

2013 HOUSE ENERGY AND NATURAL RESOURCES

HCR 3014

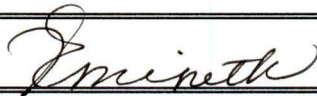
2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

HCR 3014
February 8, 2013
18581

Conference Committee



To Urge the U.S. Department of Interior and the N.D. Delegation to work together to find a solution that allows people occupying lots around Lake Tschida under bureau-issued permits to freely transfer their permits and to leave nonpermanent structures, such as mobile homes on their lots

Minutes:

1 Attachment

Rep. Porter: We will open the hearing on HCR 3014.

Rep. Mock: I will introduce HCR 3014; since 1950 when the Heart Butte Dam was constructed there have been cabin owners and lease holders around the lake some above the spring water flood level and others closer to the water within the 100 year flood plain. For over 60 years those lease holders have been able to work close with the Bureau of Reclamation and to maintain their cabins. This has been an asset to the community, tourism and summer recreation.

In 2009 the Bureau of Reclamation has changes its policies and has become very difficult to work with in the minds of those that hold the permits. In 2021 anybody that has a trailer or permit within the 100 year flood plain is expected to remove that property and to use campers and fifth wheelers.

Rep. Nathe: If this is passed we sent a letter to the delegation; has the delegation been in touch are they talking?

Rep. Mock: The delegation is aware of this and they have been visiting with members of the Heart Butte Association. The progress on that communication is unknown at this time.

Rep. Froseth: Don't they have to issue a public hearing before they make changes like that?

Rep. Mock: The Bureau and the Heart Butte Association have a long standing relationship and the bureau attends the Heart Butte Association meetings. The believe is that the changes happened after the spring of 2009 when the water level did reach some of the trailers around the lake. The policy issues have been changed I think there have been public meetings but the Bureau is firm in their resolve to change their policies to make all of the trailers to be removed by 2021.

Scott Ressler: I am the president of the Heart Butte Association; there are 114 trailers and 110 cabins. (Attachment 1) I own a lot on Lake Tschida and we have to have everything we do approved by the Bureau. With all the improvements we believed that we were putting something in place that would last us for 40 years or so. All the buildings are in pretty good shape and the yards are very nice. It makes no sense that because out of 214 dwellings 14 got wet they want us to remove the dwellings. The bureau has never paid for damages on anyone's homes all the repair costs from the flood did not cost the bureau any money. The bureau says ones something is in the ground it is theirs.

Dan Ulmer: I have been out at Heart Butte since 1966. What we looking for is more support so that we can get some people to the table. The bureau is not interested in talking to us anymore. These resolutions would draw attention to the fact that the state is behind us.

Rep. Porter: in reviewing the language in the resolution do you think it is enough to get them back to the table?

Dan Ulmer: We would not stop you from strengthening this.

Rep. Porter: I was hoping you would supply the language.

Dan Ulmer: I will get to you on that.

Rep. Nathe: Why won't they come back to the table?

Dan Ulmer: I think there is a buyer beware of terms in the lease issue.

Scott Ressler: We have always known that; I don't think they have done anything wrong. We have told them we have been there forever and have asked what has changed and they won't have a response.

Rep. Porter: I thought you people were lucky because you didn't have to work with the Corp. and now it seems like you are under the same management.

Scott Ressler: There is a little different philosophy they have switched the lake management to a JDA out of Grant County. Many of the rules that the bureau was lax on they pushed the JDA to enforce them.

Rep. Silbernagel: Is the Farmers Union camp and a 4-H Camp out there still and how is this impacting them.

Scott Ressler: At this time it is not impacting them they may be concerned.

Rep. Schmidt: I would think that they have elevations that are set and when you mentioned that there was 14 trailers that got wet and are asking for a 100 and some to be moved is there any relationship between those being removed and an elevation given a flood event?

Scott Ressler: Those are things that we talked to the bureau about. We come to them with a number of different solutions. We asked if we pull those trailers out that are in the low area and they said no if you pull them out you can't put them back.

Rep. Froseth: What are the penalties that the bureau can impose on these trailer owners if they don't meet the 2021 deadline?

Scott Ressler: I don't know.

Rep. Keiser: We need to check with the Attorney General but we have a further resolve that the state shall consider enjoying any lease holder activity relative to court action that might ensue that wouldn't commit us. We would have to get the information from the Attorney General and the proper form. I think that would strengthen it so that if that time ever came the legislature would have spoken and said we shall consider.

