

2023 SENATE STATE AND LOCAL GOVERNMENT

SB 2208

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

SB 2208
1/20/2023

Relating to mandating the attorney general to issue opinions requested by individual members of the legislative assembly.

9:00 AM Chair Roers opened hearing. Present: Chair Roers, Vice Chair Barta, Senator Cleary, Senator Estenson, Senator J Lee, and Senator Braunberger.

Discussion Topics:

- Constituent request
- Language clarification
- Time element

Senator Magrum, District 8, bill sponsor, testified in support #14599

Herb Grenz, citizen of Emmons County, testified in support with no written testimony.

Mary Kae Kelsch, Attorney General Division Director, testified neutral #14654.

9:49 AM Chair Roers closed the hearing.

Pam Dever, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

SB 2208
1/20/2023

Relating to mandating the attorney general to issue opinions requested by individual members of the legislative assembly.

11:06 AM Chair Roers opened committee work. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:

- Legislative intent
- Chain of communication

Chair Roers – Expresses concerns about the bill.

11:12 AM Chair Roers adjourned the meeting.

Pam Dever, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

SB 2208
2/3/2023

Relating to mandating the attorney general to issue opinions requested by individual members of the legislative assembly.

10:52 AM Chair Roers opened committee work. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:

- Committee action

11:15 AM Mary Kae Kelsch, Assist Attorney General, asked for an amendment adding a 3 month deadline for opinions.

Sen Lee moved a DO NOT PASS
Sen Barta seconded the motion.

Sen Lee withdraw her motion.
Sen Barta withdrew his second.

Sen Lee moved Amendment 23.0281.02001 #27541, #21172
Sen Cleary seconded the motion.

Roll call taken.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	Y
Senator Judy Estenson	Y
Senator Judy Lee	Y

VOTE: YES – 6 NO – 0 Absent - 0 Motion PASSED

11:26 AM Chair Roers adjourned meeting.

Pam Dever, Committee Clerk

23.0281.02001
Title.03000

Prepared by the Legislative Council staff for
the Senate State and Local Government
Committee

February 3, 2023

DR
1/9/
2-9-23

PROPOSED AMENDMENTS TO SENATE BILL NO. 2208

Page 2, line 3, remove "within three months from the date of the request,"

Page 2, line 6, replace "Is one of only fact, rather than of fact and law, or of law" with "Requires the attorney general to make a factual determination"

Page 2, line 12, replace "Amounts to" with "Provides"

Page 2, remove lines 17 through 19

Renumber accordingly

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

SB 2208
2/9/2023

Relating to mandating the attorney general to issue opinions requested by individual members of the legislative assembly.

9:17 AM Chair Roers opened the meeting. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:

- Committee action

Sen Lee moved a DO PASS as Amended.

Sen Cleary seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	Y
Senator Judy Estenson	Y
Senator Judy Lee	Y

VOTE: YES – 6 NO – 0 Absent – 0 Motion PASSED

Sen Braunberger will carry the bill.

9:20 AM Chair Roers closed the meeting.

Pam Dever, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2208: State and Local Government Committee (Sen. K. Roers, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2208 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 2, line 3, remove "within three months from the date of the request."

Page 2, line 6, replace "Is one of only fact, rather than of fact and law, or of law" with "Requires the attorney general to make a factual determination"

Page 2, line 12, replace "Amounts to" with "Provides"

Page 2, remove lines 17 through 19

Re-number accordingly

2023 HOUSE JUDICIARY

SB 2208

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2208
3/1/2023

Relating to mandating the attorney general to issue opinions requested by individual members of the legislative assembly.

2:00 PM Chairman Klemin opened the hearing. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. S. Olson, Rep. Rios, Rep. Schneider, Rep. VanWinkle. Absent: Rep. Henderson, Rep. Shannon Roers Jones, Rep. Satrom and Rep. Vetter.

Discussion Topics:

- Parameters for Attorney general
- Timeframe limits
- Corp management of lands
- Response time deadline

Rep. Magrum: District 8: Introduced the bill. Testimony #21596

Herb Grentz: Testimony #21603.

Mary Kae Kelsch: Division Director at Attorney General's office. Oral testimony.

The hearing closed at 2:30 PM.

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2208
3/1/2023

Relating to mandating the attorney general to issue opinions requested by individual members of the legislative assembly.

3:15 PM Chairman Klemin opened the meeting. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. S. Olson, Rep. Rios, Rep. Schneider, Rep. VanWinkle. .Absent: Rep. Henderson, Rep. S. Roers Jones, Rep. Satrom, and Rep. Vetter

Discussion Topics:

- Amendment
- Committee action.

Rep. Christensen moved to amend Page 2, line 4 delete in writing,
Seconded by Rep. Rios

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	A
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	A
Representative Bernie Satrom	A
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	A

Roll call vote: 9 Yes 0 No 4 Absent Motion carried

Rep. VanWinkle moved to amend page 2, lines 14 & 15 add 60 days;
Seconded by Rep. Schneider

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	A
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	A
Representative Bernie Satrom	A
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	A

Roll call vote: 9 Yes 0 No 4 Absent Motion carried.

Rep. Christensen moved Do Pass as Amended;
Seconded by Rep. Christensen

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	A
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	A
Representative Bernie Satrom	A
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	A

Roll Call vote: 9 Yes 0 No 4 Absent
Carrier: Rep. Christensen

Meeting closed at 3:21 PM

Delores Shimek, Committee Clerk

March 1, 2023

off
3-1-23

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2208

Page 2, line 4, remove "in writing."

Page 2, line 15, after "response" insert "within sixty days of the request"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2208, as engrossed: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). Engrossed SB 2208 was placed on the Sixth order on the calendar.

Page 2, line 4, remove "in writing."

Page 2, line 15, after "response" insert "within sixty days of the request"

Renumber accordingly

TESTIMONY

SB 2208



North Dakota Senate

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Senator Jeffery J. Magrum

District 8
P.O. Box 467
Hazelton, ND 58544-0467

C: 701-321-2224

jmagrum@ndlegis.gov

COMMITTEES:
Finance and Taxation
Energy and Natural Resources

01/20/2023

Good Morning Madam Chair Roers and committee members.

For the record I am Senator Jeff Magrum representing District 8 which is rural Burleigh County including Lincoln, Wilton, Menoken and Moffit as well as all of Emmons County including Hazelton, Braddock, Kintyre, Temvik, Linton, Strasburg, Hague, Westfield and Hull.

I am sponsoring this bill because at times as a state Legislator we are asked to get an Attorney General opinion about an issue that isn't exactly clear. Emmons County would like to enter into an agreement with the Department of Water Resources to manage federal land in Emmons County but nobody seems to know if it is a possibility.

Justification happens when an AG opinion is requested to clarify the law and an opinion is never given even though the law is clear that the AG should give written opinions to Legislators. I have spoken to the Attorney General and he agreed that we need parameters set and that's what this bill is addressing.

SB2208 sets a time in which we as legislators can expect an opinion. A description of parameters and a requirement for a legislator to get four other legislators to agree.

Madam chair and committee members I respectfully ask for a do pass on SB2208

I will stand for questions.

CHAPTER 54-12 ATTORNEY GENERAL

54-12-01. Attorney general - Duties.

