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2007 HOUSE NATURAL RESOURCES

HB 1025

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1025

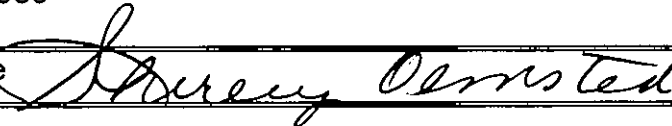
House Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 11, 2007

Recorder Job Number: 930

Committee Clerk Signature



Minutes:

Chairman Porter opened the hearing on HB 1025. The bill was read by the Committee Clerk.

Representative Chet Pollert opened the hearing. He indicated that he was chairman of the House Natural Resources Interim Committee. He indicated that one of the studies that they had done was the study on reserved water rights. This was one of the biggest subjects that they had to deal with. After lots of study and research on this, what you see before you now is HB 1025. There were three or four bill drafts. There will a number of people that will know a lot about this subject as far as technicalities. He read a paragraph out of the interim study. Pages 52 & 58. He read a paragraph from that study. "A member of the Committee noted that the bill draft should not limited to a single tribe and as drafted is discretionary that allows those tribes that wish to negotiate their reserved water rights, an opportunity to do so but does not force any tribe into negotiations with the state to quantify it's water rights. A member of the committee noted that the committee did not recommend the bill draft to the Legislative Council for submission to the Legislative Assembly and the Committee is saying that the Legislative Assembly should not be involved in approving reserved water rights treaties. However, if the committee forwards the bill draft to the Legislative Council, it is making the strong statement that it believes the Legislative Assembly should have final approval over any reserved water

right agreement negotiated between the State and a tribe. A member of the committee noted it is clear that the Governor has authority to negotiate reserved water right agreements under current law. However if the Legislative Assembly is to have a voice in the process, by requiring that an agreement be submitted to the Legislative Assembly for approval, then the bill draft before the committee should be approved and recommended to the Legislative Council. That is what we did. What we also found out during that process, they did not realize that the government had authority until the 11th or 12th hour, or more towards the end of the study. I also felt it was the opinion of this committee and that is why we wanted to go along and approve the bill, not only because we thought the Legislature should have some policy authority in the process, but because we also had to have more time to study the issue because this is something that does not get solved in a year. In testimony, it came out that this process takes somewhere from five to ten years. We did not just want to kill the subject and not even bring it up as we thought it was important that people come forward. I am sure you will have the Governor's Office and I do agree with them that they do have the authority. We didn't find out until darn near the end of the study. Maybe that was my problem because I didn't search into that fast enough. There are plenty of people from the State Water Commission and Jeff Nelson has the technical background as far as what the committee wanted at that time as well. With that, he would try to answer any questions. He is trying to figure out dollars and not policy. There were no questions for him. He recommended that Jeff Nelson go over what they did.

Mr. Jeff Nelson, staff attorney for the Legislative Council came to the podium. Mr. Nelson served as Committee Council for the interim Agriculture and Natural Resources Committee. The interim committee of the Legislative Council is recommending HB 1025. As chairman Pollert mentioned, the Agriculture and Natural Resources Committee was assigned three

studies this past interim. One of which was required by Senate Bill 2115. This bill directed a study the process and negotiations and to quantify reserved rights. HB 1025 authorizes the Governor to negotiate reserved water rights of the United States and federally recognized Indian tribes. Section 1 authorized the Governor or the Governor's designee to negotiate with any federally recognized Indian tribe claiming a reserved water right in this state and representatives of the federal government as trustee for a federally recognized Indian tribe to define the scope and attributes of rights to water claimed by the Indian tribe. The governor or the governor's designee may also negotiate with the federal government to define the scope and attributes of non-Indian reserved water rights claimed by the federal government. We are talking about two different types of reserved water rights; those claimed by Indian tribes, or Indian water rights or those claimed by the federal government in the state or Federal Reserve water rights. Subsection 2 of Section 1 on page 1 contains a notice requirement and how the governor is to provide public notice. Section 2 concerns the agreement itself and provides that once an agreement is completed, the state engineer is required to give written notice to the owner's water rights permits including the holders of conditional permits who may be affected by the agreement that they may file an exception to the agreement. The remainder of that subsection contains the notice of time and requirements. Subsection 2 of Section 2 provides that if no exceptions to the agreements are filed, then the agreement must be signed by the Governor on behalf of the state and then authorized representatives of the tribe and the federal government as trustee for the Indian tribe or by the governor on behalf of the state of ND and by authorized representatives of the federal government. Subsection 3 says that if an exception is filed, the state engineer is required to make a determination on the exception. If the determination by the state engineer is not contested, then the agreement or the amended agreement will be submitted to the negotiators for signature. Subsection 4 address if there is a

