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S. HRG. 111–734

FIELD HEARINGS FISCAL YEAR 2011

HEARINGS

BEFORE THE

COMMITTEE ON THE BUDGET
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

June 1, 2010-THE ENERGY INDUSTRY'S IMPACT ON HOUSING IN NORTH DAKOTA

June 1, 2010-INFRASTRUCTURE INVESTMENTS: PROMOTING ECONOMIC GROWTH AND IMPROVING SAFETY ALONG THE US 85 CORRIDOR

July 8, 2010-TRANSPORTATION INVESTMENTS: PROMOTING ECONOMIC GROWTH AND IMPROVING SAFETY ALONG THE ND 23

July 8, 2010-DEVILS LAKE FLOODING DISASTER: HOW SHOULD THE FEDERAL GOVERNMENT RESPOND?

July 9, 2010-TRANSPORTATION INVESTMENTS: PROMOTING ECONOMIC GROWTH ALONG THE US 52 AND US 281 CORRIDORS

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August 16, 2010-DEVILS LAKE FLOODING DISASTER: A RED RIVER VALLEY PERSPECTIVE

August 17, 2010-DEVILS LAKE FLOODING DISASTER: HOW SHOULD DOWNSTREAM IMPACTS BE ADDRESSED?

August 18, 2010-TRANSPORTATION INFRASTRUCTURE'S ROLE IN ECONOMIC GROWTH: ND-13

August 27, 2010-STUMP LAKE FLOODING ISSUES

October 11, 2010-THE NEXT FARM BILL

Printed for the use of the Senate Budget Committee

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FIELD HEARING: THE ENERGY INDUSTRY'S IMPACT ON HOUSING IN NORTH DAKOTA

TUESDAY, JUNE 1, 2010

U.S. SENATE,
COMMITTEE ON THE BUDGET
Williston, North Dakota

The Committee met, pursuant to notice, at 12:53 p.m., Williston Community Library, 1302 Davidson Drive, Williston, North Dakota 58801, Hon. Kent Conrad, Chairman of the Committee, presiding.

Present: Senator Conrad
[presiding].

OPENING STATEMENT OF SENATOR KENT CONRAD

The CHAIRMAN. The hearing will come to order.

I want to welcome everyone to this hearing of the Senate Budget Committee. This is an official hearing of the committee, so we will be operating under the rules of the U.S. Senate, and an official record of this hearing is being kept.

The title of this hearing is "The Energy's—Energy Industry's Impact on Housing in North Dakota." Perhaps a better title would be "The Energy Industry's Need for Housing in North Dakota." That might better suit what we're actually faced with here.

I want to begin by welcoming our distinguished witnesses today. We will have three panels. Our first panel will include two Federal officials: Dan Sullivan, the director of policy for multifamily development at the U.S. Department of Housing and Urban Development; and Rich Davis, the acting deputy administrator for single family housing at USDA Rural Development.

Welcome to North Dakota. Delighted that you're here.

After providing their introductory remarks, Director Sullivan and Administrator Davis will stay with us throughout the hearing so they can learn more about the challenge of housing that is confronting us, and so that we can continue our discussion of possible solutions in areas where our Federal partners can be of assistance.

Our second panel will include our mayors: Williston Mayor Ward Koeser, Stanley Mayor Mike Hynek, and Bowman Mayor Lyn James.

We're delighted that the three of you are with us, as well.

Our Federal officials tell us they've been able to visit a number of communities on the way here, and I think they'll have more to say about that momentarily.

The mayors are going to provide us with their assessment of housing needs in their communities.

And our third panel will include Jessica Thomasson, the director of Lutheran Social Services Housing in North Dakota. I see that Jessica's here. We're delighted. Ms. Thomasson will give her perspective on the challenges of developing low- and moderate-income housing in this part of the State. John Boyd, the operations manager of EOG Resources. Mr. Boyd will describe EOG's efforts to provide housing for its workers in western North Dakota. And Matt Miles, a principal at Leadership Circle, LLC. Mr. Miles will explain the challenges that Leadership Circle is facing as one of the area's largest private real estate developers.

And I think we all understand that the private sector has to have a key role in any housing solution for this area. We want to make certain that is emphasized at this hearing, as well, that—our private-sector partners are absolutely key to providing the housing opportunities that are needed in these communities.

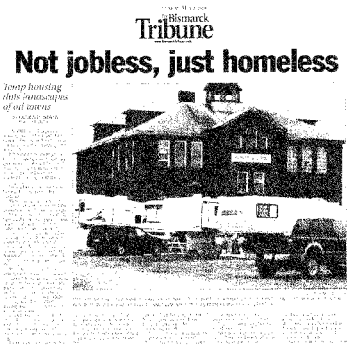
I look forward to hearing from all of you, as witnesses.

Especially pleased that Congressman Pomeroy has been able to join us, as well. Congressman Pomeroy sits on the very powerful House Ways and Means Committee, and he is in a position to play a key role in energy development opportunities for our State. And I very much thank him for taking time from his busy schedule to be here to hear firsthand the challenges and opportunities in the Williston Basin.

Our State has been blessed with abundant natural resources. The oil boom in the area brings enormous benefits to businesses and our families, but it also poses some significant challenges. One of the biggest that we face right now is a lack of housing for new workers that have been coming in. We have plenty of jobs, but not enough housing for the people who hold them. And I've certainly heard a lot from communities, in the entire northwest quadrant of our State, saying to me, "Please come out and put a focus on this issue and help us address ways of meeting these challenges."

If we fail to address this challenge, it could stifle future growth. And the influx of people is also increasing demands on local infrastructure and resources, and perhaps driving up the cost of housing for others. We have certainly heard that from people on a fixed income. Our more senior citizens have been telling us they're increasingly concerned about whether or not they'll be afford—be able to afford housing in the future.

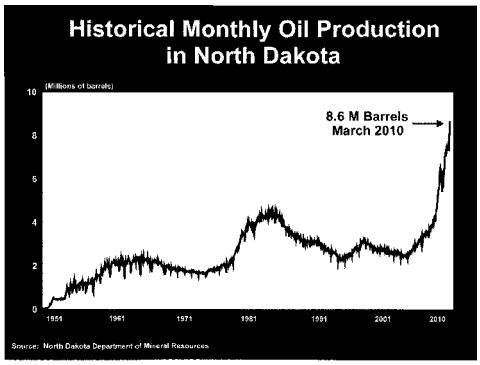
The problem we're facing has been widely reported. Here is the Bismarck Tribune headline that ran last month, "Not Jobless, Just Homeless: Temporary housing dots the landscapes of oil towns. Scenes like the one pictured here, with campers parked on school lots, can be found around the area."



Bismarck Tribune

Not jobless, just homeless

Let me go to the next one.



The oil boom in the Bakken Formation has dramatically increased oil production in the State. This chart shows that North Dakota oil production was up to 8.6 million barrels a month, as of March of this year. And we are delighted by that. It is important to our country, as well as to our State. This is helping reduce our dependence on foreign oil, so it is very welcome, to have this new production come online.

With further production in the Bakken and, of course, the discovery of the Three Forks Formation, we can expect production to continue to climb. That's certainly our hope. We also know there's considerable potential for future growth in North Dakota's oil industry.

Potential for Further Growth in North Dakota Oil Industry

- Number of Oil Rigs
  - Currently 118*
  - Possible By Year-End 150
- Over 180 Companies in Oil Operations
- 2.6 Billion Barrels in the Bakken; Up to 1.9 Billion Barrels in the Three Forks Formation

*As of May 27, 2010

There are currently 118 rigs operating in the State. We expect that to grow to 150 by the end of the year. In total, we now have over 180 companies involved in oil operations in our State. And there are an estimated 2.6 million barrels—billion barrels of oil in the Bakken Formation that are recoverable, and perhaps as much as another 1.9 billion barrels in the Three Forks Formation. We need to be prepared to handle that possible growth.

We've already seen significant spikes in the area's population.

Population Increases in Western North Dakota

	2000 Census	Current Estimate	Increase
Williston	12,500	15,000	20%
Bowman	1,600	2,000	25%
Stanley	1,300	2,600	100%

Although we don't have exact numbers, because we don't have the latest census, the Williston population has increased, we're told by local officials, by as much as 20 percent; the Bowman population, by perhaps 25 percent; and the Stanley population, we're told, by as much as 100 percent. But, we'll have a chance to hear directly from the mayors, on those questions.

But, what are the key challenges that we face?

Generally, we have a lack of sufficient housing that will require financing, will require private developers, will require additional contractors and construction workers. All of that is good news, because that will all improve business activity in these communities.

We've increased demands on emergency and essential services, and we've got increased strains on infrastructure. That's why, later today, I will be holding a hearing on—in Watford City—on what needs to be done with Highway 85. We've already held hearings in Williston and Dickinson on that matter, but we felt it was important to go to Watford City to hear from that community, as well. And I committed to that earlier this year, and we're fulfilling that commitment later today.

So, again, our State has benefited, and will continue to benefit greatly, from the oil boom here. But, we need to ensure that we provide adequate housing for the influx of needed workers. And we need to make ensure our local communities are not adversely affected.

Again, I welcome Congressman Pomeroy, am delighted he is here, and ask him to make any additional statement he'd want to make. And then we'll go to our first panel.

Congressman POMEROY.

STATEMENT OF HON. EARL POMEROY, U.S. REPRESENTATIVE FROM NORTH DAKOTA

Mr. POMEROY. Well, Senator Conrad, thank you very much for having this hearing. Thank you for allowing me to participate, making it a bit of a bicameral affair today.

I was going to have meetings, both on transportation and housing, later in the week. It worked perfectly to simply do this at one shot. We are respectful to the fact that, especially, our local leaders are so busy we don't want to take them away from the task at hand for any more time than necessary.

I think about the meetings we've had in this room over the years, Senator, where we've looked at drought, we've looked at bust, we've looked at any number of deep problems facing the efforts to continue economic activity at an adequate level in northwestern North Dakota. I look at leaders in this room, starting with Mayor Koeser and so many others, that have at times been seemingly handed the assignment, "Make something out of nothing," because there wasn't a lot going on. And then I consider that day that we are now in,

a day that—times like we've never seen before. And we are not entirely sure how this is going to play out, but we know one thing: This region and North Dakota will be forever changed by the oil play underway, and it's basically up to us to steward this thing in ways that make the outcome as positive, in all respects, near term and long term, as can possibly be achieved, knowing, again, that the leadership in the room is tried, tested, seasoned leaders. And looking at friends in the builders community, knowing—just trying to imagine how impossibly busy you must be, I want to thank you so much for participating in this discussion.

Trying to keep up with the new reality—115,000 barrels of oil a day in 1907; 240—240,000 by 1909; 261,000, April—we know that figure's higher now—daily production levels—a doubling of production levels within 2 years, driven by—now I've got 4,665 wells. But, look at these rig counts: 81 in January, 93 in February, 102 in March, 107 in April, 118 and –19 today—each rig, 40 direct jobs; potentially as many as 80 indirect jobs. So, there's no mystery, in terms of where this housing shortage came from. We've got unprecedented level of activity, and we've got an extraordinary impact resulting from that activity.

So, the only way you really can deal with a new dimension of activity of this character is "all hands on deck." That means Federal Government. So, I'm very please about our—right out of the Washington headquarters, with two agencies represented today, as well as your State leadership. Thank you very much for the efforts you've made to be here. State—very—see Lance Gaebe here, somewhere, the land commissioner. Obviously, State's going to play an important role.

I got that right. Right?

Voice: Soon.

Mr. POMEROY. Soon.

[Laughter.]

Mr. POMEROY. Soon to be announced land commissioner—don't tell anyone.

[Laughter.]

Mr. POMEROY. And city and county leadership, as well as nonprofits. It's going to take all of us, working together, to get this one seen through. So, let's get on with the fact-gathering, Senator.

Thank everyone and—for being here. And thanks, again, for including me in the hearing.

The CHAIRMAN. Thank you.

And we will go right to our Federal witnesses.

And I want to emphasize that the Federal Government has a role to play here. But, in housing issues, the Federal Government is not the lead. Housing is a local matter, primarily. It is a private development matter, primarily. But, we've got to make certain that the role that the Federal Government does play is constructive and positive, and that they're not getting in the way, and, to the extent they can, that they are helping. And that's the reason we have asked these Federal officials to be with us, as they have a chance to, then, hear firsthand, themselves, from our local officials and our private development community and the faith community and others, the needs of these communities.

With that, Dan Sullivan the director of policy for multifamily development at U.S. Department of Housing and Urban Development. Welcome, and please proceed.

STATEMENT OF DAN SULLIVAN, DIRECTOR OF POLICY FOR MULTIFAMILY DEVELOPMENT, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. SULLIVAN. Thank you, Chairman Conrad and also Congressman Conroy, for your welcome today, to have us here to speak and to hear. And mostly, we're here to listen.

I did want to make some comments, though, about HUD's involvement—FHA's involvement in North Dakota. I appreciated the opportunity to visit with—, who's director of our local HUD office in Fargo, North Dakota, the State office there, and toured around Minot last night, and then, today, through the northwestern part of the State, got to visit Stanley. And if you haven't had a chance to—for breakfast in Stanley, you're missing something. So, we got to see Tioga, and then toured around in Williston, as well, looking at various housing properties.

In the last 2 years, for 2008 and 2009, HUD's involvement throughout North Dakota involved various programs, in the amount of $375 million, of Federal presence here. For example, HUD provides approximately $15 million a year for housing—affordable housing choice vouchers throughout North Dakota, as well as for operating subsidies for public housing developments.

HUD, through various block grant programs, provided, over the last 2 years, $60 million to local authorities and Native American tribes in North Dakota for—through block grants. As well, HUD provides, directly, $43 million per year to low-income housing families living in project-based rental-subsidized properties throughout the State. There are 150 such properties.

And then, finally, our involvement through the Federal Housing Administration. It's an indirect involvement, in that we insure mortgages and loans for about $225 million of insurance—throughout the State of North Dakota. A large majority of that is single-family mortgage insurance, but we also—there are 17 FHA multifamily insured properties throughout North Dakota, and 10 properties that HUD directly funded for elderly and disabled low-income housing units, as Congress has appropriated funds for the section 202 and 811 programs.

We recognize that the strength in the energy sector has created a significant demand for additional housing in North Dakota and similar areas throughout the high plain States, as they've been impacted by the oil boom and energy sector. HUD's—FHA's mortgage insurance programs work with local real estate developers and FHA-approved lenders to provide, for instance, financing for new construction and substantial rehab of multifamily housing stock.

By way of example, in Williston—here in Williston, HUD recently invited an application from the developer and a lender to use FHA multifamily mortgage insurance to provide new construction financing for 43 additional units. It's not clear whether that particular job will go forward or not. But, in our analysis and due diligence and investigation of the market, it became apparent to HUD that the occupancy levels are at incredibly high levels; between 98

to 100 percent occupied in Williston. That is to say, there are basically no vacant units at all. And rents have reflected that. Our preliminary review of the market suggested that market-rate new construction rents for one-, two-, and three-bedroom new properties were between 850 and 1,000 and, for three bedrooms units, over $1200 per unit per month, which is dramatically higher than they were before—HUD.

That, of course, has a secondary influence on affordable housing. It puts pressure on low-income housing and low-income families, as well as the usability of our voucher program. So, we're very concerned about that.

And I look forward to hearing from other panelists and participants about ways HUD can continue to partner with State and local government and officials from the private sector.

Thank you.

[The prepared statement of Mr. Sullivan follows:]

Written Testimony of Dan Sullivan
Director of Policy for Multifamily Development
U.S. Department of Housing and Urban Development
The Energy Industry's Impact on Housing in North Dakota
Hearing before Senate Budget Committee

Tuesday, June 1st, 2010

Thank you, Chairman Conrad for inviting me to speak, today. I appreciated the opportunity to visit and tour the community with Mr. Joel Manske, the Field Office Director of the North Dakota HUD Office in Fargo.

In the last two years (2008 / 2009), HUD's involvement in North Dakota, through various programs, totaled $375 million. Activities included in those funds are:

- HUD provides approximately $15 million a year in portable Housing Choice Vouchers and operating subsidies for Public Housing throughout North Dakota.
- Through various programs, HUD funded $60 million in 2008 and 2009 through Block Grant funds to local authorities and Native American tribes in North Dakota.
- HUD provides $43 million per year in project-based rental subsidies to 4,330 low income housing units at 150 properties throughout the state.
- The Office of Housing and FHA, have about $225 million in FHA mortgage insurance in force for North Dakota properties - most of that is for single family. But there are also 17 FHA insured multifamily properties, and 10 HUD funded properties for Elderly and Disabled in North Dakota.

We recognize that the strength in the energy sector has created a significant demand for additional housing in North Dakota and other similar areas throughout the region. FHA's mortgage insurance programs work with local real estate developers and FHA approved lenders to finance new construction and substantial rehabilitation of multifamily housing stock.

In Williston, a 43 unit new construction project using FHA mortgage insurance has been invited to submit an application to our Denver HUD Office. Occupancy levels at existing rental properties in Williston are 98%-100% due to the influx of middle and upper income tenants. Our preliminary review of the project concluded market rate rents for the 1, 2, and 3 bedroom units were $850, $1075, and $1,210, respectively. We are hopeful that this transaction or similar proposals will proceed and that FHA can continue our historic role in helping our private sector partners provide workforce and other family housing here in North Dakota.

I look forward to hearing from the other panelists and participants about ways HUD can continue to partner with state and local government officials and with the private sector.

Thank you.

The CHAIRMAN. Thank you. And again, thanks for traveling to North Dakota. And we're glad that you've had a little tour of this part of the State. I think it's very helpful to see, firsthand, what's happening. You know, it's moving so fast, you really have to come here repeatedly to see the developments that are occurring. You know, I've come here for many, many years. For 30 years, I've been coming to Williston as a public official. And, just in the last 18 months, I can see dramatic changes. Just the traffic is remarkable.

Next, we'll turn to Rich Davis, the acting deputy administrator for single-family housing at USDA Rural Development.

And we're also delighted that Jasper Schneider, the administrator for rural development in North Dakota, is with us. Good to have you with us, Jasper. Welcome.

Mr. DAVIS. OK, thank you.

The CHAIRMAN. Please proceed.

STATEMENT OF RICH DAVIS, ACTING DEPUTY ADMINISTRATOR FOR SINGLE-FAMILY HOUSING, USDA RURAL DEVELOPMENT

Mr. DAVIS. Thank you, Chairman Conrad. And thank you for the opportunity—and Congressman Pomeroy—to be here today to speak to you about some of the USDA rural development housing programs.

There may be some of you here who do not know that the Rural Development Commission area of USDA has the authority to make and insure single-family housing direct and guaranteed loans. The authority is provided to us by the Housing Act of 1949. It allows us to provide financial assistance to purchase or build homes.

Now there are some conditions, however, in exercising that authority. I'll mention a few of these. First, the homes must be modest in size, design, and cost. The homes must be located in a rural area, which in most cases are areas that are less than 20,000 in population. Now, I know Williston meets that requirement today, but at the rate at which it's growing, I'm not sure how much longer that's going to last.

A few other requirements are that the applicants must meet certain income requirements, and I'll touch on those in a minute. And the applicants must be unable to secure credit elsewhere on reasonable terms and conditions.

The single-family housing direct loans are limited to applicants whose household income is no more than 80 percent of the area median income. And we use the guidelines established by the Department of Housing and Urban Development. Now, we call these loans—we call these "direct loans," because they are made directly by the Federal Government.

I mentioned that we also guarantee loans. These loans are made by approved lenders for the purchase of a home. We call these "guaranteed loans," because if the lender suffers a loss from making this loan, the government will cover most, if not all, of the lender's loss, and we guarantee it. These guaranteed loans—the income of the individuals or families receiving these loans must be less than 115 percent of the area median income.

A key feature of both the direct and the guaranteed loan programs is that the loans can be for up to 100 percent of the cost or the value of the property being financed.

Next, I'll give you an idea of what these incomes and loan amounts look like in North Dakota. In fiscal year 2009, in North Dakota, the average income of the households served through the single-family housing direct program was about $30,000. The average amount of the loan was about $99,000. Now, in the guaranteed program, the average income for the Single-Family Housing Guarantee Program was quite a bit higher. It was around 46,000. And the average loan amount was right around 100,000.

At this point, I'd like to provide a little more background on the Single-Family Guarantee Program. It is designed to assist low- and moderate-income households to buy or build homes in rural areas. On a nationwide basis during the last fiscal year, the Guarantee Program provided over $16 billion. Some of the key features of this program are: first, as I mentioned, there is no downpayment required; we will provide 100 percent financing. The loan period is 30 years. The interest rate is set by the lender, and it must be fixed; we do not allow adjustable-rate mortgages. The homes must be modest, decent, safe, and sanitary.

Now our delinquency and our foreclosure rates, despite the fact that we're giving—providing 100 percent financing, compare extremely well, and are less than the industry rates. These loans, again, are made by private-sector lenders—approved lenders, and are guaranteed by the Federal Government.

In the last 3 years, Rural Development's single-family housing programs have been quite active in North Dakota. Our total involvement for all of our single-family housing programs is approximately $104 billion. I'll briefly mention some of those activities.

We averaged over $130,000 a year in home repair loans for single-family homes in North Dakota. And this was through the Home Repair Loan Program. We also made grants, and those averaged about $285,000 a year for the single-family homes. And it's through that same Home Repair Loan Program.

And I talked earlier about the single-family direct loans. In our activity in that area, we provided—we averaged about $8 million a year, for the last 3 years. So, we totaled, in the last 3 years, around $24 million. But, in the Guarantee Program, we averaged about $27 million a year. So, the total there was nearly $80 million.

I'd like to briefly mention our multifamily housing program. It provides financing for new construction as well as the rehabilitation of existing housing. In the past year, Rural Development's involvement in North Dakota, through the various multifamily housing programs, was as follows: In our Multifamily Direct Loan Program, we provided about $2 million for new construction last year. We financed about 32 apartments for very-low and low-income individuals.

In our Guaranteed Rural Rental Housing Program, we also provided approximately $2 million for new construction and for the repair of existing multifamily housing.

I just learned that we've got two projects underway in the Williston area—one is at the—50 units, and the other one's at 41 units, and about to break ground soon, I believe. And the other's about to get started. So, excited to hear that.

We also have another program—a Rental Assistance Program, in which we provide rental assistance to very-low and low-income tenants. And last year, we provided about $4 and a half million in assistance there. And that served over 1200 individuals and families in North Dakota.

We also recognize that the boom in the oil industry in this region has created a housing crisis for North Dakota. Rural Development's housing programs and offices are ready to work with you and local realtors, real estate developers, and lenders, approved lenders, to

finance new construction and/or the rehabilitation of single-family housing.

Now, for some, ownership of housing may not be an option. In those cases, we recommend our Multifamily Housing Program, which can provide financing and loan guarantees to increase our housing portfolio for individuals and families with moderate incomes or less.

That concludes my remarks. I look forward to your questions and comments regarding ways that USDA Rural Development can partner with—.

[The prepared statement of Mr. Davis follows:]

Written Testimony of Rich Davis
Acting Deputy Administrator for Single Family Housing

United States Department of Agriculture

Rural Development
The Energy Industry's Impact on Housing in North Dakota
Senate Budget Committee Field Hearing

Tuesday, June 1st, 2010

Thank-you Chairman Conrad for the opportunity to speak today on the United States Department of Agriculture (USDA), Rural Development (RD) housing programs. The Housing Act of 1949 provides the authority to make and insure Single Family Housing (SFH) Direct and Guaranteed loans to purchase or build homes which are modest in size, design, and cost to applicants that are without sufficient resources and are unable to secure credit elsewhere on reasonable terms and conditions.

The SFH Direct loans are limited to applicants whose household income is 80 percent or below of the area median income as established by the Department of Housing and Urban Development. Guaranteed loans are capped at 115 percent or less. These loans and guarantees can be for up to 100 percent of the cost or value of the property being financed.

In fiscal year (FY) 2009, the average income of the households served through the SFH Direct program in North Dakota was about $30,000 and the average loan amount was about $99,000. At the same time, the average income for the SFH Guarantee program was about $46,000, and the average loan was about $100,000.

The SFH guaranteed loan program is designed to assist low and moderate income households to buy or build homes in rural areas. On a nationwide basis, RD Section 502 guaranteed loans provided over $16.2 billion in FY 2009. Some of the key aspects of this program are:

- Provides 100 percent financing; no down-payment is required.
- 30 year fixed rate loans for which income is always verified and affordability always confirmed.
- Homes must be modest, decent, safe, and sanitary.
- Delinquency and foreclosure rates well below the industry.
- Loans are made by private sector lenders and guaranteed by RD.

In the last three years (2007 / 2008 / 2009), RD's involvement in North Dakota, through various the SFH programs, totaled $104 million. Highlighted below are some of the major activities:

- Provided approximately $27 million a year in SFH loan guarantees to rural households in North Dakota. Total guarantees over the past three years were almost $80 million.
- Provided approximately $6 million a year in SFH direct loans to rural households in North Dakota. Total direct loans over the past three years were almost $24 million.
- Provided over $125 thousand a year in home repair loans for single family homes in North Dakota through the Home Repair Loan program. Total home repair loans were nearly $400,000 over the past three years.
- Provided about $286 thousand a year in home repair grants for single family homes in North Dakota, also through the Home Repair Loan program. Total home repair grants were about $857,000 over the past three years.

In the past year, RD's involvement in North Dakota, through various Multifamily Housing programs, was as follows:

- Provided approximately $1.9 million for new construction in 2009 using the MFH Direct Loan program to create 32 apartments for individuals and families with very low and low income families. In addition, RD provided approximately $100,000 of preservation funding to repair existing affordable housing.
- Provided through the use of the Guaranteed Rural Rental Housing (RRH) program $1.9 million for new construction and repair of existing multifamily housing that was used to provide workforce housing in 2009. The RRH program provides loan guarantees to develop rental housing for tenants up to moderate income levels (i.e. 115% of the area median income).
- Provided approximately $4.5 million in rental assistance in 2009 to very low and low income tenants using the Rental Assistance program. More than 1,200 individuals and families received rental assistance using this program.

Rural Development has invested over $51 million in multifamily housing properties in North Dakota and provides affordable housing to about 5,000 rural residents in its multifamily developments.

We recognize that the strength in the energy sector has created a significant demand for additional housing in North Dakota and other similar areas throughout the region. Rural Development's housing programs and offices work with local realtors, real estate developers, and approved lenders to finance new construction and substantial rehabilitation of single family housing portfolio. When ownership of housing is not an option, RD's multifamily housing programs provide financing and loan guarantees to increase the housing portfolio and preserve the housing portfolio for families at every income level (very low income, low income, and moderate income levels).

I welcome questions and comments regarding ways RD can continue to partner with state and local government officials and the private sector.

Thank you.

The CHAIRMAN. Thank you, Rich. Thank you very much for that.

We're going to handle this hearing a little bit differently than we typically do. We're not going to go to questions of the first panel, because they're going to stay with us through the whole hearing.

And so, what—our intention is to go to the second panel immediately. Then we'll call up the third panel. We'll go to them. And then we'll have time for questions that would involve any of the participants. So, that's what we intend to do today.

And we'll go to our second panel immediately, with our three mayors. And we'll start with Mayor Ward Koeser, the mayor of Williston. We've asked each of the mayors to give us an assessment of what the housing needs are in their communities, what's being done to address it, and what we might do, with our Federal partners, to improve the situation.

Mayor Koeser, welcome.

STATEMENT OF HON. WARD KOESER, MAYOR OF WILLISTON, NORTH DAKOTA

Mr. KOESER. Thank you, Senator Conrad, for holding this hearing on housing issues in Williston today.

And thank you, Representative Pomeroy, for being here, as well. We sure appreciate that.

I believe that providing adequate and affordable housing is the most critical issue facing our community at this time. And I believe that the only way we will be able to successfully address the challenge is by partnering with the State and Federal Government.

The Williston region has been impacted by oil—by oil development since the 1950's. An oil boom then, followed by bust, was followed by an oil boom and bust in the 1980's, and now the oil boom we are presently experiencing. During each boom experience, a shortage of housing for oilfield workers has put tremendous stress on the city of Williston.

Oil booms are very difficult to plan for, and their impacts can create lasting scars on the community. The oil boom and bust of the 1980's left the city of Williston with over 20 million in special assessment deficiency debt, largely created when developers walked away from infrastructure projects financed by special assessment bonds.

Williston's population is now estimated to be between 14- and 15,000 people. The impact of this boom has seen thousands of workers from around the country travel to Williston, looking for work. With the nationwide recession America is now experiencing, workers come here looking to begin a new life and a new career. Most of them are good people—many times, down on their luck—simply wanting a chance to start over. Their challenge, once they arrive here, is finding affordable housing.

For the past several years, the city of—the City Commission of Williston has been diligently working to facilitate and provide incentives for affordable housing of all types. Tax breaks, low- and no-interest loans, and sales of city-owned property at reduced prices have all played a role in encouraging developers and builders to invest in our community.

Although we have been successful, with 160 housing units permitted already in 2010 alone, the demand has greatly outpaced the

supply. The demand for affordable housing increases monthly as people come here looking for work.

One major concern of ours is that, after 2010, we will need additional lots developed with infrastructure. That is, water, sewer, streets. Experts believe that a community should have about 2 years of inventory of lots ready to build on, where we presently have less than 50 lots available. This has caused us to intensify efforts to attract developers who can purchase raw land, develop the infrastructure, and have lots available for sale. This has been a challenge, as the cost of developing infrastructure has doubled in the past 4 years, from roughly 20,000 per lot to roughly 40,000 per lot. At the same time, credit has tightened dramatically, making it difficult for developers to secure loans.

The city approached the Governor of North Dakota, requesting assistance, and is presently working out details of a plan whereby the State would share in some of the risk in developing raw property. This pilot program requires a developer to purchase the land and install the underground infrastructure—about half the cost of the development. And then the city special-assesses the installation of the aboveground infrastructure, with the State sharing 50 percent of that risk. This amounts to the developer assuming about 50 percent of the total risk, the city assuming about 25 percent of the risk, and the State assuming 25 percent of the risk. We believe that this plan will be helpful in attracting developers to invest in our community, and will help keep the price of lots affordable.

Now for the role of the Federal Government. The greatest challenge we face when it comes to housing is to provide affordable housing for the workers. If the Federal Government could provide additional community-development block-grant dollars that could assist with the installation of major infrastructure, I believe that the cost of the lots could be reduced, thereby making the housing more affordable. The low- to moderate-income requirements of CDBG program may also need to be adjusted to accommodate oilfield incomes in our community.

As we are providing jobs for many displaced workers from around the country, I believe that his proposal may provide unemployed workers a chance to begin a new career.

The other area that we need assistance with is financing of home purchases. Since the meltdown of the banking industry in 2008, it has become substantially more difficult for home buyers to finance new homes. I am uncertain as to what could correct this problem, but a review of banking regulations might find some rules that could be adjusted to loosen up the credit situation. Also, if HUD provided a good home loan guaranty program, easily accessed by home buyers, more people moving to Williston would be able to purchase a home.

A unique idea would be for the Labor Department, which tends to focus on unemployment numbers, to develop a program whereby unemployed people in other parts of the country could receive assistance with moving costs to come to North Dakota, where there's an excess of jobs waiting to be filled.

In January of this year, Job Service estimated that the Williston service area had about 475 job openings. Now, less than 5 months later, they estimate that there are 1100 job openings. And keep in

mind that many job openings in the oilfield are not listed with Job Service. During that same period, hundreds of workers became employed in our community.

The oil industry is a very volatile industry, with great fluctuations in work force demands. For a community to adjust to these fluctuations requires a great deal of planning and support from the State and Federal Government.

Thank you, Senator Conrad, for listening to our concerns and the support you have given Williston as we work together to supply energy for all of America.

[The prepared statement of Mr. Koeser follows:]

Field Hearing Testimony
Presented by Mayor Ward Koeser
City of Williston
June 1, 2010

Thank you, Senator Conrad, for holding this hearing on affordable housing issues in Williston today. I believe that it is the most critical issue facing our community at this time and I believe that the only way we will be able to successfully address the challenge is by partnering with the state and federal government.

The Williston region has been impacted by oil development since the 1950's. An oil boom then followed by a bust was followed by an oil boom and bust in the 1980's and now the oil boom we are presently experiencing. During each boom experienced, a shortage of housing for oil field workers has put tremendous stress on the city of Williston. Oil booms are very difficult to plan for and their impacts can create lasting scars on a community. The oil boom and bust of the 80's left the city of Williston with over $20,000,000 in special assessment deficiency debt, largely created when developers walked away from infrastructure projects financed by special assessment bonds.

Williston's population is now estimated to be between 14 and 15 thousand people. The impact of this boom has seen thousands of workers from around the country travel to Williston looking for work. With the nationwide recession America is now experiencing, workers come here looking to begin a new life and a new career. Most of them are good people, many times down on their luck, simply wanting a chance to start over. Their challenge, once they arrive here, is finding affordable housing.

For the past several years the City Commission of Williston has been diligently working to facilitate and provide incentives for affordable housing of all types. Tax breaks, low and no-interest loans, and sales of city owned property at reduced prices have all played a role in encouraging developers and builders to invest in our community. Although we have been successful with 160 housing units permitted already in 2010 alone, the demand has greatly outpaced the supply. The demand for affordable housing increases monthly as people come here looking for work.

One major concern of ours is that after 2010 we will need additional lots developed with infrastructure, i.e. water, sewer, streets. Experts believe that a community should have about two years of inventory of lots ready to build on where we presently have less than 50 lots available. This has caused us to intensify efforts to attract developers who can purchase raw land, develop the infrastructure, and have lots available for sale. This has been a challenge as the cost of developing infrastructure has doubled in the past four years from roughly $20,000 per lot to roughly $40,000 per lot. At the same time, credit has tightened dramatically making it difficult for developers to secure loans.

The city approached the governor of North Dakota requesting assistance and is presently working out details of a plan whereby the state would share in some of the risk in developing raw property. This pilot program requires the developer to purchase the land and install the underground infrastructure, about half of the cost of development, and then the city special assesses the installation of the above ground infrastructure with the state sharing 50% of that risk. This amounts to the developer assuming about 50% of the total risk, the city assuming about 25% of the risk and the state assuming 25% of the risk. We believe that this plan will be helpful in attracting developers to invest in our community and will help keep the price of lots affordable.

Now for the role of the federal government. The greatest challenge we face when it comes to housing is to provide affordable housing for the workers. If the federal government could provide additional Community Development Block Grant dollars that could assist with the installation of major infrastructure, I believe that the cost of the lots could be reduced, thereby making the housing more affordable. The low to moderate income requirements of the CDBG program may also need to be adjusted to accommodate oilfield incomes in our community. As we are providing jobs for many displaced workers from around the country, I believe that this proposal may provide unemployed workers a chance to begin a new career.

The other area that we need assistance with is financing of home purchases. Since the meltdown of the banking industry in 2008, it has become substantially more difficult for home buyers to finance new homes. I am uncertain of what could correct this problem but a review of banking regulations might find some rules that could be adjusted to loosen up the credit situation. Also, if HUD provided a good home loan guarantee

program easily accessed by home buyers, more people moving to Williston would be able purchase a home.

A unique idea would be for the Labor Department, which tends to focus on unemployment numbers, to develop a program whereby unemployed people in other parts of the country could receive assistance with moving costs to come to North Dakota where there are an excess of jobs waiting to be filled.

In January of this year, Job Service estimated that the Williston Service Area had about 475 job openings. Now, less that five months later they estimate that there are about 1100 job openings. And, keep in mind that many job openings in the oilfield are not listed with Job Service. During that same period, hundreds of workers became employed in our community. The oil industry is a very volatile industry with great fluctuations in workforce demands. For a community to adjust to these fluctuations requires a great deal of planning and support from the state and federal government. Thank you, Senator Conrad, for listening to our concerns and the support you have given Williston as we work together to supply energy for all of America.

The CHAIRMAN. Thank you very much, Mayor Koeser.

And we'll go to Mayor Hynek, of Stanley. And then we'll conclude with Mayor James. And at that point, I think it would be useful to open it up for questioning, and also to have involvement of our Federal officials, in terms of talking about specific needs in these communities and programs that are available that might address them, as they listen to what we hear.

Mayor, welcome.

STATEMENT OF HON. MIKE HYNEK, MAYOR OF STANLEY, NORTH DAKOTA

Mr. HYNEK. All right. Thank you very much. Thanks for this opportunity of being here. I thank Senator Conrad, Congressman Pomeroy for this opportunity.

I'm the mayor of Stanley, North Dakota. I've spent my entire life in the Stanley area, with the exception of my college education. I've been mayor for 4 years, and am currently seeking reelection. Prior to being the mayor, I served on the city council.

Stanley is a small community in northwest North Dakota. It is located in the area which is being intensively developed for crude oil and natural gas. Both the Bakken and Three Forks formations are proving to be great producers in the Stanley area. The chart that Senator Conrad had up had North Dakota producing 8.6 million barrels, in the month of March. Over a third of that—over—slightly over 3 million barrels of that came from Mountrail County.

Prior to the oil development, our population was 1,279, based upon the 2000 Census. Some estimates now have our population nearing 1800. Those estimates are based on residential water users at the last Census, and the number of 2.2-residents-per-water use, while at our critical shortage of housing, it is highly possible that

we're closer to 3 per-water use. So, that would put us a 2400 and some. These estimates do not include workers' camps and trailers park—and trailer parks located in the—not in the city limits, but to which the city still provides services. These outlying locations would include an additional 600 to 700 people.

Mr. POMEROY. Mayor, what was the starting figure you used?

Mr. HYNEK. Twelve hundred and seventy-nine was the population in 2000.

Mr. POMEROY. So, that'd be a—it is entirely possible you've got a 100-percent increase.

Mr. HYNEK. Totally. If you—without a doubt, if you included the outlying workers——

Mr. POMEROY. Yeah.

Mr. HYNEK [continuing]. That we provide some services to.

At this time, there's no available housing in Stanley. Some houses, and two additional apartment buildings, are currently being constructed. Current rental rates for a two-bedroom apartment in Stanley are $1300 per month. This not only—this also puts a stress on school districts, cities trying to hire police officers, schools trying to hire teachers. They come because the pay scale has increased. But, when they find the cost of living, they move on; they just can't afford those types of rents.

Mr. POMEROY. Could you—how many units in those two apartment buildings?

Mr. HYNEK. That are going to be built? I believe there are 15 in one, and 16 in the other.

We are limited in expansion by our existing infrastructure, also. Due to State law, section 15 of Article 10 of the North Dakota Century Code, Stanley is at its limit in regards to debt. This basically keeps us from improving and expanding our infrastructure. Over the last 3 years, Stanley has, approximately, added $8 million worth of infrastructure to our city.

The exploration part of oil production will go on for several more years in our area. The workers for this part of the industry are, and will be, housed in workers' camps and trailer parks. The production part of the oil industry is estimated to last an additional 50 years. These are the jobs where families will actually move to Stanley and need homes. These jobs are starting to be filled, and housing is becoming critical for these families.

There are two ways in which Stanley is seeking assistance. First is infrastructure. We need an additional cell for our sewage lagoon, which is designed for 1500 people. And we also need sewer and water mains, along with streets, curb, and gutter. Because of financial restrictions, these cannot be completed by the city.

Second is housing. I would ask that the banking regulations which have been enacted be revisited. Currently, because of these—new regulation, it has become nearly impossible for our local community banks to loan money for housing. I visited with two local community banks and the Bank of North Dakota, all of whom said loaning money on a house in Stanley is very difficult. And if the house were be—to—located outside of the city, the local community banks would not even accept an application for a loan.

Some of the specific problems are: education and training costs for staff to maintain compliance; regulatory penalties for non-

compliance; software investment and continuous updates; regulatory guidelines for terms that do not fit with lending plans that are in-house; appraisals which require segregation of duties so additional staffing may be required; and also, mandatory escrows. And I do apologize if some of these have been addressed; it's highly possible.

So, whatever assistance that is available, it would be greatly appreciated. Stanley is a very bright spot in a dim economic time. With some assistance and guidance, we will overcome our challenges.

Thank you.

[The prepared statement of Mr. Hynek follows:]

SENATE BUDGET COMMITTEE FIELD HEARING

"THE ENERGY INDUSTRY'S IMPACT ON HOUSING IN NORTH DAKOTA"
June 1, 2010
Williston, ND

Thank you for this opportunity to provide testimony for this hearing. I am Mike Hynek, the Mayor of Stanley, North Dakota. I have spent my entire life in the Stanley area, with the exception of my college education. I have been Mayor for four years and am currently seeking re-election. Prior to being the mayor, I served on the city council.

My wife, Lauri, and I have two sons. Our oldest son, Blair, is a banker/farmer, is married and has given us three grandsons. Our youngest son, Joe, is a mechanic/rancher, and is engaged to be married this fall. Lauri is employed by Mountrail County as the Deputy Clerk of Court. We also have a grain farm southwest of Stanley.

Stanley is a small community in northwest North Dakota. It is located in the area which is being intensively developed for crude oil and natural gas. Both the Bakken and Three Forks formations are proving to be great producers in the Stanley area.

Prior to the oil development, our population was 1279 based upon the 2000 Census. Some estimates now have our population nearing 1800. These last estimates do not include workers' camps and trailer parks not located in the city limits, but to which the City still provides services. These outlying locations would include an additional 600 to 700 people.

At this time there is no available housing in Stanley. Some houses and two additional apartment buildings are currently being constructed. We are

limited in expansion by our existing infrastructure.

Due to State law, Section 15 of Article X of the North Dakota Century code, Stanley is at its limit in regards to debt. This basically keeps us from improving and expanding our infrastructure.

The exploration part of oil production will go on for several more years in our area. The workers for this part of the industry are and will be housed in workers' camps and trailer parks.

The production part of the oil industry is estimated to last an additional 50 years. These are the jobs where families will actually move to Stanley and need homes. These jobs are starting to be filled and housing is becoming critical for these families.

There are two ways in which Stanley is seeking assistance. First, is infrastructure. We need an additional cell for our sewage lagoon, and sewer and water mains, along with streets, curb and gutter. Because of financial restrictions, these cannot be completed by the City.

Secondly, is housing. I would ask that the banking regulations which have recently been enacted, be revisited. Currently, because of these new regulations, it has become nearly impossible for our local community banks to loan money for housing. I visited with two local community banks and the Bank of North Dakota, all of whom said loaning money on a house in Stanley is very difficult, and if the house were to be located outside of the City, the local community banks would not even accept an application for loan. Some of the specific problems are: education and training costs for staff to maintain compliance, regulatory penalties for non-compliance, software

investment and continuous updates, regulatory guidelines for terms that do not fit with lending plan in-house, appraisals which require segregation of duties so additional staffing may be required, and mandatory escrows.

Whatever assistance that is available would be greatly appreciated. Stanley is a very bright spot in a dim economic time. With some assistance and guidance, we will overcome our challenges.

Respectfully submitted,

Mike Hynek

Mayor, City of Stanley

The CHAIRMAN. Thank you. Excellent testimony, as well.

Mayor James, welcome.

STATEMENT OF HON. LYN JAMES, MAYOR OF BOWMAN, NORTH DAKOTA

Ms. JAMES. Thank you.

The CHAIRMAN. Why don't you proceed with your testimony, and——

Ms. JAMES. Senator Conrad, Congressman Pomeroy, Mr. Sullivan, and Mr. Davis, thank you. Good afternoon.

It's a privilege to be here and be part of this historical time in North Dakota. I appreciate the opportunity to speak to you.

You know, although the exploration has slowed in Bowman County, oil production is still going strong. And it is projected that it will continue for more than 20 years. And until very recently, Bowman country was the highest-producing oil county in North Dakota. I think Mountrail knocked us off the map, but—anyway, we're still going strong down there. And, hopefully, with the Three Forks development, it looks like we will be back in the exploration phase again, when they get to that.

Production brings long-term jobs to a community, which, in turn, creates a need for permanent single-family housing, as well as multifamily units. As we look back over the past 20 to 30 years, and as we look forward to the new development of our communities, we are well aware that many local taxpayers have less than enthusiastic support for municipal development of the infrastructure needed to foster new housing, such as streets, curb and gutter, water and sewer mains, et cetera. And I'm sure Ward can speak very familiarly to that.

The city of Bowman and other cities in western North Dakota have been, and are now, struggling with the need for expanding that infrastructure in order to accommodate new development.

Oil is not the only energy industry driving the demand for housing, either. Bowman country is also seeing activity in wind energy, pipeline projects, and proposed uranium and coal development, as are many of the other counties over here in western North Dakota.

The city of Bowman offers a real estate tax exemption of up $150,000 per year for 2 years to individuals who build new housing. And this exemption was passed by the North Dakota legislative body in 2009. And we resolved to follow that pattern.

Presently, there's nothing in place for the developer who steps up and takes on risk in all his development costs. And also, the inflated prices on housing that the oilfield has supported over the years has skewed our values to the point where we are now forced to have a countywide reassessment. And we have older residents on fixed incomes, who are very concerned about what is—what that's going to bring them. You know, in theory, it should be OK for them, but they're very concerned. And so, as a leader, so am I.

After visiting with some local developers and also our economic development director in Bowman, I found that one of the topics brought up on each occasion was a public-private partnership. The local government entities have their hands full, as Mike stated, taking care of the day-to-day needs of communities who serve the energy industry.

There are terrific burdens on the existing infrastructure in the impacted areas, and insufficient funding available to keep up with those burdens. The State of North Dakota worked with oil-impacted counties, during the last legislative session, to help bring more funding back to the areas affected by oil exploration and production. Although the adjustments to gross production tax paid back to counties and cities was appreciated, it was not enough, and more work will need to be done during the next session.

We would like to see the Federal Government make an investment in oil country by offering loan guarantees to private developers, if at all possible. It would seem to be a safe investment in growing the local, State, and national economy by minimizing the risk to the developers and local governments.

We are well aware that there are many housing programs available through USDA, North Dakota Housing, finance, et cetera. Unfortunately, they're geared toward low- to moderate-income housing. That does not apply to the oilfield. So, we're kind of caught in a little bit of a trap there. There does not seem to be any programs available, to speak of, for market-rate housing.

It would be helpful if there were some sort of program available to developers that could buy down interest on their speculative homes, or something that could assist them.

It would also be extremely helpful to the municipalities if there were some sort of assistance to us for the infrastructure projects. As I stated previously, local government budgets are stretched to the limit, and the taxpayers are not receptive to sharing the burden of new development.

I visited with one of our local—our city engineer, and he said, "Minimal cost per lot, to develop water, sewer, curb and gutter, and the pavement to finish it off, would be $30- to $40,000 in Bowman. And I'm sure here it's higher, as Ward indicated.

I believe that the developers would step forward, after visiting with them, to build the needed housing in our communities if there were programs to assist them, as well as the infrastructure being in place.

The Bowman City Commission looks forward to working with Federal, State, and other local governments in order to partner to find solutions to these housing problems and challenges in western North Dakota.

Thank you for your time. I appreciate it.

[The prepared statement of Ms. James follows:]

Senator Conrad

Senate Budget Committee Field Hearing

"The Energy Industry's Impact on Housing in North Dakota"

June 1, 2010

Lyn James, Mayor

City of Bowman, North Dakota

Good afternoon Senator Conrad, Congressman Pomeroy, and members of the Senate Budget Committee.

