

February

2017



Energy
& Local
Economies

ADDRESSING ENERGY IMPACTS

A Case Study of the Northwest Landowners
Association in North Dakota

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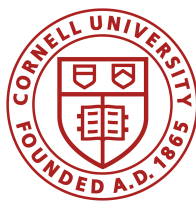
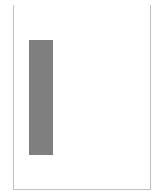


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INTRODUCTION



The Bakken infrastructure boom is arguably a more apt name for the Bakken shale boom. In addition to the municipal infrastructure demands associated with rapid population growth, development in the Bakken has been characterized by frenzied construction of thousands of wells and well pads, new roads and/or road upgrades, storage fields, processing facilities, transportation hubs, and miles upon miles of gathering lines and transmission pipelines. The Bakken's extensive production and transmission infrastructure overlays a rural landscape, dominated by over 11,800 farms along with large holdings of tribal lands. As a result of this overlay, rural landowners and farmers are key stakeholders in the construction, maintenance, and oversight of the Bakken's expanded oil and gas infrastructure. In western North Dakota, in the absence of more comprehensive federal and state energy regulations, landowner organizing has emerged as one regional strategy to help mitigate against negative impacts. This report explores insights into the role of a landowner association in managing impacts from energy development through their efforts to address concerns about pipeline development and operation.

The Northwest Landowners Association (NWLA) formed in 2009 as a network of landowners to share information and resources related to resource development (McBeath 2016). Over time, the group's role has expanded to encompass negotiating and lobbying for state policy developments. In 2016, when this research was conducted, the NWLA operated as a 501(c)(6)¹ nonprofit organization with 477 members (Figure 1). NWLA is notable as an exception to a general trend of limited landowner organizing in northeastern Montana and western North Dakota, in contrast to other regions such as the Marcellus Shale Play and the Powder River Basin where landowner collective

¹Section 501(c)(6) of the Internal Revenue Code designates business leagues as exempt non-profit organizations. Business leagues are allowed to lobby for legislative changes without endangering their exempt status.

advocacy and management is more evident (Brasier et al. 2011; J. Jacquet and Stedman 2011; Klassen and Feldpausch-Parker 2011).

In 2015, the North Dakota legislature passed an innovative Pipeline Restoration and Reclamation Oversight Program, often referred to as the pipeline ombudsman program, to facilitate conversations between landowners and pipeline companies. The program was created through a collaboration between the Department of Agriculture, energy industry representatives, and lobbying by members of the NWLA. Using in-depth semi-structured interviews with five key NWLA members who were involved with the pipeline program’s creation, this report explores why members chose to join NWLA and the value of having such an organization available as a resource. Through detailed profiles of three key members, it also investigates how NWLA enables and, at times, hinders landowners’ abilities to be heard and/or create their desired change. Finally, it offers advice for residents in other communities experiencing energy development who may be interested in starting or joining a landowner organization to mitigate undesired impacts.

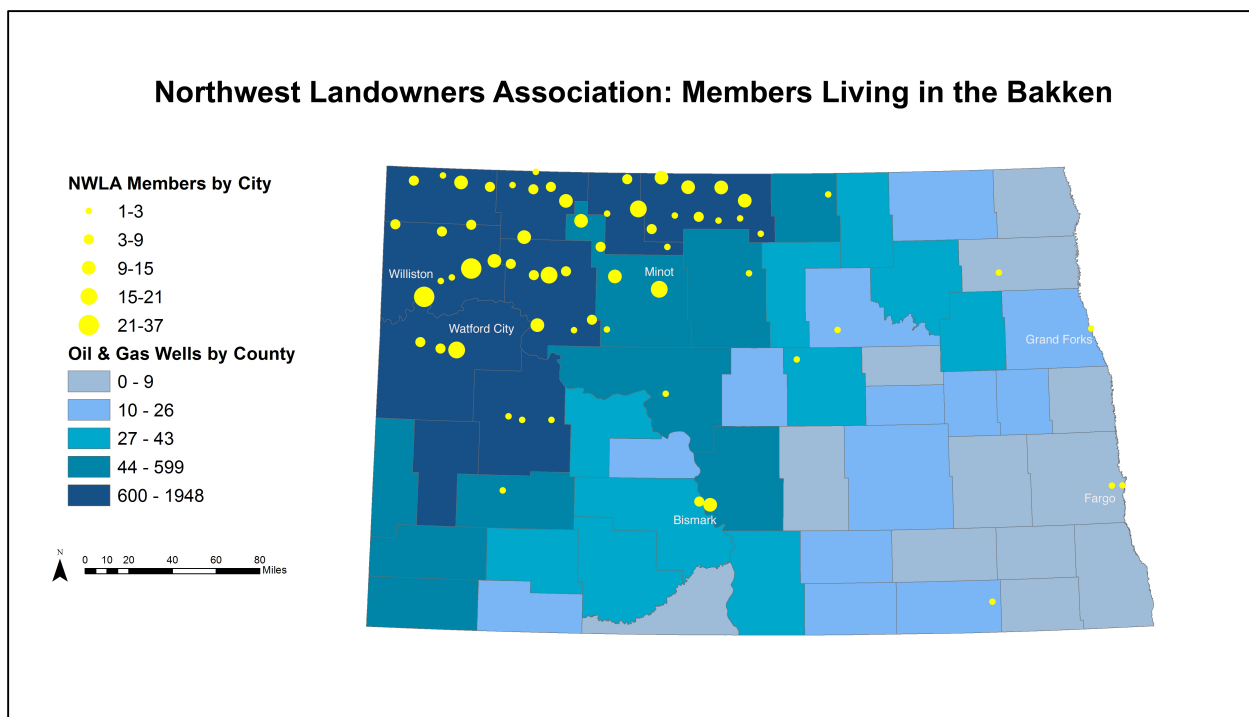
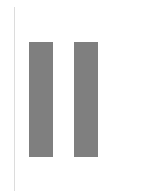