The attorney general shall:

1. Appear for and represent the state before the supreme court in all cases in which the state is interested as a party.
2. Institute and prosecute all actions and proceedings in favor or for the use of the state which may be necessary in the execution of the duties of any state officer.
3. Appear and defend all actions and proceedings against any state officer in the attorney general's official capacity in any of the courts of this state or of the United States. If both parties to an action are state officers, the attorney general may determine which officer the attorney general will represent and the other officer may employ counsel to represent that other officer.
4. Consult with and advise the several state's attorneys in matters relating to the duties of their office.
5. Attend the trial of any party accused of crime and assist in the prosecution when in the attorney general's judgment the interests of the state require it.
6. Consult with and advise the governor and all other state officers and when requested give written opinions on all legal or constitutional questions relating to the duties of such officers respectively.
7. Prepare, when necessary, proper drafts for contracts and other writings relating to subjects in which the state is interested.
8. Give written opinions, when requested by either branch of the legislative assembly, upon legal questions.
9. Enforce the proper application of funds appropriated to the public institutions of the state and prosecute breaches of trust in the administration of such funds.
10. Prosecute corporations and limited liability companies, when necessary, for failure or refusal to make the reports required by law.
11. Keep in proper books a register of all cases prosecuted or defended by the attorney general or the attorney general's assistants, in behalf of this state or its officers, and of all proceedings had in relation thereto, including a record of all actions wherein the state is a party, or is interested, prosecuted by the state's attorneys of the several counties and reported to the attorney general as provided by law, and deliver the same to the attorney general's successor in office.
12. Keep in the attorney general's office a book in which the attorney general shall record all the official opinions given by the attorney general during the attorney general's term of office, such book to be delivered by the attorney general to the attorney general's successor in office.
13. Pay into the state treasury all moneys received by the attorney general for the use of the state.
14. Serve as superintendent of the bureau of criminal investigation and perform all duties incident to the proper and efficient conduct of that office.
15. Attend to and perform any other duties which from time to time may be required by law.
16. Appoint the state fire marshal and supervise the operation of the state fire marshal department.
17. Give written opinions, when requested by the governing body or city attorney of a city in the state of North Dakota.
18. Repealed by S.L. 1991, ch. 637, § 9.
19. Give written opinions to public entities as defined in subdivision a or b of subsection 13 of section 44-04-17.1, when requested by an interested person under section 44-04-21.1.

NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



COMMITTEES:

Judiciary
Government and Veterans Affairs

Representative Jeffery J. Magrum

District 28
P.O. Box 467
Hazelton, ND 58544-0467

C: 701-321-2224
jmagrum@nd.gov

May 24, 2022

Honorable Drew Wrigley
Attorney General
State Capitol

Dear Attorney General Wrigley:

North Dakota Century Code Section 61-33-05 authorizes the Department of Water Resources to manage, operate, and supervise all properties transferred to it under Chapter 61-33. The authorization includes the ability to "enter into any agreements regarding the property" and further provides "[t]he department of water resources may enter agreements with the game and fish department or other law enforcement entities to enforce this chapter..."

I am respectfully requesting an Attorney General's opinion as to whether the Department of Water Resources may enter agreements with other entities, such as a county, to enforce Chapter 61-33.

Sincerely,

Representative Jeffery J. Magrum
District 28

JJM/HD

SENATE STATE AND LOCAL GOVERNMENT
JANUARY 20, 2023

TESTIMONY OF MARY KAE KELSCH
OFFICE OF ATTORNEY GENERAL
SENATE BILL NO. 2208

Madam Chair, members of the Committee.

I am Mary Kae Kelsch, Division Director of the Division of General Counsel in the Attorney General's office and I appear on behalf of the Attorney General.

The Division of General Counsel provides general counsel legal services to approximately 100 state agencies, commissions, regulatory boards, and the higher education institutions. The Division has 14 attorneys, 8 of whom work here in Bismarck. It is also the division that holds the open record and meetings portfolio. Pertinent to SB 2208, my division writes a majority of the legal opinions.

There are two types of opinions: 1) open records and meetings; and 2) legal opinions. By statute, any person may ask for an open records and meeting opinion. However, legal opinions may only be issued to those set forth in the statute at issue in this bill.

The language on page 2, line 3 of SB 2208 adds a three month deadline for issuing an opinion. This will be impossible to do in most instances. There are times when we will get an opinion researched, written, and issued in three months. Most of the time, however, it will take much longer to research, write, and issue an opinion.

In fact, a lot of time may be needed just to get the relevant context and background information from a requester. That time period is not within our control. I do not have an attorney whose only job is to write opinions. Attorneys work on opinions in addition to their normal workloads, which are very heavy already. Most Attorney General's offices have a division dedicated to writing opinions. Many times, a lot of research has to take place before an opinion can even be written. The office takes opinions very seriously because "an attorney general's opinion guides officials until superseded by judicial opinion" *Saefke v. Stenehjem*, 673 N.W.2d 41 (2003). We put the same level of care into an opinion as the Supreme Court puts into their decisions.

After a question is researched, it is written and then another attorney reviews it. It then goes to the Chief Deputy for review and then, finally, the Attorney General. This process is in place to safeguard the quality of the opinion. I understand the frustration that opinions take time. However, I do not have nearly enough staff to issue opinions under a three month deadline. In our budget I requested two FTE's with the purpose of having more attorneys available to write opinions. That is not taking into consideration a three month deadline. With the deadline I would need at least two people to work on opinions.

My only other comment is that the statement on Page 2, line 6 is confusing. I'm happy to answer any questions.

23.0281.02001
Title.

Prepared by the Legislative Council staff for
the Senate State and Local Government
Committee

February 3, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2208

Page 2, line 3, remove "within three months from the date of the request."

Page 2, line 6, replace "Is one of only fact, rather than of fact and law, or of law" with "Requires the attorney general to make a factual determination"

Page 2, line 12, replace "Amounts to" with "Provides"

Page 2, remove lines 17 through 19

Re-number accordingly

North Dakota Senate

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Senator Jeffery J. Magrum

District 8
P.O. Box 467
Hazelton, ND 58544-0467
C: 701-321-2224
jmagrum@ndlegis.gov

COMMITTEES:
Finance and Taxation
Energy and Natural Resources

03/01/23

Good afternoon Chairman and committee members, for the record I am Sen. Jeff Magrum Representing District 8. Burleigh and Emmons counties as well as a sliver of southern McLean County.

I introduced SB2208 to provide clarity and a flow of information from our Attorney Generals office. Under current law the AG is required to answer requests for opinion. I have spoken with the AG Wrigley and he agrees that clarity with parameters set would be good. The bill before you has been amended from its original version and passed the Senate 44-0 and I ask for a do pass on 2208.

CHAPTER 54-12 ATTORNEY GENERAL

54-12-01. Attorney general - Duties.

The attorney general shall:

1. Appear for and represent the state before the supreme court in all cases in which the state is interested as a party.
2. Institute and prosecute all actions and proceedings in favor or for the use of the state which may be necessary in the execution of the duties of any state officer.
3. Appear and defend all actions and proceedings against any state officer in the attorney general's official capacity in any of the courts of this state or of the United States. If both parties to an action are state officers, the attorney general may determine which officer the attorney general will represent and the other officer may employ counsel to represent that other officer.
4. Consult with and advise the several state's attorneys in matters relating to the duties of their office.
5. Attend the trial of any party accused of crime and assist in the prosecution when in the attorney general's judgment the interests of the state require it.
6. Consult with and advise the governor and all other state officers and when requested give written opinions on all legal or constitutional questions relating to the duties of such officers respectively.
7. Prepare, when necessary, proper drafts for contracts and other writings relating to subjects in which the state is interested.
8. Give written opinions, when requested by either branch of the legislative assembly, upon legal questions.
9. Enforce the proper application of funds appropriated to the public institutions of the state and prosecute breaches of trust in the administration of such funds.
10. Prosecute corporations and limited liability companies, when necessary, for failure or refusal to make the reports required by law.
11. Keep in proper books a register of all cases prosecuted or defended by the attorney general or the attorney general's assistants, in behalf of this state or its officers, and of all proceedings had in relation thereto, including a record of all actions wherein the state is a party, or is interested, prosecuted by the state's attorneys of the several counties and reported to the attorney general as provided by law, and deliver the same to the attorney general's successor in office.
12. Keep in the attorney general's office a book in which the attorney general shall record all the official opinions given by the attorney general during the attorney general's term of office, such book to be delivered by the attorney general to the attorney general's successor in office.
13. Pay into the state treasury all moneys received by the attorney general for the use of the state.
14. Serve as superintendent of the bureau of criminal investigation and perform all duties incident to the proper and efficient conduct of that office.
15. Attend to and perform any other duties which from time to time may be required by law.
16. Appoint the state fire marshal and supervise the operation of the state fire marshal department.
17. Give written opinions, when requested by the governing body or city attorney of a city in the state of North Dakota.
18. Repealed by S.L. 1991, ch. 637, § 9.
19. Give written opinions to public entities as defined in subdivision a or b of subsection 13 of section 44-04-17.1, when requested by an interested person under section 44-04-21.1.

