

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

3019

2001 HOUSE NATURAL RESOURCES

HCR 3019

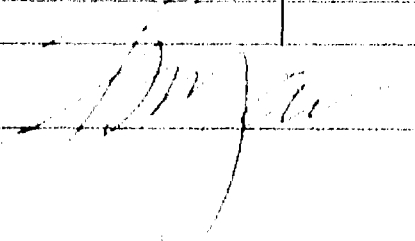
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3019

House Natural Resources Committee

☐ Conference Committee

Hearing Date February 8, 2001

Tape Number	Side A	Side B	Meter #
1	x		3870 to end
1		x	1 to 518
Committee Clerk Signature 			

Minutes:

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

Chairman Rennerfeldt: I will open the hearing HCR 3019.

Rep. Droydal: HCR 3019 has to deal with Lake Sakakawea and the land above it. The land that we call excess land. It is located above the exclusive flood plane. It also deals with the dam in South Dakota. About 50 some years ago the US Government through either purchase or condemnation acquired a lot of land in order to build the dam and back water thereof. In doing so they did acquire some land above the potential flood plane and that land is still sitting in limbo. In some areas of the country they have developed a policy returning that land to the original owners or Game and Fish or the sovereign nation of that particular state. There has been

discussion in several circles that there is a possibility that they may do the same around Lake Sakakawea, which is my primary concern. That lake is our lake and we all have some investment in it. We paid for it and dedicated a lot of land to it and we were promised a lot of things from the Federal Government, including future use. That is kinda what the issue is. There are a lot individuals and organizations that have dedicated a lot of time over the years to make that land accessible to all of us so we can fish, sail, water ski or just relax along the lake. What I was trying to do with this particular resolution is there is some places in the lake where we don't have a guaranteed access to the ramps. What I am asking here, is if the Federal Government decides to release this excess land that I would like to see them negotiate permanent access rights to those particular public sites. Guarantee access to all North Dakotans and US citizens in fact. That is pretty well covered on the back page. The heart of the bill is if Congress transfers Federal Land above Lake Sakakawea and Lake Oahe, to the Three Affiliated Tribes or Standing Rock Sioux that individuals that have invested resources in developing recreational facilities around the lakes be guaranteed access to these facilities. I also go on to say that if there is other land located that land should be treated the same. This is a proclamation, I ask for your favorable vote on this resolution.

Rep. John Warner - District 4: I signed on to this resolution for slightly different reasons than Rep. Droydal. We hope that is not a matter of if the Federal Government, but when the Federal Government returns this land. Development of the lands around Lake Sakakawea is absolutely imperative to the development of western North Dakota. We hope to see them back in private hands as soon as possible. There will be a need for some public access, public beaches and the Tribes have significant claims in that area. We have spoken with our Tribal leaders and we are less convinced now than when were when we signed onto that bill that there is a need for the

access language. I am very convinced that both the Tribes and the State recognize the common law doctrine of customary easement and that Federal law supersedes Tribal sovereignty and State sovereignty would probably guarantee access to these lands. The Tribe has been concerned that the language of the resolution has been overly accusatory and it failed to recognize the efforts that the Tribes have made to return this land to private hands. The Tribe will present some amendments today and I would like to endorse the amendments. They are an improvement to the resolution, they are mostly changes in tone. They do address the question of access. I would recommend the committee seriously consider the amendments presented by the Tribes.

Sen. Nichols - District 4: I also want to reiterate what Sen. Warner said, we have had discussion with Tribal chairman and with some of these changes I would certainly continue to support this resolution. This issue was before us before and for several reasons things weren't resolved. We need to bring this to resolution. Those of us in the area around Lake Sakakawea need to work together to see that these things are resolved in a positive manner. I hope you will consider the proposed amendments and approve that resolution.

Tex. Hall - Chairman of the Mandan Hidatsa Arikara Nation: (See written testimony).

Rep. Droydal: Your one defense in here has to do with that inadequate discussion and consultation and that is true I did not call the Three Affiliated Tribes and I also did not call the County Commissioners or County government involved in this particular issue either, but it goes on to say that I was not consulted on these amendments that were proposed either which goes on to say the same thing about me that you were saying in here is that I am not interested in that discussion or opposed to working on the solution. That is absolutely not true. I also represent a little bit the Three Affiliated Tribes and spoke to members of your tribe and certainly I have a good relationship with them. I am going to have to study these resolutions to see if they complete

what I would like to see as the problem that is out there. That is the intent of this bill to mutually solve the problem and this is how to do it.

Hall: For some reason, I sometimes think that people think the Tribes are going to deny access. That is the farthest thing from the truth. It's recreation and with Lewis and Clark we are anticipating a huge amount of visitors to this state and we will all benefit from it if we can maintain our lake level and develop a recreation site. We have a vested interest as well as you. Our casino would be affected if the lake continues to drop farther and farther. We have a successful third party lease with the Haliday Marine Club and the Corps of Engineer.

Rep. DeKrey: I know you lost more than just acres, but how many acres did you lose in the Garrison Diversion.

Hall: 156,000 acres.

Chairman Rennerfeldt: Are there any other questions from the committee? Anyone else care to speak in favor of this resolution?

Thomas Disselhorst - Attorney with the Three Affiliated Tribes: I sat in on the drafting of the amendments to this resolution and I would like to answer any questions you might have. I appreciate Rep. Drovdal's comments that we were not able to reach him for these amendments. I apologize for that. I just want to echo the sentiment of the chairman, the Tribes that have land along the lake are not interested in alienating the state because their livelihood depends upon the visitation of state citizens. It doesn't stand to reason in this century that the Tribes will deny access. The tone of the resolution seems to suggest testimony back in 1995 when the Army Corps was considering regulations that would allow the transfer of some lands administratively to the Three Tribes and the Standing Rock Sioux Tribe. The acrimonious nature of those hearings in some respects seem to be reflected in HCR 3019. I am hopeful we are past that. The

lake level is going to be very low this summer, that is a common problem. The common problem of the lake and the concerns about those problems for all of North Dakota by far outweigh the differences that currently exist between the Tribes and the State, if in fact those differences are real. I think the Tribes and the state working together can do a great deal to assist in increasing lake levels and affecting how the Corps manages that lake.

Rep. Droydal: I was unfamiliar with the 1995 legislation that was proposed and so there was not intent or tie in between the two.

Diss. Ihorst: I understand that. Those were proposed regulations and never finalized, in part due to the nature of the hearings at the time. I understand those feelings, people protecting their private property. At the same time there are some overriding interests, I think the Tribes in that area, the return of land is significant, they lost their homeland, they didn't just lose one farmstead, they lost their capitol. If the capitol in Bismarck had been flooded out I am confident that the state would have demanded full compensation and additional land in which to place the capitol. The Tribes aren't suggesting that much different.

Chairman Rennerfeldt: Any questions? Anyone else care to testify in favor of this resolution, if not is there any opposition to HCR 3019? If not, I will close the hearing on HCR 3019.