Figure 1: The majority of Northwest Landowners Association members live in North Dakota’s counties that are most impacted by oil development.

KEY FINDINGS



- Members cited **power imbalances and unequal access to information** as primary **reasons for becoming involved** with NWLA. Members looked to NWLA to bring more transparency to negotiating, regulating, and monitoring processes involving landowners and industry.
- NWLA has operated from a framework of **willingness to work with industry**, instead of taking a more aggressive or anti-industry approach, an approach credited with **increasing their traction in the state legislature**. While this strategy is not without its critics, interviewees felt that it was critical in the Bakken and North Dakota contexts.
- While NWLA has experienced legislative successes, **the impacts to landowners are still larger than the organization's capacity to address them**.
- Successes such as the pipeline ombudsman program authorization were achieved through extensive **hard work**. **Due to this large time commitment, some members are experiencing burnout** and questioning the long-term sustainability of the organization.

BACKGROUND & GEOGRAPHIC CONTEXT



Unconventional Fossil Fuel (UFF) Extraction in the U.S.

Beginning in the early 2000s, high oil prices, the technological innovations of hydraulic fracturing and horizontal drilling, and other political and economic factors coalesced to create a new energy boom: shale plays that were previously dismissed as economically unviable became both accessible and profitable (Wang and Krupnick 2013; Fleming et al. 2015). This led to an upswing in unconventional fossil fuel (UFF) extraction, dubbed the “shale revolution,” which occurred more rapidly and geographically dispersed than previous energy booms (Fleming et al. 2015; Measham, Fleming, and Schandl 2016). Since most of the lands in rural areas in the United States are still owned by agriculture operators (Hitaj, Boslett, and Weber 2014), farmers and ranchers were some of the primary stakeholders at the local level who were impacted by the shale boom and who continue to be affected despite the slowdown in oil and gas development.

Between 2005 and 2014, total oil production in North Dakota increased from less than 100,000 barrels of per day to over 1,000,000 barrels (McNally and Brandt 2015). This dramatic spike in energy production is due to the characteristics that distinguish UFF extraction from conventional methods. UFF development occurs over a broader geographic region, uses more dispersed wells, has a more uncertain timeframe, and can come online more quickly than conventional extraction (Jacquet and Kay 2014). Additionally, spills or leaks from UFF tend to behave more like non-point source pollution than the point source pollution typically associated with conventional extraction methods (Holahan and Arnold 2013). Due to the increased pace and scale of development, UFF extraction also requires more infrastructure and personnel to handle the industry’s construction, extraction, and distribution processes, as well as ongoing maintenance.

The political and economic context in the United States creates a complicated and challenging scenario from the perspective of regulating UFF as a form of industrial development. The U.S. shale industry is a complex network of operators and subcontractors that work at varying scales, from the international to the very local, with different levels of expertise, organizational cultures, and goals (Small et al. 2014). Relationships among the players shift continually as companies are formed, dissolved, and consolidated. On the ground, development strategies reflect differing needs and values of companies. Jacquet and Kay (2014) note that the increasing role of investment finance in global energy markets adds to the volatility of development and the complexity of the power structures that must be navigated at the local level. Patterns of UFF development respond quickly to global market dynamics while also being highly specific to a complex set of local factors.

Further complicating the power dynamics in this shifting field of players, the industry within the United States operates within a political economy that favors privatization, deregulation, and delegation (Harvey 2005; Levi-Faur 2005). The majority of UFF development-related activities in the U.S., such as land use planning, waste management, drilling and so forth, occurs at the state level, where the scope and nature of regulation can vary wildly from one place to the next (Warner and Shapiro 2013) In some states – such as West Virginia, New Mexico, Colorado, Pennsylvania, Louisiana, and New York – the state government has taken a strong lead in developing regulations (Zirogiannis et al. 2016), while in others the state is slow or reluctant to regulate. What results is a “halting patchwork of rules” frustrating industry on the one hand (Konschnik and Boling 2014, 1), and a dispersed, uncoordinated assemblage of regulations, regulators, and responsible parties, frustrating landowners and communities on the other (Haggerty and Haggerty 2015).

