

**2019 SENATE ENERGY AND NATURAL RESOURCES**

**SB 2295**

# 2019 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2295  
1/25/2019  
Job Number 31469

☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Marne Johnson
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### Explanation or reason for introduction of bill/resolution:

A bill relating to limitations on the creation and jurisdiction of irrigation districts; and relating to permitting an irrigation district to assess lands requiring drainage as a result of irrigation works.

### Minutes:

1 Attachment
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**Chair Unruh:** Opened the hearing, all members were present.

**Senator Jim Dotzenrod, District 26: (0:45-5:10) Introduced the bill.** This bill may be unique to District 26. It affects the water taken out of the James River that irrigates this Oakes Irrigation District; a system that's managed by the Bureau of Reclamation. I have some people here that participate in the system and know how it works; it's a very unusual system. In the process of getting this bill crafted I was contacted by the Garrison Diversion and it was an education for me how complicated and sophisticated the system they have is. They take water out of the James River and sell it to the users, there are about 5,000 irrigated acres. In addition, they have a way of draining field tile drains, when those drains systems are used to pull water out, the water is collected in a central point and reintroduced back in. Some of that area doesn't require rain or irrigation water, it's just groundwater. One of the problems they're having, if they don't get the water they need, or if there's a significant amount of rain several years in a row, some users in the system don't take any water. When the pivots that are out in this Oakes Irrigation District, they're not able to sell them water. Either there isn't enough water to sell, or the users don't need it. Then this complicated system of pulling water out and collecting it to put back into the irrigation system doesn't have a revenue stream to support that. The only revenue stream they have is to sell water to the users of the irrigation system. With no revenue from a significant number of those participants; if new pumps or maintenance is required of the irrigation system, they really have to go back to the people using water and charge them more. So this bill creates an assessment across the drain district that allows all the participants to help pay for this drain system. The purpose of the bill is to allow an assessment to be placed to allow all the participants in the system to contribute into this maintenance and taking care of this drainage system. Under current law, an irrigation district has no authority to implement any levies or mills across the property owners, this will allow them the option to assess to keep up this fairly sophisticated, complicated system.

**Senator Schaible:** By doing this, are we creating unintended consequences?

**Senator Dotzenrod:** No. We contacted the association that represents the water resource boards, and they prepared some language that was put into the bill. If you look at lines 9-15, those were the words that were added by the water resource districts and their representatives to make sure that we didn't infringe upon the current sections of our statute that allow the implementation of assessments that could be used for improving a drain projects.

**Senator Schaible:** Talking about assessments, do you have any idea how much that would be?

**Senator Dotzenrod:** I don't. There will be assessments created and I assume they will match what is coming out of these systems as far as the management by the users, I assume they will look at the assessments and their costs and make sure they get enough to cover their costs.

**Senator Piepkorn:** Will this have far reaching effects beyond this particular district?

**Senator Dotzenrod:** In order to be useful beyond the Oakes Irrigation District, it has to be applied in an irrigation district that has a need to have an assessment for drainage. There aren't that many irrigation districts statewide. Most irrigation systems are not part of an irrigation district. It would be an unusual set of circumstances where that would occur.

**David Locken, Oakes citizen, Chair, Dickey-Sargent Irrigation District Board (8:40-16:30) Testified in support, please see attachment #1.** This was a test area put in specifically to study drainage. We are unique, the only place in the state where a comprehensive irrigation system was installed.

**Senator Piepkorn:** In 1988, were they doing any drain tiling?

**David Locken:** Yes, the area they chose for the Oakes Test Area was a sand plain that needed drainage before you could irrigate it, some of it could be naturally drained, but the bigger area with low spots needed a system. The drainage system was put in before we were able to start irrigating.

**Senator Piepkorn:** When you say 'the system' this wasn't just ditches; you are saying drain tile was installed back in the 80s?

**David Locken:** Yes, from 1982-1985.

**Vice Chair Kreun:** You're operating under two different regulations, one is the irrigation, which is basically by the Bureau of Reclamation, is that correct? Isn't that when they put the irrigation lines in, they were only charging the people that were serviced, if an individual decided not to participate, they didn't pay. Now your drainage is operated by you water board, more or less.

**David Locken:** The Bureau ran it the first few years, and then decided we should pay all the costs, it was an experiment to begin with, we met the demand of the experiment, as things tightened, the Bureau threw all the costs on us.

**Vice Chair Kreun:** You are taking both, combining it into one and purchasing it from the Bureau of Reclamation and creating one basic group to monitor and take care of the drainage and irrigation?

**David Locken:** Yes, we have a staff of two that help deliver the water. For instance, this winter they've been cleaning some drains.

**Emmery Melhoff, North Dakota Farm Bureau (20:30) Testified in opposition.** We are concerned about the change in century code for a specific county issue. We are concerned about the doors this could open for funding for future projects.

**Senator Piepkorn:** That was the question I had earlier. This law this specific district is asking for would have more far reaching consequences than just this district, is that what you are concerned with?

**Emmery Melhoff:** That was one of my concerns, yes, that the language of the bill could have effects beyond the county we are discussing.

**Dale Esser, Secretary, Dickey-Sargent Irrigation District (21:50)** We've looked at what all the other existing irrigation districts are, we're talking about Buford-Trenton, Heart River, there might be one in the central part of the state; and Dickey-Sargent is the only irrigation project with both tile drainage and irrigation, none of the others have that. We've looked long and hard at this; we're hard-pressed to figure out how someone else could take advantage of this. If someone wanted to form an irrigation district, but their real goal was to do drainage, so they wouldn't have to deal with a drainage board; first under state law they would have to get it by the state engineer, who approves all the plans. I take the position that it's very difficult for anyone to take this somewhere else, develop a drainage project, call it irrigation and make assessments. We're talking about tile drainage; the majority will be service drains. One power that drainage districts have the irrigation districts don't is the ability to make highway crossings and railroad crossings. When they developed the Oakes Test Area, the Bureau of Reclamation had to go to the state and to the railroads and negotiate a crossing of all of their properties, then we paid for it. A drainage district can go to railroads, and say, I need to cross that, make it happen. Drainage districts have tremendous powers irrigation districts don't; century code states irrigation districts shall provide drainage for their irrigated lands, they don't give them any power.

**Senator Dotzenrod:** If the committee would look at lines 10-11, it says, an irrigation district may not be created if the primary purpose is to provide drainage benefits to the residents of the district. So besides all other information, irrigation districts are really very limited in powers compared to drain districts, it'd be pretty hard to take a section of law so limited to drain districts and use that to get drain district authority, it would be part of the century code that they couldn't do that.

No agency testimony.

**Chair Unruh:** Closed the public hearing.

# 2019 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2295  
2/7/2019  
Job Number 32342

☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Marne Johnson
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### Explanation or reason for introduction of bill/resolution:

A bill relating to limitations on the creation and jurisdiction of irrigation districts; and relating to permitting an irrigation district to assess lands requiring drainage as a result of irrigation works.

### Minutes:

2 Attachments
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**Chair Unruh:** Opened committee action. **Attachment #1 is an article supplied by Senator Dotzenrod.**

**Vice-Chair Kreun:** I think the visual is important (**please see attachment #2**). I think this was installed in the 70-80s. It was a pilot project on how to irrigate, collect, store, and reuse irrigation water. The left of the attachment #2 is the James River. What they were able to do was extract water from the river, use it as irrigation system, and then the tiling system collected the water and ran it into storage unit to be reused as irrigation; or returned to the James River. They were able to create an irrigation district for those individuals; they have a water district that has a charge for this irrigation district. What has happened to the majority is to clean the drainage system out. If you look at the light colored portions, those are individuals that have the advantage of drainage system, but don't need the irrigation. The irrigation people have been paying to keep all the drains clean, and not receiving any funds from the people in the light colored green squares. What they are asking for is to create this under one district and be able to charge through assessments, everybody in this area, because they all receive some kind of benefit. Also the people on this water district, there are seven owners, and five of them are on the board, and they support this type of funding mechanism to keep the tile cleaned, drained, and operational. I asked for this so we have visual of what they're asking for and why.

