2011 HOUSE ENERGY AND NATURAL RESOURCES

HB 1466

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1466
01/27/2011
13648

☐ Conference Committee

Committee Clerk Signature Emineth

Minutes: 3attached testimony."

Rep. Porter: We will open the hearing on HB 1466

Julie Ellingson: I represent the North Dakota Stockmen's Association. We are in support of HB 1466 which would initiate negations in Federal Legislation to return certain Army Corp. Engineer lands to their former owners. During this and the last session and the interim in between many very potent examples of problems relating to weed control and unreasonable grazing requirements negatively impacting land owner on these parcels, have been brought to light. Our association has always held that the land is best held in private hands and agrees that the property should be returned to those private land owners who we believe are the best owners of the land source. You will also hear about the purposed amendments to clarify the language that in the event that the former land owners have been deceased that those parcels would then be returned to their heirs. (see attachment 1)

Rep. Porter: Are there any questions for Julie Ellingson?

Rep. Brandenburg: I represent district 28. HB 1466 is a bill dealing with the Corp. land along Lake Oahe and Lake Sakakawea. In the last session there was a bill dealing with the weed issue and the problems with grazing and problems along the Corp. land. There are a lot of land owners along the reservoirs that were mistreated. (see attachment 2)This bill would allow the land commissioner to be the negotiator between the Federal Government and the land owners. The Federal Government will want one agency to deal with this. The Land Department would be that agency that could deal with that with the Federal Government. (see attachment 2)

Rep. Porter: Is there any questions for Rep. Brandenburg?

Rep. Kasper: I would like to get back my grandfathers original homestead. Would I be able to get that land back?

Rep. Brandenburg: That is what the bill is being set up for. First we have to negotiate with the Federal Government to get this land to come back. Then you are going to have an

agency to work the land owners that were adjacent when the land was taken away from them. We may have to deal with heirs.

Rep. Kasper: In the end of line 9 it says "with the goal of returning these excess lands to the former private land owners or adjacent land owners". A goal is not a requirement. They would not be required to with the word "goal of" in this bill. How do you answer that?

Rep. Brandenburg: I have an amendment that I should have made copies of. It does read that the United States Army Corp. of Engineers, with the goal of introducing Federal Legislation to return the excess lands around Lake Sakakawea above the elevation of 1854 sea level and excess land s around Lake Oahe above 1617 sea level to the board of the University of School Lands with the goal of returning excess lands to the former private land owner, their immediate family, or adjacent land owners to the extend feasible.

Rep. Kasper: You still have the word "goal" in there instead of "requirement," you are talking about heirs, some of that land could have changed hands two or three times so you have new owners. Are the new owners out?

Rep. Brandenburg: This is going to be an ongoing battle that we have to keep working on. I agree with you it should be a requirement.

Rep. Porter: In South Dakota did the land go back to the private owner?

Rep. Brandenburg: In South Dakota the land went back to the State Land Department and the State Land Department is in charge of it.

Rep. Porter: The Senate Majority Leader that the deal.

Rep. Nelson: How high above the maximum pool depth are those elevations that you are naming?

Rep. Brandenburg: The base flood elevation for Lake Sakakawea is 1837, which is where the Corp. tries to get it by March 1. It is currently at 1840.7. The Corp predicates it will get to 1838 by March 1. The base flood level for Lake Oahe is 1607. It is currently at 1605, the Corp. predicts it to be at 1606 by March 1.

Rep. Porter: Are there further questions for Rep. Brandenburg?

Rep. Kasper: Are you able to find out what the highest water elevation has ever been in Lake Sakakawea?

Rep. Brandenburg: I can find out from the Water Commission.

Rep. Anderson: If the land owners get the land back will there be restrictions on that?

Rep. Brandenburg: Yes there would have to be some land restrictions in there because you have to deal with those issues. You can't farm right up to the edges to the water.

Rep. Porter: Did you see the fiscal note on this particular bill?

Rep. Brandenburg: The State Land Department is looking for more FTE's which could cause a fiscal note.

Rep. Porter: There will be more concern in the next biennium if the land would come back because there are provisions to this bill that they would be required to give back to the private owners, family or the adjacent land owners that all of it would have to be surveyed and they are estimating it at almost two million dollars to survey the property.

Rep. Brandenburg: Who is going to pay for that would have to be determined I do know that the State Land Department is receiving a lot of money from the leases that they have been sending out for oil leases and other leases for rentals. The most exciting part is getting this economic development back for recreation and many other commerce things. The will make money off the land. The land owner will make money off the land. I bet if a farmer got the land back he would pay for the surveying fee.

Rep. Porter: Would you have a problem amending it?

Rep. Brandenburg: That should be talked about. The land owners should have a meeting and talk about that.

Rep. Porter: Are there any other questions for Rep. Brandenburg?

Herb Grenz: I live in Emmons County. I don't have a handout. I dealt directly with the Corp. of Engineers and we live on the Oahe reservoir. When dealing with the Corp. way back then everything went quite well, but the problem with the Corp. is they are a bunch of liars. They get around that policy by not lying, but changing policies. The State of North Dakota has learned that well and I was proud of the Governor, and the Attorney General and the testimony about the charges of the water that finally North Dakota said "said enough is enough." I have been working on this excess land issue, to the return back the land to the county. The Corp. will not send the land back to the private land owner it has to be an entity. Land owners are not an entity. The flowage easement acquired at the Oahe project gives the Government 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 remove from the easement lands any natural or manmade obstruction or structure which in the opinion of the Government may be detrimental to the operation and maintenance of the project. Under flowage easement this land would be under government control, we can't put any building on it. If this land would go back would be deeded back and it would be on the county taxes. We would save the Government a lot of money. The Corp. tells you how to graze the land. The Corp. would still be responsible for any land below 1617.

Rep. Porter: Are there any questions for Mr. Grenz? I have a question in regards to the elevations, if the reservoir is full this coming spring it will be at 1618 then are the numbers in the bill correct?

Herb Grenz: I go what the Corp. of Engineers goes by. I believe in Sakakawea it is 1854, In Oahe the maximum it can be is1620.

Rep. Porter: Are there any questions for Mr. Grenz?

Rep. Nelson: Is the 120 acres the lease land and then the flowage easement land that you own. Is that how it all sits on the landscape?

Herb Grenz: No the flowage easement goes down to draws or creeks.

Rep. Nelson: That 120 acres of lease land, does that follow topography too.

Herb Grenz: That does follow topography along the edge of the reservoir.

Rep. Porter: Are there any further questions for Mr. Grenz?

Rep. Schmidt: I am the district 31 representative. The land that I represent goes from South of Mandan to the South Dakota Border. The landowners along the reservoir are doing the same actions to try to get back their land as what we are doing here. My family lost 434 acres to the Oahe Dam. I have documentation of what there means were from 1952 and later. In 1962 my father wrote a letter and asked why some land was going to be taken by the Oahe. The response from Senator Young and the Corp. was quote "The substantial portion of track 454 is expected to be inundated at the normal maximum operating pool, the remainder is required because of the anticipated effects of the accreditation and erosion, thus it is necessary to acquire all of the track to meet the land requirements established for the project and to ensure that reservoirs operations will not affect the lands remaining in private ownership." To this day I don't there has not been one acre flooded nor have we lost anything in regards to erosion.
When set up, the upper limit of that reservoir of ten and a half miles is operatory. A field survey was never made. They used an 1890 map in which the elevations probably were not right. There was a survey done to find out about the fish and wildlife service situation. The letter stated "this office cannot concur with the purposed method for accomplishing the purposed wildlife management on Oahe the judgment used to reach this decision is expressed below." The one I want to point out is "this land operation portion was presented to the Governors of North Dakota and South Dakota and the people of these states in 3 separate meetings. To date which was December 17, 1965 as a result of the desires expressed by the general public, at the public hearings expressions of some state wildlife agency officials no acreage was purchased or otherwise added to the project for wildlife purposes."
If that is the case then why do I have maps with Wildlife on it? This is the method by which this land was obtained. (see attachment 2) I would like to make one amendment to the amendment and that is at the bottom it says " to the extend feasible" I don't have any words to submit at this time.

Rep. Porter: Could we put a period on line 13 after landowners?

Rep. Schmidt: That would be fine.

Rep. Kasper: Would everything you said that applies to Oahe also apply to Lake Sakakawea?

Rep. Schmidt: Yes it would other than the elevations.

Rep. Kasper: I have a problem with the word "goal" on line 11 where is says "with the goal of returning access lands" Why not the word requirement?

Rep. Schmidt: I would love it.

Rep Kasper: It says" the former private landowners" I own it now, so I qualify or adjacent landowners. There is somebody we are missing in between that is if the land had been sold to somebody else who is not adjacent landowner, it is somebody that bought it from my grandfather. So you are missing someone. I would return it to those people who own it right now even though they don't qualify under the definitions you have right now.

Rep. Schmidt: I agree with you sir.

Rep. Nelson: There seems to be 2 basic issues here, one land and the other easements. Do you know in South Dakota did the Federal Government extinguish their easements?

Rep. Schmidt: I do not know if they did or not.

Rep. Anderson: If your dad sold this land for $51.00 and they are willing to give it back. Are they going to request a payment of $51.00 plus interest that has accrued all of those years?

Rep. Schmidt: Since 1966 the public and the Corp. of Engineers has had 434 acres that they have used for $51.00. I think that is a good deal. That could be a issue.

Rep. Porter: Are there further questions for Rep. Schmidt? I there further testimony for the support of HB 1466?

Kenny Graner: I am a framer-rancher and live in Morton County. I have a grandson that would be affected by this land going back to the landowner. I am in support of this bill with the amendments. I also would like to point out that what is going to happen when this land is returned to the landowner is that part of ownership in this land is going to go back to that landowner and this land will thrive again someday.

Rep. Porter: Are there any questions for Mr. Graner? Is there further testimony in support of HB 1466?

Kevin Schmidt: I live in Morton County. The Corp. took 286 acres from by dad in 1964. This is land we had set up for irrigating 2 years before they took it. We still owned 30 acres down there. The land that we still own is about 1625 ft. The flood irrigated that field as flat as this floor is. They took right down the middle of the field. They own one side of the fence, and we own the other side of the fence. We do rent it from the Game and Fish. As far as survey costs, there are corner posts and markers all over that land from when they took it. There is no reason to survey it.

Rep. Porter: What was the elevation of the 30 acres?

Rep. Schmidt: 1625 and this has never been flooded.

Rep. Porter: Are there any questions for Mr. Schmidt? Is there further testimony in support for HB 1466?

Jim Fitzsimmons: I am here to testify in support of HB 1466 and the amendments that have offered by Rep. Schmidt. My grandparents surrendered 480 acres to the Corp. 85% of the people who lost land are no longer with us. 50 years later we can talk about the negatives. Here are some of the positives. What the Corp. did was save millions of dollars in flood devastation thru out the Midwest. We also know that they took too much land. The way to resolve it is to return the land.(see attachment3)

Rep. Porter: Are there any questions for Mr. Fitzsimmons? Is there further support for HB 1466?

Durant Schiermeister: I farm along the Missouri River I have 3 acres of river frontage. This is the most confusing piece of land in North Dakota because it was taken off of an old map. These small tracks of land grow nothing but weeds. I spent thousands of dollars trying to control weeds that are not on my land. If it was my property I would take of it like it should be. If this was returned to us people we would pay taxes and lessen the burden of the Federal Government for trying to manage land that they don't know how.

Rep. Porter: are there any questions for Mr. Schiermeister?

Rep. Nelson: Last time I visited with you, you were trying to grow some crops next to Lake Oahe. How did the reservoir affect you?

Durant Schiemeister: If you are trying to grow a high value crop along Lake Oahe give it up. When you have acres upon acres of weeds for 3 miles and are trying to irrigate that won't work.

Rep. Porter: Are there any further questions for Mr. Schiemeister? Is there further testimony in support of HB 1466? Is there opposition for HB 1466?

Mike McEnroe: I represent the North Dakota Wildlife Society. The chapter is opposed to HB 1466 because of transferring access Corp. land back to the owners. The Game and Fish Department indicates that there are about 47,000 management acres along the Sakakawea and Lake Oahe. These are public lands that are valuable to the sports people. There are currently 60 boat ramps located along the Missouri River, while none of these would be affected because the land is all high land and these boat ramps are along the reservoir access to them, may be given away for up above the way to make access to those ramps difficult or costly. The North Dakota Game and Fish Department has been working with the Corp. for seven years trying to increase shoreline access. If access along those access areas is removed or transferred back to private citizens, the citizens of the State could lose access to parts of that reservoir. I would also like to make a comment

about a letter I have seen from the McLean County State's Attorney. There seems to be a lot of legal issues dealing with the Corp. transferring the land back to the private citizens. A lot of it has reference in the settlement that was done I believe it was called the J.T.E.C. Settlement. Most or all of the land that was transferred back in South Dakota went thru the State Land Department to the Game and Fish Department and or to the Tribes. I don't know that any went back to private ownership. If they return this land to the private owners what should be the price of the land that should the 2011 prices, given the short fall of the Federal budget should it be sold back to the highest bidder?