Thank you for the opportunity to speak about housing issues here in oil country.

Although the exploration has slowed in Bowman County, oil production is going strong, and it is projected that it will continue for more than twenty years. Production brings long term jobs to a community, which in turn creates a need for permanent single family housing, as well as multi-family units. As we look back over the past twenty to thirty years, and as we look forward to the new development of our communities, we are aware that many local taxpayers have less than enthusiastic support for municipal development of the infrastructure needed to foster new housing such as streets, curb and gutters, water and sewer mains, etc. The City of Bowman and other cities in western North Dakota have been and are now struggling with the need for expanding that infrastructure in order to accommodate new development. Oil is not the only energy industry driving the demand for housing. Bowman County is also seeing activity in wind energy, pipeline projects, and proposed uranium and coal development.

The City of Bowman offers a real estate tax exemption up to $150,000.00 per year for two years to individuals who build new housing. This exemption was passed by the ND Legislative body in 2009. Presently there is nothing in place for the developer who steps up and takes on the risk of all development costs.

After visiting with some local developers and our Economic Development Director, I found that one of the topics brought up on each occasion was a "public/private partnership." The local government entities have their hands full taking care of the day to day needs of communities serving the energy industry. There are terrific burdens on the existing infrastructure in the impacted areas, and insufficient funding available to keep up with those burdens. The state of North Dakota worked with oil impacted counties during the last legislative session to help bring more funding back to the areas affected by oil exploration and production. Although the adjustments to gross production tax paid back to counties and cities was appreciated, it was not enough, and more work will need to be done during the next legislative session. We would like to see the Federal Government make an investment in oil country by offering loan guarantees to the private developers. It would seem to be a safe investment in growing the local, state and national economy by minimizing the risk to the developers and local governments. We are well aware that there are many housing programs available through USDA, ND Housing Finance, etc. Unfortunately, they are geared toward low to moderate income housing. There does not seem to be any programs available for market rate housing. It would be helpful if there were some sort of programs available to developers that could buy down interest on their speculative ventures.

It would also be extremely helpful to the municipalities if there were some sort of assistance for infrastructure projects. As I stated previously, local government budgets are stretched to the limit, and the taxpayers are not receptive to sharing the burden of new development. I believe that developers would step forward to build the needed housing in our communities if there were programs to assist them, as well as something to assist the local government with infrastructure.

The Bowman City Commission looks forward to working with Federal, State and other local governments in order to find solid solutions to these housing problems and challenges in western North Dakota.

Respectfully submitted,

Lyn James, President, Bowman City Commission

The CHAIRMAN. Thank you very much. Really excellent testimony. I'm delighted that the three of you could be with us today.

Maybe we need to start on what happened the last boom, because I know it very much affects thinking, still today. I was tax commissioner at the time. It's riveted in my mind what happened here. I remember very well, in about 1986 or 1987, Williston, as I recall, had about $27 million of debt. And you are dedicating 34 to 38 percent of your property taxes in this community to paying

down that debt. And that went on for 7 years. That was a tremendous burden on this community. And I understand, absolutely, why local officials who have seen that experience have been reluctant to step forward again.

And Mayor James, Mayor Koeser, you both talked about the development cost per lot. I think one of the figures was $20- to $40,000. I think, Mayor James, you used the figure of $30- to $40,000. That's really what we see, with respect to single-family homes. And that is—you know, there is a risk associated with it. And then you talk about curb and gutter, you talk about sewer and water; you're talking about significant risk for these communities.

And, of course, the question in everybody's mind, Is this time different? Is this time different? We've got lots of reason to believe this is going to be a longer-lasting boom, one that really has legs. But, you know, that's what we thought the last time. And so, none of us can be absolutely certain. You know, maybe there's going to be some new technological breakthrough in some other form of energy. Hard for me to see how that's going to happen in any near-term sense. And so, our reliance on petroleum, it seems to me, is going to continue, and it's going to grow.

And especially if we want to reduce our dependence on foreign oil, which has to be a very high priority for our country.

So, that gives—leaves us with the question of, What do we do about infrastructure? It's been raised by Mayor Hynek. What do we do about housing? And both of these, historically, have been a local matter and private development matter.

Because this energy play is so important to our national security and our national economic situation, there really is, in this case, some national responsibility. We've got to make certain that this development goes forward, that we're not losing out on developing this resource locally because there's insufficient housing for the workers that are needed for that production to come online. That's why there is a national interest.

So, I think, Mayor James, you talked about the need for public-private partnership. And that's what some of these programs are that are in place. Rich, I think you talked about assistance with the development of two fairly large apartment units here; 31 units or—I can't remember—40 units; 31 units in another. How did that come about, with the fact that so many of these programs are designed for low- and moderate-income people? Do you know the—how those were able to be met?

Mr. DAVIS. I briefly learned about that just before arriving today. I know that they were funded through our Guaranteed Low-Rental Housing Program. And those programs are for the low- and moderate-income. So—projects—are guaranteed. The tenants must not exceed moderate income levels.

The CHAIRMAN. Yeah. And, as I recall, you said, in this community, $46,000? Thirty thousand under one——

Mr. DAVIS. Yeah.

The CHAIRMAN [continuing]. Program, 46,000——

Mr. DAVIS. Those aren't—those are averages. We took—just took a little bit of the data to see what the typical borrower was in both of our programs. In our direct program, it's about 30,000, in our Guarantee Program it's about 36,000. I don't have the——

The CHAIRMAN. And it's the Guarantee Program that's being used for these apartment units.

Mr. DAVIS. Well, no. They're actually—that's the Single-Family Guarantee Program that I was speaking of at that point. For that program, that was the average income. For—so, that's 115 percent of area median income, which would be comparable to our tenants in the apartment building.

The CHAIRMAN. Can you tell us, in your experience—I'm interested in the mayors'—boy, it sounded to me, Ward—is you've got the need for hundreds of units, here. What is your current assessment of how many units—additional units you need, here?

Mr. KOESER. It's a difficult question to answer. I think a lot of it goes back to the number of jobs that are available. And where—Job Services, they have 1100 openings now in the Williston service area. There are probably, some believe, up to 2,000 job openings, because a lot of companies don't list with them. So, obviously, you have need for that number of workers.

Now, many of the workers coming here are young people who don't have credit or don't have good credit, or they are individuals moving here from—and I'll pick on Michigan, as an example, where they're down on their luck, they may have lost their home, and so, their credit is no longer good. And so, most of the people moving here really need to be in the rental situation. They're not—they aren't qualified. They don't have the credit to buy a new home. So, we see a huge demand in that area.

Interesting to comment on Rich's projects that—one of them is a 51-unit project, and one's a—I think, a 41-unit project. And they'll deal with the lower- and moderate-income people.

Now, we have a number of those. You know, the oilfield pays great wages, and they have good benefits. But, when—you have your whole service industry—people who are working in the motels, the restaurants, the retail sectors—who don't make that kind of money. And so, they're really being stressed right now, as to, How do they afford a place to live? And so, we're——

The CHAIRMAN. And our senior citizens, too——

Mr. KOESER. Oh, man. Let's——

The CHAIRMAN [continuing]. Is what I'm hearing from, in the Williston community. Seniors who are, some of them, just petrified that they're going to get priced out of the market, here.

Mr. KOESER. Yeah. The—I received a call last week from a senior citizen who had been paying—I think it was a two-bedroom apartment—$450 a month. And they were doing fine. And they just had received notice that next—in 1st of June, it was going to go up 100; 1st of July, it was going to go up 100; 1st of August, up 50. So, they were going to go from 450 to 700. And she was very, very concerned.

The CHAIRMAN. Yeah.

Mr. KOESER. And so, projects like this are something, of course, we direct them to. And we're very anxious for them to be completed. Because we really think there's that whole sector that——

The CHAIRMAN. That will take some of the pressure off.

Mr. KOESER. That will take some of the pressure. But, you know, to know how many houses we need—it's very, very difficult. But, it's certainly in the multihundreds, if not—you know, if we had

1,000 housing units available right now—whether that be apartments—and mostly apartments—and affordable houses, I believe that they would be full in a matter of maybe a month. It's just—affordable housing is kind of a gray area, what's affordable. But, it seems, in this area, if you can build a house or have a house available under 200,000, it will sell in a day, maybe 2 days. If you get over 200,000, it takes longer. But, tremendous demand—tremendous demand for it there. And, as you know, when you have that great demand, it drives up the prices of all things; rents and everything go up and really challenges people.

The CHAIRMAN. You know, there was this housing needs assessment that was done by Minot State University in 2006. And they were projecting a need for an additional 2,000 housing units in Williston and Williams County between 2010 and 2015. Now, that was from——

Mr. KOESER. Right.

The CHAIRMAN. —2006. So, do you think that that's probably out of date?

Mr. KOESER. It's out of date. And things, you know, have changes dramatically, you know, since that particular time.

I—sometimes people get frustrated that we've not been able to react as quickly as we would actually like to, to the housing demand. But, if you even look back to what Job Service said there was for openings in January versus now——

The CHAIRMAN. A dramatic change.

Mr. KOESER [continuing]. You know, you've had probably 1,000 or 1500 job openings happen, and there's no way you can build apartments or houses or anything in 4 months' period of time, especially in the wintertime, to accommodate that. So, it's just—it's a huge challenge. I mean, it's—there's some great opportunities with it. And I like to kind of piggyback what Mike said; these are some real opportunities for us to grow and become a better community and have the goods and services and the retail that people want.

But, it's taking everybody, working together. It's taking everybody, working long hours. And we're ready to do that, and willing to do that.

And any help that we can get from the State—we really appreciate the initiative of the Governor. That, I think, is going to help us in the area of getting some raw land developed. And anything that we can do as we meet more with you and talk to you more on the Federal level.

But, this—the credit situation, I have often said, is where we are feeling the recession the most in North Dakota—in western North Dakota. We don't—you know, we don't know the people unemployed and all the other issues, but we feel it in the credit side of things. Credit is very, very tight. Realtors will tell you that, developers will tell you that. And that certainly is complicating finding a solution.

The CHAIRMAN. Yeah, it is, because what's happened is, you know, when the economic downturn—the balance sheets of banks were impaired.

Mr. KOESER. Yeah.

The CHAIRMAN. And so, the regulators come in and say, "Hey, you've got to restore your balance sheet." That's what's leading to these regulations that Mike referenced, is—we can't allow a repeat of just what happened. And part of what just happened was caused by overly loose credit. So, they were making loans to people, with nothing down. You know, we—I know there are people who will urge me to support loans, with nothing down. Look, we cannot do that. We cannot do that. We can't afford another crash. And part of the reason we had a crash is because lending institutions were making loans that you could almost assure yourself they were going to be a high default rate. And, in fact, that's what we got, was a high default rate. So, we've got to have some standards here. We've got to have some regulation to prevent that from happening.

On the other hand, it can't be so severe that we restrict the flow of credit to places that desperately need it and can use it and not abuse it.

Mike, let me ask you, how many units do you think you need?

Mr. HYNEK. As far as—well, what we're looking at is a little bit of a different situation. We've got the EOG resources, and we've got—with their wonderful apartment—or their office building and their infrastructure, and Whiting is putting up a big office building on Highway 8; and those folks are looking, really, more at family housing. What we need for numbers there? It's seems just ridiculous to say this, but I think if we had 100 homes available, they would sell, in a matter of months, when these people start coming in to fill these positions that they're offering.

The CHAIRMAN. And at what price point would they sell?

Mr. HYNEK. Well, from the folks I've visited with on that, they think in the $125- to $150,000 homes—would be their range of where their—it would be very affordable for these folks.

The CHAIRMAN. OK. Lyn, if I can ask you—how many units do you need? What's your assessment of how many units you'd need in your community?

Ms. JAMES. I would say—of course, we're in a little bit of a different situation in Bowman, without the exploration side right now. But, I would say we safely could use 50. And——

The CHAIRMAN. And that would——

Ms. JAMES. Right now. And then—with planning for more as this exploration widens its path, because we will see more. I know we will.

The CHAIRMAN. All right.

Let me go to Congressman Pomeroy for his questions.

Mr. POMEROY. I know we want to get, Mr. Chairman, to the local builders, too. So, I will be very quick.

Mayor James, you said there was an 1909 law passed in the legislature. Did—is there a State program that's relevant, in addition to the Governor's initiative on sharing the risk?

Ms. JAMES. You know, I have a copy of that here I can share with you, if you'd like.

Previously—prior to 2009, it was $75,000 exemption that was supported by the State for 2 years. And then they raised it to 150. Now, each individual community has the choice of doing nothing or doing the maximum. We believe that it would be beneficial to us

to forgive that amount for 2 years and then get a higher dollar back on the tax roll later. So——

Mr. POMEROY. Right. That's a——

Ms. JAMES. But, I do have a copy—

Mr. POMEROY [continuing]. Tax exemption——

Ms. JAMES [continuing]. Of that——

The CHAIRMAN [continuing]. On new home construction.

Ms. JAMES. Right. And that's the burden to us, as a municipality. There's no reimbursement from the State. It's just that we will see a greater return later.

Mr. POMEROY. Yeah.

Ms. JAMES. And one of the other things I'd like to mention regarding real estate tax, and then also development, is that, without infrastructure in place for new development within the city limits, we are seeing these little neighborhoods pop up that are outside of the city limits. They want city services; in fact, they demand them. But, we don't reap any benefit back from them. And for us to—as a city, to step out there and invest in the infrastructure, the return is so slow that it—you know, it's really a difficult risk to take, you know, for a small community—or a large community. I mean, it's all economy of scale, I guess. But——

Mr. POMEROY. The Economic Recovery Act was passed to try and jump start a lot of activity across the country. Actually, that was responding to economies that were dead, not economies white hot. But, nonetheless, funds have been available, to an extraordinary dimension. I'd like to ask our Federal representatives, both Dan and Rich, if you—have the Federal Recovery Act dollars spent out to your agencies—are there opportunities, relative to Recover Act dollars, relative to the need, up in this area?

Mr. DAVIS. Well, I can speak to the housing side—single family housing. We received $10 billion—the Recovery Act, and have practically fully obligated all of those funds. In fact,—January. We've had some—obligations, so there's still a little more remaining on the guarantee side.

Voice: We'll take it.

[Laughter.]

Mr. DAVIS. But, on the direct side, that program is very much alive and well. We have plenty of funding there. But, as I mentioned, it is for the very-low- and for the low-income. But, we're working very hard. And we're optimistic we'll be able to obligate all those funds. We do have plenty of funding in the direct program.

Ms. JAMES. If I might, Congressman, regarding the Recovery Act, we went line by line through that—through all of the programs. And because of our numbers, our population, we did not qualify for——

Mr. POMEROY. On the low- to moderate-income——

Ms. JAMES [continuing]. On——

Mr. POMEROY. Basis, or what? I mean——

Ms. JAMES [continuing]. On—basically, on any of the programs where there were funds available, whether it was infrastructure funds or anything. I mean, because of our—size of our community.

Mike, did you find that?

Mr. HYNEK. We didn't go through—. That's what we were basically advised——

Ms. JAMES. Yeah, yeah. It was very frustrating. We actually had Senator Dorgan on the phone while we were going through that. And there just really—for small communities, we really fell through the cracks.

Mr. POMEROY. I'd like both of you to respond to that. What have you got for places like this?

Mr. SULLIVAN. I apologize. I don't have the data on the funds, the dollar amounts, but I do know that—was obligated for our community fund—. I do think that there is a problem in rural States like North Dakota, where, you know, the entitlement areas get a portion, and the rest of the State—.

The CHAIRMAN. Well, we know that, in our funding—we got $180 million, in North Dakota, for roads and bridges. And that money was distributed over a 2-year period. So, that benefited areas all across the State. In fact, that's part of the funding stream. It's hard to differentiate which dollars go where. But, North Dakota got $180 million right there. In the energy area, we got tens of millions of dollars. We got—you know, Basin Electric, alone, got $100 million.

So, North Dakota had substantial benefits from ARRA funding. Whether the specific programs that would be of use to a community of your size, other than highway or energy—retrofitting homes—that kind of thing, which flowed across the State—that's something we should go back and assess.

We've got—you've got other——

Mr. POMEROY. The final would be this low/moderate-income issue. The—we've encountered that with some of the flood reconstruction, back in the late 1990's, I remember. The—well, I guess I've got to see what the mayors—are you seeing eligibility criteria for Federal programs requiring low- and moderate-income levels to access the funds being a substantial bar to your ability to use them in the rural communities?

Mr. HYNEK. I think some of that will—right now, it hasn't been, on some of the programs, you know, still based upon the old Census numbers. I think what's going to happen is, the new Census numbers come out and the new dollars of income come out, I think we're going to real—bump hard against that.

Mr. POMEROY. OK.

Mr. HYNEK. That's my feeling.

Mr. KOESER. And I would say that's going to be true in Williston. I mean, up to this point, we have kind of chased down different trails, trying to find dollars. The incomes are good. I mean, we're blessed. The people make a lot of money here—not—but not everybody. But, it's been difficult to make that happen. We continue to look—and, you know, we'll certainly continue to see if things change. But, we—the State shows Williston has having the highest per-capita salary in the State right now. That's good, and yet, it doesn't help you get funded on special programs.

Mr. POMEROY. Thank you, Senator.

The CHAIRMAN. Yeah. It's really the case. I think that's the thing that's been knocking us out on some of these. Clearly, road and bridge funding is not allocated on that basis—on an income basis. A lot of the energy funding is not allocated on that basis. The money for energy projects are not allocated on that basis. But, when you go to housing—just the description, Dan, that you and

Rich gave here—it is really targeted low- and middle-income people. And some of our people qualify. So, for example, we see projects underway here that will help low- and middle-income people.

But, we've got kind of an unusual thing going on here. You know, in this economy, there aren't many boom places. This is a place that's booming, and yet there is a Federal—some Federal responsibility—not complete, because housing is typically local and private. But, because this is a national priority—we have to reduce our dependence on foreign oil.

So, we clearly have an obligation to help on roads, bridges, and, I would argue, infrastructure. Because, otherwise, it's very hard to see how it can happen in a timely way, given the high capital costs and given the risk that we have seen in the past. I mean, isn't that kind of the truth?

I mean, money follows money. We all know that. When you've got high-income people, that means higher local revenue, that means more construction, that means more jobs, more economic activity, more ability to provide education, housing, and all the rest.

But, the problem is timing. That's where we've got a big gap here. And it's made very clear to me by the testimony of the three of you. We appreciate it very much.

Mr. POMEROY. I would just say, I'm very much struck by the number of homes you're saying you could move immediately—available in each of the three communities. That, perhaps, left as big as impression of any of the other testimony.

I'd also like to introduce, for everyone in the audience, the North Dakota face of these Federal agencies that have played such an important role in housing. Joel Masgee with HUD—can you stand up, please?—and Jasper Schneider, with Rural Development at U.S. Department of Agriculture. You've got troubles, call these guys.

[Laughter.]

Mr. POMEROY. You call Conrad and me, we'll refer you to these guys.

So, we're really pleased to have such competent, focused, local leadership for the Federal programs that—these are a couple North Dakotans that we know are really very much focused on this aspect of need. And we'll be working with you to make sure these Federal programs can work.

The CHAIRMAN. And thank you, thanks to this panel.

And we'll call the next panel: Jessica Thomasson, director of Lutheran Social Services Housing, LSS Housing, Incorporated; John Boyd, operations manager of EOG Resources—large international oil and natural gas company. And I know they have tried to alleviate the housing shortage by erecting a man camp of temporary housing in Stanley. And Mr. Boyd is a native of Stanley, I believe.

Mr. BOYD. That's correct.

The CHAIRMAN. And Matt Miles, who is a principal in Leadership Circle, LLC, a large, experienced real estate developer that's had a part in developing the Timbers residences, here in Williston.

Welcome, to all of you. Thank you so much for being here.

John, why don't we start with you, and we'll go right down the line. We'll start John Boyd, then Matt Miles, and then Jessica Thomasson.

Again, John, thank you so much for taking your time to be here today.

STATEMENT OF JOHN BOYD, OPERATIONS MANAGER, EOG RESOURCES

Mr. BOYD. Thank you.

Senator Conrad, Congressman Pomeroy, Federal representatives, distinguished guests, and citizens of North Dakota, thank you for convening this field hearing regarding housing needs related to oil and gas operations.

EOG Resources agrees that housing issues in western North Dakota need to be addressed in a proactive and efficient manner. I am EOG's North Dakota operations manager, responsible for all aspects of our operations in the State. I was born and raised in Stanley, and am excited to see the positive economic impact oil and natural gas development is having in the State. I have 30 years of experience in the industry in the U.S., including initiating and developing field crew housing facilities both onshore and offshore. I refer you to my biography for my professional experience.

Currently, EOG employs 100 people in North Dakota, and is the largest crude oil producer in the State. As our operations began to ramp up in 2008, EOG recognized a shortage of housing for our employees and service contractors in Mountrail County.

Many of our contractor personnel are spending considerable time outside of normal business hours, commuting daily from Minot, Williston, and other towns in the area. In order to minimize the commuting and travel obligations for these workers, and to minimize traffic on the North Dakota roads, we initiated development of a 400- person field crew housing facility, located near Stanley, to support drilling and completion operations and other support contractors. This has worked well for EOG in the past, in operations in other States.

In developing our field crew housing facility, our biggest challenges involve providing infrastructure services, such as water, power, communications, and sewage. Early on, during our activity in Mountrail County, we discovered that the power infrastructure had not been updated for 40 to 50 years. The system, at that time, was operating at maximum capacity, and the area was experiencing blackouts. EOG and other oil and gas companies worked with the local electric cooperative to secure funding to upgrade the power grid in the county. This upgrade was very important for our continued operations in the area.

The CHAIRMAN. Do you know how much that upgrade cost, John?

Mr. BOYD. Approximately $15 million.

The CHAIRMAN. And was that federally funded?

Mr. BOYD. No, it was funded from the oil companies.

The CHAIRMAN. The oil companies put up the money for that themselves.

Mr. BOYD. Yes, through interest-free, nonrecourse loans.

The CHAIRMAN. Interest-free nonrecourse loans.

Mr. BOYD. Yeah.

The CHAIRMAN. OK.

Mr. BOYD. And that's with Mountrail Williams Electric, here in Williston.

The CHAIRMAN. So, you pre-fund—in effect, pre-funded that.

Mr. BOYD. Yes.

The CHAIRMAN. So it could be put up.

Mr. BOYD. Yes. And then we get repaid through new hookup charges——

The CHAIRMAN. OK.

Mr. BOYD [continuing]. Which most of the new hookup charges are us, so——

The CHAIRMAN. Right.

Mr. BOYD [continuing]. We're repaying ourself——

The CHAIRMAN. Yeah.

Mr. BOYD [continuing]. Is what's going on.

[Laughter.]

The CHAIRMAN. Thank you.

Mr. BOYD. Originally, power for the field crew housing was provided by diesel generators. Because of this power upgrade, we now have the power grid connected to the man camp.

Potable water at our field crew housing facility is trucked in daily and stored onsite. We are currently working on bringing city water to the facility from the city of Stanley.

Sewage from the field crew housing facility is also trucked daily from the facility to the city of Stanley sewage treatment lagoons. The operating capacity of the sewage lagoons is being stretched, and the city is working on upgrading the system. This upgrade will be very costly for the city. I believe Mayor Hynek referred to the issue of their sewage lagoons earlier.

Overall, the modular housing concept has worked very efficiently for our drilling and completion operations. However, for our production operations, another type of housing that needs to be developed is permanent single-family homes or condominiums for operational personnel and their families who will work in our offices in Stanley. Most of the wells currently being drilled in North Dakota will be producing for 30 to 40 years, and will require ongoing maintenance, which, hence, creates permanent jobs. We anticipate that EOG's total number of employees also will increase as we hire additional staff to meet our operational needs; and as we continue to develop additional resources, we think that more families will be moving into Mountrail County.

Permanent housing is difficult to develop, because of the cost—the capital cost of installing infrastructure and its maintenance expense become the responsibility each city. Due to the recent rapid expansion of operations in the State, most of the local communities are struggling to secure the capital necessary to properly expand the infrastructure. In addition, the existing local infrastructure is being stressed, due to the sheer number of people that it now must support.

EOG has been working with the mayor, the city council, Mountrail County commissioners, to find additional land that can be developed for permanent housing. However, such areas do not have infrastructure to support that development. And I understand the city of Stanley and the county do not have sufficient funds to upgrade the infrastructure. Herein lies a challenge.

In conclusion, EOG and our North Dakota employees consider ourselves to be an important long-term member of the local com-

munity of Stanley and Mountrail County. We support the efforts by the Federal Government to help the cities and counties in upgrading the local infrastructures.

[The prepared statement of Mr. Boyd follows:]

Senate Budget Committee Hearing
"The Energy Industry's Impact on Housing in North Dakota"
Williston, North Dakota
Williston Community Library
1:00 PM, 6/1/10

EOG Resources, Inc.
Prepared Statement

Senator Conrad, the senator's staff, federal representatives, distinguished guests, and citizens of North Dakota, thank you for convening this field hearing regarding housing needs related to crude oil and natural gas operations in the state. EOG Resources, Inc. (EOG) agrees that housing issues in western North Dakota need to be addressed in a proactive and efficient manner.

My name is John Boyd. I am EOG's North Dakota Operations Manager, responsible for all aspects of our operations in the state. I was born and raised in Stanley, ND and am excited to see the positive economic impact oil and natural gas development is having in the state.

I have 30 years of experience in the industry in the US, including initiating and developing temporary field crew housing facilities for both onshore and offshore operations. I refer you to the brief biography submitted to your staff for more detail of my professional experience.

Currently, EOG employs 101 people in North Dakota alone and is the largest crude oil producer in the state.

As our operations began to ramp up in 2008, EOG recognized a shortage of housing for our employees and service contractors in the Mountrail County area. Many of our contractor personnel were spending considerable time outside of normal business hours commuting daily from Minot, Williston, and other towns in the area. In order to minimize the commuting and travel obligations for these workers and to minimize traffic on North Dakota roadways, we initiated development of a 400 person modular field crew housing facility located near Stanley to support drilling and completion operations crews and other support contractors. Modular housing has worked well for EOG in the past for our operations in other states.

In developing our modular field crew housing facility, our biggest challenges involved providing infrastructure services such as water supply, power/electricity supply, telecommunications, and sewage treatment facilities.

Early on during our activity in Mountrail County, we discovered that the power/electricity infrastructure had not been updated for 40-50 years. The system at that time was operating at maximum capacity and the area was experiencing blackouts. EOG and other oil and gas companies worked with the local electric cooperative to secure funding to upgrade the power grid in the county. This upgrade is very important to our continued operations in the area.

Originally, power/electricity for the field crew housing facility was provided by diesel generators. We now have power supplied to the facility because of the upgraded power grid.

Potable water at our field crew housing facility is trucked in daily and stored on site in cisterns. We are currently working on bringing city water to the facility from the city of Stanley.

Sewage from the field crew housing facility is also trucked daily from the facility to the city of Stanley sewage treatment lagoons. The operating capacity of the sewage lagoons is being stretched and the city is working on upgrading that system. This upgrade will be costly for the city.

Overall, the modular housing concept has worked efficiently. However, another type of housing that needs to be developed is permanent - single family homes or condominiums - for our operational personnel and their families who will work in our offices in Stanley. Most of the wells currently being drilled in North Dakota will be producing for 30 to 40 years at some given production volume and will require ongoing maintenance.

We anticipate that EOG's total number of employees also will increase as we hire additional staff to meet our operational needs as we continue to develop additional resources. We think that more families will be moving into the Mountrail County area.

Permanent housing is difficult to develop because the capital cost of installing infrastructure and its maintenance expense becomes the responsibility of each city. Due to the recent rapid expansion of operations in the state, most of the local communities are struggling to secure capital necessary to properly expand the infrastructure. In addition, the existing local infrastructure is being stressed due to the sheer number of people that it now must support.

EOG has been working with the Mayor of Stanley and the Mountrail County Commissioners to find additional land that can be developed for permanent housing. However, such areas do not have infrastructure to support that development and, I understand, the city of Stanley and the county do not have sufficient funds to upgrade the infrastructure. Herein lies the challenge.

In conclusion, EOG and our North Dakota employees consider ourselves to be an important, long term member of the local community of Stanley and Mountrail County. We support the efforts by the federal government to help the cities and counties of western North Dakota in upgrading the local infrastructure to meet future demands.

Thank you.

2

The CHAIRMAN. Thank you. Thank you, John. That's very important testimony.

Matt, welcome, why don't you give us the private developer's perspective and what you've encountered.

STATEMENT OF MATT MILES, PRINCIPAL, LEADERSHIP CIRCLE, LLP

Mr. MILES. Thank you, Chairman Conrad and Congressman Pomeroy.

I've spent 2 years looking at the Williston, North Dakota, housing market. Currently, my company is underway with a 130-unit single-family housing subdivision inside the city limits.

I appreciate you giving me the opportunity to express my thoughts on the current issues facing housing availability.

I believe housing shortages, in general, should be solved by the private sector. Demand, followed by supply, is the best way to build a healthy market for all involved. Subsidized housing, in most cases I have observed, is just a way to keep businesses from paying their employees enough to afford to live. This said, there are always people on the margins that may need help. In these comments, I am addressing boomtown impacts specific to energy industry workers.

Homeownership is the backbone of any community. If home ownership opportunities exist, the most important thing then is to assure people can finance the purchase of their homes.

Due to changes in underwriting standards over the last 2 years, and a perception that there is an additional risk in lending in a local economy fueled by an energy boom, a program to assist buyers in obtaining mortgages for the purchase of permanent housing would be helpful. The Bank of North Dakota and the city of Williston have expressed interest in helping developers offset or defer some of their building costs. I think the effort would be better placed helping people purchase their homes.

Also, it is currently very economical to own or build a home in Williston, because the city does not assess impact fees. As the area continues to grow, city infrastructure will be stressed. Making sure the city has funds for water, sewer, and major transportation routes for future growth would help to assure long-term affordability.

To restate the specific things that are necessary to create home ownership opportunities, we need to promote home ownership and long-term community stability by providing some vehicle to offset risk to mortgage lenders in this boomtown environment and thus providing a long-term permanent work force base. Financially supporting infrastructure projects now to provide long-term affordable—to provide a long-term affordable building environment in the area would also be helpful.

The helpful attitudes and actions of both Williston and the State of North Dakota create an inviting atmosphere for real estate developers, and is very much appreciated. Directly helping prospective homeowners—in the short term, with mortgages; and in the long term, with a sustainable low housing cost—seems to be the best plan.

Thank you for your consideration.

[The prepared statement of Mr. Miles follows:]

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28 May 2010

Honorable Kent Conrad

United States Senate
Committee on the Budget
Washington, DC 20510-6100

RE: June 1, 2010 Senate Budget Committee Field Hearing
"The Energy Industry's Impact on Housing in North Dakota"

Dear Senator Conrad,

I have spent 2 years looking at the Williston, ND housing market, and currently my company is underway with a 130 unit single-family housing subdivision inside the city limits. I appreciate you giving me the opportunity to express my thoughts on the current issues facing housing availability.

I believe housing shortages, in general, should be solved by the private sector. Demand followed by supply is the best way to build a healthy market for all involved. Subsidized housing in most cases, I have observed, is just a way to keep businesses from paying their employees enough to afford to live. This said, there are always people on the margins that may need help; in these comments I am discussing "boom town" impacts specific to energy industry workers.

Home ownership is the backbone of any community. If home ownership opportunities exist, the most important thing then is to assure people can finance the purchase of their homes.

Due to the changes in underwriting standards over the last two years, and a perception that there is additional risk in lending in a local economy fueled by an energy boom, a program to assist buyers in obtaining mortgages for the purchase of permanent housing would be helpful. The Bank of North Dakota and the City of Williston have expressed interest in helping developers offset or defer some of their building costs; I think the effort would be better placed helping people purchase homes.

Also, it is currently very economical to own or build a home in Williston because the City does not assess impact fees. As the area continues to grow, city infrastructure will be stressed. Making sure the City has funds for water, sewer, and major transportation routes for future growth would help to assure long term affordability.

To restate the specific things I believe that are necessary to create home ownership opportunities:

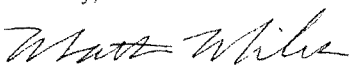
- Promote home ownership and long term community stability by providing some vehicle to offset risk to mortgage lenders in this "boom town" environment and thus providing a long term permanent workforce base. Allowing "gifting" of down payments by employers is one idea.

- Financially support infrastructure projects now to provide a long term affordable building environment in the area.

The helpful attitude and actions of both Williston and the State of North Dakota create an inviting atmosphere for real estate developers and is very appreciated. Directly helping prospective home owners in the short term with mortgages and in the long term with sustainable low housing costs seems to be the best plan.

Thank you for your consideration in these matters.

Sincerely,



Matt Miles

The CHAIRMAN. Thank you very much.

And we'll go now to Jessica Thomasson.

And then we'll have a chance to go back to everybody and ask questions before we have to conclude.

STATEMENT OF JESSICA THOMASSON, DIRECTOR OF LSS HOUSING, INC., LUTHERAN SOCIAL SERVICES OF NORTH DAKOTA

Ms. THOMASSON. Thank you, Chairman Conrad, Congressman Pomeroy.

As a nonprofit private housing developer working across the State of North Dakota, it's been my privilege to meet community leaders from across the State who are doing what they can to build their communities; not just for today, but for the future. And we met three such officials earlier. They really have a very difficult job, and rise to the task, I think, admirably.

I'm going to try to skip through a lot of the written testimony that I have. You've heard really great testimony earlier today, and I wanted to get to some of the potential solutions that I'd like to ask you to consider for multifamily housing, in particular.

But, I did want to spend a minute and talk about the reason why—With all of this activity, with all of the good things that are happening in the region, why don't we see those housing numbers being achieved? Why don't we see the need being met? If North Da-

kota is the envy of many States, with its economic fortunes and economic successes, do we need to talk about affordable housing? Do we need to talk about availability? Won't the market just take care of it? And, I guess, from my perspective, unfortunately, the answer is, no. For a number of reasons that we've talked about earlier, the market just can't address affordable housing in a meaningful way.

And I want to talk about affordability not in a narrow sense, of being only affordable to, say, a low- or a moderate-income household, but "affordable" really is a relative term. And I think one of the mayors mentioned that in the panel. We need housing that's affordable to a variety of people in the work force.

This is an issue that I think particularly affects rural communities. If we have—and I'll talk most about multifamily, because that's the primary work that I'm involved in—but, if you have programs that require you to have a very targeted or specific tenant group that your serving—in a rural community, that's a very limiting factor. I think you need the flexibility to be able to serve low-, moderate-, middle-, and other housing needs, as well, in the same project. So, that's one of the unique challenges, I think, in working in small towns.

So, a little bit on the "why." Why do we have market issues that perhaps aren't always being addressed? I think building housing in rural communities can sometimes be more costly than building in urbanized areas. It may be proximity to materials or labor, in some cases. It could be size of projects. In a lot of smaller towns—and, again, Williston is on that border of being a larger community—but, in some of the smaller towns, you really can't build 100 units at a time. And so, you have some economy-of-scale issues to deal with.

Financing housing projects in rural communities presents unique challenges. National secondary markets are seldom designed to really understand or appropriately value rural properties. And so, you run into the appraisal gap issues that we talked about. You run into challenges with community bankers being able to sell those loans on traditional secondary markets, and they present very real barriers to financing housing.

You also run in, then, to lenders—community lenders who are very interested in lending on projects in their communities, but they run into loan-to-value challenges. It's not loan-to-cost, it's loan-to-value. And so, if that value is determined by an appraisal, sometimes it presents a challenge.

In addition to these cost factors, rural markets sometimes are less attractive to many in the real estate industry; in part, because of the—in my opinion, the risk-reward ratio sometimes is greater in other places. So, there's less risk for more reward if you're building larger projects in perhaps more proven markets. And I think that's just a common issue, when you looking at rural communities and unproven markets, that that's a very natural economic decision that's oftentimes made.

Some of the programs that are available to assist with financing, particularly, affordable housing are complicated. I don't think anybody tries to make them complicated, but they are. And there's a lot of paperwork and regulations and things that you need to keep

track of. And if that's not your business model, it's difficult to enter into some of those programs. It's also easier to take on all that paperwork for 72 units than it is for 12. It's just, again, another practical matter of economies of scale.

So, who needs affordable housing? And I'll just—again, this is in the written testimony, so I'll just give you the highlighted version. Housing units that had previously been affordable in a lot of rural communities perhaps are not affordable anymore. Maybe they were sold and repurposed for another housing need. So, that source of affordable housing is gone. If there's no physical displacement—let's say that a renter or a homeowner doesn't have to move—it doesn't apply to homeowners—but, let's say a renter doesn't have to move; there may be economic displacement, so perhaps their rents go up, as I think Mayor Koeser referenced in his testimony. And then housing demand has outstripped the supply. So, even if people have good employment and good jobs, a lot of times they have a difficult time finding housing. And I think you mentioned that, as well. Supply follows demand. And that is, in fact, very true. Sometimes there's just that time lag that really causes true hardship for families.

In markets like the one in western North Dakota, without housing that's tied to affordability requirements for the long term, market pressures will eliminate any latent affordability that does happen to exist. Rental housing market dynamics will feel more like San Francisco than Stanley. And situations like the one that we've seen in Mountrail County recently will be more common.

In Mountrail County, the county housing authority has had Section 8 vouchers go unused, not because families don't need the rent assistance, but because they've really struggled to find units that they can afford. Where—in communities where fair market rents, published by HUD, used to seem like a high rent, those communities now can only see those in their rearview mirror. They're really—the rent structure has changed very dramatically in a short period of time.

So, what can the Federal Government do to help address the housing shortage in western North Dakota? There really is no silver-bullet, single-answer solution in a market that faces as much dynamism as this does. But, I think there are some things that can help facilitate public-private partnerships and help leverage private investment to create affordable housing in rural North Dakota.

There are three general things that I wanted to mention. One is to continue programs that already work for rural housing. The second is make existing affordable housing tools work even better—for rural projects, in particular. And then the third is to help create new affordable housing. And I'll highlight just a couple of things in each of those areas.

Continuing programs that work for rural housing. The USDA Rural Development has a number of products that really are very well suited to housing in rural communities, as you'd expect. The USDA Section 538 Rental Housing Guarantee which has been mentioned, I think holds real promise to providing long-term fixed-rate relatively low-cost financing for rural projects. We run into some practical difficulties with not very many lenders being able to originate those loans, or having the capacity to originate them. The

State is working to help address that, but—there are always practical concerns, but it's a great program.

The same with what's called the MPR Program, Multifamily Preservation and Revitalization. It's a USDA program that's in its fifth year as a pilot. So, it's still not a permanent program, but I would argue that the preservation of existing affordable housing is absolutely essential—in these markets, in particular. Once that affordable unit is lost, it's almost impossible to replace. And I'd say the units that HUD and the USDA have in these communities come with a rent subsidy, already. Once those units are taken out of the program, there is no replacement for that rent subsidy. We may be able to build new affordable units, but that rent subsidy is typically gone forever from those communities. So, I think preservation programs like MPR are really essential for rural affordable housing.

The second is to make existing affordable housing tools work better for rural projects. And I'll just mention two items there. And these relate to the tax credit program—the Low Income Housing Tax Credit Program. It—tax credits haven't traditionally been a huge source of development capital in rural markets. But, I would argue that they could be a more major factor if there were a few changes made. And a couple of them are before Congress, actually, right now. I have a letter with me that I'd like to submit to you for the record that details those—the actual bill numbers and things. But, fairly simple, fairly revenue-neutral proposals that would really bring more investors into the tax credit program in rural markets. One is to allow people to carry back tax credits 5 years. So, instead of having to predict out what a particular investor's tax liability is 10 years forward, the proposal is that you actually let people look back 5 and forward 5, and it gives a little bit more certainty, and entices non-CRA investors to get involved in the tax credit program. So that——

The CHAIRMAN. Matt, would that have any interest to you?

Ms. THOMASSON [continuing]. Would expand it.

Mr. MILES. No, sir.

Ms. THOMASSON. It's probably a different market.

Mr. MILES. A different market.

Ms. THOMASSON. Yeah.

Mr. MILES. We're single-family residential.

Ms. THOMASSON. Yeah, there are very few applications, I think, of tax credit with single-family. It's a possibility, but there aren't very many.

The CHAIRMAN. OK.

Ms. THOMASSON. And then the second is actually just to allow S corporations to invest in tax credits. And it sounds, again, like a minor provision, but the Federal Home Loan Bank of Des Moines estimates that about 60 percent of community banks across the Midwest are organized in this fashion. Under the current rule, they can't invest in the tax credit program, even if they wanted to. So, allowing a greater number of people to invest and to leverage their capital could make a big difference.

[The prepared statement of Ms. Thomasson follows:]

TESTIMONY
United States Senate Budget Committee
Field Hearing, Williston, North Dakota
Honorable Senator Kent Conrad, Chairperson
Tuesday, June 1, 1:00 p.m. CST

State of Housing in western North Dakota

After having gone for decades without any significant housing development, western ND has been thrust into an environment that is marked by change and rapid pace growth.

As a non-profit housing developer working in North Dakota, Lutheran Social Services has the opportunity to meet and work with community leaders from all across the state. These individuals are doing what they can to grow their communities, not just for today but for the future.

For many years, economic development was the buzzword for community leaders. Today, after achieving some success in the quest for the holy grail of economic activity and job creation, communities are finding that basic community services – like infrastructure and housing – can prove to be an ultimate limiting factor to continued growth.

In the simplest terms:
Without housing – workers can't work.
Without housing, families can't make a community a home.

With North Dakota being the envy of many states whose economic fortunes are less bright, and with all the economic success this region of the state has seen, do we need to talk about affordable housing? Won't the market just take care of what's needed?

Unfortunately, the answer is no. The market can't address affordable housing in a meaningful way – not without assistance. Not in urban America, and not in rural America either.

Why?

1. Building housing in rural communities can be even more costly than building in more urbanized areas. Projects tend to be smaller in size, which means that it is difficult to take advantage of economies of scale. Proximity to labor and materials is somewhat limited, which can drive up costs.

2. Financing housing projects in rural communities also presents unique challenges. National secondary markets are seldom designed to understand and/or appropriately value rural real estate projects. Appraisal standards make it difficult to identify "acceptable" comparable sales. And lenders often struggle to meet loan to value guidelines because of these gaps in valuation.

In addition to these cost factors, rural markets tend to be less attractive to many in the real estate industry.

3. Economic returns and economies of scale tent to be better elsewhere. The risk/reward ratio does not entice most large developers to enter rural markets.

4. The programs available to assist with financing affordable housing are complex and require a unique business model to successfully integrate them into daily operations. Again, many in the industry shy away from smaller projects in smaller markets because the paperwork burden is the same whether you are building 12 units or 72. And the return on 72 units is much better than it is on 12.

5. In smaller markets, it is also more difficult to maintain appropriate market share. An active developer can quickly come to control a large portion of the rental housing market in a rural community, again introducing unwanted risk for already risk-sensitive investors.

If a project is trying to maintain affordable rents, all this suggests that rural affordable housing projects typically require development subsidies to work economically. In our experience, a project that is striving to offer affordable rents will need at least a 50 percent equity position to make project economics work.

Absent development subsidy, rents will rise to levels that are unsustainable for long term occupancy, and unaffordable for all but the highest income families.

Who needs affordable housing?

The popular perception of oil country in western ND is one of instant millionaires and widespread prosperity. I suppose this is true in a limited sense. Fortunes have turned for many families because of oil revenues and energy-related employment. But for others, the rapid change in the housing market has caused financial hardship and thrown them into personal economic crisis.

1. Housing units that had previously been "affordable" to low and moderate income wage earners and retirees may suddenly become unavailable because they are sold to new owners and re-purposed to meet other housing needs. These families are then required to move and search for housing that often does not exist.

2. Even if physical displacement does not occur, economic displacement often does. Rents are rising in many housing projects that were previously affordable. While there is no doubt that some market adjustment was probably warranted (because rents were too low to be sustainable before), the extreme changes in price seen in many energy sector communities has caused significant financial hardship for low and moderate income households.

3. Housing demand has far outstripped housing supply in most western ND communities. As such, many families who have moved to ND to work are forced to live in marginal conditions, often homeless while waiting for suitable housing to become available.

4. This issue doesn't just affect new arrivals. Individuals who lose housing because they can no longer afford market rents can be thrown into homelessness or an otherwise precarious housing situation because they have no viable options.

Is the western ND housing issue one of availability or affordability?

In other words, if we built more market rate housing would the problem be solved?

In one sense, **Yes**. More housing – of any type – takes the pressure off of the supply side of the market. But since the market will only produce units it can afford to produce, we can't expect this housing to serve everyone's needs. In a roundabout way, all new housing helps alleviate the housing crisis because it affects the availability of housing, thus decreasing overall housing market pressures.

But in another sense, **No**. The risk/reward ratio that applies to housing development in rural North Dakota will not usually create housing that is affordable to the average, main street worker.

This is where the difference between availability and affordability becomes most stark.

The unfettered, unassisted market will not create housing units that are affordable to low, moderate, and middle income households. And most older, low rent units no longer exist because market pressures have forced rents upward. This means that people earning moderate wages ($12/hour or less) will often struggle to make ends meet. Unless they are willing to become homeless, their housing budget begins to overwhelm their overall household budget, and other non-housing expenditures must be curtailed.

In a market like the one in western ND, without housing that is tied to affordability requirements, market pressures will eliminate any latent affordability that does happen to exist. Rental market dynamics will feel more like San Francisco than Stanley. And situations like the one in Mountrail County today, will become more common.

In Mountrail County, the County Housing Authority has had Section 8 vouchers go unused. Not because no one needs the rental assistance, but because the families who need the assistance can't find apartments they can afford to rent and/or that are renting at or near HUD's allowed fair market rents. These housing markets essentially went from semi-depressed to hyperactive in a period of less than two years. Communities that had traditionally seen HUD's fair market rents as a "high rent" are now only able to see rents at those levels in their rear view mirror.

What can the federal government do to help address the housing shortage in western ND?

Put simply, the answer to the hearing topic is that housing markets in western North Dakota have been stressed by the economic activity associated with energy development, and that increased development of affordable rental housing in rural North Dakota is important for continued community success.

With both single family home prices and apartment rents rising rapidly because of an imbalance between supply and demand, there is no single solution that will alleviate the crisis. But there are several things we can do to help bring the market back into balance and I appreciate the opportunity to talk about how federal actions could spur that development.

1. **Continue programs that work for rural housing**

USDA Section 538 Rental Housing Guarantee is a multifamily loan guarantee offered by USDA Rural Development to provide long term fixed rate financing for multifamily projects in rural communities. The program holds real promise as a mechanism for stable, long term fixed rate financing to support a wide variety of housing project types.

USDA MPR (Multifamily Preservation and Revitalization) is a USDA pilot program in its fifth year as a demonstration. It essentially allows USDA Rural Development to work with new and current owners of USDA subsidized rental properties to refinance existing debt and re-capitalize aging projects to ensure their long term sustainability and affordability. Seeing this program made permanent would go a long way to helping the USDA stabilize subsidized housing projects all over rural America. Without MPR, preservation of existing affordable USDA 515 housing becomes even less feasible than it is today.

2. **Make existing affordable housing tools work better for rural projects**

Rural projects often struggle to complete for limited investor resources. As you know, Mr. Chairman, rural North Dakotans are conditioned to help themselves. There are numerous examples of communities that have banded together to invest in their own future success.

