

**2013 SENATE INDUSTRY, BUSINESS, AND LABOR**

**SB 2373**

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

SB 2373  
February 4, 2013  
Job Number 18218

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to western area water supply authority

## Minutes:

Testimony and Handouts Attached

Chairman Klein: Opened the hearing.

Senator Hogue: Written Testimony (1).

Robert Harms, Lobbyist for the Independent Water Providers: Written Testimony (2).

Steve Mortenson, Chairman of the Independent Water Providers: Said they have been in a good faith effort with WAWS trying to negotiate this problem since the start of WAWS. He said they were the first to come out and do this, they built this market and he can't believe that they want to come in and take it. They want to retain the market share that they developed. Handouts (3). (30:00-32:41)

Chairman Klein: Asked how he knows if the water commission is in charge that they would be okay.

Steve: Said the state water commission is the entity that goes ahead and offers temporary permits, permanent conditional permits. They put the water of North Dakota to the best beneficial use for the people of North Dakota. (33:35-37:15)

Discussion and questions (37:30-42:16)

Mike Moore, Attorney: Said he wanted to pass out some correspondence (4). He said the pipe line projects have been in works for a long time. (42:30-47:30)

Shawn Berry: Talked about the problems they have had with WAWS as land owners. (50:43-52:22)

Mike Ames, Independent Water Provider: Said he has been in the business as a water provider for over thirty years. His greatest concern is that this entity would restrict and

prohibit private industry from doing what they have been doing for the last thirty years.  
(52:37-54:40)

Todd Bradford, Independent Water Provider: Said they have spent about a million dollars on a water depot in Trenton. They have lost three fracks to WAWS because their water was closer and they also sell their water for sixty cents a barrel and WAWS sells theirs for eighty-four. (55:25-57:20)

Terry Jones: Said he is in trucking and talked about the problems with hauling the water.  
(58:00-1:05)

#### Opposition

John Olson, Lobbyist, WAWS Authority: Written Testimony (5).

Denton Zubke, Chairman, WAWS Authority: Written Testimony (6).

Brent Bogar, City Councilman: Speaking for Ward Koeser, Written Testimony (7).

Senator Andrist: Asked what potential he sees for litigation.

Brent: Said as a city they would have concerns of just turning it over.

Chairman Klein: Said there will be more discussion and closed the hearing.

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

SB 2373  
February 5, 2013  
Job Number 18310

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to western area water supply authority

## Minutes:

Discussion and Vote

Chairman Klein: Opened the discussion and said that they need to provide one vehicle. What they are attempting to do is make the amendments on Senator Burckhard's bill.

Senator Laffen: Said what happens if we decide later that it does make sense to put some state money into this project and we are past that project?

Chairman Klein: Said two things, they could pass both bills and they could go to the house and both are defeated. The water commission budget also has eighty million dollars in it and that is where we would tag whatever we needed to do to fix that.

Senator Sinner: Asked if he knew how many independent water producers were affected by this.

Chairman Klein: Said it seems to him that the biggest issue is that, if you are currently an independent water producer in McKenzie County, you can continue to be an independent water producer but if you had plans to provide additional water out of the river as an independent, you will no longer be able to because of the imposition of 1926(b). That does not allow anyone at this time to impose upon that franchise because there is federal dollars that came into that county.

Senator Sinner: Asked if there was any sentiment to fix that problem and by doing that we could appropriate or request those federal loans be refinanced by the Bank of North Dakota and eliminate that 1926(b).

Chairman Klein: Said that is in the discussion but we will sit back and see what those groups do. We will try to fix it on Senator Burckhard's bill.

Senator Laffen: Said the idea here is we can do all that with Senator Burckhard's bill which is much broader and has more areas that we could amend or change.

Senator Unruh: We also have another bill similar to this in another committee.

Chairman Klein: Said that is right, Natural Resource.

Senator Unruh moved a do not pass.

Senator Andrist seconded the motion.

Roll Call Vote: Yes - 7 No - 0 Absent - 0

Floor Assignment: Senator Klein

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/28/2013**

Bill/Resolution No.: SB 2373

- 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				\$31,676,657		\$56,323,303
Expenditures				\$31,676,657		\$56,323,303
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).*

SB 2373 transfers the ownership of the Western Area Water Supply project to the Water Commission.

- 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.*

The Western Area Water Supply Authority has five employees, this fiscal note assumes that those employees would become Water Commission employees. We also assume that the revenue generated by the project would be deposited into the Resources Trust Fund.

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.*

The revenues are generated from domestic and industrial water sales and are taken from a January 15, 2013 break-even analysis and business plan update prepared by Advanced Engineering's Nexus unit.

- 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 expenditures are also taken from the January 15, 2013 break-even analysis and business plan update prepared by Advanced Engineering's Nexus unit, it includes five FTE.

- 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.*

SB 2373 does not appropriate any of these funds to the Water Commission.



**Name:** David Laschkewitsch

**Agency:** ND State Water Commission

**Telephone:** (701) 328-2750

**Date Prepared:** 02/01/2013



**2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2373**

Senate Industry, Business, and Labor 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 Unruh Seconded By Senator Andrist

Senators	Yes	No	Senator	Yes	No
Chariman Klein	x		Senator Murphy		x
Vice Chairman Laffen	x		Senator Sinner		x
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Klein

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

**REPORT OF STANDING COMMITTEE**

**SB 2373: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2373 was placed on the Eleventh order on the calendar.

**2013 TESTIMONY**

**SB 2373**

(1)

1 TESTIMONY OF DAVID HOGUE IN SUPPORT OF SB 2373  
2 SENATE INDUSTRY, BUSINESS, AND LABOR COMMITTEE  
3 FEBRUARY 4, 2013  
4 10:15 am

5  
6  
7 Good Morning Chairman Klein and members of the IBL Committee. My name  
8 is David Hogue. I am a North Dakota state senator representing District 38, which  
9 includes northwest Minot and the city of Burlington. I appear before your committee to  
10 seek support for SB 2373.

11 The purpose of SB 2373 is to keep the Western Area Water Supply ("WAWS")  
12 project on her tracks before she derails. Chairman Klein, I know you and several other  
13 members of the this committee are aware of the great progress that the WAWS project  
14 has made in just the two years that it has endeavored to supply water to the people and  
15 industry of the northwest North Dakota.

16 I think we all understand northwest North Dakota is in desperate need of an  
17 expansion of infrastructure. The communities of Williston and Watford City, to name a  
18 few, desperately need electric energy and water to sustain and build on the current  
19 increase in population and commerce. WAWS serves part of that need by supplying  
20 treated water to northwest North Dakota.

21 I did want to share with the Committee our experience with our NAWS project.  
22 The project called for the transport of water from Lake Sakakawea to Minot for  
23 distribution throughout northwest North, which is centered in Minot, North Dakota. To

1 date, we have not transported a gallon of water from the Lake from communities that  
2 need it.

3 The NAWS project has been riddled by lawsuits that have produced and  
4 indefinite delay. The state of Missouri objects to every gallon that comes out of the  
5 Missouri River upstream of the state of Missouri. Canadian provinces insist water from  
6 one water basin cannot be commingled with water from another basin. They rely on the  
7 Boundary Waters Treaty to defeat and delay the NAWS project.

8 The WAWS project is built on a business case of selling water to rural residents  
9 and industrial consumers, i.e., oil and gas well operators, to generate the necessary  
10 cash flow to build WAWS infrastructure. That is a sound business case as far as it  
11 goes.

12 However, Mr. Chairman, I know members of this Committee and members of the  
13 Senate Natural Resources Committee get the feeling this endeavor is overheated with  
14 threats of lawsuits and other disputes which may create delay for this important project.

15 There is a fair amount of conflict between the leadership of WAWS and the  
16 independent water producers within the area. The disputes include the following  
17 allegations from the independent water producers:

18 --threats of lawsuits the purpose of which would enjoin independent water  
19 producers from supplying customers in the region.

20 --petitioning the US Army Corps of Engineers to deny water permits made by  
:1 independent water users.

1 --making rural industrial customers a priority at the expense of rural residential  
2 and farm customers.

3 --spending excessively on attorneys for the purpose of thwarting competition  
4 from independent water producers.

5 Mr. Chairman, this situation compels a new direction for WAWS and that is why I  
6 think the ND State Water Commission should take control of this project for the  
7 intermediate future. The State Water Commission has the mature judgment of officials  
8 who have seen a few water lawsuits; the State Water Commission has access to the  
9 ND Attorney General.



IBL Committee  
ND Legislature

February 4, 2013

SB 2373      SUPPORT

Chairman Klein and Members of the Committee:

My name is Robert Harms. I am the lobbyist for the Independent Water Providers, a trade association of private water providers, who are ranchers, farmers, landowners and businessmen in north western North Dakota. Private water providers furnish approximately 75% of the water to the oil industry in our State, which is a vital component to the thriving economy we now enjoy. (Without that water, we would not have the oil production and revenues that it produces—which propels our state forward).

We SUPPORT providing water to the people of northwestern North Dakota. We SUPPORT the Western Area Water Supply Project. We oppose how the WAWS Authority has conducted itself and think it time that the project should be brought under the direction and control of the SWC as contemplated by SB 2373.

Bringing WAWS under the SWC is a good idea. Here are the reasons why:

1. **Structurally**—does not provide public oversight, input and accountability:

-No accountability of current board. Five participating entities—each of whom send their own representatives (e.g. Williams rural water district, McKenzie County water resource district, the city of Williston, BDW water system association, and R&Twater supply association).

- can't be voted out of office
- can't be removed for cause
- can't be impeached

-Supervision by State agencies (AG/BND/SWC) is a fiction. It does not exist. HB 1206 provided:

*"The authority shall report to and consult with the state water commission regarding the operation and financial status of the project, as requested by the state water commission. In relation to initial construction of the system and debt repayment, the authority shall present the overall plan and contract plans and specifications for the project to the state water commission for approval".* Legal interpretation by WAWS limits application.

-Meetings—one member may send different representatives; some members do not stay for entire meeting. Executive sessions are common place—almost at every meeting—shutting out public input AND public scrutiny. (Litigation/contracts/legislative strategy)

-SWC has one member

- attends by phone at times (missing nuances of discussion); different staff may attend
- whose counsel and recommendation is ignored regularly; regularly out voted (8 to 1)



-insufficient state influence to protect broader public interest—local interest influences objective decision-making

2. **Performance** ---demonstrates the need for restructuring such as that contemplated by SB 2373:

A brief review of WAWS is helpful: WAWS was a \$150 million project to provide water to north western North Dakota. 80% of revenue was to come from industrial water sales to the oil industry through water depots located strategically throughout the region; 100% loan from the State. \$110 million authorized borrowing in 2011, \$40 million to be considered in 2013.

-To be paid by strategically placed water depots along major highways to reduce truck traffic.

Project has bloated to \$350 million for completion. WAWS is in 2013 Session seeking:

\$40 million loan (HB 1140)

\$80 million in grant funds (SWC Appropriations bill HB 1020)

Projected cost to reach \$350 million; we'll see them in 2015 for another \$120 million—or more.

A detailed summary, WAWS policies, new stories and letters is attached to my testimony that further demonstrates the need for a new governance structure of this public water supply project.



Robert W. Harms, JD  
The Harms Group  
On behalf of IWP

February 3, 2013

Dear Committee Members:

Thank you for addressing our concerns regarding the Western Area Water Supply in relation to Senate Bills 2359 and 2373. Representatives of the Williams Rural Water District contacted us last year for an easement to bury a 10" water line on our property west of Williston. We were informed that this line was very important since Basin Electric required this water for a new substation being built. We were told that they had contributed a sizable amount of money to acquire access to this water. Historically, we have had the belief that rural water was for domestic needs of farmers and ranchers living in the country, not for industrial/commercial applications or for people wanting to live in the country for pleasure or to escape city taxes. This is very important in the Williston area now since there is extensive, hard to control development outside the city limits of Williston.

Because of these beliefs, we were not interested in restricting our land rights as a result of these easements - especially when we were to have no compensation for this non-domestic application. Allowing easements on ones' property reduces the owners' control of this property and limits future enjoyment of ones' own land. The following discussions involved Advanced Engineering and Environmental Solutions and attorney Tami L. Norgard of the Vogel Law Firm.

The terms of the easement were not very conducive to us. We were not offered any monetary compensation. Ms. Norgard related that if we did not sign, WRSA had the right to condemn our land and take it any way. We were told that condemnation would occur in weeks if we did not sign. We were also informed that

*the WAWSA board has passed a policy to recommend denial of water service on any property where the owner did not voluntarily grant an easement. As such, if you have any commercial development plans for your property, the WAWSA Board (who provides water for Williams Rural Water District) would be unlikely to recommend providing water service to your parcel." The WAWSA board has passed a policy to recommend denial of water service on any property where the owner did not voluntarily grant an easement. As such, if you have any commercial development plans for your property, the WAWSA Board (who provides water for Williams Rural Water District) would be unlikely to recommend providing water service to your parcel.*

We had to quickly find an attorney to obtain guidance, which cost us money. Additionally, it is very hard to find an attorney on short notice in the Williston area that has time to immediately assist a client on a new matter. In the meantime, Ms. Norgard related:

*While you might think you have more leverage by having us wait – WAWSA has the power of quick take condemnation – so it isn't as if you can stop the project by waiting to sign. By allowing us to proceed with construction, you will be allowing many other individuals to receive water much sooner than having to wait until June.*

We proceeded in good faith as expeditiously as we could, given not only our own time constraints, but that of our counsel as well. When we advised Ms. Norgard that if she wished to contact our counsel to expedite matters at her own expense, she responded, *In your last communication, you advised that WAWSA would be required to pay if we called your attorney, which is not going to happen.* She subsequently called the attorney, and we have been billed for the same.