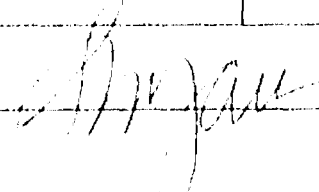
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3019

House Natural Resources Committee

☐ Conference Committee

Hearing Date February 9, 2001

Tape Number	Side A	Side B	Meter #
1	x		1 to 650
Committee Clerk Signature 			

Minutes:

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

Chairman Rennerfeldt: I will call the House Natural Resources Committee to order, call the roll.

Let's do some committee work on HCR 3019.

Rep. Drovdal: I have an amendment for HCR 3019 which incorporates much of the language that the Three Affiliated Tribes requested. It still makes the point that the original resolution made, guaranteed access and that land be returned to the original owners. I would move on the amendments.

Rep. DeKrey: I second.

Page 2  
House Natural Resources Committee  
Bill/Resolution Number HCR 3019  
Hearing Date February 9, 2001

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

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

Rep. Porter: I second.

Rep. Weiler: There was another amendment, can we just ignore that?

Rep. Droydal: That is incorporated in my amendment or as much as possible.

Rep. Nottestad: When you said you incorporated that amendment into yours. Did you contact Mr. Hall on that amendment at or are you just assuming it is okay with them?

Rep. Droydal: I certainly would never assume it was okay with Chairman Hall, I did try to obtain his fax number, I will forward this to his office and I assure you if it is not satisfactory with him we will further amend.

Rep. Nottestad: I just wanted to know if you conferred with him.

Rep. Droydal: I am sure if he doesn't approve of them, we will hear from him. I just as soon we move ahead with it.

Chairman Rennerfeldt: I have a motion for a Do Pass as Amended. Do you want to do a voice vote. All in favor of HCR 3019 as amended signify by saying aye. Opposed? The Ayes have it. Call a roll call vote.

**MOTION FOR A DO PASS AS AMENDED**

**YES 15      NO 2**

**1 ABSENT AND NOT VOTING**

**CARRIED BY REP. WEILER**

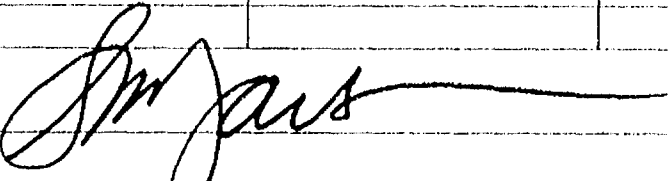
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3019

House Natural Resources Committee

☐ Conference Committee

Hearing Date February 15, 2001

Tape Number	Side A	Side B	Meter #
1	x		1 to 228
Committee Clerk Signature 			

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

Chairman Rennerfeldt: I will call the Natural Resources Committee to order.

Rep. Droydal: We did act on 3019 which has to do with access to lands around Lake Sakakawea and additional surplus lands.

Chairman Rennerfeldt: I held that up.

Rep. Droydal: We wanted to show the Tribes the new language. I did send a copy to them and received correspondence back from them. (See letter). They still object somewhat to the language of the access. Although they say they provide access. They also object to the other land along Lake Sakakawea. They say they are a separate issue though I feel Lake Sakakawea is Lake Sakakawea and my bill does not discriminate. I offered their letter for you to consider, if any of you wish to change your vote, you may move to reconsider. We can record the votes again or we

Page 2

House Natural Resources Committee

Bill/Resolution Number HCR 3019

Hearing Date February 15, 2001

can go with it the way it is. I just wanted you to know the Tribes still had some objections. I am sure they will be in on the Senate hearings.

Chairman Rennerfeldt: Is that clear with everyone? Does anyone have any concerns or do we turn it loose. If I hear no objections we will let it ride as is.

HOUSE AMENDMENTS TO HCR 3019

HOUSE NATURAL RESOURCES 02/16/01

Page 1, line 1, after "resolution" replace the remainder of the resolution with "urging that if the Congress of the United States authorizes the return of federal lands around Lake Sakakawea and Lake Oahe to the Three Affiliated Tribes and the Standing Rock Sioux Tribe, that the interests of all persons, including the affected Indian tribes, in lands and resources on those lands that are adjacent to Lake Sakakawea and Lake Oahe be protected, that individuals who have invested resources in developing the recreational facilities around Lake Sakakawea and Lake Oahe be guaranteed free access to those facilities, and that other excess federal lands acquired for the Pick-Sloan Project be returned to their original owners, their heirs, or the state of North Dakota.

**WHEREAS**, the Pick-Sloan Project, as authorized by the Flood Control Act of 1944, as amended, provides major flood control benefits, recreational benefits, water supply benefits, hydropower benefits, and navigational benefits for the downstream states of Iowa, Nebraska, Missouri, and Kansas through construction of large reservoirs in states and on Indian reservations lying upstream from these states in South Dakota, North Dakota, and Montana; and

**WHEREAS**, the state of North Dakota and the Indian tribes along the Missouri River sacrificed a total of 550,000 acres of land for the Pick-Sloan Project, including prime bottomlands and farmland along the Missouri River; lost homes and farmhouses; more than 2,000 jobs; personal income of more than \$45 million per year; business income of more than \$100 million per year; entire communities including the capitals of the Indian reservations; infrastructure, including hospitals, churches, cemeteries, schools, transportation networks, and water and sewer systems; local industry, including a saw mill, grain elevators, and feedlots; and in the case of the Indian tribes, a majority of their ancestral homelands; and

**WHEREAS**, in an attempt to mitigate a portion of the losses occurring because of the Pick-Sloan Project in South Dakota, pursuant to the Water Resources Development Acts of 1999 and 2000, the Congress of the United States directed the Secretary of the Army to transfer to the Department of Game, Fish and Parks of the state of South Dakota land located above the top of the exclusive flood pool of the Oahe, Big Bend, Fort Randall, and Gavins Point Projects of the Pick-Sloan Missouri River Basin program, acquired by the Secretary of the Interior for the implementation of the Pick-Sloan Missouri River Basin program, located outside the external boundaries of a reservation of an Indian tribe, and located within the state of South Dakota and further directed the Secretary of the Army to transfer to the Secretary of the Interior land located above the top of the exclusive flood pool of the Big Bend and Oahe Projects of the Pick-Sloan Missouri River Basin program acquired by the Secretary of the Army for the implementation of the Pick-Sloan Missouri River Basin program and located within the internal boundaries of the reservation of the Cheyenne River Sioux Tribe and the Lower Brule Sioux Tribe for the use of the Indian tribes in perpetuity; and

**WHEREAS**, the Water Resources Development Acts of 1999 and 2000 are controversial for a number of reasons, and, if applied to the state of North Dakota, do not completely meet the needs of the state or the affected Indian tribes; and

**WHEREAS**, in considering similar legislation that may apply to the state of North Dakota and the Indian tribes along the Missouri River in this state, the Congress of the United States should ensure that the interests of all persons and entities, including the affected Indian tribes, in lands and resources on those lands that are adjacent to Lake Sakakawea and Lake Oahe be protected, including, the protection of the interests of the

state of North Dakota and Indian tribes, and the wildlife, recreational, and cultural and historic resources of those lands;

