2013 HOUSE ENERGY AND NATURAL RESOURCES

HB 1338

2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

HB 1338
February 7, 2013
18493

☐ Conference Committee

To provide for the return of certain property managed by the U.S. Army Corp. of Engineers

Minutes: *1-6 Attachment*

Rep. Porter: We will open the hearing on HB 1338

Rep. Brandenburg: The bill that we have here deals with the Corp. Land and the high water level on both Lake Oahe and Lake Sakakawea to the takings line. We had a good meeting this morning with the tribes and the tribes are here today. I handed out an amendment (Attachment 1) the governor would work with the Corp. to get the land back. We may need to amendment these amendments; and ask the State of N.D.to return to the riparian owner through working with the Tribal Indian Affairs Division and the non-tribal land working with the State Land Dept.

Rep. Schmidt: On line 8 we believe it should be amended to 1620 and the 49286 amended to 493.70

Rep. Brandenburg: I talked with Mr. Englehardt we may need to make some adjustments on those levels and I am open to that.

Herb Grenz: I am representing four counties in N.D. that are affected by Lake Oahe and the counties are; Sioux, Morton, Burleigh, and Emmons Counties. (Attachment 2)

Rep. Brabandt: How many total acres were taken by the Corp.?

Herb Grenz: In N.D. it is 550,000 acres.

Rep. Brabandt: Just in N.D.?

Herb Grenz: Yes when they narrowed up the south of Sioux City, Iowa, Nebraska, and Kansas they don't talk much about this but they gained about 250,000 acres.

Glenn McCrory: I live west of Linton on the Oahe Reservoir. There are places where the Corp. didn't take property; for they took flowage easements. The wildlife doesn't care if they are on the Corp. Land or if they are on private property. When the Corp. was talking about charging for water and you had to get a permit to get to the water. The thing they left out was to get a permit to cross our land they didn't think they needed a permit to cross our land.

Merlin Leithold: I am with the N.D. Weed Control Association; the words noxious weeds have been spread around on the two bills. Our association deals not only with the city and county weeds boards in the state we also work with the Corp. and Game and Fish and other state agencies. The Corp. is trying; financially they don't know where they will be in the next two years. I think the Corp. People would be more than willing to give up some of that land so they wouldn't have to worry about spraying the land. They are also having problems finding people to spray because no one wants to deal with the chemical anymore. We feel under state law we cannot as county weed officers go and force those that have federal to spray. We can force the State Land and the landowners to spray.

Fred Fox: I am the Vice Chairman of the MHA Nation. I am here to present testimony on behalf of chairman Tex Hall. (Attachment 3-4) I respectfully provide this testimony in opposition to HB 1338. We also oppose the HCR 3010 both of which address the return of access lands around Lake Sakakawea. We will stand with you in your efforts to regain the access lands in N.D. that were taken outside the Nation; but we will continue to fight any effort by the state to acquire the lands that were taken unjustly from the MHA. I urge you to clarify this bill that does not apply to the access lands taken in the boundaries of Fort Berthold and Standing Rock Reservations.

Rep. Porter: With that language going back to the exterior boundaries of the two reservations and the checker board effect of the land where some of it is held in title and some of it is fee land and some owned by nontribal members at the time of the taking. How do we address their concerns as citizens in the state of N.D.?

Fred Fox: Include us in the tribal governments and for us to have a government to government relationship to return these homelands. But having a bill exclude us and not recognizing us as a member of these taken lands. We want to be sure that you mention the Mandan Hidatsa and Arikara Nation and the Standing Rock Sioux tribe.

Rep. Porter: So does the amendment need to say all lands on the exterior boundaries of that reservation, it's any trust lands of the exterior boundaries of that reservation so that the title land is excluded to whoever the previous owner was.

Fred Fox. Yes.

Chris Rausch: Attorney with in-house legal department with the Standing Rock Sioux Tribe. I am joined today with Evert Ironeyes who is the Water Resource Director for the tribe. We understand that there are amendments that are being discussed and that are being passed around. The thing that I would to point out is that in the testimony that you have before you which is Charles Murphy's testimony (Attachment 5) is to be part of these discussions. We are opposed to the bill as it is presently written.

Michael McEnroe: N.D. Chapter of Wildlife Society; I am here to oppose HB 1338 which calls for the return of certain property along Lake Oahe and Lake Sakakawea to returned to the neighboring landowners. (Attachment 6)

Rep. Keiser: If the state or some entity used commendation to take land and then later on decided not to use that land for the purpose for which the commendation occurred. Should that land go back to the owner?

Michael McEnroe: That is the process that was done in South Dakota about 10 years ago.

Rep. Keiser: In your opinion should that land go back to the property owner?

Michael McEnroe: No it should not. It should go to the tribe or to the state and that is the process that was done in South Dakota 10 years ago.

Mike Donahue: N.D. Wildlife Federation; and as in the past we are opposed to this activity and we are opposed to HB 1338 and ask for a do not pass.

Rep. Porter: We will close the hearing on HB 1338.

2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

HB 1338
February 21, 2013
19324

☐ Conference Committee

To provide for the return of certain property managed by the U.S. Army Corp. of Engineers

Minutes:

1-2 Attachment

Rep. Porter: We will open HB 1338.

Rep. Schmidt: Introduces the amendments .2001 and then a copy of 1338 with those amendments in it. (Attachment 1) We have input from Standing Rock and Three Affiliated Tribes with respect to those amendments.

Rep. Porter: The way the amendment reads and the marked up version reads it still says to the neighboring land owners.

Rep. Schmidt: That should be removed.

Rep. Porter: I some concern with us telling the governor to support an agreement that we haven't reviewed.

Rep. Schmidt: That wordage is from Standing Rock and the Three Affiliated Tribes they understand the wordage better than I.

Rep. Keiser: In the original bill is there a way that on line 9 to strike "neighboring" and put "landowners as of a date certain"?

Rep. Schmidt: That should be "land outside the reservation boundaries the land would be returned to the state of N.D."

Rep. Porter: I am very hesitant to open this up to a hearing level of discussion based that language. If the tribes want to have language like this placed in the bill and it passes the house then, they can speak during the senate committee hearing so all sides can be there.

Rep. Schmidt: The governor cannot negotiate with the Corp of Engineers for the return of return of land on the reservation.

Rep. Porter: We should have a 2002 amendment.

Rep. Schmidt: Now you have the 2002 for the amendments and then attached to that we have the bill as it would be with those amendments. (Attachment 2) I will move that we accept those amendments 2002 for HB 1338.

Rep. Porter: We have a second from Rep. Silbernagel.

Rep. Kelsh: What happens if the lands are transferred back to the state?

Rep. Schmidt: This is similar to what happen to the state of S.D. with the return of the corp. lands which went back to the state. In the Oahe side of the river already maintains the noxious weed control as well as all the management.

Rep. Brabandt: How many acres are we talking about?

Rep. Schmidt: About 40,000 acres.

Rep. Hunskor: Do you see the intent of this that the land would stay as it has been?

Rep. Schmidt: I don't see the state doing anything else with that.

Rep. Porter: The mineral rights stay with the individual that owned the land when it was taken.

Rep. Keiser: Originally the land was owned by somebody and then the Army Corp. of Engineers took the land. We are asking for the Army Corp. to that land back to the state of N.D. Are asking the state to give the land back to the original owners?

Rep. Schmidt: The landowners had to give up ownership for that land and it up to 1620 in elevation. A lot of that land was purchased in 1964-1966 that was for flood protection. A lot of those acres never flooded before 2011 and so the state of N.D. has maintained the land so why shouldn't the state get possession of those lands?

Rep. Keiser: If I could get the land back I would be happy to maintain it and it seems fair to give it to the owner of that land.

Rep. Schmidt: I agree; the landowners that I represent would be more than to leave the infrastructure under state control.

Rep. Porter: I would view this amended version of this bill as being step one of the negotiation process to then look at the states infrastructure and the state of N.D. investment and then have the next level of negotiation with the owner after it came back to the states control.

Rep. Froseth: Would the intent of this be that any land that is suitable for grazing or farming would be leased or sold to the original landowner or anyone interested in the land.

Rep. Porter: That is why I think this is step one. You can't have the land going back to the landowner without the consideration of the state to decide which land should or not be returned to the individual landowners.

Rep. Schmidt: We were required to give up ownership of that land and a number of acres of that land is higher than the elevation of the dam. They had to relinquish ownership of agriculture lands because they were going to flood. But most of that land only flooded once and that was in 2011.

Rep. Hofstad: I am concerned because most of the testimony came from landowners and I hope it is the intent that that we will negotiate with the landowners.

Rep. Porter: Voice vote carries. We have the amended version of HB 1338. We have a motion for a do pass as amended By Rep. Schmidt and a second from Rep. Nathe.

Yes 9 No 4 Absent 0 Carrier: Rep. Schmidt

13.0547.02005
Title.03000

Adopted by the Energy and Natural Resources Committee

February 21, 2013

2/21/13
JDNC

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1338

Page 1, line 2, replace "corp" with "corps"

Page 1, line 2, replace "neighboring landowners" with "state of North Dakota"

Page 1, line 5, replace "**landowners**" with "**state**"

Page 1, line 7, after "lands" insert "outside the boundaries of the Fort Berthold Indian Reservation"

Page 1, line 8, after "lands" insert "outside the boundaries of the Standing Rock Sioux Reservation"

Page 1, line 8, replace "1,617" with "1,620"

Page 1, line 8, replace "492.86" with "493.86"

Page 1, line 9, replace "neighboring landowners" with "state of North Dakota. Any agreement for the return of lands described under this section must include provisions for the protection of native cultural and religious sites, artifacts, and human remains. The governor may support tribal efforts in negotiating with the United States army corps of engineers"

Renumber accordingly

Date: 2-21-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1338

House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Motion Made By Rep Schmidt Seconded By Rep. Silbernagel

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter			Rep. Bob Hunskor		
Vice Chairman Chuck Damschen			Rep. Scot Kelsh		
Rep. Jim Schmidt			Rep. Corey Mock		
Rep. Glen Froseth					
Rep. Curt Hofstad					
Rep. Dick Anderson					
Rep. Peter Silbernagel					
Rep. Mike Nathe					
Rep. Roger Brabandt					
Rep. George Keiser					

Total (Yes) No

Absent

Floor Assignment Voice carrier

If the vote is on an amendment, briefly indicate intent:
to move ~~amendment~~ 2002

Date: 2-21-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1338

House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0547.02005

Action Taken

Motion Made By Rep Schmidt Seconded By Rep Nathe

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter	✓		Rep. Bob Hunskor	✓	
Vice Chairman Chuck Damschen	✓		Rep. Scot Kelsh		✓
Rep. Jim Schmidt	✓		Rep. Corey Mock		✓
Rep. Glen Froseth	✓				
Rep. Curt Hofstad		✓			
Rep. Dick Anderson	✓				
Rep. Peter Silbernagel	✓				
Rep. Mike Nathe	✓				
Rep. Roger Brabandt	✓				
Rep. George Keiser		✓			

Total (Yes) 9 No 4

Absent 0

Floor Assignment Rep Schmidt

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

Do pass as amended

REPORT OF STANDING COMMITTEE

HB 1338: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1338 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "corp" with "corps"

Page 1, line 2, replace "neighboring landowners" with "state of North Dakota"

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Renumber accordingly

2013 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1338

2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee
Missouri River Room, State Capitol

HB 1338
03/28/2013
Job Number 20645

☐ Conference Committee

Committee Clerk Signature	Carie Winings

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide for the return of certain property managed by the United States army corps of engineers to the state of North Dakota.

Minutes:

Chairman Dever: Opened the hearing on HB 1338.

Representative Brandenburg, District 28: Testified as sponsor and to explain the bill. Senator Erbele from my district is in full support of this bill as well and wanted it on the record as such. This bill has quite a history. We are talking about the land that is above the water and has never had a drop of water. It goes from the edge of the water to the takings line. It is a huge amount of land. It was taken for flood protection and generation. I have been in contact with the tribes on this bill and they are way ahead of is on this issue and they will speak to that. When this land was taken by the army corps of engineers, it was not taken right and that is why we are here talking about it. We are working with the Governor to negotiate to get this land back to the state. There are many interests in the land and there is a reason why it keeps coming back into conversation. There were mistakes made when it was done back in the 60's. This needs to be addressed, and I think the parties are coming together and working together.

(5:45) Senator Cook: What happens with the mineral rights; do you assume that they get severed?

Representative Brandenburg: That is another issue that we will have to talk about with all the parties that are concerned here. We are trying to first negotiate with the federal government and figure that out after that point.

Senator Cook: Can the Governor negotiate with the corps and get this land without this bill?

Representative Brandenburg: I believe he has been working on it for some time to a certain amount, but I think there are other parties interested in working with him and being a part of it, and if we put more emphasis on it then we can get this done together.

Senator Cook: We have received a lot of e mails on this with concerns of this becoming private land and will no longer be open for recreational purposes that many use it for today. How do you speak to that concern? What do see this land ultimately being used for?

Representative Brandenburg: Representative Porter and I have been having discussions on this and there are interests for everyone here. There are interests for everyone here. There are the Native American interests, hunting interests, wildlife, tourism, fishing, agriculture, etc. That is why, as we go along here, we are continuously making changes to deal with all of those interests because I think everybody has a play in this land. There needs to be some changes done. I know there is some concern about there needing to be a fiscal note regarding the surveying and appraisal costs. I think many would gladly pay the costs to get their land back. It is a minimal cost to deal with the issue.

Chairman Dever: I understand if we recover this land, that someone becomes responsible for things like noxious weeds and those kinds of things.

Representative Brandenburg: Thank you for bringing that up. Everyone knows about the problems that have come from the past from the noxious weeds that the corps does take care of. There is definitely a problem with weed control on the corps land. Think of the economic return that this land could have back to the state. There is a lot of land here that

could be turned back into economic development and I think the state can do a much better job dealing with it.

(12:40) Senator Schaible: My understanding of this is that land that is not used for water mitigation or flood protection in the original mission of the corps - that is what you are looking at. The corps has that control and does what they want with it currently and I think the idea is that the Governor would negotiate to get the land back into the state and they would decide what would happen with that land at that point.

Representative Brandenburg: Absolutely - there are steps to this and then the state can figure out what to do with this.

Chairman Dever: The bill says 1854 feet for Lake Sakakawea, what does that represent? Is that where the spillway is?

Representative Brandenburg: It is 6 or 8 feet above the highest the water has ever hit. We are 27 feet lower right now.

Chairman Dever: Is this an all or nothing thing or does the Governor have the ability to negotiate what would be favorable to the state?

Representative Brandenburg: Before I make any negotiation or compromise - I think others should speak to this issue.

(15:55) Representative Schmidt, District 31: Testified in support of the bill. I will talk only to the portion that affects my district. Some private land owners retained their mineral rights and some did not. I have no idea why some were able to keep them and some had to release them. I understand that if the state takes these lands over, the state retains those mineral rights.

Chairman Dever: Do you now if at that time if it was done by negotiation or by immanent domain?

Representative Schmidt: At that time, my family had to give up ownership of 434 acres. We had to either sign for $51 per acre with the corps or they would take it by eminent domain. There were no state agencies there to help these land owners whatsoever. There was no protection and no help from anyone other than the families on their own with the corps. I started into this is 1996 with the corps. I filed the freedom of information act and I have a number of boxes of documents and I want to review some important points that brought us to where we are.

(17:45) (Gave some figures and statements that apply to the area in question when it was originally acquisitioned and read from the documentation in the 60's and late 50's.)

(23:55) As far as I can tell from the maps that we have been looking at over the years, until 2011, no more than 30 acres of that track that we have has ever been flooded. Why they did not take flowage easements on that land is beyond our estimation. People were forced to relinquish ownership on that land.

Chairman Dever: Can we narrow the focus on this? Everyone here would probably agree that the corps took more land than what was necessary, and given the fact that in South Dakota they negotiated some of that back, that is a possibility in North Dakota. The question is whether we should or not. I am saying that in the interest of time. We can probably all agree that we don't like the corps. My interest, and probably yours too, is that in this process that we protect the interests of hunting and fishing. I appreciate your passion on this issue.

(25:50) Representative Schmidt: I have been in touch and have had conversations with the Deputy Commissioner for lands in South Dakota, and I have an e mail that he sent me that outlines what the state of South Dakota on how they achieved that. I also have testimony that was provided by Paul Kaufmann, the Lands Program Administrator for South

Dakota Game and Fish that he presented to the natural resources committee on March 4th. Apparently from the South Dakota perspective, the corps has given them this $108 million trust fund for which the state can operate some of their efforts from. My last comment is that they acquired lands above the 1620 elevation, even up to 1680; which means that the capitol would have to almost have to be flooded for this land to be flooded. There is no effort on the constituents that I represent to interfere with the existing recreational structures or plans already established.

(27:25)Senator Schaible: As you mentioned the river level, they were talking about 1617 on the south half and they mitigated to 1620 - which is basically where the water rises and lowers. Even if you go to 1630, I think what you are looking at is the land that is way above that that never gets wet and does not have any access to the river, is that correct?

Representative Schmidt: Yes it is.

Senator Schaible: The intent is not to hinder the wild life areas and established areas that we have access to fishing and hunting, but to return the land that is not used for these things and get that back into the state control to decide what is best for that land rather than the corps?

Representative Schmidt: Yes. North Dakota Game and Fish has been very cooperative with us to try to achieve some of those management efforts that we need to do, however, funds are obviously limited to do that.

Senator Schaible: So of the opposition says that doing this might be detrimental to the state, as we might inherit a problem that is larger than what we want. I guess the other concern is that we receive all of the headaches that the land includes if we get it back.

(30:02)Herbert Grenz, Resident: See Attachment #1 for testimony in support of the bill.

(50:50) Chairman Dever: Have you had conversations with the corps on transferring that land back to you?

Herbert Grenz: Yes.

Chairman Dever: What has been their reaction?

Herbert Grenz: No.**(51:00)** Returns to testimony.

(52:00) Chairman Dever: We will go through your testimony further and we do appreciate your time and we do appreciate your position on the bill.

(53:00) Glenn McCrory, Resident: See Attachment #2 for testimony in support of the bill.

(58:03)Chairman Dever: The problem that I have with this is that I sympathetic with those in support of the bill and those in opposition to the bill. We have some time to look at all of this and hear from you and address those concerns. I think that interest is in protecting hunting and fishing.

Opposition Testimony

(1:00:10) Mike McEnroe, North Dakota Chapter of the Wildlife Society: See Attachment # 3 for testimony in opposition to the bill, and in favor of the North Dakota Game and Fish Departments neutral testimony.

(1:03:30) Chairman Dever: When you mention the South Dakota situation, do you see that as a positive outcome to the process?

Mike McEnroe: In South Dakota it was. North Dakota was invited to participate in the same process. I think that could work in North Dakota. The process was to transfer those federal public lands to the Game, Fish, and Parks Department and to the tribal authorities to be managed for the federal project purposes.

Chairman Dever: That was an all or nothing thing?

Mike McEnroe: That is correct.

Senator Schaible: With all of this land, who should be paying to take care of the noxious weed problem that we have?

Mike McEnroe: I believe that it is the managing agency's responsibility.

(1:05:10) Terry Fleck, Friends of Lake Sakakawea: See Attachment #4 in opposition to the bill.

(1:07:02) Vice Chairman Berry: What is your major objection to this bill?

Terry Fleck: Our position is that there are no excess lands. That was the position that we took when the corps tried to give the land back in 2006 to the three affiliated tribes and Standing Rock. When I answer your question that there are no excess lands, it is because I don't believe that we have an excess lands in terms of how we are going to manage all of this because the federal government either is in or they are out. That is a difficult thing to have to work with. I called the corps this morning and tried to figure out a way to solve the weeds problem. It is resolvable except for one real challenge, and that is that the federal government has no money. When the water goes down on the big lake, the challenge is where does the corps get more money to take care of the weeds.

Vice Chairman Berry: Because they are either in or out?

Terry Fleck: Correct.

(1:10:38) Mike Donahue, North Dakota Wildlife Federation: Testified in opposition to the bill. We do not think that there are excess lands to begin with, and secondly, when HB 1338 started on the House side it was to return the property to the neighboring land owners and then it was amended to get the state to negotiate and look at returning some land. We think that the amendment is nothing but a sham. We think the objective is to get it to the state and then in time, start pushing for the state to give it to neighboring land owners.

(1:11:38) Chairman Dever: Do you see a way to construct this bill to address both sides?

Mike Donahue: No I do not.

(1:12:36) Bill Helphrey, North Dakota Bowhunter's Association: Testified in opposition to the bill. For more than 60 years, the public has been using this corps of engineers land for recreational purposes. Land was purchased by the corps of engineers as part of the Garrison Dam project for flood control and this flood control was to save lives and the property of the taxpayers. The need of this land as corps land was demonstrated in the flood of 2011. Areas within the 1620 foot elevation along the river were completely under water. While I am speaking only of the area around Bismarck/Mandan because I am most familiar with that, this bill applies to the whole river area from South Dakota all the way through Garrison and up to Williston. The Kimball bottom area, south of Mandan, has been used over the past 60 years by deer and pheasant hunters, campers, hikers, fishermen, bird watchers, rifle and pistol shooters, wild mushroom hunters, boaters, jet ski operators, paint-ballers, dirt bike riders, dog walkers, and the North Dakota National Guard. Thirteen boat ramps along this area could be affected. In the Bismarck/Mandan area there are approximately 100,000 taxpayers which are either using or could be using this recreational area. The population of North Dakota is going up and the amount of land for recreational use is not. If it ain't broke, don't fix it! What is broken here that needs fixed?

(1:15:15) Chairman Dever: A previous speaker said that it would cost $20 million to have the land that we are discussing surveyed? Shouldn't there be a corps of engineers map?

Bill Halfrey: I do not know what maps they have or how accurate they would be. We have accuracy today that we did not have 60 years ago.

(1:16:10) Mike Gunsch, Friends of Lake Sakakawea: See Attachment #5 for testimony in opposition to the bill.

Neutral Testimony

(1:22:30)Todd Sando, State Engineer, North Dakota State Water Commission: See Attachment #6 for testimony in a neutral position.

(1:25:35) Chairman Dever: Have you been a part of previous conversations with the corps towards this end?

Todd Sando: I have dealt with the corps of engineers for my whole career so we have gone through many issues.

Chairman Dever: Have there been, as a part of those conversations, discussions on noxious weeds? Can some of that be above some the elevations referred to here? Is there anything we can do to address both sides of this?

Todd Sando: I do feel for the landowners and the issues with what they have to deal with for access to their pastures and fencing out and the issues with weeds. There has to be some way to get the corps to do a much better job than what they are doing. I think we should never give up on that cause. It is inappropriate how the federal government has treated adjacent land owners.

Chairman Dever: On the map that Mr. Gunsch provided, my in-laws have a cabin and if that would be considered excess, I am not sure what we would do with that. In 1997 their survey marker was under 7 feet of water and it took out their retaining wall and I think that is a point that the corps made a major mistake when it was surveyed for which they take no responsibility.

Todd Sando: There are examples of taking too much land, and some not taking enough. We have high banks that are eroding back to private land and cabins that are right next to major cut banks, etc. There are issues both directions.

Chairman Dever: There are issues that we should address somehow.

Todd Sando: Yes.

(1:28:40) Jeb Williams, Assistant Wildlife Division Chief: See Attachment #7 for testimony in a neutral position.

(1:31:10)Senator Schaible: What would your answer be to the noxious weed problem?

Jeb Williams: The noxious weed problem should be on the agency in charge. North Dakota Game and Fish is not perfect, but we do a very diligent job. We budget approximately $650,000 each biennium which we do the best job possible on our lands that we manage and other agencies have that responsibility as well.

Chairman Dever: What is our ability to require that the federal agency deal with it?

Jeb Williams: I cannot say that they have done things perfectly but there has been some effort in prior years. We have worked together on weed task force meeting and there is better coordination and communication. As far as fixing the federal noxious weed problem is beyond my scope as far as funding.

(1:32:47) Jeff Magrum, Emmons County Commissioner: Testified in a neutral position on the bill. The corps has fenced up to the middle of a lot of our section lines, so the access is not available to the river and as far as using the land, I know that they can't take four wheelers or anything out there. It is pretty limited use and there is a lot of land available for use besides what is above the high water mark. I am also a member of the Hazelton Fire Department and the weeds are a problem for the rural fire departments. They catch on fire and we can't stop it. It gets onto the private lands and it is a huge burden on our Hazelton Rural Fire Department. Roads have been washed out that they say they will fix with a minimum of 10 years so the county had to fix them at our expense.

(1:34:48) Mark Zimmerman, North Dakota Parks and Recreation: See Attachment # 8 for testimony in a neutral position on the bill.

(1:35:35) Deputy Adjutant General, Al Dohrman: See Attachment #9 for testimony in a neutral position on the bill.

(1:36:23) Michael Brand, Department of Trust Lands: See Attachment #10 for a neutral position on the bill.

See Attachment #11 for testimony dropped off in opposition to the bill.

Chairman Dever: Closed the hearing on HB 1338.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee
Missouri River Room, State Capitol

HB 1338
04/04/2013
Job Number 20860

☐ Conference Committee

Committee Clerk Signature Carie Wiings

Minutes:

Chairman Dever: Opened HB 1338 for committee discussion. See Attachment #1 for proposed amendments brought by Senator Schaible. We visited with the Governor and we talked about the fact that we would like to see some action on this so we don't want to just turn it in to a study. I got the impression that he is not ready to deal with this issue. We put together this language and asked the Governor's office to make some adjustments to it and they followed that. They think it is better under the board of university and school lands. The Governor would have input as well. They would explore options that would consider control of noxious weeds, protecting public access for hunting and fishing, the costs associated with the transition, the costs associated with maintaining any property, include the interests of the tribes, and they can put together a task force of stakeholders if they would like and report to legislative management. Part of the concern that the Governor had was that the way the bill was written, it would seem to apply to all excess lands and this approach would allow them to consider what lands may be appropriate for a transfer.

Senator Cook: Why the appropriations?

Chairman Dever: The Governor said to have a taskforce, if we are asking private citizens to come and meet, that we should cover their expenses and that $50,000 would be adequate to do that.

Senator Cook: I think the type of people we would want there would gladly come on their own dime.

Chairman Dever: I certainly don't disagree with that.

Senator Cook: Moved Section 1 of amendments.

Senator Poolman: Seconded.

Chairman Dever: I think the intent is that any steak holders would be people that do have an interest in it.

Senator Nelson: On the discussion on who would be attending, when I look here, fishing and hunting and organizations are all here. There would not be any expense for those and these two guys that testified here probably could afford to come and talk to the Governor.

Senator Marcellais: When I look at this bill we did not have any tribal input. There are treaties involved in this and the department of interior should be involved in this.

Chairman Dever: We did add in the consideration of the North Dakota tribes.

Senator Marcellais: When I look at the original bill, it says Standing Rock Sioux Tribe only. When I talked to Mr. Fox who was here during the testimony, he said there are treaties involved in this. Any time there is excess land or buildings from the federal government, the first one it goes back to is the tribes when it is a government to government relationship.

Chairman Dever: The reference in the bill is to land outside the boundaries of Ft. Berthold and outside the boundaries of Standing Rock and I think that was with the perception they are doing their negotiations separately but that they should coordinate with one another.

Senator Marcellais: Governor Hoven could have settled this years ago when they met with him.

Chairman Dever: We are speaking to the amendment and it does not speak to the specific tribes any longer.

Senator Cook: This is a hog-house amendment and it is only referencing the interests of North Dakota tribes.

Senator Schaible: When we talked to the Governor, he also had the concerns - he was aware of the treaties or the negotiations that the tribes are doing, and that was his concern. That is the premise of this idea. It is better for him to lead the group and the area that that pertains to. This way, he brings those people together and their concerns come together and then they go from there. He was happy with this, and since we are recommending that he does something, I think that is a more balanced approach.

Senator Marcellais: I don't see the Department of Interior in the amendment and they are accountable for the trust lands. The Corps of Engineers has nothing to do with the tribal lands.

Senator Nelson: That would be limiting this to non-tribal lands.

Chairman Dever: Is the land under the control of the Corps of Engineers or is it under the control of the Department of Interior?

Senator Marcellais: Trust responsibility is under the control of the Department of Interior.

Chairman Dever: Wasn't that land transferred to the Army Corps of Engineers when the dam was built?

Senator Marcellais: I have no idea.

Chairman Dever: I think what we are doing with this is putting in place something for the Governor to oversee. We are not calling it a study, but they are going to study it and explore the options and come up with some solutions and I think they are going to take into account all of those different considerations. We did not specifically put the tribes on the

taskforce because my understanding is that the tribes negotiate separately for the areas that they have interest in.

A Roll Call Vote Was Taken: 6 yeas, 1 nay, 0 absent.

Motion Carries.

Senator Schaible: Moved a Do Pass As Amended.

Senator Poolman: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 1 nay, 0 absent.

Senator Schaible: Carrier.

