

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2115

2005 SENATE NATURAL RESOURCES

SB 2115

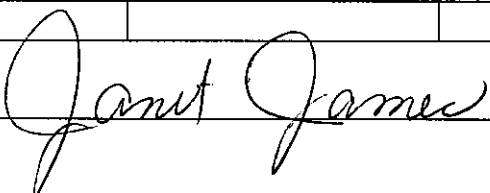
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2115

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date January 7, 2005

Tape Number	Side A	Side B	Meter #
1	X		0.0 - 45.5
Committee Clerk Signature 			

Minutes:

Senator Stanley Lyson, Chairman of the Senate Natural Resources Committee brought the committee meeting to order.

All committee member were present.

Senator Lyson opened the hearing on SB 2115 relating to authorizing the state engineer to negotiate reserved water rights of the United States and the federally recognized Indian tribes.

Dave Ripley, Director of Water Appropriations Division of the State Water Commission, testified in support of SB 2115 (See attached testimony).

Senator John Traynor asked if there could be a fiscal impact for the Water Commission.

Dave Ripley stated it is conceivable depending on the involvement of the process.

Senator Traynor questioned if all the interested parties (including the tribes and the federal government) involved in the negotiations would recognize the authority of the state engineer to quantify the water rights.

Dave Ripley stated that at this point in the present negotiations, it is understood that there would be the mandate stating this in the legislation. Referring to **Paul Hoff** of the US Bureau of Indian Affairs, he stated he could not make an official statement, but it is ultimately the governor that makes the final decision.

Senator Michael Every asked what was happening in the Turtle Mountain Reservation to initiate SB 2115.

Thomas Davis, Water Resource Director for the Turtle Mountain Band of Chippewa testified in support of SB 2115. Being involved in the initiation of the quantifying process he asked for extra time before action is taken on the bill to address the issues with other tribes. The tribes have different needs and structure of their treaties concerning water rights and asked that the legislation not be a "one fits all". The Chippewa Tribe would like to avoid litigation and are hoping for a cooperative and productive relationship between all for the betterment of the tribes and all citizens of the state.

Senator Joel Heitkamp asked how things are managed presently without the bill.

Thomas Davis responded that things are confusing and that there is a gray area that causes difficulty between the natives and non natives of the area. The intent is not to upset with any other tribe and their water rights agreements and the bill should be drafted to give the individual tribes the option to come forward to quantify their water rights.

Gene Laducer (15.5), representing of the Turtle Mountain Band of Chippewa and the Tribal Water Planner, testified in support of SB 2115. He has been involved in preparing the final (entry) report that is an informational gathering tool that will be very beneficial to answer a lot of

questions. Working together to protect this natural resource of water is the key to benefit all citizens of the state.

Senator Lyson asked for testimony in opposition of SB 2215.

Tex Hall (18.3), Chairman of the Mandan, Hidatsa and Arikara Nation testified in opposition to SB 2115 (See attached testimony). He asked for additional time to study the bill for possible amendments and agreed there was room for a middle ground in negotiations within the amendment process.

Carol Two Eagle (28.7), asked by the Treaty Organization to testify in opposition to SB 2115, asked for an extension of time for consideration of amendments.

Discussion was held as to the timing for further discussion and proposed amendments.

Dale Frink (33.7) Director of the North Dakota State Water Commission responded that the Commission will work within the time frame the Tribes need to make suggested amendments to SB 2115. He stated the bill is blazing new territory and if an agreement for the negotiation process can not be outlined in the bill, negotiations will not be successful regarding the water rights. Discussion was held if all the tribes had been notified of the bill. It is to be understood that the intent of the bill is for negotiations to quantify the water rights is voluntary and can be withdrawn at any time.

Senator Lyson led discussion on the timing of amendments and the next scheduled meeting on SB 2115. It was decided that all amendments need to be to the Committee members by January 31st with the continued hearing scheduled for February 4, 2005.

Senator Lyson closed the hearing SB 2115.

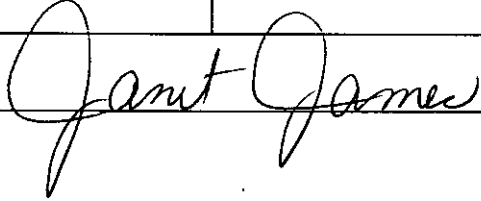
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2115

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date February 4, 2005

Tape Number	Side A	Side B	Meter #
1		X	0.0 - 6.2
Committee Clerk Signature 			

Minutes:

As per requested by Chairman of the Senate Natural Resources Committee, **Senator Stanley Lyson**, additional amendments developed by the tribes were distributed to the committee on January 31, 2005 (See attached).

Senator Stanley Lyson opened the committee work on SB 2115 relating to authorizing the state engineer to negotiate reserved water rights of the United States and federally recognized Indian tribes.

All members of the committee were present.

Dale Frink, the North Dakota State Engineer and the Chief Engineering Secretary for the North Dakota Water Commission, stated SB 2115 was introduced at the request of Turtle Mountain Chippeawa and at the first hearing it was realized some of the others tribes had some difficulty with the bill and the language as written. As a result there was a meeting at the United Tribes and it was made clear the other tribes would not support the bill. Therefore, he offered a hog house

amendment that changes the bill into study resolution. The water commission and the Chippeawa Tribe will consider a MOU? to further study the water needs and supplies of the reservation. Fort Berthold said they would support the amendment.

Senator Lyson asked if he knows if all the tribes that testified before the committee on SB 2115 agreed with this amendment.

Dale Frink stated he did not know but most of the tribes seemed to be represented in the hearing room.

Senator Lyson asked that one representative from each interested tribe in SB 2115, to present their opinion of the amendment to convert the bill into a study.

Steve Kelly, an attorney representing the 3 Afflicted Tribes testified on behalf of Chairman Tex Hall and stated the tribe supports the amendment to require a water rights study.

Tom Davison, water resource director of the Turtle Mountain Chippeawa stated as being bound by tribal law asks for the continuance of the bill. The tribe accepts the amendments and want to cooperate with the other tribes, as it might be advantageous to the state and the tribes to go through the process.

Carol Two Eagle stated "I do not speak officially for Standing Rock, but I haven't heard any objection and they were supposed to call me if they had one, so there isn't any, so as far as I know that means then, I guess they're in favor of the amendment."

Chad Kramer working with the Indian Affairs Commission, distributed to the committee testimony from Standing Rock that was given to their office. He was not sure what their stand was but that information was included in the testimony. (See attached).

