

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

3020

2001 HOUSE NATURAL RESOURCES

HCR 3020

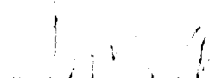
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3020

House Natural Resources Committee

☐ Conference Committee

Hearing Date February 8, 2001

Tape Number	Side A	Side B	Meter #
1		8	543 to 1566
Committee Clerk Signature 			

Minutes:

Chairman Earl Rennerfeldt, Vice Chair Jon O. Nelson, Rep. Brekke, Rep. DeKrey, Rep. Droydal, Rep. Galvin, Rep. Keiser, Rep. Klein, Rep. Nottestad, Rep. Porter, Rep. Weiler, Rep. Hanson, Rep. Kelsh, Rep. Solberg, Rep. Winrich.

Chairman Rennerfeldt: I will open the hearing on HCR 3020.

Rep. Jim Kasper - District 46: HCR 3020 is a resolution to encourage private ownership and development around Lake Sakakawea. I am interested in this issue because my home is Beulah. I can't say I was born day, but I was raised in Beulah. I grew up when the lake was still the Missouri River. My grandpa homesteaded north of Beulah. I remember before the dam was built, how beautiful the river bottom was. Then all of a sudden the beautiful lake shore and the rivers and the trees disappeared. The Federal government made a promise to us back in those days that for return in giving up the most beautiful land in the state, the Federal government said they

would provide stable water, development and access to the lake, and they would provide resources of the water throughout our state. Fifty years later, and they still have not done that. We have had excuses along the years about why they have or haven't and I am not here to say that. This resolution is here to say that we as a state want the Federal policy changed, what we want is use of some of our land back which we should have had over the last 40-50 years. What this simply says is that we have a lake shore that can't be utilized because the Corps of Engineers has a policy that keeps the public away. We have about 1800 miles of lake shore around Lake Sakakawea and I can't recall more than a handful of private owners right around the lake. I happen to have one of those around Beulah. My dad carried a little of the homestead and I bought the rest of it. So we have some private property right next to the lake. There is all this other land around the lake we can't develop because the Corps come in there and they put their restrictions on this land. This resolution is urging them to change their management decision and style and have them open the land up for private development. I want to suggest an amendment to the HCR 3020. The second line on the first page where I say "access to" I would like the committee to consider including after the word to "private ownership of". Looking at the resolution that we do allow private ownership, not only private access and private development. That is a proposal that I would ask the committee to consider. On page 2, there would be two changes that I would like you to consider, again on line 2 after the word "access to" you would add the same phrase "and private ownership of" and on line 3 after the and I would like the committee to consider adding the following phrase "to develop a Lake Sakakawea management policy that establishes a stable lake level". That is the other real problem. The water level can vary from 20 to 25 feet as you heard Mr. Hall testify earlier. So even if you had private access to, private ownership of, and private development on that lake shore and management style, lower

the lake level 25 feet you could have a private development out there that is a half mile away from the water. So one needs to work together with the other. I would encourage consideration of those amendments and ask favorable consideration of this resolution.

Chairman Rennerfeldt: Could you write out the amendments?

Kasper: I will write them out, it just came to me. I will be happy to provide them.

Chairman Rennerfeldt: Any questions from the committee. Anyone else care to speak in favor of HCR 3020? Anyone care to speak in opposition to HCR 3020?

Thomas Disselhorst - Attorney representing the Three Affiliated Tribes: (see written testimony).

Vice Chair Nelson: How much shore line is in dispute as far as the tribe and the Corps at this point?

Disselhorst: Part of the reason for return of the lake shore to the Tribe comes out of a 1986 report from the Joint Tribal Advisory Committee, that the Dept. Of Interior started in 1985. That committee suggested that the one of the ways that the Tribes could be compensated would be to return as much of the lake shore that was considered excess by the Army Corps. Of Engineers. That is mostly the littoral lands along the lake shore. The Corps did a study at that time and determined that there were about 5000 excess acres and return those to the Tribe. The Tribe since that time has been in numerous consultation with the Corps. And the Corps. Has acknowledged that there are potentially additional excess lands that are not needed to maintain the flood pool. Much of those lands are in question. The Tribe believes that as much as 35,000 acres of shoreline are available as excess for return. That is on Lake Sakakawea, I don't know about Lake Oahe. I think it is 19,000 acres in Standing Rock for your information. Those are part of the lands being discussed in the 1995 regulations that the Corps had proposed. The Tribes were promised by the Corps that some of those lands would be returned to the Tribes. The Tribes are