After many hours of our personal time as well as considerable expense for the attorney whom we retained, we arrived at a marginally desirable easement, which somewhat minimized impact upon our land and afforded a guarantee of very short duration to reserve a modest amount of water for five residential hookups. We are still awaiting payment of the nominal consideration of \$10.00 within the easement agreement. Moreover, we were recently contacted to authorize access to our land for surveying for another pipeline.

Two of our attorneys have told us that we were not the only ones being strong armed into giving up control of ones' own land. We resent the intimidation and strong-arming by a quasi governmental entity with no compensation to us for damages or compensation for value received by the District and its commercial customers, particularly when such an entities are competing with other private entities in selling water to commercial/industrial users. We object to the unfair taking of our land without adequate compensation while subsidizing other commercial entities at our expense.

Sincerely,



Allen Dominek



Arlen D. Dominek

2268 Northwest Boulevard, Columbus, Ohio

POLICY BULLETIN NO.

**SUBJECT:** Availability of Project Water for Voluntary Acquisition of Right of Way

**POLICY:**

To meet the Business Plan, WAWSA needs to acquire a significant amount of right of way in a short time period.

For property owners who voluntarily enter into easement agreements or sell property to WAWSA, WAWSA will favorably consider providing water service from the Project if requested by these property owners. If the property owner is served by a WAWSA member, the WAWSA board will recommendation to the member that service be provided to the property owner.

For any property owner who does not voluntarily grant an easement or sell property to WAWSA, where condemnation is initiated, WAWSA will likely not consider any requests for project water from the owner of the condemned property. If water service is instead provided by a WAWSA member system, the WAWSA board will likely recommend that the member deny any requests for service from that property owner.

Adopted April 18, 2012



Posted: Friday, November 11, 2011 12:00 am

By Nick Smith  
Williston Herald

## County: Water project builders broke roads, didnt file permits

The Williams County Commission voted to have the company overseeing a new regional water project repair a stretch of road damaged during recent work.

Commissioners discussed two incidents involving work being done along Williams County Road 7 in October as part of the Western area Water Supply (WAWS) Project.

No permits have been granted by the county for the placement of pipeline in the ditch paralleling the road. Williams County Highway Superintendent Dennis Nelson said nearly one mile of road was damaged on County Road 7, about three miles off of U.S. Highway 2. Nelson said on Oct. 18 he came across a crew on County Road 7 doing work. He said the crew had "dug across the ditch and county highway." The crew, he said, works for a contractor hired to do the work by Advanced Engineering and Environmental Services (AE2S).

AE2S is the firm that designed the WAWS Project. Nelson said he immediately contacted Dave Johnson with AE2S. Johnson is chief engineer of the WAWS Project. On Oct. 24, Nelson said Commissioner Wayne Aberle came upon the site and found the crew continuing its work. Aberle found the crew piling dirt on the road, making it nearly impassable. At this point, the work was shut down immediately.



### DISCUSSION

Nelson went on to explain that the county brought in its grinder and had used it to fix the road. The cost of using the grinder to fix the road was approximately \$13,000. He added that County Road 7 needs gravel immediately. Also, he said it needs to be rebuilt in the spring. Johnson was on hand and addressed the commission. He said most of the work on the WAWS Project in 2011 has been in and around Williston, to areas where the city is building infrastructure. He said the work along County Road 7 is a continuation of the project out into the county. "Where we failed has been in coordinating with the county. We realize we're going to have to coordinate with you guys in a big way," Johnson said.

Commission Chairman Dan Kalil asked who is on the WAWS Board. Johnson replied that it consists of two members of the McKenzie County Water Resource District, Williams Rural Water, the R&T Water Supply Association, Burke/Divide/Williams Rural Water as well as two City Commissioners and a member of the State Water Commission. "It didn't occur to any of those board members to contact the county?" Kalil asked. Johnson said there was a failure of communication. Johnson added that the contractor dug through the road rather than bore under, as county rules require. Johnson was asked why the crew was digging in the ditch parallel to the road and laying the pipeline without a county permit. "We have easements from the landowners," Johnson said.

Aberle said "it just amazes me" that the crew was ripping up the road the way it was and blocking traffic.

"There's one business (that) is overseeing it, and that's where the responsibility is," Aberle said.

Aberle said AE2S is responsible. Aberle made a motion to have AE2S repay County Highway the \$13,000 for the road repairs done by the grinder. His motion also required that AE2S pay for the cost of gravel being placed on the road "immediately" and for the company to repair the one-mile stretch of County Road 7 in the spring. After further discussion the commission voted unanimously, by a five votes to none margin, to approve the motion.





**DANGEROUS ICE EVERYWHERE**

**02/01/2013 - 13 MILE BULK WATER FILL STATION**

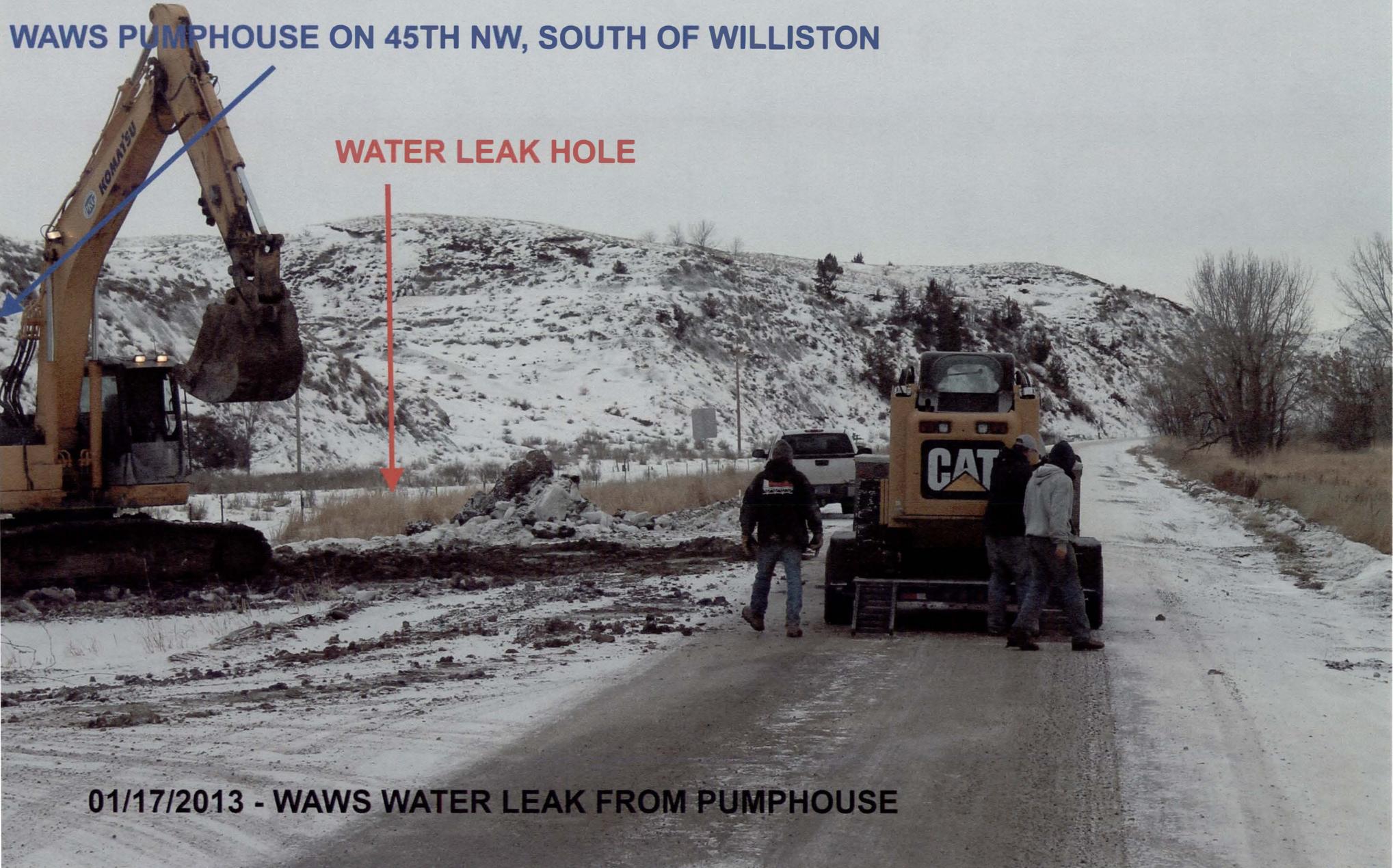
**LEAK ON WAWS PIPELINE, MILE MARKER 29, HWY 2 & 85 N**

