

2009 SENATE NATURAL RESOURCES

SB 2305

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2305

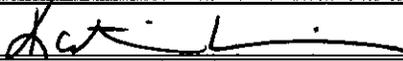
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 30, 2009

Recorder Job Number: 8217

Committee Clerk Signature



Minutes:

Senator Lyson opened the hearing on SB 2305, relating to appropriation to the state water commission for a Beaver Bay embankment feasibility study. All members were present.

Senator Erbele introduced the bill. This is an area in my district just about 54 miles south of here, along the Missouri River. This has been part of the Lake Oahe system and as you all know the reservoirs have gone down in recent years and it has been compounded by the drought. This was a beautiful area for recreation and is now gone. This project, in its thought and effort, goes all the way back to 1992. We think it is time to go ahead with the project. What they need to do is do an embankment or series of dams for the inflow rather than counting on the water coming back up out of Lake Oahe that we can capture some of the inflow and create a new area. When that builds up it can flow back out into the river system. There is a very low organized group called The Voices of Lake Oahe and they will speak to you this morning and be showing you the greater details of the project. There is someone from the economic development in that area that will speak on the impact to the area.

Senator Fischer spoke in favor of the bill (see attached handouts). This has been talked about for some time. I have talked to some people from the Water Commission and the Game and Fish Department. I look at this as a reasonable project. The Water Commission usually funds

these projects and their policy is usually a 50-50 cost share. This particular project is more of a regional project and the policy that you set here is one that we would have to adhere to. I think that this is a regional project that not only has some benefits as far as water is concerned but also economically and recreationally and it is really important for North Dakota.

Senator Triplett just to be clear the 50-50 cost share is the State Water Commission's policy but, what is being requested is 100% from the state?

Senator Fischer that is one thing I would ask you as a committee to look over and decide on a percentage that would be fair. That percentage will be followed in the project.

Senator Triplett can you tell us why this project is more important than the rest of them?

Senator Fischer I have advocated for areas that are not able to come up with the match.

When you have a project of this size there is just no way they will complete the project

because of the cost share policy. Not that the Water Commission is wrong because they are trying to spread the money as far as they can. I have always advocated that there is a regional project that has value that we should be looking at that with a higher percentage rate to help the county that is unable to come up with the match to get the project done. It is a legitimate project and it has some benefit to people I don't think the policy needs to be adhered to. I visited with the Water Commissioner about that and they made some efforts on it. However, no conclusions have come about. I think that some projects need to be looked at a little differently.

Senator Triplett what is the region that you think would benefit from this project?

Senator Fischer Bismarck to about 50miles south and the whole area out there would benefit from it.

Randy Bosch, representing The Voices of Lake Oahe, if passed this bill would provide funding to determine the feasibility of construction of the structure to impound out of Beaver Bay on Lake Oahe. Due to the extended drought and mismanagement of the Missouri River system

Lake Oahe was without ,even temporary access, during some periods of the drought. The local residents as well as those who like to visit our community on a regular basis continue to have a passion for the development of a more sustainable facility. We believe that in order to have a viable recreation area for the long term benefit of the region that an embankment and secondary reservoirs is necessary. This project was first studied by the North Dakota State Water Commission in May of 1992. The Voices of Lake Oahe became involved in February of 2003. Since this time we have had numerous local, county, state, and federal agencies. We have completed a preliminary design on a structure. We have recently received an estimate from the Water Commission to determine the feasibility of the project (see attached folder #2). Due to the size of the project and limit of funding available at the local level we request that you do approve SB 2305.

Glen McCrory, representing the Emmons County Water Resource Board, We have supported this project from the beginning. We have also invested in the preliminary stuff and we think it would be a good thing to move this project forward.

Sharon Jangula, Economic Development Coordinator for the Linton Industrial Development Cooperation. Our efforts are focused on the betterments of Lincoln and Emmons County. In 1992 the water level was extremely low. We were fortunate to have the water level rise for a few years and the project seemed to be set aside. However, the water level did not last very long and the bay area virtually dried up. The impact was devastating not only to the businesses that relied on the water for their survival, but to the county and the communities as well. We have lost an important attraction that generated economic activity in our region. The average daily traffic rate in count on Highway 1804 along Beaver Bay dropped from 535 vehicles per day in 1998 down to 205 vehicles per day in 2007. This is a 62% decrease in traffic counts. Businesses have closed, jobs have been lost and families no longer have the

opportunity to spend time together boating, fishing and camping along the bay. This has resulted in a decline in sales and a loss of tax revenues. The Beaver Bay embankment will help prevent the high water, low water, and no water cycle we have been experiencing. It will help maintain a steady economic stream for our region. I want to commend agencies, departments, entities and people that have already come to the table to work on this project. They have done their diligence as questions and concerns have been raised and addressed. The project is ready to move forward with the feasibility study and we need your help.

Senator Triplett don't you think it would be appropriate for the counties right in the region to contribute something to the project? I hear your point that you can't afford it all, but you're asking the citizens of towns who won't ever benefit from it. Don't you think there should be some sort of local share.

Sharon Jangula I do believe the entire region and state will benefit from it. I do believe that we have done a great deal on local share with the volunteer of time commitment from the different organizations. It hasn't been equated out to a dollar value but it has been worked on for a number of years and there has been a lot of contribution up to this point.

Senator Triplett has there been monetary contribution up to this point?

Sharon Jangula I do believe that on one of the initial engineering reports the Emmons County Water District and Voices of Lake Oahe spent \$4200 on the preliminary report.

Senator Lyson I can understand what you have done, but I am having a hard time with the 100%.

Sharon Jangula I do believe it has an economic impact on the entire region. It is an attraction to the state. When you start talking tourism dollars and all the other things we can market for the state this is one of those areas.

Senator Lyson don't you think that if we pass this with 100% that we are opening it up for the whole Missouri River area that is high and dry to come in here and ask for the same?

Sharon Jangula the only thing I can do at this point is ask for your support. I think that since 1992 we have been working on this and a lot of effort has been put into it. I don't believe we are asking for too much.

Dale Frink, Engineer for the State Water Commission, I truly understand the situation. I have two concerns. One is the cost share. The Water Commission does have a policy of 50% cost share for feasibility studies. It is a policy that the Water Commission itself can change and we do modify. We do almost always require something from the locals as a buy in type thing. The other word of caution I have for everyone is just how difficult this project could become as far as implementing. With this project, you not only have to get a 404 permit, but also an easement to locate a damn on the Corp's land. It is also going to be a lot more expensive than you realize.

Senator Triplett when you say that the regular policy of the Water Commission is to require cost share as a buy in and that you can change it by policy; can you describe the ranges of change you have made in other projects?

Dale Frink I would say that 90% of the time we adhere to those policies. We have changed the policy sometimes one for example was on the Nelson county project. We have also worked on a project down in Slope County. The cost of the repair was \$30,000 and they told us they only had \$4,000 in the bank and we split the difference with the Game and Fish Department.

Senator Triplett if this group had asked you for an alteration in your policy, how far would you go?

Dale Frink we haven't made a decision. My recommendation to the Water Commission would be to get some cost share from the locals.

Senator Triplett have you ever encouraged a county to seek a buy in contribution from surrounding counties? People here are making an argument that this is a state wide project, but it is probably more beneficial to the local region. Has there been any effort of cooperative work?

Dale Frink I am sure it has happened but I just can't think of it right now.

Senator Lyson have you seen a bill like this asking legislation to change your policy?

Dale Frink we had an amendment to our appropriation bill that did something like that.

Senator Hogue in the feasibility study it looks like they would be directed to study a downstream component and a high bank component. Can you tell us a little bit about both of those? Will the feasibility study be studying whether this reservoir would be sustainable?

Dale Frink I do believe that is something that needs to be studied. I know that the Game and Fish Department believes there should be some sort of fish passage built through it.

Todd Sando Assistant State Engineer for the State Water Commission, we have been providing technical support over the last couple cycles. The bay has been dry and there is an embankment called 1804 and it is a state highway. It is not designed to hold water and have a head differential. That is the biggest problem. We need to do additional geotechnical work to look at if we can have a head differential. Right now when Lake Oahe goes up and down it goes up the same evaluation on both sides of the embankment. If you turn this embankment into a damn you will have higher water on one side during the times of drought. Water wants to migrate from the highest point to the lowest point. We need to make sure it can handle these head differentials. There is a lot of feasibility work at looking at the embankment. The DOT has had a lot of concern and they didn't want any water against the tow of the embankment. The Game and Fish Department has concerns with fish migration and being able to pass. The health department has some water quality issues.

Michael Gunsch, Houston Engineering, we are not currently under contract with either the Voices of Lake Oahe or Emmons County Water Resource District. We visited with the issues they have faced. At the request of the State Water Commission we assisted in putting the cost numbers together for a feasibility study. We need to take this as an incremental process from a feasibility perspective. Getting the stake holders together, answering the first questions of whether they are willing and can it be done in those locations. Then you get into the real detail complexities like the environmental issues. From an investment standpoint this is just an initial step and it is not going to be something that gets implemented in the next couple years.

Senator Schneider if the feasibility study came back and said it was feasible, what kind of local match would there be if any?

Michael Gunsch one of the things in meeting with the stake holders would be to find what their ability to pay would be. Water Resource Districts usually have a mill levy appropriation. This particular region environment will not generate a lot of money. It will probably need some federal funding.

Ron Henke, Office of Project Development Director with the North Dakota Department of Transportation, testimony in attachment #2.

Randy Bosch I want to clarify that the Corp of Engineers has been involved in our discussions from the beginning. They do not have any immediate "stop the project" issues at this point.

Senator Triplett asked can you give us some insight on The Voices of Lake Oahe and what kind of resources you have.

Randy Bosch we were formed back in 2003. It is a completely volunteer group. We charge \$25 membership fee. Right now our account has around \$15,000 in it. Our fundraising is through raffles and such.

Senator Lyson closed the hearing on SB 2305.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2305

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 30, 2009

Recorder Job Number: 8220

Committee Clerk Signature



Minutes:

Senator Lyson opened the discussion on SB 2305. I agree with the feasibility study. My biggest fear is spending this kind of money and then having the Corp of Engineers do nothing about with the project.

Senator Triplett I think every bay on the Missouri River would come in asking for the same treatment. The State Water Commission said they would deviate from the 50-50 cost share which is great. I think this is a regional issue and the surrounding areas should try to come with a way to split the 50% they are responsible for.

Senator Erbele it would be a reasonable approach to get as much buy in on a project as you possibly can. Senator Fischer is willing to take it to appropriations and they are going to try for 100%. This way the Voices of Lake Oahe can find out where they stand with the Water Commission and what they have to work with.

Senator Schneider I am concerned with Dale's statement about appropriating these funds are a high risk because the chances are that the feasibility study will say it isn't feasible.

Senator Erbele I think dale's concern was whether the Corp would come forward in a timely manner with their permitting process. I think the physical aspect of the property is feasible. I

think the permitting of it is the question of feasibility.

Senator Triplett I was satisfied with Frink's statement that they are willing to vary from their policy. If they were not willing I would understand people having to come to the state asking for relief from it. So someone needs to go to them and make the request and find out what the maximum they will pay.

Senator Schneider why didn't they go the State Water Commission before?

Senator Triplett I think they did but, they didn't ask if they were willing to deviate from the 50-50 cost share.

Senator Freborg wasn't Mr. Frank concerned that the cost was going to be higher than expected? Also, didn't he say that the Corp wouldn't show any interest until a feasibility study was done.

Senator Pomeroy I am wondering if we are getting ahead of ourselves. It is only asking for \$300,000 to do the feasibility study. We are not committing ourselves to construction of the project if we pass it.

Senator Erbele the appropriations committee has a hand on the Water Commission's budget so Senator Fischer thought it was the right place for the discussion.

Senator Triplett The project could be discussed with or without this bill if this is something the water commission has been involved in and Senator Fischer is willing to see it is discussed in Appropriations. I think it is bad policy for us as legislature to be directing the Water Commission to do 100% on any study.

Senator Erbele these folks have been working at this since 1992. They have never had their voices heard at the capitol. We pride ourselves on being a citizen's legislature and every voice can be heard. I was happy to see them here in a form where they could be heard. I move a Do Pass and re-refer to Appropriations.

Senator Pomeroy seconds the motion.

The bill received a Do Pass on a vote of 5 to 2.

Senator Lyson closed the discussion.

Date: 1/30/2009

Roll Call Vote #: 2305

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended referred to Approp.

Motion Made By Sen. Erbele Seconded By Sen. Pomeroy

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	/		Senator Jim Pomeroy	/	
Senator David Hogue, Vice Chairman		/	Senator Mac Schneider	/	
Senator Robert S. Erbele	/		Senator Constance Triplett		/
Senator Layton W. Freborg	/				

Total (Yes) 5 No 2

Absent _____

Floor Assignment Sen. Erbele

If the vote is on an amendment, briefly indicate intent:
Referred to Appropriations.

REPORT OF STANDING COMMITTEE

SB 2305: Natural Resources Committee (Sen. Lyson, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2305 was rereferred to the Appropriations Committee.

2009 SENATE APPROPRIATIONS

SB 2305

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2305

Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: February 5, 2009

Recorder Job Number: 8732

Committee Clerk Signature

Rose Penning

Minutes:

Chairman Holmberg called the committee hearing to order at 8:30 am in regards to SB 2305 relating to an appropriation to the state water commission for a Beaver Bay embankment feasibility study. Roll call was taken.

Senator Erbele: District 28 introduced SB 2305, and testified in favor.

Introduced the Beaver Bay embankment, prime tourist and camping area. When the water recedes, it impacted the area. A feasibility study for incoming waters has been requested. Thought it wouldn't be necessary because Corps of Engineers thought waters wouldn't go down. We know how much it will cost and the folder shows the two areas of study

Randy Bosch, Chairman, Voices for Lake Oahe, testified in favor of SB 2305. (See attachment # 1)

Senator Mathern: Would this embankment dam the water coming from Beaver Creek
It would hold back water from Beaver Creek.

Sharon Jangula: Economic Development Coordinator for the Linton Industrial Development Corporation testified in favor of SB 2305.

