

1707 North 9th Street  
PO Box 5523  
Bismarck, ND 58506-5523  
Phone: (701) 328-2800  
Fax: (701) 328-3650



[www.land.nd.gov](http://www.land.nd.gov)

*Lance D. Gaebe, Commissioner*

## TESTIMONY OF

**Lance Gaebe**  
**North Dakota Department of Trust Lands**

**To The Tribal and State Relations Committee**

**October 16, 2013**

Chairman Johnson, and members of the Tribal and State Relations, I am Lance Gaebe, Secretary for the Board of University and School Lands (Land Board) and Commissioner for the Department of Trust Lands.

The primary responsibility of the Land Board and the Department is to manage the Common Schools Trust Fund and 12 other permanent educational trust funds that are governed by Article IX of the North Dakota Constitution. These trust funds were established at statehood when the Federal Government granted 3.2 million acres of land to the state "for the support of common schools" and other public institutions. The State Constitution and statutes provide that the Land Board shall manage the land, minerals and proceeds of these trust funds for exclusive benefit of beneficiaries.

The Department operates under the direction and authority of the Land Board which is comprised of the Governor, Secretary of State, Attorney General, State Treasurer and Superintendent of Public Instruction.

I am here today, to update the Committee on the status of the Board's study of issues associated with federal lands near and around lakes Sakakawea and Oahe. The responsibility to review issues was assigned to the Land Board with the 2013 Legislature's passage of HB 1338.

HB 1338, directs the Board to "...study options to address concerns of landowners adjacent to land adjacent to land under the control of the United States Army Corps of Engineers surrounding Lake Sakakawea and Lake Oahe. The study must include consideration of control of noxious weeds, protecting public access for hunting and fishing, the costs of possible transition of land from the United States Army Corps of Engineers, and the costs associated with maintaining any property that may become a responsibility of the State. The study must also include consideration of the interests of North Dakota Indian tribes."

HB 1338 also provided that "The board may establish a task force consisting of landowners, hunting and fishing organizations, the game and fish department, the parks and recreation department, the North Dakota national guard, and other parties that utilize the land for access". The results of the study must provide a copy of the report to legislative management before October 1, 2014.

The study is a general government review which does not involve the trust assets, thus permanent trust funds cannot be expended. Within the Department of Trust Lands' budget bill, the Legislature appropriated \$50,000 from the Strategic Investment and Improvements for the study, with the authority to request another \$50,000 from the emergency commission if needed.

In advance of the August 1 effective date of the Legislation, the Land Board directed me to initiate the recruitment of a qualified contractor to undertake the responsibilities of the study. State procurement laws dictate that specific processes be followed with respect to publicizing and selecting an outsourced professional for state service, thus a formal request for proposals has been prepared to aid in the selection of an appropriate contractor to undertake the effort on the Board's behalf.

I had hoped to have issued the RFP before today, but it is undergoing a review by the State Procurement Office to ensure compliance with current laws and administrative rules. I will not detail the document's extensive inclusion of procedures, time-frames, legal and insurance requirements, but instead will summarize the qualifications and tasks that the Board seeks to have accomplished.

The Board of University and School Lands seeks to obtain the following:

### **Project Objective**

*To study options to address the concerns of landowners adjacent to land under the control of the United States army corps of engineers surrounding Lake Sakakawea and Lake Oahe.*

### **Scope of Work**

*To provide the Board of University and School Lands with a professional evaluation to include consideration of control of noxious weeds, protecting public access for hunting and fishing, the costs of possible transition of land from the United States army corps of engineers, and the costs associated with maintaining any property that may become a responsibility of the state. The study must also include consideration of the interests of North Dakota Indian tribes.*

### **Standard Requirements**

- 1. The contractor shall carefully review the testimony in the 2009-2010 North Dakota legislative interim natural resources committee concerning options for noxious weed control.*
- 2. The contractor shall carefully review the 2013 legislative session testimony on HB 1338.*
- 3. The contractor shall carefully review transfers of land that occurred in South Dakota around Lake Oahe as instructive for the purposes of this study. The land transfers occurred under Title VI and Title VI of the Water Resources Development Act of 1999 and the Blunt Reservoir and Pierre Canal Land Conveyance Act of 2006.*
- 4. The contractor shall assemble a public meeting in Bismarck at the beginning of the study to include interested individuals and entities as highlighted in HB 1338 to help frame the issues and options and to identify options not reviewed in items 1, 2 and 3 as listed above.*
- 5. The contractor shall review all options and provide a summary each option including the pros, cons, possible methods of implementation and potential cost of implementation.*

## Proposal Requirements and Selection Criteria

*The successful bidder must also demonstrate:*

- 1) a knowledge of natural resources and natural resource issue*
- 2) an ability to research legislative issues on both a state and Federal level*
- 3) an ability to work productively with diverse groups of people in a public setting*
- 4) an ability to write in a clear and informative style.*

### South Dakota Example

The inclusion of the South Dakota review was included in the tasks as a recurrent topic during a study conducted in the 2009-2011 legislative interim and in hearings regarding HB 1338 was the transfer of land and management responsibility as it occurred in South Dakota on the Oahe Reservoir. Because that is a model that has been proposed on more than one occasion, it is appropriate that the study should also review the South Dakota transfer and its applicability to North Dakota.

South Dakota has accepted the property around several of the Missouri River reservoirs. However, in recognition of these costs, they did not accept the property until a Congress established a \$108 million trust fund which provides \$4.5 - \$6.5 million annually for management costs on 73,319 acres. The North Dakota acreage which is the subject of this bill would be similar.