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

That the Fifty-seventh Legislative Assembly urges that if the Congress of the United States authorizes the return of federal lands around Lake Sakakawea and Lake Oahe to the Three Affiliated Tribes and the Standing Rock Sioux Tribe, that the interests of all persons, including the affected Indian tribes, in lands and resources on those lands that are adjacent to Lake Sakakawea and Lake Oahe be protected, that individuals who have invested resources in developing the recreational facilities around Lake Sakakawea and Lake Oahe be guaranteed free access to those facilities, and that other excess federal lands acquired for the Pick-Sloan Project be returned to their original owners, their heirs, or the state of North Dakota; and

**BE IT FURTHER RESOLVED**, that the Fifty-seventh Legislative Assembly urges the Congress of the United States, in drafting legislation affecting Lake Sakakawea and Lake Oahe and the lands adjacent to these lakes, to work with and encourage cooperation among, all the parties interested in the legislation, including the affected Indian tribes; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Secretary of the Interior, the Secretary of the Army, to the chairman of the Standing Rock Sioux Tribe, the chairman of the Three Affiliated Tribes, and to each member of the North Dakota Congressional Delegation."

Renumber accordingly

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

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HCR 3019

House Natural Resources Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO Pass as Amended

Motion Made By Rep. DeRuy Seconded By Rep. Porter

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

Total (Yes) 12 No 2

Absent 1 absent

Floor Assignment Rep. Weiler

If the vote is on an amendment, briefly indicate intent: make  
language "tribe friendly"

**REPORT OF STANDING COMMITTEE**

**HCR 3019: Natural Resources Committee (Rep. Rennerfeldt, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 1 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 "urging that if the Congress of the United States authorizes the return of federal lands around Lake Sakakawea and Lake Oahe to the Three Affiliated Tribes and the Standing Rock Sioux Tribe, that the interests of all persons, including the affected Indian tribes, in lands and resources on those lands that are adjacent to Lake Sakakawea and Lake Oahe be protected, that individuals who have invested resources in developing the recreational facilities around Lake Sakakawea and Lake Oahe be guaranteed free access to those facilities, and that other excess federal lands acquired for the Pick-Sloan Project be returned to their original owners, their heirs, or the state of North Dakota.

**WHEREAS**, the Pick-Sloan Project, as authorized by the Flood Control Act of 1944, as amended, provides major flood control benefits, recreational benefits, water supply benefits, hydropower benefits, and navigational benefits for the downstream states of Iowa, Nebraska, Missouri, and Kansas through construction of large reservoirs in states and on Indian reservations lying upstream from these states in South Dakota, North Dakota, and Montana; and

**WHEREAS**, the state of North Dakota and the Indian tribes along the Missouri River sacrificed a total of 550,000 acres of land for the Pick-Sloan Project, including prime bottomlands and farmland along the Missouri River; lost homes and farmhouses; more than 2,000 jobs; personal income of more than \$45 million per year; business income of more than \$100 million per year; entire communities including the capitals of the Indian reservations; infrastructure, including hospitals, churches, cemeteries, schools, transportation networks, and water and sewer systems; local industry, including a saw mill, grain elevators, and feedlots; and in the case of the Indian tribes, a majority of their ancestral homelands; and

**WHEREAS**, in an attempt to mitigate a portion of the losses occurring because of the Pick-Sloan Project in South Dakota, pursuant to the Water Resources Development Acts of 1999 and 2000, the Congress of the United States directed the Secretary of the Army to transfer to the Department of Game, Fish and Parks of the state of South Dakota land located above the top of the exclusive flood pool of the Oahe, Big Bend, Fort Randall, and Gavins Point Projects of the Pick-Sloan Missouri River Basin program, acquired by the Secretary of the Interior for the implementation of the Pick-Sloan Missouri River Basin program, located outside the external boundaries of a reservation of an Indian tribe, and located within the state of South Dakota and further directed the Secretary of the Army to transfer to the Secretary of the Interior land located above the top of the exclusive flood pool of the Big Bend and Oahe Projects of the Pick-Sloan Missouri River Basin program acquired by the Secretary of the Army for the implementation of the Pick-Sloan Missouri River Basin program and located within the internal boundaries of the reservation of the Cheyenne River Sioux Tribe and the Lower Brule Sioux Tribe for the use of the Indian tribes in perpetuity; and

**WHEREAS**, the Water Resources Development Acts of 1999 and 2000 are controversial for a number of reasons, and, if applied to the state of North Dakota, do not completely meet the needs of the state or the affected Indian tribes; and

**WHEREAS**, in considering similar legislation that may apply to the state of North Dakota and the Indian tribes along the Missouri River in this state, the Congress of the United States should ensure that the interests of all persons and entities, including the affected Indian tribes, in lands and resources on those lands that are

adjacent to Lake Sakakawea and Lake Oahe be protected, including, the protection of the interests of the state of North Dakota and Indian tribes, and the wildlife, recreational, and cultural and historic resources of those lands;

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

That the Fifty-seventh Legislative Assembly urges that if the Congress of the United States authorizes the return of federal lands around Lake Sakakawea and Lake Oahe to the Three Affiliated Tribes and the Standing Rock Sioux Tribe, that the interests of all persons, including the affected Indian tribes, in lands and resources on those lands that are adjacent to Lake Sakakawea and Lake Oahe be protected, that individuals who have invested resources in developing the recreational facilities around Lake Sakakawea and Lake Oahe be guaranteed free access to those facilities, and that other excess federal lands acquired for the Pick-Sloan Project be returned to their original owners, their heirs, or the state of North Dakota; and

**BE IT FURTHER RESOLVED**, that the Fifty-seventh Legislative Assembly urges the Congress of the United States, in drafting legislation affecting Lake Sakakawea and Lake Oahe and the lands adjacent to these lakes, to work with and encourage cooperation among, all the parties interested in the legislation, including the affected Indian tribes; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Secretary of the Interior, the Secretary of the Army, to the chairman of the Standing Rock Sioux Tribe, the chairman of the Three Affiliated Tribes, and to each member of the North Dakota Congressional Delegation."

Renumber accordingly

2001 SENATE NATURAL RESOURCES

HCR 3019

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3019

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 3-9-01

Tape Number		Side A	Side B	Meter #
	1		X	15.3 - 44.1
3-22-01	1	X		31.9 - end
			X	Start - 6.6
3-23-01	1	X		16.7 - 36.8
Committee Clerk Signature <i>J. G. [Signature]</i>				

Minutes:

SENATOR FISCHER opened the hearing on HCR 3019.

REPRESENTATIVE DAVID DROVDAL of District 39 cosponsor of HCR 3019 introduced the RESOLUTION RELATING TO ACCESS TO RECREATIONAL FACILITIES AROUND LAKE SAKAKAWEA AND LAKE OAHE OF CONGRESS TRANSFERS FEDERAL LANDS TO THE THREE AFFILIATED TRIBES AND STANDING ROCK SIOUX TRIBES.

He testified that the resolution acknowledges the sacrifices citizens made with the building of the Garrison Dam, not only productive farm land but lands a heritage of the Indian Tribes. The object of the resolution is that "all" excess lands should be considered and returned to the prior owners. The second object is that all North Dakotans have paid a price for that lake and it should be open and with free access.

