

2017 HOUSE ENERGY AND NATURAL RESOURCES

HCR 3019

2017 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau –A Room, State Capitol

HCR 3019
2/9/2017
28099

- Subcommittee
 Conference Committee

Committee Clerk Signature

Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Exercise nondiscrimination in public land management and return the land no longer required for the Pick-Sloan Missouri Basin Project Dam at Lake Sakakawea

Minutes:

Chairman Porter: Called the committee to order on HCR 3019.

Rep. Jones: We're trying to figure out a way to get the excess lands on the projects back into the hands of the original owners so they can use that land. I have 2 specific constituents in my district, the Qualey's and another rover by White Earth Bay. In 1 situation, they gave a lot of land on their ranch to the project, were willing to do that for the good of the country. In that particular case they lost their calving pens and calving sheds because they had the house, the sheds, and now the lake is there, so they had to give up all of their spring pens. Those spring pens, that area they gave up is not a necessary part of the project. For the last 50 years they've had to see those lands be nothing but weeds even though it's a perfect are for doing their calving and doing stuff as part of their ranching operation. They would like to get the land back. Recent events with President Obama, his administration, gave the lands on the project to the tribes within the boundaries of the reservation, they gave the management or disposition of those lands to the Dept. of Interior, so they could get the lands on the reservation to the tribes, whoever that is. I was to several meetings. I don't meet to abbreviate this process. It's not like it's going to be an immediate thing that's done. The meetings I was in; they were trying to figure out how to set up the system where people can make application for those lands with different entities. Now that they've take the step on the Federal level, working with the Dept. of Interior, they're going to have to figure out the system for the people to make application and get that. As part of this bill on Line 11, it says, "if a prior landowner no longer has interest in owning the land, the US Dept. of Interior should make that land for purchase which may allow the federal government to make other necessary acquisitions". That's referring to the federal government through different pieces of legislation, they are told not to get a net gain of lands. So we're reminding the department of interior, if they want to get additional lands, somewhere they have to give up other lands. So this can be a tool for them if the new owners that own the land, make application and want to get it, they're not the previous owners, or having trouble establishing it, this would still be an attractive tool for the BLM. I'm from WY, they have wild horse management areas

there, they've tried to expand at different places for different programs. They've been stopped because of the restriction, you can't take in more land unless you give away land somewhere else, basically a tradeoff. I think this is good legislation. I talked to Kramer's office and they don't have anything they're working on at the national level. He's interested in this. He wants his staff to work with this once we get this through so we can start a forward movement. Basically what we're saying in this bill is the administration has given the lands on the reservation to those people; we do not want you to discriminate, we want you to give those lands in that project to the citizens of ND. So we're asking for non-discrimination in our land management. I stand for questions.

Chairman Porter: Questions? How many acres in the Pick-Sloan Project?

Rep. Jones: I apologize. It's been so long since I looked at that number. It was considerable. When they did the drawing, they would take up a quarter, and in a lot of cases, the high water mark doesn't even cover half of that. It's in the thousands of acres.

Chairman Porter: The Pick-Sloan Missouri Basin Project also includes Lake Oahe? Or is it just specific to Lake Sakakawea?

Rep. Jones: I told them I wanted to focus on Lake Sakakawea. The people at Legislative Council put in the Pick Sloan in, I didn't understand why they did that.

Chairman Porter: You stay silent inside this resolution on lands that may or may not be eligible for return that have been improved either by the Corp of Engineers or ND Game and Fish for boat ramps, boat landings, access for public parking lots, those types of things. Was there any consideration while you were looking at this that the State of ND had the ability to retain any improved areas that they have invested taxpayer dollars into?

Rep. Jones: In the meetings I've attended in the last 2-3 years, dealing with this, there was testimony. Those people that had vested interested, especially for the public good, defended their investments and not anticipated this would affect those. That's part of the process of having to make application through the Dept. of Interior. They would take that into account and protect public interest and investments. I would not anticipate they would be eligible for this.

Chairman Porter: The way it's worded, Line 17, "no longer required for the Pick-Sloan Missouri Basin Project." In previous legislation we've always used an elevation or mark, anything above this mark, deemed to be excess. As you drafted this did you look at using a mark of elevation in order to determine which lands they should look at, or are you saying all land? The way it's worded, they're going to say we need it and thanks for calling.

Rep. Jones: All the discussion we had was based around that high elevation mark, 1850 or 1853. I can't recall the specific elevation to capture and store water for the management of the Missouri River. Proponents of not allowing this land to go, we're saying they don't need it to just have the water, but it provides wildlife area, habitat, etc, so that discussion was ongoing. It was my intention when this was drafted, to make any land that was not inundated with water in the management of the lake available, and let them deem which was not usable as part of that purpose of the project.

Julie Ellingson, ND Stockmans Association. We too would lend our support for HCR 3019. As a private property rights advocate, we support the concept of returning unneeded property to the original landowners. I appreciated the remarks of Rep. Jones brought up on no net gain on Lines 11-12-13 in terms acquisition of property by the federal government. We too have policy that supports private ownership over government ownership and would support a no net gain.

Chairman Porter: Questions. Testimony in support? Opposition?

11:45

Carol Two Eagle: Where the land is, inside current treaty land boundaries, not necessarily current reservation boundaries, you're going to have a problem with the tribes. (a) we are citizens, and (b) we lost a huge amount of land on Standing Rock alone, which is like Oahe, I believe that was 250,000 acres in round figures. That high water mark you were asking about, I believe that high water mark is 1854, that's the last I heard. On Sakakawea, they lost more. That's the Mandan Hidatsa Arikara Nation. We are full citizens but we are also Nations. Our reservations are nations. Where land has been improved with things like boat ramps, the Tribes, I do not speak for the tribes officially, the Tribes are interested to work with the State, so the State wouldn't lose its investment and both of them would have some input and involvement and maintenance of those areas. On the surface this might be a simple bill but not because of treaty laws. The Tribes are certain to get into it if their treaty lands are going to be threatened by a bill like this.

Rep. Roers Jones: Clarify, are you in support or opposition.

Carol Two Eagle: I'm in opposition because of the treaties.

Rep. Roers Jones: the way the resolution is written wouldn't it stand to benefit the Tribes if the land is to be offered first to the original owners of the land, and if they don't want it, then to the public.

Carol Two Eagle: The treaties would say the original owners is us, but I didn't see that that was all that clear because it just talks about citizens. Then I'm thinking you're getting into some counterpoint between the sovereignty of the Nations and the sovereignty of the state of ND which under law is inferior to that of what you call Tribes or reservations. You have to take a position, so I decided to take the opposition.