The cost of managing the property would also exceed the revenue from grazing leases. In 2010 the Army Corp received a total of \$194,392 in rental. In lieu tax payments would be over \$500,000 and management expenses would exceed that amount. Managing this property could result significant cost to whoever is responsible for it.

### Survey Challenges

I have included aerial photos of an area of Mercer County on the south side of Lake Sakakawea to serve as an example of the potential complexity of related to the meandering shoreline.

When the property was originally purchased, a survey of the water's "take line" was not completed. Instead, lines were drawn along legal subdivisions which would encompass the above described elevations. This was a cost effective method of describing the property and provided easily described and manageable property boundaries. For example, a meandered metes and bounds property line would require fencing that is expensive to construct and maintain.

The estimated cost of a metes and bounds survey of the attached land description would be approximately \$15,000. There are about 180 miles of surveys on Lake Sakakawea and another 112 miles on the Oahe reservoir excluding the reservations. The total estimated cost would then be between \$4 and \$5 million.

Mr. Chairman and members of the committee, the study assigned to the Board of University and School Lands to review options related to the federal land along the Missouri River reservoirs will be undertaken by a professional or group of professionals who will be conscientious in their evaluation. The varied concerns, issues and interests will be assessed and a menu of options for the legislature to consider will be prepared. The final report will be submitted by October 1, 2014 as required by HB 1338.

# Mercer County

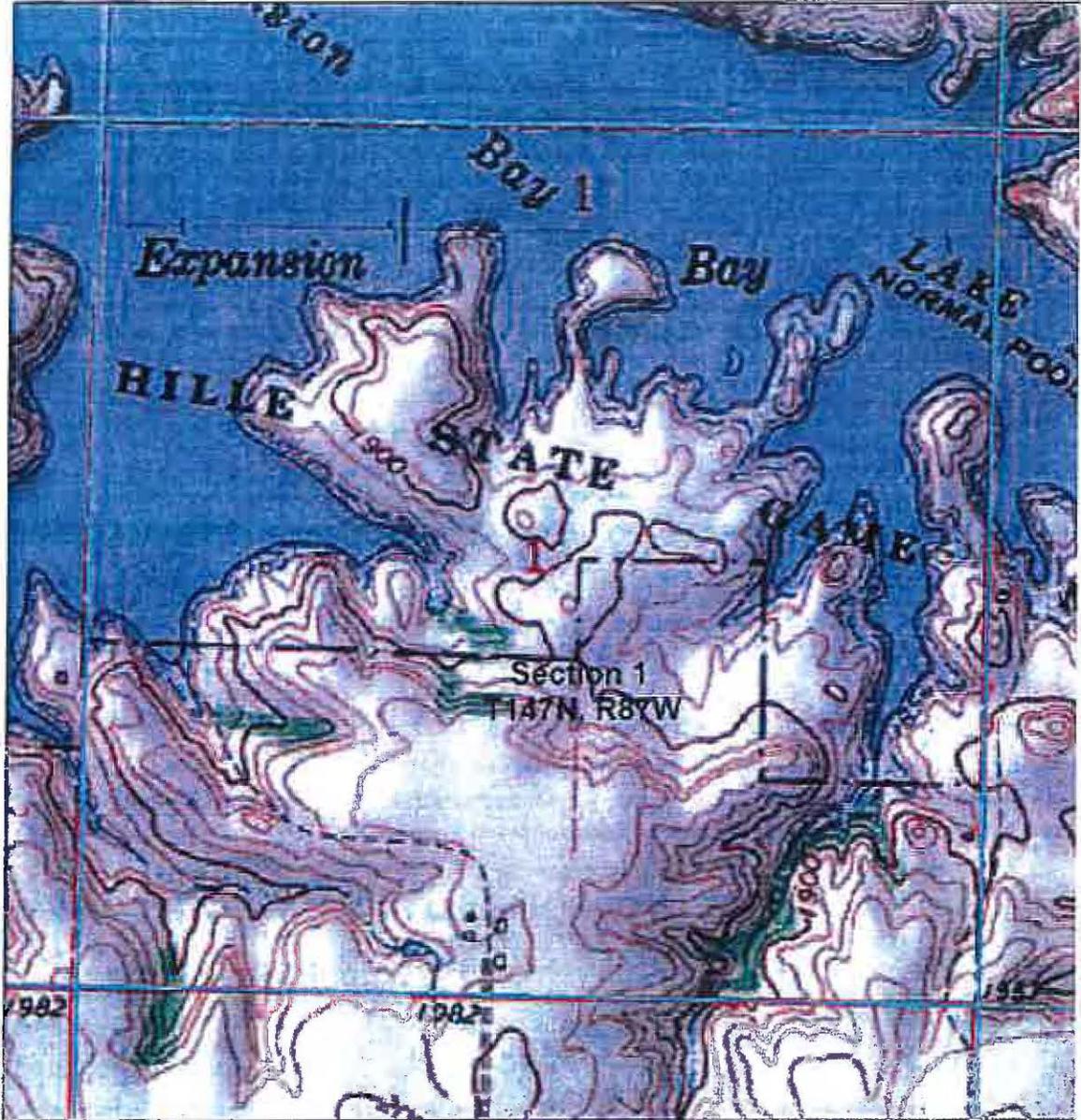


Map Datum is WGS 84 (same as NAD 83)

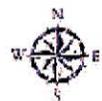


Printed: 3/25/2013

# Mercer County



Map Datum is WGS 84 (same as NAD 83)



Printed: 3/25/2013