Both dynamics are present when it comes to pipeline infrastructure in the Bakken. In addition to North Dakota’s transmission pipelines, the state has over 23,000 miles of gathering pipelines installed by industry (“Liquids Gathering Pipelines: A Comprehensive Analysis” 2015). The Federal Energy Regulatory Commission (FERC)

and Pipeline and Hazardous Materials Safety Administration (PHMSA) regulate interstate transmission pipelines. However, since the majority of the pipelines in the Bakken are intrastate transmission and gathering lines, they fall under statewide jurisdiction. The attunement of state regulations to the unique demands of shale development has lagged behind the breakneck pace of development, creating demand for local and regional governance approaches, including the kinds of information sharing, lobbying, and coordination with industry undertaken by the landowner association described in this report.

Impacts of UFF Development on Farmers and Ranchers

Researchers from a wide range of disciplines have investigated how rural individuals and communities are affected by shale energy development (for reviews see Fleming et al. 2015; Hitaj, Boslett, and Weber 2014; Measham, Fleming, and Schandl 2016). From this literature, it is clear that UFF development creates costs and benefits that are distributed unequally in communities, both spatially and temporally (Jacquet 2014; Rifkin et al. 2015). It is also clear that farming and rural community impacts from UFF are best understood as tradeoffs, making it difficult to fully execute comprehensive cost, benefit, and risk calculations. Studies suggest that impacts fall into several overlapping categories: impacts to farm and ranch land, production capacity, and economic viability, as well as impacts to owners' quality of life. The nature and extent of these impacts vary significantly according to the local context of shale plays (Haggerty, Forthcoming).

To help mitigate oil and gas impacts at the farm and property level, some landowners have joined landowner associations or coalitions. These organizations can take many forms. Ken Balliet (2008), a District Director from PennState Extension, categorized shale gas landowner associations into three types: an information sharing group, a landowner coalition, and a landowner bargaining unit. Each of these groups seeks to empower landowners but through different means, ranging from encouraging sharing of resources and information to organizing landowners into a bargaining unit to negotiate collective leases. Drawing comparisons to forest and agriculture cooperatives, Jacquet

and Stedman (2011) argue that landowner associations are often formed to maximize members' individual benefits but can have broader positive effects to the community, such as helping to protect watersheds or fragile ecosystems. Landowner organizations can therefore become de facto managers of natural resources.

Northwest Landowners Association

Northwest Landowners Association Mission

(1) To create a network of information on issues as they pertain to mineral owners, landowners, operators, or occupants;

(2) To share and discuss the development of our resources, including wind; and

(3) To become educated, that we may help maintain a balance in resource development and property rights of individuals in a responsible manner.

The Northwest Landowners Association (NWLA) is an example of an information sharing group helping to empower landowners in North Dakota. The organization formed in 2009 in response to a proposed wind development. Since then, it has continually adapted to fill the needs of landowners impacted by the Bakken shale boom. The organization formalized its structure and received 501(c)(6) status in 2012.

As of September 2016, NWLA had 477 due-paying members. The members are primarily from the Bakken region. To join, members pay

a \$100/year fee. Their membership gives them access to landowner resources, including worksheets on best practices and workshops that specifically address issues related to land and energy development. The organization also maintains a regularly updated website and Facebook page and sends out periodic legislative briefs. As illustrated by these member benefits, NWLA is striving to connect farmers through their network to facilitate information dissemination. As of 2016, the organization was volunteer led with a part time consultant, though the board was in the process of hiring its first paid executive director. In 2014, it operated with an annual budget of approximately \$48,000.

While education is the organization’s primary mission, NWLA also actively lobbies for policy changes. Policy priorities are established by an annual survey sent to all members. In 2015 six of the organization’s members registered as lobbyists with the state of North Dakota. They monitored 32 bills and worked with legislators to propose seven bills (Coons 2016). When the legislature is not in session, members attend interim committee meetings and continue to monitor legislative developments. NWLA stands out as a landowner organization that has been able to create policy changes regulating oil and gas development at the state level.

During North Dakota’s 64th legislative session, two of NWLA’s four legislative priorities were related to pipeline regulation (McBeath, 2016). As politicized events such as protests of the Keystone and Dakota Access Pipelines suggest, pipelines are contested infrastructure in North Dakota and elsewhere. In the Bakken, pipelines carry not only liquid fossil fuels but also large volumes of produced water. Concerns about pipelines focus on their safe operation, risk of spills, and disruptions from their construction. According to a study by the Energy and Environment Research Center – a division of the University of North Dakota that conducts research for industry, government agencies, and academic institutions – approximately 0.01% of the oil and saltwater brine moved through pipelines in North Dakota is spilled, translating to roughly 20,000 barrels of oil and 71,000 barrels of saltwater in 2014 (“Liquids Gathering Pipelines: A Comprehensive Analysis” 2015). Although NWLA generally supports pipelines – as they alleviate traffic and damage to roads – the organization also acknowledges their risks. The organization has proposed and/or supported multiple bills to address landowners’ concerns about pipelines, as shown by the summary of bills NWLA proposed in 2013 and 2015 in Table 1.

