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10/23/03

2003 SENATE NATURAL RESOURCES

SB 2419

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10/23/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2419

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 2-27-03

Tape Number	Side A	Side B	Meter #
1	X		complete
		X	0.0 - 4.1
2	X		14.8 - 16.6
2	X		17.0
Committee Clerk Signature <i>Jant Jant</i>			

Minutes:

Senator Ben Tollefson, Vice Chairman of the Senate Natural Resources Committee opened the hearing on SB 2419, relating to penalties for violating injunctive orders preventing Clean Water Act violations, to clarify the state's authority to seek injunctive relief against governmental entities that violate water quality standards of the state, and authority of the state to protect water quality from degradation; to provide a penalty; and to declare an emergency.

All members of the committee were present except Senator Thomas Fischer.

Senator Bob Stenehjem (0.5) of District 30 cosponsor of SB 2419 introduced the bill (See attached testimony).

Senator Randel Christmann of District 33 cosponsor of SB 2419 did not have much more to add but stated that much of his district borders the south shoreline of the lake. This is very

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Senate Natural Resources Committee
Bill/Resolution Number SB 2419
Hearing Date 2-27-03

important bill and the profound impact the lake has on so many, not only the locals but those who come into the state for the recreation.

Senator Joel Heitkamp (2.8) of District 26 cosponsor of SB 2419 wanted to draw to the committee's attention to Section 4 that increases the fines and wanted to assure the committee that these fines will not effect the water industry as the health department has a long history of working with the violators before any fines are incurred.

Representative David Droydal (3.8) of District 39 cosponsor of SB 2419 stating a lot of good land was lost because of construction of the dam, but it was done because it was good for North Dakota. A lot of the promises made have not been kept but finally economic progress is now being realized. The management of the lake has been questioned many times and is very bad. He stated this bill will make a statement how serious this is and we need to be heard

Attorney General Wayne Stenehjem (6.1) testified in support of SB 2419. He presented a chart based on corp information showing levels of the lake. The lake level predicted in one year shows it will be 19 feet lower than the level needed for the cold water habitat. This is an extremely serious situation for North Dakota. The Corp of Engineers plan for the management of the lake is in violation of the Clean Water Act that was adopted in North Dakota. We have the authority to enforce it in the state and against Federal agencies. This bill will do one very important thing that if an injunction is obtained against the corp, the state can enforce it by a civil penalty that will be increased (to \$25,000) by this bill. We're asking the corp to manage the river system so that it has equal consideration to all of the users. The corp has been working on the revised master operating manual for 15 years and last May the revised manual has now been put on indefinite hold. Again he stated this bill has two prongs which will notify the Corp of Engineers they are

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Senate Natural Resources Committee
Bill/Resolution Number SB 2419
Hearing Date 2-27-03

going to court to sue for violations of the Clean Water Act, and the second is to increase the fines that they will be charged.

Senator John Traynor asked if it would make a difference to include individuals in the bill, so that they could be sued in court and fined as well making the bill as strong as possible.

Wayne Stenehjem thought this would need to be researched and maybe discussion could happen.

Senator Tollefson asked if any other states are involved.

Wayne Stenehjem answered that South Dakota has asked to be keep abreast of the process and Montana has also been asked if they would be interested.

Dave Glatt, (18.5) Chief of the Environmental Health Section with the North Dakota Department of Health testified in support of SB 2419 (See attached testimony).

Senator Stanley Lyson inquired about the toxic blue algae that has been present with the lower levels of water in the lake.

Senator Joel Heltkamp asked how this level of fines compare with other states.

Dave Glatt responded that these fines would get North Dakota more in line with the fines of other states although the \$25,000.00 per day fine is collected after an injunction is filed and the then the violation occurs.

Dean Hildebrand, (23.8) Director of the North Dakota Game and Fish Department testified in support of SB 2419 (See attached testimony). He also stated the dams were built as flood control projects developing the lakes which have evolved into a valuable recreational resource. There is a fine balance to maintain the fish eco system and if something isn't done this valuable resource will be gone. This legislation will put some teeth into solving the problem.

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Dean Hildebrand
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Senate Natural Resources Committee

Bill/Resolution Number SB 2419

Hearing Date 2-27-03

Doug Prchal, (40.6) Director of the North Dakota Park & Recreation testified in support of SB 2419.

He talked about the access areas to the lake and stress this is causing to lake, the area people and the economic development.

Sara Otte Coleman (43.1) Director of the Tourism Division of the North Dakota Department of Commerce testified in support of SB 2419 (See attached testimony).

Bill Butcher (45.5) the State Director of the National Federation of Independent Business (NFIB) and the Friend of Lake Sakakawea testified in support of SB 2419 (See attached testimony).

Mike Quinn (49.6) representing his business and the Sakakawea South Shore which represents the tourism industry on the south shore of the lake, testified in support of SB 2419 (See attached testimony). He also presented a map of the south shore of Lake Sakakawea that promotes tourism. He also stated he does not feel the fines are high enough.

Bill Phelfer (2.7) representing the North Dakota Chapter of the Wildlife Society testified in support of SB 2419 stating the Game and Fish Department has been given the resource to manage but they need the tools to do so. He stated the fine should even be higher and that maybe individuals should be included in the action.

There was no opposing or neutral testimony on SB 2419.

Senator Tollefson closed the hearing on SB 2419.

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Senate Natural Resources Committee
Bill/Resolution Number SB 2419
Hearing Date 2-27-03

Tape 2, Side A, 14.8 - 16.4

Senator Ben Tollefson asked the committee to draw their attention to SB 2419.

Senator Joel Heitkamp made a motion for a Do Pass of SB 2419.

Senator Layton Freborg second the motion.

Roll call vote was taken indicating 5 YEAS, 1 NAYS AND 1 ABSENT OR NOT VOTING.

Senator John Traynor will carry SB 2419.

Tape 2, Side A, 17.0

Senator Stanley Lyson stated he was confused to which bill was being acted upon and asked to

change his vote from NAY to YEA on SB 2419.

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Date: 2-27
Roll Call Vote #:

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2419

Senate	Senate Natural Resources	Committee
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☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Nathan Seconded By Nathan

[illegible]

Total (Yes) 6 No 0

Absent 1

Floor Assignment 1st floor

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

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Date _____

REPORT OF STANDING COMMITTEE (410)
February 27, 2003 12:41 p.m.

