

2013 HOUSE AGRICULTURE

HCR 3017

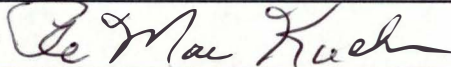
2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

HCR 3017
February 8, 2013
Job #18639

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A resolution urging the U.S. Fish & Wildlife Service and NRCS to fairly administer water management laws and regulations in a manner that allows landowners and tenants certainty and cooperation in the management of these laws and regulations

Minutes:

Attachments #1-3

Representative Brandenburg, Co-Sponsor: We are at a time when we have had many wet years. If we drain out ditches, we then get a letter in the mail that it needs to be plugged. All payments for all land would need to be returned. The only recourse is to get a drain plug. There is no place to go to court.

This resolution would send this issue on. Fifteen years ago NRCS would go out and they would indicate what is a wetland. People are tiling and running into North Dakota soil certifications. A North Dakota Soil Scientist has to classify the soil.

We should have the Secretary of State send it to the President of the U.S., the U.S. Senate and House, Committees on Agriculture, Secretary of Agriculture, NRCS, Director of Fish & Wildlife, etc.

Representative M. Nelson: You mentioned dots on the map?

Representative Brandenburg: Years ago we would notice dots on the acreage map. Those dots are now wetlands. The dot was never there before. Ten or 20 years from now they may not let you farm those acres.

Dan Wogsland, North Dakota Grain Growers: (8:15) (See attached #1)

Eric Aasmundstad, North Dakota Farm Bureau: (12:15) Supports the resolution

Representative M. Nelson: When dealing with different agencies, does that control Fish & Wildlife's actions towards that wetland?

Eric Aasmundstad: No it does not. A big part of our problem is inconsistency between government agencies. NRCS has always been good to work with. We have had problems with U.S. Fish & Wildlife Service. We are back to the lack of water management.

Scott Rising, Soybean Growers of North Dakota: In support also. The growers request something to deal with water management issues. You can deal with one agency but not the next one.

Michael Howe with North Dakota Corn Growers Assn.: Water management is a big problem. We support this also.

Representative Larson: When you want to farm your land and one of these agencies say you can't farm that. Do you have to check each year with each agency?

Michael Howe: That is one of the frustrations and the disconnect.

Opposing:

James Cart, President of the North Dakota Association of Soil Conservation Districts: (17:28) (See attached #2)

Representative Headland: (23:42) Do you believe that wetlands determinations in different states have been applied in the same fashion? Other states are way ahead of us in the goal to improve their land. We have very little wetland certified.

James Cart: There has been a change in NRCS to correct this problem of backlogs.

Representative Headland: As a farmer it is my belief that whoever had a position prior to this had their own belief on wetlands and used that to preclude farmers from development. I don't think this committee with this resolution is asking Congress for anything extraordinary. We need to move forward in a faster way. We need more federal dollars to hire more soil scientists

James Cart: The resolution castigates NRCS for past occurrences and doesn't recognize what they have done in the last year.

Representative Headland: Some of us have met with the Chief NRCS David White in Washington and he understands our issue and is going to do what he can to alleviate these concerns. We haven't seen any action.

Representative Belter: We need differentiation between wetlands that are wet and land that is wet at times but farmable. As far as the state organization of district conservationists, do you see your group as trying to push to rectify nuisance wetlands that don't raise wildlife but we cannot tile because they are considered a wetland? Salts congregate on them. I think according to NDSU 25-28% of soils in North Dakota are affected by salts. We can rectify that by tiling but are not allowed to tile.

What is your position on those wetlands that we are trying to farm?

James Cart: With respect to salinity, we are a strong supporter of gaining three positions at NDSU for research to help farmers fix those saline areas.

We are an organization of farmers. All of our supervisors are farmers. We have a process that brings resolutions to the state association which are forwarded on to the National Association of Conservation Districts to take to USDA.

I have been on this board five years.

Representative Headland: How involved is U.S. Fish & Wildlife in the decision making process with NRCS policy.

James Cart: I haven't had any dealing with them.

Representative M. Nelson: Farmers went to NRCS to get wetlands removed. There is a concern for NRCS to keep records on computer. Does that leave an auditable trail? When there is a change to the records that affects that producer's livelihood, can you see the details?

James Coats: I will defer that to the State Conservationist.

Representative M. Nelson: Back to the multiple services, does having a trained soil conservationist delineate wetlands for the NRCS, does that control the Fish and Wildlife Service. If drain tile is installed where there is no wetland according to NRCS, can the farmer still be in violation with Fish & Wildlife?

James Coats: I will defer that question.

Representative Belter: It has been our personal experience that we have made some progress with NRCS but there still is a problem with getting people out to certify wetlands and a problem with nuisance wetlands. We are not able to tile or drain areas that are productive farmland. Yet it is not good wildlife habitat. We in agriculture want to work with you so we can farm and produce a crop.

Mary Podoll, State Conservationist with NRCS: (38:28) I am here for information. I am not in favor or against this Resolution. I am here to learn what the issues are.

NRCS, 99% of the time, is a voluntary agency that works with farmers and ranchers. The financial dollars for programs are voluntary programs for agriculture producers. The conflict is the wetland compliance component. Compliance is only for those producers that want participate in USDA programs. Sixteen months ago we did meet with Chief White. We only do wetland certifications if a producer asks. This means they are making a change by tiling. In 1985 we recognized there is some value to wetlands and that is when compliance came into being.

We had requests from producers asking for certification that were over 2 years old. The blue dot issue is 10 years old and has been resolved. Once NRCS does the technical

determination of whether it is a wetland, we turn that over to FSA for administration. My goal is to have the 2-year wait down to 5 to 6 months. The chief has given us financial assistance to address that. We also are making sure we apply the labels as the farm bill requires. Wetland compliance is not conservation. The issue to me is which ones truly impact compliance with USDA. The law doesn't say we can't farm those. It just says that you can't drain them after 1985 or 1990.

Have we gone beyond what authorities we have? It is possible. Jennifer Heglund, Assistant State Conservationist, is making sure our staff understands what those authorities are. For example if someone says they want to tile, and they have an old map that shows two wetlands on that field, they might have a total of 10.2 acres of wetlands. It is my goal that we are not overstepping our authority. We need to put wetlands in its box so we can get on to water management.

Last year \$96 million went voluntarily to producers in this state for conservation practices. We rolled out Waterbank for the Devils Lake area. Tristate was authorized \$7.5 million. In the three month period of time for North Dakota for flooded agricultural cropland we received almost \$6 million of that \$7.5 million.

Irrigation efficiencies--last year we put 600 new systems in place. We do water management through soil conservation districts who are local partners. They are farmers and ranchers who come to the table every month to talk about local needs. I do appreciate the resolution getting technical assistance dollars to the state for water management as well as additional staff.

Representative M. Nelson: Can you speak to the auditable trail of information?

Mary Podoll: Sixteen months ago we were not doing a good job of following that trail back to see what documentation was available. Richland County Soil Conservation District is bringing resources to the table to do some of the data research. We don't do certifications unless a producer asks or if a whistleblower occurs.

Representative M. Nelson: You said that you couldn't drain after 1985 or 1990 depending on interpretation of the farm bill. What does that mean?

Mary Podoll: There are definitions in the 1985 farm bill that states no draining after December 23, 1985. 1990 built in a cushion because nobody understood what that meant. The true date is after the 1990 farm bill.

Representative M. Nelson: You mentioned the money spent on irrigation to increase water efficiency.

Mary Podoll: We do work through local districts to address local needs. In the west, it is grazing land issues like fencing and water for cattle or other districts want trees.

