

2015 HOUSE ENERGY AND NATURAL RESOURCES

HB 1456

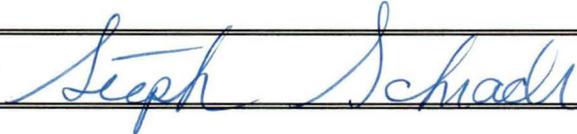
2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Pioneer Room, State Capitol

HB1456
2/5/2015
Job # 23342

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to negotiation for the transfer of excess lands around Lake Sakakawea and Lake Oahe.

Minutes:

Attachments 6

Representative Mike Brandenburg, District 28
This bill deals with the transfer of excess lands of North Dakota.
I have an amendment to hand out, written testimony #1.

Rep. Mike Nathe: What is meant of excess lands on line 8 and 9? What is meant by appropriate persons?

Representative Brandenburg: the excess land is the land between the high water level, the takings line down to the highest water level. Appropriate persons are to be determined by, in the case of the tribes it would be determined by them, the other land would be determined by the people in the counties or the Land Department.

Rep. Glen Froseth: What happens to the minerals?

Representative Brandenburg: I think a lot of this will be determined by the courts.

Rep. George Keiser: The measurements of 1620 and 1864, does everyone agrees with those?

Representative Brandenburg: They're arbitrary.

Rep. George Keiser: Who decided these?

Representative Brandenburg: I think the 1620 was decided by the Water Commission. The Takings Line has no rhyme or reason.

Rep. George Keiser: There is a segment of this area that the tribal has control of and a segment that they are not in control off. There will be two different processes involved?

Representative Brandenburg: There will be three different entities here; the Three Affiliated Tribes, Standing Rock, and the rest of the citizens of North Dakota. It will be people working with the interests of the land that borders their land.

Rep. George Keiser: On the areas designated tribal lands are there any lands owned by private people?

Representative Brandenburg: Yes.

Chairman Porter: One of the areas that is inside of the Fort Berthold Reservation because that's a checker board reservation, not all the land that was taken was fee land or titled to the tribe. Inside of this any land located inside the reservation goes back to the tribe, not to the rightful owner.

Representative Brandenburg: That's the discussion that will have to happen.

Chairman Porter: I'm not comfortable with the language on lines 12, 13 and 14. I'm here as a representative of the citizens of North Dakota, their land may have been inside the exterior boundaries of that reservation and it was held as private land at the time of the taking. The way this bill reads, now I'm saying that it's okay for the land to go back to the tribe and not the person who owned the land that it was taken from.

Representative Brandenburg: This is where it gets real dicey.

Chairman Porter: You are asking us to write something into the century code. I can understand everybody going to the table and arguing their own point, but we're taking a citizen of the state of North Dakota, that we represent and we're taking their rights away by putting it into the century code. That they wouldn't get their land back if this deal goes through, when it was theirs to start with.

Representative Brandenburg: That's why we are here to talk about this now. We are trying to find that ground where we can work together.

Rep. George Keiser: In the bill the Board of University and School Lands Shall negotiate. They are the only party negotiating, obviously they will represent the state very well. They may have a conflict of interest in their negotiations with private land owners. Do you see a problem with that?

Representative Brandenburg: The idea behind that is that the Corp of Engineers is not going to negotiate with every land owner that we have in the state. They're going to want to negotiate with one party and that may be the land Department. When the Land Department would get that back then we can negotiate with the counties and the former land owners and deal with that issue at that time.

Rep. George Keiser: The theory is nice, but the language is what counts. It doesn't say in here that the Land Department will develop a consensus of a position and negotiate. It says they will negotiate without any requirement on their part to deal with anybody else.

Representative Brandenburg: I hear what you are saying, we've got different parties with different ideas, this is a moving target. It is what it is, we are where we are, and this is going to take some more work.

Rep. Glen Froseth: This land was taken 60 years ago, original ownership would have changed a lot it's going to be pretty difficult to find the original ownership of a great deal of this property.

Representative Brandenburg: Representative Schmidt is going to talk about this issue.

Representative Jim Schmidt District 31

I represent the land owners on the west side of Oahe, from the head waters of the reservoir down to the South Dakota boarder including the Sioux Tribe.

Written testimony #2

Herbert Grenz, Production land owner

Written testimony #3A and 3B

Rep. George Keiser: What is the red line?

Grenz: That is the take line.

Glenn McCrory, land owner.

Some people are going to be against this because they say we need to protect the wildlife. The wildlife doesn't know whether they're on my land or the Corp land, or whatever. People hunt on mu land all the time and they don't know whether they're on Corp land or my land. This idea that it's going to take away form wildlife, I don't agree with.

Jeff Megrum, Emmons County commissioner and a member of ND Association of Counties Legislative Committee. Emmons County Commissioners are in full support of this bill.

Durant Schiermeister, Riverview Farms

I could not be a certified grain farmer because of all the weeds on the excess lands. Please try to work out the incidentals because our county has suffered severely from this excess land taken out of our county. All of these lands and properties are off the tax rolls, and are not being maintained. They bring nothing into our county.

Terry Jones, I represent three family ranchers, and I offer my services in any way needed. The three ranching families I represent have a considerable number of acres in this situation. I've been working with the Corp for about three years and I'll tell you what I know. The elevation is set at the spill way, the high water mark of 1856. In a bad flood the water is two feet deep on the spillway. Why the taking, when you deal with land you have to do a legal description, when you do a legal description, and for these land takings the language would have been quarter, quarter, quarter, quarter, quarter, quarter... of this section. So they tried to cut out the biggest pieces that they could. That's why you have these big pieces of ground some that go up a half mile away from the project because it was easier to

say, this half of section three. For fee land in this bill, all we have to do is it will be dealt with in the state and not by the reservation.

The thing that will be most difficult will be who has standing. Have criteria for the state to use and one for the tribe to use. Let the people come in make their case, establish their standing, get their legal descriptions, and make a petition to the court.

Wildlife; there is nobody that loves the land better and takes care of it better than those that make a living on the land.

Rep. Glen Froseth: At the time the land was taken, did the owners have a due process to protest it?

Jones: No, there was no process, it was eminent domain.

Rep. George Keiser: Will the minerals rights go with the land?

Jones: I think they should go back to the land owners.

Chairman Porter: How do you define rightful heir?

Jones: The rightful heir would be the first and immediate one.

Opposition:

Lance Gaebe, Secretary for the Board of University and School Lands (Lands Board)
Written testimony #4

Chairman Porter: That's not a state law for the minerals, it's in the constitution.

Rep. George Keiser: It seems to me that the intention of the sponsors of this bill are to improve the potential of getting the lands transferred back to the owners. I think what they want is for the state of North Dakota to support this effort statutorily. If it's not your department that should oversee and manage this, who should it be?

Gaebe: I'm not saying it's something we couldn't or shouldn't do, It's just not something we can do for free. We would need some type of funding to be able to do something like this.

Rep. George Keiser: No one is talking with authority on this issue to Washington. If we don't start acting it will never get done. Another question I have is, has there ever been a law suit to challenge the take number?

Gaebe: Not that I know off.

Rep. Mike Lefor: Are you aware of your department ever negotiating with the Corp on any Transfer of land?

Gaebe: Not to my knowledge.

Bruce Engelhardt, Director of Water Development, I'm here on behalf of the State Engineer
Written testimony # 5

Chairman Porter: During 2011 event, they came out and surveyed out neighborhood in Mandan, what was the elevation?

Engelhardt: I think it was about 1640.

Rep. Curt Hofstad: If this does require congressional action, what would be the responsibility of the state, what would be the cost?

Engelhardt: I'm not sure I can answer that. To get ready for the legislation would be one set of numbers. To transfer the land would be another, considerably higher.

Rep. Curt Hofstad: Would we need to know those elevation numbers to go forward?

Engelhardt: You would have to negotiate with the Corp as to how they define what the excess lands are.

Rep. George Keiser: Do you know of any time when the governor or any government agency has sat down and talked to the Corp about this issue?

Engelhardt: I don't believe so.

Mike Mackenroe, Bismarck, landowner
Written testimony #6

Rep. Curt Hofstad: The purpose of the project was for flood control and now that has changed. That is part of the angst of the land owners.

Mackenroe: The purposes of the project were seven fold, all seven of those were purposes of the flood control act of 1944 that authorized Garrison and Oahe.

Rep. Curt Hofstad: If we would have taken flood control out of the project from the beginning, would it have ever been build? Probably not.

Chairman Porter closes hearing.

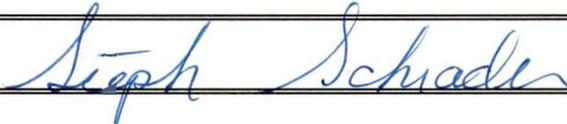
2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Pioneer Room, State Capitol

HB 1456
2/12/2015
Job # 23729

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to negotiation for the transfer of excess lands around Lake Sakakawea and Lake Oahe.

Minutes:

Attachments 0

Chairman Porter open discussion

Chairman Porter: This bill would take the support of the US Congress and the Corp of Engineers, which is unlikely. There are issues inside of the bill; the mark on Lake Oahe needs to be changed to 1620. Additionally, we're making a statement from the legislature that we're taking land that was once owned by an individual and giving it to a Native American reservation. I don't think that's a smart policy for the State of North Dakota to give away their citizen's land.

Rep. George Keiser: In addition to that, the State Board was in strong opposition to being in charge of it.

Rep. George Keiser: I move a Do Not pass.

Rep. Dick Anderson: Second.

Vote: Yes 12, 0 No, 1 Absent.

Rep. Curt Hofstad: Carrier.

2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB1456
2/19/2015
Job # 24133

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to negotiation for the transfer of excess lands around Lake Sakakawea and Lake Oahe.

Minutes:

Attachments 1

Chairman Porter opens hearing.

Rep. Corey Mock: I move to reconsider HB1456.

Rep. Curt Hofstad: Second.

Voice vote: Motion carries.

Representative Schmidt, District 31. Goes over the amendment; written **testimony #1**. It removes the conflicts with tribal interests, it removes the conflicts with Lake Sakakawea, it focuses on those lands in Emmons and Morton County above the 1620 elevation.

Chairman Porter: It narrows the scope of those two areas inside of Oahe, at those elevations.

Schmidt: Yes, it narrows it quite a bit. It takes us to where we want to be.

Rep. Corey Mock: Did we adopt any amendments to HB1456?

Chairman Porter: We did not.

Rep. Corey Mock: On line 9, the bill is written as 1854 and 1617, I believe it was your testimony (referring to Schmidt) that said we needed to adjust the elevations to be 1856 and 1620, respectively, we would need to amend this bill further to include those two changes in elevation. There was also Representative Brandenburg's amendment; would Representative Brandenburg's amendment still be desired?

Schmidt: You are correct on the amendments to the elevation. I did not see the amendments that Representative Brandenburg offered.

Chairman Porter: We did not adopt those.

Schmidt: Again, this narrows the focus a lot. It identifies those lands above 1620, which have been identified as excess lands. These are federal lands; North Dakota has 1.7 million acres of federal lands. With respect to percentages, Kansas; .6% of their land is federal, Nebraska; 1.1%, Oklahoma 1.6%, Texas; 1.8%, South Dakota 5.4%, and North Dakota is over 4%. These lands have been identified as excess lands to the operation of Lake Oahe; I see no reason why these lands should be under federal ownership. I believe that the mineral rights and the land should go back to the state of North Dakota.

Chairman Porter: For this to work, we just need to remove section 1 from the bill.

Schmidt: I would agree with that.

Rep. Curt Hofstad: I move 03003, as described, as a hog house.

Chairman Porter: With the removal of section 1 of the bill.

Rep. Curt Hofstad: Understanding that it is a hog house.

Rep. Dick Anderson: Second.

Chairman Porter: We have a motion to remove section 1 of HB1456 version .03000, and insert the proposed amendment, number .03003, as a hog house amendment.

Voice vote: Carries.

Rep. Curt Hofstad: I move a Do Pass on HB1456 as amended.