Senator Lyson closed the hearing on SB 2115.

Page 3
Senate Natural Resources Committee
Bill/Resolution Number SB 2115
Hearing Date 2-4-05

Senator Joel Heitkamp made a motion to adopt the amendment as proposed by the State Engineer.

Senator Layton Freborg second the motion.

Roll call vote #1 was taken by voice vote indicating 7 YEAS, 0 NAYS AND 0 ABSENT OR NOT VOTING.

Senator Heitkamp made a motion for a Do Pass as Amended of SB 2115.

Senator Michael Every second the motion.

Roll call vote #2 was taken indicating 7 YEAS, 0 NAYS AND 0 ABSENT OR NOT VOTING.

Senator Heitkamp will carry SB 2115.

State Engineer's proposed amendments prepared for
the Senate Natural Resources Committee
February 4, 2005

PROPOSED AMENDMENTS TO SENATE BILL NO. 2115

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the process to negotiate and quantify reserved water rights."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Legislative council study – Reserved water rights – Report. The Turtle Mountain Band of Chippewa recently passed a resolution requesting to begin the negotiation process to quantify its reserved water rights. Reserved water rights are water rights that have been impliedly reserved to the tribes or the federal government in amounts sufficient to fulfill the purposes for which the Indian reservation was established or for which the federal land reserve was set aside. These rights are based on federal law. They differ from state based prior appropriation rights because their priority is generally the reservation's creation date and they are generally not subject to forfeiture or abandonment for nonuse. Current state law does not contain a procedure to allow the state to negotiate with tribes or the federal government to quantify their reserved water rights. During the 2005-2006 interim, the legislative council shall consider studying the process to negotiate and quantify reserved water rights. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly."

Renumber accordingly

Date: 2-21-
Roll Call Vote #:)

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2115

Senate	Senate Natural Resources	Committee
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☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Move Arment of 2-4-

Motion Made By Hickson Seconded By Frehon

[illegible]

Total	(Yes)	No
1	1	0
2	2	0
3	3	0
4	4	0
5	5	0
6	6	0
7	7	0
8	8	0
9	9	0
10	10	0
11	11	0
12	12	0
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92	92	0
93	93	0
94	94	0
95	95	0
96	96	0
97	97	0
98	98	0
99	99	0
100	100	0

Absent

Floor Assignment

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

Date: 2-4-05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2115

Senate Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken None as Amended

Motion Made By Heitkamp Seconded By Every

Senators	Yes	No	Senators	Yes	No
Senator Stanley Lyson, Chairman	✓		Senator Joel Heitkamp	✓	
Senator Ben Tollefson, Vice Chair	✓		Senator Michael Every	✓	
Senator Layton Freborg	✓				
Senator Rich Wardner	✓				
Senator John Traynor	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Heitkamp

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

REPORT OF STANDING COMMITTEE

SB 2115: Natural Resources Committee (Sen. Lyson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2115 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the process to negotiate and quantify reserved water rights.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - RESERVED WATER RIGHTS. The legislative council shall consider studying, during the 2005-06 interim, the process to negotiate and quantify reserved water rights. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly."

Renumber accordingly

2005 HOUSE NATURAL RESOURCES

SB 2115

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2115**

House Natural Resources Committee

☐ Conference Committee

Hearing Date **March 4, 2005**

Tape Number	Side A	Side B	Meter #
3	x		0-945
Committee Clerk Signature <i>Loren Bonnet</i>			

Minutes:

Chr. Jon O. Nelson: I will call the House Natural Resources to order and open the hearing on SB 2115. I'll ask the clerk to read the title. Quorum present, Rep. Keiser absent.

Dave Ripley, ND State Water Commission: (Written testimony attached)

Chr. Nelson: Are there any questions? Seeing none, thank you for your testimony. Is there further supporting testimony?

Gene Laducer, Turtle Mtn. Band of Chippewa Reservation: We've been working on SB 2115 for the Turtle Mtn. Band of Chippewa (TMB) to go into negotiations with the State Engineer to reserve water rights. TMB relies only on an underground aquifer, which is approximately 55 square miles. We are committed to the ND State Water Commission. We saw the need to protect the aquifer for generations to come so it is not only protected as to quantitative but also quality. Our main interest was to make sure that the water is not only there for the TMB but for Rolette Co. as a whole. Rolette County has many entities utilizing this body

of water. In my opinion, it's in the best interests of Rolette County. In the first bill that was drafted and brought before the Nature Resource Committee, there was lots of discussion. Other tribes had some opposition to it, and rightly so. We wanted to clarify that this bill was specifically for the TMB. We did not want in any way to have any undue harm on our (unintelligible-nations). At this time we are thankful for the receptiveness of the ND State Legislature, the Natural Resource Committee, and the State Water Commission, Dale Frink and Dave Ripley. The tribe would like to work in terms of negotiations, not litigation. I believe there will come a time when litigation doesn't have to be the mainstay. As a representative, on behalf of my tribe, I ask for your favorable consideration and passage of SB 2115.

Chr. Nelson: I'm assuming that the aquifer you speak of is the same one that there is some agricultural irrigation currently in place.

Lattiser: Yes.

Chr. Nelson: Where are you in line as far as the current water permitting?

Laducer: We speak historically, as you you know, treaty rights supercede any laws. Treaty rights are the law. Tribes have senior rights, senior appropriations to the water. Right now, we are looked as parks, cities, as an agricultural user. TMB is not above or below these different entities. We take water from it through the process of state water permits, like anybody else does at this time.

Chr. Nelson: Are you considering further expansion from the water use standpoint?

Laducer: Yes, we are. We have been working for the past 2 ½ years on an engineering report which is to look at the alternatives for the future uses of the TMB Rural Water System. Yes, we do have plans, hopefully provided water for the northern tier of Rolette Co. Currently

(unintelligible) provides this. We think it's in the best interests of the tribe and of the state to have one centralized water system which we could all use.

Chr. Nelson: Do your expansion plans include Lake Upsilon?

Laducer: Yes, it does.

Chr. Nelson: Are there any further questions? Seeing none, thank you for your testimony. Is there further supporting testimony?