still in discussion with the Corps. There is actually litigation pending against the Corps concerning those lands, because they insisted that they had total discretion to return what lands they thought were excess. The Tribes contended that part of the 1994 act that repealed the original transfer done in 1992 the Compensation Act that Chairman Hall referred to, part of that act says that the Secretary of the Interior should identify excess lands and the Tribes believe that is a mandatory should, that requires the Dept. Of Interior to determine what lands are excess. That case is still pending, and the reason it is pending so long is that both the Tribe and the Corps is trying to work out a potential solution. That solution would have necessarily involved the state should it have come to any type of fruition, but it has not, so we are still waiting the outcome of the District court decision.

Chairman Rennerfeldt: Are there any further questions of the committee? Anyone else care to speak in opposition to HCR 3020. If not I will close the hearing on HCR 3020.


2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3020

House Natural Resources Committee

☐ Conference Committee

Hearing Date February 9, 2001

Tape Number	Side A	Side B	Meter #
1	x		1300 to 1843
Committee Clerk Signature 			

Minutes:

Chairman Earl Rennerfeldt, Vice Chair Jon O. Nelson, Rep. Brekke, Rep. DeKrey, Rep. Droydal,
Rep. Calvin, Rep. Klein, Rep. Nottestad, Rep. Weiler, Rep. Hanson, Rep. Kelsh, Rep. Solberg,
Rep. Winrich.

Chairman Rennerfeldt: We have HCR 3020.

Vice Chair Nelson: From the testimony yesterday, Mr. Disselhorst asked for these amendments to include the tribe on page 1, line 2 and page 2, line 3 the same thing. These amendments do exactly that. So I would move the amendments.

Rep. Kelsh: I second.

Chairman Rennerfeldt: I have a motion on the amendments, all in favor signify by saying Aye.
Opposed? Amendments carry.

Rep. Nottestad: I move a Do Pass as Amended.

Rep. DeKrey: Where does this come from and what is it doing?

Vice Chair Nelson: This was asked for by the attorney for the Three Affiliated Tribes yesterday. We talked about the private act, that the tribe is also part of that contract to return land to the tribe. So this adds that language. This is exactly what they wanted.

Rep. Brekke: I second.

Rep. Weiler: Does this also include the amendment that Mike Dwyer wanted.

Chairman Rennerfeldt: It is his amendment.

Rep. Weiler: So it is both.

Chairman Rennerfeldt: Rep. Kasper, he's comfortable with these amendments.

Vice Chair Nelson: This talked about stabilizing the lake.

Chairman Rennerfeldt: We have a Do Pass as Amended. Any further discussion?

Rep. Winrich: I guess I don't understand why this calls for stabilization of the lake?

Chairman Rennerfeldt: The stabilization came from the tribes. They want the Corps of Engineers to maintain a stable lake level which they have not done in the past.

Rep. Droydal: Testimony established that in order to have development, you must have a stable lake level. Right now it is fluctuating so much that boat ramps are inaccessible sometimes and sometimes they are underwater. In order to develop the lake you have to have a controllable variance.

Chairman Rennerfeldt: Any further discussion? We will call the roll on a Do Pass as Amended on HCR 3020.

MOTION FOR A DO PASS AS AMENDED

YES 13 NO 0

Page 3

House Natural Resources Committee

Bill/Resolution Number HCR 3020

Hearing Date February 9, 2001

2 ABSENT AND NOT VOTING

CARRIED BY REP. KELSII

VR
2/9/01

AMENDMENTS TO HCR 3020 **HOUSE NATURAL RESOURCES** **02/09/01**
Page 1, line 2, after "to" insert ", private ownership of," and after "Sakakawea" insert ", including the return of lakeshore lands that are contiguous to current tribal-owned land to the Three Affiliated Tribes and development and implementation of a water level policy that establishes and assures that Lake Sakakawea will have a stable water level"

AMENDMENTS TO HCR 3020 **HOUSE NATURAL RESOURCES** **02/09/01**
Page 2, line 2, after the second "to" insert ", private ownership of,"
Page 2, line 3, after "Sakakawea" insert ", including the return of lakeshore lands that are contiguous to current tribal-owned land to the Three Affiliated Tribes and development and implementation of a water level policy that establishes and assures that Lake Sakakawea will have a stable water level"