Table 1

Bills related to pipelines proposed by the NWLA, 2013-2015

Year	Bill	Status	Summary
2013	HB 1347	Defeated	Introduced new controls on gas and liquid gathering transmission lines
2013	HB 1333	Passed	Increased transparency for siting pipelines; Created

			new mediation and regulatory structures related to pipelines
2013	HB 1407	Defeated	Consumer protection provisions in pipeline easements
2015	SB 2271	Passed	Created pipeline ombudsman program, housed in Department of Agriculture, for restoration and reclamation oversight
2015	HB 1358	Passed	Consolidated seven bills into one; Funded study to find best technology for monitoring pipelines, including reclamation issues of pipelines built prior to 1983

The Pipeline Ombudsman Program in North Dakota

As pipeline construction scaled up alongside oil production in North Dakota, farmers and ranchers increasingly experienced reclamation issues during and after pipeline construction phases. This led to a perceived wariness amongst landowners to continue signing easements. To address this reluctance, the North Dakota Department of Agriculture, energy industry representatives, and lobbyists from NWLA proposed an ombudsman program to help navigate conflicts between landowners and pipeline companies. Their proposal was taken up by legislators and introduced as Senate Bill No. 2271 to the 64th Legislative Assembly in 2015. The bill empowered the agriculture commissioner to establish the Pipeline Restoration and Reclamation Oversight Pilot Program (referred to here as the pipeline ombudsman program). After undergoing several rounds of amendments and edits – the most notable of which dropped the appropriation from \$1,000,000 to \$400,000 – the bill was passed by a vote of 41 to 6. Governor Jack Dalrymple signed it into law on April 13, 2015.

The pipeline ombudsman program sits within the Department of Agriculture. Landowners who are experiencing problems with a pipeline on their land can request assistance from the Department, who will then assign the landowner a local ombudsman. The ombudsman meets with the landowner and the pipeline company to help facilitate a solution to the problem and avoid litigation. The goal is to develop a plan, timeline, and monitoring agreement to address the issue(s). The ombudsmen cannot provide any legal assistance, help with negotiating an easement, or implement

regulations (Junkert and Goehring 2016). Thus, the mission of the program is “to enhance landowner trust and cooperation in North Dakota’s energy development” (“Pipeline Restoration and Reclamation Oversight Pilot Program” 2016). North Dakota’s pilot program is scheduled to end on June 30, 2017, though a bill proposed in the 2017 legislative session is attempting to make it permanent.

According to an email from Ken Junkert, Administrative Services Director of North Dakota’s Department of Agriculture, the pilot program received 55 official complaints from April 2015 to November 2016. Common issues included unsatisfactory reclamation efforts (rough or uneven ground and/or incomplete re-vegetation), loss of topsoil, and introduction of weeds (Junkert and Goehring 2016). Of the 55 complaints filed, all of them but one resulted in successful negotiations, with the negotiation process lasting anywhere from several days to over two years. In response to the state’s ombudsman program, some oil companies – such as Hess – have established their own in-house ombudsman programs, presumably to self-regulate and avoid documented complaints to the state (Jean 2016). A newspaper article about Hess’s program reported that they had received 205 calls to the program in its first eleven months (ibid), far higher than the state’s program. More research is needed to understand how the state and industry programs differ and the circumstances under which some landowners call the state and others call the oil company. Nonetheless, the Department of Agriculture’s pipeline reclamation ombudsman program potentially offers an innovative solution to solving landowner issues and has already prompted changes within industry.

APPROACH

IV

Research Questions

This case study uses in-depth, semi-structured interviews to explore why key members of NWLA became involved with the landowner association and how their membership

has helped them mitigate impacts from energy development. It also seeks to tease out lessons learned from key members, and the advice they would give to other landowner associations in energy development communities. Specifically, this case study asks the following research questions (RQ):

RQ1: Why did key members join the Northwest Landowners Association?

RQ2: How do key members leverage the Northwest Landowners Association to address pipeline issues within their communities?

RQ3: What advice would key members of the Northwest Landowners Association provide to other landowner associations doing similar work in energy development communities?

Methods

Five key members of the Northwestern Landowners Association were interviewed to answer these questions. NWLA was selected as a research subject due to input from community stakeholders in the Bakken region. Of the five interviews, four were done in person during May 2016 and the final interview was performed the following month over the phone. Interviews were semi-structured, meaning they followed a script but the interviewer was also given the “freedom to digress” to explore emerging themes (Berg and Lune 2004, 61). Each of the interviewees was a key member of the Northwest Landowners Association. Three of the interviewees were farmers or ranchers with energy development on property that they owned, one was a rancher who did not have energy development on land they owned but did have energy development on land they leased, and the final interviewee was instrumental in the organization’s operations but not a farmer or rancher.

Interviews were in-depth with the shortest being just shy of 51 minutes and the longest lasting two hours and 52 minutes; the average interview lasted one hour and 40 minutes. After collecting the data, interviews were transcribed verbatim using a professional transcriber. Transcriptions were coded by hand. Through repeated

readings of the transcripts, key themes emerged and codes were collapsed and expanded as needed (Lindlof 1995). While the data offered many dynamic, interconnecting stories that could have been told, the narrative presented here focuses on using the pipeline reclamation program to illustrate key members' motivations and experience in participating in a collaborative landowner process. The discussion of this report is structured around profiles of three key members of NWLA. Names have been changed to protect anonymity.

