

# WESTERN ORGANIZING REVIEW

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February 2002

## North Dakota Wins COOL Victory

Members of the Souris Valley Chapter of the Dakota Resource Council joined Leon Merck, the manager of Marketplace Foods, in publicly announcing that the Minot grocery store has begun labeling fresh beef, pork and lamb as to the country of origin of the livestock. Merck noted that this action is an effort to come into compliance with a North Dakota law that requires country of origin labeling (COOL) for fresh meat.

"This law has been on the books for almost three years now, and the state has yet to enforce it," said Ron Martin, Chair of the Souris Valley Chapter. "We should be able to choose meat from American and North Dakota farms and ranches." The legislation passed country of origin labeling, in 1999, but has not implemented it North Dakota. An attempt to repeal the law failed during the 2001 legislature.

The North Dakota Health Department was charged by the legislature with developing regulations under the country of origin labeling law. The Department has never promulgated rules due in part to purported resistance from grocers regarding the difficulty of complying with the law.



DRC PHOTOGRAPH

*Marketplace Foods now offers Country of Origin Labeling to its customers.*

In order to support the implementation of the law, Souris Valley Chapter set out to ask Minot area grocery stores to comply with the law voluntarily. "When we contacted the stores in Minot, they didn't even know about it," said Souris

*See COOL, page 7*

## Challenges to Beef Checkoff Move Forward

Two lawsuits challenging the constitutionality of the mandatory beef checkoff are moving forward, and the end of the program may be just a matter of time. Cattle producers in both cases say a U.S. Supreme Court decision striking down a similar checkoff program for mushrooms last year means that courts should put an end to the beef checkoff program as well.

In South Dakota, Federal District Judge Charles Kornmann is expected to issue a decision any day on the constitutionality of the beef checkoff, following a two-day trial in mid-January. In December, the Western Organization of Resource Councils (WORC) and Livestock Marketing Association (LMA) brought a case before Billings, Montana U.S. District Court Judge Richard Cebull. Judge Cebull granted permission to 119 individual cattle producers to intervene in support of a lawsuit filed by Montana ranchers Steve and Jeanne Charter.

Ranchers in the two cases say that the mandatory checkoff forces them to associate with the National Cattlemen's Beef Association (NCBA), which relies on checkoff funds for almost 90% of its budget. They say the NCBA has worked against their interests on international trade policy, enforcement of the Packers and Stockyards Act, livestock price re-

porting, country of origin labeling for beef, banning packer-owned livestock, and controlling captive cattle supply contracts.

At the trial in Aberdeen, WORC and LMA witnesses objected to the use of checkoff funds to promote imported beef the same as U.S. beef, and forced association with views promoted by the NCBA. WORC and LMA say that this forced association and speech violate their First Amendment rights.

Defendants are the Cattlemen's Beef Board (CBB), the U.S. Department of Agriculture (USDA) and the Nebraska Cattlemen's, Inc., as intervenors. Monte Reese, chief operating officer of the CBB, and Barry Carpenter, of the USDA's Agricultural Marketing Service, testified that the checkoff is a government program, and exempt from the free speech requirements of the First Amendment. This argument irritates cattle producers, who have been told since its inception that the checkoff was a producer-led and controlled program.

Reese and Carpenter also denied that it is similar to the mushroom checkoff. Attorneys for WORC and LMA noted, however, that the U.S. Department of Justice had taken the opposite position before the Supreme Court in briefs defending the mushroom checkoff.

*See Checkoff, page 7*

## WESTERN ORGANIZING REVIEW

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WORC is a regional network of seven grassroots community organizations that include 7,000 members and 44 local chapters. WORC helps its member groups succeed by providing training and coordinating regional issue campaigns.

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## Contents

- North Dakota Wins COOL Victory 1**  
*Dakota Resource Council members win Country of Origin Labeling with a local grocer.*
- Challenges to the Beef Checkoff 1**  
*Two lawsuits challenging the constitutionality of the beef checkoff are moving through the courts.*
- The View From WORC 3**  
*WORC's new Chair, Skip Waters, ponders a balance between political & economic capital.*
- Bits and Pieces 4**  
*Updates on WORC'S member group's activities.*
- Commentary 5**  
*Get a Job? How about a New Farm Policy?*
- Judge OK's IBP Class Action 6**  
*IBP's manipulative cattle-buying practices are challenged in a class action suit.*

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# Political Capital vs. Economic Capital

*Skip Waters*

**M**y name is Skip Waters. My wife Vanna and I, along with our family, operate our ranch located on the Belle Fourche River north of Moorcroft and south of Devils Tower, in the northeast corner of Wyoming. Our enterprise consists of grass, hay and beef cattle. Vanna and I became involved with Powder River Basin Resource Council (PRBRC) and WORC through the meat packer concentration and subsequent market manipulation issues, which have remained our primary focus.