agency or institution of the state. Notwithstanding any other law, the state, or any agency or institution of the state, may solicit and accept one or more proposals for a lease transaction, including the arrangement thereof, under this section, and accept any proposal that is determined to be in the public interest. The public finance authority, on behalf of the state, or any agency or institution of the state, may do and perform any acts and things authorized by this section, including making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of this section.

54-01-28. Northern plains national heritage area - Use of state funds and property prohibited unless approved by legislative assembly.

State funds may not be expended or transferred from state agencies to match federal moneys for the northern plains national heritage area or any similar or successor designated areas without the approval of the legislative assembly. State lands, water, property, or facilities may not be included in the designated northern plains national heritage area or any similar or successor designated areas without the approval of the legislative assembly. No further lands, water, property, or facilities may be designated as heritage areas within this state without the approval of the legislative assembly.

54-01-29. Prohibition on the purchase of certain real property and easements with public funds.

A governmental entity may not provide funds through grant, contract, or other agreement to a nongovernmental entity that is a nonprofit organization for the purpose of holding any interest in real property or an easement for wildlife or conservation purposes. This section does not apply to a governmental entity in a partnership with a nongovernmental entity, if the governmental entity derives a benefit from the partnership. In addition, the recipient of these funds is subject to civil action by any person for the return of any public funds used by the recipient for any of the same purposes.

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 excess 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.

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2208

Introduced by

Senators Magrum, Cleary

Representatives Christensen, S. Olson

1 A BILL for an Act to amend and reenact section 54-12-01 of the North Dakota Century Code,
2 relating to mandating the attorney general to issue opinions requested by individual members of
3 the legislative assembly.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 54-12-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **54-12-01. Attorney general - Duties.**

8 The attorney general shall:

- 9 1. Appear for and represent the state before the supreme court in all cases in which the
10 state is interested as a party.
- 11 2. Institute and prosecute all actions and proceedings in favor or for the use of the state
12 which may be necessary in the execution of the duties of any state officer.
- 13 3. Appear and defend all actions and proceedings against any state officer in the
14 attorney general's official capacity in any of the courts of this state or of the United
15 States. If both parties to an action are state officers, the attorney general may
16 determine which officer the attorney general will represent and the other officer may
17 employ counsel to represent that other officer.
- 18 4. Consult with and advise the several state's attorneys in matters relating to the duties
19 of their office.
- 20 5. Attend the trial of any party accused of crime and assist in the prosecution when in the
21 attorney general's judgment the interests of the state require it.
- 22 6. Consult with and advise the governor and all other state officers and when requested
23 give written opinions on all legal or constitutional questions relating to the duties of
24 such officers respectively.

Sixty-eighth
Legislative Assembly

- 1 14. Serve as superintendent of the bureau of criminal investigation and perform all duties
- 2 incident to the proper and efficient conduct of that office.
- 3 15. Attend to and perform any other duties which from time to time may be required by
- 4 law.
- 5 16. Appoint the state fire marshal and supervise the operation of the state fire marshal
- 6 department.
- 7 17. Give written opinions, when requested by the governing body or city attorney of a city
- 8 in the state of North Dakota.
- 9 18. Repealed by S.L. 1991, ch. 637, § 9.
- 10 19. Give written opinions to public entities as defined in subdivision a or b of subsection 13
- 11 of section 44-04-17.1, when requested by an interested person under section
- 12 44-04-21.1.

copy

NOTICE NO. DACW45-22-B-RE-0001

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

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

DATE: _____

The undersigned:

_____ an individual

_____ a partnership consisting of _____

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

doing business as _____

of _____,

in accordance with your Notice of Availability No. DACW45-22-B-RE-0001 for leasing of property at the Oahe Project, and subject to all conditions and requirements thereof, propose(s) to enter into a lease for the property identified below, and agree(s) to pay the rental offered below.

Item 1

Tract & Description

TRACTS: 3202-1(pt), part of W $\frac{1}{2}$ and SW $\frac{1}{4}$ S $\frac{1}{4}$ Section 6, part of NE $\frac{1}{4}$ Section 7, T133N, R78W; 3202-2(pt) part of SE $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ Section 25; 3202-3(pt) part of E $\frac{1}{2}$ W $\frac{1}{2}$ Section 13; 3202-4(pt) part of W $\frac{1}{2}$ NW $\frac{1}{4}$ Section 13, T134N, R79W; T133N and R78W; 3209(pt) part of W $\frac{1}{2}$ E $\frac{1}{2}$ Section 36, T134N, R79W, 3211(pt) part of S $\frac{1}{2}$ NW $\frac{1}{4}$ Section 13, T134N, R79W,

Emmons County, ND

Use, Conditions, Acreage and Annual Rental Offer

PURPOSE: CROPPING AND GRAZING

Total Acres: 165 acres (0 Public Domain, 165 Acquired (161 Grazing, 4 Cropping))

Specific Management Practices:

2022: Grazing is permitted from June 1 to October 31. Lessee will contact the Oahe Project Natural Resource Specialist at (701) 255-0015 to establish grazing dates and stocking rates.

2023: Use prescription form 2022.

2024: Use prescription from 2022.

2025: Use prescription from 2022.

2026: Use prescription from 2022.

Note: If both parties (Corps and the lessee) are in agreement, stocking rates and seasonality of prescription grazing may be altered. Reasons for change may include but are not limited to drought, fire, flooding, rangeland response to the prior year's prescription, etc.

Maximum Stocking Rate: TBD

TERM: 4/1/22-12/31/26 with option for a five-year extension.

MINIMUM ANNUAL RENTAL OFFER: \$3,258.00

ANNUAL RENTAL OFFER: \$ _____ *8.4*

Item 2

Tract & Description

TRACTS: 2305-1(pt) part of N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ north of bay Section 24, part of E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$ Section 13; 2403(pt) part of NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 10, part of NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 11; 2444-1(pt) part of NW $\frac{1}{4}$ SE $\frac{1}{4}$ S $\frac{1}{4}$ Section 11; 2444-2(pt) part of SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 11; 2402(pt) part of W $\frac{1}{2}$ E $\frac{1}{2}$ and part of SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 3, T129N, R129W,

Emmons County, ND

Use, Conditions, Acreage and Annual Rental Offer

PURPOSE: GRAZING

Total Acres: 99 acres (0 Public Domain, 99 Acquired)

Specific Management Practices:

2022: Grazing is permitted from June 1 to October 31. Lessee will contact the Oahe Project Natural Resource Specialist at (701) 255-0015 to establish grazing dates and stocking rates.