Rep. Porter: Are there any questions for Mike McEnroe? Is there further testimony in opposition to HB 1466?

Mike Donahue: I represent The North Dakota Wildlife Federation. We support what the chapter had to say a few minutes ago. (see attachment 4)

Rep. Porter: Are there questions from the committee?

Rep. Nelson: the people can't drive, camp or pickup a rock on the land. How is that recreation?

Mike Donahue: I am not familiar with all the rules up and down the system, but there are many locations where you can access the water line and not be in fear of being in trouble for doing it. I do know that picking up artifacts can get you into a big bunch of trouble.

Rep. Porter: Are there any other questions for Mr. Donahue? Is there any further opposition for HB 1466?

Mike Brand: I am the director of the Surface Management Division for the North Dakota State Land Department. I am not here to present any testimony. We prepared the fiscal note for the Legislative Council my purpose here is to explain any questions you might have on the fiscal note. Under the appropriations it says one point three million dollars that's a transposition of the numbers that is really one million eight hundred and thirty two thousand six hundred and thirty six dollars. That was an error on our part. That State Land Department and the Board of University School Lands are not a general fund agency. We are a special fund agency that is why you see a fiscal note that asks for general fund appropriations. We would not be able to use our lease money from the oil and gas from that type of thing for this project. It would have to be a general fund appropriation. The one point million doesn't include the appraisal or the survey costs. If the state would take procession of the property what would happen to it. I wouldn't have any idea.(see attachment 5)

Rep. Kasper: Is there is any way you can use money in the trust fund for the costs?

Mike Brand: Not in the Lands and Minerals Trust Fund. That could be appropriated by the Legislature but not in the School Trust Funds or any other trust funds which are specific for those entities.

Rep. Kasper: I am talking about the money the Governor is going to use for the roads in North Western North Dakota. How is he getting that money out of there?

Mike Brand: That trust fund is a general fund trust fund. It is not a land trust fund.

Rep. Kasper: Then you manage it, but it is a general fund?

Mike Brand: I am not sure if that money comes from lands and minerals or if it is coming from severance tax but it would come from general fund money.

Rep. Kasper: If the land was broken into sale tracks sale costs. From your testimony are you implying that this land would be sold as opposed to "given" back to the original landowners?

Mike Brand: When this fiscal note was written, we under the impression that in reading the bill that the land would come in possession of the state. We assumed that the land would be sold. We would not be making that decision

Rep. Kasper: Do you see what your knowledge, any possibility if the Federal Government did deed the land back to state so that a trust could be set up for the landowners so that we are not doing a gifting?

Mike Brand: I am not qualified to speak about that.

Rep. Porter: Are there any further questions for Mr. Brand?

Bruce Engelhardt: I am with the State Water Commission. I would like to answer some of the questions that were asked about elevations. With the snow pact we have this year I would expect we are looking at 1620 on Oahe this spring.

Rep.Porter: Can you check and see what the maximum has been on both.

Bruce Engelhardt: Yes I can get that information for you.

Rep. Porter: Are there any questions for the Water Commission? At this time we will close the hearing on HB 1466.

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1466
02/03/2011
14052

☐ Conference Committee

Committee Clerk Signature Smith

Minutes:

Rep. Porter: We will open the hearing on HB 1466. Rep. Brandenburg asked that we would look at amending the bill, the amendment you have is what has been proposed from the sponsor. The goal of the bill is to ask for Federal Legislation to transfer the land back to which is around Lake Sakakawea and Lake Oahe above 1620 is what to the board of the University of School lands. So that with the goal of returning these lands to the former private land owners and the adjacent owners to the extend feasible.
Rep. Brandenburg felt that was too much to chew off at one time and that first needs to be accomplished and the Legislature can deal with the second one after the fact. We are hoping, that will take out the fiscal effect of the bill and that done the bill can move forward.

Rep. Porter: Are there any questions on the proposed amendment?

Rep. Keiser: Did we request the fiscal note with these amendments?

Rep. Porter: They would not do that until the amendments are placed on the bill.

Rep. Nathe: I make a motion to move the amendment.

Rep.DeKrey: Second.

Rep. Porter: Is there any discussion? All those in favor say I. Motion carries, we have an amended bill in front of us.

Rep. DeKrey: I make a motion to do pass as amended.

Rep. Nelson: Second

Rep. Hanson: What has South Dakota done with their land that they got back?

Rep. Porter: There was a Federal Grant that came with the land for the operations of the land from the Federal Government the land went into their Land Department for the Parks and Recreation. It went to a standing public agency and remained in the public since. It came with a huge check along with the return of the land.
Is there further discussion on HB 1466?

Rep. Porter: The do pass motion carries.

Yes 13 NO 2 Absent 0 Carrier: Rep. Anderson

2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee
Pioneer Room, State Capitol

HB 1466
02/10/2011
14378

☐ Conference Committee

Committee Clerk Signature Jmiriethe

Minutes:

Rep. Porter: We will open HB 1466.

Rep. DeKrey: I move we reconsider our actions by which we passed out HB 1466.

Rep. Nathe: Second

Rep. Porter: Is there any discussion? Voice vote taken. Motion carries I am going to pass around a amendment , in the fiscal note I don't have it in front of me there was a $80,000 fiscal note to lobby Congress because of the way the wording on the front of this reads where it says on line 6 negotiate with Representatives of the United States Army Corp of Engineer that fiscal note included 4 trips to Washington D.C. and the other language that was in there talked about the board of the University of Schools will except the lands on behalf of the State of North Dakota. I am passing around a hog house amendment to the bill that quite simply states "if through federal legislation the United States Army Corp. of Engineers returns the excess land" and then on the bottom line it says "the board of University and School Lands may accept the land on behalf of the State of North Dakota."

Rep. DeKrey: I move to porter the amendment to HB 1466.

Rep. Damschen: Second

Rep. Porter: Is there any discussion? All those in favor motion Carries We now have amended HB 1466 in front of us.

Rep. Kasper: The land would go back to the state and not to the original owners?

Rep. Porter: We had amended that portion out on the version that we sent on the floor. We changed the elevation to 1620 and put a period at the end of School Lands. It was felt by the bill sponsor that took the contention away from all of the other groups and that really their intention is to get this done in faces anyway. Face 1 would be to go to the Federal Government and ask for the land back, have a receiving agency and then the legislature can deal with the process of distributing the land back to the owners.

Rep. DeKrey: I make a motion

Rep. Anderson: Second

Rep. Porter: We have a Do Pass as amended. Roll call motion carries

Yes 12 NO 0 Absent 3 Carrier: Rep. Anderson

FISCAL NOTE

Requested by Legislative Council
02/15/2011

Amendment to: HB 1466

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

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

The bill authorizes the Land Board to accept 100,509 acres of federal land along the Missouri River if Congress authorizes the transfer to the state. There would be costs of managing the land, but an estimate cannot be determined without defined purposes and the time-line of a transfer.

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

There are potential costs related to survey and land management including weed control, fencing and lake access; but the actual costs cannot be determined without knowing when the transfer would occur; whether the Board would accept the land; and the purpose for which the land would be managed.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

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

The tracts acres along the Missouri River reservoirs are small issolated rough tracts that will have higher management costs than that of larger parcels.

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

The State Land Department operates with special funds; any expenditures related to transferred land would need to be appropriated from the general fund or derived from federal funds as a consequence of the transfer. The appropriation is not included in the executive budget.

Name:	Lance Gaebe	**Agency:**	State Land Department
Phone Number:	701 328-2800	**Date Prepared:**	02/16/2011

FISCAL NOTE

Requested by Legislative Council
01/25/2011

REVISION

Bill/Resolution No.: HB 1466

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

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues					$194,392	
Expenditures			$80,006		$1,832,636	
Appropriations			$80,006		$1,382,636	

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

The bill authorizes the Land Commissioner to negotiate for the transfer of 100,509 acres of Corps land to the state. Travel, legal, staff and meeting costs are estimated for the 11-13 biennium. Rent income along with land management, taxes and transfer costs are included in the 13-15 biennium.

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

Estimate is evaluated in 3 phases: negotiations with the Corps in 11-13 biennium, land transfer to the State in the 13-15 biennium, and the land sales to the former owners after 2015. Potential survey costs could exceed all of the expenditures outlined in this fiscal note.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

In 2009 the Army Corp of Engineers collected $70,700 for agricultural leases on the Garrison Reservoir and $22,600 for leases on the Oahe Reservoir as it lies in North Dakota. These amounts were increased by 10% to reflect revenue for the 13-15 biennium.

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

Travel, public meetings and legal costs of negotiating the land transfer in the 11-13 biennium. Estimate is 3.5 FTEs along with operating costs, tax payments and weed control during the 13-15 biennium, while land sales are prepared. The 100,509 acres along the Missouri River reservoirs are small rough tracts that will have significantly higher management costs than typical sections of pastureland.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and*

appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

The expenditures would need to be appropriated from the general fund. The appropriation is not included in the executive budget.

Name:	Lance Gaebe	**Agency:**	State Land Department
Phone Number:	701 328-2800	**Date Prepared:**	01/21/2011

FISCAL NOTE

Requested by Legislative Council
01/18/2011

Bill/Resolution No.: HB 1466

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

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues					$194,392	
Expenditures			$60,006		$1,832,636	
Appropriations			$60,006		$1,382,636	

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

The bill authorizes the Land Commissioner to negotiate for the transfer of 100,509 acres of USACE land to the state. Travel, legal, and public meeting costs are estimated for the 11-13 biennium. Rent income along with land management, taxes and transfer costs are included in the 13-15 biennium.

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

Estimate is evaluated in 3 phases: negotiations with the Corps in 11-13 biennium, land transfer to the State in the 13-15 biennium, and the land sales to the former owners after 2015. Potential, survey costs could exceed all of the expenditures outlined in this fiscal note.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

In 2009 the Army Corp of Engineers collected $70,700 for agricultural leases on the Garrison Reservoir and $22,600 for leases on the Oahe Reservoir as it lies in North Dakota. These amounts were increased by 10% to reflect revenue for the 13-15 biennium.

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

Travel, public meetings and legal costs of negotiating the land transfer in the 11-13 biennium. Estimate is 3.5 FTEs along with operating costs, tax payments and weed control during the 13-15 biennium, while land sales were being prepared. The 100,509 acres along the Missouri River reservoirs are small rough tracts that will have significantly higher management costs than typical sections of pastureland.

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

continuing appropriation.

The expenditures would need to be appropriated from the general fund. The appropriation is not included in the executive budget.

Name:	Lance Gaebe	**Agency:**	State Land Department
Phone Number:	701 328-2800	**Date Prepared:**	01/21/2011

Date: 2-3-11
Roll Call Vote #: 1466 - 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. _____

House House Energy and Natural Resources Committee

Legislative Council Amendment Number _____

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Nathe Seconded By Rep. DeKrey

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Hanson		
Vice Chairman Damschen			Rep. Hunskor		
Rep. Brabandt			Rep. Kelsh		
Rep. Clark			Rep. Nelson		
Rep. DeKrey					
Rep. Hofstad					
Rep. Kasper					
Rep. Keiser					
Rep. Kreun					
Rep. Nathe					
Rep. Anderson					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

voice vote taken - motion carried

11.0671.01003
Title.02000

Prepared by the Legislative Council staff for
House Energy and Natural Resources
Committee

February 03, 2011

YR
2/3/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1466

Page 1, line 7, replace "return" with "transfer"

Page 1, line 8, after "feet" insert "[565.10 meters]"

Page 1, line 9, replace "1,617" with "1,620"

Page 1, line 9, after "feet" insert "[493.78 meters]"

Page 1, line 9, remove "with the goal of"

Page 1, remove line 10

Page 1, line 11, remove "to the extent feasible"

Renumber accordingly

Date: 2-3-11
Roll Call Vote #: 1466-2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 11.0671.01003 - 02000

House House Energy and Natural Resources Committee

Legislative Council Amendment Number 11.0671.01003

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep DeKrey Seconded By Rep Nelson

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Hanson		✓
Vice Chairman Damschen	✓		Rep. Hunskor	✓	
Rep. Brabandt	✓		Rep. Kelsh		✓
Rep. Clark	✓		Rep. Nelson	✓	
Rep. DeKrey	✓				
Rep. Hofstad	✓				
Rep. Kasper	✓				
Rep. Keiser	✓				
Rep. Kreun	✓				
Rep. Nathe	✓				
Rep. Anderson	✓				

Total (Yes) 13 No 2

Absent 0

Floor Assignment Rep Anderson

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

Date: 2-10-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1466

House House Energy and Natural Resources Committee

Legislative Council Amendment Number _____

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep DeKrey Seconded By Rep Nathe

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Hanson		
Vice Chairman Damschen			Rep. Hunskor		
Rep. Brabandt			Rep. Kelsh		
Rep. Clark			Rep. Nelson		
Rep. DeKrey					
Rep. Hofstad					
Rep. Kasper					
Rep. Keiser					
Rep. Kreun					
Rep. Nathe					
Rep. Anderson					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice vote taken motion carries by which we passed out HB 1466

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1466

Page 1, replace lines 6 through 11 with:

"If, through federal legislation, the United States army corps of engineers returns excess lands around Lake Sakakawea above elevation of 1854 feet mean sea level and excess lands around Lake Oahe above 1620 mean sea level, the board of university and school lands may accept the land on behalf of the state of North Dakota."

