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DESCRIPTION

3029

2005 HOUSE NATURAL RESOURCES

HCR 3029

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HCR 3029**

House Natural Resources Committee

❑ Conference Committee

Hearing Date **February 11, 2005**

Tape Number	Side A	Side B	Meter #
2		x	1,729 - 3021
Committee Clerk Signature	Karen Bonnet		

Minutes:

Chr. Jon O. Nelson: I will open the hearing on HCR 3029 and ask the clerk to read the bill. All members present.

Rep. Kari Conrad, Dist. 3: This is a very important issue in Minot and the whole Minot region. Water is a tremendous resource that can end up in economic development projects that we haven't even thought about. If we had water in Stanley, Berthold, Bottineau and Mohall, it could change the whole makeup of those communities. We're especially reminded of it when we see what has happened in the southwest. The city of Minot has taken this on as a project on behalf of the region. We are asking you to go on record and endorse it. We are in court in various places and we know that there is an appropriation and we appreciate that, but this also puts you on the record on a policy basis.

Rep. David Drovdal: I agree with the Northwest Water project, and will continue to back it. My concern is not whether or not we encourage it, but that we have Southwest, a Fargo, the

Watford, Mandan, and all the other projects. A number of years ago, those areas all went together. So we don't have an individual fight, one district against another, they all got together and put up their priorities, then they bring it in to us as a package and we promote that. By coming in with a resolution for just *one* of many important water districts, we're kind of saying that we're going on our own. In the west, I don't want to get into a contest with Fargo on who has the most support or the funding issue of it. From that point, I'm a little concerned that this might get us into a war of mine-against-yours fight. Do you want to comment on that?

Conrad: I'm sympathetic to that, and supportive of that. We don't want to do anything to tear apart what has worked for us. The Water Commission does a fine job of putting those priorities together and we support that. This is not in any way connected to the appropriations process. We've had a bumpy road on this water project; the President left us out of the budget twice. Since the reclamation money is being cut, we're not sure that we're in this budget, either. We haven't seen the details, yet. We just want to be sure that when we send the letter to the President, that we can attach a statement from the Legislature saying that we've been given priority. It just gives statewide support to this project. I think this may be the project in the most trouble because our sales tax is what we can be sure of to work with. We can't rely on the Federal money. This puts the Legislature behind the resolution on a policy level.

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

Wayne Stenehjem, Attorney General: (Written testimony attached, NAWS Project litigation summary & Missouri River Litigation Chronology) I want to mention two significant points that tie into the previous resolutions that you have. If you look at the bottom of

page two, we are all in this litigation where Manitoba and the federal government of Canada sued us, claiming that we should be doing a more extensive impact statement rather than the environmental assessment that was done. The state of Missouri intervened in the lawsuit, and filed an amicus brief in this lawsuit, claiming that we shouldn't be taking water out of Lake Sakakawea for the Northwest area water project because they want the water for themselves. I thought that was very telling and interesting on the part of selfishness on the part of the state of Missouri. To outline where we are at this point, the state of ND, the Bureau of Reclamation and the governor of Canada all filed motions for a summary judgement before Judge Collier in Washington, DC. The court, just last week, denied our request for a motion for summary judgement, and the federal government's request.

What she did was send it back for further scientific analysis on two questions. Is there a possibility of leakage from the pipeline, and two, is there a possibility that there are treatment-resistant strains of biota that might be transferred up to Canada? Scientists need to address that issue. We just got that 40-some page ruling last week, we're still digesting it and determining what kind of approach we ought to take, whether we need appeals, or to comply, or exercise other options that are available to us. This is an important project for all northwestern ND and we're working diligently to make sure that it happens. The court did not grant the motion for an injunction, but she did say she would take issue under further consideration at a later date. Our course is clear, we need to make a determination on what we're going to do, then fight any possibility of an injunction being granted. In the meantime, the project, work, and contracts are continuing because there are no court orders in effect to end it.

Chr. Nelson: Are there any questions? We do appreciate your continued work regarding these water issues and the good job you do for the state of ND and the Missouri River projects in particular. Thank you for your testimony. Is there further supporting testimony?