contest to the agreement, the proceedings is deemed to be an adjudicative proceeding of chapter 28-32 the administrative practices act, and the provisions of chapter 28-32 apply to proceedings to sustain or reject exceptions. The state engineer is required to apply to the administrative law judge or request the office of administrative hearings to designate an administrative law judge to preside over the proceedings. Subsection 5 addresses if the administrative law judge sustains the state engineer's determination, then the state engineer is required to submit the agreement or the amended agreement to the negotiators for signature. Subsection 6, if the administrative law judge does not sustain the state engineer's determination, the administrative law judge shall remand the agreement to the governor or the governor's designee for further negotiation if desired by the parties of the agreement, Within one hundred eighty days after the administrative law judge remands the agreement, the governor or the governor's designee shall file with the administrative law judge an agreement without alteration, an amended agreement, a motion to dismiss the proceedings without prejudice, or a motion for continuance. Unless a motion for continuance is granted, the agreement must be submitted to the negotiators for signature. Subsection 7 and 8, as Chairman Pollert mentioned, upon signature by all required parties, the agreement must be submitted to the legislative assembly for approval by concurrent resolution. Upon approval of the resolution by a majority vote of the members-elect of each house of the legislative assembly, the state engineer shall incorporate the agreement in a final order. The agreement is effective upon issuance of the final order. That concludes my comments. As Chairman Pollert mentioned, I do have a substantial history of the reserved water rights doctrine and the description of the different bills that the committee has considered, and the steps that the committee went through to recommend this bill. I should also add that as I close, my

comments should not be construed as being in favor of or opposed to this bill. I am here simply to review the bill.

Chairman Porter asked for questions.

Representative Keiser asked Mr. Nelson what the problem is here. I understand what you have described here, but I still am wondering what the problem is here?

Mr. Nelson said he didn't know if he would characterize this as a problem. Under federal law, under what is called the Winters Doctrine, federally recognized Indian tribes are entitled to a water right on their reservation. Many western states have entered into negotiations or litigation with the Indian tribes to adjudicate or quantify that reserved water right. SB 2115 last session, the Turtle Mountain Band of Chippewa Indians prior to last session had expressed interest in doing just that, quantifying and adjudicating reserved water rights at that reservation.

The state engineer's office admits SB 2115 which would authorize the state engineer to negotiate those reserved water rights. Last session there were numerous questions regarding that bill and the legislative assembly at that time recommended the study which was prioritized by the Agriculture and Natural Resources Committee recommending this bill. I think the United States Supreme Court defined what a reserved water right is best and I can read an excerpt from that report that this court has long held "that when the Federal Government withdraws it land from the public domain and reserves it for a federal purpose, the Government, by implication, reserves appurtenant water than unappropriated to the extent needed to accomplish the purpose of the reservation. The United States acquires a reserved right that on the date of the reservation and superior to the rights of future appropriates. Reservation of water rights empowered by the commerce clause the federal regulation for navigable streams and the property clause which permits federal regulations to relax. As far as why a tribe or state would want to quantify its reserve right, I will read an excerpt from a water rights reserve by

John Shertz, and he states that the rationale for the adjudication and quantification for Indian reserved water rights is that the prospect of expensive litigation and uncertain outcomes has led certain Indian groups, federal government, state and local governments and other water users to focus heavily on negotiating agreements to confirm and quantify reserved rights; agreements Congress has asked or will be asked to ratify. An unusual situation, a particular Indian nation has been asked by the other parties to relinquish its indefinite and potentially expandable reserved rights to a definite quantified amount of water plus an amount of money or an agreement for assistance in bringing water to reservation lands or both. That kind of describes what the reserved water rights doctrine is and the rationale why Indian tribes desire to quantify this reserved water rights.

Representative Keiser said so if we pass a bill that says from the state's perspective, we are giving the Governor the authority to do it, the state engineer can go through these processing and take it through our court systems, won't it still go back to the Federal court if the tribes says that this is unacceptable. You can take it through this process but it is not a state issue, it is a federal issue and it goes to the Federal court.