**02/01/2013 - WAWS PIPLINE NORTH OF WILLISTON**



**WAWS PUMPHOUSE ON 45TH NW, SOUTH OF WILLISTON**

**WATER LEAK HOLE**



**01/17/2013 - WAWS WATER LEAK FROM PUMPHOUSE**



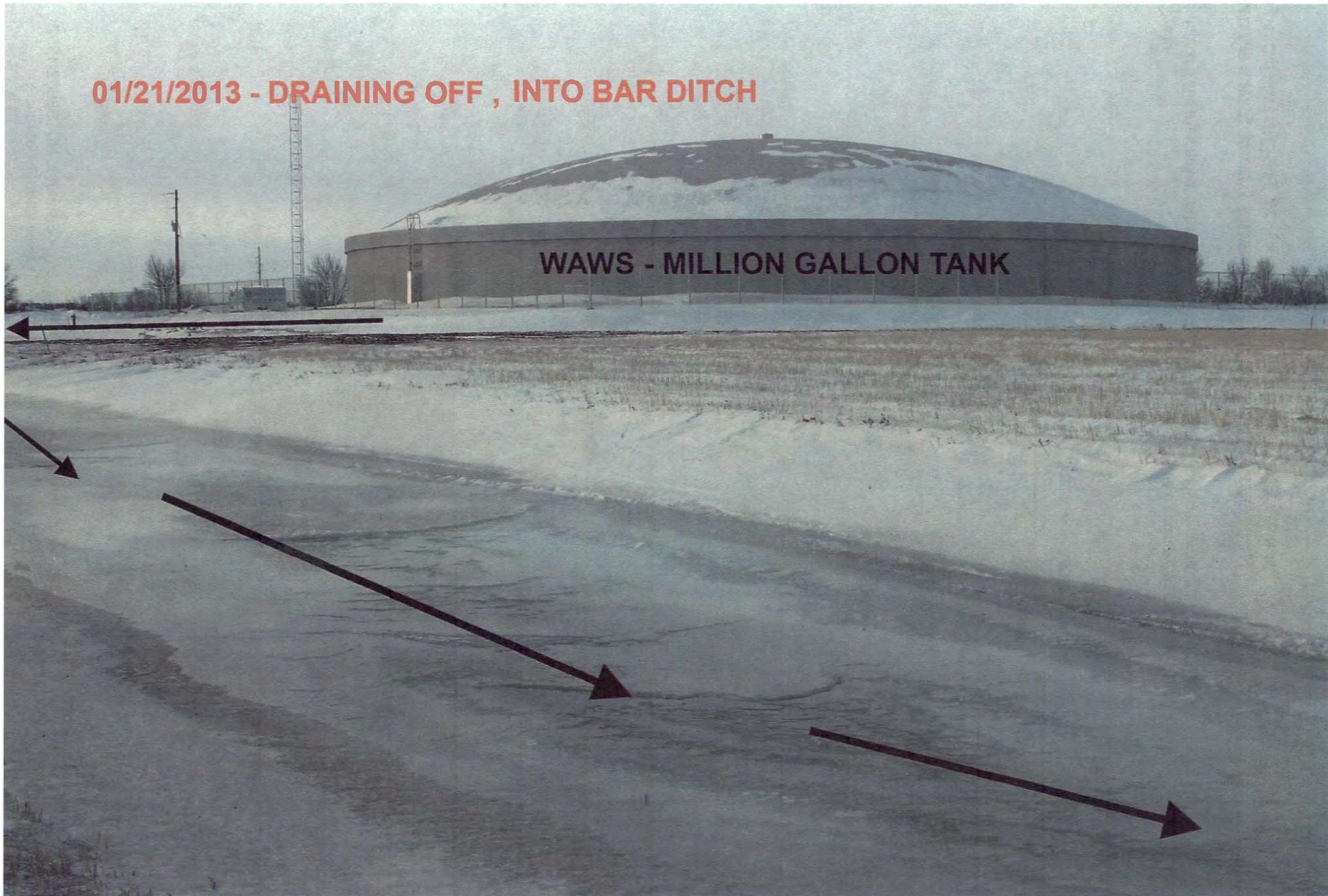
**SHEET ICE ON ROADWAY, 45TH NW**

**WAWS PUMPHOUSE**

**01/17/2013 - WAWS WATER LEAK,**

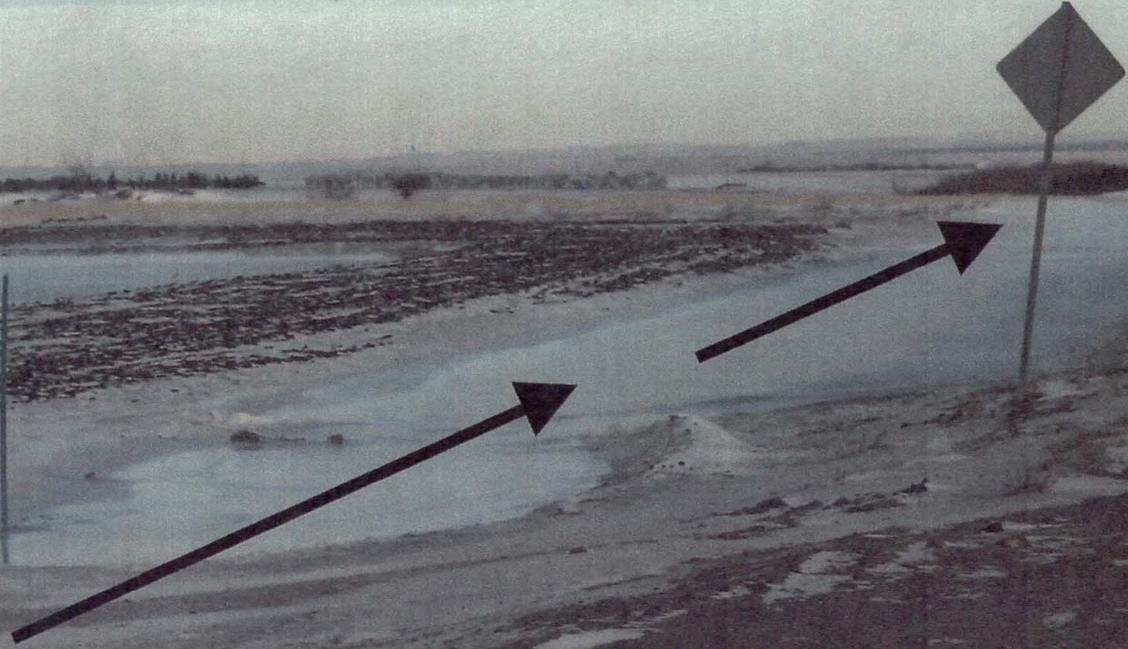
01/21/2013 - DRAINING OFF , INTO BAR DITCH

WAWS - MILLION GALLON TANK



**01/21/2013 - DRAINING ABOUT 1/4 MILE DOWN DITCH**

**WAWS WATER TANK, 55TH STR. WEST WILLISTON**

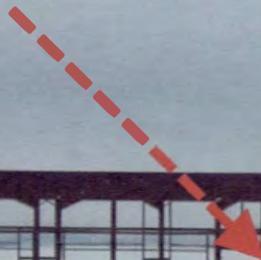




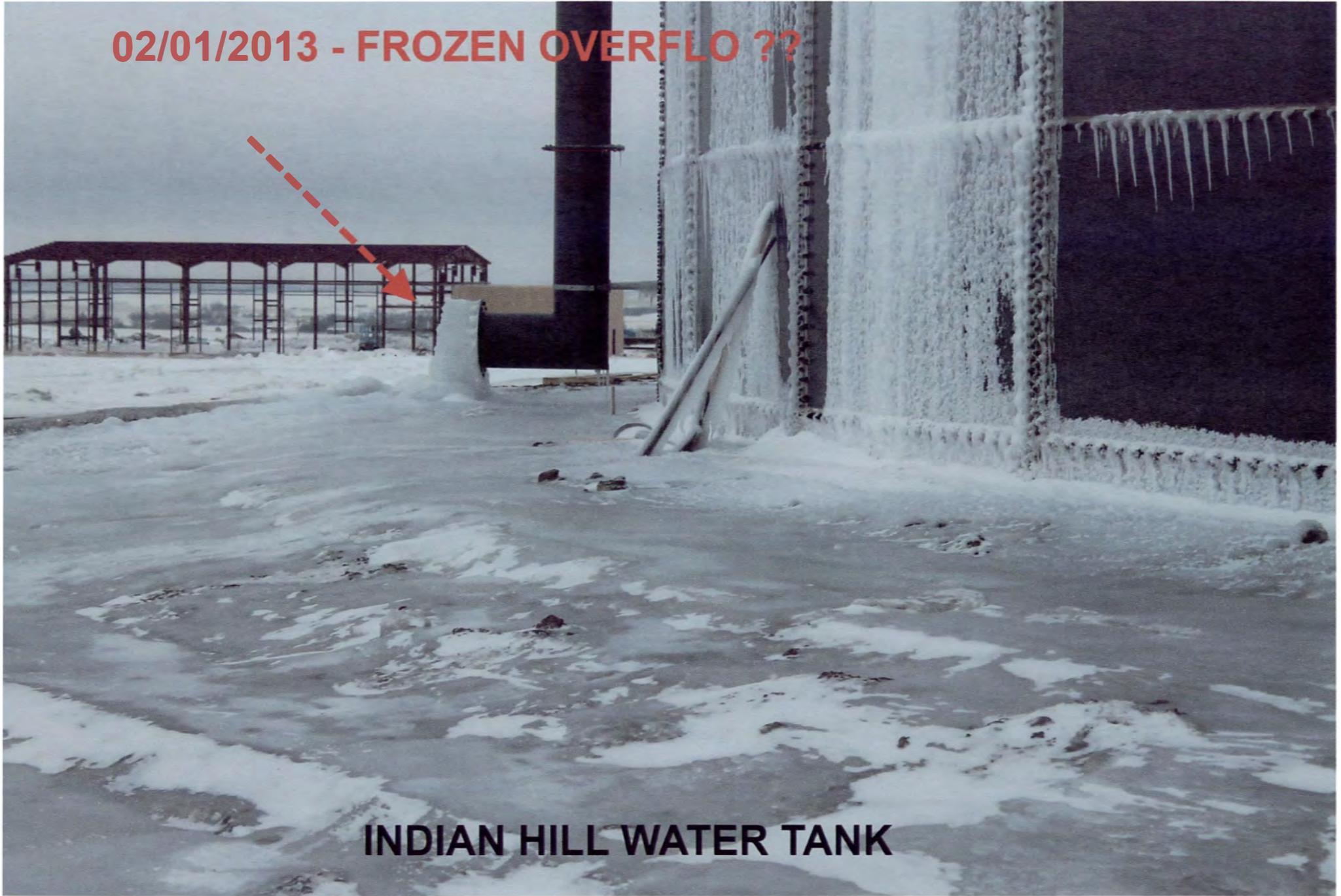
SHEET OF ICE ON ROADWAY

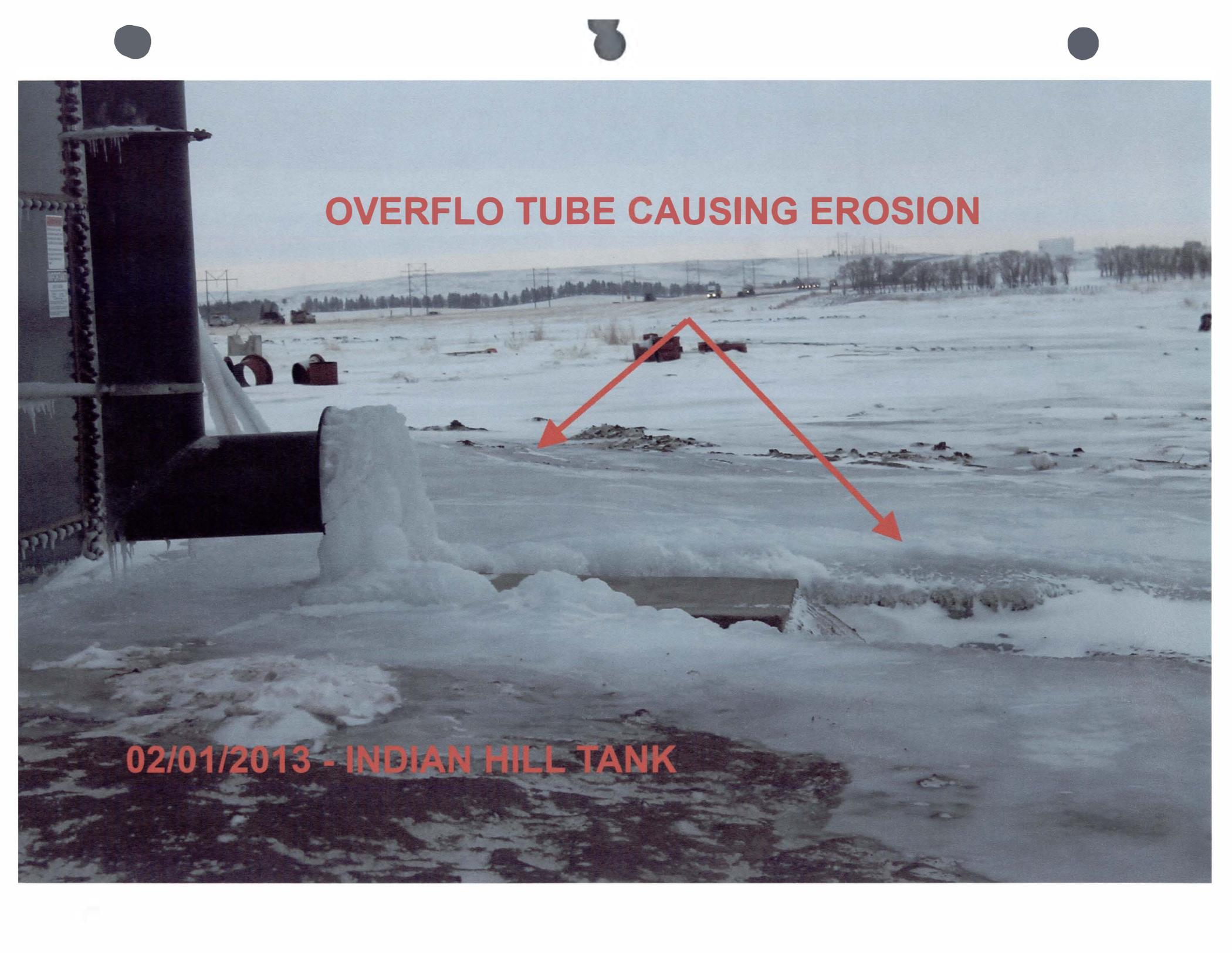
WAW'S PUMPHOUSE

02/01/2013 - FROZEN OVERFLO ??