Chairman Porter: Questions? Opposition. Closed hearing

2017 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau –A Room, State Capitol

HCR 3019
2/10/2017
28210

- Subcommittee
 Conference Committee

Committee Clerk Signature

Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Exercise nondiscrimination in public land management and return the land no longer required for the Pick-Sloan Missouri Basin Project dam at Lake Sakakawea

Minutes:

Chairman Porter: Called the committee to order on HCR 3019.

Rep. Lefor: I move a Do Pass on HCR 3019.

Rep. Roers Jones: Second

Chairman Porter: I have a motion for a Do Pass on HCR 3019 from Rep. Lefor, second from Rep. Roers Jones. This isn't the first time we've heard these. We've had them for Oahe, Sakakawea. I'm not very fond of this language. It doesn't talk about the areas that are developed and completed by the state of ND for the last 75 years. It doesn't talk about access to our properties on these lands, and they're very technical and difficult. The last time we did one of these like this, they walked to WDC with it and said see the Legislature wants to give all the land back and they don't care about the access, the improvements the state of ND has done. So I can't support it in this language. I don't know there's any language I could support it on their such complicated issues.

Rep. Devlin: There's also talk about a specific elevation and we never went anywhere with that. I don't know if there was going to be further discussion before final vote on that.

Chairman Porter: I don't know that we have the answer to that. I think it's a definite range. We heard from 1850-1853 msl, and our opposition, Ms. Carol Two Eagle stated 1854. The Tribes claim inside of their original treaty it was all theirs. In the past the ones that have passed out of here have said the land would come back to the state first, and then figured out. This one is saying the land just goes back to the individual. It doesn't have anything that takes care of those other areas of my concerns.

Rep. Keiser: to reinforce my earlier point, these resolutions can be very important. They can also be very problematic. I've been involved at national hearings in Congress where they

have sited states taking a resolution, that really if you extend it, does fullest capacity works against what they intended it to do, and say this is what you wanted, this is what we'll give you. So resolutions we take a little too casually here. They don't seem to ever have a positive impact on anybody, but if they can use them against us they will.

Rep. Lefor: I withdraw my motion.

Rep. Roers Jones: I'll second that.

Chairman Porter: The other points of discussions. When the federal government, Rep. Roers Jones was not wrong, they came in and did things during this period of time without technology that exists today and did things in squares, and sections, and did things easy to delineate going across the flow of that river on what they thought would be the lake. They missed in some spots, long in some spots, and short in some spots, that was the technology of the time. There's an ongoing discussion with Congress, on what the definition is of excess land on that whole Pick-Sloan Reservoir system. I don't know that, I don't feel comfortable sticking my nose into it with this statement.

Rep. Anderson: the public would lose all access or most of it?

Chairman Porter: it would depend on if it's on an existing section line, they wouldn't lose those. If the parking lot for the boat landing was on somebody's land that was take, that we say it's okay to give back as individuals, you could lose the parking lot. Technically if there was a turn that came off the section line and went a half mile one direction and the boat landing was there, you'd lose the whole area.

Rep. Anderson: I think eventually you'd lose the natural beauty of the lake by people develop a property. It might be good for some, but I think you'd take a lot away from the lake too.

Chairman Porter: With a blanket statement, that's also a concern. How Congress treated the Three Affiliated Tribes when they put theirs back, they didn't give the land back to the individual, they put the land in trust in the Dept. of the Interior. It becomes Tribal land, but it's not individuals.

Rep. Keiser: I move a Do Not Pass and place it on the Consent Calendar.

Rep. Ruby: Second

Chairman Porter: I have a motion for a Do Not Pass and place on the Consent Calendar from Rep. Keiser, second from Rep. Ruby to HCR 3019. Discussion?

Vice Chairman Damschen: I'm torn on this because I can see the sentiment to give the land back to the original owners, or private ownership. I don't think is the correct wording. We're not going to make amendments. Being an old property rights advocate, I'm want to make a statement by opposing the motion.

Chairman Porter: Clerk will call a roll on a Do Not Pass to HCR 3019.
Yes 12 No 1 Absent 1 Rep. Mitskog is the carrier.

Date: 2-10-17

Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3019**

House Energy & Natural Resources Committee

Subcommittee

Amendment LC# or
Description: _____

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions

- Reconsider
- _____

Motion Made By Rep Keiser Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Lefor	✓	
Vice Chairman Damschen		✓	Rep. Marschall	✓	
Rep. Anderson	✓		Rep. Roers Jones	✓	
Rep. Bosch	✓		Rep. Ruby	✓	
Rep. Devlin	✓		Rep. Seibel	AB	
Rep. Heinert	✓				
Rep. Keiser	✓		Rep. Mitskog	✓	
			Rep. Mock	✓	

Total (Yes) 12 No 1

Absent 1

Floor Assignment Rep Mitskog

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

REPORT OF STANDING COMMITTEE

HCR 3019: Energy and Natural Resources Committee (Rep. Porter, Chairman)
recommends **DO NOT PASS** and **BE PLACED ON THE CONSENT CALENDAR**
(12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HCR 3019 was placed on the
Tenth order on the calendar.

REPORT OF STANDING COMMITTEE

HCR 3019: Energy and Natural Resources Committee (Rep. Porter, Chairman)
recommends **DO NOT PASS** and **BE PLACED ON THE CONSENT CALENDAR**
(12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HCR 3019 was placed on the
Tenth order on the calendar.

The House stood adjourned pursuant to Representative Vigesaa's motion.

Buell J. Reich, Chief Clerk

JOURNAL OF THE HOUSE

Sixty-fifth Legislative Assembly

* * * * *

Bismarck, February 22, 2017

The House convened at 9:00 a.m., with Speaker Bellew presiding.

The prayer was offered by Rep. Zubke.

The roll was called and all members were present except Representatives Boschee, Guggisberg, Johnston, and Kreidt.

A quorum was declared by the Speaker.

CORRECTION AND REVISION OF THE JOURNAL

MR. SPEAKER: Your **Committee on Correction and Revision of the Journal (Rep. Klemin, Chairman)** has carefully examined the Journal of the Twenty-ninth and Thirty-second Days and recommends that it be corrected as follows and when so corrected, recommends that it be approved:

Page 521, replace lines 2 through 6 with the following:

"REPORT OF STANDING COMMITTEE

HCR 3019: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends DO NOT PASS (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HCR 3019 was placed on the Eleventh order on the calendar."

Page 590, line 14, remove "HB 1045"

Page 590, after line 15 insert:

"MESSAGE TO THE SENATE FROM THE HOUSE (BUELL J. REICH, CHIEF CLERK)

MR. PRESIDENT: The House has passed, the emergency clause failed, and your favorable consideration is requested on: HB 1045."

REP. KLEMIN MOVED that the report be adopted, which motion prevailed.

SECOND READING OF HOUSE RESOLUTION ON CONSENT CALENDAR

HCR 3015: A concurrent resolution declaring the fourth Saturday in July of each year as "Day of the American Cowboy".