2023: Use prescription form 2022.

2024: Use prescription from 2022.

2025: Use prescription from 2022.

2026: Use prescription from 2022.

Note: If both parties (Corps and the lessee) are in agreement, stocking rates and seasonality of prescription grazing may be altered. Reasons for change may include but are not limited to drought, fire, flooding, rangeland response to the prior year's prescription, etc.

Maximum Stocking Rate: N/A

TERM: 4/1/22-12/31/26 with option for a five-year extension.

MINIMUM ANNUAL RENTAL OFFER: \$1,886.00

ANNUAL RENTAL OFFER: \$ _____ *Key 1000*

Item 3

Tract & Description

TRACTS: 2523(pt) part of SE¼ of Section 35; 2524(pt) part of NW¼ of Section 35, T132N, R79W, Emmons County, ND

Use, Conditions, Acreage and Annual Rental Offer

PURPOSE: HAYING

Total Acres: 45 acres (0 Public Domain, 45 Acquired (18 Acres (2022, 2024 & 2026) 27 Acres (2023 and 2025))

Specific Management Practices:

2022: Hay north area A (18 acres). Haying is permitted on or after July 15. All hay bales must be removed within seven (7) days of completion.

2023: Hay south area B (27 acres). Haying is permitted on or after July 15. All hay bales must be removed within seven (7) days of completion.

2024: Hay north area A (18 acres). Haying is permitted on or after July 15. All hay bales must be removed within seven (7) days of completion.

2025: Hay south area B (27 acres). Haying is permitted on or after July 15. All hay bales must be removed within seven (7) days of completion.

2026: Hay north area A (18 acres). Haying is permitted on or after July 15. All hay bales must be removed within seven (7) days of completion.

Note: If both parties (Corps and the lessee) are in agreement, stocking rates and seasonality of prescription grazing may be altered. Reasons for change may include but are not limited to drought, fire, flooding, rangeland response to the prior year's prescription, etc.

Maximum Stocking Rate: N/A

TERM: 4/1/22-12/31/26 with option for a five-year extension.

MINIMUM ANNUAL RENTAL OFFER: \$491.00

ANNUAL RENTAL OFFER: \$ _____ *500.00*

Item 4

Tract & Description

TRACT: 2409(pt) part of NW¼SE¼ of Section 4, T130N, R79W, Emmons County, ND

Use, Conditions, Acreage and Annual Rental Offer

PURPOSE: CROPPING

Total Acres: 1 acre (0 Public Domain, 1 Acquired)

q. Haying Practices.

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

(2) Individual hay bales, windrowed hay, broken bales, fodder butts, and windrowed feed must be removed from the field within 7 days of harvest. Shocked feed, haystacks, and properly piled bales may be temporarily stored on hay land of the leasehold (not in high risk flood areas or where permanent vegetation will be damaged), but must be removed and the residue cleaned up prior to 1 October each year.

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

r. Cropping Practices.

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

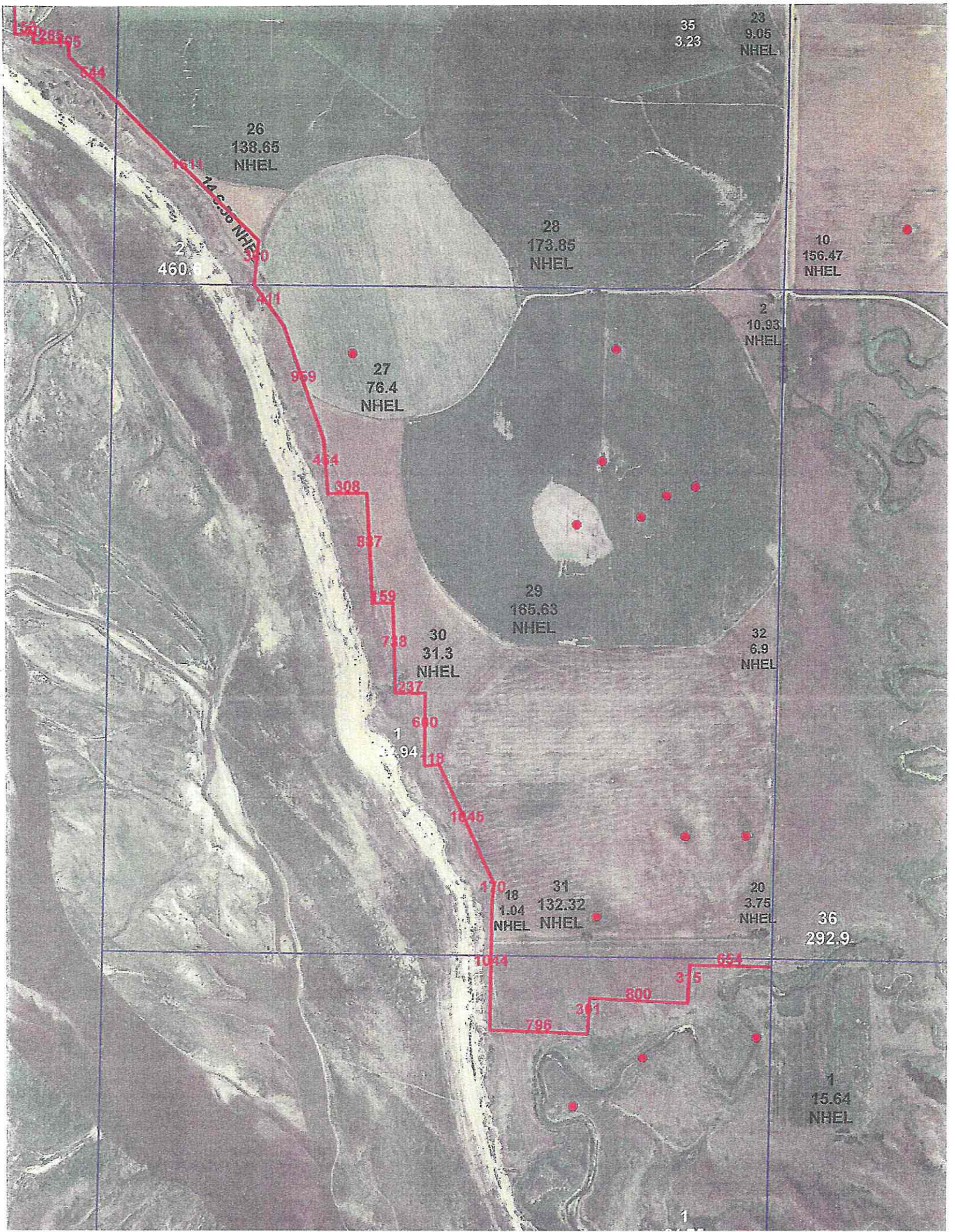
(2) Lessees must insure that food plots or crops left for wildlife, as required by a rental offset, will not be grazed or utilized by livestock in any manner and will be left standing until 1 April of the following spring. The food plot acreage may be a part of the overall cropland acreage or a separate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