**Senator Roers:** There are two assessment districts, one for irrigation and this one is for drainage. Those non-participating owners would be participating in the drainage fees, but not in the irrigation fees.

**Senator Piepkorn:** Did you say that the light green areas were not using irrigation?

**Vice-Chair Kreun:** That is correct, but they do benefit from the high water table. The irrigation

isn't necessary, but the drainage is extremely necessary in order to keep the high water table down to utilize that land. They benefit to some degree, if all this irrigation takes place, it's part of the problem. They are in concert of creating one district and being able to pay for it. Utilize both irrigation and the drainage together and they both benefit from it.

**Senator Piepkorn:** Were there no provisions at the beginning, that everybody involved is going to be responsible for maintenance of the system?

**Vice-Chair Kreun:** My understanding is, this was done by the Corps of Engineers and they did not provide this system and now they're going to take this over from the Corps and want to make sure they can keep it operational.

**Senator Roers:** I move a do pass.

**Vice-Chair Kreun:** I second.

A roll call vote was taken.

Motion passes 6-0-0.

**Senator Roers:** Will carry.

**Chair Unruh:** Closed the committee action.

Date: 2/7  
Roll Call Vote #: 1

**2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2295**

Senate Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Sen. Roers Seconded By Sen. Kreun

Senators	Yes	No	Senators	Yes	No
Senator Jessica Unruh	X		Senator Merrill Piepkorn	X	
Senator Curt Kreun	X				
Senator Donald Schaible	X				
Senator Dwight Cook	X				
Senator Jim Roers	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Roers

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



**REPORT OF STANDING COMMITTEE**

**SB 2295: Energy and Natural Resources Committee (Sen. Unruh, Chairman)**  
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
SB 2295 was placed on the Eleventh order on the calendar.

**2019 HOUSE AGRICULTURE**

**SB 2295**

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Agriculture Committee Peace Garden Room, State Capitol

SB 2295  
3/7/2019  
Job #33386

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk: ReMae Kuehn
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### Explanation or reason for introduction of bill/resolution:

Relating to permitting an irrigation district to assess lands requiring drainage as a result of irrigation works.

### Minutes:

Attachments #1 & 2
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**Senator Dotzenrod, Sponsor:** We have the Oaks Irrigation District that has been in existence since the early 80s. They fund their operations of the district with the users of the water paying for that water. The more water used, the more they pay. The pivots in the irrigation district are all tiled. The tile water returns to a central point and is used to irrigate. The primary water comes out of the James River.

There is some maintenance to keep up the system. They can get the revenue from the sales of water to operate the irrigation and the pumps. There is a different distribution of the costs for the drainage than there is for the water. The revenue isn't adequate to take care of the drainage.

This bill allows the irrigation district to assess a fee to the individual parcel owners to maintain the system they have for subsurface and surface drains. We took this bill to the water management districts for review.

They are in the process of transferring ownership of this system from the Bureau of Reclamation to the Dickey-Sargent Irrigation District. That process involves Congress. Senator Hoeven appeared in Oaks and said it is passed in the Senate and now it is in the House. (Attachment #1)

(6:39)

**Representative Skroch:** This is not an issue that causes the locals to want a vote?

**Senator Dotzenrod:** I am not sure how the management works.

**David Locken, Chairman, Dickey-Sargent Irrigation District Board of Directors:**  
(Attachment #2)

(16:20)

**Representative Headland:** How did the tile projects get funded?

**David Locken:** This was a test area from Garrison Diversion because our neighbors in Canada were concerned about drainage flows. They couldn't do the study in the drainage basin. They picked a location in the James River Valley in the Missouri Basin to do the study. It was supposed to separate the drains from the water that is applied. They designed the drains so there was no connection between the application of the water and the water that left the project.

**Representative Headland:** Where do you dump the tile water?

**David Locken:** It goes to the James River. The tile water that drains during the summer we can reuse for irrigation.

**Representative Headland:** Once it goes to the James, it just goes downstream?

**David Locken:** Yes. This is a specially built drain system.

**Representative Fisher:** What is the composition of this pipe?

**David Locken:** This is PVC.

**Representative Skroch:** Looking at the map in your testimony, the yellow-green are benefiting but not contributing to drain cleaning cost. The green are the ones benefitting from irrigation and contributing to the cost. Correct?

**David Locken:** Yes.

**Representative Skroch:** Those in the yellow, are those the ones you would assess? Or is it a blanket assessment?

**David Locken:** It would be a blanket assessment for the 7,000 acres. There are some properties that don't require drainage that may be omitted.

**Representative Skroch:** How does this differ from an assessment to clean drains that is authorized by the county commission? Is there a cap on that assessment?

**David Locken:** Yes. Drainage districts can charge \$4 an acre. That is plenty to keep open ditches. But we have the underground tile that can plug and break.

**Representative Skroch:** The landowner doesn't own this tiling because it was funded through grant money connected to Garrison Diversion?

**David Locken:** It was funded by the Bureau of Reclamation when they used a test area. They hoped to learn if it was technically correct. Politically, Garrison Diversion fell apart.

**Representative Skroch:** This bill would authorize this district to collect an assessment. Would there be a benefit ratio? Would the locals be able to vote on it?

**David Locken:** I don't think this would require a vote.

**Representative Tveit:** Was the irrigation system attached to the property installed by the landowner?

**David Locken:** The pumping plants and the open ditch and the underground pipe to the quarter were funded by the Bureau of Reclamation. The landowner was responsible to wire, to supply the pivot, and the water conveyance from the edge of the quarter to the center of the quarter.

**Representative Tveit:** Where would farming in this area be today without this project?

**David Locken:** Through the wet times we would have had a lot of problems.

**Representative Tveit:** What I am hearing is at times you don't have adequate rainfall and other times it is too much.

**David Locken:** The soils are sandy. One day you can have too much. A few days later you might want to water.

**Representative McWilliams:** How much would be assessed per acre for non-irrigated lands?

**David Locken:** \$10.74 per acre based on our cleaning for this year.

**Representative McWilliams:** On 142 acres the landowner would be paying just over \$1500. Are all the landowners alright with the increased cost?

**David Locken:** I am. I would not be able to successfully irrigate the land without these drains.

**Vice Chair Wayne Trottier:** Is there unanimous support from those coming into the district?

**David Locken:** I think there would be.

**Representative McWilliams:** If you add up the entire test area, the project is looking to raise about \$15,000. Is that accurate?

**David Locken:** 7,000 acres times \$10.74 per acre is over \$70,000.

**Representative McWilliams:** I was looking at just the lands that were not irrigated.

**David Locken:** Yes.

**Opposition:** None

**Chairman Dennis Johnson:** Closed the hearing.

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Agriculture Committee**  
Peace Garden Room, State Capitol

SB 2295—Committee Work  
3/8/2019  
Job #33461

☐ Subcommittee  
☐ Conference Committee

Committee Clerk: ReMae Kuehn
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## Explanation or reason for introduction of bill/resolution:

Relating to permitting an irrigation district to assess lands requiring drainage as a result of irrigation works.

## Minutes:

**Representative Dobervich:** Moved Do Pass

**Representative Schreiber-Beck:** Seconded the motion

**Representative McWilliams:** I have a problem with a landowner that may not be in agreement with this. We heard there might be a unification, but maybe not. If this passes, those not in agreement don't have a say and may be getting a \$2,000 bill.