Renumber accordingly

Date: 2/9/01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HR 3020

House Natural Resources Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS AS AMENDED

Motion Made By Rep. Nottestad Seconded By Rep. Brekke

Consent Calendar

Representatives	Yes	No	Representatives	Yes	No
Earl Rennerfeldt - Chairman	✓		Lyle Hanson	✓	
Jon O. Nelson - Vice Chairman	✓		Scot Kelsh	✓	
Curtis E. Brekke	✓		Lonnie B. Winrich	✓	
Duane DeKrey	✓		Dorvan Solberg	✓	
David Drovdal	✓				
Pat Galvin	✓				
George Keiser					
Frank Klein	✓				
Darrell D. Nottestad	✓				
Todd Porter					
Dave Weiler	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep. Kelsh

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

REPORT OF STANDING COMMITTEE

HCR 3020: Natural Resources Committee (Rep. Rennerfeldt, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HCR 3020 was placed on the Sixth order on the calendar.

Page 1, line 2, after "to" insert ", private ownership of," and after "Sakakawea" insert ", including the return of lakeshore lands that are contiguous to current tribal-owned land to the Three Affiliated Tribes and development and implementation of a water level policy that establishes and assures that Lake Sakakawea will have a stable water level"

Page 2, line 2, after the second "to" insert ", private ownership of,"

Page 2, line 3, after "Sakakawea" insert ", including the return of lakeshore lands that are contiguous to current tribal-owned land to the Three Affiliated Tribes and development and implementation of a water level policy that establishes and assures that Lake Sakakawea will have a stable water level"

Renumber accordingly

2001 SENATE NATURAL RESOURCES

HCR 3020

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3020

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 3-15-01

Tape Number	Side A	Side B	Meter #
1	X		12.7 - 15.6
1	X		43.0 - end
Committee Clerk Signature <i>Janet Garner</i>			

Minutes:

SENATOR TOLLEFSON opened the hearing on HCR 3020.

REPRESENTATIVE JAMES KASPER of District 46 cosponsor of HCR 3020 introduced the RESOLUTION URGING THE CORPS OF ENGINEERS TO PROMOTE PRIVATE ACCESS TO, PROVIDE OWNERSHIP IF, AND PRIVATE DEVELOPMENT ON LANDS IT OWNS AND MANAGES AROUND LAKE SAKAKAWEA. He stated the resolution is about the Garrison Dam and the most beautiful land in the state being initiated to build the dam. The federal government had made several promises with the building of the dam and they have not been fulfilled. Some of them are the use of the water behind the dam for recreation and the use of the lake shore for private use. The policy of the Corps of Engineers is very restrictive and does not allow use. The resolution would ask congress to return that land back to private ownership including the tribes. The development of the shore line would be a great economic development

for the state. The other problem is the lake management of the Lake and it's levels that are determined by down stream interests.

MIKE DONAHUE representing the North Dakota Wildlife Federation and the United Sportmen's Club testified in support of HCR 3020. He stated their concern with the interests of down stream barge traffic to our detriment.

There is no neutral or opposing testimony of HCR 3020.

SENATOR TOLLEFSON closed the hearing on HCR 3020.

SENATOR FISCHER reopened the discussion on HCR 3020.

SENATOR CHRISTMANN made a motion for a "DO PASS and on the consent calendar" of HCR 3020.

SENATOR TOLLEFSON second the motion.

SENATOR FISCHER called for a roll vote of HCR 3020 indicating 7 YAYS, 0 NAYS AND 0 ABSENT OR NOT VOTING.

SENATOR TOLLEFSON will carry HCR 3020.

Date: 3-15-01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3028

Senate NATURAL RESOURCES Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass on Consent Calendar

Motion Made By Christmann Seconded By Tollefson

Senators	Yes	No	Senators	Yes	No
Sen. Thomas Fischer, Chairman	✓		Sen. Michael A. Every	✓	
Sen. Ben Tollefson, Vice Chair.	✓		Sen. Jerome Kelsh	✓	
Sen. Randel Christmann	✓				
Sen. Layton Freborg	✓				
Sen. John T. Traynor	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Tollefson

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

REPORT OF STANDING COMMITTEE (410)
March 15, 2001 1:15 p.m.