Mr. Nelson said that brings up another aspect of reserved water rights doctrine, that the Federal government has waived its sovereign immunity in this area and authorized states to settle these in state court. Under the McCarran amendment it waives sovereign immunity of the United States and allows the United States to be named as a defendant in state adjudication and proceedings so these types of litigation are heard in state court and also allows the states to set up the negotiation process. Whether it is the governor or state engineer, or a commission, is what some of the other states are using.

Representative Damschen asked **Mr. Nelson** said he had probably heard all the discussion on the interim committee, but he understood that right now most of what this bill does is get approval by the legislature. Is that correct?

Mr. Nelson said both yes and no. He thinks the committee learned during the interim that the governor does have authority under existing law, both statutory and under the constitution. However, this bills sets up the process that the governor is to follow, just as Chairman Pollert said. This involves the Legislative assembly in the final approval once the agreement is reached. The governor has authority under current law.

Representative Damschen said under this they don't have the power change, and they don't want to change, is the tribes right to appoint their own designee or tribal representative to negotiate with the governor on this issue. I think that is right and it doesn't change that right that already exists, right?

Mr. Nelson indicated absolutely. This bill again does not require the tribe to negotiate and again one must also remember under current law, a tribe that wishes to quantify or adjudicate their water right may do so.

Chairman Porter asked **Mr. Nelson** about page 2, subsection 2, that if no exceptions are filed, the agreement must signed by the governor, so in this piece of legislation, we are pretty much telling the governor and the executive branch that if there no exception, than you don't have a choice. You have to sign the agreement.

Mr. Nelson indicated that was right. What that is simply stating is that the agreement has already been reached between the governor and the tribe, so they are comfortable with the agreement. We wait to see if there are exceptions, and then the governor can go ahead and sign it.

Representative Charging said that when you talk about the study, and I know this is something the tribes have been working diligently on, something that is needed, especially in the case of the Turtle Mountain Chippewa Tribe, when you say tribe, I hope this committee understands that they are speaking on behalf of five independent nations. In that study, how much work was done with those five nations?

Mr. Nelson said all five nations were certainly informed and were invited to attend. The Turtle Mountain Chippewa and the Standing Rock Sioux were involved. You are correct in saying there is no consensus of agreement with the tribes, but again the bill is discretionary and it allows any tribe to negotiate.

Representative Charging said as you mentioned, the exception clause puts teeth into that bill. There is no amount of time described under that section either.

Mr. Nelson referred to subsection 1 the exception is for people holding existing water rights, that they could be adversely impacted by this. They are going to file an exception to the negotiated agreement and then in subsection 1, section 2, it states that the notice must include the time and manner for filing an exception to the agreement and the telephone number or address at which a copy of the agreement may be requested. I don't think for example, if the three affiliated tribes would request that the state enter into negotiations to quantify that tribes reserved water rights and another tribe is opposed to that agreement, only people that have would be affected by that agreement would file the exception.

Representative Charging asked if in fact they are filing an exception, what will happen; does it just fall away and is no longer a part of the negotiation process?

Mr. Nelson said he thought then they would drop down to subsection 3, on page 2, that if the exception is filed, the state engineer will make a determination on the exception and then the state engineer is going to say yes, we agree with that exception and it should be incorporated

into the agreement, or no, we do not think that exception is valid and they are going to disallow that. At that point, the person filing the exception can either contest the determination of the state engineer and the agreement moves forward. If that determination is contested, then you move into the administrative receivers.

Representative Charging said that one of the things that I know you brought up and this is very complex with many laws involved, like the Winter's Doctrine and McCarran Amendment is yet another, but isn't it not true that the federal government still will be the trustee on behalf of the Indian tribe themselves? Based on those treaties, this appears to me to be far reaching in a legislative intent that we may not have the power to stand up to.

Mr. Nelson said he didn't know if that was a question or a statement, but certainly the Federal government is involved as trustee. The Federal government is trustee along with the tribe. In the McCarran Amendment, the government has waived its sovereign immunity, so theoretically in some states, the states are authorizing the legislative assembly or the legislative assembly has authorized the states to sue the federal government as trustee for an Indian tribe to adjudicate reserved water rights. Montana is an example of that. In the Montana legislation, once it was enacted, it invited each of the tribes in Montana to negotiate with the state and said that by a certain date, if the state had not received anything from the tribe, then the state would begin negotiations, because Montana wanted to quantify these reserved water rights.