Representative M. Nelson: Explain the state technical committee.

Mary Podoll: Several times a year we take a look at all resource concerns across the state. When programs come in, we have flexibility to see what is important. The committee is made of partners that have a stake in natural resources.

Representative Belter: Minnesota potholes have a pipe sticking out and it is dry. It is all farmable. Was that drainage done before 1985?

Mary Podoll: They were not following the guidance nationally. I don't believe they are still able to do that. Now they are following the same rules as the other states. Other states are not happy either.

Representative Headland: Would it be fair to say the person in the position before you had different views? Will it be difficult for us to catch up?

Mary Podoll: A year ago I would have said "yes." We kept hitting brick walls. In October we either gained the trust of Washington or the local people. In another 6 months we will be better able to address these concerns. There is a lot of anger out there.

In Tennessee the dairy farmers have picked up some of that old tobacco ground. They have been in compliance. This tobacco ground of a couple of acres is highly erodible and it is putting them in noncompliance. How I choose to run the state within the law is to look at the big picture. Their watershed benefits outweigh those two acres. The big picture is we can sit at the table. We only have six people that are willing to trust us this year with agriculture drainage water management plans. We added that to our list of cost share this year. For those that want to tile, I want to do it in a way that helps to manage water.

Representative Headland: Does U.S. Fish and Wildlife have a seat at the table when NRCS is developing their policy?

Mary Podoll: In the spirit of everyone having a voice, yes. We are two different agencies. I ultimately have the authority in this state.

Representative Headland: I would say with two different goals in mind.

Mary Podoll: My job is agricultural lands and I can't speak to their authorities.

Representative Fehr: (58:04) What happens if you are not in this position? Is there anything in this resolution that you think would be a setback in terms of moving forward with wetland management?

Mary Podoll: We have flood control structures for water management. The main thing is wetland compliance. If the language was more specific to that issue rather than lumping all of water management in, we wouldn't get all caught up in these other things.

Chairman Dennis Johnson: The waterbank program only has so much money in the pot. For the Devils Lake area, the ones away from the lake scored higher to get in the program than the ones closer.

Mary Podoll: The state technical committee has three months to roll that out. We had over \$30 million in requests and only had \$7.5 million. I would love to see the program again.

Chairman Dennis Johnson: You had three months to administer it and these folks have been sitting for ten years under water.

Support:

Greg Daws, Michigan: I have a map that came from the NRCS office. (See attached #3) Someone in the office took the liberty to do some art on one of my maps. Three times this last year I have turned in for drainage issues. They won't tell you who it is. They can come on to the land and do a wetland compliance check. At first I refused to allow them on my property. They said I have to return all of the payment money. I have withdrawn from the farm program. This past year we got \$61,000 on our farm from the program payments. The geese ate over \$35,000 worth of my crop. So 61 minus 35--it is no use to be in the program. I have to get rid of the water to get rid of the geese.

They come out and show nothing. I have more information in my portable file cabinet than they have when they come to my farm. I have all of the documentation. There is no need to do a wetland compliance check. But it is a way for them to come onto our property and try to find an issue. In Nelson County we have Lake Loretta. It is 39,000 acres of water. It has taken us 17 years to get permission to drain the water. The NRCS office took two years to do wetland delineations on the proposed route. I have spoken to Mary Podoll about this wetland compliance check. They are not always working with people. All I want is documentation. It could be an unhappy hunter. I have documentation back to 1963 showing that this drain had been there and they still thought they had to check.

Bernie Schulak from Oakes, North Dakota: We would like to tile some of our land. I have three maps they sent me. I want to get rid of the wetlands they put on the maps. They said if you ask for all of them, you will get nothing. The land in Denver Township, Sargent County, we have a legal drain that was put in 1917-1919. That whole area has paid drainage assessments all these years.

I am strongly in favor of this resolution.

Chairman Dennis Johnson: Closed the hearing.

2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

HCR 3017
February 14, 2013
Job #18957--no recording

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

(Committee Work)

A resolution urging the U.S. Fish & Wildlife Service and NRCS to fairly administer water management laws and regulations in a manner that allows landowners and tenants certainty and cooperation in the management of these laws and regulations

Minutes:

You may make reference to "attached testimony."

Representative Headland: Moved Do Pass

Representative Fehr: Seconded the motion.

A Roll Call vote was taken: Yes 12, No 0, Absent 1.

Do Pass carries.

Representative Headland: Will carry the bill

Date: 2/14/13

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 3017**

House **Agriculture** Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Consent Calendar
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Headland Seconded By Rep. Fehr

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Joshua Boschee	X	
Vice Chairman John Wall	X		Rep. Jessica Haak	X	
Rep. Wesley Belter	X		Rep. Marvin Nelson	X	
Rep. Alan Fehr	X				
Rep. Craig Headland	X				
Rep. Joe Heilman	AB				
Rep. Dwight Kiefert	X				
Rep. Diane Larson	X				
Rep. David Rust	X				
Rep. Wayne Trottier	X				

Total Yes 12 No 0

Absent 1

Floor Assignment Representative Headland

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

REPORT OF STANDING COMMITTEE

HCR 3017: Agriculture Committee (Rep. D. Johnson, Chairman) recommends DO PASS
(12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HCR 3017 was placed on the
Eleventh order on the calendar.

2013 SENATE NATURAL RESOURCES

HCR 3017

2013 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee Fort Lincoln Room, State Capitol

HCR 3017
March 21, 2013
Job Number 20306

Conference Committee

Veronica Spurling

Explanation or reason for introduction of bill/resolution:

A concurrent resolution urging the United States Fish and Wildlife Service and the United States Department of Agriculture's Natural Resource Conservation Service to fairly administer water management laws and regulations in a manner that allows landowners and tenants certainty and cooperation in the management of these laws and regulations

Minutes:

attachments

Chairman Lyson opened the hearing for HCR 3017.

Representative Mike Brandenburg, District 28, introduced the resolution. The Natural Resource Conservation Service (NRCS) has impacted the farming community in North Dakota and water management should be handled consistently across the state. The NRCS has overstepped their bounds in North Dakota.

Senator Triplett asked why Minnesota and Iowa were referenced in his verbal testimony and not in the resolution. To include them in the resolution would give the NRCS a template for what we want.

Rep. Brandenburg felt that would be a good idea. MN and IA have better procedures in place. In ND we have soil classifiers go out and ND accepts only ND soil classifiers to do that determination. That is causing a backlog.

Brad Thykeson, President of the North Dakota Grain Growers Association, presented written testimony in support of the resolution. See attachment #1. He wants to see fairness with all agencies and across all county lines. In the next to the last paragraph he mentions State Conservationist Mary Podoll. He feels this is an especially good time to pass this resolution because Ms. Podoll is very aware of the need and has been very responsive. To bring the resolution during Ms. Podoll's watch would be a good move. (Ends at 13:50)

Senator Triplett asked if most of the problem is inadequate staffing.

Mr. Thykeson feels the staff is adequate but they need direction. There is a backlog, but that could be cleared up with a change of policy. If they could undo what the 1996 Farm Bill dictated (to re-map every acre), they could clear their backlog.

Senator Murphy asked why all the areas mapped previous to 1995 had to be re-mapped. Was the previous mapping inaccurate?

Mr. Thykeson said as land became more productive and each bushel of grain is worth more, it has been brought to a head.

Senator Triplett asked if this is about sellers' remorse. With increased production and higher prices for commodities landowners wish they or their parents had not sold the wetlands. They want to limit them as much as possible because they wish they were not there at all.

Mr. Thykeson said that is not the case. It has more to do with the wet cycles we have been experiencing which turn more land into wetlands.