I had the privilege of working with people in the community of Ray, which is 25 miles east of Williston, to build three new single family homes. They wanted to make sure that families who were interested in living in Ray had the opportunity to do so. When we started the project, there was no housing available in the community.

More than 20 individuals and businesses from that community decided to invest in themselves by buying shares in a community investment pool. They then tasked these resources with the job of creating new housing. Lutheran Social Services worked with First National Bank and Trust out of Williston and CommunityWorks North Dakota out of Mandan to help the Ray investors leverage their resources to get all three homes built and sold. They, like many small town residents, were willing to invest in themselves. In this instance, they had the opportunity to do so.

This is not always the case for other types of affordable multifamily housing. I would argue that locally-engaged capital sources exist. I believe these resources can be mobilized to create affordable housing in rural communities — if they are given the opportunity to invest.

The low income housing tax credit program (LIHTC) is arguably the most important tool for creating affordable housing of the last 25 years. Yet LIHTC doesn't always work well in rural areas. There are four program reforms that could directly benefit production of affordable, tax-credit financed housing in western ND.

1. **Extend the Tax Credit Assistance Program (TCAP) to include 4% credits.** This would open the door to more projects, given the competitive nature of the 9% credit program. 4% credits are more readily available than 9% credits (since they are awarded non-

competitively) and could help smaller projects successfully use this resource to fund affordable housing projects.

2. **Bring more investors into the LIHTC program.** Within the last 5 years, the national pool of tax credit capital has decreased. As traditional equity investors like Fannie Mae, Wells Fargo, and other large national corporate investors, have seen reduced profits and an accompanying reduction in their appetite for an income tax credit, the availability of capital to affordable housing projects has been cut almost in half.

   There are several solid proposals to increase the investor pool and, consequently, the capital available to support affordable housing development. These reforms will lead to better pricing – more dollars per credit – producing more equity, and ultimately making more affordable housing developments—including rural projects—financially feasible.

   a. Allow carryback of tax credits for 5 years. This provision, currently included in S. 3141 and S. 3326 assures investors that they will be able to use the tax credits they are buying, even if their income tax liability is fluctuating from year to year.

   b. Allow people to invest in their communities by creating tax credit certificates for small project investors. Current tax credit regulations only allow real-estate-development professionals to invest their resources in LIHTC projects. This prohibits many sources of local capital (individuals and businesses) from using the tax credit program as a mechanism to help their communities. The provision could be applied specifically to small (ex. projects with less than $1,000,000 in tax credits) or rural projects as a way to boost the availability of equity in smaller projects that often struggle to attract national investors.

   c. Include S Corporations in the list of entities eligible to invest in tax credits. As an example of the impact this change could have on equity sources in rural areas, it is my understanding that roughly 60% of community banks in the Midwest would are in this category and would now be allowed to help their communities by becoming tax credit investors. Another potentially significant source of locally-grown capital made available to investment in affordable housing.

3. **Help create new affordable housing**

Create the National Housing Trust Fund. The availability of equity is essential to the creation of affordable housing. Minimizing project debt is the only way to help keep rents low. The proposed National Housing Trust Fund could be an important source of equity for both rural and urban affordable housing projects, helping to fill the need for equity that exists in projects that offer affordable rents to low and moderate income households.

Closing

Enterprise Community Partners, the ACTION Network, and many others from around the country have identified tax credit reforms as essential to opening to door to more affordable housing development. They will have a positive impact not only on urban projects, but on rural as well. **More investors bring more capital which opens the door to more projects in places that are otherwise likely to be overlooked.**

Tax credits haven't always been a big source of development capital in small town ND but, I believe the importance of this tool, both the 4% and 9% credits, will increase, given the current market pressures. We are seeing more and more situations where subsidized apartment units are being taken out of their respective subsidy programs (HUD or USDA) so their owners can rent them on the open market.

The owners are making a logical economic decision in that they can realize greater returns in today's housing market by renting the units without rent and income restrictions imposed by the subsidy program. But the impact on low income households is extremely deleterious.

Once these units are lost, they are virtually impossible to replace. Even if we can build new affordable units with LIHTC and other affordable housing programs, the rent subsidy that was previously available to the tenants is gone.

However, I would still argue that replacing lost affordable units is extremely important, and LIHTC can be key funding source for these new affordable housing projects. They will provide a long term guaranteed source of income targeted rental housing that will remain affordable for at least 15-30 years. In a market that is as volatile as western NDs, that assurance of available affordable housing is critical.

People are desperate for housing. They are desperate to reunite their families and make a home together – in rural North Dakota. But living in a camper, or a car, or a room in someone's basement is not a sustainable lifestyle. Good jobs or not, people won't stay if they can't build a life. And safe, quality, affordable housing is an essential component of continued community success.

As a non-profit housing developer working in rural North Dakota, we feel privileged to have the opportunity to engage with communities in addressing these challenges. Lutheran Social Services of North Dakota is committed to strengthening communities and families, and we stand ready to assist North Dakota communities in building a stronger future.

Respectfully submitted,
Jessica Thomasson
Director, Lutheran Social Services Housing, Inc.
Fargo, ND

May 28, 2010

The Honorable Senator Kent Conrad
530 Hart Senate Office Building
United States Senate
Washington, DC 20510-3403

Transmitted via e-mail: Caitlin_Brosseau@conrad.senate.gov

Dear Senator Conrad:

We greatly appreciate your past support of affordable housing legislation and we are pleased that you have invited Lutheran Social Services to testify at an upcoming hearing on rural housing. As you know, affordable housing is crucial in this economy. Families must have access to decent, safe, affordable homes if they are to contribute to healthy communities and economic recovery.

We now urge you to co-sponsor two bills necessary to reinvigorate affordable rental housing investment in North Dakota. Senator Bingaman has introduced a bill, S. 3141, which includes our carryback proposals. Senator Cantwell has introduced a bill, S. 3326, which includes the carryback proposals and the expansion of the exchange program to include 4% credits.

We ask that you co-sponsor both of them as a demonstration of your continued commitment to making affordable housing available for hardworking North Dakotans.

In addition to cosponsoring these bills, we strongly urge you to ask Senate Finance Committee Chairman Max Baucus and Ranking Member Charles Grassley to include them as part of the small business jobs bill (H.R. 4849).

We understand that your office is very busy, but these issues are critical for the future of affordable housing, and the Senate will consider their version of the small business bill very soon.

Sincerely:

Jessica Thomasson, Lutheran Social Services of North Dakota
Gary Stenson, MetroPlains
Terry Hansen, Grand Forks Housing Authority
Lisa Rotvold, Beyond Shelter
Rob Knoll, CommunityWorks North Dakota

The CHAIRMAN. Thank you all.

Let me just go bing, bing, bing, down—right down the line, because we're time-challenged, in terms of getting to Watford City for the next hearing there.

John, in your—from your experience, what could or should the Federal Government do or not do that would be most important?

Mr. BOYD. I think help communities with their infrastructure needs.

The CHAIRMAN. Infrastructure for those communities that have a high energy impact, something like that?

Mr. BOYD. By something, you know, where the population has probably doubled——

The CHAIRMAN. Yeah.

Mr. BOYD [continuing]. In 3 years, maybe 4 years.

The CHAIRMAN. And the infrastructure we're talking about would be water and sewer.

Mr. BOYD. Yeah.

The CHAIRMAN. OK.

Matt, what's your assessment? What should we do—not do?

Mr. MILES. Well, I would parrot Mr. Boyd's comments. I think that the Federal Government could assist in providing big-picture infrastructure—major sewer, major water, major road infrastructure—and then, you know, private developers, in the single-family world, will do the infill, the small streets, and whatnot. But, long term—as somebody brought up, a San Francisco-like atmosphere—long term, what we—what needs to be avoided is overtaxing or overstressing of existing systems, and then create some kind of situation where there has to be large impact fees in order to sustain.

The CHAIRMAN. OK.

So, what I'm hearing from the first two is a focus on the infrastructure piece of this.

What say you?

Ms. THOMASSON. I would actually concur. I think, if you had to figure out something that would have a very immediate impact, it's figuring out how to help get that infrastructure in place. Because if there is no land to develop, there is no development that can happen, regardless of what programs there are.

The CHAIRMAN. OK. Well, think we've got pretty good agreement.

Ms. THOMASSON. Yeah.

The CHAIRMAN. Congressman Pomeroy.

Mr. POMEROY. I found this to be a very, very helpful panel; an important component of making today's hearing so informative, because Senator Conrad's on the Finance Committee, and I'm on the Ways and Means Committee. You've come up with tax incentive to help move things along, that's right in our wheelhouse, so I will be very interested in further information you have on those programs.

And I hear you loud and clear on—it's expensive to build out infrastructure, but before you have the infrastructure, you can't have a lot of the housing that we need to get constructed. So, clearly, I think, at State and Federal levels, we've got to be attentive to that.

Thank you very much.

The CHAIRMAN. If I could just ask—Mayor Hynek is still here. I don't know if Mayor James is still here.

[Laughter.]

The CHAIRMAN. You going to play the piano?

Mayor James still here. And Ward's still here.

Let me just ask you quickly, for the record—we've heard from this panel, really strong consensus that Federal Government's most

useful role would be in infrastructure. Would you agree with that? This is Mayor Hynek I'm addressing the question to.

Mr. HYNEK. Yes, I would agree with that. We are—we're up against it, on a couple of real important items in our city, and we just simply don't have the funds available at this point in time to——

The CHAIRMAN. OK. And you've got that debt-limit issue.

Mr. HYNEK. Yep.

The CHAIRMAN. Right?

OK. Mayor James?

Ms. JAMES. Yes, we would strongly agree with that, too.

The CHAIRMAN. All right. Mayor James agrees, for the record.

Was our recorder able to get that? OK. OK, I want to make sure we capture this.

Mayor Koeser?

Mr. KOESER. Yes, definitely. That's the big issue. If you have to try to put the cost of that major infrastructure—first of all, it goes into the price of the lots at some point, which makes them cost prohibitive, so then you get away from—we need affordable housing, and that is more difficult. We have to put in—and infrastructure is extremely expensive right now.

The CHAIRMAN. OK. Thank you all.

We've got to wrap this up, to get to the next hearing in time.

I very much appreciate the contribution of all the witnesses.

Thank you, to our Federal officials who've come. I've heard you—hope you've heard, loud and clear, what these witnesses have told us.

Mr. POMEROY. Mr. Chairman, for the record—it's a little off-topic, but an announcement—I just became aware of this in the course of our discussion—that Governor Art Link died this morning. And, clearly, there have been no finer example of statesmanship, common sense—prairie decency, Alexander, North Dakota, native, led our State through a period of extraordinary development pressures during his time in leadership. And ask that we remember Grace and the family in our payers. And keep Governor Link's example in mind as we look at how to work our way through the challenges we've been talking about today.

Thanks, Senator.

The CHAIRMAN. I'm glad you mentioned it. And I think now it's public. So, missed—a very fine man, just turned 96 years of age on the 24th. So, he got to see his 96th year. And I know he was looking forward to being with his——

[Whereupon, at 2:30 p.m., the hearing was adjourned.]

FIELD HEARING ON INFRASTRUCTURE INVESTMENTS: PROMOTING ECONOMIC GROWTH AND IMPROVING SAFETY ALONG THE U.S. 85 CORRIDOR

TUESDAY, JUNE 1, 2010

U.S. SENATE,
COMMITTEE ON THE BUDGET
Watford City, North Dakota

The Committee met, pursuant to notice, at 3:28 p.m., 1st International Bank Building, 120 North Main Street, Watford City, North Dakota 58854, Hon. Kent Conrad, Chairman of the Committee, presiding.

Present: Senator Conrad.

[presiding].

OPENING STATEMENT OF SENATOR CONRAD

The CHAIRMAN. I'll bring the hearing to order.

We've just received the sad news that Governor Link passed away this morning. And so, I'd ask that we observe a moment of silence in his memory.

[A moment of silence was observed.]

The CHAIRMAN. Thank you.

Governor Link—we are going to miss a great man, and our thoughts and prayers go to Grace and the family. We are told that a service may be on Saturday. And we await further news on that. But, we appreciate everybody's showing their respect for, really, a remarkable man.

Thank you all very much for being here today. This is actually the third hearing that I've held now, on Highway 85. I did two hearings last year—one in Williston and one in Dickenson. Gene was out to see me recently, and we talked about the benefit of doing a hearing in this location, as well, to try to rivet the point of the importance of upgrades to Highway 85. And that's why we're doing this hearing today.

I want to welcome everyone to this hearing, especially welcome my good colleague Congressman Pomeroy, who has been able to join me here today.

This is a hearing—official hearing of the Senate Budget Committee. And as a result, we will be operating under the rules of the U.S. Senate, and an official record of this hearing is being kept.

The title of this hearing is "Infrastructure Investments Promoting Economic Growth and Improving Safety Along the U.S. 85 Corridor."

I want to begin by welcoming our distinguished witnesses today. We have two panels.

Our first panel includes our distinguished and excellent director of North Dakota's Department of Transportation, Francis Ziegler; and Watford City mayor, Kent Pelton. That's a very good first name. And the last name is good, too.

Our second panel will include McKenzie Country sheriff, Ron Rankin; and McKenzie County Job Development Authority executive director, Gene Veeder; and Rugged West Trucking operations manager, Bruce Erickson.

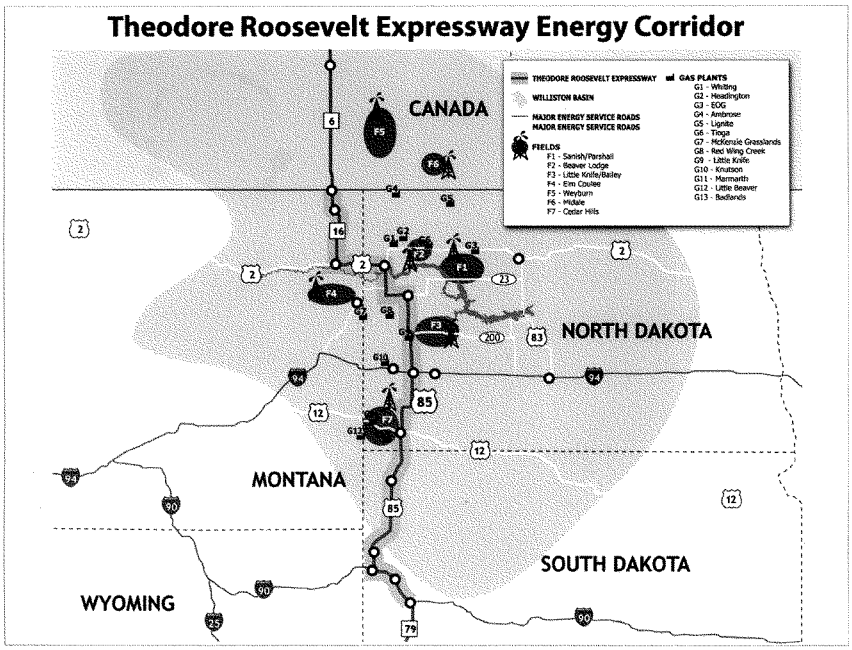
I appreciate all of the witnesses being here today, and I look forward to hearing from you all.

The timing of this hearing is especially important because this Friday I will be convening a Transportation Committee transportation summit in Bismarck with the Secretary of Transportation, Mr. Ray LaHood. The summit is part of the Secretary's nationwide tour to solicit feedback from local communities as the administration puts together its highway bill. I want to make certain that we are able to share with him your concerns about what is happening in this corridor.

I also want to be able to lay on the record, as best we can, the substantive case for improvements on Highway 85. I believe we have a very powerful case to make. We want to make certain we leave no stone unturned in our attempt to make that case persuasively.

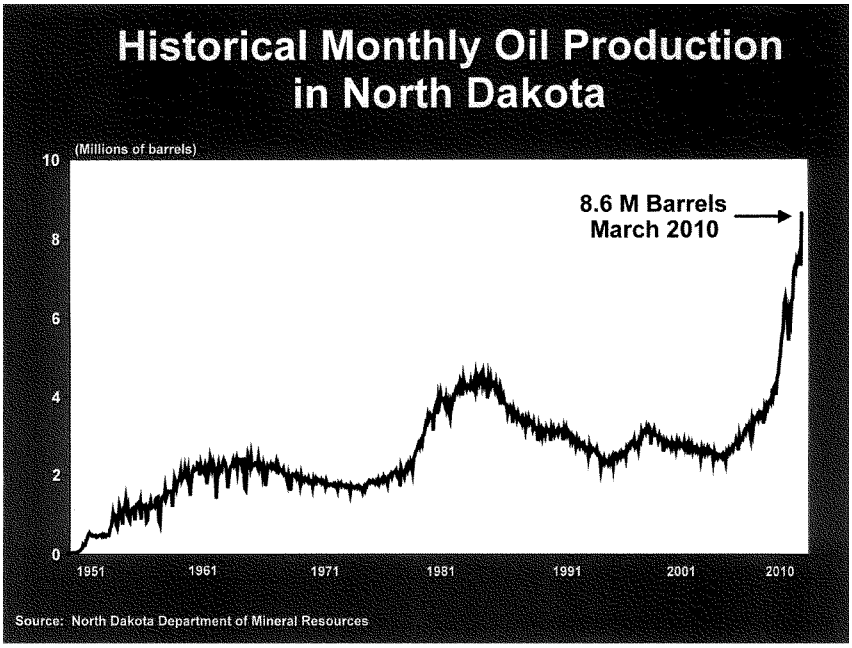
As I have indicated, this is really the third hearing I've done on the subject, and I very much appreciate the Secretary of Transportation, our North Dakota commissioner, for participating in those hearings, as well; and also appreciate their dedications of additional resources last year to address several stretches along Highway 85, improvements that will be made to make this a "super–2" highway, providing passing lanes and other enhancements between Williston and Watford City, as part of its 2010–2013 construction plan. I think all of us know that more needs to be done, that this is an area that is developing so rapidly that it's really hard to keep up with what needs to be done. But, we need to put a focus on those needs and urge everyone at the Federal and State level to help us accomplish the improvements that we really desperately need in this corridor.

This map shows why Highway 85 is so important to the energy production in our State.



We have major gas plants and oilfields scattered up and down this road. We need to ensure that Highway 85 has the capacity to handle the increased activity.

The oil boom in the Bakken Formation has dramatically increased oil production in this part of the State.



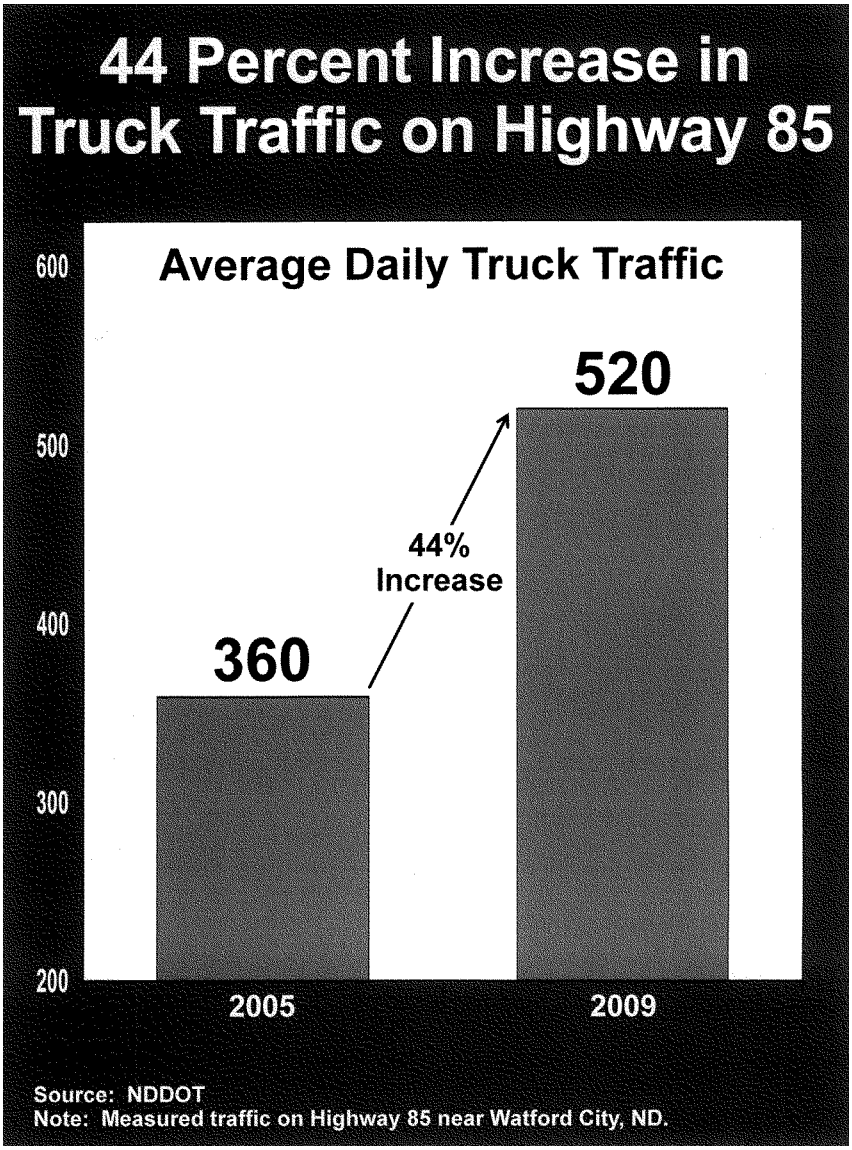
This chart, if we go to the next one, shows the really dramatic increase, as we've gone to production of 8.6 million barrels a month, as of March of this year. With further production in the Bakken and the discovery of the Three Forks Formation, we can expect additional production in this area.

Let's go to the next slide, if we can, Matt.

Highway 85 represents a critical lifeline for this energy development. Specifically, 400,000 barrels a day are produced in the corridor, and a large percentage of it is hauled over Highway 85 to tank farms for transport via pipeline. And the 400,000 barrels a day I'm referencing here is not only production in North Dakota, but, obviously, in Montana, as well.

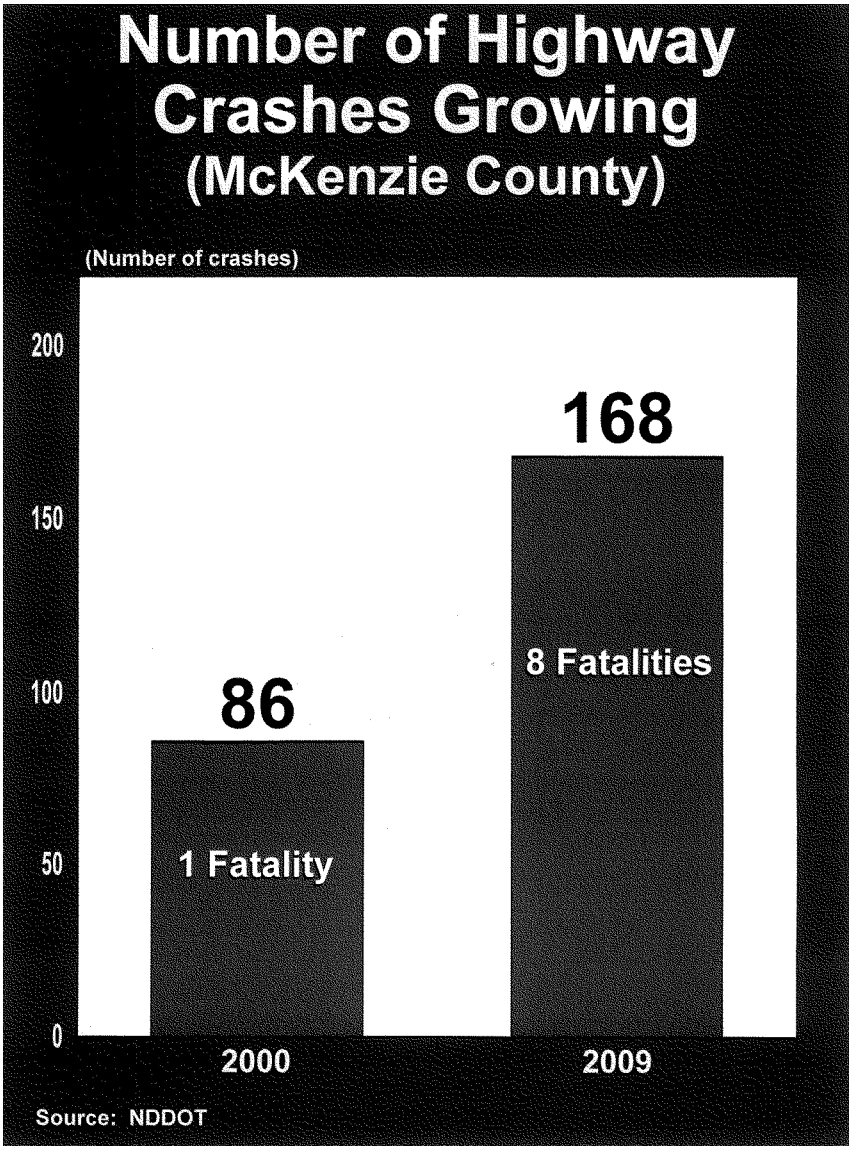
The highway connects six major east-west highway systems that service these energy developments. And the highway serves as a major route for the transport of oil rigs, pipes, steel, and supplies. And all of us who have driven up and down Highway 85 have encountered those trucks. My grandfather used to say, "Hill, truck, curve—hill, truck, curve." And we've all experienced that on Highway 85.

We also have significant and growing manufacturing and agriculture businesses in this area that rely on Highway 85 to transport their products.



The result is that Highway 85 has seen a huge spike in truck traffic. Truck traffic on 85 near Watford City increased 44 percent between 2005 and 2009. Unfortunately, the highway was not designed to handle these loads—the increasing number of heavy trucks, the oversized loads that travel on them. And as a result, the road needs improvements to foster continued growth, and to better serve the communities in the area, and to ensure a safe travel route. I want to emphasize, safety is of increasing concern.

Let's go to that next slide, if we can, Matt.



With the growing traffic and wear and tear on the area roads, we have seen a disturbing increase in the number of crashes. In 2000, there were 86 crashes on McKenzie County roads, with one fatality. Last year, there were 162 accidents, with eight fatalities. Several of those fatalities occurred on Highway 85. I'd like to hear from our witnesses what we can do to make Highway 85 safe.

As I noted, now is an important time to focus on our transportation infrastructure, because the new highway bill is beginning to be developed. It's worth remembering that North Dakota benefited greatly from the last bill. As a conferee on that bill, one of the ne-

gotiators between the House and the Senate, I made certain that North Dakota received significant funding for our highways and transit.

In that bill, we received $1.5 billion, a 31-percent increase over the previous bill. Annually, that averages out to $234 million for highways, with additional funding provided for transit. We did very well, in comparison to other States, receiving $2 for every dollar we send the Federal Government. That put us in about fourth place in the country, among the States, in terms of our return for dollars sent Washington. In other words, only three States did better than we did in getting dollars back from the Federal Government. And we think that's fair, given the fact that we are a rural State, we're a big State, and yet, we are a State that is critically important to the country. We're important for our agricultural production, for our energy production, and for our national defense contributions made by our bases.

I also fought hard to have Highway 85 designated a high-priority corridor. That designation means that Highway 85 is eligible for special corridor funding from the Federal Highway Administration. And we're going to need to bring this to the attention of our friends from the Federal Highway Administration that will be here on Friday with the Secretary.

In terms of the next highway bill, I will be focusing on these priorities:

I believe the next bill must identify sufficient funding so that the infrastructure investments are secure and robust over the longer term. States and communities must be able to rely on them. In other words, we've got to have a stable and secure funding source.

Next, any new highway bill must maintain recognition that rural transportation needs are vital to the Nation.

And finally, I'll fight to secure funding from long-term investments for our nationally important corridors, like Highway 85.

So, I'm particularly interested in hearing from our witnesses today on the immediate investments that are needed in Highway 85, and what future investments are required to support the growth in this area and the safety of those using this road.

With that, I want to turn to my able colleague, Congressman Pomeroy, for his opening remarks. And then we'll go to the first panel.

Congressman Pomeroy, by the way, serves on the very powerful Ways and Means Committee, in the House, that plays such a significant role in funding any highway legislation, and so, will play a critically important role in the energy future of our State.

Congressman POMEROY.

STATEMENT OF HON. EARL POMEROY, U.S. REPRESENTATIVE FROM NORTH DAKOTA

Mr. POMEROY. Senator Conrad, thank you very much. I'm very pleased to join you on today's hearing.

As we looked at our respective recess work schedules, we were each going to be in the northwestern part of the State, we were each going to be focusing on infrastructure and housing, and it just

made sense to combine the meetings. I'm very pleased you are adding a bicameral flair to this hearing by including a House guy.

We understand that our local leaders, under the crush of development, are so busy. We didn't want to take any more of your time than required. But, we absolutely need to have a vigorous back-and-forth with you during this period of time so that we fully understand the rapidly changing circumstances that you're dealing with and we identify the Federal areas that can play an important role in helping in this period of time.

I thought Highway 85 made sense as a high-priority area long before I knew much about the Bakken play. I felt like the possibilities—major north-south area—the delegations that have come in to see me, including even representatives as far as Texas, along a route that could be hooked up in this fashion, made an awful lot of sense.

But, what has become a rational, national highway artery strategy has now given way to a development impact that has presented urgent demand to build out this infrastructure and improve it to four-lane capacity, to the fullest extent we can.

I'm very pleased Brad Bekkedahl, a city commissioner in Williston, able to come down Watford City for this meeting. He was a driving force for many, many years in pushing Highway 2 to move from two-lane to four-lane. Finally, with a very successful fight won in the highway bill, we were able to have the resources to make that move and summon the political will, as a State, to get it done. Brad—when it comes to making two-lane roads—four-lane roads, I'd start with Bekkedahl as a guy you want to confer with.

So, I'm very please you're here.

The last thing I would mention relates to the remarks that Senator, and chairman, made, relative to our dear friend Art Link, now departed. I was at a public event with him 2 weeks ago. He summoned me to the table. He wasn't as mobile as he once was, but just sharp as a tack. And he talked to me about highways up in this area, and specifically Highway 85, running through his old home territory. I promised him that I would come and see him—come to he and Grace's apartment—and we were going to talk about the impact on Highway 85.

So, I believe that, even as we internalize this news, that our Governor has left us, at the age of 96, we do honor to his memory in two ways today; one, by continuing the public work. If there's one thing Art Link stood for, he was a public man and cared about the greater good. So, I think that every one of you who has spent the time and distance to travel here does honor to Governor Link, his memory, today.

And then, specifically, because the last thing he wanted to talk to me about was Highway 85, and I—we had an exchange on the topic for a couple, 3 minutes at this event, looking forward to the longer conversation that will never happen. I believe, by specifically focusing on this issue, we will be doing precisely what Governor Art Link would want us to be doing this afternoon.

So, thank you for including us, Senator.

And on to business.

The CHAIRMAN. Thank you. And that's a special—gives special relevance to the hearing.

I also, before we go further, want to recognize Lance Gaebe, who is here as deputy chief of staff of the Governor.

Lance, thank you very, very much for joining us. And I think that sends a signal of the Governor's interest in this subject, as well. So, thank you very much for taking your time to be here, as well.

With that, we'll turn to our first panel. And we'll start with director of North Dakota's Department of Transportation, Francis Ziegler.

Let me just say, one of the things I am especially appreciative from Francis, of being here, is—Francis has a lot of credibility in Washington with my colleagues. And when we have a hearing and Francis is involved in it, it confers additional credibility on the case that we're trying to make. So, I am especially appreciative that he's here today.

Director Ziegler.

STATEMENT OF FRANCIS ZIEGLER, P.E., DIRECTOR, NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

Mr. ZIEGLER. Mr. Chairman, Congressman, good afternoon.

I'm Francis Ziegler, director of the North Dakota Department of Transportation. And I want to thank you for the opportunity to appear before the committee today. And thanks for your interest in improving transportation in North Dakota.

Today, I'd like to address a number of broad transportation issues that you've already touched on, and on Highway 85 Corridor, as well as some of the other roads in the immediate area that we've been working on.

North Dakota has been working hard to improve transportation. Transportation infrastructure investment results in many benefits: creates jobs, strengthens the economy, improves safety, and improves mobility for citizens and businesses.

The Department of Transportation recently held public input meetings across the State to discuss transportation. Preliminary input illustrates the following: Residents want more infrastructure, and that's across the State. Residents are concerned about traffic increases, especially in western North Dakota, due to the energy industry. And public expectations are growing for load-carrying capacity and wider roads.

The State of North Dakota increased its financial commitment to transportation infrastructure with a $1.35-billion transportation funding bill. This year, the Department of Transportation has the largest construction season in the history of the department, with approximately $423 million in projects on nearly 2,000 miles of roadway, statewide. Projects include regular Federal aid, stimulus, emergency relief, and State funding.

Specific to the energy-area projects, in the energy area, there are many transportation investments to be completed between 2010 and 2013.

The first map that I have up here—it's part of the attachment—shows the immediate area. You—and you can see that. It's the map on your right, Senator. More than $60 million will be contracted for

improvements to the U.S. Highway 85 Corridor, which includes a super–2 concept between Watford City and Williston.

We're going to be adding safety improvements. We're adding a three-lane section that includes intermediate left- and right-turning lanes from Highway 2 to the Missouri River, which is about 2—just a touch over 2 miles, just south of Williston, south of Highway 2. Adding several turn lanes and numerous intersections between the Missouri River and Highway 200 East, which is south of Watford City.

We're regrading the section south of the Long X Bridge, located south of Watford City. And a climbing lane will be part of that new regraded section.

On the Highway—in addition to that, we're going to be doing a lot of other work on Highway 85. We're doing microsurfacing, which is to get rid of any ruts that might have occurred, depressed cracks, and those types of things, that are, as you say, due to the heavy loads. So, we'll be—also be doing that.

But, in other areas, on Highway 23 we'll—next year, we'll start regrading and adding a new asphalt paving west of the Four Bears Bridge. Overlay and rumble stripes, will be added this year, east of New Town. And turn lanes will be added at a number of intersections east of New Town this year. And reconstruction is in the future for the city of New Town, within the city limits.

On Highway 8, we'll be widening and regrading north of Stanley. That road is breaking up badly now; and so, rather than just doing an overlay, we're going ahead with regrading that portion, too.

Other safety projects: We're lowering speed limits on various highways in this area. We're installing rumble stripes in the Williston district in 2010. And, on all two-lane highways, include shoulder and centerline throughout the entire State in the next 3, 4 years, depending on how the funding comes in.

Rumble stripes have been shown to be a real safety effort that many States have been using in the past, and have found it to be very successful. I've had a lot of comments on the rumble stripes that we already have in North Dakota, and that they're working very well.

DOT is also working in partnership with the Petroleum Council to create additional programs to promote safety on highways, especially in the western part of the State.

While the State of North Dakota is doing more than ever, Federal investment in transportation is critically important. Federal aid accounts for 52 percent of the current biennial construction budget, and that's without ARRA. It's, therefore, critically important that legislation reauthorizing the Federal Highway Program serve the needs of rural States like North Dakota.

And, Senator, we're very pleased that the—Secretary of Transportation LaHood will be in Bismarck, as well as Victor Mendez, the Federal Highway Administrator, so that we can visit with them about some of the issues we're facing as rural States.

A strong——

The CHAIRMAN. Can I——

Mr. ZIEGLER. Federal——

The CHAIRMAN [continuing]. Stop you on—right there, Francis, just for the record?

Fifty-two percent is Federal aid, not counting the Recovery Act money. What is it with the Recovery Act figured in for the years that it's available?

Mr. ZIEGLER. Senator, with the Recovery Act, it's 57 percent.

The benefits from transportation infrastructure investment:

First, job creation. Jobs are created on projects. They're created in supplier and support industry. They're also a boost to the general economy from onsite and supplier jobs.

As you can see from the second map, many projects are completed—and that's this map right here, to my left—many projects are completed and planned with transportation investments covering the entire State. These projects create jobs, and positively affect economic development throughout North Dakota. And the way they affect economic development is by us being able to move loads. We have a strong ag economy, we have a strong energy economy. And those two are heavy users of our transportation system. So, it's important that we keep pushing for the funding.

Safety is another benefit. Preserving and improving roads in pursuit of smooth surfaces, appropriate roadway width, guardrail, signage, and pavement marking is essential in our mission of the DOT providing a transportation system that safely moves people and goods. These investments are also important to the economic competitiveness of North Dakota and the Nation.

The needs are there to justify increased investment. Various commissions and reports have called for increased surface transportation infrastructure investment. Our AASHTO Association has recommended, for a 6-year period of 2010 to –15, proportional increases in highway and transit programs over the next 6 years, of $375 billion and $93 billion, respectively, for those programs. It's essential that rural States like North Dakota participate at least proportionately in any growth of the Federal Highway and Transportation Program, both as to formula and other funds.

The authorizing committee in the House of Representatives has outlined a partial legislation. This outline apparently calls for increases in Federal Highway program authorizations of about $110 billion over the next 6 years, compared to the last 6 years. We're concerned about proposals with programs for metro areas with a population of over 500,000 or more—large, nationally significant projects—highspeed rail and infrastructure banks. We prefer that increased funding be provided to highway formula programs.

We recognize—and it's important that I indicate this—we recognize that there are major needs in urban areas. However, we just don't want rural States to be forgotten.

In short, even though all details of this bill are not set, we're very concerned that the House legislation would provide North Dakota with considerably reduced share of transportation program dollars, compared to the current law.

The highway industry has been hit by inflation during the past decade. From 2001 to 2010, inflation has gone up about 87 percent. And so, we've lost some spending power there.

Now I'd to say how the Nation benefits from Federal transportation investment in and across rural States. Reasons why are that, first of all, rural States serve as a bridge for truck and personal traffic. They enable ag exports and serve the Nation's ethanol

production and energy extraction industries, are a lifeline for remotely located and economically challenged citizens, and enable people and business to traverse the vast tracks of sparsely populated land. In addition, the Federal aid system, extending beyond the NHS, enables ethanol—enhanced investment needed to address safety on rural roads.

Moving beyond——

The CHAIRMAN. We can put a word in for ethanol, too.

Mr. ZIEGLER. Yeah. There you go.

The CHAIRMAN. That's OK.

Mr. ZIEGLER. That would be twice, now.

[Laughter.]

Mr. ZIEGLER. Essential service—on page 5—essential service to agriculture, natural resources, and energy.

Governor Hoeven's economic strategic plan has identified ag, energy, advanced manufacturing, technology-based businesses, and tourism as growth industries, because North Dakota holds a competitive advantage in these areas. These have been the focus of much of North Dakota's investments in economic development. Ag is one sector of the economy where the United States has consistently run an international trade surplus and not a deficit.

North Dakota is a major contributor of energy production in the State. Good roads throughout the State are important to our Nation becoming energy-independent and providing agricultural products to feed the world.

Over the past three decades, and nationwide, railroad branch lines have been abandoned. Over 1500 miles were abandoned in North Dakota. The reduced reach of the rail network means many areas, particularly rural areas, must rely heavily on trucks to move the goods. With increased truck traffic, it's a challenge for us to continue to move the products. The challenge is compounded by the necessity of imposing spring load restrictions. The underlying reason for imposing spring load restrictions is inadequate roadway thickness. Like congestion, load restrictions slow down commerce and add greatly to the cost of doing business.

Funding and financing considerations: North Dakota faces a number of serious obstacles in preserving and improving the highway system within their borders. We're very large, we're very rural, we have low population densities, and have extensive highway networks. These factors make it very challenging for rural States to provide, maintain, and preserve a modern transportation system that connects to the rest of the Nation.

We also ask your help to avoid increases in regulatory requirements. The next authorization bill should not make Federal Highway Program delivery more complicated. We do support the Federal Highway Administration's initiative of "Every Day Counts" to streamline the project development process. Additional rules and regulations will add time to program and project delivery costs. Senator, the Every Day Counts is a brainchild of Victor Mendez, the Federal Highway Administration director, and we certainly do support that.

One area where new regulation—concerns performance standards. I am on a task force of AASHTO regarding performance standards. And we use performance standards in North Dakota.

And we certainly support performance standards. But, what we believe is that each State should be allowed to establish its own specific targets for those performance measures.

We're a strong supporter of the approach to program delivery and current law, and that most funds are apportioned to the States. And we conduct public outreach and then prioritize project selection. We think rapid growth in discretionary Federal programs should be avoided.

Transportation is a good investment. Many people have invested in new forms of communication in their home, spending more than ever before on items such as cell phones and Internet. Today an individual consumer will spend up to $500 a year on a cell phone bill compared to the national average of $109 for transportation. So, I say, transportation is a very good investment.

In conclusion, it's essential that Congress, through the reauthorization process, recognize that increased Federal investment in highways and surface transportation in rural States is, and will remain, important to the national interest. The citizens and businesses of our Nation's more populated areas, not only residents of rural America, benefit from good transportation network in and across rural States like North Dakota. With such legislation, we'll be better equipped to address transportation issues on the U.S. 85 Corridor, as well as elsewhere in North Dakota.

Senator that concludes my comments. And I will be happy to answer any questions you may have.

[The prepared statement of Mr. Ziegler follows:]

Statement of Francis Ziegler
Director, North Dakota Department of Transportation
before the
Committee on the Budget, United States Senate
on
Infrastructure Investments:
Promoting Growth and Improving Safety Along ND Highway 23
New Town, North Dakota, July 8, 2010

Mr. Chairman:

Good morning. I am Francis Ziegler, Director of the North Dakota Department of Transportation (NDDOT). Thanks for the opportunity to appear before the Committee today and thanks for your interest in improving transportation in North Dakota.

Today, I'd like to address several broad transportation issues, North Dakota Highway 23 and other roads in the immediate area.

North Dakota is Working Hard to Improve Transportation

Transportation infrastructure investment results in many benefits. It creates jobs and strengthens the economy. It improves safety. It improves mobility for our citizens and businesses. With these and other benefits in view, NDDOT is working hard to improve transportation in the state.

This year, the Department has the largest construction season in its history underway, with approximately $450 million in projects on more than 2,000 miles of roadway statewide. The work includes projects under the regular federal program, ARRA, emergency relief and state funding.

Transportation System important in western North Dakota

The NDDOT has recognized the importance of the transportation system in western North Dakota. From 1999 to 2009 approximately $886 million has been invested in preserving and improving the corridors in this area. Some of the projects include:

- Highways
  - 2; 22; 23; 40; 50; 85; and 1804

The DOT has been aggressive in the Energy Area of the western part of the state, with recent pavement preservation projects and many transportation investments planned to be completed from 2010-2014 as shown on the attached map (Attachment 1), including projects on ND 23 and other highways on the local system in the New Town area. Construction projects include the following highways:

- **US Highway 85**
  - Senator you have had several hearings on this corridor, reviewing transportation needs.
  - In 2010 and 2011, the DOT will put more than $70 million worth of improvements into Highway 85, working toward the Super 2 highway concept which include:
    - Adding a three-lane section which includes intermittent left and right turning lanes from Highway 2 to the Missouri River.
    - Adding several turning lanes at numerous intersections between Highway 200, East of Highway 85, and the Missouri River.
    - Re-grading and adding a climbing lane south of the Long X Bridge.
    - Adding multiple passing lanes between Watford City and Williston.

- **ND Highway 23 and other highways**
  - In the New Town area, Highways 23, 22 and 8 are in one of the fastest traffic growth areas in the western part of the state. Construction projects in this area include:
    - **ND Highway 23**
      - Improvements involve adding turn lanes at 6 intersections.
      - NDDOT staff is now scoping (reviewing needs for future improvements) ND 23 to see what we should do in this area to meet the growing traffic needs.
      - Also scoping ND 8 from ND 23 north to US 2.

    - **ND Highway 8**
      - Widening and regrading north of Stanley. ($10.6 M)

Safety is a priority

We are always concerned about the safety of the traveling public. We are continuously monitoring crash and fatality rates in the area and evaluating the data to implement safety projects.

Recent Safety Projects include:

- Lowered speed limits on Highway 8, Highway 23 and on a four mile section of Highway 22 north of Dickinson.
- Installation of centerline and edgeline rumble stripes in the Williston District in 2010 and on all highways across the state as funding becomes available. Research has found edgeline and centerline rumble stripes to be effective in reducing head-on crashes, opposite direction sideswipe crashes, and rollovers.
- The NDDOT is also working in partnership with the Petroleum Council to create educational programs to promote safety on roadways.

Oil Impacts on Transportation System – Highway 23 and Other Energy Area Projects

The recent oil boom in western North Dakota is an economic benefit for the state, but it also creates challenges for the DOT and local entities.

- We are planning for transportation needs. We are working with Upper Great Plains Transportation Institute (UGPTI), which is studying local needs in oil producing counties, and the DOT is developing what we need to do in the future as part of our normal budget process.

- Recognizing the transportation challenges the DOT has several projects planned over the next four years (2010-2014), in western North Dakota. Approximately $468 million will be invested in road projects throughout the 17 oil producing counties ($400 million on state roads, $68 million on local roads.)

- Moving forward with these projects depends on federal and state funding at or above current funding levels.

The tables below illustrate portions of the road network that have seen an increase in traffic and truck loads, according to our most recent traffic counts.

TABLE 1 – Annual Average Daily Traffic (AADT) count for all types of vehicles

Highway	Location	Year	Average AADT	High AADT	Low AADT	% Growth 2006-2009
ND 8	Richardton N to Lake Sakakawea	2009	329	1565	120	15%
ND 8	ND 23 N to Stanley	2009	2454	4430	1675	301%
ND 22	Dickinson N to ND 23	2009	1869	3685	1040	73%
ND 23	Watford City to ND 1804	2009	2304	6460	1270	70%
ND 23	ND 1804 to US Hwy 83	2009	2095	7300	1268	31%
ND 37	ND 23 N of Parshall E to US 83	2009	832	2325	300	7%
ND 73	ND 23 to ND 22	2009	650	690	610	209%
ND 1804	ND 37 W & N to Montana Line	2009	889	4720	120	21%
US 85	Williston to SD line	2009	1810	4335	1110	15%

TABLE 2 – Truck Annual Average Daily Traffic (TAADT) count

Highway	Location	Year	Average TAADT	High TAADT	Low TAADT	% Growth 2006-2009
ND 8	Richardton N to Lake Sakakawea	2009	95	170	20	120%
ND 8	ND 23 N to Stanley	2009	744	905	685	629%
ND 22	Dickinson N to ND 23	2009	398	585	278	268%
ND 23	Watford City to ND 1804	2009	625	880	70	274%
ND 23	ND 1804 to US Hwy 83	2009	369	920	218	167%
ND 37	ND 23 N of Parshall E to US 83	2009	113	455	30	28%
ND 73	ND 23 to ND 22	2009	138	140	135	318%
ND 1804	ND 37 W & N to Montana Line	2009	188	705	30	31%
US 85	Williston to SD line	2009	437	990	223	34%

- While we have made significant transportation improvements in the New Town area, including Four Bears Bridge, we recognize that there has been an increase in traffic. I have asked staff to immediately start scoping ND 23 and ND 8 corridors to address this traffic growth.

- The State of North Dakota and the NDDOT are doing more than ever in this area, however, federal and state funding for transportation projects is essential for the growing needs of the energy industry in the western part of the state. Federal dollars are important for state residents who are working hard to serve the energy needs of our nation today and in the future.

