



US Army Corps
of Engineers®
Omaha District

FACT SHEET

Surplus Water Reports and Rulemaking

[Section 6, Flood Control Act of 1944; Water Supply Act of 1958]

PROJECT NAME AND STATE: Surplus Water Reports: Garrison Dam/Lake Sakakawea, ND, Fort Peck Dam/Fort Peck Lake, MT, Oahe Dam/Lake Oahe, SD/ND, Big Bend Dam/Lake Sharpe, SD, Fort Randall Dam/Lake Francis Case, SD, and Gavins Point Dam/Lewis and Clark Lake, SD/NE.

BACKGROUND:

- On 10 June 2008, Real Estate Policy Guidance Letter No. 26 entitled "Easements to Support Water Supply Storage Agreements and Surplus Water Agreements" was issued.
- The policy provided that ". . . effective immediately, no easement that supports any type of water supply agreement will be executed prior to the water supply agreement being executed by all parties."
- The District had been issuing easements without a water supply agreement in place, per prior policy. In early 2010 the District received requests for intake easements, but subject to the 2008 policy lacked the ability to issue water storage or surplus water agreements.
- Several of the requests were for oil and gas exploration in North Dakota.

STATUS:

- The District is completing Surplus Water Reports (SWR) for each of the six main stem reservoirs, to address current and future demands for water. The SWRs are required to be able to enter into contracts for the temporary use of water in Corps reservoirs.
- The first report submitted for public review was the Garrison Dam/Lake Sakakawea SWR and Environmental Assessment. In the draft report it proposed 1) that there is surplus water available, 2) temporarily making up to 100,000 acre-feet of surplus water per year available for municipal and industrial water supply use, and 3) a policy computed price for the use of surplus water. Temporarily making surplus water available will allow the Omaha District to enter into surplus water agreements for up to 100,000 acre-feet of surplus water to meet regional water needs until a Missouri River Reallocation Study can be completed.
- In February 2012 the ASA(CW) determined that the Corps did not have an authority to contract for irrigation water out of the reservoirs, therefore excluding irrigation use from the contract requirement.
- In May 2012 the ASA(CW) acknowledged that surplus water was available at Garrison, but declined to accept the policy pricing that was outlined in the report. Instead she directed the Corps to conduct rulemaking to determine a nationwide pricing methodology for surplus water that was reasonable and fair.
- The final Garrison SWR was released on 19 July 2012 and the rulemaking process has begun.
- In addition to the Garrison report, Surplus Water Reports are being prepared for Fort Peck, Oahe, Big Bend, Fort Randall and Gavins Point projects. These reports were released for public comment on 7 August 2012, with the comment period ending on 10 October 2012.
- The five reports have been revised, based on comments received, and are being routed for NWD, HQ and ASA approval.
- Concerning rulemaking the Corps is examining the need to update and clarify, through notice-and-comment rulemaking, the policies governing the use of storage in its reservoir projects for domestic, municipal and industrial water supply pursuant to Section 6 of the Flood Control Act of 1944, and the Water Supply Act of 1958. This may include consideration of pricing methodologies for agreements entered into under both statutes, and interpretation and definition of key statutory terms.
- Rulemaking would afford an opportunity to clarify the Corps' interpretation of Section 6 and the Water Supply Act, its policies implementing those statutes, and to consider input from all stakeholders. Any rulemaking that the Corps does pursue in this area will be developed through the Administration, as an open and deliberative process in compliance with the Administrative Procedure Act, and will provide ample opportunity for public comment and for consideration of all viewpoints expressed.