Chad Weckerly, Director of the ND Farm Bureau and member of the ND Grain Growers Association and a farmer from Hurdsfield, ND, spoke in favor of the resolution. He presented attachment #2. He has heard people say that farmers are not conservationists. He feels they have to be conservationists. If they don't work to improve their soils, they will not make it as farmers. What should be a concerted effort to do the best by our land resources and our wildlife has been reduced to a battle. He doesn't feel it is a remorse issue that Senator Triplett asked about. It is a matter of the NRCS being inflexible. As an example he mentioned that the government has added 1500 plant species to the list of plants they now consider wetlands vegetation. It is an example of how the government can change the rules in the middle of the game. There is no room for mitigation when a battle is being waged. He describes how difficult it has been to work with the NRCS and the US Fish and Wildlife. They need reasonable, uniform guidelines to work within. (19:00 to 27:23)

Dwight Wrangham, President of ND Landowners Association, spoke in support of the resolution. LAND has about 500 members across the state. They urge a Do Pass.

Terry Weckerly, ND Grain Growers and farmer from Hurdsfield, ND, urged a Do Pass. His reasons were uniformity is needed and soil health. He said "they are a moving target". He said he has heard Fish and Wildlife say "this is what you can get from us" and "in a timely fashion". He said they give lip service but they don't do it.

More in Favor: None

Opposition:

James Cart, President of the ND Association of Soil Conservation Districts, presented written testimony in opposition to HCR 3017. See attachment #3. (Ends at 37:00)

There was discussion about the problems that exist and how they can be rectified.

Senator Murphy mentioned that the resolution asks for mediation through the Ag Service. He asked if Mr. Cart would be opposed to that proposed policy change.

Mr. Cart said he is not against that.

Senator Murphy asked what unintended consequences Mr. Cart might be concerned about.

Mr. Cart feels this may target the present State Conservationist for actions that have happened in the distant past. He feels this reflects an unfair assessment of the present situation.

More Opposition: None

Neutral: None

Chairman Lyson closed the hearing for HCR 3017.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

HCR 3017
April 4, 2013
Job Number 20887

Conference Committee

Veronica Spaulding

Explanation or reason for introduction of bill/resolution:

A concurrent resolution urging the United States Fish and Wildlife Service and the United States Department of Agriculture's Natural Resource Conservation Service to fairly administer water management laws and regulations in a manner that allows landowners and tenants certainty and cooperation in the management of these laws and regulations

Minutes:

attachment

Chairman Lyson opened the discussion of HCR 3017.

Senator Triplett and Senator Unruh both expressed that they did not like some aspects of this resolution.

Senator Unruh presented an amendment. See attachment #1.

Senator Unruh mentioned that all the testimony was in favor of the resolution except for James Cart, the President of the ND Association of Soil Conservation Districts. He did not like the resolution because he felt it would imply that the current State Conservationist, Mary Podoll, is not doing a good job. Ms. Podoll has been the State Conservationist for about a year and has been taking the concerns that are addressed in this resolution very seriously. The Soil Conservation Districts were concerned that if we passed this resolution someone would look at this and want to change our leadership as far as the State Conservationist. In talking with more members of the Soil Conservation Districts, she doesn't feel that is a legitimate or serious concern. Watering down the emotion would possibly make Mr. Cart feel a little bit better about his concern with that.

Senator Unruh: Motion to adopt amendment # 13.3063.01001
Senator Murphy: Second
Motion Carried by Voice Vote

Senator Triplett: Do Not Pass as Amended
Senator Laffen: Second

Senator Triplett felt the amendment helped somewhat, but the whole resolution is written so negatively. She quoted from Mr. Cart's testimony that she feels indicates that the problem already is beginning to work its way toward a solution. (06:08 to 07:15)

Senator Unruh did acknowledge that in the last 1 ½ years there have been improvements made, but she feels the point of this was to try to get some new direction from the federal government on these topics. She felt a change in leadership in a state program would not change how things are run if there is clear direction from the federal government.

Senator Murphy proposed they strike line 16 through line 24 on page one.

Senator Triplett: Second

Senator Murphy feels they can send a very strong message even without those lines in there. They want them to do a better job of defining the wetlands.

Senator Triplett said if she were to amend this she would rewrite the resolution in more neutral language befitting a state legislature. She listed a number of words that are very negative in tone (14:00 to 14:20).

Senator Murphy withdrew his motion to amend the resolution by striking line 16 through line 24 on page one.

Roll Call Vote on Senator Triplett's motion (Do Not Pass as Amended): 4, 3, 0

Carrier: Senator Triplett

2013 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee Fort Lincoln Room, State Capitol

HCR 3017
April 11, 2013
Job Number 21097

Conference Committee

Veronica Spurling

Explanation or reason for introduction of bill/resolution:

A concurrent resolution urging the United States Fish and Wildlife Service and the United States Department of Agriculture's Natural Resource Conservation Service to fairly administer water management laws and regulations in a manner that allows landowners and tenants certainty and cooperation in the management of these laws and regulations

Minutes:

attachment

Audio recording starts at 02:50.

Roll Call was taken and all committee members were present except for Senator Hogue and Senator Triplett.

Chairman Lyson stated they would be opening this back up for the purpose of adding an amendment to HCR 3017. There would be no opportunity for anyone to testify before the committee.

Senator Burckhard: motion to adopt amendment #13.3063.01002. See attachment #1.

Senator Murphy: Second

Motion to adopt amendment #13.3063.01002 carried by voice vote.

Senator Murphy, out of respect for the sponsors of the bill, made a motion to strike lines 16-24 on page 1 of the bill. He feels it doesn't change the message of the resolution, it still has the urgency, and it would be a little more dignified.

Senator Burckhard: Second

Motion failed by voice vote.

Senator Murphy: Do Pass as Amended

Senator Unruh: Second

Roll Call Vote: 5, 0, 2

Carrier: Senator Murphy

Amendment #13.3063.010021 and #13.3063.01002 were merged to make amendment #13.3063.01003

13.3063.01001
Title.02000

Prepared by the Legislative Council staff for
Senator Unruh

March 26, 2013

4/4/13
TD

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3017

Page 2, line 6, replace "have demonstrated no regard for" with "need to consider"

Renumber accordingly

4/11/13
TD

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3017

Page 2, line 6, replace "have demonstrated no regard for" with "need to consider"

Page 2, line 10, after the semicolon insert "and

WHEREAS, this state has the governmental agencies and resources to manage wetlands; and

WHEREAS, the waterfowl population is stable and secure, and the United States Fish and Wildlife Service should allow this state to manage wetlands within the state's boundaries;"

Re-number accordingly

Date: 4-4-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 3017

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 13,3063,01001

Motion Made By Unruh 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:
carried by voice vote

Date: 4-4-13
Roll Call Vote #:

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 3017

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 Murphy Seconded By Triplett

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:
on page one
strike line 16 & 24
motion withdrawn

Date: 4-4-13
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 3017

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 Laffen

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

Total (Yes) 4 No 3

Absent 0

Floor Assignment Triplett

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

Date: 4-11-13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 3017**

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 13,3063.0100

Motion Made By Burckhard 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:

amend by voice vote

Date: 4-11-13
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 3017

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 Murphy Seconded By Burckhard

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 *strike lines 16-24 on*

Date: 4-11-13
Roll Call Vote #: 3

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 3017

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended ^{qs} Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Murphy 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) 5 No 0

Absent 2

Floor Assignment Murphy

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

REPORT OF STANDING COMMITTEE

HCR 3017: Natural Resources Committee (Sen. Lyson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HCR 3017 was placed on the Sixth order on the calendar.