Nancy Bosch: Business Owner, testified in favor of SB 2305. (No written testimony)

Glenn McCrory: Emmons County Water Resource Board, Linton testified in favor of SB 2305. (No written testimony)

\$342,000 project is too expensive and that is why we need your help. Some people say this might be too costly. With the debt our country already has, at least this is something we could use.

Chairman Holmberg: So this would "prime the pump" and gives you the money to start the project.

Glenn McCrory: Correct

Chairman Holmberg: What does a mill raise in Emmons County?

Senator Mathern: Could your community support 150 new workers to build this project. Would farmers willing to put together equipment? Do you think your community could support such and effort? Would community welcome these workers?

Glenn McCrory: Don't know if farmers have equipment, that's a hard question for me to answer at this time. But people would be welcomed.

Senator Mathern: Bring in people and get it done.

V. Chair Bowman: Is this dam going to be built on Beaver Creek or close to it.

Glenn McCrory: This would be built on Corps property and it would shut of Beaver Creek.

V. Chair Bowman: Is there enough water to keep this dam sustainable

Glenn McCrory: This is for the study to answer. We should know how much water comes down. It's all on Corps land.

Dale Frank: State Water Commission, testifying in neutral, we do require a 50% cost share or some kind of cost share. Lake Oahe just disappeared. Senator Fischer mentioned Maple River Dam and Maple Creek are same and require large spillway. Cost estimate is 10M plus. In addition, Senator Fischer talked about getting a '404 permit' and it still took 10 years. For this project, you have to get permit and an easement. The Corp of Engineers has issues, but that is how it is. The Federal Government just does not like to build dams anymore.

Senator Christmann: If we were inclined and able to do this. Would it be possible to get commitment from Corps, with regards to the easement, before all this money is spent?

Dale Frank: They might require some work to be done. You don't have to buy local land and that's huge, but you also have to get permission from the Corp and that's not easy.

Senator Warner: There is a requirement that say a highway embankment could hold it. I get nervous to have an embankment as a dam. Is this an issue or just to save money.

Dale Frank: Embankments have to be significantly built up. A study would show.

V. Chair Bowman: How many feet would water have to come up to bring the bank back?

How much water does it take?

Dale Frank: I don't know if it's backed up the creek, but you can't. It goes up and down several times. Our hay field is in and out of the water.

Dale Frank: They are looking for some stability. Lake Oahe is probably worse than Lake Sacagawea. We have the upper end and that's the area that is effected here.

Chairman Holmberg: closed the hearing on SB

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2305

Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: February 11, 2009

Recorder Job Number: **9207 (starting at 4:51)**

Committee Clerk Signature



Minutes:

Chairman Holmberg opened discussion on SB 2305.

Senator Fischer moved **Do Pass**.

Senator Mathern seconded.

Chairman Holmberg asked if this was a long term or a stop gap.

Senator Fischer: This is down by Linton. There are pretty much three people dictating how water runs in the state whether it be uphill or downhill. This project will never get on the State Water Commission's list unless the legislature takes back the setting of policy to the Water Commission – and this is outside the Water Coalition, the Water Commission, and Garrison Conservancy, so therefore, it's not looked on favorably. They get this study done because it's part of the Missouri River. They feel that the federal government, the Corps, has told them, that there is a distinct possibility that this could be done rather quickly. The thing is, that there is money available to the Corps of engineers to channel this water in from the Missouri River. It would provide recreation. It would keep people in the area and provide some economic development. The Central Supply Project, they have a heck of a time getting money out of the Water Commission because of the favorability that these three have influence to give money to projects other than that. That is going to be discussed at length this session

because I'm sick and tired of three people dictating water in this state when there is need in every form. It's time the legislature makes those decisions rather than just a few people.

Senator Warner: I'd like to recommend an amendment that we amend no more than \$100,000 can be expended until they get an easement from the Corps of Engineers since it's Corps property.

Senator Fischer withdrew his motion and the second also.

Senator Warner moved for an amendment that no more than 100,000 can be expended until they get an easement from the Corps or Engineers.

Senator Mathern second.

Senator Kilzer It's the beginning of an orderly advance of building the dam. The Maple River Dam is done and it cost around \$24M . This is the next logical parallel program which is about 15 years behind the Maple River Dam, so I intend to vote for it.

Senator Mathern If we had more time with the bill, it would be nice to make it more workable. These potential projects that will be coming down in the next couple years. Wouldn't it be wonderful to have a place where we draw in people who are unemployed from around the country? We could help the economy in that area, start a project and even include the farmers and get them involved in this project. We should make it a project that would last for a 100 years. Let's involve the local people.

Voice vote carried on amendment.

Senator Mathern moved Do Pass as Amended on SB 2305.

Senator Wardner seconded.

A Roll Call vote was taken. Yea: 14 Nay: 0 Absent: 0

PROPOSED AMENDMENTS TO SENATE BILL NO. 2305

Page 1, after line 9, insert:

"SECTION 2. BEAVER BAY EMBANKMENT FEASIBILITY STUDY - USE OF FUNDS. Of the funding provided in section 1 of this Act, no more than \$100,000 may be spent prior to the acquisition of necessary easements from the federal army corps of engineers."

Renumber accordingly

Date: 2-10-09

Roll Call Vote # 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2305

Senate _____ **Senate Appropriations** _____ Committee

Check here for Conference Committee

Legislative Council Amendment Number Pass the Amendment

Action Taken Do Pass Do Not Pass Amended

Motion Made By Sen. Warner Seconded By Sen. Mathern

Senators	Yes	No	Senators	Yes	No
Sen. Ray Holmberg, Chairman			Sen. Aaron Krauter		
Sen. Bill Bowman, VCh			Sen. Elroy N. Lindaas		
Sen. Tony S. Grindberg, VCh			Sen. Tim Mathern		
Sen. Randel Christmann			Sen. Larry J. Robinson		
Sen. Tom Fischer			Sen. Tom Seymour		
Sen. Ralph Kilzer			Sen. John Warner		
Sen. Karen K. Krebsbach					
Sen. Rich Wardner					

Total Yes 14 No _____

Absent _____

Floor Assignment Sen. John Warner

If the vote is on an amendment, briefly indicate intent:

Voice vote passed

Date: 2-10-09
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2305

Senate _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO Pass as Amended

Motion Made By Sen Mathern Seconded By Sen Wardner

Representatives	Yes	No	Representatives	Yes	No
Senator Krebsbach	✓		Senator Seymour	✓	
Senator Fischer	✓		Senator Lindaas	✓	
Senator Wardner	✓		Senator Robinson	✓	
Senator Kilzer	✓		Senator Warner	✓	
V. Chair Bowman	✓		Senator Mathern		
Senator Christmann	✓		Senator Krauter	✓	
V. Chair Grindberg	✓		Senator Mathern	✓	
Chairman Holmberg	✓				

Total Yes 14 No 0

Absent 0

Floor Assignment Sen Warner

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2305: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2305 was placed on the Sixth order on the calendar.

Page 1, after line 9, insert:

"SECTION 2. BEAVER BAY EMBANKMENT FEASIBILITY STUDY - USE OF FUNDS. Of the funding provided in section 1 of this Act, no more than \$100,000 may be spent prior to the acquisition of necessary easements from the federal army corps of engineers."

Renumber accordingly

2009 HOUSE NATURAL RESOURCES

SB 2305

2009 HOUSE STANDING COMMITTEE MINUTES

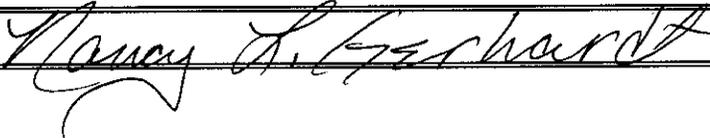
Bill/Resolution No. 2305

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 3-13-09

Recorder Job Number: 10921

Committee Clerk Signature 

Minutes:

Chairman Porter – Open the hearing on SB 2305.

Senator Erbele – The history of this bill goes back quite a ways. There's been work done on this issue dating all the way back to 1992 the state water commission looking up the feasibility of doing a dam embankment off of Beaver Creek down at Beaver Bay. This area is an area about 50 miles south of Bismarck down the Missouri River. In ND we know a lot about Lake Sakakawea, we know a lot about their various opportunities, but this is a part of the Oahe project which ??????????????????. The Oahe impact comes all the way up to Bismarck. This is not just a community specific type of bill. This is an area that has a great tourism and regional type of impact for much of the state of ND and for people coming from Minnesota, SD that used to enjoy the recreational area. Since the river's gone down that has changed. We no longer have any kind of fisheries or activities in the campground we used to have. There was a nice bayside resort there at one time that no longer exists. It really has impacted not only that community, but a very large part of the region. The bill was introduced it was asking for \$342,000 to do a feasibility study of whether or not they should a highway embankment project or a downstream embankment project. See **Attachment # 1**. Tourism and recreation are our 3rd largest industry. The bill was amended in the senate to say they could only spend

\$100,000 without further securing proper easements from the corp. The entire project would be located on state land so there's no need for securing other rights or easements from other property owners. There are no formal amendments drawn, but amendments have been suggested the term easements may not be the term we want to use. Some of the language suggested be the acquisition of applicable licenses and authorizations from the federal army cor. Of engineers for access to their property to complete the study would be better wording of that rather than use the term easement. If this goes forward it would not be build with state money, there are conventional delegation involved in some of the process and have indicated willingness to commit federal funds to actually build the project once all the other necessary steps will take place. Questions?

Chairman Porter – Approximately how big the embankment area will be? How much water would it hold back?

Senator Erbele – The area would cover about 900 acre.

Senator Tom Fischer – I think this is really a project that should be studied. I first received information on this about a year ago. This is a regional project I think would enhance not only recreation but help the economy of the area. I think it is well worth the money to study this area and see if something can be done. Questions

Rep. Mike Brandenburg – I think this project is one that is very important, not only for our district, but also for our state. If you have a recreational area it is going to attract economic development. Questions

Rep. DeKrey – How soundly is the community behind getting the water back? I did get 1 email on this to vote against it because it is now full of pheasants and deer and they like that better than the water. Of course there was no name or address on it so I don't know where it came from. Is there talk like that down there too or is that just 1 individual that's way out there?

Rep. Brandenburg – That’s an individual that’s way out there. The people are very much in support of that.

Randy Bosch – Voices for Lake Oahe – If passed this bill will provide funding to provide feasibility of constructing a structure to impound water at Beaver Bay and Lake Oahe. Without the feasibility study the chances of this project moving forward has very little chance. Due to the extended drought and the miss management of the Missouri River System Lake Oahe has been without even temporary access during some periods of the drought. This caused businesses to close and even a larger number of those businesses to struggle. We believe in order to have a viable recreational area for long term economic benefit of the region an embankment and a secondary reservoir is necessary. The local residents as well as those who like to visit our community on a regular basis continue to have a passion for development for a more sustainability community. The project was first studied by the ND State Water Commission in May of 1992. The Voices for Lake Oahe became involved in February of 2003. Since this time we’ve had numerous meetings with local, county, state & federal agencies. We’ve invested considerable time and money. We’ve completed a preliminary design on the structure and have recently received an estimate from ND State Water Commission to determine the feasibility of the project. This estimate has been included in your blue handout. The property on which the reservoir would be located is within the Army Corp. of Engineers federal property boundaries. I’d like to make this perfectly clear, we would not have to have to purchase any land to have this project built. The water it would hold back would still be on Corp. of Army Engineers land. It would not be on flood any land that has not previously been flooded. This reservoir would be between 600 to 950 acres depending on the location and the height of the structure. 87% of the state’s lakes are less than 1,000 acres. The depth at the highway bridge would be between 30’ – 35’ deep. See **Attachment # 1**. Questions

Rep. Hunskor – Is Lake Oahe part of the Missouri River System and Beaver Bay?

Mr. Bosch – Yes, Lake Oahe actually starts in Pierre SD and extends some 250 miles to the north ending just south of Bismarck. Lake Oahe is considered to be on the northern end of that system. We're kind of in an area where the dam is in SD so we don't get a lot help from SD, and being on the northern end we don't get a lot of help from our state, so we're kind of in a no man's land.

Alvin Chelsic – Emmons Co. Commission – We think it's vital, interesting bill because it creates economic development and it also helps the water fowl. Beaver Creek runs through Linton and ends in this area. We encourage you vote yes.

Glen McLory – Chairman of the Emmons Co. Water Resource District – We've been in support of this for a number of years. We've participated in State Water Commission in the first study.

We've contributed money to the later studies. This is kind of an unused project. It might be an unusual way of going about it, coming directly to the legislature. We're going to need full force support from the state to make this happen. Since it is all on federal land, it is a little different way of doing it. Normally we'd probably come through the water commission budget, but we need your help on this. Our local resources aren't enough to make the match it would take to do this study. Questions?

Rep. Drovdal – One of the suggestions was Beaver Bay Vice Chairman Damschen to the Emmons Co. Water Resource Board was to request from the state water commission, park & rec. dept, and the game & fish some assistance. Has those requests been put in?

Mr. McLory – It has been discussed. I don't know if we have any responses from them. We've had responses from DOT to tell us how high we could use their road that crosses it. 1804

crosses this project about ½ miles from the mouth of the creek that hits the river.

Randy Bosch – We had meetings with the game & fish and DOT this appropriation would be added to the ND state water commissions project to study this. At this point the highway dept. nor the game & fish has committed any dollars to this project.

Rep. Drovdal – You have requested money from each of these agencies directly?

Mr. Bosch – We haven't made a formal request for money, we have talked about it a little bit. We feel that if this project is going to be built it will have to be with the help of the federal government.

Rep. Nottestad – If we look at the state HWY Dept., if this project goes through what estimated cost do you think the state HWY Dept. is going to have on 1806?

Mr. Bosch – We're not sure. We're actually studying 2 areas. We're studying using the existing HWY as an embankment and what would need to be done there. That would be part of the study. We are also looking at an area further to the west that wouldn't affect existing roadway in any way, because that's always had water on both sides. If we went further to the west it wouldn't affect the HWY at all. We are looking at both of those.

Rep. Nottestad – The federal government doesn't look too highly on using roads as dams. Have you had any contact with the corp. on that?

Mr. Bosch – They have commented on using the road, we've got some information that's included in your packet from the ND DOT and they tell us if we use that we could come up to within 46' of the travel lane.