Module No: SR-35-3581
Carrier: Traynor
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2419: Natural Resources Committee (Sen. Fischer, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2419 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-35-3581

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2003 HOUSE NATURAL RESOURCES

SB 2419

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10/23/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2419

House Natural Resources Committee

☐ Conference Committee

Hearing Date March 6, 2003

Tape Number	Side A	Side B	Meter #
3	xx		0-2454
Committee Clerk Signature <i>E. M. M.</i>			

Minutes:

Chair Nelson called the hearing on SB 2419 relating to penalties for violating injunctive orders preventing Clean Water Act violations, to clarify the state's authority to seek injunctive relief against governmental entities that violate water quality standards of the state, and authority of the state to protect water quality from degradation; to provide a penalty; and to declare an emergency to order.

Sen. Fischer: Introduction of SB 2419. Read a statement from Senate Majority Leader Stenehjem. (See Attached Testimony) Sen. Fischer commented that if anything the language is not strong enough.

Rep. Drovdal: Introduced SB 2419. I am pleased to sign on. Lake Sakakawea and Garrison Dam are in my district. I remember getting on a ferry and crossing the river to Tioga and seeing the very productive bottom land in the Missouri Valley. This was the very land that Lewis and Clark talked about in their memoirs. That land was sacrificed so that the US Government could

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10/23/03
Date

Page 2

House Natural Resources Committee

Bill/Resolution Number 2419

Hearing Date March, 6, 2003

make Lake Sakakawea. There were many promises made about water quality and irrigation.

That of course was never fulfilled. There were promises to the local people to recover the economic losses by recreational and tourism industries. It took a lot of years because the lake level kept coming up. The local people have finally developed some pretty good industry in recreation and irrigation. Now the water level has been dropping. The ramps are now unusable as of last fall. There are serious questions about the management of that lake. If we lose that water quality we lose that which we have built for generations. It took us four decades to build it up to where it is now. I hope mother nature will come through.

Dave Glatt: Chief of environmental health section of ND Department of Health. Testified in support of SB 2419. (See Attached Testimony)

Rep. DeKrey: Why do we need the approval of the Governor.

Dave Glatt: Primarily to keep checks and balance in the system. To prevent abuse of the authority.

Dean Hildebrand: North Dakota Game and Fish. Support of SB2419. We have worked long and hard to create a world class fishery. It can be snuffed out in the blink of an eye.

Dale Frink: ND State Engineer. Testified in support of SB 2419.

Doug Prchal: ND Parks and Rec. Testified in support of SB 2419. Commented that the state park system is under real threat. The state park system has 4 parks on the lake with a 40% visitation rate. 80% of those visitors are from in state.

Bill Butcher: NFIB. Testified in support of SB 2419. (See Attached Testimony)

Bill Pfeifer: ND Wildlife Society. Testified in support of SB 2419.

Mike Donahue: ND Sportsman. Testified in support of SB 2419.

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House Natural Resources Committee

Bill/Resolution Number 2419

Hearing Date March, 6, 2003

Chair closes hearing on SB 2419.

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2419

House Natural Resources Committee

☐ Conference Committee

Hearing Date March 7, 2003

Tape Number	Side A	Side B	Meter #
2	xx		3205-3533
Committee Clerk Signature <i>E. M. M.</i>			

Minutes:

Chair Nelson called the meeting to order.

Rep. Drovdal moves an amendment. Seconded by **Rep. Clark**. Motion passes by voice vote.

Rep. DeKrey moves **Do Pass with Amendments** seconded by **Rep. Clark**. Motion carries by a vote of 11-0-3.

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10/23/03
Date

38392.0301
Title.0400

Adopted by the Natural Resources
Committee

March 7, 2003

House Amendments to SB 2419 - Natural Resources Committee 03/07/2003

Page 2, line 2, remove "It is also unlawful for any person to"

Page 2, remove line 3

Page 2, line 4, remove "causes or threatens to cause long-term or irreparable harm."

Page 2, line 5, replace "degradation of" with "a threatened or continuing violation of a", after "quality" insert "standard", and after "including" insert "any"

Page 2, line 6, replace "degradation" with "violation"

Page 2, line 10, replace "degradation" with "a violation", after "of" insert "the", and after "quality" insert "standards, including violations of the narrative standards."

Page 2, line 11, after "department" insert ", after obtaining written approval of the governor."

Renumber accordingly

1 of 1

38392.0301

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10/23/03
Date

Date: 3/7/03
Roll Call Vote #:)

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2419

House House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass with Amendments

Motion Made By DeKrey Seconded By Clark

Representatives	Yes	No	Representatives	Yes	No
Chairman Jon O. Nelson	✓				
Vice-Chairman Todd Porter	✓				
Rep. Byron Clark	✓				
Rep. Duane DeKrey	✓				
Rep. David Drovdal	✓				
Rep. Lyle Hanson	✓				
Rep. Bob Hunsaker	✓				
Rep. Dennis Johnson	✓				
Rep. George Keiser	✓				
Rep. Scott Kelsh					
Rep. Frank Klein	✓				
Rep. Mike Norland	✓				
Rep. Darrell Nottestad					
Rep. Dorvan Solberg					

Total (Yes) 11 No 0

Absent 3

Floor Assignment Drovdal

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

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Deanna Solberg 10/23/03
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REPORT OF STANDING COMMITTEE (410)
March 10, 2003 9:29 a.m.

Module No: HR-42-4304
Carrier: Drovda
Insert LC: 38392.0301 Title: .0400

REPORT OF STANDING COMMITTEE

SB 2419: Natural Resources Committee (Rep. Nelson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB 2419 was placed on the Sixth order on the calendar.

Page 2, line 2, remove "It is also unlawful for any person to"

Page 2, remove line 3

Page 2, line 4, remove "causes or threatens to cause long-term or irreparable harm."

Page 2, line 5, replace "degradation of" with "a threatened or continuing violation of a", after "quality" insert "standard", and after "including" insert "any"

Page 2, line 6, replace "degradation" with "violation"

Page 2, line 10, replace "degradation" with "a violation", after "of" insert "the", and after "quality" insert "standards, including violations of the narrative standards."