Tex Hall, Chr., Mandan, Hidatsa, Arikara Nation: We stand in support of SB 2115. It's consistent with the previous speakers. We opposed the original legislation in part because of lack of notification about the original bill to begin the process of negotiations. As was mentioned, our tribes did meet, Turtle Mountain, Spirit Lake, Standing Rock, coordinated a meeting amongst ourselves. We are all in support of SB 2115 as a result of that meeting. There are differences. Of course, one size does not fit all with the tribes. For Turtle Mountain Band, ground water is their primary source of water supply. For our tribe and others it's probably the Missouri River. Much differences in those can be further developed with a study. **(Written testimony attached)**

Chr. Nelson: Are there any questions for Chr. Hall? Seeing none, thank you for your testimony. Is there further supporting testimony? Seeing none, is there opposition to SB 2115? Seeing none, I'll close the hearing on SB 2115.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2115

House Natural Resources Committee

☐ Conference Committee

Hearing Date March 11, 2005

Tape Number	Side A	Side B	Meter #
1	x		4700-End
Committee Clerk Signature <i>Karen Bonnet</i>			

Minutes:

Chr. Nelson: Committee, let's take up SB 2115. I don't believe there were any amendments being considered with this bill. What is the committees' wishes?

Rep. Charging: I move a do pass on SB 2115.

Chr. Nelson: Rep. Charging moves a do pass, is there a second?

Rep. Kelsh: Second.

Chr. Nelson: Committee discussion?

Rep. DeKrey: Can we put this on the consent calendar?

Drovdal: No, it has to be a resolution.

Rep. Keiser: I'm going to oppose this bill. It's not the principle of the bill. Pretty soon, we're going to have so many interim studies that we're not going to know what to do. I may be exaggerating, but I'll bet the Senate has sent over 40 bills just like this. These can be study resolutions and we can make decisions, but putting it into the code is unnecessary.

Rep. Kelsh: Just to respond to that. These essentially are resolutions. The Legislative Council pares these down and makes a determination what area will be studied. So they basically have the same effect as a resolution, they don't really go into code.

Chr. Nelson: Further discussion?

Rep. Keiser: Rep. Kelsh may be correct, but I don't think so. I think there are bills that say the Legislative Council "may consider doing a study." This says, "will provide for a Legislative Council study" which it's by law required to do. You can write bills that say, "may consider." This (bill) is a "shall consider." That means you have to do it.

Rep. Charging: In relation to this bill in particular and Rep. Keiser's question, it brings a question to an area of law but leaves the state once again, with our friends the tribes. It's very complex and it's special to do with treaty rights. One tribe can forward this, whereas others could and would not agree to quantification of water rights. Maybe we could head off a derailment at some point in time. That's why I would support it.

Rep. Hunsakor: "Shall consider" isn't a mandate. You're just considering.

Rep. Keiser: That may be, the way you interpret it. I understand what you're saying. Just read the last sentence and tell me, if you *don't* "shall consider" how are you going to do "shall report."

Rep. Norland: We had a bill just like this in Education, and that was the exact word they changed to make sure of the states attorney in a truancy case...they changed it from "may" to "shall." That said that the attorney general had to do something because "shall" meant that's the way it was supposed to be. That's the exact word they changed to give it power.

Rep. DeKrey: I'd like to move an amendment on Line 5, strike "shall" and ...

Chr. Nelson: We have a motion on the floor.

Rep. Charging: Could we contact Legislative Council and ask?

Chr. Nelson: Who was the council staff person on the Natural Resource Committee?

Rep. Porter: Jeff Nelson.

Chr. Nelson: Maybe we should contact Jeff and get clarification from him on this.

Porter: This started out as a bill that was amended to the language of the Senate. Technically, if the motion and second were withdrawn, we could make a simple amendment to it and change the "shall" to "may" and I think everybody would be happy (to deal with it today).

Chr. Nelson: Is that the wishes of the committee? If you would withdraw the motion and second, we could.

Rep. Charging: That's fine, I will withdraw my motion.

Rep. Kelsh: I withdraw my second.

Rep. DeKrey: I move that in Line 5, the "shall" be struck, and replaced by "may."

Rep. Kelsh: Second.

Chr. Nelson: Does everybody understand the amendment? Is there committee discussion on the amendment?

Rep. Keiser: I need to vent. I can support the "may," but committee members, you have no idea how many bills the House worked really hard on, that are being sent over and turned into study resolutions because they don't want to spend the time and can't figure out how complex these issues are.

Chr. Nelson: Further discussion? Seeing none, we'll call for a voice vote on the proposed amendment. All those in favor, signify by saying aye. Opposed, same sign. Motion carried-unanimous.

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House Natural Resources Committee
Bill/Resolution Number SB 2115
Hearing Date March 11, 2005

Rep. Drovdal: I'll move do pass as amended.

Rep. Hunsakor: Second.

Chr. Nelson: Do pass as amended by Drovdal, seconded by Hunsakor. Committee discussion?

Rep. Hanson: Question.

Chr. Nelson: Question has been called on a do pass as amended motion on SB 2115. Karen,
call the roll:

Do Pass as Amended Vote:

13-Yeas; 0-Nays; 1-Absent; CARRIER: Kelsh

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2115

House Natural Resources Committee

☐ Conference Committee

Hearing Date **March 17, 2005**

Tape Number	Side A	Side B	Meter #
2	x		411-689
Committee Clerk Signature <i>Karen Bonnet</i>			

Minutes:

Chr. Jon O. Nelson: I call the House Natural Resources committee back to order and take up SB 2115.

Rep. George J. Keiser: I move to reconsider our action to SB 2115.

Rep. Darrell D. Nottestad: Second.

Chr. Nelson: Moved by Rep. Keiser to reconsider our action where we passed SB 2115 as amended. Seconded by Rep. Nottestad. All those in favor? Opposed, same sign. Motion carried.

Rep. David Drovdal: I move to reconsider action where we amended SB 2115. That will take the amendment off.

Rep. Darrell D. Nottestad: Second.

Chr. Nelson: The bill is before us and now a motion by Rep. Drovdal to reconsider the amendment to SB 2115, seconded by Rep. Nottestad. Committee discussion? The only reason

we're doing this is that Legislative Council called down and said to put "shall consider," then it's optional. All those in favor of the motion to reconsider the amendment, signify by saying aye.

Opposed, same sign. Motion carried.

Rep. Darrell D. Nottestad: I move a do pass.

Rep. David Drovdal: Second.

Chr. Nelson: Motion by Rep. Nottestad for a do pass on SB 2115. Second by Rep. Drovdal.

Rep. Nottestad: Call for the question.