13.0547.03001
Title.04000

Adopted by the Government and Veterans Affairs Committee
April 4, 2013

3/4/13
TU

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1338

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a board of university and school lands study of private lands owned adjacent to lands under the control of the United States army corps of engineers and a report to the legislative management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. STUDY BY BOARD OF UNIVERSITY AND SCHOOL LANDS - REPORT TO LEGISLATIVE MANAGEMENT. During the 2013-14 interim, the board of university and school lands shall study options to address the concerns of landowners adjacent to land under the control of the United States army corps of engineers surrounding Lake Sakakawea and Lake Oahe. The study must include consideration of control of noxious weeds, protecting public access for hunting and fishing, the costs of possible transition of land from the United States army corps of engineers, and the costs associated with maintaining any property that may become a responsibility of the state. The study must also include consideration of the interests of North Dakota Indian tribes. The board may establish a task force consisting of landowners, hunting and fishing organizations, the game and fish department, the parks and recreation department, the North Dakota national guard, and other parties that utilize the land for access. Before October 1, 2014, the board shall provide to the legislative management a report on the outcome of this study."

Renumber accordingly

Date: 4/4

Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1338

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Section 2 Attachment #1

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Cook Seconded By Senator Schaible

Senators	Yes	No	Senator	Yes	No
Chariman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais		✓
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment

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

Date: 4/4

Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1338

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Schaible Seconded By Senator Poolman

Senators	Yes	No	Senator	Yes	No
Chariman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais		✓
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Schaible

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

REPORT OF STANDING COMMITTEE

HB 1338, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1338 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a board of university and school lands study of private lands owned adjacent to lands under the control of the United States army corps of engineers and a report to the legislative management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. STUDY BY BOARD OF UNIVERSITY AND SCHOOL LANDS - REPORT TO LEGISLATIVE MANAGEMENT. During the 2013-14 interim, the board of university and school lands shall study options to address the concerns of landowners adjacent to land under the control of the United States army corps of engineers surrounding Lake Sakakawea and Lake Oahe. The study must include consideration of control of noxious weeds, protecting public access for hunting and fishing, the costs of possible transition of land from the United States army corps of engineers, and the costs associated with maintaining any property that may become a responsibility of the state. The study must also include consideration of the interests of North Dakota Indian tribes. The board may establish a task force consisting of landowners, hunting and fishing organizations, the game and fish department, the parks and recreation department, the North Dakota national guard, and other parties that utilize the land for access. Before October 1, 2014, the board shall provide to the legislative management a report on the outcome of this study."

Renumber accordingly

2013 CONFERENCE COMMITTEE

HB 1338

2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

HB 1338
April 18, 2013
21232

☒ Conference Committee

Minutes: "attached testimony."

Present were: Rep. Brabandt, Rep. Silbernagel, Rep. Kelsh, Senator Schaible, Senator Dever, and Senator Nelson

Rep. Brabandt: We will call HB 1338 to order. I will read a history of the bill so that we know what we are doing here. There is a revised fiscal note for approximately $118,000. 1:00 - 5:45

Senator: Schaible: The governor shall was mentioned in the first part of the bill, so we thought it was important to talk to the governor. We did have several meetings with the governor to get his input. That is the premise for what we did. The language that sets before you is from his department.

Rep. Silbernagel: Did you say the bill has been passed to appropriate the dollars to fund the majority this project?

Rep. Brabandt: Yes. It has appropriated $50,000 and when this bill is passed another $50,000 would be available.

Senator Dever: When we took this to be drafted it said "shall explore options" and the legislative council put "study options" The governor could do this without legislative authorization this is positive action.

Rep. Brabandt: I agree.

Rep. Kelsh: You said there would be $100,000 available yet the final fiscal note is $118,000? Where is the difference?

Rep. Brabandt: The revised fiscal note is from Chairman Porter and it says total estimated cost is $118,000.

Senator Schaible: I move that the house accede to the senate amendments.

Rep. Brabandt: We have a motion and a second from Senator Nelson for the house to accede to the senate amendments. We will adjourn the meeting.

Yes 6 No 0 Absent 0 Carrier: Rep. Brabandt

13.0547.04000

FISCAL NOTE
Requested by Legislative Council
04/09/2013

Amendment to: HB 1338

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures				$141,680		
Appropriations						

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The Bill directs the Land Board to study management and possible acquisition of federal land adjacent to Lakes Sakakawea and Oahe. It must include coordination of landowners, sportsmen, tribes and other agencies.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of the Bill is the entirety and it does not include an appropriation for the costs of the mandated review, task force administration and staff time, or the cost of formulating and documenting recommendations. The Board's budget is entirely special funds, and it is not able to divert these funds to other uses.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

NA

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The cost estimate assumes the hiring of a contractor to undertake the study and includes anticipated compensation and expenses related to travel, information gathering, research, information technology, public relations, legal and administrative support.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

There is no money appropriated or available within the Land Board's discretion to undertake the actions directed in the Bill.

Name: Lance Gaebe

Agency: Department of Trust Lands

Telephone: 701 328-2800

Date Prepared: 04/11/2013

3) The financial and staff limitations would not allow the Department of Trust to complete this a study, thus a contractor would be secured.
4) Timeline involves review of state and federal laws and regulations, stakeholder meetings in state and WDC, task force review and report preparation.
5)Report likely to be presented by task force representation, with Land Board as the facilitator, not study author.

Suggested time line

2013	July-13	Funding available	
	July 1 - 31	Develop RFP outline and contract parameters	Land Board/D
	August 1 - 21	Advertise contract and accept proposals	
	Aug 22 - Sept 4	Interview applicants and award contract	
	Sept	Develop website to inform public of the issues, meetings and progress Website will also allow public to submit written comments and suggestions This project will require public involvement and t ansparency	
	Sept/Oct/Nov	Meet with the US Army Corps of Engineers, study Corp regulations and study divestiture process of Corps lands in other states	Contactor
	Dec/Jan	Meet with special interest groups and agencies to gather their input	
2014		Meet with tribes and BIA	
	Feb/March	Hold public meetings in each of the 10 counties adjoining the reservoirs Advertising to provide public notice	
	April - June	Coor inate drafting of study with task force of interest groups and agencies.	
	July	Draft on web for public comment period - no public meetings	
	August	Complete final study document	
	September	Present final study document to Land Board	Land Board/D
	October	Land Board/Task Force forwards study to legislative management	

Budget

In-state stakeholder meetings	$12,000	Travel from Williston to Linton and Keene to Fort Yates and all points and agencies in-between
Public meetings	$6,500	10 Public meetings in-state two people travel and lodging at $500 per meeting and meeting room rental
Meetings in D.C.	$5,200	Assumes 2 people: airfare $1,000, motel $1,200, meals $400
Computer Services web site	$15,000	the website, data collection, and data analysis.
Interest Groups Task Force	$22,500	Meetings with tribes, agencies and special interest groups. Organized groups need to have input other than the public meetings.
legal	$15,000	Review legal questions: minerals, title, survey, management, access.
work product	$32,000	Consideration of public input, laws and tribal rights and desires. Preparing of final study document.
Department of Trust La	$15,000	Department costs of contact preparation, negotiation, oversight.
Support & overhead	$18,480	15% overhead for support staff, office space, and supplies
Total Estimated Cost	$141,680	

2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Energy + Natural Resources

Bill/Resolution No. HB 1338 as (re) engrossed

Date: 4-18-13

Roll Call Vote #: 1

Action Taken

- [x] HOUSE accede to Senate amendments
- [ ] HOUSE accede to Senate amendments and further amend
- [ ] SENATE recede from Senate amendments
- [ ] SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1260 - 1261

- [ ] Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Senator Schaible Seconded by: Senator Nelson

Representatives	Rollcall			Yes	No		Senators	Recall			Yes	No
Rep Brabandt	✓			✓			Senator Schaible	✓			✓	
Rep Silbernagel	✓			✓			Senator Hogan	✓			✓	
Rep Kelsh	✓			✓			Senator C Nelson	✓			✓	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Rep Brabandt Senate Carrier Sen Schaible

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1338, as engrossed: Your conference committee (Sens. Schaible, Dever, Nelson and Reps. Brabandt, Silbernagel, S. Kelsh) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ pages 1260-1261 and place HB 1338 on the Seventh order.

Engrossed HB 1338 was placed on the Seventh order of business on the calendar.

2013 TESTIMONY

HB 1338

13.0547.02001
Title.

Prepared by the Legislative Council staff for
Representative Brandenburg
January 25, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1338

Page 1, line 2, replace "corp" with "corps"

Page 1, line 2, replace "neighboring landowners" with "state of North Dakota"

Page 1, line 9, after "the" insert "state of North Dakota for the future return to the"

Renumber accordingly

excerpts from Oahe Master plan

2

1338 Pioneer Not Rec. Hist Geog

1 THE PROPOSED PROJECT

1.1 Location

Trans

Oahe Dam is located about six miles north of Pierre, South Dakota, on the Missouri River approximately 1072.3 river miles from its mouth. At normal operating pool level (1617 feet mean sea level (m.s.l.)), Lake Oahe extends roughly 231 miles from Oahe Dam to near Bismarck, North Dakota. At this level, the lake covers approximately 360,000 acres. At elevation 1607.5 msl, base flood control elevation, the lake has over 2,250 miles of shoreline.

Lake Oahe is located in parts of ten counties in north-central South Dakota – Campbell, Corson, Dewey, Haakon, Hughes, Potter, Stanley, Sully, Walworth, and Ziebach, and in parts of four counties in south-central North Dakota – Burleigh, Emmons, Morton, and Sioux. Additional U.S. Army Corps of Engineers (Corps) fee-owned lands surround the reservoir and contain such facilities as the dam embankment, powerhouse, maintenance facilities, recreation facilities, and wildlife habitat.

1.2 Purpose and Need for the Master Plan

The Oahe Dam/Lake Oahe project was authorized under the Flood Control Act approved December 22, 1944 as amended, Public Law 78-534. The Oahe Dam and Lake Oahe were named for the Oahe Mission, established in 1874 to serve t e Sioux Indians. The site of the mission was an old Arikara Indian Village, which the Sioux called "Ti Tanke Ohe" ("site of the large house") for the dirt council lodge located there. Shortened to "Oahe" the name of the village was eventually given to the mission and later to the dam and lake that now cover the area.

The first Master Plan for Lake Oahe, Design Memorandum (DM) MO-150B, was approved in November 1962 for the purpose of providing flood control, irrigation, municipal and industrial water supply, navigation, hydropower, recreation, fish and wildlife, and other purposes. The 1962 Master Plan is of limited use in guiding project development and resource use because of the many changes in recreational demand and use patterns. In 1992, the Corps began the process of updating the Lake Oahe Master Plan. In addition to project visits by key members of the study team, preliminary meetings were held with those State and local governmental officials that have direct involvement in the management of Lake Oahe's resources. Scoping meetings to obtain public input were held in 1993 and 1994. The Master Plan update was finished in 1995 but not approved.

PERTINENT DATA

GENERAL

Location of Dam	6 miles north of Pierre, South Dakota, at Missouri River miles 1072.3 (1960 mileage)
Operating and Managing Agency	U.S. Army Corps of Engineers
Purposes	Flood control, hydroelectric power, navigation, irrigation, fish and wildlife enhancement, municipal water supply, improvement of water quality, and recreation
Authorization	Flood Control Act of 22 December 1944, as amended (Public Law 78-534)
Year Construction Started	1948
Year Dam Place in Operation	1962
Project Cost	$347 million (1999 dollars)

DAM AND EMBANKMENT

Type	Rolled earth fill and shale berms
Fill Quantity	92,000,000 cubic yards
Concrete (all structures)	1,045,000 cubic yards
Foundation Material	Pierre shale
Height	245 feet
Length of Top (elevation 1660 feet m.s.l.)	9,300 feet (excluding Spillway)
Width of Top	60 feet
Width of Base (maximum)	3,500 feet

OUTLET

Location	Right bank
Number and Type	6 - concrete lined tunnels
Size	19.75 feet diameter upstream; 18.25 feet diameter

N.D.

Table 2-28
Government-Owned Lands at the Oahe Project (in acres)

	South Dakota Counties										North Dakota Counties				Project Total
	Camp-bell	Corson	Dewey	Haakon	Hughes	Potter	Stanley	Sully	Walworth	Ziebach	Burleigh	Emmons	Morton	Sioux	
Acquisition Lands															
Fee Land	23,055.18	7,751.88	15,352.43	1,916.99	16,874.47	18,641.80	47,995.50	29,195.16	20,970.49	873.4	7,228.91	30,838.36	12,465.42	3,900.05	237,060.04
Easement	43.2	185.07	27.1	1,766.51	102.68	22	11.76	112.36	102.6	2,321.28	10	1,144.37	758.9	166.51	6,774.34
Public Domain	212.24	-0-	-0-	205.35	163.4	184.7	8,078.42	778.23	46.46	-0-	3,838.92	655.6	774.52	-0-	14,937.84
Indian	-0-	34,419.60	95,541.61	123.6	-0-	-0-	2,255.80	14,567.64	108.95	1,664.36	-0-	-0-	-0-	22,283.31	170,964.87
Temporary Use	-0-	-0-	-0-	-0-	-0-	-0-	12.95	-0-	-0-	-0-	-0-	-0-	17.4	-0-	30.35
Total Acquired	23,310.62	42,356.55	110,921.14	4,012.45	17,140.55	18,848.50	58,354.43	44,653.39	21,228.50	4,859.04	11,077.83	32,638.33	14,016.24	26,349.87	429,767.44
Disposal Lands															
Title VI	4,121.18	-0-	-0-	889.47	1,469.71	3,525.33	15,261.42	10,815.62	3,311.90	1,106.46	N/A	N/A	N/A	N/A	43,537.39
Fee Land*)	100	213.7	1,841.16	31.02	92.98	-0-	107.37	-0-	80	-0-	-0-	-0-	0.26	24.86	2,491.35
Easement*	3.96	184.73	27.1	-0-	102.22	-0-	-0-	-0-	102.6	-0-	-0-	-0-	148.29	14.61	583.51
Public Domain*	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	434.4	-0-	-0-	-0-	434.4
Indian*	-0-	34.66	29,977.23	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	30,011.89
Total Disposed	4,225.14	433.09	31,845.49	920.49	1,664.91	3,525.33	15,368.79	10,815.62	3,494.50	1,106.46	434.4	-0-	148.55	39.47	77,058.54
Total Acres Managed	19,085.48	41,923.46	79,075.65	3,091.96	15,475.64	15,323.17	42,985.64	33,837.77	17,734.00	3,752.58	10,643.43	32,638.33	13,867.69	26,310.40	352,708.90

* Non-Title VI

2-1

A revision was begun in 2001 to reflect changes of the Title VI Land Transfer, mandated by the 1999 Water Resources and Development Act (WRDA) (P.L. 106-53, Title VI – Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, and State of South Dakota Terrestrial Wildlife Habitat Restoration) as amended by the 2000 WRDA (P.L. 106-541). Under the Title VI land transfer the Corps is required to 1) transfer in fee title certain lands (outside the boundaries of Indian reservations) above elevation 1620 msl, the top of the exclusive flood control pool, to the State of South Dakota to be managed by the South Dakota Game, Fish, and Parks Department (SDGFP); 2) transfer in fee title lands within the boundaries of the Cheyenne River Sioux Tribe (CRST) and Lower Brule Sioux Tribe (LBST) Indian Reservations that are above elevation 1620 msl to the Department of Interior (DOI) to be managed in trust for the two tribes; 3) transfer all Corps recreation areas in South Dakota above elevation 1607.5 msl to SDGFP and to DOI for CRST and LBST; and 4) establish the South Dakota Terrestrial Wildlife Habitat Restoration Trust Fund, Cheyenne River Sioux Tribe Terrestrial Wildlife Habitat Restoration Trust Fund, and Lower Brule Sioux Tribe Terrestrial Wildlife Habitat Restoration Trust Fund to pay for wildlife restoration work, cultural resources preservation, and management of transferred lands. Under the provisions of Title VI, the Corps retains fee title to lands and structures necessary for the operation of the Oahe dam and related flood control and hydropower structures, including land below elevation 1620 msl.

Prior to the land transfers, the Oahe project contained 18,220 acres of land above the exclusive flood control pool (1620 feet m.s.l.). Of these, 4,709 acres of land were transferred to the State of South Dakota January 26, 2002, and 7,546 acres were transferred to the Bureau of Indian Affairs (BIA) in trust for the Cheyenne River Sioux Tribe (CRST) June 25, 2002. Of the 5,965 acres of land above the exclusive flood control pool remaining under Corps ownership, approximately 4,700 acres would be transferred to the State of South Dakota within one year of full capitalization of the South Dakota Terrestrial Wildlife Habitat Restoration Trust Fund, in 2008 or 2009 (USACE 2001). The changes made as a result of the Title VI Land Transfer were described in an environmental impact statement (EIS), which concluded that no significant cumulative impacts would be expected as a result of the land transfers (USACE 2001). In addition, an environmental assessment (EA) for the lease of 22 recreation areas within the project area to South Dakota was also prepared in 2000 and resulted in a finding of no significant impact (USACE 2000). This EA is intended to address the changes that will be made to land allocation and management as a result of the update of the 1962 Master Plan, but does not address the Title VI Land Transfers already assessed in the EIS or the land leases assessed in the EA.

The update of the 1962 Master Plan will provide guidance for stewardship of natural resources, and management for long-term public access to, and use of, the natural resources of Lake Oahe. The Master Plan update provides a comprehensive description of the project, a discussion of factors influencing resource management and development, an identification and discussion of special problems, a synopsis of public involvement and input to the planning process, and descriptions of past, present, and proposed development.

6 POTENTIAL CUMULATIVE EFFECTS

Cumulative effects, as defined by the Council on Environmental Quality for NEPA, are those impacts on the environment which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of the agency of persons undertaking these actions. The scope of this cumulative effects analysis includes the impact of land reclassification under the proposed Master Plan on lands surrounding Lake Oahe.

a. Past Actions. Numerous cumulative effects from previous actions have occurred throughout the Lake Oahe area and have impacted wildlife habitat and other aspects of the environment, including hydrology, water quality, and cultural resources. Construction of Oahe Dam; filling of Lake Oahe; construction of the additional five main stem dams on the Missouri River; management of the Missouri River for flood control, navigation, water supply, and hydropower; development of the Missouri River floodplain for agricultural and residential uses; and alteration of the Missouri River channel have caused dramatic changes to the entire Missouri River system. These anthropogenic changes have caused cumulative effects to resources, ecosystems, and human communities. The Missouri River system is now primarily a passive, controlled system with reduced natural communities and habitats. Without a complete restoration of the Missouri River basin to its original ecological condition, these cumulative effects will not be reversed.

b. Present and Future Actions Associated with the Master Plan Alternatives. Implementation of proposals for Corps-owned areas in the updated Master Plan would incrementally reduce the cumulative effects that have occurred in the Oahe project area and would also compensate for increased visitor use of the project area in the future. These include more stringent and comprehensive guidelines for development on project lands, recreation areas designed with high carrying capacities so intensive visitor use can be concentrated away from resource-oriented areas, greater environmental protection and improvement of wildlife habitat, and greater maintenance of sustainable resources.

These Corps actions would be combined with actions of those managing the areas transferred to the State of South Dakota and to the BIA in trust for the CRST to further incrementally reduce the cumulative impacts on the environment that have occurred in the Oahe project area. The resources of the State and the CRST would be added to Corps dredging funds, equipment, and expertise to reduce cumulative impacts of sediment on lake access.

elevations. Pre-historic and historic sites are located along the original river channel and on the surrounding bluffs and plains. Nearly all sites are affected by the changing water elevations but this issue is most critical at the extreme high and low water elevations. Sites covered by water during normal pool operating levels are potentially affected by low water conditions because they may be exposed and subject to wave action, wind erosion or looting. Sites above the normal pool operating levels are affected by high water conditions because they are newly exposed to erosive wave action and can be damaged directly or exposed once the water level drops. Regardless of the operating condition, the National Historic Preservation Act requires that archeological sites that are eligible or potentially eligible for listing on the National Register of Historic Places be preserved and protected from adverse effects.

c. Bank Erosion. Bank erosion caused by wave and wind action is an issue of concern at all reservoir levels. But it becomes a particular concern at the extremes of the pool elevations as areas that are not often subjected to wave action are exposed to the wind and waves. Essential facilities such as roads, ramps, docks and/or areas of particular safety concern such as unstable banks near recreation areas are of first importance. Erosion is also a concern with regard to cultural issues and municipal water intakes. Erosion can expose or damage cultural or historic resources, cause turbidity that can clog water intakes and impact water treatment, or damage water intake structures.

d. Invasive Species. Several invasive plant species (noxious weeds) thrive in low pool conditions. Newly exposed shoreline provides ideal habitat for invasive species to grow and spread quickly. Invasive species tend to be species that specialize in colonizing and thriving in disturbed environments such as the newly exposed reservoir shoreline. As noxious weeds spread quickly on the exposed soils and gain a foothold they can then more easily spread to adjacent farms and ranches. The primary invasive species threats on the exposed shorelines of Oahe Reservoir are Canada thistle (Cirsium arvense), saltcedar (Tamarix ramosissima, Tamarix chinensis, and Tamarix parviflora), and leafy spurge (Euphorbia esula). Saltcedar poses an immediate threat to the natural resources around the reservoir. At all operating levels (high, low, and normal) adjacent disturbed land is susceptible.

e. Municipal Intakes. Municipal water supply intakes may be threatened by the receding of the reservoir pool during low water conditions. Through six intake locations, the reservoir provides public drinking water to several communities (approximately 100,000 individuals) and serves a number of individual homes. The reservoir level required for a given intake structure to operate properly varies. Exposure of municipal water intake structures can result in turbidity issues with the water supply, shut down of the facility, or collapse of the intake pipes due to erosion of adjacent banks.

f. Irrigation Intakes. Irrigation intakes are impacted primarily by low water levels. These intakes however, are the responsibility of the individual owners. The owners generally extend their lines to follow the water down into the reservoir as the pool level recedes. This is an

issue for both land mangers and owners to be aware of as reservoir levels rise and fall. Contingency plans for pump relocation, with input form both parties, are advantageous to facilitate emergency actions.

g. Threatened and Endangered Species. The foraging and nesting activities of two endangered bird species are impacted by changes in pool elevation. The interior least tern (Sterna antillarum athalassos) and piping plover (Charadrius melodus) are two shorebirds that feed and raise their young on the shores of the Missouri River and reservoir beaches. The least tern is a pale grey swallow-sized bird that tends to nest west of the reservoir on sand bars in riverine conditions.

The reservoir area provides habitat primarily for the piping plover, a sandy brown robin-sized shorebird. A steady drop in reservoir elevations provides for an optimum increase in potential nesting habitat for the piping plover. The piping plover prefers the newly exposed open shorelines for nesting that are provided by a steady drop in the reservoir elevation. However, this habitat is short lived as within one to two years vegetation will encroach and colonize the open shores and eliminate the open habitat. The additional vegetative growth that accompanies lower elevations also decreases their critical foraging areas and increases opportunities for predators. Changes in foraging habits can adversely affect the survival of chicks and adult birds. High grass and weeds along the shoreline will discourage piping plovers away from ideal feeding locations. Vegetation also provides cover for predators such as snakes, raccoons, and skunks to destroy nests. Nests can be concentrated on ideal sandy soil but in limited areas, endangering a large percentage of the population by allowing predators easy access.

The transition to low pool conditions has the potential of providing optimum conditions for these endangered species. As the reservoir level drops new habitat is continually exposed. Because very little sedimentation occurs in the upper end of the reservoir, as the elevation of Lake Oahe goes down, the upper end reverts to riverine conditions that are not encumbered by sediment, which enhances habitat for bird species (Pavelka, 2007). If low pool elevations persist, however, some habitat will be overgrown with vegetation. Year to year the more important factor for the endangered bird species is the short-term rise and fall of the reservoir pool.

Higher water levels pose the greatest issues for the endangered birds because nearly all of the prime habitat areas would be inundated by the rising water. As reservoir elevations enter the flood control zones the open expanses of shoreline begin to disappear. At high pool elevations habitat is eliminated on almost the entire reservoir except for Dredge Island (Pavelka, 2007).

One additional endangered species resides in the reservoir. The pallid sturgeon (Scaphirhynchus albus) is a bottom dwelling fish that prefers large, free-flowing, warm turbid water, with a vast array of physical habitat conditions that are in a constant state of change. The low water pool conditions may have beneficial effects for pallid sturgeon in that riverine habitats are exposed in the upper end of the reservoir. These areas would provide habitat conditions that were not

version of this plan, M(Gen)19, as a good starting point, they did not endorse the plan as full mitigation. In the late 1980s and the 1990s the Corps implemented some wildlife mitigation at the Oahe project by contracting with the SDGFP to plant trees, food plots, and nesting cover on Corps land.

TITLE VI

Under the Title VI land transfer, mandated by the 1999 WRDA (P.L. 106-53) as amended by the 2000 WRDA (P.L. 106-541), the Corps is required to transfer in fee title certain lands and recreation areas (outside the boundaries of Indian reservations) above the top of the exclusive flood control pool, to the State of South Dakota to be managed by the SDGFP; transfer all lands including recreation areas within the boundaries of the CRST Indian Reservation above elevation 1620 feet m.s.l. to the DOI to be managed in trust for the tribe; and establish the South Dakota Terrestrial Wildlife Habitat Restoration Trust Fund and Cheyenne River Sioux Tribe Terrestrial Wildlife Habitat Restoration Trust Fund to pay for wildlife restoration work, cultural resources preservation, and management of transferred lands. The transfer of lands owned by the Corps in South Dakota to the State of South Dakota fulfills Corps obligations as defined in the 1982 post authorization plan, which was a plan for the restoration of terrestrial wildlife habitat loss that occurred as a result of flooding related to the Oahe project. Under the provisions of Title VI, the Corps retains fee title to lands and structures necessary for the operation of the Oahe dam and related flood control and hydropower structures, including land below elevation 1620 feet m.s.l..

Tribal land transfers

On January 26, 2002, the Corps transferred in fee title 3,065.88 acres, including 27 recreation areas outside the boundaries of Indian reservations above elevation 1607.5 feet m.s.l. to the State of South Dakota. Fee title of other lands above elevation 1620 feet m.s.l., such as wildlife management lands totaling approximately 39,394 acres, were transferred to the State of South Dakota in July 2007. On June 5, 2002 the Department of Interior, Bureau of Indian Affairs accepted the transfer of custody and accountability of 32,879.64 acres, including 6 recreation areas within the boundaries of Cheyenne River Sioux Indian Reservation to be held in trust for the CRST. This completes the transfer of lands within the Cheyenne River Sioux Indian Reservation pursuant to Title VI prior to the Cheyenne River Sioux Tribe Terrestrial Wildlife Habitat Restoration Trust Fund being fully capitalized at $42,476,000.

After these trust funds are fully capitalized, interest from these funds can be used by the State of South Dakota and the CRST to develop, submit, and carry out plans for the restoration of terrestrial wildlife habitat loss that occurred as a result of flooding related to the projects carried out as part of the Pick-Sloan Missouri River Basin Program. The interest can also be used for protecting archeological, historical, and cultural sites, and for funding cost associated with lease, ownership, management, operation, administration, maintenance, or development of recreation areas and other land transferred or to be transferred by the Secretary of the Army.

CURRENT LANDHOLDINGS

There were four types of land tenure acquired for the Oahe project:

transferred to the DOI and the recreation areas transferred to the State of South Dakota pursuant to Title VI were transferred subject to these easements.

FLOWAGE EASEMENTS

The flowage easements acquired at the Oahe project give the Government a perpetual right to overflow the land when necessary as a result of construction, maintenance, and operation of the project. The Government also has the right to enter the easement lands as needed as well as to remove from the easement lands any natural or manmade obstructions or structures which, in the opinion of the Government, may be detrimental to the operation and maintenance of the project. The flowage easements were acquired subject to "existing easements for public roads and highways, public utilities, railroads, and pipe lines."

Historically, it has been Corps policy to prohibit structures for human habitation on flowage easements acquired by the Corps. Construction and/or maintenance of non-habitable structures on the flowage easement are subject to prohibition or regulation by the District Engineer.

GRAZING RIGHTS WITHIN THE CRST AND SRST RESERVATIONS

Section 10 of Public Law 83-776 dated 3 September 1954 (68 Stat. 1191) and Section 10 of Public Law 85-915 dated 2 September 1958 (72 Stat. 1762.) provided that after the Oahe Dam gates were closed and the water of the Missouri River was impounded, the Cheyenne River Sioux and the Standing Rock Sioux Tribes, respectively, and their members were given exclusive permission, without cost, to graze livestock on the land between the water level of the reservoir and the exterior boundary of the reservation. Consistent with this legislation and in accordance with the 26 May 1977, Decision by the Comptroller General, the Corps has deferred administration of all grazing programs within the reservation boundary to the Tribal Council and the Bureau of Indian Affairs.

These grazing rights have no effect on the statutory limitation that the grazing privileges only extend to lands the Secretary of the Army determines are not devoted to other beneficial uses or project purposes. Additionally, any land can be withdrawn from grazing if it is to be put to an authorized project use. Thus, public park and recreation or fish and wildlife uses continue to preempt the tribal grazing privileges.