INDIAN HILL WATER TANK





**OVERFLO TUBE CAUSING EROSION**

**02/01/2013 - INDIAN HILL TANK**



**OVERFLO TUBE FROZEN, WAS TANK  
OVERFILLED ?**

**02/01/2013 - INDIAN HILL TANK ON HWY 85**

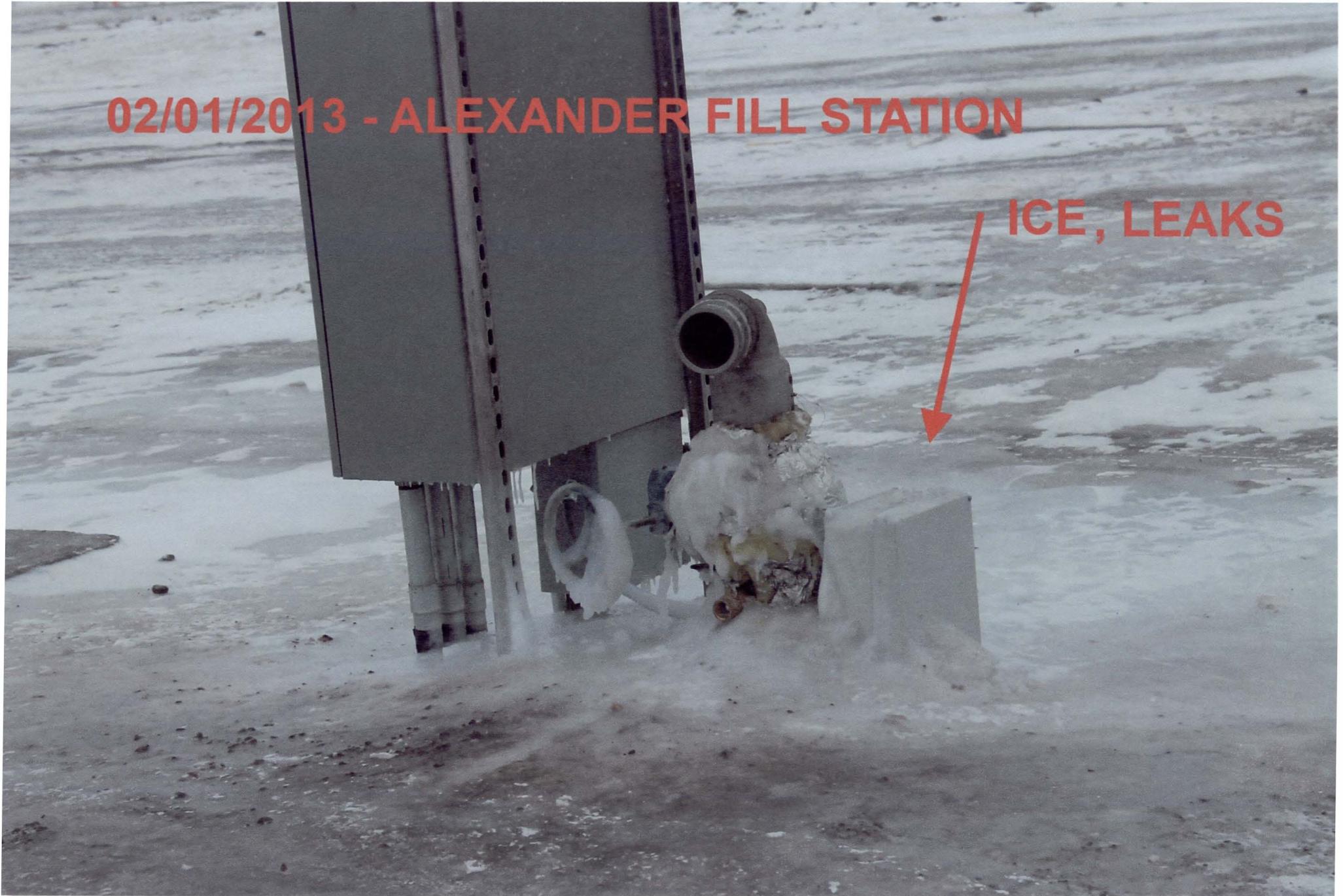
**EROSION TRAIL , FROM OVERFLO**

**02/01/2013 - INDIAN HILL TANK**



02/01/2013 - ALEXANDER FILL STATION

ICE, LEAKS



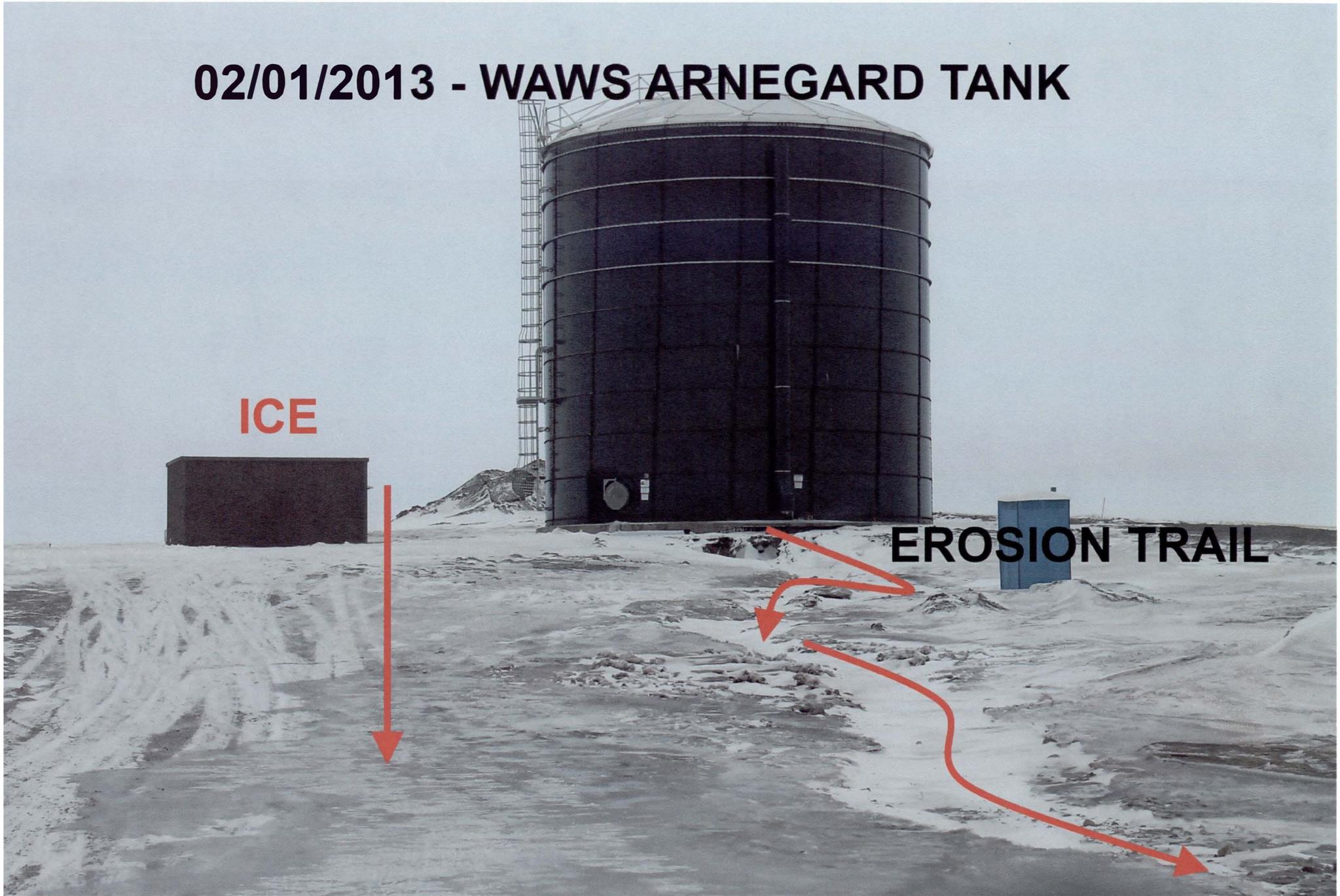
02/01/2013 - ALEXANDER FILL DEPOT

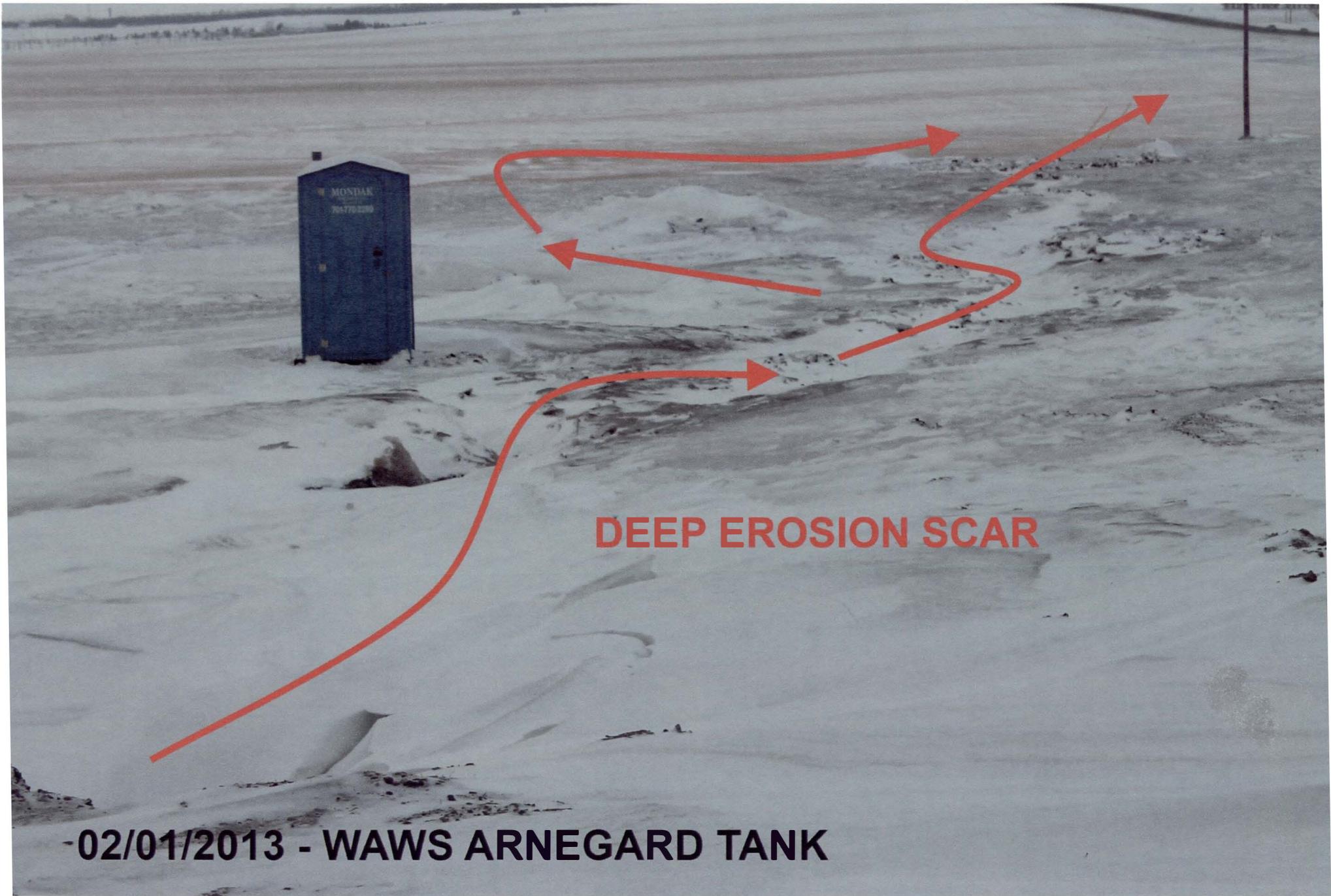


02/01/2013 - WAWS ARNEGARD TANK

ICE

EROSION TRAIL

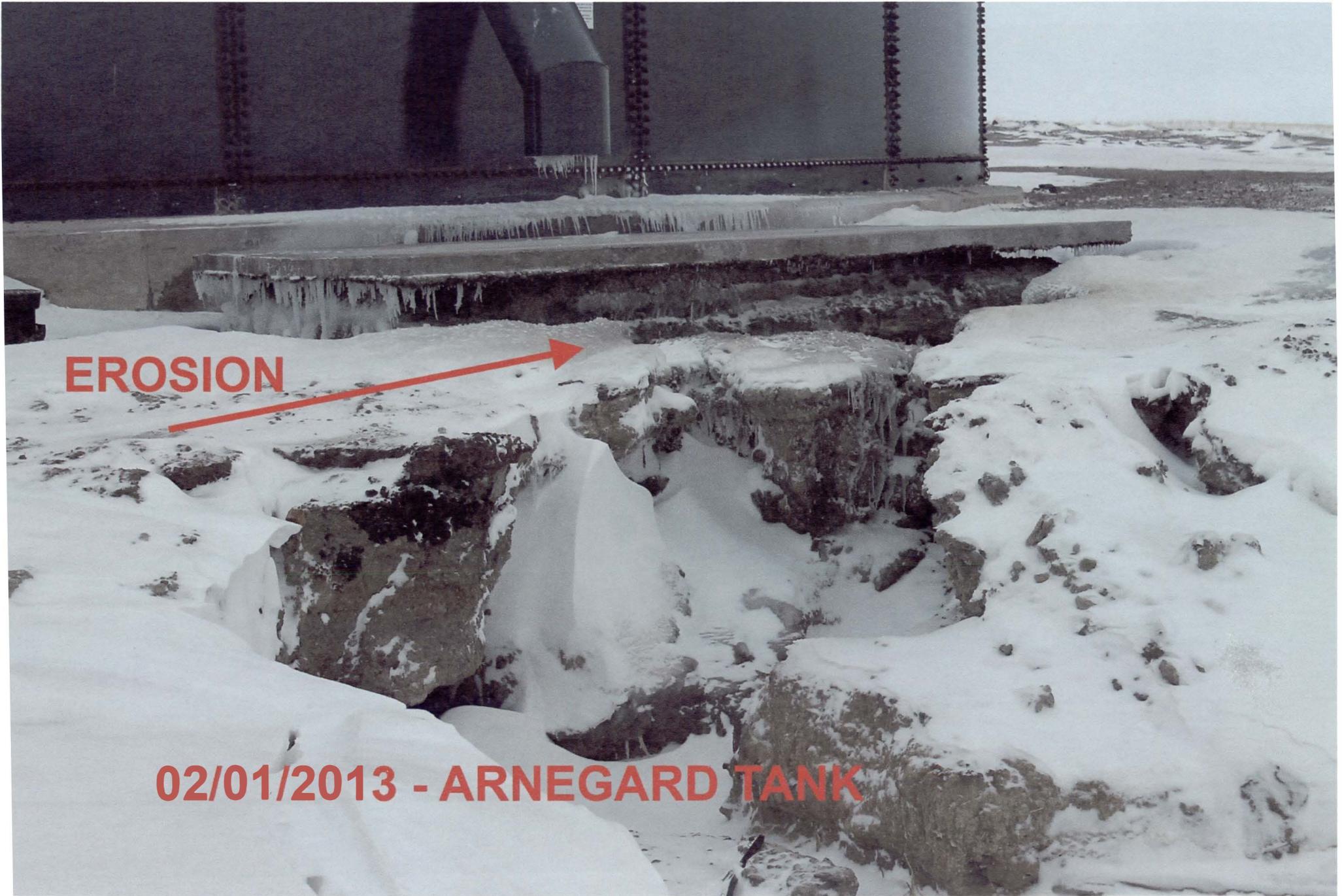




MONDAK  
904-770-2288

DEEP EROSION SCAR

-02/01/2013 - WAWS ARNEGARD TANK



**EROSION**

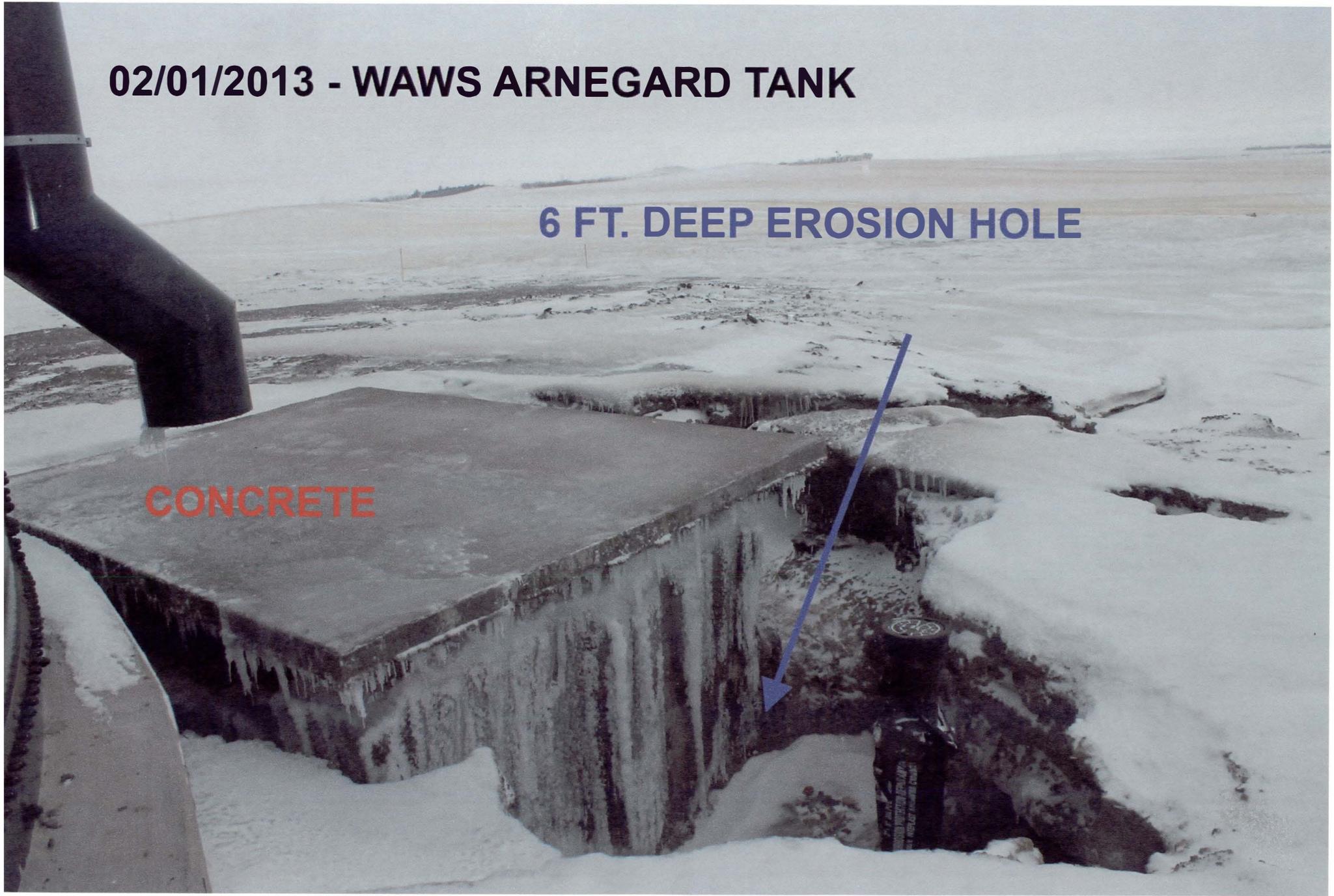


**02/01/2013 - ARNEGARD TANK**

**02/01/2013 - WAWS ARNEGARD TANK**

**6 FT. DEEP EROSION HOLE**

**CONCRETE**



**02/01/2013 - WAWS ARNEGARD WATER TANK**

**CONCRETE SLAB COMPLETELY WASHED OUT !!**



**02/01/2013 - ARNEGARD TANK**

**DEEP SOIL EROSION**



**DANGEROUS ICE, ALL LANES**



**02/01/2013 - WATFORD CITY BULK FILL STATION**



# MCKENZIE COUNTY, NORTH DAKOTA

Water Resources District Board  
205 6th St. NW - (Mailing addr.) 201 5th ST. NW, Suite 1456  
Watford City, ND 58854  
Tel: 701-842-2821 ext. 7 • Fax: 701-842-2822

July 5, 2012

Denton Zubke, Chairman  
PO Box 827  
Watford City, ND 58854-0927  
701-444-6484 work  
701-842-3081 home  
dentonz@ndakotawater.org

Jo Ellen Darcy,  
Assistant Secretary of the Army, Civil Works  
108 Army Pentagon  
Washington, DC 20310-0108

Gene Veedor, Vice-Chairman  
PO Box 899  
Watford City, ND 58854-0899  
701-444-2804  
gveedor@co.mckenzie.nd.us

Re: Private Water Permits within McKenzie County

Lee Tjelds, Board Member  
14884 HWY 200  
Carrington, ND 58838  
701-828-3008  
tjeldslee@yahoo.com

Dear Assistant Secretary Darcy

Leif Jellison, Board Member  
10581 HWY 1808 E  
New Town, ND 58763-8084  
701-875-2480  
jellison@rural.net

The McKenzie County Water Resource District (MCWRD) is informed of various permit applications and current intentions by private parties who intend to divert water from the Missouri River and create an extravagant pipeline system to sell significant amounts of water to the oil industry within McKenzie County. In some instances, this information has been coupled with demands by the independent water provider community for MCWRD and the Western Area Water Supply Authority to reduce their water sales at water depots so as not to compete with the private water sellers. While MCWRD has historically not objected to the development of isolated private water sellers to meet the demands of the oil industry, the more recent private development plans are simply too extensive to allow to proceed given MCWRD's significant investment in infrastructure and need to generate income to repay its federal loan obligations as well as the state loan obligations authorized in House Bill 1206 during the last legislative session.

Lars Haugen, Board Member  
14914 Hwy 88  
Alexander, ND 58831  
701-828-3666 home  
408-489-1704 cell

MCWRD is requesting information from these private water sellers, out of concern that these entities may be encroaching on the MCWRD water franchise area. Federal law is very protective of a rural water system's water sales territory if the rural water system is indebted to the Federal government through a federal loan for the water system's infrastructure. See 7 U.S.C.A. 1926(b). MCWRD has outstanding federal Rural Development loans through the USDA and qualifies for the franchise protection of Section 1926(b).

Cliff Hecker  
Assistant Manager  
Watford City, ND 58854  
701-842-2821  
701-280-6701 cell  
checker@water.org

MCWRD believes that the grant of water appropriation permits by the State Engineer's Office or the access permits and easements by the Corps would constitute governmental action that will provide a private water franchise to develop within the MCWRD jurisdiction. The purpose of this letter is to advise you that MCWRD intends to protect its franchise territory from further encroachment by private water sellers, and to request that you forego the issuance of any permits for private water development within McKenzie County without engaging MCWRD in discussion for each permit requested.

Respectfully,

Denton Zubke  
Chairman of MCWRD



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
CIVIL WORKS  
108 ARMY PENTAGON  
WASHINGTON DC 20310-0108

SEP 27 2012

Mr. Denton Zubke  
Chairman, McKenzie County Water Resources District  
201 5<sup>th</sup> Street, NW, Suite 1456  
Watford City, North Dakota 58854

Dear Mr. Zubke:

This is in response to your July 5, 2012, letter concerning private water permits within McKenzie County. I apologize for the delay in responding.