Date: 2-10-11
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1466

House House Energy and Natural Resources Committee

Legislative Council Amendment Number _____

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep DeKrey Seconded By Rep Damschen

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Hanson		
Vice Chairman Damschen			Rep. Hunskor		
Rep. Brabandt			Rep. Kelsh		
Rep. Clark			Rep. Nelson		
Rep. DeKrey					
Rep. Hofstad					
Rep. Kasper					
Rep. Keiser					
Rep. Kreun					
Rep. Nathe					
Rep. Anderson					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

move to porter the Amendment to HB 1466
voice vote taken motion carries

11.0671.01004
Title.03000

Adopted by the Energy and Natural Resources Committee

February 11, 2011

VK 2/11/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1466

Page 1, line 1, remove "subsection to"

Page 1, line 1, replace "15-02-05" with "to chapter 15-02"

Page 1, line 2, replace "duties of the commissioner" with "the authority of the board"

Page 1, replace lines 4 through 11 with:

"**SECTION 1.** A new section to chapter 15-02 of the North Dakota Century Code is created and enacted as follows:

Authority to accept Lake Sakakawea lands.

If, through federal legislation, the United States army corps of engineers returns excess lands around Lake Sakakawea above elevation of 1,854 feet [565.099 meters] mean sea level and excess lands around Lake Oahe above 1,620 feet [493.766 meters] mean sea level, the board of university and school lands may accept the land on behalf of the state of North Dakota."

Renumber accordingly

Date: 2-10-11
Roll Call Vote #: 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1466

House House Energy and Natural Resources Committee

Legislative Council Amendment Number 11.0671.01004 03000

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep DeKrey Seconded By Rep. Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Hanson	✓	
Vice Chairman Damschen	✓		Rep. Hunskor	✓	
Rep. Brabandt	✓		Rep. Kelsh		
Rep. Clark	✓		Rep. Nelson	✓	
Rep. DeKrey	✓				
Rep. Hofstad					
Rep. Kasper	✓				
Rep. Keiser					
Rep. Kreun	✓				
Rep. Nathe	✓				
Rep. Anderson	✓				

Total (Yes) 12 No 0

Absent 3

Floor Assignment Rep Anderson

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

REPORT OF STANDING COMMITTEE

HB 1466: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1466 was placed on the Sixth order on the calendar.

Page 1, line 7, replace "return" with "transfer"

Page 1, line 8, after "feet" insert "[565.10 meters]"

Page 1, line 9, replace "1,617" with "1,620"

Page 1, line 9, after "feet" insert "[493.78 meters]"

Page 1, line 9, remove "with the goal of"

Page 1, remove line 10

Page 1, line 11, remove "to the extent feasible"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1466: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1466 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "subsection to"

Page 1, line 1, replace "15-02-05" with "to chapter 15-02"

Page 1, line 2, replace "duties of the commissioner" with "the authority of the board"

Page 1, replace lines 4 through 11 with:

"**SECTION 1.** A new section to chapter 15-02 of the North Dakota Century Code is created and enacted as follows:

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Renumber accordingly

2011 SENATE NATURAL RESOURCES

HB 1466

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

HB 1466
March 17, 2011
Job #15623

☐ Conference Committee

Committee Clerk Signature Veronica Sparling

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 15-02 of the ND Century Code, relating to the authority of the board of university and school lands

Minutes: Testimony Attached

Chairman Lyson opened the hearing on engrossed HB 1466.

Sheyna Strommen, representing the ND Stockmen's Association, stood in support of HB 1466. See **Attachment #1**.

Representative Mike Brandenburg, District 28, introduced the bill. HB 1466 is to deal with the Corps land and bringing it back to the state. What we are talking about is the land that is above the waterline. The dams were built for flood control. Some of the lands taken have been 10-20 feet above the water level. SD has taken back their land. We need a program to return our land to the State Land Dept and then they can return it to the landowners. It is not just about agriculture, it is about water for fracing, it's about all the things alongside oil, agriculture, cattle, residential and recreation. Those are all things that we gave up.

Chairman Lyson: Why are the 2 reservations not involved in this bill?

Representative Mike Brandenburg: I will let Representative Schmidt speak to that. We are working together with the reservations.

Senator Triplett: Where will the lands go? What will be the final disposition of the lands? And will the tribal lands go back to the tribes?

Representative Mike Brandenburg: I agree, this bill still needs some help.

Representative Jim Schmidt, District 31, stood to explain HB 1466. There are two entities on Standing Rock, the Lake Oahe Landowners that are American natives that own land themselves. That land was taken. Then you have Standing Rock Sioux tribe. I have been working to do this very same thing on Standing Rock. We would like to see HB 1466 compliment the efforts of the tribe to recover the taken lands. We want to approach the

federal government together, which will give us more power. With respect to the individuals in Morton County that had land taken, some of that land was higher than the dam itself. We agree that the land goes to the state and as landowners we are working with the state to get the land back. One of the key items in this though is the state, once it gets this land, retains the mineral rights. We want to get the mineral rights back with the land rather than the state retaining them. The opportunity for the money to be gotten back by the state through those mineral rights exists.

Chairman Lyson: Shouldn't we have something in the bill that the land that is outside the reservation or owned by tribal members will come back to the tribe, not back to the state of ND?

Representative Jim Schmidt: Yes, I would agree to amend that. Those of us in Morton County that gave up the land that didn't flood, we find it interesting that the land south of Bismarck that does flood is being maintained in private ownership and taxpayers' dollars are going to protect that while we, on the other hand, had to give up our land and it didn't flood.

Senator Triplett: Do you have any amendments to propose as far as exempting the tribal lands from this?

Representative Jim Schmidt: You can work on that. But it should not go into Sioux County.

Mike Donahue, ND Wildlife Federation, spoke in favor of HB 1466. The original version, we were opposed to. This version is weak enough to go through and not bother anything. We did feel that on line 6 of the bill "and Lake Oahe lands" should be inserted after Lake Sacagawea.

Mark Fox, on behalf of the Mandan Hidatsa & Arikara Nation, presented written testimony in opposition to HB 1466. See **Attachment #2**.

Senator Triplett: Have you prepared the amendments you would like to see?

Mark Fox: You can go ahead; we will also work with our tribal lawyer.

Dave Archambault, representing the Standing Rock Sioux Tribe, spoke in opposition to the bill. This bill is not ready for passage. 56,000 acres were taken from the tribe and about 19,000 were deemed excess by the Corps of Engineers. They have been working at getting the acres back since 1986. In 2002 some land was returned to South Dakota. An act of Congress gave it back to the tribes and to the state. The Corps does not do any improvement and management. We understand they don't need that excess land. The Corps has even asked the BIA to manage it for them. The other aspect to consider is the safety of the cultural heritage resources that exist within the boundaries. They are protected by federal law. If they are taken out of federal status even if they are in the state lands, they are no longer protected. There are also different factions within the reservations. The tribe is working with the different factions, they identified the factions and settled it with them. They did return some that they deemed excess. 386 acres were given back. The Corps

negotiated only with the BIA. They went straight rather than around the reservation so there was a lot more acreage that was taken on the reservations. If there is land that will be returned there are other obligations such as the 1868 treaty. The lands do need to be returned; we just want it to be equitable.

Chairman Lyson: If we would change this bill into a study, would you work with us to get a bill that would work?

Dave Archambault: We would be more than willing to work with you.

Dana Yellow Fat, the Natural Resources Liaison for Chairman Murphy with the Standing Rock Sioux Tribe, presented written testimony in opposition to HB 1466. See **Attachment #3**. It would be good for all of us to work together to get something passed, so if an amendment is offered, please notify the tribe.

Senator Triplett: If the land comes back to state landowners, you have concern with the potential of cultural artifacts being on them. It is not just on land that is within the boundaries of the reservations, is that correct?

Dana Yellow Fat: Yes

Neutral

Lance Gaebe, the Commissioner of the State Land Department, and the secretary to the Board of University and School Lands: My comments are not on behalf of the board. It is not a role of the State Land Commissioner or of the Board of University and School Lands to undertake this legislation. It came about by legislative action so what you see in front of you is something we are responding to and not something we initiated. There are unknowns in the bill, only South Dakota has done this. That land came back to South Dakota with a 1.8 million dollar trust fund to use to manage the land. Half of the tribes participated with that transfer. Also I would like to mention that Governor Hoeven was opposed to the transfer directly to the BIA for the benefit of the Three Affiliated Tribes. It would have gone to the trust and not to the original landowners. Besides, it should come with money for management. It should also go to the original beneficiary of the land. They would have just transferred it to the BIA for the benefit of the tribe without consideration for the private owner or the trustee.

Senator Triplett: Mr Gaebe, could you get us a copy of that March 4, 2008 letter? It was from Governor Hoeven directed to the Depts. of the Interior and the Army.

Lance Gaebe: Yes, I can do that.

Dana Yellow Fat: On Standing Rock, the majority of the land is owned by the tribe or tribal members. Denying access to the river, that is not the case with Standing Rock. We are working with two separate groups. Three Affiliated Tribes and Standing Rock are two separate entities and have two separate interests.

Chairman Lyson: We have to come up with something that works for the two tribes and for us.

Dana Yellow Fat: I agree. In SD it was a trade off and only two of seven tribes were in agreement with it.

Chairman Lyson closed the hearing on HB 1466.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee
Fort Lincoln Room, State Capitol

HB 1466
March 24, 2011
Job #15933

☐ Conference Committee

Committee Clerk Signature Veronica Spurling

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 15-02 of the ND Century Code, relating to the authority of the board of university and school lands

Minutes: No Attachments

Chairman Lyson opened the discussion on HB 1466.

Senator Triplett: Did someone offer some amendments to convert this to a study?

Chairman Lyson: I didn't because from the information I have been getting we could convert it into a study and by then there will be two new chairmen of the tribes and the study would be wasted. I cannot see how we could pass this bill without mention of the reservations because Lake Sacagawea runs right through the Fort Berthold Reservation and it borders Standing Rock Reservation. Standing Rock representatives said they even had sacred land above the reservation.

Senator Uglem: Where it refers to the returns of excess land, aren't we only talking about lands outside the reservation?

Senator Schneider: We need to make clear that we would accept only the land that was formerly state land, not land that was reservation land.

Chairman Lyson: The land in Fort Berthold that flooded was some state land and some tribal land. If we say only the state land it leaves them out. They were owners of the land that was taken.

Senator Hogue: What is the status of any Congressional action to do this or to ask the Corps to do this? This might be premature.

Chairman Lyson: One of the reasons this was brought forward was that South Dakota won and was awarded their lands.

Senator Schneider: It is my understanding that it was clear that Congress was going to authorize that these lands be returned to South Dakota first. Concurrently with that South Dakota made provisions to accept the land. I think we are taking step B here first. Obviously Congress is not going to do this any time soon. I don't think this does anything.

Senator Hogue: I think South Dakota acquired theirs when Senator Daschle was the Majority Leader of the Senate and had considerably more influence. This bill might be premature.

Senator Hogue: Do Not Pass motion

Senator Triplett: Second

Senator Schneider: I am torn about this. I know we want to send a signal and we have done that through resolution that the state wants these lands back.

