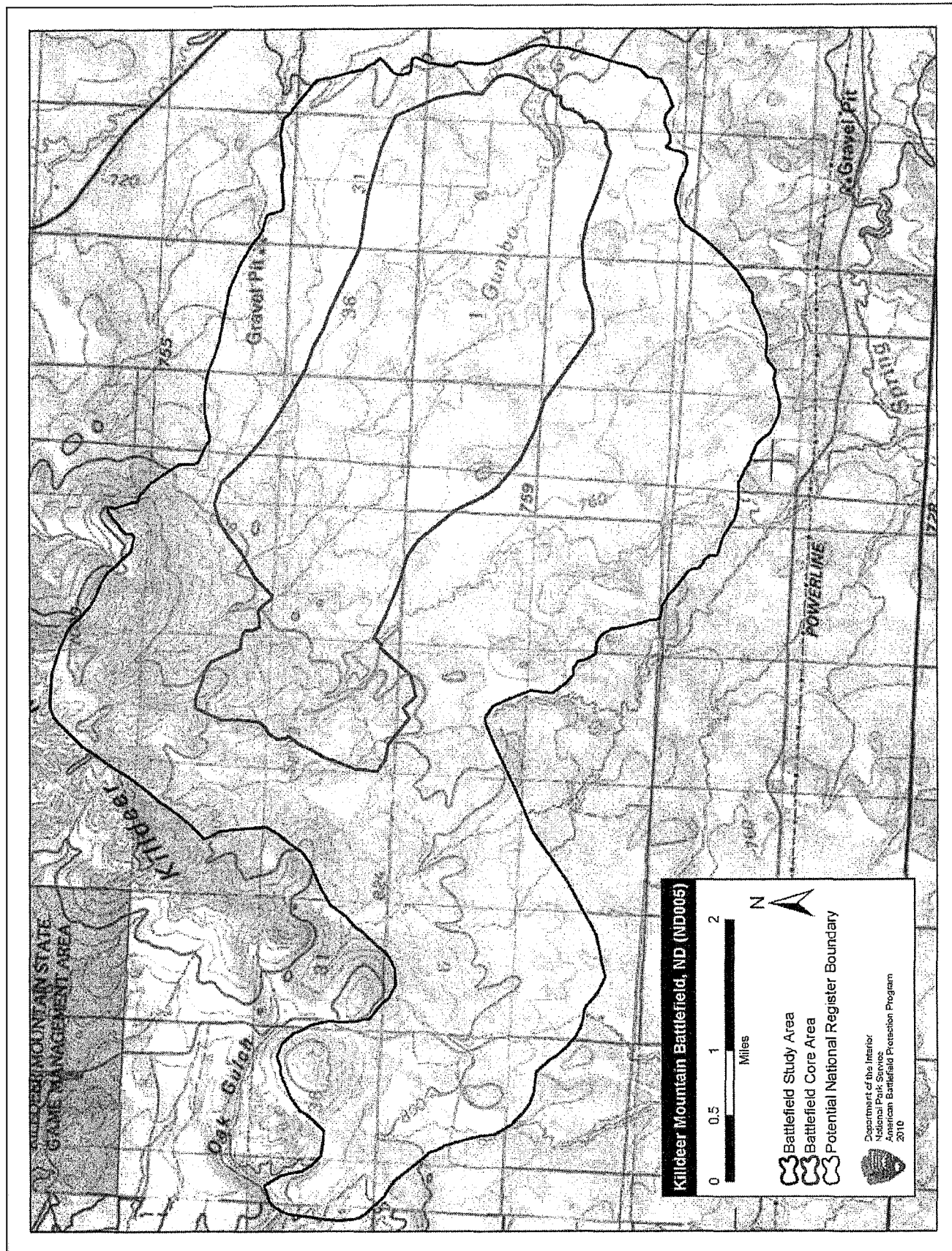
- ✓ Wayside Exhibits/Signs
 - Website
 - Other

Condition Statement

Land use is little changed since the period of significance, but oil industry interest in mineral rights development is a steadily increasing threat at Killdeer Mountain.

Historical Designation

None



We appreciate the many benefits oil development has brought to our area. We're also concerned about the relentlessness and rapidity of the development, especially when it threatens areas precious to all North Dakotans. We invite everyone who cares about the Killdeer Mountains to join the Killdeer Mountain Alliance:

"The Killdeer Mountain Alliance exists to preserve the cultural, spiritual, ecological, archaeological, and historical integrity of the Killdeer Mountains of western North Dakota and protect them from industrial development that harms the American Indian sites, plant and wildlife habitat, ranching, hunting, tourism, scenic beauty, and recreation for which the Killdeer Mountains are known and loved."

If you want to be on our mailing list, please sign our contact sheet or contact one of us. You can also link with us through our facebook site.

Lori Jepson
863-6653
<lorijepson@ndsupernet.com>

Rob Sand
863-7263
<killdeermtn@gmail.com>

Sixty-third

Attachment # 1

Legislative Assembly

of North Dakota

Introduced by

Senators Wardner, Andrist, Triplett

Representatives N. Johnson, Onstad, Oversen

A BILL for an Act to provide for an appropriation to the state historical society for archeological surveys.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION - STATE HISTORICAL SOCIETY - ARCHEOLOGICAL

SURVEYS. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$250,000, or so much of the sum as may be necessary, to the state historical society for the purpose of conducting archeological surveys in the Killdeer battlefield study area, for the biennium beginning July 1, 2013, and ending June 30, 2015. The state historical society shall reduce its expenditures relating to the general fund appropriations provided under this section by any grant funds received by the state historical society for the purposes identified in this section.

The survey shall take place on private property only with a written agreement with the owner of the private property that defines the scope of the survey, the conditions of access to the property and an understanding that any artifacts discovered are the property of the landowner. Following the survey, any preservation of the site shall be at the discretion of the landowner.