Steve Gefroh – Linton Industrial Development Corp. Looking back at the history of the Beaver Bay impoundment the first study of the project was completed in 1992. At that time the water level was extremely low. We were fortunate to have the water level rise for a few years. The project seemed to be put aside temporarily. The high water level didn't last long and the bid area virtually dried up. The impact was devastating, not only to the business that relied on

water for their survival, but to the community and county as well. In the 2000 Emmons strategic plan the Beaver Bay recreational area, fishing in the Bay and fishing along the Missouri River were identified as major assets to capitalize on. However, the average daily traffic on 1804 along beaver bay dropped from 535 vehicles per day in 1998 down to 205 vehicles per day in 2007. This represents 62% decrease in traffic counts. Seasonal visitation numbers for Beaver Bay campground dropped from 18,060 in 1996 to 10,409 in 2007. Representing a 42% decrease in visitation over the last 10 years. The decreases correlate to the decline in water level. We've lost an important attraction that generated economic activity in our region. Businesses have closed, jobs have been lost and families no longer have the opportunity to spend time together fishing, boating and camping along the bay. This has resulted in a decline of sales and loss of tax revenues. I personally witnessed the decline in traffic. I drove by Beaver Bay Bridge frequently to and from work when the water level was adequate for recreational activities. Thursday evenings I'd notice camping areas along the bay fill up with campers and people. By the time I'd go home Friday evenings the bay on the west side and on the east side would be full of campers. There was so much activity on the bay with boating, tubing and skiing almost every day I'd notice people fishing. As the water level declined all this activity ceased to exist. The following information is furnished in 2005 by the Game & Fish Dept. Typically a 1,000 acre reservoir in ND will have about 3 to 8 angler days per acre per day. That would mean about 3 to 8,000 angler days of use each year over the life of the reservoir. The US Fish & Wild Life Service has stated that an angler day is worth \$75.00. That would place the fishing value of the lake between \$225,000 and \$600,000 each year. Over the life of the reservoir this would total around 30 million dollars. The Beaver Bay would help the high water, low water, no water cycle that we've been experiencing and help maintain a steady economic stream for our region. I'd like to thank the agencies, departments,

organizations and people that have been working on this project over the past 5 years. It's now time to move the project forward with a feasibility study. We will need the help of the state to do so. Our local financial resources are very limited. Our largest city has 1300 people in it. Governmental budgets are strained, or tight at best. We need your help. Please give us your support with a do pass vote on this bill. Thank you for your time and consideration.

Questions.

Herb Grenz – In 1960 I was secretary of the Oahe Land Owners Association . At that time when we looked over the plans for the corp.'s ?????? We were informed and brought to the attention of Coronel Woodbary that this road was coming across Beaver Bay. I asked them at that time, why isn't this going to be a low head dam? For continuous support of a lake behind that ????? that is coming across Beaver Bay. They have done this in SD which is 30 miles south. Coronel Woodbary received sort of a sharp letter from them. Telling me there was no need for this because there would be ample water in Beaver Bay. Well Coronel Woodbary isn't around and there isn't any water either.

Chairman Porter – Further testimony in support of SB 2305? Any opposition to SB 2305?

Mike McEnroe – ND Chapter of the Wildlife Society – See **Attachment # 3**. Questions?

Chairman Porter – Further testimony in opposition to SB 2305? Seeing none we will close the hearing on SB 2305.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2305

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 3-13-09

Recorder Job Number: 10924

Committee Clerk Signature

Nancy L. Gerhardt

Minutes:

Chairman Porter – Pull up SB 2305.

Rep. DeKrey – Do we have an amendment?

Chairman Porter – I have it written down. I will read it to you so you will know it. On page 1,

line 12, we will overstrike “easements” and insert “applicable licenses and authorizations”.

Rep. DeKrey – I move that.

Chairman Porter – We have a motion from Rep. DeKrey.

Rep. Keiser – 2nd.

Chairman Porter – And a 2nd from Rep. Keiser. Discussion? Seeing none – all those in favor – unanimous voice vote – opposed – none. Motion carries.

Rep. Drovdal – Are we on the bill?

Chairman Porter – We are on the amended bill.

Rep. Drovdal - I think it's a very worthwhile project. One they have put a lot of time and effort into. In the past, with one exception, which I always regretted, we have a way to finance these. When we start setting priorities in legislature we are setting a preference. Although I support the project, I do not support the bill, because I think they need to go back to the Game

& Fish and to the state water commission and sell the idea to them for the feasibility study fund it the way we fund all the other projects along the way.

Rep. Hofstad – My question goes to the scope of the project. I don't know what the scope of the project is. What is the future fiscal impact for the state of ND? Will they come back with a 30, 40 50 million dollar project, or is the project even feasible? This is federal land, I suspect you will be talking a ?????????????????? Do we need a 404 permit? Is it feasible? I agree with Rep. Drovdal, this is better handled within the water commission. I would have a hundred questions and none of them are answered.

Chairman Porter – Further discussion? What are the wishes of the committee?

Rep. Hofstad – I move a Do Not Pass.

Chairman Porter – We have a motion from Rep. Hofstad for a Do Not Pass As Amended.

Rep. Drovdal – 2nd.

Chairman Porter – And a 2nd from Rep. Drovdal. Discussion on the motion? Seeing none the clerk will call the roll on a Do Not Pass As Amended on SB 2305.

Yes 5 No 7 Absent 1

Chairman Porter – Motion fails.

Rep. DeKrey – Move a Do Pass As Amended with a rereferral to appropriations.

Chairman Porter - We have a motion from Rep. DeKrey for a Do Pass As Amended with a rereferral to appropriations.

Rep. Keiser – 2nd.

Chairman Porter – 2nd from Rep. Keiser. Seeing none the clerk will call the roll.

Yes 9 No 3 Absent 1 Carrier Rep. DeKrey

March 13, 2009

VK
3/13/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2305

Page 1, line 12, replace "necessary easements" with "applicable licenses and authorizations"

Renumber accordingly

Date: 3-13-0
 Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. SD 2305

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass As Amended *Referred to Approp*

Motion Made By DeKrey Seconded By KEISER

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hanson	✓	
Vice Chairman Damschen		✓	Rep Hunskor	✓	
Rep Clark	✓		Rep Kelsh	✓	
Rep DeKrey	✓		Rep Myxter	✓	
Rep Drovdal		✓	Rep Pinkerton		
Rep Hofstad		✓			
Rep Keiser	✓				
Rep Nottestad	✓				

Total (Yes) 9 No 3

Absent 1

Floor Assignment DeKrey

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2305, as engrossed: Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (9 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2305 was placed on the Sixth order on the calendar.

Page 1, line 12, replace "necessary easements" with "applicable licenses and authorizations"

Renumber accordingly

2009 HOUSE APPROPRIATIONS

SB 2305

2009 HOUSE STANDING COMMITTEE MINUTES

SB 2305

House Appropriations Committee

Check here for Conference Committee

Hearing Date: March 24, 2009

Recorder Job Number: 11474

Committee Clerk Signature

Carmen Hart

Minutes:

Chm. Svedjan called the House Appropriations Committee back to order.

Rep. Todd Porter, District 34, approached the podium to explain SB 2305. This bill asks for \$100,000 to study the feasibility for a Beaver Bay embankment. "Beaver Bay Impoundment" (Attachment A) was distributed. What the money would be used for is to do the study and then work on any easements that would be necessary from the Corps of Engineers. All the land affected is already owned by the state or federal government.

Rep. Pollert: (2:02) Is there any water in there now?

Rep. Porter: I would imagine there is water in there now, but in July it will be bone dry after the water leaves. What they are looking at is in this project is a retention system, whether it would be a dam or a series of overflow dams that would retain some of the water back up into the bay area so it wouldn't be bone dry after the water leaves. This is to retain behind the bridge so there is a sustained recreation area once the water flows are done for the spring.

Chm. Svedjan: The total appropriation is \$342,000.

Rep. Porter: The restrictions are that the other funds are not available unless all the easements and acquisitions through the Corps of Engineers are met. All that can be spent is \$100,000 unless they say the project is a go.

Chm. Svedjan: You amended that to applicable licenses and authorizations.

Rep. Porter: Rather than easements, because all of the land is already owned by a government entity whether it would be the state or the federal government.

Chm. Svedjan: Did you check the status of the Resources Trust Fund?

Rep. Porter: I guess I personally knew the status of the Resources Trust Fund. I don't think that came up in committee. It's not looking good since Measure 3 passed.

Chm. Svedjan: How bad is it looking?

Rep. Skarphol: The latest estimates they are hoping for are in the \$71 million area. Every dollar of that is committed in their minds. It's a moving target.

Rep. Nelson: Does the federal government would they enter into a partnership with North Dakota? What about the easement possibilities? Is that a given?

Rep. Porter: Nothing is a given in regards to how the land is acquired for this embankment. There wouldn't have to be any easements because the land is already owned. It would be about a 900 acre area that is affected. Sen. Erbele is nodding his head yes that there is a federal component.

Rep. Nelson: Would that go into one of those programs where there is a dedicated match?

Rep. Porter: I don't really have the answer to that one. Maybe Senator Erbele can address that.

Sen. Erbele: Are you asking if there is a federal match?

Rep. Nelson: If the feds partner, is there a dedicated match that this would fall into?

Sen. Erbele: It would be on a case by case basis. Sen. Dorgan or some of his staff members were at some of the meetings that we attended going back a number of years already. (7:41) I have a note here that said he has expressed an interest in assisting with the development process at some point. However, again, without adequate information which this study is looking for it cannot be sold for funding at the federal level until we know what level they are

coming in at. He indicated at one time about \$20 million to do the project and thought it would be largely federal funds for it. I think what we are looking at for state funds would be for the feasibility study.

Rep. Wieland: Is this project 100 percent recreation?

Rep. Porter: The vast majority is recreation. All the water would be embanked on already existing state land.

Rep. Wald: I move a Do Pass.

Rep. Metcalf seconded the motion.

Rep. Skarphol: What happened after 1999 to today to result in the lack of water? Is it simply lack of precipitation?

Rep. Porter: The area is primarily fed through runoff. It's primarily the lack of snow. Below normal rainfall didn't help.

Rep. Skarphol: Considering the situation today, will there be a recreation area if nothing is done?

Rep. Porter: There will be a recreation area for six to seven weeks until it drains into the Oahe. The bill would retain the water year round.

Rep. Skarphol: What's the potential cost of the overall project?

Rep. Porter: \$20 million federal.

Rep. Skarphol: What implications does this have to the state Water Commission's priorities?

Rep. Porter: It would become part of the ongoing process. Take a number. Get in line like any other project. They would have the necessary information to argue their point in front of the Water Commission with all the partners involved and the feasibility study done.

Rep. Skarphol: I cannot support this with the money coming out of the Resources Trust Fund. Right now we have enough water problems across the state that I am not sure the money should come from Resources Trust.

Rep. Nelson: Was there discussion about if the structure was built, who would control the level of the water?

Rep. Porter: It would be at a set level from the start. The feasibility study would determine that level.

Chm. Svedjan: If this appropriates the money to the Water Commission and yet if what you say is true, they would have to plead their case and determine where within the priority this would reside. Why do we need this bill?

Rep. Porter: This is a separate bill. When the project is looked at after the study is done, it would be looked at for priority. The study would be what they would spend in the next 18 months.

Rep. Wald: What's Game and Fish's attitude on this project?

Rep. Porter: They weren't opposed to the project. They didn't testify on one side or another. The opposition was from the Wildlife Society because they thought that really it was going to be a small and shallow basin that would already have a self-sustaining carp population. Game and Fish didn't testify up or down on this bill.

Rep. Skarphol: Did you ask the Water Commission where they would put this on a list?

Rep. Porter: They were not in the audience.

Rep. Skarphol: I would support this if it came from the General Fund.

Rep. Berg: I think this is an important bay, but I'm not sure we should take money from the Trust Fund. How have we done these studies in the past?

Rep. Nelson: I'm not familiar with studies that has been cost shared. In the Devils Lake area there have been partnerships between the State Water Commission, DOT, and Game and Fish. (17:30) Maybe we could change the funding source to a partnership of agencies that may include the Resource Trust Fund.

Chm. Svedjan: You are offering a substitute motion?

Rep. Nelson: Yes, I am. What I would offer is that we would provide language that other agencies give to the \$100,000 goal of the funding. I think Resource Trust Fund shouldn't be eliminated from the appropriation line, but they shouldn't be the only ones that should be on the hook.

Chm. Svedjan: It's not just \$100,000 in play. This authorizes the \$100,000 to be spent. After that, the remaining 242 kicks in.

Rep. Nelson: I would offer that in both sections.

Chm. Svedjan: Does everyone understand the amendment? It is nonspecific in terms of where the money would come from. Your motion addresses other agencies to include the possibility of the Resource Trust Fund to fund this. There was no second. The motion dies for a lack of a second. We are back to the Do Pass motion.

Rep. Berg: We should put General Fund one-time money in there.

Rep. Skarphol: If the Do Pass prevails, then we are out of the Water Resources Trust Fund? Unless we reconsider, there is no way to change that?

Rep. Onstad: It seems that the appropriate place is the Resources Trust Fund.

Rep. Klein: The Water Resources Trust fund is about half short of the projects they have now. There is no money to even get close to what they have considered.

Rep. Berg: This is a wasted resource if we don't do something. Measure 3 impacts that. I feel like we need to either change that so legislatively we set the priorities, or we need to support

them in how they set their priorities. That is my challenge in saying yes, just go ahead and take it out of there.

Chm .Svedjan: Explain that. Go ahead and take what out of where?

Rep. Berg: (23:00) I believe by having a stand-alone bill to take money out of that fund, we are undermining their priorities.

Rep. Skarphol: It requires that they spend \$342,000 that they might have spent somewhere else. This is not a project they had on their list as a priority. I'm not sure this will ever meet a priority in our lifetime.

Rep. Berg: Let's take 2/3 of the money out of the General Fund and let them find a match for the remainder. That would make that motion if this Do Pass recommendation fails.

DO PASS. 12 YEAS, 11 NAYS, 2 ABSENT AND NOT VOTING. Rep. DeKrey is the carrier of this bill.