Montana may be in a little different situation. The McCarran Amendment has authorized states the right to negotiate.

Representative Keiser said that as he reads this, it is very permissive language saying we may, and apparently Montana says they shall negotiate apparently. What happens if parties think this question should be addressed and the tribes, or the state, or any of the three parties said we are not interested, what happens at that point? We can't sue, nor can we?

Mr. Nelson indicated yes. You must always remember this only sets up the negotiation process. The tribes have the reserved water rights under this doctrine, and if they want to quantify that right, then the tribe can litigate at any point. The state could too. Usually it is the tribe that that initiates.

Chairman Porter asked that if the tribe takes that route and goes the litigation route, who has jurisdiction then? Is it the district courts systems or the federal courts systems?

Mr. Nelson indicated that it would be the state courts.

Representative Charging going back to Representative Keiser's message, you stated that the negotiations ability is there. It is currently there today. I am just concerned that while you may have given notice to the tribes throughout the interim session, that the study was short, two years I guess. Do we have all the information we need from you? This is a statement from me, being a native in the assembly, and the purpose negotiating and not litigating is our goal. I feel that this is headed in the wrong direction. If we have that ability already, why do need to take this or put teeth into it and address the litagative revenues when maybe we are not ready for that yet.

Chairman Porter reminded everyone that Mr. Nelson was not here presenting this as something that he wants. I think when we get further testimony from the parties interested like the executive branch and the governor's office and the water commission, we will find out what their views of why we would or would need this.

Representative Damschen said to clarify things, if we were in a situation where one of the tribes requested negotiations, and we had a governor that did not respond to that, if this bill said "shall negotiate" that would require him to respond to the request.

Mr. Nelson said that was correct.

Chairman Porter asked for any testimony in support of HB 1025. He also reminded people to be sure to sign in on the clipboard so that we have record of those here to testify.

Dale Frank said that he was the state engineer with the State Water Commission. He is here in support of the bill. He said that he would have a couple of his staff members go through the process a little more. He said he wanted to make a couple of comments himself after listening to the testimony. My first comment is that this is just a process and we are plowing new ground here in North Dakota. I think has been very much of a learning experience with us. Other western states, most of them, have been involved in this and have a lot more history with it. One of the things I want to you to know is that it is a very important piece of legislation and the Winter's Doctrine is the tribe's priority based on the time that their tribe was born. In North Dakota, they varied, but all pre-date any existing water rights that we have. If we do agree that these Indian tribe's water rights would be senior to all the existing water rights in the state, you have to keep that in mind. It is very important for all of us. On the other hand, the tribe doesn't have to go through this process. They could litigate and history from these other states show that if you can possibly negotiate these things, do it. Don't slug it out in court. That is the purpose of this bill. The Turtle Mt. Band of Chippewa made the request so we only have one tribe at this point. I know that a couple of others are thinking about this, and a couple are very cautious. It is just a process that if both sides agree to negotiate, one of the outcomes typically ends up in Congress. It works a lot better if the states and the tribes go into Congress together rather than fighting each other. The purpose is to try to negotiate these water rights. They are very important.

Chairman Porter asked Mr. Frank if we do nothing with this bill, and it would go away, what process would the state engineer's office have if a tribe requested negotiations, rather than the

expense of litigation. If they came forward and said they wanted to start the negotiations. How would the process be done without this piece of legislation?

Mr. Frank said to him, it would pretty much be the way the bill is laid out, with the exception that we would not come back to the legislation. When the bill was first introduced, just as the state engineer I can tell you that before the session, this is bigger than what one person wants. This will be your choice as a committee. I believe that the governor and the state engineer could sit down with a tribe and negotiate this out.

Chairman Porter asked Mr. Frank if that at any point in time whether the bill passes or not, at any point in time, the tribe could say no we are going to litigate and we will see you in court.

Mr. Frank said he thought that was correct.

Mr. Robert Shaver, from the ND State Water Commission presented his comments regarding HB 1025. See attached testimony. He discussed the flowchart attached to his testimony. This is what the state engineer follows in dealings with allocating and allocation of water rights and dealing with the water permitting process.