After we became involved at the WORC level, and became acquainted with the various issues, I began to sense that all of these issues had an underlying, not readily apparent, interconnection. I experienced the frustration myself, and see the same frustration of others working on these issues, not being able to achieve much meaningful or lasting success, I began to question what, if anything, we as individuals or as a group could do to improve our strategies or methods of dealing with these issues that would improve our success rate.

This question was at least partially answered for me while listening to a presentation made at the R-CALF convention by Dr. Andy Schmitz, who is Professor of Economics at the University of Florida. Dr. Schmitz presented a concept that I had never heard any other economist directly address.

Dr. Schmitz's premise was that in any given situation involving transactions there are always losers and gainers. Not much new there, right? He went on to say that in the utopian view of transactions that there would only be mutual benefits to both sides and therefore no losers. However, in reality, this almost never happens, and there are two categories of losers and gainers to each transaction. These transactions involve not only a loss or gain of monetary capital but also a loss or gain of political capital and that these categories are interrelated. Political capital almost always takes precedence over monetary capital, especially concerning the issues community organizations like WORC are involved in.

While I do not think that we have been unaware of this aspect of our issues, I question if we have focused on it enough in our strategizing? An example of this that I am most familiar with, is the issue of market concentration, although I believe the same principles apply to the vast majority of the issues we work on.

In the market concentration issue not only have we had the law in our favor, but also the public interest and economic incentive, yet we have been unable to prevail! In the course of this fight we have spent monetary capital, which

includes direct expenditures for staff time, travel, lodging, telephone and expert opinion, along with sweat equity from our members with costs of volunteering their time and resources. However, we have not thus far been able to guarantee enough political capital to overcome the special interests investment of political capital. Which they obtained by exchanging large amounts of monetary capital, an option that is not currently available to us.



Our means of generating political capital includes: exposing the truth, educating the public and governmental decision-makers, acquiring national and local recognition in the media, and instigating and enabling public outcry and pressure. This type of political capital may be just as, or more effective, than purchasing it, but involves a much longer time frame.

The question that I am posing here for thought and debate is: if we were to focus more intently upon the political capital requirements needed to win on an issue, and to realistically assess our ability and resources to meet those perceived requirements, would this be beneficial to improving our success rate?

You have to ask yourself, of all the issues WORC is currently involved in that have taken the most time and available resources, how many would actually be ongoing if the political will was there to do the right thing such as enforcing existing law or regulation even though by doing so may prove detrimental to the special interests who are spending a large amount of political capital to insure their own interests?

I am very proud of WORC's accomplishments and I believe you should be also, as you as members are the driving force. This is the most effective organization dealing with multifaceted, complex issues. But, we can improve on our successes, if we can focus a little harder on building our political capital.

*Skip Waters is the new Chair of WORC.*

## Bits and Pieces

The Western Organization of Resource Councils Board of Directors elected Skip Waters of the Powder River Basin Resource Council as the Chair of WORC for 2002. Skip ranches in Moorcroft, Wyoming. Jack Thornborrow of the Idaho Rural Council became the Vice Chair. He has a farm in Buhl, Idaho. Shirley Effling of Dakota Rural Action was chosen as the Secretary/Treasurer. Shirley is a registered nurse and farmer from Strandburg, South Dakota.

Farmers and ranchers in the **Powder River Basin Resource Council** and **Northern Plains Resource Council** asked Senator Tom Daschle (D-South Dakota) to include protections for surface owners in his Energy Policy Act of 2002, S. 1766, in a letter hand-delivered in Washington D.C. on January 11, 2002. The letter asks that landowners be given the right to release their consent to the leasing of federal oil and gas resources under their private land, and for a requirement that mineral operators sign a surface use agreement with surface owners before drilling. Under current law, the federal government can lease oil and gas minerals without notifying surface owners or securing surface owner permission. Federal legislation passed in the late 1970's prohibits the leasing of coal minerals without surface owner consent, but methane is considered part of the gas estate, not the coal estate.