Public Input illustrates transportation needs

NDDOT and the Upper Great Plains Transportation Institute (UGPTI) recently held public input meetings across the state to discuss transportation. During the sessions, UGPTI presented results of a study on highway service levels and investments in North Dakota and gathered input about prioritizing transportation funds and levels of service.

Preliminary input indicates that:

- Residents want more transportation infrastructure across the state.
- Residents are concerned about traffic increases, especially in western North Dakota due to the energy industry.
- Public expectations are growing – for load carrying capacity and wider roads.

Recognizing the benefits of transportation, the State of North Dakota increased its financial commitment to transportation infrastructure by enacting a $1.35 billion transportation funding bill. This comprehensive transportation package for North Dakota funds maintenance and enhancement of the state's transportation system. It includes an unprecedented sum in non-matching State General Fund dollars. It also includes almost $600 million more to rebuild our roads and help cities, counties and townships recover from statewide flooding.

Federal investment in transportation is critically important. Federal aid accounts for 52% of our State's current biennial transportation budget (excluding ARRA). So, federal dollars are important to our efforts to preserve and improve North Dakota highways, including highway 23. It is, therefore, critically important that legislation reauthorizing the federal highway program serve the needs of rural states like North Dakota.

Even though our state's large road network has few people to support it – North Dakotans pay more than the national average to support Federal surface transportation programs. The per capita contribution to the Highway Account of the Highway Trust Fund attributed to North Dakota is $161 compared to a national average of roughly $109 per person. This is a per capita contribution 48 percent above the national average.

So, while North Dakota is investing in transportation, federal investment in surface transportation in our state is critically important.

Let me turn now to a discussion of why a strong Federal investment in surface transportation in North Dakota is not just in North Dakota's interest, but also very much in the national interest.

Benefits from Transportation Infrastructure Investment

There are many benefits from transportation infrastructure investments. Job creation is one. Jobs are created on the site of projects. Jobs are created in supplier and support industries. There is also a boost to the general economy from the onsite and supplier jobs.

Safety is another benefit. Preserving and improving roads in pursuit of smooth surfaces, appropriate roadway width, guardrails, signage and pavement marking is essential to our mission of providing a safe transportation system. Better highways and the availability of public transit help us in our daily lives, ensuring good access to school, medical facilities, work, and other important destinations.

These investments are also important to the economic competitiveness of North Dakota and the nation. Businesses reviewing whether to stay or locate in North Dakota want to be sure that goods arriving at or leaving their facilities move safely and efficiently.

Federal Surface Transportation Issues

Clearly, our ability to continue to invest in surface transportation infrastructure in North Dakota will depend in part on Federal surface transportation funding levels. The needs are there to

justify increased investment. Various commissions and reports have called for increased surface transportation infrastructure investment. For example, the American Association of State Highway and Transportation Officials (AASHTO) has recommended, for the six-year period 2010-2015, proportional increases in the highway and transit programs over the prior six years -- to $375 billion and $93 billion, respectively -- plus funding for other programs.

Another factor relevant to funding levels is inflation. The highway industry has been hit hard by inflation during the past decade. From 2001 through April of 2010, North Dakota's overall construction cost index increased by 87 percent. The purchasing power of highway dollars has been reduced significantly and program funding has not kept pace with these rising costs (Attachment 2). A transportation bill without significant growth for North Dakota will severely hurt our ability to invest in transportation infrastructure throughout the state.

Beyond the overall funding level, however, to achieve continued progress in North Dakota it is essential that rural states like North Dakota participate at least proportionately in any growth of the Federal highway and transportation program, both as to formula and other funds.

In the authorizing committee in the House of Representatives a proposal has been outlined and partial legislation reported from a subcommittee to the full committee. This proposal apparently calls for increases in federal highway program authorizations of about $110 billion over the next 6 years compared to the last 6 years ($337 billion compared to $227 billion).

We are concerned about a number of aspects of this proposal. It would: create a large new program funding only metro areas with a population of 500,000 or more; and provide funds for large nationally significant projects, a high speed rail program and infrastructure banks, all of which seem geared to assist urban areas of the country. We recognize that there are major needs in urban areas; however, rural needs are essential too. It does not appear that rural states like North Dakota would be able to utilize the funds in these new programs – even though these new programs seem to represent most of the proposed increase in the federal highway program.

In that regard, we were very pleased that bipartisan rural mobility legislation, S. 3485, was recently introduced in the United States Senate by Senator Barrasso, you, Mr. Chairman, and 11 other Senators. That legislation basically takes the position that, if new legislation is to dedicate significant funds to discretionary highway programs only for large metropolitan areas, the legislation must also include a significant counterpart program of funding for rural states. We are hopeful that efforts like this will ensure that final legislation will not ignore the national interest need to continue to invest significant Federal transportation funds in rural states as well as urban ones.

In addition, we do not support funding new large discretionary programs, particularly programs that are not accessible to North Dakota. We would prefer that increased funding be provided to highway formula programs, enabling all states to participate in program growth.

The House proposal also would increase the share of overall transportation investment dedicated to transit. North Dakota joins AASHTO in supporting, instead, proportional growth in the highway and transit programs.

In short, even though all details of this proposal are not set, we are very concerned that the House legislation could provide North Dakota with a considerably reduced share of transportation program dollars compared to current law. We will appreciate your efforts, Mr. Chairman, to avoid any such adverse result in the final legislation.

The Nation Benefits from Federal Transportation Investment In and Across Rural States

Let me turn now to reasons why authorization legislation should provide rural states like ours at least their current share of the Federal highway and surface transportation programs.

Federal-aid highways in our state, not just those on the National Highway System --

- serve as a bridge for truck and personal traffic between other states, advancing interstate commerce and mobility;
- enable agricultural exports and serve the nation's ethanol production and energy extraction industries, which are located largely in rural areas;
- are a lifeline for remotely located and economically challenged citizens;
- enable people and business to traverse the vast tracts of sparsely populated land that are a major characteristic of the western United States; and
- provide access to scenic wonders and facilitate tourism.

In addition, the scope of the Federal-aid system, extending beyond the NHS, enables enhanced investment to address safety needs on rural routes.

Further, Federal investment in rural transit helps ensure personal mobility, especially for senior citizens and people with disabilities, connecting them to necessary services. Federal public transportation programs must continue to include funding for rural states and not focus entirely on large metropolitan areas.

Bridge States Serve a National Connectivity Interest for People and Business

Let me amplify a few of these points. Highway transportation between major metropolitan areas is simply not possible without excellent roads that bridge those vast distances. This connectivity benefits the citizens of our nation's large metro areas because air or rail frequently will not be the best option for moving people or goods across the country. The many commercial trucks on our rural interstate highways demonstrate every day that people and businesses in major metropolitan areas benefit from the nation's investment in highways in rural states.

The most recent FHWA data on tonnage origins and destinations shows that just over 59 percent of the truck traffic using North Dakota's highways does not either originate or terminate within the State. This is well above the national average of about 45 percent, underscoring that North Dakota's highways help connect the nation in a way that benefits other states.

Essential Service to Agriculture, Natural Resources, Energy

A significant portion of the economy in our State is based on agriculture, energy production, and natural resource extraction. Governor Hoeven's economic strategic plan has identified agriculture, energy, advanced manufacturing, technology-based businesses, and tourism as growth industries because North Dakota holds a competitive advantage in those areas. These have been the focus of much of North Dakota's investments in economic development.

Agriculture is one sector of the economy where the United States has consistently run an international trade surplus, not a deficit. Over the last two decades roughly 30 percent of all U.S. agricultural crops were exported.

Apart from its value to the state, there is a strong national interest in ensuring that agricultural products and natural resources have the road network that is needed to deliver product to markets, particularly export markets. In 2009, North Dakota led the nation in the production of barley, durum wheat, spring wheat, navy beans, pinto beans, canola, flaxseed, honey, lentils, dry peas, sunflowers, and dry edible beans. Last year North Dakota was the fastest growing export state in the nation. A key part of the road network supporting the movement of agricultural products is roads below the National Highway System, where crops begin their journey from point of production to destination.

North Dakota is a major contributor of energy production in the nation. Our state is currently fourth in the nation in oil production and contains large coal reserves. Good roads throughout the State are important to our nation becoming energy independent and providing agricultural products to feed a hungry world.

Over the last three decades, tens of thousands of rural rail branch lines have been abandoned nationwide. In North Dakota since 1980, over 1,500 miles of railroad branch lines have been abandoned. The reduced reach of the rail network means that many areas, particularly rural areas, must rely more heavily on trucks to move goods. This was noted by USDA in its April 2010 "Study of Rural Transportation Issues."

With increased truck traffic in North Dakota and much of the upper Midwest, it is a challenge for us to continue to move these products. That challenge is compounded by the necessity of imposing spring load restrictions. The underlying reason for imposing spring load restrictions is inadequate roadway thickness. During the spring thaw, the ground is waterlogged and can't support a fully loaded 18-wheeler on a highway of standard thickness. Many states, especially those in the north, have little choice given their current funding, but to limit the amount of weight on highways in the spring. Like congestion, load restrictions slow down commerce and add greatly to the cost of doing business.

Tourism Access

Without a strong road network in rural states, access to many scenic destinations would be limited. Tourism is vital to the economy of North Dakota.

Funding and Financing Considerations

Rural states like North Dakota face a number of serious obstacles in preserving and improving the Federal-aid highway system within their borders. We:

- are very rural,
- are geographically large,
- have low population densities, and
- have extensive highway networks.

These factors make it very challenging for rural states to provide, maintain, and preserve a modern transportation system that connects to the rest of the nation. Our low population and traffic densities also mean that tolls are not an answer to funding transportation needs in rural areas. Our budget to maintain (plow snow, apply pavement marking, patch roads, seal cracks, repair signs and guardrails) the state transportation system is approximately $9,200 per mile each year. It takes approximately 2,700 vehicles per mile per day, using today's Corporate Average Fuel Economy (CAFÉ) standards, to generate this amount of revenue from state motor fuel taxes. Very few state highways average 2,700 vehicles per mile per day in North Dakota.

Avoid Program Complications or Increases in Regulatory Requirements

The next authorization bill should not make federal highway program delivery more complicated. The current highway and transportation program is complex. We would like to see processes streamlined so we can deliver projects more efficiently. We see proposals for additional requirements as counterproductive. It takes three to four years in North Dakota to complete a project that requires full environmental process clearance. We support the Federal Highway Administration's "every day counts" initiative to streamline the project development process. However, any new statutory provisions that add requirements and regulations will add time to program and project delivery and increase project costs.

One area where new regulation is being actively discussed concerns performance standards and targets. Performance measures are important, and we in North Dakota use them in our state. We believe, however, that national performance standards should be general in nature and that each state should be allowed to establish its own specific targets.

Areas being discussed that may involve some program changes and may involve new regulation concern "livability" and transportation planning to address climate change. These are often discussed in terms of providing options for transit, biking, and walking. From the perspective of this state, that raises concern. For many Americans, particularly in rural areas, those options will not serve their transportation needs. Good highways will also be essential to livability in rural and many other areas. If livability is to be part of the next highway and transit legislation, it must be framed in a flexible way that allows rural states and communities to pursue solutions that are practical for them.

We are strong supporters of the approach to program delivery in current law – that most funds are apportioned to the states. We, like other states, conduct public outreach and then prioritize project selection. We are concerned that various proposals would give more emphasis to distribution of funds to projects based on decisions at USDOT, not in the states. Disproportionate growth in Federal

discretionary dollars inevitably would reduce the portion of the program distributed to states. While we do not expect a Federal program without some discretionary funding decisions made by USDOT, we think rapid growth in discretionary Federal programs should be avoided.

Before closing, let me also note that while we want a surface transportation reauthorization law that is good for North Dakota enacted as soon as possible, without a reauthorization law, states and business are faced with operating under program extensions. While we are currently operating under an extension through the end of 2010, we suspect that some will say that any next extension should be short. Short extensions make program delivery less effective and discourage investment by the private sector. So, if there are to be extensions, they should be of practical length, perhaps a year.

Transportation is a Good Investment

Much of today's surface transportation infrastructure was built by our forefathers as an investment in our country. Today that investment is taken for granted as everyone automatically expects a strong transportation network. Many people have invested in new forms of communication in their home, spending more than ever before on items such as cell phones and Internet. Today it is not unusual for an individual consumer to spend $500 a year on a cell phone bill, compared to the national per capita average contribution of $109 a year into the Highway Account of the Highway Trust Fund. We think this illustrates that transportation is a good buy.

While we recognize that we do have challenges on our system, we do have many hundreds of miles that are in good to excellent condition. Continued investment is necessary to ensure our roadways stay in good condition and that we can improve those that are not.

Conclusion

In conclusion, it is essential that the Congress, through the reauthorization process, recognize that increased federal investment in highways and surface transportation in rural states is, and will remain, important to the national interest. The citizens and businesses of our nation's more populated areas, not only residents of rural America, benefit from a good transportation network in and across rural states like North Dakota. With such legislation, we will be better equipped to address transportation issues in the ND 23 corridor as well as elsewhere in North Dakota.

That concludes my statement. I'll be happy to respond to any questions you may have.

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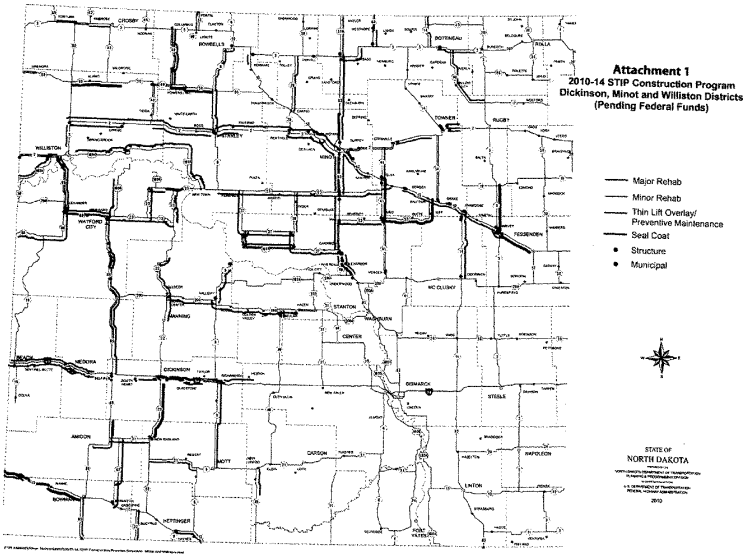
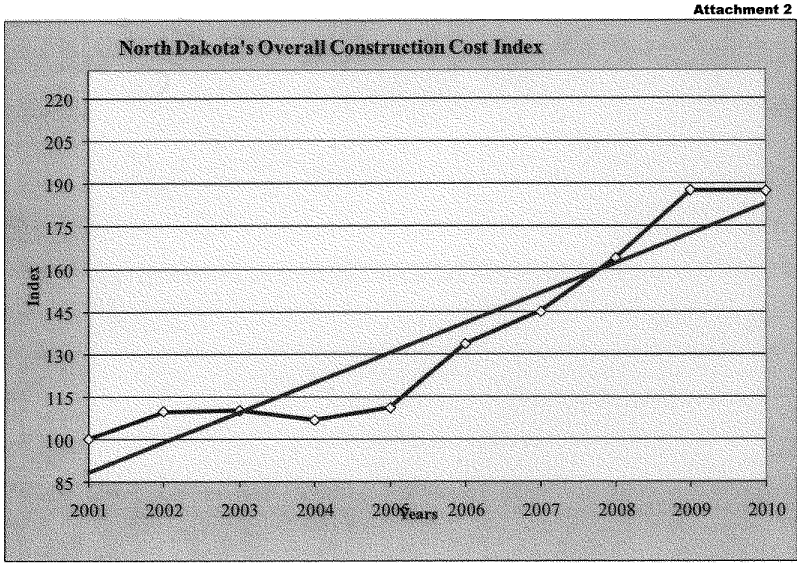


Attachment 2



The CHAIRMAN. Thank you, Director Ziegler, for your always excellent testimony.

Typically, we would go to Mayor Pelton next, but, for the purposes of this record, I hope, Mayor, that you'll indulge us as we direct a series of questions to the Director, because I want to have this record, with respect to his testimony, all in one piece. And I—because I think that's important for the purpose of our colleagues.

First of all, Director Ziegler, do you have an estimate of how many jobs are created for every billion dollars that's put into the transportation infrastructure?

Mr. ZIEGLER. Senator, yes I do. That number was 35,000 jobs for each billion dollars. And I believe, now, with some of the inflation factors, it's in the neighborhood of 29,000 jobs per billion dollars invested.

The CHAIRMAN. So, for every billion dollars we put into the national transportation infrastructure, the most recent, credible, objective estimates is that creates 29,000 jobs. Is that correct?

Mr. ZIEGLER. That is correct, Senator.

The CHAIRMAN. And that's 29,000 jobs that are created in America. Wouldn't that be the case?

Mr. ZIEGLER. That's correct.

The CHAIRMAN. So, when we look at places where Federal expenditure creates jobs, this is a good place to look. And I'm talking about American jobs.

No. 2, when we look at a place that helps our competitive position in the world, this is also a good place to look.

So, to me, this is a place where you get a double bang for the buck; you get American jobs and you get improved competitive position for American industry. And isn't that what you have found, as well, Director Ziegler, that it is important to improving the competitive position of the United States that we improve the efficiency of our transportation system?

Mr. ZIEGLER. Mr. Chairman, that's very correct. In fact, at the Department of Transportation, we often say that you can't have an economy without good transportation.

The CHAIRMAN. I've often wondered—you know, as we travel across North Dakota, and we see the delays on a highway like 85—you go to Washington—if you go out on, the highway system in Washington, D.C., after 4 o'clock in the afternoon: stopped dead. What is the cost to this Nation of the delays of moving goods and services because our transportation infrastructure has not kept up?

I believe it would be in the tens and hundreds of billions of dollars that we're losing in competitive position.

Director Ziegler, do you know if AASHTO or any of your other related organizations have done a calculation on what the cost to the Nation is of not keeping up with our infrastructure?

Mr. ZIEGLER. Mr. Chairman, you're correct, it's in the billions, but I can't recall that number right now. It's in one of the AASHTO publications, and I would certainly get——

The CHAIRMAN. If you could——

Mr. ZIEGLER [continuing]. That for you.

The CHAIRMAN [continuing]. Provide that for the record, I think it'd be very useful.

The CHAIRMAN. Third question I want to go to—and, again, it's very important for the record, again, because we're going to have the Secretary of Transportation in Bismarck on Friday—the recommendation that your organization is making nationally for the next transportation bill—could you repeat those numbers? How much money you believe is important to put into the next transportation bill? That'd be a 6-year bill.

Mr. ZIEGLER. Mr. Chairman, our association, AASHTO, American Association of State Highway and Transportation Officials, has recommended a $375-billion investment in roads and bridges, and a $93-billion investment in transit.

The CHAIRMAN. So, the—and the $375 billion in the transportation part of the bill—that's roads and bridges——

Mr. ZIEGLER. That is correct.

The CHAIRMAN [continuing]. That's 6-year—that's a 6-year total, is it not?

Mr. ZIEGLER. That is correct, Mr. Chairman.

The CHAIRMAN. And the $93 billion in transit is also a 6-year total, is it not?

Mr. ZIEGLER. It is.

The CHAIRMAN. So, that is $468 billion, the combined cost of those two programs, in terms of the recommendation that your organization is making to us.

And can you tell us, over that period, how much the Highway Trust Fund will produce in revenue?

Mr. ZIEGLER. Currently, the Highway Trust Fund is producing $31 billion a year.

The CHAIRMAN. So, correct me if my math is wrong, but that tells me: $186 billion. So, that's a shortage of $282 billion, if we're going to fully fund this legislation and pay for it so it doesn't get added to the deficit or the debt. Is that correct?

Mr. ZIEGLER. That is correct.

The CHAIRMAN. So, somewhere we've got to find—if we're going to have a transportation bill that meets the needs of this country, we're going to have to find an additional funding source of $282 billion over the next 6 years.

Mr. ZIEGLER. That is correct.

The CHAIRMAN. And it's the position of your organization, AASHTO, the national organization, that this bill be paid for.

Mr. ZIEGLER. That is correct.

The CHAIRMAN. That we not just put it on the charge card, we don't just add it to the deficit, that we pay for it.

Mr. ZIEGLER. Correct.

The CHAIRMAN. And I—as the Budget Committee chairman, I strongly believe that is imperative.

I wanted to get those elements of testimony on the record.

Final point that I want to raise—and then we'll turn it to Congressmen Pomeroy—is the question of Highway 85. You've given an excellent review of what is the plan, going forward, with the funds available. And that's $60 million of projects that will enhance the efficiency of this road network and the safety of this road network. And—have I got the number correct?

Mr. ZIEGLER. That is correct.

The CHAIRMAN. And over what period is that $60 million?

Mr. ZIEGLER. That $60 million is between 2010 and 2013.

The CHAIRMAN. If you had additional funding, in terms of what you see as the need in this corridor, how much additional funding would you require?

Mr. ZIEGLER. Currently—Mr. Chairman, currently the Department of Transportation, as well as the corridor group, is looking at a corridor study. And that corridor study is not complete. And we're looking to get that completed very soon.

When we took the action to go to the super–2, it was because I already had enough information to know that we need it. Traffic had increased to the point where we needed to do something

quicker than we could have if we'd have waited for the corridor study, and waited for some very lengthy environmental documents.

But, we'll be looking at that corridor study to give us an idea of where to move next.

The CHAIRMAN. Do you have any idea of what that corridor study might tell us, in terms of the additional cost?

Mr. ZIEGLER. In terms of additional cost, I—Senator, I don't know exactly, but I can share this with you, that what we're doing an environmental document on, and that which we are now designing, the passing lanes, the super–2 concept, is in excess of a million dollars a mile.

The CHAIRMAN. A million dollars a mile.

And from Williston to Watford City, what's that mileage?

Mr. ZIEGLER. It's actually, in round numbers, 40 miles. But, when I say a million dollars a mile, it's a million dollars per constructed mile. I looked at the designs this morning, and we're doing six passing zones between here and Williston, and then six passing zones coming back again. So, they will be in excess of a mile long each. And I believe the latest estimate chief engineer Grant Levi gave me was, this total corridor cost will be about $66 million. Actually, the costs have gone up——

The CHAIRMAN. Well, how——

Mr. ZIEGLER [continuing]. Because we've lengthened some of those transitions and added one more passing zone.

The CHAIRMAN. So, how much is that?

Mr. ZIEGLER. Sixty-six million dollars——

The CHAIRMAN. Sixty-six million.

Mr. ZIEGLER [continuing]. That we're actually going to be investing in. And he just got that number this morning. But, it's all because of the passing lane, and the cost——

The CHAIRMAN. Sixty-six million.

Mr. ZIEGLER [continuing]. Has gone up on some of those——

The CHAIRMAN. Could you——

Mr. ZIEGLER [continuing]. Because we've added the transition and the length of each one, to make sure that you can get enough passing distance.

The CHAIRMAN. Let me just say, most of the people I talk to in this area believe very strongly we need four lanes here. I believe that. If we were to go to four lanes, what would that cost be?

Mr. ZIEGLER. The latest numbers are unbelievable; they're $2 million for each mile of road. They've gone up that high.

The CHAIRMAN. Wow. It just keeps moving up on us, doesn't it, the cost of all these things? The inputs to—everything on highway construction is going up much faster than the underlying rate of inflation.

All right. I—so, let's just, for the—so we capture it on the record—if we were to four-lane 85 in this highest-traffic corridor, what would that total cost be?

Mr. ZIEGLER. I believe it's 186 miles. It'd be—times 2——

The CHAIRMAN. Three hundred and seventy-two million dollars.

Mr. ZIEGLER. Yes. And that's—of course, those are today's numbers. That—the inflation rate has subsided a little bit, between 2009 and 1910. But, it's still progressing at about an—8 to 9 per-

cent per year. And that's typically because of fuel and asphalt costs.

The CHAIRMAN. So, it's—keeps going up 8 to 9 percent a year.

Mr. ZIEGLER. That is correct.

The CHAIRMAN. Well, I'm very glad that we've got this on the record, because I want to bring this directly to the attention of the Secretary of Transportation. You'll be there——

Mr. ZIEGLER. Yes, I will.

The CHAIRMAN [continuing]. On Friday. I think it is very important that we lay out to them what we're looking at, in terms of the cost, if this were to be done. We're not prejudging the corridor study. And you've got other priorities across the State. I certainly understand that; we all understand that. But, I think we can all see what's happening here. I mean, every time I drive out here, I mean, it's just—just keeps moving. This traffic count is off the charts.

Congressman POMEROY.

Mr. POMEROY. I'll be brief, Mr. Chairman, so we can get to the local input, very important for this record.

I think it mattered enormously that you were on the Conference Committee, representing the Budget Committee, but also looking after rural interests. And I'm anxious about a growing infatuation, in the House, with transit systems that might ultimately be placing, frankly, subways against highways.

Director Ziegler, in your—within your association, how do you see that one breaking out?

Mr. ZIEGLER. Congressman, our association supports keeping the same proportion between highways and transit that we currently have, which is about a 25-percent transit.

Mr. POMEROY. I think that's very important, as well. I mean, we—the—we have an awful lot of infrastructure to maintain, and—some folks like to think about the next thing we're going to build, but we've got a lot to maintain. If we don't maintain it, it's going to be far short of what serves the American public. But, as a national association, you have taken that position.

Mr. ZIEGLER. That is correct.

Mr. POMEROY. The House proposal took a different route. Do you recall the statistics—the breakout?

Mr. ZIEGLER. Congressman, the House proposal is closer to one-third for transit, rather than the 25 percent.

Mr. POMEROY. So, that, compounded with the donor- State/donee-State ratios will give us plenty to talk about as the new bill is constructed.

Mr. ZIEGLER. Congressman Pomeroy, I'm sure we'll be talking a lot about the donor/donee relationship, as my colleagues in the other States are already bringing that up.

Mr. POMEROY. I am surprised about the cost per mile. At $2 million per mile, that's the highest cost I've heard. I'm not doubting the factual basis. I just want to know why. I might have thought, with the economy slowing up a little, that we'd have ten more of a buy. You hear about bid openings, where the public's getting a buy. What in the world happened with roads?

Mr. ZIEGLER. One of the things, Congressman, is the fact that, when you take a look at a $2-million investment, you have to look

at all the bridges that are between—you know, that are on this same roadway. Highway 2 cost us $125 million for about 99 miles; let's—so, let's just say $1.2 million a mile. And that was without the bridges. Highway 2 had very few bridges; box culverts and, I believe, one or two bridges. I was in project development at the time. I'm sorry I can't recall all the bridges we had. But, Highway 85 has a whole lot more bridges than that, and a whole lot more tougher terrain. The terrain that we go through here is significantly more difficult.

Mr. POMEROY. OK.

Mr. Chairman, that concludes my questions.

Thank you.

The CHAIRMAN. Thank you. And thank you, Director Ziegler. I wanted very much to have your testimony and the questions all tied together for the record so that we can excise that, give it to our Secretary when he's here, give it to others, so that it's all of a piece. And I thank you very much for it.

Mr. ZIEGLER. Thank you.

The CHAIRMAN. Next, we're going to go to——

But, if you'd stay at the table, so that we—as we have local testimony that we could refer back to, Francis, for answers on questions that might come up.

Mayor, thank you so much for being here. We appreciate very much your leadership, and appreciate your willingness to go on the record, with respect to the needs of the local community.

STATEMENT OF HON. KENT PELTON, MAYOR, CITY OF WATFORD, NORTH DAKOTA

Mr. PELTON. Senator Conrad, Congressman Pomeroy, congressional staff members, I want to thank you for bringing this congressional budget hearing to Watford City, and for giving me the opportunity to testify regarding the importance of transportation infrastructure to the communities along Highway 85 Corridor.

In September of 2008, Senator Conrad spent the afternoon with us discussing the many concerns that we have in western North Dakota. The issue of highway funding was a major concern then, and is even more so today, with the additional traffic, especially with increased large tankers and semitrailers.

Again, my name is Kent Pelton. I proudly serve as Mayor of Watford City. For 33 years, I was a vocational agriculture instructor at our high school. And, currently, I acquire surface-use agreements for well sites, pipelines, access roads here in the Williston Basin. I drive Highway 85 several times every week.

It is interesting to note that today's topic focuses on transportation of goods and services along a corridor that brought the first settlers to this community. The Long X Ranch, the largest and most famous cattle ranch McKenzie County, is synonymous with cattle drives in the era of open range in Dakota Territory.

In their quest for grazing land, the Reynolds brothers drove their first herds from Texas north toward Montana in the spring of 1884. Hearing reports of stirrup-high grass, the brothers brought with them 4,000 longhorns into the Badlands of North Dakota. This is said to be the first herd of longhorns in the area.

The Reynolds established a ranch, in the mid-1880's, southwest of here, near the North Unit to Theodore Roosevelt National Park. By 1888, the Reynolds were bringing three herds a year into the Dakota Territory.

They named their ranch for their official brand, the Long X, which was one of the first two brands recorded in North Dakota. Much of the Long X Ranch is now part of the North Unit to Theodore Roosevelt National Park. And the name and history of the Long X lives on through the U.S. Highway 85 Bridge along the Little Missouri River.

Highway 85 Corridor, which includes the Theodore Roosevelt Expressway, connects many of the most notable names in U.S. history. Lewis and Clark, Theodore Roosevelt, Sitting Bull, George Armstrong Custer are synonymous with western North Dakota and South Dakota. This corridor brings tourism—tourists along the Theodore Roosevelt Expressway from Mount Rushmore, in the Black Hills, to Theodore Roosevelt National Park, and to historic sites along the confluence of the Missouri and Yellowstone Rivers, where Lewis and Clark left, in search of a passage to the ocean, and where Sitting Bull surrendered.

Today, the home—the region is home to what the U.S. Geological Survey calls "the largest continuous oil accumulation it has ever assessed." With 4.35 billion barrels of recoverable oil in place, the Bakken, as you said, is the huge play for domestic oil companies and individual investors. Geologists and oil industry officials are saying that we have a second Bakken that could literally double the Bakken's already prolific output, the Three Forks Sanish Formation lying directly underneath that Bakken Formation.

As we saw earlier in your testimony, daily production for Bakken wells in the Williston Basin exceeds 270,000 barrels of oil from 4500 wells. The Basin has over 100 rigs today searching for oil. And the highway system supports of over 300 different service companies and crew transports in the Basin.

Theodore Roosevelt Expressway provides a transportation corridor for oil rigs, for pipe, for steel, and for supplies from Edmonton, Calgary, Alberta to the north, and as far has Houston, Dallas, and Denver to the south. The highway allows the movement of oil and gas from wells to connection points and then on to processing facilities located either in-State or out-of-State. Exploration and extraction technologies use specialized equipment and services, many of which are not available in North Dakota, and must be purchased from out-of-State sources.

While oil operators present a mix of small to large firms, a majority of the predominant oil operators in North Dakota also have operations in other States. They operate in Utah, Colorado, Texas. Theodore Roosevelt Expressway is a collector corridor for six major east-west highway systems that service major development areas.

Production agriculture, which I was a part of for 33 years, serves as the third leg to the economy of our region. Trucks transporting spring wheat, durum, feeder cattle, and a host of other agricultural products to other States and countries make this region a primary exporter of agricultural foodstuff—foodstuffs. The Mondak region continues to diversify its agricultural production to ag processing and to shipping.

What does this mean for Highway 85 and for the Theodore Roosevelt Expressway? It means that existing highway—this existing highway system, that was built to support small farms, moving grain in single-axle trucks to market, and the station wagon taking the family on a daily outing, is being asked to support an industry using tankers and semitrailers with multiple wheels to transport goods.

The Long X Bridge, south of Watford City has become a bottleneck to traffic, moving more over-height equipment to the oil fields. North Dakota officials issued over 26,000 over-weight or over-height permits on roadways in and along Highway 85 in 2009, compared to 10,700 in 2005. Currently, our 2010 permits could total over 60,000 permits.

Tank—tanker trucks hauling crude and water up the steep grades in the Badlands are laboring in front of RVs and cyclists on the way to visit our national parks and tourism sites. Also, narrow shoulders and unstable weather, combined with heavy equipment and increased speeds, has placed the infrastructure in jeopardy, and have created safety issues for our citizens and workers.

In closing, I want to thank you for the support that you've given on past highway projects in North Dakota. My favorite example, of course, is the Four Bears Bridge on the Missouri River, near New Town. What a difference this bridge made—has made, not only for the citizens of McKenzie County and Mountrail County, but for the hundreds of other people and industries that use it on a daily basis.

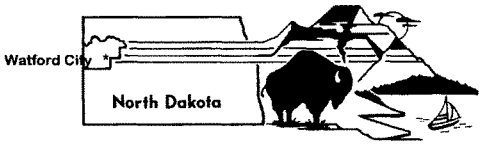
On behalf of the City, I want to thank you again for including this congressional budget hearing in Watford City, and urge you to continue your support in upgrading Highway 85 and the Theodore Roosevelt Expressway.

Thank you, Senator. Thank you——

The CHAIRMAN. Thank you.

Mr. PELTON. —Congressman.

[The prepared statement of Mr. Pelton follows:]



City of Watford City
Kent Pelton, Mayor
213 2nd St., NE
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Statement of Kent Pelton, Mayor of Watford City, North Dakota
United States Senate Committee on the Budget
June 1, 2010

Senator Conrad and congressional staff members. I want to thank you for bringing this Congressional Budget hearing to Watford City and giving me the opportunity to testify regarding the importance of transportation infrastructure to the communities along the Highway 85 corridor.

In September of 2008, Senator Conrad spent the afternoon with us, discussing the many concerns that we have in western North Dakota. The issue of Highway funding was a major concern then and is even more so today with the additional traffic, especially with the increase of large tankers and semi trailers.

My name Kent Pelton, I proudly serve as Mayor of Watford City. For 33 years I served as a Vocational Agricultural Instructor at our High School. Currently, I acquire Surface Use Agreements for well sites, pipelines and access road here in the Williston Basin and drive Highway 85 several times each week.

It is interesting to note that today's topic focuses on transportation of goods and services along a corridor that brought the first settlers to this community. The Long X Ranch, the largest and most famous cattle ranch in McKenzie County, is synonymous with cattle drives and the era of open range in Dakota Territory.

In their quest for grazing land, the Reynolds brothers drove their first herds from Texas north toward Montana in the spring of 1884. Hearing reports of "stirrup high" grass, the brothers moved their

4,000 Longhorns into the Badlands of North Dakota. This is said to be the first herd of Longhorns in the area. The Reynolds established a ranch in the mid-1880s, southwest of here, near the North Unit of Theodore Roosevelt National Park. By 1888, the Reynolds were bringing three herds a year into Dakota Territory. They named their ranch for the official brand, the "Long X" which was one of the first two brands recorded in North Dakota. Much of the Long X Ranch is now part of the North Unit of Theodore Roosevelt National Park. The name and history of the Long X lives on through the U.S. Highway 85 Bridge over the Little Missouri.

The Highway 85 corridor which includes the Theodore Roosevelt Expressway connects many of US Histories most notable names. Lewis and Clark, Theodore Roosevelt, Sitting Bull and George Armstrong Custer are synonymous with western North and South Dakota. This corridor brings tourists along the Theodore Roosevelt Expressway from Mount Rushmore in the Black Hills to Theodore Roosevelt National Park and the historic sites along the confluence of the Missouri River and Yellowstone, where Lewis and Clark left in search of a passage to the ocean and where Sitting Bull surrendered.

Today, the region is home to what the U.S. Geological Survey called "the largest continuous oil accumulation it has ever assessed." With 4.35 billion barrels of recoverable oil in place, the Bakken is a huge play for domestic oil companies and individual investors. Geologists and oil industry officials are saying we may have a "second Bakken" that could literally double the Bakken's already-prolific output, the Three Forks - Sanish oil formation lying directly underneath the Bakken.

Daily production from Bakken wells in the Williston basin exceeds 270,000 barrels of oil from over 4500 wells. The Basin has over 100 rigs searching for oil today and the highway system supports of 300 oil service companies and crew transports in the basin. Theodore Roosevelt Expressway provides a transportation corridor for oil rigs, pipe, steel and supplies from Edmonton, Calgary, Alberta to the North and Houston, Dallas and Denver from the south. The highway allows the movement of oil and gas from wells to collection points,

and then on to processing facilities located either instate or out-of-state. Exploration and extraction technologies use specialized equipment and services, many of which are not available in North Dakota and must be purchased from out-of-state sources

While oil operators represent a mix of small to large firms, a majority of the prominent oil operators in North Dakota also have operations in other states. TRE is a collector corridor for six major east-west highway systems that service major oil development areas.

Production agriculture serves as the third leg to the economy of the region. Trucks transporting spring wheat, durum, feeder cattle and a host of other agricultural raw products to other states and countries making this region a primary exporter of American foodstuffs. The Mon Dak region continues to diversify its agricultural production to ag processing and shipping.

What does this mean for Highway 85 and the Theodore Roosevelt Expressway?

It means the existing highway system that was built to support small farms moving grain in single axle trucks to market and the station wagon taking the family on a daily outing is being asked to support an industry using tankers and semi-trailers with multiple wheels to transport goods. The Long X Bridge south of Watford City has become a bottleneck to traffic moving over height equipment to the oil fields. North Dakota officials issued over 26,000 overweight or over height permits on roadways in and along Highway 85 in 2009 compared to 10,700 in 2005. Over 5,100 permits have been issued this year which could put 2010 totals over 60,000. Tanker trucks hauling crude and water up the steep grades in the badlands are laboring in front of RV's and cyclists on the way to visit our national parks and tourism sites.
Also, narrow shoulders and unstable weather combined with heavy equipment and increased speeds have places the infrastructure in jeopardy and have created safety issues for our citizens and workers.

In closing, I want to thank you for the support given on past highway projects in North Dakota. A perfect example of this is the 4-Bears Bridge on the Missouri River near New Town. What a difference this bridge makes for our community and everyone in the Williston Basin.

On behalf of the city, I want to thank you for holding this Congressional Budget Hearing in Watford City and urge you to continue supporting the upgrade of Highway 85 and the Theodore Roosevelt Expressway.

The CHAIRMAN. Thank you for your kind words. And thank you for your excellent testimony.

I'd like, at this moment, to ask the audience, by a show of hands, how many believe a part or all of Highway 85 ought to be four-laned—if we could just see a show of hands.

[A show of hands.]

The CHAIRMAN. That's about as unanimous as it can be. I think it would be unanimous, but our press representatives, by press ethics, are not allowed to vote at these things.

[Laughter.]

Voice: I voted.

The CHAIRMAN. You voted?

[Laughter.]

The CHAIRMAN. OK.

[Laughter.]

The CHAIRMAN. You can vote. OK. Good for you. Well, I'm glad you did.

And let the record show, if we can, that on that question, where the audience was asked, "How many believe Highway 85 ought to be four-laned, in part or all?" it was virtually unanimous.

Mayor Pelton, if I can, for a moment, take us to the question of safety—because we're going to have, on the next panel—the Sheriff is going to testify. I hope he will talk about that. But, from the perspective of the Mayor, are you concerned with the safety of this corridor? And what leads you to a conclusion, if that is your conclusion, that more needs to be done to make this roadway more safe?

Mr. PELTON. The amount of traffic that we have on Highway 85, and some of the other highways that connect to Highway 85, of course, has just increased by leaps and bounds. And they're bigger, heavier vehicles that can't stop as easily.

The CHAIRMAN. Let me ask you to pause a moment. I'm told the court reporter has to change tape.

Is that correct?

We need to pause just for a moment. I apologize for this, but it's a technical matter, to make certain that all of it is captured for the record.

[Pause.]

The CHAIRMAN. All right?

Please resume.

Mr. PELTON. OK. As I was saying, Highway 85, of course, is just a lot busier. We have a lot more traffic. There's times when I pull up to a stop sign, leaving Williston, or on a truck bypass here at Watford City, where it may take several minutes before I have an opportunity to get on the highway because it's backed up a block or two blocks—several blocks—with trucks. And we just have that—so much more traffic.

I know you saw the figures on our fatalities in—Highway 85 and Highway 23 have become probably the bloodiest highways in North Dakota. And it's simply because—not because our people don't know how to drive, it's because of the excess wear and tear on the highways, weather conditions, and excess traffic. And it is a—it's a major concern to all of us here in Watford City.

The CHAIRMAN. Mayor, one of the things I'm going to be asked, because part of the record here is—we had a vote of those in at-

tendance at this hearing—I don't know the numbers of people, but most of the seats are full here—one of the things that will be said to me is, "Well, that's not a representative sample of community opinion." In your judgment, is the vote that was just taken on the question of four-laning Highway 85—is that representative of public opinion?

Mr. PELTON. I would say public opinion is probably higher. A lot of——

[Laughter.]

Mr. PELTON. A lot of—when you visit with people on the street, you know, when they don't take into consideration the costs that we've heard and all of these different things that we've heard, they just say, "Why can't we be a four-lane highway?" and, "Why can't we have a southbound and a northbound lane, and not have multiple—u one lane like that?" And I would say it's probably higher than what you saw here in the room.

The CHAIRMAN. All right.

Director Ziegler, I'd like to come back to you for a moment on the question of, Do we have—I assume we do—different traffic counts for different reaches of the road—that is, for different segments of the road? And would that traffic count tell us that there are substantial differences on that 186 miles of 85? And would that tell us—well, why don't you answer that question and then we'll go to the next question.

Mr. ZIEGLER. Mr. Chairman, yes, we do. The traffic counts, as best as I can remember them from the corridor study—from the South Dakota border to I–94, are in the neighborhood of 1200 to 1500 vehicles a day. And north of I–94, they're in the neighborhood of 2,000 to 2500. As you get closer to Watford City, the traffic counts are in the neighborhood of 20-—I believe it as 26- to 2800 vehicles per day.

The CHAIRMAN. OK. And what is—is there a rule of thumb, Director Ziegler, with respect to what kind of traffic count justifies four-laning?

Mr. ZIEGLER. Mr. Chairman, there are several out there. Minnesota doesn't even think about a four-lane until they hit 12,000 vehicles per day. South Dakota's at—is at 6,000. Those are the two that I've talked to, personally.

The CHAIRMAN. So, we would not meet either of those tests.

Mr. ZIEGLER. Mr. Chairman, no, we wouldn't. In fact, you know, we talked about some traffic in other areas. There's more traffic between New Town and Highway 8 right now than there is anywhere on Highway 85 between the Four Bears Bridge and Highway 8, going north to Stanley.

The CHAIRMAN. We'd better——

Mr. ZIEGLER. That's——

The CHAIRMAN [continuing]. Do a hearing on that.

Mr. ZIEGLER. That's about 5,000 vehicles a day right now.

The CHAIRMAN. Five thousand.

Now, there's a difference, though, I assume, between what kind of vehicles we're talking about. And is that captured in this data? That is, here we have a disproportionate share of heavy truck traffic. So, does a "traffic count" count—does it differentiate between heavy trucks and passenger vehicles, for example?

Mr. ZIEGLER. Mr. Chairman, yes, it does. Each count has both the total vehicles and the truck count.

The CHAIRMAN. And how would our truck count relate to—so, these standards, when we're talking about 12,000 and 6,000—Minnesota, South Dakota—do they have a sub limit for heavy trucks?

Mr. ZIEGLER. Mr. Chairman, that I don't know. But, you know, typically, in North Dakota, our truck proportion is 25—in round numbers—25 percent of the total traffic. Up in this area, we're probably talking a little bit more. And I cannot recall those numbers, but I can get them for you as——

The CHAIRMAN. OK.

Mr. ZIEGLER [continuing]. Part of this testimony.

The CHAIRMAN. I think that'd be very useful.

The one thing I notice—I mean, it just—it appears to me—and I don't have any scientific data to support it—but, it just appears to me that the proportion of heavy truck traffic is much higher here than I see other places.

Mr. ZIEGLER. Mr. Chairman, it is high; there's no doubt about it. And as I shared in my testimony, we have a whole system that we have to address north of Jamestown, between Jamestown and Carrington—their average: 760 trucks a day. And I think I saw your number here being about 560. So——

The CHAIRMAN. Yeah.

Mr. ZIEGLER [continuing]. We're seeing, in North Dakota—and we've done testimony to several of the transportation committees and in-term legislative committees where we're talking about not only the oil movements, which is a major movement, but the ag product that we're taking off the fields right now is substantial. And then adding to that the ethanol and some of the manufacturing that we've got, we've got traffic generators that are significant.

The CHAIRMAN. Now, your earlier reference to—that was Highway 52? Highway 52?

Mr. ZIEGLER. Highway——

The CHAIRMAN. Heavy truck——

Mr. ZIEGLER. Highway 281.

The CHAIRMAN. 281.

Mr. ZIEGLER. It's 281 and 52, combined.

The CHAIRMAN. 281 and 52, and we've done a hearing on that, that you——

Mr. ZIEGLER. Mr. Chairman——

The CHAIRMAN [continuing]. Participated in.

Mr. ZIEGLER [continuing]. Yes, we have, in Jamestown.

The CHAIRMAN. So, we've done a special hearing on that road network?

Mr. ZIEGLER. That is correct.

The CHAIRMAN. And from what I hear you saying, we'd better think about doing 23.

Mr. ZIEGLER. We're looking——

The CHAIRMAN. The regional——

Mr. ZIEGLER [continuing]. At that. In fact—Grant Levi is in the audience here—we have—we've already flown that area to take a look at what it is we're going to have to do. We're doing a scoping document.

The CHAIRMAN. OK.

Mr. ZIEGLER. Like I said, we're going to start regrading, next year, west of the Four Bears Bridge, of the new road that's there now. And we need to look at what we need to do to the rest of the system. While we're doing intersection improvements—there are no shoulders on that road at all——

The CHAIRMAN. Yeah.

Mr. ZIEGLER [continuing]. And it's very narrow and concerning.

The CHAIRMAN. Yeah. Well, that's important for the record, as well.

Let me just conclude this part of the discussion by saying, the other thing that has to be taken into account is topography, it would seem to me. In terms of safety issues, it'd be a combination of road capacity, traffic, topography—this is a pretty unforgiving area, in terms of what we're dealing with, in terms of what my grandfather used to refer to as "hill, truck, curve." So, that's got to be taken into account, as well.

In the interest of time, I think we'd better go to the second panel.

Anything that you'd want to add, Congressman Pomeroy?

Mr. POMEROY. One quick question—26,000 permits, 1909; maybe 60,000 in 2010—how do you process all that volume? I mean, to me, that's extraordinary. Every time down the road, you've got to get a permit. Do you have expedited ways of, basically, facilitating the essential paper flow so the traffic flow can move?

Mr. ZIEGLER. Congressman, the Highway Patrol actually gives out the permits, and we have—or they have, I should say—an—a electronic system, where truckers can get permits electronically——

Mr. POMEROY. Electonic.

Mr. ZIEGLER [continuing]. Unless they're of such weight and size that they have to do the call-in. But, that's just for the Department of Transportation and the State system. Each county system has their own permitting system. And I know there's one—happens to be one here in Watford City, too, that—and they do have a multi county system that they've engaged in.

And I don't have the answers to all that, but maybe the Mayor does.

