

March 14, 1990

LB 1031, 1059
LR 239, 285, 286-291

SPEAKER BARRETT: Record, please.

CLERK: 26 ayes, 2 nays, Mr. President.

SPEAKER BARRETT: The Chambers amendment is adopted. The call is raised. Mr. Clerk.

CLERK: Mr. President, may I read some items for the record.

SPEAKER BARRETT: Proceed.

CLERK: Mr. President, new resolutions. LR 285 by Senators Langford and Kristensen. (Read brief description of LR 285. See pages 1357-58 of the Legislative Journal.) That will be laid over. LR 286 is an interim study resolution by Senator Haberman, as is LR 287. (See pages 1358-59 of the Legislative Journal.) LR 288 by Senator Ashford. (Read brief description. See page 1359 of the Legislative Journal.) LR 289 by Senator Elmer and others. (Read brief description. See pages 1360-61 of the Legislative Journal.) LR 290 by Senator Dierks and Baack calls for an interim study. (See page 1361 of the Legislative Journal.) LR 291 by Senator Dierks, Lamb, Lindsay, Ashford, Kristensen and Chizek calls for an interim study. (See pages 1361-62 of the Legislative Journal.) All of those will be referred to the Executive Board.

Mr. President, I have amendments to be printed to LB 1059 by Senator Hall. (See page 1362 of the Legislative Journal.)

Enrollment and Review reports LR 239CA to Select File with E & R amendments attached. Signed by Senator Lindsay as Chair of the committee.

SPEAKER BARRETT: The Chair would like to take a moment to introduce a couple of members, former members of this august body, in the south balcony. We have Senator Tom Kennedy, former Senator Kennedy from Newman Grove, and former Senator Richard Maresh from Milligan. Gentlemen, take a bow. Nice to see you back. Mr. Clerk.

CLERK: Mr. President, Senator Kristensen would move to amend the committee amendments. (The Kristensen amendment appears on pages 1362-63 of the Legislative Journal.)

SPEAKER BARRETT: The Chair recognizes Senator Kristensen.

March 15, 1990

LR 285, 289

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of LR 285.

SPEAKER BARRETT: LR 285 is adopted. LR 289.

CLERK: Mr. President, 289 was a resolution primarily introduced by Senator Elmer and a number of the members. It asks the Legislature to request the districts file with FERC a petition for rehearing or in the alternative a request for clarification of the February 14, 1990, order, and that the FERC be requested to stay execution of the order and to expedite its consideration of any petition for rehearing, that the Nebraska Department of Water Resources and other appropriate state and local agencies are directed to provide any information available which assists FERC in determining the potential impacts on recreation, fish and wildlife, irrigation, and power production resulting from the February 14, order, and that the Clerk send a copy to each entity specifically named.

SPEAKER BARRETT: The Chair recognizes Senator Elmer, please.

SENATOR ELMER: Thank you, Mr. Speaker. This resolution is one that has been very seriously considered over the past 30 days by Nebraska Public Power District, Central Public Power and Irrigation District, various state agencies involved with water use and protection in our state. The Federal Energy Regulatory Commission, February 14th, issued an order to Nebraska Public Power District requiring certain stream flows be maintained in the Platte River at the gauge at Grand Island, more than 200 miles from Kingsley Dam and Lake McConaughy. Given current climatic conditions and the predicted continuing dry weather in the watersheds in the Upper Platte, very serious consequences could result from these required releases. Hydrologic data that I have been given by NPPD and Tri-County show that by the end of 1992, given very dry conditions that are most probably going to take effect, Lake McConaughy could be virtually dry. This sort of exacerbates these conditions. Therefore, I am presenting this resolution. I don't know how many members have read it. It states: "WHEREAS, the Federal Energy Regulatory Commission (FERC) on February 14, 1990, ordered the Nebraska Public Power District (NPPD) in cooperation with the Central Nebraska Public Power and Irrigation District (Central) to maintain instream flows by releasing stored water to the Platte River for the benefit of four endangered and threatened species; and WHEREAS, NPPD is required in cooperation with Central to continue the