Roll Call Vote: 6-1-0

Carrier: Senator Hogue

Date: 3-24-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1466

Senate Natural Resources Committee

Legislative Council Amendment Number _____

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Hogue Seconded By Triplett

Senators	Yes	No	Senators	Yes	No
Chairman Lyson	✓		Senator Schneider		✓
Vice-Chair Hogue	✓		Senator Triplett	✓	
Senator Burckhard	✓				
Senator Freborg	✓				
Senator Uglem	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Hogue

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

REPORT OF STANDING COMMITTEE

HB 1466, as engrossed: Natural Resources Committee (Sen. Lyson, Chairman) recommends **DO NOT PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1466 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1466

North Dakota

STOCKMEN'S ASSOCIATION

407 SOUTH SECOND STREET
BISMARCK, NORTH DAKOTA 58504
Ph: (701) 223-2522
Fax: (701) 223-2587
e-mail: ndsa@ndstockmen.org
www.ndstockmen.org

Attachment 1

HB 1466

Good afternoon, Chairman Porter, and House Natural Resources Committee members. For the record, my name is Julie Ellingson and I represent the North Dakota Stockmen's Association.

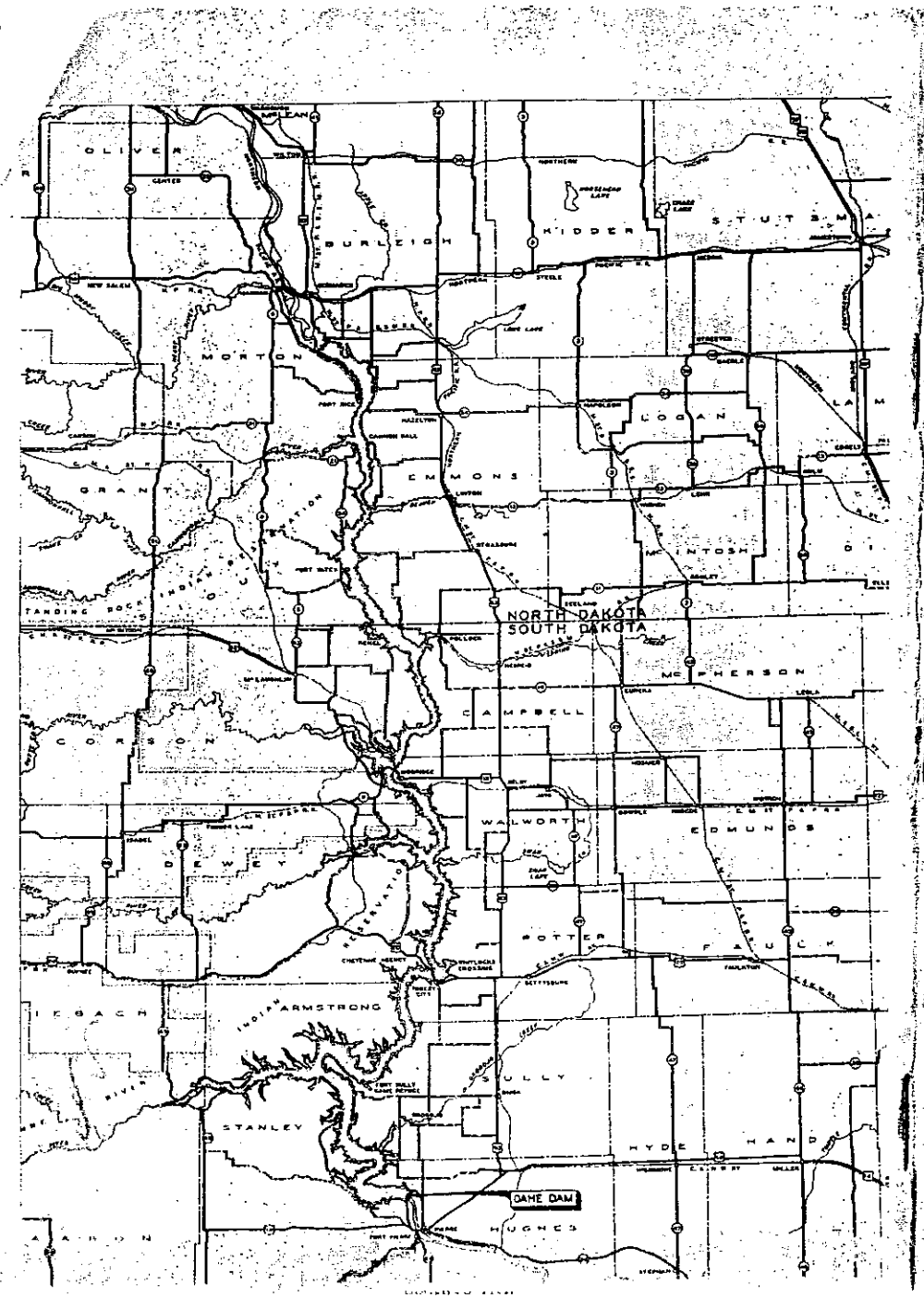
The Stockmen's Association stands in support of HB 1466, which would initiate negotiations and federal legislation to return certain Army Corps of Engineer lands to their former owners.

During this and last session and the interim in between, many very poignant examples of problems relating to weed control and unreasonable grazing requirements negatively impacting landowners on these parcels have been brought to light, and I know you will be hearing more of those stories today.

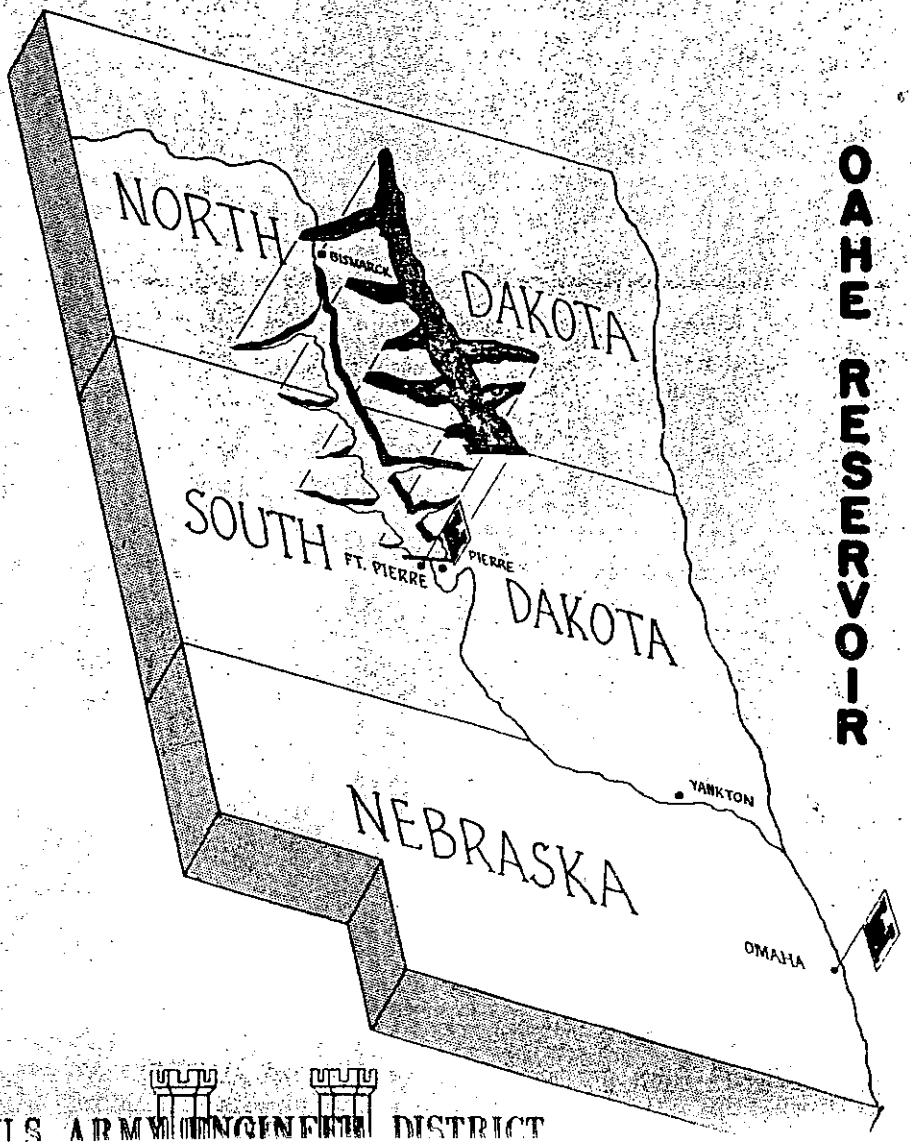
The Stockmen's Association has always held that land is best placed in private hands and agrees that this property should be returned to those private landowners, who are the best stewards of the resource.

For these reasons, we ask for your favorable consideration of this bill.

attach 2



RESERVOIR LAND
how the U.S. buys it



U.S. ARMY ENGINEER DISTRICT

THE PURPOSE OF THIS PAMPHLET

This pamphlet is intended to explain as briefly and as clearly as possible the methods and procedures employed by the Corps of Engineers in acquiring land for the Oahe Reservoir.

General information is provided on some of the most common questions concerning the purchase of land in the Oahe Reservoir area. The answers are not all-inclusive, as there will be many problems which concern only few properties. No attempt has been made to discuss herein such matters as the relocations of railroads, cemeteries, and other like facilities.

This pamphlet is for you, the property owner in the reservoir area. It is hoped that the questions and answers will help you to get a better understanding as to how the Government acquires interest in the land for the Oahe Project.

H. G. WOODBURY, JR.
Colonel, Corps of Engineers
District Engineer
U. S. Army Engr Dist, Omaha

1961

INDEX

WHY IS THE OAHE DAM AND RESERVOIR BEING BUILT?

The Oahe Dam and Reservoir was authorized by the Flood Control Act approved 22 December 1944 as a unit of the comprehensive plan for flood control and other purposes in the Missouri River Basin. The project consists of a rolled earth-fill dam, a hydroelectric generating plant and a multiple-purpose reservoir to be operated as a unit in the comprehensive plan for flood control, irrigation, navigation, power development and other uses. The dam is located on the Missouri River 1,123.4 miles above the mouth and approximately 6 miles northwest of Pierre, South Dakota. Elsewhere in this pamphlet is a picture of the dam together with statistical data thereof.

HOW ARE LAND REQUIREMENTS OF THE RESERVOIR DETERMINED?

The land requirements in the Oahe Project are based on the storage space needed to operate the reservoir to obtain maximum flood control benefits and for storage of water for beneficial use for navigation, irrigation, and generation of hydroelectric power. Under the present policy, lands permanently flooded or frequently flooded in the reservoir will be purchased outright (fee simple); whereas title to higher lands will be left with the owner, where feasible, and the right to flood the land will be acquired (flowage easements).

The maximum elevation pool will be at 1620 feet mean sea level. The reservoir lying below that elevation will therefore be flooded frequently enough to make purchase of the land necessary. The land in this portion of the reservoir is being blocked out generally along legal subdivision lines and acquired in fee.

Above the maximum elevation of 1620 feet, certain areas will be required for flowage easements or will be acquired in fee for public access to the reservoir, rights of way for relocation of utilities, highways, railroads, etc., plus the required freeboard area to allow effects of wave action, sloughing, saturation, deposit of debris, and other effects of backwater.

WHEN WILL THE ACQUISITION OF ALL LANDS FOR THE RESERVOIR BE COMPLETED?

The Government began acquiring land for the Oahe Reservoir in 1948. Purchase has progressed upstream from the dam through the years as construction and inundation of the areas was necessary. The purchase of all lands required for the reservoir is scheduled for completion in 1963. By the end of 1961 it is planned to have lands acquired up to the general vicinity of the Cannonball River. During 1962 it is proposed to acquire those lands lying north of the Cannonball River up to the upper limits of the Project which is approximately to Bismarck, North Dakota, while 1963 will be devoted to isolated acquisitions of remaining lands in the upper extremities of the Reservoir.

HOW IS THE PURCHASE PRICE DETERMINED?

Prior to the enactment of Public Law 86-645, 14 July 1960, the Corps of Engineers has for many years appraised real estate by regularly employed staff professional appraisers and by obtaining appraisals by contract from commercial professional appraisers, basing its purchase of land on the estimates of values thus obtained. Pursuant to Section 301, Public Law 86-645, a procedure has now been established by which real estate will be acquired by true negotiations. The representatives

of the Corps will contact the owner and negotiations will proceed on the same basis as would be involved in the barter and sale of real estate generally even though it is fully realized that owners of land in reservoir projects are normally not desirous of disposing of their property. Whereas owners are generally familiar with real estate values and are usually acquainted with the conditions of their property which affect its value, the Government finds it necessary to make investigations with respect to these items. For that purpose a real estate appraiser will contact each owner, or his representative in possession of the property and of sales of property in the community. All landowners are encouraged to assist the appraisers in this respect, to make information available to them and to point out any special features of the property which affect its desirability, use or value. After this investigation has been completed a negotiator will contact the landowner.