Chairman Porter asked for further testimony in favor of HB 1025.

Mr. Tom Davis, the water resources director for the Turtle Mountain Band of Chippewa. He indicated that his tribe wanted to negotiate a water settlement with the state of ND. He said he comes with good will and good intentions on behalf of his people and his government. He wanted to inform the committee does not want to litigate this issue. He said he came as a partner to the state. The population of Rolette County is about 70% Indian. For a number of years, there has been an enormous amount of flooding. It has been declared a disaster area 5 of the last 6 years. There has been millions of dollars in road damage because of the uncontrolled water coming from the land that is elevated above the prairie land. It has caused serious concerns to his tribe as their hospital, the community of Belcourt, their banks, their

homes, are all in that flood plains and that is being controlled by two small dams that hold thousands acre feet of water. They have seen permit processes that at times being done the tribes. He can go back to the early 80's the US government sent letters to the state of North Dakota asking them to intercede with the water rights. We as a good neighbor have allowed our government to file for a state water permit. Rolette County has always been economically dependent on the native and non-natives. They depend on one another. They are tied economically to Rolette County. They sometimes see water being sent out of the county. Some day when it comes time to quantify their water, there may not be enough for the future generations. There are some serious concerns here. He has been involved for the last three or four years and it seems to him that people like Dale, Mr. Shavers and Representative Charging are the spokes of the wheel and they are all on the same page about reserved water rights. The decision makers appear not to be on the same page. They do not understand that we have unique treaties, unique obligations from the US government. We are different as far as water concerns. When they came and asked for a bill tailored to meet the specific needs of one tribe, that being the Turtle Mountain Tribe, they didn't ask for the three affiliated or Standing Rock. But through this process, we now find we are all in this mix and Turtle Mountain is stuck in the middle of loyalty to my fellow tribesmen. There is a desire to move forward with this to negotiate a settlement that is going to help the entire Rolette County and not just the Turtle Mountain tribe. Whatever we do in Rolette County, it will benefit everyone in the county. This bill, in its present form, if no change can be made to accommodate the Turtle Mountain Tribe, as you sit down with us government to government, and have a relationship with us, and the other tribes can participate, then I would ask not to pass this. It makes me feel very bad that we initiated this. It is unfortunate that that you have such little understanding of my people, or no understanding of how we can move forward. I see that

often when I come here and it is an unfortunate thing. Today, he is pulled by loyalty by his tribe and what can be done specifically for his people. How can we collectively come to some kind of agreement and reach something that can be beneficial to both parties? How do we do that? Do we amend this bill? Do we take out any federal tribe and put Turtle Mountain there? That is the way it should be. In his previous testimony, he had asked that the committee review and try to include what Montana has done as a state. Our tribes were in agreement with that. We felt that way we would have a fair way to negotiate. The way this is set up now, we do not. Water is one of the most precious resources that we have. It is a basic element of life to us; spiritually, economically, and socially to our culture. So how do we proceed? We need to protect these rights and manage them and make sure that our people to come will have this. Our tribe needs to advance and move ahead in areas of irrigation. Water is something that can do wonders for the tribe. They can start feeding ourselves. We want to become self sufficient. They need to be able to move waters to accommodate this. In its present form, he cannot support this bill.

Chairman Porter asked Mr. Davis if instead of a federally recognized tribe, you want it to be specific to the Turtle Mountain Band of Chippewa.

Mr. Davis indicated that would be the intention of his tribe. He thinks it is going to save a lot of litigation. He said he was at a hearing with the interim committee they brought a gentleman in from Idaho and he was a special appointee with the Attorney General's Office. The state of Idaho spent one hundred twenty one million dollars litigating against a tribe, which eventually came back to a water study and a compact decree by congress. That would have been one hundred twenty one million dollars they could have spent doing something positive for that tribe. It is a costly thing. It is a fruitless way to go and the tribes that I take a lot of direction from in the state of Montana have advised me that you should be allowing the Native

Americans from some tribes to be sitting at the table on this. Not only is this good for the tribe, but it is also good for the state.

Representative Solberg asked Mr. Davis if it was his understanding that in the present form he was opposed to HB 1025. Is that correct?

Mr. Davis indicated that was correct.