Chr. Nelson: Question has been called on a do pass motion on SB 2115. I will ask the clerk to call the roll,

Do Pass, vote:

10-Yeas; 1-Nay; 3-Absent; CARRIER: Kelsh

March 11, 2005

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2115

Page 1, line 5, replace "shall" with "may"

Renumber accordingly

Date: 3/11/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2115

House NATURAL RESOURCES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number :

Action Taken : Move Amendment

Motion Made By : ~~Kelsh~~ DeKrey Seconded By : Kelsh

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Jon O. Nelson	✓		Rep. Lyle Hanson	✓	
Vice Chairman - Todd Porter	✓		Rep. Bob Hunskor	✓	
Rep. Dawn Marie Charging	✓		Rep. Scot Kelsh	✓	
Rep. Donald L. Clark	✓		Rep. Dorvan Solberg	Absent	
Rep. Duane DeKrey	✓				
Rep. David Drovdal	✓				
Rep. Dennis Johnson	✓				
Rep. George J. Keiser	✓				
Rep. Mike Norland	✓				
Rep. Darrell D. Nottestad	✓				

Total (Yes) 13 No 0

Absent 1 - Solberg

Floor Assignment Kelsh

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

change 'shall' to 'may' on line 5

3/11
Orig bill to LC
w. amend
1:45
Hold for final
amend

Date: 3/9/05
Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2115

House NATURAL RESOURCES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number :

Action Taken : Pass as Amend

Motion Made By : Drovdal Seconded By : Hunskor

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Jon O. Nelson	✓		Rep. Lyle Hanson	✓	
Vice Chairman - Todd Porter	✓		Rep. Bob Hunskor	✓	
Rep. Dawn Marie Charging	✓		Rep. Scot Kelsh	✓	
Rep. Donald L. Clark	✓		Rep. Dorvan Solberg	Absent	
Rep. Duane DeKrey	✓				
Rep. David Drovdal	✓				
Rep. Dennis Johnson	✓				
Rep. George J. Keiser	✓				
Rep. Mike Norland	✓				
Rep. Darrell D. Nottestad	✓				

Total (Yes) 13 No 0

Absent 1 Solberg

Floor Assignment Kelsh

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

Date: 3/17/05
 Roll Call Vote #: 1

 2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2115

 House NATURAL RESOURCES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number :

 Action Taken : Do Pass

 Motion Made By : Nottestad Seconded By : Drovdal

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Jon O. Nelson	✓		Rep. Lyle Hanson	✓	
Vice Chairman - Todd Porter	✓		Rep. Bob Hunskor	✓	
Rep. Dawn Marie Charging	✓		Rep. Scot Kelsh	<u>Abs.</u>	
Rep. Donald L. Clark	✓		Rep. Dorvan Solberg	✓	
Rep. Duane DeKrey	<u>Abs</u>				
Rep. David Drovdal	✓				
Rep. Dennis Johnson	✓				
Rep. George J. Keiser		✓			
Rep. Mike Norland	<u>Abs</u>				
Rep. Darrell D. Nottestad	✓				

 Total (Yes) 10 No 1

 Absent 3

 Floor Assignment Kelsh

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

REPORT OF STANDING COMMITTEE (410)
March 18, 2005 8:29 a.m.

Module No: HR-50-5379
Carrier: S. Kelsh
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2115, as engrossed: Natural Resources Committee (Rep. Nelson, Chairman)
recommends **DO PASS** (10 YEAS, 1 NAY, 3 ABSENT AND NOT VOTING).
Engrossed SB 2115 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

SB 2115



MANDAN, HIDATSA & ARIKARA NATION
Three Affiliated Tribes • Ft. Berthold Reservation
404 Frontage Road • New Town, ND 58763-9402

**59th LEGISLATIVE ASSEMBLY
NATURAL RESOURCES COMMITTEE
HONORABLE LYSON, CHAIRMAN & COMMITTEE MEMBERS**

**TESTIMONY OF TEX G. HALL, CHAIRMAN
MANDAN, HIDATSA & ARIKARA NATION
ON SENATE BILL 2115**

Chairman Lyson and Committee Members my name is Tex Hall and I am the Chairman of the Mandan, Hidatsa & Arikara Nation. Thank you for allowing me to testify before you today.

Senate Bill 2115 would authorize the North Dakota State Engineer to negotiate with the federally recognized Indian tribes in the State of North Dakota and representatives of the federal government to define the scope of the reserved water rights of the Tribes and the scope and attributes of non-Indian water rights claimed by the federal government.

Under the Winters doctrine, Indian tribes hold reserved water rights dating back to the establishment of their reservations. For the Three Affiliated Tribes and the Fort Berthold Reservation, we believe our priority date goes back to 1851 when our Reservation was first established under the Fort Laramie Treaty of 1851. The Fort Berthold Indian Reservation includes approximately 1 million acres of land with both Lake Sakakawea and the Missouri River included within its exterior boundaries and with water on both sides of the Reservation. Adequate lake levels are of vital importance to Three Affiliated Tribes. The quantification of the Tribes' reserved water rights is somewhat difficult because the reserved rights doctrine has been defined broadly to insure enough water for Indian tribes to fulfill the purposes of their reservations. We recognize that the quantification of reserved water rights is necessary for maximum certainty for water users. However, the Three Affiliated Tribes are very cautious about blessing any process concerning the quantification of their water rights.

The Mandan, Hidatsa & Arikara Nation supports the concept of developing a negotiation process between the State and Tribes for Tribes that desire to quantify their water rights. We believe in and support processes that recognize and further our government-to-government relationship with the State.

Section 1 of Senate Bill 2115 uses permissive language with respect to negotiation. The Bill does not compel Tribes to quantify and negotiate their reserved water rights. It only provides a process for those Tribes that desired to quantify their reserved water rights. The Three Affiliated Tribes believes that Tribes should not be compelled to quantify their reserved water rights and appreciates the permissive nature of the language in Section 1.

Section 1 also authorizes the State Engineer to negotiate on behalf of the State. The Three Affiliated Tribes understands the need to have the State Engineer and his staff involved with the negotiations. The Tribe questions whether other individuals should not be involved as well. Given the short notice of the hearing and the fact that we have only had the Bill a few days, we have not had adequate time to think about what parties should be involved in the negotiation process. The Tribes' initial thought is that it may be better to negotiate with a body or perhaps a commission that would be fairly representative of the State rather than with just one individual.