James Lennington, NAWS Project Mgr., State Water Commission: (Written testimony attached)

Chr. Nelson: Are there any questions?

Rep. Mike Norland: Where is the pipeline going to enter the water?

Lennington: It will go in at Snake Creek. We are fairly certain at this time that it will go in on the Lake Sakakawea side. We are currently looking at some of the options of how we do that. One of the options that we're looking at is negotiating with the Bureau of Reclamation to remove one of the pumping units, the north one on the Snake Creek Pumping Plant and suspend our pump in its place. We're comparing that to separate intakes that would be to the north of the Snake Creek Pumping Plant. A less favorable option would be to go on the Audubon side. It's less favorable in terms of water quality. The Health Department has expressed its preference for us to use Lake Sakakawea and we do have a much more stable water level than in Lake Audubon. We do have a large elevation difference to pump against so that really isn't a bigger factor. There are also some water quality differences.

Norland: I didn't realize that you were going all the way to the Missouri River.

Lennington: That is right, we're not entirely certain and the state Water Commission has not acted yet to positively identify that we're on the Lake Sakakawea side as to the Lake Audubon side.

Rep. Charging: Do you know, if it all goes well, when these communities would be served?

Lennington: That is always a difficult question. As I put in the testimony, there's been about $20 million spent so far. The contract that we're looking to award this spring is another $10-11 million, probably. It's going to take us $30 million just to complete the infrastructure needed just to get the water to Minot. After that, there is further work to be done to get water to the other entities. We're looking at a total project cost of around $145 million. People do ask me that question a lot. I always say that if we can get $10 worth of funding, we need $140 million to do it.

Chr. Nelson: Are there any questions? Seeing none, thank you for your testimony. Is there further supporting testimony? Seeing none, is there opposition? Seeing none, I will close the hearing on HCR 3029.

Rep. Lyle Hanson: I move a do pass.

Rep. Solberg: Second, and put on the consent calendar.

Chr. Nelson: There has been a motion for do pass and put on the consent calendar, and a second.

Rep. Darrell D. Nottestad: Question.

Chr. Nelson: Question has been called. I would try a voice vote on the question of a do pass motion and place on the consent calendar on HCR 3029. All those in favor, signify by saying aye. Opposed, same sign. Motion carried, unanimously.

Do pass, put on the consent calendar, Vote:

14-Yeas; 0-Nays; 0-Absent; CARRIER: Hanson

Entered

Date: 2/11/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3029

House NATURAL RESOURCES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number :

Action Taken : Do pass & pl on Consent Calendar

Motion Made By : Hanson Seconded By : Solberg

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

Total (Yes) 14 No 0

Absent 0

Floor Assignment Hanson ✓

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

REPORT OF STANDING COMMITTEE

HCR 3029: Natural Resources Committee (Rep. Nelson, Chairman) recommends **DO PASS** and **BE PLACED ON THE CONSENT CALENDAR** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3029 was placed on the Tenth order on the calendar.

2005 SENATE NATURAL RESOURCES

HCR 3029

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3029

Senate Natural Resources Committee

❑ Conference Committee

Hearing Date March 11, 2005

Tape Number	Side A	Side B	Meter #
1	X		7.8 - 8.4
	X		23.8 - 37.1
	X		42.6 - 44.1
Committee Clerk Signature			

Minutes:

Senator John Traynor, acting Chairman for **Senator Stanley Lyson**, Chairman of the Senate Natural Resources Committee opened the hearing on HCR 3029 expressing the Legislative Assembly's support for continued construction of the Northwest area Water Supply Project. All members of the committee were present except Senator Ben Tollefson.

Wayne Stenejhem Attorney General of North Dakota distributed to the committee documents that give the chronological efforts for the NAWS Project (see attached). The case has been remanded for further consideration whether there should be further environmental assessment or if there needs to be a complete environmental impact statement that is a more lengthy and much more expensive process. So it is now back in district court. (See Tape #1, Side A, 7.8 - 8.4)

Representative Kari Conrad (23.8) of District 3 cosponsor of HCR 3029 introduced the resolution on behalf of the Minot delegation asking the committee to put on paper their

commitment to NAWS. This project is important to the economic development for not only for the Minot area but also the corridor to Williston and the area around it.