Page 2, line 11, after "department" insert ", after obtaining written approval of the governor."

Renumber accordingly

10/23/03

2003 TESTIMONY

SB 2419

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10/23/03
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**Testimony on Senate Bill 2419
Senate Majority Leader Bob Stenehjem**

Mr. Chairman and members of the committee, for the record my name is Bob Stenehjem, senator from District 30.

I haven't placed my name on many bills this session, but when SB 2419 was presented to me, I signed on because we must do everything we can to protect one of our great natural resources. Preserving the cold-water habitat on Lake Sakakawea is crucial if we are to maintain our multi-million dollar fishing and tourism industry. Over the years state officials have held countless discussions with the Corps of Engineers about the need to maintain certain levels at Lake Sakakawea. And yet once again, the Corps is forecasting the lowering of lake levels to a point where our world-class salmon fishery and the smelt population will be destroyed. These species can only survive when certain water quality standards are met, those standards can't be met at the lower lake levels. The domino effect of a smelt kill is that our tremendous walleye fishery will also be destroyed.

I find it curious that the federal government can require North Dakota to adopt clean water standards, and then the federal government can turn around and predict when it will violate its own standards. This bill should serve as a wake-up call to the Corps of Engineers ... If the Corps intends to allow the lake to drop, it should also be prepared to pay significantly higher penalties for violating clean water standards.

I encourage you to give SB 2419 a "Do Pass"

Thanks for your time.

Testimony
Senate Bill 2419
Senate Natural Resources Committee
February 27, 2003
8:30 a.m.
North Dakota Department of Health

Mr. Chairman and members of the committee, my name is Dave Glatt and I am the Environmental Health Section Chief with the North Dakota Department of Health. I am here today to provide testimony in support of Senate Bill 2419.

Senate Bill 2419 seeks to change the penalty for violating State Water Quality Standards from \$5,000 per day to \$25,000 per day and clarifies the state's authority to protect water quality from degradation. The increased penalty applies only to entities that violate injunctive orders to stop degradation that is causing or threatening to cause long-term or irreparable harm to water quality in North Dakota.

North Dakota Water Quality Standards consist of three parts: the designated beneficial uses of the water, the criteria necessary to support those uses, and the policies and procedures to prevent degradation of existing water quality. Beneficial uses include, but are not limited to, municipal water supplies, recreation, and aquatic life (e.g., Lake Sakakawea's cold-water fishery).

The North Dakota Department of Health is required to document a water quality violation after it (and any subsequent damage) has occurred, and this policy will continue. The passage of this bill will provide added protection, as it will make it unlawful to cause degradation to the state's water resources. By issuing a notice of violation when a threat to water quality is likely to occur, as determined by the Department based upon monitoring data, the Department can avoid long-term or irreparable harm to the designated beneficial uses of surface water or groundwater.

In the case of Lake Sakakawea, data shows that thermal pollution caused by the manipulation of lake levels to 1,825 feet above sea level during summer months likely will cause dissolved oxygen to fall to dangerously low levels in the deepest parts of the lake that support the cold-water fishery. Lake levels lower than 1,825 feet above sea level, will result in a diminished cold-water habitat. With diminished habitat, the cold-water fishery will suffer and possibly cease to exist. Currently, the level of Lake Sakakawea is well below 1,825 feet above sea level, and unless management of the resource is changed to protect water quality and the cold-water fishery, violations undoubtedly will occur.

The current penalty of \$5,000 per day is an insufficient deterrent to violating State Water Quality Standards. A penalty of up to \$25,000 per day, plus the potential cost of any

Dave Glatt
Operator's Signature

10/23/03
Date

damages, more accurately reflects the contemporary value of the resource – especially a resource as valuable as Lake Sakakawea.

The Department of Health would appreciate your favorable response to Senate Bill 2419. I am happy to answer any questions you may have.

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"VARIETY IN HUNTING AND FISHING"

100 NORTH BISMARCK EXPRESSWAY BISMARCK, NORTH DAKOTA 58501-5085 PHONE 701-328-6300 FAX 701-328-6302

Testimony for SB 2419

3

Lake Sakakawea is the number one fishery in North Dakota in terms of angler participation and use. On average, anglers spend more than \$20 million annually on Lake Sakakawea. Although there are a number of game fish species present in Lake Sakakawea, the primary species sought after and harvested by anglers are walleye, Chinook salmon and northern pike. Rainbow smelt provide the main forage for the walleye, salmon and pike and the abundance of rainbow smelt plays a pivotal role in determining the quantity and quality of the recreational fishery in Lake Sakakawea.

In normal water years, the amount of coldwater habitat needed for smelt and salmon to survive is not limited. However, in years when Lake Sakakawea's elevation drops below 1825 feet mean sea level during the summer, the volume of coldwater habitat declines dramatically, which in turn has detrimental effects on the smelt and salmon populations. A combination of high temperature and low oxygen stress the smelt and salmon resulting in poor growth, condition, and even survival. When the stress is elevated for an extended period of time, fish kills can occur.

8

Unfortunately, the combination of the drought and the Corps of Engineers water management practices may result in record low levels at Lake Sakakawea this summer, which in turn, may threaten the Lake's coldwater fishery. Because of the importance of the state's fishery resources and the threat imposed by the Corps of Engineers water management of the Missouri River System, I support SB 2419.

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10/23/03

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**TESTIMONY OF SARA OTTE COLEMAN
DIRECTOR, TOURISM DIVISION
NORTH DAKOTA DEPARTMENT OF COMMERCE
SENATE BILL 2419
SENATE NATURAL RESOURCES COMMITTEE
FEBRUARY 27, 2003**

Good morning, Mr. Chairman and members of the committee. I am Sara Otte Coleman, director of the Tourism Division of the North Dakota Department of Commerce.

Outdoor recreation is a significant segment of North Dakota's tourism industry. A recent study showed that total spending by hunters and anglers in North Dakota during the 2001-02 season was estimated at \$468.5 million, excluding purchases of licenses. The economic impact of outdoor recreation continues to increase. Outdoor recreation is an important source of economic activity across the state.