Rep. Roger Brabandt: Second.

Vote: Yes 12, No 0, Absent 1.

Rep. Curt Hofstad: Carrier.

Chairman Porter closes hearing.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1456

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "54-01-29" insert "and 54-01-29.1"

Page 1, after line 16, insert:

"**SECTION 2.** Section 54-01-29.1 of the North Dakota Century Code is created and enacted as follows:

"54-01-29.1. Federal legislation encouraged to return lands and mineral rights to the state of North Dakota.

Uplands of the Oahe Reservoir in Emmons and Morton Counties in North Dakota above the elevation of 1,620 feet are defined as access lands to the operation of the Oahe Dam. The North Dakota legislative assembly encourages Congress to pass federal legislation to return those lands and mineral rights to the state of North Dakota and the North Dakota legislative assembly encourages the governor of North Dakota to work with the North Dakota Congressional delegation and Congress to secure enactment of necessary federal legislation."

Renumber accordingly

February 19, 2015

AD
2-19-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1456

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 54-01-29.1 of the North Dakota Century Code, relating to the encouragement of federal legislation to return lands and mineral rights to the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 54-01-29.1 of the North Dakota Century Code is created and enacted as follows:

54-01-29.1. Federal legislation encouraged to return lands and mineral rights to the state of North Dakota.

Uplands of the Oahe Reservoir in Emmons and Morton Counties in North Dakota above the elevation of 1,620 feet [493.78 meters] are defined as access lands to the operation of the Oahe Dam. The North Dakota legislative assembly encourages Congress to pass federal legislation to return those lands and mineral rights to the state of North Dakota and the North Dakota legislative assembly encourages the governor of North Dakota to work with the North Dakota congressional delegation and Congress to secure enactment of necessary federal legislation."

Renumber accordingly

Date: 2/12/15
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB**

1456

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Refer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep Keiser Seconded By Rep Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hunskor	✓	
Vice Chairman Damschen	✓		Rep Mock	✓	
Rep D Anderson	✓		Rep Muscha	✓	
Rep Brabandt	A				
Rep Devlin	✓				
Rep Froseth	✓				
Rep Hofstad	✓				
Rep Keiser	✓				
Rep Lefor	✓				
Rep Nathe	✓				

Total (Yes) 12 No 0

Absent

Floor Assignment Rep Hofstad

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

Date: 2/19/15
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1456**

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Mock Seconded By Rep. Hofstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep Hunskor		
Vice Chairman Damschen			Rep Mock		
Rep D Anderson			Rep Muscha		
Rep Brabandt					
Rep Devlin					
Rep Froseth					
Rep Hofstad					
Rep Keiser					
Rep Lefor					
Rep Nathe					

*Vote
 Vote
 Carries*

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 2/19/15
 Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1456**

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 15.0603.03003

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Hofstad Seconded By Rep. Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep Hunsakor		
Vice Chairman Damschen			Rep Mock		
Rep D Anderson			Rep Muscha		
Rep Brabandt					
Rep Devlin					
Rep Froseth					
Rep Hofstad					
Rep Keiser					
Rep Lefor					
Rep Nathe					

Voice Vote Carries

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

To remove section 1, version .03000, and to insert the proposed amendment, number .03003.

Date: 2/19/15
Roll Call Vote #: 3

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1456

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 15. 0603. 03004

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep Hofstad Seconded By Rep Brabandt

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hunskor	✓	
Vice Chairman Damschen	✓		Rep Mock	✓	
Rep D Anderson	✓		Rep Muscha	✓	
Rep Brabandt	✓				
Rep Devlin	✓				
Rep Froseth	✓				
Rep Hofstad	✓				
Rep Keiser	A				
Rep Lefor	✓				
Rep Nathe	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep Hofstad

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

REPORT OF STANDING COMMITTEE

HB 1456: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1456 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 create and enact section 54-01-29.1 of the North Dakota Century Code, relating to the encouragement of federal legislation to return lands and mineral rights to the state.

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Uplands of the Oahe Reservoir in Emmons and Morton Counties in North Dakota above the elevation of 1,620 feet [493.78 meters] are defined as access lands to the operation of the Oahe Dam. The North Dakota legislative assembly encourages Congress to pass federal legislation to return those lands and mineral rights to the state of North Dakota and the North Dakota legislative assembly encourages the governor of North Dakota to work with the North Dakota congressional delegation and Congress to secure enactment of necessary federal legislation."

Renumber accordingly

2015 SENATE ENERGY AND NATURAL RESOURCES

HB 1456

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

HB 1456
3/26/2015
25453

- Subcommittee
 Conference Committee

Committee Clerk Signature

Katie Oliver

Explanation or reason for introduction of bill/resolution:

Relating to the encouragement of federal legislation to return lands and mineral rights to the state.

Minutes:

2 Attachments

Chairman Schaible called the committee to order. Representative Jim Schmidt was on hand to introduce the bill.

Representative Jim Schmidt: District 31. See attachment #1. (:48-9:03)

Senator Laffen: Why not Lake Sakakawea?

Representative Schmidt: It would be more complicated to keep it in.

Senator Hogue: We had this bill in an interim study and what we concluded that, while a long shot, we thought that returning the land would be better than having the government take it over. Did the House consider that?

Representative Schmidt: The federal cannot return land to an individual. We are also including the transfer of mineral rights as well

Senator Hogue: You describe the precedent and going back to our interim is that Senator Dashel was able to shepherd that through the compass. What do you regard as precedent?

Representative Schmidt: There is no precedent, you are correct. The fact is the federal returned the lands above 1620.

Senator Hogue: Is there momentum in Congress?

Representative Schmidt: The 3 affiliated tribes have been in contact with the congressional delegation. There was a desire on their part to continue.

Senator Armstrong: You said that the federal government cannot return land to individual so we need to return it to the state first?

Representative Schmidt: Yes

Senator Armstrong: What would be the second?

Representative Schmidt: Returned if at all possible to the landowners or the public.

Senator Armstrong: Can we do that?

Representative Schmidt: The state can.

Senator Triplett: Via our constitution we cannot give their land back but we cannot gift them back.

Representative Schmidt: I am with you on that. The other thing I will say is that landowners who I represent have indicated that the access to the recreation sites would remain. The interest is obtaining those lands and managing it for our operation as best we can.

Chairman Schaible: I was involved with that a few years ago, the intent was to give the state control and not infringe on hunting, recreation, what have you.

Herb Grentz: Emmons County Resident. See attachment #2 (16:43-35:08)

Jeff Magrum: Emmons County Commissioner. Concerning this bill our commission is on favor of this. We ask for a do pass

Durant Schiermeister: Farmer 28 miles south of Bismarck. Spoke in favor of the bill.

Lisa Knoll: I feel for North Dakota to flourish we need ethical practices for our citizens. I am 3 generations down for farming, our family farmed along the creek in Emmons County. Their latest request to us is about accessing 2 section lines. Our cattle grazes on rented state land and these two section lines lead to the only water source for our cattle; their reasoning: no one has access to the section lines in Corps land. Is this ethical? I feel the Coprs has gone beyond flood control, their statement is that that they own these acres, who is they?

Kenny Graner: Morton County. 4th generation farmer and rancher; I am not here to duplicate to what everyone said but to add to families not wanting to take away from the recreation and parks. 50-75 campers come down and enjoy the river and if the land is to be returned I would not stand in the way of this. It would stay in control of the Morton County parks and rec to build on their.

Chairman Schaible: It is understood that the governor would control the land but just wanted to reaffirm that.

Glen McCrory: I think that you will hear some testimony against this and my thinking on this is that wildlife doesn't know if they are on my land or Corps land. To me it isn't a wildlife issue; some of the people who are against it do not have any skin in the game.

Merlin Leithold: North Dakota Weed Control Association. In support of 1456. This is access land it isn't the land that is flooded. It would help with every acre. As wheat people we do not have the authority to go after federal land.

Chairman Schaible: You have no authority to spray on Corps land?

Merlin Leithold: We have no authority to ask them to patrol it. If they give us a budget we can spray on Corps land with their recommended chemicals.

Chairman Schaible: Have you ever made a request to the Corps to do a better job of spaying their noxious weeds?

Merlin Leithold: The Emmons County Weed Board has asked for more money to spray.

Senator Triplett: I understand you can't go on Corps land without permission, correct? But you can access their land for spraying if you follow their rules for spraying.

Merlin Leithold: Yes.

Senator Triplett: Do all the communities have this agreement?

Merlin Leithold: Yes.

Senator Triplett: If the weed board wanted to could they use other methods?

Merlin Leithold: I kind of doubt it but I am not sure.

Julie Ellingson: Stockman's Association. In favor of HB 1456, we think that it represents the next step in this process.

OPPOSTION

Michael Gunsch: Vice Chairman of the Friends of Lake Sakakawea. We understand the concerns and should review the pragmatic elements. The mismanagement of the resource and they are not properly funded. We have had some discussion as to how this can be done but let's get down to the issue that returning the lands is not the appropriate approach because it doesn't resolve the weed issue. The majority of the weeds are a large portion of the Corps budget to spray, they get the same amount each year, when the reservoir are down below 1610 are not covered by this bill. If the Corps has to go spray 1,000 acres because the reservoir is down verses 200 acres because it is high they get the same budget. In the acquisition of the lands to begin with, landowners were paid including mineral rights, we can argue if they were compensated fairly for hours. Federal cannot give land back to the landowners, in North Dakota you cannot pass them back to the owners. South Dakota example was very influential in getting the trust fund I think that we have

another things coming. When those lands were transferred to the state of South Dakota and are owned by the citizens of the United States. Every one of those restrictions is required to be followed. The lease agreements, all those restrictions will come back across. That being said if all those have to be complied with. Friends of Sakakawea have worked with Hoeven and Heitkamp we are trying to get more money in the Corps budget and had limited success.

Senator Hogue: Do you know when the federal government transferred the land to South Dakota what kind of restrictions did they put in place so they couldn't further transfer it to landowners.

Michael Gunsch: I am not familiar with the aspect of the transfer of ownership they are obligated to the criteria.

Senator Triplett: Do you have an answer if the weed control budget isn't satisfactory can someone who has the land under lease mow the land?

Michael Gunsch: There was a study that was done and goes through all of the issues related to weed control and they are federal lands and unless the federal entity that manages them authorizes that activity it doesn't happen.

There was no further discussion and Chairman Schaible closed the hearing on HB 1456.

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Fort Lincoln Room, State Capitol

HB 1456
4/2/2015
25764

- Subcommittee
 Conference Committee

Committee Clerk Signature

Katie Oliver

Explanation or reason for introduction of bill/resolution:

Relating to the encouragement of federal legislation to return lands and mineral rights to the state.

Minutes:

Chairman Schaible opened the committee work on HB 1456.

Senator Triplett: I think to make any significant improvement on this situation and so if we are successful but are not committed to actually putting the dollars in to a proper job and we put a huge amount of time and energy and ask our congressional delegation and our governor to put a lot of time and energy into it for naught. My question would be does the legislature have a commitment on this, to putting serious money into this kind of land management. If you have high water one year and low water the next year you are always starting over again. Every time the water goes up for a while and it kills the vegetation and then goes back down again you are starting over again with weeds. This is going to be ongoing starting from scratch, weed management program until the dams are gone. It is going to be an expensive proposition and I am not sure if people understand that.

Chairman Schaible: Game and fish's control of noxious weeds is as good as it needs to be. It is not only the money it is the timing of when you do it, if you do not spray the weed when it is small and just starting out the cost really goes up. The chemical cost is irrelevant to the labor cost and the time of doing it but the thing is if it much better handled by local then it is by federal and it gets better as you go that is the opportunity they are asking for. South Dakota's legislation was all in one shot and this doesn't say that the governor has to, the can piece meal to find the areas that might be best suited to make something the state wants to go to. In the initial discussions we had with this it was not just to get the land back it was land that could potentially be used for state parks and access.