**Chairman Dennis Johnson:** This bill has had a hearing and passed the Senate. The people involved in this project are aware of it by the time it gets here. It amazes me that you can get that large of a water project encompassing one area of land and the benefits. I don't think there would be opposition.

**Representative McWilliams:** It sets a bad precedent for other projects in the future. Generally, when you raise taxes there are public hearings and votes on it.

**Chairman Dennis Johnson:** When you look at what they are grossing off the land, the payment is minimal.

**Representative Schreiber-Beck:** Didn't he say all the landowners were aware.

**Representative McWilliams:** I heard they know about it but are they on board?

**Representative Skroch:** I had a question if they would vote on it? I didn't get an answer.

**Chairman Dennis Johnson:** Do you want to wait with the committee vote?

**Representative McWilliams:** I plan on opposing the bill anyway.

**A Roll Call vote was taken:** Yes 12, No 1, Absent 1.

**Do Pass** carries.

**Representative Fisher** will carry the bill.

**Chairman Dennis Johnson:** For those with concerns, visit with Senator Dotzenrod who has been working with those that wanted this bill.



Date: 3/8/2019

Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2295**

House **Agriculture** Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

**Recommendation**

- ☐ Adopt Amendment  
☒ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation  
☐ As Amended    ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

**Other Actions:**    ☐ Reconsider    ☐ \_\_\_\_\_

Motion Made By Rep. Dobervich Seconded By Rep. Schreiber Beck

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Ruth Buffalo	AB	
Vice Chairman Wayne Trottier	X		Rep. Gretchen Dobervich	X	
Rep. Jake Blum	X				
Rep. Jay Fisher	X				
Rep. Craig Headland	X				
Rep. Dwight Kiefert	X				
Rep. Aaron McWilliams		X			
Rep. David Richter	X				
Rep. Bernie Satrom	X				
Rep. Cynthia Schreiber Beck	X				
Rep. Kathy Skroch	X				
Rep. Bill Tveit	X				

**Total**    **Yes**    12    **No**    1

**Absent**    1

Floor Assignment    Representative Fisher

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

**REPORT OF STANDING COMMITTEE**

**SB 2295: Agriculture Committee (Rep. D. Johnson, Chairman)** recommends **DO PASS** (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). SB 2295 was placed on the Fourteenth order on the calendar.

**2019 TESTIMONY**

**SB 2295**

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#1  
Pg.1

Testimony by David Locken

to the

**Senate Energy and Natural Resources Committee**

Bismarck, North Dakota

January 25, 2019

Mr. Chairman, members of the committee; thank you for the opportunity to testify in support of Senate Bill 2295. My name is David Locken; I am a resident of Oakes, ND, and Chair of the Dickey-Sargent Irrigation District board of directors. Senate Bill 2295 will enable the Dickey-Sargent Irrigation District to operate in the manner it always has.

The Dickey-Sargent Irrigation District is responsible for the operation and maintenance of the Oakes Test Area irrigation facilities. I am here today because the Dickey-Sargent Irrigation District lacks the authority to levy assessments for about 20% of the 48 miles of tile drains that serve the project.

The Oakes Test Area comprises about 7,100 acres and was intended to be the first block of about 44,000 acres of Garrison Diversion Unit irrigation in Dickey and Sargent counties. The demise of the remaining irrigation and of the Missouri River connection needed to fully irrigate the test area is well known.

The test area has been operated since 1988 using interim water supplies. The current funding source for payment of operation and maintenance costs are water service charges collected when landowners sign annual water service contracts with Dickey-Sargent. The cost of maintaining drains is incorporated in the water service

charge. In 2018, contracts were signed for 4,523 acres of irrigation, delivering what we call "project" water. The remaining acres were irrigated from groundwater or were farmed dryland. Only the lands irrigating with project water are contributing to the cost of maintaining the drains, even though the other lands benefit from the drains.

This bill is before you now because the Dickey-Sargent Irrigation District is pursuing a title transfer from the Bureau of Reclamation; meaning it is in negotiations to purchase the Dickey-Sargent irrigation facilities from the Federal government. As a privately held irrigation district, it will not be able to pay all expenses by the cost of the water. This will not affect any other irrigation district in the state.

Dickey-Sargent Irrigation District lacks the authority to levy an assessment to maintain drains under land not irrigated with project water because irrigation district assessments must be based on irrigation benefits. Since these lands are not irrigating with project water, there is no irrigation benefit and no basis for levying an assessment. For this reason, we are asking that we be granted the authority to levy assessments based on drainage benefits, allowing us to equitably apportion the costs of maintaining our drains. This bill would affect seven landowners, including myself and the other four members of the Dickey-Sargent board.

An option we considered was forming a drainage district that encompassed the Oakes Test Area drains. We quickly realized the limitation imposed on drainage district assessments was a serious problem, as the levy in any year for cleaning out and repairing a drain may not exceed four dollars per acre on any agricultural lands in the drainage district.

For 2018, the Dickey-Sargent Irrigation District budgeted \$61,200 for drain cleaning. If apportioned to the entire test area, the cost would have been \$8.57 per acre. Drainage districts can double the assessment for six years to cover costs, but even that would be insufficient, especially after the six year catch-up assessment expired. The Dickey-Sargent Irrigation District could then be forced to petition landowners for an additional levy, which requires a 61% yes vote. Considering the shortfalls Dickey-Sargent would face after 10, 15 or 20 years, forming a drainage district is not a desirable option. No such limitations are placed on assessments by irrigation districts. Therefore, allowing the Dickey-Sargent Irrigation District to assess for their own drain maintenance is a much better option.

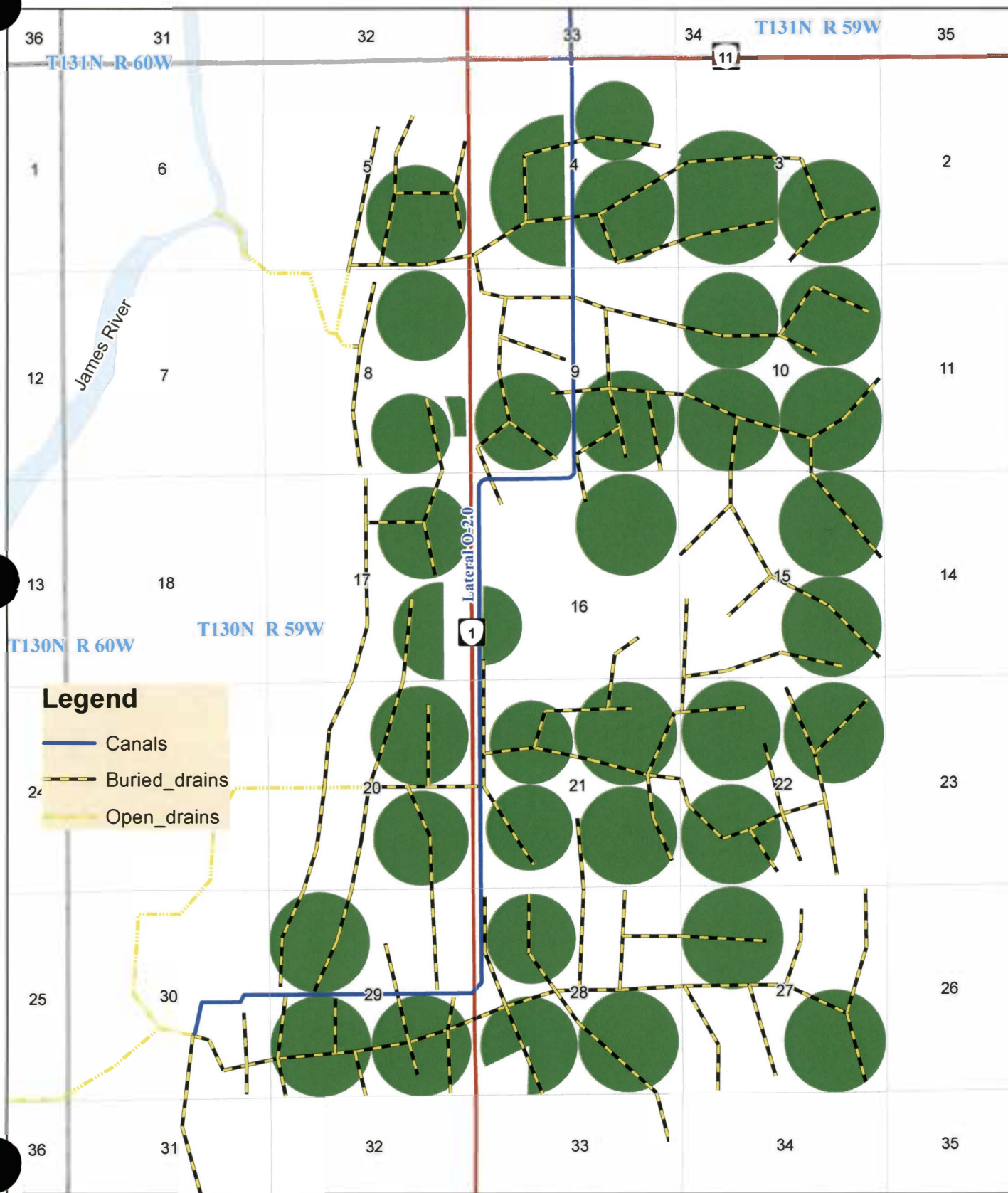
Thank you for allowing my testimony today.