Senator Traynor asked if there is any plan to extend the benefits of the project to Canadian communities.

Representative Conrad answered that is not a plan at this time but that they are very proud of their relationship with their Canadian friends directly across the boarder, although that is not quit the case to the east and west. Two dams were built in Canada with. Minot sales tax to help with flood control in their city.

Senator Traynor asked if the water that will be used in this proposed project be treated in Minot.

Representative Conrad stated that they are planning to expand their water treatment plant once the project has been approved to bring the water from the Missouri River into their water system. It is very important to the city of Minot and they will continue to fight for the federal funds although the President has again cut funds from his budget to support the project.

Andy Mork with the BOMMM (Burleigh, Oliver, Morton, McClean, Mercer Counties) Joint Board consisting of the five counties along the Missouri River between Garrison and Bismarck, North Dakota that has been involved in supporting the activities of the river. He testified in support of HCR 3026, 3027 and 3029 as they all relate to each other. (See Tape #1, Side A, 8.7)

Mike Donahue of the United Sportsmen of North Dakota and the North Dakota Wildlife Federation testified they are in support of HCR 3027. (See Tape #1, Side A 17.6)

James Lennington, (26.6) the Northwest Area Water Supply Project Manager testified in support of HCR 3029 (See attached testimony).

Senator Joel Heitkamp asked for an update on NAWS.

James Lennington stated that the bids for the contract have been opened and the commission has authorized the state engineer to award the contract. There is litigation with Manitoba that has filed a brief for a injunction of the project that would totally shut it down. The contract will still be awarded. This litigation does not seem to effect the bidding process although bids are higher due to the time and rising prices of supplies and fuel.

Discussion was held regarding bonding for the project. If this injunction is granted the present projects should be able to be completed.

Senator Traynor asked if the city or the state would bear the responsibility to the bond holders and the contractors if the injunction should stop the projects.

James Lennington stated there is no borrowing of funds, so there are no bonds but there would be a lot of pipe left. At this time the pipe line is laid from the cities of Minot to Max and about 76,000 feet of pipe is laid a year.

Senator Heitkamp asked if it is an issue with the International Joint Commission.

James Lennington stated there has never been a unilateral reference of a project to the International Joint Commission, it has always been for the two countries to refer at the same time. With NAWS the countries have not agreed and is better than having the present situation of being in court.

Senator Traynor asked if the treatment plant in Minot is capable of treating the new water.

James Lennington stated it would need to be modified and the decision for where the water is taken has not been decided. The are some water quality and chemistry differences to be considered and that the Lake Sakakawea would be better.

Senator Traynor asked for neutral and opposing testimony of HCR 3029 and hearing non closed the hearing on HCR 3029.

Tape #1, Side B, 42.6 -

Senator Stanley Lyson opened the committee work on HCR 3029.

Senator Rich Wardner made a motion for a Do Pass of HCR 3029.

Senator John Traynor second the motion.

Roll call for a Do Pass of HCR 3029 was taken indicating a 6 YEAS, 0 NAYS AND 1 ABSENT.

Senator Ben Tollefson will carry HCR 3029.

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

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3029

Senate Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By T Wardner Seconded By Traynor

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

Total (Yes) 6 No 0

Absent 1

Floor Assignment Tollefson

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

REPORT OF STANDING COMMITTEE (410)
March 11, 2005 1:17 p.m.

Module No: SR-45-4775
Carrier: Tollefson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HCR 3029: Natural Resources Committee (Sen. Lyson, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HCR 3029 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HCR 3029

By: Wayne Stenehjem
Re: HCR 3029 - 2/11/05
Pg: 1 of 4

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Wayne Stenehjem
ATTORNEY GENERAL

February 11, 2005

Missouri River Litigation Chronology – A Summary

1944: The 1944 Flood Control Act authorizes Missouri River dams.

1967: The dams become fully operational.

1979: The Corps adopts a Master Manual to implement the Flood Control Act and to guide management of the System.

1987 – 1993: The Missouri River Basin experiences its first major drought since the dams became fully operational.