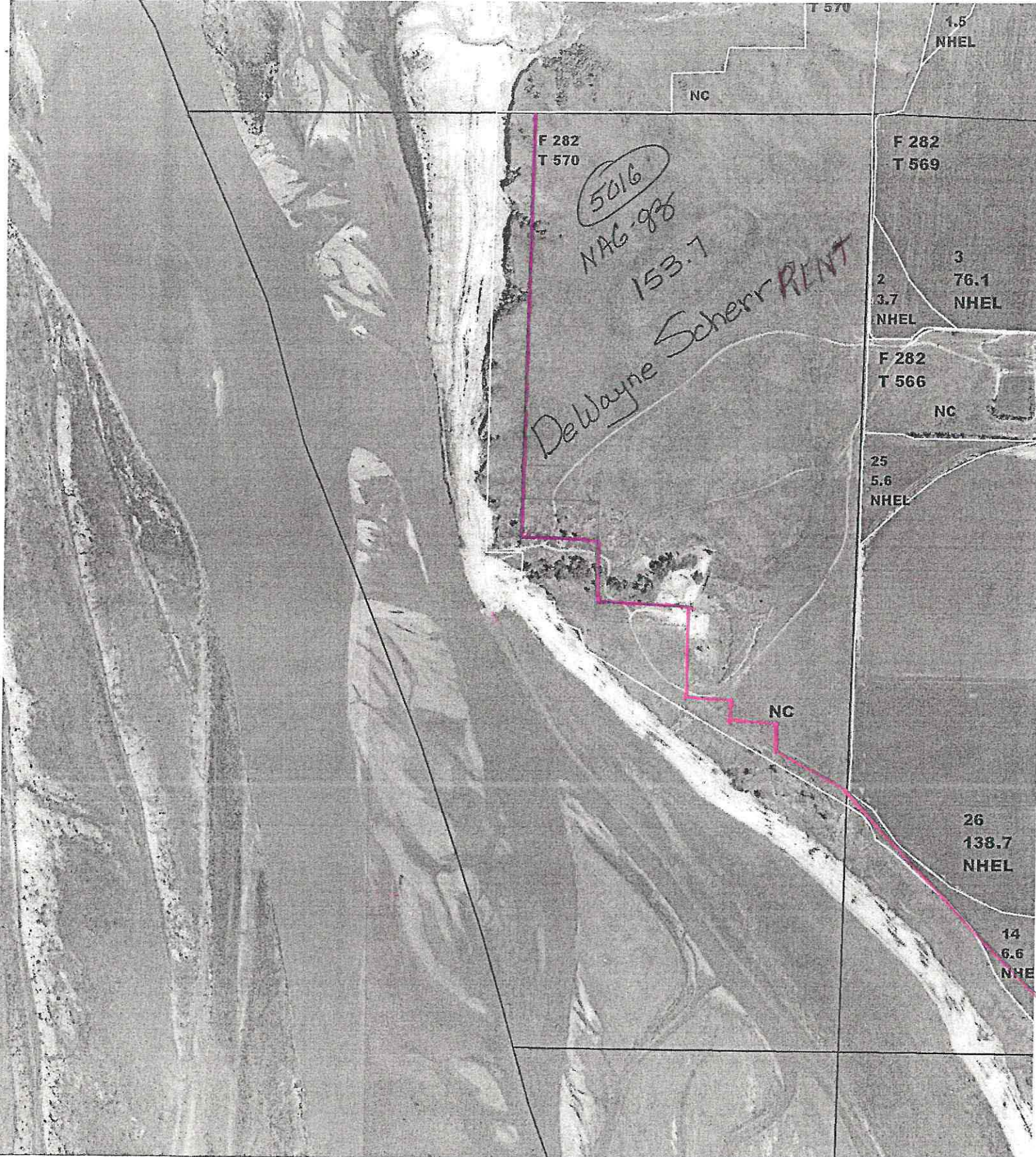
(3) Fall plowing of crop stubble is prohibited. Summer fallow of cropland areas must be minimized or eliminated but fields in fallow rotation may be black fallowed if the lessee plants vegetation erosion strips, ridges fields or uses other Natural Resources Conservation Service approved means to inhibit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

2. Specific Management Practices.

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

Lessee's Initials_____



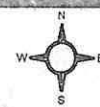


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Farm 282

36-134-79

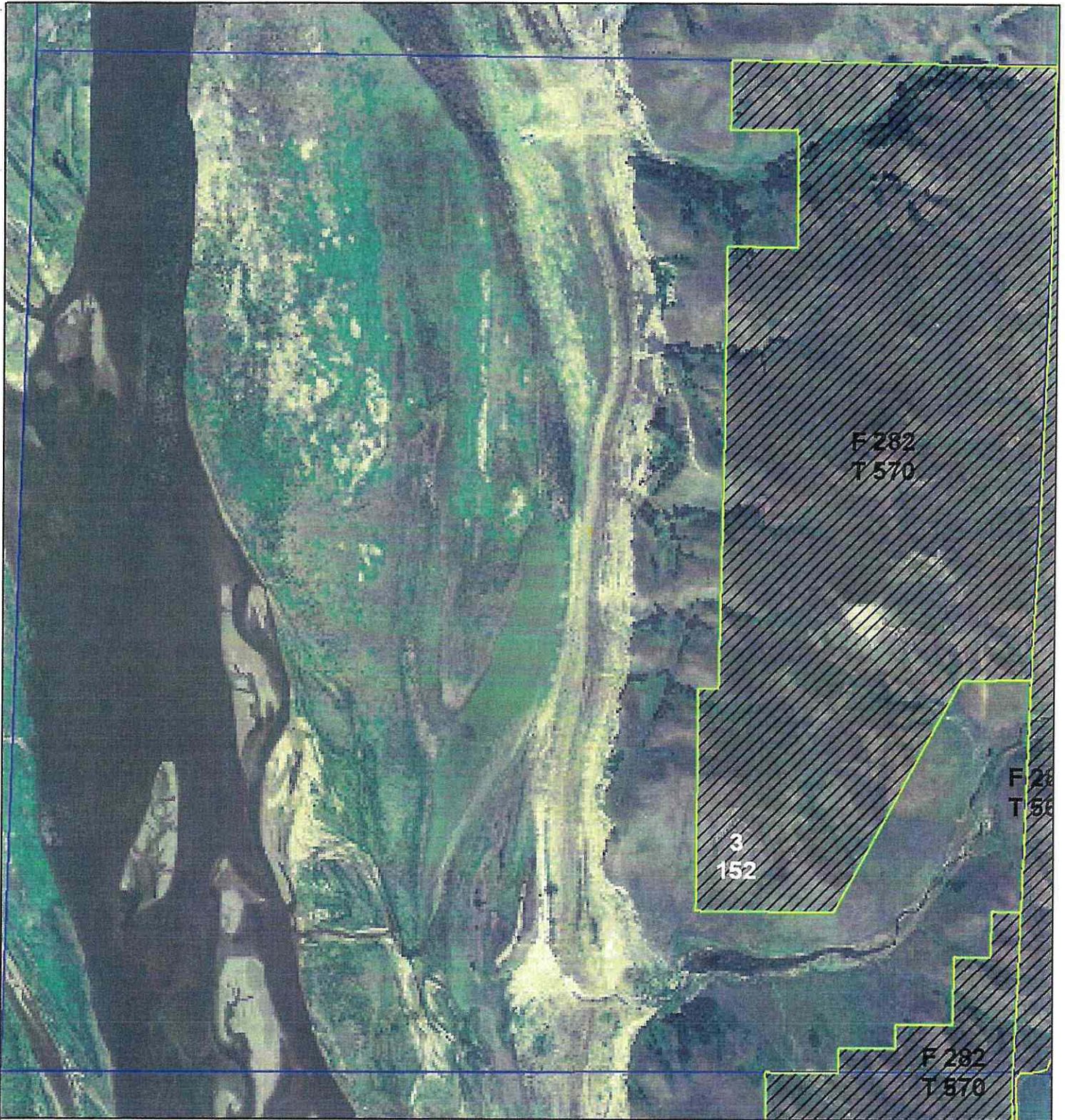
USDA Farm Service Agency
Emmons County, North Dakota