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# Oakes Test Area Project Irrigation vs Drainage

0 0.4 0.8  
Miles







SB 2295  
2.7.19  
#1  
Pg.1

# Title Transfer of the Oakes Test Area Would Benefit Local Irrigators

By Kimberly Cook

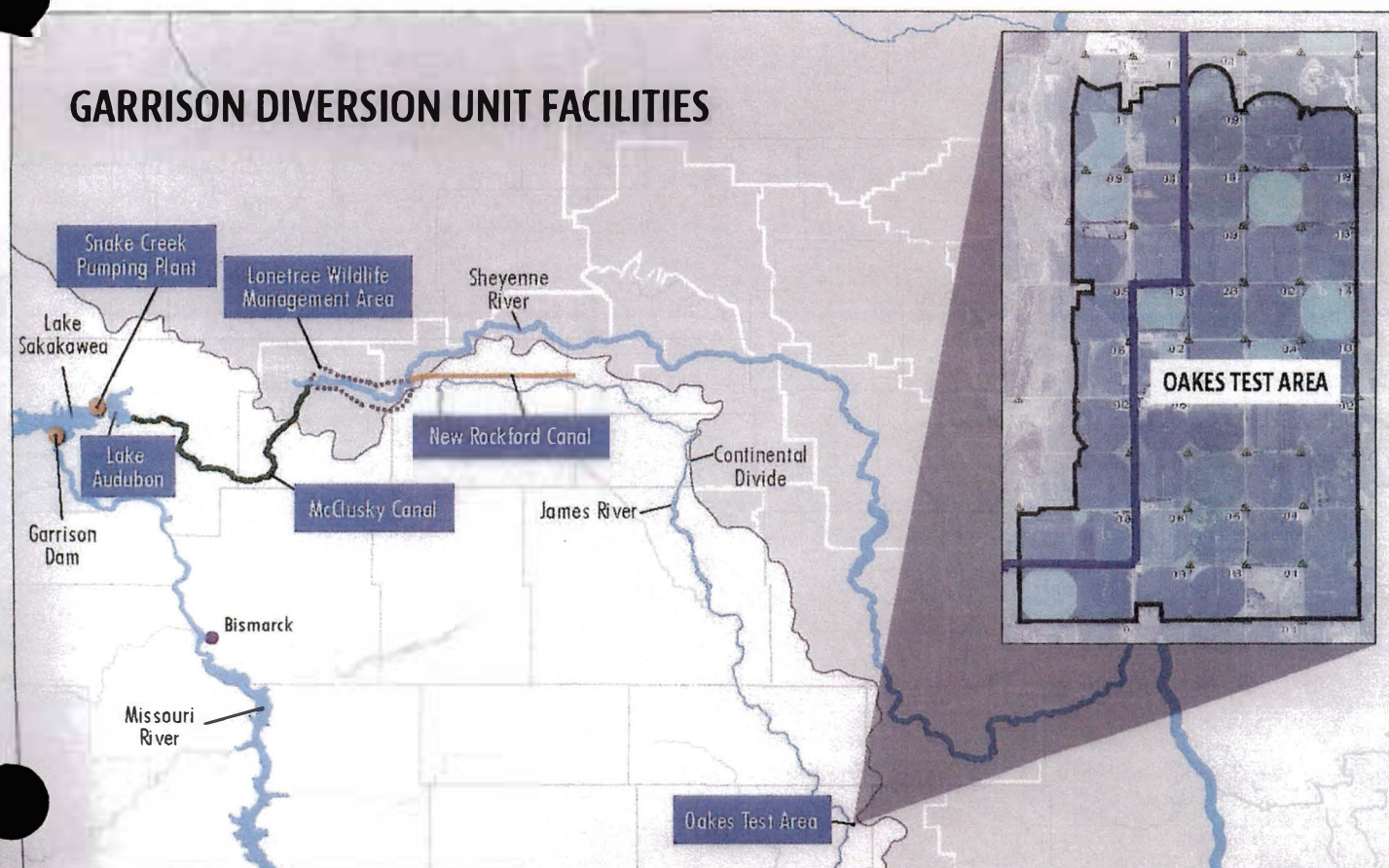
For 30 years, the Oakes Test Area (OTA) has provided a wealth of important data imperative to developing the best management practices for irrigated agriculture in North Dakota. OTA is an irrigation research site located near Oakes in southeast North Dakota.

## WHAT IS THE OAKES TEST AREA?

OTA came about when the International Joint Commission recommended the establishment of a facility to study the effects of Garrison Diversion Unit (GDU) irrigation. The irrigation research site was developed in 1980 by the Bureau of Reclamation (Reclamation)

in cooperation with state and federal agencies. Prior to irrigation delivery, data collection and monitoring was completed to document pre-development conditions.

Irrigation delivery began at OTA in the spring of 1988 after completion of a subsurface drainage system and water distribution system. In 1994, Reclamation's director of research determined that original research objectives had been met, and it was no longer in Reclamation's interest to continue this research. Reclamation discontinued funding research in OTA at the end of 1995. This decision was supported by an environmental assessment and decision document, which also stated Reclamation's intent to





transfer title of the OTA facilities. It also stated that if title transfer cannot be accomplished, water deliveries would be discontinued and the facilities would be abandoned.

## QUESTIONABLE FUTURE OF OTA

The future of OTA is questionable at this time. Limited water supplies have prevented OTA from reaching its full potential. While OTA is authorized to irrigate up to 5,000 acres, limited water supplies have prevented the test area from reaching its full potential. Anywhere from 500 to 4,300 irrigated acres have been irrigated from 1988 through today, though in 2012, 4,529 acres were irrigated, making it a record year for OTA.