Mr. POMEROY. The Mayor made an interesting point, also, on Four Bears Bridge. Senator Conrad led the fight to get Four Bears in. Basically, it was a promise unfulfilled, to the Reservation, from the Federal Government. Thank God we got that done. Can you imagine, with the oil traffic, on that horrifying—I used to get scared passing a little, you know, what—Chevy Nova. I mean——

[Laughter.]

Mr. POMEROY [continuing]. You can imagine this oil traffic, what that would have done on that bridge; it would have been a completely dysfunctional, but essential, artery. Thank goodness that one got in, in time.

Mr. ZIEGLER. If I could, Mr. Chairman and Congressman Pomeroy, I—I, as the director of the Department of Transportation, take this responsibility very—it's a very serious responsibility. And I have the whole State. So, when I gave you the statistics, I don't mean to slight Highway 85, but I do want to share with you—today, Walt Peterson and the district engineer, Grant Levi, Joel

Welt, the assistant, and I did a lot of driving. And we're seeing lot of infrastructure needs out here. Highway 73, just east of Watford City, is in tough shape. And while we've got a contract coming, Walt is already saying, "I'm"—with all the trucks we saw on it today, "I'm not sure the overlay that we've got planned for the summer is adequate."

So, we have a tremendous need for a highway bill. And I really appreciate anything and everything that you can do to make that happen.

The CHAIRMAN. Well, I'll tell you, Francis, the one thing there's no question in my mind, you are absolutely responsible and professional in the conduct of your duties, as is Grant Levi and the rest of your team. I think you're just first-rate. And we're proud that you're in the position, and the—proud of the team that you've assembled. I think they're top-rate. And we don't think anything you said here today wasn't factual and exactly what we needed to have credible testimony to make the record.

Mr. ZIEGLER. Thank you, Mr. Chairman.

The CHAIRMAN. And we appreciate it very much.

And, Mayor, we thank you for your leadership and your participation.

We'll call the second panel, McKenzie County sheriff, Ron Rankin; McKenzie County Job Development Authority executive director, Gene Veeder; and Rugged West trucking operations manager, Mr. Bruce Erickson.

Welcome, all. We appreciate very much your willingness to participate in this hearing.

And because we're time-challenged, as we always seem to be at these, because we really have a need to get certain critical facts on the record, which I think we're doing very well at here today—we'll go right away to your testimony.

Maybe we'll just start, Gene, with you, and we'll go right down the panel, give each of you a chance to testify, then open it up for your questions.

Gene, it was really your idea that we hold this hearing; came out of our meeting just—I don't know——

Mr. VEEDER. Month ago.

The CHAIRMAN [continuing]. Weeks ago. Appreciate very much.

STATEMENT OF GENE VEEDER, EXECUTIVE DIRECTOR, McKENZIE COUNTY JOB DEVELOPMENT AUTHORITY, NORTH DAKOTA

Mr. VEEDER. We appreciate you and Congressman Pomeroy, always willing to meet with us and talk about the matters of importance. It's good to see a friendly face when we go there, and you're always willing to meet with us. We do appreciate that.

My name is Gene Veeder, and I'm the executive director for McKenzie County Job Development Authority. I'd like to give you greetings from McKenzie County commissioners. They're in session today, so they couldn't be here, but they wanted to be.

I'm proud to say I'm a third-generation rancher, the grandson of Norwegian immigrants. I'm operating the same ranch my father and my grandfather——

The CHAIRMAN. You're Norwegian?

Mr. VEEDER. Norwegian, yeah.

The CHAIRMAN. You know, Senator Dorgan and I were just in Norway, and met with the King.

Mr. VEEDER. Well, he's a relative, I'm sure.

[Laughter.]

The CHAIRMAN. Can I just tell you, Gene, he did not remember that about either of us?

Mr. VEEDER. He may be getting older; I'm not sure.

[Laughter.]

The CHAIRMAN. You know, it turns out the King of Norway is Danish.

[Laughter.]

The CHAIRMAN. It's true.

Mr. VEEDER. We have mixed blood in our family.

[Laughter.]

The CHAIRMAN. Yeah, mine, too.

Mr. VEEDER. But, my—you know, I'm the third generation. My daughter, this week's, moving back to the ranch, so we'll have four generations on this ranch. And that's why this economic development stuff is important to us, and it's important to me.

As Mayor Pelton stated, the Theodore Roosevelt Expressway, it follows a route of historic significance to us here. And I'm a community member and the economic development director and the president of the Theodore Roosevelt Expressway Association. And so, my priorities are to develop and sustain this economy. We take it seriously here.

I thought maybe I would try to tie this in to a larger picture, because you've talked to this—about it. You have to deal with other States. And the Theodore Roosevelt Expressway works with the Ports-to-Plains Corridor. And I'd like to talk about that a little bit. It's not just about North Dakota, it's about what moves between North Dakota.

So, we want to acknowledge especially, though, your strong support over the years for U.S. Highway 85 and the Theodore Roosevelt Expressway. It's part of a larger corridor known as the Ports-to-Plains Alliance Corridor.

Now, you've been a champion of transportation investment in North Dakota and rural America, and we know that. You truly understand the importance of this investment and what it means, in terms of safety and economic development for America's rural heartland, and we do thank you.

And our message for the MAC group today is simple: keep up the good work. It's your voice that helps us be heard in rural America.

As Congress considers the reauthorization of the Federal transportation programs, we urge you to do everything you can to ensure that adequate resources are made available for rural transportation, in general, and for U.S. Highway 85 and the Theodore Roosevelt Expressway and the Ports-to-Plains Alliance Corridor, in particular.

As I mentioned, the U.S. Highway 85 and Theodore Roosevelt Expressway are part of a larger corridor known as the Ports-to-Plains Alliance Corridor. This larger corridor is made up of three congressionally designated high-priority corridors on the National Highway System. And as you can see from the map that we have

over here, it connects North Dakota with a common north-south corridor reaching domestically across nine States, from Texas to Montana, and internationally to markets in Canada and Mexico.

The Alliance is a corridor of national significance, and we appreciate your support with that. It provides a backbone to the common economy of energy and agriculture that are so critical to the security and economic vitality of the United States.

I'd like you to consider these facts: Six of the top ten oil-producing States are in this corridor; five of the top ten natural gas producing States are in this corridor; seven of the top ten U.S. States for installed wind and wind-energy potential are in this corridor; the corridor contains North America's agricultural heartland, producing $44.3 billion of agricultural goods, or 25 percent of the U.S. total; it contains six of the top ten farm States; and Canada and Mexico are the top two export markets for U.S. farm commodities.

Nearly 25 percent of U.S. ethanol refining capacity with 33 existing refiners and more are underway in this corridor. Domestic trade between these States in this corridor by truck is valued by the 2007 Commodity Flow Survey at 156 billion, which has increased 82 percent since 2002. International trade with Mexico by truck was valued, in 2008, at 87 billion, and that's up 25 percent since 2008. International trade with Canada by truck was valued, in 2008, at 32 billion, up 55 percent since 2008.

Highway 85, the Theodore Roosevelt Expressway, and the Ports-to-Plains Alliance Corridor are currently inadequate to meet the demands of this traffic, with substantial investments necessary to upgrade these facilities to modern, safe highways capable of serving local and regional and national needs.

It's for this reason that the next Federal transportation reauthorization bill is so important, and one of the reasons we're here today. This legislation must provide the necessary resources to make significant progress in upgrading this corridor of national significance.

The key components of these recommendations that our group have are:

Rural connectivity and mobility. The new legislation should include a major focus on upgrading and modernizing the transportation infrastructure that provides connectivity and mobility for America's small communities and rural areas, especially federally designated high- priority corridors in the National Highway System.

Freight transportation is an issue. The new legislation should also include a major focus on freight movement, including freight corridors in rural areas, especially high-priority corridors in the National Highway System.

Border infrastructure. The border infrastructure that's critical to promote safe and efficient movement of goods, facilitating trade and supporting jobs in America.

And something that I know you're concerned with is rural safety. The new legislation should include a major focus on highway safety, especially safety on two-lane rural roads, which have often had fatality rates well above urban interstates.

The freight pilot program. We are supporting a freight pilot program. We'd like to see upgrading and modernization of the Ports-to-Plains Corridor and Heartland Expressway and the Theodore Roosevelt Expressway.

And a permitting pilot program. We support a pilot program for streamlined transport of overweight and oversized equipment along the Ports-to-Plains Corridor and the Heartland Expressway and Theodore Roosevelt Expressway.

Finally, the last two points I'd make. We feel the Federal Trust—Highway Trust Fund must have adequate resources to meet the needs of rural areas, as well as small, medium and large metropolitan areas.

And a critical area we haven't talked about: It is imperative that the transportation bill, as well as any climate change legislation Congress might enact, be balanced. It must recognize that rural areas are different than major metropolitan areas and that additional capacity in rural America is critical if these areas are to be tied to the national network in the 21st-central—-century global economy.

Thank you, again, for addressing—coming to Watford City and addressing our needs locally. We also like to thank you for recognizing the importance of this corridor as its national significance along the Theodore Roosevelt Expressway and Ports-to-Plains Alliance. We appreciate your being here.

[The prepared statement of Mr. Veeder follows:]

STATEMENT OF GENE VEEDER, EXECUTIVE DIRECTOR,

McKENZIE COUNTY JOB DEVELOPMENT AUTHORITY

BEFORE

UNITED STATES SENATE

COMMITTEE ON THE BUDGET

JUNE 1, 2010

Good morning.

I am Gene Veeder, Executive Director of the McKenzie County Job Development Authority. I am proud to say I am a third generation rancher, the grandson of Norwegian immigrants, operating the same ranch my father and grandfather worked before me. This week, my daughter and son in law made the move to the family ranch as the fourth generation to set permanent roots in this part of the state. As Mayor Pelton has stated, the Theodore Roosevelt Expressway follows a route of historic note in developing the agricultural, energy and tourism industries in western North Dakota. As a community member, economic development director and President of the Theodore Roosevelt Expressway, my priorities are to develop and sustain a diversified community and maintain a quality of life for our residents.

Senator Conrad, I want to thank you for bringing this Congressional Budget hearing to Watford City and giving me the opportunity to testify regarding the importance of transportation infrastructure to the communities along the Highway 85 corridor.

More importantly, we want to acknowledge your strong support over the years for U.S. Highway 85 and the Theodore Roosevelt Expressway--which is part of a larger corridor known as the Ports-to-Plains Alliance Corridor. You have been a champion of transportation investment in North Dakota and rural America. You truly understand the importance of this investment and what it means in terms of safety and economic development for America's rural heartland. Thank you!

Our message today is quite simple: keep up the good work. As Congress considers the reauthorization of federal transportation programs, we urge you to do everything you can to ensure that adequate resources are made available for rural transportation in general, and for U.S Highway 85, the Theodore Roosevelt Expressway and the Ports-to-Plains Alliance Corridor in particular.

As I mentioned at the outset, U.S. Highway 85 and the Theodore Roosevelt Expressway are part of a larger corridor known as the Ports-to-Plains Alliance Corridor. This larger corridor is made up of three congressionally-designated High Priority Corridors on the National Highway System. As you can see from the map on the poster, it connects North Dakota with a common north-south

corridor reaching domestically across nine states from Texas to Montana and internationally to markets in Canada and Mexico.

The Alliance corridor is a corridor of national significance. It provides the backbone to a common economy of energy and agriculture that is so critical to the security and economic vitality of the United States. Consider these facts:

- Six of the Top Ten Oil Producing States are in the corridor.
- Five of the Top Ten Natural Gas Producing States are in the corridor.
- Seven of the top ten U.S. states for installed and wind energy potential are in the corridor.
- The corridor contains North America's agricultural heartland, producing $44.3 billion of agricultural goods, or 25% of the U.S. total; it contains 6 of the top 10 farm states; and Canada and Mexico are the top two export markets for U.S. farm products.
- Nearly 25% of U.S. ethanol refining capacity, with 33 existing refineries and more underway, are in the corridor.
- Domestic trade between these states by truck is valued by the 2007 Commodity Flow Survey at $156 billion which has increased 82% since 2002.
- International Trade with Mexico by truck was valued in 2008 at $87 billion up 25% since 2008.
- International Trade with Canada by truck was valued in 2008 at $32 billion up 55% since 2008.

Highway 85, the Theodore Roosevelt Expressway and the Ports-to-Plains Alliance Corridor are currently inadequate to meet these demands. A substantial investment is necessary to upgrade these facilities to modern, safe highways capable of serving local, regional and national needs.

It is for this reason that the next federal transportation reauthorization bill is so important. This legislation must provide the necessary resources to make significant progress in upgrading this corridor of national significance.

On behalf of the Ports-to-Plains Alliance, I would like to submit for the record a document, titled ***SAFETEA-LU Reauthorization Recommendations of the Ports-to-Plains Alliance.*** The key components of these recommendations are:

- Rural Connectivity and Mobility – The new legislation should include a major focus on upgrading and modernizing the transportation infrastructure that provides connectivity and mobility for America's small communities and rural areas, especially federally-designated High Priority Corridors on the National Highway System.
- Freight Transportation – The new legislation should also include a major focus on freight movement, including freight corridors in rural areas, especially high priority corridors on the National Highway System.
- Border Infrastructure -- Border infrastructure is critical to promote the safe, efficient movement of goods, facilitating trade and supporting jobs in America.
- Rural Safety -- The new legislation should include a major focus on highway safety, especially safety on two-lane rural roads which often have fatality rates well above urban interstates.

- Freight Pilot Program -- We support a freight pilot program for upgrading and modernizing the Ports-to-Plains Corridor, the Heartland Expressway, and the Theodore Roosevelt Expressway.
- Permitting Pilot Program -- We support a pilot program for streamlined transport of overweight and oversize equipment along the Ports-to-Plains Corridor, the Heartland Expressway and the Theodore Roosevelt Expressway.

There are two final points I would like to make regarding the new transportation legislation.

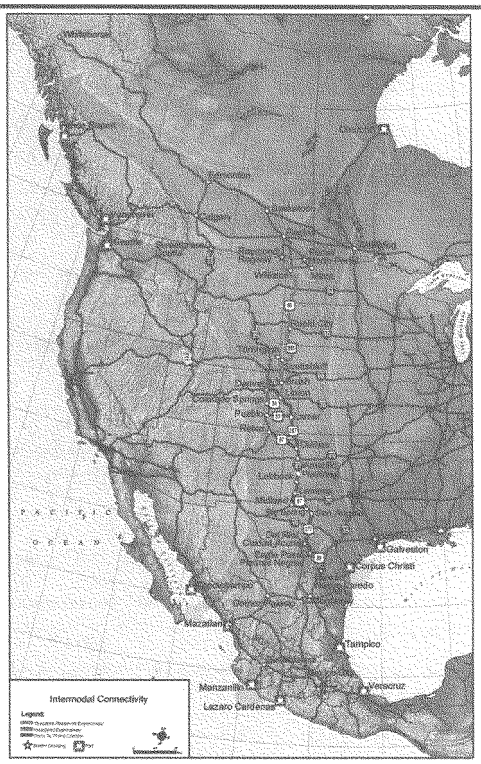
First, the Federal Highway Trust Fund must have adequate resources to meet the needs of rural areas as well as small, medium and large metropolitan areas.

And second, it is imperative that the transportation bill, as well as any climate change legislation Congress might enact, be balanced. It must recognize that rural areas are different than major metropolitan areas and that additional capacity in rural America is critical if these areas are to be tied into the national network and the 21st Century global economy.

Thank you for considering these recommendations. Not only are they important for Watford City and the communities along U.S. Highway 85, the Theodore Roosevelt Expressway and the Ports-to-Plains Alliance Corridor, they are important for the safety, security and economic vitality of our Nation and its citizens.

PORTS-TO-PLAINS
ALLIANCE
Securing the Benefits of Commerce to
North America's Energy & Agriculture Heartland

SAFETEA-LU REAUTHORIZATION RECOMMENDATIONS OF THE PORTS-TO-PLAINS ALLIANCE



"A Corridor of National Significance"

INTRODUCTION

The **Ports-to-Plains Alliance** is a non-profit, non-partisan, community-driven advocacy group led by mayors, councilpersons, economic development officials, business and other opinion leaders from a nine-state, 2300-plus mile transportation and economic development corridor between Texas and Alberta, Canada.

Today, we collaborate with our federal and state leaders, partners in Canada and Mexico, and industry partners, to deliver the infrastructure, food and fuel to secure the quality of life of America's great cities. At the same time, we embrace America's new energy economy, and are capitalizing upon wind power, biofuels and other innovation sectors to renew one of America's greatest legacies, the rural heartland.

The north-south movement of goods and persons through this region relies on an existing network of mostly two-lane highways which have been designated by federal law as National Highway System High Priority Corridors: the Ports-to-Plains Corridor (#38), the Heartland Expressway (#14), and the Theodore Roosevelt Expressway (#58).

These existing highways are inadequate to meet current and future needs of the region and the nation. ***To promote economic security and prosperity throughout America's energy and agricultural heartland, these high priority corridors must be upgraded and modernized.***

An improved transportation network will produce significant benefits:

- It will improve safety, cutting accidents by 50 percent from today's levels.
- It will increase the efficiency of agricultural freight flow. Our corridor runs through six of the top ten farm states that produce nearly a quarter of all U.S. agriculture products.
- It is necessary for the development of the traditional energy resources essential to our nation's energy security. We serve six of the top ten oil producing states. The corridor also goes through five of the top six natural gas producing states. A single oil well requires an estimated 1,200 truck movements to develop.

- It is essential to developing the growing renewable energy industry. We serve seven of the top ten states for wind energy potential, and five of the top twelve installed wind generation states. A single wind tower requires eight trucks for major parts, not including the crane, concrete or rebar. One planned wind farm in West Texas would install more than 2,600 towers, and put more than 21,000 trucks and 42,000 pilot cars on the highways in and out of the site.

- It is a cost-efficient way to take pressure off of highly-congested parallel corridors, such as the I-35 corridor.

- It will promote economic development in a region of the country that has the highest rate of population loss over the last decade and ensure that America's heartland and its communities are connected to America by a modern, efficient and safe transportation facility.

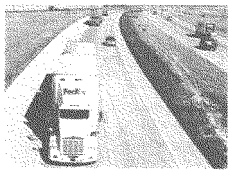
SAFETEA-LU REAUTHORIZATION RECOMMENDATIONS

The Ports-to-Plains Alliance urges Congress to expeditiously enact comprehensive, multi-year surface transportation legislation that modernizes our Nation's surface transportation network to meet the challenges of the 21st century.

We support significant reform of the federal surface transportation programs, including development of a clear and compelling federal vision, a performance-based, outcome-oriented program structure, and an improvement in project delivery. The legislation should be balanced; meet the needs of small communities and rural areas as well as major metropolitan areas; fund system preservation and needed capacity; and be environmentally responsible and energy efficient.

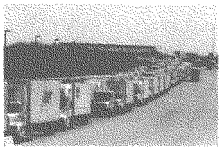
Recognizing that preserving and upgrading our national transportation infrastructure will be costly, we support significantly increased transportation investment and continued user financing through a dedicated trust fund.

Policy Recommendations



1. ***Rural Connectivity and Mobility*** – The new legislation should include a major focus on upgrading and modernizing the transportation infrastructure that provides connectivity and mobility for America's small communities and rural areas, especially federally-designated high priority corridors on the National Highway System. It is imperative that the new legislation provide adequate, targeted resources sufficient to make significant progress toward upgrading our rural transportation network.

2. ***Freight Transportation*** – The new legislation should also include a major focus on freight movement, including freight corridors in rural areas, especially high priority corridors on the National Highway System. It is imperative that the new legislation provide adequate, targeted resources sufficient to make significant progress toward upgrading our national freight network.



3. ***Border Infrastructure*** -- Border infrastructure is critical to promote the safe, efficient movement of goods, facilitating trade and supporting jobs in America. The new legislation should provide adequate, targeted resources sufficient to make the necessary investments in border infrastructure. We support the continuation of the Coordinated Border Infrastructure (CBI) program with adequate funding.

4. ***Rural Safety*** -- The new legislation should include a major focus on highway safety, especially safety on two-lane rural roads which often have fatality rates well above urban interstates. It is imperative that adequate, targeted resources be provided sufficient to allow the upgrading and modernizing of two-lane rural roads. This is especially the case with respect to National Highway System high priority corridors essential to the movement of people and goods in our rural heartland. These overburdened two-lane roads are carrying much of the food and fuel destined for our nation's major metropolitan areas.

5. ***Environment/Energy*** -- The new legislation should be environmentally responsible and energy efficient. As a Nation we must reduce greenhouse gas emissions and we must reduce or eliminate our reliance on overseas oil. It is critically important, however, that climate change requirements—whether included in surface transportation legislation, climate change legislation, or energy legislation—recognize that the options in rural areas are different than the options in major metropolitan areas. A one size fits all approach to climate change will not work. The legislation must provide sufficient flexibility to allow upgrading and modernizing of rural highways, especially rural high priority corridors on the National Highway System.

Specific Ports-to-Plains Corridor Recommendations

1. ***NHS High Priority Corridors*** – We support the continued designation of the Ports-to-Plains Corridor (#38), the Heartland Expressway (#14), and the Theodore Roosevelt Expressway (#58) as High Priority Corridors on the National Highway System.

2. ***Rural Connectivity/Freight/Border Infrastructure/Highway Safety*** -- The Ports-to-Plains Corridor, the Heartland Expressway and the Theodore Roosevelt Expressway should be made eligible for funding under these programs. If special treatment/funding or pilot projects are provided under these programs, these corridors should be considered, if appropriate.

3. ***Freight Pilot Program*** -- We support a freight pilot program for upgrading and modernizing the Ports-to-Plains Corridor, the Heartland Expressway, and the Theodore Roosevelt Expressway.

4. ***Permitting Pilot Program*** -- We support a pilot program for streamlined transport of overweight and oversize equipment along the Ports-to-Plains Corridor, the Heartland Expressway and the Theodore Roosevelt Expressway. One of the key challenges facing transporters of the heavy equipment used in the energy industry is permitting oversized loads. They must frequently cross multiple jurisdictions, with varying regulations on size and weight, and requiring multiple permits. We recommend a pilot program to provide uniform size and weight restrictions and streamlined permitting throughout the corridor to find a more efficient way to move these important products.

Picture sequence above is a wind turbine blade being transported around the courthouse in Boise City, Oklahoma

5. ***High Priority Projects*** – If Congress includes high priority projects in the new surface transportation legislation, then we support funding for individual projects along these three corridors.

6. ***Ports-to-Plains Transportation Center*** – We support the creation of the Ports-to-Plains University Transportation Center at Texas Tech University. The unique facilities and programs at Texas Tech make it possible to incorporate the many aspects associated with modern transportation needs including renewable energy, electric power transmission, legal issues, rural health issues and rural social issues. We propose to use the existing transportation, wind energy and other programs at Texas Tech University as a platform for developing an integrated approach to developing a University Transportation Center to meet the research needs for the Ports-to-Plains corridor. One of the center's primary goals is to initiate economic growth within the Ports-to-Plains region through the provision of enhanced transportation capacity and connectivity.

7. ***Theodore Roosevelt Expressway Expansion*** -- We support an expanded designation for the Theodore Roosevelt Expressway, Corridor #58 in the National Highway System High Priority Corridors.

OUR ASSETS

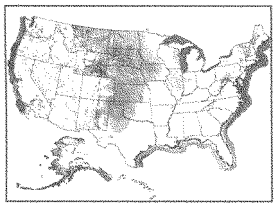
- **Through partners, we are three Congressionally-designated, north-south High Priority Corridors,** comprising 2333 miles of highway, 14% of total U.S. GDP ($1.7 trillion), and 38.5 million citizens
- **A major U.S. trading region** generating $166.7 billion in trade with Canada and Mexico, nearly 20% of total U.S.-North America trade
- **7 of the top 10 U.S. states** for installed and wind energy potential generating over 5185MW, nearly 45% of the U.S. total
- **6 of the top 10** oil producing states
- **Alberta** has the **world's 2nd largest** recoverable oil reserves
- **5 of the top 6** natural gas producing states
- **Nearly 25% of U.S. ethanol refining capacity,** with 33 existing refineries and more underway
- **North America's agricultural heartland**, producing $44.3 billion of agricultural goods, or 25% of the U.S. total; 6 of the top 10 farm states; Canada and Mexico are the top two export markets for U.S. farm products
- **Accidents will be significantly reduced** on current two-lane segments of the corridor when they are upgraded to four-lane-divided highway. Rural roads are dangerous and improving them saves lives. Each year, more than 42,000 Americans are killed and nearly 3 million are injured on our nation's roadways. The total economic cost of these crashes exceeds $230 billion annually. Unfortunately, nearly 60 percent of highway fatalities typically occur on two-lane rural roads. When adjusted for vehicle miles traveled, according to the GAO, some rural roads have a fatality rate over six times greater than urban interstates. These facts are extremely troubling since only 40 percent of all vehicle miles are traveled on two-lane rural roads.

PORTS-TO-PLAINS CORRIDOR NOT JUST A HIGHWAY

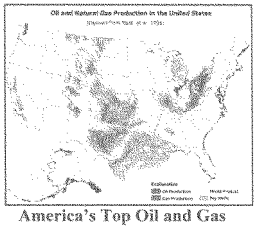
Ports-to-Plains: North America's Energy Corridor

"The most important energy corridor on the planet is no longer the Persian Gulf. It runs from the oil sands, Fort McMurray to Port Arthur, Texas." - Montana Governor Brian Schweitzer

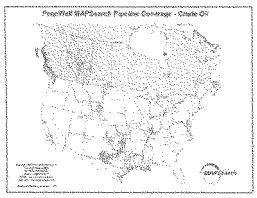
THE PORTS-TO-PLAINS REGION
North America's Energy Heartland



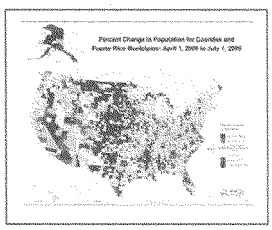
7 of America's Top 10 Wind States
Source:
U.S. Department of Energy



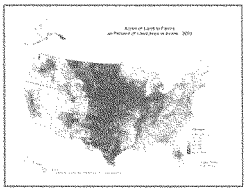
America's Top Oil and Gas States
Source:
U.S. Department of Energy



Primary Pipeline Corridor for North America's Oil
Source:
PennWell MapSearch



Percent Population Change 2000-2009
Source:
U.S. Census Bureau



America's Agricultural Heartland
Source:
U.S. Department of Agriculture

PORTS-TO-PLAINS
ALLIANCE
Securing the Benefits of Commerce to
North America's Energy & Agriculture Heartland

PORTS-TO-PLAINS ALLIANCE MISSION STATEMENT

Ports-to-Plains is a grassroots alliance of communities and businesses whose mission is to advocate for a robust transportation infrastructure to promote economic security and prosperity throughout North America's energy and agricultural heartland.

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The CHAIRMAN. Well, thank you, Gene. Thank you for that excellent testimony. And thanks for the invitation to be here.

We'll go next to Sheriff Rankin.

Thank you for your willingness to testify. And please proceed.

STATEMENT OF RON RANKIN, SHERIFF, McKENZIE COUNTY, NORTH DAKOTA

Mr. RANKIN. Thank you, sir.

Mr. Chairman, Congressman Pomeroy, sir, in addressing your request for testimony on improving safety along the U.S. Highway 85 Corridor, I submit the following:

Speaking strictly from a law enforcement point of view and directed only to U.S. Highway 85 as it transitions through McKenzie County, the safety problems I am facing this year are caused by an increased volume of traffic. I do not for sure know—I do not know for sure, but I am working and planning, with my department's strategy, under the assumption that the oil production has not yet reached its peak.

The safety concerns created by an increased traffic volume are, first of all, an increase in the number of accidents. I am aware that your office has statistics on the number of fatal accidents on Highway 85 for 2009 and 2010. However, the number of accidents investigated on Highway 85 in McKenzie County in 2006, were 49; in 2007, were 47; in 2008, were 55; in 2009, were 53. These figures were taken from the North Dakota Driver's License and Traffic Safety Division. This does not count the car and deer accidents. Car and deer accidents are quite often investigated locally, and they are not—generally, if the damage is not significant, they are not reported.

Second, there have been a—there has been a dramatic increase in the number of 9–1–1 and 9–1–1—non-9–1–1 traffic violation complaints and reports received by our office. These are complaints that deal with speeding motorists, passing where prohibited, reckless driving, and possible drunk drivers. There are also many reports of near-collisions caused by reckless driving. Each of these calls requires a deputy to respond and attempt to contact the vehicle.

Of major concern to me, as sheriff, is that these issues are not limited to Highway 85, although this is our discussion. I still—they are not limited to Highway 85, they are countywide. McKenzie County, as you know, is the largest county in the State. Not only do I have Highway 85 to deal with, I also have Highway 23, Highways 200 north and south, and all the county roads that run through the county. This is a concern because, even though we enjoy complete cooperation with the Williston District North Dakota Highway State Patrol, I only have six deputies that must deal not only with the highway concerns, but other law enforcement-related issues. This reflects in our response time and places a strain on an already stretched manpower level.

As sheriff, I see safety concerns on U.S. Highway 85 being caused by a significant increase in the volume of traffic along the corridor, and the inherent problems associated with a heavy traffic flow. Short of making Highway 85 a four-lane highway—I'm one of those that voted on it—I support—I see super-highways, turnout lanes placed strategically along highway 85, with an increased law enforcement presence, as being a helpful part of that solution. Having marked patrol vehicles patrolling routinely along the highway, I really believe that would help in a proactive manner.

Thank you for the opportunity to voice my concerns regarding the safety issues on Highway 85 through McKenzie County. And I hope I have assisted you in a small way.

[The prepared statement of Mr. Rankin follows:]

McKenzie County Sheriffs Department

Ron Rankin, Sheriff

Telephone: 701-444-3654 Fax: 701-444-2105
201 5th St. NW
P.O. Box 591
Watford City, North Dakota 58854

May 28, 2010

Honorable Kent Conrad
United States Senate
Washington, DC 20510-6100

Senator Conrad,

Sir, in addressing your request for testimony on "Improving Safety Along the US 85 Corridor", I submit the following.

Speaking strictly from a law enforcement point of view and directed only to US Hwy. 85 and its transition through McKenzie County, the safety problems I am facing as Sheriff is caused by the **increased volume of traffic**. I do not know for sure, but I am working and planning my department's strategy under the assumption that the oil production has not yet reached its peak.

The safety concerns created by the increased traffic volume are, first of all an increase in the number of accidents. I am aware that you have the statistics on the number of fatal accidents on Hwy. 85 for 2009 and 2010. However, the number of accidents investigated on Hwy. 85 in McKenzie County, in 2006 were 49, 2007 47, 2008 55, and 2009 53. These figures are taken from the North Dakota Drivers License and Traffic Safety Division. This does not count all car/deer accidents. Secondly, there has been a dramatic increase in the number of 911 and non-911 "Traffic Violations" complaints/reports received by our office. These are complaints that deal with speeding motorist, passing where prohibited, reckless driving, and possible drunk drivers. There are also many reports of near collisions caused by reckless driving. Each of these calls requires a Deputy to respond and attempt contact.

Of major concern to me as Sheriff is that these issues are not limited to Hwy. 85, they are county wide. McKenzie County is as you know the largest county in the state. Not only do I have Hwy. 85 to deal with but I also have Hwy. 23, Hwy 200, North and South, and all of the county roads. This is a concern because even though we enjoy the complete cooperation of the Williston District North Dakota State Highway Patrol, I have only six deputies that must not only deal with highway concerns, but other law enforcement related issues. This reflects in our response time and places a strain on an already stretched to the limit manpower level.

As Sheriff, I see the safety concerns of US Hwy. 85 being caused by a significant increase in the volume of traffic along that corridor and the inherent problems associated with a heavy traffic flow. Short of making Hwy. 85 a 4-lane highway, I see "Super 2's", and turn out lanes placed strategically along Hwy. 85, with an increased law enforcement presence as being a helpful part of the solution. Having marked patrol vehicles routinely patrolling along any stretch of highway will have a proactive effect on the traffic flow.

Thank you for the opportunity to voice my concerns regarding the safety issues of the US Hwy. 85 corridor through McKenzie County. I only hope that I have been able to assist you in your decision making process.

Respectfully,

Ron Rankin
Sheriff,
McKenzie County, ND

The CHAIRMAN. Yes, sir, you have. I appreciate very much your testimony here today.

Next, we'll go to Mr. Bruce Erickson, representing Rugged West Trucking.

STATEMENT OF BRUCE ERICKSON, OPERATIONS MANAGER, RUGGED WEST TRUCKING, NORTH DAKOTA

Mr. ERICKSON. Mr. Chairman, Congressman Pomeroy, I'm Bruce Erickson. I am the current operations manager for Rugged West Trucking in Watford City. We're a small company, about 35 trucks large. We started, a few years back, with one truck and two drivers, and in a matter of 5 years, have expanded to about 35 trucks today.

We move approximately 20,000 barrels of crude oil per day from the field to the pipeline. That's what we do. In that process, our guys see a lot of things every day.

I started out—I came to Watford City originally—I taught high school music for 20 years, and I drove those big buses, hauling kids on Highway 85. Pretty important cargo. We have people in this community that drive those buses every day on these highways. Precious cargo.

I was involved in the tourism industry. I owned a resort. I deal with—I dealt with the tourism—the part of that came along with it. And I see the increase and I see the conflicts that arise between not only the local traffic and the industry with the oil and agriculture and whatnot, but also with the tourism. It's a common complaint I hear on the phone. I push the trucks, currently, and I get this complaint on the phone a lot: "They're in our way. They go too slow. Can't they get out of the way? Can't they drive somewhere else?" You hear that all the time. I hear the same thing from my drivers, too. They wonder why we've got to go around motor homes, or what they're doing, and all of a sudden they veer off.

But, at the same time, it's—it deals with that issue of safety that Sheriff Rankin and everybody else is—has brought forward.

This morning, we had a safety meeting, and the opening of the meeting was, What season is it? Everybody kind of looked around

and, "Spring, summer, yeah." And everybody was wrong, the guy said, "It's tourist season." In North Dakota we have three seasons. It's when no one wants to be here, in the winter, and then tourist season, and then harvest. And in all those times, there's an increased amount of traffic. And there are issues that arise from each one of those.

I strongly support the idea of turning lanes; widening the road, making it into a super–2, as a minimum, though four-laning it would be the most appropriate.

Just outside of town, south—4 miles south of Watford City, there's a particular intersection infamous, for not-good reasons. But, today, there's about 100 trucks every day that enter and exit this intersection. It's at the bottom of a hill. If you're heading south out of that, down Highway 85, if you're in a truck, by the time you get to start negotiating the corner, you cannot—you have no visibility of the vehicle approaching that's heading south. By the time you can see that vehicle, it's too late. Every day, there are mishaps there. There are many, many near-misses. It's one of the issues that needs to be addressed.

Just a few more miles down the road—and this one's kind of interesting—this isn't really the Highway Department's issue, but—there was a well drilled, just off the highway. This winter, we started to haul that, and my guys had to lay on the highway to chain up in the traffic in order to be able to negotiate the hill to get up that. We put those guys' lives—you know, that's just not reasonable. And I think that's the things that we need to look at.

We like to tell our guys we want 'em to go—come home as in good a shape as they left. That's important to us. They need to leave safely, be able to do their job, and return home each day as safe as they were when they got here.

Those are the big concerns we have. There are other things that deal with trucking issues—States' State regulations that aren't the same, things that prohibit us from using Highway 85. But, those aren't the important things. The important things are the lives that it affects each day, and bringing each person home safely.

I'd like to take this opportunity to thank you for allowing me speak today. And if there's any further questions—thank you.

The CHAIRMAN. Thank you. Thank you. Very, very good testimony, Mr. Erickson.

I'd like to go right back to you, if I could, and talk about that intersection. What is that intersection that you identified, the one where you're going south and——

Mr. ERICKSON. It's actually where we're located, 4 miles south of Watford City. It's—there are now three trucking operations working out of that intersection. One of them's soon to be 300-plus trucks large. They bought 100 acres to put their trucks in the yard. Also on there is Redrock Transportation and Rugged West Transportation. There's also a repair shop, Big Rig Services, there. And the road—and it's just the topography—the road that is accessed is at the bottom of a hill. And there's a large grade going to the south, which is, you know, miles long, and so, very visible—can see. But, the one coming from the north, by the time the cars poke over the top, a truck turning to go south—and whether you're loaded or empty, it's just a target. You can't see it until it's too late.

The CHAIRMAN. Now, Director Ziegler, is that an intersection that we've got—you've got plans to deal with?

Mr. ZIEGLER. Mr. Chairman, yes, it is.

The CHAIRMAN. Good. And

Mr. ZIEGLER. We're putting a southbound left-turn lane—.

The CHAIRMAN. And I assume that would help——

Mr. ZIEGLER. And the right turn——

The CHAIRMAN. OK. All right. So, that's——

Mr. ERICKSON. Yes, that would——

The CHAIRMAN [continuing]. That's good news. That's slated for something to be done.

Gene, if I can go to you—when you were in to see me, we were talking about other issues, as well, but these transportation issues, which are increasingly important in the area—I want to ask you the same question I asked the Mayor, because I know, when I go back to Washington, and I indicate this audience voted overwhelmingly for four- laning, that they will say to me, "Well, that's not representative." In your judgment, was that vote of the people present at this hearing—was that a—representative of the feeling in the community.

Mr. VEEDER. Yes, it is.

The CHAIRMAN. And so—maybe if we could hand Gene the microphone so that they can capture that for the record.

So, let me just repeat, in terms of the vote that was taken here earlier today on support for four-laning, you believe that that's representative of feeling in the community?

Mr. VEEDER. Yes, I do.

The CHAIRMAN. And I assume the reasons for that would be the safety reasons, as well as just the efficiency of being able to move goods and services across this area.

Mr. VEEDER. Well, yes, it is. And, to follow that up, the unique part about Watford City—and I believe that's one of the reasons that you came here—is, it is our tie-in. We don't have rail here. We don't have the interstate here. Highway 85 is our lifeline, north and south. And so, it is the only way we get those goods and services. They do come by truck. And, as the Mayor said, the—we're mixing traffic and rough terrain in a tough environment.

And so, you know, the responses we have are good. But, I think that people feel that a four-lane is good for us, locally, but for the State, as well—for the commerce to the State, as well.

The CHAIRMAN. OK.

Congressman POMEROY.

Mr. POMEROY. Gene Veeder was in school with my brother. I've been hearing about Watford City from Gene Veeder for about 35 years.

[Laughter.]

Mr. VEEDER. Don't say it like that.

[Laughter.]

Mr. POMEROY. I have. I am thrilled that Jesse's back. You're going to have a fourth-generation Veeder——

Mr. VEEDER. Yep.

Mr. POMEROY [continuing]. In McKenzie County, and thrilled with the entirely different range of economic opportunity that Jesse will have, in light of this fabulous oil play taking place. I wish

you'd have told about the mineral acres, because I might have bought some, 35 years ago, but——

The CHAIRMAN. You didn't have any money.

Mr. POMEROY. Well, there is that.

[Laughter.]

Mr. POMEROY. Nothing's—that's one area, nothing's changed.

I do think that the Veeder story represents something extraordinarily special happening up in this area, and it's not without its challenge.

And I found today's hearing, both in Williston and Watford City, extremely helpful, in terms of understanding what our assignment is, making sure the Federal Government is doing its part to continue to emerge this opportunity.

Because it's not just an opportunity for the families of the region; we have a desperate need for the energy sources that we can produce, made more acute now by the tragedy unfolding in the Gulf of Mexico. And so, you look at the corridor—yeah, there's some investment there, but it's nothing compared to the investment we're going to be making, cleaning up places where maybe we shouldn't have been drilling in the first place. So, we have to make the best of this opportunity. And that certainly includes the kind of infrastructure that's going to afford the optimal development.

So, I appreciate everybody in the—all the evidence put into the hearing.

We're meeting in a facility that reflects infrastructure investment—the Stengem's private-sector infrastructure investment—now what a wonderful place this will play in the community, going forward. It's just an example. Yeah, there's money up front, but long-term dividends to flow from it. I think we need to consider this 85 project in that vein.

Thank you very much.

The CHAIRMAN. I want to thank everyone who's testified here today. I think this is exactly what we needed to get on the record. It couldn't be more timely, with the Secretary of Transportation coming to North Dakota on Friday, with the Director of the Federal Highway Administration with him.

And I deeply appreciate, really, the excellent testimony of both panels. Thank you very much. We appreciate your participation.

With that, we'll close the hearing.

[Whereupon, at 4:58 p.m., the hearing was adjourned.]

FIELD HEARING: TRANSPORTATION INVESTMENTS: PROMOTING ECONOMIC GROWTH AND IMPROVING SAFETY ALONG ND 23

THURSDAY, JULY 8, 2010

U.S. SENATE,
COMMITTEE ON THE BUDGET,
New Town, North Dakota

The committee met, pursuant to notice, at 9 a.m. in the Arikara Room of the 4 Bears Lodge, 202 Frontage Road, New Town, North Dakota, Hon. Kent Conrad, chairman of the committee, presiding.

Present: Senator Conrad.

OPENING STATEMENT OF SENATOR CONRAD

The CHAIRMAN. The hearing will come to order. I want to welcome everyone this morning to this hearing of the Senate Budget Committee. This is an official hearing of the committee, and therefore we will be operating under the rules of the U.S. Senate, and an official record of this hearing is being kept.

The title of this hearing is, "Transportation Investments: Promoting Economic Growth and Improving Safety Along North Dakota 23." As the title suggests, we'll be focusing on what investments may be needed to upgrade and improve highway 23, to promote the economy in Western North Dakota. We also want to focus on how to make the road more safe. I think all of us are concerned about the safety of local residents who use this highway.

I want to begin by welcoming our distinguished witnesses today. We have two panels. Our first group includes our North Dakota Department of Transportation Director, Mr. Francis Ziegler. Welcome, Francis. Mandan-Hidatsa and Arikara Nation Chairman, Marcus Levings, welcome. And New Town Mayor, Dan Uran. Welcome mayor, good to have you with us as well.

The second panel will include State Representative Kenton Onstad, and Trust Land Oil Field Service President, Steve Kelly.

I look forward to hearing from each of you, and we will share your concerns and your points of view with our colleagues back in Washington. I also want to warmly greet Congressman Pomeroy, who is here as well. As you know, Congressman Pomeroy serves on the Ways and Means Committee, which has a key role in writing the new highway and transportation legislation.

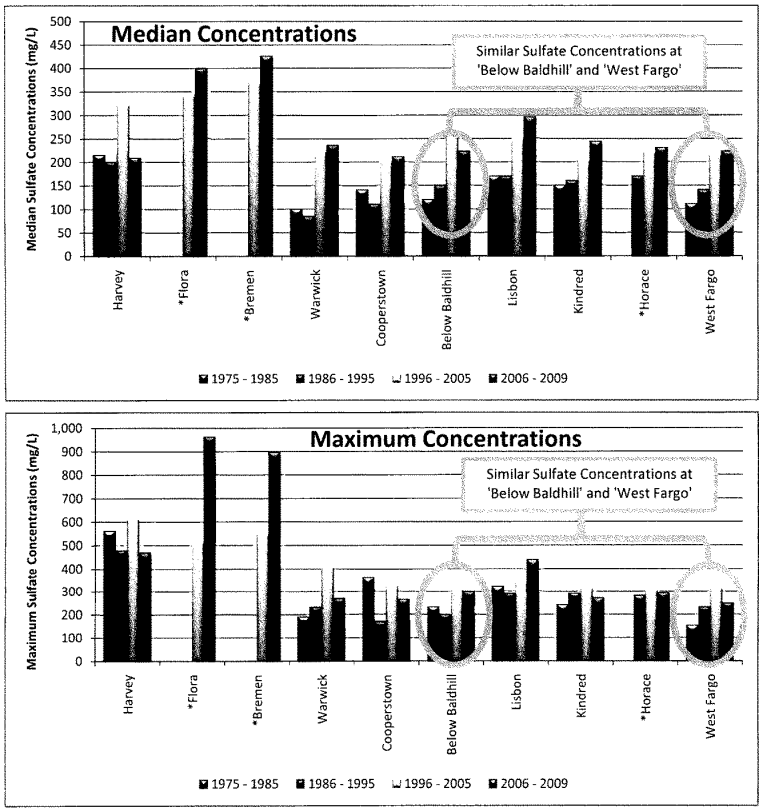
This is actually the third hearing that I have held this summer that relates to the impact of oil development in Western North Da-

kota. In June I held a hearing in Williston on the need for more housing in the region to support the growing energy industry. I held another hearing in Watford City on the impact of energy production on highway 85. Last year we held hearings in Williston and Dickenson on highway 85.

This map shows why highway 23 is so important to energy production in our State. The road is a critical lifeline for energy development. It runs east-west through the Bakken Formation, and links the area to other major highway networks. It serves as a major route for the transport of oil rigs, pipes, steel, and supplies. We need to ensure that highway 23 has the capacity to handle the increased activity from the growing energy production.

Attachment 3

Historic Median and Maximum Sulfate Concentrations
At Locations Along the Sheyenne River (Following Flow Direction)



*Flora: Data Ranges are 2005 & '06-'07
*Bremen: Data Ranges are 2005 & '06-'07
*Horace: Data collection began in 1992

The next chart shows the Minot Daily News report from last month summed up the situation, "Oil Boom Impact: Highway 23 at New Town is Areas Busiest Highway." And the picture shows the kind of large truckloads coming through the area.

The Minot Daily News
MONDAY JUNE 21, 2010 Minot, North Dakota

Oil-boom impact

'Director (Francis) Ziegler was referring to a section of N.D. 23 which showed an average daily traffic count of 6,358 from east of the Four Bears Bridge to east of New Town, compared to an average daily traffic count on the entire U.S. 85 corridor in North Dakota of 1,548.'

– Peggy Anderson, spokeswoman for N.D. Transportation Department

Eloise Ogden/MDN

Trucks carrying tanks slow down for a large pothole in N.D. Highway 22 northwest of Mandaree on the Fort Berthold Reservation, shown in this June 16 photo. Three Affiliated Tribes officials are requesting that Highways 23 and 22, which are state highways, be made into four-lane roads.

Highway 23 at New Town is area's busiest highway

Editor's note: This is the second part of a two-part series about roads on the Fort Berthold Reservation being impacted by the oil boom. The first part, which ran Friday, June 18, covered the Three Affiliated Tribes Roads Department, which maintains Bureau of Indian Affairs paved and gravel routes as well as roads into tribal members' homes. This part concerns N.D. Highways 23 and 22, state roads, which are main arteries through the reservation including hotspots for oil activity.