Senator Triplett: The other real concern that I had was that some of the lands immediately south of Bismarck used to be Corps of Engineer land and were given over to the city of Bismarck and instead of making them into parks, which they should have, they allowed development on that land which then created the opportunity during the 2011 flood to cause a lot of damage and the state and federal government has to pick up the pieces. I

would want to know that we are not going to do that sort of thing, not going to allow development that will then get flooded.

Chairman Schaible: I agree that bad decisions have been made; looking at this it is not legislation it is negotiations with the governor and the Corps, at least it would give us an opportunity to make our own decisions and address the problems locally.

Senator Laffen: Representative Schmidt suggested we amend the word 'access' to 'excess' and I think we should do that.

Senator Laffen then made a motion to change the word 'access' to 'excess' with a second by Senator Murphy, there was no further discussion, roll was taken and the motion passed on a 7-0-0 count.

Senator Laffen then made a motion for a do pass as amended with a second by Senator Armstrong

Vice Chair Unruh: I will be resisting the do pass motion, I think that the government is already doing this and we are already working on it. I am not sure that this does anything to help that effort and it only includes two of the counties and it doesn't make it as inclusive as it needs to be.

Senator Laffen: In my mind I would like to have this be as narrow as it can so we can get something started and maybe we can go up from there.

There was no further discussion, roll was taken and the motion passed on a 6-1-0 count and Chairman Schaible carrying the bill to the floor.

15.0603.04002
Title.05000

Adopted by the Energy and Natural Resources
Committee

April 2, 2015

*4/2/15
JW*

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1456

Page 1, line 10, replace "access" with "excess"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1456, as engrossed: Energy and Natural Resources Committee (Sen. Schaible, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1456 was placed on the Sixth order on the calendar.

Page 1, line 10, replace "access" with "excess"

Renumber accordingly

2015 TESTIMONY

HB 1456

15.0603.03001
Title.

1

Prepared by the Legislative Council staff for
Representative Brandenburg
January 23, 2015

2/5/15
1456

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1456

Page 1, line 15, replace "The" with "With the exception of tribal interests in the excess land to be returned, the"

Renumber accordingly

2/5/15

#2

1456

Report to the Legislative Water Topics Committee 10-1-14

Summary

The passage of HB 1338 directed the State Board of University and School Lands to conduct a study of the United States Army Corps of Engineers (USACE) held lands around Lake Sakakawea and around Lake Oahe to address the concerns of adjacent landowners. The major impetus of the study was to develop different options for the Legislature concerning noxious weed control, public access to these lands, and to look into the possibility of transferring these lands away from the USACE to a different entity or individuals along with those associated costs of transferring and maintenance. It also was to include consideration for the interests of the ND Indian Tribes.

This study resulted from the 2013 House Bill 1338 directing the Board of University and School Lands to study options to address the concerns of landowners adjacent to the United States Army Corps of Engineers (USACE) lands surrounding Lake Sakakawea and Lake Oahe in North Dakota (ND).

The scope of work involves determining different options for the Legislature relating to the USACE lands surrounding Lake Sakakawea and Lake Oahe. The particular concerns are noxious weeds growing on USACE lands, continued public recreation access to these lands, and the possibility of transferring these lands back to Tribal governments and the State of North Dakota (ND) or adjacent/original landowners. While this conversation may have started with the USACE's lack of control of noxious weeds, a major part of this study is the transfer of USACE excess land and who should be the final benefactor/owner of the land. The study also includes consideration for the interests of the North Dakota Indian Tribes. There are diverse opinions on what the final outcome should be. For purposes of this study, excess lands are defined as USACE lands from the take line to the 1854' elevation around Lake Sakakawea and to the 1620' elevation around Lake Oahe.

The methodology used was to review the previous work that had been done, to gather public input to explore various options that might be available or feasible, and to conduct personal interviews with various stakeholders and governmental agencies' personnel. To gather this input, we used a combination of a mail survey, local public meetings, follow up telephone interviews, and a final public meeting in Bismarck. This information has been compiled to formulate different options for the final report. Estimated costs were secured from different governmental agencies for the various option implementations.

The review of information section should give the reader an accurate picture of what was done in South Dakota (SD), how it transpired, and how that has worked out for their state. It should also give accurate information on how the Payment in Lieu of Taxes (PILT) and the Sec. 7 of the 1941 Flood Act payments work.

This study is to give the Legislature different options concerning these lands. Option One is status quo or no change. The study is to address the concerns of the adjacent landowners to these lands. One major concern is weed control. Most adjacent landowners felt if they were the landowners, they would do a better job of weed control than the United States Army Corps of Engineers (USACE). Therefore Option Two was created showing the transfer of these lands back to the original landowners or their heirs. Option Three transfers the land from the USACE to the State of ND and the state manages the transferred land. Options Four and Five had

similar features with land being transferred back to the State of ND and the two adjacent Indian Tribes, showing different management options for those lands. Options Six and Seven came from the input at two of the regional public meetings. With Option Six the USACE retains the ownership of these lands but some of the management is turned over to local, state, or tribal agencies. The impetus behind this option is the lands would be better managed with more local control. Option Seven is a direct transfer back to preferential lease holders. Grazing lease holders, North Dakota Game and Fish (NDGF), Morton County Parks and Recreation Board, and North Dakota Parks and Recreation (NDPR) would be examples of preferential lease holders. For your reference, there is a side by side option comparison under the options tab.

House Bill 1338

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

HOUSE BILL NO. 1338

(Representatives Brandenburg, Froseth, Heller, Kasper, Kreidt, Kretschmar, Rohr, Schmidt,
Onstad)

(Senators Schaible, Unruh, Warner)

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.

The 2013 HB 1338 directed the State Board of University and School Lands to conduct a study:

- This study is to give the Legislature options regarding USACE lands around Lake Sakakawea above 1854' and Lake Oahe above the 1620' elevations.
- This study was to address:
 - Noxious weed control
 - Public access to these lands
 - Costs for each option
 - Was to include consideration for the interests of the ND Indian Tribes.
 - Review previous work, including the 2013 HB 1338, 2009 HB 1459, and what had been done in SD under the Title VI land transfer and the Blunt Reservoir and Pierre Canal project.
- These issues have had a history of diverse opinions on what can be or should be done to address these issues.
- Some of these same issues have come up in previous legislative sessions.
- Eide Bailly LLP was awarded this study in January of this year.

Methodology

- Review previous work, including 2013 HB 1338, 2009 HB 1459, and what had been done in SD under the Title VI land transfer and the Blunt Reservoir and Pierre Canal project.
- Send out a non-scientific study to various stakeholders to gather information.
- Scheduled five regional public meetings and one general public meeting in Bismarck to secure additional stakeholder information.
- Conduct interviews with various stakeholders, ND officials/agencies, SD officials, and USACE officials to gather additional information.
- Compile and formulate this information into options along with cost estimates for each option.

Misconceptions or misinformation

1. Survey costs

- Survey costs are often cited as an impediment to land transfers.
- In SD, no surveying was done under Title VI.
- The SD legislature passed a provision to allow elevation to be used as a legal boundary.
 - Title was passed using a quick claim deed.
- Survey costs could run from \$3,500 to 5,000 per lineal mile, using modern surveying technology.
 - There could possibly be some economies in size in a large project.

2. Weed control below 1854' and 1620'

- USACE is still responsible for noxious weed control below the 1854' and 1620' elevations, if the excess lands are transferred back to the Tribal governments, the state, and/or individuals.
- Most of the weed problem is below the high water mark.

- The noxious weed problem is a larger issue during the low water years and more so at the upper end of the dams, especially when the lake is back in the river channel.
- USACE has lost their flexibility move budget funds from one area to another, during low water years when the noxious weeds are a bigger problem.
- USACE works with the local county weed boards and independent contractors.
 - USACE at Lake Sakakawea created a noxious weed task force over 10 years, for advising on noxious weed control, primarily Salt Cedar.
- The state or county has no noxious weed control jurisdiction over USACE.

3. Grazing

- According to the USACE, it has some flexibility in different grazing options including early turnouts.
- Grazing is handled differently between the two lakes.
- Grazing is not an authorized use, only an interim use.
 - Grazing is usually used in conjunction with wildlife management.
 - The USACE lease is 23 pages.

4. Public access

- Stricter use of the zoning has been implemented.
 - There is less public access than in the past.
 - Primarily because of
 - The endangered species laws and the cultural resources laws.
 - New generation of off road vehicles.
- This appears to be less of an issue in SD, under SDGFP management.
- Lake Sakakawea lands are still open to walk in access.

5. 1999 Title VI (CRST, LBST, and State of SD Terrestrial Wildlife Habitat Restoration Act)

- Involved the Oahe, Big Bend, Fort Randall, and Gavin's Point projects in SD.
- In SD, all the lands above 1620' around Lake Oahe were transferred back to SD or the adjoining tribes except those lands required for dam management and the Lake Oahe lands adjoining the Standing Rock reservation.
- In SD, the lands were transferred back to SDGFP, an agency with a dual mission.
- A \$180 million trust fund went along with this for perpetual management.
 - \$108 million to SD
 - \$72 million to the tribes, held in trust with BIA
- Title VI was accomplished when Tom Daschle was Senate Majority Leader and the federal government had a balanced budget.
- The Lake Oahe portion was offered to ND and to Standing Rock at the same time, they both opted out.
- Title VI came under the authority of the 1959 Fish and Wildlife Coordination Act
 - Lake Sakakawea was completed before this act, therefore only Lake Oahe in ND would have qualified.
- Title VI lands are perpetually zoned for only recreation and wildlife use.

6. SDGFP management

- SDGFP has a dual mission of both recreation and wildlife.
- They use the income from the \$108 million trust fund to help manage these lands.
- Numerous park and lake access areas have been added or upgraded.
- SDGFP has a 25 year lease with the USACE, from the water's edge to the 1620' elevation.
 - SDGFP's manages all the grazing leases and all the easements, including below the 1620' elevation.
 - USACE is still responsible for weed control below 1620'.
 - USACE has management responsibilities for cultural resources and endangered species below 1620'.
- The game and fish side of the agency manages about 100 grazing leases around Lake Oahe.
 - They meet with each tenant every year.
 - The SDGFP grazing lease is 2 pages long versus the USACE 23 page lease.
 - SDGFP has fewer grazing restrictions than the USACE.
- SDGFP needs to follow all federal applicable laws in the management of these lands.

7. Blunt Canal project (Pierre Canal and Blunt Reservoir project)

- The Blunt Canal project was authorized with the construction of Lake Oahe to supply irrigation to central SD.
 - This project was started but was stopped in the 1980's after farmers petitioned to have it stopped because the soil types were not conducive to irrigation.
- A compromise bill was written for Congress to de-authorize this project along with an appropriation to handle the transfer costs.
- The taken lands that had been disturbed with the project's construction were transferred to the SDGFP's.
- The undisturbed taken lands that were being leased to the original landowners, were sold back to the preferential leaseholders.
 - The preferential lease holders were the original landowners who were leasing the lands from the USACE.
- A new archeological study was required before any of these lands could be transferred back to the preferential lease holders and the SDGFP.

8. PILT (Payment In Lieu of Taxes) and Sec 7 payments (Section 7 of the 1941 Flood Control Act).

- PILT payments go directly to the counties for taken lands.
 - The PILT payments are for all taken lands, including the inundated land under the lakes.
 - If the lands above 1854' and 1620' were transferred from the federal government, the PILT payments would only stop on those lands above those elevations.
 - The majority of the PILT payments come from lands below the 1854' and 1620' elevations.

- Sec 7 payments are 75% of the lease revenue collected by USACE on lands, such as grazing leases.
 - These payments are made directly to the state which in turn reimburses each county for their pro rata share.
 - These payments would stop, if the land above 1854' and 1620' was transferred from the USACE to another entity or individual.
- To summarize the PILT and Sec 7 payments, if the lands above 1854' and 1620' were transferred back to the State of ND, a Tribal government, or an individual; then:
 - A small portion of the PILT payments would stop above the 1854' and 1620' elevations.
 - The majority of the PILT payments would continue on the land below the 1854' and 1620' elevations.
 - All the Sec. 7 payments would stop.
 - The new owner would collect 100% of the lease payments versus the county collecting 75% of the lease payments under Sec. 7.