2008

-  Field Boundaries
-  Wetland Points
-  Section Lines

Map Created Thursday, January 3, 2008



USDA United States Department of Agriculture
 Farm Service Agency

25-134-79 Farm 282
 Emmons County, ND

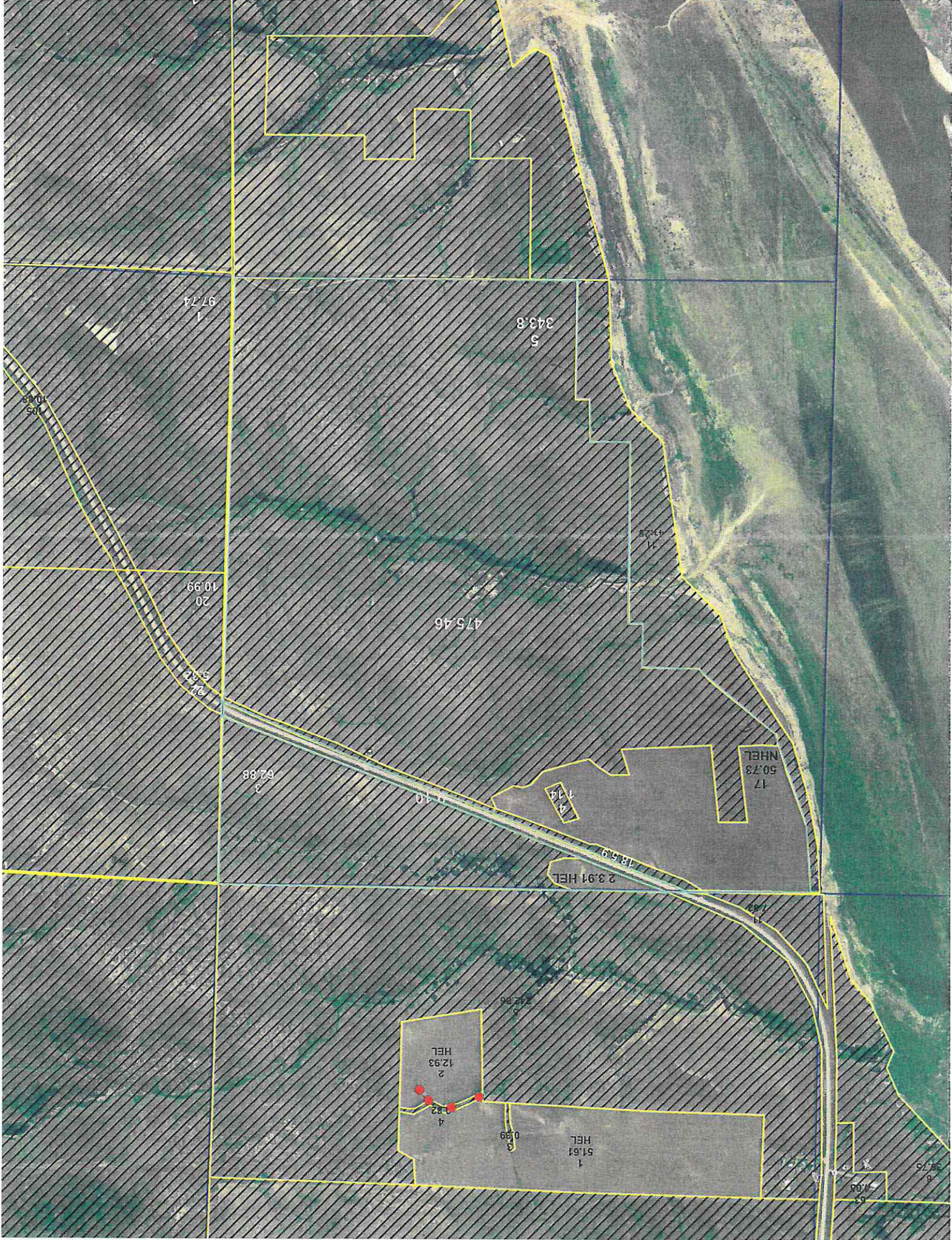
Boundary Descriptions

- CLU Field Boundary
- Tract Boundary
- Section Lines

Wetland Determination Identifiers

- Restricted Use
- Limited Restrictions
- Exempt from Conservation Compliance Provisions

USDA FSA maps are for FSA program administration only. There is no guarantee or representation to the user as to the accuracy, currency, suitability or reliability of the map. FSA MAPS DO NOT REPRESENT A LEGAL SURVEY. The user accepts the data 'as is' and assumes all risks associated with its use. Wetland points reflect records available with NRCS and may or may not constitute a full inventory of the property. The USDA Farm Service Agency assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data.



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

REPLY TO
ATTENTION OF:
Operations Project Manager

August 1, 2019

Emmons County Commissioners
PO Box 129
Linton, ND 58552

Dear Commissioners:

The Oahe Project Office of the Army Corps of Engineers (CORPS) will soon turn over three parcels of land, totaling approximately 1,200 acres above elevation 1620, to the North Dakota Game and Fish Department (NDGFD) for management. The areas are Glencoe, Badger Bay and Beaver Creek wildlife areas, as shown on the attached maps.

The land will remain in federal ownership but the NDGFD will be responsible for management to improve these areas for wildlife and outdoor enthusiasts. The North Dakota Game and Fish will honor existing leases the CORPS has in place until they expire and will then continue to work with neighbors interested in haying and grazing for management purposes.

The contact person for the North Dakota Game and Fish Department regarding management of these areas is:

Bill Haase
Wildlife Resource Management Supervisor
bhaase@nd.gov
701-220-1020

Sincerely,

A handwritten signature in black ink that reads "Eric Stasch".

Eric Stasch
Operations Project Manager

Encl

CF:
Bill Haase

Oahe WMA Addition - Badger Bay
Land which is above elevation 1620
Approximately 227 Acres