Representative Damschen said he appreciated Mr. Davis' testimony. He said that he was on the interim committee. It was his understanding of current situations that your tribe could go to the governor today if you wanted to and request that you negotiate the reserved rights with specifically your tribe and that you as the designee or someone from your government appointed could negotiate these rights.

Mr. Davis said they based that belief on the fact that the governor had the right to negotiate and we know that he has the statutory right to do that. It is not frightening, but it makes us stand back and take a look at this. The legislative process is going on four years and still hasn't given us a concrete position to negotiate. There are still come questions about the process with the governor having the authority and if he does not have the authority our tribe feels that is a dangerous move for my tribe to be involved in that kind of thing with the House of Representatives of this state. All we need is the clear part that we can do some business. As far as the tribe is concerned and he cannot speak for the other tribes, but their concern are different from Turtle Mountain. They have a unique situation from the other tribes of this state. That is how we would like to approach this. You will eventually have one tribe litigating against another. I know that time is short, but we need to sit down and look at some of this stuff. He said he only received this Monday night. He felt he needed more time to prepare for this.

They need to get information in a timely manner. This is a very serious situation to their tribe. He said he very much appreciates the comments made by Dale. They are not a junior user or

secondary user in this state or secondary citizens of this state. The state court could hear under McCarran even though all of these cases ended up in Federal court. It is not on their radar to litigate.

Chairman Porter asked for testimony in opposition to HB 1025.

Mr. Steven C. Emery, representing the Standing Rock Sioux Tribe spoke to the committee in his language. He was glad to see all of his relatives, and in case you don't think we are relatives, you should check the holy Bible. At home they call him Big Bear. He is from South Dakota. He is here to represent the people of Mad Bear and Sitting Bull, the Standing Rock Tribe. He said when he signed up, he checked the box neutral. It is difficult to be neutral, but he has some questions. It has been stated here that the McCarran Amendment waives the sovereign immunity of the United States and that is true in so far as the joinder of the United States to a lawsuit in which Indian water rights are an issue. It certainly, either in the legislative history of the McCarran amendment, nor anywhere in the statute does it actually say can we give it all us. In a case Arizona vs. California, which you will find some place in the written testimony I have passed out, it is noted that the court seems to depart on general principals of law in interpreting the McCarran Amendment because there is not really any legislative history that says that we did everything on behalf of the United States. At any rate, what is puzzling to us at Standing Rock is the use of the word "claiming". We like to think that as relatives in this state, you should recognize that we have reserved water rights under our treaty and we hope that you recognize that we were here first. It is not really clear from the language of HB1025 that either of these things is recognized, and they surely ought to be. I was invited as a third year law student to come to UND in 1989 and I told a crowd of about 2500 people that I didn't come to celebrate North Dakota statehood. I came instead to celebrate the fact that my relatives had survived for well over 100 years. If we are going to

continue to survive as neighbors, it surely seems that in our government to government relationship with the state, how things ought to go, is that there needs to be some contact between executives. Certainly this past summer when we had dangerous fires, we saw the governor get into a helicopter and come on over. It was a great thing that we were able to work together and put out those fires. Similarly, it looks like for the future of all North Dakotan, at some point we are going to want to talk about this. But until the Standing Rock Sioux Tribal Government has decided to do so, we would like you to know, and I passed out sufficient copies so that the record has one, that even though this resolution is written to the Corp master manual, it does set forth the tribes position on its water rights. In that position, from the time the tribal council enacted this resolution it hasn't changed. I come to you today and I ask you to consider whether or not this is really the legislation you want to put forth. It seems like that intermediary or maybe it is the preliminary step of leaders contacting leaders was skipped, and having said those things, I want to say it is nice to be testifying in from of the North Dakota Legislature in a committee, as opposed to South Dakota, even though I am a native South Dakotan because frankly, in terms of many things, we get along much better here in North Dakota than we do in South Dakota and that is a wonderful thing. It is puzzling how something that started out as one of the North Dakota Tribes and is sort of being painted with a broad brush. Even though we are neutral, we ask is this really what you want to do. Having said that, I appreciate the Committees time and I understand you have another bill that you are going to get in very close order. I would like to say again, this is our position on these water rights. We have not consented to meet with anyone to quantify them and we are not looking to quantify them at the moment. If and when our Government changes that position, we will be the first to let you know. In the mean time, we hope that there won't be a "shall" in the bill notwithstanding the interesting suggestion of Representative Damschen. Thank you very kindly