9. Public lands (2009 information)

- ND ranks 12th in the country with 3.38 acres of public land per capita.
- The top 10 states per capita are mountain states and Alaska.
- SD ranks 11th and is the only other Great Plains state ahead of ND.

Options:

1. Status Quo

- With this option nothing changes. There are various special interest groups have indicated they are satisfied with the present situation and generally are not concerned about weed control or restricted public access.

2. Return to original owners

- One major concern is weed control. Most adjacent landowners felt if they were the landowners, they would do a better job of weed control than the USACE.
- Option Two was created showing the transfer of these lands back to the original landowners or their heirs.

3. Return to State of ND and the state manages the land

- Option Three transfers the land from the USACE to the State of ND and the state manages the transferred land.
- The state would bear the costs of managing these lands.

4. Return to the State of ND and the adjoining tribes, each manage their own land.

- Options Four and Five had similar features with land being transferred back to the State of ND and the two adjacent Indian Tribes, showing different management options for those lands.
- Under each option either the state or the tribal government would bear the management costs.

5. **Return to the State of ND and the adjoining tribes. The state, tribal government or a local government manages the land.**
6. **USACE retains ownership but the state, tribal government, or a local government manages selected portions of the land, while the USACE manages the balance of the land.**
 - Options Six and Seven came from the input at two of the regional public meetings.
 - With Option Six the USACE retains the ownership of these lands but some of the management is turned over to local, state, or tribal agencies.
 - The impetus behind this option is the lands would be better managed with more local control.
 - Different agencies or government entities would choose which parcel they were interested in managing, then petition the USACE to take over the management for that parcel.
7. **These lands are transferred back to the State of ND and the state transfers these lands to preferential lease holders.**
 - Option Seven is a direct transfer back to preferential lease holders, via the State of ND. Grazing lease holders, North Dakota Game and Fish (NDGF), Morton County Parks and Recreation Board, and North Dakota Parks and Recreation (NDPR) would be examples of preferential lease holders.
 - Some stakeholders fear that any transfer back to the state would be a conduit to transfer back to private individuals.
 - They are against any transfer back to individuals or in some cases the tribes.

Please see the attached "Options—side by side comparison" spread sheet.

Options--Side by Side comparison.

Brief Option Description:	Option 1	Option 2	Option 3	Option 4	Option 5	Option 6	Option 7
	Status Quo	Return to original owners	Return to State of ND, state manages	Return to State of ND & Tribes, each manage their own land.	Return to State of ND & Tribes. Tribes, local gov, & state manages	USACE retains ownership but turns over management to tribes, state, & local gov.	Transfer land to ND and ND transfers land to preferential lease holders.
1 What would it take to make each option happen?	NA	Act of Congress	Act of Congress	Act of Congress	Act of Congress	Tribes, state, or local gov. would need to seek a lease from the USACE.	Act of Congress
2 Other related factors related to each different option.	Nothing changes	Federal Government typically doesn't sell land to private individuals.	It takes an act of Congress and there is no ground swell support behind this. The tribes may not support this.	It takes an act of Congress and there is no ground swell support behind this. The tribes may or may not support this.	It takes an act of Congress and there is no ground swell support behind this. The tribes, local governments, and special interest groups may or may not support this.	This potentially can happen with state, tribal, and/or local governments positioning the USACE for a lease arrangement.	Federal Government typically doesn't sell land to private individuals. There are deed restrictions under Title VI in SD.
3 With each option, who would be the ultimate owner of the land?	USACE	Original owners or their heirs.	State of ND	State of ND & the tribes	State of ND & the tribes	USACE retains ownership	Preferential lease holders.
4 With each option, who would manage the land?	USACE & present lease holders	Original owners or their heirs.	State of ND	State of ND & the tribes	State of ND, the tribes, or a local governmental agency.	State of ND, the tribes, local government, or the USACE.	Preferential lease holders.
5 Will there be a net loss of public lands?	No	Yes	No	Yes & No, tribal land or BIA controlled lands is not necessarily public lands.	Yes & No, tribal land or BIA controlled lands is not necessarily public lands.	No	Yes
6 Can the zoned use of these lands be changed?	No	Maybe, depends on Congress and what the act says.	Maybe, depends on Congress and what the act says. SD was not able to change the stated use under Title VI.	Maybe, depends on Congress and what the act says. SD was not able to change the stated use under Title VI.	Maybe, depends on Congress and what the act says. SD was not able to change the stated use under Title VI.	No	Maybe, depends on Congress and what the act says.
7 Will these lands need to be re-surveyed?	NA	Maybe, depends if the ND Legislature passes a law to allow an elevation as a boundary.	Maybe, depends if the ND Legislature passes a law to allow an elevation as a boundary.	Maybe, depends if the ND Legislature passes a law to allow an elevation as a boundary.	Maybe, depends if the ND Legislature passes a law to allow an elevation as a boundary.	NA	Maybe, depends if the ND Legislature passes a law to allow an elevation as a boundary.
8 If these lands don't need to be resurveyed, what is the cost to the state of ND?	NA	Low, most of the closing costs are picked up by the new landowner or the Federal Government. The state would probably have administration costs during the transfer.	High, the state would have administration costs during the transfer and maintenance & operating costs after the transfer.	High, the state would have administration costs during the transfer and maintenance & operating costs after the transfer. The costs would be less because the tribes would be responsible for their own management.	High, the state would have administration costs during the transfer and maintenance & operating costs after the transfer. The state may need to support local government entities with weed control and recreational areas. Tribes would have their own costs.	Medium, the state, tribes, and local governments may pick and chose which lands they want to lease and manage. The state may need to support local governmental entities with weed control and the recreational areas.	Low, most of the closing costs are picked up by the new landowner or the Federal Government. The state would probably have administration costs during the transfer.
9 Will there be more public recreational opportunities?	No, it will be the same.	Maybe with a public access easement. Otherwise, probably no extra campgrounds, state parks, etc.	Maybe, if the state revitalizes some of the existing campgrounds and parks that the USACE is presently managing.	Maybe, if the state revitalizes some of the existing campgrounds and parks that the USACE is presently managing. Tribes would manage their own, it is unknown what they would do.	Maybe, if the state revitalizes some of the existing campgrounds and parks that the USACE is presently managing. Local governments may encourage extra opportunities. Tribes would manage their own, it is unknown what they would do.	Possibly, if local governmental entities and the state had an extra push for more recreational opportunities.	Maybe with a public access easement. Otherwise, probably no extra campgrounds, state parks, etc.
10 Will public access be enhanced?	No, it will be the same.	Maybe with a public access easement.	Probably, as it appears it was improved in SD under Title VI.	Maybe, as it appears it was improved in SD under Title VI. Tribes would manage their own, it is uncertain what they would do.	Possibly, with more local control and it appears it improved in SD under Title VI. Tribes would manage their own, it is uncertain what they would do.	Possibly, if local governmental entities and the state had an extra push for more public access opportunities. It would also depend on how much land the state, local governments, or the tribes would be interested in leasing.	Maybe with a public access easement.
11 Will noxious weed control improve?	Probably not, the USACE has lost its flexibility to move dollars around from one area to another. It has a hard time budgeting for changing lake levels.	More than likely on their own land but the USACE will still be responsible on the elevations below 1854' and 1820'.	Probably on the state's land but the USACE will still be responsible on the elevations below 1854' and 1820'.	Probably on the state's land but the USACE will still be responsible on the elevations below 1854' and 1820'. It is unknown if the tribes will have the budget for weed control on their land.	More than likely, with local control will improve on the state's land but the USACE will still be responsible on the elevations below 1854' and 1820'. It is unknown if the tribes will have the budget for weed control on their land.	More than likely, with local control will improve on the state's land but the USACE will still be responsible on the elevations below 1854' and 1820'. It is unknown if the tribes will have the budget for weed control on their land.	More than likely on their own land but the USACE will still be responsible on the elevations below 1854' and 1820'.
12 Would the present leaseholders, such as the NDGF, NDPR, and the Morton County Park Board, be able to keep their present leases?	Yes	Probably not.	Yes	Yes	Yes	Yes	Yes, they would all be preferential lease holders.

Grenz

#3A

2/5/15

1456

May 2, 2014

Dear interested Stake Holders:

RE: Mail survey dealing with USACE excess lands bordering Lake Oahe in Emmons County:

The Emmons County Commissioners have authorized a study around the issue of the USACE taking excess lands in Emmons county bordering Lake Oahe in N.D. The purpose of the study is to give adjacent landowners the opportunity to express their concerns with excess acreage lying above elevation 1620 to "corps take line" regarding USACE practices & regulations.

During the Eide Baily meeting 03/06/14 in Linton ND, the consensus of those present; that this is a county concern and all parties involved shall define the excess land issues in their county. In N.D. there are eleven counties involved in two different bodies of water, each individual county is in a better position to acknowledge the needs in their county.

A county is a legal entity. The local consensus is - it is time to listen to local government policies from the bottom up, rather than policies from the top down.

We are sending a survey to each adjacent landowner to fill out. This is an important survey for your concerns to be heard to help formulate the report to the N. D. legislator.

701-782-4293

ACTING CHAIRMAN

are adjacent landowners bordering
Oahe Reservoir in Emmons County, N.D.

Please sign the introduction page for land verification ownership. Do not sign survey pages. Return as soon as possible before 05/31/14. Any questions please call.

**House bill 1338 Reservoirs Excess Land
Oahe Reservoir N.D.**

Excess reservoir Land in Emmons County N.D.
Lands lying above Lake Elevation 1620 to USACE survey markers.
4931, 34 acres
Bill 1338

REPORT OF STANDING COMMITTEE

HB 1338, as engrossed: Government and Veterans Affairs Committee (Sen. Denver, 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.

FLOWAGE EASEMENTS

ADJACENT LANDOWNERS

Where private lands adjacent to OAHE USACE LAND

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.

100 SURVEYS

SURVEY

Excess Reservoir's lands (corp land) in SD have been transferred to SD agencies plus one hundred million dollar Federal Trust Fund for continued operations; so transfers of USACE land is feasible.

1. Emmons County adjacent landowners, are you in favor of transfer of USACE excess lands to the state of ND. Yes 76 No 15
2. In Emmons county: USACE surveyed the take line 3 times, are you satisfied with these survey marks? Yes 47 No 41
3. Are you or your family, previous landowners adjacent to corp land? Yes 71 No 25
4. Have you purchased land that is presently adjacent to USACE excess land? Yes 76 No 17
5. Are you in favorite of the State of ND returning USACE excess land in Emmons county be returned to adjacent landowners? Yes 94 No 2
6. Adjacent landowner: if you do not lease the excess land does the USACE allow you to trespass on their property although it is public land? Yes 38 No 35
7. If excess land were returned to adjacent landowners would you accept the cost & responsibility for title & ownership? Yes 91 No 3
8. The last 50 years has the corp improved the excess land that you lease or are adjacent too? Yes 2 No 87
9. If you lease excess land (take line 1617) what is your payment? This question is OPTIONAL, but would like to know total amount from the county. 4 39
10. If you received excess land would you practice good stewardship on this property? Would you work with local & state agencies to help improve the excess property? Comment Yes 93 No 2

11. Has the USACE been good stewards of the excess land?

Yes 6 No 88

12. The big question about public land: accessibility to the reservoir of which the corps does not recognize. Because of physical topography there are not many areas of public egress - ingress areas along the reservoir. What is your comment on this subject?

no definite answer

13. Please understand **FLOWAGE EASEMENTS** = the government has a perpetual right to over flow the land when necessary & no man made obstruction or structures are allowed on excess land. Is this acceptable?

*40 yes
61 no*

If you have other comments in relation to **Bill 1338 excess property**, please use this space.