Page 2, line 6, replace "have demonstrated no regard for" with "need to consider"

Page 2, line 10, after the semicolon insert "and

WHEREAS, this state has the governmental agencies and resources to manage wetlands; and

WHEREAS, the waterfowl population is stable and secure, and the United States Fish and Wildlife Service should allow this state to manage wetlands within the state's boundaries;"

Renumber accordingly

2013 TESTIMONY

HCR 3017



1

Your voice for wheat and barley. www.ndgga.com

North Dakota Grain Growers Association
Testimony on HCR 3017
House Agriculture Committee
February 8, 2013

Chairman Johnson, Members of the House Agriculture Committee, for the record my name is Dan Wogsland, Executive Director of the North Dakota Grain Growers Association. We appear here before you today in support of HCR 3017. HCR 3017 calls upon the United States Fish and Wildlife Service and the USDA-Natural Resources and Conservation Service to fairly administer water management laws and regulations in a consistent and cooperative manner.

Chairman Johnson, Members of the House Agriculture Committee HCR 3017 orderly water management in the State of North Dakota is critically important not only to the agriculture community but to every citizen of the state. We in North Dakota have sadly witnessed the devastating impacts that agency bureaucracy can wreak on our people in regards to water. Ask any farmer, township officer, county commissioner, administration official or Congressional staffer what their biggest complaint is and I would submit their answer would be water management and agency inflexibility in dealing with the issues at hand. HCR 3017 seeks to notify decision makers in Washington D.C. of the need to change the way the United States Fish and Wildlife Service and the USDA-Natural Resources and Conservation Service are doing business in our state.

By the length of HCR 3017 you can readily see the frustration felt in dealing with the bureaucracy of USDA-Natural Resources and Conservation Service and the United States Fish and Wildlife Service in water management issues. Inconsistencies and misinterpretations of water management laws and regulations, regulatory overreach, and outlandish punishment are the hallmarks of the experience of dealing with these two agencies. It's time to change that attitude within the agencies and HCR 3017 serves notice to the powers that be in our Washington D.C. that the time to change is now.

Chairman Johnson, Members of the House Agriculture Committee, HCR 3017 isn't just about problems; it's also about defining solutions. Pages two and three outline specific solutions to changes that need to be made within the United States Fish and Wildlife Service and the USDA-Natural Resources and Conservation Service that will benefit water management efforts in the state; the suggestions in the resolution include:

NDGGA provides a voice for wheat and barley producers on domestic policy issues – such as crop insurance, disaster assistance and the Farm Bill – while serving as a source for agronomic and crop marketing education for its members.

- Requiring the United States Fish and Wildlife Service to specifically define easement boundaries for North Dakota landowners
- Requiring the USDA-Natural Resources and Conservation Service to more clearly define and consistently implement their mission statement of “Helping People Help the Land”
- Requiring USDA- Natural Resources and Conservation Service clearly define all the options available to landowners to accomplish orderly water management
- Require that USDA- Natural Resources and Conservation and United States Fish and Wildlife Service provide technical assistance for orderly water management
- Require USDA-Natural Resources and Conservation Service and United States Fish and Wildlife Service to complete water management processes in a timely manner
- Require USDA-Natural Resources and Conservation Service and United States Fish and Wildlife Service to work with landowners in cases of violations giving the landowners the time and ability to correct a wetland violation
- In the case of a violation allow landowners’ mediation and an appeal process which is timely
- Allow for indeterminate good faith effort determinations as defined by USDA-Farm Service Agency.

Chairman Johnson, Members of the House Agriculture Committee, HCR 3017 outlines some of the problems and defines possible solutions to frustrations felt by farmers regarding orderly water management in the North Dakota. To be sure, USDA-Natural Resources and Conservation Service have begun the process of working towards some of the goals outlined in this resolution. For that we commend State Conservationist Mary Podoll and her staff. However, if we are to accomplish the goals set out in HCR 3017, decision-makers in Washington D.C. must be apprised of our situation in North Dakota.

Therefore Chairman Johnson, Members of the House Agriculture Committee, the North Dakota Grain Growers Association would ask for your favorable consideration of HCR 3017 and would ask that the Committee and the House concur.

#2
2/8/13

TESTIMONY
NORTH DAKOTA ASSOCIATION OF SOIL CONSERVATION DISTRICTS
HOUSE CONCURRENT RESOLUTION NO 3017
HOUSE AGRICULTURE COMMITTEE

Chairman Johnson, Vice Chairman Wall, Members of the Committee. My name is James Cart and I am here today as the President of the North Dakota Association of Soil Conservation Districts. I am also a Burke County Soil Conservation District Supervisor and farmer.

I am presenting today in opposition to HCR 3017 for the following reasons:

- First, I understand that there are backlogs in some parts of the State, particularly the eastern and central regions, with regard to water management issues, and more specifically with tiling.
- I have, as of yesterday, communicated with as many Soil Conservation District (SCD) staff, local Watershed Coordinators and NRCS District Conservation personnel as I could reach to identify the kinds of concerns addressed in this Resolution. These included the counties of Richland, Cass, Stutsman, Rolette, Towner, Renville, Burke and Bowman to get a view across the state. There is a notable consistency in the responses I received.
- The focus on processing wetland determinations is intensive. This emanates from the NRCS State Conservationist through to the last District Soil Con and SCD Manager/Clerk. In my telephone interviews, I always began with whoever answered the phone – usually the District Clerk, Manager or Watershed Coordinator, then progressed up the local chain. While only some had heard of this Resolution, they were all aware of whether or not there were wetland issues in their counties and the amount of effort being applied to process wetland determinations and to work with landowners and operators, yet remain within the bounds of the Federal Conservation Security Act of 1985.
- During the past year and a half or so and coinciding particularly with the assignment of Ms Mary Podoll as North Dakota State Conservationist, there have been substantial changes in the emphasis, organizational structure and operating philosophy aimed at water management. I've already described the emphasis that has reached right to the boots on the ground. There is now a dedicated staff within the State NRCS organizational structure to process and to adjudicate wetland determinations. They apply a detailed knowledge and understanding of the Food Security Act and of the technical factors involving soil types, vegetation and hydrology that define wetlands. And the operating philosophy is to support the farmers, ranchers and others in every legal way they can, by every means available. I visited with a farmer in Pierce County who described his experience at requesting, late last fall after freezeup, a determination for tiling a field. He was surprised and pleased with the quick and thorough response and cooperative attitude of the local NRCS personnel.

- A note on the backlog of wetland determinations – a year ago North Dakota had a backlog of over 3,000 wetland determination applications on the books. Today the backlog is 1,600. Of the nearly 1,500 backlog reduction in that time, there have been only six appeals – a rate of 0.4%. I am told that NRCS is applying resources to complete on-site evaluations to reduce that number to 1,000 by next fall, thus reducing the worst case waiting period to four to six months. They have dedicated over \$2 million toward hiring private contractors and trained temporary employees to speed up the work – and it does require a good amount of time and effort on each application.
- Therefore, I believe that the points addressed in this Resolution, certainly as they apply to the North Dakota NRCS leadership and staff, are a year or more out of date and not cognizant of the great effort to process both a substantial backlog and continuing new applications for wetland determinations, to allow the local field office staff to act as an advocate FOR the farmer and rancher while compliance determinations are made by a separate element of the organization, and to bring to the producers the certainty and timeliness that they need and deserve.
- I respectfully ask that your Committee recommend a Do Not Pass on House Concurrent Resolution No. 3017

Thank you. Have you any questions?