1989: The Corps recognizes that its operations are contrary to the basin's current needs and begins studying revisions to the 1979 Master Manual.

1990: North Dakota, South Dakota, and Montana jointly sue the Corps, seeking temporary reductions in releases from the dams to protect the smelt spawn. (The smelt is the primary food source for the walleye.) On May 11th the U.S. District Court for North Dakota issues an injunction stopping the Corps from releasing water until June 1st. The Corps appeals to the Eighth Circuit Court of Appeals, which promptly overturns the district court's order. That court later dismisses the states' lawsuit as moot because the spring smelt spawn is over. The merits of the states' claims are never reached.

1991: North Dakota, South Dakota, and Montana again jointly sue the Corps. The suit, which is filed in the U.S. District Court for Montana, asserts that the 1979 Master Manual and the Corps' operation of the dams is contrary to the 1944 Flood Control Act. The states allege that the Corps must treat fish, wildlife, and recreation equally with other System purposes. During the lawsuit, the Corps agrees that all uses are entitled to equal consideration. The court dismisses the lawsuit based on the Corps' assurances that it will give all water uses equal consideration while the Master Manual is being revised.

1990s: The drought breaks in 1994. Because there is sufficient water for all uses litigation abates. The full reservoirs, however, remove any urgency to revise the 1979 Master Manual. The Corps' revision process moves slowly.

2000: The present drought takes hold.

2002: South Dakota, to protect Lake Oahe's smelt spawn, sues the Corps in the U.S. District Court for South Dakota. On May 10th the court enjoins the Corps from lowering the lake until May 23rd. The Corps responds by increasing releases from Lake Sakakawea and Ft. Peck.

2002: North Dakota sues the Corps in U.S. District Court for North Dakota and obtains an injunction preventing the Corps from temporarily lowering Lake Sakakawea. The injunction saves Lake Sakakawea's 2002 smelt spawn. The suit also seeks an order requiring the Corps to properly apply the 1944 Flood Control Act and to promptly issue a new Master Manual.

2002: Montana sues the Corps in the U.S. District Court for Montana. After obtaining some temporary relief, Montana dismisses its suit and, for the most part, removes itself from further litigation.

2002: Nebraska sues the Corps in the U.S. District Court for Nebraska and obtains an injunction requiring the Corps to operate the System to maintain minimum navigation flows. North Dakota later intervenes in this suit to protect the state's interests before the Nebraska District Court

2002: The Corps appeals the three district court injunctions to the Eighth Circuit Court of Appeals.

2003: American Rivers and other environmental organizations sue the Corps in the U.S. District Court for the District of Columbia. They assert that the Corps' river management violates the Endangered Species Act and 1944 Flood Control Act.

2003: North Dakota authors an amicus brief joined by South Dakota and Montana opposing the Corps' motion to transfer the American Rivers lawsuit to Nebraska. The motion is denied. North Dakota later intervenes in the American Rivers lawsuit to protect its interests before the U.S. District Court for the District of Columbia.

2003: North Dakota supports American Rivers' request for an injunction against the Corps. The District of Columbia Court grants the injunction. The Corps and downstream states and interests appeal to the District of Columbia Court of Appeals, but the appellants later dismiss their appeals.

2003: The Corps' 2002 appeals to the Eighth Circuit Court of Appeals, however, remain pending and the Eighth Circuit holds oral argument on them.

2003: North Dakota serves the Corps with a Notice of Violation informing the Corps that drawing down Lake Sakakawea will violate the state's water quality standards and destroy the coldwater fishery, on which the walleye and salmon depend. North Dakota later sues the Corps in the U.S. District Court for North Dakota. This suit differs from the 2002 suit. The 2003 suit asserts that the Corps will violate the federal

Clean Water Act by drawing down Lake Sakakawea and jeopardizing its coldwater habitat. The suit also seeks and obtains an injunction to protect the spring smelt spawn. The injunction saves Lake Sakakawea's 2003 spawn.

2003: Blaske Marine and other downstream interests sue the federal government and upstream states in the U.S. District Court for Nebraska. Among other claims, they assert that the states and the government violate the Endangered Species Act by stocking walleye, which, Blaske Marine asserts, compete with the endangered pallid sturgeon. The state responds and defends the suit.