Module No: SR-45-5716
Carrier: Tollefson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HCR 3020, as engrossed: Natural Resources Committee (Sen. Fischer, Chairman) recommends **DO PASS** and **BE PLACED ON THE CONSENT CALENDAR** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HCR 3020 was placed on the Tenth order on the calendar.

2001 TESTIMONY

HCR 3020



MANDAN, HIDATSA, & ARIKARA NATION

Three Affiliated Tribes • Fort Berthold Indian Reservation

HC3 Box 2 • New Town, North Dakota 58763-9402

**Natural Resources Committee
North Dakota House
57th Legislative Assembly**

TRIBAL BUSINESS COUNCIL
701-627-4781
Fax 701-627-3805

**Testimony of Three Affiliated Tribes
Mandan, Hidatsa and Arikara Nation
Tex G. Hall
Chairman**

on HCR 3020

**Concurrent Resolution Calling on the U.S. Army Corps of Engineers
to promote private access to and private development on lands it owns and
manages around Lake Sakakwea**

February 8, 2001

Mr. Chairman, members of the Committee. On behalf of the Mandan, Hidatsa and Arikara Nation (the Three Affiliated Tribes of the Fort Berthold Reservation), I rise in opposition to HCR 3020, which requests the U.S. Army Corps of Engineers to promote private development on the lands now owned by the Army Corps of Engineers around Lake Sakakawea.

Without mentioning the Three Affiliated Tribes, this Resolution appears to be a calculated effort to prevent the Three Affiliated Tribes from gaining return of much of the shore line lands as partial replacement of the lands taken from our Nation more than 50 years ago. The theory might be that by placing more private development on Corps land, it would make it more difficult for the Tribe to get those excess lands returned to them, because of the development. I am hopeful that is not the real purpose of this Resolution.

The Committee has just considered my testimony about HCR 3019. As stated in that testimony, the Three Affiliated Tribes is not interested in denying access to developments along the shore line of Lake Sakakawea. We are working on a joint management plan with the Corps of Engineers and the State of North Dakota. It is not in our economic self interest to deny access to the lake shore and as a Tribe, we have not done so. What we cannot do, of course, is control the actions of private citizens who may be Tribal members who own or control land along or near the lake.

This resolution simply stirs up old antagonisms for no purpose. The Corps has a leasing policy and if you qualify, private citizens can lease Corps land and develop it, sometimes for a long period. This resolution is therefore essentially unnecessary.

But I will not deny that we are interested in the return to us of much of the lake shore around Lake Sakakawea. Does that mean it will not be available for development? On the contrary. As mentioned in our previous testimony, we are developing a lake shore management plan and of course that will include some development opportunities.

Testimony of Tex G. Hall
Chairman, Three Affiliated Tribes
In Opposition to HCR 3020
February 8, 2001
Page 2 of 2

Please remember why we are seeking the return of the lake shore. Lake Sakakawea cuts through the middle of our homelands. Under that lake are villages where we lived for centuries generally at peace with our neighbors. More than one-half of the lake shore some of it already privately developed, is within the exterior boundaries of the Fort Berthold Reservation, which was supposed to be reserved to us forever. Therefore, the shore line is and should be a part of our reservation and should be returned to us.

We are also interested in protecting cultural and historic sites that are sacred to us along the entire lake shore, both on and off the Fort Berthold Reservation. Further development along the lake shore, without taking into account the location of these sites, makes the preservation of such sites within such development areas even more difficult. Since this is Federal land, there are some protections available to us under Federal law, and we have been working with the Corps for some time to ensure that these laws are fully enforced on Corps land. We certainly want to minimize any disputes that might exist about such sites.

Recall also that it was our Nations, the Mandan, Hidatsa and Arikara, that greeted Lewis and Clark almost two hundred years ago, not with hostility, but with food, shelter, and a guide, Sakakawea, whose name, ironically, is the name of the reservoir that flooded our homelands. Our goals of living peacefully among our neighbors have not changed.

Therefore, Mr. Chairman, members of the Committee, I urge you not to pass HCR 3020, a resolution that will only stir up old antagonisms and old wounds. Let us rather work together, as I testified concerning HCR 3019, towards common solutions to our common problems. We would urge you to oppose HCR 3020 and give it a DO NOT PASS recommendation to the full House.

.....

House Natural Resource Committee

February 7, 2001

Mr. Chairman and Members of the Committee,

The North Dakota Wildlife Federation Inc. and the United Sportsman of North Dakota support HCR 3020.

We ask for a do pass.