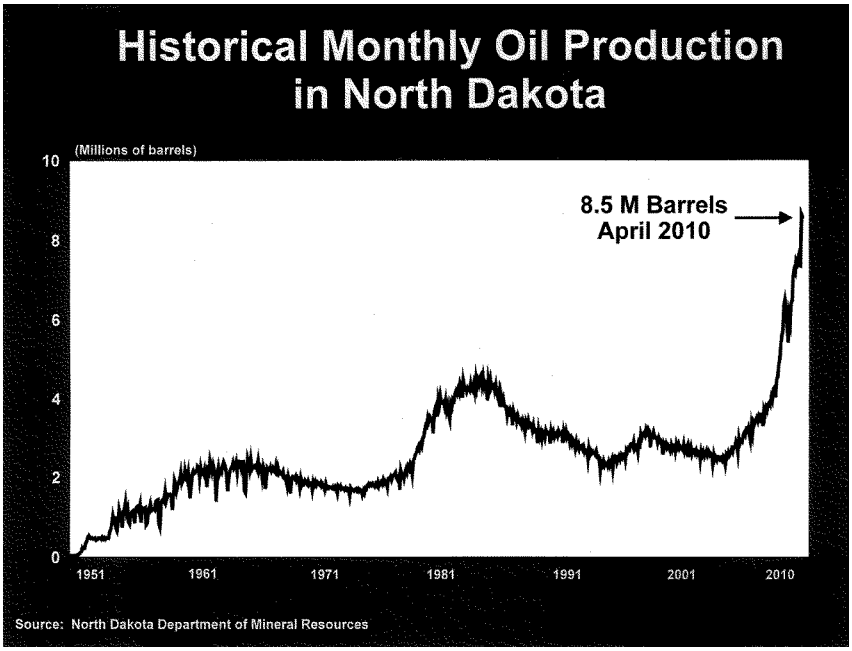
By ELOISE OGDEN
Regional Editor
eogden@minotdailynews.com

NEW TOWN – Every day an average of 6,358 vehicles travel a stretch of N.D. Highway 23 between the Four Bears Bridge and east of New Town, North Dakota Department of Transportation say. Many of the vehicles on that road are oil-field related vehicles.

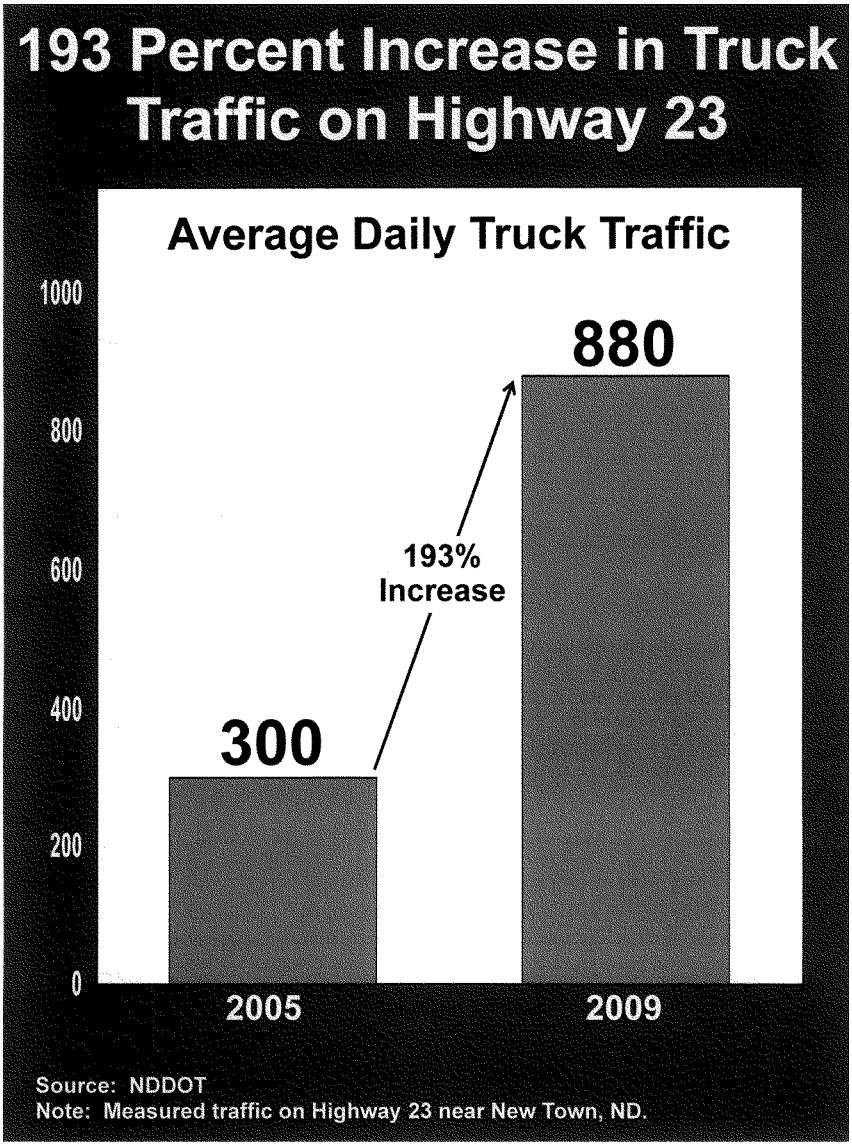
That also means 44,506 vehicles a week or 2.3 million vehicles a year are on

See IMPACT — Page A6

We have seen a dramatic increase in oil production in North Dakota from the oil boom in the Bakken Formation. This chart demonstrates that. North Dakota oil production was up to 8.5 million barrels a month as of April, with further production in the Bakken and the discovery of the Three Forks formation, we can expect production to continue to climb.



The next chart shows that highway 23 has seen a dramatic spike in truck traffic. Truck traffic on highway 23 near New Town increased 193 percent between 2005 and 2009. Unfortunately, the highway was never designed to handle this number of heavy trucks and oversized loads that are currently traveling on it. This road clearly needs improvements to foster continued growth, to better serve the communities in the area, and to ensure a safe travel route.



The next chart shows what happened with respect to our transportation infrastructure needs and the critical nature of the time we are in right now. Because the administration is developing its Highway Bill Reauthorization Plan. It's worth remembering that North Dakota benefited greatly from the last Highway Bill, which was completed in 2005. I was privileged to serve as a conferee. Conferees are chosen by the House and the Senate to work out the differences between proposals coming out of the House of Representatives and proposals coming out of the Senate to produce the final legislation. In that role as a conferee on that bill I was able

to help secure a significant increase in funding for our State. We got $1.5 billion for North Dakota, a 31 percent increase in that bill. That averages out to $234 million a year for highways with additional funding provided for transit. We did very well overall by securing two dollars for every dollar in gas tax collected in the State, ranking us among the top four States in the Nation for return on gas tax dollars. So, only three States do better than North Dakota in terms of our return on our tax dollar.

Here are some of the priorities I will focus on as we consider the next highway bill. The next bill must identify sufficient funding so that infrastructure investments are secure and robust over the long term. States and communities must be able to rely on them, something I know Director Ziegler is acutely concerned about. Next, any new highway bill must maintain recognition that rural transportation needs are vital to the nation. And it must recognize the importance of a nationally connected highway system.

Finally, I will fight to enhance investments in the Indian Reservation Roads Program. And I am particularly interested in hearing from our witnesses on the immediate investments that are needed in highway 23, and what future investments are required to support the growth in this area and the safety of those using this road network.

With that, I want to turn to Congressman Pomeroy, and again acknowledge the key role that he will play in the funding decisions for the next highway bill as a member of the important Ways and Means panel.

Congressman Pomeroy, welcome. Before you begin, I should also point out that in the Recovery Act we also secured some $180 million for highway improvements in North Dakota, money that has been spent last year and some of which will be spent this year.

The CHAIRMAN. With that, welcome, Congressman Pomeroy.

STATEMENT OF HON. EARL POMEROY, U.S. CONGRESSMAN FROM NORTH DAKOTA

Mr. POMEROY. Mr. Chairman, thank you very much for having me at your budget hearing, and pleased to make this bicameral event. I normally put on a tie when I'm with you at a budget hearing. I am later today going to actually look at the oil activity, tour a man camp, see a drilling site, and so you'll forgive my more casual attire as we commence this hearing.

Two vivid images impress upon me the importance of this inquiry. The first, one time along highway 23—there was a period of time where memorials are placed representing the lives that have been lost along this highway. I happened to be coming down the road at a time when the memorials were out and I was struck by

the astonishing number, between here and Cody, of white crosses, other memorials representing accidents that have occurred, lives that have been lost over the years. And that was before the oil activity.

So this has been a stretch of road that has seen more than its share of tragedy. Before being asked to encounter the kind of activity that the most welcome oil has brought us. But this oil boom is occurring on an infrastructure that was not built in anticipation to the kind of traffic and industrial demand now on these roads.

Clearly, you have brought your focus on one of the most stressed areas of infrastructure in the State, Senator, and I'm pleased we're developing the record on the need for activity in the—in this area, as we look at a new highway bill.

A new highway bill is going to involve the Ways and Means Committee, the Senate Finance Committee, as we look at funding strategies, recognizing that the existing highway trust fund is not entirely getting the job done, in terms of producing the kinds of revenues from the previously in place Federal gas tax that's going to accommodate the needs of the nation.

Another unwelcome development is the push from States that have previously paid more into the trust fund than they have received back. It's just a factor of population, North Dakota, 16 people per mile, South Dakota 19 people per mile. On average a multiple of that, 120 people per mile not uncommon. So of course it pays—it costs more on a per capita basis to maintain the North Dakota road system, which I've been told has more roads per capita than any State in the entire country. But if those States that have historically paid more into the Nation road system are now saying, "No, no, we put in a buck, we get a buck back just like every other State," this is going to be a very negative development for maintaining a national infrastructure across the rural reaches of our country, because the economics fall apart very quickly. So we've got our work cut out for us in the new highway bill.

One feature that I think needs to be mentioned is this oil activity is producing a tremendous amount resources, some of which go directly to the Federal Government, in revenues collected from the taxes, as well as the drilling activity on Federal lands itself. This is not a—yet another lost Federal investment, this is an area where the Federal Government gains for—as it builds out the oil plain in Western North Dakota, the Federal Government has direct gain like everyone else.

Let me conclude with the second vivid image, 4 Bears Bridge. I crossed it this morning coming to this meeting. And I imagined what a different experience that might have been, indeed I think we'd have been waiting for a pilot car because I can't imagine, giving the kind of traffic now traveling across that bridge, that you could have the two-way traffic that was scary enough prior to the oil boom. That bridge came about because Senator Conrad demanded we were going to get the bridge that had long been promised when Lake Sakakawea was established and the reservoir was created, and the tribe was flooded. The makeshift bridge moved from another location, slapped in place, served over the many decades, was never viewed to be an adequate fulfillment of the Federal commitment in this area. And Senator Kent Conrad insisted on a

new bridge, no ifs, not buts, no ands. We got the bridge. It was put in place as we now can see just in time. And we'd have had no end of trouble, in terms of infrastructure, but for that component.

So I think it's an example of what can happen with a hearing like this one. We're identifying problems, we intend to address these problems, but we've got new activity that needs to be responded to, we're all gaining from the oil activity, we need to make sure we just keep the infrastructure expanding accordingly.

The CHAIRMAN. Thank you, Congressman Pomeroy, very much for you kind words and for being here, and for you continuing involvement and interest in the opportunities created by the oil play in our State, but also the challenges it presents.

With that we're going to turn to our witnesses. We're going to start with our North Dakota Department of Transportation Director, Francis Ziegler. Francis, thank you so much for being here and please proceed with your testimony.

STATEMENT OF FRANCIS ZIEGLER, DIRECTOR, NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

Mr.ZIEGLER.Good morning, Mr. Chairman. I'm Francis Ziegler, Director of the North Dakota Department of Transportation. I want to thank you for the opportunity.

The CHAIRMAN. If you'd withhold just 1 minute, because I want to make sure that I acknowledge Lance Gaby, who is here, the Governor's Deputy Chief of Staff, Lance Gaby, and I very much appreciate his involvement and the Governor's interest in having one of his top aids here for this hearing. So welcome, Lance, thank you.

Francis, please proceed.

Mr. ZIEGLER. Again, I want to thank you for the opportunity to appear before the committee today and for your interest in improving transportation in North Dakota.

Today, I'd like to address several broad transportation issues that you've already touched on, Senator, and specifically today on highway 23 and other roads in the immediate area. North Dakota is working very hard to improve transportation. Our infrastructure investment results in many benefits, creates jobs, strengthens the economy, improves safety, improves mobility for citizens and business. We these and other benefits, DOT is working hard to improve transportation in our State.

This year the department has the largest construction season in the history. We have about $450 million in projects on more than 2,000 miles of roadway improvement Statewide. The money comes from the regular Federal aid program, ARRA, or often called stimulus, emergency relief, and State funding. Transportation systems are important in Western North Dakota. The DOT has recognized the importance of the transportation system in Western North Dakota, and from 1999 to 2009, we've invested about $886 million in preserving and improving the corridors in this area. And some of the projects are highway 2, 22, highway 23, the high interest today, highway 40, 50, 85, and 1804. Eight is not mentioned in there, but that's another one of the main highways in this area.

DOT has been aggressive in the energy area of the Western part of the State. With recent pavement preservation projects and many transportation investments planned to be completed from 2010 to

2014, as shown on the attached map—and Senator, that's an attachment that I have to the testimony that you have in front of you—shows what we do in this area, and I know we've got copies for the audience here today. But fundamentally it shows, by map, just how much work we're doing in this area and what we're doing to try to keep improving the transportation system, including highway 23 and other projects, again, in this local New Town area.

Let's get into some specifics. On page two of my testimony, highway 85. Senator, you've had several hearings on this corridor reviewing transportation needs. In 2010 and 2011, the DOT is going to be putting more than $70 million worth of improvements into highway 85. We're going to add a three lane section between highway 2 and the Missouri River, several turning lanes in numerous intersections, all the way to highway 200 east of 85 and the Missouri River. We're going to be regrading and adding a climbing lane south of the Longex Bridge and we're adding multiple passing lanes between Wotford City and Williston.

But highway 23, high interest today. In this area, 23, 22, and 8 are in the fastest growing areas in the State. Construction projects in this area include highway 23 and the improvements involve adding turn lanes at six intersections between here and highway 83. DOT staff is now scoping, reviewing needs for the future on highway 23 to see what we should do in the area to meet the future and the current growing traffic needs.

We're also scoping highway 8 and 23. What we mean by scoping is that we're looking at—trying to figure out what it is we need to do in the future. We've flown it so that we can get good pictures of what's happening and what it looks like, but we're going to have to take a good hard look at it, because the six intersections that we're building this year we don't believe are going to be adequate for the long term. I'll be getting into some traffic counts later, Senator, and it's significant, it's really significant.

On highway 8, we're widening and regrading north of Stanley, but we're also scoping highway 8 between Stanley and highway 23 out here east of New Town. We have to look at those areas too, and see what it is we need to do.

Safety, as you know, is a priority for the Department of Transportation, and we're always concerned about the safety of the traveling public. We're continuously monitoring crash and fatality rates in the area and evaluating the data to implement safety projects. Some of the more recent safety projects include lowering the speed limits on 8, 23, and on a four mile section north of Dickenson on highway 22. Installation of center line and edge line rumble stripes in the Williston district, the entire district is going to get those.

We drove from Stanley to New Town today and saw the rumble strips and stripes, is what we call them, and they're working. Research has found that it's a significant safety improvement. It keeps the distracted driver in the lane. If you start getting out of the lane there's a rumble, a vibration in the vehicle sets up and it reminds the driver to get back in that lane. And so from a safety perspective, I think it's one of the more important things we can do, at least in the short term, Senator.

North Dakota Department of Transportation is working—also working in partnership with the Petroleum Council to create educational programs to promote safety on roadways.

Moving on to page three, the recent oil boom in Western North Dakota is an economic benefit for the State, as you and the Congressman have already said, but it also includes challenges for the DOT and local entities. We're planning for transportation needs. We're working with the Upper Great Plains Transportation Institute, studying the local needs in oil producing counties. And the DOT is developing what we need for State highways to do our part in the future as our normal budgeting process is coming up.

Recognizing the transportation challenges—the DOT has several projects planned over the next 4 years in Western North Dakota, about $468 million will be invested in rural projects through the 17 oil producing counties, that's $400 million in State roads and $68 million on local roads. Moving with this project, of course, always depends on Federal and State funding at or above current levels.

But I want to get into some of those traffic counts that I talked about earlier, Senator, and I'm not going to go through this whole chart in the interest of time, but I'll just point out a few highlights. On highway 8, starting from the top of the page, you can see that 23 North to Stanley has a high of 4,430 vehicles, a low of 1,675, and the way our traffic engineers do that, they average a corridor. And that's 2,454 vehicles, that's a 301 percent increase from what we've seen in 2006. It's a tremendous increase in traffic. Highway 22, there too, average of 1,869, a high of 3,685, a 73 percent increase.

But on 23, from Watford City to highway 1804, 1804 is just on the west edge of the city of New Town. On that stretch, we have a high of 6,460 vehicles a day, with an average of 2,304 vehicles, 70 percent increase. Then, if you look at the next line, it's the high number. From 1804 to highway 83 is a high of 7,300 vehicles a day and a low of 1,268 in some segments, and the average for that corridor is 2,095. That's a 31 percent increase. And so on and on, highway 72 which is just off highway 22 west of here. That has an increase of 209 percent.

And so what we're seeing out here is unprecedented in traffic growths. Typically we see three to 10 percent maximum growth, and here we're seeing these—on an annual basis—and here we're seeing these kinds of numbers.

Now that's—that includes trucks, Senator, but on page four, on the top of that page, we're going to see some truck numbers and those two are astonishing. Highway 823 to Stanley, a high of 905 trucks per day, with an average of 744, a 629 percent increase. And the number you had shown earlier on the chart, on highway 23, a high truck ADT of 880, with an average of 625, a 274 percent increase.

And I know I could go into these details, but Senator, in the interest of time, what I'm saying to you is that traffic has increased at unprecedented amounts here, and what we're going to have to do is make sure that we address those issues.

And while we've made significant transportation improvement in the New Town area, including the Four Bears Bridge, we recognize

there's been an increase in traffic, and I've asked staff to immediately start scoping highway 23 and 8, as I've already mentioned, to address the traffic growth.

The State of North Dakota and the DOT are doing more than ever in the area. However, Federal and State funding for transportation projects is essential to the growing needs of the energy industry in Western North Dakota. Federal dollars are so important for State residents who are working hard to serve the energy needs of our nation today and in the future.

Public input that we took this spring at many regional meetings, we had eight regional meetings around the State, Senator, and the preliminary input includes statements like, "The residents really want more transportation infrastructure." They're concerned about traffic increases, especially in Western North Dakota, and public expectations are growing, especially for load-carrying capacity and wider roads.

Moving on to page five, we certainly recognize the benefits of transportation. The State has increased its financial commitment to transportation by enacting a $1.35 billion transportation dollar bill—excuse me, $1.35 billion—that's a big number—transportation funding in the State, and that includes an unprecedented sum of non- matching in State general fund, and then it also includes Federal dollars, such as the regular Federal program ARRA and the State's money. Excluding ARRA, we use 52 percent of our budget is based on Federal aid. And with ARRA, Senator, that's 57 percent.

Even though our State's large road network has few people to support it, North Dakotans pay more than the national average to support the Federal surface transportation programs. The per capita contribution to the highway account of the highway trust fund attributed to North Dakota is $161 compared to a national average of roughly $109 per person. So, this is a per capita contribution of 48 percent above the national average.

There are large benefits, as I've said before, from transportation infrastructure investment, job creation and a general boost in the economy, and safety, as I've mentioned before. Preserving and improving the roads in pursuit of smooth surfaces, appropriate roadway with guardrails and signage and pavement marking is essential to our mission of providing a safe transportation system.

Moving to the bottom of page five, clearly our ability to continue to invest in surface transportation infrastructure in North Dakota will depend in part on Federal surface transportation funding levels.

Moving on to the top of page six, our association ASHTO has recommended for the 6-year period, 2010 to 2015, proportional increases in the highway and transit programs over the prior 6 years to $375 billion, and $93 billion respectively, plus funding for other programs. Another relevant factor to funding are the level of inflation. The highway industry has been hit hard by inflation during the past decade. From 2001 to 2010, the construction cost index for North Dakota's projects is 87 percent. So in other words, we're spending 87 percent more in 2010 than we did in 2001 to get the same work done.

We're concerned about a number of aspects of the bill that's being considered now, in that it creates a large new program funding only metro areas with a population of 500,000 or more, and provides funds for large nationally significant projects, high speed rail and infrastructure banks. And the next paragraph, Senator, in regard to that, we're very pleased that bipartisan rural mobility legislation in 3485 was recently introduced in the U.S. Senate by Senator Barrasso, yourself, Mr. Chairman, and 11 other Senators. That legislation basically takes the position that if new legislation is to dedicate significant funds to discretionary highway programs only for large metropolitan areas, the legislation must also include a significant counterpart program of funding for rural States. We're hopeful that efforts like this will ensure that the final legislation will not ignore national need to continue to invest significant Federal transportation funds in rural States, as well as in urban States.

In the interest of time, Senator, I'll move on to page seven. The nation benefits from transportation investment and access across rural States. We serve as a bridge for truck and personal traffic, we enable exports to serve the nation's ethanol production, largely—and the energy extraction industries, which are located largely in rural areas, and our lifeline for remotely located and economically challenged citizens, enable businesses to traverse sparcely populated land and provide access to scenic wonders. Our bridge serves—our State serves as a national bridge for connectivity. Just over 90—excuse me—just over 59 percent of the truck traffic using North Dakota's highways does not either originate or terminate within the State.

Moving on to page eight, essential service and agricultural natural resources and energy—a significant portion of the economy in our State is based on ag, energy production, and natural resource extraction. Governor Hoeven's economic strategy has identified ag energy, advanced manufacturing, technology-based businesses, and tourism as growth industries, because North Dakota holds a competitive advantage in these areas. Ag is one sector of the economy where the United States has consistently run an international trade surplus, not a deficit.

Apart from its value to the State, there's a strong national interest ensuring that ag products and natural resources have the road network needed to deliver product to market, particularly export markets. North Dakota is a major contributor of energy production in the nation. We're currently fourth in oil production and contain a large coal reserve.

On page nine, I want to talk a little bit about avoiding complications or increases in regulatory requirements. We certainly support the Federal Highway Administration's every counts initiative to streamline the project development process. However, any new statutory provisions that add requirements and regulations will add time to the program and project delivery and increase costs.

Moving on to the last page, Senator, 10—page 10. Before closing, let me note that while we want a surface transportation authorization law, that's good for North Dakota, enacted as soon as possible, without a reauthorization law, States and businesses are faced with operating under current program extensions. While we're cur-

rently operating under such an extension through the end of 2010, we suspect that some will say that any—that any next extension should be short. However, short extensions make program delivery less efficient and discourage investment by the private sector. So if there are extensions, they should be practical length and perhaps a year or even more, Senator.

I want to say that transportation is a good investment. You know, in today's society, surface transportation was built by our forefathers as an investment in our country. Today, that investment is taken for granted and everybody automatically expects a strong transportation network. Many people have invested in new forms of communication in their home and are spending more than ever on items such as cell phones and the internet. It's interesting to make the comparison, it's not unusual to pay $500 for a cell phone, but yet the average cost for transportation in a household is $109, so it's interesting to say that—the whole point is that transportation is a good investment.

In conclusion, Senator, it's essential that Congress, through the reauthorization process, recognize that increased Federal investment in highways and surface transportation in rural States is and will remain important to the national interest. Citizens and businesses of our nation's more populated areas, not only residents of rural America, benefit from a good transportation network in and across rural States like North Dakota. With such legislation, we will be equipped to address transportation issues in the highway 23 corridor, as well as elsewhere in the State of North Dakota.

And that concludes my formal statement, Senator and Congressman, and I'll be willing to answer any questions that you may have.

[The prepared statement of Mr. Ziegler follows:]

Statement of Francis Ziegler
Director, North Dakota Department of Transportation
before the
Committee on the Budget, United States Senate
on
Infrastructure Investments:
Promoting Growth and Improving Safety Along ND Highway 23
New Town, North Dakota, July 8, 2010

Mr. Chairman:

Good morning. I am Francis Ziegler, Director of the North Dakota Department of Transportation (NDDOT). Thanks for the opportunity to appear before the Committee today and thanks for your interest in improving transportation in North Dakota.

Today, I'd like to address several broad transportation issues, North Dakota Highway 23 and other roads in the immediate area.

North Dakota is Working Hard to Improve Transportation

Transportation infrastructure investment results in many benefits. It creates jobs and strengthens the economy. It improves safety. It improves mobility for our citizens and businesses. With these and other benefits in view, NDDOT is working hard to improve transportation in the state.

This year, the Department has the largest construction season in its history underway, with approximately $450 million in projects on more than 2,000 miles of roadway statewide. The work includes projects under the regular federal program, ARRA, emergency relief and state funding.

Transportation System important in western North Dakota

The NDDOT has recognized the importance of the transportation system in western North Dakota. From 1999 to 2009 approximately $886 million has been invested in preserving and improving the corridors in this area. Some of the projects include:

- Highways
  - 2; 22; 23; 40; 50; 85; and 1804

The DOT has been aggressive in the Energy Area of the western part of the state, with recent pavement preservation projects and many transportation investments planned to be completed from 2010-2014 as shown on the attached map (Attachment 1), including projects on ND 23 and other highways on the local system in the New Town area. Construction projects include the following highways:

- **US Highway 85**
  - Senator you have had several hearings on this corridor, reviewing transportation needs.
  - In 2010 and 2011, the DOT will put more than $70 million worth of improvements into Highway 85, working toward the Super 2 highway concept which include:
    - Adding a three-lane section which includes intermittent left and right turning lanes from Highway 2 to the Missouri River.
    - Adding several turning lanes at numerous intersections between Highway 200, East of Highway 85, and the Missouri River.
    - Re-grading and adding a climbing lane south of the Long X Bridge.
    - Adding multiple passing lanes between Watford City and Williston.

- **ND Highway 23 and other highways**
  - In the New Town area, Highways 23, 22 and 8 are in one of the fastest traffic growth areas in the western part of the state. Construction projects in this area include:
    - **ND Highway 23**
      - Improvements involve adding turn lanes at 6 intersections.
      - NDDOT staff is now scoping (reviewing needs for future improvements) ND 23 to see what we should do in this area to meet the growing traffic needs.
      - Also scoping ND 8 from ND 23 north to US 2.

    - **ND Highway 8**
      - Widening and regrading north of Stanley. ($10.6 M)

Safety is a priority

We are always concerned about the safety of the traveling public. We are continuously monitoring crash and fatality rates in the area and evaluating the data to implement safety projects.

Recent Safety Projects include:

- Lowered speed limits on Highway 8, Highway 23 and on a four mile section of Highway 22 north of Dickinson.
- Installation of centerline and edgeline rumble stripes in the Williston District in 2010 and on all highways across the state as funding becomes available. Research has found edgeline and centerline rumble stripes to be effective in reducing head-on crashes, opposite direction sideswipe crashes, and rollovers.
- The NDDOT is also working in partnership with the Petroleum Council to create educational programs to promote safety on roadways.

Oil Impacts on Transportation System – Highway 23 and Other Energy Area Projects

The recent oil boom in western North Dakota is an economic benefit for the state, but it also creates challenges for the DOT and local entities.

- We are planning for transportation needs. We are working with Upper Great Plains Transportation Institute (UGPTI), which is studying local needs in oil producing counties, and the DOT is developing what we need to do in the future as part of our normal budget process.

- Recognizing the transportation challenges the DOT has several projects planned over the next four years (2010-2014), in western North Dakota. Approximately $468 million will be invested in road projects throughout the 17 oil producing counties ($400 million on state roads, $68 million on local roads.)

- Moving forward with these projects depends on federal and state funding at or above current funding levels.

The tables below illustrate portions of the road network that have seen an increase in traffic and truck loads, according to our most recent traffic counts.

TABLE 1 – Annual Average Daily Traffic (AADT) count for all types of vehicles

Highway	Location	Year	Average AADT	High AADT	Low AADT	% Growth 2006-2009
ND 8	Richardton N to Lake Sakakawea	2009	329	1565	120	15%
ND 8	ND 23 N to Stanley	2009	2454	4430	1675	301%
ND 22	Dickinson N to ND 23	2009	1869	3685	1040	73%
ND 23	Watford City to ND 1804	2009	2304	6460	1270	70%
ND 23	ND 1804 to US Hwy 83	2009	2095	7300	1268	31%
ND 37	ND 23 N of Parshall E to US 83	2009	832	2325	300	7%
ND 73	ND 23 to ND 22	2009	650	690	610	209%
ND 1804	ND 37 W & N to Montana Line	2009	889	4720	120	21%
US 85	Williston to SD line	2009	1810	4335	1110	15%

TABLE 2 – Truck Annual Average Daily Traffic (TAADT) count

Highway	Location	Year	Average TAADT	High TAADT	Low TAADT	% Growth 2006-2009
ND 8	Richardton N to Lake Sakakawea	2009	95	170	20	120%
ND 8	ND 23 N to Stanley	2009	744	905	685	629%
ND 22	Dickinson N to ND 23	2009	398	585	278	268%
ND 23	Watford City to ND 1804	2009	625	880	70	274%
ND 23	ND 1804 to US Hwy 83	2009	369	920	218	167%
ND 37	ND 23 N of Parshall E to US 83	2009	113	455	30	28%
ND 73	ND 23 to ND 22	2009	138	140	135	318%
ND 1804	ND 37 W & N to Montana Line	2009	188	705	30	31%
US 85	Williston to SD line	2009	437	990	223	34%

- While we have made significant transportation improvements in the New Town area, including Four Bears Bridge, we recognize that there has been an increase in traffic. I have asked staff to immediately start scoping ND 23 and ND 8 corridors to address this traffic growth.

- The State of North Dakota and the NDDOT are doing more than ever in this area, however, federal and state funding for transportation projects is essential for the growing needs of the energy industry in the western part of the state. Federal dollars are important for state residents who are working hard to serve the energy needs of our nation today and in the future.

Public Input illustrates transportation needs

NDDOT and the Upper Great Plains Transportation Institute (UGPTI) recently held public input meetings across the state to discuss transportation. During the sessions, UGPTI presented results of a study on highway service levels and investments in North Dakota and gathered input about prioritizing transportation funds and levels of service.

Preliminary input indicates that:

- Residents want more transportation infrastructure across the state.
- Residents are concerned about traffic increases, especially in western North Dakota due to the energy industry.
- Public expectations are growing – for load carrying capacity and wider roads.

Recognizing the benefits of transportation, the State of North Dakota increased its financial commitment to transportation infrastructure by enacting a $1.35 billion transportation funding bill. This comprehensive transportation package for North Dakota funds maintenance and enhancement of the state's transportation system. It includes an unprecedented sum in non-matching State General Fund dollars. It also includes almost $600 million more to rebuild our roads and help cities, counties and townships recover from statewide flooding.

Federal investment in transportation is critically important. Federal aid accounts for 52% of our State's current biennial transportation budget (excluding ARRA). So, federal dollars are important to our efforts to preserve and improve North Dakota highways, including highway 23. It is, therefore, critically important that legislation reauthorizing the federal highway program serve the needs of rural states like North Dakota.

Even though our state's large road network has few people to support it – North Dakotans pay more than the national average to support Federal surface transportation programs. The per capita contribution to the Highway Account of the Highway Trust Fund attributed to North Dakota is $161 compared to a national average of roughly $109 per person. This is a per capita contribution 48 percent above the national average.

So, while North Dakota is investing in transportation, federal investment in surface transportation in our state is critically important.

Let me turn now to a discussion of why a strong Federal investment in surface transportation in North Dakota is not just in North Dakota's interest, but also very much in the national interest.

Benefits from Transportation Infrastructure Investment

There are many benefits from transportation infrastructure investments. Job creation is one. Jobs are created on the site of projects. Jobs are created in supplier and support industries. There is also a boost to the general economy from the onsite and supplier jobs.

Safety is another benefit. Preserving and improving roads in pursuit of smooth surfaces, appropriate roadway width, guardrails, signage and pavement marking is essential to our mission of providing a safe transportation system. Better highways and the availability of public transit help us in our daily lives, ensuring good access to school, medical facilities, work, and other important destinations.

These investments are also important to the economic competitiveness of North Dakota and the nation. Businesses reviewing whether to stay or locate in North Dakota want to be sure that goods arriving at or leaving their facilities move safely and efficiently.

Federal Surface Transportation Issues

Clearly, our ability to continue to invest in surface transportation infrastructure in North Dakota will depend in part on Federal surface transportation funding levels. The needs are there to

justify increased investment. Various commissions and reports have called for increased surface transportation infrastructure investment. For example, the American Association of State Highway and Transportation Officials (AASHTO) has recommended, for the six-year period 2010-2015, proportional increases in the highway and transit programs over the prior six years -- to $375 billion and $93 billion, respectively -- plus funding for other programs.

Another factor relevant to funding levels is inflation. The highway industry has been hit hard by inflation during the past decade. From 2001 through April of 2010, North Dakota's overall construction cost index increased by 87 percent. The purchasing power of highway dollars has been reduced significantly and program funding has not kept pace with these rising costs (Attachment 2). A transportation bill without significant growth for North Dakota will severely hurt our ability to invest in transportation infrastructure throughout the state.

Beyond the overall funding level, however, to achieve continued progress in North Dakota it is essential that rural states like North Dakota participate at least proportionately in any growth of the Federal highway and transportation program, both as to formula and other funds.

In the authorizing committee in the House of Representatives a proposal has been outlined and partial legislation reported from a subcommittee to the full committee. This proposal apparently calls for increases in federal highway program authorizations of about $110 billion over the next 6 years compared to the last 6 years ($337 billion compared to $227 billion).

We are concerned about a number of aspects of this proposal. It would: create a large new program funding only metro areas with a population of 500,000 or more; and provide funds for large nationally significant projects, a high speed rail program and infrastructure banks, all of which seem geared to assist urban areas of the country. We recognize that there are major needs in urban areas; however, rural needs are essential too. It does not appear that rural states like North Dakota would be able to utilize the funds in these new programs – even though these new programs seem to represent most of the proposed increase in the federal highway program.

In that regard, we were very pleased that bipartisan rural mobility legislation, S. 3485, was recently introduced in the United States Senate by Senator Barrasso, you, Mr. Chairman, and 11 other Senators. That legislation basically takes the position that, if new legislation is to dedicate significant funds to discretionary highway programs only for large metropolitan areas, the legislation must also include a significant counterpart program of funding for rural states. We are hopeful that efforts like this will ensure that final legislation will not ignore the national interest need to continue to invest significant Federal transportation funds in rural states as well as urban ones.

In addition, we do not support funding new large discretionary programs, particularly programs that are not accessible to North Dakota. We would prefer that increased funding be provided to highway formula programs, enabling all states to participate in program growth.

The House proposal also would increase the share of overall transportation investment dedicated to transit. North Dakota joins AASHTO in supporting, instead, proportional growth in the highway and transit programs.

In short, even though all details of this proposal are not set, we are very concerned that the House legislation could provide North Dakota with a considerably reduced share of transportation program dollars compared to current law. We will appreciate your efforts, Mr. Chairman, to avoid any such adverse result in the final legislation.

The Nation Benefits from Federal Transportation Investment In and Across Rural States

Let me turn now to reasons why authorization legislation should provide rural states like ours at least their current share of the Federal highway and surface transportation programs.

Federal-aid highways in our state, not just those on the National Highway System --

- serve as a bridge for truck and personal traffic between other states, advancing interstate commerce and mobility;
- enable agricultural exports and serve the nation's ethanol production and energy extraction industries, which are located largely in rural areas;
- are a lifeline for remotely located and economically challenged citizens;
- enable people and business to traverse the vast tracts of sparsely populated land that are a major characteristic of the western United States; and
- provide access to scenic wonders and facilitate tourism.

In addition, the scope of the Federal-aid system, extending beyond the NHS, enables enhanced investment to address safety needs on rural routes.

Further, Federal investment in rural transit helps ensure personal mobility, especially for senior citizens and people with disabilities, connecting them to necessary services. Federal public transportation programs must continue to include funding for rural states and not focus entirely on large metropolitan areas.

Bridge States Serve a National Connectivity Interest for People and Business

Let me amplify a few of these points. Highway transportation between major metropolitan areas is simply not possible without excellent roads that bridge those vast distances. This connectivity benefits the citizens of our nation's large metro areas because air or rail frequently will not be the best option for moving people or goods across the country. The many commercial trucks on our rural interstate highways demonstrate every day that people and businesses in major metropolitan areas benefit from the nation's investment in highways in rural states.

The most recent FHWA data on tonnage origins and destinations shows that just over 59 percent of the truck traffic using North Dakota's highways does not either originate or terminate within the State. This is well above the national average of about 45 percent, underscoring that North Dakota's highways help connect the nation in a way that benefits other states.

Essential Service to Agriculture, Natural Resources, Energy

A significant portion of the economy in our State is based on agriculture, energy production, and natural resource extraction. Governor Hoeven's economic strategic plan has identified agriculture, energy, advanced manufacturing, technology-based businesses, and tourism as growth industries because North Dakota holds a competitive advantage in those areas. These have been the focus of much of North Dakota's investments in economic development.

Agriculture is one sector of the economy where the United States has consistently run an international trade surplus, not a deficit. Over the last two decades roughly 30 percent of all U.S. agricultural crops were exported.

Apart from its value to the state, there is a strong national interest in ensuring that agricultural products and natural resources have the road network that is needed to deliver product to markets, particularly export markets. In 2009, North Dakota led the nation in the production of barley, durum wheat, spring wheat, navy beans, pinto beans, canola, flaxseed, honey, lentils, dry peas, sunflowers, and dry edible beans. Last year North Dakota was the fastest growing export state in the nation. A key part of the road network supporting the movement of agricultural products is roads below the National Highway System, where crops begin their journey from point of production to destination.

North Dakota is a major contributor of energy production in the nation. Our state is currently fourth in the nation in oil production and contains large coal reserves. Good roads throughout the State are important to our nation becoming energy independent and providing agricultural products to feed a hungry world.

Over the last three decades, tens of thousands of rural rail branch lines have been abandoned nationwide. In North Dakota since 1980, over 1,500 miles of railroad branch lines have been abandoned. The reduced reach of the rail network means that many areas, particularly rural areas, must rely more heavily on trucks to move goods. This was noted by USDA in its April 2010 "Study of Rural Transportation Issues."

With increased truck traffic in North Dakota and much of the upper Midwest, it is a challenge for us to continue to move these products. That challenge is compounded by the necessity of imposing spring load restrictions. The underlying reason for imposing spring load restrictions is inadequate roadway thickness. During the spring thaw, the ground is waterlogged and can't support a fully loaded 18-wheeler on a highway of standard thickness. Many states, especially those in the north, have little choice given their current funding, but to limit the amount of weight on highways in the spring. Like congestion, load restrictions slow down commerce and add greatly to the cost of doing business.

Tourism Access

Without a strong road network in rural states, access to many scenic destinations would be limited. Tourism is vital to the economy of North Dakota.

Funding and Financing Considerations

Rural states like North Dakota face a number of serious obstacles in preserving and improving the Federal-aid highway system within their borders. We:

- are very rural,
- are geographically large,
- have low population densities, and
- have extensive highway networks.

These factors make it very challenging for rural states to provide, maintain, and preserve a modern transportation system that connects to the rest of the nation. Our low population and traffic densities also mean that tolls are not an answer to funding transportation needs in rural areas. Our budget to maintain (plow snow, apply pavement marking, patch roads, seal cracks, repair signs and guardrails) the state transportation system is approximately $9,200 per mile each year. It takes approximately 2,700 vehicles per mile per day, using today's Corporate Average Fuel Economy (CAFÉ) standards, to generate this amount of revenue from state motor fuel taxes. Very few state highways average 2,700 vehicles per mile per day in North Dakota.

Avoid Program Complications or Increases in Regulatory Requirements

The next authorization bill should not make federal highway program delivery more complicated. The current highway and transportation program is complex. We would like to see processes streamlined so we can deliver projects more efficiently. We see proposals for additional requirements as counterproductive. It takes three to four years in North Dakota to complete a project that requires full environmental process clearance. We support the Federal Highway Administration's "every day counts" initiative to streamline the project development process. However, any new statutory provisions that add requirements and regulations will add time to program and project delivery and increase project costs.

One area where new regulation is being actively discussed concerns performance standards and targets. Performance measures are important, and we in North Dakota use them in our state. We believe, however, that national performance standards should be general in nature and that each state should be allowed to establish its own specific targets.

Areas being discussed that may involve some program changes and may involve new regulation concern "livability" and transportation planning to address climate change. These are often discussed in terms of providing options for transit, biking, and walking. From the perspective of this state, that raises concern. For many Americans, particularly in rural areas, those options will not serve their transportation needs. Good highways will also be essential to livability in rural and many other areas. If livability is to be part of the next highway and transit legislation, it must be framed in a flexible way that allows rural states and communities to pursue solutions that are practical for them.

We are strong supporters of the approach to program delivery in current law – that most funds are apportioned to the states. We, like other states, conduct public outreach and then prioritize project selection. We are concerned that various proposals would give more emphasis to distribution of funds to projects based on decisions at USDOT, not in the states. Disproportionate growth in Federal

discretionary dollars inevitably would reduce the portion of the program distributed to states. While we do not expect a Federal program without some discretionary funding decisions made by USDOT, we think rapid growth in discretionary Federal programs should be avoided.

Before closing, let me also note that while we want a surface transportation reauthorization law that is good for North Dakota enacted as soon as possible, without a reauthorization law, states and business are faced with operating under program extensions. While we are currently operating under an extension through the end of 2010, we suspect that some will say that any next extension should be short. Short extensions make program delivery less effective and discourage investment by the private sector. So, if there are to be extensions, they should be of practical length, perhaps a year.

Transportation is a Good Investment

Much of today's surface transportation infrastructure was built by our forefathers as an investment in our country. Today that investment is taken for granted as everyone automatically expects a strong transportation network. Many people have invested in new forms of communication in their home, spending more than ever before on items such as cell phones and Internet. Today it is not unusual for an individual consumer to spend $500 a year on a cell phone bill, compared to the national per capita average contribution of $109 a year into the Highway Account of the Highway Trust Fund. We think this illustrates that transportation is a good buy.

While we recognize that we do have challenges on our system, we do have many hundreds of miles that are in good to excellent condition. Continued investment is necessary to ensure our roadways stay in good condition and that we can improve those that are not.

Conclusion

In conclusion, it is essential that the Congress, through the reauthorization process, recognize that increased federal investment in highways and surface transportation in rural states is, and will remain, important to the national interest. The citizens and businesses of our nation's more populated areas, not only residents of rural America, benefit from a good transportation network in and across rural states like North Dakota. With such legislation, we will be better equipped to address transportation issues in the ND 23 corridor as well as elsewhere in North Dakota.

That concludes my statement. I'll be happy to respond to any questions you may have.

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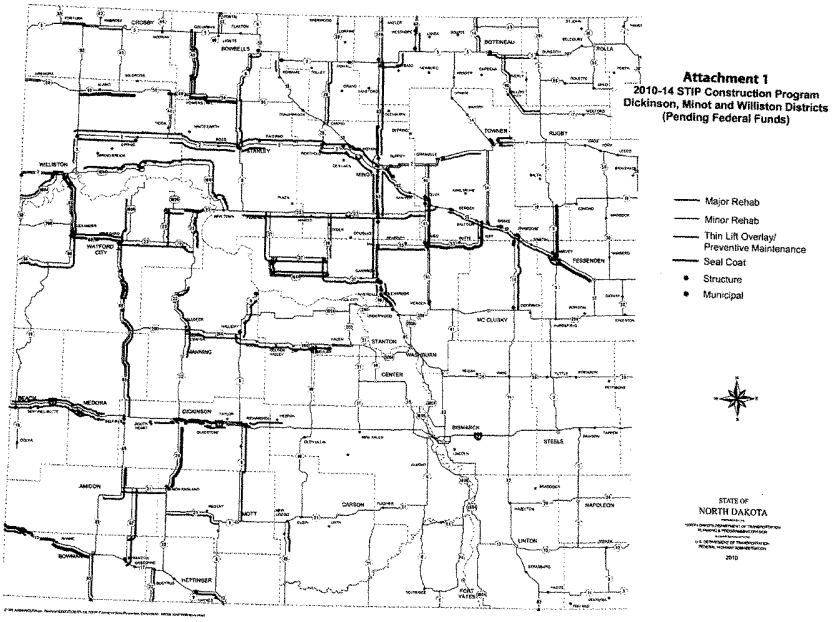

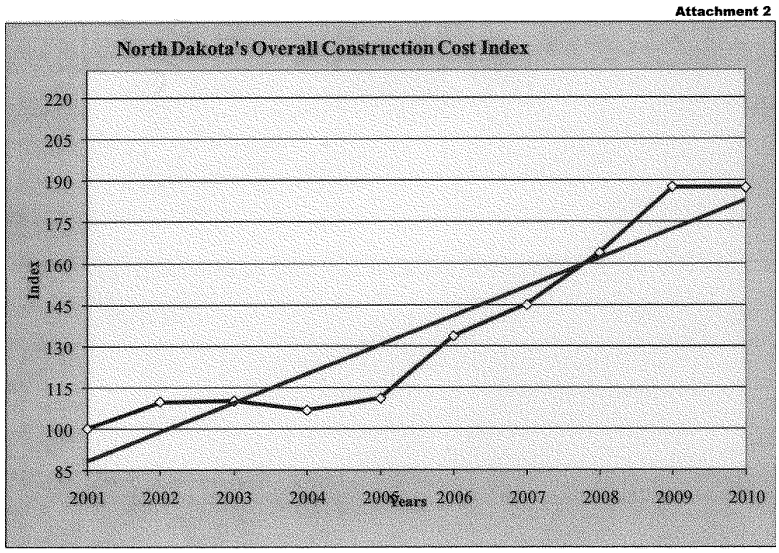

The CHAIRMAN. Thank you, Director Ziegler, for really an excellent statement. You know that a key reason I'm doing these hearings is to lay on the record the case that needs to be made for additional Federal investment in our transportation system in North Dakota. I've been told that if there are going to be any additions to funding, beyond the formula funding, if there's not been a hearing and a hearing record established, that it is going to be very difficult to get any funding beyond formula funding.

And as you know in the last bill, we were very fortunate to get substantial funding beyond the formula for North Dakota, and of course that carried over into the stimulus bill, or the Recovery Act as it's called. And so, we think it is very important to lay on the record, just as clearly as we can, the case that is to be made for additional Federal investment in these road and transportation systems. And I think you've done an excellent job here this morning of laying out the case just as clearly as we can make it.

My intention is to go to Chairman Levings next, and then to the mayor, and then we'll go to questions of all three members of the panel.

Welcome, Chairman Levings. Thank you so much for being here and please proceed with your testimony.

STATEMENT OF HON. MARCUS LEVINGS, CHAIRMAN, MANDAN, HIDATSA, ARIKARA NATION

Mr. LEVINGS. Thank you, Chairman Conrad. My name is Marcus Dominick Levings, Eh-Bah-Dah-Gish, White Headed Eagle, and I am the elected Tribal Chairman of Three Affiliated Tribes of the Fort Berthold Indian Reservation. I would like to thank the honorable Chairman Conrad, Congressman Pomeroy, and other distinguished officials for your visit to the Fort Berthold Indian Reservation, and for this opportunity to testify before you today. I have previously provided Congressional testimony regarding the many issues that effect Fort Berthold, our enrolled members and every person who resides in and around the Fort Berthold Reservation. We would like to thank Chairman Conrad for his efforts in addressing an issue that is important to all of us who reside here, the promotion of economic growth and improving safety of our most travelled roadways in the North Dakota oil patch, highways 22 and 23.