prescribed releases by the FERC order as an interim measure prior to action on the districts' applications for long-term licenses; and WHEREAS, the prescribed flows will impact recreational and fish and wildlife usage of Lake McConaughy as well as power production and irrigation needs in the Central Platte area of Nebraska; and WHEREAS, clarification of the order could assist the districts in minimizing potential impacts; and WHEREAS, water losses in the North Platte river which will inhibit delivery of water for instream use to the Grand Island gauge are unknown; and WHEREAS, the FERC order will create conflicts with existing contracts and water rights of long standing along the Platte River. Now, therefore, be it resolved by the members of the Ninety-first Legislature of Nebraska, Second Session: That the districts are required to file with the FERC a petition for rehearing or in the alternative a request for clarification of the February 14, 1990, order, and, two, that the FERC is requested to stay execution of the order and to expedite its consideration of any petition for rehearing or clarification as well as consideration of the districts' application for new long-term licenses for their projects. And, three, that the Nebraska Department of Water Resources and other appropriate state and local agencies including the Game and Parks Commission and Natural Resources Districts are directed to provide any information available which assists FERC in determining the potential impacts on power production and irrigation resulting from the February 14, 1990, order as well as assistance in determining potential losses in river flows which may inhibit delivery of water for instream use to Grand Island." That is the basic resolution that is intended to be sent to the Federal Energy Regulatory Commission and all affected districts and entities for assistance and to show that the Nebraska Unicameral is very concerned about the impact upon basic power production, irrigation use, and recreation use of this water and how it will be seriously impacted by the order. If there are any questions about any of the whereases, or therefore be it resolveds, I would be happy to try to answer them, and I would ask for your support in passage of LR 289.

SPEAKER BARRETT: Thank you. Is there discussion? Senator Nelson.

SENATOR NELSON: Mr. Speaker, I certainly want to commend Senator Elmer for bringing this to the body. I hope that all of you listened intensely and I know that it was difficult for him to mention all of the concerns and all of the problems. This is

serious, and, as all of you know, is particularly in the drought years and any quantity of water whatsoever released from McConaughy or so on, not only the power but to be available for irrigation. I don't think they have exactly said what quantity of water or I don't think they know exactly what they are asking for to protect some of the wildlife or so on that they are asking for, but if we start doing this, we could very readily find ourselves in the middle of an irrigating season without a quantity of water or without any water, and this is not a simple little order and, again, I look at it as if we don't stand up and be counted, I guess my favorite saying is a little old lady in New York will take care of it for us, and so I certainly do commend Senator Elmer and I hope that all of you support it.

SPEAKER BARRETT: Senator Morrissey, further discussion.

SENATOR MORRISSEY: Mr. Speaker, and members, when Senator Elmer brought this resolution to me, I really didn't know what to do. I read it over pretty good and I ended up signing onto it, basically, because it is another example of the federal government issuing down an order from high above and saying, here you go, folks, live with it, without considering the consequences it has and the impact it has on the local folks in the area. So I would support Senator Elmer's resolution. I think it is good that we ask these folks to, hey, wait a minute, slow down a little bit, take another look at this, and consider and get input from the local people, from the local associations, the water associations, et cetera, and try and really find out what the long-term, short-term, long-term impacts of this decision you have made is on the people downstream, the local residents on the water rights that have been in place for so long. So I think it is good for us to ask them to take another look at this and ask for input from the local groups, and possibly, not for sure, possibly change your decision, and, hopefully, for sure clarify their orders and let the people downstream and the people in Ogallala that are concerned about the reservoir know more clearly what the results of this decision will mean. Thank you.

SPEAKER BARRETT: Senator Schmit, please.