March 13, 2009

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2305

Page 1, line 12, replace "necessary easements" with "applicable licenses and authorizations"

Renumber accordingly

Date: 3/24/09
 Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2305

Full House Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Wald Seconded By Metcalf

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan		✓			
Vice Chairman Kempenich		✓			
Rep. Skarphol		✓	Rep. Kroeber	✓	
Rep. Wald	✓		Rep. Onstad	✓	
Rep. Hawken	✓		Rep. Williams	✓	
Rep. Klein		✓			
Rep. Martinson	✓				
Rep. Delzer		✓	Rep. Glassheim		✓
Rep. Thoreson		✓	Rep. Kaldor	✓	
Rep. Berg		✓	Rep. Meyer	✓	
Rep. Dosch		✓			
Rep. Pollert		✓	Rep. Ekstrom		✓
Rep. Bellew		✓	Rep. Kerzman	✓	
Rep. Kreidt		✓	Rep. Metcalf	✓	
Rep. Nelson	✓				
Rep. Wieland	✓				

Total (Yes) 12 No 11

Absent 2

Floor Assignment Rep. McKree

If the vote is on an amendment, briefly indicate intent:

Date: 3/24/09
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2305

Full House Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number TBD

Action Taken _____

Motion Made By Nelson Seconded By No second

*Subst.
motion
file*

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan					
Vice Chairman Kempenich					
Rep. Skarphol			Rep. Kroeber		
Rep. Wald			Rep. Onstad		
Rep. Hawken			Rep. Williams		
Rep. Klein					
Rep. Martinson					
Rep. Delzer			Rep. Glasheim		
Rep. Thoreson			Rep. Kaldor		
Rep. Berg			Rep. Meyer		
Rep. Dosch					
Rep. Pollert			Rep. Ekstrom		
Rep. Bellew			Rep. Kerzman		
Rep. Kreidt			Rep. Metcalf		
Rep. Nelson					
Rep. Wieland					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Encourage agencies to fund this

REPORT OF STANDING COMMITTEE (410)
March 24, 2009 3:17 p.m.

Module No: HR-53-5724
Carrier: DeKrey
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2305, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman)
recommends **DO PASS** (12 YEAS, 11 NAYS, 2 ABSENT AND NOT VOTING).
Engrossed SB 2305 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2305

Fischer, Tom L.

From: Klapprodt, LeRoy A.
Sent: Tuesday, January 27, 2009 3:46 PM
To: Fischer, Tom L.
Subject: SB 2305 Beaver Bay embankment

Tom,

I received your request for information on the proposed Beaver Bay embankment project and did some checking here to see what was available.

I spoke with Mike Gunsch of Houston Engineering since they are the people who developed the feasibility study cost estimate that is the basic element of SB 2305. Mike promised to forward you information describing the proposed project and expected benefits etc.

I will be providing you the cost estimate sheet provided to us as it outlines the various tasks and their costs. I'll also provide a memo (dated 2-27-08) from our project file that discusses the proposed project and some of the issues that would have to be addressed.

I understand our primary concern with the legislation is the request for 100% feasibility study costs share from the SWC. As you know, our policy requires 50-50 cost share on feasibility studies.

LEE

NORTH DAKOTA GAME & FISH DEPARTMENT

"Variety in Hunting and Fishing"

GOVERNOR, John Hoev

DIRECTOR, Terry Steinwa
DEPUTY, Roger Rostv

100 North Bismarck Expresswa
Bismarck, North Dakota 58501-509
Phone: (701) 328-630
FAX: (701) 328-630

July 31, 2007

Randy Bosch, Chairman
Voices for Lake Oahe
PO Box 482
Linton, ND 58552

Dear Mr. Bosch:

Thank you for sharing the design plans that have been developed for the proposed impoundment structure on Beaver Creek. After reviewing the plans, we have some questions and concerns regarding the proposed structure. As you recall, our original opposition was based on the premise that the structure would substantially impact fish movement up Beaver Creek during 'normal' Lake Oahe water elevation periods. Our willingness to withdraw that objection was predicated on discussions we had stating that the project design would accommodate those fish movements.

Beaver Creek is one of the five largest tributaries on this stretch of the Missouri River and Lake Oahe in North Dakota. Tributaries play an important role in maintaining fish populations, not only for reproduction but for all phases of their life history. There is ample evidence that fish congregate at the mouths of feeder creeks. In the past, thirty five species of fish have been sampled in Beaver Creek. Some of these species reside in the creek year-round, while others reside in the Missouri River and rely on Beaver Creek for spawning and nursery habitat. Construction of any type of dam will alter the nature of the tributary and will affect fish in the river as well as the creek. To alleviate the concerns of fish passage, it is critical to have both a physical structure in place that allows for adequate fish movement as well as an operating plan that gives highest consideration to fish passage while still accomplishing the objectives you've developed.

According to the engineering design you submitted, the structure will be solid concrete, with only a 4'Hx9.5'W opening with stop logs at the top of the structure. When Lake Oahe water levels are above 1606' msl and the structure is inundated, fish will have to swim up and over the structure. Such an impediment will reduce the number of species that are able to navigate into the creek at various times of the year, including during their respective spawning periods. For elevations between 1602-1606' msl, we are concerned your project is under-designed for fish passage as there is not enough space to pass

potentially large amounts of water. For example, average April discharge for Beaver Creek from 1990-2007 was 205 cubic feet per second (prime time for walleye and northern pike spawning). Thus, water flowing through the 9.5'x4' notch would have a velocity of 5.4 ft/sec, which would be too swift to allow passage for most fish species. Lastly, your proposed design won't allow fish passage to Beaver Creek from the Missouri River at elevations below 1602' msl. Lake Oahe hasn't been to 1602' msl since October 2001 thus if your proposed impoundment had been in place prior to the current drought, it would have been nearly six straight years (and growing) of totally damming the creek and not allowing Missouri River fish species to repopulate Beaver Creek.

From a longer term perspective, given the large, agricultural watershed, the proposed impoundment will trap large amounts of sediment and nutrients. Thus, the lifespan of the proposed impoundment will likely be short. Sedimentation could destroy existing spawning habitat. If the impoundment were built using the proposed solid concrete design, water would be held upstream indefinitely with no way of freshening if the pool should become stagnant. It would be very difficult to maintain a quality sport fishery under those conditions as occasional 'flushing flows' under any conditions are desired. As is, carp are likely the only species that will thrive in these 'stagnant' conditions in the long term. Options for fish management become very limited (and expensive) under that scenario.

We recommend two matters be further addressed. First, the project design should include some feature that would allow for adequate water to be moved through a structure that is similar to the current width of the creek channel to reduce velocities. Additionally, it is desirable to have releases originate from the bottom rather than a surface release (stop logs). Perhaps some type of a radial gate would suffice. And lastly, it's difficult to fully address your plans/vision without some type of operating plan that lays out different flow and elevation scenarios. A draft operating plan would be helpful.

If you have any questions or comments, please contact Greg Power, Fisheries Division Chief.

Sincerely,



Terry Steinwand
Director

cc: Greg Power
Mike McKenna
Steve Krentz

Supporting Documentation

- **North Dakota Department of Transportation**
 - Letter dated 2-14-07 *
 - Letter dated 9-30-07 *
 - Letter dated 5-22-08 *
- **North Dakota State Water Commission**
 - Letter dated 8-17-07 *
- **U.S. Army Corps of Engineers**
 - Letter dated 1-28-09 *
- **Voices for Lake Oahe**
 - Minutes from joint meeting on 8-16-07 *

* Document attached

Same given to all committees.

Economic Impact

- **Average annual daily traffic**
 - 535 in 1998
 - 325 in 2002
 - 205 in 2007
- **Business closings**
 - Loss of jobs
 - Loss of sales
 - 16% decline in local sales tax revenue from 1997 to 2003
- **Beaver Bay Recreational area identified as important to economic sustainability and growth**
 - 2000 Emmons County Strategic Plan
 - 2007 City of Linton Strategic Plan
- **Fishing value of lake placed between \$225,000 and \$600,000 each year (information received from ND Game & Fish Department in 2005)**



North Dakota Department of Transportation

Francis G. Ziegler, P.E.
Director

John Hoeven
Governor

February 14, 2007

Randy Bosch, Chairman
Voices for Lake Oahe
P.O. Box 591
Linton, ND 58552-0591

BEAVER BAY CONTROL STRUCTURE

The North Dakota Department of Transportation (NDDOT) has reviewed the information provided for a proposed control structure to be built at Beaver Bay. NDDOT does not oppose the construction of the structure provided the following conditions or requirements are agreed to:

- The control structure should be located outside of NDDOT right-of-way on the east side of the bridge piers. This will allow the Department to address bridge maintenance issues during times of low water in the Oahe Reservoir.
- The construction and maintenance of the control structure which would include marking and maintaining a channel for boat traffic would not be the responsibility of the Department.
- The proposed maximum water elevation shall not at any time cause the NDDOT roadway embankment to act as a dam. The department would like to receive additional information (such as cross sections) sufficient to verify existing embankment, riprap locations, elevations, and proposed water elevations.
- If at anytime the NDDOT observes detrimental effects to the roadway embankment, the water level behind the control structure will be lowered as per the Department's request.
- If for any reason the control structure may create a higher water velocity through the channel of the bridge, slope stabilization is recommended.
- The Voices of Lake Oahe will be responsible to obtain all applicable permit for the project.

If Voices of Lake Oahe agrees with the above conditions and elects to go forward with this project all requirements and costs will be the responsibility of the Voices of Lake Oahe. Additionally, an agreement will need to be signed by both parties if any work is done on the NDDOT right-of- way.

Please contact Kevin J. Levi, Bismarck District Engineer, at 701-328-6950 if you have any questions. Thank you.

for
RON J. HENKE – DIRECTOR, P.E. - OFFICE OF PROJECT DEVELOPMENT
57:rjh:js



North Dakota Department of Transportation

Francis G. Ziegler, P.E.
Director

John Hoeven
Governor

September 20, 2007

Randy G. Bosch, Chairman...
Voices for Lake Oahe
P. O. Box 482
Linton, ND 58552-0482

*Same harbor
given to Senate
& House Logging
& House Natural
Resources.*

IMPOUNDMENT OF STRUCTURE TO BE LOCATED ALONG HIGHWAY 1804 AT BEAVER BAY, EMMONS COUNTY, NORTH DAKOTA

We have reviewed your August 2, 2007, letter.

If this impoundment is at elevation 1606 it would fall below the fill material placed to construct the highway; therefore, this would not have any adverse effect on the North Dakota Department of Transportation (NDDOT) highway. However, NDDOT would like information on the amount of acre-feet that will be held, maximum depth of water to be stored, cross-section that shows the elevation of the roadway section in relation to the water, and a soil survey

If any work needs to be done on the highway right-of-way, appropriate permits and risk management documents will need to be obtained and approved from the Department of Transportation District Engineer, Kevin Levi at 701-328-6955.

RONALD J. HENKE, P.E., DIRECTOR – OFFICE OF PROJECT DEVELOPMENT

57: rjh:js

c: Kevin Levi, Bismarck District Engineer



North Dakota Department of Transportation

Francis G. Ziegler, P.E.
Director

John Hoeven
Governor

May 22, 2008

Randy Bosch, Chairman
Voices for Lake Oahe
P.O. Box 591
Linton, ND 58552-0591

BEAVER BAY UPDATE

The North Dakota Department of Transportation (NDDOT) has reviewed the letter that you provided from the ND State Water Commission, and we understand the importance of this project.

Upon further review of Code of Federal Regulations, highway fills that are used to permanently impound water of the size and depth identified in the State Water Commissions letter is allowed provided that the hydrologic, hydraulic, and structural design of the fill and appurtenant spillways have the approval of the State Water Commission or Federal agency responsible for the safety of dams or like structures within the State, prior to advertising for bids for construction.

NDDOT does not oppose the construction of the structure provided the following conditions or requirements are agreed to:

- At no time should water or riprap be placed or allowed to enter into the highway clearzone, which is being defined as 46' from the edge of the travel lane when using a 4:1 inslope.
- The control structure should be located outside of NDDOT right-of-way.
- The construction and maintenance of the control structure which would include marking and maintaining a channel for boat traffic would not be the responsibility of the Department.
- That appropriate approval(s) be obtained from State or Federal agencies responsible for the safety of dams or like structures within the State.
- If at anytime the NDDOT observes detrimental effects to the roadway embankment, the water level behind the control structure will be lowered as per the Department's request.
- If for any reason the control structure may create a higher water velocity through the channel of the bridge, slope stabilization is recommended.
- The Voices of Lake Oahe will be responsible to obtain all applicable permit for the project.

Randy G. Bosch
Page 2
May 22, 2008

If Voices of Lake Oahe agrees with the above conditions and elects to go forward with this project all requirements and costs will be the responsibility of the Voices of Lake Oahe. Additionally, an agreement will need to be signed by both parties if any work is done on the NDDOT right-of- way.

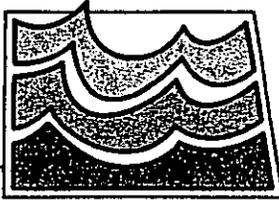
Please contact Kevin J. Levi, Bismarck District Engineer, at 701-328-6950 if you have any questions. Thank you.



RON J. HENKE – DIRECTOR, P.E. - OFFICE OF PROJECT DEVELOPMENT

57:rjh:js

c: Grant Levi, P.E., Deputy Director for Engineering
Kevin Levi, P.E., Bismarck District Engineer



North Dakota State Water Commission

900 EAST BOULEVARD AVENUE, DEPT 770 • BISMARCK, NORTH DAKOTA 58505-0850
701-328-2750 • TDD 701-328-2750 • FAX 701-328-3696 • INTERNET: <http://swc.nd.gov>

August 17, 2007

Glenn McCrory, Chairman
Emmons County Water Resource Board
P.O. Box 643
Linton, ND 58552-0643

Re: Beaver Bay-proposed-dam

Dear Glenn:

It was good to meet with you and others from Emmons County yesterday concerning the development of a new dam in Beaver Bay. We think everyone gained a great deal from the discussion. The Game and Fish Department and Corps of Engineers representatives brought up a number of important issues that must be addressed but we believe none are insurmountable. The proposed project would likely be a significant benefit to Emmons County and to the state.