A legal opinion was done in 1984 concerning these grazing rights. The opinion stated that these grazing rights have no effect on the statutory limitation that the grazing privileges only extend to lands the Secretary of the Army determines are not devoted to other beneficial uses or project purposes. Additionally, any land can be withdrawn from grazing if it is to be put to an authorized project use. Thus, public park and recreation or fish and wildlife uses continue to preempt the tribal grazing privileges.

What about fencing concerning the adjacent land owners?

Public Law 102-575 (106 Stat. 4731), 30 October 1992, Title XXXV - Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act. *In compliance.* Section 3503 declares that the Standing Rock Sioux Tribe is entitled to additional financial compensation for the taking of over 56,000 acres of its reservation lands, as the site for the Oahe Reservoir. The act also provided that certain lands acquired by the Government in areas surrounding the reservoir created by Oahe Dam would be offered for sale to the owners from whom they had been purchased or to their heirs. All land not acquired by the original owners or heirs would be available for purchase by the Standing Rock Sioux Tribe. The land transfer part of this act was repealed by Congress in February 1994.

Public Law 103-211 (108 Stat 3,41) 12 February 1994, Emergency Supplemental Appropriation Act. *In compliance.* Section 407 of this act repealed the land transfer provisions of the Public Law 102-575 as they pertained to the Oahe project (Section 3509).

Public Law 106-53, 17 August 1999, Title VI of the Water Resources Development Act of 1999, Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, and State of South Dakota Terrestrial Wildlife Habitat Restoration. *In compliance.* Under this provision, the Government retains fee title to lands and structures necessary for the continuation of the operation, maintenance, repair, replacement, rehabilitation, and structural integrity of the dam and related flood control and hydropower structures, including land below the top of the exclusive flood control pool, and can lease in perpetuity all or part of certain recreation areas associated with the dams to the State of South Dakota or to the Cheyenne River Sioux Tribe at the Oahe project. Title VI establishes the South Dakota and Cheyenne River Sioux Tribe Terrestrial Wildlife Habitat Restoration Trust Fund. After these funds are fully capitalized the interest may be used for costs associated with the restoration and management costs associated with the transferred lands. This legislation also requires the Secretary to arrange for the U.S. Geological Survey to complete a comprehensive study of the potential impacts on water flows in the Missouri River as a result of the transfer of lands under this title and prohibits such transfers until the secretary determines that the transfers will not significantly reduce the amount of water flow to the downstream States of the Missouri River. The master plan reflects land transfers that have occurred as a result of Title VI.

Public Law 106-541, 11 December 2000, Title VI of the Water Resources Development Act of 2000. *In compliance.* Section 540 of this act amended Public Law 106-53. The section applied a deadline of 1 January 2002 for land transfers; included direction on the lease of specific recreation areas to the State of South Dakota; and a requirement to clean up each open dump and hazardous waste site. The act also established both a Cultural Resources Advisory Commission as well as a requirement to inventory and stabilize each cultural and historic site on land to be transferred. The master plan reflects land transfers that have occurred as a result of Title VI.

noise emissions to within compliance levels. Noise emission levels at sites where development was proposed in the updated Oahe Master Plan would increase above current levels temporarily during periods of construction; however, appropriate measures will be taken to keep the noise level within the compliance levels.

Public Law 93-205 (87 Stat. 884), 28 December 1973, Conservation, Protection, and Propagation of Endangered Species Act of 1973, as amended. *In compliance*. This law repeals the Endangered Species Conservation Act of 1969. It also directs all Federal departments/agencies to carry out programs to conserve endangered and threatened species of fish, wildlife, and plants and to preserve the habitat of these species in consultation with the Secretary of the Interior. This act establishes a procedure for coordination, assessment, and consultation. This act was amended by Public Law 96-159. Corps management and construction activities proposed by the master plan would have no effects on federally or State listed or candidate threatened and endangered species known to exist in Oahe project areas for which the Corps is responsible.

Public Law 93-523 (88 Stat. 1660), 16 December 1974, Safe Drinking Water Act, as amended. *In compliance*. This act amends the Public Health Service Water Act to assure that the public is provided with safe drinking water. This law states that all potable water at civil works projects will meet or exceed the minimum standards required by law. This act was amended by the Safe Drinking Water Act Amendments of 1986, Public Law 99-339 of 1986, and Public Law 104-182. The NDDH and SDDENR work with all public water systems along Lake Oahe to ensure they comply with this act.

Public Law 93-629, (88 Stat. 2148), 3 January 1975, Federal Noxious Weed Act of 1974, as amended. *In compliance*. Section 15, added to the act in 1990, requires noxious weed control management on Federal lands and sets forth the process by which it is to be accomplished. Resource objectives and development needs for management units in the master plan include the control of noxious weeds.

3

not done.

Executive Order 11988, 24 May 1977, Floodplain Management. *In compliance*. This order outlines the responsibilities of Federal agencies in the role of floodplain management. Each agency shall evaluate the potential effects of actions on floodplains and should not undertake actions that directly or indirectly induce growth in the floodplain, unless there is no practical alternative. Agency regulations and operating procedures for licenses and permits should include provisions for evaluation and consideration of flood hazards. Construction of structures and facilities on floodplains must incorporate flood proofing and other accepted flood protection measures. Agencies shall attach appropriate use restrictions to property proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties.

TOPOGRAPHY, GEOLOGY, AND SOILS

The area to the east of Lake Oahe is characterized by gently rolling plains to steep glacial moraines. West of the lake, the topography is typically gently sloping to very steep with a few scattered buttes. The bedrock surrounding Lake Oahe consists of nearly flat sedimentary rock with older rock exposed in the southern part of the project and the younger rock exposed in the northern portion of the project. Soils within the project area vary in their suitability for road construction, facility development, and vegetative plantings.

LAND USE

Why is there not a equivalent Rep. from each county included regarding land regulation.

Agricultural use accounts for the majority of the land in the counties bordering Lake Oahe. The remainder of the lands is devoted to recreation, wildlife, transportation, and urban areas.

BORROW AREAS AND UTILITIES

Major borrow areas used during the construction of the dam were located at the left abutment east of the powerhouse and northwest of the existing West Shore Recreation Area. At the present time, the only active borrow areas located on project land are the ORV area south of the dam and the area northwest of the West Shore Recreation Area.

STEWARDSHIP

If you have the money Corps

Corps stewardship of Oahe project lands reflects priorities established by the Assistant Secretary of the Army for Civil Works and the Corps' National Stewardship Advisory Team. The first priority is to comply with all laws relating to endangered species, cultural resources, and mitigation. The second priority is to transition all poor or fair condition lands towards a sustainable ecosystem. This would include prairie restoration, ~~control of noxious~~ weeds, and preventing the loss of wetlands or native prairie. The third priority is to balance uses of project lands while maintaining a sustainable ecosystem in good to excellent condition.

VEGETATION RESOURCES

Native vegetation found on the Oahe project varies widely. Although much of the project region is dominated by a short grass ecosystem, a substantial number of tallgrass species occur in some areas. Riparian wetlands occur in the northern portion of the project where remnants of the old Missouri River forest can be found. Smaller embayments and narrow drainages are found in the central and southern portions of the lake. Bottomland woodlands are dominated largely by cottonwoods and are found predominantly in the upper portions of the major tributary drainages.

The fluctuation of the water level on Lake Oahe creates unique temporary vegetative layers. The annual rise and fall of the lake's elevation provides a changing seedbed that is constantly renewed. During consecutive years with lower water levels, shoreline vegetation levels dramatically increase which results in an increase in upland game, migratory birds, and big game populations.

Public Law 90-583 (82 Stat. 1146), 17 October 1968, Noxious Plant Control. *In compliance.* This law provides for a control of noxious weeds on land under the control of the Federal government. Resource objectives and development needs for management units include the control of noxious weeds.

Public Law 86-717 (74 Stat. 817), 6 September 1960, Conservation of Forest Lands in Reservoir Areas. *In compliance.* This law provides for the development and maintenance of forest resources on Corps managed lands and the establishment and management of vegetative cover so as to encourage future resources of readily available timber and to increase the value of such areas for conservation. Resource objectives and development needs for the management units include planting trees and shrubs to increase the amount of woody vegetation for winter and nesting cover for upland and big game species; planting trees, food plots, native grasses, and/or marsh grasses to supplement the existing food sources for upland and big game species and/or waterfowl; and developing additional woody draw habitat

Public Law 109-320 (120 Stat. 1748), 11 October 2006, Salt Cedar and Russian Olive Control Demonstration Act. Requires the Secretary of the Interior to work with Secretary of Agriculture and Secretary of Defense to carry out a salt cedar and Russian olive assessment program to assess the extent of salt cedar and Russian olive in the western United States, demonstrate strategic solutions for long-term management of salt cedar and Russian olive and assess economic means to dispose of salt cedar and Russian olive. The Corps coordinates with the multi-State and multiagency salt cedar task force to control salt cedar at Lake Oahe.

Public Law 93-629, (88 Stat. 2148), 3 January 1975, Federal Noxious Weed Act of 1974, as amended. *In compliance.* Section 15, added to the Act in 1990, requires noxious weed control management on Federal lands and sets forth the process by which it is to be accomplished. Resource objectives and development needs for management units in the updated Master Plan/EA include the control of noxious weeds.

Public Law 92-500 (86 Stat. 816), 18 October 1972, The Federal Water Pollution Control Act Amendments of 1972, as amended. *In compliance.* This law amends the Federal Water Pollution Control Act and establishes a national goal of eliminating pollutant discharges into waters of the United States. Section 404 authorizes a permit program for the disposal of dredged or fill material in the Nation's waters that is to be administered by the Secretary of the Army acting through the Chief of Engineers. This law was later amended by the Clean Water Act of 1977, Public Law 95-217, to provide additional authorization to restore the Nation's water. The project is in compliance with this law. If any construction activities involve the temporary or permanent placement of dredged or fill material into any waterbody or wetland area at Lake Oahe, a permit pursuant to Section 404 is required.

Public Law 92-574 (86 Stat. 1234), 27 October 1972, Noise Control Act, as amended. *In compliance.* This Act establishes a national policy to promote an environment for all Americans free from noise that jeopardizes their health and welfare. Federal agencies are required to limit noise emissions to within compliance levels. Noise emission levels at sites where development was proposed in the updated Oahe Master Plan would increase above current levels temporarily during periods of construction; however, appropriate measures will be taken to keep the noise level within the compliance levels.

SCHMIDT/GRANER BOTTOMS

Management Unit. MU #062

Classification. Multiple Resource Management: Wildlife Management

Management Agency. North Dakota Game and Fish Department

Location. The Schmidt/Graner Bottoms area is located in Morton County approximately 10 miles south of Mandan, North Dakota. This area is in the extreme northern portion of the Oahe project located on the west side of the lake. The area extends from the northern boundary south to the Huff Village Area but excludes both the Little Heart and the Graner Park Recreation Areas. Access is by several minimum maintenance roads and dirt trails leading from ND Highway 1806.

Description. The topography of this 5,591-acre management area is flat river bottomland. There are large forested areas of primarily cottonwood with willow along the shoreline. In addition, there are small stands of bur oak on the small side slopes. Portions of this area that are leased for agricultural purposes provide supplemental food sources for area wildlife. Corn, wheat, oats, and alfalfa are planted by local farmers and portions of these crops are left standing for the benefit of wildlife.

The heavily wooded bottomlands along the lake are home to a variety of wildlife species. White-tailed deer are numerous. Upland game species include pheasant with a few sharp-tailed grouse. Cottontail rabbits, squirrels, raccoon, porcupine, and turkey also reside here. Beaver and muskrat make their homes in the many small embayments in the area. These embayments also receive considerable use by migrating waterfowl during the spring and fall. Numerous shorebirds reside in the area because of the location of adjacent sandbars and the sandy nature of the shoreline. These include killdeer as well as the federally endangered least tern and the threatened piping plover.

The CRMP has identified cultural sites in this area. Prior to any future development at or near this area, an evaluation must be made to determine if the development would affect any historic properties that may be eligible for the National Register or any Traditional Cultural Properties and the best way to avoid, minimize, or mitigate potential impacts.

Area Use. The area is managed to improve the quality of habitat for wildlife species by maintaining woody vegetation and winter cover and providing a supplemental food source. Several shelterbelt plantings have been established within the Schmidt/Graner Bottom Area. As mentioned earlier, portions of cropland are left standing for an additional food source. The cropland left standing have attracted numerous waterfowl species during spring and fall migrations, making this a prime waterfowl hunting location.

This area receives considerable hunting pressure for big game species, as well as some upland game and waterfowl. There is a small rifle range located adjacent to project land near the Little Heart Recreation Area that is operated by Morton County. This area is heavily used just before and during hunting season for sighting-in rifles, target practice, and skeet shooting.

This management area is also popular for shoreline fishing because of its easy access and proximity to the Little Heart and Graner Park Recreation Areas. Other activities include sightseeing, photography, and hiking.

Resource Objectives.

- Upgrade the quality of habitat for big game, upland game, and waterfowl species
- Protect any State or federally listed threatened and endangered species that may periodically use the area
- Promote ecological integrity by controlling noxious weeds
- Preserve, monitor, and protect any cultural resources

Development Needs.

- Manage vegetation for optimum use of wildlife and fisheries when water returns
- Increase food plots to supplement existing food sources for waterfowl, big game, and upland game
- Monitor and maintain the vegetative resources to ensure the continued survival of the bottomland forest
- Manage vegetation for optimum use of threatened and endangered species and other wildlife and fisheries
- Control noxious weeds
- Provide appropriate protection for any cultural resources

Rationale. A land use classification of Multiple Resource Management: Wildlife Management is assigned to the Schmidt/Graner Bottoms Area because it serves as a travel corridor for wildlife moving between upland areas and Lake Oahe. Much of the area is suitable for additional wildlife plantings such as trees, shrubs or food plots. Compatible recreation opportunities based upon the resources present are also supported.

Excess land taken for reservoir construction of dams in ND, Lake Sakakawea and Lake Oahe in eleven counties in the Missouri River corridor, land above elevation 1617 on Lake Oahe and elevation 1845 on Lake Sakakawea.

Conditional excess = meaning land wouldn't be needed under modern land acquisition criteria.

Excess Land = means property under the control of any Federal Agency which is not required for its needs and the discharge of its responsibilities.

4/9/96

Every ND county affected by the 1944 Flood Act has a different geography and each county is going to have a different prospective of excess acres. The county commissions of each county in the river corridor, set up committees for the purpose of making recommendations involving wildlife mitigation, recreation and excess lands. When the county committees have concluded their recommendations, the county commissioners have approved the plan, the state of ND shall petition the Federal Government Agencies for the transfer of the excess land to that county for their consideration.

Understand, it is not possible for the Corps to transfer land to state or counties without specific federal legislation authority. All land lying below elevation 1617-1854 and federal recreation areas would remain the responsibility of the Corps.

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Defending Their Lands

The Struggle of Three Tribes to Save Their Reservation in the 1940s

By Robert J. Hanna

"The principles that we fought for in this last war, right beside you, was for the very homes, lands, and resources that you are trying to take from us today."

—Mandan, Hidatsa and Arikara Nation Councilman Mark Mahto, Washington, D.C., July 17, 1947.

It was a bitter irony. During World War II, while 250 Mandan, Hidatsa and Arikara Indians—half the adult men from their reservation—were away fighting to protect their country and homes, their country was making plans to destroy their homes instead. In 1944, Congress approved a plan to build a dam that would flood the core of the Fort Berthold Reservation and the homes of 90 percent of the reservation's people.

These three tribes had lived along the Missouri River for hundreds of years. They built their culture around the river, locating their earthlodge villages on bluffs overlooking its banks and farming the river bottoms. Every spring they depended upon the Big Muddy to flood its banks, laying sediments as fertile soil and watering the ground. The floodplains were divided into vast stretches of fenced fields where the women raised enough corn, beans, squash, and sunflowers to feed their families and trade with other tribes. Tens of thousands of people thrived here until the late 1700s. Then, beginning in 1781, a series of smallpox epidemics began that killed all but a few hundred people within a century. Still, the tribes persevered. In 1862, they banded together to form what is now called the Mandan, Hidatsa and Arikara Nation.

Photograph Courtesy of the Associated Press

Fort Berthold Tribal Council Chairman George Gillette weeps as J.A. Krug signs the contract to purchase reservation lands for the construction of Garrison Dam.

At that time, their reservation history was beginning. The

Continued on Page 4

The Battle of the Washita

The following article was originally published in the New York Times *on Feb. 14, 1869:*

"The St. Louis Democrat publishes the following private letter from a participant in the battle of Washita, Idaho, which gives some of the secret history of that fight, and accounts for the fact of Maj. ELLIOTT and his men being reported missing:

Fort Cobb, I.T., Dec. 22, 1868.

MY DEAR FRIEND: I wrote to you from Camp Supply, which place we left on the 7th, arriving at this post on the evening of the 18th. On the 11th we camped within a few miles of our 'battle of the Washita,' and Gens. SHERIDAN and CUSTER, with a detail of one hundred men, mounted, as escort, went out with the view of searching for the bodies of our nineteen missing comrades, including Maj. ELLIOTT.

The bodies were found in a small circle, stripped as naked as when born,...and nearly all had been horribly mangled in a way delicacy forbids me to mention. They lay scarcely two miles from the scene of the fight, and all we know of the manner they were killed we have learned from Indian sources. It seems that Major ELLIOTT's party were pursuing a well mounted party of Cheyenne in the direction of the Grand Village, where nearly all the tribes were encamped, and were surrounded by the reinforcements coming to the rescue of the pursued before the Major was aware of their position. They were then out of sight and hearing of the Seventh Cavalry, which had remained at

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The River Be Dammed

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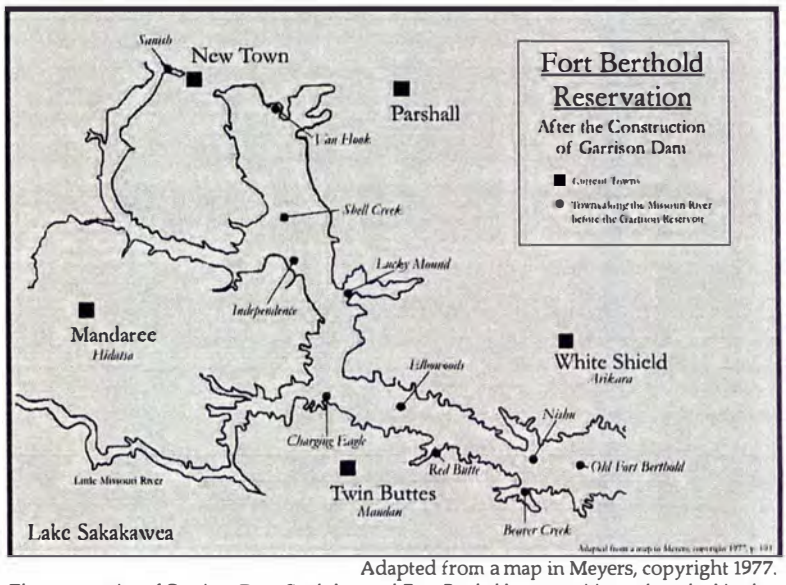
government and the tribes signed the Fort Laramie Treaty of 1851, in which the government agreed to recognize much of the traditional lands of the tribes as belonging to them—an area of 12.6 million acres. But, over the years a process began in which more and more reservation lands were taken away and the very concept of the reservation itself was degraded. In 1870, the reservation was arbitrarily reduced by executive order. It was reduced again in 1880, down to 1.2 million acres, to allow the government to give free land to the Northern Pacific Railroad, which it was to sell to settlers. Then, in 1887, the General Allotment Act determined that the tribes would no longer hold the reservation in common, but rather each head of household would be assigned a 160-acre plot from the reservation. Any reservation lands left over—indeed the majority of the reservation—could be sold to the government. The tribes were essentially strong-armed into doing so several times until 1910. By then, the reservation was one twelfth its original size, with even less of its land under the ownership of Three Tribes members.

But, if any comfort was left to them it was that they still had the river bottomlands. Their towns of Elbowoods, Nishu, Red Butte, Charging Eagle, Lucky Mound, Independence, Shell Creek, Beaver Creek and Square Butte punctuated long stretches of farmland and beautiful cottonwood forests. The soil there was among the most fertile on the Great Plains. The tribes carried on their thousand-year tradition of farming in the river valley, adding wheat to their more traditional crops. Many also invested in cattle and made ranching the reservation's second main industry. They did so well that during the depression of the 1930s, even though they also faced poverty, their economy survived better than that of surrounding white areas—many impoverished white people survived the depression by getting jobs on Three Tribes farms and ranches. Even during the Second World War, while so many of the men were away, the farms managed to increase production.

But, far downstream, things were not going well. The year 1943 saw one of the largest floods recorded along the Missouri, claiming several lives and destroying millions of dollars of property. The Missouri had always been an unpredictable river, prone to flood one year and drop so low another that it was unnavigable. The nation was persuaded to do anything necessary to stop it, and when the waters started lapping into the streets below the Omaha office of Colonel Lewis Pick of the Army Corps of Engineers, no one was more persuaded than he. Sent away to Omaha after bungling the design of an Army Air Corps training facility (it had to be shut down after it was determined that the runway was impossible to land on), Pick now found himself called upon to design a flood-control plan for the entire Missouri basin. Developed in just 90 days and only 10 pages long, the Pick Plan called for almost the entire length of the upper Missouri River to be converted to a series of five artificial lakes, with the intended result of not only controlling flooding, but also ensuring enough water for permanent navigation on the lower Missouri. The plan naturally won the favor of downstream states.

Meanwhile, Glenn Sloan of the Bureau of Reclamation office in Billings, Mont., had been working for the last three years on another proposal for controlling the Missouri. The Sloan Plan did not provide for downstream navigation, but it did provide for irrigation of otherwise arid farmland upstream and, of course, the control of flooding. It involved three fewer dams on the main stem of the Missouri and more small ones on its tributaries. Naturally, it was favored by the upstream states.

The two competing plans led to long and loud debates between Pick and Sloan, between the Army Corps and the Bureau of Reclamation, between the downstream and the upstream states, and between their corresponding congressmen. Finally, President Franklin D. Roosevelt ordered the corps and the bureau to design a compromise plan. Quickly realizing that neither side would give ground, they decided in a one-day meeting to simply combine all the proposed dams and projects of each side without even considering whether there would be enough water in the Missouri Basin for the combined goals of both agencies. The resulting Pick-Sloan Plan was approved by Congress as part of the Flood Control Act of 1944.



Adapted from a map in Meyers, copyright 1977.

The construction of Garrison Dam flooded several Fort Berthold communities and resulted in the creation of five new towns, all away from the newly-flooded river bottoms.

Neither side gave much consideration to Fort Berthold or the many other reservations that would be affected by the dams. Taking land for a public works project from Indian reservations was very different from using eminent domain laws to take it from private citizens. Reservation land was protected by treaties in which the government had promised to recognize the lands of the Three Tribes as theirs forever. According to the legal situation in force by that time, much of the land to be flooded was held in trust by the United States Government for the tribes. But four of the five artificial lakes to be created from the Missouri would fall on reservations, and the Three Affiliated Tribes would be hit hardest. Ninety percent of the people lived on land that was to be flooded by the Garrison Dam, not to mention every one of their towns. The July 1, 1943, issue of the *Sanish Sentinel* quoted a memo from Department of the Interior Solicitor Felix S. Cohen to Indian Commissioner William Brophy as saying, "the Garrison site was selected by reason of the fact that a large proportion of the inundated area would be composed of Indian lands."

The Three Tribes' first indication that their homeland was in danger was in the spring of 1943 when engineers and small red surveyors' flags were noticed around Garrison and Elbowoods. The *Stanley Sun* was the first to break the news to the tribes that the government was planning a dam. The *Sun* reported that the engineers were trying to determine where exactly it would be built.

Once the Pick-Sloan plan was approved, the Army Corps unleashed major advertising efforts to promote the dams in Missouri Basin states. Newspapers in North Dakota reported that the Garrison Dam, the first of the new dams, would be a wonder of the modern age, providing flood control, irrigation, recreation, cheap electricity and, eventually, an industrial paradise for the state, not to mention a crystal-clear sparkling blue lake in place of the muddy Missouri. A text

was even written for the state's public schools so that school children could be informed in class about the benefits of the dam, presented as a monumental work of human technology and ingenuity.

The Three Tribes tried to defend their homes, land, cities and economic base. As early as November, 1943, the tribal council passed a resolution opposing construction of the dam because of the "untold material and economic damage" it would cause to the Three Affiliated Tribes. Members of the tribal council traveled back and forth to Washington many times in the following years to plead their case. They did not have travel money or even professional suits to wear, so dances and other fundraisers were held throughout the reservation to pay for their tickets and hotel bills, while other members sought out used suits of clothing for them in church donation barrels. The tribes hired a civil engineer named Daniel C. Walser to propose an alternative dam site. He developed a design for a dam in the northwestern part of the reservation, which would have left the majority of the reservation bottomlands intact. According to Walser, it would have achieved the same flood-control and irrigation results as the Garrison Dam, generated electricity even more efficiently, cost $1 million less to build, and saved perhaps $20 million in relocation costs. The Three Tribes even offered to give this land to the government for free, but the Army Corps would not consider it. Many have blamed longstanding rivalry between the corps and civil engineers.

Having approved the Pick-Sloan plan in 1944, Congress finally authorized funding for it in 1946 under the stipulation that the tribes be offered land of sufficient size and comparable quality to replace the lands to be destroyed by the dam. It looked as if the most likely area would be the land just south of the dam, in the Washburn area. However, an outcry from the local non-Indian residents quickly dampened the idea.

In May of 1946, Colonel Pick, North Dakota Governor Fred Aandahl and other officials involved with the dam met with Three Tribes members in Elbowoods. The corps hoped to persuade the Three Tribes to accept replacement lands outside of the current reservation, but the tribes hoped to persuade the corps to consider their other dam location. One Three Tribes man expressed empathy for the white settlers who would have to be removed to give the Three Tribes additional river bottom land. "The residents of the lieu area are pioneers of the country, and I do not think it right to compel them to leave their home." The consensus of the tribes was that they could not duplicate their former lifestyle in other riverside areas. Both the tribes and the Bureau of Indian Affairs ultimately rejected the offer.

Finally, in 1947, the tribes were offered $5,105,625 along with irrigation and free electrical power as a take-it-or-leave-it settlement for the lands to be inundated. Tribal Council Chairman George Gillette, literally in tears, signed the agreement on May 21, 1948. The *Sanish Sentinal* quoted him as saying that day, "The truth is, as everyone knows our Treaty of Fort Laramie, made in 1851 and our tribal constitutions are being torn into shreds by this contract."

Once work began on the dam, it was every bit the amazing spectacle of human might and technology the Army Corps literature had promised. An entire planned town, named Riverdale, with its own church, school, stores and recreation centers was built next to the site to house all the workers. A bridge was built over the river from which dump trucks poured stone and earth to form the dam while earthmovers worked the sides of the site. Massive turbines were constructed for the electrical generators. Meanwhile, Three Tribes members were haphazardly relocated from their precious river bottom to lands on the desolate high plains. Frequently, entire houses were moved on trailers, leaving behind ghost towns of gaping basements. Other Three Tribes members were given new housing with woefully inadequate insulation that no North Dakota resident would voluntarily chose against the harsh winters. Tribal members were not permitted to salvage the wood of the cottonwood trees. On the high plains they would no longer have access to their usual wood and coal veins as sources of fuel and heat. Government representatives told them that they would receive sufficient electricity from the dam generators as a replacement, but the promise was never followed through.

Finally, in 1954, the dam was finished. President Dwight D. Eisenhower himself came to oversee the dam-closing celebration. After he left and the festivities died down, the Mandan, Hidatsa and Arikara watched the water slowly back up against the earth-filled wall and swallow up a little more of their doomed homeland every day for the next two years.

In addition to never receiving the power benefits, the promise of irrigation for the people's new lands never materialized. Furthermore, the swollen Missouri now divided the reservation into five distinct sections that could not be accessed except by driving many dozens of miles outside the reservation to the nearest bridges. The combined force of all these factors threw the once-growing Three Tribes economy on its side for decades. Despite repeated attempts at justice, none got very far. With their economic base destroyed and no help establishing a new one, the tribes struggled on for over 30 years.

In 1986, a Joint Tribal Advisory Committee was formed under orders from the Secretary of the Department of the Interior to examine the effects of the Garrison Dam on the people of the Fort Berthold Reservation, as well as the effects of other Pick-Sloan dams on the people of the Standing Rock Reservation. In a carefully-researched, 90-page document, the committee reported that the Three Affiliated Tribes had borne most of the expense of a dam of which they had not voluntarily accepted construction, and brought them no benefits whatsoever. Even though written in straight-forward, objective legal terminology, the document is deeply moving as one reads the long list of injustices done to the tribes. The committee pointed out that justly compensating the Three Tribes for the taking of their lands required much more than reimbursing them for the fair market value of their farmland. The river bottomland was also the essential raw material of their economy—an economy that could not be replicated on the dry high plains. Adequate compensation should consider what it would take for the people to form some completely new kind of economic base. Furthermore, the document pointed out how the dividing of the reservation had lead to serious difficulties in reaching emergency medical care, how the taking of the trees and coal veins had eliminated the tribes' energy sources in ways that the failed promise of electricity had never restored, while shabbily-insulated government-provided houses often forced families at the time to pay electrical bills of $400 or $500 per month in the winter. Because the land was taken in square chunks, a considerable amount of excess land around the reservoir had been taken that was not needed for the running of the dam. Health care facilities, an important bridge, schools, highways and access roads had been removed that were never replaced, despite Army Corps promises. Furthermore, the tribes were not allowed to develop picnic shelters, marinas and other recreational facilities along the lakeshore that might help their economy. Altogether, the document listed 10 changes that Congress should make to improve the fairness of the land-taking of 1948.