Rep. Porter: I think we should also bring the State Water Commission into this also so that they are at the table because it does have impacts on our entire state water system hopefully we can get this stronger. We will close the hearing on HCR 3014.

2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

HCR 3014

February 14, 2013

18947

Conference Committee

Minutes

Urge the U.S. Depart. Of Interior and the N.D. Delegation to work together to find a solution that allows people occupying lots around Lake Tschida under bureau-issued permits to freely transfer their permits and to leave nonpermanent structures, such as mobile homes on their lots.

Minutes:

Rep Porter: We will open HCR 3014. There was language in this bill to allow the Attorney General to consider taking action that may be helpful to bring about a desired solution.

We have a motion from Rep. Mock to move to the proposed amendment and a second from Rep. Hunskor Voice vote carries.

We have an amended resolution is front of us, and a do pass and to be placed on the consent calendar as amended motion from Rep. Silbernagel and a second from Rep. Anderson. Motion carries. Carrier Rep. Mock.

February 14, 2013

2/14/13
JSC

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3014

Page 1, line 5, after "lots" insert "and that the state Attorney General consider taking such action as may be helpful to bring about the desired solution"

Page 2, line 2, after "lots" insert "and that the state Attorney General consider taking such action as may be helpful to bring about the desired solution"

Page 2, line 5, remove "and"

Page 2, line 5, after "Delegation" insert ", and to the state Attorney General"

Renumber accordingly

Date: 2-14-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 3014

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep Mock Seconded By Rep Hunskor

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter			Rep. Bob Hunskor		
Vice Chairman Chuck Damschen			Rep. Scot Kelsh		
Rep. Jim Schmidt			Rep. Corey Mock		
Rep. Glen Froseth					
Rep. Curt Hofstad					
Rep. Dick Anderson					
Rep. Peter Silbernagel					
Rep. Mike Nathe					
Rep. Roger Brabandt					
Rep. George Keiser					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
to move the proposed amendment Vote
Carrier

Date: 2-14-17
 Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HCR 3014**

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep Silbernagel Seconded By Rep Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter	✓		Rep. Bob Hunsakor	✓	
Vice Chairman Chuck Damschen	✓		Rep. Scot Kelsh	✓	
Rep. Jim Schmidt	✓		Rep. Corey Mock	✓	
Rep. Glen Froseth	✓				
Rep. Curt Hofstad	✓				
Rep. Dick Anderson	✓				
Rep. Peter Silbernagel	✓				
Rep. Mike Nathe	✓				
Rep. Roger Brabandt	✓				
Rep. George Keiser					

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep Mock

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

for a do pass + placed on consent calendar as amended

REPORT OF STANDING COMMITTEE

HCR 3014: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HCR 3014 was placed on the Sixth order on the calendar.

Page 1, line 5, after "lots" insert "and that the state Attorney General consider taking such action as may be helpful to bring about the desired solution"

Page 2, line 2, after "lots" insert "and that the state Attorney General consider taking such action as may be helpful to bring about the desired solution"

Page 2, line 5, remove "and"

Page 2, line 5, after "Delegation" insert ", and to the state Attorney General"

Renumber accordingly

2013 SENATE NATURAL RESOURCES

HCR 3014

2013 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee Fort Lincoln Room, State Capitol

HCR 3014
March 21, 2013
20308

Conference Committee

Veronica Spasling

Explanation or reason for introduction of bill/resolution:

A concurrent resolution urging the United States Department of the Interior's Bureau of Reclamation and North Dakota's Congressional Delegation to work together to find a solution that allows people occupying lots around Lake Tschida under bureau-issued permits to freely transfer their permits and to leave nonpermanent structures, such as mobile homes, on their lots and that the state Attorney General consider taking such action as may be helpful to bring about the desired solution.

Minutes:

Written testimony

Chairman Lyson opened the hearing on HCR 3014. All committee members were present.

Representative Corey Mock, District 42, introduced HCR 3014 and explained the reason for introducing this resolution. Lake Tschida is located on the Heart Butte River just SW of the Bismarck - Mandan area. Lake Tschida is the summer home of about 200 families. Over 100 of these have cabins above the 100 year flood plain surrounding Lake Tschida. There are another 100 plus trailers around the lake. This has been a long-standing relationship between the Bureau of Land Reclamation and the residents around the Lake. HCR 3014 is a resolution in support of the residents around Lake Tschida and the communities surrounding the lake. Under the current federal policy, the residents of Lake Tschida are facing permanent eviction beginning in 2021. He said that the hope is to have a resolution between the Bureau and the residents so that those residents who have invested in their trailers and cabins around the lake can maintain those properties and do so safely. It is also so that the Heart Butte Dam and all of the aspects around the Heart Butte River are protected and that we have for generations a continued, amazing, area for recreation.