In response to your letter of June 21 in which you ask if we have any suggestions, we would offer the following. Based on the input from the Corps of Engineers, Game and Fish Department and others, it appears that there are a range of issues that must be addressed to gain their support or approval. The work done by Dennis Meyer has been a great help is more clearly defining the project but a more comprehensive feasibility study will be required to address the issues brought up yesterday. The Emmons County Water Board may want to investigate hiring a consulting firm with the capability to address the water quality, fish passage, soils suitability, hydrology and specific engineering design, and irrigation potentials associated with this project. You may wish to visit with a couple local firms to get a ballpark estimate of costs and time that might be involved. We may be able to assist with the feasibility study but we'll need to discuss it further.

Mr. Meyers provided a cost estimate with his preliminary design. You may wish to explore your funding options early on. We talked yesterday about going to the congressional delegation to seek federal funding assistance. That is certainly one avenue but time is important in this case since building the structure while Lake Oahe is at its current low level would certainly reduce the final cost. It will be important to confirm that there is a local willingness to financially support the project. We believe the State Water Commission would be receptive to a funding request. Perhaps the North Dakota Parks and Recreation Department and Game and Fish Department may be interested in contributing. You will need to contact them directly. We have seen a number of multi-partner projects succeed in the recent past, Dead Colt Creek Dam is an example.

Lastly, it might be a good time to discuss locally any recreation infrastructure anticipated. This will be another cost associated with the project and may result in some cultural/historical resource issues that the Corps will need to consider.

We believe the Beaver Bay dam proposal is a good idea and should be pursued. We at the State Water Commission will be happy to work with you as you proceed.

Sincerely,

A handwritten signature in cursive script that reads "Todd Sando".

Todd Sando

A handwritten signature in cursive script that reads "Lee Klapprodt".

Lee Klapprodt



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
OAHE PROJECT
28563 POWERHOUSE ROAD
PIERRE SD 57501-6174

January 28, 2009

Operations Project Manager

Voices for Lake Oahe
P.O. Box 482
Linton, ND 58552

Dear Mr. Bosch,

This letter is in response to your request for the Oahe Project position on the Beaver Creek sub impoundment. As you are aware, Oahe Project has not developed an opinion either for or against this project.

Prior to initiating any activity on Corps of Engineer lands, further coordination will be required. All design and specifications need to be submitted and approved by Oahe Project Office and ND Regulatory Office. Then the ND CoE Real Estate Office will issue an out grant to your organization to start your work. If you are thinking about funding from the Corps of Engineers it will take Congressional authorization and funding for us to participate or fund any part of this project. I hope this explains our position and assist you in your endeavor to obtain funding for this study.

Sincerely,

A handwritten signature in black ink, appearing to read "John J. Bartel".

John J. Bartel
Operations Project Manager

CF: Electronically to
Bayside@BEKTEL.com

VFLO WATER IMPOUNDMENT MEETING 8-16-07

*Same
handout given
to all committees.*

Randy Bosch welcomed all present and stated the format of the meeting to be informal. Meeting would proceed by asking agencies involved to state their concerns and comments.

ND GAME & FISH – Scott Gangl

- questioned drawings relating to elevation of fish passage
- concerned with water quality behind impoundment
- recommended more consideration for fish passage; opening should be as wide as the creek channel; opening needs to be to the bottom of the wall
- suggests an operating plan
- Beaver Creek is an important tributary for natural reproduction of the fishery

ND Dept. of Transportation -- Kevin Levi

- stated that he has visited site and has reviewed plans
- noted that roadway embankment cannot be used as a dam
- as he spoke - DOT has a survey crew on site collecting data; will determine elevation relating to start of roadbed
- noted that impoundment structure is off DOT right-of-way; acknowledges the need to tie in to the roadbed involving the project.
- does not see any problems with the proposed project.

ND State Water Commission – Todd Sando

- will need water and construction permits from NDSWC; sees no problem obtaining them; will need more complete plans.
- NDSWC will fund up to 50% of the project - the balance will need to be local match
- possibility of NDSWC to sponsor the project

Emmons County Water Resource District – Glen McCory

- ECWRD is in support of the project
- would like to see the project proceed

Corps – John Bartel

- roadways don't make good dams; suggest soil borings or study of existing borings if available.
- concerned with water saturation with water being on one side and not the other
- project will need to be reviewed for archaeological and cultural issues; biggest cultural issue will be in the construction area.
- if it meets all the cultural issues and the project is completed it would fit in with the Corps master plan
- weir needs to be as wide as the bridge opening
- ECWRD would be the responsible agency
- water retention cannot backup beyond the Corps take line in all instances

Corps – Jason Renschler

- impoundment requires a regulatory permit from the Corps
- sees potential water quality issues
- Corps does allow these type of projects but not normally of this magnitude

Emmons County Commission – Alvin Tschosik

- the ECC supports this project
- has concerns about the effects of heavy spring run off and/or ice jams

NRCS – Erin Bussher

- no concerns; are not a regulatory agency

Dorgan's Office – Marion Houn

- stated that she did not have time to review the project but noted that the Senator has an attachment to pending legislation for \$300,000 and felt some of it is intended for this project

At this time, Randy asked for any additional questions or comments.

R.A.Kellar – Rynee questioned Todd Sando relating to funding, wondering if the project required legislative funding? Todd stated that projects less than one million dollars do not require special funding. The project would be funded under NDSWC water operations budget. It was noted that the project cost estimate was \$684,000.

Herbert Grenz – Herb commented that the project should be done as soon as possible as costs will escalate if construction is to take place in water conditions. He stated that it is the Corps responsibility to provide the funding for the project as they are directed to provide services for irrigation and recreation and this falls in that category.

Todd Sando – Todd stated that there is a need for more engineering and study. VFLO needs to work toward final design.

John Bartel – The Corps needs more info before permitting re; more complete plans, soil borings, water quality info, etc. He noted Lake Pocasse at Pollock SD is similar in nature as to what is being proposed and they are currently dealing with water quality issues. It was stated that the Corps is not for or against the project, but sees opportunities and some issues that need to be dealt with. He stated that the Corps does not have any funding in the budget for the project or have funding available. It was stated that we should continue working with our delegation for funding. He commented that VFLO should not get discouraged and keep the project moving forward.

Lee Klapprodt – Lee suggested that we look at partnering with supporting agencies such as; NDSWC, ND Game & Fish, ND Parks, ND Dept. of Commerce, National Wildlife Federation, or any other conceivable supporters for funding.

Scott Gangl – Scott questioned DOT relating to review of the roadway embankment. Kevin stated that he met with VFLO during preliminary planning and stated that he did not see a problem with the roadway embankment as long as the water was not up to that elevation. The proposed structure does not reach that elevation.

Mike Brandenburg – Mike stated that there is a need for someone to ramrod this project if it is to become a reality.

Alvin Tschosik – Alvin requests that more information be provided locally. There seems to be a considerable amount of local interest and questions. He thanked the VFLO committee for all their efforts.

Randy closed by thanking everyone for attending and participating. He stated that VFLO is open to comments or suggestions related to this project and should be mailed to:
VFLO PO Box 482 Linton ND 58552-0482

ATTENDANCE ROSTER

Richard Nicklos	701-254-4056	ECWRD	
Glen McCory	701-782-4295	ECWRD	
Glen Geffre	701-336-7487	ECWRD	
Erin Busscher EIK	701-254-4653x3	NRCS	
Nikki Foerderer	701-328-2200	Governor's Office	nfoerderer@nd.gov
Sharon Jangula	701-254-4267	LIDC	
Alvin Tschosik	701-254-4165	Emmons County Commission	
Herbert H Grenz	701-782-4293	NDIA	
Dennis Meyer	701-667-2012	Meyer Engineering	
Allan Burke	701-254-4537	Emmons County Record	
Jerry Schaack	400-5915	NDIA	
Marion Houn	250-4618	Sen. Dorgan's Office	
Scott Gangl	701-328-6662	ND Game & Fish	sgangl@nd.gov
Kevin Levi	701-328-6950	NDDOT	klevi@nd.gov
Kirk Hoff	701-328-6950	NDDOT	khoff@nd.gov
Robert Erbele	701-378-2272	Dist 28 Senate	reberle@nd.gov
Mike Brandenburg	701-493-2915	Dist 28 House	mbrandenburg@nd.gov
Bill Kretschmar	H. 701-684-7321 O. 701-288-3632	Dist 28 House	
R.A.Kellar	701-223-9166	BCWRD	rynee1@netzero.net
Ron Kraft	701-223-1834	VFLO	
Lee Klapprodt	701-328-4970	NDSWC	iklapprodt@nd.gov
Karen Goff	701-328-4953	NDSWC	kgoff@nd.gov
Dan Farrell	701-328-3468	NDSWC	dfarrell@nd.gov
Todd Sando	701-328-2752	NDSWC	tsando@nd.gov
Tony Splonskowski	701-223-0326	VFLO	tsplon@hotmail.com
Dave Beastron	701-782-6227	VFLO - City of Linton	
Randy Bosch	701-254-4462	VFLO	
Jason Renschler	701-255-0015	Corps - Regulatory	
Ralph Gabrysh	701-255-0015	Corps - Oahe Project	
John Bartel		Corps	

Beaver Bay Embankment Primary Cost Issues for the Feasibility Study

*Same given
to Senate logging.*

Note these should be completed for both sites and costs provided for each

1. Site Surveys - Need for boring locations too. **\$ 20,000 Both**
 - a. USGS and COE Topography available, though need better site data
 - b. Given past issues with topography, there have been problems with estimates we might consider flying to validate reservoir pool area too. (Cost Includes Aerial Topography)
2. Hydrology/Hydraulics **\$ 14,000 Both**
 - a. Extension of May 1992 SWC Study – (Gregg Thielman)
 - b. This will give an indication on the size of the spillway required
 - c. Structural Design for Design Event
 - d. Base flows for fish ladder?
3. Geotechnical **\$ 94,000 Roadway \$ 65,000 Downstream**
 - a. Borings and Soils Analysis
 - i. Embankment and Borrow Areas
 1. Borrow location unknown – within reservoir or on hills
 - b. Highway Embankment to include constructed condition assessment
 - c. Foundation Assessment – Both alternatives
 - i. Possible alluvial silts as this is near Oahe Reservoir/Missouri River
 - d. Slope Stability
4. Archeological Investigation **\$ 15,000 Each Site – Class I**
 - a. Class III – Site Inspection
5. Embankment and Structural Measures **\$ 20,000 Each Site**
(Plan and Profile – See SWC Report)
 - a. Low Level Drawdown
 - b. Principal Spillway
 - c. Emergency Spillway (Dam Design Criteria)
 - d. Fish Ladder (NDGF & USFWS requirement – spawning area)
 - e. Ability to allow boat traffic when Oahe floods out this reservoir?
6. Environmental – Issue Identification **\$ 25,000 Roadway \$ 15,000 Downstream**
 - a. An EA at this time is not required, though we project some water quality review
 - b. Recognize in the design that a fish ladder has been requested
 - c. We would not get into details here, just create a list...
7. Stakeholder/Agency Meetings and Coordination (5) **\$ 10,000 Roadway \$ 3,000 Downstream**
 - a. This could be costly and affect scope as issues are identified
8. Engineering Opinion of Probable Costs **\$ 4,000 Roadway \$ 4,000 Downstream**
9. Study Report with Executive Summary **\$ 15,000 Roadway \$ 3,000 Downstream**

Study Estimate	=	Highway Embankment	\$217K
		<u>Downstream</u>	<u>\$125K</u>
		Total	\$342K

Fischer, Tom L.

From: Gunsch, Michael [mgunsch@houstonengineeringinc.com]
Sent: Wednesday, January 28, 2009 9:45 AM
To: Fischer, Tom L.
Cc: Klapprodt, LeRoy A.; 'baysud (bayside@bektel.com)'
Subject: Beaver Bay Briefing Document Request
Attachments: Bever Bay Letters.pdf; SB #2305.pdf; Sen Fisher Breifing Doc.pdf

Importance: High

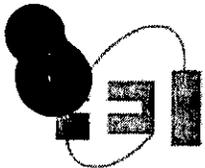
Senator Fisher:

Lee Klapprodt with the NDSWC requested that I provide you with a briefing document on the Beaver Bay Embankment Project. Attached is that information. Probably more than you might want or need, however there is an extended history as you are probably aware. Also attached is related information you may find useful in the consideration and deliberation of this issue. This information is not intended for distribution during the committee hearing. Should you feel a handout of some kind would be beneficial that would need to be prepared separately.

If you have any questions, please feel free to contact me.

PS Randy Bosch, VOLO also requested that I send him a summary as he was working on his testimony to support SB #2305 on behalf of his organization. That is why he is included in this e-mail.

Michael H. Gunsch, PE
Principal / Project Manager



HoustonEngineering Inc.

3712 Lockport Street
Bismarck, ND 58503
Phone (701) 323-0200

Cell (701) 527-2134
Fax (701) 323-0300
e-mail mgunsch@houstonengineeringinc.com

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Beaver Bay Embankment – Briefing Statement
Senator Tom Fisher
January 28, 2009

Lee Klapprodt with the NDSWC requested that I provide you with a briefing document related to the proposed Beaver Bay Embankment feasibility study associated with SB #2305. As background information we have been working with the Voices of Lake Oahe (VOLO) and the Emmons County Water Resource District (ECWRD) trying to guide them through what is required from a feasibility study perspective, and at the request of the NDSWC prepared the attached summary of projected costs for this study. We are not under contract with either party regarding this issue, but have provided information as a courtesy to them knowing they have limited funding to proceed with what is necessary to move a project forward or in this instance to determine project viability given the known issues and concerns. We are also not under contract with the NDSWC regarding this project.

The idea of placing an embankment and creating a reservoir on Beaver Creek was first studied by the NDSWC and was reported in a Preliminary Engineering Report completed in May 1992. The recommendation at that time was to construct an embankment approximately 2000 feet east or upstream from Highway #1804. The highway embankment at that time was considered to be a more expensive alternative. The recent low waters on Lake Oahe, caused by the extended drought, essentially stranded and dry docked the existing boat ramp facilities in this location making access impossible. Even temporary access could not be provided during some periods. Only recently have water levels increased to where the ramps are marginal for use. The local residents within in this region and VOLO continue to have a passion for the development of a more sustainable facility.

