

SD Ag Officials Cancel Russia Trade Trip

PIERRE (AP) — A trade mission to Russia that was meant to center on beef genetics has been cancelled because of uncertainties in the Russian market. State agriculture officials had signed up beef producers and industry representatives to make the trip, which was planned for October. Ty Eschenbaum with the state's Agriculture Department says officials will consider a trip in 2015. Eschenbaum says Russian cattle breeders like the fact that cattle from the Northern Plains are raised in a climate similar to their own.

Reward Offered For Casino Burglary

RAPID CITY (AP) — Rapid City police say a \$5,000 reward is being offered for information that leads to an arrest in a casino burglary last month. Police were called to Chances Casino at 4 a.m. on July 26 for a burglary alarm. Authorities say the suspect entered the casino and took an undisclosed amount of cash from the office. Surveillance video from the burglary can be viewed on the police website at <http://www.rcgov.org/police>.

Lincoln Gets Two Charging Stations

LINCOLN, Neb. (AP) — Electric car owners will soon have more places to charge their vehicles in Lincoln. The *Lincoln Journal Star* reports Lincoln Electric System is installing two charging stations next week in a city parking garage that's under construction. The stations should be operational in September. Each station inside of the parking garage will have two charging ports, but one will be reserved for company-use only. The other three ports will be open to the public. Customers will have to pay a \$2 flat rate to charge their vehicles. The company's manger of energy services says there are between 100 and 150 electric cars registered in Lancaster County. He says that includes plug-in hybrid cars and all-electric cars.

Neb. Officials Issue Pheasant Outlook

LINCOLN, Neb. (AP) — Nebraska game officials say pheasant hunting in the state this year should be on a par with last year or slightly better. The Nebraska Game and Parks Commission's upland game hunting outlook says habitat conditions have improved across most of the state. But spring storms seem to have harmed the pheasant hatch. Pheasant populations are beginning to recover from the drought of 2012-2013. The commission says bobwhite quail numbers are up across the state, and the number of grouse is higher in the sandhills and central part of the state than in any other region. To view the full report, go online at OutdoorNebraska.org and click on Hunting, Upland Game and Forecast.

Man's Trial Set In Grandma's Slaying

COLUMBUS, Neb. (AP) — A January trial has been scheduled for a 19-year-old man accused of fatally stabbing his grandmother at the home she shared with him in Columbus. Chase Micklevitz stood silently at an arraignment hearing Wednesday in Platte County District Court, and a plea of not guilty to charges of second-degree murder and use of a deadly weapon was entered, the *Columbus Telegram* reported. His trial is set to begin Jan. 5. Micklevitz faces 20 years to life in prison on the murder charge and one to 50 years on the weapons charge. Police have said he stabbed 58-year-old Deanna Micklevitz four times on July 30 with a kitchen knife. She was taken to Columbus Community Hospital and then flown to a Lincoln hospital, where she was pronounced dead. Chase Micklevitz fled on foot from the home and was arrested more than an hour later in the parking lot of a chiropractic office. He was taken to the Columbus hospital for treatment of self-inflicted injuries, police said, before being taken to Platte County Jail. He remained there Friday, pending \$1 million bail. Micklevitz is scheduled to be sentenced Oct. 15 on a charge of attempted assault, to which he had pleaded guilty after prosecutors lowered the charge and dropped another. Online court records say Micklevitz had punched two officers at the county jail on March 15. He'd been arrested the day before on charges of disturbing the peace, criminal mischief and trespassing.

Officer Fired After Stun Gun Incident

RAPID CITY (AP) — An Ogjala Sioux police officer has been fired for improperly using a stun gun, and the police chief's job might also be in jeopardy. Tribal Councilman Garfield Steele tells the *Rapid City Journal* Cpl. Becki Sotherland was fired Thursday for an incident last week in which she used a Taser several times on a man lying on the ground. A passer-by shot video and posted it online, drawing attention to the incident. Steele says a Tribal Council committee is recommending Chief Ron Duke be fired for lack of leadership. Duke says he'll fight any effort to remove him. Sotherland is being investigated by the FBI and the Bureau of Indian Affairs. A telephone listing for her couldn't be found and it wasn't immediately clear if she has an attorney.