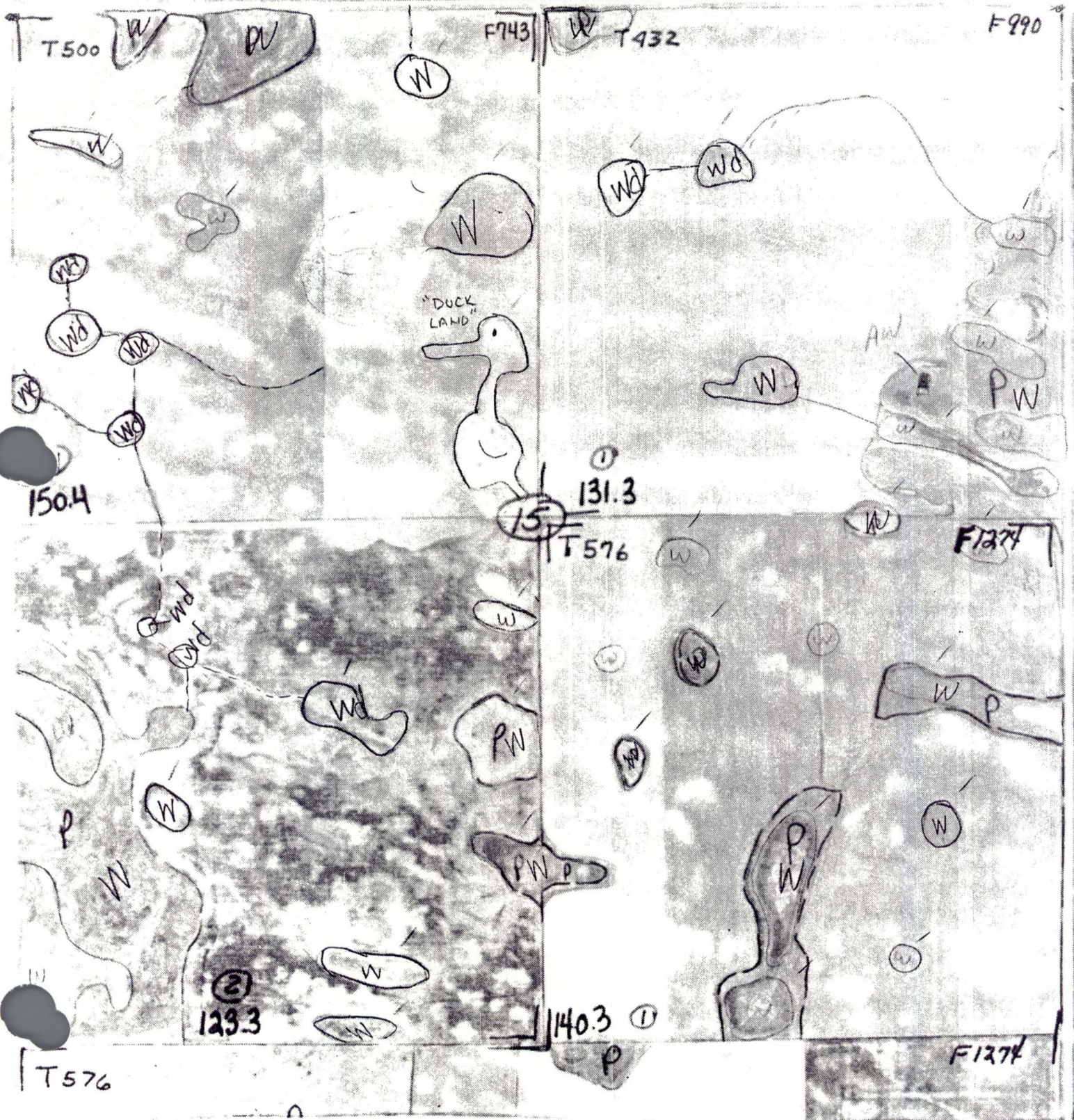
#3
Greg Davis
2/8/13

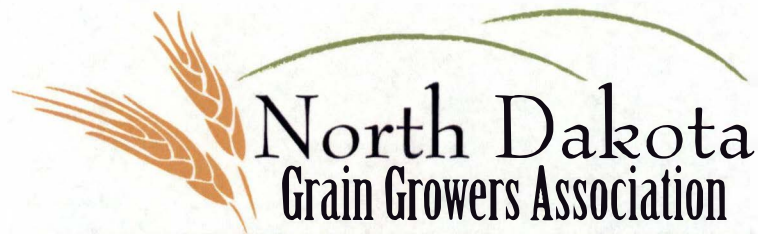
Page 6

NELSON 063
NOT TO SCALE

601

153-58





Your voice for wheat and barley. www.ndgga.com

North Dakota Grain Growers Association
Testimony on HCR 3017
Senate Natural Resources Committee
March 21, 2013

Chairman Lyson, Members of the Senate Natural Resources Committee, for the record my name is Brad Thykeson, President of the North Dakota Grain Growers Association. I appear here before you today on behalf of the North Dakota Grain Growers Association in support of HCR 3017. HCR 3017 calls upon the United States Fish and Wildlife Service (USFWS) and the USDA-Natural Resources and Conservation Service (NRCS) to fairly administer water management laws and regulations in a consistent and cooperative manner in the state of North Dakota.

Chairman Lyson, Members of the Senate Natural Resources Committee, orderly water management in the State of North Dakota is critically important not only to the agriculture community but to every citizen of the state. We in North Dakota have sadly witnessed the devastating impacts that agency bureaucracies can wreak on our people in regards to water. Ask any farmer, township officer, county commissioner, administration official or Congressional staffer what their biggest complaint is and I would submit their answer would be water management and agency inflexibility in dealing with the water management issues at hand. HCR 3017 seeks to notify decision makers in Washington D.C. of the need to change the way the USFWS and the NRCS are doing business in our state.

By the length of HCR 3017 you can readily see the frustration felt in dealing with the USFWS and NRCS in water management issues. Inconsistencies and misinterpretations of water management laws and regulations, regulatory overreach, and outlandish punishments are the hallmark of the experience in dealing with USFWS and NRCS. It's time to change that attitude within the agencies and HCR 3017 serves notice to the powers that be in Washington D.C. that the time to change is now.

Chairman Lyson, Members of the Senate Natural Resources Committee, HCR 3017 isn't just about problems; it's also about defining solutions. Pages two and three outline specific solutions to changes that need to be made within the USFWS and NRCS that will benefit water management efforts in the state; the suggestions in the resolution include:

NDGGA provides a voice for wheat and barley producers on domestic policy issues – such as crop insurance, disaster assistance and the Farm Bill – while serving as a source for agronomic and crop marketing education for its members.

- Requiring the USFWS to specifically define easement boundaries for North Dakota landowners
- Requiring the NRCS to more clearly define and consistently implement their mission statement of "Helping People Help the Land"
- Requiring the NRCS to clearly define all the options available to landowners to accomplish orderly water management
- Require that USFWS and NRCS provide technical assistance for orderly water management
- Require USFWS and NRCS to complete water management processes in a timely manner
- Require USFWS and NRCS to work with landowners in cases of violations giving the landowners the time and ability to correct a wetland violation
- In the case of a wetland violation allow landowners' mediation and an appeal process which is timely and affordable
- Allow for indeterminate good faith effort determinations as defined by USDA-Farm Service Agency.

HCR 3017 outlines some of the problems and defines possible solutions to frustrations felt by farmers regarding orderly water management in the North Dakota. To be sure, NRCS has begun the process of working towards some of the goals outlined in this resolution. For that we commend State Conservationist Mary Podoll and her staff. However, if we are to accomplish the goals set out in HCR 3017, decision-makers in Washington D.C. must be apprised of our situation in North Dakota.