Local residents, VOLO and users of this area believe that in order to have a viable recreational facility for the long term economic benefit of this region that an embankment and secondary reservoir is necessary. The property on which this reservoir would be located within the Oahe Reservoir take line, owned by the Corps of Engineers (COE); however a final determination remains on the final impact area and land requirements. The COE has been willing to accept the facility to be constructed in this location, though it will require considerable evaluation and environmental considerations.

Since 1992 the ECWRD and VOLO have continued to discuss and consider use of the highway embankment as a dam. In doing so they invested in an engineering study, which unfortunately did not consider nor adequately address the larger issues associated with the use of this embankment. It also provided in our opinion a false sense of the true cost for the facility and optimism for quick implementation. The principal issues include dam safety criteria, potential environmental impacts (i.e. fishery, spawning, etc...) and a critical issue is the NDDOT's willingness to allow such use and the suitability of the embankment as a dam. After considering various issues a stakeholders meeting was held in August 2007 where some consensus was built on the opportunity to evaluate an alternative that would meet the local objectives, while not creating adverse impacts, which were a concern of the NDFWS, NDGF and NDDOT. Several letters on this meeting and the attendees is attached. This document will also provide some background on the agency position and comments.

Houston Engineering became involved in the process in late 2007 and early 2008 and encouraged the ECWRD and VOLO to contact the NDSWC to have them complete a reconnaissance level evaluation of the feasibility to utilize the NDDOT embankment. We also suggested consideration of the downstream site west of Hwy #1804. This downstream site would utilize the existing recreation area for both Lake Oahe and the proposed reservoir as well as create a larger reservoir pool, increase the average depth and may better facilitate design considerations. Various critical issues were then reviewed by the NDSWC and they found additional errors in the original assessment of the proposed highway embankment alternative. These included issues related to topography and available water depths within the proposed reservoir pool. What followed was a discussion with NDDOT and further consideration of an acceptable water level that could be retained upstream against the highway, which is subject to a number of conditions (i.e., dam safety, roadway safety, etc...) that needed evaluation before further consideration could be given. Subsequently, elevation 1616 was noted as a maximum water surface that would not impact the clear zone within the highway right-of-way. While this elevation is acceptable there are other operational considerations that remain to be addressed.

In the end the idea of using the NDDOT Hwy #1804 embankment requires considerable geotechnical analysis to determine if it is even feasible for use as an embankment. The issue of seepage analysis construction of the emergency spillway and a possible fish ladder for spawning make this site questionable from a number of factors.

In light of the risks associated utilizing the highway embankment and the potential need to reconstruct or expanding the existing roadway embankment upstream we recommended consideration should be given to evaluating the downstream alternative as well. In short we anticipate the first question, if the highway embankment is not feasible, will be - Would the other site work? Therefore, it is best in a feasibility assessment to evaluate more than one alternative. The extended costs to complete this investigation are noted on the attached sheet.

The Beaver Creek watershed has a drainage area of 900 square miles of which 90 square miles are considered non-contributing, meaning in short the watershed has adequate runoff to maintain the reservoir under most conditions. The issue of water quality is one to be considered given the intended uses and since federal and state permitting is required including the need for an environmental assessment. It is not known if an EIS is required at this time. The EA is not part of the feasibility study budget; however issues associated with it are included to facilitate the decision process for future planning. Based on a preliminary topographic evaluation the downstream reservoir size at elevation 1616 would be around 950 acres, while at the Hwy site it would be around 830 acres. The maximum depth at the highway bridge is estimated at around 35 feet at 1616. The average depth is an issue that will determine the quality of the fishery as well as sustainable water quality and fishery. **As a lower control or management elevation is more likely a reservoir pool at elevation 1610 the reservoir at the Hwy would be 600 acres in size and 700 acres at the downstream site.**

There are considerable issues to be considered and evaluated in order to make a determination on the feasibility or selection of either site. The budget developed is intended to provide the information necessary to decide how and or if to proceed with future planning and development. Bottom line is that information presently available is inadequate to make a determination to go forward and the local entities are unable to fund the necessary studies, therefore their only recourse is to request state and federal assistance.

When considering the development and planning of this site the NDDOT commented and reference is their letter that the VOLO would be responsible for permitting, assurances and other items. This is inconsistent with COE and state funding policy as VOLO is a private organization and would not have the resources or the ability to contract with the state or federal government to construct, maintain or otherwise develop this facility. That responsibility will have to be taken by another entity such as the Emmons County Water Resource District, who has expressed an interest in working with the VOLO on this project. The State of North Dakota is another option to be considered. The logistics of these issues remain to be evaluated as project planning proceeds. Stakeholder meetings are included in the feasibility study budget. The proposed feasibility study will assist in defining these issues and the positioning of the various stakeholders and their future involvement in the process.

We understand Senator Dorgan expressed an interest in assisting in the development process at some point, however again without adequate information it could not be sold for funding at the federal level. The availability of federal funding is unknown.

If you have any questions I would be happy to answer them. While I am planning to attend the hearing I am not representing anyone and do not plan on testifying.

Site Information:

Location: The Highway #1804 embankment site is located on Beaver Creek in Emmons County approximately 54 miles southeast of Bismarck. See attached aerial map along Highway #1804 to reach the site.

Ownership: All the properties within the reservoir are owned by the COE.

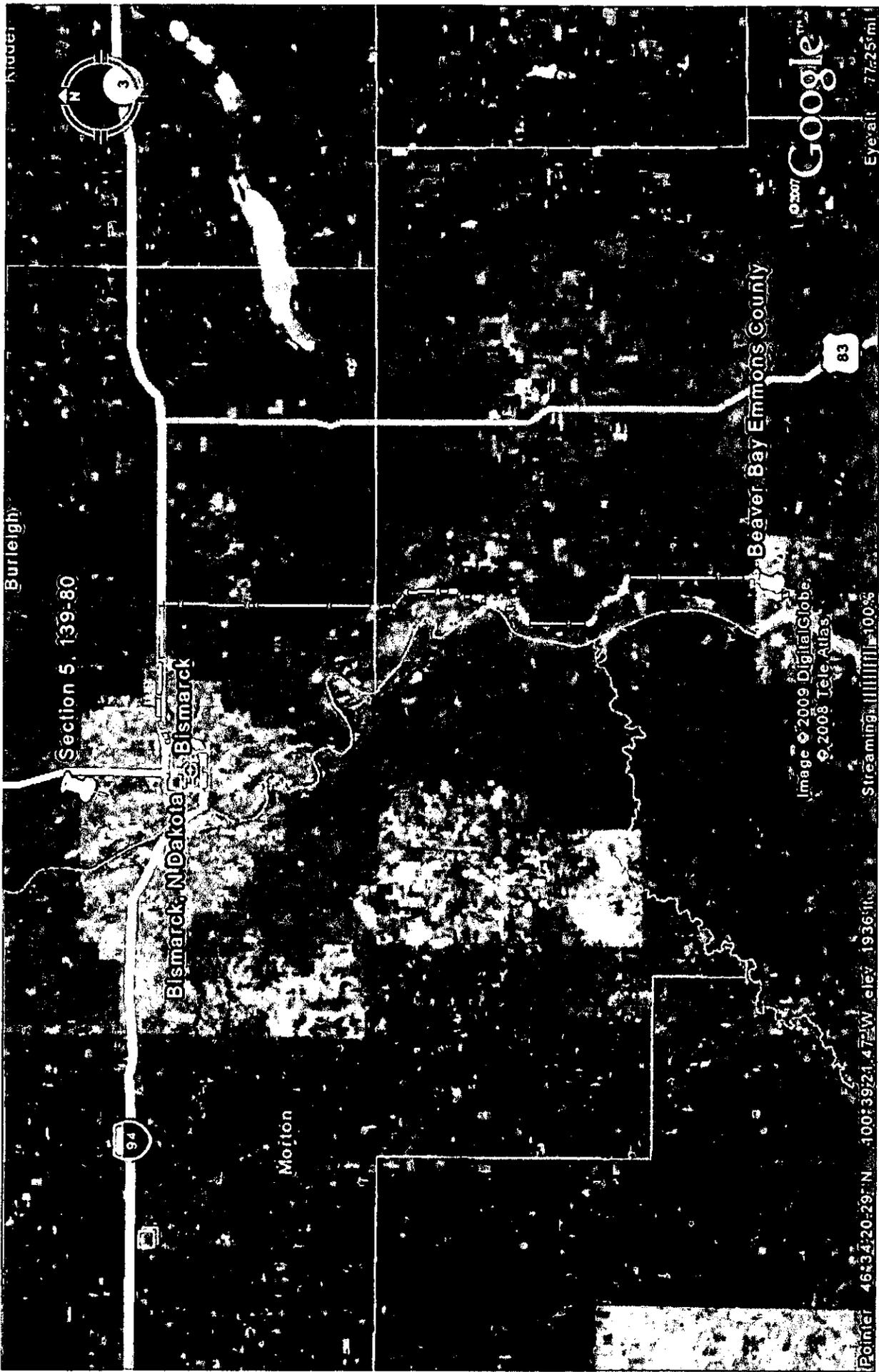
NDDOT: The NDDOT Bridge Plans indicate an elevation of roughly 1632 for the top of road, with the channel under the bridge having a bottom elevation of 1581 for a difference of 51 feet. There were at least two borings associated with the bridge that were probably used for the sheet pile design. These extended from elevation 1595.5 and 1597.6 to depths of 1545.5 and 1547.6 respectively. These borings indicate everything from silty sand to fat clay. This would be the potential native soil within the channel area or foundation materials.

Embankment Height $1632 - 1581 = 51$ feet
Embankment Length 2,800 feet (Google Measurement)

Oahe: The Oahe Reservoir varies in water surface elevation from 1580 to as high as 1620. That means various conditions will exist on the embankment. The sponsors have talked about access from Oahe into the newly created reservoir; however the ability to do this would seem problematic. If the waters were at 1620 the clearance under the roadway would be around 9 feet or less. Average operation elevations as I recall are around 1600 – 1610 ; I did not go back to review or validate at this point.

Downstream Alternative: Assumed to have a top of dam around 1630+ and the base is likely around 1575 so the height would be around 55 feet at the upper range. Not sure what the water levels would be held at – that remains to be considered.

Embankment Length 2,350 feet (Google Measurement)



Burlington

Section 5, 139-80

Bismarck, N. Dakota

Motion

Beaver Bay Emmons County

Google

© 2007

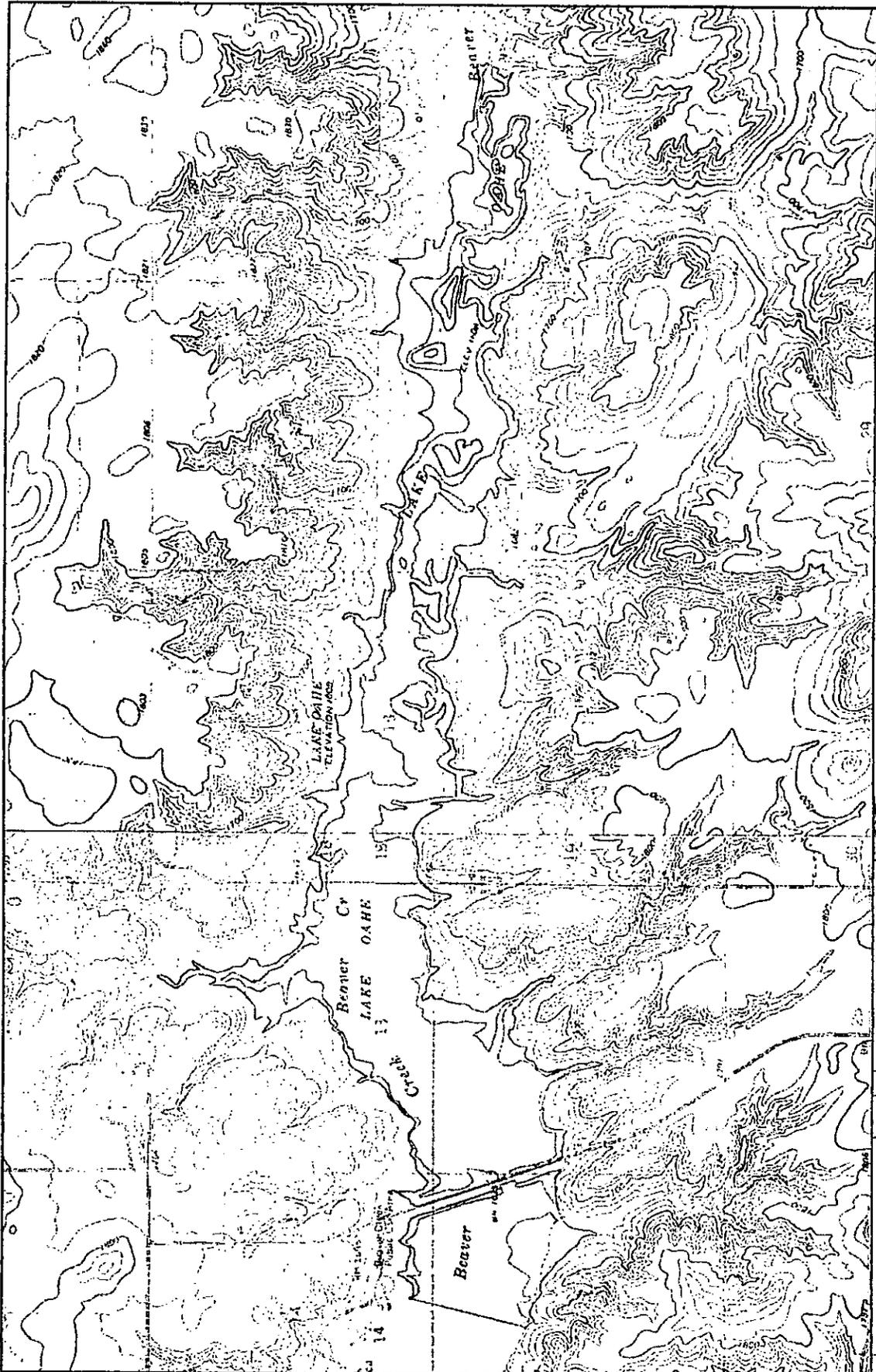
Eye alt 77.255mi

Image © 2009 DigitalGlobe
© 2008 Tele Atlas

Streaming 100%

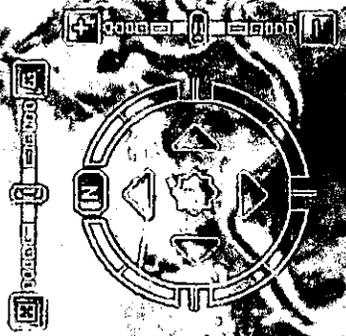
Point 46°34'20-29" N 100°39'21-47" W elev 1936 ft