Section 2 authorizes the State Engineer to sign a reserved water rights agreement upon approval of the Governor. Any agreement with a Tribe will require approval of its Tribal Council. Furthermore, the United States Congress will also have to approve the Agreement. Thus, the Three Affiliated Tribes believe that any agreement negotiated by the State Engineer should be subject to ratification by the State legislature and signed by the governor. Please note that the State of Montana ratifies Water Compacts with Tribes and publishes these compacts in the Montana Code Annotated.

Section 3 requires notice of the agreement to all persons affected by an agreement. The Three Affiliated Tribes believes this provision is acceptable.

Section 4 of the Agreement would allow any individual that took exception to the agreement to file that Agreement with the State Engineer in an adjudicative proceeding. The State Engineer would appoint an administrative law judge to preside over any hearing for an exception. The Three Affiliated Tribes objects to any administrative process and believes that it may be contrary to Sections 61-03-16 & 61-03-17 of the North Dakota Century Code which allows suits concerning the final adjudication of water rights to be filed in State Court. Because the Tribe shares a unique relationship with the United States which is governed by principles of trust responsibility, the Tribe also has legitimate concerns about State Court proceedings and would find State Court more compatible if the Tribe and State could agree to the appointment of a Special Master to hear the matter in State Court. The State Court could then take the recommendation of the Special Master and enter a final order incorporating the agreement.

Section 5 of the Agreement is acceptable provided that reference to the administrative process is deleted for reference to the State court.

Because of these concerns, I would respectfully urge this committee to recommend a DO NOT PASS on SB 2115 in its present form.

TESTIMONY ON SENATE BILL 2115

Senate Natural Resources Committee

**Dave Ripley, Director, Water Appropriations Division
State Water Commission**

January 7, 2005

Mr. Chairman and Members of the Senate Natural Resources Committee, I am Dave Ripley, the director of the Water Appropriations Division of the State Water Commission. I am appearing in support of Senate Bill 2115.

This bill authorizes the state engineer to enter into negotiations with each Indian tribe, or the federal government, to quantify the reserved water rights of that tribe's, or the federal government's, respective reservation. The Turtle Mountain Band of Chippewa recently passed a resolution requesting to begin the negotiation process to quantify its reserved water rights. It is not known whether other tribes will want to quantify their reserved water rights, but if they do, this bill will establish a procedure by which the quantification can take place.

Current state law does not contain a procedure allowing the state to negotiate with tribes or the federal government to quantify reserved water rights. Reserved water rights are water rights that have been impliedly reserved to the tribes or the federal government in amounts sufficient to fulfill the purposes for which the Indian reservation was established or for which the federal land reserve was set aside. These rights are based on federal law. They differ from state-based prior appropriation rights because their priority is the reservation's creation date and they are not subject to forfeiture or abandonment for nonuse.

A brief section by section analysis:

Section 1 authorizes the state engineer, on behalf of the state, to negotiate with Indian tribes and the federal government to quantify their reserved water rights.

Section 2 requires the governor to approve any agreement reached by the state engineer and a tribe or the federal government. It also specifies who must sign any agreement.

Section 3 requires the state engineer to give notice of the agreement to all affected water permit holders, and allows them to file exceptions or objections to the agreement.

Section 4 provides that an agreement is not effective until it is incorporated into a final order of the state engineer after the state engineer has given all affected water right holders the opportunity to file an exception. If an exception is filed, the matter becomes an adjudicative proceeding under North Dakota Century Code chapter 28-32, the Administrative Agencies Practices Act, and an administrative law judge will be

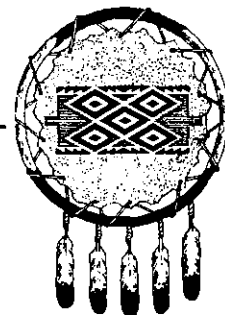
appointed to preside over the matter. If the administrative law judge upholds an exception, the matter will be remanded back to the state engineer for further negotiation with the parties to the agreement. If the administrative law judge does not uphold an exception, or if no exceptions are filed, the agreement will be incorporated into a final order.

Section 5 provides that once an agreement is remanded to the state engineer, the state engineer has 180 days to develop a new agreement, file a motion to dismiss the proceeding, or file a motion for a continuance.

I ask for your favorable consideration of this bill. Thank you.



UNITED TRIBES TECHNICAL COLLEGE
3315 UNIVERSITY DRIVE
BISMARCK, NORTH DAKOTA 58504 • PHONE 701-255-3285 • FAX 701-530-0605



February 4, 2005

Senator Stanely W. Lyson
Chairman
Senate Natural Resources Committee
North Dakota 59th Legislative Assembly
North Dakota State Capitol
Bismarck, ND 58505

Re: SB 2115

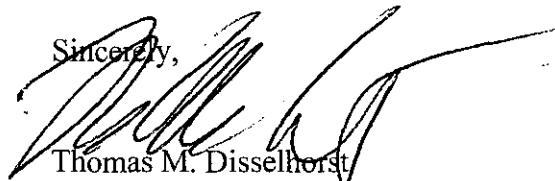
Dear Senator Lyson:

It is my understanding that you are accepting further testimony on SB 2115 on Friday, February 4, 2005 before the Senate Committee on Natural Resources. While Chairman Charles W. Murphy of the Standing Rock Sioux Tribe (who is also the Chairman of the Board of United Tribes Technical College) or his representative may be able to be present, Chairman Murphy asked me to transmit to you the attached letter submitted earlier this week to State Engineer Dale Frink in lieu of formal testimony on this bill. As I am also unable to appear today, I have asked Chad Kramer of the Indian Affairs Commission to provide this information to you.

From my previous experience in working with several of the Tribes in North Dakota, I know that Chairman Murphy and other Tribes remain concerned about establishing any precedent with regard to water rights settlements that will affect his tribe or other tribes by passage of such a bill, especially when it has not been formulated in consultation with the Tribes that will be most affected.

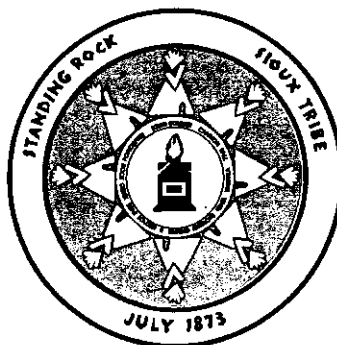
Thank for the opportunity to offer Chairman Murphy's testimony today.