Scott Ressler, President of the Heart Butte Cabin Owners Association, representing over 200 families that have cabins and trailer homes around Lake Tschida, gave the history and testimony in support of HCR 3014. He explained the Bureau's policy change and how the Association has worked to address their concerns and find solutions. (9:20) Scott made reference to their meeting with Mike Ryan, the new manager of the Billings office and all he would say is that it's a policy change. (17:39) **Written testimony #1**

Senator Triplett: Was there any purpose for the dam being built other than recreation?

Scott Ressler: It was originally built more for flood protection with a recreation component to it.

Senator Triplett: Do you know what the term of the contract was before the 2009 policy change?

Scott Ressler: Our contract has always been an annual contract.

Senator Triplett: So in that sense, everyone really assumed the risk of policy changes by agreeing to a one year contract. That was all that was ever offered? Answer: Yes.

Senator Triplett: You have said that the reason is a policy change but in the testimony they suggested dam safety.

Scott Ressler: That was what the Bureau said at first. (20:00) When we asked them what they were concerned about, we countered their concerns and gave solutions. He gave examples.

Senator Triplett: Expressed her concern for the House amendment that the State Attorney General consider taking such action as may be helpful to bring about the desired solution. What would be the state interest in requiring our busy State Attorney General to take action on behalf of a private contract like this?

Scott Ressler: All we are looking for is the support of the State. He talked about the small communities that benefit from the residents at the lake.

Senator Murphy: Asked what exactly the glory hole is.

Scott Ressler: Explained what the glory hole was and where it is located and what it does. He also explained the barrier system that the association had looked at.

Senator Lyson: Did you ask the manager from Billings if there was a way to get his superiors out here?

Scott Ressler: We were working with Representative Berg and he demanded that they sit down and talk and try to put something together. The Bureau ignored him. He gave additional information on dealing with the Bureau. (26:00)

Dan Ulmer, Mandan, said that his family has been at Heart Butte since 1966. I was raised there, I raised my kids there, and I am now raising my grandchildren there. I am a cabin owner and although this only demands the removal of trailer homes, we as cabin owners are a little more than spooked about how the Bureau is approaching us. I think the question to Senator Triplett's question is that we are residents of this state and as such, I believe that should give us some sense of standing. This is a federal issue but we do need the state's support. At one point the Bureau gave the trailer owners twelve years but

told them they couldn't sell their trailers. Originally it was get out today. Senator Dorgan got 12 years.

Senator Triplett: Do you know at what level this policy came from?

Dan Ulmer: As I understand, it came extensively out of Montana and DC saying that we can't have any of these folks in a flood pool.

Scott Ressler: That was the reason for filing for the Freedom of Information Act. We wanted to know that. The pages were all blacked out.

Dan Ulmer: Reiterated that the residents care.

No opposing testimony.

No neutral testimony.

Chairman Lyson closed the hearing on HCR 3014.

Senator Laffen moved a **Do Pass** on HCR 3014.

Senator Unruh seconded.

Senator Triplett moved to adopt an amendment that would delete the reference to the Attorney General's office.

Senator Murphy seconded.

Amendment failed by voice vote.

Roll Call Vote on a **Do Pass** on HCR 3014: **7-0-0**

Senator Unruh is the carrier.

Date: 3-21-13
Roll Call Vote #: 31

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 3014 eng.

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Triplett Seconded By Murphy

Senators	Yes	No	Senators	Yes	No
Senator Lyson			Senator Triplett		
Senator Burckhard			Senator Murphy		
Senator Hogue					
Senator Laffen					
Senator Unruh					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

failed by voice vote *delete atty General from HCR*

Date: 3-21-13
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES HC
BILL/RESOLUTION NO. 3014 eng

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Laffen Seconded By Unruh

Senators	Yes	No	Senators	Yes	No
Senator Lyson	✓		Senator Triplett	✓	
Senator Burckhard	✓		Senator Murphy	✓	
Senator Hogue	✓				
Senator Laffen	✓				
Senator Unruh	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Laffen Unruh

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

REPORT OF STANDING COMMITTEE

HCR 3014, as engrossed: Natural Resources Committee (Sen. Lyson, Chairman)
recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HCR 3014 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HCR 3014

HCR 3014

Before the House Energy and Natural Resources Committee

Testimony of the Heart Butte Cabin Owner's Association

February 8, 2013

This is being submitted on behalf of the Heart Butte Cabin Owner's Association. The Association represents over 200 families that have cabins and trailer homes around Lake Tschida, also known as Heart Butte.