In related news, the **Powder River Basin Resource Council** and two other Wyoming groups filed suit on January 18, 2002 in federal court to stop surface and groundwater pollution and damage to streams, wildlife, ranching, and agriculture from coalbed methane (CBM) production. The suit challenges the Army Corps of Engineers' general permit which governs construction of in-channel reservoirs for produced water from coalbed methane production wells, roads, and pipeline crossings.

**Dakota Rural Action (DRA)** is busy at the annual session of the state legislature. DRA is countering legislation to turn back Amendment E, a voter approved constitutional amendment limiting non-family farm corporate ownership of livestock. DRA supported four bills to promote wind energy development by lowering taxes and authorizing an assessment of wind resources. The legislature, however, has so far killed or failed to act on these measures. In addition, DRA favors a bill that would refer the "Gag Law" to the voters. The Gag Law prohibits state officials from commenting on any examination, investigation, or audit of any private entity. Previous attempts to repeal the Gag Law have died in committee.

**Dakota Resource Council (DRC)** is urging the North Dakota Department of Health to quickly resolve the state's air quality problems to clarify "the conditions under which new coal-fired power plants may be sited in the state." DRC

made the request in response to a proposed Permit to Operate revision at the Milton R. Young Station near Center, ND. The revision would raise allowed nitrous oxide emissions from 3,820 pounds per hour to 5,418 pounds per hour. The Environmental Protection Agency (EPA) objected to the state's Title V air quality permit for the plant in part because it increased allowed emissions without an underlying permit. In its objection, EPA also pointed out that the higher emissions level resulted in predicted violations of federal Prevention of Significant Deterioration (PSD) increments. "It is unclear to us why this Permit to Construct would not also result in violations," said DRC Energy Committee Chair Terrence Kardong. Terrence said the state should follow EPA guidelines for PSD measurement to see if violations are occurring, and if so, "begin immediately to draw up a State Implementation Plan revision which will propose reductions in pollutant emissions."

The **Idaho Rural Council (IRC)** has reached a settlement that provides some protection from factory farm pollution for Idaho's water resources. Pending court approval, the settlement requires Bosma Dairy of Bliss, Idaho to line two lagoons, eliminate a third lagoon, and prevent animals, waste, and other irrigation water from entering an area that acts as a recharge for an aquifer.

**Oregon Rural Action** cosponsored two well attended wind energy forums in eastern Oregon. More than 300 people participated in the daylong sessions held in Pendleton on January 30 and in La Grande on January 31. Designed for farmers, ranchers, and landowners, the forums covered incentives, producer cooperatives, basic wind energy production, and leasing.

In December, the **Western Colorado Congress (WCC)** expanded by opening a field office in Steamboat Springs and by adding Christi Ruppe as organizer based in the new office. A Colorado native, Christi served 27 months in the Peace Corps as a natural resource management agent in Mali, West Africa. She can be reached at P.O. Box 772695, Steamboat Springs, CO 80477, 970-879-1242, cruppe@wccongress.org.

—Kevin Dowling



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# Get a Job? How About a New Farm Policy?

*Gilles Stockton*

The chickens have come home to roost at the Montana Grain Growers Association. Their keynote speaker at the groups annual meeting, Dan Meternach of the Sparks Company, advised farmers to get off-farm jobs. I wonder where anyone will find those jobs? Grain Grower inspired farm policy has devastated Montana's economy.

The latest Grain Grower inspired farm bill, the Freedom to Farm Bill -perhaps more appropriately called Farming for Free -is by far the worst farm bill in recent history. Past farm bills merely declared war on America's family farmers and our unparalleled beautiful land. This policy was certainly effective in forcing farmers off of the land. Farming for Free's declared purpose went one step further- it was to put farmers in the rest of the world out of business, too. The theory was that unremitting low wheat and corn prices would drive the world's farmers to the point of starvation and send them packing for the cities. America's surviving farmers would gather the spoils of unlimited export markets. It didn't work that way. Other governments around the world stuck by their farmers. They understood that if they lost their farmers, they would lose their sovereignty and the ability to feed their people.