SENATOR SCHMIT: Mr. President, and members, this resolution has been written and rewritten and written again and again and again in an attempt to satisfy the concerns and avoid the criticisms of many persons. I support the resolution. I believe it is

important that we recognize that at some time we have to determine just how much of a cost is involved in some of this federal activity. We have, as Senator Morrissey said, undergone a series of deep discussions relative to past orders of the federal government. This, in itself, is another example of an agency coming into Nebraska and deciding what will happen to a major water resource. A 162,000 acre feet of water, as I understand it, will be discharged for this purpose and I find no way that anyone can assure that the water will ever reach the point where it is determined to be needed, no matter how they release it. It is sort of like this morning, I believe, Martin Marietta is looking for their lost missile, and it is a little bit the same way. How they are going to hit those seven least tern nesting areas at Grand Island by releasing that water at McConaughy has not yet been determined. But I want to make one additional point. The relicensing application process has been going on for several years. I have been told that more than \$11 million has been spent on this relicense application and there have been proposals to spend additional tens of millions of dollars to guarantee certain wildlife and instream flow benefits. I want to emphasize that I have no objection to enhancement of the wildlife and the fish species of Nebraska. I have been told, and if it is not true, someone can correct me, but I have been told that until McConaughy was there, there were no least tern nesting areas at all on the Platte. Now we have a few and they want to enhance them. It seems somewhat ironic that the very structure which allowed the least tern to locate on the Platte now is being required to provide additional habitat as if man could regulate it better than the least tern, themselves. In addition to that, we have stood on this floor for the last 50 days, approximately, and have spent most of our time debating monetary issues. How many times have we on this floor argued over this amount of money? Not very often. We don't even get up into that kind of money, but by virtue of the fact that we have attorneys who have delayed this relicensing in Washington, \$11 million has been spent, in excess of that, and we have not yet reached a conclusion. I would suggest that there will be many more millions of dollars before the license is issued and then there will be additional millions of dollars of expense that will be incurred by the Central Platte and NPPD in order to satisfy certain wildlife concerns. I think the public ought to know that those costs are there. If they want to pay them, that is their decision, and it may be a very logical decision and it may be a wise one, but it ought not to be hidden in the light bill. It ought not to be covered up in

the bill you get every month from your local power company, and those power generators are not to be saddled with the problem of having to explain increased energy costs in some other manner than in the factual manner in which it took place. So I support the resolution. I apologize for bringing up some of these other issues but I think it is important.

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: I would like to see just once in the newspaper, once by a reporter an article that says, do you know that Washington attorneys have milked the State of Nebraska for \$11 million in the relicensing process and we are no closer to it than we were at the start. I do not want to condemn the Wildlife Federation nor the Whooping Crane Trust Fund, but to the extent that they have not helped solve the problem, they bear some of the cost. If on the other side the power people have not negotiated in good faith, then they ought to be held accountable also because the people of the State of Nebraska do not need those additional costs for no good purpose. I think that one of these days we are going to reach the point where the public will have had enough, and all of this for 50 megawatts of power seems to me to be a little bit extraordinary. Thank you very much.

SPEAKER BARRETT: Any other discussion? Senator Elmer, would you like to close?

SENATOR ELMER: Thank you, Mr. Speaker. I want to thank the 30 other members of this body that co-sponsored this resolution. It shows that we have great concern for the resources of our state. Lake McConaughy has a capacity in full storage of 1.8 million acre feet. It is currently just at or slightly below 1.3 million acre feet. The flows that are being requested by the Federal Energy Regulatory Commission are to be released from the lake until it is down to 900,000 acre feet, which is one-half of the storage capacity of the lake. At the 900,000 foot level, which we will certainly reach this summer, the boat ramps that the Game and Parks Commission have established will be fully 10 vertical feet above the surface of the lake, vertical feet. The most popular boat ramp at Lake McConaughy is at Macklin (phonetic) Bay. It will be fully one-half mile to the water's edge from the bottom of that boat ramp at the 900,000 acre feet. If the climatic conditions continue and the lake is depleted by the end of 1992, which looks probable, that