The question being on the final adoption of the resolution, which has been read.

HCR 3015 was declared adopted on a voice vote.

SECOND READING OF HOUSE BILL

HB 1279: A BILL for an Act to create and enact a new subdivision to subsection 2 of section 62.1-02-05 of the North Dakota Century Code, relating to possession of a firearm; and to declare an emergency.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 89 YEAS, 0 NAYS, 0 EXCUSED, 5 ABSENT AND NOT VOTING.

YEAS: Anderson, B.; Anderson, D.; Anderson, P.; Beadle; Becker, Rich S.; Becker, Rick C.; Blum; Boe; Boehning; Bosch; Brabandt; Carlson; Damschen; Delmore; Delzer; Devlin; Dobervich; Dockter; Ertelt; Grueneich; Guggisberg; Hanson; Hatlestad; Headland; Heinert; Hogan; Holman; Howe; Johnson, C.; Johnson, D.; Johnson, M.;

2017 SENATE ENERGY AND NATURAL RESOURCES

HCR 3019

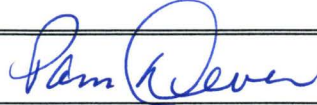
2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

HCR 3019
3/9/2017
Job #28990

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution: Directing the US Dept. of the Interior to exercise nondiscrimination in public land management and return the land no longer required for the Pick-Sloan Missouri Basin Project dam at Lake Sakakawea to the citizens of the United States.

Minutes:

Attch#1=Representative Jones

Chairwoman Unruh: Open the hearing on HCR 3019.

Representative Terry Jones, Dist. 4: I have passed out a hog house amendment. (see Attch#1). We are asking the federal government not to discriminate on the Pike-Sloan Project. The Obama administration took the land that was managed by the Corps and gave it to the Dept. of the Interior to manage in a trust for the tribe. We would like them to give the same opportunity for the ND citizens to access the land in the same project. This has been back a few times. Some constituents are interested in this. We put the framework on how they can go ahead and do a transfer on a limited basis for those people who had land severed from their ranches and taken into the project even though it was above the high water mark. We are asking those people, their heirs, and/or successors will be able to apply through the state trust lands to repurchase that land. For this process to work, we will have them pay market value for the land and they will have to pay costs in trans. No net for the state of ND. The trust lands would be a pass through agency. The federal government will gain by this and be a no net gain on their land management. He gave an example in Wyoming. (4.47)

Vice Chair Kreun: How many acres do you think are involved?

Rep. Jones: Hard to determine. They thought 30,000 acres, but that was with reservations. I am narrowing it down. I think 5,000 to 10,000 acres.

Sen. Armstrong: What if the land transfers since, does the corps land go with the owner or title?

Rep. Jones: We are trying to go back to when it was severed. We look back at the title.

Sen. Armstrong: If the corps designates and what if I do not want to buy the tiny tract? Is it all or nothing?

Rep. Jones. You are correct. We do not think the little tracts will transfer. They have been trying this for 50 years. The flaw was that they tried to do at all at one time. Just targets to those who think there is enough value to pay the appraised costs and surveys to establish new boundaries.

Sen. Roers: I could see a lot of small tracts also wanting to come back if they were accessible for development land. You may be underestimating the need here

Rep. Jones: You may be right. I do not know all the details. They were afraid that people from California or wherever would buy up this lake front property.

Sen. Oban: Isn't the situation you just described, discrimination?

Rep. Jones: The program will have particular parameters. If you, you are eligible.

Vice Chair Kreun: When the land is vacated, do adjacent landowners get first choice. I do not see this as discrimination. Am I reading this right?

Rep. Jones: It's not just the adjacent land owner. We will chase the title. They were the ones who were wrongfully taken. (15.55)

Chairwoman Unruh: Any more testimony? Any against? Any agency? Hearing is closed.

2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Fort Lincoln Room, State Capitol

HCR 3019
3/16/2017
Job #29345

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Minutes:

Committee work

Chairwoman Unruh: Look at 3019. Representative Jones offered hog house amendments for this bill. I think they are at my desk. I want to see how committee feels.

Vice Chair Kreun: What time frame are we using for the appraisal to figure out the price?

Sen. Roers: I think it was current, today's appraisal.

Vice Chair Kreun: Was there anything on what could be used for. His intention was to try to sell it back to original owners, but wouldn't it have to go back to public auction? Would this stop them from doing that? Past owner gets first refusal.

Sen. Roers: The intent was to allow the original title holder of record. to be the first in line and negotiate. Not even the current title owner. I did not understand how they were going to jump forward 50 years

Chairwoman Unruh: Good discussion.

Sen. Roers: Did the amendments address this issue?

Chairwoman Unruh: You got a copy when the bill was introduced.

Chairwoman Unruh: We will table this until tomorrow.

2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

HCR 3019
3/23/2017
Job #29598

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Minutes:

Comm.wk.

Chairwoman Unruh: Look at HCR 3019. Representative Jones brought amendments at the hearing. We discussed this last week. Not much discussion then, either.

Vice Chair Kreun: I understand what he is trying to do. I would have to take this to LC to see how we can follow this and follow the law to dispose of property that is either owned by the Corps or by the state. (2.10)

Sen. Roers: Isn't that the purpose of the study to digest what you just said. Finding that right owner will be a challenge. (2.48)

Chairwoman Unruh: This is not a study. This is a resolution urging people to take action.

Sen. Schaible: Four years ago there was a study very similar to this south of the dam. It was done through the governor's office. It was tailored after SD when land was given back. You can give it to the state. It did not include tribal land. The only way it would work is if federal would give it back to the state. The state would determine what to do. I was part of that study. In SD, it all became state land. (4.44) We did the study. The avenues of what you could do are there. Does the governor want to do it? This just says, do we want to pursue the idea? I don't think a study is necessary.

Sen. Armstrong: Sen. Schaible, I understand with the amendments, is for the federal government to take any other lands in the country, they have to give some back. They cannot acquire new land. This would allow them to do that. Is this accurate?

Sen. Schaible: If the feds want to expand their public land. Then they have to do that. This is just giving the land back, not to expand the footprint of public land. I haven't looked at it for 4 years.

Vice Chair Kreun: Maybe we could have Representative Jones could give us an update. Will this bill accomplish what he wants to accomplish?

Representative Jones, Dist. 4: It is a complex issue. The study Sen. Schaible was talking about is 5 inches thick. We want to keep the agencies out of the weeds by this bill. The meat of this bill is if you are going to give land back to the Dept. of Interior to be managed for the Tribe, we want to make the lands on the same project available to the citizens of ND. We are asking them not to discriminate in their land management. That is the heart of this bill. This is the only time to step up. We don't want the state to manage because it is expensive. ND is short on money right now, we all know that. We will have to get the Corps and Interior

Dept. together with our congressional delegation and hammer out all the discussion about who can and who can't. Work with the State Trust Lands, also. This is a guidance document. We need to give them a clear message.