*very mixed comments,
but majority were favorable*

ms/tp
fw 254012
#3B

County Auditor

1456
2/15/15



USDA Historic Aerial Photography

For more than half a century, the United States Department of Agriculture (USDA) has acquired high quality aerial photographs to support federal farm programs. Over the years, the USDA has photographed the vast majority of the nation and its territories at approximately seven-year intervals.

The USDA's Aerial Photography Field Office (APFO) is home to one of the country's largest aerial film libraries. We currently house more than 70,000 rolls of film. Our imagery dates from 1955 to the present, and is available at several different scales and in stereo. The APFO has a photographic wet lab, which allows us to print photos on site.

USDA historic photography can play a vital role in environmental assessments, change detection, past land use and property boundary disputes. Our photographs are frequently ordered by attorneys, universities, local governments and individuals.

USDA imagery is available to the general public at minimal cost. We can provide black and white, color infrared, or natural color prints depending on the original film type. Enlargements up to 38"x38" are available. We can also provide tiff scans which can be viewed on any computer. We are able to certify photos for use in court.

You can order this aerial imagery by contacting the APFO by phone, fax, mail or email. Please be prepared to provide an accurate description of the area you wish to be included in your photo; this can be a legal description, latitude and longitude, or a local map. All products are made to order and completion time may vary depending on existing workload. Please include your name, address and phone number with your inquiry.

Customer Service Section

Telephone: 801-844-2922

Fax: 801-956-3653

Email: apfo.sales@slc.usda.gov

USDA Farm Service Agency
Aerial Photography Field Office
2222 West 2300 South
Salt Lake City, UT 84119-2020

More information about our products and services is available on our website:
www.apfo.usda.gov

HTTP://WWW.FSA.USDA.GOV/FSA/APFOAPP?

Weber, Daniel - FSA, Linton, ND

From: Heinrich, Laura - FSA, Napoleon, ND
Sent: Tuesday, June 26, 2012 10:56 AM
To: Weber, Daniel - FSA, Linton, ND
Subject: FW: USDA Historical Aerial Photography
Attachments: USDA_APFO.pdf; How to download FREE NAIP CCMs.pdf

From: Cotter, Linda - FSA, Salt Lake City, UT
Sent: Monday, April 23, 2012 3:22 PM
To: Heinrich, Laura - FSA, Napoleon, ND
Subject: USDA Historical Aerial Photography



Dear Logan County Executive Director,

We would like to ask for your assistance in informing the public about the availability of historic aerial photography of your county.

The United States Department of Agriculture's Farm Service Agency has been collecting aerial photography of the United States for over half a century. These aerial photos were originally collected to support federal farm programs throughout the United States. This historic film is now stored at the USDA's Aerial Photography Field Office (APFO) in Salt Lake City, Utah.

USDA aerial photos are high resolution images taken during the growing season and clearly show features such as roads, buildings, vegetation, trees and waterways. Most of these projects covered entire counties over large parts of the U.S. at least once a decade.

The APFO believes that these historic photos would be of great interest to the general public. Because people seeking evidence of historic land use may inquire at their local FSA Service Center, we are conducting a Public Information Campaign to make the FSA Service Centers aware of the services we provide to the public.

The APFO is able to print or digitally scan these photos for public use. Our print photos and scans start as low as \$13.00 each. We can also certify our photos for use as evidence in court for a small fee.

According to our Aerial Imagery Catalog, we have the following years and types of imagery available for your county:

LOGAN - 38047 (BAD) Square Mile Land Area: 993

PROG	%COV	YEAR	RES BAND			QTY	REMARKS
			SCL	FILM	FMT		
NAIP10	100	2010	1	NC	MR	1	CCM .724GB
NAIP10		2010	1	M4B	GT	105	QQ 17.472GB
NAIP09	100	2009	1	NC	MR	1	CCM .730GB



How to download NAIP (2003-Present) Compressed County Mosaics (CCMs) from the USDA Data Gateway.

1. Go to <http://datagateway.nrcs.usda.gov/>. Note the System Status to determine whether the NAIP imagery is presently online or offline.
2. On the home page, click the green **Get Data** button
3. Input your state and county of interest and click **Submit Selected Counties**.
4. In the next window, scroll down until you reach the heading of **Ortho Imagery**
5. Place a check next to the year you want, and then press **Continue**.
6. Read the information, **FTP Download** is selected for you. Press **Continue**.
7. Enter contact information and then press **Continue**.
8. Review your order and press the **Place Order** button.
9. Within a few hours, you will receive an email with your ftp download link.

Notes: CCMs over 8 Gigabytes in size **cannot** be downloaded from the Data Gateway site. They may be ordered by emailing your name, address, phone number, year and county of interest to: apfo.sales@slc.usda.gov. There is a charge for this service. One- meter resolution four-band quarter-quads are also available.

Most CCMs are in MrSid format. A free viewer for this format type is available at:
<http://www.lizardtech.com/download/>

The MrSID format is not compatible with Macintosh computers.

The shapefile within County Compressed Mosaic zip file contains attributes such as the imagery acquisition date. The polygons in the shapefile will vary in area and shape depending on the source of the original imagery.

USDA Imagery from the 1980-2002 NHAP and NAPP projects are available from the USGS Earth Explorer website:

<http://edcsns17.cr.usgs.gov/NewEarthExplorer/>

jll 11/3/11

NAIP09		2009	1	M4B	GT	105	QQ	18.154GB
NAIP06	100	2006	2	NC	MR	1	CCM	.181GB
NAIP06		2006	2	NC	GT	105	QQ	3.287GB
NAIP06		2006	40000	CP				
NAIP05	100	2005	1	NC	MR	1	CCM	.724GB
NAIP05		2005	1	NC	GT	105	QQ	13.106GB
NAIP04	100	2004	2	NC	MR	1	CCM	.052GB
NAIP04		2004	2	NC	GT	105	QQ	3.254GB
NAIP04		2004	40000	CP				
NAIP03	100	2003	1	NC	MR	1	CCM	.242GB
NAIP03		2003	1	NC	GT	112	QQ	14.403GB
NAIP03		2003	40000	CP				
NAPP3	77	1997	40000	BW			100% WITH NAPP2	
NAPP2	23	1995	40000	BW			100% WITH NAPP3	
NAPP1	100	1990	40000	BW	SI	1	18703	
NHAP1	100	1984	60000	CIRP				
FSA	100	1980	40000	BW	PI	6	8081	
FSA	100	1968	20000	BW	PI	6	8080	
FSA	100	1960	20000	BW	PI	4	8079	

(P) = partial county coverage

Additional information about the APFO and available aerial imagery is available at:

www.apfo.usda.gov

Detailed information about ordering aerial imagery is available [here](#).

We would appreciate it if you would make the attached PDF file accessible to the general public who visit your office or your website. Please feel free to forward this information to any government agency that might be interested in informing the public about this service.

If you have any questions about this Public Information Campaign, you can contact me via email or at my direct line listed below.

Thank you,

Linda Cotter
 USDA Farm Service Agency
 Aerial Photography Field Office
 2222 West 2300 South
 Salt Lake City UT 84119-2020

Tel: 801-844-2922
 Fax: 801-956-3653

Email: apfo.sales@slc.usda.gov
 Website: <http://www.apfo.usda.gov>

4

#4

**TESTIMONY OF LANCE GAEBE
COMMISSIONER
North Dakota Department of Trust Lands**

OPPOSITION TO HOUSE BILL 1456

**HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
February 5, 2015**

Chairman Porter, and members of the House Energy and Natural Resources Committee, I am Lance Gaebe, I serve as the Secretary for the Board of University and School Lands (Land Board), and Commissioner of the Department of Trust Lands. I am here to testify in opposition to HB 1456.

The concepts and objectives outlined in this bill have been considered in several forms by the Legislature in recent sessions.

The 2013 legislature eventually converted a bill which initially required negotiations for the return of land to a formal study of options.

In its adoption of HB 1338, the 2013 Legislature directed the Land Board to:

"...study options to address 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 2013 Legislature appropriated \$50,000 for completion of the HB 1338 study. The Land Board contracted with Eide Bailly LLP to conduct the project which included several regional meetings, surveys, interviews and research of options.

In summary the Eide Bailly methodology included:

- A comprehensive review of previous legislative studies and testimony related to the issues, including 2013's HB 1338, 2011's HB 1466 and 2009's HB 1459.
- A study of the transfers that occurred in South Dakota under the Title VI land transfer and the Blunt Reservoir and Pierre Canal project.
- Multiple stakeholders were polled via a non-scientific survey
- Six regional meetings were hosted to gather additional stakeholder and user input
- Interviews of North and South Dakota state agencies
- Interviews with USACE officials in both states

The report including multiple options with steps and costs related to those options, was completed last fall. It was formally submitted to Legislative Management on September 23, 2014 and presented to the Water Topics Committee on October 1, 2014.

The study was extensive in its research and detailed in its results. The review clearly found that all proposed options to transfer land to either the state or to private landowners would require congressional action. Thus, it will be difficult for the Land Board to implement the tasks outlined HB 1456 because:

- 1) The United States Army Corps of Engineers has not been provided with the Congressional authority to dispose of, or liquidate the land
- 2) The Bill uses the term "excess lands" to describe the property. This has a widely varied meaning to different interest groups and agencies.
The U.S. Army Corps of Engineers does not consider any land around the reservoirs as excess for the project purposes.
- 3) Most historic and adjoining landowners prefer that land be transferred to private ownership, not from one government entity to another.
- 4) The Land Board's costs to negotiate are unknown and not appropriated.
- 5) The state's 'leverage' in potential negotiations is unclear.
- 6) The costs to manage the land if the State becomes the owner are not considered or available.

The study completed by Eide Bailly LLP as a result of HB 1338 directed by the State Legislature discusses seven options in detail. An abbreviated side-by-side comparison of the options is attached to this testimony, as is the summary of the extensive report the Mr. Jim Hauge of Eide Bailly presented to the interim Water Topics on October 1, 2014.

I respectfully request a "do not pass" on HB 1338.

Options—Side by Side comparison.