In your letter you requested that the Corps of Engineers (Corps) engage the McKenzie County Water Resources District (MCWRD) in discussions prior to issuing surplus water agreements or easements associated with private water development within McKenzie County. You contend that executing such agreements or easements could facilitate a private franchise within the boundaries of your service area, thereby undermining the protections granted by Section 306(b) of the Consolidated Farm and Rural Development Act, 7 U.S.C. Section 1926(b).

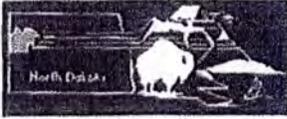
The Corps has completed an extensive public review process in formulating the Final Garrison Dam/Lake Sakakawea Project Surplus Water Report and Environmental Assessment to support the granting of easements and the execution of surplus water agreements for the withdrawal of water for municipal and industrial purposes at Lake Sakakawea. To my knowledge, your letter of July 5 is the first reference made to the potential applicability of 7 U.S.C. 1926(b), and requires further review.

I am requesting the Omaha District of the Corps to review the issues you raise and to respond to your letter. My staff point of contact for coordination of this matter is Mr. Andrew Hagelin, [andrew.hagelin@us.army.mil](mailto:andrew.hagelin@us.army.mil) or (703) 697-7084, and the point of contact in the Omaha District is Mr. Larry Janis, [Larry.D.Janis@usace.army.mil](mailto:Larry.D.Janis@usace.army.mil) or (402) 995-2440.

Thank you for your interest in the Army's Civil Works program.

Very truly yours,

Jo-Ellen Darcy  
Assistant Secretary of the Army  
(Civil Works)



## MCKENZIE COUNTY, NORTH DAKOTA

### Water Resources District Board

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checker@co.mckenzie.nd.us

January 4, 2013

Dale Behan  
Lindale Pipeline, LLC  
600 N. Carroll Avenue  
Southlake, TX 76092

Re: Request for approval of 3 McKenzie County, North Dakota irrigation ponds

Dear Mr. Behan,

At the McKenzie County Water Resource District (MCWRD) meeting on December 18, 2012, your representatives from Epic Engineering presented a request for the approval of the construction of three containment ponds to impound water for irrigation purposes, to provide for irrigation of adjacent farmland.

Given the State's anti-corporate farming law and the fact that we have not previously heard that Lindale Pipeline was in the business of supplying irrigation waters supplies, MCWRD wants to reiterate that these impoundments cannot be used for any industrial water supplies. Be advised that the MCWRD's approval of these three impoundments is specifically contingent upon and conditioned upon the fact that they are solely for storage of irrigation water and to be used for irrigation purposes. As MCWRD has previously advised you, the Lindale Pipeline LLC's plan to sell industrial water within McKenzie County violates the MCWRD franchise territory protection afforded by federal and state law. In addition to the federal franchise protection afforded by 7 USC 1926b, MCWRD's industrial water sales franchise is protected by two state statutes since MCWRD has outstanding loan: financed by the North Dakota Public Finance Authority (NDCC 6-09.4-22) and/or funding through the State Water Commission (NDCC 61-02-68.18).

You are hereby advised that, to the extent the ponds are used for any industrial water to be sold in McKenzie County, it will be a violation of the terms and conditions of this permit approval and will subject you to immediate enforcement action in the form of a permanent injunction to prohibit use of the ponds as well as any and all other remedies available pursuant to state and federal law.

Very truly yours,

Denton Zubke  
MCWRD Chairman

LAW OFFICES  
**DOYLE HARRIS DAVIS & HAUGHEY**

A PROFESSIONAL CORPORATION  
INTERNATIONAL PLAZA  
1350 SOUTH BOULDER, SUITE 700  
TULSA, OKLAHOMA 74119

[steve.harris@1926blaw.com](mailto:steve.harris@1926blaw.com)

MAILING ADDRESS  
P.O. BOX 1679  
TULSA, OK 74101-1679

TELEPHONE  
(918) 592-1276

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(918) 592-4389

[www.1926blaw.com](http://www.1926blaw.com)

Fed. I.D. 73-1034582

STEVEN M. HARRIS

**E-Mail ([mmoore@bppw.com](mailto:mmoore@bppw.com)) and U.S. Mail**

January 29, 2013

Michael J. Moore  
Brown, Pruitt, Peterson, and Wambsganss P.C.  
Attorneys and Counselors at Law  
801 Wells Fargo Tower  
201 Main Street  
Fort Worth, Texas 76102

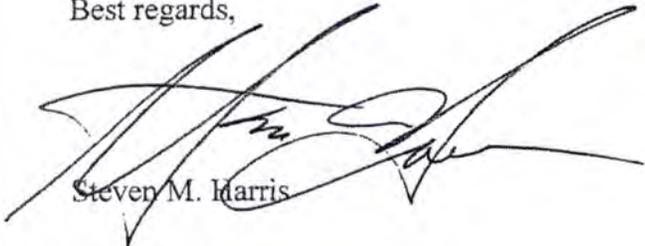
Dear Mr. Moore:

For some reason I did not receive the attached email message directly from you. It was forwarded to me by others.

As I explained in my letter to you (attached with exhibits) McKenzie County Water Resource District's (MCWRD) cancellation/retraction of its approval of the three (3) ponds at issue was premised on the failure of the condition precedent for the original approval.

This action by the Board does not preclude the land owner or others from submitting a new application which will be independently considered by the Board.