Therefore Chairman Lyson, Members of the Senate Natural Resources Committee, the North Dakota Grain Growers Association would ask for your favorable consideration of HCR 3017 and would ask for the Senate to concur.

#2

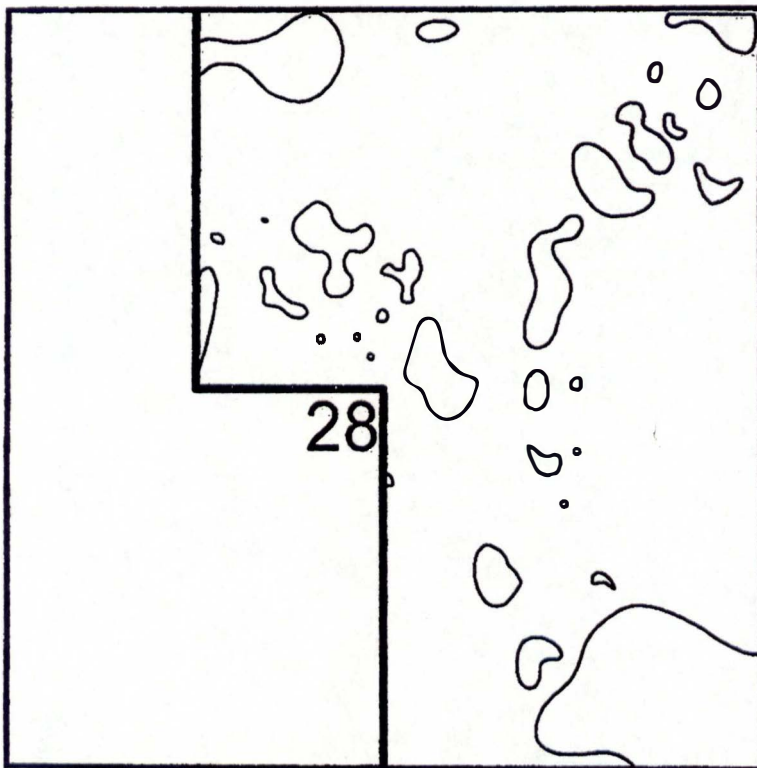
UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

Tract: 11X

Map 1 of 2

WATERFOWL PRODUCTION AREA WELLS COUNTY, STATE OF NORTH DAKOTA EASEMENT
AUTHORIZED BY MIGRATORY BIRD HUNTING STAMP ACT OF MARCH 16, 1934, AS AMENDED.
T. 146N., R. 73W., 5th PRINCIPAL MERIDIAN

SECTION 28, E1/2, E1/2NW1/4



1 inch = 0.25 miles






The U.S. Fish and Wildlife Service (Service) has purchased and owns perpetual rights which restrict or prohibit the right to drain, burn, level, and fill any wetland basins depicted on this map. This map represents the Service's effort to depict the approximate location, size and shape of all protected wetlands based on information and maps available at the time this map was prepared. However, wetlands are hydrologically dynamic systems, with expanding and contracting water levels. This map is not meant to depict water levels in the wetland in any given year. The Service reserves the right to revise this map, provided the mapped acreage remains consistent with the Easement's Summary Acres.

Prepared by: Kristina Hanson
Kristina Hanson

Approved by: Neil R. Shook
Neil Shook

Date: 10/19/2011

LEGEND

-  Section Boundary
-  Boundary of Easement Description
-  Wetlands Covered by Provisions of the Easement
-  Wetlands Deleted from the Easement
-  Approved Drainage Facility

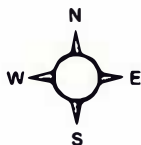
UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

Tract: 11X

Map 2 of 2

WATERFOWL PRODUCTION AREA WELLS COUNTY, STATE OF NORTH DAKOTA EASEMENT
AUTHORIZED BY MIGRATORY BIRD HUNTING STAMP ACT OF MARCH 16, 1934, AS AMENDED.
T. 146N., R. 73W., 5th PRINCIPAL MERIDIAN

SECTION 33, SW1/4, E1/2



1 inch = 0.25 miles






The U.S. Fish and Wildlife Service (Service) has purchased and owns perpetual rights which restrict or prohibit the right to drain, burn, level, and fill any wetland basins depicted on this map. This map represents the Service's effort to depict the approximate location, size and shape of all protected wetlands based on information and maps available at the time this map was prepared. However, wetlands are hydrologically dynamic systems, with expanding and contracting water levels. This map is not meant to depict water levels in the wetland in any given year. The Service reserves the right to revise this map, provided the mapped acreage remains consistent with the Easement's Summary Acres.

Prepared by: Kristina Hanson
Kristina Hanson

Approved by: Neil Shook
Neil Shook

Date: 10/19/2011

LEGEND

-  Section Boundary
-  Boundary of Easement Description
-  Wetlands Covered by Provisions of the Easement
-  Wetlands Deleted from the Easement
-  Approved Drainage Facility

United States Department of the Interior
 Fish and Wildlife Service
 Bureau of Sport Fisheries and Wildlife
 Branch of Realty

DRAINAGE FACILITY MAP

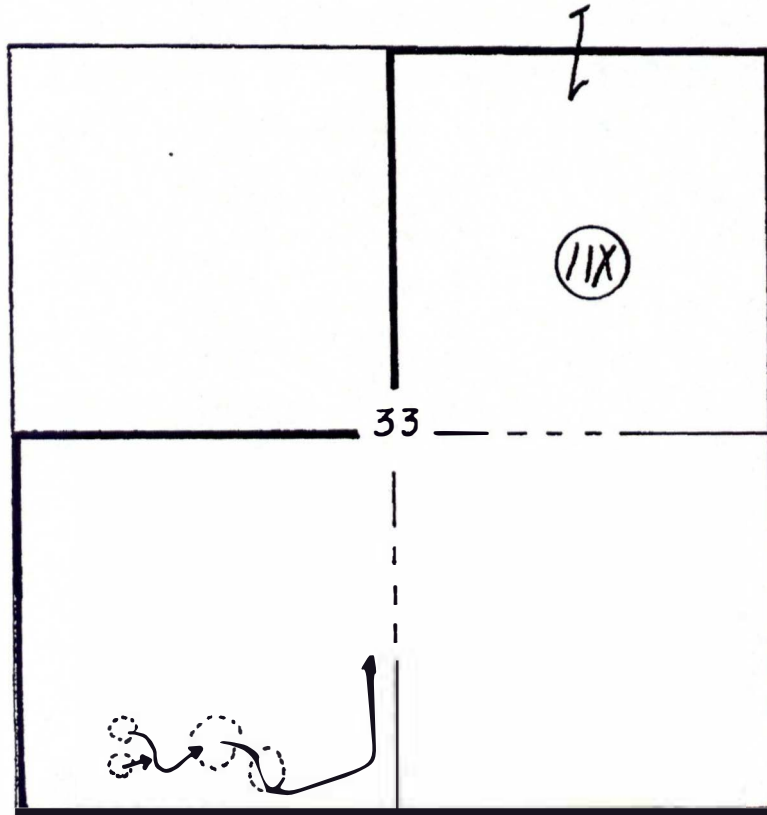
RADTKE, WALLACE F.
 WATERFOWL PRODUCTION AREA

TRACT (//X)
 WELLS COUNTY

480.00 ACRES
 NORTH DAKOTA

EASEMENT AUTHORIZED BY MIGRATORY BIRD HUNTING STAMP ACT OF MARCH 16, 1934, AS AMENDED
 DESCRIPTION: FIFTH PRINCIPAL MERIDIAN

T. 146 N., R. 73 W.,
 sec. 33, SW $\frac{1}{2}$, E $\frac{1}{2}$



An exact duplicate of the map was mailed on 9/29/65
 to Wallace F. Radtke
Realty Management Section

I hereby certify that this map represents the excepted drainage
 ditches and/or deleted wetlands referred to in the easement
 agreement executed July 8, 1965 and accepted on SEP 27 1965.