There was no neutral testimony on HCR 3019.

CAROL TWO EAGLES testified in opposition of HCR 3019 on behalf of a landowner who has problems with people crossing her property for access causing damage as they do so.

TERRANCE RED FOX a member of the Three Affiliated Tribes testified in opposition of HCR 3019. He gave his family history of displacement because of the Garrison Dam project. The only part of the resolution they agree on is the idea of the property being returned to the original owners for the tribes are the original owners. There is an opportunity here to make history and return those land to the original owners the Three Affiliated Tribes.

SENATOR CHRISTMANN felt that this a different issue than the resolution is directing. It is the concern of available access when the lands are returned to the owners.

SENATOR KELSII asked how this land is presently being used.

TERRANCE RED FOX answered that some is leased, grazing and tourism which is now more profitable.

CAROL TWO EAGLES added that Corp of Engineers is covered by federal law and can decide who can have access. The private landowners are concerned with the "free access".

SENATOR FISCHER closed the hearing on HCR 3019.

### MARCH 22, 2001

SENATOR FISCHER reopened the discussion on HCR 3019.

Written testimony submitted by the Three Affiliated Tribes was distributed to the Committee members.

Discussion was held as to how much land around the lake is privately owned and how much owned by the tribes. It was questioned if the resolution urged congress to turn over the lands around the lake to the tribes because it was the reservation or to the previous owners. It was

decide to let Rep. Drovdal review the testimony submitted by the Three Affiliated Tribes and come back to the Committee.

**MARCH 23, 2001**

SENATOR FISCHER reopened the discussion on HCR 3019.

SENATOR CHRISTMANN stated he did visit with Rep. Drovdal and Senator Lyson, cosponsors of HCR 3019 and would very much to see the resolution passed because the big issue is the guaranteed free access to areas. He felt the point of the resolution is to make the congressman understand that within the reservation lines are owned and operated by the tribes and that access should still be available for access.

SENATOR TRAYNOR stated his concern for assurance with or without record or contract of access.

SENATOR KELSH stated his concern that the passage of HCR 3019 might cause more problems.

It was decided that hopefully that if these lands are returned the state's Congressional team will have the wisdom to make sure access would not be part of the exchange.

SENATOR KELSH made a motion for a "DO NOT PASS" of HCR 3019.

SENATOR EVERY second the motion.

SENATOR FISCHER called for the roll vote of HCR 3019, indicating 6 YAYS, 1 NAY AND 0 ABSENT OR NOT VOTING.

SENATOR EVERY will carry HCR 3019.

Date: 2-23  
Roll Call Vote #: /

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 3019

Senate      NATURAL RESOURCES      Committee

☐ Subcommittee on \_\_\_\_\_  
or \_\_\_\_\_

☐ Conference Committee

Legislative Council Amendment Number

Action Taken Do Not Pass

Motion Made By Kelsch Seconded By Evary

[illegible]

Total (Yes) 6 No 1

Absent 0

Floor Assignment Every

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

REPORT OF STANDING COMMITTEE (410)  
March 23, 2001 10:47 a.m.

Module No: SR-51-6516  
Carrier: Every  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

HCR 3019, as engrossed: Natural Resources Committee (Sen. Fischer, Chairman)  
recommends **DO NOT PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING).  
Engrossed HCR 3019 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

HCR 3019



# MANDAN, HIDATSA, & ARIKARA NATION

*Three Affiliated Tribes • Fort Berthold Indian Reservation*

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

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

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

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

**on HCR 3019  
Concurrent Resolution Calling on Congress to  
Pass Legislation Relating to Lake Sakakawea and Lake Oahe  
If Excess Lands Are Returned to Three Affiliated Tribes and  
Standing Rock Sioux Tribe**

**February 8, 2001**

Mr. Chairman, members of the Committee. On behalf of the Mandan, Hidatsa and Arikara Nation (the Three Affiliated Tribes of the Fort Berthold Reservation), I must reluctantly state my opposition to HCR 3019 in its present format, which seeks to request certain legislation be passed by Congress in the event legislation is passed by Congress similar to that contained in the Water Resources Acts of 1999 and 2000, concerning, in part, the Cheyenne River Sioux Tribe and the Lower Brule Sioux Tribe. I say reluctantly, because if this resolution were to pass, I believe we would be taking a step backward in the generally good relationship we have had with the State of North Dakota, and that is discouraging.

However, we have discussed this Resolution with several of our legislators who are co-sponsors, and have proposed an alternative that we trust you will find acceptable.

We are concerned about the Resolution in its present format for a number of reasons:

**1) Inadequate discussion and consultation:**

In state government, as well as with the federal government, we are in an era of government-to-government consultation and recognition of the sovereign nature of both the state and tribal governments. Introducing a resolution like HCR 3019 without such consultation simply is not adequate and not acceptable. All of the interested parties, including the affected Tribes, should have been at the table discussing these issues before action was taken to introduce HCR 3019.

Dialogue is critical on issues involving Lake Sakakawea because I believe we all have a stake in what happens to Lake Sakakawea, Lake Oahe and their shorelines, including the Tribes, Tribal members, local communities, local counties, recreational users, residents of the region, anyone who uses the lakes or lives near them, state government and the Federal agencies that have a role to play in management of the Lakes. In fact, we have

far more common concerns about Lake Sakakawea than we have differences. But the tone of HCR 3019 makes it sound as if the Tribes are not interested in such discussion, or are opposed to working out a solution to lake and lake shore management that is in the best interests of all concerned. That notion is outmoded and far from the truth.

For example, we are all concerned about inadequate lake levels. When the lakes are drained down through part of the summer for downstream navigation interests, an industry of far less economic importance than the recreational aspects of Lake Sakakawea and Lake Oahe, we are all affected. We want our Casino and its related enterprises to succeed, these Tribal enterprises in part depend on lake levels, just as much as any recreation site along Lake Sakakawea. We are in this together -- all of us as State citizens, as Tribal members, as people interested in maintaining the quality of our large reservoirs. Instead of kicking at each other, we need to work together for our common benefit.

Our proposed alternative resolution calls upon the Congress, and really calls upon all of us, to work together towards solid solutions that will allow of the stake holders in Lake Sakakawea and its shoreline to know that their interests will be protected. A joint approach will minimize the risk of litigation and I believe is the only way that we can resolve the issues raised by this resolution.

2) We are not interested in denying access to the lakeshore to anyone.

But I must set the record straight on a number of matters referred to in HCR 3019. The Resolution, without any evidence at all, suggests by its language of seeking "guaranteed access" to the lake shore that the Tribe is not willing to continue to provide access to recreation sites along the lake shore of Lake Sakakawea. Nothing could be further from the truth. It is simply not in our economic self interest to prevent access to the lake shore. At the very least, the language of the resolution is insulting to our Tribal government.