WHAT IS THE PROCEDURE IF NEGOTIATIONS FAIL?

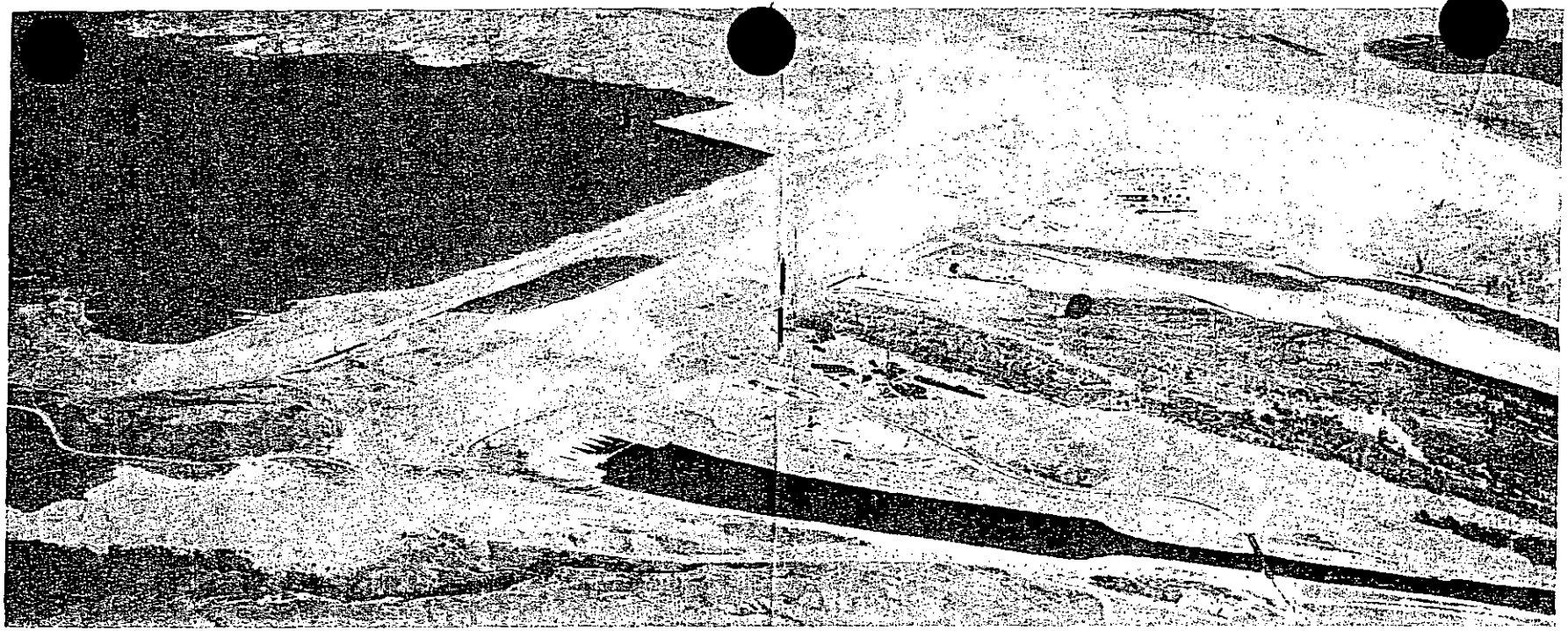
It is fully realized that the value of real estate is a matter of opinion. The opinions of the owners will be given full consideration in all negotiations and where agreements as to the purchase price are reached, written contracts of sale will be executed by the owner and a contracting officer of the Government. Where mutually agreeable figures cannot be negotiated, the land will be acquired through a condemnation proceeding commenced in the local United States District Court for the District in which the land is located. Except in instances where construction schedules may require acquisition on short notice, ample time will be allowed for negotiation. Where the institution of a condemnation proceeding is required, a deposit will be made in Court of the

estimated compensation of the land to be taken. Under the procedure existing before the enactment of Public Law 86-645, the amount of the deposit was the appraisal estimate. Under the present negotiating procedure the amount will be determined by the Corps of Engineers in accordance with its estimate of market value and this amount may not necessarily be the amount discussed during negotiations.

WHAT IS A CONDEMNATION PROCEEDING?

Condemnation Proceeding is a method of acquiring property needed by the Government where the value of property cannot be agreed upon between the property owner and the Government. It may also be used to acquire property where title to such property is encumbered or clouded. When a condemnation proceeding is instituted to remove the encumbrance or cloud affecting title and there is no dispute between the property owner and the Government as to the price to be paid, he will be called on only to assist the United States Attorney as much as he can.

If the property owner and the United States cannot agree as to the value of this property, it will be necessary that the condemnation case be brought to trial before the United States District Court having jurisdiction. The trial will be conducted in accordance with the established rules and procedures of such courts. No attempt is made here to relate such rules and procedures. Each side will be permitted to present its evidence to the court for the purpose of supporting its view as to the value of the property to be acquired. The court or jury will then determine the fair market value of the property.



PROJECT DATA

RESERVOIR	Area-Acres	Volume Ac. Ft.
At Elev. 1620	376,000	23,600,000

EMBANKMENT

Crest Length, Feet	9,300
Maximum Height, Feet	242

SPILLWAY - Gated Chute

Capacity, Cu. Ft./Sec	300,000
Crest Length, Feet	456

OUTLET WORKS

6 Tunnels - Concrete Lined ..... 19 Ft. Diam.

DRAINAGE AREA ..... 243,490 Sq. Mi.

ELEVATIONS (Feet above Mean Sea Level)

Maximum Operating Pool	1620
Minimum Flood Control Pool	1610
Minimum Pool	1540
Multiple-Purpose Use	1540-1610
Normal Flood Control Use	1610-1617
Reserve Flood Control Use	1617-1620
Top of Dam	1660
Spillway Crest	1596.5

POWER INSTALLATION

7 Power Tunnels - With Penstocks 19 Ft. Diam.
Ultimate Installation .....Seven 85,000 Kw units

WHAT HAPPENS IF OWNER'S TITLE IS DEFECTIVE?

The law requires the Attorney General of the United States to pass upon the adequacy of the title to the property owner's land before it can be bought by the United States. If the Attorney General determines that the title is so defective that it cannot be cured, the Government will not pay the property owner immediately for the property, but will be required to file a legal proceeding and deposit the estimated fair market value with the court. If the landowner and the Government have already agreed on price the court is so advised and judgment will be entered on the basis of this agreed price. All the court will do is clear title at no cost to the property owner.

WHAT ARE THE EXPENSES OF AN OWNER?

Any costs of providing a clear title are borne by the owner. He is required to affix revenue stamps to the deed to the United States. He must provide proof that there are no legal liens against the property on the date of transfer.

Abstract or other title evidence and recording fee of deed to the United States are Government expenses.

Landowner must pay legal fees, cost of witnesses, appraisals, and other expenses he may incur in his behalf during the condemnation proceedings. Court costs will be borne by the Government.

CAN BUILDINGS OR OTHER IMPROVEMENTS AND CROPS BE SALVAGED OR RESERVED?

Yes, except in the few instances where the Government needs the improvements in connection

with the project. In general, if the owner wishes to retain buildings and improvements and move them to another location outside the reservoir boundary, he may do so by including a provision in the offer. The salvage value of the buildings or improvements is deducted from the purchase price. This salvage value takes into consideration the fact that the owner must move such improvements at his own expense and be responsible for removing them by a specified date. The salvage value is established as an appraisal matter on the basis of the estimate of what the improvements would bring on bid in the open market for off-site removal. If the owner does not want to reserve any improvements, they are advertised and sold to the highest bidder by means of competitive bidding. Growing crops may also be reserved by the owner.

HOW LONG CAN THE OWNER OR TENANT REMAIN ON THE PROPERTY?

This depends upon the need for the property. If your property is located in the upper reaches of the reservoir, you will be permitted to remain on it longer than those who lived where the dam and work areas originated. If the Government does not have immediate need for the area in which your property is located, and you desire to remain on the property after the Government has acquired title, you may reserve a right to use or obtain a lease. The date you must vacate the premises depends upon the Government's plan for the use of your property.

WHAT IS AN OWNER'S RIGHT OF RESERVATION AND USE WHERE LAND IS ACQUIRED THROUGH CONDEMNATION?

Where land is acquired through court action, title passes by a decree of the court rather than

by deed. Reservation of crops and improvements, or of other rights, can be made by stipulation arranged with the United States Attorney at any time prior to the closing of the case. The terms and conditions of any stipulation must, of course, be mutually satisfactory. Use by the former owner is normally handled by a lease.

WHEN WILL THE PROPERTY OWNER GET HIS MONEY?

The Government recognizes that a property owner may need his money in order to buy another place and will pay him just as soon as it can after an Offer has been accepted and the Attorney General of the United States has approved his title. It usually takes less than 90 days from the date an offer is accepted until the check is delivered, provided title is good.

If the property is acquired by condemnation proceedings, the amount the Government estimates the property to be worth is deposited in the Registry of the local United States District Court and the court will permit the property owner to withdraw nearly all of the amount deposited, provided his title is clear. What percentage he can withdraw is discretionary with the court. The withdrawal does not in any way prejudice him from going ahead with his claim for more money than deposited in the Court.

Inquiries about withdrawals for cases in condemnation should be sent to the U. S. Attorney, District of South Dakota, Post Office Building, Sioux Falls, South Dakota, or U. S. Attorney, District of North Dakota, Post Office Box 272, Fargo North Dakota, according to the state in which the property is located.

WILL THE GOVERNMENT PAY FOR MOVING EXPENSES?

Under current legislation, the Secretary of the Army is authorized to reimburse both owners and tenants for certain expenses, losses or damages which they incur in the process and as a direct result of the moving of themselves, their families, and their possessions because of the acquisition of land for reservoir projects. To secure reimbursement, it is necessary that owners and tenants make written application within one year following the date of acquisition or within one year following the date that the property is vacated by the applicant, whichever date is later.

When the Government acquires title, all owners and tenants will be notified by letter of their right to make application for reimbursement and will be furnished forms for that purpose. The application for reimbursement must be supported by an itemized statement of the expenses, losses, and damages incurred. The law, however, provides that the total amount of reimbursement to be paid to the owners or tenants of any parcel of land acquired shall in no event exceed 25% of the fair value of the parcel of land. The Corps will furnish such information and assistance in making the application for reimbursement as requested.

WHAT FEDERAL INCOME TAXES DOES THE PROPERTY OWNER PAY ON MONEY RECEIVED FOR HIS PROPERTY?

Responsibility for the administration of the Federal income tax laws rests with the Internal Revenue Service, Department of the Treasury. As presently written, these laws contain special provisions with respect to gains derived from the sale of real estate, including sales made to the United States. It may be that the property owner

will not be obligated for income tax on such gain, especially if he rebuilds or reinvests in similar or like property. Such questions concerning the application of these provisions should be taken up with the local Director of Internal Revenue.

HOW MAY ACQUIRED RESERVOIR LANDS BE LEASED FROM THE GOVERNMENT?

It is the policy of the Government that available land may be outleased. Under existing policies, former owners or their tenants in possession at the time of acquisition are permitted preference in leasing the land, provided they are willing to pay the rental which the Corps of Engineers determines by appraisal to be proper. The use must be in accordance with existing regulations regarding the production of price-supported crops and the provisions of a standard form lease executed by the proper contracting officer of the Government.

In the event former owners, or their tenants in possession at the time of acquisition, do not desire to lease the available lands, they are advertised and leased to the highest responsible bidder by means of competitive bidding.

During the construction period of the dam, the available land is offered for lease on a year to year basis. After the construction period, and in the event there is land available for outleasing, leases may be granted for a term of five years. Cropping plans and conditions governing care and protection are similar to those commonly governing landlords and tenants. Cash rental in advance is required.

WHAT DISPOSAL IS MADE OF LEASE REVENUES?

Acts of Congress provide that 75% of all money received and deposited in the Treasury of the United States from the leasing of lands acquired by the United States for flood control purposes shall be returned to the State for use on public schools and public roads of the county, or counties, in which the property is located.

ARE ORAL AGREEMENTS MADE BY GOVERNMENT REPRESENTATIVES BINDING?

The Government can be represented only by certain individuals. They are willing and anxious to furnish information and advice, but owners are cautioned not to consider their statements as binding contracts unless they are incorporated into an Offer to Sell, a stipulation, a lease, or other formal document, properly executed.