DISCUSSION



Profile 1. Ellen: “I wasn’t looking to create chaos in my own personal life, but I just felt like somebody needed to step up...”

Ellen grew up in northwestern North Dakota and returned to the area with her husband and children during the beginning of the shale boom. Instead of finding the quiet, pastoral life she envisioned for her family, she moved to a community undergoing an immense amount of development. Or, as she explained, “I don’t even call it development because it wasn’t managed at all, just this rapid growth.” She was particularly frustrated with how the benefits and costs of shale development were distributed unequally throughout the state and noted that the revenue her county received did not cover the full costs of impacts. She questioned the large tax breaks energy companies received given her perception of the high costs on local landowners from energy-related impacts: “There’s just these trickle down impacts [so] that the cost of doing business gets pushed on to the agriculture community, who does pay property taxes.” In addition to these broader frustrations, Ellen’s neighbors started complaining about interactions with landmen and sharing concerns about leases.

Ellen represents the perspective of landowners dealing with energy development but not receiving the royalties from production—the mineral rights below her ranch had long ago been sold to private parties outside her family. When a landman approached Ellen about a surface use agreement, she refused to sign and felt that she lacked power in negotiations as a non-mineral rights owner. Afterward, Ellen helped to start a local landowner association, which became subsumed under NWLA. She was also elected to public office. When questioned about why she didn't sign the agreement and why she started to organize landowners, she stated:

The people that stayed here after the Great Depression, they stayed here either because they couldn't leave, or they had a huge amount of conviction for being stewards of the place. I have that conviction...I wasn't looking for volunteer work. I wasn't looking to create chaos in my own personal life, but I just felt like somebody needed to step up and start talking about this and just not get distracted by the checks and the promises, and so I did that.

This story simultaneously explains why Ellen became a member of NWLA and her local government while also emphasizing the toll her involvement in managing energy impacts has taken on her personal life; the “chaos” that she has experienced.

Before NWLA existed, landowners in Ellen's community had limited options for voicing their concerns related to UFF development. While many landowners were members of larger state associations like the North Dakota Farmers Union or the North Dakota Farm Bureau, these organizations did not focus on energy issues. According to Ellen, NWLA was the first organization in her region that “focus[ed] on surface rights as they intersect[ed] with energy development, the mineral aspect, and that our surface and our minerals are by a majority segregated.” When asked about the organization's role with regards to policy, she described how the mission expanded to include regulatory issues:

The mission really is to educate and through that educational process I think people are starting to realize that there are some very deficient areas in our state law or in our administrative rules in the different departments that oversee development.

Since the state's regulations failed to address many landowner concerns, NWLA became more actively involved with proposing policy ideas and changes.

To help mitigate negative impacts from pipeline development, Ellen advocated for a local pipeline ombudsman program. As she explains, “people were just really exhausted [due to problems with pipeline operations] and didn’t want to continue to sign easements and allow right of ways.” In response, the conservation district for Ellen’s region proposed creating a regional pipeline ombudsman program. At the same time, an alternative plan was proposed for a statewide ombudsman program. As Ellen explains, “...there were these two concepts, go very local or go from state down.” NWLA, as an organization, supported the statewide plan. Ellen disagreed and felt that a local ombudsman would have a better understanding of the local economy, land, and culture and thus be more suited to address her neighbors’ problems. Ultimately the statewide plan won the funding, and the more localized program proposed by the soil conservation district was discarded.

The debate between the statewide or local approach speaks to the hard decisions that landowner associations face. From Ellen’s point of view, the landscapes in her region offer particular challenges – such as highly erosive soils and low population densities – that her local conservation district would have been better prepared to address. However, the NWLA worried that creating multiple, more regionalized pipeline ombudsman programs could result in inconsistent services for their members. While Ellen remains involved NWLA, she still expresses regret that the local ombudsman failed to materialize. She described low uptake of the statewide ombudsman program in her community, attributing its failure to her community’s cultural mistrust of state agencies. From her perspective, a consequence of this dynamic is that unaddressed pipeline impacts persist in her community. Counter to the idea of collective benefits from landowner associations, from Ellen’s perspective, NWLA’s regional and statewide approach actually constrained the efficacy of a potentially innovative solution to pipeline issues in her community.

The ombudsman program raises questions about the appropriate scale and scope of the programming that landowner associations should provide for members. This debate is particularly timely as some members are wondering if it makes sense to reorganize

NWLA into a statewide organization, expanding its pool of potential members. To make this decision, members will need to address what they gain and lose from expanding to broader geographic extent.

Profile 2. Jim: “We’re not there representing anyone else. We’re representing ourselves...we’re living it.”