In fact, had there been adequate dialogue before this unfortunate resolution was released, all would have known that we are working with the Army Corps of Engineers on a lake shore management plan, which must include, in part, provisions for recreational sites along the lake. Such a plan is in our overall best interests to put in place, especially as we approach the bicentennial celebration of the Lewis and Clark Expedition. Furthermore, we have told our Congressional delegation repeatedly, at least since 1995, that we are not interested in denying access to the lake shore and I have been working with our delegation on this issue since 1998.

Let me give you some examples of what we are doing to ensure access. In Charging Eagle Bay, on the southern side of the lake near Twin Buttes, North Dakota, we have

extended access through a long term third party lease to the cabins along that part of the shore line. We worked out what we believe was a fair lease for all parties concerned, including adjacent landowners.

We also have several recreation sites along the lake, including Pouch Point about seven miles south of New Town, North Dakota, that we lease from the U.S. Army Corps of Engineers. Non-Indians and Indians alike enjoy the facilities at that site, including the boat ramp. There is simply no incentive for us to stir up trouble for our own sites by denying access to non-Tribally operated recreation sites. We need to set those fears about denial of access aside and work jointly for the development of the shore line and the appropriate management of the water levels of Lake Sakakawea. Together we can make a difference. Our proposed alternative speaks about recognizing and protecting all of our interests in the lake shore.

3) The Tribe is not seeking a similar bill to the Water Resources Act of 1999 as amended by the Water Resources Act of 2000.

This Concurrent Resolution, among other things, essentially calls upon Congress and our Congressional delegation to guarantee access to the recreational sites on Lake Oahe and Lake Sakakawea in the event Congress were to pass legislation similar to that contained in the Water Resources Development Acts of 1999 and 2000 (also called the "Mitigation Act"), as passed by Congress on behalf of the State of South Dakota, the Cheyenne River Sioux Tribe and the Lower Brule Sioux Tribe in South Dakota. This implies that the Three Affiliated Tribes and the Standing Rock Sioux Tribe favor similar legislation to what supposedly benefited the Cheyenne River Sioux Tribe and the Lower Brule Sioux Tribe.

This is simply not the case. We have not been asking our North Dakota Congressional delegation for any kind of bill similar to the Mitigation Act; in fact, we would like the U.S. Army Corps of Engineers to return to us excess land within the boundaries of the Fort Berthold Reservation without the need for further legislative authority. That's what has been promised to us for many years, and that was the recommendation of the Joint Tribal Advisory Committee report issued in 1986, known as the "JTAC Report".

That we want some land back to replace what was taken from us should come as no surprise. If the City of Bismarck, the State Capitol, had been flooded because of a dam downstream on the Missouri, the State of North Dakota would have demanded an equivalent site in which to place its Capitol, and would have wanted land and infrastructure to replace what was lost. We have been seeking the return of our land and our infrastructure for 50 years, and our requests are still unfulfilled.

But I should explain what exactly the Mitigation Act is and why we don't particularly want that solution to be imposed on us in North Dakota. The Mitigation Act gave shoreline land within the boundaries of the reservations back permanently to the Tribes affected. It also preserved certain state recreation sites for the State of South Dakota, and gave land off the reservations but above a certain elevation along the lake shore to the Tribes mentioned above. The bill set up a lake shore management fund, funded by returns from electrical generation from the Pick Sloan dams, that will benefit the Tribes not earlier than 10 years after the passage of the bill.

One of the big problems we have with the Mitigation Act is that our interests, such as preservation of our sacred cultural and historic sites, are at all adequately protected. Because the Mandan and Hidatsa people existed in an agricultural, permanent setting along the Missouri River for centuries before Europeans came to this continent, we have many historic and cultural sites sacred to our people along the Missouri River into Nebraska and further. Many of these sites are in South Dakota, on the lands that are being transferred to the State of South Dakota, yet the Mitigation Act provides only limited protection for those sites, as we must work through a Commission in South Dakota to gain protection for those sites.

Nor do we believe the Mitigation Act goes far enough in creating an atmosphere of cooperation among all concerned about the future of Lake Sakakawea and its lake shore. Instead, it basically says, you get yours, and we get ours. We are simply not interested in another Mitigation Act in North Dakota. The Mitigation Act has created a huge division among the other 7 tribes in South Dakota and the State of South Dakota, and a potential lawsuit has been under consideration. Again, our proposed alternative seeks protection of all of our interests in the shore line of Lake Sakakawea.

#### 4) This Resolution stirs up old antagonisms.

The return of our lands along the lake shore is not a threat to lake shore users, nor has it ever been. The lands flooded out on our reservation were our best lands. Since the dam was constructed, we have sought adequate compensation for our lost lands as well as return of those lands which could be returned as being unneeded by the federal government.

Yet, for years there has been mistrust of our Tribal governments for reasons that really have little basis in fact, and for reasons that are generally rooted in simply being unwilling to see the problem from our point of view. This was borne out a few years ago in 1995 when the Army Corps held a series of hearings about returning some of the excess lands to the Tribes. Without any threat being provided by the Tribal governments, there was much testimony about wanting to preserve access to recreational sites always

implying that Tribal governments cannot be trusted and would prevent people from using favorite recreational sites. Let me tell you, if we had wanted to shut off access, we could have done so a long time ago, but as a Tribal government, we have not done so.

There was little basis for the fear of denial of access then and even less now, yet the language of HCR 3019 evokes memories of those acrimonious hearings. Given the fact that neither the Standing Rock Sioux Tribe or the Mandan, Hidatsa and Arikara Nation are trying to have Congress pass a law like the Mitigation Act, HCR 3019 seems out of place. We do not need a return to that kind of atmosphere.

**5) The Mitigation Act doesn't return land to former owners other than the Tribes involved and the State of South Dakota.**

The section of HCR 3019 that requests Congress to return lands taken to their previous owners is confusing. Does this apply on the reservation as well as off? With all of the land the Tribes lost to the Lake within their reservation, and all of the lands lost previously, we believe we should have the first right to the return of the excess lands along the lake shore. The Three Affiliated Tribes lost 156,000 acres and the Standing Rock Sioux Tribe 90,000 acres and we have never fully had our infrastructure restored since the flood over fifty years ago. We have been working on the issue of land restoration during that whole period of time.

This provision is also one that seems to have been inserted to try to kill any legislation that would return excess lands to the Tribes, since the data collection needed to make those returns could be expensive, as indicated in 1993 when the return of lake shore lands was being discussed and the expense of surveys was being considered. If individuals who formerly held lands off the reservation want lands that are now excess to the project returned to them, they can pursue that request without making reference to the Tribal return of lands; without insulting our Tribal needs and our good intentions.

Our proposed language for the Resolution recognizes the interests of all concerned about the lake shore. We are interested in working with all of the affected groups to propose legislation that will meet the interests of all concerned. We are citizens of North Dakota too, and we believe the effort to work out issues of development on the lake shores around Lake Sakakawea and Lake Oahe is a common one for all of us.

In summary, Mr. Chairman, members of the Committee, we need to have real dialogue between us, not a resolution that stirs up old problems. We would urge you to support the alternative resolution we have proposed, but if the Committee is not in support of our proposed alternative, then we have no choice but to urge a DO NOT PASS recommendation to the full House on HCR 3019.