Brief Option Description:	Option 1	Option 2	Option 3	Option 4	Option 5	Option 6	Option 7
	Status Quo	Return to original owners	Return to State of ND, state manages	Return to State of ND & Tribes, each manage their own land.	Return to State of ND & Tribes. Tribes, local gov, & state manages	USACE retains ownership but turns over management to tribes, state, & local gov.	Transfer land to ND and ND transfers land to preferential lease holders.
1 What would it take to make each option happen?	NA	Act of Congress	Act of Congress	Act of Congress	Act of Congress	Tribes, state, or local gov. would need to seek a lease from the USACE.	Act of Congress
2 Other related factors related to each different option.	Nothing changes	Federal Government typically doesn't sell land to private individuals.	It takes an act of Congress and there is no ground swell support behind this. The tribes may not support this.	It takes an act of Congress and there is no ground swell support behind this. The tribes may or may not support this.	It takes an act of Congress and there is no ground swell support behind this. The tribes, local governments, and special interest groups may or may not support this.	This potentially can happen with state, tribal, and/or local governments petitioning the USACE for a lease arrangement.	Federal Government typically doesn't sell land to private individuals. There are deed restrictions under Title VI in SD.
3 With each option, who would be the ultimate owner of the land?	USACE	Original owners or their heirs.	State of ND	State of ND & the tribes	State of ND & the tribes	USACE retains ownership	Preferential lease holders.
4 With each option, who would manage the land?	USACE & present lease holders	Original owners or their heirs.	State of ND	State of ND & the tribes	State of ND, the tribes, or a local governmental agency.	State of ND, the tribes, local government, or the USACE.	Preferential lease holders.
5 Will there be a net loss of public lands?	No	Yes	No	Yes & No, tribal land or BIA controlled land is not necessarily public lands.	Yes & No, tribal land or BIA controlled land is not necessarily public lands.	No	Yes
6 Can the zoned use of these lands be changed?	No	Maybe, depends on Congress and what the act says.	Maybe, depends on Congress and what the act says. SD was not able to change the stated use under Title VI.	Maybe, depends on Congress and what the act says. SD was not able to change the stated use under Title VI.	Maybe, depends on Congress and what the act says. SD was not able to change the stated use under Title VI.	No	Maybe, depends on Congress and what the act says.
7 Will these lands need to be re-surveyed?	NA	Maybe, depends if the ND Legislature passes a law to allow an elevation as a boundary.	Maybe, depends if the ND Legislature passes a law to allow an elevation as a boundary.	Maybe, depends if the ND Legislature passes a law to allow an elevation as a boundary.	Maybe, depends if the ND Legislature passes a law to allow an elevation as a boundary.	NA	Maybe, depends if the ND Legislature passes a law to allow an elevation as a boundary.
8 If these lands don't need to be resurveyed, what is the cost to the state of ND?	NA	Low, most of the closing costs are picked up by the new landowner or the Federal Government. The state would probably have administration costs during the transfer.	High, the state would have administration costs during the transfer and maintenance & operating costs after the transfer.	High, the state would have administration costs during the transfer and maintenance & operating costs after the transfer. The costs would be less because the tribes would be responsible for their own management.	High, the state would have administration costs during the transfer and maintenance & operating costs after the transfer. The state may need to support local government entities with weed control and recreation areas. Tribes would have their own costs.	Medium, the state, tribes, and local governments may pick and chose which lands they want to lease and manage. The state may need to support local governmental entities with weed control and the recreational areas.	Low, most of the closing costs are picked up by the new landowner or the Federal Government. The state would probably have administration costs during the transfer.
9 Will there be more public recreational opportunities?	No, it will be the same.	Maybe with a public access easement. Otherwise, probably no extra campgrounds, state parks, etc.	Maybe, if the state revitalizes some of the existing campgrounds and parks that the USACE is presently managing.	Maybe, if the state revitalizes some of the existing campgrounds and parks that the USACE is presently managing. Tribes would manage their own, it is unknown what they would do.	Maybe, if the state revitalizes some of the existing campgrounds and parks that the USACE is presently managing. Local governments may encourage extra opportunities. Tribes would manage their own, it is unknown what they would do.	Possibly, if local governmental entities and the state had an extra push for more recreational opportunities.	Maybe with a public access easement. Otherwise, probably no extra campgrounds, state parks, etc.
10 Will public access be enhanced?	No, it will be the same.	Maybe with a public access easement.	Probably, as it appears it was improved in SD under Title VI.	Maybe, as it appears it was improved in SD under Title VI. Tribes would manage their own, it is uncertain what they would do.	Possibly, with more local control and it appears it improved in SD under Title VI. Tribes would manage their own, it is uncertain what they would do.	Possibly, if local governmental entities and the state had an extra push for more public access opportunities. It would also depend on how much land the state, local governments, or the tribes would be interested in leasing.	Maybe with a public access easement.
11 Will noxious weed control improve?	Probably not, the USACE has lost its flexibility to move dollars around from one area to another. It has a hard time budgeting for changing lake levels.	More than likely on their own land but the USACE will still be responsible on the elevations below 1854' and 1620'.	Probably on the state's land but the USACE will still be responsible on the elevations below 1854' and 1620'.	Probably on the state's land but the USACE will still be responsible on the elevations below 1854' and 1620'. It is unknown if the tribes will have the budget for weed control on their land.	More than likely, with local control will improve on the state's land but the USACE will still be responsible on the elevations below 1854' and 1620'. It is unknown if the tribes will have the budget for weed control on their land.	More than likely, with local control will improve on the state's land but the USACE will still be responsible on the elevations below 1854' and 1620'. It is unknown if the tribes will have the budget for weed control on their land.	More than likely on their own land but the USACE will still be responsible on the elevations below 1854' and 1620'.
12 Would the present leaseholders, such as the NDCG, NDPR, and the Morton County Park Board, be able to keep their present leases?	Yes	Probably not.	Yes	Yes	Yes	Yes	Yes, they would all be preferential lease holders.

W

Report to the Legislative Water Topics Committee 10-1-14

Summary

The passage of HB 1338 directed the State Board of University and School Lands to conduct a study of the United States Army Corps of Engineers (USACE) held lands around Lake Sakakawea and around Lake Oahe to address the concerns of adjacent landowners. The major impetus of the study was to develop different options for the Legislature concerning noxious weed control, public access to these lands, and to look into the possibility of transferring these lands away from the USACE to a different entity or individuals along with those associated costs of transferring and maintenance. It also was to include consideration for the interests of the ND Indian Tribes.

This study resulted from the 2013 House Bill 1338 directing the Board of University and School Lands to study options to address the concerns of landowners adjacent to the United States Army Corps of Engineers (USACE) lands surrounding Lake Sakakawea and Lake Oahe in North Dakota (ND).

The scope of work involves determining different options for the Legislature relating to the USACE lands surrounding Lake Sakakawea and Lake Oahe. The particular concerns are noxious weeds growing on USACE lands, continued public recreation access to these lands, and the possibility of transferring these lands back to Tribal governments and the State of North Dakota (ND) or adjacent/original landowners. While this conversation may have started with the USACE's lack of control of noxious weeds, a major part of this study is the transfer of USACE excess land and who should be the final benefactor/owner of the land. The study also includes consideration for the interests of the North Dakota Indian Tribes. There are diverse opinions on what the final outcome should be. For purposes of this study, excess lands are defined as USACE lands from the take line to the 1854' elevation around Lake Sakakawea and to the 1620' elevation around Lake Oahe.

The methodology used was to review the previous work that had been done, to gather public input to explore various options that might be available or feasible, and to conduct personal interviews with various stakeholders and governmental agencies' personnel. To gather this input, we used a combination of a mail survey, local public meetings, follow up telephone interviews, and a final public meeting in Bismarck. This information has been compiled to formulate different options for the final report. Estimated costs were secured from different governmental agencies for the various option implementations.

The review of information section should give the reader an accurate picture of what was done in South Dakota (SD), how it transpired, and how that has worked out for their state. It should also give accurate information on how the Payment in Lieu of Taxes (PILT) and the Sec. 7 of the 1941 Flood Act payments work.

This study is to give the Legislature different options concerning these lands. Option One is status quo or no change. The study is to address the concerns of the adjacent landowners to these lands. One major concern is weed control. Most adjacent landowners felt if they were the landowners, they would do a better job of weed control than the United States Army Corps of Engineers (USACE). Therefore Option Two was created showing the transfer of these lands back to the original landowners or their heirs. Option Three transfers the land from the USACE to the State of ND and the state manages the transferred land. Options Four and Five had

similar features with land being transferred back to the State of ND and the two adjacent Indian Tribes, showing different management options for those lands. Options Six and Seven came from the input at two of the regional public meetings. With Option Six the USACE retains the ownership of these lands but some of the management is turned over to local, state, or tribal agencies. The impetus behind this option is the lands would be better managed with more local control. Option Seven is a direct transfer back to preferential lease holders. Grazing lease holders, North Dakota Game and Fish (NDGF), Morton County Parks and Recreation Board, and North Dakota Parks and Recreation (NDPR) would be examples of preferential lease holders. For your reference, there is a side by side option comparison under the options tab.

House Bill 1338

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

HOUSE BILL NO. 1338

(Representatives Brandenburg, Froseth, Heller, Kasper, Kreidt, Kretschmar, Rohr, Schmidt, Onstad)

(Senators Schaible, Unruh, Warner)

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.

The 2013 HB 1338 directed the State Board of University and School Lands to conduct a study:

- This study is to give the Legislature options regarding USACE lands around Lake Sakakawea above 1854' and Lake Oahe above the 1620' elevations.
- This study was to address:
 - Noxious weed control
 - Public access to these lands
 - Costs for each option
 - Was to include consideration for the interests of the ND Indian Tribes.
 - Review previous work, including the 2013 HB 1338, 2009 HB 1459, and what had been done in SD under the Title VI land transfer and the Blunt Reservoir and Pierre Canal project.
- These issues have had a history of diverse opinions on what can be or should be done to address these issues.
- Some of these same issues have come up in previous legislative sessions.
- Eide Bailly LLP was awarded this study in January of this year.

Methodology

- Review previous work, including 2013 HB 1338, 2009 HB 1459, and what had been done in SD under the Title VI land transfer and the Blunt Reservoir and Pierre Canal project.
- Send out a non-scientific study to various stakeholders to gather information.
- Scheduled five regional public meetings and one general public meeting in Bismarck to secure additional stakeholder information.
- Conduct interviews with various stakeholders, ND officials/agencies, SD officials, and USACE officials to gather additional information.
- Compile and formulate this information into options along with cost estimates for each option.

Misconceptions or misinformation

1. Survey costs

- Survey costs are often cited as an impediment to land transfers.
- In SD, no surveying was done under Title VI.
- The SD legislature passed a provision to allow elevation to be used as a legal boundary.
 - Title was passed using a quick claim deed.
- Survey costs could run from \$3,500 to 5,000 per lineal mile, using modern surveying technology.
 - There could possibly be some economies in size in a large project.

2. Weed control below 1854' and 1620'

- USACE is still responsible for noxious weed control below the 1854' and 1620' elevations, if the excess lands are transferred back to the Tribal governments, the state, and/or individuals.
- Most of the weed problem is below the high water mark.

- The noxious weed problem is a larger issue during the low water years and more so at the upper end of the dams, especially when the lake is back in the river channel.
- USACE has lost their flexibility move budget funds from one area to another, during low water years when the noxious weeds are a bigger problem.
- USACE works with the local county weed boards and independent contractors.
 - USACE at Lake Sakakawea created a noxious weed task force over 10 years, for advising on noxious weed control, primarily Salt Cedar.
- The state or county has no noxious weed control jurisdiction over USACE.

3. Grazing

- According to the USACE, it has some flexibility in different grazing options including early turnouts.
- Grazing is handled differently between the two lakes.
- Grazing is not an authorized use, only an interim use.
 - Grazing is usually used in conjunction with wildlife management.
 - The USACE lease is 23 pages.

4. Public access

- Stricter use of the zoning has been implemented.
 - There is less public access than in the past.
 - Primarily because of
 - The endangered species laws and the cultural resources laws.
 - New generation of off road vehicles.
- This appears to be less of an issue in SD, under SDGFP management.
- Lake Sakakawea lands are still open to walk in access.

5. 1999 Title VI (CRST, LBST, and State of SD Terrestrial Wildlife Habitat Restoration Act)

- Involved the Oahe, Big Bend, Fort Randall, and Gavin's Point projects in SD.
- In SD, all the lands above 1620' around Lake Oahe were transferred back to SD or the adjoining tribes except those lands required for dam management and the Lake Oahe lands adjoining the Standing Rock reservation.
- In SD, the lands were transferred back to SDGFP, an agency with a dual mission.
- A \$180 million trust fund went along with this for perpetual management.
 - \$108 million to SD
 - \$72 million to the tribes, held in trust with BIA
- Title VI was accomplished when Tom Daschle was Senate Majority Leader and the federal government had a balanced budget.
- The Lake Oahe portion was offered to ND and to Standing Rock at the same time, they both opted out.
- Title VI came under the authority of the 1959 Fish and Wildlife Coordination Act
 - Lake Sakakawea was completed before this act, therefore only Lake Oahe in ND would have qualified.
- Title VI lands are perpetually zoned for only recreation and wildlife use.

6. SDGFP management

- SDGFP has a dual mission of both recreation and wildlife.
- They use the income from the \$108 million trust fund to help manage these lands.
- Numerous park and lake access areas have been added or upgraded.
- SDGFP has a 25 year lease with the USACE, from the water's edge to the 1620' elevation.
 - SDGFP's manages all the grazing leases and all the easements, including below the 1620' elevation.
 - USACE is still responsible for weed control below 1620'.
 - USACE has management responsibilities for cultural resources and endangered species below 1620'.
- The game and fish side of the agency manages about 100 grazing leases around Lake Oahe.
 - They meet with each tenant every year.
 - The SDGFP grazing lease is 2 pages long versus the USACE 23 page lease.
 - SDGFP has fewer grazing restrictions than the USACE.
- SDGFP needs to follow all federal applicable laws in the management of these lands.