CONGRESSIONAL/STATE/TRIBAL INTEREST

Senators/Representatives: Montana, North Dakota, South Dakota, Nebraska, Iowa, Kansas, Missouri

Governors: Montana, North Dakota, South Dakota, Nebraska, Iowa, Kansas, Missouri

Tribes: Mandan, Hidatsa, Arikara Nation, Standing Rock Sioux Tribe, Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, Oglala Sioux Tribe



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Potential Transfer of Garrison Dam/Lake Sakakawea Project Lands Utilizing the Fort Berthold Mineral Restoration Act [P.L. 98-602, Section 206(b)]

PROJECT NAME AND STATE: Potential Transfer of Garrison Project Lands within the Fort Berthold Reservation Boundaries, North Dakota

AUTHORIZATION: P.L. 98-102, Fort Berthold Mineral Restoration Act, Section 206(b)

CHRONOLOGY:

- July 26, 2012 - Tex Hall, Chairman of the Mandan, Hidatsa, & Arikara (MHA) Nation sent a letter to the Assistant Secretary of the Army for Civil Works (ASA/CW), Jo Ellen Darcy, sharing the MHA Nation's desire to have lands around the Garrison Project transferred to the BIA to be held in trust for the MHA Nation.
- August 3, 2012 - Colonel Joel Cross, Omaha District Commander, received a letter from the MHA formally requesting a meeting to discuss several tribal concerns, one of which was the land transfer action.
- August 20, 2012 - A response letter was sent to the Chairman from the ASA/CW outlining the current status of the process as understood by the ASA/CW and suggesting that MHA representatives meet with the ASA/CW's staff to reach a common understanding on the action's status.
- August 30, 2012 - A meeting was held between Chairman Hall and representatives of Headquarters (HQ) Corps and the Office of the ASA/CW. The participants discussed the contents of the July and August letters.
- September 19, 2012 - A meeting was held between Colonel Cross and the Chairman at the MHA tribal offices. Colonel Cross offered to participate in the meetings the Chairman was scheduling with state and congressional entities to discuss the potential transfer. No requests to participate were received.
- February 12, 2013 - The ASA/CW received a letter from the MHA reiterating their desire to move forward with the potential transfer of lands. Several tribal concerns were expressed and a meeting was requested for February 26, 2013 with the ASA/CW and staff.
- February 26, 2013 - A meeting was held with Chairman Hall and MHA Legal Counsel, ASA/CW staff, and Corps HQ staff. The tribal concerns mentioned in the February letter were discussed and a draft Memorandum of Agreement (MOA) was provided.
- May 3, 2013 - The ASA/CW sent a memo to Corps Headquarters requesting input on the potential transfer and the draft MOA that had been provided by the Chairman.

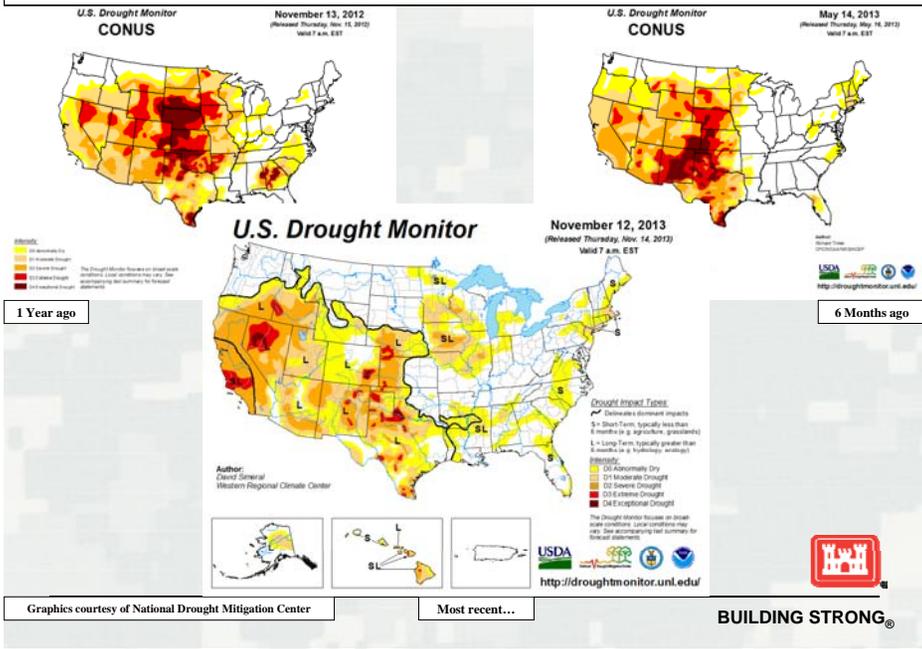
STATUS:

- At this time the Corps has not provided a response to the May 3, 2013 request from the ASA/CW. The District and Division have provided input, and HQ is taking those comments into consideration as they prepare a response.
- Currently the MHA Nation is working directly with the ASA/CW on this request.

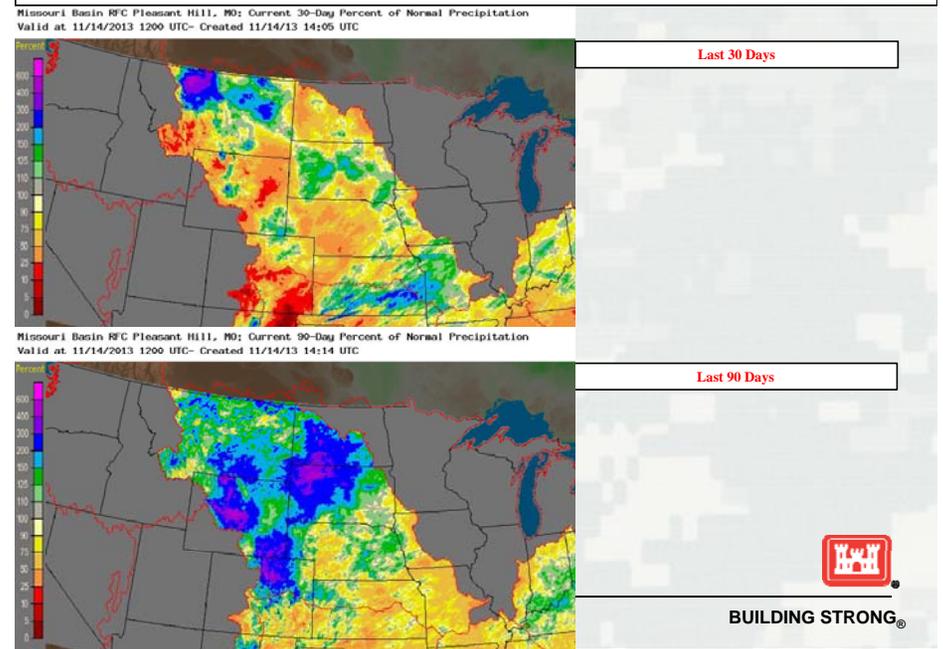
CONGRESSIONAL STATE/TRIBAL INTEREST

Senators Heidi Heitkamp (ND) and John Hoeven (ND) and Representative Kevin Cramer (ND)
Governor Jack Dalrymple (ND)
Chairman, Tex Hall, Three Affiliated Tribes - Mandan, Hidatsa, & Arikara Nation (ND)