The myth of unlimited exports wasn't the only lie in the Farming for Free Bill. The other big lie was that farmers would be freed from government. Farmers would plant what and as much as they liked, and markets would look after them. Five years later, government has never been more deeply entangled in the day-to-day lives of farmers. Federal farm payments have increased 200 percent. Without the government welfare check, no farmer in America would be left on the land. The Farming for Free USDA welfare program is so complicated and convoluted that even the helpful people at the Farm Services Agency are often confused.

Farmers and ranchers are embittered that urban Americans, as represented by environmental interests, appear to resent and dislike agricultural people. What else would one expect? They look at what our commodity organizations support in terms of agricultural policy and conclude that farmers and ranchers are at war with nature while surviving on their charity.

Factory farms spill manure into the rivers. Huge machinery requires huge fields, a practice that contributes to water and wind erosion. Nature isn't good enough; it must be genetically modified to enhance the power and control of transnational agribusiness. Our nation's farm policy is predicated on following an industrial model. Apply the right mix of capital, technology, and labor; and corn, soybeans, wheat, beef, pork, and chicken result. In industrial agriculture, nature is merely a resource to be used. After the soil is mined for its fertility, and after the streams are polluted, production moves on, perhaps to another country waiting to be exploited.

Industrial agriculture is a process of exploitation. The land, watersheds, plants and animals and the people are exploited.

Now, the members of the Grain Growers are finding that industrial agriculture believes that it doesn't even need them. In the thinking of the vertically integrated corporations, all they need to get their grain is someone to keep books and drive a tractor. Naturally the proponents of industrial agriculture, including the monopoly corporations and most commodity organizations, are pushing for a continuation of the disastrous Farming for Free. If you want industrial agriculture, and if you want to be dependent upon USDA welfare checks up to the day that you too are forced from the land, then a continuation of Farming for Free is the farm bill for you. If not, there are alternatives.

Family-based farming and ranching provide a value to the land, nature, and our country. We can recognize that in order for farm and pasture land to be properly sustained it takes the attention of the owner, and that the owner cannot properly do his job if he is trying to farm and ranch half of the county. An the old Chinese saying affirms, "The best fertilizer is the footsteps of the farmer."

A safe and secure food system is not only the right of our own citizens, it is the right of people everywhere. Food exports should be encouraged, but only if they enhance the diets and lives of the recipients. We should stand up to the unbridled economic power of the agribusiness monopolies and cartels that are undermining free enterprise and destroy

The best agricultural system is one in which multitudes of farmers sell their products in an open, public and competitive marketplace. Thankfully, there is farm legislation that affirms all of the above principles. A broad network of agricultural organizations including the National Family Farm Coalition, National Farmers Union, Organization for Competitive Markets, R-Calf USA, American Corn Growers, Western Organization of Resource Councils, and many others have advanced various pieces of legislation that together form the basis for a sane farm policy. If you want to fight for an alternative future for a viable, decentralized, family farm agricultural system, then consider joining these efforts.

*Gilles Stockton is a rancher from Grass Range, Montana, and Chairs the Agriculture Task Force of the Northern Plains Resource Council.*



## Judge OK's Class Action Against IBP

**R**anchers and cattle feeders who believe IBP uses its dominant market position and secret cattle trades to unfairly lower the price of cattle got a late Christmas present from U.S. District Judge Lyle Strom. On December 26, the Judge approved the request of a group of cattlemen suing IBP over the secret cattle trades, called "captive supplies", to bring the case as a class action.

Certification of the case as a class action allows the plaintiffs to bring the case on behalf of all cattle producers who sold cattle to IBP through open marketing channels between 1994 and the fall of 2001 – and to recover damages for them if they win. As many as 30,000 cattle producers stand to collect if the plaintiffs win.

### Margin Monitor

Company	Latest quarterly profits (% change from prior year)
Tyson/IBP*	+370%
ConAgra	-18%
Cargill	+34%
Smithfield	+36%
ADM	+20%

\* Tyson released a comparison of combined Tyson & IBP revenue to Tyson-only prior-year earnings.

Judge Strom found that the plaintiffs had demonstrated a workable economic analysis, to determine the economic impact of captive supplies on cattle prices. The judge would not have certified the case as a class action and allowed it to go forward if he had not found that the plaintiffs had a good chance to prove a significant, specific amount of damages from the allegedly illegal activity.