 Houston Engineering, Inc. 3713 Lakewood Blvd. Houston, Texas 77057 TEL: (713) 331-0330 FAX: (713) 331-0330		Drawn by TECH Checked by ENGR	Date X-DATE Month AS SHOWN	TITLE OF PROJECT OWNER ADDRESS	SHEET TITLE MORE SHEET TITLE PROJECT NO. 0000-000	SHEET 1 of 2
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DATE	BY



Beaver Bay, Minnesota

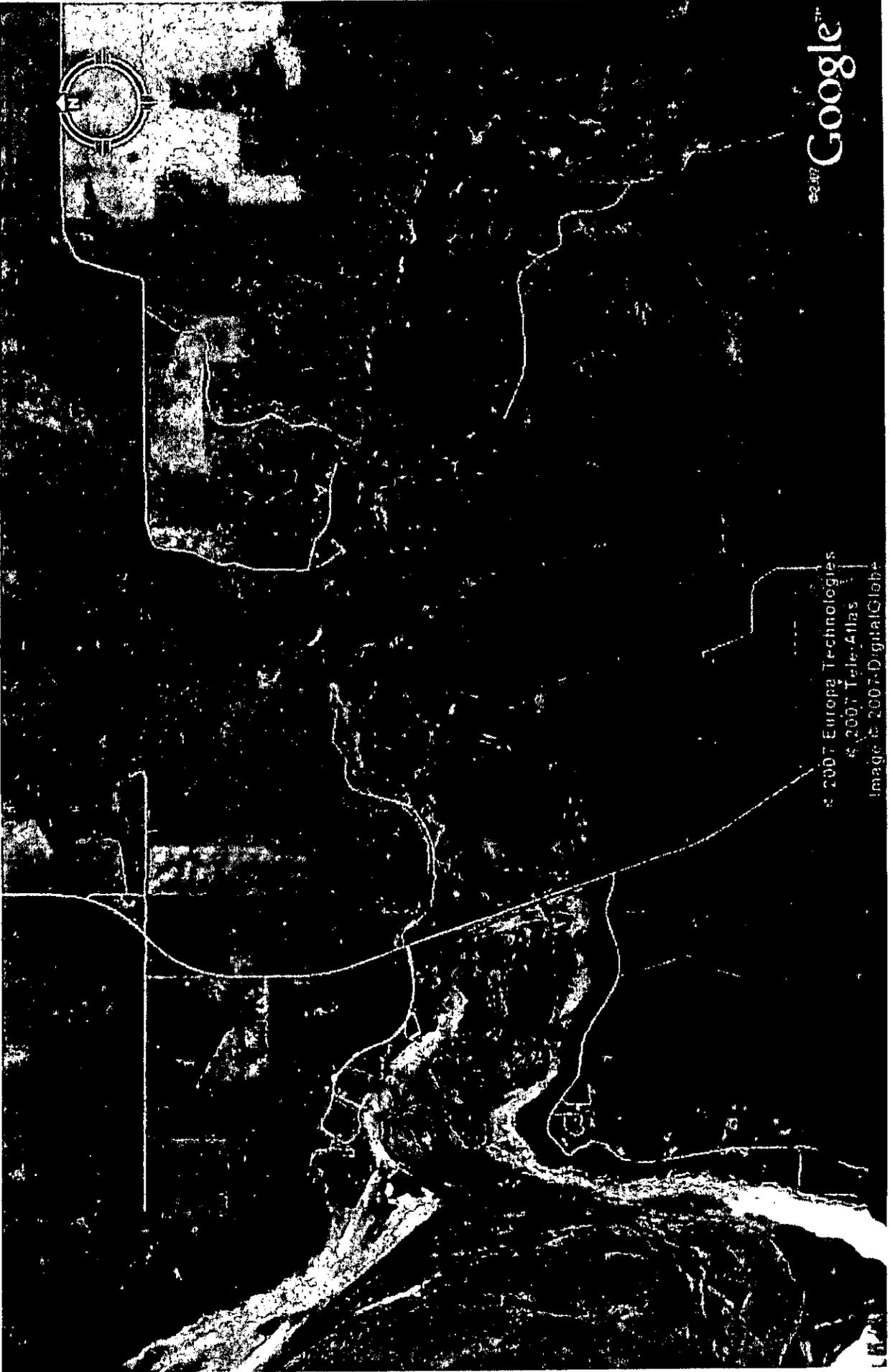
Google

Image © 2009 DigitalGlobe
© 2008 Terra Atlas

Pointer 46°14'47.58"N 100°31'40.76"W elev 1608ft

Streaming 100%

EyeAlt 9890ft



© 2007 Google™

© 2007 Europa Technologies
© 2007 TeleAtlas
Image © 2007 DigitalGlobe



BEAVER BAY IMPOUNDMENT

Project History

- **First studied by North Dakota State Water Commission in May, 1992**
 - Preliminary Engineering Report completed
- **Voices for Lake Oahe became involved in February, 2003**
- **First meeting to discuss project in July, 2004**
 - Voices for Lake Oahe
 - Emmons County Water Resource District
 - U.S. Army Corps of Engineers
 - ND Game & Fish Department
 - Emmons County Soil Conservation District
 - Natural Resources Conservation Service
 - ND Department of Transportation
- **Preliminary design from Dennis Meyer Engineering in June, 2007**
 - \$2,100 paid by Voices for Lake Oahe
 - \$2,100 paid by Emmons County Water Resource Board
- **Water Impoundment meeting held on August 16, 2007**
 - ND Game & Fish
 - ND Department of Transportation
 - ND State Water Commission
 - Emmons County Water Resource District
 - U.S. Army Corps of Engineers
 - Emmons County Commission
 - Natural Resources Conservation Service
 - Senator Dorgan's Office
 - ND Governor's Office
 - Linton Industrial Development Corporation
 - ND Irrigation Association
 - District 28 Senate & House
 - Meyer Engineering
 - Emmons County Record
 - Burleigh County Water Resource District
 - City of Linton
- **Received estimate for feasibility study on January 12, 2009 ****
- **Senate Bill No. 2305 (Beaver Bay Embankment) introduced on 1-19-09**

** Document attached

Preliminary Impoundment Information

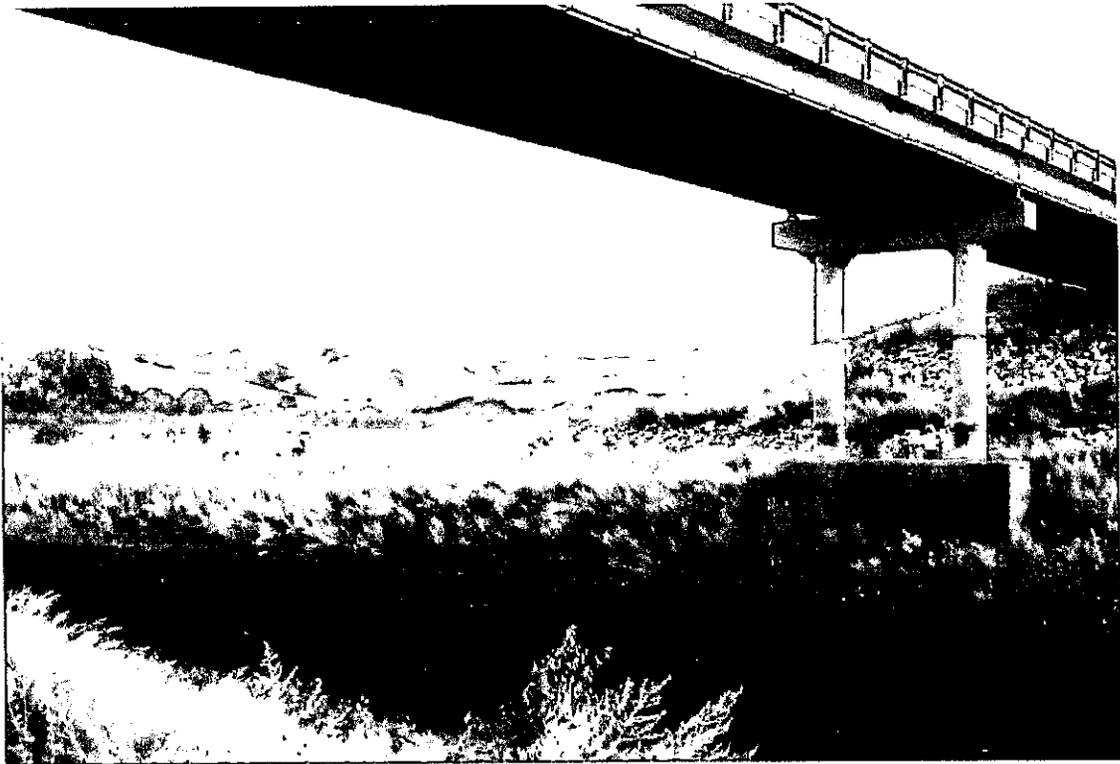
- **The property on which this reservoir would be located is within the U.S. Army Corps of Engineers federal property boundaries.**
 - This will eliminate the need to acquire additional land
- **Based on a preliminary topographical evaluation, the reservoir would be approximately 600 to 950 acres.**
 - 281 (87%) of existing lakes in ND are less than 1000 acres
 - 42 (13%) of existing lakes in ND are more than 1000 acres
- **Maximum depth at the highway bridge will be 30 to 35 feet**
- **The structure will have a removable section to allow fish passage**

Water Levels

- **Multi-purpose pool elevation**
 - 1607.5
- **Maximum pool elevation**
 - 1620.0
- **Lowest pool elevation**
 - 1570.2 (2006)
- **Highest pool elevation**
 - 1618.7 (1997)
- **Current pool elevation**
 - 1593.05 (1-24-09)

Pictures of Beaver Bay and Maps of Area

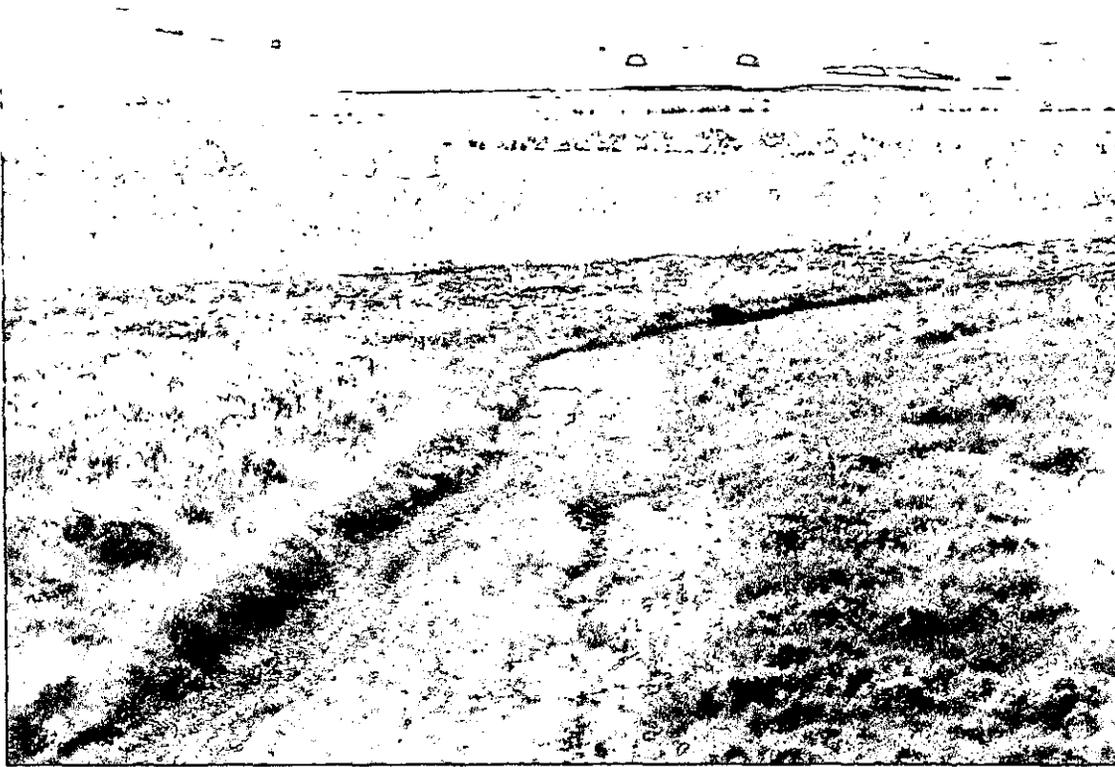
Following 6 pages



Beaver Bay Recreation Area Bridge - today



Beaver Bay Recreation Area – 1999
(Bridge in background)



Beaver Bay Recreation Area - today



Beaver Bay Recreation Area - 1999

Beaver Bay Recreational Campground (today)



Beaver Bay Boat Ramp (today)

Supporting Documentation

- **North Dakota Department of Transportation**
 - Letter dated 2-14-07 *
 - Letter dated 9-20-07 *
 - Letter dated 5-22-08 *
- **North Dakota State Water Commission**
 - Letter dated 8-17-07 *
- **U.S. Army Corps of Engineers**
 - Letter dated 1-28-09 *
- **Voices for Lake Oahe**
 - Minutes from joint meeting on 8-16-07 *

*Same
given to
all committees!*

Letters of Support

- **Emmons County***
- **City of Linton***
- **Linton Industrial Development Corporation***
- **Linton Chamber of Commerce***

* Document attached

BEAVER BAY EMBANKMENT

Project History

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 - Preliminary Engineering Report completed

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 - Emmons County Record
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Pictures of Beaver Bay and Maps of Area