As Chairman of the Three Affiliated Tribes and as a enrolled tribal member, I have witnessed the development of the Bakken Shale Oil Play and with it the possibility of increased economic wealth and opportunities to every resident of Western North Dakota, including the Three Affiliated Tribes and the Fort Berthold allottees. However, with those increased opportunities comes increased impact to our most important system of infrastructure, our roadways. The introduction of oil tankers, trucks, and other heavy equipment on our roadways has increased traffic numbers, increased the number of road fatalities, and severely decimated road conditions to the point where all roadways on the Fort Berthold Reservation are clearly overburdened and are in desperate need of upgrade.

However, as today's discussion is centered on State highways 22 and 23, it must be clearly stated to this committee that these are not the only roads that have suffered with the increased oil activity. The tribal roadways of the Fort Berthold have been even more severely impacted by the development of oil and gas on Fort Berthold and the surrounding areas. The deteriorated conditions of the tribal roads are beginning to impact the ability of all our people, enrolled members and others, to safely travel even in the best of weather conditions.

The Fort Berthold Reservation is criss-crossed with a complex web of different road types, and with even more complex jurisdictional web as to which governmental bodies policies, monitors, and ultimately responsible for the maintenance and upkeep of these roadways. In short, this creates a very complex problem that can only be addressed through cooperation by all the governmental bodies who ultimately share in the benefits of the increased economic development that has risen with oil and gas activity in the Bakken Shale.

As the main throughways on the Fort Berthold Reservation, State Highways 22 and 23 have seen a steady and dramatic increase in both light and heavy traffic. According to a report in the Minot Daily News, the four-and-one-half mile stretch of highway from the Four Bears Bridge east to New Town area sees over 6,300 vehicles daily. This roadway, along with Highway 22, serve as the main routes for tribal members and others to access employment, healthcare, food, fuel, recreation, and other basic services that are scarce in most areas of the reservation.

The safe and improved conditions of these roadways are vital not only to the increased economic opportunities for the reservation, but are absolutely necessary to the improvement to the basic quality of life of our enrolled members.

It is the position of Three Affiliated Tribes, and I believe this view is shared by other local communities, that Highways 22 and 23 should be, at minimum, upgraded from a two-lane to a four-lane highway system. Further, State, County and Tribal law enforcement would work cooperatively to ensure traffic and load-restriction laws are complied with to ensure the highest level of public safety is property established and maintained. These improvements are vital, not only to the continued economic development of Fort Berthold and western North Dakota, but to ensure the residents of this area are sufficiently protected as the oil activity continues to increase for the next 15 to 20 years.

Presently, the Fort Berthold Reservation has a multitude of different road types, that are classified by the governmental body responsible for maintenance and upkeep. Specifically, I've listed the roadways on Fort Berthold, and the tribe is directly responsible for maintenance and upkeep of a majority of these tribal roadways being directly impacted by the increased oil and gas activity on this area. Rural minor arterial roads, 141.2 miles, community residential streets, 28.7 miles, rural major connector roads, 191.5 miles, rural local roads, 729.5 miles, city minor arterial roads, 6.8 miles—total miles on Fort Berthold Reservation that we have to maintain is 1,097.7 miles.

In addition to the tribal Indian reservation road inventory, with the BIA there are also 664.4 miles of county roads, 150 miles of State-owned roads that are located within the boundaries of the reservation that both members and nonmembers use for daily commutes.

As I stated previously, the issue of roadway safety and the need for improved conditions is not limited to merely Highways 22 and 23, but is a problem that all roadways on Fort Berthold Reservation face and will continue to face.

The Three Affiliated Tribes, BIA highway system is currently beyond its acceptable life span. The current tribal roadways were built with 2 inches of bituminous asphalt, in the decades of 1970's and 1980's. The engineers, at the time, were not aware of the future oil boom, and did not design the BIA road system to withstand the heavy amounts of truck traffic associated with an oil boom, and the lack of planning shows today.

Present-day travel on our BIA route today can only prove to be very hazardous and expensive. It costs hundreds of thousands of dollars each construction season to keep up with the repairs of all of our paved routes and infrastructure. The highway system is so old that the roadbed begins to deteriorate immediately right on the other side of the patch job. Currently, the list of improvements and repair jobs exceeds the amount of revenue coming in.

It is the goal of the Three Affiliated Tribes and our Tribal Road Department to keep our primitive gravel and our paved roads as safe as possible, despite the limited resources currently available to us. We understand and accept the responsibility of our road system, must handle the daily commute of multiple oil field trucks, daily school traffic, our elders, emergency and public safety services, and the daily commutes of all residents of the Fort Berthold Reservation as they move about in their daily lives.

Currently, BIA Routes 12, 18, 6, 2, and 22 are in need of complete reconstruction and repaving to withstand the influx of oil field traffic, and the assurance of the safety of our school-aged children, our elders, and our emergency and law enforcement personnel.

In total, the traveled roads require a minimum of 56.2 miles of reconstruction. Even with the dedication of a portion of the oil and gas tax revenues received by the Three Affiliated Tribes through our tax agreement with the State of North Dakota, our current IRR budget does not have enough money to reconstruct even a single route on Fort Berthold Reservation.

The Three Affiliated Tribes is faced with a unique situation. While we welcome and encourage the development of tribal oil and gas resources, and yet must unfortunately welcome the devastating impacts to our already fragile and outdated roadway system. It is this issue that the tribes, as well as other communities in and around Fort Berthold Reservation, now address this committee in order to find a solution.

Chairman Conrad, Congressman Pomeroy, and other officials with us today, I would once again like to thank you for this opportunity to briefly speak to you regarding our collective issue, the safety and conditions of our roads. The ability to travel safely and securely is something that the Three Affiliated Tribes has continually strived for here on Fort Berthold Indian Reservation. The Three Affiliated Tribes, given our rural environment, recognize the need for safe and adequate road systems so our enrolled members can travel safely during their daily lives.

We also recognize the need for an adequate road system so that the tribe, the Fort Berthold allottees and all of our enrolled members can benefit from the economic opportunities that stem from the Bakken shale oil field.

However, while we recognize and fully support this committee in its study, what can be done to improve State Highway 22 and 23, we cannot let this committee and the surrounding local communities overlook the simple fact that much of the continued oil and gas development in this area will also severely impact our travel roads.

We respectfully remind and request this committee to review the need for improved and upgraded roads as a problem that requires solutions for all of our roadways, including the Bureau of Indian Affairs roads that the tribe is responsible for.

It is simply unacceptable to ignore these non-State roads on the reservation when the economic benefit derived from the use of these roads benefits not only the Fort Berthold Reservation, but the surrounding communities, counties, and the entire State of North Dakota.

Once again, on behalf of myself and the Three Affiliated Tribes, I would like to thank the committee for inviting me to testify to you today. I will be happy to try to answer any questions you may have. Thank you.

[The prepared statement of Mr. Levings follows:]

THREE AFFILIATED TRIBES
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United States Senate Budget Committee

Formal Hearing on

"TRANSPORTATION INVESTMENTS: PROMOTING ECONOMIC GROWTH AND IMPROVING SAFETY ALONG ND 23"

July 10, 2010

Testimony of Marcus D. Levings, Chairman
Mandan, Arikara & Hidatsa Nation

My Name is Marcus Dominick Levings, Eh-Bah-Dah-Gish, (White Headed Eagle) and I am the elected Tribal Chairman of the Three Affiliated Tribes of the Fort Berthold Indian Reservation. I would like to thank the Honorable Chairman Conrad, Congressman Pomeroy and other distinguished officials for your visit to the Fort Berthold Reservation and for this opportunity to testify before you today. I have previously provided Congressional Testimony regarding the many issues that affect Fort Berthold, our enrolled members and every person who resides in and around the Fort Berthold Reservation. We would like to thank Chairman Conrad for his efforts in addressing an issue that is important to all of us who reside here, the promotion of economic growth and improving the safety of our most traveled roadways in the North Dakota oil patch, Highways 22 and 23.

As Chairman of the Three Affiliated Tribes and as an enrolled tribal member, I have witnessed the development of the Bakken Shale Oil Play and with it the possibility of increased economic wealth and opportunities to every resident of Western North Dakota, including the Three Affiliated Tribes and the Fort Berthold Allottees. However, with those increased opportunities comes increased impact to our most important system of infrastructure, our roadways. The introduction of oil tankers, trucks and other heavy equipment on our roadways have increased traffic numbers, increased the number of road fatalities and severely decimated road conditions to the point where all roadways on the Fort Berthold Reservation are clearly overburdened and are in desperate need of upgrade.

However, as today's discussion is centered on State Highways 22 and 23, it must be clear stated to this Committee that these are not the only roads that have suffered with the increased oil activity traffic. The tribal roadways of the Fort Berthold Reservation have been even more severely impacted by the development of oil and gas on Fort Berthold and the surrounding areas. The deteriorated conditions of our tribal roads are beginning to impact the ability of all people, enrolled members and others to safely travel in even the best of weather conditions. The Fort Berthold Reservation is crisscrossed with a complex web of different road types with an even more complex jurisdictional web as to which governmental body policies, monitors and is ultimately responsible for the maintenance and upkeep of those roadways. In short, this creates a very complex problem that can only be addressed through cooperation by all the governmental bodies who ultimately share in the benefits of the increased economic development that has arisen with Oil and Gas activity in the Bakken Shale.

North Dakota Highways 22 and 23

As the main throughways on the Fort Berthold Reservation, State Highways 22 and 23 have seen a steady and dramatic increase in both light and heavy traffic. According to a report in the Minot Daily News, the 4 ½ mile stretch of highway from the Four Bears Bridge east to New Town sees over 6,300 vehicles daily. This roadway, along with Highway 22 serve as the main routes for tribal members and others to access employment, healthcare, food, fuel, recreation and other basic services that are scarce in most areas of the Reservation. The safe and improved conditions of these roadways are vital not only to the increased economic opportunities for the Reservation but are absolutely necessary to the improvement of the basic quality of life for our enrolled members.

It is the position of the Three Affiliated Tribes and I believe this view is shared by other local communities, that Highways 22 and 23 should be at minimum upgraded from a two-lane to a four-lane highway. Further, State, County and Tribal law enforcement should work cooperatively to ensure traffic and load-restriction laws are complied with to ensure the highest level of public safety is properly established and maintained. These improvements are vital not only to the continued economic

development of Fort Berthold and Western North Dakota but to ensure the residents of this area are sufficiently protected as the level of oil activity continues to increase for the next 15 to 20 years.

Current Highway and Road Inventory of the Fort Berthold Reservation

Presently, the Fort Berthold Reservation has a multitude of different road types that are classified by the governmental body responsible for maintenance and upkeep. Specifically, I have listed the roadways on Fort Berthold that the Tribe is directly responsible for maintenance and upkeep with the majority of these Tribal roadways being directly impacted by the increased oil and gas activity in this area:

Rural Minor Arterial Roads	**141.2 mi**
Community Residential Streets	**28.7 mi**
Rural Major Collector Roads	**191.5 mi**
Rural Local Roads	**729.5 mi**
City Minor Arterial Streets	**6.8 mi**
Total Miles	**1097.7 mi**

In addition to the Tribes Indian Reservation Road ("IRR") Inventory with the BIA there are also 664.4 miles of county roads, and 150 miles of state owned roads that are located within the boundaries of the Reservation that both members and non-members use for daily commutes. As I stated previously, the issue of roadway safety and the need for improved conditions is not limited merely to the Highways 22 and 23, but is a problem that all roadways on the Fort Berthold Reservation face and will continue to face.

The Three Affiliated Tribes BIA Highway System is currently beyond its acceptable life span. The current tribal roadways were built with 2 inches of bituminous asphalt in the decades of the 70's and 80's. Engineers at the time were not aware of a future oil boom and did not design the BIA roads system to withstand the heavy amounts of truck traffic associated with an oil boom, and the lack of planning shows today. Present day travel on our BIA Routes today can prove to be very hazardous and expensive. It

costs hundreds of thousands of dollars each construction season to keep up with the repairs of all of our paved routes in our infrastructure. The highway system is so old that the road-bed begins to deteriorate immediately right on the other side of a patch job. Currently the list for improvements and repair jobs exceeds the amount of revenue coming in.

Current and Future Goals of the Three Affiliated Tribes

It is the goal of the Three Affiliated Tribes and our Tribal Road Department is to keep our primitive, gravel, and paved roads as safe as possible on despite the limited resources currently available to us. We understand and accept the responsibility that our road system must handle the daily commute of multiple oil field trucks, daily school bus traffic, our elders, emergency and public safety services and the daily commutes of all residents of the Reservation as they move about in their daily lives.

Currently, B.I.A Routes 12, 18, 6, 2, and 22 are in need of complete reconstruction and repaving to withstand the influx of oilfield traffic, and the ensure the safety of our school age children, our elders and our emergency and law enforcement personnel. In total, the tribal roads require a minimum of 56.2 miles of reconstruction. Even with the dedication of a portion of the oil and gas tax revenues received by the Three Affiliated Tribes through our Tax Agreement with the State of North Dakota, our current IRR budget does not have enough money to reconstruct even a single route on the Fort Berthold Reservation. The Three Affiliated Tribes is faced with a unique situation: where we welcome and encourage the development of the Tribal and Allottee oil and gas resources and yet must unfortunately welcome the devastating impacts to our already fragile and out-dated road-way system. It is this issue that the Tribe as well as other communities in and around the Fort Berthold Reservation now addresses this Committee in order to find a solution.

Conclusion

Chairman Conrad, Congressman Pomeroy and the other officials with us today, I would once again like to thank you for this opportunity to briefly speak to you today regarding our collective issue, the safety and conditions of our roads. The ability to travel safely and securely is something that Three Affiliated Tribes

has continually strived for here on the Fort Berthold Reservation. The Three Affiliated Tribes, given our rural environment, recognizes the need for a safe and adequate road system so our enrolled members can travel safely during their daily lives. We also recognize the need for an adequate road system so that the Tribe, the Fort Berthold Allottees and all our enrolled members can benefit from the unique economic opportunities that stem from the Bakken Shale Oil play.

However, while we recognize and fully support this Committee in its study of what can be done to improve State Highways 22 and 23, we cannot let this Committee and the surrounding local communities overlook the simple fact that much of the continued oil and gas development in this area will also severely impact our tribal roads. We respectfully remind and request this Committee to view the need for improved and upgraded roads as a problem that requires solutions for all our roadways, including the Bureau of Indian Affairs Roads that the Tribe is responsible for. It is simply unacceptable to ignore these non-State roads on the Reservation when the economic benefit derived from the use of those roads benefits not only the Fort Berthold Reservation but the surrounding communities, counties, and the entire State of North Dakota.

Once again, on behalf of myself and the Three Affiliated Tribes, I would like to thank the Committee for inviting me to testify to you today. I would be happy to try to answer any questions you may have.

"Mod-zi-gidaz". Thank you.

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The CHAIRMAN. Thank you.

And next we'll go the Mayor? Please proceed with your testimony and then we'll go to questions of the whole panel. Welcome.

STATEMENT OF HON. DANIEL URAN, MAYOR, CITY OF NEW TOWN

Mr. Uran. Good morning, and thank you, Senator Conrad and Representative Pomeroy and the Budget Committee for taking the time to hear our concerns today on Highway 23. When we talked about—when you guys brought up the chart a little bit ago about bringing back 2 dollars for every dollar or whatever, and investing in roads and safety, what's one life worth? If we put a billion dollars into Highway 23 and we save one life, is that not worth it?

The number of fatal accidents that have been happening in the New Town area and the Fort Berthold Indian Reservation has everybody concerned. You know, we're losing loved ones, friends, relatives, neighbors—whatever amount of money we can put in to Highway 23 or all of our roads south of New Town, north of New

Town—any of the highways, any of the county township roads, anything—if they can save one life, it's worth it.

Highway 23, which ids what we're here talking about today—I don't want to give away my age, but I can remember it, traveling to Minot on that road when I was a kid. It's got to have been built in the 50's or 60's. I don't know that there's been a whole lot improvement done to it since that time, other than maybe repaving it once in a while. It's, you know, built for the traffic of the 60's. We're in 2010.

That highway, it runs right through the main street of New Town. New Town is fortunate enough where we're looking at replacing—reconstructing Main Street in 2012. We've received a grant through the State—$2 million is Federal money, $200,000 is from the State. Without that $2 million from the Federal Government, we wouldn't be even able to consider reconstructing Main Street, so it's greatly appreciated. I mean, that shows how important Federal dollars are to our area.

We probably can't fit a four-lane through New Town or across the bridge, but we can probably fit three lanes, a turning lane, and that's the plan that we have right now for reconstructing Main Street—is to put three lanes, a turning lane in the middle. The last traffic surveys warrant—show we warrant traffic lights, OK? Along with traffic lights come the $250,000 bill, per light. You know the project is about $3.6 million, so right now that's just figuring two stoplights. So that, the city share is going to be $1.4 million that we have to come up with. But, we are trying to address that traffic problem in New Town.

The traffic in New Town, right now, I've attached a map that shows the traffic surveys that have been done over the last—since 2006. Traffic in New Town is up 27 percent, anywhere from 25 to—25 percent on each intersection. Since 2002, it's up 53 percent.

The truck traffic alone, just a couple of examples, the truck traffic is up 123 percent on—at West Avenue. It's up 373 percent at Sioux Place since 2002. I mean, we have all kinds of concerns about pedestrians trying to get across the street; imagine trying to cross the street. I work at the school district, I go to the bank, I walk to the bank at least three times a week to make deposits and do banking business. Sometimes you can stand there 5, 10 minutes to get across the street.

Luckily, we haven't had any fatalities as far as pedestrians in the city of New Town—so far. But, you know, we're addressing that problem.

The city of New Town is also selling a lot of water to the oil field, you know, for frack jobs and what-not. I think, from January through May I figured out it was over a million and a half gallons a month that's sold to the oil field. All of that is trucked, and most of that traffic goes down Highway 23, most of that truck traffic. And right now, we're taking a portion of that revenue that we receive off the sale of water and we're putting it away to help with the Main Street project, to help raise that $1.4 million. I mean, we feel that that's part of the traffic problem, so we're using part of that revenue to help fix the problem.

The city continues to grow, the tribe is putting in a new health center up here. Along with it is going to come—I don't know, I've

heard anywhere from 65 to 120 homes. We have another housing project planned for west of New Town—all of that's going to add to the traffic that goes on Highway 23, you know?

And they're talking the Bakken field to be here the next 40 years. Well, our highway is already 50 years outdated, what's it going to be like in another 40 years? So, we need to invest in Highway 23, not only Highway 23, but Highway 22. My sister just came up from Dickenson yesterday and asked me if I had been on that highway. There's big holes and what-not in there, she said, it's unreal, the shape of that highway.

Myself, I drove to Stanley the other day, there's a 55 mile per hour speed limit on Highway 8, coming back, I was passed three times by semis. I had my cruise set on 55 miles an hour. I drove to Minot, here, Monday, July 5th. Between New Town and Plaza, I was passed 8 times—not by oil field traffic but just by holiday traffic, for the Fourth of July. There was twice, there was about 6 of us in a row that had our cruise set on 55 miles an hour, there was twice that vehicles come around and passed all 6 of us at one time, you know? That's an accident waiting to happen. And those types of things need to be addressed.

So, I guess I would just like to say any Federal dollars that can come our way, that can save a lift, that can improve our roads, improve the safety for not only the residents of New Town and Fort Berthold Indian Reservation, and not only for those that live along Highway 23, but any tourist or anybody who travels through on Highway 23, we don't want to lose that life.

Thank you.

[The prepared statement of Mr. Uran follows:]

Heart of Lake Sakakawea

City of New Town
P.O. Box 309
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Phone: (701) 627-4812

Daniel Uran, Mayor
City Of New Town

July 8, 2010

Committee Members,

I thank you for the opportunity to present my concerns on ND Highway 23 and the safety of the residents of New Town, Fort Berthold Indian Reservation and everyone who lives along and/or has to travel highway 23.

The number of fatal accidents that has been happening on Highway 23 has everyone concerned. Although there have been fatal accidents in the past, myself having lost a sister, cousin and my fiancé in an accident 30 years ago, the number of fatal accidents has increased significantly with the huge amount of traffic that is now traveling Highway 23.

Highway 23 was not built to handle the huge amount of traffic that is now traveling the highway, must less the truck traffic that has come along with the oil boom. The highway needs to be updated to handle today's traffic flow and to handle the truck traffic. It should be updated to a four lane or at least widened to provide turning lanes.

Highway 23 runs through the main street and, although the City of New Town cannot fit four lanes through town, we do have plans to reconstruct Main Street in 2012. The plans are to widen Main Street and put a turning lane in the middle. Recent traffic surveys indicate traffic signals may be warranted. The cost of the project is estimated at $3.6 million dollars funding will come from Federal, State and local funds.

The City has been approved for a grant from the North Dakota Department Transportation of which $2 million is from Federal dollars and $200,000 is State funds. The City's cost is currently estimated at $1.4 million. Without the federal money the City would not be able to even consider the project.

I have attached a main street traffic volume survey record which shows the traffic volume in New Town increased by 25% from 2006 to 2010 and by 53% from 2002 to 2010. Just a couple of examples, according to the surveys, truck traffic volumes on Main Street have increased by 123% at West Avenue since 2006 and by 373% at Soo Place since 2002. Imagine a pedestrian trying to cross the street in New Town.

As mentioned earlier, Highway 23 is our main street and if the traffic volumes have increased this significantly in New Town they are probably similar all along highway 23.

From January through April the City sold an average of about 1.5 million gallons of water per month to the oilfield. All of that water is trucked out and most of those trucks travel on Highway 23. A portion of the revenue from the sale of that water has been allocated to help pay for the Main street project.

The City of New Town continues to grow. The Three Affiliated Tribes has housing projects planned to house the medical staff at the new medical center and a housing project west of New Town. The school continues to build housing for teachers. All this growth will add to the traffic that will use highway 23.

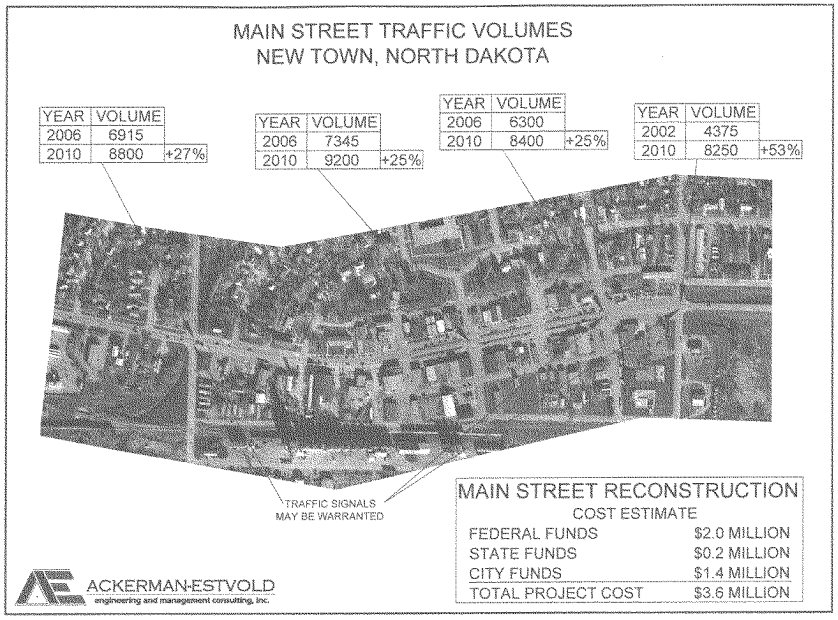
Any Federal money that could be budgeted and allocated to help update Highway 23 and improve the safety of our motorists who use the highway and the pedestrians who have to cross the highway will be greatly appreciated.

If you have any questions please call me at home 701-627-4933, work 701-627-3650, cell 701-898-3511 or write me at P.O. Box 208 New Town, ND 59763-0208. My e-mail address is Dan.uran@sendit.nodak.edu.

Thank You,

Daniel Uran

Daniel Uran



The CHAIRMAN. All right, thank you very much. Excellent testimony.

Let me just ask you, Mayor, we have some in our society now who say the Federal Government's got a dramatically cut back pro-

grams like this one. What would your response be to that? What would be the result?

Mr. URAN. I understand, you know, living under a budget, but I also understand that when there's a dire need, you have to address it. And I think there's a dire need, here, I don't believe that we can put this off any longer.

The CHAIRMAN. Chairman Levings, what would you say to those people who might be listening or reading this testimony and they're of the belief the Federal Government should cut this program dramatically? Federal Highway transportation dollars, specifically.

Mr. LEVINGS. Chairman Conrad and Congressman Pomeroy, respectively, all audience members, as a lifetime resident of Fort Berthold, since May 1966 I've been living here. There was only a year and 9 months I moved away to go to work in Oregon. And I've never seen such congestion, I've never seen such Grand Central Station, I've never seen so much activity.

Four Bears is where I grew up—western part of the reservation, right on the reservation line, actually, where the Wells-Levings Homestead is at. And I lived there from day one. It was a four-walled, frame home from Beaver Creek, south of the reservation after the flood of our homelands, Alba Woods, North Dakota. And we moved out here and relocated up on hilltops—no running water, no road, no electricity, nothing. Coal and water were hauled to heat the home and the water came from the Little Swallow Spring across Highway 23, there, and it was by team horse. These were the times that my parents and my grandparents lived.

So, then to live that life, as well, my father raised us there. I didn't have running water until August of 2005. I'm 44 years old, so 39 years, I hauled water. So, I kind of have an opportunity to see what the hardships are of our hearty people of the Mandan Hadats and Arikaras, as well as western North Dakotans—as all North Dakotans go. You all went through that.

Today, with this traffic boon that we're dealing with, I think this is the second or third one for western North Dakota. Today, there is just a fear factor, now, as the Mayor has spoken of. In August 2009, I and the new town partial Mayors—Watford City Mayor, Minot Mayor, Stanley Mayor, Williston Mayor, Killer Mayor got together and we had a press conference at the tribal headquarters—live on KMHA 91.3 and we talked about a four-lane on 23 and 22.

So, about 12 months ago, we addressed this because we were losing too many lives. There was accidents, and more accidents. July 1997, my brother was killed on Highway 23. And he wasn't a driver, he was a passenger. And it was devastating to my mother, Rosalda Dwa Grady Wells, and my father, Marcus Wells, Sr. So, I know full well what Dan was speaking of, as Congressman Pomeroy was speaking of.

That was before this boom. At that time there was a tail end of the 80's and 90's oil boom. Today, it is very, very dangerous to drive 23. I had a weed and seed meeting, right here, in this Arikara Room of the Four Bears Casino Lodge with the DOJ attorneys, three of them—Claire Hawkhalter, Rick Volk, and I can't remember the third one—Lynn Hyme, I think. We were all here and we were talking about the traffic. And they said, "Chairman, we don't even drive 23. We're going to go back out 22 and go back

down to Dickenson and go back to Bismarck." They know the statistics. They know the fatalities as Congressman Pomeroy was alluding to, those crosses that were put on those 23 line and 22. And that's where they drove out. Now, if those are Federal attorneys, they know where to stay away from, the concern of the narrowness.

The rumble strips—now the road is narrower. Do you think about that? So, it's a good thing, it wakes you up a little bit, but now you've got to, you know, navigate a narrower strip on each side, because there's one in the middle, too.

So, the four-lane, in August 2009, Chairman Conrad and Congressman Pomeroy is what we're looking for on 23 and 22. When I went up to the Mount Churro County celebration last fall and the Williston Mayor cornered me, the Stanley Mayor corned me, too, and they said, "OK, Chairman Levings, you need to help me. You need to help both of us," they said. "We need a four-lane on 1804 to Williston, we need a four- lane on number 8." Because it's all of us. And they know that we're working as a team. The Three Affiliated Tribes, Tribal Business Council and the Administration, we're working with everyone—the cities, the towns, the State, the counties—and our issue right now is, let's work this through. And it shows—it shows. I mean, this group effort has expanded. We went and did that with the water, we went and did that with getting that supply to everyone, and that's how we're carrying forward on this infrastructure.

We don't think that working separately it can be tackled, because this is a Federal highway issue. Twenty percent of the fund comes from the State and 80 percent comes from the Federal Congress, and the White House, the ability.

I think being here is a lot easier to understand. You can see photos in D.C., you can see photos in Bismarck, but when you actually drive these roads, it speaks for itself.

I've got a picture, here, where there's 9 trucks on the Four Bears bridge. Wow, that old bridge probably would have collapsed. And I used to drive that, all the time. And I'm an original resident of Dragsford Village, house 214, from Head Start through K to 12 through New Town School Public District Number 1. I rode that bus. I remember how dangerous it was. Now, we've made strides on that, now we just need to expand.

Talking about 22, the Mayor mentioned 22. It's called an obstacle course, really. The speed limit goes down to 45. And there's a little jump, by Beardon, it's actually like a little roller coaster, and you just hack it, you know? And then you've got to look behind you, too, because a truck is trying to pass you while you're trying to go through that obstacle course. So, it is very, very dangerous.

In fact, at our groundbreaking for the fiberoptic with RTC which our Congressional delegation helped us receive $21.9 million, I told the story, and I'll tell it again. On 22, coming down from the top by Bergbears, going into Beardon, I was in front of an 18-wheeler, and there was a bar behind the 18-wheeler, and we were going down into Beardon and there was an 18-wheeler coming up with a white passenger truck and then an oil service truck coming up. Well, just as the Mayor alluded to, trying to pass six cars, well this passenger truck was going to pass a service truck and an 18-wheeler, and I and that 18-wheeler that were behind me seen it coming,

so we both got in the shoulder—literally got in the shoulder. And that truck didn't even slow down, it just zoomed right between both of us. And that's how close it was to having a head-on collision. And I'm the chairman of this tribe. And I was coming back from a funeral for a long-time realty officer for the Fort Berthold Agency and the funeral just concluded. So, that's real.

And, it was a long answer to a short question, Chairman Conrad, Congressman Pomeroy, but these are actual facts.

The CHAIRMAN. It's a good answer, and an important answer.

Let me just announce that they've just informed me that the air conditioning is not working, they're working to fix it. I just invite anybody with a coat on, feel free to take a coat off. People who are standing in the back, there are some chairs up in front where you're invited to come and sit so you don't have to stand the whole time, there are chairs up in these first two rows for anybody who doesn't want to have to stand.

Let me go to you, Mr. Ziegler. What would you say to those who are saying Federal highway program should be cut substantially from where it is?

Mr. ZIEGLER. Mr. Chairman, Congressman Pomeroy, you know, our country's economy took off in the 50's, 60's, and 70's when we started putting out the interstate system. That's when we create iconic activity in this country. That's when we started saying, "You know what? We need to be able to move people across this country." From the interstate system, after it was completed, obviously we need to look at the Federal highway system that connects to the interstate, and then from there, to the local highways that connect to the State highways.

I think our country needs to continue its investment in infrastructure. If we don't, we will potentially become a third-world country. When—I haven't been there, but I've certainly heard stories about what's happening in China and what's happening in India, now, with their transportation systems. And with the infrastructure they're putting into place, and it's significantly above what America is doing. I think without that investment, our country is going to continue to fall backward from the economic power that we have been in this world.

Speaking from more of a local perspective, I do understand the concerns of safety. And there are days, Mr. Chairman, Congressman Pomeroy, that we feel overwhelmed at the Department. Highway 22 got to the condition that it's in because we're working on Highway 85. And we had bad weather this spring, so the trucks has to be moved to Highway 22, or stop commerce. We knew we were going to have trouble. Walt Peterson, our District engineers, here, Jim Reading, our District Engineer from Minot are both here, as well as Grant Levi, our chief engineer. They've been working diligently to try to fix those potholes, but they get one fixed and a few trucks blow it up, again.

But we have been planning. We have a contract in place; we had it in place months ago. But, this spring just took its toll on all our roads, we had a wet spring, we've had more water, as you know, in the State than ever before, and we have a contract with Knife River Construction who are going to fix those holes, and then do a heavy overlay. And it's costing us.

We're going to be increasing the contract significantly. On Highway 22, we'll be spending $2 million more, and that's all State money. It's coming out of Walt's budget, and he's squirming a little bit about that, but we're going to have to do it.

Also, on Highway 73, we're going to spend a million dollars more than the contract because of the breakups there, due to the oil industry. That is coming out of the Central Office maintenance budget. So, we're working hard to keep the roads in good condition. What it's going to take for our planning to be successful in the future is a long-term transportation bill that addresses the needs of the infrastructure, not only in the country, but right here in North Dakota.

The CHAIRMAN. Director, let me ask you this question. In your testimony, you referred to your National organization as calling for—if I'm correct in my math, somewhere around $78 billion a year in funding.

Mr. ZIEGLER. That is correct, Mr. Chairman.

The CHAIRMAN. For transportation. As you know, the current Trust Fund provides $31 billion a year. So, if we kind of put this together, we have $78 billion a year in need, we have $31 billion a year in funding. We all know that we've got to deal with the deficit, because the debt is growing too rapidly and that threatens our long-term economic security. So, in the short term of this period of economic weakness, it's been important for the Federal Government to run deficits, to give lift to the economy, to provide liquidity to prevent a collapse. We know, very soon, we have to pivot and begin focusing on bringing down this deficit and debt. Highway is not immune from that, transportation's not immune from that, we're going to have to deal with, over the medium-term and longer-term, bringing down this deficit and debt. That means it's going to have to be paid for. And right now, we have $78 billion a year of need, identified by Mr. Ziegler and his colleagues across the country, and $31 billion a year in funding. That's a $47 billion shortfall.

So, somewhere, we're going to have to come up with additional resources, and a lot of them. And I know, people say, "Well, we've got to improve the roads," but where is the money going to come from? If people say, "No, you can't raise revenue," then the only alternative is going to be to cut spending, and if we cut spending on roads from what we're already doing, which is insufficient, I think you can think for yourself what the result will be.

I mean, these are hard facts. This is reality. You know, the best thing in the world would be for us to believe we didn't have to do anything—don't have to cut spending, don't have to raise revenue, but that's not real. We can see, right here, we've got a State need that is also a national need. We're not just asking on behalf of North Dakota. Yes, we get $2 back for every dollar we send Washington in transportation, but we are part of a national network. And this energy play is part of a—has a national benefit, because we are helping reduce our dependence on foreign oil. And we're spending a billion dollars a day buying foreign oil. And that money is going to place where we don't have a lot of friends. So, it makes no sense to continue this policy of sending a billion dollars a day to Venezuela, to Saudi Arabia, and the rest—Kuwait. How much better off would we be if that money stayed home?

But, we're not going to produce more energy here unless we have the transportation network to help us do it. And if we're going to have the transportation system that is needed to help us with this energy development, it's going to cost money. And we don't have the money, right now, to finance what's already being done, much less to do anything more. And the testimony—the very clear testimony that has been here today that we're going to need to do more.

Is that fair to say, Director Ziegler?

Mr. ZIEGLER. That is a fair statement. A very fair statement.

The CHAIRMAN. Chairman Levings? What is your reaction to that?

Mr. LEVINGS. I think—Chairman Conrad, Congressman Pomeroy—that being here, driving the road, stopping at intersection, trying to get on 23, trying to get on 22, trying to get on number 8, trying to get on 1804, 37—as you go across the reservation, it is here. So, our focus, I think, as our task force started this initiative in August of 2009 was, let's get 22 and 24 a four-lane. I heard the Mayor say it, and I heard Congressman Pomeroy say it—you can't really put a value on a life. While we have a few members in the audience, here, who have lost lives this last year, and my condolences still go out to them and wipe their tears, because we need to prevent that.

We know, you know, the divided highway with the four-lane will probably have a different speed limit. However, it will do a good job of trying to prevent those head-on scrapes and head-on collisions. We just had one yesterday, I don't know if Mr. Ziegler told you that, Chairman Conrad and Mr. Pomeroy. That's what happened. And it was roughly around 6 p.m. last night. So, that was over here on 23 in Partial. And so, I mean, that's No. 8, there.

So, it's real—or, 37, excuse me. And it's never going to go away because we're just getting started. So, I commend our Congressional delegation for getting this Federal Lands cap off the oil and gas development, now we just need to deal with the progress, is to take care of the infrastructure needs, because without this oil and gas development, our tribe would still be in a different situation.

So, we're working with all of the needs. We have the Bureau routes and tribal routes, but I called Governor Hoeven myself on 22, because I drove through that obstacle course, took pictures on my Blackberry, emailed them to Ryan Bernstein and they got the issue addressed. By July 15th, they're going to get of those potholes filled in, and they're going to get it all restriped and back in good condition.

But that's a temporary fix. It's going to be like that a month down the road. We have Bureau routes, tribal routes that are connected. We all need to have the same effort but again, the Federal highways having a heck of a time on their heavy highway—now imagine the tribe. We've got car and pickup traffic conditions, truck, compactions when they buildup these roads. Basically, our tribal roads were old cow trails. And then they just put a little bit of gravel on them and they kind of built them up, and then they put, you know, some mix on some of them.

So, now imagine having 18-wheelers across that. All of our roads were built for pickups and cars and maybe a bus or two, but we also have ag. This picture I showed you with these 8 trucks on the

Four Bears bridge was just 2 days ago. A lot of those trucks are ag. So, we've always had that. But the tribe and the Bureau routes, we need the funding, as well.

So, the IRR program as Kurt Wells has put together for us, we need that, as well. And we want to work as a team, we want to get this worked out in a team effort, because what's good for Fort Berthold is good for everybody. As I said earlier, about the water, well, we did that in healthcare, too. And it's with the Congressional delegation's assistance. We want to be working through a constructive effort versus, "Well, we're going to be over here and we're going to do our own thing," well, we can't afford that. Every year, I think, we put in over $2 million on maintenance and that's over and above the general contract. So, that's General Fund money. That's revenue made out of the casino, lease income, other areas. That could be going to services to our people, while we're putting them on the roads.

The CHAIRMAN. All right.

Mr. LEVINGS. Thank you.

The CHAIRMAN. Mr. Pomeroy.

Mr. POMEROY. Mr. Chairman, I think that you've elicited the key facts for the record. I would just—I just go back and circled some of those that I pulled out of the Commissioner's testimony.

59 percent of truck traffic neither originates nor ends in North Dakota. Thirty percent of ag crops grown here are exported, and I bet we've got a number of commodities where the figures would be substantially higher than that.

Farm to market roads, the interstate, the network of roads critical to our ag export dimension benefits to the entire country. Energy production, we all know that story, one that's unfolding and is going to have a multi-decade dimension to our contribution to the Nation's energy supply. And then the final one, and one I think that we need to talk about a lot more in framing this issue—North Dakotans are paying way more than the national average, relative to highway taxes, highway taxes per miles driven, you live in a rural area, you drive more miles, you pump more gas, you pay more money. So, our per capita contribution of $161, compared to the National average, $109, really puts some balance into this donor/donee argument that we're on the receiving end, we're paying 50 percent higher gas taxes out here. We're doing our part.

And, Mr. Chairman, thank you for this—and I want to thank the panel members for their excellent testimony.

The CHAIRMAN. Any other final thought any of the other panel members would want to make before we go to the next panel? Director Ziegler?

Mr. ZIEGLER. Just one, Mr. Chairman, in that—and I know I've talked about it a lot in my testimony, but if we understand the—a new transportation bill may take some time, we understand that. We understand the reality of that, as you have said. We ask, though, that for our planning purposes that if we have to work with continuing resolutions that we get at least a year—if not 18 months—so that we can continue planning out ahead. Because as you know, from an environmental perspective, it takes time to create projects and move earth and put down pavement. It takes time.

And so, if we know where we stand, we can plan, and pick the highest priorities and make those happen.

The CHAIRMAN. All right.

Mr. ZIEGLER. Thank you, Mr. Chairman, again——

The CHAIRMAN. Very important—very good thought.

Mr. ZIEGLER [continuing]. For the opportunity to be before you.

The CHAIRMAN. Yes, sir.

Mr. ZIEGLER. And you, Mr. Pomeroy.

The CHAIRMAN. Mayor?

Mr. URAN. Just to add, when you're talking about what we pay in highway taxes, what about the royalty income that the U.S. Government gets out of all of this core land that's flooded that goes back into the Federal Government? I know, 25 percent of that, the Federal Government keeps. Seventy-five percent comes back to the State, through the State, to the counties and the school districts.

The leasing alone, New Town School District—I worked for the New Town School District—our cut was $22 million. And that's just a cut of that 75 percent—of that 75 percent, 25 percent goes back to the—or, 25 percent of that goes to the county, 25 percent to the townships and 50 percent to the school districts, and that's all of the school districts in Montrail County and New Town School District has about 50 percent of the students in Montrail County, so our cut was like—well, actually, it didn't go by student, it went by acres, we have like 42,000 acres under there. Our share was 22 million. The Federal Government kept 25 percent of that.

The CHAIRMAN. Let me just say, when I make this argument to my colleagues, they say, "Kent, North Dakota gets $1.70 back for every dollar you send Washington." I'm talking, in total, now. So, we are a huge recipient State of Federal money. We get far more Federal money into the State than tax money we send Washington. And so, we're depending on the year, fourth, fifth, or sixth in terms of return out of all 50 States, in terms of getting more Federal money into the State than we send. And that's from all sources combined.

So, let me just say, as your representative, our colleagues are saying to us, and saying to us increasingly, "Hey, your State gets a lot more Federal money than you send in tax dollars. And, you know, now you're down making an argument for more?" I am. Because I think we've got a good case to make. We are participating in securing the energy future for the country, and of course we are the food supply—not only for our country but for much of the rest of the world. And you've got to have a transportation system to be able to do those things.

But I just want you to know and people in North Dakota need to know, the argument my colleagues make to me is, "Gee, your State gets a lot more Federal money than you contribute in taxpayer dollars to the expenses of the Federal Government, you're getting a pretty good deal already." That's the argument they make to me. And, you know, we have to acknowledge that fact and then make the case on why these funds are required.

I want to thank—to stay on time, we need to go to the next panel. I want to thank this group of witnesses. Thank you, you've been excellent, you've helped us make what, I think, will be a very strong record. Next, I'll call on State Representative Kenton

Onstad and Trustland Oilfield Service President Steve Kelly for the second. As they're coming, I want to acknowledge Senator Warner is here.

Senator Warner, won't you stand and be recognized. Thank you for being here, Senator Warner.

Representative Conrad, I especially like that name, won't you stand, please? Thank you for being here.

As the second panel is being seated, I want to just repeat for those who are here why we are doing this. We are having an official hearing, where a record is kept, so that we can make a case to our colleagues on why additional funding is needed in North Dakota because of the energy activity and the agricultural activity, primarily, although we also have growing tourism, for additional investments in the transportation system above and beyond the funding that is provided via a formula. So, that is the reason that we're doing this.

I want to welcome Representative Onstad and I want to recommend, also welcome Steve Kelly, the Manager and the Owner of Trustland Oilfield.

Good to have you here. Kenton, why don't you proceed? And if you'd grab the microphone to have it in front of you so our stenographer can get all of your testimony.

STATEMENT OF HON. KENTON ONSTAD, DISTRICT 4 REPRESENTATIVE, NORTH DAKOTA HOUSE OF REPRESENTATIVES

Mr. ONSTAD. Good morning, Senator Conrad and Congressman Pomeroy and welcome to District 4. You acknowledged my running mate, Senator John Warner, but I also want to acknowledge Tom Conklin is in the room, also.

We're here to talk about Highway 23 and need to point that all the—Highway 22, Highway 8, 1804—they're really part of the whole investment part.

The CHAIRMAN. Let me just stop you there, if I can, because while we have headlined this as Highway 23, we're really interested, as Director Ziegler knows, in the entire network, here. That's why we've done separate hearings in different parts of the State on the road network, we're going to be doing another one tomorrow. Because we're trying to build the case, not only for 23, but as we look at 23 and focus on that, because that's the busiest road, here, that we're looking at 22, we're looking at 8, we're looking at the tribal network—that all of these are part of the record that we're building, here.

Mr. ONSTAD. Great. The question is, is investing in Highway 23 a prudent, wise investment? And I'll say, absolutely. Addressing safety issues is very critical to this increased traffic. We need transportation investments to keep pace with current industry investments. North Dakota is sparsely populated—we've talked about that. We have the highest miles driven per capita in the Nation. And so that's an added cost. When you look at this current area, we have to travel 70 to 100-plus miles to go to our major shopping areas—Minot, Williston, Dickenson, and Bismarck. So, Highway 23 really is that connecting route to those areas, so it becomes a vital route to this region.

Agriculture is our No. 1 industry, and I suspect that will stay, but recent oil and gas developments in the region is emerging, along with recreation. Each of these industries are highly dependent on Highway 23, they're highly dependent on trucking. All of those industries—and the highway system is there to promote moving of produce, moving of products, but it's also movement of people.

When we look at the demographics of 23, and it was pointed out on the one map, it's only one of two major highways that run east and west north of the Missouri River—one of two. And we refer to Highway 2, that's a four-lane highway. Where Highway 23 is just single. And it's also only one of two major crossings across the Missouri River, and that connects us to the Dickenson area, southwest North Dakota, through Four Bears Bridge. Other than that, the Garrison Dam. So, we have a situation of location that's really important to look at our highway system.

We have to look at recreation in this area. We look at our recreational sites of Van Hook, Partial Bay, Pouch Point, New Town Marina, Four Bears Marina—all of those are dependent on Highway 23. On any given weekend, you have to note the population. On any given weekend at these recreational sites, it more than doubles a population of Montreau County of 7,000 people. Those people are looking for houses in lots, and they're making investments in those recreational sites. And it's important that we, in turn, increase our investments in Highway 23 to pay a large part of that. They're a large part of our economy, the State's economy.

So, now we have to look at oil and gas development. Oil and gas is completely dependent on trucking. We're not talking pickups and cars, we're talking heavy, heavy trucks. Tankers, rigs, those movements all are huge and very damaging to our system.

Let's take one well site, one rig. One rig can drill about 10 to 12 wells in a year, but to set up that rig, take it down, dismantle it, we're talking 1,000 truckloads into that one site.

Take the hydraulic fracking techniques that's needed. They'll need as much as 900,000 gallons to as high as 2.3 million to complete one fracking job on that rig. One tank alone, about 6,000 gallons, you're looking at 150 to 400 truckloads into that one well site, plus the 1,000 that's already mentioned at that point. Now, that's just one well.

We currently have over 60 rigs working in this area, over 100 in all of western North Dakota, but 60 in this alone. So, you add that up, we're talking now, in the next year, 700,000 truckloads to move in and out, establish these wells, we're looking at 200,000-plus loads of water that's going to be hauled to these well sites, we're now putting us over 1 million, or close to, miles or truckloads a year traveling across our roads.

Our highways were not designed for that kind of traffic. The interstate highway system is the only system designed to handle that. Again, remember, 22, 23, Highway 8—we're only a two-lane highway. The interstate's four-lane, along with Highway 2.

So, where do these tankers get their water? Well, they're going to come out of the communities, the majority out of New Town and Partial. That's putting an additional strain on their own road system within those communities. And they're going to travel right

down Highway 23. That's going to tributary out into our county and township roads, and you can see the destruction that 23 is having, the added destruction is happened to our county and township roads.

Now, this isn't just short term. We talked about earlier, mentioned earlier, we're looking at 15 to 20 year of drilling. We're looking at 10,000, probably, to 15,000 wells being drilled in western North Dakota. Current technology, if it keeps improving, who knows where that is going to lead to in the future. As this thing expands, it's going to be here awhile, so we significantly need that investment.