Jim has lived in northwestern North Dakota his entire life. Before starting his farm, he worked in the energy sector during the 1970s oil boom to help save money to buy his farmland. While Jim is in favor of UFF extraction, he experienced negative impacts from recent development on his land and, like Ellen, felt mistreated by the landmen. After describing how the increases in heavy truck traffic damaged roads near his farm, he said, “We’re mad. We’re fighting it. We just don’t like it, and we’re crabby.” In another story, Jim voiced his frustration about the energy companies’ failure to take into account local knowledge. When an oil company proposed building a well on a neighbor’s nearby farm, his friend informed the contractors that the location was frequently flooded in the spring during snow melts. The company continued construction until the spring, when the pad that they were working on was flooded, as predicted by the farmer. Jim noted, “They had no idea what’s there...so when you see things like that you think, oh my God. It bugs you, but that’s the way things are.”

Given these frustrations, the Northwest Landowners Association provided Jim an outlet to make changes to a system that he considers flawed:

We’re at the point where we adapted and got used to it, and it ain’t going away. I can fight it and be mad forever, or I can try to make it work better. It was sometime in there...[that] I got involved with Northwest Landowners.

This quote speaks to the tension Jim feels between accommodating industry and creating change. He has navigated this tension by becoming involved with NWLA’s lobbying efforts. In 2015, Jim estimated that he spent over 35 days in the state capitol, Bismarck, lobbying during the 64th legislative session. One of the major policy wins for NWLA during this session was the establishment of the pipeline ombudsman program. When asked how NWLA decides which policy priorities to pursue, Jim answered,

“Whatever our members come with, that’s what we’re going to fight for. And reclamation is the big one, reclamation of pipelines.” As a lobbyist for NWLA, Jim understands his role as being a collective voice for the members.

Jim reported that NWLA was having an impact on statewide policy while also acknowledging the organization’s limits. He explained that NWLA members are increasingly seen as important stakeholders on policy issues: “I don’t want to sound like I’m bragging, but things just went really good for us last session. We get invited to the table a lot...so they’re asking us what we think!” Later in the interview, however, he described the NWLA as being constrained by the UFF industry’s power. When he reflected back on his first session lobbying, he suggested that they only succeeded with their early proposals because the industry representatives allowed them to: “[the oil industry] threw us some bones so we could say, ‘Yeah, we got something.’” Throughout the interview, Jim was proud of NWLA’s achievements but also aware of the power dynamics that shaped what the organization was able or unable to accomplish.

To help navigate these power dynamics, Jim noted that NWLA positions itself as an organization that is an “authentic” voice of the farmers. When asked about why he thinks NWLA is effective at changing statewide policy, Jim answered, “We’re the guys. We’re the ones. We’re not there representing anyone else. We’re representing ourselves...we’re living it.” By cultivating this identity of “authentic” rural farmers and ranchers, NWLA avoids being seen as “career” lobbyists. Instead, Jim explained, “We just try to do it straightforward, and I think we’re appreciated because of that. And, sometimes, I think we get away with it because we’re just these dumb hick farmers.” In comparing and contrasting NWLA members to professional lobbyists, Jim suggested that professional lobbyists are held to stricter standards than NWLA’s members. Jim repeatedly emphasized that the aura of authenticity that NWLA brings has been important for the organization’s success.

Further, Jim described NWLA as an avenue for helping landowners to access industry decision makers and public officials who would otherwise be inaccessible. NWLA

strategically cultivated this position over many years, and, according to Jim, it also marked a shift from earlier approaches:

So many people are anti-everything else. It's my way or no way...And, that's the way we started. Northwest Landowners started with that view of you guys are the bad guys. Oil is the bad guy; we're the good guys. We care about the land. That got us nowhere.

Jim described NWLA's current strategy as being more solution-oriented and collaborative. To illustrate this shift in tactics, he compared NWLA to another organization working on shale development issues, the Dakota Resource Council (DRC). In describing the DRC's approach to advocacy, he explained, "[T]hey have a bad reputation of being very negative, very controversial." This strategy, he explained, hinders their ability to create change. "[T]hey do not have a good name. In fact, they're discounted. We've had industry and state people tell us that they're not a factor anymore." In contrast, NWLA is effective because they position themselves as part of a collaborative solution between industry and landowners. Jim reiterated this throughout the interview by explaining that he could call important industry representatives or government officials when he needed advice or wanted to report a problem.

Jim's accounts of his involvement with the organization point to the power of NWLA to be both empowering and exhausting for members. Jim was proud of his volunteer efforts to educate landowners and industry representatives around the county about pipeline reclamation and landowner associations. He also enjoyed having direct access to industry representatives. Despite these benefits, he is at times skeptical of NWLA's impact. At one point he asked, "Is it worth it? I don't know. I'm questioning that too." Throughout our conversation, Jim made off-hand comments about getting tired of the process. He said, "That's why I go to Bismark, because I have to. Try to get other people, but there's no one else..." Indeed, during a follow up interview a year after first talking with Jim, he had left the board and was no longer involved with NWLA.

Other board members have recognized the time burden that NWLA places on its members. As of September 2016, the organization was in the process of hiring an Executive Director, who would be NWLA's first paid employee. While the director will

help redistribute the workload from volunteers, some of the members interviewed worried that the organization will lose its aura of authenticity by paying someone to lobby for them. Jim's empowerment through NWLA and also fatigue with the process speaks to larger opportunities and challenges of participating in a landowner association to manage energy impacts.