079

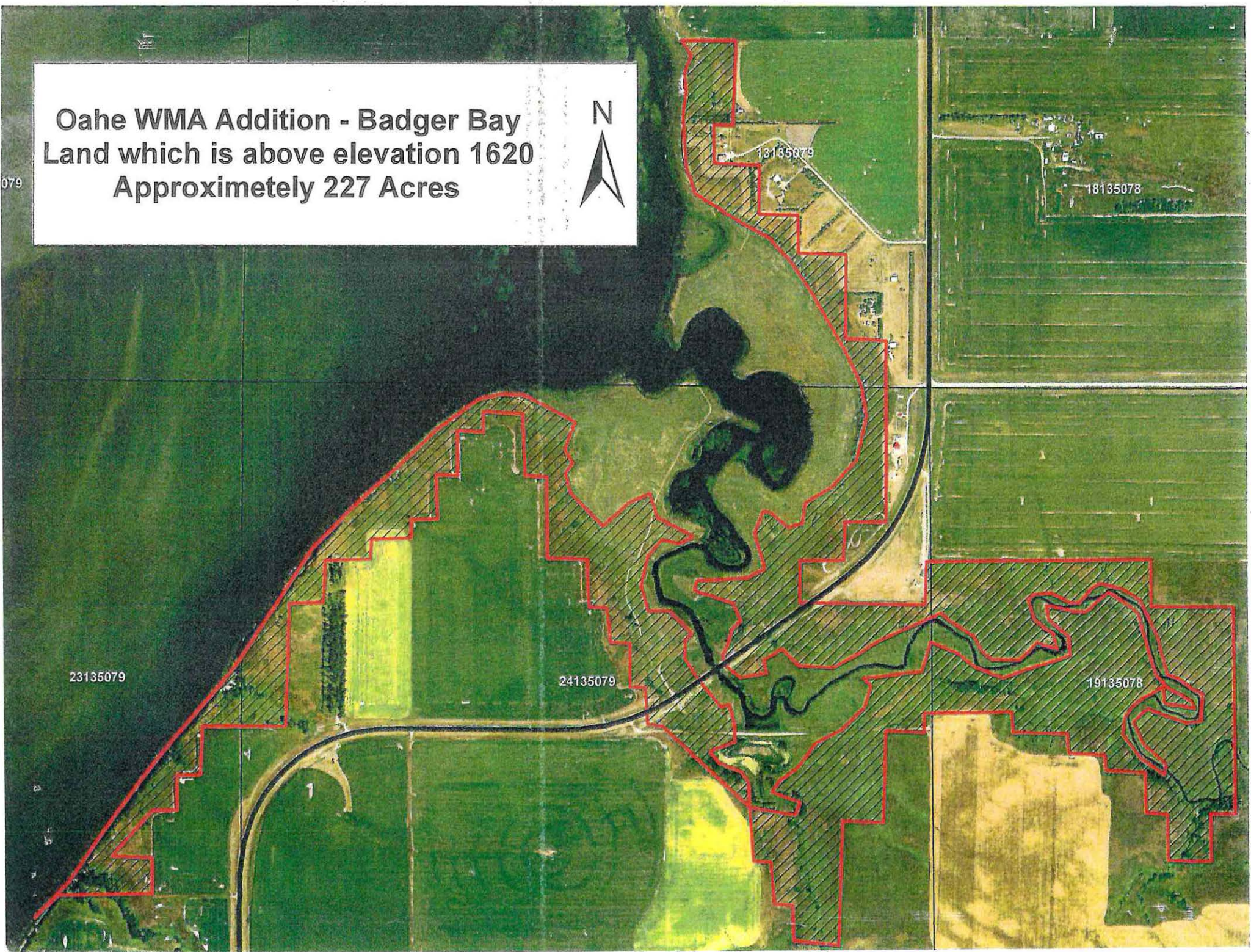
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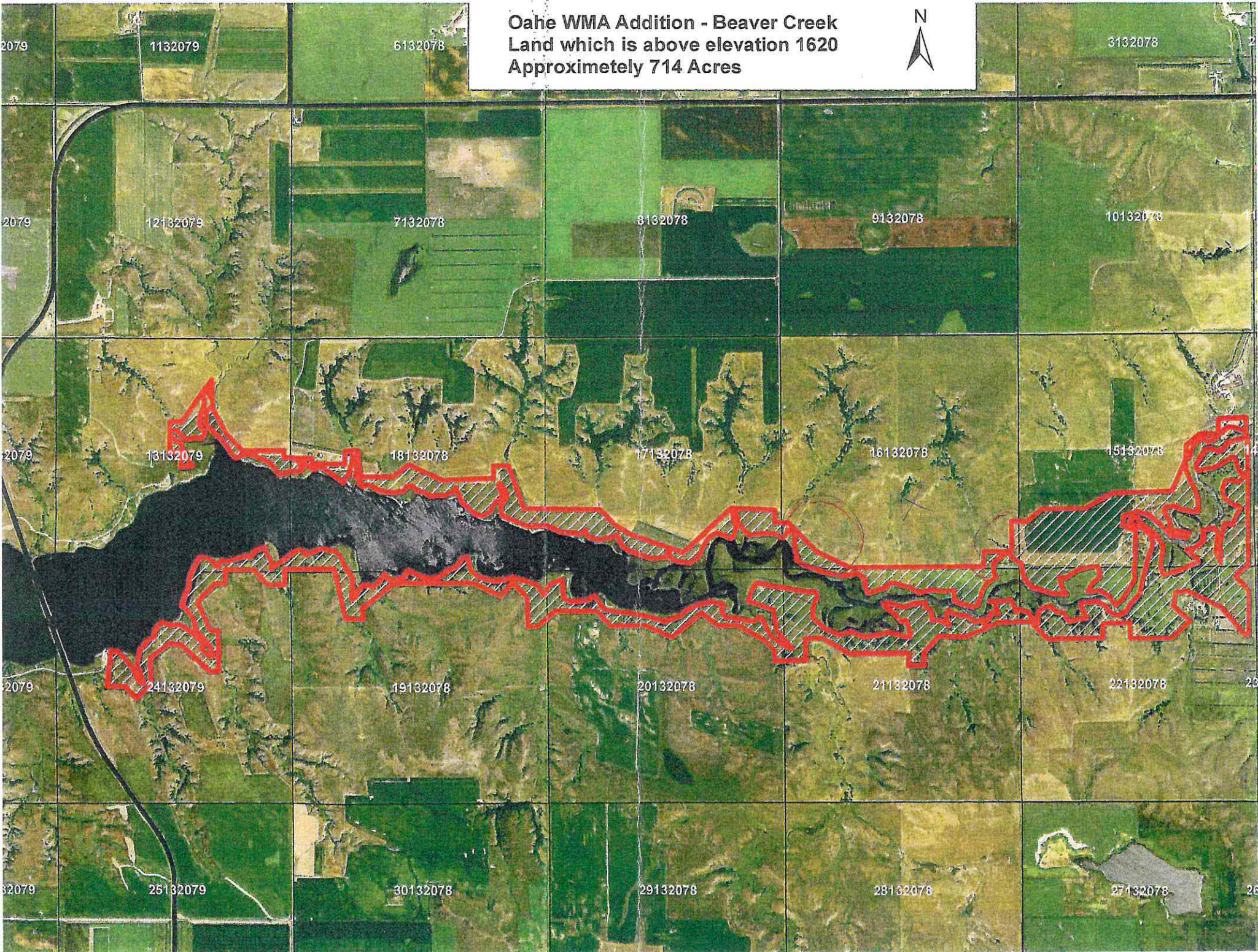
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**Oahe WMA Addition - Beaver Creek
Land which is above elevation 1620
Approximately 714 Acres**



EMMONS COUNTY COMMISSIONERS' RESOLUTION

2016-09-0001

A resolution urging Senators John Hoeven and Heidi Heitkamp, and Representative Kevin Cramer to supply dates between August 24th and October 14th, 2016, at which they could attend a public meeting to be called by the Emmons County Commissioners to determine the level of support to secure enactment of necessary federal legislation to return excess lands to the operation of the Oahe Dam in Emmons County, together with mineral rights thereto, to the State of North Dakota.

WHEREAS, since the taking of excess lands in Emmons County for the operation of the Oahe Dam, numerous problems have arisen which adversely affect Emmons County, its residents and adjoining real property;

WHEREAS, the Sixty-fourth Legislative Assembly of North Dakota did pass House Bill No. 1456, with the House voting 91 yeas and 1 nay, and the Senate voting 40 yeas and 7 nays, thereby creating and enacting N.D.C.C. § 54-01-29.1 which provides:

"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 excess 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 right 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."

AND WHEREAS, information has been disseminated which indicates there is a reluctance by one or more of North Dakota's congressional delegation to introduce, sponsor or support federal legislation to return excess lands and its minerals to the State of North Dakota without more of a consensus for such federal legislation being shown;

NOW, THEREFORE, BE IT RESOLVED BY THE EMMONS COUNTY COMMISSIONERS:

That the Emmons County Commissioners urge Senators John Hoeven and Heidi Heitkamp, and Representative Kevin Cramer to promptly supply dates between August 24th and October 14th, 2016, at which they could attend a public meeting to be called by the Emmons County Commissioners to determine the level of support to secure enactment of necessary federal legislation to return excess lands to the operation of the Oahe Dam in Emmons County, together with mineral rights thereto, to the State of North Dakota: and

Transfer of Lake Oahe land comes under fire

LAUREN DONOVAN
Bismarck Tribune

The former wildlife chief for North Dakota's Game and Fish Department says a possible transfer of excess land around Lake Oahe to private landowners lacks transparency and would be unfair to the thousands of outdoorsmen and women who use the lakeshore for hunting and fishing.