THE CORPS OF ENGINEERS WILL BE PLEASED TO ASSIST YOU.

In carrying out the river control and development work assigned by Congress, the Corps of Engineers strives earnestly to acquire, in a fair and equitable manner, lands necessary for reservoirs. It is necessarily restricted to methods and procedures established by law.

It is only natural that in some instances misunderstandings arise. Often this is the result of lack of information. Should you therefore find it necessary to contact the Corps of Engineers on matters concerning your lands, be sure to have the proper legal description available so that your property may be correctly identified. The District Engineer and members of his staff assigned to land acquisition are always

desirous of the opportunity to clear up such misunderstandings and to provide all possible information for the benefit of owners.

"DON'T RELY ON RUMORS"

For additional information and procedures or other questions you may have in connection with property acquisition, property owners and tenant are invited to write or contact the U. S. Army Engineer District, Omaha, Corps of Engineers, Real Estate Division, U. S. Post Office and Courthouse, 215 North 17th Street, Omaha, Nebraska.

The local Real Estate Project Office of the Engineer District Real Estate Division may also be contacted for information and assistance on acquisition matters. The local address of this office is Project Manager, Oahe-Big Bend Real Estate Project Office, Fort Pierre National Bank Building, Fort Pierre, South Dakota.

Attachment 2 Kenny Grave
Hugh will be Jim Fitzsimmons
There to testify — Lin 5.

11.0677.01000

Sixty-second
Legislative Assembly
Of North Dakota

PROPOSED AMENDMENT TO HOUSE BILL NO. 1466

Introduced by

Representatives Brandenburg, Kretschmar, Schmidt

Senators Erbele, Klein, Wanzek

A BILL for an Act to create and enact a new subsection to section 15-02-05 of the North Dakota Century Code, relating to duties of the commissioner of university and school lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 15-02-05 of the North Dakota Century Code is created and enacted as follows:

Negotiate with representatives of the United States army corps of engineers with the goal of introducing federal legislation to return excess lands around Lake Sakakawea above elevation 1,854 feet mean sea level and excess lands around Lake Oahe above 1,617 feet mean sea level to the board of university and school lands with the goal of returning these excess lands to the former private landowners, **their immediate family** or adjacent landowners to the extent feasible.

Office of
McLean County State's
Attorney

McLean County

STATE OF NORTH DAKOTA

712 5th Avenue
P.O. Box 1108
Washburn, ND 58577-1108
(701) 462-8541
Fax (701) 462-8212
lrerickson@nd.gov

TO: Representative Todd Porter

FROM: Ladd Erickson

DATE: January 25, 2011

RE: HB1466 and SCR4002

SCR4002 "urges the Congress of the United States to provide a legal process to return to the riparian landowner land controlled by the Army Corps of Engineers which is not necessary for authorized purposes" and, HB1466 directs the commissioner of school and university lands to negotiate with the Corps to introduce federal legislation to "return excess lands" above elevation 1854 around Lake Sakakawea and elevation 1617 around Lake Oahe. Both measures fail to grasp the complexities of this long drawn out issue and could undermine the state and counties efforts to protect important interests implicated by transferring Corps lands.

Background

Both reservoirs (project areas) in North Dakota were built by first establishing the respective high water mark, elevation 1617 for Oahe and 1854 for Sakakawea; flagging that elevation line on the ground; and then the Corps went perpendicular to that elevation line back to the next rectangular grid line (section, township, range) and that spot often is the first section line uphill from the high water mark which became what is referred to as the "take line", or where the Corps purchased the property for the project area. Locations where the "take line" was a good distance back from the high water mark because the next uphill section line was on the other end of the section often became Wildlife Management Areas (WMA's) or campgrounds and boat ramp areas. Areas where the high water mark was close to the next uphill section line simply became Corps lands.

When people talk about "excess" lands or "lands not necessary" for project purposes (as the bill and resolution do), in lay terms, they are talking about the areas between the high water mark and the take line because those areas don't flood. This view began in the late 1980's with the release of the Joint Tribal Advisory Committee (JTAC) report to Congress which has a

paragraph that states lands that haven't or will not be flooded by the reservoirs should be considered for return to the tribes. In 1989-90 that statement lead to Congress inserting a provision in the Equitable Compensation Act (ECA), P.L. 102-575, that directed the Corps to transfer all lands above elevation 1860 within the exterior boundaries of the Ft. Berthold Indian Reservation back to the people the land was taken from, or to the tribe, and a similar provision directed lands to be transferred within Standing Rock Indian Reservation. (During the debate over the ECA the Corps transferred 5000 acres to the Three Affiliated Tribes (TAT) and then told Congress they have no more excess lands in North Dakota.)

Pursuant to the ECA the Corps held a series of meetings both on and off the reservations. For a host of reasons, Governor Schafer opposed the transfers. One of the major issues was the cost of properly doing the transfer. The Corps estimated that finding heirs, title searches, etc. would cost $23 million in 1993 dollars. (Now that the family trees of the heirs has had another generation to spread out that cost from 1993 is very conservative, and legal fights between heirs over who gets to the buy land with oil and gas under it is a lawyers dream law!) The practical problems that developed with the ECA resulted in the land transfer provision being repealed by Congress in 1994.

In 1995 the Corps held hearings in the upper basin states regarding "excessing" project lands with an eye toward redefining what "excess" meant. That resulted in the Corps issuing draft federal regulations with a new definition of what was "excess." Gov. Schafer opposed the draft regulations because the Corps definition of "excess lands" include WMA's, campground and park facilities and other areas where the state had invested a lot of money to support recreation. The Corps withdrew the regulations.

Also in 1995 the TAT sued the Corps, claiming the ECA had vested the tribe with rights to the lands subject the transfer and Congress could not quash their vested rights. In 2004 the case was dismissed and no appeal was filed. However, the TAT made a new request for the lands, this time all lands with the reservation above elevation 1854, and cited as authority the Ft. Berthold Mineral Restoration of 1984. (P.L. 98-102) The Corps, using that elevation line, estimated that 36,000 acres of project lands could be transferred to the BIA to be held in trust for the TAT. Governor Hoeven and the counties around the Lake opposed the transfer. (See attached) The Corps then paired down the acreage to 24,000 acres by excluding areas such as the WMA's and developed recreation sites. Even at this reduced acreage Governor Hoeven, Attorney General Stenehjem, and the counties publically indicated that a lawsuit would be filed if the Corps attempted to transfer the land.

The issue never ended, but sort of faded away. The last I recall, the Corps had drafted a MOU between themselves and BIA that once executed would transfer the land to tribal trust status controlled by BIA for the benefit of the TAT. The concern with HB1466 and SCR 4002 is that they could be interpreted by the Corps as a change in state policy "green lighting" them to complete and execute the MOA with BIA without addressing the concerns the state and counties

have raised. Neither measure addresses any of the complexities and interests involved. If the state and counties do have to sue the Corps over a land transfer HB1466 and SCR4002 will be cited by the Justice Department in their briefs as North Dakota's support for the Corps' action, even though the legislature did not have the facts of the transfer(s) in mind. Some of contested issues have been:

1) There are two systems universally used to transfer land in the United States: Rectangular Grid (section, township, range), and metes and bounds for irregular tracts. The Corps can't use rectangular grid because of the way the project lands were established. If, for instances, the Corps starts from the current take line and goes downhill to the next section line they will be below the high water mark of the reservoirs and be transferring lands that are needed for flooding in high water cycles. If the Corps uses metes and bounds the surveying costs and costs to re-fence the new take line would be tens or hundreds of millions of dollars for large land transfers such as the one that they contemplated on Ft. Berthold. (over 700 linear miles of lake shore with all the ins and outs) Therefore, the Corps' position has been that they will not use either established land description system, but instead not survey or mark the land on the ground, nor will they file the changes in land status with the county recorders. They will simply transfer the land to BIA in their records, and BIA would accept and recognize the lands in their records. The implications of this are:

    a. County land records are taken for granted to be an accurate depiction of what is on the ground. Transferring unplatted land on an elevation line would change that and county recorders could no longer assure title searchers that the land records are accurate.
    b. The elevation line within an Indian reservation becomes the civil/criminal jurisdiction line, but on the ground no one will know where that line is, what type of hunting license or permit is needed (tribal or state), or in some limited cases, what court system has jurisdiction.
    c. Pursuant to the Flood Control Act of 1944, the counties and school districts around the reservoirs are annually paid PILT (Payment in Lieu of Taxes) for Corps land acres. If the land is transferred to private ownership property taxes would kick in. However, if the land is transferred to tribal trust land status there would be no PILT payments, which are needed to support area roads.
    d. Below the take lines all congressional section lines were vacated by federal court actions in the 1950's. Therefore, currently, if a person can get to a take line by section line they have access to project lands, even if by foot. Moving the take lines down towards the high water mark without re-establishing the vacated section lines has the potential to create land-locks, where project lands are off-limits to public access except by consent of the BIA or private land owner. (The TAT has charged the public a fee for crossing tribal trust lands to get to public land, but currently an

agreement with the NDGF stopped those charges in lieu of a payment from GF for public access.)

e. There are currently 142 requests for water intakes around Lake Sakakawea, mostly from oil interests. Under state law each congressional section line also carries the automatic right to utility and other easements has seen fit by the county. Transferring land with vacated section lines means in order to access the water for intakes means consent of not only the Corps at the water line (currently at the take line), but BIA if they get the land, or the private land owner. An initiated measure (very poorly worded) recently amended the state constitution to prohibit eminent domain to be used for things like water intakes unless they serve a public purpose or "common carrier," which private oil company water depots do not under the wording.

f. Mineral interests could be a mixed bag. But before the legislature starts taking positions encouraging surface land transfers, the mineral interests of the public should be accounted for because it is possible that millions of dollars of oil and gas deposits that currently belong to the public would be given away, and in any bill passed, the legislature should with specificity relinquish public mineral interests or retain them. The Corps used three different purchasing criteria when they bought the land and mineral interests were treated differently in each criteria. In addition, subsequent acts such as the Ft. Berthold Reservation Mineral Restoration Act, changed the original mineral ownership interests on project lands within that reservation. Therefore, I can't say for certain what implication land transfers would have on mineral interests, but the legislature should understand this and describe its wishes regarding minerals before encouraging any surface land transfers.

These and other complexities should be addressed in any legislation encouraging land transfers because the lack of specifics could mean HB1466 and SCR 4002 sole purpose will be to be used against the state in court to support irresponsible federal actions. Additionally, this issue is a governor/congressional delegation level issue, not a state land commissioner issue as described in HB1466.

SCR 4002 urges Congress to establish a "legal process" to return land to riparian landowners. The Congress has already done that once with the ECA, and that law had to be repealed because it was so impractical and detrimental to the interests of North Dakota. (These lands were taken 60 years ago so how many of the original riparian landowners are still alive is a question.) The Corps currently has authority to make project lands "surplus" to project purposes and available for sale or transfer. (Within the boundary of an Indian reservation the tribe as the right of first refusal to any "surplus" federal lands, even if it came from private landowners.)

Despite the Corps historical denial, recreation is a project purpose under the Flood Control Act, which the upper basin states established in court. *See* South Dakota v. Ubbelohde, 330 F.3d 1014 (8th Cir. 1993) When the Corps "excesses" project lands what they're doing is trying to reduce their upper basin recreational legal responsibilities our state is owed under the FCA. These are the types of issues the legislature should consider before granting the Corps a broad-based "green light" to harm our state's interests.

Thank you for your consideration of this matter.

BismarckTribune.com

Hoeven adamant about stopping land transfer

LAUREN DONOVAN Bismarck Tribune | Posted: Monday, June 26, 2006 7:00 pm

North Dakota's governor said the state would likely go to court to prevent the U.S. Army Corps of Engineers from transferring 24,000 acres of land it no longer needs around Lake Sakakawea to the Three Affiliated Tribes.

Gov. John Hoeven said the plan isn't fair and could create a confusing map of go and no-go areas around the lake

Hoeven made his comments Monday at the first in a week-long series of public hearings the corps is holding on its draft plan to transfer the land to be held in trust for the reservation.

The transfer would be the most significant change in the land's status since it was acquired by the corps back in the '40s for construction of Garrison Dam and the permanent flood of Lake Sakakawea.

Hoeven said the transfer isn't fair because the majority of land taken inside the reservation boundaries was privately owned, by both tribal and non-tribal members, not by the tribal government. He also said the land, which is above 1,854 feet elevation and no longer needed to operate the dam, is now open for public hunting and fishing and he objected to taking it out of the public domain at the same time the state is working to provide more free hunting.

