

Testimony
HB 1077—Department of Water Resources
House Energy and Natural Resources Committee
Representative Todd Porter, Chairman
January 12, 2023

Chairman Porter, and members of the House Energy and Natural Resources Committee—I am John Paczkowski, the State Engineer for the Department of Water Resources. I am here today to provide testimony in support of House Bill 1077.

In 2010, the U.S. Army Corps of Engineers challenged the State of North Dakota's ability to manage water that was held within the Lake Sakakawea Reservoir and other reservoirs along the Missouri River. The Army Corps began to deny access to, and attempted to require payment for Missouri River water flowing through Lake Sakakawea. The Army Corps took the stance that any water removed within an Army Corps-operated reservoir, such as Lake Sakakawea or Lake Oahe, requires a water supply agreement and that all water within a federal reservoir is considered to be storage. The Department takes the position that a water supply agreement is only necessary when water is taken out of the federal storage from a reservoir. The Department and the State of North Dakota further believe that dam systems are comprised both of stored water and natural stream flow components which would include the naturally flowing Missouri River.

By way of background, in North Dakota, the water is owned by the state and held in trust for the people. The Department of Water Resources administers the water permitting system to manage this trust resource for our citizens. Under N.D.C.C. ch. 61-04, a permit is required for all water use unless below a given threshold. Through this process, the Department would expect any entity looking to obtain water from an Army corps-operated reservoir to submit an application for that use. However, with this disagreement regarding authority, the state may not be seeing approved water storage agreements.

The Western part of the United States has continued to see extreme drought conditions, including the greater than 20 year drought occurring in the Colorado River Basin, and today, water levels are at historic, critically low levels throughout the basin. The lack of water within the Hoover Dam, the Glen Canyon Dam and the overall river system has led to discussions that include options of finding water available outside of the Colorado River Basin. Instead of states within the Colorado River Basin agreeing on ways to cut or reuse the water that they do currently have, studies have been conducted that include the use of Missouri River water to supplant their water scarcity. These studies have been conducted by the U.S. Army Corps of Engineers and the U.S. Bureau of Reclamation to identify options for water supply and irrigation use. Additionally, we are starting to see and hear of states located within the Missouri River Basin having conversations and developing project proposals that may assist improving low water levels within the Colorado River Basin.

Due to the increased pressure to find options to replenish water supply for the Colorado River Basin through the use of Missouri River water, HB 1077 requires federal agencies to provide the Department of Water Resources with an executed copy of any water storage contract relating to reservoirs partially or wholly within the state. By having this directive in Century Code, the Department of Water Resources can be aware of agreements that may be executed with other states or entities that may be looking to have access to stored water in the State of the North Dakota.

Although nearly all water use in North Dakota requires an appropriation permit from the Department of Water Resources, with the Army Corps' current stance that they own all of the water behind the dams, and not just the storage components, this bill is intended to ensure that the Army Corps and other entities will not be able to coordinate the transfer and purchase of water from Lake Sakakawea or Oahe without North Dakota being a part of the discussions.

HB 1077 enables the state to be fully aware of decisions that affect North Dakotans' access to Missouri River water. With the passage of this bill, DWR will be in a better position to manage our water resources in the best interest of our citizens and economy.

Thank you, and I would be happy to answer any questions.