Profile 3. Garret: “Now these get documented to the state, which is very, very important.”

The final profile is of Garret, a farmer who heard about NWLA from Jim. Garret has over 80 miles of pipeline beneath his fields. When we talked with him, he was dealing with three pipeline reclamation problems, and he noted several other minor but unresolved issues. According to Garret, “We could literally hire someone on a full time basis just to work with oil field issues, a 40 hour week, every week, every month all summer long, most of the winter.” Garret attributed his negative experiences with pipelines to his initial lack of knowledge about leasing negotiations and contracts. When asked why he decided to get involved with NWLA, he stated,

All these pipeline issues have to do with signing leases and how your lease is structured. Here's how the oil field works. They move into a new area. We're all brand new at this, and we think, “100% for it!” I just was thrilled about it because here's our pathway to energy independence. But they move into an area where nobody knows anything and they just run over the top of you. And they did to the point where something has to be done. The only way to stop that is to be affiliated with a group.

In another example, an energy company proposed building a storage and transportation facility next to his farm but failed to identify the project's full range of risks. After it was completed, Garret felt the project did not meet his expectations:

So now we have this pipeline to take trucks off the road, but guess where the trucks are going to come? Right here! So what's the use? They don't lie. They just don't tell you, and you don't know the right questions to ask. That's why it's important to get a hold of landowner groups that have already been there.

Both of these stories speak to his perception of systemic knowledge and power imbalances between individual landowners and energy companies that exist within

communities experiencing UFF development. For Garret, these stories also underscore how a group like NWLA can help landowners mitigate undesired impacts.

Garret cited the state's regulations as reinforcing these imbalances instead of helping to protect landowners. He explained, "...[the] oil field does whatever they want to do. The state of North Dakota has given them tacit approval to do whatever they need to do to get the money because they want money." He attributed this lack of regulation to disconnections between statewide legislatures and the localized impacts experienced in northwestern North Dakota. "Every legislator that is not in an oil affected county doesn't care about this one bit." Since energy tax revenues are redistributed statewide, legislators from other regions benefit from new sources of revenue and thus have little incentive to propose regulations to manage growth. Garret argued, "What do you think they [state legislators] think? They think this is a gold mine. They don't want to slow it down." Garret particularly felt disempowered when he went to the statehouse to testify about energy development impacts: "we got told, without saying so, we got told in no uncertain terms that we didn't matter." Again, Garret's comments speak to power and knowledge imbalances that are embedded within the system, which he feels state regulations fail to address.

Given the lack of regulation and landowners' limited knowledge about the legal and regulatory system, Garret encouraged landowners to join a group like NWLA to help manage impacts. He noted, "...having a group like [NWLA] that's in touch with other groups gets you up to speed faster." In addition to knowledge sharing, Garret appreciated NWLA's ability to monitor policy proposals and negotiations. Even in years without legislative sessions, he noted, "[NWLA members] are monitoring everything that goes on." While Garret often commented that he would like state legislatures and industry to be more proactive, he relied on NWLA as a way to make his own voice heard and to act as a watchdog at the statehouse by monitoring policies.

Notably, Garret has directly benefited from the statewide pipeline ombudsman program that NWLA lobbied for in 2015. When Garret's fields developed large holes due to

unsuccessful reclamation efforts, he used the ombudsman program to negotiate solutions when none of the pipeline companies would claim responsibility. Before the ombudsman program, landowners would have had limited options, besides litigation, about how to resolve this problem. With the ombudsman program, explained Garret, “I can take care of ten pipelines in one morning instead of spending ten days to take care of one pipeline.” In addition to creating a better communication system, the program has institutionalized a way for landowners to file complaints. According to Garret,

Now these get documented to the state, which is very, very important. All these other issues that we deal with here are just between you and the company, and as long as nobody says anything out loud, they can pretty much do what they want. But these get recorded, and that is the effectiveness of it.

Garret used the announcement of the pipeline ombudsman program and his membership with NWLA to get a regional newspaper article published about his negative experiences with pipeline reclamation. After the article was published, oil companies were more proactive in addressing his concerns. As Garret recounted,

They came, and they fixed an issue. And I said, what brought you here now? They said, “Our boss saw that newspaper article and said, ‘Is that about us?’” Three or four companies all said, “Is that about us?” So basically there’s a lot of not doing things right...That article was huge, just absolutely huge.

Garret credited the news article and, more generally, NWLA with helping him to manage impacts from pipeline construction. Having a clear process for solving these problems through the ombudsman program and having access to the power of both NWLA and the media has made him more optimistic about managing pipelines issues.

While Garret is currently a strong advocate of NWLA, he initially refused to become a member during the organization’s early years due to its more oppositional strategy. As mentioned in the previous profile, the organization originally approached industry more antagonistically. Garrett only joined NWLA when the leadership changed, and the organization switched to its current, more collaborative approach. As a landowner who is generally in favor of energy development, he did not want to be seen as oppositional and also acknowledged that the energy industry is not monolithic, stating, “There’s some very good companies out there.” His more nuanced views of the industry reinforce

his openness to working with industry and not against it. However, he has also experienced many challenges on his farm due to impacts from energy development. His involvement with NWLA and his views about energy development suggest tension between a willingness to accommodate industry and a desire to protect landowners' rights.