Sincerely,



Thomas M. Disselhorst
Attorney for United Tribes Technical College

Charles W. Murphy
Chairman



Tom Iron
Vice Chairman

Sharon Two Bears
Secretary

DISTRICTS

Carol White Eagle
Cannonball District

Verna Bailey
Long Soldier District

Milo Cadotte
Wakpala District

Frank White Bull
Kenel District

Avis Little Eagle
Bear Soldier District

Milton Brown Otter
Rock Creek District

Donel Takes The Gun
Running Antelope District

Randal White Sr.
Porcupine District

T LARGE

Mike Claymore

Archie Fool Bear

Matt Lopez

Alma J. Mentz

Jesse McLaughlin

January 31, 2005

Dale Frink
State Engineer
North Dakota State Water Commission
900 East Boulevard Ave.
Bismarck, ND 58501

Re: Opposition of Standing Rock Sioux Tribe to
SB 2115, creation of state process to quantify Tribal
reserved water rights

Dear Mr. Frink:

This letter is written to inform you of our fundamental opposition to SB 2115, which would establish a state process for quantification of Tribal reserved water rights. While I realize that at least one North Dakota tribe is in favor of this process, this bill poses grave risks for all North Dakota tribes that do not believe it is necessary at this time to quantify our reserved water rights under the "Winters doctrine" relating to reserved water rights for Indian tribes.

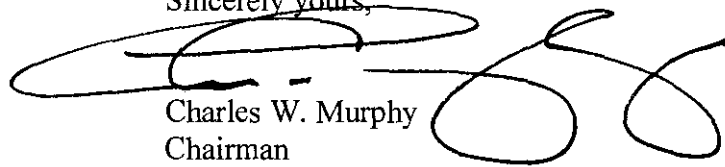
First, the bill does not proceed on a government-to-government basis. We have in place an accord with the State of North Dakota that says this kind of legislation should be developed in consultation with our Tribe, which did not occur in this case.

Second, this bill proposes a process for quantifying water rights which could set a precedent that other Tribes would be forced to follow, even if only one Tribe were to use the process. We do not believe that any process of quantifying our water rights with the State of North Dakota will help us solve the problems several of our Tribes have with the Army Corps of Engineers management of the Missouri River, nor will it even take care of our local water needs, since our water comes from the Missouri River and not other surface or underground sources.

Third, this legislation seems to short circuit the federal process for coming to agreements on water rights and water quantification. The Federal process is based on a government-to-government basis, which this legislation does not appear to recognize. This is simply not the time for this kind of legislation.

As I stated in my address to the Legislature on January 6, 2005, we do look forward to working with the State on common water issues. But we are not seeking at this time, nor in the reasonably foreseeable future, to quantify our water rights with the State of North Dakota or with other water users.

Sincerely yours,

A handwritten signature in black ink, appearing to be "Charles W. Murphy", written over a horizontal line.

Charles W. Murphy
Chairman
Standing Rock Sioux Tribe

cc: North Dakota Tribal leaders
North Dakota Senate Natural Resources Committee
Governor Hoeven



MANDAN, HIDATSA & ARIKARA NATION
Three Affiliated Tribes • Ft. Berthold Reservation
404 Frontage Road • New Town, ND 58763-9402

**TEX HALL'S PROPOSED AMENDMENT
TO
SENATE BILL NO. 2115**

Amend Page 1, line two (2) to read as follows:

Strike "the state engineer" and insert "as State/Tribal Water Rights Commission"

Amend line three (3) to read as follows:

Strike "federally recognized Indian Tribe" and insert "the Turtle Mountain Band of Chippewa".

Amend line eight (8) to read as follows:

Strike "state engineer" and put in "State/Tribal Water Rights Commission"

Strike "any federally recognized Indian Tribe claiming a reserved water right in North Dakota" and insert "the Turtle Mountain Band of Chippewa".

Amend line ten (10) to read as follows:

Strike "federally recognized Indian tribe" and insert "Turtle Mountain Band of Chippewa."

Amend line 14 & 15 to read as follows:

Strike "state engineer" and insert "State/Tribal Water Rights Commission."

Amend line 21 to read as follows:

Strike "state engineer" and insert "State/Tribal Water Rights Commission."

Strike "of any federally recognized Indian tribe" and insert "the Turtle Mountain Band of Chippewa."

Amend line 23 to read as follows:

Strike "federally recognized Indian tribe" and insert "Turtle Mountain Band of Chippewa."

Amend Page 2, line two (2) to read as follows:

Strike "Indian tribe" and insert "Turtle Mountain Band of Chippewa."

**TEX HALL'S PROPOSED AMENDMENT
TO
SENATE BILL NO. 2115**

PAGE 2

Amend Page 2, line three (3) to read as follows:

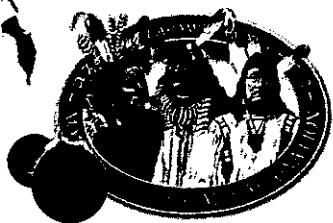
Strike "Indian tribe" and insert "Turtle Mountain Band of Chippewa."

Amend line 10 & 11 to read as follows:

Strike "state engineer" and insert "State/Tribal Water Rights Commission."

Strike Section 4 and replace with a section that will allow for filing with State District Court and review of all objections by a Special Master (with extensive knowledge in water law) appointed by the Court to preside over all proceedings.

Section 5 would be amended to conform with the new Section 4.



MANDAN, HIDATSA & ARIKARA NATION
Three Affiliated Tribes • Ft. Berthold Reservation
404 Frontage Road • New Town, ND 58763-9402

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Strike "state engineer" and put in "State/Tribal Water Rights Commission"

Strike "any federally recognized Indian Tribe claiming a reserved water right in North Dakota" and insert "the Turtle Mountain Band of Chippewa".

Amend line ten (10) to read as follows:

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Amend line 14 & 15 to read as follows:

Strike "state engineer" and insert "State/Tribal Water Rights Commission."

Amend line 21 to read as follows:

Strike "state engineer" and insert "State/Tribal Water Rights Commission."

Strike "of any federally recognized Indian tribe" and insert "the Turtle Mountain Band of Chippewa."

Amend line 23 to read as follows:

Strike "federally recognized Indian tribe" and insert "Turtle Mountain Band of Chippewa."

Amend Page 2, line two (2) to read as follows:

Strike "Indian tribe" and insert "Turtle Mountain Band of Chippewa."