**Proposed Amendment to HCR 3019  
Presented by Three Affiliated Tribes  
February 8, 2001**

On line 1, After the words "A concurrent resolution" strike all that follows, insert the following and renumber accordingly:

"urging that if Congress authorizes the return of federal lands around Lake Sakakawea and Lake Oahe to the Three Affiliated Tribes and the Standing Rock Sioux Tribe, that the interests of all persons, including the affected Indian tribes, in lands and resources on those lands that are adjacent to Lake Sakakawea and Lake Oahe be protected.

**WHEREAS**, the Pick-Sloan Project, as authorized by the Flood Control Act of 1944, as amended, provides major flood control benefits, recreational benefits, water supply benefits, hydropower benefits, and navigational benefits for the downstream states of Iowa, Nebraska, Missouri, and Kansas through construction of large reservoirs in states and on Indian reservations lying upstream from these states largely in South Dakota, North Dakota and Montana; and

**WHEREAS**, The state of North Dakota and the Indian tribes along the Missouri River sacrificed a total of 550,000 acres to the Pick-Sloan Project, including prime bottom lands farmland along the Missouri; and lost, among other things: homes and farmhouses; more than 2,000 jobs; personal income of more than \$45 million per year; business income of more than \$100 million per year; entire towns, including the capitals of the Indian reservations; infrastructure, including hospitals, churches, cemeteries, schools, transportation networks and water and sewer systems; local industry, including a sawmill, grain elevators and feed lot; and in the case of the Indian tribes, the majority of their ancestral homelands; and

**WHEREAS**, as one attempt to mitigate some of the losses that occurred because of the Pick Sloan Project in South Dakota, pursuant to the Water Resources Development Acts of 1999 and 2000, the U.S. Congress directed the Secretary of the Army to transfer to the Department of Game, Fish, and Parks of the state of South Dakota land located above the top of the exclusive flood pool of the Oahe, Big Bend, Fort Randall, and Gavin's Point Projects of the Pick-Sloan Missouri River Basin program, acquired by the Secretary of the Interior for the implementation of the Pick-Sloan Missouri River Basin program, located outside the external boundaries of a reservation of an Indian tribe, and located within the state of South Dakota, and further directed the Secretary of the Army to transfer to the Secretary of the Interior land located above the top of the exclusive flood pool of the Big Bend and Oahe Projects of the Pick-Sloan Missouri River Basin program acquired by the Secretary of the Army for the implementation of the Pick-Sloan Missouri River Basin program and located within the internal boundaries of the reservation of the Cheyenne River Sioux Tribe and the Lower Brule Sioux Tribe for the use of the Indian tribes in perpetuity; and

**WHEREAS**, The Water Resources Development Acts of 1999 and 2000 are controversial for a number of reasons, and, if applied to the state of North Dakota, do not completely meet the needs of the state of North Dakota or the affected Indian tribes; and

**WHEREAS**, In considering similar legislation that might apply to the state of North Dakota and the Indian tribes along the Missouri River within the State, Congress should ensure that the interests of all persons, including the affected Indian tribes, in lands and resources on

**Proposed Amendment to HCR 3019  
Presented by Three Affiliated Tribes  
February 8, 2001  
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those lands that are adjacent to Lake Sakakawea and Lake Oahe be protected, including, but not limited to, the protection of the interests of the state of North Dakota and the Indian tribes in wildlife management, recreational facilities and the cultural and historic resources of those lands.

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

That the Fifty-seventh Legislative Assembly urges the Congress of the United States that if Congress authorizes the return of federal lands around Lake Sakakawea and Lake Oahe to the Three Affiliated Tribes and the Standing Rock Sioux Tribe, Congress should ensure that the interests of all persons, including the affected Indian tribes, in lands and resources on those lands that are adjacent to Lake Sakakawea and Lake Oahe be protected, including, but not limited to, the protection of the interests of the state of North Dakota and the affected Indian tribes in wildlife management, recreational facilities and the cultural and historic resources of those lands;

**BE IT FURTHER RESOLVED**, that the Fifty-seventh Legislative Assembly urges the Congress of the United States, in drafting legislation affecting Lake Sakakawea and Lake Oahe and the lands adjacent to these lakes, to work with, and encourage cooperation among, all of those interested in the legislation, including the affected Indian tribes;

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Secretary of the Interior, Secretary of the Army, to each member of the North Dakota Congressional Delegation and to the Chairpersons of the Standing Rock Sioux and the Three Affiliated Tribes.

February 13, 2001

Dear Representative Drovdal:

Thank you for sending us a copy of the changes you made to the version of HCR 3019 that we proposed. Chairman Tex Hall is on travel and has asked that I respond to your suggestions.

Unfortunately, the changes you made to the suggested amendments proposed by the Tribe simply reinsert the language that was unacceptable in the first resolution. The Tribe is not restricting access to the lake shore and does not seek restricted access.

I realize you believe that not to be the case. We have made a number of inquiries, and if anyone is restricting access or charging a fee, it may be individual private landowners, not the Tribe itself. The Tribe does not generally have the power to tell individual landowners that they must grant access across their land, it does not have the same power of condemnation that the State has.

This issue is actually no different than that of landowners along the Missouri River who occasionally block access to a particular spot along the river. It is generally individual private landowners who do not want their land used for an access route who block access. The Tribe has encouraged its members to provide access, and in several instances has worked out, on behalf of the public generally, an access route to particular boat ramps or other facilities that is free. However, the Tribe has no control over specific land owners who have refused access.

Nor has the Tribe not used any funds it may have obtained for paving a road to a boat ramp within the reservation. Most, if not all, of the access roads are not part of the Bureau of Indian Affairs (BIA) road system, and therefore the Tribe has no control over them. If a particular road has not been built, it would primarily be because of an individual who has blocked access or wanted to charge a fee for crossing his or her land.

Again, the Tribe has little control over what an individual may do, except to try to work out a solution. That is exactly what the Tribe has been willing to do.

This resolution could result in the condemnation of both Tribal and member owned land, and the Tribal government has always been opposed to further loss of its land and the land of its members through the condemnation process. The Tribe has lost enough already with the building of the Garrison Dam.

In addition, the issue of return of non-Indian lands to original owners is a separate issue and ought to be sought separately, not as a part of a resolution seeking permanent access to the lake shore. As Chairman Hall stated in his testimony, insertion of such language seems to be calculated to frustrate the return to the Tribe of the lakeshore lands now owned by the U.S Army Corps of Engineers. Again, the Tribe has lost enough.

The Tribe stands ready to cooperate on this issue, and work on specific cases where access has been made more difficult by individual land owners, but does not want to have access forced upon it through condemnation or other actions of the Federal government that would reduce the land base of the Tribe and its members still further. We believe reasonable solutions can be obtained without further Federal action.

Again, thank you for allowing us the opportunity to comment on your latest draft of the resolution.

Sincerely,

Thomas M. Disselhorst  
Staff Attorney  
Three Affiliated Tribes  
Lobbyist No. 405.