means no irrigation water, no fish in the lake, no water in the lake, the inability to run the Gerald Gentleman Power Generation Station, no water in the river, no water in Lake McConaughy, no water in Jeffrey Lake, Maloney Lake, Johnson Lake, Elwood Lake, or any of the systems. The irrigation projects that depend on it in Lincoln, Keith, Dawson, Gosper, Kearney, Buffalo, Adams Counties will be dryland. Of course, recognizing if it doesn't rain or snow, which the trends are, it is a very serious situation for the agriculture and power generation in Nebraska. People need to stand up and show what the adverse effects are to some of the proposals that are brought forth by experts from outside our state and the consequences of what they propose. I'd appreciate your full support. This is certainly not a frivolous revolution, resolution, excuse me. Thank you, Mr. Speaker, and I ask your support.

SPEAKER BARRETT: Thank you, sir. Those in favor of adoption of LR 289 please vote aye, opposed nay. Record, please.

CLERK: 33 ayes, 0 nays, Mr. President, on adoption of LR 289.

SPEAKER BARRETT: LR 289 is adopted. Reverting back, Mr. Clerk, to LR 279.

CLERK: LR 279, Mr. President, by Senator Robak congratulates the Humphrey St. Francis boys' basketball team for winning the Class D-1 championship.

SPEAKER BARRETT: Senator Robak, please.

SENATOR ROBAK: Thank you, Mr. Speaker and members, this will be very brief. District 22 did have six teams in the state basketball tournaments, three in the girls' basketball tournaments and three in the boys', however, only one emerged a victor and that was Humphrey St. Francis. They had a record of 25-0. This was their third state championship and the first since 1943. I'd like to honor the team, the players, the coach and all the residents in the community that supported the team, and I just ask the adoption of the amendment. Thank you.

SPEAKER BARRETT: Thank you. Is there discussion on the adoption of the amendment? If not, those in favor of its adoption please vote aye, opposed vote nay. Record, please.

CLERK: 29 ayes, 0 nays, Mr. President, on adoption of LR 279.

March 15, 1990

LB 989A, 1031

LR 279, 283, 284, 285, 289, 298

(Read brief description. See pages 1383-84 of the Legislative Journal.) LR 298 by Speaker Barrett, signed by other members, calls for an interim study, Madam President. (See page 1384 of the Legislative Journal.)

Hearing by Health and Human Services for certain gubernatorial appointments. (See page 1835 of the Legislative Journal.)

Confirmation reports offered by the Natural Resources Committee. (See page 1385 of the Legislative Journal.)

And new A bill, LB 989A, offered by Senator Wesely. (Read by title for the first time. See pages 1385-86 of the Legislative Journal.) That's all that I have, Madam President.

SENATOR LABEDZ: Senator Conway, would you like to recess us for lunch until one-thirty this afternoon.

SENATOR CONWAY: Yes, Madam Chairman, I move that we recess until one-thirty this afternoon.

SENATOR LABEDZ: All in favor say aye. Opposed nay. We are recessed until one-thirty this afternoon.

RECESS

SPEAKER BARRETT PRESIDING

CLERK: I have a quorum present, Mr. President.

SPEAKER BARRETT: Thank you. Any matters for the record?

CLERK: Mr. President, just that certain resolutions passed by the Legislature this morning are now ready for your signature. That is all that I have.

SPEAKER BARRETT: Thank you. While the Legislature is in session and capable of transacting business, I propose to sign and I do sign LR 279, LR 285, LR 284, LR 283, and LR 289. Also, the Chair is pleased to announce that Senator Korshoj has some guests under our south balcony, Elma Thelma Thomas and Kay Bursheim, of the Nebraska Indian Community College at Winnebago. Stand and take a bow. Thank you very much. We are glad to have