Advice for Joining a Landowner Association

Given the decentralized regulatory system for UFF in the United States, NWLA helps create innovative solutions for landowners experiencing negative impacts from energy development, such as by helping to establish the pipeline ombudsman program. Nonetheless, joining a landowner association has both pros and cons. While members generally felt NWLA helped them to mitigate unwanted impacts, at times NWLA hindered landowners, as shown by Ellen's experience with the rejection of the county pipeline ombudsman program that she favored. In this final section, we provide advice for community members considering establishing or participating in landowner associations as a method for mitigating negative impacts from energy development.

1. Understand the scope of the opportunity for landowner action.

One of the key benefits that NWLA offers members is that it helps to equalize power dynamics between individual landowners and energy companies. Each of the members profiled here joined NWLA due to perceived power and knowledge imbalances between the individual landowner and the energy companies. The system, they argued, is built to keep individuals separated from each other. As Ellen noted, "...it's really a business philosophy," suggesting that industry is strategically separating community members to maximize their own benefits. Garrett continually reiterated this point, noting that having access to a group like NWLA will help equalize the knowledge between individual landowners and oil companies. Further, NWLA created a clear pathway for landowners to access industry representatives and/or policy makers when previously these individuals were inaccessible.

While members felt that participating in NWLA amplified their voice, they also acknowledged the limitations of the landowner association. Jim felt that the landowner

association was successful with certain policy changes only because industry “allowed” them to be successful. Since UFF companies are primarily regulated at the state level, landowners frequently have limited power at the individual, community, or regional levels. NWLA addressed these power imbalances by starting to lobby for policy changes at the state legislature. When joining a landowner association, members should be aware of the constraints that they are working under. Landowner associations should be able to match their desired changes with strategies that identify the correct regulatory body and scale of government (local, state, national) to address. Unrealistic expectations about what landowner associations are able or unable to achieve could create frustration within members.

2. Be clear about the landowner association’s mission and strategy.

As noted in these profiles, NWLA has worked strategically to present itself as the “authentic” voice of landowners and to be seen as a collaborator with industry and state government agencies. Jim particularly emphasized the need to focus on solutions and not just complaints, arguing that NWLA’s collaborative strategy was superior to the more antagonistic approach taken by other organizations. Although this collaboration took years to achieve, NWLA members now have increased access to top industry representatives, the Secretary of Agriculture, and other important political figures. While this strategy enables creative collaborations, it also exposes NWLA to the risk of being criticized as being too close to industry. An ongoing point of tension is whether or not they are enabling industry interests at the expense of landowners’ rights. Nonetheless, NWLA’s key members feel this strategy has been particularly effective in creating policy changes, such as establishing the ombudsman program, even if not every member agrees with the strategy. New members should clearly understand what type of strategy the association is pursuing and whether or not this strategy aligns with their goals.

3. Be prepared to invest a large amount of time to create policy changes.

Creating policy changes is time consuming. NWLA members spent years developing their relationships with industry stakeholders and policy makers. The key members profiled in this report believe that the association's increasing success is largely due to the passion of their current leader and the huge amount of time invested by several key volunteers. These individuals worked hard to make sure that organization was represented and present at all the "right" meetings. However, the time investment has taken a personal toll on members, as shown by Jim's fatigue. In the absence of regional planning or a federal energy policy, NWLA members invested large quantities of time to organize, plan, inform, and lobby to create a better regulatory framework for North Dakota. The long-term sustainability of this model, however, is questionable.

Landowner associations interested in becoming more involved with policy changes can expect to invest a large amount of time attending legislative sessions and committee meetings. Leaders within the association should understand the personal toll this takes on members and think of innovative ways to keep volunteers motivated and – when possible - compensated, such as reimbursing trip expenses or hiring consultants to help share the workload. As NWLA illustrates, landowner associations willing to invest time into policy change can create changes within the regulatory system that will benefit landowners.

CONCLUSION

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The Northwest Landowners Association is an innovative network of landowners, predominantly farmers and ranchers, who are actively trying to change policy and regulations related to energy development and infrastructure. Since its beginning in 2009, the organization has opened up new pathways for landowners to access industry

decision makers and policy makers. The NWLA members profiled in this report shared personal stories about feeling disempowered and/or taken advantage of by the UFF industry. They relied on NWLA to amplify their voices and to help them better manage impacts from energy infrastructure. As the organization matures and continues to build its political capital, NWLA faces challenges about how to increase its effectiveness. These challenges include addressing the question of what scale of programming is most appropriate for its members, how to decrease the time burden on its members without losing authenticity, and how to create policy changes that proactively plan for the next energy boom. NWLA raises questions about how civic organizations can work collaboratively with industry and government to create managed shale development. Further, NWLA illustrates how devolved governance can simultaneously empower landowners while also creating a burden. The three NWLA members profiled in this report speak to the benefits – as well as the challenges – of using a landowner association to manage impacts from UFF development.

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