Acting W. P. Schaefer
 Regional Director



Wetlands Deleted from the Provisions of the Easement

Wetlands Drained

Open Ditch

Scale - 4" = 1 mile

Map drawn by: R.L.B. Date: 7-9-65

UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE

Easement Summary

State : North Dakota
County : Wells
Location: T. 146 N., R. 73 W., 5th P.M.
sec. 28, E $\frac{1}{2}$
E $\frac{1}{2}$ NW $\frac{1}{4}$
sec. 33, SW $\frac{1}{4}$, E $\frac{1}{2}$

Tract Name : Radtke, Wallace F.
Tract Number: 11A
Easement Dated : 7-8-65 Easement Option Expires: 1-7-66
Easement Accepted: SEP 21 1965 Term of Easement: Perpetual
Easement Consideration: \$1500.00
Tract Acreage : 980.00 Cost per acre: \$1.70
Wetland Acreage: 167.00 Wetland cost per acre: \$8.98
Estimate of Value: \$1500.00
Accounting Number 14-16-0003-11554

Authorization to acquire easements in Wells County,
North Dakota, given by Governor William Guy
in letter dated 12-18-61.

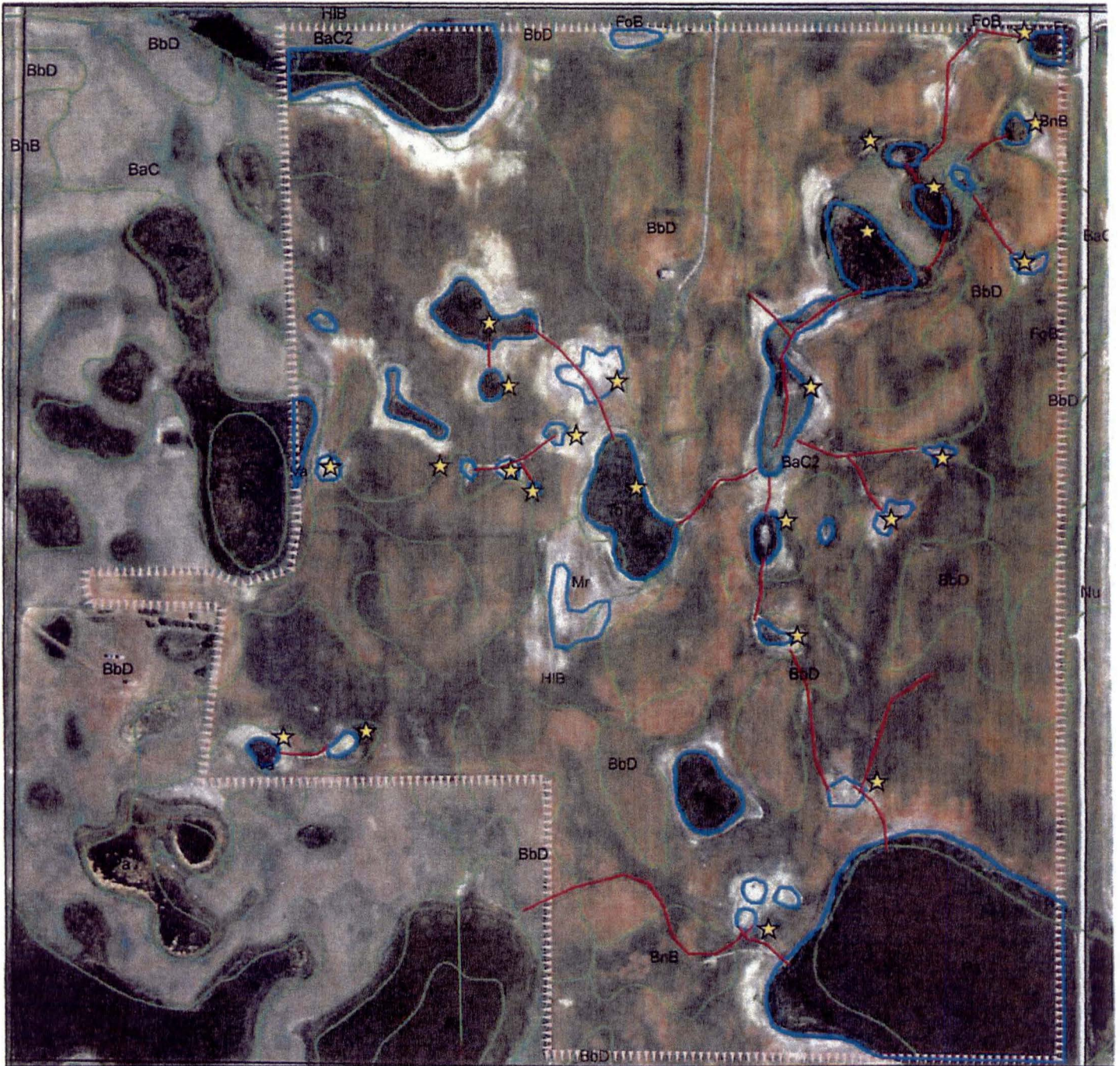
Is your RETURN ADDRESS completed on the reverse side?

"off site" 6 Potential Wetlands

Soils Map

Field Office: Fessenden FO
Legal Desc: 28-146-73

Agency: USDA-NRCS
Tract: 10626, 10627



Legend

Certified Wetland Determination Boundary

Wetlands

Ditch



- W Wetland
 - FW Farmed Wetland Drained or modified & cropped prior to 12-23-1985, but still meets wetland criteria
 - PC Prior Converted
 - NW Non Wetland
 - NI Not Inventoried Potential Waters of the US
- See NRCS CPA-O26E for definitions and additional info.