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## MANDAN, HIDATSA, & ARIKARA NATION

Three Affiliated Tribes • Fort Berthold Indian Reservation

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

Natural Resources Committee  
North Dakota Senate  
57th Legislative Assembly

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

on HCR 3019

Concurrent Resolution Calling on Congress to  
Pass Legislation Relating to Lake Sakakawea and Lake Oahe  
If Excess Lands Are Returned to Three Affiliated Tribes and  
Standing Rock Sioux Tribe

March 9, 2001

Mr. Chairman, members of the Committee. On behalf of the Mandan, Hidatsa and Arikara Nation (the Three Affiliated Tribes of the Fort Berthold Reservation), I must reluctantly state my opposition to HCR 3019 in its present format, which seeks to request certain legislation be passed by Congress in the event legislation is passed by Congress similar to that contained in the Water Resources Acts of 1999 and 2000, concerning, in part, the Cheyenne River Sioux Tribe and the Lower Brule Sioux Tribe. I say reluctantly, because if this resolution were to pass, I believe we would be taking a step backward in the generally good relationship we have had with the State of North Dakota, and that is discouraging, this despite the passage of some of the amendments that were made to the bill at the request of the Three Affiliated Tribes.

We are concerned about the Resolution in its present format for a number of reasons:

### 1) Inadequate discussion and consultation.

In state government, as well as with the federal government, we are in an era of government-to-government consultation and recognition of the sovereign nature of both the state and tribal governments. Resolution HCR 3019 was introduced without any consultation with the Three Affiliated Tribes or Standing Rock Sioux Tribe, and that is unacceptable. Although we had good discussions with our District 4 representatives about the bill, and introduced to the Committee considering the bill in the House a substitute version of the bill which we believed should have satisfied everyone's concerns, the language in the bill which caused our initial concerns is still in the Resolution concerning "guaranteed access to the lake shore" and that "other excess lands acquired for the Pick Sloan project be returned to their original owners..."

Dialogue is critical on issues involving Lake Sakakawea because I believe we all have a stake in what happens to Lake Sakakawea, Lake Oahe and their shorelines, including the Tribes, Tribal members, local communities, local counties, recreational users, residents

In fact, had there been adequate dialogue before this unfortunate resolution was released, all would have known that we are working with the Army Corps of Engineers on a lake shore management plan, which must include, in part, provisions for recreational sites along the lake. Such a plan is in our overall best interests to put in place, especially as we approach the bicentennial celebration of the Lewis and Clark Expedition. Furthermore,

Testimony of Ted G. Hall, Chairman, Three Affiliated Tribes  
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Senate Natural Resources Committee  
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we have told our Congressional delegation repeatedly, at least since 1993, that we are not interested in denying access to the lake shore and I have been working with our delegation on this issue since 1998.

Let me give you some examples of what we are doing to ensure access. In Charging Eagle Bay, on the southern side of the lake near Twin Buttes, North Dakota, we have extended access through a long term third party lease to the cabins along that part of the shore line. We worked out what we believe was a fair lease for all parties concerned, including adjacent landowners.

We also have several recreation sites along the lake, including Pouch Point about seven miles south of New Town, North Dakota, that we lease from the U.S. Army Corps of Engineers. Non-Indians and Indians alike enjoy the facilities at that site, including the boat ramp. There is simply no incentive for us to stir up trouble for our own sites by denying access to non-Tribally operated recreation sites. We need to set those fears about denial of access aside and work jointly for the development of the shore line and the appropriate management of the water levels of Lake Sakakawea. Together we can make a difference. Our proposed alternative, part of which has been adopted in the present SCR 3019, speaks about recognizing and protecting all of our interests in the lake shore.

**D) The Tribe is not seeking a similar bill to the Water Resources Act of 1999 as amended by the Water Resources Act of 2000.**

This Concurrent Resolution, among other things, essentially calls upon Congress and our Congressional delegation to guarantee access to the recreational sites on Lake Oahe and Lake Sakakawea in the event Congress were to pass legislation similar to that contained in the Water Resources Development Acts of 1999 and 2000 (also called the "Mitigation Act"), as passed by Congress on behalf of the State of South Dakota, the Cheyenne River Sioux Tribe and the Lower Brule Sioux Tribe in South Dakota. This implies that the Three Affiliated Tribes and the Standing Rock Sioux Tribe favor similar legislation to what supposedly benefited the Cheyenne River Sioux Tribe and the Lower Brule Sioux Tribe.

This is simply not the case. We have not been asking our North Dakota Congressional delegation for any kind of bill similar to the Mitigation Act; in fact, we would like the U.S. Army Corps of Engineers to return to us excess land within the boundaries of the Fort Berthold Reservation without the need for further legislative authority. That's what has been promised to us for many years, and that was the recommendation of the Joint Tribal Advisory Committee report issued in 1986, known as the "JTAC Report".

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In Opposition to HCR 3019  
Senate Natural Resources Committee  
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That we want some land back to replace what was taken from us should come as no surprise. If the City of Bismarck, the State Capitol, had been flooded because of a dam downstream on the Missouri, the State of North Dakota would have demanded an equivalent site in which to place its Capitol, and would have wanted land and infrastructure to replace what was lost. We have been seeking the return of our land and our infrastructure for 50 years, and our requests are still unfulfilled.

But I should explain what exactly the Mitigation Act is and why we don't particularly want that solution to be imposed on us in North Dakota. The Mitigation Act gave shoreline land within the boundaries of the reservations back permanently to the Tribes affected. It also preserved certain state recreation sites for the State of South Dakota, and gave land off the reservations but above a certain elevation along the lake shore to the Tribes mentioned above. The bill set up a lake shore management fund, funded by returns from electrical generation from the Pick Sloan dams, that will benefit the Tribes not earlier than 10 years after the passage of the bill.

One of the big problems we have with the Mitigation Act is that our interests, such as preservation of our sacred cultural and historic sites, are not at all adequately protected. Because the Mandan and Hidatsa people existed in an agricultural, permanent setting along the Missouri River for centuries before Europeans came to this continent, we have many historic and cultural sites sacred to our people along the Missouri River into Nebraska and further. Many of these sites are in South Dakota, on the lands that are being transferred to the State of South Dakota, yet the Mitigation Act provides only limited protection for those sites, as we must work through a Commission in South Dakota to gain protection for those sites.

Nor do we believe the Mitigation Act goes far enough in creating an atmosphere of cooperation among all concerned about the future of Lake Sakakawea and its lake shore. Instead, it basically says, you get yours, and we get ours. We are simply not interested in another Mitigation Act in North Dakota. The Mitigation Act has created a huge division among the other 7 tribes in South Dakota and the State of South Dakota, and a potential lawsuit has been under consideration. Again, our proposed alternative seeks protection of all of our interests in the shore line of Lake Sakakawea.

#### **4) This Resolution stirs up old antagonisms.**

The return of our lands along the lake shore is not a threat to lake shore users, nor has it ever been. The lands flooded out on our reservation were our best lands. Since the dam was constructed, we have sought adequate compensation for our lost lands as well as return of those lands which could be returned as being unceded by the federal government.