Randy Kreil said the transfer of more than 6,000 acres of land owned by the U.S. Army Corps of Engineers in Morton and Emmons counties not needed for flood control would have a tremendous impact on sportsmen, especially if the land is returned to private heirs instead of the state.

The transfer was directed by the 2015 Legislature, which passed a

Please see **Lake**, Page A10

A10 | SATURDAY, MAY 28, 2016

Lake

From A1

bill encouraging Gov. Jack Dalrymple to work with the state's congressional delegation to get Congress to authorize the return of land and minerals above elevation 1,620 to the state.

Kreil said no one was aware that the governor's-level discussion included the potential for reprivatizing some of the land until U.S. Sen. John Hoeven's office started calling around last week, looking for public feedback.

"This is an important issue that was going on under the cover of darkness. Thankfully, Hoeven's office started asking around. Without that, it would have progressed further," Kreil said.

Andrea Travnicek, the governor's policy adviser on natural resources, said the possible return of private lands, where practicable, is under discussion, but the main intent is to preserve public access.

"The intent is that public access would be the same in the future as it is today, no matter what happens," she said.

Rep. Kenton Onstad, D-Parshall, House Minority leader, said he voted against the bill and is against any privatization. *Social*

"The governor's office needs to get it out front and be transparent," he said.

One of the bill sponsors is Rep. Jim Schmidt, R-Mandan, who said his family would benefit if some 300-plus acres that are part of a Game and Fish Wildlife Management Area would be returned.

"If that land was grabbed unnecessarily for flood control, yes, I would be interesting in having it returned, but not for free," said Schmidt, who met Wednesday with 13 heirs, all looking for a win-win outcome. "We would want to make sure that recreational values are met."

Schmidt said his uncle and aunts were paid \$51 an acre for about 400 acres in Morton County, most of which was eventually subleased by the Game and Fish for a 2,000-acre wildlife management.

"None of that has ever been under water except in 2011, and that was from high ground water, not overland flooding," he said.

Kreil said Schmidt contacted him at the department before he was a legislator to discuss reacquiring the land.

Schmidt said, if the corps doesn't need the land for flood protection, it amounted to a federal land grab.

"If it's not needed for flood protection, why was it taken?" he said.

Rep. Mike Brandenburg, R-Edgeley, said he's been meeting with landowners on the Emmons County side and said the desire is to return excess land to the heirs.

"We're working on it real hard, but we're not hurting anybody. We want to take care of everybody's needs first with hunting and fishing," he said.

Hoeven's chief of staff Ryan Bernstein said the plan is to get consensus with the recognition that everybody wants a guarantee of continued public access.

"We will not send up a bill that returns land to the heirs. There's no consensus on that," Bernstein said.

U.S. Sen. Heidi Heitkamp said she has prepared a bill to return land to the state as asked by the governor.

"But it's up to the governor and state leaders to work with interested parties on what the next step should be and if this legislation is wanted or needed," she said.

Travnicek said, if the transfer were to pass Congress, the land would go to the state land trust.

"From there, there's no decision on what that would look like," she said.

Reach Lauren Donovan at 701-220-5511 or lauren@westriv.com.

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press
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called*

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Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2208

Introduced by

Senators Magrum, Cleary

Representatives Christensen, S. Olson

1 A BILL for an Act to amend and reenact section 54-12-01 of the North Dakota Century Code,
2 relating to mandating the attorney general to issue opinions requested by individual members of
3 the legislative assembly.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 54-12-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **54-12-01. Attorney general - Duties.**

8 The attorney general shall:

- 9 1. Appear for and represent the state before the supreme court in all cases in which the
10 state is interested as a party.
- 11 2. Institute and prosecute all actions and proceedings in favor or for the use of the state
12 which may be necessary in the execution of the duties of any state officer.
- 13 3. Appear and defend all actions and proceedings against any state officer in the
14 attorney general's official capacity in any of the courts of this state or of the United
15 States. If both parties to an action are state officers, the attorney general may
16 determine which officer the attorney general will represent and the other officer may
17 employ counsel to represent that other officer.
- 18 4. Consult with and advise the several state's attorneys in matters relating to the duties
19 of their office.
- 20 5. Attend the trial of any party accused of crime and assist in the prosecution when in the
21 attorney general's judgment the interests of the state require it.
- 22 6. Consult with and advise the governor and all other state officers and when requested
23 give written opinions on all legal or constitutional questions relating to the duties of
24 such officers respectively.

- 1 7. Prepare, when necessary, proper drafts for contracts and other writings relating to
2 subjects in which the state is interested.
- 3 8. a. Give written opinions, ~~within three months from the date of the request,~~ when
4 requested by either ~~branch~~ a member of the legislative assembly, in writing, upon
5 legal questions unless the request:
- 6 (1) ~~Is one of only fact, rather than of fact and law, or of law~~ Requires the
7 attorney general to make a factual determination;
- 8 (2) Involves the constitutionality of a statute;
- 9 (3) Concerns the internal operation or management of the judicial branch of
10 government;
- 11 (4) Is likely to be or presently is pending before a court or a court has ruled on
12 the issue;
- 13 (5) ~~Amounts to~~ Provides private legal advice; or
- 14 (6) Involves matters regarding whether a criminal offense has occurred.
- 15 b. If the attorney general declines to issue an opinion for a reason in subdivision a,
16 the attorney general shall inform the individual who requested the opinion in a
17 written response.
- 18 ~~c. A request from a member of the legislative assembly must be cosigned by at~~
19 ~~least five members of the legislative assembly before a request may be~~
20 ~~submitted to the attorney general under this subsection.~~
- 21 9. Enforce the proper application of funds appropriated to the public institutions of the
22 state and prosecute breaches of trust in the administration of such funds.
- 23 10. Prosecute corporations and limited liability companies, when necessary, for failure or
24 refusal to make the reports required by law.
- 25 11. Keep in proper books a register of all cases prosecuted or defended by the attorney
26 general or the attorney general's assistants, in behalf of this state or its officers, and of
27 all proceedings had in relation thereto, including a record of all actions wherein the
28 state is a party, or is interested, prosecuted by the state's attorneys of the several
29 counties and reported to the attorney general as provided by law, and deliver the same
30 to the attorney general's successor in office.

Sixty-eighth
Legislative Assembly

- 1 12. Keep in the attorney general's office a book in which the attorney general shall record
- 2 all the official opinions given by the attorney general during the attorney general's term
- 3 of office, such book to be delivered by the attorney general to the attorney general's
- 4 successor in office.
- 5 13. Pay into the state treasury all moneys received by the attorney general for the use of
- 6 the state.
- 7 14. Serve as superintendent of the bureau of criminal investigation and perform all duties
- 8 incident to the proper and efficient conduct of that office.
- 9 15. Attend to and perform any other duties which from time to time may be required by
- 10 law.
- 11 16. Appoint the state fire marshal and supervise the operation of the state fire marshal
- 12 department.
- 13 17. Give written opinions, when requested by the governing body or city attorney of a city
- 14 in the state of North Dakota.
- 15 18. Repealed by S.L. 1991, ch. 637, § 9.
- 16 19. Give written opinions to public entities as defined in subdivision a or b of subsection 13
- 17 of section 44-04-17.1, when requested by an interested person under section
- 18 44-04-21.1.