In order for OTA to irrigate a consistent number of acres, a more reliable water supply needs to be secured. OTA utilizes water from the James River and groundwater through temporary water permits acquired from the North Dakota State Water Commission. Interim water sources include Jamestown Reservoir storage (when available in accordance with the Operating Principles for the OTA from the James River), surplus James River flows, flows captured from the OTA drainage system, and water from the interim water supply wells, which depend upon natural recharge and artificial recharge of the Oakes Aquifer using surplus James River flows.

Alternatives are being considered to secure future water supply options for irrigation in OTA. In a dry year, OTA could potentially be without a water supply, so the level of investment to be made in the facilities is questionable.

## TITLE TRANSFER OF FACILITIES

While Reclamation owns OTA, the Garrison Diversion Conservancy District (Garrison Diversion) Operation and Maintenance staff performs the daily operations, which includes operating pumps, servicing equipment and maintaining the extensive system of subsurface pipe

drains. Since federal funding was eliminated for OTA in 2011, irrigators within the Dickey-Sargent Irrigation District (DSID) came to an agreement with Reclamation to assume all O&M costs associated with OTA. DSID is now responsible for all operations and maintenance costs for the irrigation system at OTA.

DSID is pursuing a title transfer of OTA from Reclamation with the assistance of Garrison Diversion. The Dakota Water Resources Act states that OTA must be title transferred or go through the federal surplus property process two years after a Record of Decision (ROD) is signed for the Red River Valley Water Supply Project. Since the ROD has not yet been signed and a signature is not expected, OTA remains owned and operated by Reclamation, with intermittent irrigation reimbursement for OM&R of the project.

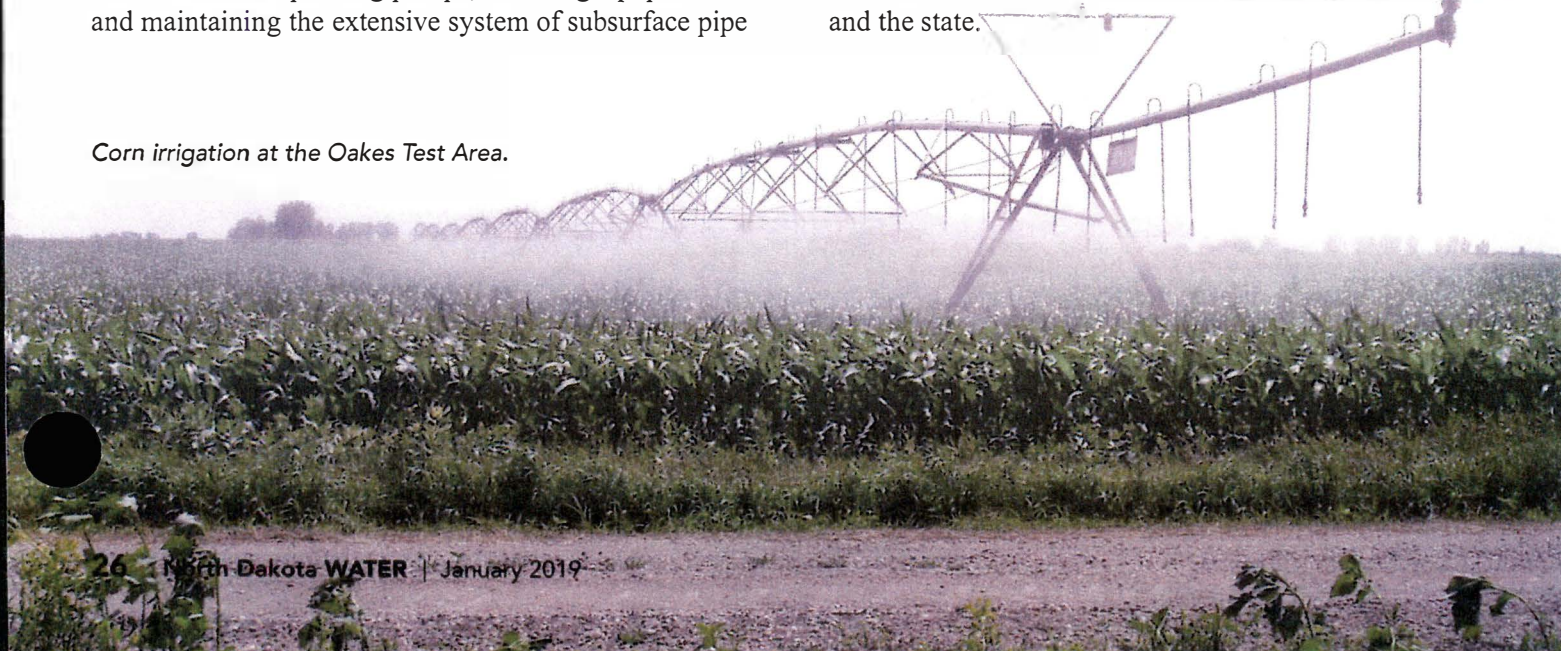
DSID would see several benefits from a title transfer of the facilities.

- More efficient and economical O&M operations
- Make own O&M decisions
- Set own O&M priorities
- Able to modify facilities without the necessity of federal processes
- Secure/guarantee the long-term operations of the facility

Reclamation would also realize benefits from a title transfer, mainly reduced costs to taxpayers, reduced liability to the federal government/taxpayers and the ownership of the facility would be turned to local users rather than the federal government.

North Dakota is fortunate to have an asset as great as OTA positively impacting the region, as irrigation operations at OTA have provided data to develop the best management practices for irrigated agriculture in North Dakota, the United States and the world. A title transfer of the facilities would be in the best interest of the local users and the state.

Corn irrigation at the Oakes Test Area.





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# Dale Esser Receives Recognition for Excellence in Irrigation

At the 55th annual Joint Water Convention and Irrigation Expo hosted by the North Dakota Water Users Association, Dale Esser was the recipient of the Irrigation Excellence Award, given by the North Dakota Irrigation Association. Dale has played an instrumental role in irrigation research and development in North Dakota since he began his career as an irrigation advisor in Oakes in 1988, where he made an important contribution to the overall effort in the distribution and education of irrigation best management practices to irrigators.

He then spent many years as Garrison Diversion's operations and maintenance supervisor at the Oakes Test Area, a 5,000-acre irrigation test site. He became involved with the Dickey-Sargent Irrigation District Board of Directors, where he has served as secretary for a number of years.

In 2010, Dale was named Garrison Diversion's irrigation specialist. He spent countless hours working on the McClusky Canal Irrigation Project and, more recently, the Master Irrigation Plan, which identifies further irrigation potential along the McClusky Canal.