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Yet, for years there has been mistrust of our Tribal governments for reasons that really have little basis in fact, and for reasons that are generally rooted in simply being unwilling to see the problem from our point of view. This was borne out a few years ago in 1995 when the Army Corps held a series of hearings about returning some of the excess lands to the Tribes. Without any threat being provided by the Tribal governments, there was much testimony about wanting to preserve access to recreational sites always, implying that Tribal governments cannot be trusted and would prevent people from using favorite recreational sites. Let me tell you, if we had wanted to shut off access, we could have done so a long time ago, but as a Tribal government, we have not done so.

There was little basis for the fear of denial of access then and even less now, yet the language of HCR 3019 evokes memories of those acrimonious hearings. Given the fact that neither the Standing Rock Sioux Tribe or the Mandan, Hidatsa and Arikara Nation are trying to have Congress pass a law like the Mitigation Act, HCR 3019 seems out of place. We do not need a return to that kind of atmosphere.

5) The Mitigation Act doesn't return land to former owners other than the Tribes involved and the State of South Dakota.

The section of HCR 3019 that requests Congress to return lands taken to their previous owners is confusing. Does this apply on the reservation as well as off? With all of the land the Tribes lost to the Lake within their reservation, and all of the lands lost previously, we believe we should have the first right to the return of the excess lands along the lake shore. The Three Affiliated Tribes lost 156,000 acres and the Standing Rock Sioux Tribe 90,000 acres and we have never fully had our infrastructure restored since the flood over fifty years ago. We have been working on the issue of land restoration during that whole period of time.

But this provision is also one that seems to have been inserted to try to kill any legislation that would return excess lands to the Tribes, since the data collection needed to make those returns could be expensive, as indicated in 1993 when the return of lake shore lands was being discussed and the expense of surveys was being considered. If individuals who formerly held lands off the reservation want lands that are now excess to the project returned to them, they can pursue that request without making reference to the Tribal return of lands; without insulting our Tribal needs and our good intentions.

Our proposed language, which is the same as the proposed resolution but without the "guaranteed access" and "return of lands to original owners" phrases added by the House Committee, recognizes the interests of all concerned about the lake shore. We are interested in working with all of the affected groups to propose legislation that will meet

**Testimony of Tom G. Hall, Chairman, Three Affiliated Tribes  
In Opposition to HCR 3019  
Senate Natural Resources Committee  
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the interests of all concerned. We are citizens of North Dakota too, and we believe the effort to work out issues of development on the lake shores around Lake Sakakawea and Lake Oahe is a common one for all of us.

In summary, Mr. Chairman, members of the Committee, we need to have real dialogue between us, not a resolution that stirs up old problems. We would urge you to support the alternative resolution we have proposed, but if the Committee is not in support of our proposed alternative, then we have no choice but to urge a **DO NOT PASS** recommendation to the full Senate on HCR 3019.

**Proposed Amendment to HCR 3019  
Presented by Three Affiliated Tribes  
March 9, 2001**

On line 1, After the words "A concurrent resolution" strike all that follows, insert the following and renumber accordingly:

"urging that if Congress authorizes the return of federal lands around Lake Sakakawea and Lake Oahe to the Three Affiliated Tribes and the Standing Rock Sioux Tribe, that the interests of all persons, including the affected Indian tribes, in lands and resources on those lands that are adjacent to Lake Sakakawea and Lake Oahe be protected.

**WHEREAS**, the Pick-Sloan Project, as authorized by the Flood Control Act of 1944, as amended, provides major flood control benefits, recreational benefits, water supply benefits, hydropower benefits, and navigational benefits for the downstream states of Iowa, Nebraska, Missouri, and Kansas through construction of large reservoirs in states and on Indian reservations lying upstream from these states largely in South Dakota, North Dakota and Montana; and

**WHEREAS**, The state of North Dakota and the Indian tribes along the Missouri River sacrificed a total of 550,000 acres to the Pick-Sloan Project, including prime bottom lands farmland along the Missouri; and lost, among other things: homes and farmhouses; more than 2,000 jobs; personal income of more than \$45 million per year; business income of more than \$100 million per year; entire towns, including the capitals of the Indian reservations, infrastructure, including hospitals, churches, cemeteries, schools, transportation networks and water and sewer systems; local industry, including a sawmill, grain elevators and feed lot; and in the case of the Indian tribes, the majority of their ancestral homelands; and

**WHEREAS**, as one attempt to mitigate some of the losses that occurred because of the Pick Sloan Project in South Dakota, pursuant to the Water Resources Development Acts of 1999 and 2000, the U.S. Congress directed the Secretary of the Army to transfer to the Department of Game, Fish, and Parks of the state of South Dakota land located above the top of the exclusive flood pool of the Oahe, Big Bend, Fort Randall, and Gavin's Point Projects of the Pick-Sloan Missouri River Basin program, acquired by the Secretary of the Interior for the implementation of the Pick-Sloan Missouri River Basin program, located outside the external boundaries of a reservation of an Indian tribe, and located within the state of South Dakota, and further directed the Secretary of the Army to transfer to the Secretary of the Interior land located above the top of the exclusive flood pool of the Big Bend and Oahe Projects of the Pick-Sloan Missouri River Basin program acquired by the Secretary of the Army for the implementation of the Pick-Sloan Missouri River Basin program and located within the internal boundaries of the reservation of the Cheyenne River Sioux Tribe and the Lower Brule Sioux Tribe for the use of the Indian tribes in perpetuity; and

**WHEREAS**, The Water Resources Development Acts of 1999 and 2000 are controversial for a number of reasons, and, if applied to the state of North Dakota, do not completely meet the needs of the state of North Dakota or the affected Indian tribes; and

**WHEREAS**, in considering similar legislation that might apply to the state of North Dakota and the Indian tribes along the Missouri River within the State, Congress should ensure that the interests of all persons, including the affected Indian tribes, in lands and resources on

**Proposed Amendment to HCR 3016  
Presented by Three Affiliated Tribes  
February 8, 2001  
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those lands that are adjacent to Lake Sakakawea and Lake Oahe be protected, including, but not limited to, the protection of the interests of the state of North Dakota and the Indian tribes in wildlife management, recreational facilities and the cultural and historic resources of those lands.

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

That the Fifty-seventh Legislative Assembly urges the Congress of the United States that if Congress authorizes the return of federal lands around Lake Sakakawea and Lake Oahe to the Three Affiliated Tribes and the Standing Rock Sioux Tribe, Congress should ensure that the interests of all persons, including the affected Indian tribes, in lands and resources on those lands that are adjacent to Lake Sakakawea and Lake Oahe be protected, including, but not limited to, the protection of the interests of the state of North Dakota and the affected Indian tribes in wildlife management, recreational facilities and the cultural and historic resources of those lands;

**BE IT FURTHER RESOLVED**, that the Fifty-seventh Legislative Assembly urges the Congress of the United States, in drafting legislation affecting Lake Sakakawea and Lake Oahe and the lands adjacent to these lakes, to work with, and encourage cooperation among, all of those interested in the legislation, including the affected Indian tribes;

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Secretary of the Interior, Secretary of the Army, to each member of the North Dakota Congressional Delegation and to the Chairpersons of the Standing Rock Sioux and the Three Affiliated Tribes.