Once the report was sent to Secretary of the Interior Donald P. Hodel, however, he allowed it to sit on his desk for over a year. It appeared that the document would be ignored indefinitely until President Ronald Reagan, during a meeting with then-tribal chairman Ed Lone Fight and several other Native American leaders, heard about the situation and personally requested Secretary Hodel to look into the document right away. This began a long legislative process, lasting until late 1992, in which Congress agreed to pay the tribes $149.2 million dollars to help them recover from the damages caused by the dam. Money from the electricity generated by the Garrison Dam was to be placed into a trust fund and the interest from the fund to be sent to the tribal government at regular intervals.

This amount was less than half the minimum suggested by the Joint Tribal Advisory Committee.

Of course, no amount of money or improvements will ever bring back the memories, the beauty or the thousand-year ties lost to the flood.

4

MANDAN, HIDATSA & ARIKARA NATION

Three Affiliated Tribes * Fort Berthold Indian Reservation

Tex "Red Tipped Arrow" Hall
Office of the Chairman

TESTIMONY ON HB 1338
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

February 7, 2013

Tex "Red Tipped Arrow" Hall, Chairman
Mandan Hidatsa & Arikara Nation
Fort Berthold Indian Reservation

Chairman Porter, Vice Chairman Damschen and members of the House Energy and Natural Resources Committee, my name is Fred Fox, I am the Vice Chairman of the Mandan Hidatsa and Arikara Nation (MHA Nation) of the Fort Berthold Indian Reservation. I am here to present testimony on behalf of Chairman Tex Hall. I respectfully provide this testimony in opposition to House Bill 1338. We also oppose House Concurrent Resolution 3010, both of which address the return of excess lands around Lake Sakakawea.

In its current form, HB 1338 directs the Governor to negotiate with the federal government for the return of excess lands around Lake Sakakawea and Lake Oahe. The MHA Nation is opposed to this Bill because it makes no exception for lands taken by the United States within the Fort Berthold or Standing Rock Reservations. Without a clarifying amendment to ensure that the Bill does not apply to lands within the Fort Berthold and Standing Rock Reservations, this Bill conflicts with long-standing federal treaties and law securing reservation lands for the benefit of Indian tribes and our members. This Bill also conflicts with a specific federal law, Section 206 (b) of the Fort Berthold Reservation Mineral Restoration Act, which provides for the return of lands not needed by the Army Corps around Lake Sakakawea and within the Fort Berthold Reservation to the MHA Nation.

In fact, the MHA Nation has been working pursuant to Section 206 (b) for a number of years to obtain the return of our lands. In our efforts, we are not seeking the return of State lands, and we have pledged to work with the non-Indians and recreation areas within the

Reservation to assure their continued access. HB 1338, as currently drafted, will interfere in these ongoing efforts. This Committee should amend HB 1338 to be consistent with long-standing federal treaties and law and to respect the efforts of the MHA Nation to obtain the Reservation lands that were taken.

I note that this is the second time in recent years that I have been forced to testify in opposition to a measure in the North Dakota Legislature seeking Army Corps' surplus lands around Lake Sakakawea and Oahe. In the 62nd Legislative Assembly I testified in opposition to House Bill 1466 for its failure to properly exclude reservation lands from its provisions. I ask that the North Dakota Legislature end these efforts to usurp tribal lands and begin to develop bills and resolutions that recognize the MHA Nation's and the Standing Rock Sioux Tribe's rightful claim to the excess reservation lands around Lake Sakakawea and Lake Oahe.

The Mandan, Hidatsa and Arikara people have, for centuries, lived and thrived along the Missouri River, which we have long called "grandfather". The River has always been our lifeblood and the source of much of our economic activity. History documents that the Missouri River and the history of our peoples are inseparable. Our lodges were built along its bluffs, our crops grew, and our animals grazed and had shelter along the river bottom. We built our culture and economy around the river, it was our heartland. Even during the Great Depression our people did well along the River. This all changed when the Army Corps came with the Flood Control Act and constructed the Missouri River Pick-Sloan Project.

The Missouri River is now controlled by a series of dams. One of our former Chairmen, the late Carl Whitman, noted that these dams were conveniently placed to have maximum effect on the Indian tribes whose reservations and homelands lie directly upriver from the dams, placed that way primarily because it was easier to condemn tribal lands than other lands along the river. This is a documented fact.

No one can dispute that the effects of these dams have been devastating to our people, our culture, and our way of life. The MHA Nation is only now beginning to emerge from the long shadow of devastation inflicted by the "great flood" as our elders have called the creation of Lake Sakakawea behind the dam. This flood took away 156,000 acres of our heartland. This was fertile bottom land that supported our people and our animals for centuries. The reservoir called Lake Sakakawea stretches from one end of our Reservation to the other. The reservoir also means that we

have lost immediate access to the river, as the Army Corps owns the land adjacent to it, part of what is called the "taken area".

The MHA Nation was the only tribal nation to be split in two parts by the dams. In fact, to get from one part of our Reservation to another, we must travel outside the boundaries of our Reservation. What used to be a close knit community is now split into widely separated towns, with some communities, once a few miles part, separated by 120 miles because of Lake Sakakawea.

I have attached an article entitled "Defending Their Lands" written by Robert J. Hanna for "The Past Times", the official publication of the Fort Lincoln Foundation. I ask that it be made a part of the record along with this testimony. I want to quote the beginning of this insightful article because it goes to the heart of the injustice that surrounds the taking of our homeland, and our continuing effort to regain the land that was unjustly taken from our people. Remember, it was during World War II when the groundwork was being laid for the Garrison Dam. The Article quotes what one of our Councilmen said back then:

> *"The principles that we fought for in this last war, right beside you, was for the very homes, lands, and resources that you are trying to take from us today."*

—Mandan, Hidatsa and Arikara Nation Councilman Mark Mahto, Washington, D.C., July 17, 1947.

The Past Times Article goes on to state:

> *"It was a bitter irony. During World War II, while 250 Mandan, Hidatsa and Arikara Indians— half the adult men from their reservation—were away fighting to protect their country and homes, their country was making plans to destroy their homes instead. In 1944, Congress approved a plan to build a dam that would flood the core of the Fort Berthold Reservation and the homes of 90 percent of the reservation's people."*

The Garrison Dam displaced 90 percent of our people and flooded all of our towns, including our hospital which has never been replaced. The Fort Berthold Indian Reservation was set aside by federal law for the benefit of the MHA Nation. If the excess Reservation lands along the lake belong to anyone, they belong to us. Federal law authorizes the return of these excess lands to the MHA Nation. Section 206 (b) of the Fort Berthold Reservation Mineral Restoration Act grants the Secretary of the Army the power to enter into agreements with the Secretary of the Interior to restore these excess lands in trust for the Mandan Hidatsa and Arikara Nation. This federal law will help to remedy a historical injustice.

I ask that the State of North Dakota and its Legislature respect the sacrifice our people made in the taking of our heartland and economic resources, and our efforts to regain what was wrongfully taken from us. We will stand with you in your effort to regain the excess lands in North Dakota that were taken outside of the Reservation. But we will continue to fight any effort by the State to acquire the land that was taken unjustly from the MHA Nation. Mr. Chairman, Mr. Vice Chairman and members of the Committee, I urge you to clarify that this Bill does not apply to the excess lands taken within the boundaries of the Fort Berthold and Standing Rock Reservations.

5

STATEMENT OF CHARLES W. MURPHY
CHAIRMAN, STANDING ROCK SIOUX TRIBE
NORTH DAKOTA HOUSE OF REPRESENTATIVES
ENERGY AND NATURAL RESOURCES COMMITTEE
HEARING ON HB 1338
FEBRUARY 7, 2013

Mr. Chairman and members of the Energy and Natural Resources Committee, my name is Charles W. Murphy. I serve as Chairman of the Standing Rock Sioux Tribe. I ask that my statement be entered into the hearing record on HB 1338, a bill to require the governor to negotiate for the transfer of Army Corps of Engineers' land to the adjacent landowners.

I recognize the severe impact of the Missouri Basin Pick-Sloan Program, and the desire of the affected landowners to receive excess lands taken by the Corps. Indeed, we do not oppose the individual landowners to whom this Bill references, nor denigrate their collective loss. But it is because the Standing Rock Sioux Tribe so thoroughly identifies with that loss that raises serious concerns for the Tribe over the Bill. The Pick-Sloan Program, and resultant dam construction, decimated Indian Country along the Missouri River, including the Treaty-protected homeland of the Standing Rock Sioux Tribe, which led to the taking of 56,000 acres of the Tribe's land, and the dislocation of a quarter of the Tribe's population. Given the Tribe's own history, its overwhelming interest in the return of taken Tribal lands, and the implications of the language in the bill before you, the Tribe's primary concerns with HB 1338 focus on two areas:

(1) HB 1338 will harm Native American cultural resources on land that may be transferred out of federal status, as federal protections currently in place would be eliminated.

(2) HB 1338 does not adequately take into consideration Tribal interests.

Given these concerns, addressed more thoroughly below, further discussion between the State and Tribe is necessary on this issue before legislation is enacted mandating negotiations over the return of taken lands, and we must respectfully request a "do not pass" recommendation on HB 1338.

1. The Proposed Land Transfer Under HB 1338 Would Eliminate Federal Protections for Cultural Resources Along the Missouri River.

Our Tribe wintered in the bottomlands of the Missouri River for hundreds of years before non-Indian settlement. Consequently, this area contained a wealth of artifacts and cultural resources of our Tribe (and the Three Affiliated Tribes). By one report, the Corps of Engineers itself identified 1,114 cultural sites at Lake Oahe, and 1,402 cultural sites at Lake Sakakawea. (U.S. Army Corps of Engineers, *Final Environmental Impact Statement, Missouri River Master Water Control Manual, Review and Update*, March 2003, p. 3-165). While those are significant numbers, the Tribe believes these figures are still too low, and there are probably thousands of additional sites. Their protection is very important to the Standing Rock Sioux Tribe.

The Oahe Act of September 2, 1958, which authorized the Corps of Engineers to acquire 56,000 acres of wooded bottomlands at Standing Rock for the Oahe Reservoir, required the Corps to relocate the cemeteries that were located in the taken area. (72 Stat. 1762-1763). The Corps, however, failed to do so. As a result, water level fluctuations at the Missouri River main stem reservoirs continue to result in the unearthing of human remains, funerary objects and cultural resources, traceable to Standing Rock and our neighboring Tribes.

Federal law protects these objects from looting and other activities, as long as they are located on federal land. The National Historic Preservation Act (NHPA) requires federal agencies to evaluate the impacts of their operations on such sites, to consult with the Historic Preservation Officers when such impacts occur, and to mitigate harm. (16 U.S.C. §470f). The Native American Graves Protection and Repatriation Act (NAGPRA) prohibits the intentional unearthing of Native grave sites and cultural objects on federal lands, and prescribes mitigation requirements for the unintentional unearthing of such objects. (25 U.S.C. §3002).

Any Corps of Engineers' land transferred to the Tribes retain their federal character, so these protections would remain in place. But Corps' lands transferred to private landowners would lose these protections for Native American cultural resources. Such resources, when uncovered, would be subject to claims of private ownership and to possible excavation and sale.

That is extremely troubling to the Standing Rock Sioux Tribe, as many of the historic sites and cultural resources along the Missouri River are of Lakota and Dakota origin. As such we have proprietary rights to these resources under NAGPRA. (25 U.S.C. §3002). Any land transfer to private landowners, as contemplated in HB 1338, will jeopardize our rights under NHPA and NAGPRA. This issue requires much more consideration before there may be any negotiated transfer of land from federal to private status.

2. HB 1338 Does Not Adequately Take Into Consideration Tribal Interests.

HB 1338 provides that the Governor negotiate the return of excess lands "to neighboring landowners." This language does not distinguish between the Corps of Engineers' land acquired from the Standing Rock Sioux Tribe and Tribal members, and the Corps' land in North Dakota outside of the Reservations, and therefore the intent as to the extent of the Governor's authority is unclear. As you are aware, the Tribe is a sovereign nation, and taken Tribal and trust lands within the Reservation boundaries are within the purview of the Tribe and the Federal Government, for which the Governor does not have the authority to negotiate. The Tribe wants to clarify that the Bill cannot grant that authority, as it would be in conflict with inherent principles of the Tribe's sovereignty.

However, beyond that issue, the Tribe still opposes the Bill since it makes no acknowledgement or provision of support for the Tribe's significant interests in the return of its taken lands, nor provide for a Tribal voice in the negotiations.

The land taken from our Tribe by the Corps of Engineers for the Pick-Sloan program was Treaty-protected land, guaranteed to our Tribe to be held in trust by the United States in perpetuity, in the Treaty of Fort Laramie of April 29, 1868 (15 Stat. 635). After ignoring those Treaty obligations and flooding the

Reservation, section 1(b) of the 1958 Oahe Act provided that excess taken land should be returned to Tribe and former Indian landowners within two years. (72 Stat. 1762). Although approximately 20,000 acres of Corps lands at Standing Rock lay above 1620 mean sea level, the maximum pool level for Oahe Reservoir, the Corps never implemented this provision.

In 1985, the Secretary of the Interior appointed an authoritative committee to study Pick-Sloan's impacts on the Standing Rock Sioux and Three Affiliated Tribes. The establishment of this committee was related to passage of the Garrison Reformulation Act of 1986. (100 Stat. 418-426). Prominent North Dakotans, such as General C. Emerson Murray, were appointed to the Joint Tribal Advisory Committee (JTAC). The JTAC Committee issued its Final Report on May 23, 1986. The report stated, "The former Indian lands comprising the present excess lands should be restored to the [Standing Rock and Three Affiliated] tribes subject to easements for project purposes." (*Final Report of the Garrison Unit Joint Tribal Advisory Committee*, May 23, 1986, p. 3).

In 1992, the Congress established a process for the transfer of these lands to the Tribe and former Indian allottees, in the *Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act*. (106 Stat. 4734-4738). However, this provision was repealed in the *Emergency Supplemental Appropriations Act of February 12, 1994*, due to the inability of the Corps of Engineers and Bureau of Indian Affairs to carry out the land transfer in a timely manner. The repeal states that, "the U.S. Army Corps of Engineers should proceed with the Secretary of the Interior to designate excess lands and transfer them pursuant to Public Law 93-599." (108 Stat. 3). Accordingly, Standing Rock has been attempting to work with the Corps for a land transfer under P.L. 93-599, which authorizes the administrative transfer of excess Corps' lands to the Interior Secretary, to be held in trust for Tribes. Unfortunately, the state of North Dakota has previously expressed opposition to related Tribal efforts. (*Letter of Honorable John Hoeven to the Departments of the Interior and the Army*, dated March 4, 2008, referencing "serious opposition," to an administrative land transfer at Fort Berthold).

Therefore, for nearly 50 years, the Tribe has had expectations of a return of taken Tribal lands, and has seen those expectations unfulfilled. By promoting the return of off-Reservation land to landowners, while not supporting the Tribe's efforts which have spanned the last half-century, nor by ensuring the Tribe would be made part of the negotiations, leaves unaccounted not only a significant amount of taken land, but also the hopes and interests of hundreds of Tribal members who are also citizens of the State of North Dakota. In addition, the Tribe is concerned that the Bill's contemplation of the rights of off-Reservation landowners, to the exclusion of equal contemplation of the Tribe and Tribal members, would cast a shadow over the Tribe's own efforts, and generate an impression – even if completely baseless – that the State does not support the Tribe's initiative.

These are serious and important issues, which should be examined and discussed between the State and Tribes prior to enacting legislation which would mandate negotiations over the return of excess lands. A similar bill (HB 1466) was rejected in the sixty-second legislative assembly, at least in part because of Standing Rock's concerns and request for further discussions between the State and the Tribe.

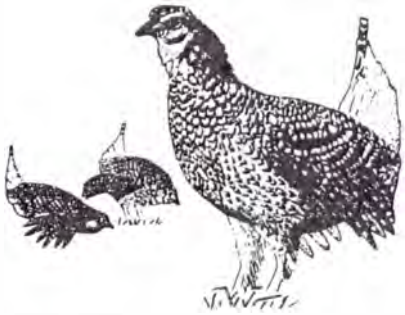
The Tribe's concerns are as important today, and the need for those discussions remains as crucial, as they were two years ago. I remain prepared to work constructively with Governor Dalrymple, the legislature and all affected stakeholders in North Dakota, to resolve these issues in a mutually agreeable manner. Until discussions between the Tribes and the State occur, however, this committee should not recommend passage of HB 1338. Thank you.

6

North Dakota Chapter

THE WILDLIFE SOCIETY

P.O. BOX 1442 • BISMARCK, ND 58502



TESTIMONY OF MICHAEL R. McENROE
NORTH DAKOTA CHAPTER, THE WILDLIFE SOCIETY
HOUSE BILL 1338
ENERGY AND NATURAL RESOURCES COMMITTEE
FEBRUARY 7, 2013

Chairman Porter and members of Committee:

For the record, Mike McEnroe, representing the North Dakota Chapter of The Wildlife Society. I am here today to oppose HB 1338.

HB 1338 calls for the return of certain property along Lake Oahe and Lake Sakakawea to be returned to the neighboring landowners. This amount of land amounts to approximately 41,000 **acres of public land managed by the North Dakota Game and Fish Department for the benefit of hunters and fishermen and other outdoor enthusiasts. The Chapter believes these lands should stay in public ownership under management by the Department.**

In previous legislative sessions, this idea has been proposed. The costs of surveying boundary lines for the proposed land transfer and the costs of moving fence lines and roads was estimated at over $20 million.

We urge a Do Not Pass on HB 1338

Thank you and I will answer any questions the Committee may have.

Amended 13.0547.2002

February 14, 2013

PROPOSED AMENDMENTS TO HB 1338

Page 1, line 2, replace "corp" with "corps"

Page 1, line 2, replace "neighboring landowners" with "state of North Dakota"

Page 1, line 7, after "lands" insert " outside the boundaries of the Fort Berthold Indian Reservation"

Page 1, line 8, after "lands" insert " outside the boundaries of the Standing Rock Sioux Reservation"

Page 1, line 8, replace "1,617" with "1,620"

Page 1, line 8, replace "492.86" with "493.70"

Page 1, line 9, replace "neighboring landowners" with "state of North Dakota. Any agreement for the return of lands described herein shall include provisions for the protection of native cultural and religious sites, artifacts, and human remains. The governor may support tribal efforts in negotiating with the United States army corps of engineers"

HB 1338

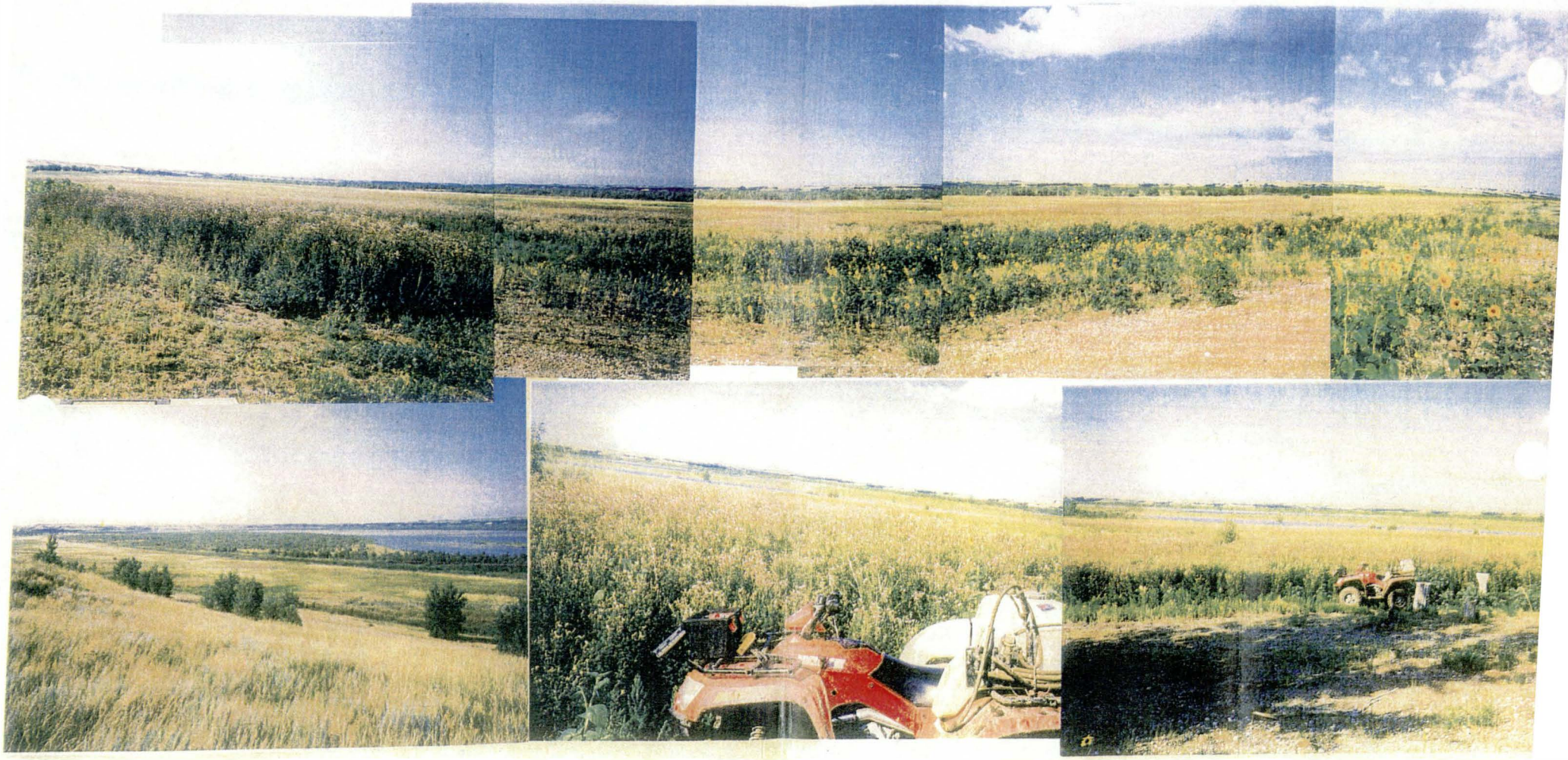
A BILL for an Act to provide for the return of certain property managed by the United States army ~~corp~~corps of engineers to the ~~neighboring landowners~~ state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1.

Return of land to landowners.

The governor shall negotiate with representatives of the United States army corps of engineers for the return of excess lands outside the boundaries of the Fort Berthold Indian Reservation around Lake Sakakawea above elevation 1,854 feet [565.01 meters] mean sea level and excess lands outside the boundaries of the Standing Rock Sioux Reservation around Lake Oahe above ~~1,617~~1,620 feet [~~492.86~~493.70 meters] mean sea level to the ~~neighboring landowners~~ state of North Dakota. Any agreement for the return of lands described herein shall include provisions for the protection of native cultural and religious sites, artifacts, and human remains. The governor may support tribal efforts in negotiating with the United States army corps of engineers. The governor shall report on the status of negotiations to the budget section of the legislative management by December 31, 2014.



1338

Good morning. My name is Herbert Grenz. I live 45 miles south of Bismarck bordering Lake Oahe Reservoir in Emmons County. Our family lost over 2,000 acres to the reservoir. I was involved with negotiations with the Corps Real-estate Division for over 8 years in court and out of court. I was Secretary for the Oahe Landowners Association which was organized in 1960 including Sioux, Emmons, Morton and Burleigh County landowners losing land to Lake Oahe. The purpose—to gather information and educate landowner's rights for negotiation procedures with the Army Corps Real-estate Division.

When Lake Oahe pool levels are reduced from elevation 1618 down to 1590 all counties in ND on Lake Oahe are reduced back to the Missouri River waterway, and land in this river is now state sovereign land, Oahe reservoir in ND becomes one gigantic slough.

Emmons County has 60 miles (more or less) of take line bordering the lake reservoir. Years 2005-2008 had approximately 30,000 acres that became a noxious weed nursery on the lakebed. This has become a normal occurrence over the last 40 years of lake operation, and this lakebed will continue to become more ~~noxious~~ notorious with noxious weeds every time land becomes exposed to low water levels.

Because lake elevation trends, the vegetation will turn to more noxious weeds and less natural vegetation. Salt cedar, Canada thistle, wormwood, and foxtail barley now dominate the lake bottoms, have spread onto adjacent lands. The noxious weed trend has been uncompromised by Corps Policies by attempting to make wild life habitat a priority.

Because of these changing policies, we have observed the rapid takeover of noxious weeds, and the lack of resources to control the problem.

Grazing dates have been changed to enhance wildlife, livestock is bad for wildlife, but why do they get along in the feedlots or hay lots? Most landowners are concerned stewards of wildlife and donate resources of assistance for wildlife when needed.

Livestock, which is one of the better natural controllers of noxious weeds in its early stages of growth, are not allowed grazing until July 15th. Corps claims that livestock will have an adverse effect on piping plover, and tern nesting along the lakeshore, if not complied with--$250.00 fine will be assessed for each trespass incident, meaning now landowners are responsible for fencing out "Corps take line" if there are adjoining grazing pastures with livestock. EXHIBIT (A) ATTACHED.

Property owners are having grave concerns of the influx of noxious seeds being spread over vast areas in Emmons county, be it wood draws, shelter belts, wet lands, grazing land, dry land farming, hay land, irrigation lands, high value crops; **noxious weeds can and does bring about restrictions and contamination to agriculture production grown in Emmons County.** There is over 8,000 acres of irrigated land bordering Lake Oahe in Emmons County when there is water.

Addresses many concerns that are presently occurring in Emmons County, which is a concerned county with its surrounding environment. This county had a beautiful natural riverfront that was destroyed and not by choice. One would hope that after 50 years some of the natural beauty would return, it hasn't.

If government owns the land or has the right to regulate it as deems fit, and people are at the mercy of bureaucrats regulations, land will not prosper. Land use regulations encumber property rights; thereby reducing or eliminating equity so there is little to no capital with which to create wealth. Without wealth, land becomes more difficult to protect the environment and land asset values decline.

Received the Corps letter 1-26-09 "unless you have a rotational grazing plan which is approved by the Corps of Engineers and NRCS or other specific dates as stated in the lease, grazing is allowed after 14 July lease year." Now we have 2 sets of rules to follow: 1. NRCS, 2. Corps of Engineers. The grazing dates have been changed from 1 May to 15 July – Oct. 31.

"Due to the increased interest in alternate and early grazing dates, (who are these increased interests?). Grazing lessees are encouraged to Work with their local NRCS to set up rotational grazing program on the Corps managed lands they lease.

"Upon completion of a rotational grazing program, lessee are encouraged to personally meet in Bismarck's NR staff to discuss and finalize the program and work it into <u>their lease</u>. (Question, which program do I entail my sovereign rights.) Paragraphs 2-3 = we are talking in my case about 90 acres of grass that has a 4.5

mile shore line which would support 7 ANU if not incorporated within the 2 pastures consisting of 2,300 acres; where as, July 15 would control all pasture grazing from May 1 to July 15 if not fenced out. The 90 acres of grass are a concern because this policy is allowing thousands of noxious weed acres that lie on the bottomland below elevation 1617 and noxious weeds spreading into lease land and private property to flourish. Weeds are not grass, therefore, not rotational which was explained by Ken Sedizec "Range Land Management NDSU" during the March 3rd meeting, he explained the July 15 date for wildlife protection is for haying, it was also indicated that wildlife numbers are very compatible when incorporated with livestock grazing before July 15. If forced to fence out the 4.5 miles to take area consisting of 90 acres, land from the Corps would not be leased – it's not worth the bother. What we believe brought about the 1 May to 15 July grazing date. "Digest of Federal Resource Laws of Interest to US Fish Wildlife Service." 2nd page The 1958 Amendments Wildlife Resources to the Nation. This is the amendment the Corps refers to.

"The fence is another issue one major problem regardless who erects or maintains the take line fence; because of very steep and hilly terrain there is a great concern with the ecosystem that different grazing habits may cause uncontrollable erosion problems."

Does the Corps of Engineers have the right to jeopardize and create harm to citizens of this state by failing policies and neglect _____ is a real challenge, involving powerful Government agencies. There comes a time when we have to challenge the challenged. If we never do anything we will never know what we've done. But no matter what we do, when you are in a Government Agency there are no consequences. Nobody is held accountable, who is to make up for their mistakes. We the citizens make up for their mistakes. However, that certainly doesn't mean citizens can't and should point out the mistakes and hold fast to the facts.