Millions of dollars – perhaps hundreds of millions of dollars – are at stake in the case. The plaintiff's are also asking the judge to order IBP to stop using captive supplies to acquire cattle for slaughter, and to buy the cattle it needs in open, competitive markets.

The ruling gives new life to the case, which was filed five years ago. It could also give a boost to proponents of amendments to the farm bill to ban packer ownership of cattle. "Even the fact that this case has been certified as a class-action lawsuit could add some boost to new legislation for more competition in the livestock industry," Iowa State agricultural law professor Neil Harl told the *Omaha World Herald*.

The cattlemen allege that IBP uses captive supplies – cattle the company controls through secret contracts with no set price – to undermine the open market and depress cattle prices, in violation of the Packers and Stockyards Act. IBP said it will appeal Judge Strom's ruling. If the appeal fails, the case could go to trial in the Fall.

Cattle producers' concerns about captive supplies were validated by a USDA study released in January. USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA) said a third of cattle procured by the largest four packers through captive supplies in 1999, not 25% as the packers had reported to GIPSA. As the percentage of captive supplies in a concentrated market such as meatpacking increases, economists say, the price paid to cattle producers drops – savings that aren't passed on to consumers. The largest four packers – IBP, ConAgra, Cargill, and Farmland – account for more than 80% of all fed cattle slaughtered in the U.S.

Many market observers believe packers' use of captive supplies has increased since 1999. Another USDA agency, the Agricultural Marketing Service (AMS), publishes daily and weekly captive supply numbers. Those reports typically show 50% of cattle sold under various kinds of captive supply agreements or owned outright by packers. GIPSA's annual reports, which are usually released two years or more after the end of the reporting period they cover, have reported national, annual captive supply percentages of about 20%. The discrepancy led Congress to order the study GIPSA released in January.

— John Smillie

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Cool, continued from page 1

Valley Chapter member Sharrie Stephenson. Marketplace Foods, the first store that chapter members contacted, agreed immediately.

“We were glad to do this for our customers,” Merck said. “There is no physical reason why this cannot be done in other stores.” Marketplace Foods has taken the additional step of labeling much of their fresh poultry and seafood as to country of origin. Merck believes that Marketplace Foods in Minot may be the first grocery store in North Dakota to comply with the state’s country of origin labeling law.

The farm bill currently being debated in the United States Senate contains language that would require country of origin labeling of beef, pork and lamb throughout the country.

“Consumers have grown increasingly concerned about the safety and quality of the food that they purchase,” said Stephenson. “We think this is a logical and important first step in addressing those concerns, a step that can be taken right now.”

Souris Valley Chapter members have approached other stores in Minot but to date no other stores have responded to their requests to institute country of origin labeling. The Chapter members plan to continue to work with Marketplace Foods to improve their labeling program and to work with other grocery stores in the area to follow suit. The members also hope that drawing attention to the issue will help pressure the state Health Department into developing regulations that will allow all of the grocery stores in North Dakota to be brought into compliance with the state’s country of origin labeling law.

— John Crabtree

Checkoff, continued from page 1

National Cattlemen’s Beef Association President Lynn Cornwell told the Georgia Cattlemen’s Association in late January that he expects Judge Kornmann to rule the checkoff unconstitutional.

The original *Charter vs. USDA* lawsuit, filed last August, asks the Court to strike down the mandatory beef check-off as unconstitutional. The suit also asks the Court to issue an injunction to freeze all expenditures of current checkoff funds until the case is resolved; to establish an escrow account into which cattlemen may pay future checkoff assessments until the case is resolved; and to order refunds of all fees paid into the program by the parties to the lawsuit — including the 119 intervenors — since the checkoff became mandatory.

“The beef checkoff collects close to \$2 million in assessments every week,” said Custer, Montana rancher Bill Mackay Jr., Chair of the Northern Plains Beef Checkoff Legal Defense Fund. “As long as they can continue to collect and spend our money, those who benefit from the checkoff have every incentive to drag the court battle out as long as possible. All of us intervenors collectively are compelled to pay over \$220,000 per year into the NCBA-run checkoff program. We should be free to redirect those funds to efforts that benefit independent American cattle producers, not be forced to finance promotions and studies that support the global trade agendas of big feeders, packers and processors.”

— John Smillie

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## **In this issue...**

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