Lake Sakakawea is one of the premier outdoor recreation destinations in North Dakota. With its 1,500 miles of shoreline, Lake Sakakawea is without a doubt a major asset to tourism in North Dakota. It's a world-class fishery. It's home to many state parks. It's home to many resorts. And with the Lewis & Clark Bicentennial now underway, many new visitors to North Dakota will be visiting Lake Sakakawea for the very first time.

Lake Sakakawea is a real asset in how the Tourism Division markets North Dakota. We use photographs of the lake and around the lake in all of our promotional materials. The lake is part of how we're "branding" the state because North Dakota's legendary fishing and outdoor recreation is an important part of what we can offer visitors.

We support whatever we can do to save this important resource.

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SENATE BILL 2419

NFIB - 3000 ND MEMBERS

FRIENDS OF LAKE SAKAKAWEA - 100S OF INDIVS AND
BUSINESS OWNERS WITH A RELATIONSHIP WITH THE LAKE

NFIB POLLING POLICY - TOOK A POLL IN APRIL 2002 AND 82%
OF OUR MEMBERS VOTED TO TAKE WHATEVER IS
NECESSARY TO REQUIRE THE CORPS TO STABILIZE WATER
LEVELS OF UPSTREAM LAKES ON THE MISSOURI RIVER.

WILDLY DEVASTATING TO BUSINESSES NOT ONLY ON THE
LAKE BUT TO BUSINESSES IN THE REGION - BISMARCK,
MINOT, DICKINSON, WILLISTON AND EVEN FURTHER EAST
AND WEST. DIRECT CORRELATION - HISTORICALLY WHEN
THE WATER LEVELS GO DOWN, TOURISM GOES DOWN AND
BUSINESSES GO DOWN. MANY EXAMPLES OF BUSINESSES
CLOSING BECAUSE OF LOW WATER LEVELS. THE COST IS
HUGE!

A VIOLATION OF THE WATER QUALITY STANDARDS IS BEING
PRACTICED BY THE CORPS AS I SPEAK. LOWERING WATER
TO UNPRECEDENTED LEVELS AND DESTROYING OUR
FISHERIES. GEN FASTEBEND OF THE CORPS SAID JUST LAST
WEEK THAT THE CORPS COULD SHORTEN THE NAVIGATION
SEASON DOWNSTREAM BY FIVE WEEKS, AS THEY DID IN THE
DROUGHT OF THE EARLY 90S, BUT THEY SIMPLY WON'T DO
IT.

NFIB AND FRIENDS URGE THAT YOU SIDE WITH ND SMALL
BUSINESSES AND GIVE THE STATE THE TOOL IT NEEDS TO
GET ACTION FROM THE CORPS. VOTE A DO PASS ON SB 2419!

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Deanna G. H. S.
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10/23/03
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Testimony on behalf of Sail Sakakawea and Sakakawea South Shore

My name is Mike Quinn, and I am representing my business, Sail Sakakawea. I am also representing a tourism organization in Mercer and Dunn County called Sakakawea South Shore. I would like to testify about the economic impact low lake levels have on both of these entities.

First, I will speak about my sail chartering business. This will be my fourth year offering a sailing charter service on Lake Sakakawea. One other sail charter service operates on the lake. Both our businesses depend on a lake with good access. Access means several things. First, access means the ability to get my boat in and out of the water. Second, access means being able to get my boat into the bay where I dock and keep my boat. Third, access means being able to take my customers to areas of the lake where they will have an enjoyable time.

For the past two years, I have had to pay additional storage fees because it has become impossible to get my boat out of the water at Dakota Waters Resort or Beulah Bay due to lack of water. I have been forced to sail the boat to the State Park at Pick City to have it stored for the winter. This cost me an additional two hundred dollars every year. Low lake levels shortened the sailing season by a month. This means I lose one month's worth of revenue in a season that is only four months long. In past years, low lake levels have forced sailboat owners to hire a crane service to remove the boats from the water. If this happens again, the cost will run into thousands of dollars for crane rental and services. This does not include the additional cost for removing the masts from some boats such as mine, which will cost at least an additional thousand dollars per boat.

I rely on customers having an enjoyable experience. Word of mouth advertising is the best form of marketing I have. When lake levels are low, I cannot take my boat into the prime areas I rely on for overnight camping. My customers do not have good access to the shore, which enables them to enjoy shore activities such as hiking and campfires. Low lake levels mean docks are poorly positioned for loading passengers and their gear. Good experiences foster good publicity. Low lake levels cancel the money I have spent to attract and maintain customers.

If the lake level drops far enough, I will not be able to utilize the bay at Dakota Waters, Beulah Bay, or Hazen Bay. My boat draws six feet of water. From a practical standpoint, I have to be able to reach a dock in order to load my passengers. If I cannot pick up my customers and do not have a place to dock my boat, I am out of business. Sakakawea will have a limited amount of dock space because of lower lake levels. It cost me a little over four thousand dollars per year to operate my business. Most of the money is spent prior to the season. If I cannot operate, the entire investment is lost. My customers spend money in Mercer County when they utilize my service. They use lodging facilities, gas stations, grocery stores, and restaurants. When they do not do business with me, other businesses suffer.

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Sakakawea South Shore is an organization of people interested in promoting tourism along the south shore of Lake Sakakawea. This organization has been in existence for three years and is becoming a vital element in promoting the area. The map I have handed out to some of you is a product of this organization. This map was put together with a grant from the North Dakota Tourism Department. Much of the money spent by all the towns from Washburn to Killdeer will be money spent in vain if the Corps of Engineers is allowed to drain the lake as the Lewis and Clark Bicentennial gets under way. Lake Sakakawea is the centerpiece for our area to attract tourists. Garrison has already shown the Corps of Engineers statistics that indicate how badly low lake levels can effect the economy of communities along the lake. As a state, we have been working for years to prepare for our guests from the rest of the country to enjoy the legacy of Lewis and Clark. A lake in less than pristine condition will be a severe blow to this effort.