The governor said he's talked to the Attorney General about the state's options to block the transfer, if it comes to that.

The corps will decide whether to go forward with the draft plan in final form. The corps said it would not transfer another 12,000 acres inside the reservation boundary that is leased for recreation sites and for wildlife management areas.

About 45 people attended the hearing, far fewer than when the plan was originally opened to public discussion a year ago. Tribal chairman Tex Hall made the formal request in 2004, saying it was part of the tribe's longstanding quest to get back land it gave up for the dam.

Paul Danks, who heads up natural resources for the tribes, said he was surprised by the governor's continued resistance, but said he couldn't comment further.

Danks said the tribe's position is that it is pleased that the corps intends to transfer 24,000 acres of grazing land and that it will continue to request the 12,000 acres that were left off the table.

"We think it's great, we're a little disappointed that we didn't get the full 36,000. We will make a request for the remainder,"Danks said..

Todd Hall, a tribal member, said tribal people are also citizens of North Dakota and that issues like access could be worked out.

He said he would "pray" that Hoeven changes his position, since a transfer would return the land to local control.

Dale Frink, state water engineer, said the transfer could complicate water permits from Lake Sakakawea, by adding another level of government to the process.

McLean County State's Attorney Ladd Erickson has taken a lead legal role on the matter.

He said the only way to legally identify land in North Dakota is by the township grid system, or by meets and bounds.

Erickson said the land would have to be surveyed and platted at the time of transfer, rather than described by a simple elevation line, so that counties would know precisely where reservation boundaries begin for taxation purposes.

Erickson also said the transfer is being done under a 1984 Fort Berthold MIneral Restoration Act, which was intended to transfer

mineral ownership to the tribes, not land ownership.

Terry Fleck, who represented a statewide Lake Sakakawea friends' group, said it would be easier to agree to the transfer if people knew how the tribe planned to manage the land and had a plan for long-term development.

"When 24,000 acres of land changes hands and is managed differently, it changes the face of North Dakota and it changes it forever," Fleck said.

The hearings continue today at 10 a.m. in Dickinson and at 5 p.m. in Hazen.

(Reach reporter Lauren Donovan at 888-303-5511 or lauren@;westriv.com.)

Lake land transfer to be aired

LAUREN DONOVAN, Bismarck Tribune | Posted: Monday, February 28, 2005 6:00 pm

The public will get to comment on a proposed transfer of land on Lake Sakakawea to the Three Affiliated Tribes.

Col. Jeff Bedey, commander of the U.S. Army Corps of Engineers' Omaha (Neb.) District, which includes North Dakota, said he made that assurance to state leaders last week.

Bedey said he made an unsolicited commitment to Gov. John Hoeven's staff that he will hold public meetings on the issue, even though it's not in the rules when a federal agency transfers land to another federal agency, in this case to the Bureau of Indian Affairs.

Bedey said he hasn't determined when the public meetings will be scheduled.

The tribes have asked the corps to use the Fort Berthold Mineral Restoration Act to transfer 36,000 acres of land on both sides of the lake bordering the reservation.

It says its request is part of an ongoing effort to restore reservation land taken in the 1940s and '50s for the flooding of Garrison Dam.

The corps is studying its authority under the act and could make a decision this year.

Duane Houdek, attorney for the governor's office, said the state expressed general concerns about the transfer to Bedey.

Houdek said there are questions about public access, jurisdiction, private property, Game and Fish land, and roads and bridges.

The land involved - a continuous strip of varying width on the reservation - does include some places that the corps has under lease to public entities.

One is the McKenzie Bay Recreation Site, with $2.5 million in improvements, and the other is the Deepwater Bay wildlife management area, leased to the State Game and Fish Department.

McLean County State's Attorney Ladd Erickson is the only official to publicly call on the corps to hold public hearings before the transfer is made.

Erickson said public access would be severely impacted, and the tribe would have no obligation to honor leases once they expire and the land becomes tribal trust land.

(Reach reporter Lauren Donovan at 888-303-5511, or lauren@westriv.com.)

BismarckTribune.com

Giving tribal land back meets resistance

LAUREN DONOVAN, Bismarck Tribune | Posted: Tuesday, May 24, 2005 7:00 pm

Members of Fort Berthold Indian Reservation have waited 50 years to get back land taken from them for the permanent flooding of Lake Sakakawea.

They may be within months of getting about 25 percent of that land back, but from comments at a hearing on a proposed transfer Tuesday night in Bismarck, the idea faces some stiff resistance.

The U.S. Army Corps of Engineers says it has authority to transfer land above 1,854 feet elevation within reservation boundaries that's no longer needed to maintain or operate the dam. It proposes to transfer about 36,000 acres of the 156,000 acres originally taken when Garrison Dam was built in the 1950s. The authority comes from a 1984 federal law, the Fort Berthold Mineral Restoration Act.

The transfer would be a several-step process and include more hearings and a report on the effects of the transfer before any final action, possibly later this year.

Members of the Three Affiliated Tribes said the transfer helps right an old wrong, created when the reservation was forced to give nearly 70 percent of all the land needed in North Dakota to hold back the Missouri River from flooding downstream.

John Danks, a reservation member, reminded the 200 or so at the hearing that the tribes were once given 12 million acres in treaty, now reduced to 450,000 acres by one taking after another. About one-third of the people who attended were tribal members.

"Why does the public want these few acres in the heart of our reservation?" Danks asked. "Why would they?"

The corps has leased some of that land to state and local public users over the years and several state officials stepped up to provide that answer.

State Game and Fish Commissioner Dean Hildebrand said he is diametrically opposed to the transfer as proposed because of the state's investment in 7,000 wildlife management areas around the lake. The areas are managed for recreation and hunting.

He said the wildlife management areas would become tribal lands and non-tribal members would have to buy tribal hunting licenses to use them. He said the state and tribes should at least have the same "sideboards" of opening seasons and bag limits.

Gov. John Hoeven said the corps should not abandon its responsibility to provide recreation on Lake Sakakawea, which is outlined in the corps' master manual for Missouri River operations.

Doug Prchal, director of the State Parks Department, said there are state and federal cooperative recreation projects on the lake that could be affected by the transfer.

"What does the future hold should this transfer proceed?" he asked.

The transfer would consist of varying widths of land, rimming the reservation on both sides of the lake. The land is closest to the water, where boat ramps and public use occurs.

Prchal's question got to the heart of the matter.

David Johnson, a member of a cabin owner's association at McKenzie Bay, said people simply need more information about what would happen if the tribe takes over leases like the one McKenzie County and Watford City have with the corps for a $2.5 million public and private recreation area there.

Byron Holtan, owner of Indian Hills resort on the lake's north shore, raised a question of fairness. Holtan said he is a non-tribal member, living within the boundaries, whose family also had land taken for the dam. Now he's leasing some of that land back to operate a resort and said it's in jeopardy of being included in the transfer.

He said his grandfather had an old farm truck in which he used to help reservation members move out of their homes ahead of the rising water.

"There were a lot of tears shed in that truck," Holtan said. "Why shed tears again?"

Holtan said the land should be returned to reservation and non-reservation members alike.

Russell Gillette is the son of George Gillette, who was tribal chairman when the federal law was signed to flood the reservation members' ancestral home. In a photo that went around the world, George Gillette was overcome with emotion among stoic bureaucrats.

Russell Gillette said the Three Affiliated Tribes are still reeling from the trauma caused by the dam.

"We all have to work together," he said. "We're all human."

The corps plans to make an agency-to-agency transfer to the Bureau of Indian Affairs, which will hold all of the transferred land in trust.

Paul Danks, tribes' natural resource manager, said the Three Affiliated Tribes still has to clarify whether it would take over the corps' leases for wildlife management areas and public recreation areas or whether those would be managed by the BIA.

Tribal chairman Tex Hall sent a statement to the hearing. He said the tribe has questions about the transfer, too.

"The tribes recognize and understand that many of you are fearful of the proposed transfer," Hall said. "... understand that the tribes do not have any desire to obstruct your interests as we recognize that it is in the tribes' best interest to promote economic activity on and around Lake Sakakawea."

The corps will hold a hearing at 4 p.m. today at the Dickinson Days Inn and at 4 p.m. Thursday at the Williston Airport International Inn. Public comment will be taken from 6 p.m. to 8 p.m.

(Reach reporter Lauren Donovan at 888-303-5511 or lauren@westriv.com.)

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

www.land.nd.gov
www.nd.gov

Attachment 5

ND STATE LAND DEPARTMENT
Helping to Fund Education

Lance D. Gaebe, Commissioner

TESTIMONY BY

Michael Brand, Director
Surface Management Division

North Dakota State Land Department

HOUSE BILL NO. 1466

House Energy and Natural Resources Committee
January 27, 2011

House Bill 1466 as written directs the Commissioner of University and School Lands to negotiate with the United States Army Corps of Engineers to return excess lands around Lake Sakakawea and Lake Oahe to the Board of University and School Lands, and ultimately to private landowners.

A similar land transfer occurred in South Dakota in 2007 from the U.S. Army Corps of Engineers to the State of South Dakota. South Dakota retained the land and the federal legislation, did not authorize returning the land to private ownership. The following information was obtained from the South Dakota Game, Fish and Parks Department.

1. 73,319 acres of land around Lake Oahe, Lake Francis Case, and Lake Lewis and Clark in South Dakota were returned to the State of South Dakota to be managed for recreation and wildlife. The process began in 1999 and was completed in 2007 (i.e. 7 year process).
2. For the South Dakota land transfer, a trust fund of $108 million is held by the U.S. Treasury for South Dakota to manage the former Army Corps land. $4.5 - $6.5 million is paid to South Dakota *each year* from the trust fund.
3. Four Indian Tribes were involved in the negotiations in South Dakota. Standing Rock and Crow Creek had the land adjacent to their reservation left with the Army Corps for management. The Cheyenne River and Lower Brule had the land transferred to the Bureau of Indian Affairs to be held in trust.
4. Weeds were not a major problem because the weeds are mostly below the "exclusive flood pool" where the water fluctuates with the operation of the reservoir.

In North Dakota, the following points should be considered for HB#1466.

1. The Office of the Commissioner of University and School Lands is a special fund agency. Therefore, implementing HB#1466 would require a general fund appropriation (i.e. special funds managed by the Land Board could not be used).
2. For the 2011/13 biennium expenses would be minimal ($80,000) but for the 2013/15 biennium expenditures could easily exceed $1.8 million.
3. There are approximately 77,909 acres around Lake Sakakawea and 22,600 acres around Lake Oahe in North Dakota.
4. If this land was broken into sale tracts, sale costs would probably greatly exceed management costs. The two most significant sale costs would be surveys and appraisals.

Attachment 5 page 2

5. The State Game and Fish Department, and the ND Parks and Recreation Department both have facilities on these two reservoirs. County park districts may also be involved. It would be appropriate to provide for the direct transfer of lands to these entities where their facilities are located.
6. Taxes would be about $535,254 for the 2013-2015 biennium.
7. Weed control is estimated at $165,840 for the 2013-2015 biennium.
8. There is a transposition of numbers on the fiscal note. The 2013-2015 Appropriation should be $1,832,636.

In South Dakota the entire land transfer process took 7 years and private landowners were not involved. In North Dakota the process from beginning to end could take longer considering the involvement of the tribes, other state agencies, private landowners and the general public.

#1

HB 1466 – Testimony to the Senate Natural Resources Committee

Good morning, Chairman Lyson, and Senate Natural Resources Committee members. For the record, my name is Julie Ellingson and I represent the North Dakota Stockmen's Association.

The Stockmen's Association stands in support of HB 1466, which would allow the state to accept returned lands from the U.S. Army Corps of Engineers.

During this and last session and the interim in between, many very poignant examples of problems related to the unnecessary taking of land, as well as inadequate weed control and unreasonable grazing requirements negatively impacting landowners on these parcels, have been brought to light, and I know you will be hearing more personal accounts today.

We appreciate your efforts to help spur the discussion about returning the land that is not necessary for flood control, just as was done in the State of South Dakota. This bill will help facilitate the process, and we urge your do-pass recommendation on it as well.

#2

TESTIMONY ON HB 1466
SENATE NATURAL RESOURCES COMMITTEE
MARCH 17, 2011
Tex "Red Tipped Arrow" Hall, Chairman,
Mandan Hidatsa & Arikara Nation
Fort Berthold Indian Reservation

Chairman Lyson & Members of the Natural Resources Committee, my name is Tex Hall, or Ihbudah Hishi, which means "Red Tipped Arrow". I am honored to present this testimony as the Chairman on behalf of the Mandan Hidatsa & Arikara Nation. In its current form, HB 1466 authorizes the Board of University and School Lands to accept excess lands from the Corps of Engineers around Lake Sakakawea and Lake Oahe on behalf of the State of North Dakota. The bill makes no exception for lands taken from the Mandan Hidatsa and Arikara Nation or the Standing Rock Sioux Nation. I oppose this bill without a clarifying amendment that ensures that it does not apply to lands within the Fort Berthold and Standing Rock Reservations, because these lands belong, by Treaties, to the people for whose benefit those reservations were set aside.