After exhausted efforts with the Corps, landowners requested a meeting June 2008 with Corps officials; county, districts, state and congressional personnel at Oahe Beaver Bay for a show-tell weed view for all to see. ND weed laws were being violated and out of control. The Emmons County weed board requested with the N.D. Dept. of Agriculture meeting with the Corps which took place March 3, 2008 at the heritage Center in Bismarck. This meeting was a long time coming for Federal agencies to come forth and answer questions about lack of noxious weed control. ATTACHED EXHIBIT (B).

Junkert yielded the floor to Governor John Hoeven as he entered the hearing room. Governor Hoeven thanked the Corps for being at the hearing and urged them to listen to the local landowners and act on what they have to say. Hoeven stated that local farmers and ranchers, such as those present at the hearing, are the foundation of our economy and that the Corps needs to help with weed control, not hinder it. Hoeven continued by referencing the great fisheries Lake Oahe and the Missouri River system offer and the adjacent wildlife populations. Hoeven urged cooperation between local, state, and federal agencies to come up with a common sense solution and recommended that all sides recognize each other's problems in the process.

John Bartel (Corps Project Operations Manager out of Pierre, SD) showed a PowerPoint presentation explaining the weed control project areas that the Corps manages. The various lake elevations and how those elevations affect their management decisions were presented, such as acres exposed at specific lake levels. Bartel pointed out that, according to the Master Plan (1961), which is currently being revised, grazing is considered an "interim use" of the land and is not an "authorized project purpose", a reason he gave for the July 15th grazing restriction. The grazing restriction was implemented in 1998 as a result of drought conditions to allow cattle to graze Corps land, according to Bartel. Also, it was mentioned that the Fish and Wildlife Coordination Act of 1958 has a big impact on their operations as it gives them guidelines to land management. Moreover, Bartel said that the focus of their weed control efforts shifted in 2007 from saltcedar to Canada thistle, at which time they released 700+ Canada thistle stem mining weevils along with several hundred Canada thistle gall flies, which are used for biological control. In 2008, Bartel pointed out that the Corps invited public comments regarding bottom land grazing, at which time the ND Game and Fish Department urged them to stick with the July 15th grazing restriction and continue to look to biocontrol as the weed control method of choice.

Bartel stated that they also face budgeting constraints, which may lead to invasions of noxious weed and mentioned that weed control is 4th on their list of priorities, hence its lack of attention and funds.

In FY07, the Corps spent $399,677 on weed control, of which 79 percent was spent via contracts with Emmons County. In FY09, $400,000 is going to be sought for noxious weed control.

Problems the Corps faces regarding weed control include difficult terrain, winding land boundaries, the fact that it is not an authorized project, and the fact that their fiscal year starts on October 1st (doesn't allow them to write contracts with the Board as they must first receive the funds). Bartel explained that higher authorities in their agency have more power, thus only allowing them to do certain things and/or bend certain rules. Bartel reminded people that there are also those concerned with wildlife habitats who urge the Corps to keep their grazing restriction in place. Bartel said that managing land to satisfy all land users is very difficult.

Bartel concluded his presentation by stating that if landowners contact Corps field staff with grazing plans, they will work together to come up with an acceptable plan.

Bud Kuhn (Corps) declared that each year they lease land for cropping, haying and grazing using a bidding process. The Corps uses the U.S. Department of Agriculture-North Dakota Agriculture Statistics Service (Fargo, ND) land appraisal values to determine rent fees. The Corps subtracts 25 percent from

portions of corps Contract ATTACHED (A) sheet.

d. Fences.

(1) The lessee of unfenced land shall make the necessary arrangements and/or agreements with the owners or lessees of adjacent land regarding access, fencing, and the location of boundary lines. In the event such arrangements and/or agreements are not made, it will be the sole responsibility of the lessee, at his own expense, to establish necessary access roads and boundary lines, and to obtain and erect the required fencing which wi be constructed to meet the requirements of State laws.

(2) All fencing must be approved by the United States prior to construction. Fencing required under the offset program becomes the property of the United States upon construction. Fences constructed by the lessee and not under the offset program are to be removed within 30 days of lease termination or become the property of the United States.

(3) Maintenance of all boundary and interior fences shall be the responsibility of the lessee. Existing fences will not be moved, modified, or changed without written permission. The akeside end of cross fencing must be moved up and down with fluctuating lake levels for safety reasons. Requests to modify any fence, including the installation of gates, shall be directed to the Bismarck Natural Resource Office, Telephone no. (701) 255-0015.

e. Noxious Weeds and Other Pests.

(1) Lessees will be responsible for control and attempted elimination of noxious weeds on all lands leased to them. A rental offset may be offered for the control of noxious weeds located on lands below 1617.0' feet msl and adjacent to the leased premises where use of this and is authorized by Paragraph 1.a.(2), above. The lessee shall comply with all applicable Federal, State, County, and Municipal laws, ordinances, and regulations. Additionally, the lessee shall conduct an active program to control or prevent significant infestations of pests such as, but not limited to, rodents, and grasshoppers, at the direction of or with the permission of the Lake Manager.

(2) Permission must be obtained from the Lake Manager prior to the use of any pesticide on the leased area or on lands below 1617.0' msl. (Note: the term pesticide includes but is not limited to herbicides, insecticides, rodenticides, larvicides, fungicides, etc.) The Lake Manager's permission for the use of Federally registered "restricted use" pesticides must be obtained in writing. Only chemica s approved for use in aquatic areas will be allowed for use on lands below 1617.0' msl elevation. No suspended or cancelled use pesticide may be used on the leased area. A list of these chemicals may be obtained from the Lake Manager.

(3) In addition to the above, the lessee shall report all pesticide applications on the Lessee's Annual Pesticide Report, by 1 October annually. This report shall be submitted to the Lake Manager and is required even if no chemicals were applied. Pesticides shall not be stored on United States' property in excess of five (5) days. All empty pesticide containers shall be removed from United States' property within five (5) days.

(4) Applicators will be required to be registered in accordance with Federal and state statutes. App icators will be required to notify the Lake Manager a minimum two days prior to applying any chemicals to United States' property and submit standardized forms to the Lake Manager's Office within a week of application.

f. Vegetation Modification. Modification of existing vegetation in any manner, to include trees, shrubs brush, native and tame grasses and riparian vegetation is prohibited unless permitted under the specific terms of this lease or approved in writing by the Bismarck Natural Resource Office, Bismarck, North Dakota 58504.

Attached at Shed.

29. DISCLAIMER

This lease is effective only insofar as the rights of the United States in the premises are concerned. The Lessee shall obtain any permit or license which may be required by Federal, state or local statute in connection with the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC §403), and Section 404 of the Clean Waters Act (33 USC §1344).

Prior to the execution of this lease, the following site specific Condition No. 30 was added hereto and made a part hereof.

30. TRESPASS CHARGES

The lessee agrees that trespass charges shall be assessed for any livestock belonging to the lessee, or under his control, or on the leasehold by his invitation.. The trespass charges are in addition to the annual rental and will consist of prorated rental charges for the additional days plus an administrative charge of $250.00 for each trespass incident. Failure to pay the trespass charges within 30 days following receipt of billing or continued failure on the part of the lessee to comply with the lease provisions will be sufficient grounds for immediate revocation of the lease, and will not relieve the lessee from payment of any monies due and owing the Government.

(OPTIONAL) 31. RIGHT OF RENEWAL WITHOUT COMPETITION

The United States may renew this lease by mutual agreement with the current lessee if the lease term stated above expressly authorizes renewal, the lessee's performance is satisfactory, and the value as determined by the United States Government is acceptable.

THIS LEASE is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF I have hereunto set my hand by authority of the Secretary of the Army this _____ day of _____, _____.

THIS LEASE is also executed by the Lessee this _____ day of _____, _____.

them to the elements. SDGFP Wildlife Conservation Officers assist with patrolling nesting areas to keep the public out of nesting areas.

Contaminants
Description: Adverse affects from environmental contamination should be monitored for potential impacts to least tern and piping plover populations. A study on least terns and piping plovers on the Missouri River did not find any reduction in reproductive success attributable to contamination (Welsh and Mayer 1993). Researchers should be aware of potential impacts by contaminants in the future, but management actions do not appear to be necessary at this time.

Disease
Description: A dead piping plover tested positive for West Nile virus in 2003 (Pers. Comm. Greg Pavelka, Corps). The Corps' crews are currently collecting dead least tern or piping plover specimens found during monitoring and shipping them to the USFWS health lab for analysis. A disease epidemic among least terns and piping plovers could have devastating effects on the populations.

SDGFP Management Options: SDGFP summer employees on the river with Corps least tern and piping plover crews will assist with specimen collection and documentation as they find carcasses.

Table 1: Causes of least tern and piping plover nest failures during the Corps monitoring period in South Dakota. Monitoring Periods: Lake Oahe 1995-2003, Fort Randall River 1986-2003, Lewis and Clark Reservoir 1986-2003, Gavins Point River 1986-2003. Source: Greg Pavelka.

Least tern Nests: Causes of Failure						
Total Nests Monitored 4,271						
Cause	Flooding	Human Disturbance	Livestock	Predation	Erosion	Weather
Number Destroyed	235	22	10	420	21	128
Percent of all tern nests	5.5%	0.5%	0.2%	9.8%	0.5%	3.0%

Piping plover Nests: Causes of Failure						
Total Nests Monitored 2,564						
Cause	Flooding	Human Disturbance	Livestock	Predation	Erosion	Weather
Number Destroyed	129	36	3	256	9	63
Percent of all plover nests	5.0%	1.4%	0.1%	10.0%	0.4%	2.5%

Emmons County Weed Board
P O Box 188
Linton, ND 58552

ice: 701-254-4802

INVOICE

Invoice Number: 11-1-08-7
Invoice Date: Oct 1, 2008
Page: 1
Duplicate

Bill To:	Ship to:
[redacted]	

Customer ID	Customer PO	Payment Terms	
Bav		Net 30 Days	
Sales Rep ID	**Shipping Method**	**Ship Date**	**Due Date**
	Airborne		10/31/08

Quantity	Item	Description	Unit Price	Amount
	1 C-NWC	Noxious Weed Control Chemical		1,991.50
	2 CCS	Cost Share Discount Chemical		-224.80
	3 L-NWC	Noxious Weed Control - Labor		5,175.00
	4 LCS	Cost Share Discount Labor		-2,587.50

adjacent corps property in Emmons county.

Subtotal	4,354.20
Sales Tax	
Total Invoice Amount	4,354.20
Payment/Credit Applied	
TOTAL	**4,354.20**

Check/Credit Memo No:

10 578.80

Corps deception to land owners

During landowner negotiations with the Corps real estate division and court testimony taking property no fence needed for take line, therefore, no severance damage would be collected for fence purposes. This narrow strip of "take line" acreage has become a very controversial hardship for relationship with local landowners, and in adequate management of the Corps policy. It's becoming a concern to all parties involved.

What the Corps should have done, and maybe can be done is ~~clarify~~ classify excess land above elevation 1620 to "flowage easement" category, wherefore, becoming a taxable county valuation and no capital structures allowed.

FLOWAGE EASEMENTS

The flowage easements acquired at the Oahe project give the Government a perpetual right to overflow the land when necessary as a result of construction, maintenance, and operation of the project. The Government also has the right to enter the easement lands as needed as well as to remove from the easement lands any natural or manmade obstructions or structures which, in the opinion of the Government, may be detrimental to the operation and maintenance of the project. The flowage easements were acquired subject to "existing easements for public roads and highways, public utilities, railroads, and pipe lines."

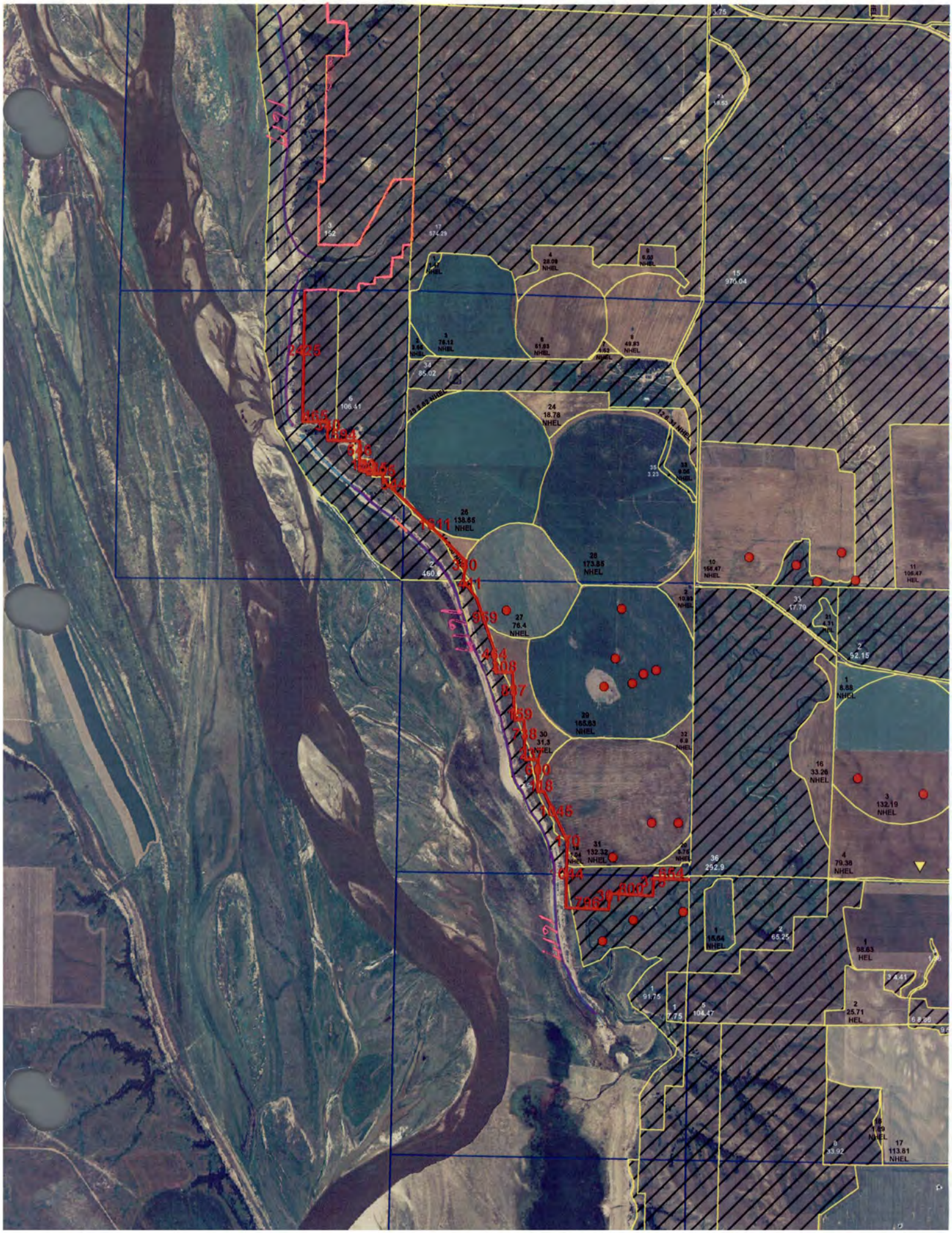
Historically, it has been Corps policy to prohibit structures for human habitation on flowage easements acquired by the Corps. Construction and/or maintenance of non-habitable structures on the flowage easement are subject to prohibition or regulation by the District Engineer.

Conditional excess = meaning land wouldn't be needed under modern land acquisition criteria.

Excess Land = means property under the control of any Federal Agency which is not required for its needs and the discharge of its responsibilities.

Every ND county affected by the 1944 Flood Act has a different geography and each county is going to have a different prospective of excess acres. The county commissions of each county in the river corridor, set up committees for the purpose of making recommendations involving wildlife mitigation, recreation and excess lands. When the county committees have concluded their recommendations, the county commissioners have approved the plan, the state of ND shall petition the Federal Government Agencies for the transfer of the excess land to that county for their consideration.

Understand, it is not possible for the Corps to transfer land to state or counties without specific federal legislation authority. All land lying below elevation 1620-1854 and federal recreation areas would remain the responsibility of the Corps.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33.92
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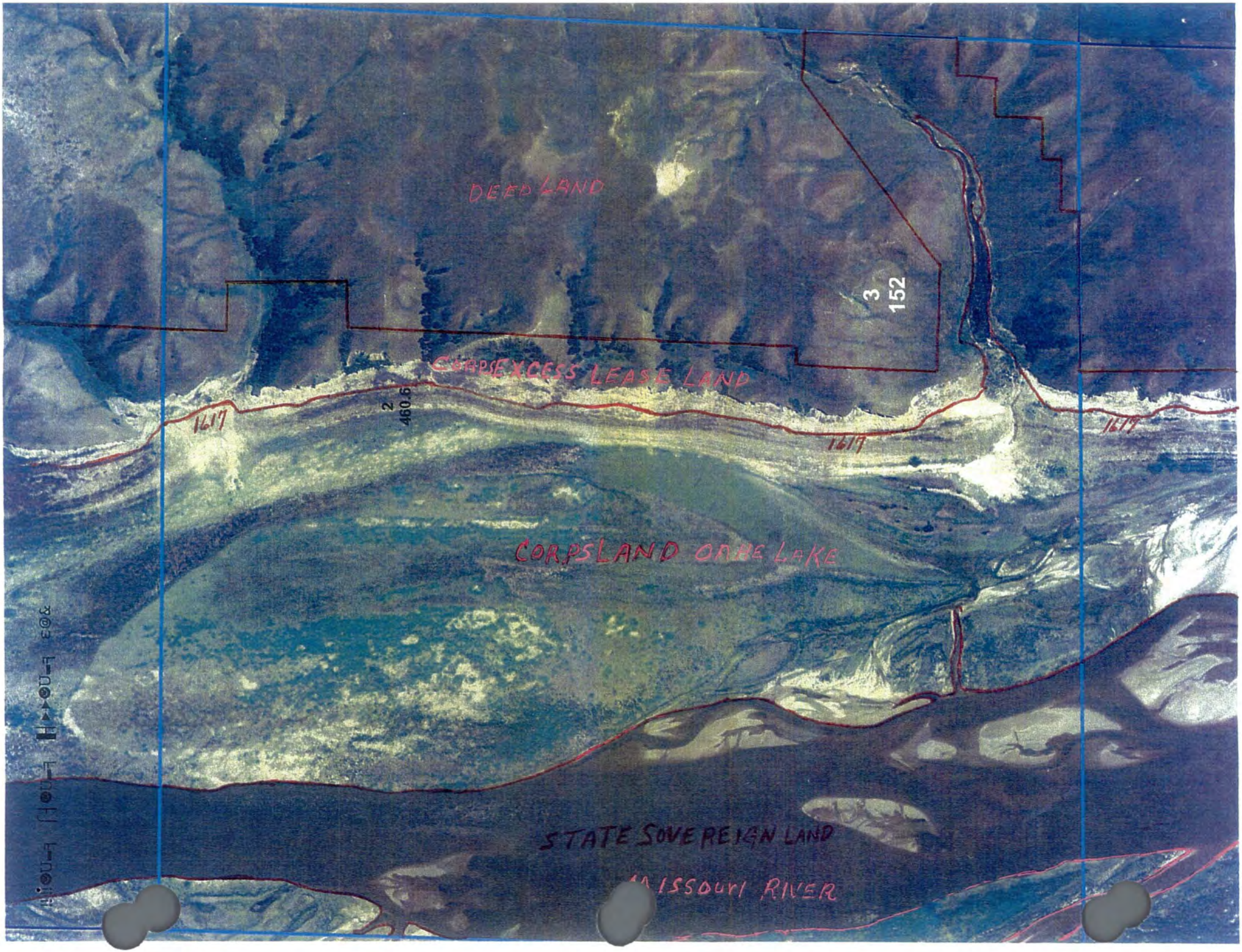
DEED LAND
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152
CORPS EXCESS LEASE LAND
2
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1617
1617
1617
CORPS LAND ON THE LAKE
STATE SOVEREIGN LAND
MISSOURI RIVER

Attachment #2

Glenn McCrory

From: "Glenn McCrory" <gmccrory@bektel.com>
Date: Wednesday, March 27, 2013 10:53 PM

SENATE GOVERNMENT & VETERANS AFFAIRS COMMITTEE

CHAIRMAN SENATOR DICK DIVER AND MEMBERS OF THE COMMITTEE

MY NAME IS GLENN MCCRORY FROM LINTON ND

I SUPPORT THE PASSAGE OF HOUSE BILL 1338

I HAVE HANDED OUT COPIES OF LEASES THAT LANDOWNERS HAVE TO AGREE TO WITH THE CORPS OF ENGINEERS BECAUSE THERE IS NO FENCE ON THE PROPERTY LINE.

1. COE RULE OF GRAZING ONLY AFTER JULY 15 CONTROLS THE PRIVATE LAND AS WELL.

2.TRESPASS CHARGES CAN APPLY IF GRAZING DATES ARE NOT FOLLOWED. (CONTROL)

3.COST OF THE LEASE INCREASES EVERY TIME THE LEASE IS RENEWED.

WILDLIFE DO NOT CARE WHO HAS TITLE TO LAND.

WEED PROBLEM

HOW WOULD THE STATE OF NORTH DAKOTA BE AFFECTED ?

WATER STORAGE CONTRACTS. PERMITS TO CROSS THEIR EXCESS LAND TO OBTAIN OUR WATER (CONTROL)

I DO NOT FORESEE IT AFFECTING BOAT DOCKS, SHOOTING RANGES, ETC. I BELIEVE THE GOVERNOR COULD NEGOTIATE SUCH THINGS OUT.

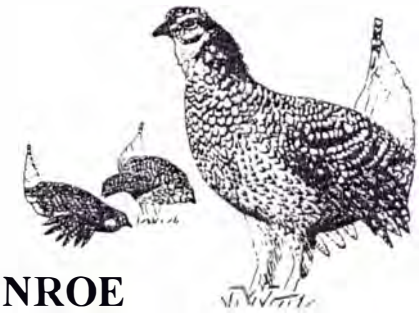
I HOPE YOU CAN RECOMMEND A DO PASS TO SEE IF THE FOOTPRINT OF THE CORPS OF ENGINEERS CAN BE REDUCED IN NORTH DAKOTA.

Attachment #3

North Dakota Chapter

THE WILDLIFE SOCIETY

P.O. BOX 1442 • BISMARCK, ND 58502



TESTIMONY OF MICHAEL R. McENROE
NORTH DAKOTA CHAPTER, THE WILDLIFE SOCIETY
HOUSE BILL 1338
SENATE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE
MARCH 28, 2013

Chairman Dever and members of Committee:

For the record, Mike McEnroe, representing the North Dakota Chapter of The Wildlife Society. I am here today to oppose HB 1338.

HB 1338 calls for the return of excess property along Lake Oahe and Lake Sakakawea to be returned to the State. This land is neither excess nor not needed for project purposes of flood control, hydropower, municipal and industrial water, irrigation, navigation, fish, wildlife and recreation. Approximately 130,000 acres of public land managed by the North Dakota Game and Fish Department, State Parks and Recreation Department, and the U. S. Army Corps of Engineers for the benefit of all North Dakota citizens, including hunters and fishermen, campers, and hikers and outdoors enthusiasts would be lost to the public. The Chapter believes these lands should stay in public ownership under management by the respective State and federal agencies.

Acquisition of land for public recreation is very difficult in North Dakota. Giving up or losing public recreation lands at a time when our State population is increasing in not acceptable to the approximate 270,000 outdoor enthusiasts in North Dakota.

In previous legislative sessions, this idea has been proposed. The costs of surveying boundary lines for the proposed land transfer and for moving fence lines and roads was estimated at over $20 million.

The Chapter stands in support of the Game and Fish Department and urges a Do Not Pass on HB 1338

Thank you and I will answer any questions the Committee may have.

Attachment # 4.

Senate Government & Veterans Affairs Committee
March 28, 2013
HB1338
Testimony by Terry Fleck, Friends of Lake Sakakawea Chairman

Good morning, I'm Terry Fleck, chairman of the Friends of Lake Sakakawea. The Friends of Lake Sakakawea represent a broad cross section of stakeholders in North Dakota – cabin owners, fishermen, counties, cites, chambers and businesses. Our membership spans the entire state. We see the whole picture and for us discussions about the lake should not be about remedying wrongs of the past but about how we can work together in constructively moving forward into the future. It's about providing water to the cities, industries and rural areas, it's about creating economic opportunities for businesses through tourists and job creation and it's about developing a natural resource treasure that has enormous potential for ALL North Dakotans.

The issue of transferring excess land around Lake Sakakawea is nothing new to us. We worked with Sen. Dorgan, Gov. Hoeven, the state and the Corps when this issue was on the table in 2006. The same issues remain today – uncertainty and results that cause us to fear the phrase, "be careful what you wish for."

We won't belabor the point: our membership is opposed to HB1338 and we urge a "do not pass." We appreciate the opportunity to have a voice in this important discussion.

Attachment #5

FRIENDS OF
LAKE SAKAKAWEA

P.O. Box 309 | Garrison, North Dakota | 58540 | friends@lakesakakawea.com | www.lakesakakawea.com

Senate Government and Veterans Affairs Committee
Missouri River Room, 10:45 am, March 28, 2013

Good Morning, my name is Michael Gunsch and am here today speaking on behalf of the Friends of Lake Sakakawea to ask questions and provide insights. Looking at HB1338 one has to ask the question what is the purpose and intent of this bill? If this is about lake access what changes? If this is about land management around the lake what changes?

The bill requests the return of excess lands based on fixed elevations, but what is excess? If the return is negotiated to these elevations, the COE still retains control below this elevation line, therefore nothing regarding lake access changes. So what are the benefits and value to the State of North Dakota? During the 2011 flood Lake Sakakawea was surcharged to elevation 1856. If these lands were returned based on elevation 1854, state lands would have been flooded. So what are excess lands? Currently most public access to the lakes is provided on COE lands or those leased to the State or local governmental entities. HC1338 is not necessary to provide increased public access, as it does not.

In 2007 the COE prepared a master plan they now follow to manage these lake shore properties. The Friends of Lake Sakakawea provided input and comments on this plan. Attached to this testimony is a snapshot of one small area along the lake shore from this document. These public lands are managed for multiple purposes, essentially a zoning ordinance, which governs their use for public benefit. These purposes or zoning designations are based on the COE's determination of highest and best use, including factors like wildlife habitat, protection of cultural resources, recreational access, cabins, state parks, erosion, etc. These are public lands and must be managed as such, under federal or state control. Do we agree with every designated use, NO, but HB1338 is not the vehicle to address our differences.

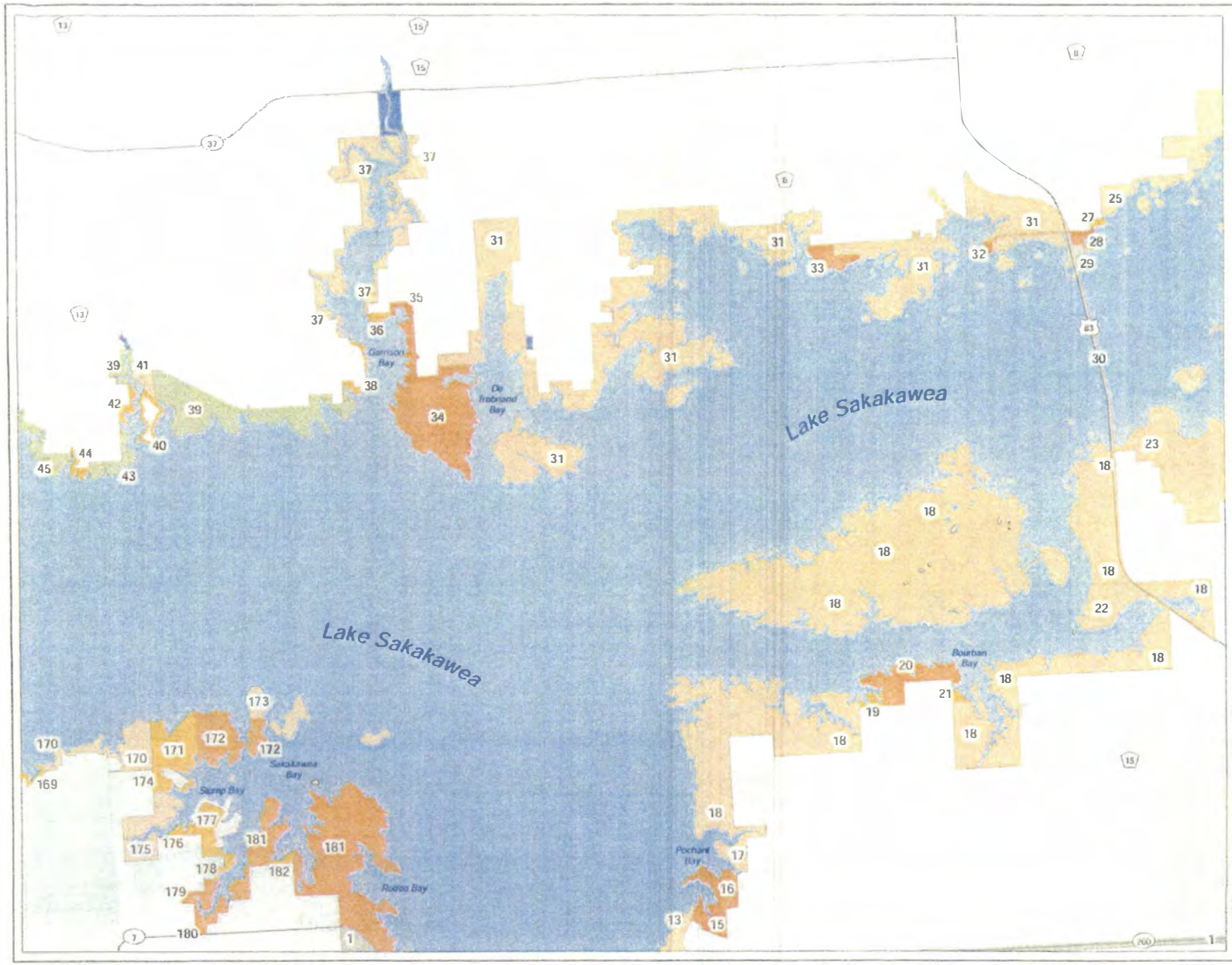
If the State obtains ownership of the multitude of parcels along the lake shore how might this change land uses? Would the State manage these properties differently, probably? Might they provide better weed control, certainly? Might they allow grazing on some lands, maybe? Might they allow more access to the lake or development in areas where there is significant erosion or where it would adversely impact critical wildlife habitat or cultural resources? Not likely. So again what are the benefits and value to the State of North Dakota?