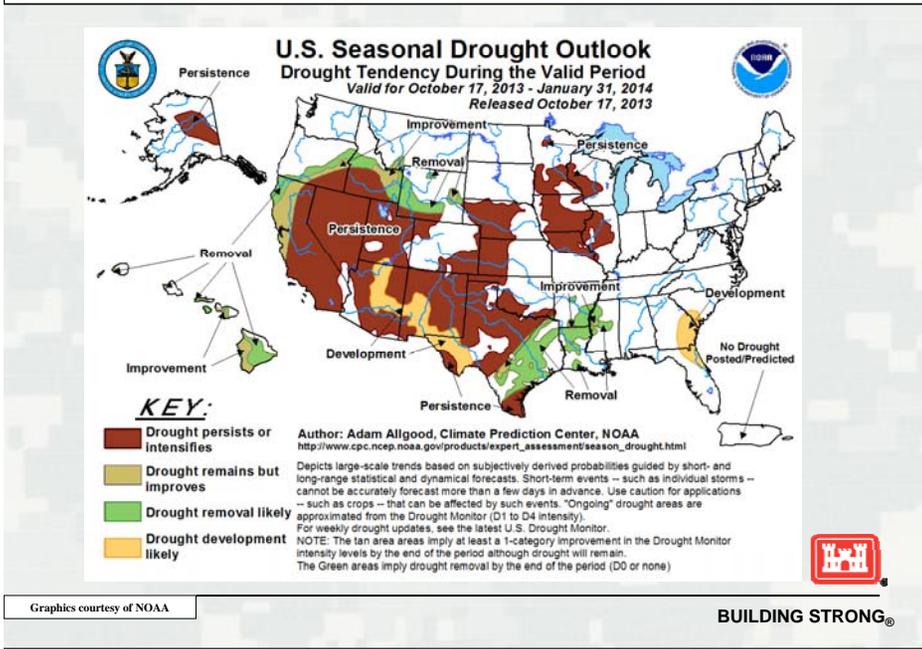
U.S. Drought Monitor (comparison)



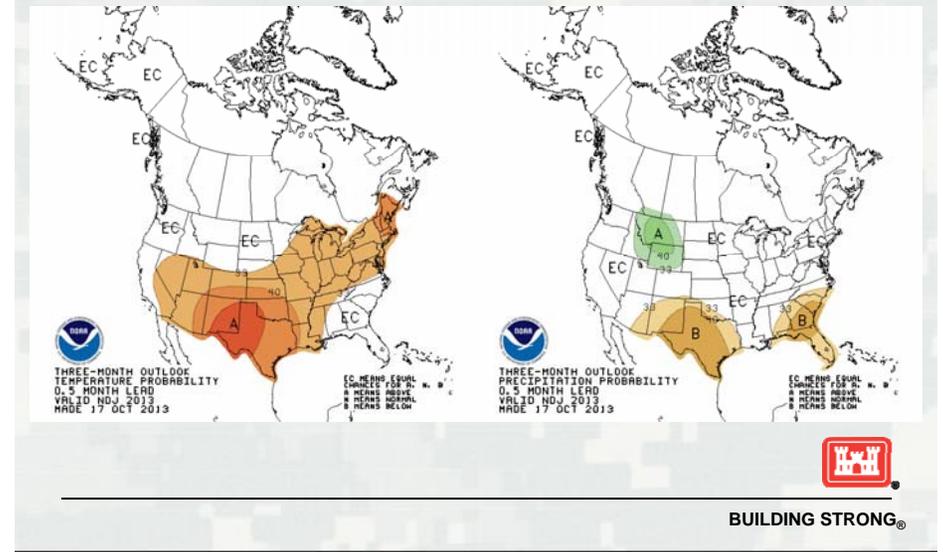
Recent Precipitation (Percent of Normal)