**TEX HALL'S PROPOSED AMENDMENT
TO
SENATE BILL NO. 2115**

PAGE 2

Amend Page 2, line three (3) to read as follows:

Strike "Indian tribe" and insert "Turtle Mountain Band of Chippewa."

Amend line 10 & 11 to read as follows:

Strike "state engineer" and insert "State/Tribal Water Rights Commission."

Strike Section 4 and replace with a section that will allow for filing with State District Court and review of all objections by a Special Master (with extensive knowledge in water law) appointed by the Court to preside over all proceedings.

Section 5 would be amended to conform with the new Section 4.

Date: January 31, 2005

From: Turtle Mountain Band of Chippewa
Water Resources Directors
Gene Laducer & Tom Davis

Phone: (701) 477-2665

RE: SB 2115 Amendments

Fifty-ninth
Legislative Assembly
North Dakota

Introduced by

State Water Commission and State Engineer

A BILL for an Act to create and enact five new sections to chapter 61-03 of the North Dakota Century Code, authorizing the state engineer to negotiate reserved water rights of the United States and the Turtle Mountain Band of Chippewa Indians.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-03 of the North Dakota Century Code is created and enacted as follows:

Negotiation for reserved water rights..

The state engineer may negotiate with the Turtle Mountain Band of Chippewa Indians asserting reserved water rights in North Dakota and representatives of the federal government as trustee for the Turtle Mountain Band of Chippewa Indians to define the scope and attributes of rights to water claimed by the Turtle Mountain Band of Chippewa Indians. The state engineer may also negotiate with the federal government to define the scope and attributes of non-Indian reserved water rights claimed by the federal government.

2. During negotiations conducted under subsection 1 of this section, the state engineer shall, in the manner the state engineer determines is appropriate:
 - a. Provide public notice of the negotiations;
 - b. Allow for public input.

Fifty-ninth Legislative Assembly

SECTION 2. A new section to chapter 61-03 of the North Dakota Century

code is created and enacted as follows:

Agreement.

1. When the state engineer and representatives of the Turtle Mountain Band of Chippewa Indians asserting a federal reserved water rights in North Dakota and the federal government as trustee for the Turtle Mountain Band of Chippewa Indians have completed an agreement, the agreement, subject to ratification by the State legislature and upon approval of the governor, shall be signed by the state engineer on behalf of the state of North Dakota and by Turtle Mountain Band of Chippewa Indians and the federal government as trustee for the Indian tribe.
2. When the state engineer and the federal government with regard to non-Indian reserved water rights have completed an agreement, the agreement, upon approval of the governor, shall be signed by the state engineer on behalf of the state of North Dakota. and by authorized representatives of the federal government.

SECTION 3. A new section to chapter 61-03 of the North Dakota Century Code is created and enacted as follows:

Notice to persons affected by agreement. After signing the agreement, the state engineer shall give written notice to the owners of water right permits, including the holders of conditional permits, who may be affected by the agreement, that the agreement has been signed, the time and manner for filing an exception to the agreement, and the telephone number or address at which a copy of the agreement may be requested. The notice must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure or

Fifty-ninth
Legislative Assembly

by depositing the notice in the United States mail or with a third-party commercial carrier, postage or shipping prepaid, and directed to the owner's or holder's last reasonably ascertainable address.

SECTION 4. A new section to chapter 61-03 of the North Dakota Century Code is created and enacted as follows:

Effective date of agreement - Remand.

1. An agreement negotiated under section 1 of this Act is not effective until incorporated in a final order of the state engineer after the state engineer has provided an opportunity for the owners of water rights, including the holders of conditional permits that may be affected by the agreement, to file an exception to the agreement.
2. Once an exception is filed with the state engineer, the proceeding is deemed to be an adjudicative proceeding under chapter 28-32 and the provisions of chapter 28-32 apply to proceedings to sustain or reject exceptions. The Turtle Mountain Band of Chippewa Indians and the State shall agree to the appointment of a Special Master to hear the matter in State Court.
3. The State Court shall take the recommendation of the Special Master and enter a final order incorporating the agreement.
4. If the State Court sustains an exception to the agreement, the Special Master shall remand the agreement to the state engineer for further negotiation according to the provision of sections 1 through 5 of this Act, if desired by the parties to the agreement.

Fifty-ninth
Legislative Assembly
North Dakota

Introduced by

State Water Commission and state Engineer

A BILL for an Act to create and enact five new sections to chapter 61-03 of the North Dakota Century Code, authorizing the state engineer to negotiate reserved

water rights of the United States and ~~federally recognized Indian tribes~~ the Turtle Mountain Band of Chippewa Indians.

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SECTION 1. A new section to chapter 61-03 of the North Dakota Century Code is created and enacted as follows:

Negotiation for reserved water rights..

1. The state engineer may negotiate with ~~any federally recognized Indian tribe~~ the Turtle Mountain Band of Chippewa Indians claiming ~~asserting~~ a reserved water rights in North Dakota and representatives of the federal government as trustee for the ~~federally recognized Indian tribe~~ Turtle Mountain Band of Chippewa Indians to define the scope and attributes of rights to water claimed by the ~~Indian tribe~~ Turtle Mountain Band of Chippewa Indians. The state engineer may also negotiate with the federal government to define the scope and attributes of non-Indian reserved water rights claimed by the federal government.
2. During negotiations conducted under subsection 1 of this section, the state engineer shall, in the manner the state engineer determines is appropriate:
 - a. Provide public notice of the negotiations;
 - b. Allow for public input.

Fifty-ninth Legislative Assembly

SECTION 2. A new section to chapter 61-03 of the North Dakota Century

code is created and enacted as follows:

Agreement.

1. When the state engineer and representatives of ~~any federally recognized Indian tribe~~ the Turtle Mountain Band of Chippewa Indians ~~claiming asserting a federal reserved water rights~~ in North Dakota and the federal government as trustee for the ~~federally recognized Indian tribe~~ Turtle Mountain Band of Chippewa Indians have completed an agreement, the agreement, subject to ratification by the State legislature and upon approval of the governor, shall be signed by the state engineer on behalf of the state of North Dakota and by authorized representatives of the Indian tribe Turtle Mountain Band of Chippewa Indians and the federal government as trustee for the Indian tribe.
2. When the state engineer and the federal government with regard to non-Indian reserved water rights have completed an agreement, the agreement, upon approval of the governor, shall be signed by the state engineer on behalf of the state of North Dakota. and by authorized representatives of the federal government.

