

2023 HOUSE ENERGY AND NATURAL RESOURCES

HB 1077

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1077
1/12/2023

Relating to water storage contracts

10:22 AM

Chairman Porter opened the hearing. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Olson, Roers Jones, and Ruby.

Discussion Topics:

- Water management
- Project proposals
- Permits
- Storage agreements
- Water storage contracts

Testimony in favor:

John Paczkowski, State Engineer, ND DWR, Testimony #12908

Dani Quissell, Executive Vice President, ND Water Users Association, Testimony #13009

Chairman Porter closed the hearing.

10:38 AM

Kathleen Davis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

HB 1077
1/19/2023

Relating to water storage contracts

4:02 PM Chairman Porter starts discussion

Chairman Porter opened the hearing. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Marschall, Novak, Roers Jones, and Ruby. Absent: Kasper, Olson

Discussion Topics:

- Water management
- Project proposals
- Permits
- Storage agreements
- Water storage contracts
- Committee meeting

Representative Dockter, moves to adopt amendments to HB 1077 (#14637)

Representative Ruby, seconds motion

Voice vote: Motion carried

Representative Dockter, moves a do pass as amended.

Representative Novak, seconds motion

Roll call vote:

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Liz Conmy	Y
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	Y
Representative Jim Kasper	AB
Representative Andrew Marschall	Y
Representative Anna S. Novak	Y
Representative Jeremy Olson	AB
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	Y

House Energy and Natural Resources Committee

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Motion carried 12-0-2

Bill Carrier: Representative Dockter

Meting adjourns: 4:09 PM

Kathleen Davis, Committee Clerk By: Leah Kuball

JA 1-19-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1077

Page 1, line 7, after "enters" insert "into discussions with an entity relating to"

Page 1, line 7, remove "with an entity"

Page 1, line 8, after "resources" insert "with a sixty-day notice once the discussions begin.
Communications regarding a water storage contract must be copied to the department
of water resources. The department of water resources must be provided"

Page 1, line 9, replace "the" with "a"

Re-number accordingly

REPORT OF STANDING COMMITTEE

HB 1077: Energy and Natural Resources Committee (Rep. Porter, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1077 was placed
on the Sixth order on the calendar.

Page 1, line 7, after "enters" insert "into discussions with an entity relating to"

Page 1, line 7, remove "with an entity"

Page 1, line 8, after "resources" insert "with a sixty-day notice once the discussions begin.
Communications regarding a water storage contract must be copied to the
department of water resources. The department of water resources must be
provided"

Page 1, line 9, replace "the" with "a"

Renumber accordingly

2023 SENATE ENERGY AND NATURAL RESOURCES

HB 1077

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1077
3/2/2023

A bill relating to water storage contracts.

9:00 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Kessel, Boehm, Beard and Magrum are present. Senator Kannianen is absent.

Discussion Topics:

- Missouri River
- Lake Oahe
- Army Corp of Engineers
- Droughts
- Water Levels

9:01 AM Andrea Travnicek, Director of the Department of Water Resources, introduced the bill and provided written testimony #21316.

9:12 AM Dani Quissell, North Dakota Water Users Association testified in favor of the bill and provided written testimony #21505.

9:13 AM Chairman Patten closed the public hearing.

9:13 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1077
3/2/2023

A bill relating to water storage contracts.

9:32 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Kessel, Kannianen, Beard, Boehm and Magrum are present.

Discussion Topics:

- Committee action

9:33 AM Senator Boehm moved to Do Pass the bill. Motion is seconded by Senator Kessel.

9:33 AM Roll call vote is taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passes 6-0-0.

Senator Kessel will carry the bill.

This bill does not affect workforce development.

9:33 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1077, as engrossed: Energy and Natural Resources Committee (Sen. Patten, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1077 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

TESTIMONY

HB 1077

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.



DEDICATED TO PROTECTING, DEVELOPING, AND MANAGING NORTH DAKOTA'S WATER RESOURCES

PO Box 2254, Bismarck, ND 58502-2254 701-223-4615 • 701-223-4645 (Fax)

**Senate Energy and Natural Resources Committee
Hearing for HB 1077
January 12, 2023**

Testimony of Dani Quissell, North Dakota Water Users Association

Chairman Porter and members of the House Energy and Natural Resources Committee. I am Dani Quissell, the Executive Vice President of the North Dakota Water Users Association. The North Dakota Water Users Association supports HB 1077.

The Water Users Association is the state-wide member organization dedicated to protecting, developing, and managing North Dakota's water resources. We have more than 150 members including local, statewide and regional organizations in North Dakota who have an active interest in water. The Water Users was actively involved in the issue of water storage contracts that was referenced earlier by the Department of Water Resources and has policy to support the state's position regarding ownership of the water within the Missouri River system.

The Water Users believe it will be helpful to have the state more involved in the water storage contract process. The proposed notification requirement will help the state keep track of agreements in the state, which is especially important given the posturing of other states when it comes to use of the Missouri River.

We ask for your favorable consideration of HB 1077.

Thank you for the opportunity to provide this testimony. I'd be happy to stand for any questions.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1077

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Page 1, line 7, remove "with an entity"

Page 1, line 8, after "resources" insert "with a 60-day notice once such discussions begin. All communications regarding water storage contracts must be copied to the department.

The department must be provided"

Page 1, line 9 replace "the" with "any"

Renumber Accordingly

Testimony
HB 1077—Department of Water Resources
Senate Energy and Natural Resources Committee
Senator Dale Patten, Chairman
March 2, 2023

Chairman Patten, and members of the Senate Energy and Natural Resources Committee—I am Andrea Travnicek, the Director of the Department of Water Resources (Department). 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.

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Due to the increased pressure to find options to replenish water supply for the Colorado River Basin through the use of Missouri River water, Engrossed HB 1077 requires federal agencies to notify the Department of conversations regarding water storage contracts and provide the Department with an executed copy of any water storage contract relating to reservoirs partially or wholly within the state. Further, the Department must be copied on all communications regarding the contract. 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, the Department 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.



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**Senate Energy and Natural Resources Committee
Hearing for HB 1077
March 2, 2023**

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The Water Users Association is the state-wide member organization dedicated to protecting, developing, and managing North Dakota's water resources. We have more than 150 members including local, statewide and regional organizations in North Dakota who have an active interest in water. The Water Users was actively involved in the issue of water storage contracts that was referenced earlier by the Department of Water Resources and has policy to support the state's position regarding ownership of the water within the Missouri River system.

The Water Users believe it will be helpful to have the state more involved in the water storage contract process. The proposed notification requirement will help the state keep track of agreements in the state, which is especially important given the posturing of other states when it comes to use of the Missouri River. Since this bill's introduction, our members have continued this important conversation and would be supportive of amending the bill to also require the federal government to notify the state of already executed contracts.

We ask for your favorable consideration of HB 1077.

Thank you for the opportunity to provide this testimony. I'd be happy to stand for any questions.