

# Testimony on SB 2341

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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](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>