2003: Nebraska files a motion asking the Judicial Panel on Multidistrict Litigation to consolidate all pending Missouri River cases before the Nebraska District Court. The Corps and other downstream interests support the motion. North Dakota and other parties oppose it. North Dakota later appears before Judicial Panel on Multidistrict Litigation to argue that if the cases are to be consolidated, then the Minnesota District Court would be the most appropriate court. The Panel orders all Missouri River cases consolidated before Judge Paul Magnuson of the U.S. District Court for Minnesota.

2003: The Eighth Circuit Court of Appeals issues a decision on the three injunctions issued in 2002. It overturns injunctions issued by the North Dakota and South Dakota District Courts and affirms the one issued by the Nebraska District Court. Its opinion contains comments that could be construed as ruling that the Flood Control Act gives navigation priority over recreation.

2003: North Dakota authors a petition for certiorari that is joined by South Dakota. The petition asks the United States Supreme Court to review the Eighth Circuit Court of Appeals' decision.

2003-2004: Dozens of motions are filed in the underlying cases with Judge Magnuson.

2004: The Corps and downstream states and interests file oppositions to North Dakota's petition for certiorari. In April, the U.S. Supreme Court denies North Dakota's petition and declines to review the Eighth Circuit's decision.

2004: In February, Judge Magnuson grants North Dakota's motion and orders the Corps to issue a new Missouri River Manual, which the Corps does in March. Judge Magnuson later holds a hearing on the many motions pending in the consolidated cases.

2004: In April, Judge Magnuson dismisses North Dakota's 2003 suit against the Corps in which the state asserted that drawing down Lake Sakakawea violates the Clean Water Act. The judge rules that the Corps is not subject to North Dakota's

water quality standards. North Dakota later appeals the decision to the Eighth Circuit Court of Appeals.

2004: In June, Judge Magnuson issues his decision on all remaining issues. He dismisses Blaske Marine's claim that North Dakota's walleye stocking violates the Endangered Species Act. He rules that the Flood Control Act does not give navigation a priority over recreation, but that the Corps has a duty to even-handedly balance all river uses and that in doing so it has considerable discretion. He also dismisses American Rivers' environmental claims. Downstream interests view the decision as a loss and appeal to with the Eighth Circuit Court of Appeals. American Rivers also appeals.

2004-2005: Briefs are filed with the Eighth Circuit. Thus far, about 20 briefs have been filed. The final batch, which is due in a couple of weeks, will include another six briefs. The Court of Appeals will hold oral argument on the appeals in mid-April.

By: Wayne Stenehjem
Rec. HCR 3029-2/11/05

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February 11, 2005

NAWS PROJECT – LITIGATION SUMMARY

1944: Congress passes the 1944 Flood Control Act. The Act authorizes irrigation projects, and North Dakota, in return for its support for the legislation, is promised huge irrigation projects.

1965: Congress passes the Garrison Diversion Unit Act authorizing multi-purpose water projects for North Dakota.

1968: Construction on the Garrison Diversion Project begins.

1970: The Government of Canada begins to express opposition to the project. It is concerned that the project will transfer "foreign biota," that is, Missouri River Basin organisms, to the Hudson Bay Basin that will, Canada asserts, damage the Canadian environment.

1974: The United States and Canada refer the project to the International Joint Commission, a body established by the 1909 Boundary Waters Treaty. The Commission studies the project and later in the year issues a report expressing concerns about the project.

Late 1970s – early 1980s: The U.S. and Canada, along with North Dakota and Manitoba, study the Garrison Diversion Project's transboundary affects. But the Canadian issues, coupled with waning Congressional support for large irrigation projects and objections from environmental groups, largely end the original vision of Garrison Diversion.

1986 – late 1980s: Congress passes The Garrison Diversion Reformulation Act, authorizing municipal, rural, and irrigation (MR&I) projects in North Dakota and a scaled-down irrigation project. North Dakota begins planning a water project for the northwest and north central parts of the state. The project eventually becomes known as the Northwest Area Water Supply Project, or the NAWS Project. Canadian concerns and objections, however, continue, and federal support for even the smaller irrigation project weakens.