7. Blunt Canal project (Pierre Canal and Blunt Reservoir project)

- The Blunt Canal project was authorized with the construction of Lake Oahe to supply irrigation to central SD.
 - This project was started but was stopped in the 1980's after farmers petitioned to have it stopped because the soil types were not conducive to irrigation.
- A compromise bill was written for Congress to de-authorize this project along with an appropriation to handle the transfer costs.
- The taken lands that had been disturbed with the project's construction were transferred to the SDGFP's.
- The undisturbed taken lands that were being leased to the original landowners, were sold back to the preferential leaseholders.
 - The preferential lease holders were the original landowners who were leasing the lands from the USACE.
- A new archeological study was required before any of these lands could be transferred back to the preferential lease holders and the SDGFP.

8. PILT (Payment In Lieu of Taxes) and Sec 7 payments (Section 7 of the 1941 Flood Control Act).

- PILT payments go directly to the counties for taken lands.
 - The PILT payments are for all taken lands, including the inundated land under the lakes.
 - If the lands above 1854' and 1620' were transferred from the federal government, the PILT payments would only stop on those lands above those elevations.
 - The majority of the PILT payments come from lands below the 1854' and 1620' elevations.

- Sec 7 payments are 75% of the lease revenue collected by USACE on lands, such as grazing leases.
 - These payments are made directly to the state which in turn reimburses each county for their pro rata share.
 - These payments would stop, if the land above 1854' and 1620' was transferred from the USACE to another entity or individual.
- To summarize the PILT and Sec 7 payments, if the lands above 1854' and 1620' were transferred back to the State of ND, a Tribal government, or an individual; then:
 - A small portion of the PILT payments would stop above the 1854' and 1620' elevations.
 - The majority of the PILT payments would continue on the land below the 1854' and 1620' elevations.
 - All the Sec. 7 payments would stop.
 - The new owner would collect 100% of the lease payments versus the county collecting 75% of the lease payments under Sec. 7.

9. Public lands (2009 information)

- ND ranks 12th in the country with 3.38 acres of public land per capita.
- The top 10 states per capita are mountain states and Alaska.
- SD ranks 11th and is the only other Great Plains state ahead of ND.

Options:

1. Status Quo

- With this option nothing changes. There are various special interest groups that have indicated they are satisfied with the present situation and generally are not concerned about weed control or restricted public access.

2. Return to original owners

- One major concern is weed control. Most adjacent landowners felt if they were the landowners, they would do a better job of weed control than the USACE.
- Option Two was created showing the transfer of these lands back to the original landowners or their heirs.

3. Return to State of ND and the state manages the land

- Option Three transfers the land from the USACE to the State of ND and the state manages the transferred land.
- The state would bear the costs of managing these lands.

4. Return to the State of ND and the adjoining tribes, each manage their own land.

- Options Four and Five had similar features with land being transferred back to the State of ND and the two adjacent Indian Tribes, showing different management options for those lands.
- Under each option either the state or the tribal government would bear the management costs.

5. **Return to the State of ND and the adjoining tribes. The state, tribal government or a local government manages the land.**
6. **USACE retains ownership but the state, tribal government, or a local government manages selected portions of the land, while the USACE manages the balance of the land.**
 - Options Six and Seven came from the input at two of the regional public meetings.
 - With Option Six the USACE retains the ownership of these lands but some of the management is turned over to local, state, or tribal agencies.
 - The impetus behind this option is the lands would be better managed with more local control.
 - Different agencies or government entities would choose which parcel they were interested in managing, then petition the USACE to take over the management for that parcel.
7. **These lands are transferred back to the State of ND and the state transfers these lands to preferential lease holders.**
 - Option Seven is a direct transfer back to preferential lease holders, via the State of ND. Grazing lease holders, North Dakota Game and Fish (NDGF), Morton County Parks and Recreation Board, and North Dakota Parks and Recreation (NDPR) would be examples of preferential lease holders.
 - Some stakeholders fear that any transfer back to the state would be a conduit to transfer back to private individuals.
 - They are against any transfer back to individuals or in some cases the tribes.

Please see the attached "Options—side by side comparison" spread sheet.

2/5/15

#5

1456

TESTIMONY ON HOUSE BILL NO. 1456

House Energy and Natural Resources Committee

**Bruce Engelhardt, Director of Water Development
North Dakota State Water Commission/Office of the State Engineer**

February 5, 2015

Mr. Chairman and members of the House Energy and Natural Resources Committee, my name is Bruce Engelhardt. I am the Director of Water Development for the State Water Commission. I am here today representing the State Water Commission and Office of the State Engineer to provide information regarding House Bill 1456.

The elevations referred to in House Bill No. 1456 are the maximum operating pool, which corresponds to the top of the gates on the emergency spillways at Lake Sakakawea (1854 ft.) and the maximum normal operating pool (1617 ft.) at Lake Oahe. An elevation of 1620 feet at Lake Oahe would correspond to the 1854 feet elevation at Lake Sakakawea. 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 the Corps has been doing with the surplus water agreements. The noxious weed problem would also remain as most of the noxious weeds occur below the base of the flood control pool.

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. As a result, negotiations for transfer based on a single elevation may not be possible.

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 the Corps has 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.

2/5/15
1456

#6

**HOUSE ENERGY AND NATURAL
RESOURCES COMMITTEE
FEBRUARY 5, 2015
HB 1456**

Good afternoon Chairman Porter and members of the House Energy and Natural Resources Committee:

For the record; Mike McEnroe from Bismarck; retired biologist, landowner, duck hunter, and running un attached this year.

We seem to deal with this bill or several like it every session. I am opposed to HB 1456 and support the Board of University and School Lands testimony, and generally agree with the conclusions reached in the legislative study conducted by Eide-Bailly.

This bill gives the Trust Land Department an impossible task.

There are no "excess" lands. There are lands people want back; there are lands that were not flooded in 2011. But there has been no change in the 1944 Flood Control Act or the legislated purposes for Garrison and Oahe Dams and Reservoirs. These purposes; flood control, navigation, municipal water supply, navigation, irrigation, fish and wildlife, and recreation are all still authorized project purposes.

There is or has been no federal legislation authorizing the U.S. Army Corps of Engineers to negotiate or return lands. Without Congressional action, the Corps can do nothing.

I would like to address one issue that won't make me popular; the issue of "unjust taking" or illegal taking" of these lands. There was no illegal taking of land. It may have been and still is opposed by the affected landowners. It was and still is unpopular, but it was not illegal. The Garrison and Oahe projects were authorized by the U. S. Congress. They were funded with Congressionally authorized funds. The condemnation settlements were decided by the courts. The projects were constructed with the full support of every level of State government. They were not illegal.

Thank you for the opportunity to comment on this bill. I would stand for any questions from the Committee.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1456

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "54-01-29" insert "and 54-01-29.1"

Page 1, after line 16, insert:

"SECTION 2. Section 54-01-29.1 of the North Dakota Century Code is created and enacted as follows:

"54-01-29.1. Federal legislation encouraged to return lands and mineral rights to the state of North Dakota.

Uplands of the Oahe Reservoir in Emmons and Morton Counties in North Dakota above the elevation of 1,620 feet are defined as access lands to the operation of the Oahe Dam. The North Dakota legislative assembly encourages Congress to pass federal legislation to return those lands and mineral rights to the state of North Dakota and the North Dakota legislative assembly encourages the governor of North Dakota to work with the North Dakota Congressional delegation and Congress to secure enactment of necessary federal legislation."

Renumber accordingly

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
SEN. DON SCHAIBLE, CHAIR

March 26, 2015

Attachment 1

TESTIMONY ON HB 1456
REP. JIM SCHMIDT
DISTRICT 31

2009 legislative session: HB1459 that dealt with transferring the excess lands above 1620' around Lake Oahe only. Was amended into a study regarding USACE weed control programs. Study was approved and conducted.

2011 legislative session: HB1466 that included Lake Oahe and Lake Sakakawea identified that should USACE return excess lands, the North Dakota Board of University and School Lands would accept the lands.

2013 legislative session: HB1338 directed governor to negotiate with the USACE return of excess lands above 1620' in Lake Oahe and around Lake Sakakawea above 1854. Was amended to a study of the possible options in dealing with these lands.

The study was directed by North Dakota Board of University and School Lands and the impetus for HB1456.

2015 legislative session: HB1456 was first drafted to include Lake Oahe and Lake Sakakawea with mention of tribal processes. House Energy and Natural Resources Committee removed reference to Lake Sakakawea and tribal processes and passed the amended version 13-0. It passed the House 91-2.

Lake Oahe has been the focus because it has had precedence in that the federal government transferred lands above 1620' classified as excess to the State of South Dakota. South Dakota also received a \$108 million trust fund to manage the 79,319 acres that were transferred. The transfer took place through Congressional legislation, Title VI. The transfer started in 1999 and was complete in 2007 via a Quitclaim Deed.

Lake Sakakawea does not have such precedence.

Lake Oahe proposed transfer, while later in time, is parallel with Standing Rock Sioux Tribe's efforts to obtain excess lands. That was initiated in a government-to-government relationship. Standing Rock Sioux Tribal Chairman and Tribal attorney were involved in this process and stated to Rep. Brandenburg and me they take no opposition.

Lake Oahe excess acres are substantially less than Lake Sakakawea. The study identifies, from USCAE data, Lake Oahe federal lands in North Dakota as 94,000 acres of which 7,656 acres (8.1%) are considered excess---above 1620'. I believe NDGF may have a different acreage but this is the USCAE according to the study.

Lake Sakakawea federal lands total 455,621 acres of which 70,666 acres (15.5%) are considered excess---above 1854'.

For comparison of federal land ownership:

Texas—1.8%---3 million acres

Oklahoma---1.6%---700,000 acres

Kansas---0.6%---300,000 acres

Nebraska---1.1%---550,000 acres

South Dakota---5.4%---2.6 million acres

North Dakota---3.9%---1.7 million acres

From the study: North Dakota's public land per capita is 12th in the Nation at approximately 3.38 acres per capita. South Dakota is 11th at 4.51 acres per capita.

Honorable Chairman Schaible and other Honorable Members of the Committee:

My name is Herbert Grenz. I live in Emmons County on the East side of the Oahe Reservoir, about two miles south of the mouth of the Cannon Ball River.

I have been a resident at this location, now known as J.T. Ranch, most of my life. The Ranch was involved with the Corp for nearly 8 years, "land taken for the Oahe Reservoir".

I am one of the few survivors that had the experience of direct negotiations with the Corp. Military Service and graduating with a composite major in government social studies and history, I became hardened right away with front line Corps. "Government in action". "Hello!! We are from the government, we come to help - - take your land & destroy it so someone else's land won't be destroyed. Eminent Domain (willing buyer – willing seller) - - the willing buyer set the rules and the willing seller's only other option was to go to court, pay all the expenses, and then the forced seller had the option to reinvest in similar property or pay a 45% capital gains tax in one year.

The eleven counties involved with the reservoirs in this state - - there are so many geography & physical geography differences & needs - - need to be addressed. A simple example is the deep part of the lake – vs – the shallow part of the lake that becomes a slough – weeds, blowing sand storms, insect infestation etc; and the many Corps restrictions to accommodate or resolve problems.

The Corps policies lack input from State, County, local & adjacent landowners & come dangerously close in controlling private property rights thought regulations. Maybe all agencies will learn that proactive management is better than reactive management.

Example: Excess Corps land in Emmons County held in an INTERIM Category – meaning – of the time between; for the time being; during the time between; meanwhile. This has been going on for over 60 years - - the time has come for a find resolution.

3-26-15
HB 1456
Attachment 2

**House bill 1338 Reservoirs Excess Land
Oahe Reservoir N.D.**

Excess reservoir Land in Emmons County N.D.
Lands lying above Lake Elevation 1620 to USACE survey markers.
4931, 34 acres
Bill 1338

REPORT OF STANDING COMMITTEE

HB 1338, as engrossed: Government and Veterans Affairs Committee (Sen. Denver, 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.