Sen. Schaible: The study 4 years ago, was very separate from the Tribe, by design. They would be against state control over Tribal land.

Representative Jones: I worked with the Tribal people because we had a lot of Tribal people that had patent land in the boundary of that reservation. Those individuals will not be able to access their land. The Obama administration transferred Tribe land as a block and they don't like that. So it will never be available to them again. (11.17) Lake Sakakawea does not have access land.

Chairwoman Unruh: Thank you. Let's hold this.

2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

HCR 3019
3/23/2017
Job #29630

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Minutes:

Comm.wk.

Chairwoman Unruh: Look at HCR 3019.

Sen. Armstrong: Is the .1004 the amendment?

Chairwoman Unruh: Representative Jones brought out the hog house amendment. I like his amendments better than the bill.

Sen. Armstrong: I move the amendment. .1004. **Vice Chair Kreun:** I second.

Chairwoman Unruh: Any discussion?

Vice Chair Kreun: I kind of wondered if this will do what he intends. I appreciated Sen. Schaible explanation of this in the past. I would like to see it go, so I will support it. (1.32)

Sen. Cook: I will support it, but I don't think we will ever see anything come about with it. Telling you like it is.

Chairwoman Unruh: We will take a voice vote. All in favor, say Yea, any opposed, same sign. Motion carried.

Chairwoman Unruh: We have before us, HCR 3019 as amended.

Vice Chair Kreun: I move a Do Pass as amended.

Sen. Roers: I second.

Chairwoman Unruh: Any discussion? Call the roll: YES 5 NO 2 -0- absent

Passed. **Vice Chair Kreun** will carry the bill.

March 9, 2017

3123-4011
1 of 2

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3019

Page 1, line 1, after "resolution" replace the remainder of the resolution with "requesting the Army Corps of Engineers exercise nondiscrimination in public land management and develop, in cooperation with the North Dakota Board of University and School Lands, a process consistent with this resolution to allow prior owners, their heirs, and their successors to repurchase eligible land within the Pick-Sloan Missouri Basin project.

WHEREAS, the Army Corps of Engineers maintains control of excess land purchased or condemned for the Pick-Sloan Missouri Basin project but which is located above the ordinary high-water mark of the Missouri River, was not needed for the original intent of that project, and is not needed for flood control; and

WHEREAS, the Army Corps of Engineers has transferred a portion of the excess land to the Department of the Interior to manage in trust for the Three Affiliated Tribes of the Fort Berthold Reservation; and

WHEREAS, fairness dictates the Army Corps of Engineers, in cooperation with the North Dakota Board of University and School Lands, should make the remainder of the excess land available to United States citizens through a process that will allow prior owners, and their heirs and successors, of excess land that is not being used by the state for public benefit to repurchase their eligible land without discrimination or the appearance of discrimination; and

WHEREAS, the process should include a designation by the Army Corps of Engineers or Department of the Interior of the eligible land as disposable for land management purposes; and

WHEREAS, the process should provide an opportunity for a prior owner of eligible land, or the prior owner's heir or successor, to make a case to the North Dakota Board of University and School Lands that the prior owner, heir, or successor has just cause to repurchase the prior owner's eligible land and doing so will not conflict with the state's interest; and

WHEREAS, if the North Dakota Board of University and School Lands finds the prior owner, heir, or successor has just cause to repurchase the prior owner's eligible land and doing so will not conflict with the state's interests, the prior owner, heir, or successor must be allowed to repurchase the eligible land at market value plus survey and transfer costs;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-fifth Legislative Assembly requests the Army Corps of Engineers to exercise nondiscrimination in public land management and develop, in cooperation with the North Dakota Board of University and School Lands, a process consistent with this resolution to allow prior owners, their heirs, and their successors to repurchase eligible land within the Pick-Sloan Missouri Basin project; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of the United States Department of the Interior, the

Commanding General and Chief of Engineers of the Army Corps of Engineers, and to each member of the North Dakota Congressional Delegation."

3123-2011
2 of 2

Renumber accordingly

3/23/17

Date:
Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO.

HCR 3019

Senate Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 17.3049 .01004

- Recommendation: Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By Sen. Armstrong Seconded By Sen. Kreun

Senators	Yes	No	Senators	Yes	No
Chairman Jessica Unruh			Sen. Erin Oban		
Vice Chair Curt Kreun					
Sen. Kelly Armstrong					
Sen. Dwight Cook					
Sen. Jim Roers					
Sen. Don Schaible					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Yess - all

Date: 3/23/19
 Roll Call Vote #: 2

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO.**

HCR 3019

Senate Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 17.3049.01004

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Sen Kreun Seconded By Sen Roer

Senators	Yes	No	Senators	Yes	No
Chairman Jessica Unruh		/	Sen. Erin Oban		/
Vice Chair Curt Kreun	/				
Sen. Kelly Armstrong	/				
Sen. Dwight Cook	/				
Sen. Jim Roers	/				
Sen. Don Schaible	/				

Total (Yes) 5 No 2

Absent _____

Floor Assignment Sen. Kreun

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

REPORT OF STANDING COMMITTEE

HCR 3019: Energy and Natural Resources Committee (Sen. Unruh, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HCR 3019 was placed on the Sixth order on the calendar.

Page 1, line 1, after "resolution" replace the remainder of the resolution with "requesting the Army Corps of Engineers exercise nondiscrimination in public land management and develop, in cooperation with the North Dakota Board of University and School Lands, a process consistent with this resolution to allow prior owners, their heirs, and their successors to repurchase eligible land within the Pick-Sloan Missouri Basin project.

WHEREAS, the Army Corps of Engineers maintains control of excess land purchased or condemned for the Pick-Sloan Missouri Basin project but which is located above the ordinary high-water mark of the Missouri River, was not needed for the original intent of that project, and is not needed for flood control; and

WHEREAS, the Army Corps of Engineers has transferred a portion of the excess land to the Department of the Interior to manage in trust for the Three Affiliated Tribes of the Fort Berthold Reservation; and

WHEREAS, fairness dictates the Army Corps of Engineers, in cooperation with the North Dakota Board of University and School Lands, should make the remainder of the excess land available to United States citizens through a process that will allow prior owners, and their heirs and successors, of excess land that is not being used by the state for public benefit to repurchase their eligible land without discrimination or the appearance of discrimination; and

WHEREAS, the process should include a designation by the Army Corps of Engineers or Department of the Interior of the eligible land as disposable for land management purposes; and

WHEREAS, the process should provide an opportunity for a prior owner of eligible land, or the prior owner's heir or successor, to make a case to the North Dakota Board of University and School Lands that the prior owner, heir, or successor has just cause to repurchase the prior owner's eligible land and doing so will not conflict with the state's interest; and

WHEREAS, if the North Dakota Board of University and School Lands finds the prior owner, heir, or successor has just cause to repurchase the prior owner's eligible land and doing so will not conflict with the state's interests, the prior owner, heir, or successor must be allowed to repurchase the eligible land at market value plus survey and transfer costs;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-fifth Legislative Assembly requests the Army Corps of Engineers to exercise nondiscrimination in public land management and develop, in cooperation with the North Dakota Board of University and School Lands, a process consistent with this resolution to allow prior owners, their heirs, and their successors to repurchase eligible land within the Pick-Sloan Missouri Basin project; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of the United States Department of the Interior, the Commanding General and Chief of Engineers of the Army Corps of Engineers, and to each member of the North Dakota Congressional Delegation."