1990s: Throughout much of the 1990's, the Department of the Interior's Bureau of Reclamation support for NAWS remains strong and it works to satisfy the obligations of the National Environmental Policy Act (NEPA), as

well as those of the 1909 Boundary Waters Treaty. It works in cooperation with North Dakota. The Governments of Canada and Manitoba participate in many joint technical meetings and studies throughout the 1990s. The primary objective of the work is to ensure that the NAWS Project does not transfer "foreign biota" to the Hudson Bay Basin.

1999-2000: NAWS reaches the highest levels of government. The project is discussed by Pres. Clinton and Prime Minister Chretien. Meetings are held with Canadian officials and U.S. State Department, as well as with the Administrator of the Environment Protection Agency (EPA).

2000: Congress enacts the Dakota Water Resources Act. The Act is another reformulation of the Garrison Diversion Project. With the Act, Garrison Diversion has evolved from primarily an irrigation project to one focused on the state's MR&I needs.

2001: The Secretary of the Interior, in consultation with the Administrator of the EPA, concludes that the NAWS Project satisfies the 1909 Boundary Waters Treaty. In the spring, the Bureau of Reclamation issues its Finding of No Significant Impact for the Project. This allows the Bureau to avoid preparing an environmental impact statement. The Bureau of Reclamation also issues its Final Environmental Assessment.

2002: Groundbreaking for NAWS occurs in April. In October the Province of Manitoba files suit against U.S. Department of the Interior and the U.S. Bureau of Reclamation. The suit is filed in U.S. District Court for the District of Columbia. Manitoba's suit asserts that the government's development of the Project violates the NEPA. In particular, Manitoba asks the court to order the Bureau to prepare an environmental impact statement for the Project. Manitoba also asks that construction on the Project stop.

2003: North Dakota files a motion asking to be allowed to intervene in the suit to protect North Dakota's interests. The motion is granted. North Dakota later files a motion asking the court to dismiss the case on jurisdictional grounds. North Dakota asserts that transboundary relations between the U.S. and Canada are governed by 1909 Boundary Waters Treaty and that the two countries established the International Joint Commission to address transboundary disputes. Consequently, North Dakota asserts, the judiciary lacks jurisdiction to consider what is essentially a matter of the Nation's foreign

affairs. The Bureau of Reclamation files a similar motion. The court holds a hearing on the motions. In November the court denies the motions.

2003: Despite the litigation, construction on the project proceeds.

2004: Manitoba files a motion for summary judgment. The Government of Canada files an amicus brief is support of Manitoba. Environmental groups, led by the National Wildlife Federation, also file an amicus brief supporting Manitoba. And the State of Missouri files an amicus brief. Missouri argues that North Dakota should not be allowed to withdraw water from the Missouri River. North Dakota and the federal government file their own motions for summary judgment. The court holds a hearing on the pending motions.

2004: Despite the litigation, construction on the project proceeds.

2005: The court grants, in part, Manitoba's summary judgment motion. It denies North Dakota's and the federal government's summary judgment motions. The court rules that the Bureau of Reclamation did not satisfy its duties under NEPA. It orders the Bureau to do more analysis on leakage from the NAWS pipeline and on the effects to Canada's environment should "foreign biota" reach and take hold in Canada. The court, however, does not stop work on the Project, but states that it will consider doing so at a hearing to be held in the near future.

Options: Because of the Bureau of Reclamation's significant role in the Project and litigation, North Dakota will have to work with the Bureau in deciding how best to respond to the court's order.

By: James Lennington
Re: HCR 3029 2/11/05

Testimony on House Concurrent Resolution 3029

House Committee on Natural Resources

James Lennington, NAWS Project Manager
State Water Commission
February 11, 2005

Mr. Chairman and Members of the House Committee on Natural Resources, I am James Lennington, Northwest Area Water Supply Project Manager. I am appearing in support of House Concurrent Resolution 3029.