A fine of five thousand dollars a day assumes the state suffers roughly two million dollars worth of damage from the Corps' mismanagement of the lake. Two million dollars does not cover the cost of shutting down the businesses on the lake that have struggled for years to become viable. Two million dollars does not cover the cost of advertising dollars that were spent to attract people to the area. Two million dollars does not cover the cost of ruining the lake's reputation for years to come. Two million dollars does not cover the cost of destroying a fishery that has taken years to develop. Two million dollars does not cover the economic loss to all of the small towns around the lake that face less revenue. Two million dollars does not cover the cost for local people that can no longer enjoy the lake that is right on their doorstep. I feel a fine of twenty five thousand dollars a day is justified, and it is a shame some of the Corps' people cannot be sentenced to spend their summer vacations on the lake they drained.

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Just Do It

GIVE US A CALL OR VISIT
OUR WEBSITE.

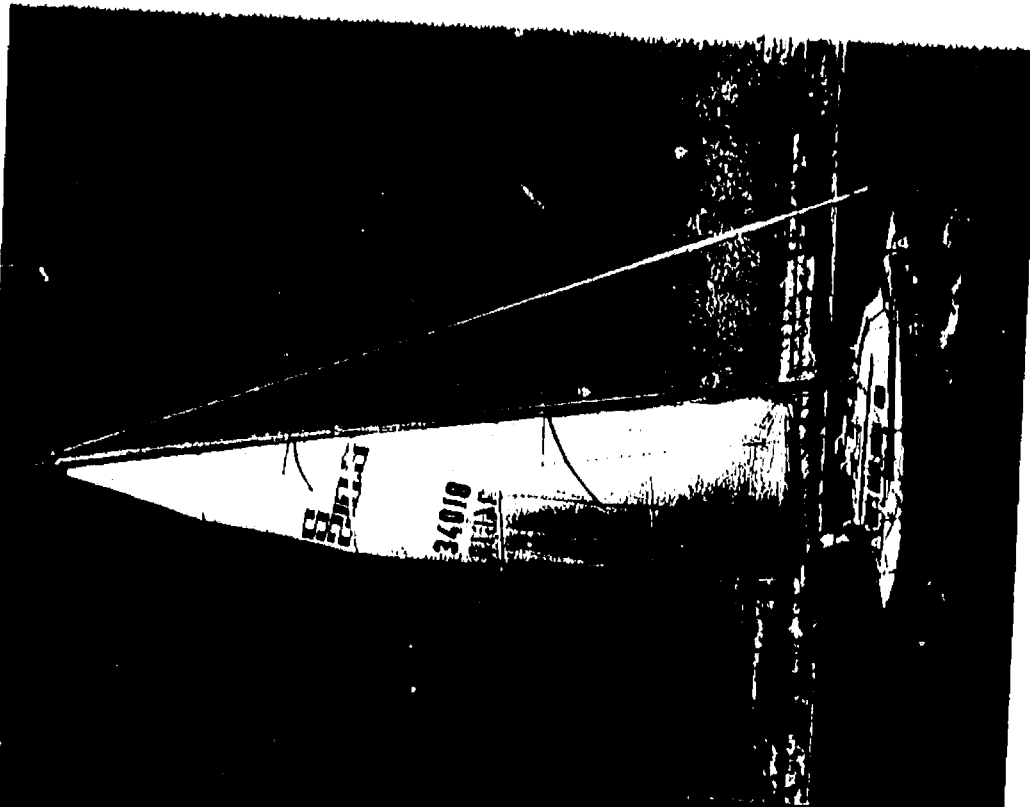
LET US KNOW WHAT YOU
WANT TO DO, AND WE
WILL CUSTOMIZE A TRIP
FOR YOU.

- GO OUT FOR A DAY OR EVENING SAIL.
- DO AN OVERNIGHT SAIL.
- TOUR THE LITTLE MISSOURI.
- TAKE A TRIP TO FOUR BEARS CASINO.



Sail

Sakakawea



SAIL

THE LEWIS AND CLARK T'AIL

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What We Offer

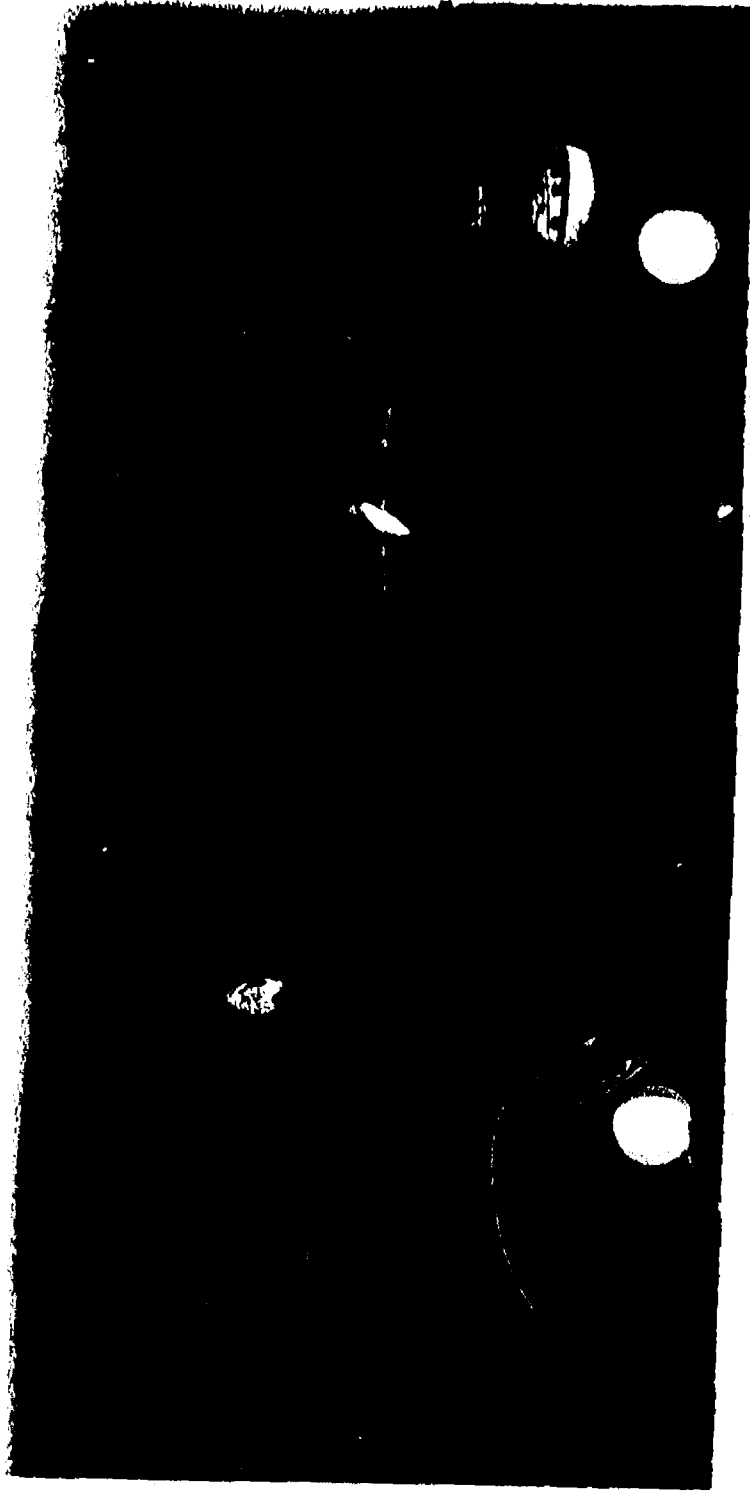
- SAIL FOR AN HOUR, A DAY, OR A WEEK
- ENTERTAIN FRIENDS OR CLIENTS
- SEE THE REAL AREA LEWIS AND CLARK TRAVELED
- GET AWAY FROM CIVILIZATION
- LET THE WIND BLOW YOUR TENSION AWAY
- FIFTEEN YEARS OF EXPERIENCE ON LAKE SAKAKAWEA