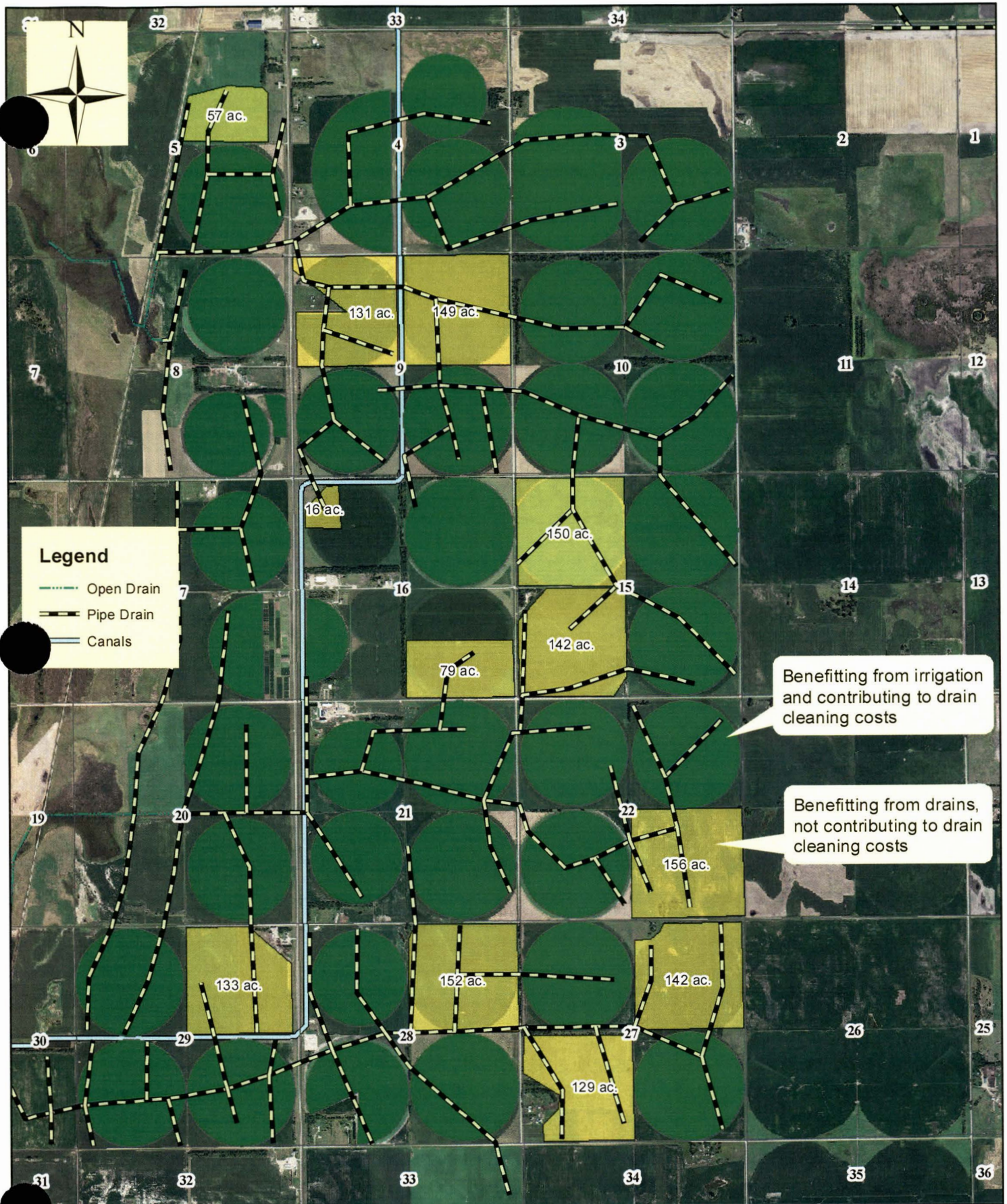
Overall, Dale has been responsible for the development, operations and maintenance of nearly 10,000 acres of irrigation in North Dakota. His expertise in all aspects of irrigation, from identifying soil types to dealing with landowners, troubleshooting complex irrigation systems and board operations, has been invaluable to Garrison Diversion and irrigators alike.

Dale, we congratulate you on this honor and thank you for your contribution to irrigation development across the state.



Dale Esser receives Irrigation Excellence Award.





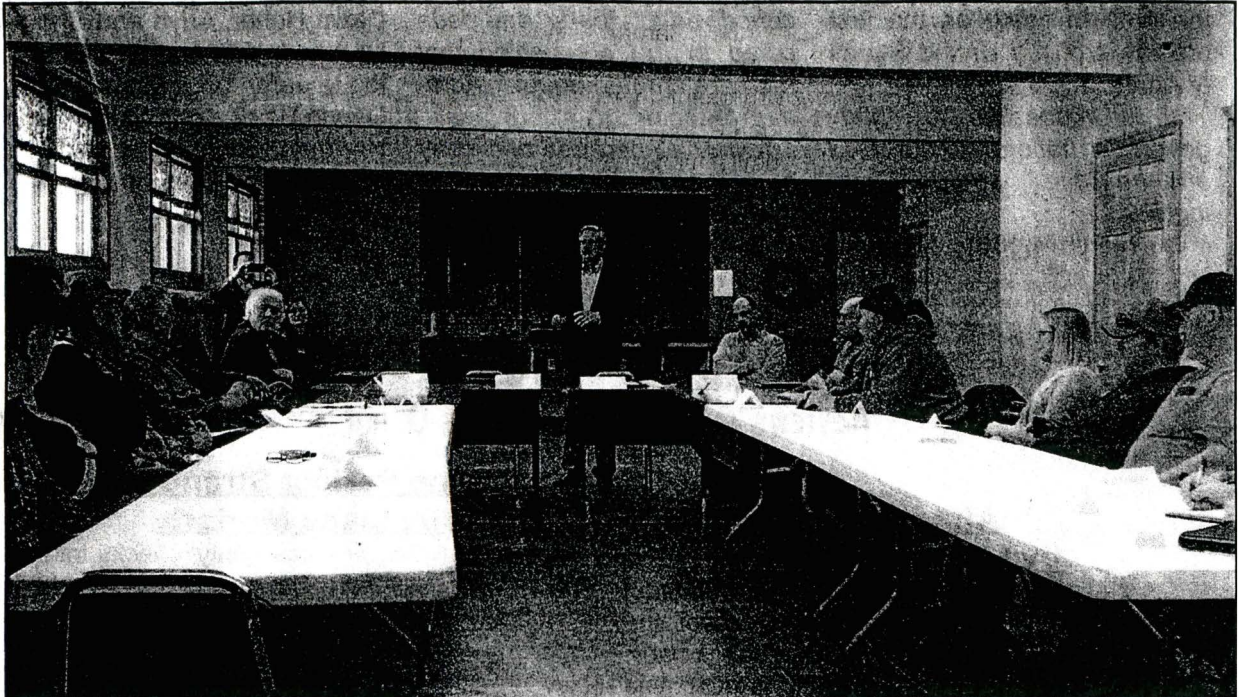
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Oakes Test Area  
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# Hoeven highlights efforts to advance title transfer



Sen. Hoeven held a roundtable discussion at the Oakes Community Center to outline his legislation for the Oakes Test Area title transfer. *Photo by Jen Cuhel*

Senator John Hoeven outlined legislation he recently helped pass through the Senate that would allow the title transfer for the Oakes Test Area to move forward, pending a final deal between the Bureau of Reclamation (BOR) and the Dickey-Sargent Irrigation District. Hoeven provided the overview at a roundtable he arranged with the City of Oakes, the Garrison Diversion Conservancy District, the Fish and Wildlife Service, the Dickey Sargent County Water Board and the Dakota Valley Electric Cooperative, as well as local water users and land owners.

Among other things, the bipartisan public lands legislation would remove the need for congressional authorization prior to transferring the title of a BOR project facility, including the Oakes Test Area. This aligns with legislation Hoeven previously introduced,

with Senator Cramer as an original cosponsor, to authorize the title transfer of the facility to the local irrigation district.

"The Oakes Test Area holds the promise of truly benefitting local water users and land owners," said Hoeven. "We should make the best possible use of this infrastructure, rather than letting it go to waste. The public lands package we passed in the Senate last week helps us to do just that by removing the need for congressional authorization when transferring the title for facilities like the test area. Now, we're urging our colleagues in the House to pass the legislation and look forward to it being signed into law. At the same time, we will continue supporting the Dickey-Sargent Irrigation District as it works out the final terms for purchasing the facility from the Bureau of Reclamation."

The Oakes Test Area was established at the recommendation of the International Joint Commission, but has never operated at full capacity and no longer receives federal appropriations. The local irrigation district continues to make use of the facility, but is unable to make modifications due to the required federal approval process.