Heart Butte Dam was built in 1950 by the federal government. It is located on the Heart River approximately 20 miles south of Glen Ullin. The Bureau of Reclamation manages the dam and the lake created behind it.

Shortly after the dam was complete, use of the Government owned land around the lake for cottages was allowed under a permit, a formal agreement between the Bureau and individuals referred to as the "Permittees."

Lake Tschida cottage permits consist of two types of agreements. The first type, referred to as the "Cabin Areas" (110 total), allow solid built structures that are set at a high enough elevation that the spring high water will not reach them. The second type, referred to as the "Trailer Areas" (114 total), allow trailer homes setting closer to the water. Their location is similar to houses along the Red River in Fargo-Moorhead, the Missouri River in Bismarck-Mandan, or the Mouse River in Minot.

Through the years various improvements have been made to all the cottages, including but not limited to drilling water wells, adding sheds for storing lawn mowers and yard tools, building decks, adding additions to the cabins, tree planting and other landscaping, and sometimes replacing a dated trailer. All the improvements and/or changes have been made at the sole expense of the permittee and with the approval of the Bureau. More than a few trailer owners have over \$100,000 invested in their trailers and lots.

In the 63 years of the dam's existence, the trailer areas have experienced high spring rises only about 3 times, causing less than 10% of the trailers to get wet. The vast majority of the trailers have NEVER been damaged by even the highest spring rises. The permittees that did get water damage, would at their own expense make the necessary repairs or simply replace their trailer, never expecting the Bureau to pay for any damage. To this day, the repair costs have not cost the government any money. Further, in none of these high water events was the glory hole ever in jeopardy. Our trailer homes are secured with anchoring systems.

1

In 2008 the Bureau came to our Association's annual meeting and announced a new policy allowing the trailer permittees to add on and enclose a porch to their trailer so as to create more room for their use. As a result, in 2008 some trailer owners made additional improvements to their trailers.

In the spring of 2009 the trailer areas experienced one of these three higher water events. This time the Bureau reacted differently, and dramatically changed the permit agreement. The changes included:

- 1) By 2021 all trailer area permittees must remove everything off their lot and may only use a camper or fifth wheeler.
- 2) If a trailer gets wet before 2021 then that permittee must remove everything off their lots and start using a camper or fifth wheeler at that time.
- 3) After 2021, the transfer of the permit to a trailer area can only be to an immediate member of the permittee's family. Currently, trailer owners, like cabin owners around Lake Tschida, may transfer their permits to anyone. Permittees on other Bureau-managed land in the state, in particular at the Jamestown Reservoir and at Lake Patterson in Dickinson, may transfer their permits to anyone.

These changes will dramatically affect the way in which we have historically used our lots around the Lake Tschida. It will also adversely affect business in the towns near the lake, and as a result we have received many letters of support from city officials and businesses in Glen Ullin, Elgin, and New Leipzig.

The Bureau stated that its reason for the change is for dam safety. Their concern is that flood debris from the lots would flow to the glory hole and plug it and cause the dam to fail.

Our Association, however, believes that this concern is unfounded, and something else is the reason for the Bureau's policy changes. Nonetheless, the Association has gathered information from international companies who believe a barrier could be installed that prevents debris from reaching the glory hole, and we have the opinion of an engineer that trailer homes can be adequately secured to prevent them from floating away.

I would note that a trailer park was flooded during the recent Mouse River flood, and that none of the trailers floated down the river and only a few fell off of their blocks. Our Association has told the Bureau that we are willing to hire an engineer to recommend methods to ensure that our trailers are secure and that we would abide by those recommendation. The Bureau, however, wants us out and doesn't seem interested in other solutions to its concerns.

We have, therefore, turned to our Congressional Delegation for assistance.

We also hope to have the support of the North Dakota Legislative Assembly.

Many Association members belong to families that have been at Lake Tschida and on the same lots for decades. They have a deep, emotional attachment to them, and to the lake and their neighbors. On many of these lakeside lots, there is now a third generation that is continuing family traditions. We hope that you will help us ensure that we can carry them on for more decades, and more generations.

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3014

Page 2, line 2, after "and" insert "that the attorney general consider taking such action as may be helpful to bringing about the desired solution; and"

Renumber accordingly

#1

HCR 3014

Before the Senate Natural Resources Committee

Testimony of the Heart Butte Cabin Owner's Association

March 21, 2013

Chuck Carvell
wrote

Scott Ressler
Gave

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