Why Sail?

NOTHING IS QUITE AS RELAXING AS A SLEIGH RIDE ON A SAILBOAT. NO NOISY MOTOR, NO HURRY, AND GETTING THERE IS MOST OF THE FUN. FIND A COMFORTABLE SPOT, SIT BACK, READ, TAN, OR JUST MARVEL AT THE SCENERY. IF YOU WANT TO BE MORE ACTIVE, TAKE YOUR TURN AT THE WHEEL. HELP TRIM THE SAILS.

WHY CAMP IN A ROW WITH THE NOISE AND IRRITATIONS OF A CAMPGROUND, WHEN YOU CAN HAVE ANY ONE OF A HUNDRED BAYS TO YOURSELF? STOP TO SWIM, HIKE, OR JUST SIT ON THE BOAT AND WATCH THE WILDLIFE.

THERE IS NO OTHER WAY TO SEE THE MISSOURI AS LEWIS AND CLARK EXPERIENCED IT. MUCH OF THE LAND ON THE WESTERN END OF THE LAKE REMAINS AS IT WAS WHEN THE CORPS OF DISCOVERY FIRST SAW IT.



The Boat

THE BOAT IS A 34 FOOT 52 DESIGNED TO RACE AND CRUISE. EQUIPMENT INCLUDES A DIESEL ENGINE, ROLLER FURLING, HEAD, OVEN, COOLER, CELL PHONE, VHF RADIO, AND ALL REQUIRED SAFETY GEAR. FOR DAY OR EVENING SAILS UP TO SIX GUESTS CAN BE ACCOMMODATED. FOR OVERNIGHT SAILS, TWO TO FOUR PEOPLE CAN SLEEP.

Contact Us

MIKE QUINN - USCG LICENSED CAPTAIN
701-748-6111

EMAIL: MQUINN@WESTRIV.COM

WEBSITE:

SAILSAKAKAWEA.BIGSTEP.COM

SAIL SAKAKAWEA

BOX 316

HAZEN, ND 58545

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Deanna G. H. S. S.

Date

10/23/03

February 20, 2003

STATE TO SUE US CORPS OF ENGINEERS

BISMARCK – The State of North Dakota is taking action to stop the US Army Corps of Engineers (Corps) from endangering the state's fisheries and from violating state clean water standards. By taking the first step today, Attorney General Wayne Stenehjem will seek a court order preventing the Corps from lowering the level of Lake Sakakawea to a historic low.

The lawsuit is being filed in response to a recent Corps forecast indicating that levels at Lake Sakakawea will drop to 1814.7 ft by the end of August and to 1806.7 ft by the end of February 2004. The Corps controls water flow through the Missouri River basin based on operating standards established in the 1979 Master Manual. The manual, which has been under revision for over 14 years, serves as the center of controversy in a struggle between downstream navigation and upstream recreation and tourism interests.

Over the last two years Governor John Hoeven and Attorney General Stenehjem have demanded a more responsible approach to Missouri River basin management. Yet, with latest water level forecast, it is likely that the fish population in Lake Sakakawea will be severely impacted. "If the Corps is allowed to release water downstream at the forecasted rate, it will create long-term damage to Lakes Sakakawea and Oahe and our world-class fisheries," declared Governor Hoeven. He noted that only 15 of 85 boat ramps are usable at the 1815 ft level, and at lower levels, most of the ramps will be left high and dry.

Attorney General Stenehjem raised concerns about water quality. "North Dakota has clean water standards that must be met by not only citizens of the state, but also the federal government," stated Stenehjem. He continued, "Our lawsuit is notice to the federal government that it too has duties to be a responsible citizen." Stenehjem noted that the first steps of the lawsuit coincide with the filing by the leadership of both legislative houses of a delayed bill amending the state's clean water act.

Senate Bill 2419 will allow a court to grant penalties up to \$25,000 per day per violation when an entity violates a court order granting injunctive relief. Stenehjem emphasized, "This is comparable to penalties under the federal Clean Water Act. We want to make sure that the Corps understands the gravity of the situation." His concerns were echoed by Senate Majority Leader Bob Stenehjem who stated, "Legislative leadership recognizes the need to ensure that entities, including the federal government, are punished for violating court orders issued to protect our precious water resources." He promises the legislation will be put on a fast track to assure its enactment as soon as possible. The delayed bill will have its first hearing next week.