SD Troopers Didn't Stop Their Practice Of Taking Drivers' Blood

BY BOB MERCER
State Capitol Bureau



Jackley

PIERRE — South Dakota Highway Patrol troopers deliberately continued to have blood drawn involuntarily from drunk driving suspects during the past 17 months without obtaining warrants from judges, despite a U.S. Supreme Court decision to the contrary. The nation's highest court determined last year that warrants were generally required. That was a reversal of the court's previous position taken in 1966 that warrantless blood draws were acceptable because alcohol content in blood dissipates with time. The South Dakota Legislature adopted a law in 2006 that said drivers automatically give their implied consent to blood draws, meaning a warrant wasn't necessary to take their blood, when they get in their vehicles. The South Dakota Highway Patrol kept operating under the implied-consent law and kept conducting warrantless blood draws, even though the new U.S. Supreme Court decision on April 17, 2013, required that law enforcement obtain a suspect's consent or a judge's warrant in most instances. The Highway Patrol continued its standard practice of warrantless blood draws because of advice that South Dakota's implied-consent law remained constitutional, a spokesman for the state Department of Public Safety said Friday. The department, which oversees the Highway Patrol, took its legal guidance on the matter from state Attorney General Marty Jackley, according to DPS information officer Terry Woster. On Thursday, the South Dakota Supreme Court unanimously ruled against Jackley and the Highway Patrol on the practice of warrantless blood draws. The five justices said a person's right against unreasonable search and seizure, that is provided in the U.S. Constitution and the South Dakota Constitution, was violated when blood was taken from Shauna Fierro without her consent. Fierro was arrested and taken into custody by two Highway Patrol troopers for suspicion of driving under the influence on the night of Aug. 4, 2013, while riding her motorcycle to her home in Butte County.

A magistrate judge, following the 2013 U.S. Supreme Court decision known as *McNeely*, rejected the blood sample as evidence in October because it was taken without Fierro's consent. While at the jail, according to the South Dakota decision, Fierro said she didn't want the blood to be drawn and she wanted to speak to an attorney. Jackley's office attempted to have the magistrate's suppression order overturned and also sought to offer new evidence. That dispute eventually led to the state's highest court. Woster said Friday that Public Safety didn't have a current count of warrantless blood draws performed by Highway Patrol troopers since the *McNeely* decision. He suggested state's attorneys for the 66 counties across South Dakota be asked instead. The Highway Patrol is changing its policy. "Following Fierro, SDHP will attempt to obtain consent from the person stopped in a suspected DUI case and will document that attempt," Woster said in a written statement. "If unable to obtain consent, SDHP will request a search warrant to draw a blood sample unless another warrant exception applies," he continued. The South Dakota justices specifically said in their decision Thursday they "had never held" that the state's implied-consent law was an exception to the warrant requirement under the Fourth Amendment to the U.S. Constitution. The justices further said the Legislature can't enact a law that would preempt a citizen's constitutional right. According to the justices, the Highway Patrol trooper who arrested Fierro knew about the *McNeely* decision and had received new training. In a footnote, the court stated, "Fierro's blood sample was obtained as a result of a constitutional violation." Lee Schoenbeck, the former state legislator who sponsored South Dakota's law requiring blood to be drawn from drunk-driving suspects, said Friday the

tough requirement resulted from too many repeat offenders using an exemption under the old law. Prior to his 2006 legislation, state law allowed suspected drunk drivers to refuse to take breath and blood tests if they were facing a first offense or second offense. If they did, they lost their driver licenses for one year. The exception wasn't allowed for a third offense or more. It also wasn't allowed in felony cases involving vehicular homicide, vehicular battery or an accident resulting in death or serious bodily injury of another person. Schoenbeck, a lawyer from Watertown and a former Day County state's attorney (1985-1989), said he was convinced to support the change after seeing statistics from the Rapid City area. He said former Rapid City police chief Tom Hennies worked hard for the change while in the state House of Representatives. The South Dakota Supreme Court didn't have any choice in applying the federal *McNeely* decision to stop warrantless blood draws, Schoenbeck said. Currently Schoenbeck is unopposed for election in November to the state House. He said the attorney general and Public Safety would need to take the lead on fashioning any change to South Dakota's law. Some law enforcement units are already using telephonic search warrants "which are way easier with modern communications," Schoenbeck said. "They call it in, get the judge's approval, and then do the paperwork afterwards. I believe it is recorded," he said. "I was with an officer last night and he explained the ease of the process to me," he continued. "We didn't have all that technology back in the day." After the South Dakota Supreme Court's ruling, Jackley issued a statement Thursday that in part offered his defense for the position he had taken that warrantless draws were still legal. "The *McNeely* decision had not addressed the legality of the withdrawal of under an implied consent statute nor did it fully address what would constitute exigent circumstances to justify proceeding without a warrant," Jackley said.