Renumber accordingly

2017 CONFERENCE COMMITTEE

HCR 3019

2017 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau –A Room, State Capitol

HCR 3019

4/4/2017

29922

Subcommittee

Conference Committee

Committee Clerk Signature

Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Exercise nondiscrimination in public land management and return the land no longer required for the Pick-Sloan Missouri Basin Project Dam at Lake Sakakawea

Minutes:

Attachment 1

Chairman Porter: called the conference committee meeting to order. The clerk took roll call.

Sen. Kreun: One of the processes brought to us by an originator of the HCR actually feels there was an opportunity for ND residents to obtain some land originally paid for but in a sense but taken because they had no choice as far as how it was taken, but it was paid for. There is an opportunity because the federal government giving some land back to a trust for the Three Affiliated Tribes, and wants to take the opportunity to send this message they would like to have the same opportunity to give back to residents of ND and first of all the people adjacent to that property and give them a first opportunity to buy that land back. They would have to incur all the costs for appraisals, setting out boundaries, however they're going to do that, and that was his intent. The intent is not to disturbed any of the lands used for boat docks, an elk area, the state is already utilizing. That was his intent. We had a long discussion and passed by 5 votes.

Chairman Porter: the original bill that went over to the Senate dealt strictly with Lake Sakakawea. The bill that came back was expanded to the entire Pick-Sloan Missouri Basin so it takes it all the way down to the South Dakota border.

Sen. Kruen: That's my understanding. That could be altered I do believe by the person originating the resolution. I don't think that's a drop dead scenario.

Chairman Porter: Questions? We had a lot of concern in the House with this resolution. This isn't the first of the resolutions dealing with the whole Missouri River and lands and that whole argument that has gone back and forth. We've had bills and resolutions that dealt strictly with Oahe. We've never had one that dealt with Lake Sakakawea because of complexities of the issues with the tribe, the lake shore, private development the other side of the lake shore on what's considered to be Corp of Engineer property. One of my biggest

concerns is the private individual who has lake front property with a cabin and then someone else would get the land back between them and the lake. They would go to being on the street off of the lake where they were not prior to it, under the verbiage in this resolution. Another concern, by adding in the language the entire Missouri River Project. I personally can't support throwing back in Lake Oahe back in. That's been kind of resolved in previous bills and resolutions. Ladd Erickson send me an email, Attachment 1, to possibly hog house this to relate back to what is going on. If you want to look at that email I received and handed out. The first Whereas that he talks about is really what the Pick-Sloan Act is, where it was established in federal law, that it's for flood control, river navigation, hydroelectric power irrigation, water quality and supply recreation, fish and wildlife. That's the actual verbiage out of Pick-Sloan. The second Whereas on page 2, talks about the way the Army Corp of Engineer purchased the land. Back in the day they just drew a circle and said this is ours inside of here and this is yours outside of here. He talks about inside of those lands that are being called "excess lands". That a lot of things of public value reside inside of those may or may not be protected inside of the way the resolution is worded. On the third Whereas, he gets into the actual grid line and the divestment process for those lands and working through the grid. One of the things I think is important to understand is that the bases from what I heard on this resolution was that the Corp was giving back title to the land to the Three Affiliated Tribes. Inside of this email it talks about that transfer and that it really hasn't been completed, it isn't a transfer, it's more of a change of authority over who manages the land from the federal government to the BIA. The federal government maintains title of that land. That kind of changes the premise that the federal government is giving land back to individuals. Inside of that land there are a number, because that was fee land at the time even though it was on the exterior boundaries, inside of the exterior boundaries of the Three Affiliated Tribes. There's a lot of fee land inside of there that was not owned by Native Americans and a lot of fee land inside of there not owned by the tribe that people are talking they're going to be in a lawsuit if their land is suddenly given to someone else. This is not the first time this has been in front of us or that we've dealt with these issues. I just wanted to make sure everybody had that information as we go through this. It's a very complicated issue and we need to be very careful on what say in a resolution and we have a lot of things to take into consideration as we look at this resolution. People will tell you it's just a resolution and it's not. People take these things, get on airplanes and fly to WDC and use them to promote their position.

Sen. Cook: this message, does he have any "therefore be it resolved"?

Chairman Porter: This is all we have for the moment for the start of the discussion. If this is the direction the conference committee wants to head, it would require me to hit reply on the email and get the Now Therefore Be it Resolved sentence on what fits.

Sen. Cook: It would be nice to see where he wants to go.

Chairman Porter: I can do that.

Sen. Kreun: Does your thought process go to some of this land can be brought back into the state of ND?

Chairman Porter: Some of the language we passed on some of the Oahe tracts, I still remain of the thought that it could be returned to the state of ND. I have a hard time thinking it could ever get back to private ownership. In my mind there's been over the years so much public moneys and investment inside of that, it would be difficult for me to get to there. I do think the state of ND manages their land better than the federal government and are more receptive to working agricultural needs and our citizens. I don't have a problem from that aspect. I've never supported taking these lands back to private ownership though.

Sen. Kruen: If we have the opportunity would we want to word something to that aspect so it actually comes back into the state of ND. If we have to, at least manage it within our state and be able to utilize it if not for the individuals if that isn't going to work, for public use as well. My understanding is in some areas it's not being managed very well at all. You got leafy spurge out there which is like wildfire and trying to cure that in ND. In my opinion it would be better to take it and utilize it either in ND or individuals. It certainly isn't being managed to its whole capacity at this time either. If we have an opportunity to do that, and take it, if this is the right opportunity with our new administration, some things being given back to another governmental agency, so to speak, why wouldn't we want to take the opportunity to do a better job and utilize it to better usage for ND?