Hoeven's efforts would remove this hurdle by allowing the Dickey-Sargent Irrigation District to purchase the facility and its infrastructure, bring it to its full potential and better adapt it for local use. The senator has been advancing this priority since meeting with the Garrison Diversion last year and continues urging the BOR to forge a path forward on turning over control of the facility to the local irrigation district.

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Testimony by David Locken

to the

**House Agriculture Committee**

Bismarck, North Dakota

March 7, 2019

Mr. Chairman, members of the committee; thank you for the opportunity to testify in support of Senate Bill 2295. My name is David Locken; I am a resident of Oakes, ND, and Chair of the Dickey-Sargent Irrigation District board of directors. Senate Bill 2295 will enable the Dickey-Sargent Irrigation District to operate in the manner it always has.

The Dickey-Sargent Irrigation District is responsible for the operation and maintenance of the Oakes Test Area irrigation facilities. I am here today because the Dickey-Sargent Irrigation District lacks the authority to levy assessments for about 20% of the 48 miles of tile drains that serve the project

The Oakes Test Area comprises about 7,100 acres and was intended to be the first block of about 44,000 acres of Garrison Diversion Unit irrigation in Dickey and Sargent counties. At the time of construction, tiles drains were installed to drain the entire test area. The demise of the Missouri River connection needed to fully irrigate the Oakes area is well known.

The test area has been operated since 1988 using interim water supplies. The current funding source for payment of operation and maintenance costs are water service charges collected when landowners sign annual water service contracts with

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Dickey-Sargent. The cost of maintaining drains is incorporated in the water service charge. In 2018, contracts were signed for 4,523 acres of irrigation, delivering what we call "project" water. The remaining acres were irrigated from groundwater or were farmed dryland. Only the lands irrigating with project water are contributing to the cost of maintaining the drains, even though the other lands benefit from the drains. Maintaining proper drainage is of great importance to Dickey-Sargent, as there are two potato growers and an onion grower that raise crops on our irrigated land.

This bill is before you now because the Dickey-Sargent Irrigation District is pursuing a title transfer from the Bureau of Reclamation; meaning it is in negotiations to purchase the Dickey-Sargent irrigation facilities from the Federal government. Federal legislation authorizing the transfer has been introduced by Senator John Hoeven and Senator Kevin Cramer. An article about the benefits of the title transfer is attached to this testimony.

Dickey-Sargent Irrigation District lacks the authority to levy an assessment to maintain drains under land not irrigated with project water because irrigation district assessments must be based on irrigation benefits. Since these lands are not irrigating with project water, there is no irrigation benefit and no basis for levying an assessment. For this reason, we are asking that we be granted the authority to levy assessments based on drainage benefits, allowing us to equitably apportion the costs of maintaining our drains. This bill would affect seven landowners, including myself and the other four members of the Dickey-Sargent board. A map of the affected lands is attached to this testimony.

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Of the 23 irrigation districts in the state, we believe that Dickey-Sargent is the sole district in this situation, so no other irrigation districts would be affected. This bill would not impinge on any existing drainage authority.

An option we considered was forming a drainage district that encompassed the Oakes Test Area drains. We quickly realized the limitation imposed on drainage district assessments was a serious problem, as the levy in any year for cleaning out and repairing a drain may not exceed four dollars per acre on any agricultural lands in the drainage district.

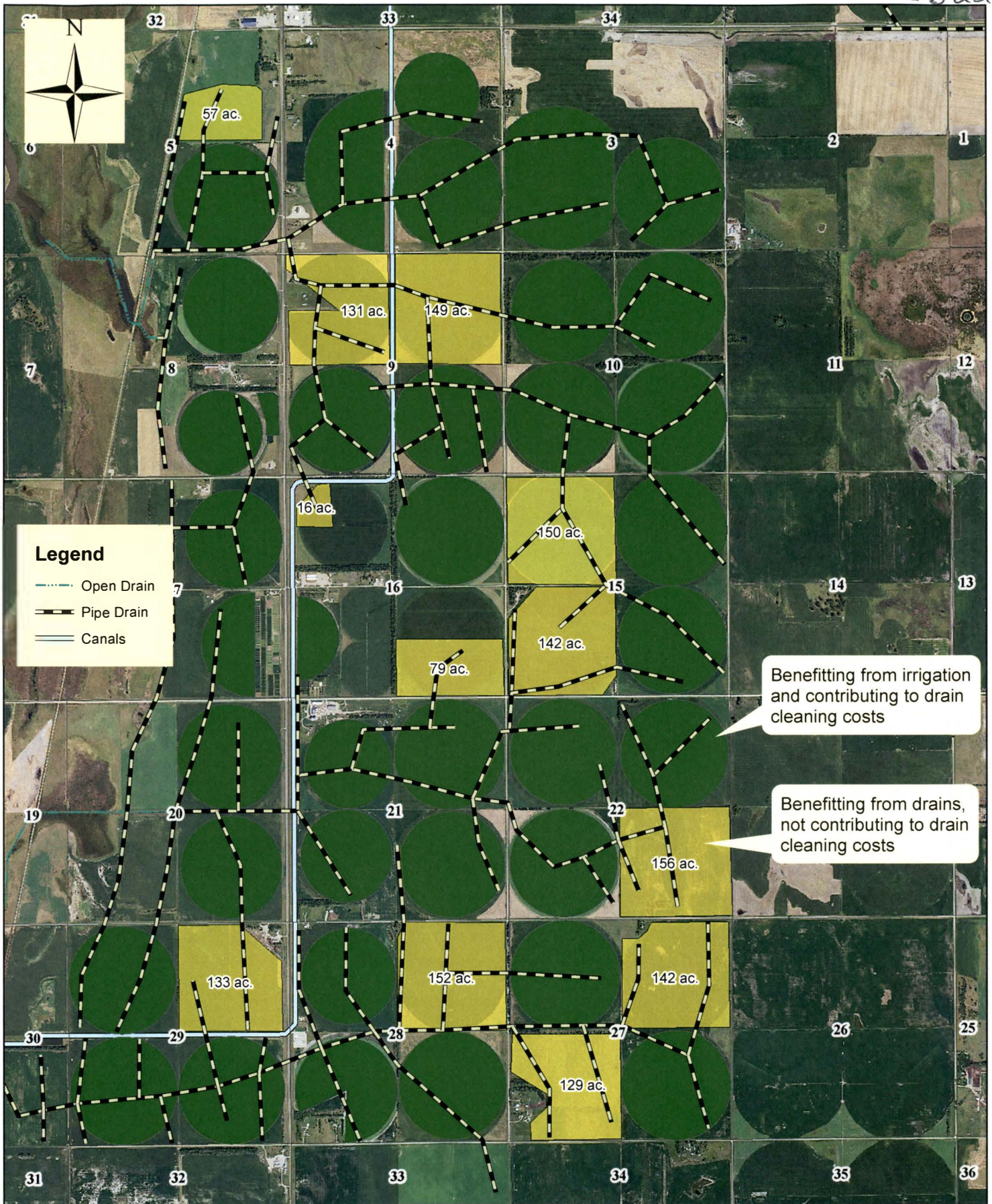
For 2018, the Dickey-Sargent Irrigation District spent \$64,000 for drain cleaning, or \$14.15 per acre of project irrigation. If apportioned to all lands with drainage benefit, the costs would have been \$10.74 per acre. Drainage districts can double the assessment to \$8 per acre for six years to cover costs, but even that would be insufficient. Considering the shortfalls Dickey-Sargent would face, forming a drainage district is not a desirable option. No such limitations are placed on assessments by irrigation districts. Therefore, allowing the Dickey-Sargent Irrigation District to assess for their own drain maintenance is a much better option.

Thank you for allowing my testimony today.