Thank you,

Mike Donahue
Lobbyist # 258
Telephone number: 701-222-3899



MANDAN, HIDATSA, & ARIKARA NATION

Three Affiliated Tribes • Fort Berthold Indian Reservation

HCB Box 2 • New Town, North Dakota 58763-9402

**Natural Resources Committee
North Dakota Senate
57th Legislative Assembly**

TRIBAL BUSINESS COUNCIL
701-627-4781
FAX 701-627-3805

**Testimony of Three Affiliated Tribes
Mandan, Hidatsa and Arikara Nation
Tex G. Hall
Chairman**

on HCR 3020

**Concurrent Resolution Calling on the U.S. Army Corps of Engineers
to promote private access to and private development on lands it owns and
manages around Lake Sakakawea**

March 15, 2001

Mr. Chairman, members of the Committee. On behalf of the Mandan, Hidatsa and Arikara Nation (the Three Affiliated Tribes of the Fort Berthold Reservation), this testimony is in reluctant opposition to HCR 3020, which requests the U.S. Army Corps of Engineers to promote private development on the lands now owned by the Army Corps of Engineers around Lake Sakakawea.

As engrossed after being amended in the Senate, SCR 3020 also now mentions the possibility of development along the shoreline of Lake Sakakawea by the Three Affiliated Tribes. Yet the thrust of this bill is still to take lands out of public hands and put them into private ownership and control. After speaking to the U.S. Army Corps of Engineers about this bill, it calls for doing exactly the opposite of what present Corps policy concerning the lake shore is, which is to promote public use of the shoreline along Lake Sakakawea and in fact, along the shoreline of any project managed by the U.S. Army Corps of Engineers. The Corps also has a leasing policy which allows leasing of the lands along the lake shore which also promotes public use. In the past, it is also my understanding that some private development along the lake shore has been allowed by the Corps.

That the state of North Dakota and particularly the Mandan, Hidatsa and Arikara Nation suffered from the construction of the Garrison Dam, and sacrificed, in our case, the lands which had been part of our Nation forever is beyond doubt. However, it has been our approach to continue the public development of the lake shore. We are very interested in having the lake shore lands that are above the flood pool returned to us.

Would return of the lands above the flood pool to the Three Affiliated Tribes mean that such lands would not be available for development? On the contrary. We are now developing a lake shore management plan in cooperation with the U.S. Army Corps of Engineers which includes a variety of concerns, including erosion control, wildlife management, access issues and of course the plan will include further development

**Testimony of Tes G. Hall
Chairman, Three Affiliated Tribes
In Opposition to HCR 3020
March 15, 2001
Page 2 of 2**

opportunities that are open to all North Dakotans so that all can enjoy the lake created out of the sacrifice of the lands of both our Tribe and many other citizens of North Dakota and the state of North Dakota itself.

I would ask you to remember why we are seeking the return of the lake shore. Lake Sakakawea cuts through the middle of our homelands. Under that lake are villages where we lived for centuries generally at peace with our neighbors. More than one-half of the lake shore, some of it already privately developed, is within the exterior boundaries of the Fort Berthold Reservation, which was supposed to be reserved to us forever. Therefore, the shore line is and should be a part of our reservation and should be returned to us.

We are also interested in protecting cultural and historic sites that are sacred to us along the entire lake shore, both on and off the Fort Berthold Reservation. Further development along the lake shore, without taking into account the location of these sites, makes the preservation of such sites within such development areas even more difficult. Since this is Federal land, there are some protections available to us under Federal law, and we have been working with the Corps for some time to ensure that these laws are fully enforced on Corps land. We certainly want to minimize any disputes that might exist about such sites.

Recall also that it was our Nations, the Mandan, Hidatsa and Arikara, that greeted Lewis and Clark almost two hundred years ago, not with hostility, but with food, shelter, and a guide, Sakakawea, whose name, ironically, is the name of the reservoir that flooded our homelands. Our goals of living peacefully among our neighbors have not changed.

Therefore, Mr. Chairman, members of the Committee, I urge you not to pass HCR 3020, a resolution that runs counter to the U.S. Army Corps of Engineers policy along the lake and which seems to be a mechanism to discourage the return of our lands along the lake shore. Let us rather work together, as my testimony indicated to your Committee earlier on HCR 3019, towards common solutions to our common problems. We would urge you to oppose HCR 3020 and give it a DO NOT PASS recommendation to the full Senate.