Certification Map

Date: 7/26/2012

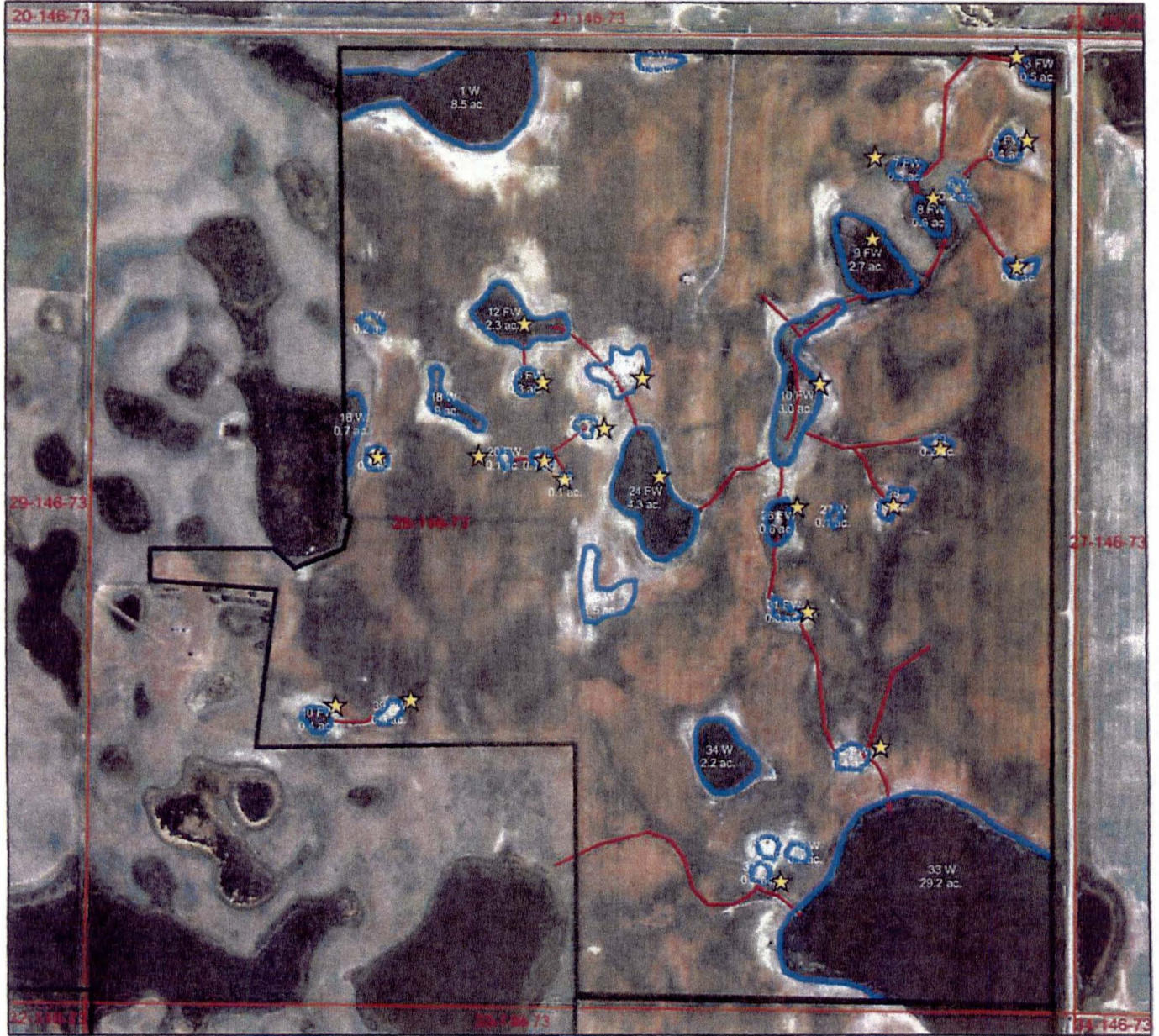
Customer(s): WECKERLY FARMS PARTNERSHIP

"off site"

Field Office: FESSENDEN SERVICE CENTER
Agency: NRCS

Legal Description: 28-146-73

Tract 10626, 10627



Legend

- ☆ Potential Wetlands
- Certification Boundary
- Wetlands
- Drains
- Wells PLSS



1,100 0 1,100



N



Certified Wetland Determination

Field Office: Fessenden FO

Legal Desc: 28-146-73

Easements

Agency: USDA-NRCS

Tract: 12255



Legend

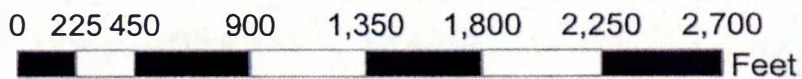
Certified Wetland Determination Boundary



Wetlands



Ditch



- W Wetland
 - FW Farmed Wetland Drained or modified & cropped prior to 12-23-1985, but still meets wetland criteria
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- See NRCS CPA-O26E for definitions and additional info.



- easements -

TESTIMONY
NORTH DAKOTA ASSOCIATION OF SOIL CONSERVATION DISTRICTS
HOUSE CONCURRENT RESOLUTION NO 3017
SENATE NATURAL RESOURCES COMMITTEE

Chairman Lyson, Vice Chairman Burkhard, Members of the Committee. My name is James Cart and I am here today as the President of the North Dakota Association of Soil Conservation Districts. I am also a Burke County Soil Conservation District Supervisor and farmer.

I am presenting today in opposition to HCR 3017 for the following reasons:

- First, I understand that there are backlogs in some parts of the State, particularly the eastern and central regions, with regard to water management issues, and more specifically with tiling. I am also aware that some of the determinations have dragged on far too long for various reasons.
- I have been in communication with many Soil Conservation District (SCD) staff, local Watershed Coordinators and NRCS District Conservation personnel to identify the kinds of concerns addressed in this Resolution. These included the counties of Richland, Cass, Stutsman, Rolette, Towner, Grand Forks, Traill, Ward, Renville, Burke and Bowman to get a view across the state. There is a notable consistency in the responses I received.
- The focus on processing wetland determinations is intensive. This emanates from the NRCS State Conservationist through to the last District Soil Con and SCD Manager/Clerk. In my telephone interviews, I always began with whoever answered the phone – usually the District Clerk, Manager or Watershed Coordinator, then progressed up the local chain. While only some had heard of this Resolution, they were all aware of whether or not there were wetland issues in their counties and the amount of effort being applied to process wetland determinations and the directives to work **with** landowners and operators, yet remain within the bounds of the Federal Conservation Security Act of 1985.
- During the past year and a half or so and coinciding particularly with the assignment of Ms Mary Podoll as North Dakota State Conservationist, there have been substantial changes in the emphasis, organizational structure and operating philosophy aimed at water management. I've already described the emphasis that has reached right to the boots on the ground. There is now a dedicated staff within the State NRCS organizational structure, headed by Ms Jennifer Heglund, to process and to adjudicate wetland determinations. She is present today to address any technical issues. Her staff applies a detailed knowledge and understanding of the Food Security Act and of the technical factors involving soil types, vegetation and hydrology that define wetlands. And the operating philosophy is to support the farmers, ranchers and others in every legal way they can, by every means available. I visited with a farmer in Pierce County who described his experience at requesting, late last fall after freezeup, a determination for

tiling a field. He was surprised and pleased with the quick and thorough response and cooperative attitude of the local NRCS personnel.

- A note on the backlog of wetland determinations – a year ago North Dakota had a backlog of over 3,000 wetland determination applications on the books. Today the backlog is 1,600. Of the nearly 1,500 backlog reduction in that time, there have been only six appeals – a rate of 0.4%. I am told that NRCS is applying resources to complete on-site evaluations to reduce that number to 1,000 by next fall, thus reducing the worst case waiting period to four to six months. They have dedicated over \$2 million toward hiring private contractors and trained temporary employees to speed up the work – and it does require a good amount of time and effort on each application.
- Therefore, I believe that the points addressed in this Resolution, certainly as they apply to the North Dakota NRCS leadership and staff, are a year or more out of date and are not cognizant of the great effort first, to process both a substantial backlog and continuing new applications for wetland determinations, second, to allow the local field office staff to act as an advocate FOR the farmer and rancher while compliance determinations are made by a separate element of the organization, and third, to bring to the producers the certainty and timeliness that they need and deserve.
- I respectfully ask that your Committee recommend a Do Not Pass on House Concurrent Resolution No. 3017

Thank you. Have you any questions?

#1

13.3063.01001
Title.

Prepared by the Legislative Council staff for
Senator Unruh

March 26, 2013

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3017

Page 2, line 6, replace "have demonstrated no regard for" with "need to consider"

Renumber accordingly

#)

13.3063.01002
Title.

Prepared by the Legislative Council staff for
Senator Hogue

April 8, 2013

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3017

Page 2, line 10, after the semicolon insert "and

WHEREAS, this state has the governmental agencies and resources to
manage wetlands; and

WHEREAS, the waterfowl population is stable and secure, and the Fish and
Wildlife Service should allow this state to manage wetlands within the state's
boundaries;"

Renumber accordingly