Chairman Porter: I don't have a problem with that. We should also pull previous resolutions that dealt with Oahe so the conference committee can have a look at them and see the main crux of the resolution has complexity of the lake that doesn't exist down on the Oahe system. In years past, we have always deleted Lake Sakakawea out of the resolutions because of its complexity in dealing with this and the inability to have any way to come to a resolution on what is the mark, what do you do with the public infrastructure. One session we had a bill that set up a mechanism to bring the land back into the land department and the land department put an unbelievable fiscal note, because of the way the land is laid out, you would have to set new pins and boundaries. That would require a lot of legal title throughout. It does not happen without consequences.

Sen. Kreun: I understand. Personally, at this point and time I believe if we can acquire that back under our control, it would be a step in the right direction. The government has set the precedent as what is excess land. They've already set that perimeter by giving it back to BLM through the tribe. They've set that precedent already. If we can take advantage of it. I agree, let's take all the information that's been done before and write something palatable.

Chairman Porter: The thing we need to be careful on is that there hasn't been a transfer of title, just a transfer of authority. That the title is still in the federal government's name not the Three Affiliated Tribes.

Sen. Kreun: That's why I call that a quasi-trade. They get the use of it.

Chairman Porter: Is there any other information any members want us to put together? Kyle will pull up past resolutions that deal with Oahe. I will send a reply and include everyone so we get info back Mr. Erickson on the Now Be It Resolved language. Anything else?

Sen. Unruh: My intern went back 4 years to look at any bills or resolutions relating to this.

Chairman Porter : Kyle you can get that from Morgan. We will do more information seeking and see you in a couple days. Closed the hearing.

2017 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau –A Room, State Capitol

HCR 3019

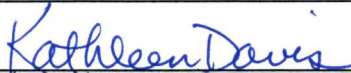
4/10/2017

30013

Subcommittee

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Exercise nondiscrimination in public land management and return the land no longer required for the Pick-Sloan Missouri Basin Project Dam at Lake Sakakawea

Minutes:

Attachment 1-2

Chairman Porter: Attachment 1. Called the conference committee meeting to order. We had our conversation how complicated an issue this is. Everyone is fully aware of the gravity of the situation in what we have going around Lake Sakakawea. We have land that that's been separated that may or may not be above the high water mark that is Corp of Engineer land that subsequently behind it has been developed into beautiful lakefront property with walking easement across Corp land. The original language of the bill, or the resolution would have severely affected those individuals. Lad Erickson, McLain County States Attorney has a very vested interest in this because of some of the things the Corp of Engineers has done in and around Lake Sakakawea and McLain County. The sponsor of the resolution, myself and Mr. Erickson, along with Terry Steinwand from Game and Fish, came up with this language, a complete hoghouse language of HCR 3019. The way the language works, it talks about main purpose. The first Whereas, #1 talks about manages the land purchased for the operation for the operation of the Garrison Project, so we are limited back to the Garrison Project, not the entire Pick Sloan Act. #2 reaffirms what the Garrison Project was inside of the Pick-Sloan and what the purposes of the project are currently. #3 talks about the how the original land was taken and how it was basically drawing a circle around it and things were divided and not done in normal land surveying terms. #4 talks about the ability to bring the land back out of those grids, back to the State of ND through the School Lands Department between the high reservoir mark and the tracks regular grid. #5 Therefore be it resolve, the land would go back through the ND Board of Universities and a purchase right would exist, or we're asking for a purchase right for the prior owner, their heirs, or successors of the land that the parcels were detached from. This narrows the scope of the lands that are available if the Corp of Engineers were to say we would clean up some of those right angles they developed along the process but also protects areas the that have Corp land between a developed area and the shores of the lake.

Sen. Kreun: It appears from what was handed out, except for the 4th Whereas, it's almost verbatim, almost says the same thing just worded a little differently. Other than that I think the rest are worded exactly the same. I think that 4th Whereas almost says the same thing as well, just worded differently if you would take a look at that.

Sen. Unruh: Yes

Chairman Porter: I'm not familiar with the one handed out.

Sen. Kreun: Take a look at that 4th Whereas, that was handed out.

Sen. Unruh: In my estimation it seems exact same thing just phrased differently.

Rep. Seibel: This won't affect according to #3 any wildlife management areas, boat landings, etc?

Chairman Porter: It's very specific it can't, and not interfere with recreational wildlife uses.

Sen. Unruh: I move the Senate recede from the Senate amendments and further amend (attachment 2).

Rep. Mitskog: second

Chairman Porter: I have a motion and a second from Rep. Mitskog. Discussion?
Roll call vote. 6 yes 0 no 0 absent. Motion carries. Rep. Seibel, House carrier,
Sen. Kreun, Senate carrier.

Rep. Jones presented Attachment 2 but did not speak.

April 10, 2017

9/10/17 DJD

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3019

That the Senate recede from its amendments as printed on pages 1196 and 1197 of the House Journal and pages 908 and 909 of the Senate Journal and that House Concurrent Resolution No. 3019 be amended as follows:

Page 1, line 1, after "resolution" replace the remainder of the concurrent with "requesting the United States Army Corps of Engineers divest land not needed for the management of the Garrison project area in North Dakota.

WHEREAS, the United States Army Corps of Engineers manages land purchased for the operation of the Garrison project area in North Dakota; and

WHEREAS, Congress and the federal courts have established in federal law that the Pick-Sloan project areas must be managed for flood control, river navigation, hydroelectric power, irrigation, water quality and supply, recreation, and fish and wildlife; and

WHEREAS, the purchasing criteria used by the United States Army Corps of Engineers to acquire land for the Garrison project area required land be purchased based on a rectangular grid line above the reservoir's high water mark, and the rectangular grid size used for purchase criteria could be smaller in some cases and not interfere with recreation and wildlife uses; and

WHEREAS, the United States Army Corps of Engineers should develop a divestment process for the lands by working in cooperation with the North Dakota Board of University and School Lands and the North Dakota Congressional Delegation, if the Garrison project can be managed without tracts of land between the reservoir high water mark and that tract's regular grid take line;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-fifth Legislative Assembly requests that any land subject to divestment under an agreement between the United States Army Corps of Engineers and the North Dakota Board of University and School Lands include a purchase right for prior owners who own the land the parcels were detached from, their heirs who own the land the parcels were detached from, or successors who own the land the parcels were detached from; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Under Secretary of Public Works for the United States Army Corps of Engineers and each member of the North Dakota Congressional Delegation."