Best regards,

  
Steven M. Harris

1682-2.mooreltr2:tf

cc: Denton Zubke, Chairman

---

**From:** Michael Moore [mailto:mmoore@bppw.com]  
**Sent:** Monday, January 28, 2013 3:27 PM  
**To:** steve.harris@1926blaw.com; dentonz@dakotawestcu.org; Tami L Norgard  
**Cc:** Dale Behan; kwalker@epiceng.net; bill@premierwve.com  
**Subject:** FW: Message from KMBT\_601

Steve- thank you for this attached package with regard to McKenzie. The Lindale name will be changed on our end for a variety of reasons- but that is not what I am emailing about.

Specifically- I did say and these pits that our located on Mr. Behan's private property will be used for industrial purpose. That is correct. With regard to your email "Mr. Zubke, chairman of MCWRD explained in his letter of January 4, 2013 (Exhibit 1) that MCWRD's approval of the three ponds was contingent and conditional. The condition/contingency was that the ponds must not be used for industrial purposes. As a result, the condition/contingency has failed. MCWRD intends to proceed to cancel/retract its prior approval of the ponds at its next regular meeting of the Board of Directors of MCWRD."

Obviously- with the letter included in this packet- these SWC was notified/worked with on their construction. My question is what is the denial above going to be based on? (code, statute, rule, etc. or is it just 1926(b)?)

Thanks-

Mike



# MCKENZIE COUNTY, NORTH DAKOTA

## Water Resources District Board

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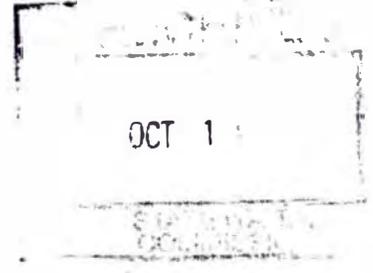
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[checker@co.mckenzie.nd.us](mailto:checker@co.mckenzie.nd.us)

October 8, 2012

Todd Sando, P.E.  
North Dakota State Engineer  
ND State Water Commission  
900 East Boulevard  
Bismarck, ND 58505-0850



Dear Mr. Sando:

As Chairman of the McKenzie County Water Resource District (MCWRD) Board of Directors I am writing this letter regarding permit application number ND2012-14462 submitted by North Star Energy and Construction, LLC that is intended to take water from the Arnegard Dam in McKenzie County. It is the MCWRD Board's decision to request the State Water Commission to deny this permit due to the dry conditions, quality of water available, impact to potential wetland areas and also recreational opportunities.

Sincerely,

Denton Zubke

Chairman

McKenzie County Water Resource District

cc. North Star Energy



# MCKENZIE COUNTY, NORTH DAKOTA

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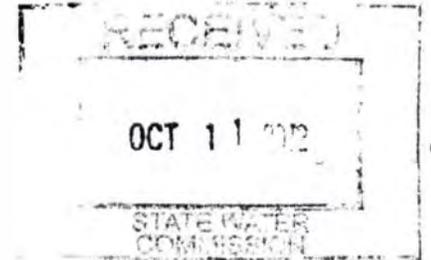
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October 8, 2012

Todd Sando, P.E.  
North Dakota State Engineer  
ND State Water Commission  
900 East Boulevard  
Bismarck, ND 58505-0850



Dear Mr. Sando:

As Chairman of the McKenzie County Water Resource District (MCWRD) Board of Directors I am writing this letter regarding permit application number ND2012-14470 submitted by Northwest Transfer that is intended to take water from Demmicks Lake in McKenzie County for industrial use. It is the MCWRD Board's decision to request the State Water Commission to deny this permit due to the dry conditions, quality of water available, impact to potential wetland areas and also recreational opportunities.

Sincerely,

Denton Zubke

Chairman

McKenzie County Water Resource District



# MCKENZIE COUNTY, NORTH DAKOTA

## Water Resources District Board

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October 8, 2012

Todd Sando, P.E.  
North Dakota State Engineer  
ND State Water Commission  
900 East Boulevard  
Bismarck, ND 58505-0850

Dear Mr. Sando:

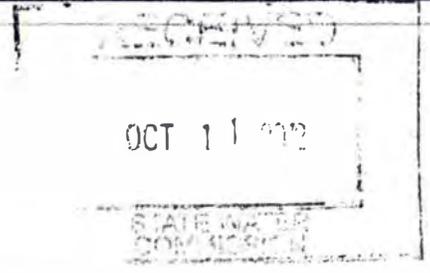
As Chairman of the McKenzie County Water Resource District (MCWRD) Board of Directors I am writing this letter regarding permit application number ND2012-14454 submitted by SM Energy Company that is intended to take water from an un-named pond in McKenzie County for industrial use. It is the MCWRD Board's decision to request the State Water Commission to deny this permit due to the dry conditions, quality of water available, impact to potential wetland areas and also recreational opportunities.

Sincerely,

Denton Zubke

Chairman

McKenzie County Water Resource District





# MCKENZIE COUNTY, NORTH DAKOTA

## Water Resources District Board

205 6th St. NW • Mailing: 201 5<sup>th</sup> St NW, Suite 1456  
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Denton Zubke, Chairman  
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dentonz@dakotawestcu.org

October 8, 2012

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Todd Sando, P.E.  
North Dakota State Engineer  
ND State Water Commission  
900 East Boulevard  
Bismarck, ND 58505-0850

Lee Tjelde, Board Member  
14984 HWY 200  
Cartwright, ND 58838  
701-828-3008  
glaseyes@yahoo.com

Dear Mr. Sando:

Leif Jellesed, Board Member  
10561 HWY 1806 E  
New Town, ND 58763-9084  
701-675-2490  
jellesed@restel.net

As Chairman of the McKenzie County Water Resource District (MCWRD) Board of Directors I am writing this letter regarding permit application number ND2012-14477 submitted by Ronnie and Mavis Berry that is intended to take water from the Yellowstone River for industrial use in McKenzie County. It is the MCWRD Board's decision to request the State Water Commission to deny this permit based on concerns over bank stabilization, contamination, and infrastructure concerns.

Lane Haugen, Board Member  
14914 Hwy 68  
Alexander, ND 58831  
701-489-1704 cell  
701-828-3555 home

Sincerely,

Clint Hecker  
Assistant Manager  
Watford City, ND 58854  
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[checker@co.mckenzie.nd.us](mailto:checker@co.mckenzie.nd.us)

Denton Zubke  
Chairman  
McKenzie County Water Resource District



# MCKENZIE COUNTY, NORTH DAKOTA

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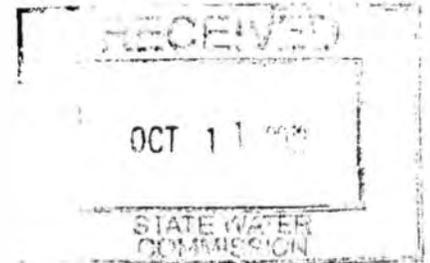
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October 8, 2012

Todd Sando, P.E.  
North Dakota State Engineer  
ND State Water Commission  
900 East Boulevard  
Bismarck, ND 58505-0850



Dear Mr. Sando:

As Chairman of the McKenzie County Water Resource District (MCWRD) Board of Directors I am writing this letter regarding permit application number ND2012-14488 submitted by Northwest Water Transfer that is intended to take water from Missouri River for industrial use in McKenzie County. It is the MCWRD Board's decision to request the State Water Commission to deny this permit based on concerns over bank stabilization, contamination, and infrastructure concerns.

Sincerely,

Denton Zubke  
Chairman  
McKenzie County Water Resource District



# MCKENZIE COUNTY, NORTH DAKOTA

## Water Resources District Board

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701-842-2821  
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September 3, 2012

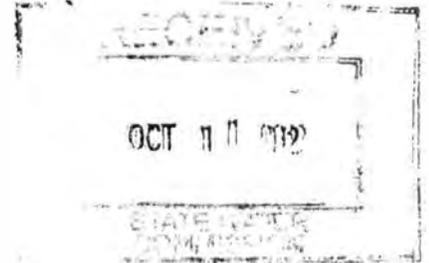
Todd Sando, P.E.  
North Dakota State Engineer  
ND State Water Commission  
900 East Boulevard  
Bismarck, ND 58505-0850

Dear Mr. Sando:

As Chairman of the McKenzie County Water Resource District (MCWRD) Board of Directors I am writing this letter regarding permit number ND2012-14330 submitted by Park Construction Co. that is intended to take water from Cherry Creek McKenzie County. It is the MCWRD Board's decision to request the State Water Commission to deny this permit based on concerns for domestic and agricultural users. The Board also feels there are other reliable sources to better serve this type of water use in McKenzie County.

Sincerely,

Denton Zubke  
Chairman  
McKenzie County Water Resource District



**POLICY BULLETIN NO.**

**SUBJECT:** Availability of Project Water for Voluntary Acquisition of Right of Way

**POLICY:**

To meet the Business Plan, WAWSA needs to acquire a significant amount of right of way in a short time period.

For property owners who voluntarily enter into easement agreements or sell property to WAWSA, WAWSA will favorably consider providing water service from the Project if requested by these property owners. If the property owner is served by a WAWSA member, the WAWSA board will recommendation to the member that service be provided to the property owner.

For any property owner who does not voluntarily grant an easement or sell property to WAWSA, where condemnation is initiated, WAWSA will likely not consider any requests for project water from the owner of the condemned property. If water service is instead provided by a WAWSA member system, the WAWSA board will likely recommend that the member deny any requests for service from that property owner.

Adopted April 18, 2012



# WESTERN AREA WATER SUPPLY AUTHORITY

## **Testimony of John Olson, Lobbyist, WAWS Authority**

### **SENATE BILL 2373 - Appearing in Opposition**

### **Senate Industry, Business, and Labor Committee**

**Jerry Klein, Chairman**

**Bismarck, North Dakota – February 4, 2013**

- John Olson, Lobbyist, Western Area Water Supply (WAWS) Authority
- Please let me introduce those testifying from WAWS Authority who will urge you to kill Senate Bill 2373
  - Denton Zubke, WAWSA Chairman
  - Mayor Ward Koeser, City of Williston, WAWSA Board Member
  - Mayor Mike Hynek, City of Stanley, available to address any local issues
  - Steve Burian, CEO, AE2S, available to address any financial and technical questions
- The WAWS Project is a Success Story
  - WAWS Authority Members had the foresight to join forces to create a regional system to fulfill a need that is fully understood at the local level.
  - Population growth was out-pacing the capacity of water supplies in the region needed to support the very jobs for the oil industry that was causing the growth.
  - WAWS Authority was created by you as a locally-controlled aggregation of existing independent water systems to proactively meet this water demand.
  - In less than two years, WAWS Authority will be delivering water to 10 cities - this must be a historic record. This success was achieved from the local understanding of what needed to be done, local cooperation amongst the stakeholders, a local sense of urgency, and quite honestly a lot of commitment and hard work at the local level.
  - The legislation last Session created the appropriate level of oversight from the North Dakota State Water Commission, North Dakota Department of Health, and Bank of North Dakota
  - WAWS Authority is being built on a foundation of trust amongst neighboring systems that committed to fulfilling water needs and the trust you put in the Authority to get the job done.
  - This region is making significant contributions to the State coffers that would not be possible without our leaders thoughtfully building out their communities and this water system to support the people required to work in this industry.

- After a very thoughtful process in 2011 (I believe WAWS Authority legislation was the most-heard piece of the 62<sup>nd</sup> Legislative Assembly with 35 committee and subcommittee hearings), we didn't expect we'd be back here to discuss the State taking over our project - particularly without pointing to what's "broken". **HB 1206 was passed with an overall 86% legislative approval.**
- **Senate Bill 2373 inappropriately proposes to transfer project ownership from appropriate local ownership to the State.**
  - 31 of 33 existing regional water systems in North Dakota are locally-owned and controlled. Furthermore, you have two pieces of legislation before you this Session to consider transfer of the Southwest Pipeline Project to the Southwest Water Authority, leaving the Northwest Area Water Supply as the only State-owned and controlled project. Governing regional water systems at the local level is appropriate, proven, and is the norm within the State of North Dakota.
  - The State Water Commission is governed by a Board which includes the Governor, the Commissioner of Agriculture, and seven members appointed by the Governor from across the State without recognition of the oil development challenges, local relationships, and priorities of northwestern North Dakota. Currently, there is one member of the State Water Commission serving from the WAWS Authority service area. The WAWS Authority Board is comprised of local elected officials or their delegates appointed by Member water systems with local skin in the game.
  - We have seen no plan associated with this legislation that will demonstrate how the State will implement its ownership and administration, pay for the new positions required within the State Water Commission, and achieve the success already demonstrated by WAWS Authority.
  - Those testifying today from WAWS Authority will demonstrate their local understanding and commitment, their extensive progress that has been made at the local level, the appropriate oversight that is being provided, and the extensive amount of work that remains to be done at the local level. We strongly encourage you to kill Senate Bill 2373.