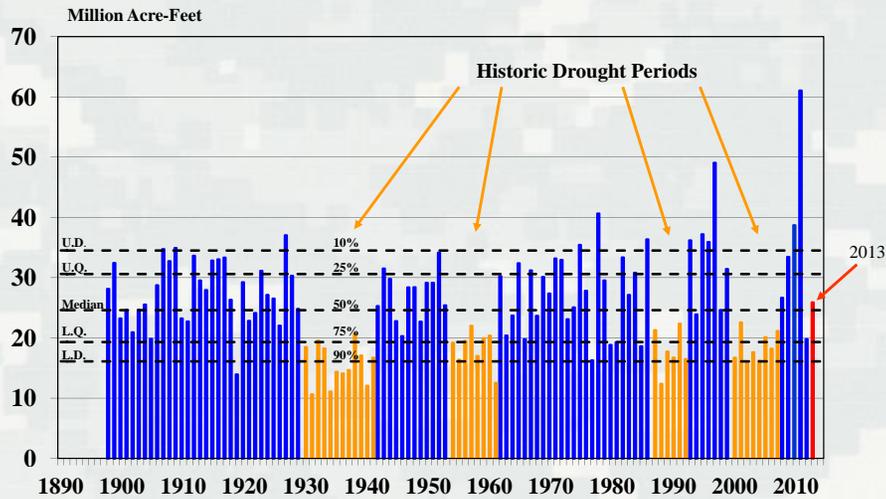
U.S. Drought Forecast



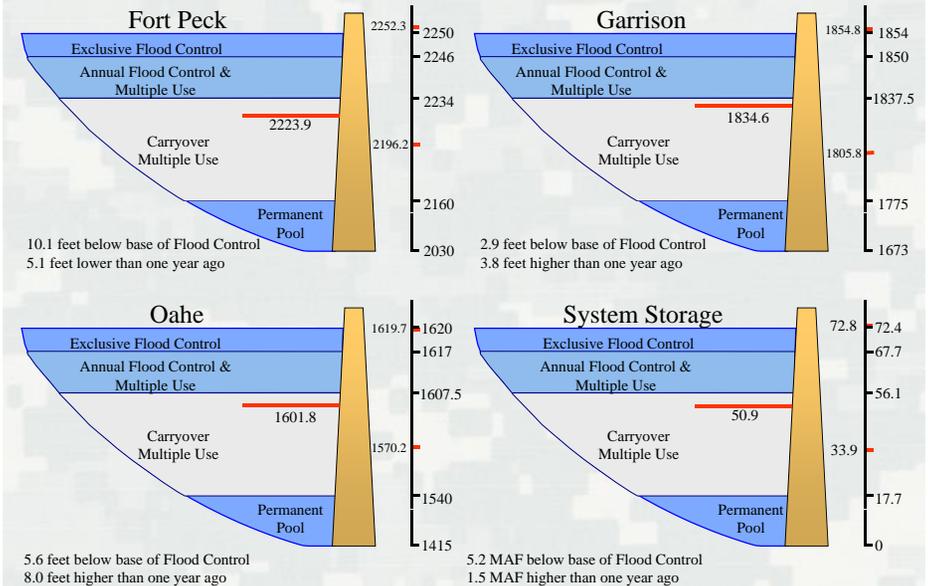
3-Month Outlooks November - January



Missouri River Mainstem System Annual Runoff above Sioux City, IA



Current Reservoir Levels – Nov. 17, 2013



Summary of 2013 Operations

- Full flood control capacity of the reservoir system was available
- 2013 runoff forecast = 25.9 MAF ~ 102 percent of normal
- Spring pulses from Gavins Point dam not implemented
- Favored Fort Peck and Oahe during the forage fish spawn
- Minimum service first half of navigation season, increased to intermediate service after July 1 storage check
- Full navigation season
- Below normal reservoir levels and releases
- Gavins Point winter releases at minimum level ~ 12,000 cfs



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Planned Operation for 2014

- Draft Annual Operating Plan developed using August 1 starting condition
 - ▶ Based on 5 statistical runoff scenarios
- September 17, 2013 letter to Tribes offered consultation
- Draft AOP released in late September 2013
 - ▶ Will begin 2014 runoff season below the base of the Annual Flood Control zone
 - ▶ Reduced flow support for navigation likely
 - ▶ No Gavins Point spring pulse in 2014 per agreement with USFWS
- Public meetings scheduled for week of October 7, 2013 canceled due to lapse of Federal appropriations
 - ▶ Presentation posted on Water Management website
 - ▶ Conference call October 28 to answer questions and take comments
 - ▶ Comments due November 15, 2013
- Final Annual Operating Plan in December 2013



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