SECTION 3. A new section to chapter 61-03 of the North Dakota Century Code is created and enacted as follows:

Notice to persons affected by agreement. After signing the agreement, the state engineer shall give written notice to the owners of water right permits, including the holders of conditional permits, who may be affected by the agreement, that the agreement has been signed, the time and manner for filing an exception to the agreement, and the telephone number or address at which a copy of the agreement may be requested. The notice must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure or

Fifty-ninth
Legislative Assembly

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Effective date of agreement - Remand.

1. An agreement negotiated under section 1 of this Act is not effective until incorporated in a final order of the state engineer after the state engineer has provided an opportunity for the owners of water rights, including the holders of conditional permits that may be affected by the agreement, to file an exception to the agreement.
2. Once an exception is filed with the state engineer, the proceeding is deemed to be an adjudicative proceeding under chapter 28-32 and the provisions of chapter 28-32 apply to proceedings to sustain or reject exceptions. ~~The state engineer shall appoint an administrative law judge~~ The Turtle Mountain Band of Chippewa Indians and the State shall agree to the appointment of a Special Master to hear the matter in State Court. ~~or request the office of administrative hearings to designate an administrative law judge to reside over the proceedings.~~
3. The State Court shall take the recommendation of the Special Master and enter a final order incorporating the agreement. ~~If the administrative law judge does not sustain an exception, the state engineer shall issue a final order incorporating the agreement as submitted without alteration.~~
4. If the State Court ~~administrative law judge~~ sustains an exception to the agreement, the Special Master ~~administrative law judge~~ shall remand the agreement to the state engineer for further negotiation according to the provision of sections 1 through 5 of this Act, if desired by the parties to the agreement.

ty-ninth
slative Assembly

SECTION 5. A new section to chapter 61-03 of the North Dakota Century Code is created and enacted as follows:

Procedures after remand of agreement. Within one hundred eighty days after the Special Master administrative law judge remands the agreement under section 4 of this Act, the state engineer shall file with the Special Master administrative law judge:

1. An amended agreement complying with section 2 of this Act, which shall be subject to the procedures specified by sections 3 and 4 of this Act;
2. A motion to dismiss the proceedings without prejudice; or
3. A motion for a continuance.

By: Dave Ripley
Re: SB 2115 3/4/05

TESTIMONY ON ENGROSSED SENATE BILL 2115

House Natural Resources Committee

**Dave Ripley, Director, Water Appropriations Division
State Water Commission**

March 4, 2005

Mr. Chairman and Members of the House Natural Resources Committee, I am Dave Ripley, the director of the Water Appropriations Division of the State Water Commission. I am appearing in support of Engrossed Senate Bill 2115.

This bill began in the Senate as a bill intended to authorize the State Engineer to enter into negotiations with each Indian tribe, or the federal government, to quantify the reserved water rights of that tribe, or the federal government's, respective reservation. It was drafted in response to a Turtle Mountain Band of Chippewa resolution requesting to begin the negotiation process to quantify its reserved water rights. At the hearing before the Senate Natural Resource Committee on January 7th, testimony was presented by other tribes. They expressed concern that they do not want to negotiate their rights at this time, and they want more time to consider the procedure that would be put into law on how the negotiation would be handled.

The Senate Natural Resource Committee discussed various possibilities with the Turtle Mountain Band of Chippewa, with representatives of the other tribes, and with the State Engineer. The Committee postponed action on this bill until the parties could agree upon amendments that could be brought to the committee on February 4th.

Between January 7th and February 3rd numerous discussions were held, which culminated in a meeting hosted by the Turtle Mountain Band of Chippewa on February 3rd. The Turtle Mountain Band of Chippewa hosted all of the other tribes in the morning and invited the State Engineer's Office in the afternoon. The essence of those four weeks and the all-day meeting is that the Turtle Mountain Band of Chippewa would like to begin the process now, and that the other tribes want more time to consider the procedures that would be formulated.

The compromise is Engrossed Senate Bill 2115. A Legislative Council study would begin the process of creating the framework for negotiating Indian and federal reserved water rights. During this two-year time period, the State Engineer's Office and the Turtle Mountain Band of Chippewa have agreed to begin designing a cooperative study of the quantitative and qualitative characteristics of the water resources in the vicinity of the Turtle Mountain Band of Chippewa Reservation. This data will be necessary when the negotiation procedures are eventually promulgated.

I ask for your favorable consideration of Engrossed Senate Bill 2115. Thank you.

By: Tex Hall
Re: SB 2215 3/4/05



MANDAN, HIDATSA & ARIKARA NATION
Three Affiliated Tribes • Ft. Berthold Reservation
404 Frontage Road • New Town, ND 58763-9402

**59th LEGISLATIVE ASSEMBLY
HOUSE NATURAL RESOURCES COMMITTEE
HONORABLE JON O. NELSON, CHAIRMAN & COMMITTEE MEMBERS**

**TESTIMONY OF TEX G. HALL, CHAIRMAN
MANDAN, HIDATSA & ARIKARA NATION
ON SENATE BILL 2115**

Chairman Nelson and Committee Members my name is Tex Hall and I am the Chairman of the Mandan, Hidatsa & Arikara Nation. Thank you for allowing me to testify before you today.

Senate Bill 2115 requires the legislative council to consider studying a process to negotiate and quantify reserved water rights and report its findings and recommendations to the 60th legislative assembly.

Under the Winters doctrine, Indian tribes hold reserved water rights dating back to the establishment of their reservations. The Three Affiliated Tribes' priority date goes back to 1851 when our reservation was first established under the Fort Laramie Treaty of 1851. The quantification of the Tribes' reserved water rights is somewhat difficult because the reserved rights doctrine has been defined broadly to insure enough water for Indian tribes to fulfill the purposes of their reservations. However, the Tribe recognizes that the quantification of its reserved water rights is ultimately necessary for maximum certainty for water users.

The Mandan, Hidatsa & Arikara Nation, much like other tribes, is very cautious about engaging in any process concerning the quantification of its water rights and we believe that studying what quantification process would serve the best interest of the Tribes and the State is a step in the right direction.

The Mandan, Hidatsa & Arikara Nation supports the concept of developing a negotiation process between the State and Tribes for Tribes that desire to quantify their water rights as we believe in and support processes that recognize and further our government-to-government relationship with the State.

SB 2115 is consistent with the approach the Mandan, Hidatsa & Arikara Nation believes the State should take. Accordingly, I would respectfully urge this committee to recommend a DO PASS on SB 2115.