Following 6 pages

Beaver Bay Embankment

Primary Cost Issues for the Feasibility Study

Note these should be completed for both sites and costs provided for each

1. Site Surveys - Need for boring locations too. **\$ 20,000 Both**
 - a. USGS and COE Topography available, though need better site data
 - b. Given past issues with topography, there have been problems with estimates we might consider flying to validate reservoir pool area too. (Cost Includes Aerial Topography)
2. Hydrology/Hydraulics **\$ 14,000 Both**
 - a. Extension of May 1992 SWC Study – (Gregg Thielman)
 - b. This will give an indication on the size of the spillway required
 - c. Structural Design for Design Event
 - d. Base flows for fish ladder?
3. Geotechnical **\$ 94,000 Roadway \$ 65,000 Downstream**
 - a. Borings and Soils Analysis
 - i. Embankment and Borrow Areas
 1. Borrow location unknown – within reservoir or on hills
 - b. Highway Embankment to include constructed condition assessment
 - c. Foundation Assessment – Both alternatives
 - i. Possible alluvial silts as this is near Oahe Reservoir/Missouri River
 - d. Slope Stability
4. Archeological Investigation **\$ 15,000 Each Site – Class I**
 - a. Class III – Site Inspection
5. Embankment and Structural Measures **\$ 20,000 Each Site**
(Plan and Profile – See SWC Report)
 - a. Low Level Drawdown
 - b. Principal Spillway
 - c. Emergency Spillway (Dam Design Criteria)
 - d. Fish Ladder (NDGF & USFWS requirement – spawning area)
 - e. Ability to allow boat traffic when Oahe floods out this reservoir?
6. Environmental – Issue Identification **\$ 25,000 Roadway \$ 15,000 Downstream**
 - a. An EA at this time is not required, though we project some water quality review
 - b. Recognize in the design that a fish ladder has been requested
 - c. We would not get into details here, just create a list....
7. Stakeholder/Agency Meetings and Coordination (5) **\$ 10,000 Roadway \$ 3,000 Downstream**
 - a. This could be costly and affect scope as issues are identified
8. Engineering Opinion of Probable Costs **\$ 4,000 Roadway \$ 4,000 Downstream**
9. Study Report with Executive Summary **\$ 15,000 Roadway \$ 3,000 Downstream**

Study Estimate	=	Highway Embankment	\$217K
		Downstream	\$125K
		Total	\$342K

EMMONS COUNTY STATE'S ATTORNEY

Donald R. Becker

Courthouse • P.O. Box 658
Linton, North Dakota 58552-0658
(701) 254-4948 • Fax: (701) 254-4943
e-mail: dbecker@nd.gov

February 3, 2009

To Whom It May Concern

RE: Feasibility Study for Beaver Bay Embankment
Senate Bill #2305

Good Day:

The Emmons County Commission has asked that I notify interested parties that at its regularly scheduled meeting on February 3, 2009, it again discussed Senate Bill #2305. The Emmons County Commission unanimously supports funding for this feasibility study.

This issue is not new to the county. The Emmons County Commission has supported action contemplated by the study for several years. The economic benefit realized by the county from recreational use of the Beaver Bay area is considerable. During our recent long lasting years of drought, it has become all too clear the effect of lack water in the bay for recreational purposes. We have seen businesses close and felt the further impact of a sever decline in traffic within the county associated with recreational use of the river.

The Emmons County Commission strongly urges support for this worthwhile project.

Sincerely,



Donald R. Becker
Emmons County State's Attorney

DRB:abw

pc: Emmons County Auditor

City of Linton

**P.O. Box 57 (101 NE 1st Street)
Linton, ND 58552-0057
(701) 254-4460 Fax (701) 254-4382**

February 3, 2009

Randy Bosch
Voices for Lake Oahe
P.O. Box 482
Linton, ND 58552

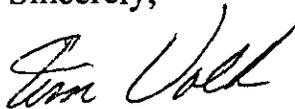
Dear Mr. Bosch,

The Linton City Council, at its regularly scheduled meeting on February 3, 2009, voted unanimously to support the Beaver Bay Embankment Project. The Beaver Bay recreational area is an asset to the City of Linton, Emmons County, and the south central region of the state.

The embankment will allow the Beaver Bay area to be utilized despite low water levels in the Missouri River. This will provide a positive economic impact to the area.

Thank you for your continued efforts on the proposed embankment project.

Sincerely,



Tim Volk
Linton City Mayor

CITY OF LINTON
LINTON INDUSTRIAL DEVELOPMENT CORPORATION

PO Box 433 • Linton, ND 58552
Phone: 701-254-4267 • Fax: 701-254-4223 • E-mail: lidcbek@bektel.com

February 4, 2009

Randy Bosch
Voices for Lake Oahe
PO 482
Linton, ND 58552

Dear Mr. Bosch;

The Linton Industrial Development Corporation (LIDC) is in full support of the Beaver Bay Embankment Project.

The current condition of the Beaver Bay area and the negative economic impact it has had on the region has been a point of discussion for the LIDC Board of Directors over the past few years. Traffic has slowed, sales have declined, businesses have closed, and jobs have been lost due to the low water level in the bay. The embankment should allow the bay area to be used on a continual basis, reviving the economy that has been slowed due to the low water conditions which have left the bay unusable.

We would like to thank the "Voices for Lake Oahe" for all the time and effort that you have given this project.

Sincerely,



Ron Kaiser
LIDC President

**Linton Chamber of Commerce
P.O. Box 493
Linton, N.D. 58552-0493
701-254-4537**

February 4, 2009

Sharon Jangula, Development Coordinator
Linton Industrial Development Corporation
P.O. Box 433
Linton, N.D. 58552-0433

Dear Sharon:

The Linton Chamber of Commerce supports the proposed Beaver Bay Impoundment as proposed by Voices for Lake Oahe. The impoundment would allow the Beaver Bay area to be used during drought years and would significantly increase economic activity in the area.

The project would also provide recreational activity for the south central area of the state. People from across the state—many from the eastern part of North Dakota—fish, hunt, and camp in our area, so it is far from being only a local project.

The Linton Chamber of Commerce urges the Senate to support this proposal that would benefit Emmons County and all of North Dakota.

Sincerely,



Leah Burke
President
Linton Chamber of Commerce

Economic Impact

- **Average annual daily traffic**
 - 535 in 1998
 - 325 in 2002
 - 205 in 2007

- **Visitation numbers for Beaver Creek (Bay) Campground**
 - 18,060 in 1996
 - 10,409 in 2006
 - 12,509 in 2007

Information not available at this time for 1997 thru 2005

- **Business closings**
 - Restaurant/C-Store/RV Park closed in 2005 – direct result of low/no water
 - Conference center closed in 2003 – low/no water had impact
 - Grocery store closed in 2006– low/no water had impact
 - Loss of jobs: full-time, part-time, seasonal
 - Loss of sales
 - 16% decline in local sales tax revenue from 1997 to 2003

- **Beaver Bay Recreational area identified as important to economic sustainability and growth**
 - 2000 Emmons County Strategic Plan
 - Fishing identified as major asset
 - Tourism - develop materials promoting attractions including Beaver Bay Campground
 - 2007 City of Linton Strategic Plan
 - Vision: Natural Resources will be a strong draw for tourism
 - Goal: Attractive and functional Missouri River recreational areas, including Beaver Bay Campground
 - Support efforts for Beaver Bay Impoundment

- **Fishing value of lake placed between \$225,000 and \$600,000 each year**
 - “We estimated potential usage based on water bodies of similar size. Typically, a 1000 acre reservoir in North Dakota will have about 3 to 8 angler days of effort per acre per year. That would mean about 3,000 to 8,000 angler days of use each year over the life of the reservoir. The U.S. Fish and Wildlife Service has stated that an angler day is worth \$75, which would place the fishing value of the lake between \$225,000 and \$600,000 each year. Over the life of the reservoir (50 years) this would total \$30 million dollars. This, of course, does not include any maintenance costs, development, etc. for public use, and assumes that the proposed reservoir would act similar to other lakes of that size.” *Paragraph excerpt in letter from North Dakota Game & Fish Department to the Voices for Lake Oahe dated November 7, 2005.*

Attachment #2

EMMONS COUNTY

STATE OF NORTH DAKOTA



LINTON, NORTH DAKOTA 58552

OFFICIALS:

Marlys A. Ohlhauser, Auditor
Florence Plienis, Treasurer
Gary R. Sanders, Sheriff
Donald R. Becker, State's Attorney
Anita Ibach, County Recorder
Shawna Paul, Supt. of Schools
Ardella Deis, Tax Director
Jeffrey Ohlhauser, VA Officer
Alex Jahner, Road & Shop Foreman

COMMISSIONERS:

Jeffrey J. Magrum, 1st District
Francis W. Lawler, 2nd District
Alvin M. Tschosik, 3rd District
Gary Keller, 4th District
Dennis J. Hummel, 5th District

March 11, 2009

Dear Committee Members:

At the February 3, 2009 Emmons County Board of Commissioners Meeting, the Commission approved a motion that the Emmons County Commission support a Comprehensive Study for the Beaver Bay Impoundment Project, Senate Bill #2305.

Sincerely,

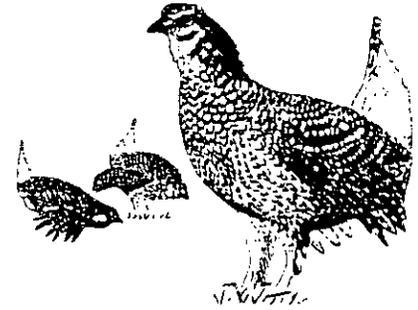
Marlys Ohlhauser
Emmons County Auditor



North Dakota Chapter

THE WILDLIFE SOCIETY

P.O. BOX 1442 • BISMARCK, ND 58502



**TESTIMONY OF MIKE McENROE
NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY
on SB 2305
HOUSE NATURAL RESOURCES COMMITTEE
March 13, 2009**

Chairman Porter and Members of the Committee:

For the record I am Mike McEnroe and I am representing the North Dakota Chapter of The Wildlife Society, a group of approximately 350 wildlife and natural resources professionals in the State.

The Chapter does not believe that SB 2305, a feasibility study for a proposed embankment to create a fishing and recreational reservoir at Beaver Bay in Emmons County, focuses on the best way to improve recreational opportunities at Lake Oahe. Ordinarily, the Chapter would not oppose a study, an effort to increase the knowledge in order to make an informed decision later on. However, in the case of this proposal I suggest that you can make that decision now.

It is our belief and group consensus that this will be a marginal fishery at best. The proposed reservoir is relatively small and shallow. Equally important, there is a self-sustaining carp population, both upstream and downstream, that will thrive in this shallow environment. Carp have the real potential to immediately negate any positive fisheries value within this proposed reservoir. The impoundment site is literally across the road from a world class fishery in Lake Oahe.

Beaver Bay and Beaver Creek are both important spawning and rearing areas for walleye and northern pike. A proposed embankment in this area

would block upstream spawning and rearing areas for fish that return to Lake Oahe and the Missouri River.

The proposed impoundment would also flood valuable pheasant and deer habitat, including public lands with great hunting opportunities.

We recognize that during the last few years, fishing and recreation opportunities on the upper end of Lake Oahe have been difficult due to drought and very low reservoir levels. However, in future dry times, water levels in the proposed impoundment will also drop and limit or restrict opportunities on the proposed small reservoir.

A better solution to improve the recreational opportunities in the Lake Oahe area will be continued support for the modernization of the 1944 Flood Control Act that specifies the management of the Missouri River. Your interim Natural Resources Committee started that process last summer with its letter of support to Congress (copy attached). Fixing management of the Missouri River offers the best opportunities to improve recreation at Beaver Bay by redirecting management of the River to meet the contemporary water needs of the area. The feasibility study in SB 2305 detracts from the real solution, contemporary Missouri River management, that can resolve problems not only at Beaver Bay, but along the whole river.

Thank you for the opportunity to comment on SB 2305. I would answer any questions the Committee may have.



North Dakota Legislative Council

AL CARLSON
State Representative
Chairman

JIM W. SMITH
Director

JAY E. BURINGRUD
Assistant Director

JOHN WALSTAD
Code Revisor

STATE CAPITOL, 600 EAST BOULEVARD, BISMARCK, ND 58505-0360 (701) 326-2916 TTY: 1-800-366-6885

August 8, 2008

Honorable Robert C. Byrd
Chairman
Senate Committee on Appropriations
311 Hart Senate Office Building
Washington, DC 20510

Dear Senator Byrd:

The North Dakota Legislative Council's interim Natural Resources Committee is studying how North Dakota might pursue additional uses of Lake Sakakawea and Missouri River waters for such beneficial purposes as domestic and industrial uses, recreation, fish and wildlife, and irrigation, and how the state, to enhance its use of the lake and river, might promote congressional review of the Flood Control Act of 1944 and a reexamination by the Corps of Engineers of the way in which it manages the Missouri River system.

The committee, in concurrence with the chairman of the Legislative Council, supports Section 108 of S. 3258, a bill making appropriations for energy and water development and related agencies for the fiscal year ending September 30, 2009, and for other purposes. Section 108 authorizes the Secretary of the Army to conduct a study of the Missouri River projects located within the Missouri River Basin with the express purpose to review the original project purposes based on the Flood Control Act of 1944, as amended, and other subsequent relevant legislation and judicial rulings to determine if changes to the authorized project purposes and existing federal water resource infrastructure may be warranted.

As selected representatives of North Dakota, the members of the Natural Resources Committee feel that Congress needs to objectively evaluate the original project purposes to determine whether meaningful changes may be warranted and to establish a timeline to meet those changes. As the Secretary studies current and future needs of the Missouri River Basin, we request that the study include the economic, social, health, environmental, irrigation, and cultural needs of the Missouri River Basin. This is an issue of great importance to the state of North Dakota and therefore we urge the Senate Committee on Appropriations, the Congress of the United States, and the President to support this study.

Sincerely,

Senator Tim Flakoll
Chairman
Natural Resources Committee

TF/AL

President George W. Bush
Members of the Senate Committee on Appropriations
Congressional Delegations from Missouri River Basin
Mr. Woody Corbine, Mni Sose Intertribal Water Rights Coalition, Inc.
Mr. David Pope, Missouri River Association of States and Tribes
Representative Al Carlson, Chairman, Legislative Council