FLOWAGE EASEMENTS

ADJACENT LANDOWNERS

Where private lands adjacent to OAHE USACE LAND

May 2, 2014

Dear interested Stake Holders:

RE: Mail survey dealing with USACE excess lands bordering Lake Oahe in Emmons County:

The Emmons County Commissioners have authorized a study around the issue of the USACE taking excess lands in Emmons county bordering Lake Oahe in N.D. The purpose of the study is to give adjacent landowners the opportunity to express their concerns with excess acreage lying above elevation 1620 to "corps take line" regarding USACE practices & regulations.

During the Eide Baily meeting 03/06/14 in Linton ND, the consensus of those present; that this is a county concern and all parties involved shall define the excess land issues in their county. In N.D. there are eleven counties involved in two different bodies of water, each individual county is in a better position to acknowledge the needs in their county.

A county is a legal entity. The local consensus is - it is time to listen to local government policies from the bottom up, rather than policies from the top down.

We are sending a survey to each adjacent landowner to fill out. This is an important survey for your concerns to be heard to help formulate the report to the N. D. legislator.

701-782-4293

ACTING CHAIRMAN

are adjacent landowners bordering
Oahe Reservoir in Emmons County, N.D.

Please sign the introduction page for land verification ownership. Do not sign survey pages. Return as soon as possible before 05/31/14. Any questions please call.

SURVEY

Excess Reservoir's lands (corp land) in SD have been transferred to SD agencies plus one hundred million dollar Federal Trust Fund for continued operations; so transfers of USACE land is feasible.

- 1. Emmons County adjacent landowners, are you in favor of transfer of USACE excess lands to the state of ND. Yes 76 No 15
- 2. In Emmons county: USACE surveyed the take line 3 times, are you satisfied with these survey marks? Yes 47 No 41
- 3. Are you or your family, previous landowners adjacent to corp land? Yes 71 No 25
- 4. Have you purchased land that is presently adjacent to USACE excess land? Yes 76 No 17
- 5. Are you in favorite of the State of ND returning USACE excess land in Emmons county be returned to adjacent landowners? Yes 94 No 2
- 6. Adjacent landowner: if you do not lease the excess land does the USACE allow you to trespass on their property although it is public land? Yes 38 No 35
- 7. If excess land were returned to adjacent landowners would you accept the cost & responsibility for title & ownership? Yes 91 No 3
- 8. The last 50 years has the corp improved the excess land that you lease or are adjacent too? Yes 2 No 87
- 9. If you lease excess land (take line 1617) what is your payment? This question is OPTIONAL, but would like to know total amount from the county. 7 39
- 10. If you received excess land would you practice good stewardship on this property? Would you work with local & state agencies to help improve the excess property? Comment Yes 93 No 2

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.

11. Has the USACE been good stewards of the excess land?

Yes 6 No 88

12. The big question about public land: accessibility to the reservoir of which the corps does not recognize. Because of physical topography there are not many areas of public egress - ingress areas along the reservoir. What is your comment on this subject?

no definite answer

13. Please understand **FLOWAGE EASEMENTS** = the government has a perpetual right to over flow the land when necessary & no man made obstruction or structures are allowed on excess land. Is this acceptable?

*40 yes
61 no*

If you have other comments in relation to **Bill 1338 excess property**, please use this space.

*very mixed comments,
but majority were favorable*



1-4 15/012
County Auditor

USDA Historic Aerial Photography

For more than half a century, the United States Department of Agriculture (USDA) has acquired high quality aerial photographs to support federal farm programs. Over the years, the USDA has photographed the vast majority of the nation and its territories at approximately seven-year intervals.

The USDA's Aerial Photography Field Office (APFO) is home to one of the country's largest aerial film libraries. We currently house more than 70,000 rolls of film. Our imagery dates from 1955 to the present, and is available at several different scales and in stereo. The APFO has a photographic wet lab, which allows us to print photos on site.

USDA historic photography can play a vital role in environmental assessments, change detection, past land use and property boundary disputes. Our photographs are frequently ordered by attorneys, universities, local governments and individuals.

USDA imagery is available to the general public at minimal cost. We can provide black and white, color infrared, or natural color prints depending on the original film type. Enlargements up to 38"x38" are available. We can also provide tiff scans which can be viewed on any computer. We are able to certify photos for use in court.

You can order this aerial imagery by contacting the APFO by phone, fax, mail or email. Please be prepared to provide an accurate description of the area you wish to be included in your photo; this can be a legal description, latitude and longitude, or a local map. All products are made to order and completion time may vary depending on existing workload. Please include your name, address and phone number with your inquiry.

Customer Service Section

Telephone: 801-844-2922

Fax: 801-956-3653

Email: apfo.sales@slc.usda.gov

USDA Farm Service Agency
Aerial Photography Field Office
2222 West 2300 South
Salt Lake City, UT 84119-2020

More information about our products and services is available on our website:
www.apfo.usda.gov

HTTP://WWW.FSA.USDA.GOV/FSA/APFOAPP?

-7-

1955 present Day

2.7

Weber, Daniel - FSA, Linton, ND

From: Heinrich, Laura - FSA, Napoleon, ND
Sent: Tuesday, June 26, 2012 10:56 AM
To: Weber, Daniel - FSA, Linton, ND
Subject: FW: USDA Historical Aerial Photography
Attachments: USDA_APFO.pdf; How to download FREE NAIP CCMs.pdf

From: Cotter, Linda - FSA, Salt Lake City, UT
Sent: Monday, April 23, 2012 3:22 PM
To: Heinrich, Laura - FSA, Napoleon, ND
Subject: USDA Historical Aerial Photography



Dear Logan County Executive Director,

We would like to ask for your assistance in informing the public about the availability of historic aerial photography of your county.

The United States Department of Agriculture's Farm Service Agency has been collecting aerial photography of the United States for over half a century. These aerial photos were originally collected to support federal farm programs throughout the United States. This historic film is now stored at the USDA's Aerial Photography Field Office (APFO) in Salt Lake City, Utah.

USDA aerial photos are high resolution images taken during the growing season and clearly show features such as roads, buildings, vegetation, trees and waterways. Most of these projects covered entire counties over large parts of the U.S. at least once a decade.

The APFO believes that these historic photos would be of great interest to the general public. Because people seeking evidence of historic land use may inquire at their local FSA Service Center, we are conducting a Public Information Campaign to make the FSA Service Centers aware of the services we provide to the public.

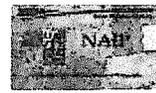
The APFO is able to print or digitally scan these photos for public use. Our print photos and scans start as low as \$13.00 each. We can also certify our photos for use as evidence in court for a small fee.

According to our Aerial Imagery Catalog, we have the following years and types of imagery available for your county:

LOGAN - 38047 (BAD) Square Mile Land Area: 993

PROG	%COV	YEAR	RES BAND			QTY	REMARKS
			SCL	FILM	FMT		
NAIP10	100	2010	1	NC	MR	1	CCM .724GB
NAIP10		2010	1	M4B	GT	105	QQ 17.472GB
NAIP09	100	2009	1	NC	MR	1	CCM .730GB

2.8



How to download NAIP (2003-Present) Compressed County Mosaics (CCMs) from the USDA Data Gateway.

1. Go to <http://datagateway.nrcs.usda.gov/>. Note the System Status to determine whether the NAIP imagery is presently online or offline.
2. On the home page, click the green **Get Data** button
3. Input your state and county of interest and click **Submit Selected Counties**.
4. In the next window, scroll down until you reach the heading of **Ortho Imagery**
5. Place a check next to the year you want, and then press **Continue**.
6. Read the information, **FTP Download** is selected for you. Press **Continue**.
7. Enter contact information and then press **Continue**.
8. Review your order and press the **Place Order** button.
9. Within a few hours, you will receive an email with your ftp download link.

Notes: CCMs over 8 Gigabytes in size **cannot** be downloaded from the Data Gateway site. They may be ordered by emailing your name, address, phone number, year and county of interest to: apfo.sales@slc.usda.gov. There is a charge for this service. One-meter resolution four-band quarter-quads are also available.

Most CCMs are in MrSid format. A free viewer for this format type is available at:
<http://www.lizardtech.com/download/>

The MrSID format is not compatible with Macintosh computers.

The shapefile within County Compressed Mosaic zip file contains attributes such as the imagery acquisition date. The polygons in the shapefile will vary in area and shape depending on the source of the original imagery.

USDA Imagery from the 1980-2002 NHAP and NAPP projects are available from the USGS Earth Explorer website:

<http://edcns17.cr.usgs.gov/NewEarthExplorer/>

jll 11/3/11

8

2.9

NAIP09		2009	1	M4B	GT	105	QQ	18.154GB
NAIP06	100	2006	2	NC	MR	1	CCM	.181GB
NAIP06		2006	2	NC	GT	105	QQ	3.287GB
NAIP06		2006	40000	CP				
NAIP05	100	2005	1	NC	MR	1	CCM	.724GB
NAIP05		2005	1	NC	GT	105	QQ	13.106GB
NAIP04	100	2004	2	NC	MR	1	CCM	.052GB
NAIP04		2004	2	NC	GT	105	QQ	3.254GB
NAIP04		2004	40000	CP				
NAIP03	100	2003	1	NC	MR	1	CCM	.242GB
NAIP03		2003	1	NC	GT	112	QQ	14.403GB
NAIP03		2003	40000	CP				
NAPP3	77	1997	40000	BW			100% WITH NAPP2	
NAPP2	23	1995	40000	BW			100% WITH NAPP3	
NAPP1	100	1990	40000	BW	SI	1	18703	
NHAP1	100	1984	60000	CIRP				
FSA	100	1980	40000	BW	PI	6	8081	
FSA	100	1968	20000	BW	PI	6	8080	
FSA	100	1960	20000	BW	PI	4	8079	

(P) = partial county coverage

Additional information about the APFO and available aerial imagery is available at:

www.apfo.usda.gov

Detailed information about ordering aerial imagery is available [here](#).

We would appreciate it if you would make the attached PDF file accessible to the general public who visit your office or your website. Please feel free to forward this information to any government agency that might be interested in informing the public about this service.

If you have any questions about this Public Information Campaign, you can contact me via email or at my direct line listed below.

Thank you,

Linda Cotter
 USDA Farm Service Agency
 Aerial Photography Field Office
 2222 West 2300 South
 Salt Lake City UT 84119-2020

Tel: 801-844-2922
 Fax: 801-956-3653

Email: apfo.sales@slc.usda.gov
 Website: <http://www.apfo.usda.gov>

Rusty Plienis

From: Somsen, Russell A NWO [Russell.A.Somsen@usace.army.mil]
Sent: Wednesday, April 16, 2014 9:18 AM
To: Rusty Plienis Emmon Co (rplienis@nd.gov); Don Larson Emmons Co Weed Board
Subject: FW: 2014 noxious weed spraying on Corps Lands in Emmons County. (UNCLASSIFIED)
Attachments: invoice sample.docx

Classification: UNCLASSIFIED
Caveats: NONE

You have the official "Go ahead" to start spraying noxious weeds on Corps land only, in Emmons County.

Your budget is \$14,832.90. REMEMBER, YOU CAN NOT GO OVER THAT DOLLAR FIGURE!!!!

I have included a sample invoice for reference when sending in your bill for this year.

If you have any questions, let me know.

Russell Somsen
Natural Resource Specialist
Lake Oahe Project
U. S. Army Corps of Engineers
28563 Powerhouse Road
Pierre S.D. 57501
Phone: (605)224-5862 ext 3301
Fax: (605)224-5945
email: russell.a.somsen@usace.army.mil

Phil Schaffeld 904-3420

*Emmons County, ND 58542 Alex Ekstrand
above 1630
" " " 29,549.04 1/1/14*

Classification: UNCLASSIFIED
Caveats: NONE

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."

114,370 sq. ft. of easement

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?



2.13