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

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

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

The Mandan Hidatsa and Arikara was the only Tribal Nation to be split in two parts by the dam. In fact, to get from one part of our Reservation to another, we must travel outside the boundaries of our reservation. What used to be a close

knit community is now split into widely separated towns, with some communities, once a few miles part, separated by 120 miles because of Lake Sakakawea.

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

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

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

The Past Times Article goes on to state:

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

The Garrison dam displaced 90 percent of our people and flooded all of our towns, including our hospital which has never been replaced. The Fort Berthold

Indian Reservation was set aside by federal law for the benefit of the Mandan Hidatsa and Arikara people. If the excess Reservation lands along the lake belong to anyone, they belong to us. Federal law authorizes the return of these excess lands to the Mandan Hidatsa and Arikara Nation. Section 206 of the Fort Berthold Reservation Mineral Restoration Act grants the Secretary of the Army the power to enter into agreements with the Secretary of the Interior to restore these excess lands in trust for the Mandan Hidatsa and Arikara Nation. This federal law will help to remedy a historical injustice.

I ask that the state of North Dakota respect the sacrifice our people made in the taking of our heartland, and our efforts to regain what was wrongfully taken from us. We will stand with you in your effort to regain the excess lands in North Dakota that were taken from non-native people. But we will continue to fight any effort by the state to acquire the land that was taken unjustly from the Mandan Hidatsa and Arikara people. Mr. Chairman and members of the Committee, I urge you to clarify that this bill does not apply to the excess lands taken from the Mandan Hidatsa and Arikara, as well as the Lakota of Standing Rock.

THE PAST TIMES

SPRING MMIX, DAKOTA TERRITORY VOLUME XVI, NO. 1

OFFICIAL PUBLICATION OF THE FORT ABRAHAM LINCOLN FOUNDATION

Defending Their Lands

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

By Robert J. Hanna

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

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

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

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

Photograph Courtesy of the Associated Press

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

At that time, their reservation history was beginning. The

Continued on Page 4

The River Be Dammed

Continued from Page 1

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

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

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

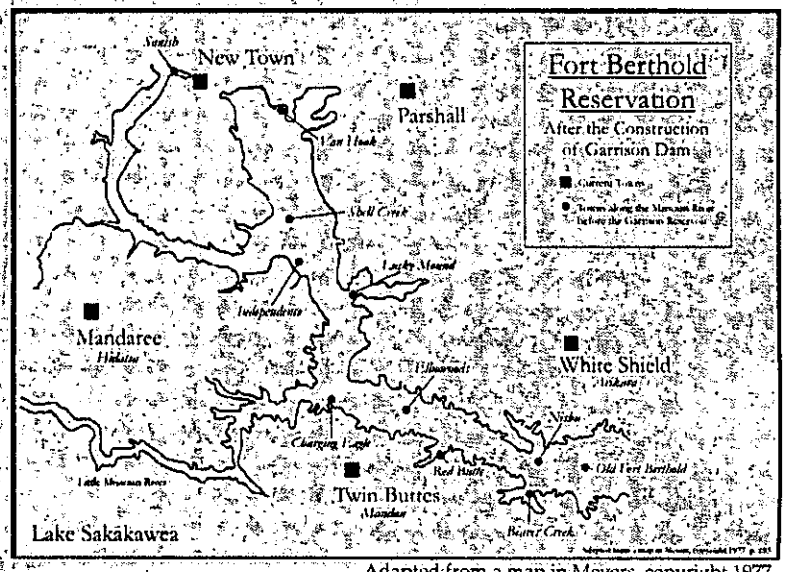
Meanwhile, Glenn Sloan of the Bureau of Reclamation office in Billings, Mont., had been working for the last three years on another proposal for controlling the Missouri. The Sloan Plan did not provide for downstream navigation, but it did provide for irrigation of otherwise arid farmland upstream and,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

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

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

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

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



Adapted from a map in Meyers, copyright 1977.

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

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

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

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

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

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

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

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

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

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

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

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

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

#3

Charles W. Murphy
Chairman

Mike Faith
Vice Chairman

Adele M. White
Secretary

March 17, 2011

Honorable Stanley W. Lyson, Chairman
North Dakota State Senate
Natural Resources Committee
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0001

RE: Written testimony for Natural Resources Committee Hearing on HB 1466

[redacted]

Dear Senator Lyson:

Attached is my written testimony on HB 1466, a bill to provide authority to the state Board of University and School Lands to receive title to U.S. Army Corps of Engineers land along the Missouri River. I respectfully request that my statement be included in the record of the Natural Resources Committee hearing on HB 1466, and be taken into consideration in the committee's deliberations on this bill.

Thank you very much for your consideration.

Sincerely,

Charles W. Murphy
Tribal Chairman

[redacted]

Attachment

BLDG 1 NORTH STANDING ROCK AVE. • P.O.BOX D • FORT YATES, NORTH DAKOTA 58538
PHONE: 701-854-7201 or 701-854-8500 • FAX 701-854-7299

STATEMENT OF CHARLES W. MURPHY

CHAIRMAN, STANDING ROCK SIOUX TRIBE

NORTH DAKOTA STATE SENATE

NATURAL RESOURCES COMMITTEE

HEARING ON HB 1466

MARCH 17, 2011

STATEMENT OF CHARLES W. MURPHY

CHAIRMAN, STANDING ROCK SIOUX TRIBE

NORTH DAKOTA STATE SENATE

NATURAL RESOURCES COMMITTEE

HEARING ON HB 1466

MARCH 17, 2011

Mr. Chairman and members of the Natural Resources Committee, my name is Charles W. Murphy. I serve as Chairman of the Standing Rock Sioux Tribe. I ask that this written statement be entered into the committee's record of the hearing on HB 1466, a bill to authorize the state Board of University and School Lands to receive title to U.S. Army Corps of Engineers land along the Missouri River.

Let me begin by recognizing the severe impacts that the Army Corps of Engineers has had on North Dakota, and the desire of the affected landowners to receive lands taken by the Corps. Our Tribe lost 56,000 acres of our Reservation's most fertile and wooded lands, for the site of Lake Oahe. I have been working for the restoration of nearly 20,000 acres of excess taken land, for 25 years. I fully understand the impetus behind HB 1466.

However, I have serious concerns with this bill. My concerns focus on two areas: (1) the state of North Dakota's efforts to obstruct comparable land transfers for the Standing Rock Sioux and Three Affiliated Tribes of Fort Berthold; and (2) the potential impacts on cultural resources along the Missouri River, on land that may be transferred out of federal status. These concerns lead me to request that this committee withhold action on HB 1466, pending further discussion between the state and the Tribes on this matter.

I address these concerns in more detail, below.

1. North Dakota's Efforts to Obstruct Tribal Land Transfers

As stated above, as Tribal Chairman, I have been working on the restoration of excess taken lands, for 25 years. Of the 56,000 acres of land taken from our Tribe, approximately 19,000 acres lay above 1620 msl, Lake Oahe's maximum operating pool. The land is generally undeveloped and fallow. There are some leases for cutting hay, and the Tribe maintains some food plots for wildlife. There is hunting and fishing on this land, although there are fewer boat docks and facilities than at other places along the Missouri River. One of the best boating sites has been developed by our Tribe at the Prairie Knights Marina, at Walker Bottom.

Unlike lands acquired off-Reservation, the lands taken from our Tribe by the federal government for the Missouri River Basin Pick-Sloan program were Treaty-protected land. They were guaranteed to our Tribe to be held in trust by the United States in perpetuity, in the Treaty of Fort Laramie of April 29, 1868 (15 Stat. 635). Accordingly, when the Army acquired the land in 1958, the federal government committed to return any land that was taken in excess of project needs.

In 1985, the Secretary of the Interior appointed an authoritative commission to study Pick-Sloan's impacts on the Standing Rock Sioux and Three Affiliated Tribes. The establishment of this commission was related to passage of the Garrison Reformulation Act of 1986. (100 Stat. 418). Prominent North Dakotans, such as General C. Emerson Murray, were appointed to the Joint Tribal Advisory Committee (JTAC).

The JTAC Committee issued its Final Report on May 23, 1986. The report stated in part, "The former Indian lands comprising the present excess lands should be restored to the (Standing Rock and Three Affiliated) tribes subject to easements for project purposes." (Final Report of the Garrison Unit Joint Tribal Advisory Committee, May 23, 1986).

Nearly seven years later, the Congress established a process for the transfer of these lands to the Tribe and former Indian allottees, in the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act of 1992. (106 Stat. 4734). However, this provision was repealed in the Emergency Supplemental Appropriations

Act of February 12, 1992 (108 Stat. 41), due to the inability of the Army Corps of Engineers and Bureau of Indian Affairs to carry out the land transfer in a timely manner, and issues over river access at Fort Berthold. Nearly 40 years after the land was taken, our Tribe was back at square one.

The legislation repealing the land transfer stated in part, "the U.S. Army Corps of Engineers should proceed with the Secretary of the Interior to designate excess lands and transfer them pursuant to Public Law 99-599." Accordingly, the Tribes have been attempting to work with the Corps for a land transfer.

Unfortunately, the state of North Dakota has generally opposed the efforts of the Tribes. For example, on March 4, 2008, then-Governor Hoeven signed a letter to the Departments of the Interior and the Army, referencing, "serious opposition," to an administrative land transfer at Fort Berthold. The state has been holding up these longstanding issues of justice for our Tribes.

Now, we learn that the North Dakota Lands Commissioner has a plan to acquire over 100,000 acres of Corps land (see the Fiscal Note to HB 1466), and is seeking the authority from the legislature to implement it. There is a definite inconsistency. Until that inconsistency is resolved, HB 1466 should not be enacted.

2. The Proposed Land Transfer Under HB 1466 Could Eliminate Federal Protections for Cultural Resources Along the Missouri River

Our Tribe wintered in the bottomlands of the Missouri River for hundreds of years before non-Indian settlement. Consequently, this area contained a wealth of artifacts and cultural resources of our Tribe, and the Three Affiliated Tribes. The Corps of Engineers has identified 1,114 cultural sites at Lake Oahe, and 1,402 cultural sites at Lake Sakakwea. (U.S. Army Corps of Engineers, Final Environmental Impact Statement, Missouri River Master Water Control Manual, Review and Update, March 2003, p. 3-165). These figures are clearly too low – there are probably thousands more of these sites. Their protection is very important to our Tribe.

The act of Congress which authorized the acquisition of land from the Standing Rock Sioux Tribe for the site of Lake Oahe, required the Corps of Engineers to relocate

the cemeteries that were in the bottomlands. (72 Stat. 1762). The Corps failed to do so, however. As a result, water level fluctuations at the Missouri River main stem reservoirs result in the unearthing of human remains, funerary objects and cultural resources, traceable to Standing Rock and our neighboring Tribes.

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

Excess Corps lands transferred to the Tribes retain their federal character, and these protections would remain in place. Excess Corps lands transferred to the state – or, as the state Lands Commissioner has proposed, to former non-Indian landowners – would lose these protections for Native American cultural resources. That is extremely troubling to me.

This issue clearly requires more deliberation. Until these issues are resolved, however, HB 1466 should not be enacted.

3. Conclusion

In sum, I fully understand the desire for all local stakeholders to obtain redress for the surplus taken lands by the Corps of Engineers. Our Tribe has been working on this for many years. The state of North Dakota has not been supportive of our efforts, however It is clearly inconsistent for the state to oppose the Tribes on the return of excess taken land, and then to enact legislation authorizing non-Indian land transfers. This inconsistency should be resolved, prior to enactment of HB 1466.

Moreover, the land that would be subject to transfer pursuant to this bill contains valuable cultural resources of Native American origin. The protection of these valuable resources will be jeopardized, if the land transfer contemplated under HB 1466 were to

take place. This issue must also be resolved, in order for the state to acquire any surplus Corps lands.

I stand prepared to work constructively with Governor Dalrymple, the Board of University and School Lands, and all affected stakeholders in North Dakota, to resolve these concerns in a mutually agreeable manner. Until that occurs, however, this committee should not refer HB 1466 to the Senate for passage.

Thank you very much for taking my testimony into consideration. *Pila miya.*