Construction on the Northwest Area Water Supply Project began in the spring of 2002. Since then, a little over 30 miles of pretreated water pipeline from the Missouri River to Minot have been constructed at a cost of about $20 million. Bids were opened on another pipeline contract just last week. This latest contract will essentially complete pipeline construction between Minot and the Missouri River. While much remains to be done before Missouri River can be delivered to North Dakota residents in Minot and other communities and rural water systems in the area, the State Water Commission is committed to completing this critical water supply project and appreciates the support of the legislature.

I request your favorable consideration of House Concurrent Resolution 3029.

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March 11, 2005

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2000: Congress enacts the Dakota Water Resources Act. The Act is another reformulation of the Garrison Diversion Project. With the Act, Garrison Diversion has evolved from primarily an irrigation project to one focused on the state's MR&I needs.

2001: The Secretary of the Interior, in consultation with the Administrator of the EPA, concludes that the NAWS Project satisfies the 1909 Boundary Waters Treaty. In the spring, the Bureau of Reclamation issues its Finding of No Significant Impact for the Project. This allows the Bureau to avoid preparing an environmental impact statement. The Bureau of Reclamation also issues its Final Environmental Assessment.

2002: Groundbreaking for NAWS occurs in April. In October the Province of Manitoba files suit against U.S. Department of the Interior and the U.S. Bureau of Reclamation. The suit is filed in U.S. District Court for the District of Columbia. Manitoba's suit asserts that the government's development of the Project violates the NEPA. In particular, Manitoba asks the court to order the Bureau to prepare an environmental impact statement for the Project. Manitoba also asks that construction on the Project stop.

2003: North Dakota files a motion asking to be allowed to intervene in the suit to protect North Dakota's interests. The motion is granted. North Dakota later files a motion asking the court to dismiss the case on jurisdictional grounds. North Dakota asserts that transboundary relations between the U.S. and Canada are governed by 1909 Boundary Waters Treaty and that the two countries established the International Joint Commission to address transboundary disputes. Consequently, North Dakota asserts, the judiciary lacks jurisdiction to consider what is essentially a matter of the Nation's foreign

affairs. The Bureau of Reclamation files a similar motion. The court holds a hearing on the motions. In November the court denies the motions.

2003: Despite the litigation, construction on the project proceeds.

2004: Manitoba files a motion for summary judgment. The Government of Canada files an amicus brief is support of Manitoba. Environmental groups, led by the National Wildlife Federation, also file an amicus brief supporting Manitoba. And the State of Missouri files an amicus brief. Missouri argues that North Dakota should not be allowed to withdraw water from the Missouri River. North Dakota and the federal government file their own motions for summary judgment. The court holds a hearing on the pending motions.

2004: Despite the litigation, construction on the project proceeds.

2005: The court grants, in part, Manitoba's summary judgment motion. It denies North Dakota's and the federal government's summary judgment motions. The court rules that the Bureau of Reclamation did not satisfy its duties under NEPA. It orders the Bureau to do more analysis on leakage from the NAWS pipeline and on the effects to Canada's environment should "foreign biota" reach and take hold in Canada. The court, however, does not stop work on the Project, but states that it will consider doing so at a hearing to be held in the near future.

Options: Because of the Bureau of Reclamation's significant role in the Project and litigation, North Dakota will have to work with the Bureau in deciding how best to respond to the court's order.

Testimony on House Concurrent Resolution 3029

Senate Committee on Natural Resources

James Lennington, NAWS Project Manager
State Water Commission
March 11, 2005

Mr. Chairman and Members of the Senate Committee on Natural Resources, I am James Lennington, Northwest Area Water Supply Project Manager. I am appearing in support of House Concurrent Resolution 3029.

Construction on the Northwest Area Water Supply Project began in the spring of 2002. Since then, a little over 30 miles of pretreated water pipeline from the Missouri River to Minot have been constructed at a cost of about $20 million. Bids were opened on another pipeline contract on February 3rd. This latest contract will essentially complete pipeline construction between Minot and the Missouri River. While much remains to be done before Missouri River water can be delivered to North Dakota residents in Minot and other communities and rural water systems in the area, the State Water Commission is committed to completing this critical water supply project and appreciates the support of the legislature.

I request your favorable consideration of House Concurrent Resolution 3029.