# WESTERN AREA

WATER SUPPLY AUTHORITY

(6)

## Testimony of Denton Zubke, Chairman, WAWS Authority

### SENATE BILL 2373 - Appearing in Opposition

### Senate Industry, Business, and Labor Committee

Jerry Klein, Chairman

Bismarck, North Dakota – February 4, 2013

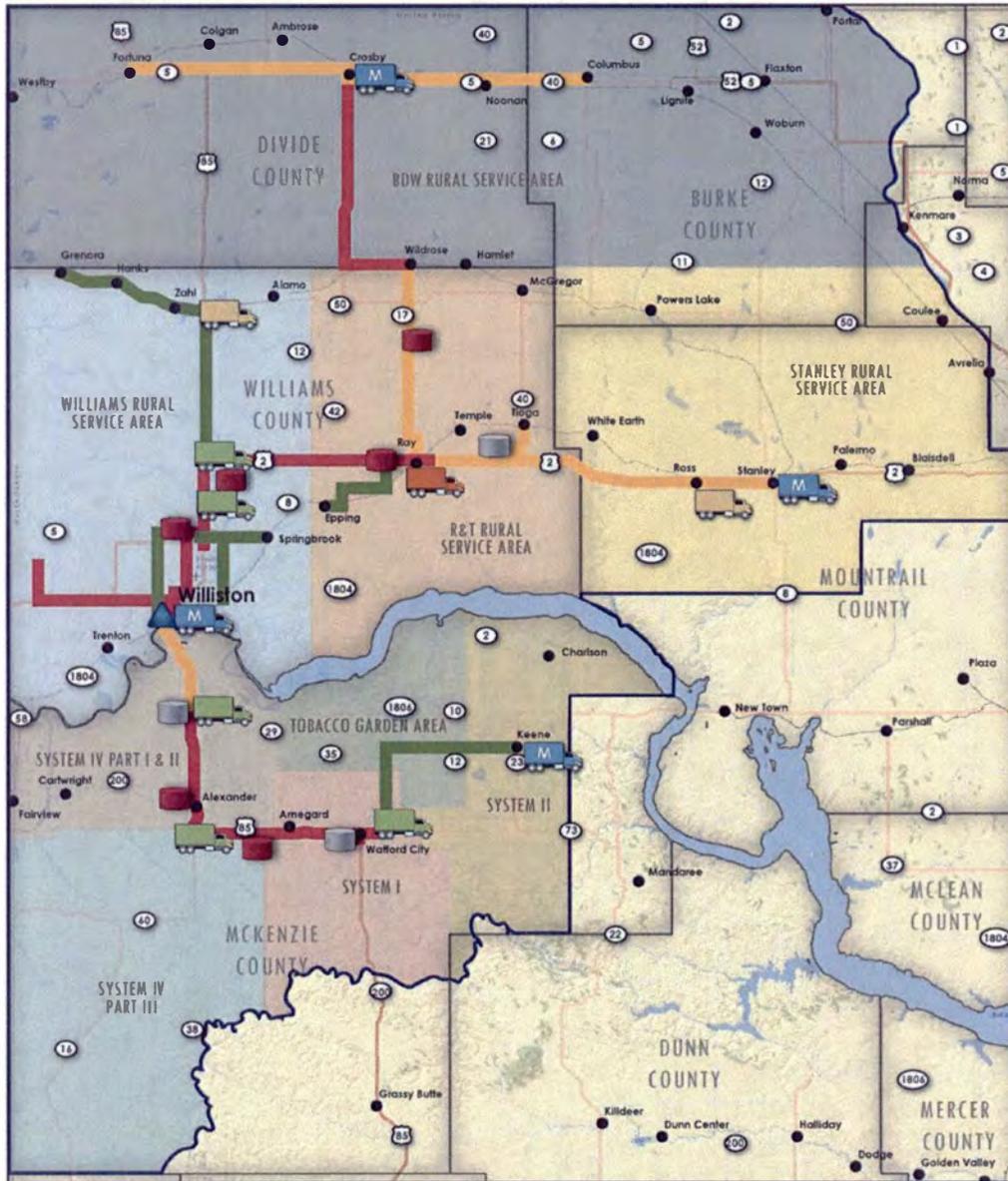
- WAWS Authority would like to express its appreciation for formation of the WAWS Authority and the financing package provided last Session.
- WAWS Authority has moved quickly - hit the ground running.
  - We had to in order to respond to demand.
  - Population growth is driving the pace of project.
    - Anticipated a peak population of 48,000 people just two short years ago
    - Current estimated population in the service area is already 58,000 people and is estimated to grow to almost 100,000 people
- We have made historic progress.
  - We are a start-up entity which was able to implement a business structure, adopt policies, gain Members' support and contribution of their assets, put contracts in place, seek permit approval from 30 governmental entities and agencies, secure easements, solicit and award \$112 million in infrastructure contracts, and now will serve 10 cities within 24 months of our creation.
  - This is a process that normally takes decades - not a couple of years.
  - We are not only serving ourselves, but we are serving the State by supporting the most basic human need - water - to our ever-growing employment base in northwestern North Dakota.
  - This WAWS Authority map summarizes the achievements and contributed assets from member systems as well as the 10 cities which will be served within 24 months of our creation. (Attachment 1: Major Infrastructure Components 2013-2015 Biennium)

- 6
- A project of this size requires good oversight on the local, State, and Federal levels.
    - We haven't been run-away mavericks building this system. We've been accountable to government oversight on every level. (Attachment 2: Oversight Summary, January 31, 2013)
    - Why change the current structure?
    - Our first level of oversight comes, first and foremost, from our own Board of Directors.
      - Our Members are appointed by the entities they represent.
      - We meet every month with an average of 18 agenda items.
      - We diligently review every contract, every pay request, and every complaint.
      - We administer WAWS Authority with a single goal of achieving results for our Members. WAWS Project is on my mind day and night.
    - This pace has required a trustful relationship that we've built with our main oversight partners. WAWS Authority has had a strong working relationship with all of our State overseers - the State Water Commission, ND Department of Health, and Bank of North Dakota.
      - State Water Commission representative serves on Board.
      - State Water Commission has reviewed overall plan.
      - Regular updates are provided to the State Water Commission.
      - State Water Commission staff has participated in 11 design review meetings and have approved 11 sets of plans and specifications and 15 construction contracts.
      - ND Department of Health has reviewed and approved 11 sets of plans and specifications.
      - Bank of North Dakota has outlined and enforced rigorous lending controls associated with the four loans from last Session.
    - We have received permit approval by 30 different authorities.
    - We have met State and Federal requirements.
    - Based on the extensive oversight that currently exists and our solid performance, it is difficult to grasp what additional oversight is possibly necessary.
    - Where have we erred that requires a complete shift in project ownership and management after an 86% approval for this structure was granted by the 2011 legislative body?
  
  - We desire appropriate local control to:
    - Maintain our local board structure and membership.
    - Maintain our local voting rights.
    - Maintain our single sense of purpose.
    - Maintain control of the rate setting process for our Members, which was a difficult negotiation for five existing water systems.
    - Maintain a positive local interface with our stakeholders, understanding their needs, their hot buttons, the oil industry impacts, and the needs of the oil industry.
    - Maintain local ownership and control of the assets we contributed to the project and are building.
    - Maintain the sense of urgency required by the project and the sense of ownership provided with local control.

- Maintain our agility and ability to respond to the very dynamic conditions.
  - Maintain the trust developed at the local level and with the State.
  - Prevent unnecessary additional bureaucracy and costs associated with State ownership and control.
- The WAWS Authority:
    - Is very appreciative of the trust you placed in us last session and the funding you provided.
    - Has stepped to the plate to administer the project and achieve amazing progress at the local level.
    - Has appropriate oversight from the ND State Water Commission, ND Department of Health, and the Bank of North Dakota.
    - Needs and desires local control to maintain the structure we have established and achieve much needed additional progress moving forward.
    - Is committed to continuing project success.
  - We strongly encourage you to kill Senate Bill 2373

# Attachment 1: Major Infrastructure Components 2013-2015 Biennium

## WESTERN AREA WATER SUPPLY PROJECT Major Infrastructure Components



- Existing Transmission Lines
- 2011/2012 Improvements
- 2013/2014 Improvements
- 2015/2016 & Beyond Improvements
- WAWSA Project Boundary Line
- Existing Reservoir
- 2011/2012 Reservoir
- 2013/2014 Reservoir
- WTP/intake Expansion/Improvements
- Existing Member Depots in Operation
- WAWSA Depots in Operation
- WAWSA Depots Operational by Summer 2013
- Future WAWSA Depots



## Western Area Water Supply (WAWS) Authority Oversight Summary January 31, 2013

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The WAWS Authority founding legislation resulted in the establishment of North Dakota Century Code Chapter 61-40 (NDCC 61-40). Project oversight was developed to ensure prudent investment of State resources, regulatory compliance, quality control, and a general system of checks and balances. The following is a summary of how the provisions in the Century Code were implemented.

### Project Controls and Oversight

The WAWS Authority has met, and perhaps exceeded, the State oversight standards outlined in State law relative to project oversight. NDCC 61-40-06 provided for the following oversight:

*The Authority shall comply with the policy of the State Water Commission as the policy relates to bidding, planning, and construction of the project. The policy must include provisions for insurance, including general liability insurance, in adequate amounts. The Authority shall report to and consult with the State Water Commission regarding the operation and financial status of the project, as requested by the State Water Commission.*

*In relation to initial construction of the system and debt repayment, the Authority shall present the overall plan and contract plans and specifications for the project to the State Water Commission for approval. The Attorney General shall assist the Authority at the request of the State Water Commission. If the twenty-five million dollar zero interest loan from the State Water Commission has not been repaid, without the written consent of the State Water Commission the Authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of property used in a water system of the Authority if the property is used to provide revenue.*

The specific project controls and oversight of the WAWS Authority since its founding include the following:

- On June 21, 2011, the WAWS Authority presented the Phase 1 portion of the project to the State Water Commission (SWC), which included the pipelines around Williston and the pipeline from Wildrose to Crosby. The SWC passed a motion to approve the first portion of WAWS Project Phase I, with costs not to exceed \$25,000,000. The SWC

delegated SWC staff to review and approve plans and specifications for that Phase as well as others to follow.

- In order for the WAWS Authority to access the remaining \$85,000,000 of loan dollars, the Bank of North Dakota's (BND) letter of conditions also required the SWC approval of Phase II, Tier I projects. On December 9, 2011, the SWC approved the Phase II - Tier I projects.
- Throughout the planning and design of the Phase I and Phase II projects, SWC staff reviewed plans and specifications during 11 design review meetings and approved the following:
  - Eleven sets of plans and specifications for 11 bid lettings to date.
  - Fifteen contracts (three prime contractors on two different projects).
- The WAWS Authority staff and Board of Directors have provided written and verbal status reports to the SWC (quarterly or as needed to address specific project issues) and other State agencies including the BND (monthly and quarterly reports).
- The North Dakota Department of Health (NDDH) also provided reviews of each of the project plans and specifications for each segment to ensure the project was in compliance with public health and safety regulations.
- The North Dakota State Historic Preservation Office (NDSHPO) requires cultural resource surveys to identify and document any cultural resources with the requirement of avoiding impact on any identified cultural resources. All cultural resources within the WAWS corridors have been avoided.
- Wetland delineation was completed on the project, and the results were presented to the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service for comments. The project was constructed in accordance with the Nation Wide 12 404 permit.
- The following local entities have permit requirements. These entities reviewed the plans and issued permits to allow construction of the project:
  - **Counties** - Divide, Williams and McKenzie
  - **Cities** - Crosby, Williston, Ray, Watford City, Alexander, and Arnegard

- **Townships** – Fredrick, Frazer, Hawkeye, Fillmore, Big Stone, Hazel, Missouri Ridge, Pherrin, East Fork, Marshall Wheelock, Tyrone, Judson, Round Prairie, Hebron, Tri-Township, Alex, and Arnegard Townships
  - North Dakota Department of Transportation
  - Williams County Highway Department
  - McKenzie County Highway Department
  - North Dakota Department of Trust Lands
- Advanced Engineering and Environmental Services (AE2S) also performs engineering Quality Assurance/Quality Control (QA/QC) measures commonly accepted in the engineering industry.

### **WAWS Authority Oversight**

Since the first Board of Directors meeting was held on May 31, 2011, the WAWS Authority has initiated comprehensive oversight including:

- As outlined in NDCC 61-40, the SWC has a voting representative on the WAWS Authority Board of Directors. The SWC placed Michelle Klose, Assistant State Engineer, as its representative on the Board of Directors of the WAWS Authority. Ms. Klose also serves on the WAWSA Executive Committee. Ms. Klose has served in this role since the first Board of Directors meeting was held on May 31, 2011. Jeffrey Mattern, SWC Water Development staff, serves as the SWC alternate when Ms. Klose is unable to attend the Board of Director's meetings in person or by teleconference.
- The Board of Directors implemented organizational Bylaws that were approved by the North Dakota Attorney General's Office, created an Employee Handbook, and implemented Operational Policies for the water system. Additional Operational Policies and Employee Handbook provisions are considered on a regular basis as new issues arise.
- The WAWS Authority hired a full-time Executive Director to manage its day-to-day operations. The Executive Director is responsible to the Board of Directors for carrying out the policies and promoting the goals and mission of the WAWS Authority. This position plans, organizes, directs, implements, and supervises the functions, activities, and finances necessary to achieve efficient design, construction, and operation of the WAWS Project. The Executive Director assures compliance with laws, regulations, codes, and ordinances applicable to the Authority.