So what changes? The State would assume land management costs. What is the fiscal note on this and is it worth the price? Do not pass HB1338 without seriously considering and knowing about the larger consequences. As our Chairman stated – be carefully what you ask for. Let me summarize: Access does not change, land management remains public, and the citizens of North Dakota pay the costs. Management of these properties is the responsibility of the COE; let's not relieve them of that project obligation. We strongly encourage you to vote a DO NOT PASS for HB1338.

Master Plan

Garrison Project / Lake Sakakawea

Current Land Classification



Land Classification

- Project Operations
- Recreation - Intensive Use
- Recreation - Low Density Use
- Wildlife Management
- Vegetation Management
- Environmentally Sensitive
- Water
- Lake Easement
- Private Property

Sheet 4 of 22

0 0.5 1 2 Miles

1 Inch equals 1 Mile

Attachment #6

TESTIMONY ON ENGROSSED HOUSE BILL NO. 1338

Senate Government and Veterans Affairs Committee

Todd Sando, State Engineer
North Dakota State Water Commission

March 28, 2013

Mr. Chairman and members of the Senate Government and Veterans Affairs Committee, my name is Todd Sando. I am the Chief Engineer and Secretary for the State Water Commission and the State Engineer. I am here today to provide information regarding House Bill 1338.

The elevations referred to in House Bill 1338 are the top of the flood control pools at Lake Sakakawea and Lake Oahe, which corresponds to the top of the gates on the emergency spillways. Lake Sakakawea has rarely reached 1854 feet, and Lake Oahe has never reached 1620 feet. For comparison, the base of the flood control pool, which is the elevation targeted for March 1 of each year, is 1837.5 feet for Lake Sakakawea and 1607.5 feet for Lake Oahe. As a result, even if the Corps could be persuaded to turn over land to the state, they would still own and control a ring of land around the lakes and make access to the state's water difficult or impossible as they have been doing with the surplus water agreements.

When the Corps acquired the land for the reservoirs they determined a pool level and acquired the entire parcel (e.g., the entire quarter section). This pool level was increased in the upstream portion of the reservoirs to account for backwater and aggradation. Transfer of land within the parcels would require a metes and bounds survey that would be very costly. For example, the Water Commission has incurred costs of $3,000 to $3,500 per mile for metes and bound surveys for the Southwest Pipeline project. If the section corners have been destroyed and have to be reestablished the costs are even higher. At an elevation of 1854 feet, Lake Sakakawea has a shoreline of approximately 1,600 miles.

Finally, the Corps may not consider these lands excess for authorized purposes other than flood control (e.g., recreation or fish and wildlife). More importantly, the Corps will likely not consider land down to the elevations provided as excess for flood control. Although 1854 feet is the top of the flood control pool, in 2011 the Corps surcharged Lake Sakakawea, meaning they intentionally increased the elevation to 1854.6 feet to provide additional storage and reduce the peak flood flow downstream. Since they have so recently surcharged Lake Sakakawea, I expect they will want to maintain control of the land around the reservoirs to some elevation higher than the top of the flood control pool.

Attachment #7

SENATE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE

Testimony on HB 1338

Jeb Williams, Assistant Wildlife Division Chief

March 28, 2013

Chairman Dever and members of the Senate Government and Veterans Affairs Committee, my name is Jeb Williams, Assistant Chief of the Wildlife Division for the North Dakota Game and Fish Department. I'm here today to provide information on the unintended consequences of this bill.

HB 1338 references the return of 'excess lands' above certain elevations around Lakes Sakakawea and Oahe. None of the lands should be considered 'excess' given that the Flood Control Act of 1944 stated that authorized purposes were flood control, navigation, hydroelectric power generation, water supply, recreation, and fish and wildlife. Countless hours of hunting, fishing, camping, and hiking occurs on these lands. The communities of Bismarck, Mandan, Williston, Dickinson and Minot are growing and the demand for recreational opportunity is correspondingly increasing dramatically.

HB 1338 also states the land should be returned to the State of North Dakota. There is a question what this actually means given the State of North Dakota is actually the public and the state agencies serving that public. It's unclear which agency or agencies would be involved and affected. Management of these lands would be different depending on the agency and their respective missions and responsibilities.

A statement was made during the House committee hearing on this bill that this is a "step in the process" in returning the land to private landowners. If those lands above the referenced elevations were transferred to private landowners it could mean a loss of approximately 130,000 (110,000 Lake Sak/20,000 Lake Oahe) acres of publicly accessible land for recreation. Of that amount, approximately 30,000 acres of wildlife management areas that North Dakota Game and

Fish manages under permit from the U.S. Army Corps of Engineers for wildlife production and recreational purposes would be in jeopardy. Shooting ranges and other facilities could be lost.

Access to approximately 35 public boat ramp sites on Lake Sakakawea and another nine sites on Lake Oahe could be affected. These two large reservoirs annually account for 30-40% of all statewide fishing effort.

Further, the state, through the North Dakota Game and Fish Department, has invested heavily in boat ramps, wildlife management areas and associated facilities over the years. Several million dollars of sportsmen dollars dedicated for wildlife habitat projects alone on wildlife management areas could be affected and approximately $9 million in boating access. Access to these areas would be difficult given that section lines on both Lake Sak and Oahe were vacated when Garrison Dam was built.

This concludes my testimony and I would be happy to answer any questions you might have.

#8

Jack Dalrymple, Governor
Mark A. Zimmerman, Director

1600 East Century Avenue, Suite 3
Bismarck, ND 58503-0649
Phone 701-328-5357
Fax 701-328-5363
E-mail parkrec@nd.gov
www.parkrec.nd.gov

HOUSE BILL 1338

SENATE GOVERNMENT AND VETERANS AFFAIR COMMITTEE

THURSDAY, MARCH 28, 2013

NORTH DAKOTA PARKS AND RECREATION DEPARTMENT

Chairman Dever and members of the Senate Government and Veterans Affair Committee. I am Mark Zimmerman, Director of North Dakota Parks and Recreation Department. I appear before this committee to provide information on HB 1338 and the Department.

Possible impacts of HB 1338 on operations of North Dakota State Parks and Recreation Department on Lake Sakakawea and in the Lake Oahe area could be categorized in several areas:

1. Those areas currently under lease from the Corps of Engineers-- Lake Sakakawea State Park, Fort Stevenson State Park and Lewis and Clark State Park (a total of 2323 acres). One area of concern would be the expense of a survey for each of the parks if actual transfer of the property was to occur. Conservative estimates for surveys of these three parks alone would be in the $100,000 range.

   However, should Corps areas such as Wolf Creek Recreation Area, Douglas Bay Recreation Area, East Totten Trail Recreation Area and perhaps the Downstream Campground be returned to the state and subsequent management assumed by the Department, there would be major additional costs of staffing and equipment for maintenance and operation of those areas. Projections for staffing would include at least 2 additional full time staff and perhaps 6 to 8 seasonal staff for seasonal maintenance and operation of these areas. Capital projects and major improvements to existing facilities, to bring the facilities to the level of standards maintained by this Department, would be a couple hundred thousand dollars per biennium for at least 3 to 4 biennium. It should be noted entrance fees and camping fees would be collected and retained by the Department with the assumption of the management of these areas, but those revenue streams essentially cover operational costs. Permanent staff salaries as well as major improvement and capital projects would look to be funded by general fund dollars as they currently are now for all state parks.

2. For those lands in the Lake Oahe area that the Corps of Engineers currently maintains for camping and outdoor recreational pursuits such as Beaver Bay Recreation Area, Hazelton Recreation Area and the recreational area south of Bismarck, Kimball Bottoms, known as "the desert", there would be major financial considerations for the Department should those lands be transferred to the state and then to the Parks and Recreation Department for management. Again there would be the costs of surveys to be completed to clearly define the areas involved. An estimated expenditure of $197,000 would be necessary for an initial 6 month seasonal staffing and start-up costs for fencing, entrance station construction and general clean-up of Kimball Bottoms area. Additional seasonal and full time staffing as well as maintenance and infrastructure upgrades to the other major recreational areas on Lake Oahe would run in the hundreds of thousands of dollars per biennium.

As the bill currently reads there is no definition as to what agencies of state government would be responsible for the operation and maintenance of the recreation areas currently within those areas ascribed in the bill. North Dakota Parks and Recreation Department's mission is to provide recreational opportunities for the citizens and visitors to North Dakota and provides this information for your consideration.

#9

Army National Guard

"The Straight Arrows"

Air National Guard

"The Happy Hooligans"

Department of Emergency Services

Homeland Security & State Radio

The

Office of the Adjutant General

Testimony of
Brigadier General Alan Dohrmann
Deputy Adjutant General

before the

Senate Government and
Veterans Affairs Committee
March 28, 2013

HOUSE BILL 1338

TESTIMONY OF
BRIGADIER GENERAL ALAN DOHRMANN
THE DEPUTY ADJUTANT GENERAL
BEFORE THE
GOVERNMENT AND VETERANS AFFAIRS COMMITTEE
MARCH 28, 2013
HOUSE BILL 1338

Mr. Chairman and Members of the Committee:

I am Brigadier General Alan Dohrmann, Deputy Adjutant General for the North Dakota National Guard. I am testifying neutral on HB 1338. While the office of the Adjutant General does not have a position on the policy behind HB 1338, we have concerns about its potential impact to our readiness.

Attached to our agency's testimony is a book of maps showing the training areas that we use under license or agreement from the Corps of Engineers. Based on our analysis of the engrossed bill, these training areas at Kimball Bottoms, Garrison Local Training Area (LTA) and Williston LTA could be subject to transfer from the Corp of Engineers if HB 1338 is enacted into law.

Most critical to our readiness requirements is Kimball Bottoms. Our 957th Multi-role Bridge Company based in Bismarck, uses this area extensively for boating and bridging operations. Additionally, our 1-112th Aviation Battalion, based in Bismarck, uses Kimball Bottoms for fire bucket training, sling-load operations and air mobility operations. In this time of reduced federal training resources, having training areas near our bases is critical for maintaining our readiness.

Another area of concern is the Garrison LTA. While this has not been used to the degree that Kimball Bottoms has, due to sequestration, our 164th Engineer Battalion out of Minot will use this area for its annual training this summer. Again, with the reduction in future year federal training dollars, this area will likely see increased use in the future.

We also have a license from the Corps of Engineer for the Williston LTA. This site has not been suitable to our requirements in recent years and we are working with the Corps to terminate our license and secure another suitable site. Most likely any new training areas would also be Corps property that is subject to the transfer authority contained in HB 1338.

The individual and collective training that is conducted at Kimball Bottoms and Garrison LTA is critical for both preparing our soldiers to deploy overseas and ensuring we are ready to fight fires and floods here in North Dakota. If this land is transferred from the Corps, we would ask that it be encumbered to provide for a right of access for North Dakota National Guard training. We are aware of this sort of agreement working in the state of South Dakota and we would hope that it could happen here.

I am happy to take any questions that the committee may have.

Attachments:

1. Maps of North Dakota National Guard Training Areas

NOTICE NO. DACW45-13-B-RE-0003

NOTICE OF AVAILABILITY (NOA) FOR LEASING REAL PROPERTY OF THE UNITED STATES LAKE OAHE PROJECT, NORTH DAKOTA

District Commander
Omaha District, Corps of Engineers
Real Estate Division
1616 Capitol Avenue
Omaha, Nebraska 68102-4901

Date: **March 20, 2013**

Sealed lease applications, subject to the conditions contained in this NOA, will be received at the Corps of Engineers Real Estate Office, Administration Building, Riverdale, North Dakota 58565-0527, until 1:00 p.m., central time, April 3, 2013, and then publicly opened at the Administration Building, Riverdale, North Dakota, for the leasing of the following described Government real property:

1. **Property to be Leased.**

a. **Location and Description.** Crop, Haying and Grazing land within the boundaries of the Lake Oahe Project, as described on the attached Application for Leasing form.

b. **Description Approximate.** The description of the property and the maps are believed to be correct, but any error or omission in the description of the property or on the maps will not constitute any ground or reason for nonperformance of the provisions and conditions of the lease or claim by the lessee for any refund or deduction from the rental.

c. **Map.** Individual tract maps will be attached to each lease as Exhibit "B". Maps showing the location of the items are available for review in the following Corps offices: Riverdale Real Estate Office, Administration Building, Riverdale, North Dakota 58565-0527 and the Bismarck Natural Resource Office, 1513 South 12th Street, Bismarck, North Dakota 58504.

d. **Land Use Regulations.** Land Use Regulations for each item offered for lease will be attached to each lease as Exhibit "A".

e. **Specific Management Practices.** If applicable, individual Specific Management Practices for each item offered for lease are found under the Use/Conditions on the attached Application for Leasing form and will be incorporated into the lease's Land Use Regulations.

2. **Purpose of Leasing.**

a. The lands described in this NOA are available for leasing for the purposes indicated on the attached Application for Leasing form.

b. The purpose of leasing is to place Government lands under an effective resource management program and to provide for the maintenance, restoration, protection, and repair of the leased property. Cropping, haying, and grazing activities will be utilized as a management tool wherever compatible and supportive of the above goals.

c. In realizing all present and anticipated needs for the operational, recreational, and fish and wildlife purposes on the Lake Oahe Project, the Government will use all available tools of sound land management practices and resource conservation to maintain, protect, repair, and/or restore the project lands. **Leasing of this land is for an interim or temporary use only. All or portions of the leasehold are reserved for operational, recreational or wildlife management purposes, or may be so designated, and any lease may be modified or terminated when the requirement arises, subject to the provisions of the condition on RENTAL ADJUSTMENT in the lease.**

3. **Authority of Law.** The authority to lease the items described on the attached Application for Leasing form is Title 10, United States Code, Section 2667.

4. **Terms and Conditions of Leasing.**

a. **Form of Lease.** Each successful lease applicant will be required to enter into a lease with the Government on the Army lease form attached to this NOA. The lease will be subject to all existing easements or those subsequently granted, for roads, electric power transmission lines, telephone or telegraph lines, water, gas, gasoline, oil or sewer pipelines or other facilities located on the property covered by the lease. Tract Maps and Land Use Regulations containing specific management practices for each respective item will be attached to and made a part of the lease.

(1) Maintenance requirements or rental offsets are an integral part of the cash consideration for the lease. Failure to accomplish required maintenance or offsets may result in revocation of the lease for noncompliance.

(2) The **"Lease for Agricultural or Grazing Purposes"** form will be modified for grazing leases by adding the following condition:

"**30. Trespass Charges.** The lessee agrees that trespass charges shall be assessed for any livestock belonging to the lessee, or under his control, or on the leasehold by his invitation, which remain on the leasehold after the date specified in the lease or which return to the leasehold prior to the date specified in the lease. The trespass charges are in addition to the annual rental and will consist of prorated rental charges for the additional days plus an administrative charge of $250.00 for each trespass incident. Failure to pay the trespass charges within 30 days following receipt of billing or continued failure on the part of the lessee to comply with the lease provisions will be sufficient grounds for immediate revocation of the lease, and will not relieve the lessee from payment of any monies due and owing the Government."

b. **Term.** The lease term will be for the term shown under each item.

c. **Payments of Rental.** The lease will provide for the payment of rental, annually in advance, to **"FAO-USAED, OMAHA DISTRICT"**. The first payment of rental, less the sum deposited as a guaranty with the Application for Leasing, will be made at the time the lease is delivered to the lessee for execution. All subsequent rental payments shall be made on or before January 1st each year thereafter. A charge will be imposed for late payment of rent, as specified in the condition on **CONSIDERATION** in the lease. **NOTE: All monetary payments of $500.00 or less for the term shall be fully paid for the term at the time the lease is delivered.**

d. **Conservation and Crop Limitations.** See the Land Use Regulations attached to and made a part of the proposed lease form.

e. **Warranty.** The property described in the Application for Leasing will be leased subject to the provisions and conditions of this NOA and the attached lease form. The property is now available for inspection. Lease applicants are expected to inspect the property and form their own conclusions as to its suitability for their purposes. The failure of a lease applicant to make an inspection of the property will not constitute grounds for any claim for adjustment or for the withdrawal of his lease application after the lease applications have been opened. It is understood and agreed that there is no warranty of any character other than that expressly stated in this NOA.

f. **Inspection of Property.** Arrangements to inspect the items of land offered for lease may be made by contacting the Bismarck Natural Resource Office at telephone number (701) 255-0015, between the hours of 8:00 a.m. and 4:00 p.m., daily, Monday through Friday, except holidays.

g. **Condition of Property.** The Corps of Engineers may prepare an Environmental Condition of Property (ECP), documenting the history of each of the items with regards to the storage, release, or disposal of hazardous substances thereon. The ECP for any item will be available to any applicant upon request. By submitting an application on an item or items, the applicant either waives inspection or acknowledges inspection of the

premises, and understands that the premises are leased without any representation or warranties whatsoever and without obligation on the part of the Government.

h. **Deposit Required.** No Application for Leasing will be considered unless it is accompanied by a deposit in an amount not less than 10 percent of the amount of the annual rental offered. The deposit will guarantee that the lease applicant will enter into a written lease and pay the balance of the rental due within ten days after the date of receipt of written notice of acceptance of his lease application and a lease for execution. The deposit must be in the form of a money order or check, payable to the "FAO USAED-OMAHA DISTRICT". The deposit of the successful lease applicant will be retained by the Government to apply against payment of the balance of the annual rental offered, and deposits of unsuccessful lease applicants will be returned, without interest, as promptly as possible after rejection. In the event of failure on the part of the successful lease applicants to enter into a lease as expressed in the preceding paragraph, or in the event of the lease applicant's failure to otherwise comply with the terms of this NOA, the Government may declare the lease applicant in default and the deposit may be applied by the Government to any loss, cost, and expense incurred by the Government, including any loss, cost, and expense incurred in leasing the property and including any difference between the amount specified in the lease application and the amount for which the Government may lease the property, if the latter amount is less than the former. The lease applicant is liable for the full amount of damages sustained by the Government because of his default. Such liability is not limited to the amount of the lease applicant's deposit.

i. **Acceptance of Lease Applications.** All lease applications may remain open for acceptance or rejection for a period of up to 20 days after the date of opening the lease applications. Notice of Acceptance will be given to successful lease applicants as soon after the date of lease application opening as practical. Notice by the Government of the acceptance of a lease application, if not given to the successful lease applicant personally or to a duly authorized representative of the lease applicant will be deemed to have been sufficiently given when mailed in a postage paid envelope to the lease applicant at the address indicated in his lease application.

j. **Rejection of Lease Applications.** The right is reserved, as the interests of the Government may require, to reject any and all lease applications and to waive any informality in lease applications received, and to accept or reject any items of any lease application, unless such lease application is qualified by specific limitation.

k. **Award of Lease.** Leases will be awarded to the lease applicant offering the highest rental amount and complying with the conditions of this NOA, provided that the lease applicant is responsible, his lease application is reasonable, and it is in the best interest of the Government to accept it. Identical rental offers will be decided by drawing lots. For the purpose of this NOA and a subsequent lease, a responsive applicant is one who has no delinquent accounts or unpaid debts with the Department of the Army as of the date of acceptance of the application and/or who has not had an Agricultural or Grazing Lease revoked for non-compliance within the last 10 years.

5. Instructions to Lease Applicants

a. **Lease Applications Subject to These Terms.**

(1) All lease applications submitted shall be deemed to have been made with full knowledge of all the terms, conditions, and requirements contained in this NOA, including those set forth in the Land Use Regulations (Exhibit "A") , which will be attached to the lease.

(2) Lease applications may be submitted for one, several, or all tracts; however, a separate rental amount must be offered for each tract. (Lump-sum rental amount offers covering more than one or all tracts will not be considered.)

(3) If the lease applicant stipulates on the lease application form that the lease application is to be considered only subject to certain qualifying statements, the Government reserves the right, as its interests may require, to reject the lease application. However, if a lease application so qualified is accepted, acceptance will be subject to the qualifying statements stipulated by the lease applicant.

(4) If a lease application for two or more tracts is designated by "first choice," "second choice," etc., said designations will be regarded as manifesting the intention of the lease applicant to enter into a lease for no more than one tract with the Government. In the event that a lease application so designated and submitted by the same lease applicant is determined to be the highest rental offers on two or more items or tracts, the order of preference as indicated by the designations will determine which lease application will be accepted to the extent that it is in the best interest of the Government to honor said preference.

(5) The decisions of the Omaha District, Chief of Real Estate, representing the Government, is final and without recourse to all lease applicants. Such decisions will be made in a manner determined to be most advantageous to the Government.

b. **Application For Leasing Form.** Lease applications must be submitted on the Application for Leasing form attached to this NOA. Additional copies of the NOA and Application For Leasing form may be obtained from Corps of Engineers Real Estate Office, Administration Building, Riverdale, North Dakota 58565-0527, telephone (701) 654-7752 and the Bismarck Natural Resource Office, Bismarck, North Dakota, telephone (701) 255-0015.

c. **Execution of Lease Applications.** Each lease application must contain the full address and social security number or tax identification number of the lease applicant and be signed with the applicant's usual signature. A lease application executed by an attorney or agent on behalf of the lease applicant shall be accompanied by authenticated copy of the applicant's power of attorney, or other evidence of authority to act on behalf of the lease applicant. If the lease applicant is a corporation, the Corporate Certificate attached to this NOA must be executed. If the lease application is signed by the secretary of the corporation, the Certificate must be executed by some other officer of the corporation under the corporate seal. In lieu of the Corporate Certificate, there may be attached to the lease application, copies of the records of the corporation that will show the official character and authority of the officer signing, certified by the secretary or assistant secretary, under the corporate seal, to be true copies.

d. **Submission of Lease Applications.** It will be the duty of each lease applicant to see that the lease application is delivered by the time and at the place prescribed in this NOA and to ensure that the lease application is completely and properly filled out. Lease applications received prior to the time of opening will be securely kept, unopened. The person whose duty it is to open them will decide when the specified time has arrived, and no lease application or modifications to a lease application or withdrawals of a lease application received will be allowed, except that lease applications received before award is made, but delayed in the mail by occurrences beyond control of the lease applicant, may be considered if written certification is furnished by authorized postal authorities to that effect. The Government will not be responsible for the premature opening of a lease application that is not properly addressed and identified. Electronic transmission (i.e., telefax or email) of lease applications will not be considered.

e. **Lease Application Modifications and Withdrawals.** Lease applications in the Government's possession may be modified or withdrawn by written request or by electronic transmission prior to the time set for opening the lease applications. Negligence on the part of the lease applicant in preparing his lease application confers no right to modify or withdraw the lease application after it has been opened.

f. **Opening of Lease Applications.** At the time set for opening of lease applications, the contents will be made public for the information of the lease applicants and others who may be present.

g. **Marking and Sealing Lease Applications.** Lease applicants are encouraged to use the enclosed self-addressed envelope that contains the required information as follows:

NAME OF LEASE APPLICANT
ADDRESS
CITY, STATE, ZIP CODE

SEALED APPLICATION FOR LEASE OF PROPERTY AT BOWMAN-HALEY LAKE PROJECT

Notice No. DACW45-13-B-RE-0003

Corps of Engineers
Real Estate Office
Administration Building
Riverdale, ND 58565-0527

TO BE OPENED:
DATE: April 3, 2013
TIME: 1:00 p.m., central time
LOCATION: COE, Real Estate Office
Riverdale, ND 58565

h. Additional Information. Any additional information required by the lease applicant may be obtained from the Corps of Engineers Real Estate Office, Administration Building, Riverdale, North Dakota 58565-0527, telephone number (701) 654-7752, or the Bismarck Natural Resource Office, 1513 South 12th Street, Bismarck, North Dakota 58504, telephone number (701) 255-0015.

6. Data Required by the Privacy Act of 1974: The personal information requested in the NOA and Application for Leasing is needed and will be used to contact the lease applicant and, in the case of the successful lease applicant, to prepare the lease. The lease document, containing the lessee's address, will be made available to the public upon request.

NO. DACW45-1-13-XXXX

DEPARTMENT OF THE ARMY LEASE

FOR AGRICULTURAL OR GRAZING PURPOSES

LOCATED ON

LAKE OAHE ROJECT

_____, NORTH DAKOTA
(county)

THIS LEASE, made on behalf of the United States, between the **SECRETARY OF THE ARMY,** hereinafter referred to as the Secretary, and _____, _____; hereinafter referred to as the Lessee,

WITNESSETH:

That the Secretary, by authority of Title 10, United States Code, Section 2667, and for the consideration set forth herein, hereby leases to the Lessee the property hereinafter identified in Exhibit(s) _____, attached hereto and made a part hereof, hereinafter referred to as the premises, for _____ purposes, and in accordance with the land use regulations identified in Exhibit(s) _____, which is attached hereto and made a part hereof. Said property, lying above elevation 1617.0' mean sea level and containing _____ acres, more or less, is more particularly described as follows:

(Tract Number(s) and Legal Description(s) inserted)

THIS LEASE is granted subject to the following conditions:

1. TERM

Said premises are hereby leased for a term of _____ (years) (months), beginning _____, _____, and ending _____, _____, but revocable at will by the Secretary.

(Alternate) Said premises are hereby leased for a term of _____ (years)(months), beginning _____, ____, and ending _____, _____, and may be renewed for up to an additional 5 years in accordance with Condition 31, but revocable at will by the Secretary.

2. CONSIDERATION

(Use if there will be no rental offsets) The Lessee shall pay rental in advance to the United States in the amount of _____ ($_____), payable annually in advance to the order of the "FAO-USAED, Omaha District" and delivered to USAED, Omaha, ATTN: CENWO-RE-S, 1616 Capitol Avenue, Omaha, Nebraska 68102-4901. (Insert the following if first year is less than full year) (The period _____, _____, through _____, _____, shall be considered as one annual year for rental payment purposes. All subsequent rental payments shall be made on or before 1 January each year thereafter for the remainder of the lease term.)

a. (Alternate Condition) (Use if there will be rental offsets) As consideration for this lease, the Lessee shall pay cash rental in advance to the United States in the amount of _____, ($_____), payable annually to the order of the "FAO-USAED, Omaha District" and delivered to USAED, Omaha, ATTN: CENWO-RE-S, 1616 Capitol Avenue, Omaha, Nebraska 68102-4901. (Insert the following if first year is less than full year) (The period _____, _____, through _____, _____, shall be considered as one annual year for rental payment purposes. All subsequent rental payments shall be made on or before 1 January each year thereafter for the remainder of the lease term.) Such cash rental has been reduced by the value of work items which shall be accomplished by the Lessee for the maintenance, protection, repair, restoration, and improvement of the leased premises as described in the Land Use Regulations attached as Exhibit ____. The Lessee shall reimburse the United States annually for any work not performed by the Lessee during the previous lease year in accordance with the rental offset requirement included the attached Land Use Regulations. The amount of the reimbursement shall be determined by the United States' appraisal of the fair market value of work and will be in addition to the cash rental due above.

b. All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 U.S.C. Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from the due date. An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

3. NOTICES

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to _____, and if to the United States, to the District Commander, Omaha District, Attention: Chief, Real Estate Division, 1616 Capitol Avenue, Omaha, Nebraska 68102-4901, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "District Commander", or "said officer", include their duly authorized representatives. Any reference to "Lessee" shall include any sublessees, assignees, transferees, successors and their duly authorized representatives.

5. SUPERVISION BY THE DISTRICT COMMANDER

The use and occupation of the premises shall be subject to the general supervision and approval of the District Commander, Omaha District, hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

6. APPLICABLE LAWS AND REGULATIONS

The Lessee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. CONDITION OF PREMISES

The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representation or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs or additions thereto.

8. TRANSFERS AND ASSIGNMENTS

Without prior written approval of the District Commander, the Lessee shall neither transfer nor assign this lease, nor sublet the premises or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by the District Commander.