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Nebraska Court Gives Phone Carrier A Second Chance

BY GRANT SCHULTE
Associated Press

LINCOLN, Neb. (AP) — The Nebraska Supreme Court on Friday gave a national cell-phone carrier a second chance to qualify as a provider of government-subsidized phone service for low-income residents. The ruling came after the Nebraska Public Service Commission ordered the Telrite Corporation, doing business as Life Wireless, out of the programs in Nebraska. The decision stemmed from a sign-up event for "free" cell phones in Omaha in July 2013 that was sponsored by the prepaid wireless carrier. The Public Service Commission said last September that it had revoked the certification that allowed the company to participate in the Nebraska Telephone Assistance Program. The state program provides a monthly credit for phone service to low-income applicants; a similar federal program also requires that carriers be certified by state officials. According to the ruling, a large crowd gathered for the promotion and applicants

were forced to wait in the heat for long periods of time without shelter or water. The commission, which regulates telecommunications, was bombarded with questions and complaints after the event, many of which focused on why the event wasn't more highly publicized. The commission alleged that the company didn't contact the state before starting operations in Nebraska, used the wrong enrollment form for the state of Nebraska and handed out flyers that failed to note that the commission had the final say over eligibility. Life Wireless also violated the state's eligibility-verification and application procedures when it handed out roughly 800 phones, according

to the commission. Life Wireless officials later apologized and asked for a chance to make amends. During an August 2013 hearing on the matter, company president Brian Lisle said his employees would not give away free phones in the future, but would take applications and mail them once the applications were approved. Commissioners raised concerns that the event could have allowed more than one person per household to receive a phone, in violation of federal rules. In its ruling, the Nebraska Supreme Court said the punishment imposed by the commission was excessive, and it sent the case to the commission for further review. The company "admitted

that it made mistakes, but these initial administrative missteps occurred over the course of a single day and were immediately curtailed," Justice William Connolly wrote. "Furthermore, these errors are easily remedied." Phone messages left with the commission's Lincoln office and Life Wireless' attorney in Omaha were not immediately returned. In a statement, the company said: "Life Wireless is pleased with the court's decision. We look forward to working with the PSC to bring affordable phone service to eligible low-income Nebraskans, helping them stay connected to loved ones, medical providers, employers and emergency services."

Nebraska Recovering Jobless Benefits Overpayments

LINCOLN, Neb. (AP) — The Nebraska Labor Department has recovered nearly \$5.8 million this year from people who were given too much unemployment pay, either because of errors or because they lied on their applications, the department said Friday. The total includes more than \$2.7 million recovered through the federal Treasury Offset Program, the department said. The program can tap federal tax refunds of unemployment insurance claimants who commit fraud or reporting errors. "Recovery of these funds means lower tax rates for employers and more funds available to jobseekers who qualify for benefits," said acting Labor Commissioner John Albin. In an email, department spokeswoman Grace Johnson said the recovery of benefit overpayments helps increase the benefits trust fund balance so that tax rates are calculated, not as much tax revenue is needed. "Last year was the first

year we participated in the Treasury Offset Program," she said. "This is our second year, and tax rates for the upcoming year will be calculated in fourth quarter, so the actual impact is yet to be determined." Nebraska has an unemployment insurance fraud rate of about 1 percent, compared with the national average of around 2.7 percent as of last year, the department said. In October the department began assessing a 15 percent penalty against claimants who commit fraud. Other penalties for fraud can include permanent loss of eligibility and

criminal prosecution. When an overpayment occurs, claimants are notified and may review the payment information to help ensure the accuracy of state records. In addition to claimants returning overpayments, the money also is recovered from state income tax refunds and by lowering the claimants' unemployment benefit payments. The Treasury Offset Program was instituted in Nebraska in February 2013. In addition to the \$2.7 million recovered so far this year, the program recovered more than \$2 million last year.

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