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UNITED STATES CODE ANNOTATED
TITLE 33. NAVIGATION AND NAVIGABLE WATERS
CHAPTER 26—WATER POLLUTION PREVENTION AND CONTROL
SUBCHAPTER III—STANDARDS AND ENFORCEMENT

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Current through P.L. 108-6, approved 02-13-03

§ 1323. Federal facilities pollution control

(a) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement, whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law. Nothing in this section shall be construed to prevent any department, agency, or instrumentality of the Federal Government, or any officer, agent, or employee thereof in the performance of his official duties, from removing to the appropriate Federal district court any proceeding to which the department, agency, or instrumentality or officer, agent, or employee thereof is subject pursuant to this section, and any such proceeding may be removed in accordance with section 1441 et seq. of Title 28. No officer, agent, or employee of the United States shall be personally liable for any civil penalty arising from the performance of his official duties, for which he is not otherwise liable, and the United States shall be liable only for those civil penalties arising under Federal law or imposed by a State or local court to enforce an order or the process of such court. The President may exempt any effluent source of any department, agency, or instrumentality in the executive branch from compliance with any such a requirement if he determines it to be in the paramount interest of the United States to do so; except that no exemption may be granted from the requirements of section 1316 or 1317 of this title. No such exemptions shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting such exemption. In addition to any such exemption of a particular effluent source, the President may, if he determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vessels, vehicles, or other classes or categories of property, and access to such property, which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature. The President shall reconsider the need for such regulations at three-year intervals.

(b)(1) The Administrator shall coordinate with the head of each department, agency, or instrumentality of the Federal Government having jurisdiction over any property or facility utilizing federally owned wastewater facilities to develop a program of cooperation for utilizing wastewater control systems utilizing those innovative treatment processes and techniques for which guidelines have been promulgated under section 1314(d)(3) of this title. Such program shall include an inventory of property and facilities which could utilize such processes and techniques.

(2) Construction shall not be initiated for facilities for treatment of wastewater at any Federal property or facility

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after September 30, 1979, if alternative methods for wastewater treatment at such property or facility utilizing innovative treatment processes and techniques, including but not limited to methods utilizing recycle and reuse techniques and land treatment are not utilized, unless the life cycle cost of the alternative treatment works exceeds the life cycle cost of the most cost effective alternative by more than 15 per centum. The Administrator may waive the application of this paragraph in any case where the Administrator determines it to be in the public interest, or that compliance with this paragraph would interfere with the orderly compliance with conditions of a permit issued pursuant to section 1342 of this title.

CREDIT(S)

2001 Main Volume

(June 30, 1948, c. 758, Title III, § 313, as added Oct. 18, 1972, Pub.L. 92- 500, § 2, 86 Stat. 875, and amended Dec. 27, 1977, Pub.L. 95-217, § 60, 61(a), 91 Stat. 1597, 1598.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. Senate Report No. 92-414 and Senate Conference Report No. 92- 1236, see 1972 U.S. Code Cong. and Adm. News, p. 3668.

1977 Acts. Senate Report No. 95-370 and House Conference Report No. 95- 830, see 1977 U.S. Code Cong. and Adm. News, p. 4326.

Amendments

1977 Amendments. Subsec. (a). Pub.L. 95-217, § 60, 61(a), designated existing provisions as subsec. (a) and, in subsec. (a) as so designated, added provisions making officers, agents, or employees of Federal departments, agencies, or instrumentalities subject to Federal, State, interstate, and local requirements, administrative authority, process, and sanctions respecting the control and abatement of water pollution in the same manner and to the same extent as nongovernmental entities, including the payment of reasonable service charges, added provisions covering Federal employee liability, and added provisions relating to military source exemptions and the issuance of regulations covering those exemptions.

Subsec. (b). Pub.L. 95-217, § 60, added subsec. (b).

Marine Guidance Systems

Pub.L. 105-383, Title IV, § 425(b), Nov. 13, 1998, 112 Stat. 3441, provided that: "The Secretary of Transportation shall, within 12 months after the date of the enactment of this Act [Nov. 13, 1998], evaluate and report to the Congress on the suitability of marine sector laser lighting, cold cathode lighting, and ultraviolet

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Testimony
Senate Bill 2419
House Natural Resources Committee
March 6, 2003
1:30 p.m.
North Dakota Department of Health

Mr. Chairman and members of the committee, my name is Dave Glatt and I am the Environmental Health Section Chief with the North Dakota Department of Health. I am here today to provide testimony in support of Senate Bill 2419.

Senate Bill 2419 seeks to change the penalty for violating State Water Quality Standards from \$5,000 per day to \$25,000 per day and clarifies the state's authority to protect water quality from degradation. The increased penalty applies only to entities that violate injunctive orders to stop degradation that is causing or threatening to cause long-term or irreparable harm to water quality in North Dakota.

North Dakota Water Quality Standards consist of three parts: the designated beneficial uses of the water, the criteria necessary to support those uses, and the policies and procedures to prevent degradation of existing water quality. Beneficial uses include, but are not limited to, municipal water supplies, recreation, and aquatic life (e.g., Lake Sakakawea's cold-water fishery).

Senate Bill 2419 will affect federal and state agencies that operate facilities in the state such as dams. Historically, the North Dakota Department of Health has been required to document a water quality violation after the violation and any subsequent damage have occurred. However, with the advent of more sophisticated techniques, it is now possible to predict a violation of water quality standards before it actually occurs, thereby preventing both long- and short-term damage to the state's water resources. By issuing a violation when a threat is likely, the Department of Health can avoid long-term or irreparable harm to the designated beneficial uses of surface or ground water.

In the case of Lake Sakakawea, data shows that thermal pollution caused by the manipulation of lake levels to 1,825 feet above sea level during summer months likely will cause dissolved oxygen to fall to dangerously low levels in the deepest parts of the lake that support the cold-water fishery. Lake levels lower than 1,825 feet above sea level, in addition to dry weather conditions and the length of time those levels are maintained, will result in a diminished cold-water habitat. With diminished habitat, the cold-water fishery will suffer and possibly cease to exist. Currently, the level of Lake Sakakawea is well below 1,825 feet above sea level, and unless management is changed or significant precipitation is received, water quality violations undoubtedly will occur.

The current penalty of \$5,000 per day is an insufficient deterrent to violating State Water

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Quality Standards. A penalty of up to \$25,000 per day, plus the potential cost of any damages, more accurately reflects the contemporary value of the resource – especially a resource as valuable as Lake Sakakawea.