Renumber accordingly

**2017 HOUSE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. HCR 3019 as (re) engrossed

House Energy and Natural Resources0 Committee

- Action Taken**
- HOUSE accede to Senate Amendments
 - HOUSE accede to Senate Amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Sen. Unruh Seconded by: Rep. Mitskog

Representatives	ATTENDANCE			VOTE		Senators	ATTENDANCE			VOTE	
	4/10			Yes	No		4/10			Yes	No
Chairman Porter	✓			✓		Sen. Kreun	✓			✓	
Rep. Seibel	✓			✓		Sen. Cook	✓			✓	
Rep. Mitskog	✓			✓		Sen. Unruh	✓			✓	
Total Rep. Vote						Total Senate Vote					

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Rep Seibel Senate Carrier Sen. Kreun

LC Number 17, 3049 . 01005 of amendment

LC Number _____ . 03000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Insert LC: 17.3049.01005
House Carrier: Seibel
Senate Carrier: Kreun

REPORT OF CONFERENCE COMMITTEE

HCR 3019: Your conference committee (Sens. Kreun, Cook, Unruh and Reps. Porter, Seibel, Mitskog) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1196-1197, adopt amendments as follows, and place HCR 3019 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1196 and 1197 of the House Journal and pages 908 and 909 of the Senate Journal and that House Concurrent Resolution No. 3019 be amended as follows:

Page 1, line 1, after "resolution" replace the remainder of the concurrent with "requesting the United States Army Corps of Engineers divest land not needed for the management of the Garrison project area in North Dakota.

WHEREAS, the United States Army Corps of Engineers manages land purchased for the operation of the Garrison project area in North Dakota; and

WHEREAS, Congress and the federal courts have established in federal law that the Pick-Sloan project areas must be managed for flood control, river navigation, hydroelectric power, irrigation, water quality and supply, recreation, and fish and wildlife; and

WHEREAS, the purchasing criteria used by the United States Army Corps of Engineers to acquire land for the Garrison project area required land be purchased based on a rectangular grid line above the reservoir's high water mark, and the rectangular grid size used for purchase criteria could be smaller in some cases and not interfere with recreation and wildlife uses; and

WHEREAS, the United States Army Corps of Engineers should develop a divestment process for the lands by working in cooperation with the North Dakota Board of University and School Lands and the North Dakota Congressional Delegation, if the Garrison project can be managed without tracts of land between the reservoir high water mark and that tract's regular grid take line;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-fifth Legislative Assembly requests that any land subject to divestment under an agreement between the United States Army Corps of Engineers and the North Dakota Board of University and School Lands include a purchase right for prior owners who own the land the parcels were detached from, their heirs who own the land the parcels were detached from, or successors who own the land the parcels were detached from; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Under Secretary of Public Works for the United States Army Corps of Engineers and each member of the North Dakota Congressional Delegation."

Renumber accordingly

HCR 3019 was placed on the Seventh order of business on the calendar.

2017 TESTIMONY

HCR 3019

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3019

Page 1, line 1, after "resolution" replace the remainder of the resolution with "requesting the Army Corps of Engineers exercise nondiscrimination in public land management and develop, in cooperation with the North Dakota Board of University and School Lands, a process consistent with this resolution to allow prior owners, their heirs, and their successors to repurchase eligible land within the Pick-Sloan Missouri Basin project.

WHEREAS, the Army Corps of Engineers maintains control of excess land purchased or condemned for the Pick-Sloan Missouri Basin project but which is located above the ordinary high-water mark of the Missouri River, was not needed for the original intent of that project, and is not needed for flood control; and

WHEREAS, the Army Corps of Engineers has transferred a portion of the excess land to the Department of the Interior to manage in trust for the Three Affiliated Tribes of the Fort Berthold Reservation; and

WHEREAS, fairness dictates the Army Corps of Engineers, in cooperation with the North Dakota Board of University and School Lands, should make the remainder of the excess land available to United States citizens through a process that will allow prior owners, and their heirs and successors, of excess land that is not being used by the state for public benefit to repurchase their eligible land without discrimination or the appearance of discrimination; and

WHEREAS, the process should include a designation by the Army Corps of Engineers or Department of the Interior of the eligible land as disposable for land management purposes; and

WHEREAS, the process should provide an opportunity for a prior owner of eligible land, or the prior owner's heir or successor, to make a case to the North Dakota Board of University and School Lands that the prior owner, heir, or successor has just cause to repurchase the prior owner's eligible land and doing so will not conflict with the state's interest; and

WHEREAS, if the North Dakota Board of University and School Lands finds the prior owner, heir, or successor has just cause to repurchase the prior owner's eligible land and doing so will not conflict with the state's interests, the prior owner, heir, or successor must be allowed to repurchase the eligible land at market value plus survey and transfer costs;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-fifth Legislative Assembly requests the Army Corps of Engineers to exercise nondiscrimination in public land management and develop, in cooperation with the North Dakota Board of University and School Lands, a process consistent with this resolution to allow prior owners, their heirs, and their successors to repurchase eligible land within the Pick-Sloan Missouri Basin project; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of the United States Department of the Interior, the

Commanding General and Chief of Engineers of the Army Corps of Engineers, and to each member of the North Dakota Congressional Delegation."

HCR 3019
3/9/17
Att #1
pg 2

Renumber accordingly

1
4-4-17

From: States Attorney Ladd R Erickson

lrerickson@nd.gov

Subject: RE: HCR 3019

Date: Mar 31, 2017, 5:49:59 PM

To: Porter, Todd K. tkporter@nd.gov,
randy.kreil57@gmail.com

Cc: Jones, Terry B. tbjones@nd.gov, Unruh,
Jessica K. jkunruh@nd.gov

Todd: I drafted the attached replacement language for HCR 3019. I do not speak for anyone else on this, so the outdoor or other groups may not support my proposal. I'll highlight a couple of my provisions:

WHEREAS Congress and the federal courts have established in federal law that Pick-Sloan project areas shall be managed for flood control, river navigation, hydroelectric power, irrigation, water quality and supply, recreation, fish, and wildlife; and

The current HCR language references flood control as the original project purpose. That, along with river navigation, is the lower basin state's position on the purpose of the FCA of 1944. And, what Missouri and other southern states mean by flood control is controlling their flooding problems, not ours. In essence, they permanently flooded us to control flooding for them.

The FCA would have never passed Congress if that were the only purpose of the project. The other project purposes delineated in federal law are the ones I listed, and have always been the upper basin state's position. Although this is "just an HCR", we are in a perpetual battle to protect our FCA interests: For example, we sued the Corps in 2004 over their releases impacting our walleye and smelt spawn because "fish and wildlife" management is a project purpose, we sued them again in 2005 over the water quality in Lake Sakakawea (again, a project purpose); we threatened to sue over the Corps trying to charge us fees for drawing water out of the system; the Corps has tried to shut down recreational sites in recent years and we sent demands stating that recreation is a project purpose they must fund. The three upper basin states even had to sue the Corps in 2003 for them to recognize recreation as a project purpose in their master manual. I don't believe it is ever in our interest to have the legislature proclaim anything but the full list of project purposes, because we in the executive have to then argue against the legislature's position that project purposes are more than flooding in Missouri, etc. I can back up the bolded statement here with the FCA, its legislative

history, and court opinions.