- The WAWS Authority hired a full-time business manager to structure and perform entity and project business processes and practices. The business manager is responsible for, among other things, generating the monthly profit and loss statement, balance sheet, and cash flow statement. In addition, the business manager handles all financial transactions with the BND, vendors, and developers that pertain to the WAWS Project related matters.
- The Board of Directors meeting agenda and packets for each month are robust and contain numerous components for review and approval (an average of approximately 18 items per meeting). The Board of Directors provides oversight on issues such as staffing and Authority policies, task orders and addenda, internal and external agreements, Right-of-Way/easement issues, industrial sales, and other issues as needed.
- The Board of Directors meets monthly to review and take necessary action on project matters, task orders and amendments, Capital Accounting Statements, Financial Reporting, and BND pay requests. All meetings are open to the public, and meeting packets are posted on the WAWS Authority website ([www.wawsp.com](http://www.wawsp.com)) prior to the meetings.
- The WAWS Authority Board of Directors negotiated and continues to negotiate numerous output, infrastructure use and water supply contracts with its stakeholders, which have included robust discussion, discourse and additional levels of review from stakeholders' Boards, their various attorneys and bond counsel.
- In addition to the bulk water contracts with stakeholder entities, the WAWS Authority developed a form Membership Agreement, easement forms, a rate schedule, as well as form contracts for industrial, commercial and rural water supply customers.
- The Board of Directors, which includes SWC representation, has reviewed and taken votes on over 275 entity, project, and financial issues with almost all being unanimous decisions. The Board of Directors has had three split votes - two relating to the legal services selection and one relating to a task order amendment for engineering services for the Williston Water Treatment Plant Expansion. The SWC representative took exception on four occasions (voted no – and was the single dissenting vote) on the following approval decisions: low bid from John T. Jones; engineering services agreement; amendments to engineering tasks orders 11, 12, 14, and the addition of task order 15a; and final WAWS Authority depot locations. The SWC representative registered four abstentions which involved changes in baseline industrial sales, an increased pipeline size, a task order amendment pertaining administrative tasks, and a Bulk Industrial Water User Agreement.

## **Financial Oversight and BND Requirements**

The BND is the lender for multiple loans for the WAWS Project. The BND stipulated that the loans were approved under several terms and conditions to which the WAWS Authority must adhere including the following:

- The SWC was required to approve Phase I and Phase II components of the WAWS Project. The SWC must also approve contracts and plans and specifications in each of the project phases to ensure compliance with SWC policy as the policy relates to bidding, planning, and construction of the project. In relation to initial construction of the system and debt repayment, the WAWS Authority must present the overall plan and construction plans and specifications for the project to the SWC for approval. The SWC reviews are documented under the “Project Controls and Oversight” section above.
- In order for the WAWS Authority to access the initial \$25,000,000, the WAWS Authority was required to provide the framework for the water purchase agreements, infrastructure transfers, and transmission of the WAWS Authority water throughout the system network and provide financial projections within a Business Plan Supplement. The framework and Business Plan Supplement were provided to BND in June 2011.
- In order for the WAWS Authority to access the remaining \$85,000,000, the agreements and supporting documents contemplated under the conceptual framework referred to above had to be fully executed consistent with assumptions upon which the financial projections in the WAWSA business plan were based. In support of this, the WAWS Authority developed and provided BND the following materials:
  - Memoranda summarizing the infrastructure for which the WAWS Authority needed to secure output or access agreements from Members and Sub Members in order to supply, treat, and deliver water to the proposed service area as intended in the business plan. Individual memoranda addressing each of the Members were forwarded to the BND in April 2012, and a comprehensive memo updating the infrastructure for all Members and Sub Members was delivered to the BND on June 18, 2012.
  - Executed agreements have been submitted to the BND as required. These agreements have also been reviewed by the ND Public Finance Authority (NDPFA).

- A detailed table referencing various requirements in the BND commitment letter to the appropriate sections in the agreements, to document that requirements of the commitment agreement were being met. The WAWS Authority also provided correspondence to the BND on August 27, 2012 documenting the progress to date, anticipated progress through the close of 2012, and the financial outlook for the project.
  
- WAWS Authority must provide BND quarterly interim financial statements for review. Complete financial statements are provided monthly to BND following the Board of Directors' meetings.
  
- WAWS Authority must provide BND monthly construction budget and progress reports. The WAWS Authority submits a monthly Capital Accounting Report to the BND. The Capital Accounting Report provides a project budget and construction summary which includes: Business Plan Estimate, Baseline Engineering Estimate, Project Growth/Expansion, Contracted Amounts To Date, Actual To Date, and Best Estimate To Date for each Task Order and Phase of the WAWS Project.
  
- Each month, the WAWS Authority Board of Directors (which includes a SWC representative) and Executive Director must approve each payment voucher before it is submitted to BND. Each payment voucher is accompanied by the pay estimates and invoices for that month that detail precisely which loan funds are being allocated to which project components as well as project progress. If there were any dissenting votes pertaining to the payment vouchers, the dissenting WAWS Authority Board Member must provide reason(s) for dissent. The result of the vote and the reason for dissent is required to be submitted to the BND. There have been no dissenting votes on payment vouchers to date.
  
- WAWS Authority procures a financial audit by an independent accountant. The WAWS Authority is currently in the process of hiring an independent accountant to perform the 2012 audit. Due to limited financial activity in 2011, BND concurred to omit a 2011 audit.

## **Oversight Summary**

The WAWS Authority takes its oversight responsibilities seriously and has instituted many operational policies to assure the Authority is meeting both its fiscal management obligations and as well as the Legislative oversight intent included in the founding WAWS Authority legislation. As outlined within this summary, the WAWS Authority is subject to appropriate

oversight from the NDSWC, NDDH, and BND as well as numerous other Federal, State, and Local entities. The WAWS Authority Board of Directors meets monthly to review and approve all financial statements, capital accounting reports, payment vouchers, contracts, and any other issues that arise. Additionally, the WAWS Authority Members have a vested interest in assuring the overall success of the WAWS Project as Members have selflessly contributed infrastructure and industrial water sales revenues to support the greater good achieved by the WAWS Project.

Managed by the local Member entities, the WAWS Authority has prudently invested available resources to meet the ambitious goals outlined in its original 2011 Business Plan and Business Plan Supplement. The WAWS Authority has made outstanding progress on the implementation of the WAWS Project. The WAWS Authority Members have had one goal - to meet a truly public purpose of initiating a water project with a public resource to meet the ever-growing domestic water needs of the region while capitalizing on industrial water sales in the near-term to provide a revenue stream for substantial debt service payments to the State of North Dakota. The WAWS Project progress has been accomplished without any additional employees added to the State's payroll.

Additional oversight of the WAWS Authority and Project is unwarranted. Additional oversight may contribute to increased costs, delayed implementation, and decreased project performance.



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February 4, 2013

**Re: Senate Bill 2373 - Appearing in Opposition**

Mr. Chairman Klein and Members of the Committee:

Thank you for the opportunity to testify before you today. I am Ward Koeser and I serve as the Mayor of the City of Williston and as a Director on the Western Area Water Supply (WAWS) Authority. I am here today to urge you to vote "Do Not Pass" on Senate Bill 2373 - an effort to take the WAWS Authority from its local members and place it at the State Water Commission.

**Bakken Development Was Going to Stress an Already Insufficient Water Supply**

The northwest region of the State has always been plagued with insufficient water supply. The concern for solving the water supply problem was heightened as the oil boom began to take off around 2008, the realization that this oil boom was very much based on a significant need for both water and laborers. Our neighboring communities and rural water systems were even more concerned than the City of Williston about insufficient water supply. It became apparent that water would quickly become a limiting factor for this boom if we didn't develop a solution for water supply sufficient to serve the entire region.

As the most sizable City in the northern area of the Bakken Formation, the City of Williston and Williams County serve as the service center for the oil industry. We are the main hub supporting this play we also enjoy being located on the very abundant, reliable, and high quality Missouri River. As such, we knew something had to be done to provide the water infrastructure needed to support this economic engine for the State. Without water, the region could not approve any more building permits which means no more workers able to fill the thousands of oil development jobs in our area.

Mayor Ward Koeser, City of Williston  
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### **Building on Our Long-Standing, Strong Relationship with Rural Water**

The City has had a good working relationship with the Williams Rural Water District as the City supplies all water to the rural water district. Our relationship has been built even stronger as we've had to work together to figure out how to serve the massive water demands directly adjacent to the City limits as well as provide adequate water supply throughout the rural water district area. We understand the importance of locals working together for the betterment of the region – things happen faster and easier when you can come together on the local level.

### **2011 Legislative Session Strengthened Our Local Bonds**

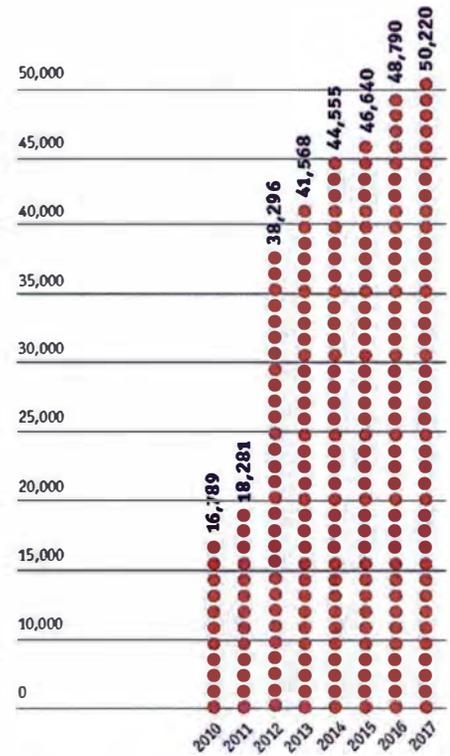
The City came together with partners in the region to propose a creative water solution to the 2011 Legislative Assembly - the Western Area Water Supply Project. We worked tirelessly, attended 35 committee and subcommittee meetings (the most of any bill in the history of the legislature?), and crafted something that works! The creation of the WAWS Project has provided the organizational structure with the necessary flexibility to serve all of the entities involved and tear down local political boundaries to allow the efficient and cost effective delivery of water for the benefit of the region and the State of North Dakota

### **Williston - Fastest Growing Micropolitan in the United States**

The 2010 Census data was quickly dismissed as inaccurate due to other economic indicators which served to convince us that the oil boom was causing a large influx of people and industry. By July 2011, the City was ranked the fastest growing "micropolitan" in the United States. The City could see the need for this project coming based on the record-setting trends within our City. We knew water would be one of our most basic requirements to be able to support the growth we'd seen.

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The City commissioned a population study from the NDSU Department of Agribusiness and Applied Economics to get a handle on our population for the next five years. This report was presented to the City Council in early December 2012. Figure 1 is a summary of the projections provided by NDSU - for only the City of Williston. Our growth has been remarkable. As you can see, our service population as estimated by NDSU was 16,789 people and we are projected to climb to 50,220 by 2017. The 2012 North Dakota Housing Needs Assessment estimates the current population of Williams County to be 49,000 to 51,000 people - this does not include workers living in temporary housing. This county estimate is nearly double our 2010 Census for Williams County of 22,398 people.



**Figure 1: City of Williston Population Projections 2010 to 2017**

**Local Control of the WAWSA Project Was One of Our Core Principles**

Local management of the WAWS Project and Authority was very important to the City of Williston. The City of Williston participated fully because we knew we had skin in the game and thousands of water requests that would otherwise be unfilled.

The City of Williston “contributed” its water supply and treatment plant to the effort with sufficient confidence in this organization’s structure and leadership to give up control of its water treatment plant output for the common good of the region. We also contributed a portion of the local industrial water sales to the effort. We knew it was the basis of our business plan and only fair to do so.

The City is well-represented with two seats (and weighted voting) on the WAWS Authority Board of Directors. I have served as a founding member on the Board of Directors

Mayor Ward Koeser, City of Williston  
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since its inception and our other seat is currently filled by Brent Bogar, a City Councilman and Vice President and Chief Information Officer at American State Bank and Trust. Williston is “all in” – and so are our partners

### **After Shoring Up Our Water Supply, We Successfully Negotiated Our Territory**

With passage of the WAWS Authority legislation, we had confidence that we’d be able to solve our expanded water supply needs. We then moved on to renegotiate our territorial boundaries with Williams Rural Water District as the City was quickly growing into their service area. Our local relationships and trust paved the way as we unceremoniously worked through what could have been a difficult issue. We understand that what we are doing is benefiting nearly 100,000 people when it is all said and done.

### **Oppose the transfer of WAWSA and the project to the State**

After a very rigorous Legislative debate in 2011, we walked away knowing the State made a commitment to the WAWS Project and all of its sponsors. Today, we are back looking at legislation proposing that the State replace the local leadership with nine individuals not involved with the systems and assume the Authority’s power, take possession of our infrastructure, and determine the governance for the system. This is, quite frankly, a slap in the face to our local leaders.

We, the WAWS Authority, have worked on a daily basis during the legislative interim to achieve the massive results we have over the past two years. It simply could not have been done by anyone else but local leadership. I dare say had we known we’d be here debating the control of a system we’ve poured our hearts and souls into, we would have reconsidered our participation.

It is imperative that this Committee “Do Not Pass” the poorly conceived SB 2373.