9. PROTECTION OF PROPERTY

The Lessee shall keep the premises in good order and in a clean, safe condition by and at the expense of the Lessee. The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefore by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

10. RENTAL ADJUSTMENT

In the event the United States revokes this lease or in any other manner materially reduces the leased area or materially affects its use by the Lessee prior to the expiration date, an equitable adjustment will be made in the rental paid or to be paid under this lease. Where the said premises are being used for farming purposes, the Lessee shall have the right to harvest, gather and remove such crops as may have been planted or grown on said premises, or the District Commander may require the Lessee to vacate immediately and, if funds are available, compensation will be made to the Lessee for the value of the remaining crops. Any adjustment of rent or the right to harvest, gather and remove crops shall be evidenced by a written supplemental agreement, executed by the District Commander; PROVIDED, however, that none of the provisions of this paragraph shall apply in the event of revocation because of noncompliance by the Lessee with any of the terms and conditions of this lease, and in that event, any remaining crops shall become property of the United States upon such revocation.

11. RIGHT TO ENTER AND FLOOD

The right is reserved to the United States, its officers, agents and employees to enter upon the premises at any time and for any purposes necessary or convenient in connection with government purposes; to make inspections; to remove timber or other materials, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever, and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claims for damages on account thereof against the United States or any officer, agent or employee thereof.

12. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Lessee, or for damages to the property or injuries to the person of the Lessee's officers, agents or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

13. RESTORATION

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee and restore the premises to a condition satisfactory to said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the said officer may designate or as otherwise specified by the provisions of the condition on **RENTAL ADJUSTMENT.** In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefore, or the said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation or termination of this lease in restoring the premises.

14. NON-DISCRIMINATION

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap or national origin.

15. SUBJECT TO EASEMENTS

This lease is subject to all existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Commander, interfere with the use of the premises by the Lessee.

16. SUBJECT TO MINERAL INTERESTS

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development of Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the Lessees operations or would be contrary to local law.

17. TERMINATION

This lease may be terminated by the Lessee at any time by giving at least sixty (60) days notice thereof, in writing, to the District Commander. In the case of such termination, no refund by the United States of any rental previously paid shall be made and payment in full of all rent becoming due during the period of notice will be required. In the event the effective date of termination occurs after the start of the grazing, planting or harvesting season as specified in the Land Use Regulations, any rent due for the balance of the annual term, or the rental due for the remaining term if the lease is for less than one year, shall be due and payable on or before the date of such termination.

18. PROHIBITED USES

a. Certain soil conservation practices may be required by the land use regulations which are identified as rental offsets. By acceptance of such offsets, the Lessee agrees that he will not accept any Federal or State cost-sharing payments or subsidies for the same soil conservation practices.

b. The Lessee shall not construct or place any structure, improvement or advertising sign or allow or permit such construction or placement without prior written approval of the District Commander.

19. PROTECTION OF NATURAL RESOURCES

The Lessee shall use the premises in accordance with the attached Land Use Regulations and shall at all times: (a) maintain the premises in good condition and free from weeds, brush, washes, gullies and other erosion which is detrimental to the value of the premises for agricultural purposes; (b) cut no timber, conduct no mining operations, remove no sand, gravel or kindred substances from the premises; (c) commit no waste of any kind nor in any manner substantially change the contour or condition of the premises except changes required to accomplish soil and water conservation measures as may be authorized by said officer.

20. DISPUTES

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. §§ 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding $100,000 is not a claim under the Act until certified as required by subparagraph c.(2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Commander for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Commander.

(2) For Lessee claims exceeding $100,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) (i) If the Lessee is an individual, the certificate shall be executed by that individual.

(ii) If the Lessee is not an individual, the certification shall be executed by:

(A) A senior company official in charge at the Lessee's location involved; or

(B) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of $100,000 or less, the District Commander must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over $100,000, the District Commander must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Commander's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Commander or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certification described in paragraph c.(2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Commander received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Commander receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the Condition on **CONSIDERATION.**

h. The Lessee shall proceed diligently with performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Commander.

21. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the premises against pollution of its air, ground and water. The Lessee shall comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions or instructions in effect or prescribed by the said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this lease. The Lessee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from activities of the Lessee, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

22. HISTORIC PRESERVATION

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

23. SOIL AND WATER CONSERVATION

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon the premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed in writing by the District Commander.

24. TAXES

Any and all taxes imposed by the state or its political subdivisions upon the property or interest of the Lessee in the premises shall be promptly paid by the Lessee. If and to the extent that the property owned by the Government is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.

25. COVENANT AGAINST CONTINGENT FEES

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fees, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

26. OFFICIALS NOT TO BENEFIT

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise there from. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

27. SEVERAL LESSEES

If more than one Lessee is named in this lease, the obligations of said Lessees herein named shall be joint and several obligations.

28. MODIFICATIONS

This lease contains the entire agreement between the parties hereto, and no modifications of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as other conditions of this lease.

29. DISCLAIMER

This lease is effective only insofar as the rights of the United States in the premises are concerned. The Lessee shall obtain any permit or license which may be required by Federal, state or local statute in connection with the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC §403), and Section 404 of the Clean Waters Act (33 USC §1344).

Prior to the execution of this lease, the following site specific Condition No. 30 was added hereto and made a part hereof.

30. TRESPASS CHARGES

The lessee agrees that trespass charges shall be assessed for any livestock belonging to the lessee, or under his control, or on the leasehold by his invitation, which remains on the leasehold after the date specified in the lease or which returns to the leasehold prior to the date specified in the lease. The trespass charges are in addition to the annual rental and will consist of prorated rental charges for the additional days plus an administrative charge of $250.00 for each trespass incident. Failure to pay the trespass charges within 30 days following receipt of billing or continued failure on the part of the lessee to comply with the lease provisions will be sufficient grounds for immediate revocation of the lease, and will not relieve the lessee from payment of any monies due and owing the Government.

(OPTIONAL) 31. RIGHT OF RENEWAL WITHOUT COMPETITION

The United States may renew this lease by mutual agreement with the current lessee if the lease term stated above expressly authorizes renewal, the lessee's performance is satisfactory, and the value as determined by the United States Government is acceptable.

THIS LEASE is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF I have hereunto set my hand by authority of the Secretary of the Army this _____ day of _____, _____.

_____

THIS LEASE is also executed by the Lessee this _____ day of _____, _____.

_____

LAND USE REGULATIONS
CROPPING, HAYING AND GRAZING
OAHE PROJECT

The lessee agrees to conduct all farming and ranching operations in accordance with the land use practices set forth in this document.

THE LEASING OF THIS LAND IS AN INTERIM USE ONLY, UNTIL SUCH TIME AS PUBLIC USE OF THE LEASED PROPERTY FOR AUTHORIZED PROJECT PURPOSES REQUIRES REMOVAL OF THE PROPERTY FROM THE LEASING PROGRAM FOR OPERATIONAL, RECREATIONAL, OR FISH AND WILDLIFE MANAGEMENT PURPOSES.

The use of lands covered by this lease are subject to, but not limited to, the following specific restrictions and regulations and in addition must be in compliance with U.S. Department of Agriculture approved practices for this community.

1. General Management Practices.

a. Lease Operations.

(1) The lessee agrees to furnish all equipment, material, and labor and to conduct all farming and ranching operations in accordance with the lease, recognized principles of good husbandry, and the land use practices set forth herein. All operations will be accomplished in a timely manner without further notice and at no expense to the United States unless otherwise provided. All operations will be conducted with extreme care to avoid any possibility of boundary or survey monuments, markers, or bench marks being destroyed or disturbed. The lessee will be held responsible for any damages. The lessee must not enter and occupy the subject property prior to receiving a fully executed lease without the prior approval of the Natural Resource Manager, Oahe Project Office, 28563 Powerhouse Road, Pierre, South Dakota 57501, telephone (605) 224-5862. The lessee's management plan and the conditions of leasing must be mutually discussed between the lessee and the Natural Resource Manager prior to approval of initial entry onto the leased lands.

(2) When the purpose of the lease is for grazing, the lessee may use the land lying below the 1617' mean sea level (msl) elevation and adjacent to the leasehold for grazing purposes. All conditions of the lease will apply with regards to use of this land, including fencing the lease boundaries. No grazing will be allowed on this area when tracts are leased for haying or cropping purposes only.

b. Public Access. The lessee will not interfere with nor obstruct vehicular access to and exit from the water areas by the general public on open, public, and reservoir access roads that cross the leased premises without the written permission of the Natural Resource Manager, nor interfere with the placement and use of facilities or structures authorized by the Corps of Engineers. Pedestrian access must be permitted. The leased premises are open to the general public for hunting, fishing, and related recreational activities unless prohibited by the Natural Resource Manager. Posting of the leased premises by the lessee with "No Trespass", "No Hunting", "Private Property" or similar signs is prohibited.

c. Rental Offset Program. An offset is work performed by the lessee for the United States in exchange for reduced cash rental. Examples: leaving a specified amount of crop or hay unharvested or constructing a specified amount of fence. Offsets are considered standard requirements of the lease and must be performed by the lessee. Failure to perform the offset work during the specified time will result in increased rental for the remainder of the term or may be a basis for lease revocation.

d. Fences.

(1) The lessee of unfenced public land must make the necessary arrangements and/or agreements with the owners or lessees of adjacent land regarding access, fencing, and the location of boundary lines. In the event such arrangements and/or agreements are not made, it will be the sole responsibility of the lessee, at his own expense, to establish necessary access roads and boundary lines, and to obtain and erect the required fencing which will be constructed to meet the requirements of State laws and the Corps of Engineers. All such improvements must be approved in writing by the Natural Resource Manager.

(2) All fencing, with the exception of temporary electric type fences that are used in a grazing/rest type usage, must be approved by the Corps of Engineers prior to construction. Fencing required under the offset program becomes the property of the United States upon construction. Fences constructed by the lessee and not under the offset program must be removed within 30 days of lease termination or they will become the property of the United States.

(3) Maintenance of all boundary and interior fences will be the responsibility of the lessee. Existing fences, with the exception of temporary electric type fences that are used in a grazing/rest type usage, shall not be moved, modified, or changed without written permission. The lakeside end of cross fencing must be moved up and down with fluctuating lake levels for safety reasons. Requests to modify any fence, including the installation of gates, must be directed to the Natural Resource Manager.

e. Noxious Weeds and Other Pests.

(1) Lessees will be responsible for control and attempted elimination of noxious weeds on all lands leased to them. A rental offset may be offered for the control of noxious weeds located on lands below the 1617' msl elevation and adjacent to the leased premises where use of this land is authorized by Paragraph 1.a.(2), above. The lessee must comply with all applicable Federal, State, County, and Municipal laws, ordinances, and regulations. Additionally, the lessee must conduct an active program to control or prevent significant infestations of pests such as, but not limited to, rodents, and grasshoppers, at the direction of or with the permission of the Natural Resource Manager.

(2) Permission must be obtained from the Natural Resource Manager prior to the use of any pesticide on the leased area or on lands below 1617' msl elevation. (Note: the term pesticide includes but is not limited to herbicides, insecticides, rodenticides, larvicides, fungicides, etc.) The Natural Resource Manager's permission for the use of Federally registered "restricted use" pesticides must be obtained in writing prior to application. Only chemicals approved for use in aquatic areas will be allowed for use on lands below 1617' msl elevation. No suspended or cancelled use pesticide will be used on the leased area. A list of these chemicals may be obtained from the Natural Resource Manager.

(3) In addition to the above, the lessee must report all pesticide applications on the Lessee's Annual Pesticide Report, by 1 October annually. This report shall be submitted to the Natural Resource Manager and is required even if no chemicals were applied. Pesticides must not be stored on United States' property in excess of five (5) days. All empty pesticide containers must be removed from United States' property within five (5) days of application.

(4) Applicators will be required to be registered in accordance with Federal and State statutes. Applicators will be required to notify the Natural Resource Manager a minimum of two days prior to applying any chemicals to United States' property and submit standardized forms detailing all applications made to the Natural Resource Manager's Office within a week of application.

(5) The United States may pursue noxious weed control on the leased premises or below the 1617' msl elevation without advance notification to the Lessee.

f. Vegetation Modification. Modification of existing vegetation in any manner, to include trees, shrubs, brush, native and tame grasses and riparian vegetation is prohibited unless permitted under the specific terms of this lease or approved in writing by the Natural Resource Manager.

g. Burning. Burning, for any purpose, is prohibited on the leased premises without the prior written approval of the Natural Resource Manager. Such approval may be granted only when burning is justified for sound grazing or wildlife management practices and for drift and crop residue clearing operations where no practical alternative exists. A North Dakota State Burning Permit must be obtained in advance.

h. Dead Stock. The lessee must comply with all applicable Federal, State, County, and Municipal laws, ordinances and regulations (including quarantine laws) regarding dead stock. Additionally, the lessee must immediately dispose of dead stock off United States' lands, eliminate any unsanitary conditions, and prevent the spread of disease.

i. Public Use, Air and Water Pollution. The leasehold must be managed for agricultural purposes in a manner that is consistent with current and future public use and enjoyment and which will preserve and enhance scenic, scientific, aesthetic, historical, biological, and archeological resources. The lessee must not discharge or apply any substance to the leasehold or operate the leasehold in any manner which would cause pollution to the ground water, surface waters, or air to the extent that it would endanger the health of human, animal, or aquatic life. Surveillance of all possible sources of pollution must be coordinated with the State Health Department.

j. Highly Erodible Land Conservation and Wetland Conservation Programs. The Federal Agriculture Improvement and Reform Act of 1996 provides for highly erodible land conservation and wetland conservation. It is the lessee's responsibility to obtain approval of conservation plans for highly erodible cropland, if applicable, and for correction of any existing erosion problems to assure eligibility of US Department of Agriculture benefits. Any required conservation practice may or may not be subject to rental offset in accordance with procedures outlined in Paragraph 1.c., above.

k. Reservation to Plant Trees/Tree Plantings. The Natural Resource Manager reserves the right withdraw lands from the lease to plant trees. Adjustments in rental for lands removed from the lease will be in accordance with the Condition 10 of the lease.

l. Reservation to Fence Woody Draws And Wetlands. The Natural Resource Manager reserves the right to withdraw woody draw and wetland habitat from the lease and fence the draw or wetland perimeter. Grazing will not be permitted within the draw or wetland once fenced. Adjustments in rental for lands removed from the lease will be in accordance with Condition 10 of the lease.

m. Vehicle and Equipment Storage. Storage of vehicles and equipment, including grain storage facilities, on lands of the United States, is prohibited.

n. Cultural Resources. Lessees are required to notify the Natural Resource Manager upon discovery of any cultural resources during their authorized operations. Upon discovery of cultural resources, leases may be modified to implement protective measures. Unauthorized collection and disturbance of cultural resources is a Federal offense and lessees must not give permission to individuals to search for or collect artifacts from lands of the United States.

o. Threatened and Endangered Species. Shoreline areas are potential nesting habitat for Piping Plovers and Least Terns, shorebirds on the Threatened and Endangered Species list. If either or both species are observed, the

Corps may fence the nesting site(s) or the lessee may be asked to change grazing dates to prevent disturbance by livestock.

p. Grazing Practices.

(1) There are two approved methods to determine livestock stocking rates, Animal Unit Months (AUM) or utilization of no more than 50% of annual forage production. If the leased tracts are fenced on the boundary, the lessee must use the AUM utilization rate as specified in Paragraph 2. Specific Management Practices. If the leased tracts are not fenced on the boundary, the lessee must use a utilization rate not to exceed 50% of annual forage production. If a leased area is not fenced, a non-grazing enclosure must be constructed on the premises to assist in measuring annual forage production.

(2) The leasehold will be periodically inspected and/or a range condition evaluation may be completed during the grazing season by the Corps of Engineers. If the inspection or evaluation indicates that grazing is adversely impacting the range, grazing may be reduced or terminated for the season. Overgrazing, as determined by the Natural Resource Manager, is not permitted and may be a basis for lease revocation or future removal of lands from the leasing program without advance notice to the lessee or general public.

(3) Stock must be removed during the non-grazing season and the use of the leasehold for feedlots or localized stock feeding operations is prohibited. The construction of pit or trench silos, ensiling of forage, or the placement of feeders or watering tanks on the leasehold is prohibited. The construction of corrals or loading chutes is prohibited. The use of salt, minerals or other supplements shall be permitted on lands of the United States as a management tool to help in the distribution of livestock through a grazing unit. If a lessee fails to remove unused blocks or leaves holding tubs within the leased area after livestock are removed, this privilege shall be revoked.

(4) Grazing crop stubble is permitted only if grazing is an authorized lease purpose and only during the authorized grazing season, as found in Paragraph 2, Specific Management Practices.

(5) The lessee must provide a copy and description of the brand(s) found on livestock that will graze the lease area.

(6) Livestock animal unit (AU) equivalents are as follows:

AU = Animal Unit
AUM = Animal Unit Monthly
1,000 pound Cow/Calf pair = 1.00 AU
Yearling = 0.75 AU
Dry Cow=0.85 AU
Bull=1.3 AU
Horse=1.5 AU
Ewe/Lamb pair = 0.20 AU
Yearling Sheep = 0.12 AU
Ram = 0.25 AU

q. Haying Practices.

(1) Unless otherwise specified under Paragraph 2, Specific Management Practices, all haying will be conducted after 15 July each year. One (1) cutting only will be permitted per year.

(2) Individual hay bales, windrowed hay, broken bales, fodder butts, and windrowed feed must be removed from the field within 7 days of harvest. Shocked feed, hay stacks, and properly piled bales may be

temporarily stored on hayland of the leasehold (not in high risk flood areas or where permanent vegetation will be damaged), but must be removed and the residue cleaned up prior to 1 October each year.

(3) A 20-foot buffer of uncut hay must be left along all water and drainage edges, adjacent to all shelterbelts, tree stands and woody draws.

r. Cropping Practices.

(1) Lessees must not expand cropland beyond that existing as of 1 April 1992 unless permitted under the specific terms of this lease or approved in writing by the Natural Resource Manager. Cropland expansion includes breaking grasslands, woodlands, meadows, pastures, prairie or native sod for the purpose of planting row, forage, grain, hay or other crops. Expansion includes extending the perimeter of existing cropland fields. Expanding cropland without authorization will be considered noncompliance and msy be a basis for revocation of the lease.

(2) Lessees must insure that food plots or crops left for wildlife, as required by a rental offset, will not be grazed or utilized in any manner and will be left standing until 1 April of the following spring. The food plot acreage may be a part of the overall cropland acreage or a separate food plot located elsewhere on the leased land. If the food plot is part of the overall cropland acreage, the Natural Resource Manager has the option to choose the location of the crop that will be left standing as a wildlife food plot. A legal description or map of the area to be left as a food plot may be included in the lease. The lessee may be required to plant food plots other than wheat such as barley, oats, corn, sunflowers and sweet clover, or plant a mixture of crops in the same field. The wildlife food plots must be clean and free of weeds.

(3) Fall plowing of crop stubble is prohibited. Summer fallow of cropland areas must be minimized or eliminated but fields in fallow rotation may be black fallowed if the lessee plants vegetation erosion strips, ridges fields or uses other Natural Resources Conservation Service approved means to inhibit wind and water erosion. Continuous cropping is an approved method of using cropland as long as the lessee rotates the types of crops that are planted annually (wheat, barley, oats, corn, sunflowers, sweet clover, etc.). The Natural Resources manager may require the lessee to discontinue continuous cropping or require that specific crops be planted in a specific year.

2. Specific Management Practices.

(Specific management practices, as shown under each item, will be listed here on the signed lease.)

Lessee's Initials_____

NOTICE NO. DACW45-13-B-RE-0003

APPLICATION FOR LEASING UNITED STATES REAL PROPERTY AT LAKE OAHE PROJECT, NORTH DAKOTA

TO: **District Commander**
Omaha District, Corps of Engineers
Real Estate Division
1616 Capitol Avenue
Omaha, Nebraska 68102-4901

DATE:_____

The undersigned:

_____ an individual

_____ a partnership consisting of _____

_____ a corporation existing under the laws of the State of _____

doing business as _____

of _____,
in accordance with your Notice of Availability No. DACW45-13-B-RE-0003 for leasing of property at the Lake Oahe Project, and subject to all conditions and requirements thereof, propose(s) to enter into a lease for the property identified below, and agree(s) to pay the rental offered below.

Item	Tract & Description	Use, Conditions, Acreage and Annual Rental Offer
1	Tracts 2622(pt) part of NW¼ Sec 10, part of W½W½ Sec 3 and part of E½E½ Sec 4, T132N, R79W ; 2624(pt) part of W½ Sec 36, T133N, R79W, Emmons County, ND	PURPOSE: GRAZING Graze after 15 July each lease year. 190.0 acres TERM: 4/1/13 – 12/31/17 with five year option to renew MINIMUM ACCEPTABLE BID $2,850.00 ANNUAL RENTAL BID $_____
2	Tract 3211(pt) part of SE¼ Sec 11, T134N, R79W, Emmons County, ND	PURPOSE: HAYING Hay after 15 July each lease year. 16.0 acres TERM: 4/1/13 – 12/31/17 with five year option to renew MINIMUM ACCEPTABLE BID $235.00 ANNUAL RENTAL BID $_____
3	Tract 3428(pt) part of NW¼SE¼ Sec 31, T136N, R78W, Emmons County, ND	PURPOSE: HAYING Hay north section only years 2 and 5of lease. Hay middle section only year 3 of lease.

Hay south section only years 1 and 4 of lease.

2.0 acres

TERM: 4/1/13 – 12/31/17 with five year option to renew

MINIMUM ACCEPTABLE BID $30.00

ANNUAL RENTAL BID $_____

4 Tract 3452(pt) part of NW¼ Sec 27, T135N, R79W, Morton County, ND

PURPOSE: HAYING & GRAZING with offset*

Hay after 15 July each lease year.

Graze 15 April to 15 May each lease year.

Offset: Lessee shall plant and leave unharvested a 2.0 acre row crop food plot on north side of draw and a 1.5 acre row crop food plot on the south side of draw each lease year.

25.0 acres (10 hay, 15 graze)

TERM: 4/1/13 – 12/31/17 with five year option to renew

MINIMUM ACCEPTABLE BID $Any Positive Bid

ANNUAL RENTAL BID $_____

5 Tracts 3470(pt) part of SE¼SE¼ Sec 22 and part of E½NE¼ Sec 27; 3473(pt) part of SW¼NW¼, NW¼SW¼ and NE¼SW¼ Sec 26, T136N, R79W, Morton County, ND

PURPOSE: HAYING with offset*

Alfalfa or native grasses only allowed in lease area.

Ground disturbance or breaking of ground is prohibited.

Offset: Lessee shall plant and leave unharvested a 1.0 acre corn food plot each lease year.

27.0 acres

TERM: 4/1/13 – 12/31/17 with five year option to renew

MINIMUM ACCEPTABLE BID $435.00

ANNUAL RENTAL BID $_____

6	Tracts 3502(pt) part of NW¼NW¼ Sec 6; 3503(pt) part of NE¼NW¼ Sec 6; 3516(pt) part of NE¼SE¼ Sec 6; 3545(pt) part of NE¼SE¼ Sec 6; 3519(pt) part of SW¼SE¼ Sec 6; 3547(pt) part of SE¼NE¼ and NE¼SE¼ Sec 6, T136N, R79W, Morton County, ND	PURPOSE: HAYING Only one (1) hay cutting is allowed in the lease area after 15 July each lease year. Hay south 15.0 acres only years 2 and 4 of lease. Hay north 15.0 acres only years 1, 3 and 5 of lease. 30.0 acres TERM: 4/1/13 – 12/31/17 with five year option to renew MINIMUM ACCEPTABLE BID $175.00 ANNUAL RENTAL BID $_____

*See Bidding Instructions, paragraph 5a(2) and Land Use Regulations Paragraphs 1c and 1d(2) for additional information concerning offsets. Rental Offsets will be considered an integral part of the lease and the annual rental bid should be reduced accordingly to reflect this work performed by the Lessee.

Lease applicant represents: (Check the appropriate boxes in the below statements.)

(a) that applicant [ ] has [ ] has not employed or retained any company or persons (other than a full-time bona fide employee working solely for the lease applicant) to solicit or secure this contract, and

(b) that applicant [ ] has [ ] has not paid or agreed to pay to any company or persons (other than a full-time bona fide employee working solely for the lease applicant) any fee, commission, percentage, or brokerage fee to solicit or secure this contract.

ENCLOSED IS A CHECK OR MONEY ORDER, MADE PAYABLE TO "FAO-USAED, OMAHA DISTRICT", IN THE AMOUNT OF $_____ TO COVER THE REQUIRED DEPOSIT, WHICH IS NOT LESS THAN TEN PERCENT (10%) OF THE ANNUAL RENTAL OFFER.

I (we) make this lease application with full knowledge of all the conditions and requirements set forth in the NOA and will enter into a written lease within ten (10) days after the date of receipt of a lease for execution.

_____
Signature Date

_____
Social Security No. or Tax Identification No.

_____
Street Address, Rural Route or Box No.

_____
City, State and Zip Code

_____
Telephone Number

CORPORATE CERTIFICATE

I, _____, certify that I am the
(Name)

_____ of the corporation named as lease applicant in the attached lease
(Title)

application; that _____, who signed the lease application on behalf of the lease
(Name)

applicant, was known to me and was then _____ of the Corporation; and that the lease
(Title)

application was duly signed for on behalf of the Corporation; by authority of its governing body, and is within the

scope of its corporate powers.

DATE: _____ _____ (CORPORATE SEAL)
(Signature)

PARTNERSHIP CERTIFICATE

I, _____, certify that I am a General Partner
(Partner X)

in the Partnership named as lease applicant in the attached lease application. I further certify that

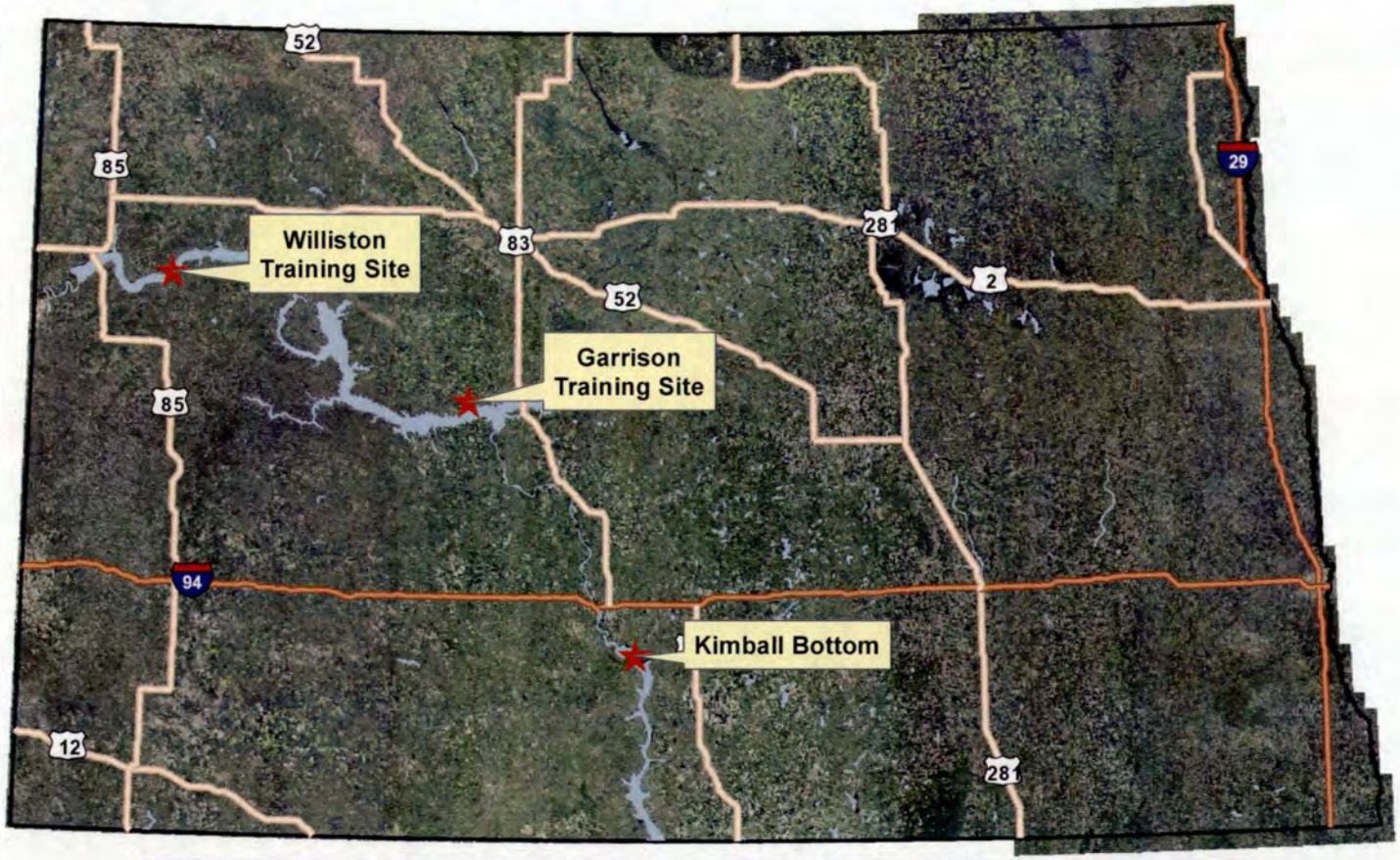
_____, who signed said lease application on behalf of that Partnership,
(Partner Y)

is also a General Partner and has the authority to bind the Partnership by virtue of powers vested in him in the

Partnership Agreement.