The Department of Health is proposing the attached amendments to SB 2419 for your approval. The amendments clarify concerns regarding the definition of degradation by deleting its reference in the bill and inserting a reference to threatened or continuing violation of water quality standards. In addition, the amendments require the Department must obtain written approval from the Governor prior to instituting any injunctive relief action as part of N.D.C.C. ch. 61-29.

The Department of Health would appreciate your favorable response to Senate Bill 2419. I am happy to answer any questions you may have.

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2419

Page 2, line 2, remove "It is also unlawful for any person to"

Page 2, remove line 3

Page 2, line 4, remove "causes or threatens to cause long-term or irreparable harm."

Page 2, line 5, replace "degradation of" with "a threatened or continuing violation of a"; after "quality" insert "standard"; and after "including" insert "any"

Page 2, line 6, replace "degradation" with "violation"

Page 2, line 10, replace "degradation" with "a violation", after "of" insert "the", and after "quality" insert "standards, including violations of the narrative standards."

Page 2, line 11, after "department" insert ", after obtaining written approval of the governor."

Renumber accordingly

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MISSOURI RIVER – CHRONOLOGY

- 1944 Mainstem dams (other than Ft. Peck) authorized by the 1944 Flood Control Act.
- 1967 The dams became fully operational.
- 1987 – The Missouri River Basin experienced first major drought since the dams became fully operational.
- 1993
- 1989 The Corps recognizes that its operation of the Missouri River system is contrary to the realities of the system's current needs and equities. It began to study how it should revise the Master Manual, the Corps's "Bible" for operating the system.
- 1990
- May 9th - North Dakota, along with South Dakota and Montana, sued the Corps to stop it from releasing water until June 1 to protect the fish spawn in their reservoirs.
 - The federal district court, on May 11, issued a preliminary injunction stopping the Corps from releasing water until June 1. The Corps immediately appealed to the 8th Circuit. The 8th Circuit issued a stay of the district court's order on May 11.
 - On May 17, the 8th Circuit reversed the district court's decision that the Corps' actions were arbitrary and capricious.
 - On September 12, the 8th Circuit held that the action was moot because the fish spawn, over which the lawsuit had been filed, was complete.
- 1990-1993 The drought continued and the Corps continued to draw down the upstream reservoirs to provide flows for navigation.
- 1991 February 4 - North Dakota, along with South Dakota and Montana, again sued the Corps alleging that the Corps's operation of the mainstem dams, based on the Master Manual, which treats fish, wildlife, and recreation uses of the reservoirs as secondary purposes that only receive whatever water is left over after the needs of all other uses, including navigation, have been met, was contrary to the 1944 Flood Control Act. The upper basin states alleged that the law requires the Corps to treat fish, wildlife, and recreation uses equally with all other purposes, except for flood control and upstream beneficial consumptive uses, which are the only priorities established in the 1944 Flood Control Act.
- During the lawsuit, the Corps changed its legal position, and it agreed with the upper basin states that all uses are entitled to equal consideration. The judge dismissed the lawsuit based on assurances made by the Corps that it would give all water uses equal consideration while the Master Manual was undergoing a revision.
- 1991 May 14 - Lake Sakakawea was drawn down to its record low elevation, 1815 masl, 16 1/2 feet lower than the lake elevation today
- 1991-2002 The Corps, contrary to the 1944 Flood Control Act and to the assurances it made to the upper basin states and the federal district court, has continued to operate the mainstem system in accordance with the Master Manual, which gives navigation a higher priority than fish, wildlife, and recreation.
- 2000-2002 The Missouri River Basin again experiences a drought and, despite repeated requests from North Dakota, the Corps refuses to implement conservation measures to keep more water in the upper basin reservoirs.
- 2002
- April 25 - South Dakota sues the Corps to stop it from releasing water in order to protect its 2002 fish spawn.
 - May 10 - Judge Kornmann issues a preliminary injunction restraining the Corps from lowering the level of Oahe and Lake Francis Case until May 23.
 - May 10 - Instead of reducing flows for navigation, the Corps, at midnight, began releasing water

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from Lake Sakakawea and Ft. Peck Dam in Montana to make up for the water it could not release from South Dakota's reservoirs.

- May 12 - North Dakota obtained a temporary restraining order preventing the Corps from lowering the water level in Lake Sakakawea until May 25th. On May 20th, Judge Conmy converted the temporary order into a preliminary injunction. The Corps, instead of reducing navigation flows, increases releases from Ft. Peck to make up for the water it cannot take from the other reservoirs.
- May 13 - Montana obtained a temporary restraining order prohibiting the Corps from increasing releases above those that had been planned by the Corps. Montana's lawsuit was dismissed after the Corps returned to normal operations when the 8th Circuit stayed all the other injunctions.
- May 13 - Nebraska obtained a preliminary injunction requiring the Corps to operate the mainstem reservoirs in accordance with the Master Manual and current annual operating plan and to maintain minimum navigation flows.
- May - the Corps appeals North Dakota, South Dakota, and Nebraska's orders to the 8th Circuit. The case is still pending.
- May 31 - The Corps misses its deadline for issuing its revised Master Manual.
- June - The Corps announces that it is indefinitely postponing the release of the revised Master Manual.

2002

July 18 - North Dakota amends its complaint against the Corps asking the federal district court to order the Corps to release and implement its revised Master Manual by the 2002 -- 2003 operating season. The amended complaint also requests the court to require the Corps's plan to be consistent with the 1944 Flood Control Act and the assurances the Corps gave to North Dakota in its 1991 lawsuit. The complaint states:

The Corps recognizes its operation of the reservoir is contrary to the realities of the current Missouri River system operational needs and equities. It therefore undertook a study of the Master Manual in 1989 - 13 years ago. This study has been plagued by the indecision of the Corps resulting in repeated goal setting and missed deadlines. In June, 2002, the Corps once again delayed adopting a revised Master Manual. Instead of issuing the long-awaited revised plan, which the Corps had promised to release in May, 2002, the Corps announced it was indefinitely postponing its release. Even under pressure of a congressional committee, the Corps refused to divulge when the plan might be released. The Plaintiffs fear the Corps will not actually promulgate a new Master Manual for several years.

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