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# Title Transfer of the Oakes Test Area Would Benefit Local Irrigators

By Kimberly Cook

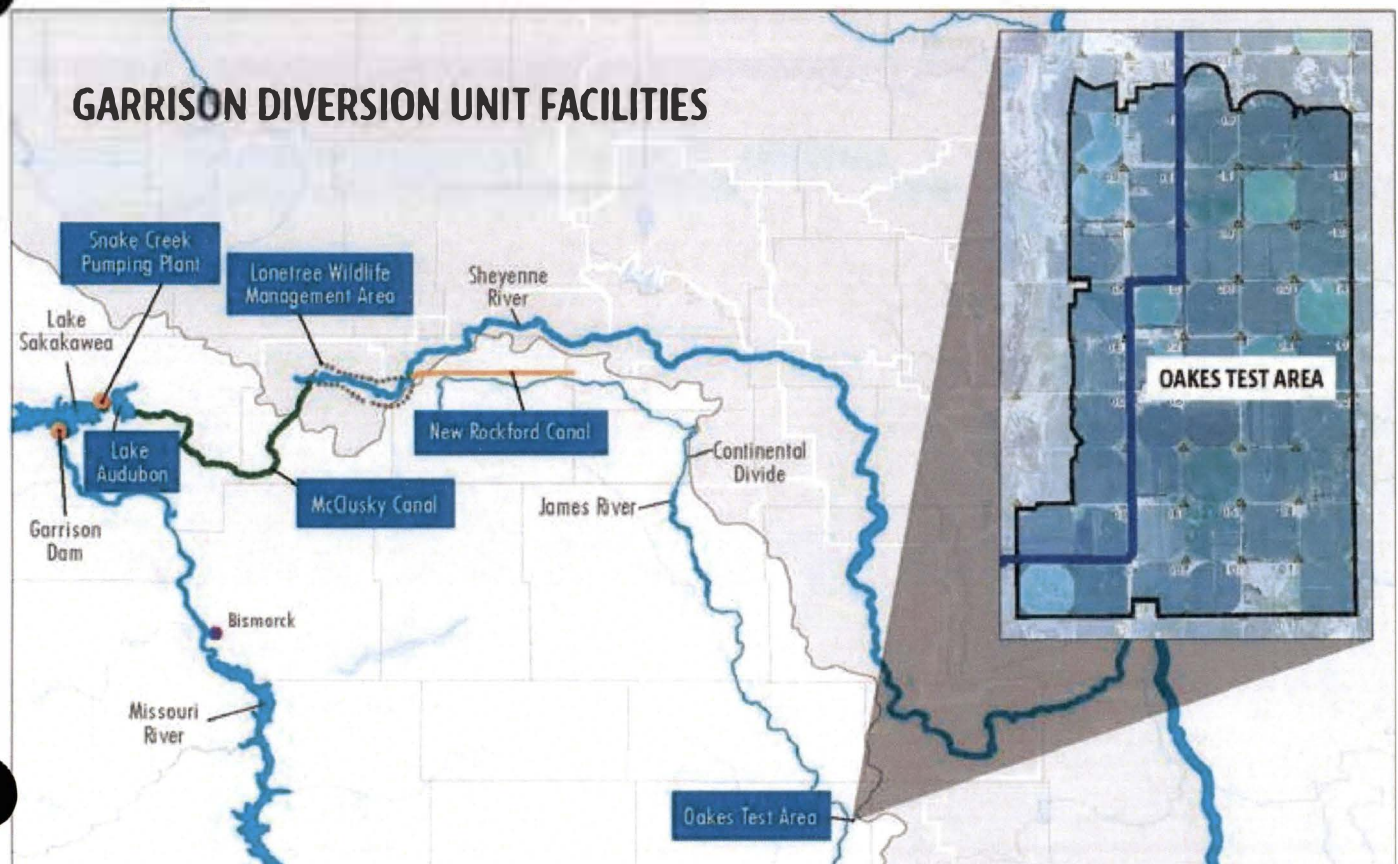
For 30 years, the Oakes Test Area (OTA) has provided a wealth of important data imperative to developing the best management practices for irrigated agriculture in North Dakota. OTA is an irrigation research site located near Oakes in southeast North Dakota.

## WHAT IS THE OAKES TEST AREA?

OTA came about when the International Joint Commission recommended the establishment of a facility to study the effects of Garrison Diversion Unit (GDU) irrigation. The irrigation research site was developed in 1980 by the Bureau of Reclamation (Reclamation)

in cooperation with state and federal agencies. Prior to irrigation delivery, data collection and monitoring was completed to document pre-development conditions.

Irrigation delivery began at OTA in the spring of 1988 after completion of a subsurface drainage system and water distribution system. In 1994, Reclamation's director of research determined that original research objectives had been met, and it was no longer in Reclamation's interest to continue this research. Reclamation discontinued funding research in OTA at the end of 1995. This decision was supported by an environmental assessment and decision document, which also stated Reclamation's intent to



transfer title of the OTA facilities. It also stated that if title transfer cannot be accomplished, water deliveries would be discontinued and the facilities would be abandoned.

### QUESTIONABLE FUTURE OF OTA

The future of OTA is questionable at this time. Limited water supplies have prevented OTA from reaching its full potential. While OTA is authorized to irrigate up to 5,000 acres, limited water supplies have prevented the test area from reaching its full potential. Anywhere from 500 to 4,300 irrigated acres have been irrigated from 1988 through today, though in 2012, 4,529 acres were irrigated, making it a record year for OTA.

In order for OTA to irrigate a consistent number of acres, a more reliable water supply needs to be secured. OTA utilizes water from the James River and groundwater through temporary water permits acquired from the North Dakota State Water Commission. Interim water sources include Jamestown Reservoir storage (when available in accordance with the Operating Principles for the OTA from the James River), surplus James River flows, flows captured from the OTA drainage system, and water from the interim water supply wells, which depend upon natural recharge and artificial recharge of the Oakes Aquifer using surplus James River flows.

Alternatives are being considered to secure future water supply options for irrigation in OTA. In a dry year, OTA could potentially be without a water supply, so the level of investment to be made in the facilities is questionable.

### TITLE TRANSFER OF FACILITIES

While Reclamation owns OTA, the Garrison Diversion Conservancy District (Garrison Diversion) Operation and Maintenance staff performs the daily operations, which includes operating pumps, servicing equipment and maintaining the extensive system of subsurface pipe

drains. Since federal funding was eliminated for OTA in 2011, irrigators within the Dickey-Sargent Irrigation District (DSID) came to an agreement with Reclamation to assume all O&M costs associated with OTA. DSID is now responsible for all operations and maintenance costs for the irrigation system at OTA.

DSID is pursuing a title transfer of OTA from Reclamation with the assistance of Garrison Diversion. The Dakota Water Resources Act states that OTA must be title transferred or go through the federal surplus property process two years after a Record of Decision (ROD) is signed for the Red River Valley Water Supply Project. Since the ROD has not yet been signed and a signature is not expected, OTA remains owned and operated by Reclamation, with intermittent irrigation reimbursement for OM&R of the project.

DSID would see several benefits from a title transfer of the facilities.

- More efficient and economical O&M operations
- Make own O&M decisions
- Set own O&M priorities
- Able to modify facilities without the necessity of federal processes
- Secure/guarantee the long-term operations of the facility

Reclamation would also realize benefits from a title transfer, mainly reduced costs to taxpayers, reduced liability to the federal government/taxpayers and the ownership of the facility would be turned to local users rather than the federal government.

North Dakota is fortunate to have an asset as great as OTA positively impacting the region, as irrigation operations at OTA have provided data to develop the best management practices for irrigated agriculture in North Dakota, the United States and the world. A title transfer of the facilities would be in the best interest of the local users and the state.

Corn irrigation at the Oakes Test Area.