DATE: _____ _____ (SEAL)
(Signature Partner X)

House Bill 1338
ND National Guard and Army Crop of Engineers Lands



Interstate

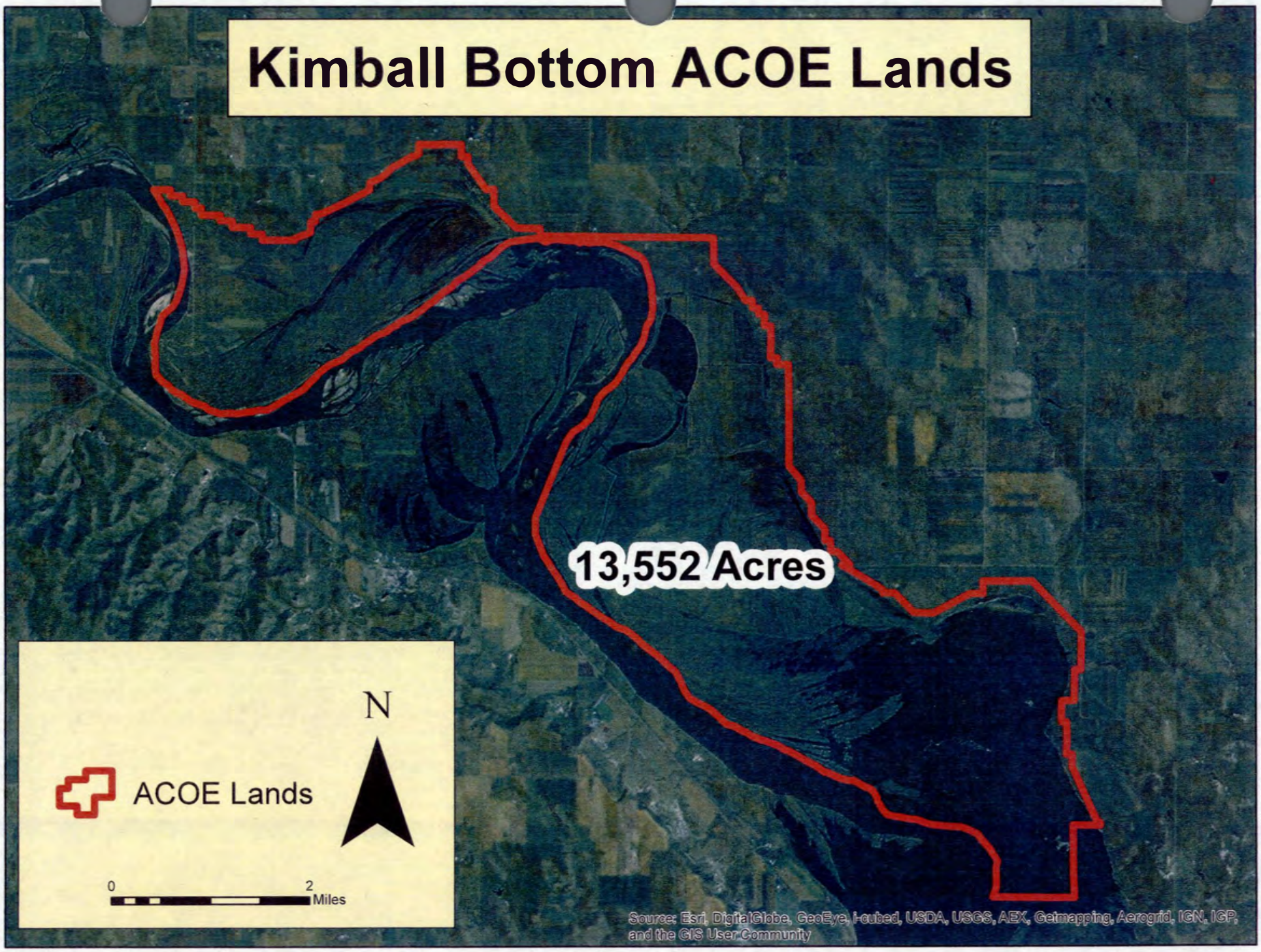
U.S. Highway

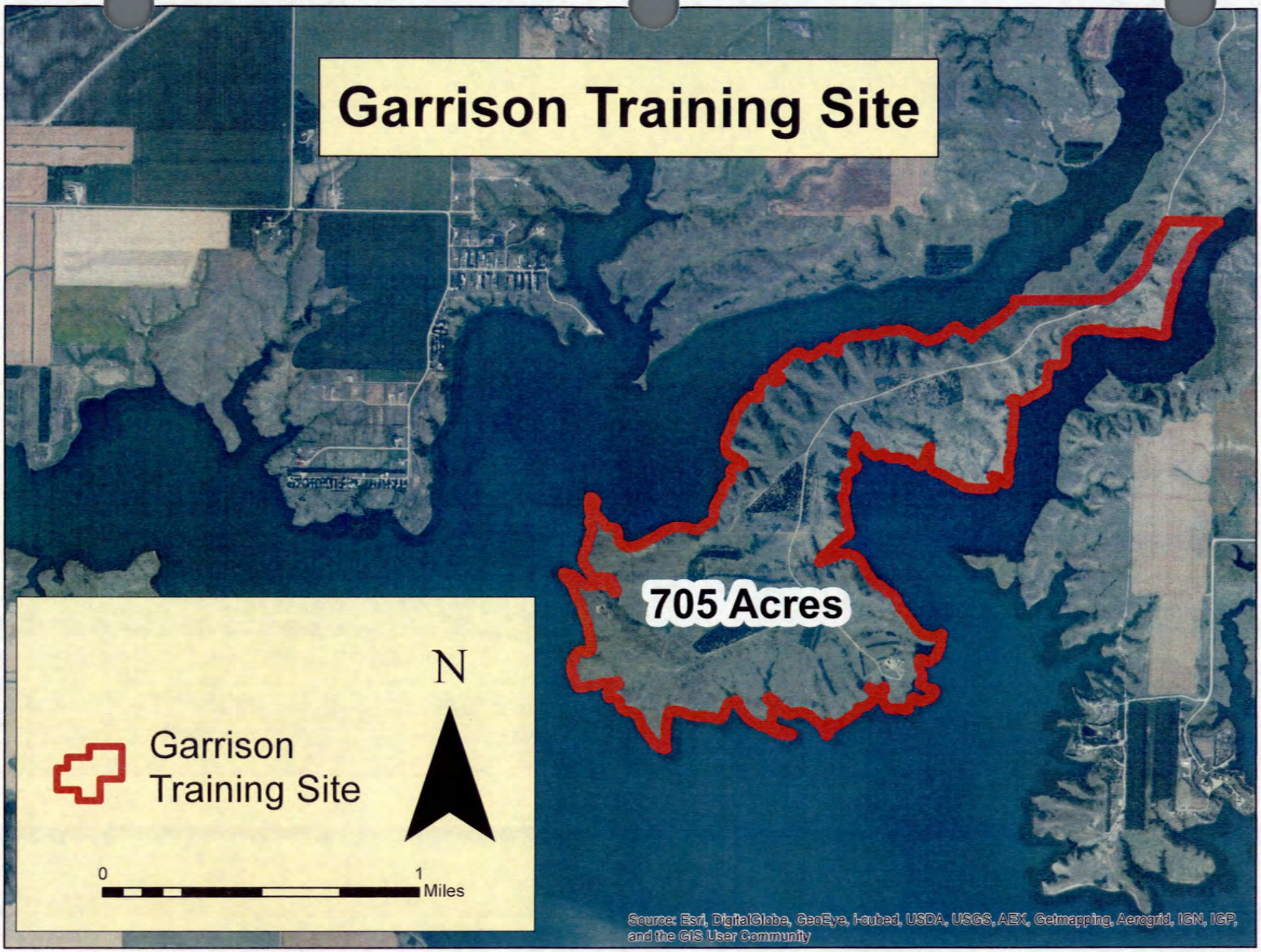
Lakes

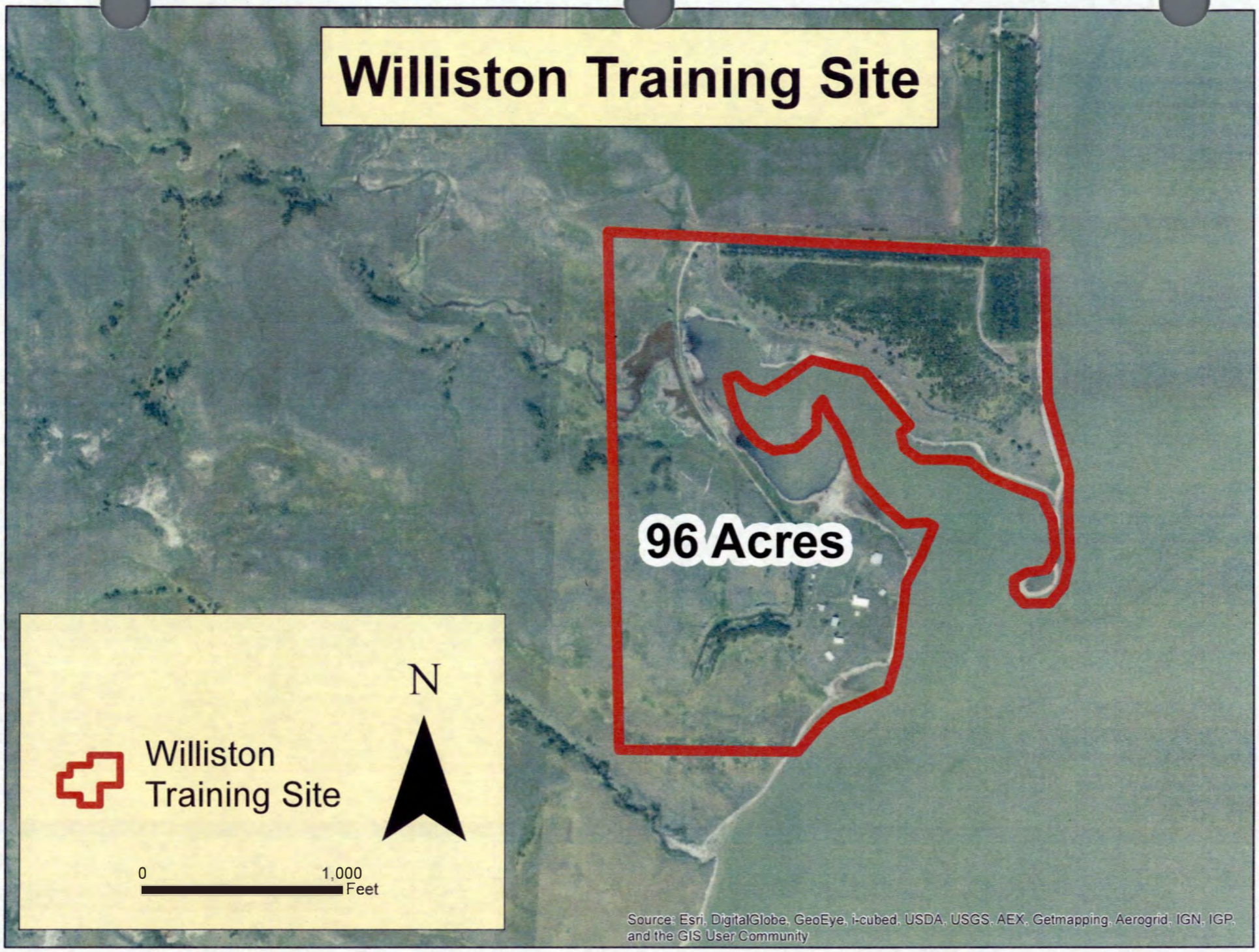
0 100 Miles

N
W E
S

Kimball Bottom ACOE Lands




Garrison Training Site
705 Acres
N
Garrison
Training Site
0
1
Miles
Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, and the GIS User Community


Williston Training Site
96 Acres
N
Williston
Training Site
0
1,000
Feet
Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, and the GIS User Community

Attachment #10

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

www.land.nd.gov

DEPARTMENT OF
ND TRUST LANDS
INVESTING FOR EDUCATION

Lance D. Gaebe, Commissioner

TESTIMONY BY

Michael Brand, Director
Surface Management Division

North Dakota Department of Trust Lands

HOUSE BILL NO. 1338

Senate Government and Veterans Affairs Committee
March 28, 2013

Appearing today on behalf of the Department of Trust Lands to express concerns about House Bill 1338 which seeks to have the State of North Dakota acquire "excess land" around Lakes Sakakawea and Oahe from the Army Corps of Engineers. The Department's apprehension about the bill is largely because it does not contain provisions for the costs of negotiating for the return; the costs and responsibilities of surveying and marking the boundary; nor the anticipated costs of managing the land if acquired.

As stated in HB 1338, the term "excess lands" is assumed to include any land above 1,854 feet mean sea level around Lake Sakakawea and above 1,620 feet mean sea level around Lake Oahe, excluding lands within the reservations. Because elevations do not provide a meaningful boundary for land descriptions, a registered and federally approved surveyor would be required to conduct surveys for the State and the Army Corp of Engineers in order to establish a defensible property boundary.

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

There are several areas to carefully consider, 1) The cost of a metes and bounds survey, 2) how is that property boundary marked or separated, so the public or lessees know the line and 3) The costs for "State" to cost effectively manage the property.

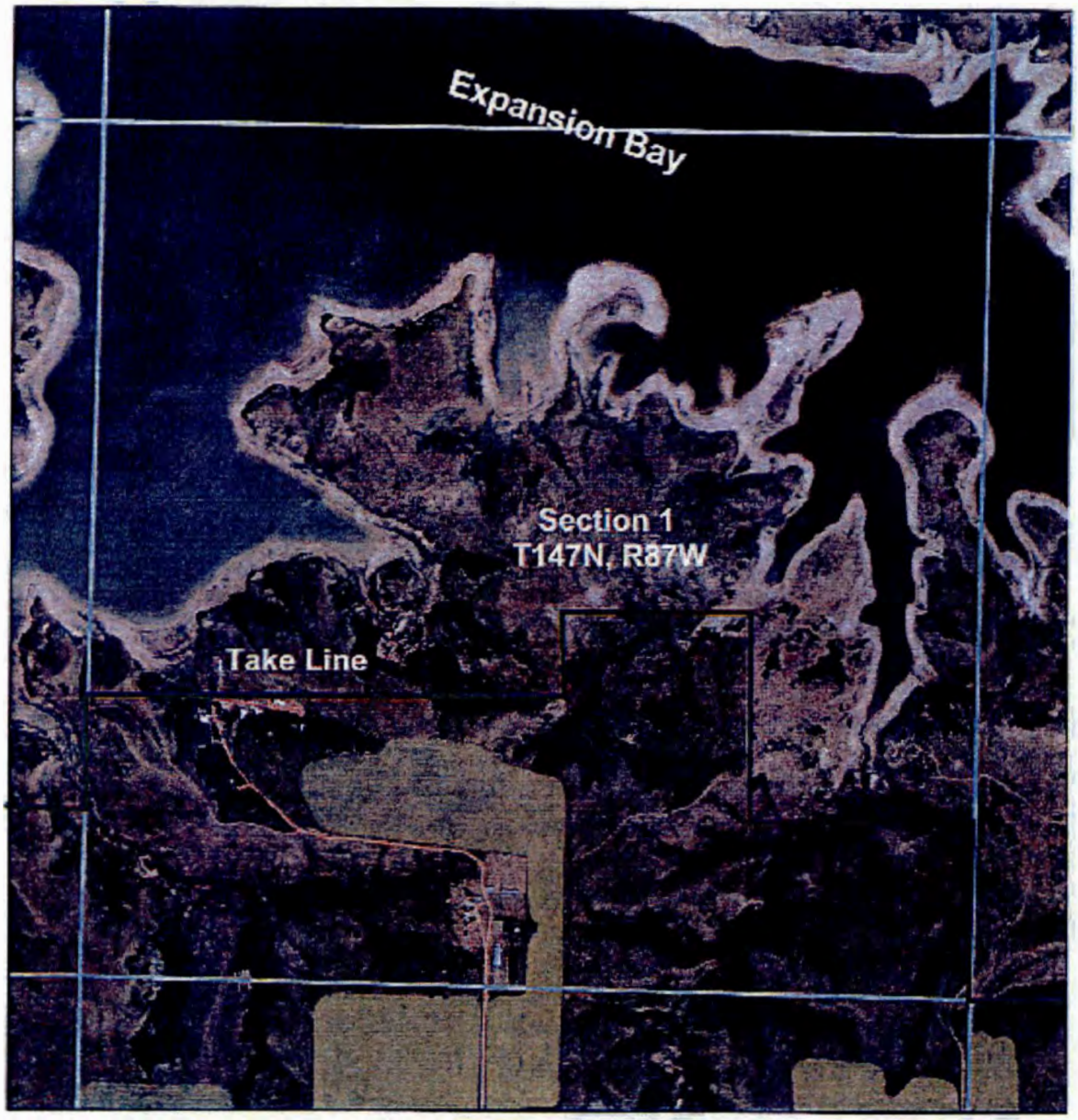
A metes and bounds survey would be extremely costly, especially now with surveyors in high demand because of energy development. The estimated cost of a metes and bounds survey of the attached land description would be approximately $15,000. There are about 180 miles of surveys on Lake Sakakawea and another 112 miles on the Oahe reservoir excluding the reservations. The total estimated cost would then be between $4 and $5 million.

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

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

While the prospect of State ownership of excess lands around the reservoirs is an appropriate policy discussion, the conversation should include recognition of the potential costs, jurisdictional challenges and management responsibilities.

Mercer County

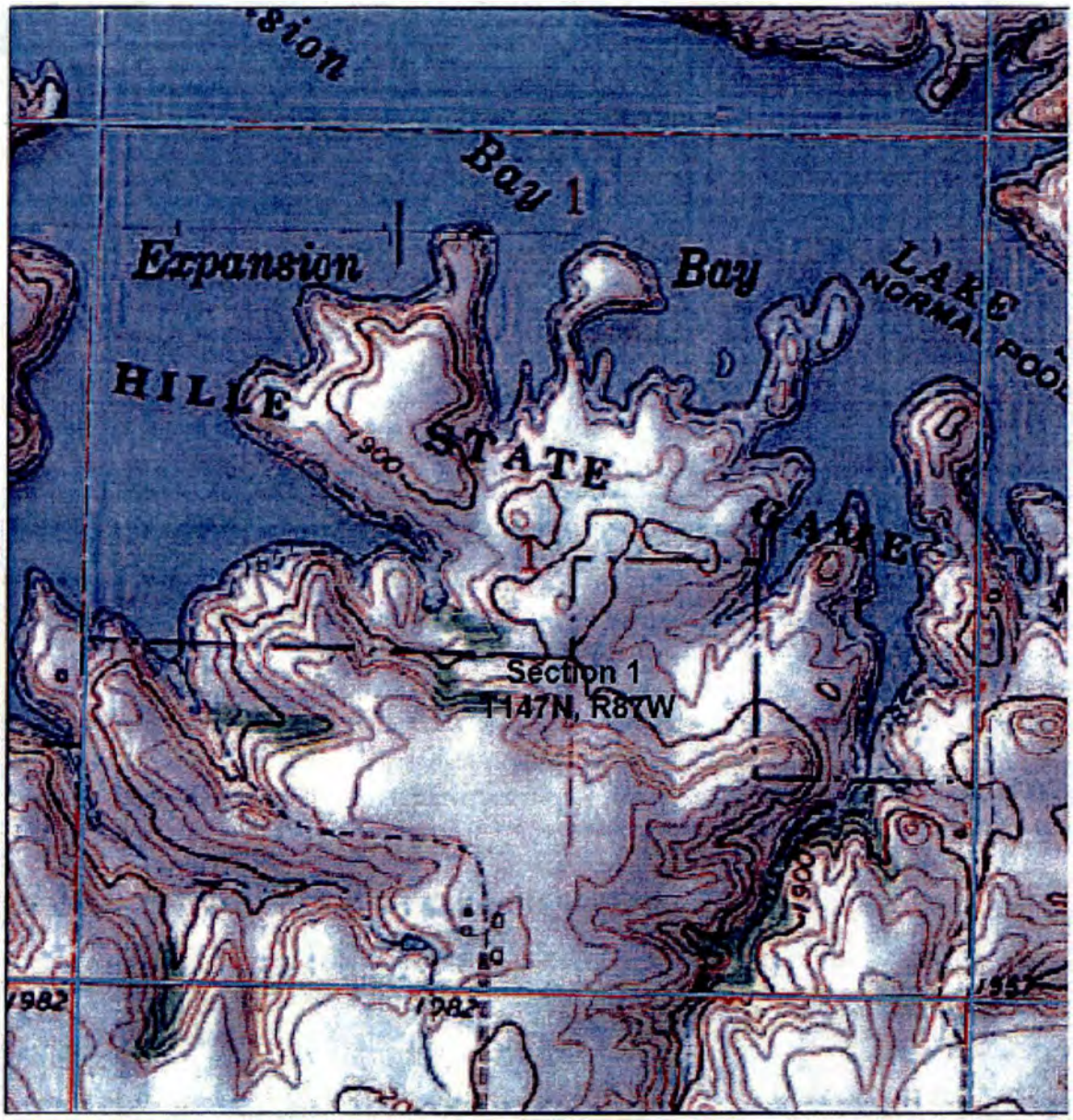


Map Datum is WGS 84 (same as NAD 83)

0 0.5 1 Miles

Printed: 3/26/2013

Mercer County



Map Datum is WGS 84 (same as NAD 83)

Miles

Printed: 3/28/2013

#11

Date: March 26, 2013
Purpose: Official Written Testimony
Bill: HB 1338
Committee: Government and Veterans Affairs

The letter below is testimony submission for a DO NOT PASS recommendation on HB 1338.

The Army Corp of Engineers (COE) has played an important role in planning, designing, building and operating water resources and other civil works projects throughout the nation. In North Dakota, the COE has done the same maintaining a relatively strong relationship while preserving their authority throughout various projects including Lake Sakakawea and the Missouri River below the dam.

In total, the COE purchased approximately 550,000 acres necessary in ensuring its project purposes of flood control, navigation, hydropower, fish and wildlife habitat, and recreation. Included in the purchase, were 155,000 acres from the Three Affiliated Tribes (TAT) and the remaining 395,000 from state, public and private entities.

HB 1338 forces the State of North Dakota into accepting "excess lands" deemed no longer needed for project purposes. The bill is flawed in many ways and reignites an age old battle waged to protect public interests. To the public's dismay we are forced to explain yet again the project purposes of the Pick-Sloan Missouri Basin Program.

There Are No Excess Lands

In the early 1990's when the TAT requested transfer of "excess lands" the COE was persuaded to acknowledge their loose interpretation of excess lands. Between litigation and reassessment, the COE deemed all acres non excessive for the management of the Garrison Dam. Then again between 2005 and 2006 the public again successfully defended the definition of excess lands thwarting another attempt by the TAT requesting so-called excess lands. Fast forward to 2013 the constituents of North Dakota find themselves battling uninformed and/or agenda driven legislators in the halls of Congress.

According to the Merriam-Webster dictionary, excess is defined as: *1(a) the state or an instance of surpassing usual, proper, or specified limits.* Therefore, the COE would need to find proven lands "surpassing usual, proper, or specified limits" of the project purposes.

So let's look again at the project purposes of **flood control**, navigation, hydropower**, fish and wildlife habitat**, and **recreation** and explore their specified limits.

By focusing on the bolded items it should already be obvious no excess lands exist. For instance, in 2011 we lived through an epic flood many thought could never happen. The COE itself has acknowledged in media reports they may need to acquire additional acres for flood control purposes. Areas along Lake Sakakawea and the Missouri River including cabins/homes, roads and other infrastructure were in need of closure and/or sand bagging. By definition of flood control do you see any excess lands available? The answer should be no.

But if that is not compelling enough let's examine what the US Government defines recreation as*: auto touring, biking, boating, camping, climbing, historic/cultural sites, educational purposes, fishing, fish factories, hiking, horseback riding, hunting, lodging, off-highway vehicle access, recreational vehicles, museum/visitor centers, water sports, wildlife viewing and winter sports.*

By analyzing flood control, recreation, and fish and wildlife habitat (without even mentioning the other obvious project purposes) can you honestly look anyone in the eye and say one acre of the 555,000 is surpassing the project purposes? The answer should be no.

The Affects/Effects of Transferring Fictitious Excess Lands

They are many and to list them all in this summarized testimony will be burdensome as I need your focus on the itemized affects and/or effects of HB 1338 continued on page two.

The Affects/Effects of Transferring Fictitious Excess Lands, contd…

1. If lands were to somehow to be found in excess they should never A) go to the State of North Dakota or B) go to the TAT. Instead, the former owner or heir should have the right to purchase that land or receive by other agreed upon transfer.
2. Any transfer should be equitable and ensure the project purposes of flood control, navigation, hydro power, fish and wildlife and recreation are maintained.
3. What easements will be enforced and maintained to ensure public access to the lake for all recreation?
4. Counties receive payment in lieu of taxes off the public land. Emergency managers plan fire, enforcement, ambulance jurisdictions based on the current land structure. Roads will need to be maintained. Many other similar questions/concerns will arise. Who is going to analyze the affects before they become effects?
5. Weed control, public assets like boat ramps, shorelines and recreation sites will require maintenance. Who is going to provide the funds and resources to maintain function, enforcement and access?
6. North Dakota Game and Fish (NDGF) laws exist on COE public land. This transfer will open the door for the TAT to request lands. Tribal government is volatile and chances frequently. Currently the NDGF and TAT are back negotiating memorandums regarding fishing and hunting access. Who is going to explain the loss of free public recreation if/when the TAT acquires once public lands?
7. HB 1338 removes the transfer of so-called excess lands from the boundaries of the TAT and Standing Rock Reservation. History has proven the importance in mentioning the COE's preconceived attempt to transfer excess lands to the tribes. Where is the support for my claim? In 2005 the COE prematurely determined there were so-called excess lands within the boundaries of the TAT but NOT outside the boundary of the TAT. Does a cartographic line on a map have that much bearing? It seems ironic that the TAT Chairman Tex Hall traveled recently to Washington D.C. to request the COE to transfer excess lands to the TAT. If HB 1338 illegitimately survives the Senate the ability to survive another hostile takeover of public lands will not be survived.
8. Transfer of lands should require environmental impact studies and management plans. Why have these plans not been submitted prior to a requested transfer?
9. Many reasons above require specific answers. Who will fund a metes and bounds survey of the lands to be transferred? In prior testimony from 2005 it was estimated to cost $4,500 per mile. While the specific transfer in HB 1338 is small in nature we must think long term as HB 1338 will open the doors for more acres to be transferred to both the State and TAT. In 2005 the TAT proposed transfer of 828 miles of shoreline would cost $21 million. Take todays survey rates and you can expect the per mile cost to be much higher.
10. It is obvious the House of Representatives did not review the Effects Analysis Report from the 2005-2006 TAT transfer requests. Has anyone taken the time to contact the COE for their prior documentation? Has the COE itself show cased involvement? Have they been forth coming with the recent requests by Tex Hall?

Today, there are a number of stakeholders with interests and concerns regarding policies in and around Lake Sakakawea and the Missouri River. The corresponding land along the waters has become a recreation giant, a municipal and rural water portal, a fish, wildlife, and conservation machine, an agriculture and ranching savior, and a direct/indirect tax generator.

If the passage of HB 1338 is allowed the very constituents tasked to protect North Dakota will have failed their people. By simple definition there are no excess lands around Lake Sakakawea and the Missouri River. To force such assumption upon the COE of which they have shown poor judgment before will empower them to abandon the project purpose of recreation further deteriorating our ability to fight downstream interests. The House of Representatives made a poor choice in passing HB 1338. The people trust the Senate will not make the same mistake.

Tim Sandstrom
1309 13th Ave NW
Minot, ND 58703
701-471-2399 | tsandstrom@fishingbuddy.com

#1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1338

Page 1, line 1, after "A Bill" replace the remainder of the bill with "for an Act to address conditions on private lands owned adjacent to lands under the control of the United States Army Corps of Engineers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AUTHORITY OF THE BOARD OF UNIVERSITY AND SCHOOL LANDS. The board of university and school lands shall explore options to address the concerns of landowners adjacent to land under the control of United States Army Corps of Engineers surrounding Lake Sakakawea and Lake Oahe. This review shall include consideration of control of noxious weeds, protecting public access for hunting and fishing, the costs associated with making the transition, and the costs associated with maintaining any property that may become a responsibility of the state. Consideration shall also include the interests of North Dakota tribes. The board of university and school lands may establish a task force of stakeholders including, but not limited to, landowners, hunting and fishing organizations, the game and fish department, the parks and recreation department, the North Dakota National Guard, and other parties that utilize access through the lands. The board of university and schools lands shall provide a report to legislative management by October 1, 2014 of the findings of this review.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $50,000, or so much of the sum as may be necessary, to support the work of the task force referenced in section 1 of this bill."

Renumber Accordingly