WHEREAS the purchasing criteria used by the United States Army Corps of Engineers to acquire land for the Garrison and Oahe project areas required land be purchased to a rectangular grid line above a reservoir's high water mark; and

The danger in saying, as the HCR does, that lands above the high water mark are "excess" is that many of those lands are at the heart of our recreational economy. (campgrounds, boat ramps, rifle ranges, etc.) I realize that the legislature has made that statement in the past, but it isn't the truth so I drafted this clause to reflect the historical record. The Corps never bought any land for recreation. But they had to square off the tracts because buying just to a meandering elevation line would have been impossible to record, fence, etc. Where there was some distance between the high water mark and the next uphill quarter or section line, many of those areas are now WMA's, campgrounds, etc. (Some of the most heavily used rec areas in the state and areas that mean tens of millions of dollars in our economy.) In our constant battle over Corps funding priorities, it is not in our interest to say lands above 1854 msl are 'excess', and then in the next breath demand the Corps fund rec lands above 1854 (and 1620 on Oahe) because recreation on those lands is a project purpose, specifically enumerated in Section 2 of the FCA.

WHEREAS if the Garrison and Oahe project purposes can be managed without particular tracts of land between a reservoir high water mark and that tract's rectangular grid take line, the United States Army Corps of Engineers should develop a divestment process for those lands by working in cooperation with the North Dakota Board of University and School Lands, and the North Dakota Congressional Delegation.

This HCR language should not harm ND's global interests in the Corps project areas. Here, we aren't taking the lower basin state's position on the purpose of the FCA, and not threatening the heart of our recreational economy, but still requesting a process to

get lands divested from the Corps if there is no project purpose in keeping those lands.

Two things I suggest the HCR not do: First, reference the recent supposed transfer of land between the Corps and BIA on Ft. Berthold. That may end up in court, and if it doesn't, there will still be efforts to reverse or adjust that because it is just a MOU between two federal agencies – and there are a number of problems with it. But, assuming that transfer stands, their MOU is supposed to mean that management for project purposes are not changed on the lands at issue. That can't happen the same if lands are privatized.

Second, I did put a priority purchase provision for prior owners of the land and their heirs, but I feel you should all know what a snakes pit that is. There could be hundreds of heirs now for some tracts that might qualify for divestment. I attached a letter I received from Sen. Conrad who sponsored federal legislation in the early 1990's that would have returned Corps land above 1860 msl around Sakakawea to prior owners or their heirs. The Corps and DOI tried to find the heirs after that passed Congress and couldn't so they requested a \$21 million dollar fiscal note to find the heirs for the tracts at issue. Now, another 27 years of the family trees spreading out, marriages, divorces, etc. makes the task of identifying heirs hugely expensive and some of the heirs may not know each other or hate each other. Which heir is the heir that gets a shot at land that could be a profitable lake subdivision could be an epic battle. These problems, and others, lead Sen. Conrad to repeal his law on this issue in 1994. The last attachment is a letter sent to him by Gov. Schafer outlining some issues to Sen. Conrad with his transfer law. Eventually, Gov. Schafer and Sen. Conrad got into a public name calling spat over Sen. Conrad's law, and that lead to the State's demand that the law be repealed because of all the problems and conflict it was causing.

Thank you for considering my concerns. Presently, Morton has asked me to handle two DAPL trials next Thursday and Friday so I may not be available those days if the cases don't get resolved...Wednesday I have a judge up here all day... I should be able to respond to emails and phone messages at night if anyone needs anythingTake

PROPOSED AMENDMENTS TO HCR 3019 (17.3049.01000)

1
4-10-17
HCR 3019
Porter

Page 1, line 1, after "resolution" replace the remainder of the bill with:

A concurrent resolution requesting the United States Army Corps of Engineers divest land not needed for the management the Garrison project area in North Dakota

WHEREAS the United States Army Corps of Engineers manages lands purchased for the operation of the Garrison project area in North Dakota; and

WHEREAS Congress and the federal courts have established in federal law that Pick-Sloan project areas shall be managed for flood control, river navigation, hydroelectric power, irrigation, water quality and supply, recreation, fish, and wildlife; and

WHEREAS the purchasing criteria used by the United States Army Corps of Engineers to acquire land for the Garrison project area required land be purchased to a rectangular grid line above the reservoir's high water mark, and the rectangular grid size used for purchase criteria could be smaller in some cases and not interfere with recreation and wildlife uses; and

WHEREAS the United States Army Corps of Engineers should develop a divestment process for those lands by working in cooperation with the North Dakota Board of University and School Lands, and the North Dakota congressional delegation, if the Garrison project can be managed without tracts of land between the reservoir high water mark and that tract's rectangular grid take line.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-fifth Legislative Assembly requests that any land subject to divestment under an agreement between the United States Army Corps of Engineers and the North Dakota Board of University and School Lands include a purchase right for the prior owner, or their heirs or successors, of the land the parcels were detached from; and

BE IT FURTHER RESOLVED that the Secretary of State forward copies of this resolution to the Under Secretary of Public Works for the United States Army Corps of Engineers and each member of the North Dakota Congressional Delegation.

2
4-10-17
HCR 3019
Jones

HCR 3019

A concurrent resolution requesting the United States Army Corps of Engineers divest land not needed for the management of project purposes within the Garrison project area in North Dakota

WHEREAS the United States Army Corps of Engineers manages lands purchased for operation of the Garrison project area in North Dakota; and

WHEREAS Congress and the federal courts have established in federal law that Pick-Sloan project areas shall be managed for flood control, river navigation, hydroelectric power, irrigation, water quality and supply, recreation, fish, and wildlife; and

WHEREAS the purchasing criteria used by the United States Army Corps of Engineers to acquire land for the Garrison project area required land be purchased to a rectangular grid line above the reservoir's high water mark, and the rectangular grid size used for purchase criteria could be smaller in some cases and not interfere with recreation and wildlife uses; and

WHEREAS if the Garrison project purposes can be managed without particular tract's of land between the reservoir high water mark and that tract's rectangular grid take line, the United States Army Corps of Engineers should develop a divestment process for those lands by working in cooperation with the North Dakota Board of University and School Lands, and the North Dakota Congressional Delegation.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-Fifth Legislative Assembly requests that any land subject to divestment under an agreement developed between the United States Army Corps of Engineers and the North Dakota Board of University and School Lands include a purchase right for prior owners who own the land the parcels were detached from, their heirs who own the land the parcel was detached from, or successors, who own the land the parcels were detached from; and

BE IT FURTHER RESOLVED that the Secretary of State forward copies of this resolution to the Under Secretary of Public Works for the United States Army Corps of Engineers and each member of the North Dakota Congressional Delegation.

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