Francis Ziegler, the Director of DOT provided a lot of statistical data for the highway and I've added that to my comments, and you can see from 2006 to 2009, it's been a pretty stead increase. That increase in those last 3 years—just in the last year—has doubled that increase in the last 3 years. If you'll note in those, I–94, the traffic in I–94. Highway 23 now is higher than I–94 from Bismarck to Dickenson, by their account.

A local engineering firm, Aquinescefold, has had account of over 9,000 vehicles right downtown New Town. Over 9,000 vehicles. And most of that is truck traffic—heavy truck traffic. I can't emphasize that enough, about that portion of that.

And so this increased traffic, that leads to our safety concerns. Highway 23 has no turning lanes. We have no shoulder, to speak of, on these roads. Traveling up any of these hills, you'll notice on major highways you'll have a truck route, we do not have that. If you look at our intersections, a lot of them are just below, or on top of a crest of a hill. These now become major intersections for oil traffic, residential traffic, and so on. That's a concern. That's where we've had our accidents. And it isn't just a fender-bender, you're talking deaths. It's important to that point.

It's kind of looking like you can put—a 6-inch pipe will hold so much water. We're trying to shove that same amount of water down a 1-inch hose. Everything gets speeded up, everything now becomes dangerous, and that's where we're at—we're at a critical point, at that point. And so it's really reflective of our situation, and we—the necessary and the point—we need to make those investments in our highway system.

Speak of a situation just last week. We had a few rainy days, I'm on Highway 23, we have a stalled tanker truck. And he's loaded. Because there's no shoulder there, and what is left there is pretty wet, and he's—he must be a veteran driver, he pulls over a little bit, but most of that truck is still sitting on the highway. Now, this would probably be OK if it was on a flat stretch, but it was right below the Crescent Hill, going up that hill. So, the safety concerns that we have because there's no where for him to go, there's no shoulder on that road for that particular person to pull off, to go around, you have oncoming traffic the way it is, that's a safety thing. And we have about—in that short term that I sat there, there must have been 15 vehicles behind me, including trucks to pass that point. And that's evident of the situation that we have.

And so, to kind of come to conclusion, you know, 5 years ago, our current highway system could handle the agriculture economy of this area. But this current highway system is now limiting our

growth, not only for oil development, they're making huge investments. The recreational areas are dependent on the road system, and those individuals are making investments out there, we need to, in turn, make the same investments in our highway system.

And I again want to thank you for holding this Congressional hearing, and thank you for coming to hear our remarks, and——

[The prepared statement of Mr. Onstad follows:]

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July 8, 2010
Senate Budget Hearing Committee
Transportation Investments: Promoting Economic Growth and Improving Safety Along ND 23

Is investing in ND Hwy 23 a prudent and wise investment? Absolutely!! Addressing safety issues is critical!!

North Dakota, because of its sparse population, has one of the highest miles driven per capita in our nation. This is especially true of our region when the residents must travel 70 - 100 miles one way to the four major shopping areas of Williston, Minot, Bismarck and Dickinson. Hwy 23 is our connecting route to these areas which makes Hwy 23 a very important and vital route to our region.

Agriculture is our #1 industry, but recent oil and gas development in this region is emerging, along with recreation, hunting and fishing. Each of these industries are highly dependent on Hwy 23 for moving of goods, equipment, and people.

Hwy 23 is one of 2 major highways running east and west across Northwestern North Dakota. It links us with the rest of Western North Dakota, crossing of the Missouri River at the 4-Bears Bridge. The location of the Missouri River through our area limits our option of travel to the South, creating Hwy 23 as the only option to the Southwest for travelers of our region.

Recreational sites in this region, such as Van Hook, Parshall Bay, Pouch Point, The New Town Marina, and 4-Bears Marina are all dependent on Hwy 23. We must note the population at these sites on any given week-end more than doubles Mountrail County's population of 7000. The interest for housing at these sites has increased three-fold and in recent years more and more people have purchased lots at or near these recreational areas. Transportation on Hwy 23 to these recreational sites plays a large part of this region's economy.

Let's focus on our Oil and Gas Development along Hwy 23. The development of Oil and Gas is completely dependent on trucking. One rig will drill approximately 10-12 wells in one year, and it takes approximately 1000 truck loads to set up, drill and dismantle a rig before it moves to its next site. Fracing techniques used in horizontal drilling uses 900,000 gallons to 2.3 million gallons of water. There could be 150-400 tanker trucks hauling 6000 gallons of water across our highway system to each well.

Today, we have over 60 rigs working in our region, capable of drilling 600-700 wells per year. That makes 700,000 truck loads per year and additional 200,000 plus loads of water each year. Putting us near or over one million truck loads traveling over our highway system, which includes Hwy 23. The roads of our area were not designed for that kind of heavy traffic. Our interstate highways are the only systems designed to handle this kind of traffic, not Hwy 23.

Where do these tankers get this water? The communities of New Town, Parshall, along with a few other water depots provide water. Where do they travel, right down Hwy 23!! This is not a short term situation. We now anticipate 15-20 years of drilling with over 10,000 wells in Western North Dakota.

I have provided current data reflecting traffic counts from 2006- 2009 on several major highways, Hwy 85, I-94, Hwy 2 and Hwy 23. You will see a steady increase on these roads except for I-94. Current unofficial 2010 data

shows over 6000 vehicles per day on Hwy 23, this equals the traffic on I-94. It is believed that there has been over 9000 vehicles passing through New Town east to Parshall or north to Stanley along Hwy 23.

The increased traffic has created safety concerns. Hwy 23 has no turning lanes, or shoulders along its side of the highway to stop or turn off. Highway systems are designed to move products and people safely, and Hwy 23 is a bottleneck for traffic. It's similar to pushing water through a 6 inch pipe now try and push that same amount of water through a 1 inch hose. This is reflective of the situation we have and why it is so necessary to make the investments and improvements in Hwy 23.

Last week, after several rainy days I came upon a stalled tanker truck. The truck was loaded and had pulled over to the side of the road. With no shoulder, the majority of the truck was left sitting on the highway. We could get around him but in this case, the truck driver was stalled near the base of a hill. Now, you can imagine the concern for the traffic that was attempting to go around this stalled vehicle. I was one of fifteen vehicles attempting to pass with the uncertainty of oncoming traffic. This is not a safe situation but a very common occurrence.

Five years ago, our current highway system could handle the agricultural economy of our area. This current highway system is now limiting the economic growth of our area. It needs to grow and improve to provide adequate travel routes for the increasing demands for oil development and recreation that is now facing this area and the people who live along Hwy 23.

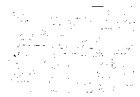
Respectfully submitted,

Kenton Onstad

Rep. Kenton Onstad
District 4

ADT= Average Daily Traffic

Hwy	Reference Point	Year	ADT	ADT (Trucks)
2	31 / North of Williston	2009	3965	890
		2008	3630	1020
		2005	2700	490
2	51 / West of Ray	2009	2964	783
		2008	2675	669
		2007	2116	466
		2006	1874	378
2	124 / East of Berthold	2009	3330	720
		2008	2770	401
		2004	2065	202
23	3/ East Watford City	2009	2925	700
		2006	1700	230
23	43/ West of Casino	2009	2681	678
		2008	2358	549
		2007	1726	229
		2006	1598	148
23	68 / East of Hwy 8	2009	3270	615
		2008	2625	325
		2005	2300	
23	96 / West of 83	2009	1235	225
		2008	1220	
		2004	1000	
85	81 / North of Belfield	2009	1820	504
		2008	1810	507
		2007	1759	475
		2006	1652	398
85	137 / South of Watford City	2009	1475	400
		2006	1450	
94	82 / West of Richardton	2009	5725	1365
		2006	5200	1450
94	127 / West of New Salem	2009	6588	1439
		2008	6198	1467
		2007	6262	1462



The CHAIRMAN. Thank you. Thank you for that excellent testimony.

And now we'll go to Steve Kelly, Manager and Owner of Trustland Oilfield Services.

Welcome, and please proceed.

STATEMENT OF STEVE KELLY, PRESIDENT, TRUSTLAND OILFIELD SERVICES

Mr. Kelly. Thank you, Senator Conrad and Mr. Pomeroy. Good morning to both of you, and thank you for providing me with this

opportunity to provide testimony at this hearing in this very important matter.

In the interest of full disclosure, I will say I was also—I'm a former attorney. I was the supervising attorney for the Northern Cheyenne tribes and the Three Affiliated Tribes for, combined, for over 10 years.

So, I've had—and over those years, I've had numerous opportunities to write testimony for various tribal officials, so it's nice to be able to write your own, and be able to testify. And especially about something that I am very excited about and very interested in as an owner, now, of a trucking company. I own Trustland Oilfield Services. That company provides trucking—we haul freshwater and disposal water, saltwater, and we also haul gravel and scoria. In that company we also have—I have 10 trucks that haul tankers, and then I have a winch truck and then we have 5 roustabout trucks, so we have people out on the road around Newtown and Mandaree and Partial and Stanley every day.

I also own a company called Trustland Consultants, LLC. And that's a land brokerage company, and I have field reps, about 5 of them that go out every day, and they're also out on the road.

Our shop is located 1 mile east of New Town, so we enter and exit off of 23 every day. And I would, personally, like to see the speed limit reduced to 45 past my shop, because I know we're going to get rearended making that right-hand turn into that—onto that road. And I'd also like to see a turn lane there.

I figure that we, right now, I have had, in the last 2 months at least 5 trucks go 24/7 for the last 60 days, except for 3 days within that period. I estimate that my trucks will put, in the roustabout truck, 700,000 miles on Highway 23 and the surrounding roads this year alone, and I only have 10 trucks—I'm a small operator. OK?

I don't know how many more miles—I have calculated how many more miles my field reps will put on, but they will—they certainly put on their share of miles.

So, as an owner, when I was asked to testify, I immediately said yes. Because safety on these roads is paramount for me, as an owner of a trucking company. I cringe, at night, when I get a call after 10 thinking that one of my trucks might have run into somebody or somebody might have run into one of my trucks. Either way, it doesn't matter, because I own a truck, you're always, seem to me, the bad guy in that situation.

And as a member of the Three Affiliated Tribes, a proud member, I also have a lot of family. So, there just about can't be a wreck without me having a family member involved, or at least somebody I know. Again, when I sat down to write the testimony, I immediately recalled 7 traffic accidents that have occurred in the last two and a half years. Three of them occurred east of New Town, three of them occurred west of New Town, between New Town and the turnoff on North Dakota Highway 22. And then one occurred, it involved—I did get the call, I had my truck pusher, Esley Thornton, who's also my cousin—got in an accident when there was real bad fog, he was driving down to get some tickets signed, and the line on BIA 14, past Mandaree, the center line disappeared, there was no center line. So, when he went to look for the shoulder, the

line on the shoulder of the road, he didn't realize he was going around a corner, and I don't think the other people did, either, because the fog was really bad, and they hit head-on, driver to driver. That was March 5th of 2010, he still is not back to work. And I don't foresee him being back to work. He pulverized his hip, and I don't see him being back to work until probably October 1 or later. So, these are the types of problem that we have to deal with and that we live with, here.

With respect to the other six accidents, out of those six accidents, nine people were killed and three people were seriously injured. So, when we have accidents on these roads, they're bad ones. And out of those six, obviously the one involving my employee involved an oil company—three of those were oil-related. And three of those accidents included family members of mine, and all of them included somebody I knew. So, we take this very seriously.

OK, in listening to the testimony I think I agree with everything that everybody's said, about—that we've outgrown this road. You know, when I sat down to analyze and take a look at and say, "Well, you know, what would I—the one thing I would say about Highway 23, what would it be, and that is, 'Nice ditches.'" Because we don't have anyplace to go. There is, virtually, mo shoulder.

Coming up here today from Minot, my wife has a place in Minot, I have a place that I stay at because I work here all the time, down at Pouch Bay. There was, somebody got a flat tire on a trailer. Well, he—when he got off, he got off the highway completely, and he was on the grass. And if you go back to Minot, or head east today at all, take a look, and you'll see where the State mows the grass so people can pull off, there, and do whatever they have to do. Trucks can't do that. You know, trucks can't do that—they can't get completely off the road because the slope is too steep. Especially if you're top-heavy, you'll tip over.

So, you know, at the very least, you know, tell Congress to give us a shoulder to—to lean on.

[Laughter.]

Mr. KELLY. So, and you know, the other thing is, is people have to realize that we have to fight the elements, here, at any given moment, and we cannot predict when we're going to get blinding rain, blinding snow—we had, I'll bet you we had 90 days of fog between the middle of January and the end of March, early April, where we had 50 feet or less of visibility. It was terrible. And so you get scared, and my drivers get scared, I get scared driving, and you don't know what to do. If you pull over, are you going to get hit from behind? You don't have a shoulder to pull over on, there's nothing there. And it's just not—it's just not 23, it's 22, it's 8, it's 1804, it's that way everywhere. And honestly, I believe it's a miracle that more people haven't been killed on these roads.

The other thing—my statement about nice ditches, really only applies to New Town and everything east of New Town. West of New Town there is no shoulder, absolutely none, and what you have there—they did some roadwork a couple of years ago, where they repaved the top of the road, and they didn't go out to the end. And when they didn't go out to the end, they put an abrupt edge on each side of the road. So now, if you go over, you've got to fight it to get back on, and a car, you can flip. If you're on a truck and

a trailer, you'll swerve that trailer over onto oncoming traffic to get back on. That's very, very dangerous. That—from the casino to off-reservation—and, by the way the road all of a sudden gets a shoulder once you get off reservation, I really don't understand how that happened—it's treacherous. It really is. And something needs to be done.

Just the other day I was driving along and you could see where a truck got off on the shoulder, he couldn't make it back, he ended up going down in the ditch—and by the way, the ditches on that side of the river are narrower, and they're steeper. But, anyway, he got down in the ditch, and he ended up going over an approach. And he was high-centered. So, you know, we need shoulders on the road, all the way, you know, wider shoulders, 5-foot, 6-foot, whatever it is, you know, all the way along Highway 23 and every other road, at the very minimum. At the very minimum, and you need turn lanes, and you need passing lanes. The second-biggest problem on 23 that I can see and my drivers see is from New Town east to Highway 8, you've got all of those hills in between here and the Scenic. And if I had my druthers, I'd be no passing all the way. It's already 55, but of course, you go back to 55 and everybody wants to pass. Well, that should be four-lane, as far as I'm concerned.

The CHAIRMAN. Now, you're talking from——

Mr. KELLY. From New Town, east to Highway 8, to Stanley, the turnoff. Yeah, 7 miles. That's treacherous road, too, and so that needs to be taken care of.

You know, and the other thing, we have a lot of deer and every now and then we get horses and cows that wander, and there's just no place to maneuver to avoid these animals, there's not. And so that compounds the problem regarding the shoulders, as well.

OK, so, of course, now that I've pointed out all of the problems, I want to recommend some solutions. You know, I got on the internet, took a look at your site, Senator, and I saw where you had some meetings on the 85 corridor, and I believe it might have been on—the other one on Highway 8, I'm not sure. But anyway, everyone's vying for four-lane superhighways. I would not oppose that, obviously. But I know that, like you've pointed out, money's short in Congress and so they're looking for solutions. But I would say if you can do that, construction of four lanes from North Dakota 23 from Partial west to Watford City, or the junction of North Dakota 22 would be the second alternative, construction of four lanes from the junction of North Dakota 23 and North Dakota 8 and Watford City, or the junction of North Dakota 22—that's all warranted. I would really push for a four-lane—at the very minimum—four-lane from 8 to 22. Because, you know, another thing I wanted to mention, if we're doing a frack job and we are hauling from New Town, west, and it is a Friday or Saturday night, I will not let my trucks haul after 10. Because between—there's a bar located just out—just on the other side of the casino, a couple of miles, and there's no shoulders and we've got heavy foot traffic between the casino and the Four Bears Village. So, I don't let our trucks drive between 10 and 7 in the morning, normally, if we're going back and forth. We will go to Watford City, or we will go to Killdeer, if it's feasible for us to do that, if we can justify it with costs.

So, we really do need four lanes, and we need a pedestrian walkway from the casino to that Four Bears Village, we really need that. So, I am, you know, surprised that people have not been hit and killed by, not only trucks, but by cars, as well.

And then I say on my fourth recommendation, if four lanes can not be constructed, many turn lanes and passing lanes need to be constructed along North Dakota 23 in terms of minimize the disruption of traffic in a lane. And I mentioned the walking path.

And then six, oh, here's another problem. North Dakota 22 where it meets 23, you have a little hill and you have a warning sign right before the hill, and you have a crest and you come down, and you have the rumble strips, and those help, I liked, Mr. Ziegler, what you said about the rumble strips, those do help. But, you know, if you have bad snow, or you have a lot of rain and a lot of thunder, or if people just fall asleep, they miss that stop sign, and they go right through 23. And there's a little approach there, and then a field. What I would recommend is that we put some flashing red lights on both the warning for the stop, and the stop sign, so that—as another safety precaution to warn people to stop, and then I would also recommend putting a little landing pad on the other side of that approach. It's—we have a lot of people who run that sign, and it is a safety hazard.

OK, I hear a lot of statistics and figures being thrown around about fracking, and I, you know, and I agree with much of them—I think Representative Onstad's figures are a little lower than mine. When we frack, we normally frack 50,000 barrels—not when we frack, but when we deliver to a frack site, we'll deliver 50,000 barrels. It normally takes us a week. It's about 416 trips for a frack, OK? Now, that's at 120 barrels a load, which is within the weight limits for the road. When you put on weight restrictions in the springtime, between March 1, generally, and June 1, that's 90 days where you have to haul 65 to 80 barrels. It costs that oil company 50 percent more to frack that well, for the hauling alone, OK? So, guess what? They want to wait until summer and fall to do it.

Now, we have had over 120 wells drilled, a month, for the last three or 4 months, and we'll probably have 100 a month drilled for—if the prices keep on going the way they are, for a very long time. Now, if I've got to—if I can't frack during those months, guess when they're getting fracked? They're getting fracked in the summertime when they're also drilling 120 wells, and you end up having to make, I've done the math on this, that would be 360 fracks that you have to make up, OK? And 416 loads, I believe it's about another 150,000 trips that you have to make up, when you're already going 90 trying to do the fracks that they've already lined up. So, you have that extra stress on the roads that wouldn't need to be there if our roads could withhold the normal weights.

So, if we're going to do some construction, let's construct these roads so that we don't have to have load restrictions in the springtime, OK?

When the oil company's shut down, that means I have to lay off drivers, and I've got to wait 90 days. They may stick around, they may not. And then I've got to turn around and get them again. There's no stability, no continuity, and that's not good for the economy here, for the oil companies, or for my company. So, if we're

going to build roads, let's rebuild the roads we have with sturdy roads.

OK, the auxiliary roads. You can't just build, you know Highway 23, obviously, and ignore the rest. And I'm glad to hear that we're talking about Highway 8, 1804, 85 and 23, as well. All of those serve the oil industry, right now. And, not only to, but Soda's BIA 2, which is down here south of the Mitza, south of New Town, BIA 12 which goes through Mandaree, BIA 14 which is a south route down to McKinzee Bay and East Mandaree and then you have Highway 17, which is south of Highway 14. All of those roads are decimated—terrible. And we need more Federal money to fix those roads.

I estimate—when you go across these roads, and you have potholes, and you have—I can't think of the word I'm looking for, here, but—roads in bad repair where you're shaking the heck out of your trucks, it costs you money. Any weld that you have on your truck or on your trailer to hold anything else that wasn't there when you got it, it's going to break sooner or later. And it costs you to replace that.

Your air lines break and come undone. There's a variety of other things that poor roads cost me. And I estimate, I spend probably 2,000 a month fixing these little things. So, good roads would also save me money. So, that's another reason, you know, I'm trying to just be altruistic, but it does provide us a savings, as well, as well as being safe.

So, I would really like—I'm glad to hear you mention these BIA roads, because the tribe really does need money for those—for these roads, as well.

Economic development along North Dakota 23—I've started another company where we are putting in water loadout facilities, three miles east of New Town.

The CHAIRMAN. Let me just stop you there, if I can, because we are—we're supposed to be taking off——

Mr. KELLY. OK.

The CHAIRMAN. Or, I'm supposed to be taking off in 10 minutes, which I don't think is going to happen, and I have another hearing in Devils Lake. I have read the rest of—just that final paragraph, and we know that issue is really separate from this hearing.

Mr. KELLY. OK.

The CHAIRMAN. So, I think we should reserve that—we're well aware of that issue, that's the Corps and the water permits issue.

Mr. KELLY. Yeah.

[The prepared statement of Mr. Kelly follows:]

TESTIMONY OF STEVEN A. KELLY
MANAGER AND OWNER OF
TRUSTLAND OILFIELD, LLC AND TRUSTLAND CONSULTANTS, LLC
FOR THE SENATE BUDGET COMMITTEE FIELD HEARING
AT THE FOUR BEARS CASINO ON JULY 8, 2010 REGARDING:

"TRANSPORTATION INVESTMENTS: PROMOTING ECONOMIC GROWTH AND IMPROVING SAFETY ALONG ND 23."

Mr. Chairman & Congressman Pomeroy:

Good morning to both of you and thank you for providing me with this opportunity to provide testimony at this hearing and on this very important matter.

My name is Steve Kelly and I am a proud member of the Three Affiliated Tribes and the Manager and Owner of Trustland Oilfield Services, LLC and Trustland Consultants, LLC located here in New Town, North Dakota. My Trustland Oilfield Services provides trucking and roustabout services to oil companies and Trustland Consultants provides mineral and land related services. Both of these companies were started as a direct result of the Bakken activity here on the Fort Berthold Reservation and western North Dakota. Between these two companies I employee approximately fifty-five (55) people. Both companies have employees traveling ND 23 and the surrounding rounds every day and I estimate that these companies will log over 700,000 miles on these roads in 2010 alone so we are very familiar with ND 23 and all other roads that run within and through the Fort Berthold Reservation.

As you know, ND 23 serves as a main artery to all transportation moving east and west through the Fort Berthold Reservation and western North Dakota. This highway is vital to the development of the agricultural and energy industries and to the general flow of goods and services that support these industries and our economy here and western North Dakota. The importance of this road to our local economy cannot be overstated.

ND 23 was built to serve "rural traffic" and has served us well in the past. However, the recent growth of the oil industry in western North Dakota and the sudden and shocking influx of truck traffic on this highway have made it

very clear that this road, as currently constructed, is inadequate for the traffic that burdens it on a daily basis. Simply put, Highway 23 is unsafe and a hindrance to the efficient development of the energy services in this part of North Dakota.

When I sat down to write this testimony, I immediately recalled six serious accidents in the last two and one-half years that happened on ND 23. Three of these accidents happened east of New Town and three occurred west of New Town. These six accidents resulted in eight deaths and three serious injuries. All of the people involved in these accidents lived here or were raised here in his part of the country. I truly believe that at least three of these accidents may not have happened if ND 23 was wider.

ND 23 is Unsafe for the Present Traffic.

From a trucking standpoint, I have this to say about Highway 23 is this: "Nice ditches". Although I am being somewhat facetious, I say this because there is no place for a semi-tractor or other vehicle to go other than the ditch. The shoulders of the highway are so narrow that a vehicle has to literally pull off onto the grass in order to safely pull off the road. Semi-tractors have to be very careful in pulling off the road this far for fear that the tractor and trailer may tip over in the ditch.

My statement about the "narrow" and unsafe shoulders on ND 23 only applies to Highway 23 east of New Town and west of the reservation. This statement does not apply to the stretch of ND 23 west of the Four Bears Bridge to the west boundary of the Fort Berthold Reservation **because there are no "shoulders" on ND 23 on this stretch of road!** This is a problem not only for trucks, but also the general public. There is no place to pull over to wait out snow storms, fog or any other weather. There is no place to swerve to avoid hitting a deer or person. No place to change a flat or deal with any other emergency that could occur. When the road crews came through and reconstructed the surface of ND 23 on this stretch of road they did not extend the surface to the same width as the previous shoulders. I have to wonder if such shoddy construction on ND 23 would have been acceptable if it occurred east of New Town.

Furthermore, the "abrupt" edges of the road truly make this stretch of road treacherous. Vehicles that fall off the edge of road in this stretch have a hard time getting back up on the road and tractor-trailers that fall of the

edge end up "swinging" back on and crossing the center line if they do get back on and don't end up in the ditch. Also, and ironically, the ditches on this stretch of road aren't as wide or as nicely sloped as the ditches on ND 23 east of New Town.
This problem is compounded by the fact that there is a bar located in this stretch of road and a lot of foot traffic from the Four Bears Casino to the Four Bears village. If I have trucks hauling to a frac job from New Town to a location west of New Town, we shut down at 10:00 p.m. every Friday and Saturday nights or haul water from Watford City in order to avoid the perils this stretch of road offers during these hours.

Another problem area on ND 23 is the stretch of road from New Town to Parshall, ND. There is a lot of oil activity and thus a large volume of daily traffic in this area north and south of ND 23. The stretch of road between New Town and the turn-off onto ND 8 to Stanly, ND is particularly dangerous because of the steep hills located in this stretch of road. There are pass lines on this stretch but passing on this stretch of road is particularly dangerous. It is my opinion that passing should not be allowed in this stretch of road and that four lanes are definitely needed in this stretch.

Another problem area I would like to mention is the junction of ND 23 and ND 22. The State of North Dakota needs to put up blinking red lights on the warning sign and stop sign on ND 22. For whatever reason, many vehicles have "blown" this stop sign and gone right through it and across ND 23 and into the ditch and field on the other side. A "landing pad" should also be developed across from the stop sign in order to minimize damage to vehicles that run through this sign.

Recommended Solutions.

1. Construction of four lanes on ND 23.
2. Construction of four lanes on ND 23 from Parshall west to Watford City or to the junction of ND 22.
3. Construction of four lanes from the junction of ND 23 and ND 8 to Watford City or the junction of ND 22.
4. If four lanes cannot be constructed, many turn lanes and passing lanes need to be constructed along ND 23 in order to minimize the disruption of traffic in a lane.

5. A walking path for pedestrians should be built from the Four Bears Casino to the Four Bears Village.
6. Flashing red lights on the warning sign and stop sign where ND 22 meets ND 23.

Order of Priority.

1. The stretch of ND 23 west of the Four Bears Casino needs to be addressed as soon as possible. This stretch of road is truly dangerous. A walking path should be built immediately.
2. The stretch of ND 23 east of New Town to the junction of ND 8. Four lanes are needed immediately for this stretch of road.

ND 23 Inhibits the Efficient Development of Our Energy Resources.

ND 23 is not built thick enough to handle heavy loads associated with the oilfield when the frost comes out of the ground in the spring. Every year, the state imposes road restrictions on ND 23 and other highways throughout the state. These restrictions are generally imposed in early March through May. These restrictions limit how much weight a semi tractor can haul. For instance, we can normally haul eight tons per axle on our trucks and trailers. During road restrictions, trucks are limited to seven or six tons per axle. Thus, trucks must make more trips when road restrictions are on then when they are not on. This cost oil companies a lot of money and many of them choose to minimize the amount of hauling they do when road restrictions are observed by the State. The only remedy to this problem is to build a thicker road that will handle regular loads in the spring.

Let me give an example of the effects that these road restrictions have on a frac job.

On average, an oil company will use 50,000 barrels of water on a frac job. When there are no road restrictions we can haul 120 to 130 barrels of water per trip depending on the weight of the trailer. When road restrictions are on ND 23, we can only haul about 80 barrels to the location.

Under normal conditions, it would take approximately 416 trips to provide 50,000 barrels of water for a frac job to location. When road restrictions are on, it would take approximately 625 trips. This amounts to a fifty percent increase in cost for delivery of the same product for frac job in the spring as opposed to a frac job that occurs in the summer when road restrictions are off. These costs also apply to other products, such as sand, that are trucked to location for a frac job. Obviously, oil companies take a look at these inflated costs and many of them choose to not frac during road restrictions in order to avoid these costs.

An oil company's decision not to frac during road restrictions causes havoc in many ways. First of all, this results in a slow time of the year for companies like mine that provide trucking services and I have to lay off drivers and then re-hire drivers when things get busy. Second, oil companies try to "catch-up" on fracing in the summer and fall. This means that we have more trucks on the road than we would or should have if companies would have fraced their wells during the spring. Roads that allow companies to work year round without road restrictions results in stability for the oil company, the oil services company and all ancillary businesses. If this is a desired result, it is important that ND 23 be re-constructed in such a way that road restrictions are unnecessary.

Although this is a problem for the oil industry, I would like to point out that this also affects other industries and the general public negatively. Because the roads are thin and more trips have to be made, the wear and tear on the roads continues with more usage. This causes not only unfavorable, dangerous driving surfaces, it forces more traffic onto the roadways slowing everyone down and increasing opportunity for accidents.

Ancillary Roads.

I recognize the focus of this hearing is ND 23. However, ND 23 feeds ND 22, many county roads and BIA roads and I believe I would be remiss if I did not mention that these roads are in dire need of help. The "loop" road on the peninsula south of New Town is completely decimated. Portions of this road are owned by the Mountrail country and the BIA. This road is completely decimated and needs to be completely rebuilt in a way to sustain the traffic it endures on a daily basis.

You should also know that BIA Roads 12, 14, and 17 are also in very, very bad shape. The Tribe could desperately use federal money to re-build and maintain these roads.

Economic Development Along ND 23

Another company I recently started up received water permits from the Three Affiliated Tribes for water load out facilities to be located 3 miles east of New Town and on the east side of the junction of ND 22 and ND 73. Both of these facilities are strategically located to reduce traffic in New Town and on highways ND22 and ND23. We have put in for permits and easements at the US Corps of Engineers in Riverdale to place our pumps in Lake Sakakawea. Our friends at the Corps recently informed me that they will not issue any permits or easements until they have concluded a study on water storage costs that may be assessed on the water used by such facilities. I had hoped to have these water load out facilities in service by August of this year. However, the Corps recent decision will delay operation of these facilities until at least May, 2011 unless common sense intercedes and prevails.

I strongly oppose the Corps assessment of any storage fees against the Tribe's water. Even if fees are ultimately assessed, I certainly don't understand why studies need to be conducted to determine the amount of the storage fees. I could, however, understand it taking the Corps eight months to think up a justification for water storage fees. I do not think that progress should be hindered for *this* reason.

Any assistance you may be able to provide to resolve this problem would be greatly appreciated.

Thank you for the opportunity to appear today and provide this testimony to the Senate Budget Committee.

6

The CHAIRMAN. Congressman Pomeroy and I and Senator Dorgan are very aware of that.

Let me just say that it's very apparent to me from the hearing today that not only do we have major issues with 23, we've got major issues with 22, 8, 1804, we have significant challenges with the Loop Road, in terms of reservation, 12, 14 and 17 on the reservation.

We, of course, we know from an earlier hearing, serious challenges on 85. So, you put all of this together, this entire network is stressed, and it's going to require additional dollars and some of the things have to be done urgently. I think, 23 we've heard in the testimony, Steve your excellent testimony, Kenton, your excellent testimony—these are things that need to be done urgently, because we're talking about loss of life. And we're having people have accidents, losing their lives, that's happening right now. And so those are things that need to be address urgently. And we've certainly heard, I think, the case made as compellingly as it could be.

Congressman Pomeroy?

Mr. POMEROY. Mr. Chairman, sensitive to your time, and you have the gavel, I think we have had, just superb testimony. This panel was absolutely excellent, also, in terms of really putting kind of a—how this works when the rubber hits the road, literally, on the operation of business and the daily life experience here, so I found this to be very informative, and I think we've built a strong record, this morning. Thank you.

The CHAIRMAN. Thank you so much, and thank you for participating.

One thing we should do, because I will be asked, you know, did I load the panel, or are the witnesses all in favor of doing something but the general population is not. Let me just ask, is there anybody here who opposes additional steps being taken to improve 23, 22, 8, 1804, the BIA roads, 85—is anybody in opposition to highway improvements on this road network?

[No response.]

The CHAIRMAN. Not a single hand is raised. Let me ask it the other way. How many here believe it is important that we have improvements to this road network? Let me just see a show of hands.

[Show of hands.]

The CHAIRMAN. All right. That's about as clear as it can be. Let the record show that the overwhelming majority of hands were raised. I think the only ones that weren't are people who aren't in a position to vote because they are the administrators of the program here in North Dakota. All right, thank you very much. I think this is an important hearing. Hearing will stand adjourned.

[Whereupon, at 11 a.m., the hearing was adjourned.]

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July 21, 2010

U.S. Senator Kent Conrad
Chairman of the U.S. Senate Budget Committee
Bismarck, ND 58505

Subject: Formal Hearing on Highway 23 Entitled,

Dear Honorable Senator Conrad:

Attached you will find our written testimony regarding the field hearing that took place focusing on ND Highway 23. This testimony compiled from community members and community public servants focuses not only on Highway 23 but also on Highway 22 and other road safety issues impacting the Fort Berthold Reservation. Our primary issues include highway safety, roads maintenance/construction, and road impacts due to area Oil & Gas Developments and Activity.

Should have any questions you may contact me on my cell (701) 421-0418 via e-mail: lredford@mhanation.com or Sherrie Gillette at 701-421-1469 or via e-mail: sherriegillette@mhanation.com.

Thank you for this opportunity to submit our testimony.

Sincerely,

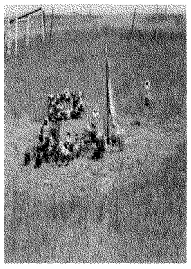
Lisa Redford, Director
Planning & Grants Department

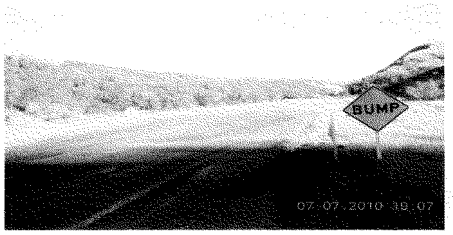
CC: File

Attachments

HIGHWAY SAFETY CONCERNS

FORT BERTHOLD INDIAN RESERVATION





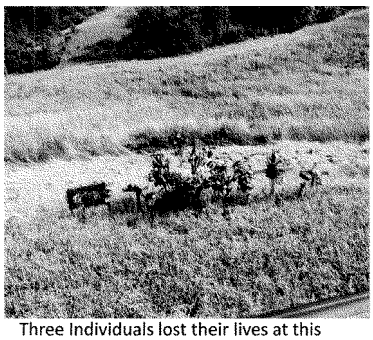
Testimony for Highway and Public Safety on
The Fort Berthold Indian Reservation
Compiled Information from Community Members and Public Servants
THREE AFFILIATED TRIBES
PLANNING DEPARTMENT
Lisa C. Redford, Director
JULY 8, 2010

A TYPICAL SCENE DRIVING TO WORK

FATALITIES AND CRASHED ON FORT BERTHOLD

INFORMATION SUPPLIED BY ND STATE DOT

	FATALITIES*			CRASHES	
Year	AI	Non Native	Total	AI	Non Native
2008	7	1	8		
2007	3	0	3		
2006	4	0	4		
2005	1	1	2		
2004	4	1	5		
2003	4	0	4		
2002	1	0	1		
2001	4	3	7		
2000	2	1	3		
Totals					



Three Individuals lost their lives at this location on Highway 23. The road in this area has limited sight of oncoming traffic.

Crosses of 2 people that were going to work one foggy morning and an oncoming truck hit them head on. Both were killed instantly. When contacting family members, they could not talk about it. "It's too soon, one member said, What would be done about it anyway?"

***This area on Highway 23 also has a limited view to oncoming traffic and has been host to several serious accidents.**

Data Summary:

According to North Dakota State Highway Statistics, from 2001 – 2006, the average number of injury accidents on Fort Berthold were 30 per year. The report indicated that accidents on the reservation were highly underreported issued other than DUI.
There were 5 traffic related fatalities all of which were alcohol related.

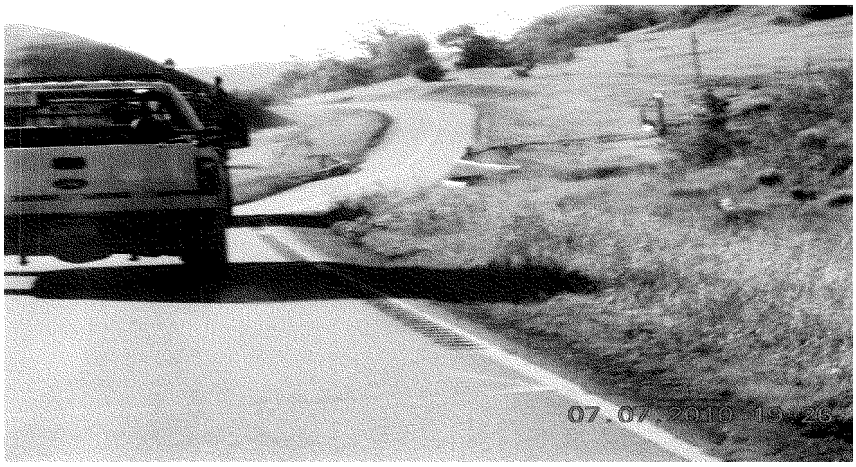
•In 2008 there were 11 traffic related fatalities in which alcohol was a factor in the actual collision but not in all vehicles involved.
•On May 1, 2008 there were four fatalities. In one case, an intoxicated driver carrying three other passengers hit head on with a non intoxicated driver who was 17 years old. The 17 year old driver, her 7 month old baby boy and 48 year old aunt were killed in this accident. One passenger in the intoxicated drivers' vehicle was also killed.
•In another case, due to the influx of heavy truck traffic from heightened oil field activity in the area, a water tanker truck passed along side a 23 year old tribal member driving a newer quad cab pick up, the water tank swung and rolled over the top of her vehicle, killing her instantly. The oil field traffic has caused many people to literally be afraid to drive on the highways. It is critical that law enforcement have a presence to deal with the traffic issues related to the oil activity.

FIRST OIL FIELD MOTOR VEHICLE TRAGEDY

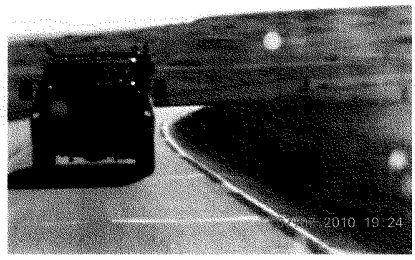
In another case, due to the influx of heavy truck traffic from heightened oil field activity in the area, a water tanker truck passed alongside a young female tribal member driving a newer quad cab pick up, the water tank swung and rolled over the top of her vehicle, killing her instantly. The oil field traffic has caused many people to literally be afraid to drive on the highways. It is critical that law enforcement have a presence to deal with the traffic issues related to the oil activity. Tribal Officers do not have the manpower or jurisdiction to address all of the traffic issues

Slow Moving Truck Traffic Highway 22

Limited Sight Distance is A Common Factor in a Majority of Motor Vehicle Crashes and Resulting Fatalities



An Abrupt Lane Edge on Highway 23 Is a Key Factor in Traffic Fatalities



PUBLIC SAFETY CONCERNS IDENTIFIED BY COMMUNITY MEMBERS

- Improved roads Highways 22, 23 and 37(narrow, surface damage, no shoulders, mowing in ditches, repainting of lines, TURN OUTS!
- Address semi-truck traffic throughout reservation due to oil industry
- Improve Enforcement of lowered speed limits
- Need for more law enforcement manpower to patrol highways (tribal, county and state)

Public Safety Concerns Continued:

- Emergency Services – Ambulance, Structure Fire – Oil Field related Fires and Toxic Emissions and Spills

- **Future goals of the Traffic Safety Plan would include:**
- An emergency response system throughout the reservation that would include an ambulance service for all six communities, water rescue services, and structure fire services
- Satellite phones for law enforcement (a grant was written that would provide such phones for law enforcement)
- Better cell phone coverage and cell towers throughout the community.
- A paid emergency response service will improve emergency outcomes due to volunteers getting burned out
- Cross train ambulance and firefighters
- 'Public safety and protection' needs to have higher priority on the Tribal Priority Allocation list.
- Improve communication services throughout the community
- Fully operational 911 system
- Cover all districts but individual needs addresses for the communities

Emergency Services on Fort Berthold

Community	Ambulance	Fire	Law Enforcement	Dive
New Town	Yes, transport to Stanley or Minot	Volunteer	Headquarters	
Lucky Mound		Tribal* Wild Fires only		
Mandaree	From to then to Bismarck or Minot	Tribal* Wild Fires only	35 miles one way	
Twin Buttes	Killdeer? Halliday taken to		110 miles one way	
Parshall	Volunteer	Volunteer	17 miles one way	Volunteer (?)
White Shield	Garrison to	Tribal* Wild Fires only	55 miles one way	
Four Bears			8 miles one way	

WHAT IS BEING DONE?

According to an August 8, 2009 article in the Minot Daily News rumble strips will be added to ND Highway 23 from New Town to Plaza and from ND Highway 23 and 8 to U.S. Highway 2 at Stanley. In August of 2008 the "Council Commissioners" [Mountrail County?] asked the ND DOT to reduce the speed from 65 mph to 55 on Highway 23 from Parshall to New Town and from the junction of Highway 23 and ND Highway 8 to Stanley. In a study done by DOT they found that speed changes were not recommended and in these particular areas, DOT found a slightly greater speed than the existing 65 mph speed limit. In addition, the study recommended right-turn lanes at Highways 23 and 8 and ND 23 and ND 37 and the work would be done in 2010. DOT also recommended increasing the radius of the northeast quadrant of the Plaza intersection (ND 23 and 64th Avenue Northwest) to improve turning conditions for large trucks and the work scheduled to be done in 2010. DOT did not believe four lanes were justified. Commissioners had also requested widening the shoulders and DOT stated widening the shoulders doesn't help with head-on crashes and it's very expensive to do.

WHAT IS BEING DONE?

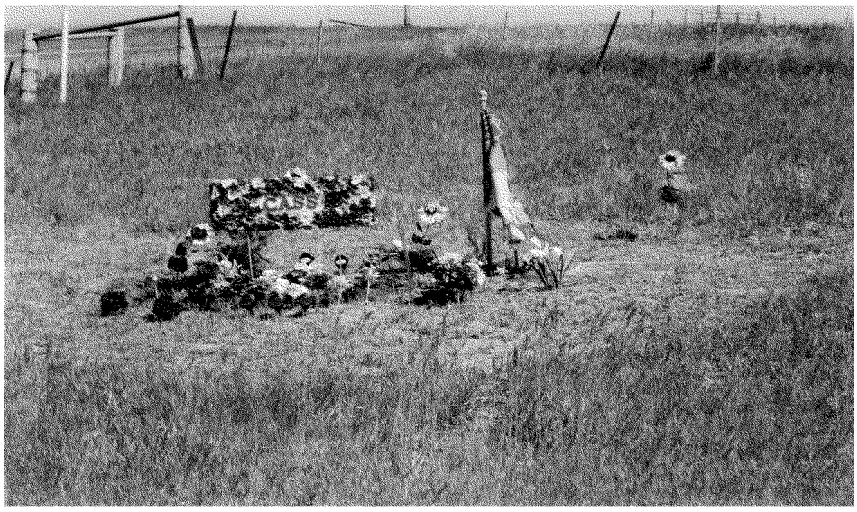
•On September 17, 2009 a meeting was held in Bismarck at the request of the Three Affiliated Tribes to discuss ways to make N.D. Highway 23 a safer road. As a result, the Governor's office requested the N.D. Highway Patrol to provide more assistance on the Fort Berthold Reservation in regard to non-Indian vehicle operators since tribal officers do not have authority over non-tribal vehicle drivers on the reservation.

•The Three Affiliated Tribes Law Enforcement has established a Traffic Safety Division that employs 3 officers to enforce traffic laws and patrol the highways.

•State has reduced the speed limit on Highway 23 at the Junction of Highway 22 and 23 East to the Junction of Highway 23 and 37 (approximately 28 miles). THIS CHANGE IS ONLY AS GOOD AS THE ENFORCEMENT! - On one evening a tribal officer made 18 stops for speeding and other traffic stops. Of the 18 stops; 16 were non-enrolled/non-native drivers. It is imperative that County and State Law Enforcement have a presence on the highways as well.

Family and Friends Remember

A neatly kept memorial reflects the memory of a young lady who lost her life driving home on a weekday afternoon on Highway 23. Another area with limited sight; no shoulder and narrow lanes.



We offer this testimony from the human side; real people; real happenings; real stories. Many family and friends as well as local officials wonder if the outcomes of these accidents would have been different had the minimum or a shoulder and not an abrupt lane edge or if lanes were not so narrow; possibly a caution light in a notorious intersection known for accidents.

No one may ever know for sure. Many of the families seem to think that these factors would have an impact and that the outcomes could have been very different.

The pictures included in this testimony package/powerpoint are not uncommon on highways 22 and 23 and other locations on the Fort Berthold Indian Reservation. They are pictures of Memorials set up on road sides or accident sites, for loved ones lost on highways. In visiting with the People, it is heart wrenching. No matter how much time has gone by, no matter how many years have passed, it does not get any easier. It is tragic and the sting of that type of death is never forgotten.

Jeannette Coffey stands at the crossroads of Hwy 23 and Highway 8. One July morning she is traveling to New Town with her friend and her two small children. A motorist does not see the stop sign and travels strait onto the highway hitting her vehicle. Her vehicle is totaled and her passenger and two children get out with minor injuries.

Her sister was not so lucky.

1 month after her accident, her sister was traveling to New Town to take her children to a show. She was hit in the exact same spot, when a motorist coming from Van Hook, ran through the stop sign and T-boned her vehicle. " My Nephew died in that accident and my sister and my niece were hospitalized for month's. All were wearing their seat belts."

"My sister did not get to attend her only son's funeral services, she did not get the chance to have closure. My sister will never be the same"

"We do not put a Memorial up for Lane. We remember it everyday. I pass it twice a day. Once to come to work, and once to go home."

"Is the road safe? No. Still cars and trucks are running stop signs and people will continue to have accidents until there are warning lights at locations like this at the crossing of a major highway. Until then I fear the accidents and fatalities will continue to happen."

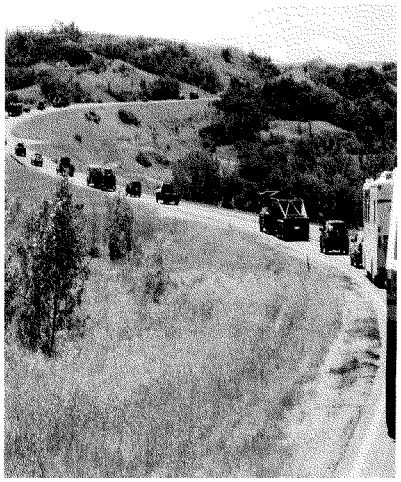
***Junction Highway 23 and Highway 8**

Another Families Story

- Heather Demaray thinks back to the day she received ***"the phone call".*** It was a beautiful day. Sun was shinning and there was no breeze. She had spoken to her Mother earlier in the week and she was told that her Mom would be traveling to New Town from Killdeer to go to the Dentist and she was taking her cousin and her baby along to go see the Doctor. Just like the Reservation news goes, I received a phone. They said there was a terrible accident outside of New Town and rumors were it was bad. They knew that there were fatalities. "I tried not to get worried and think anything bad, but after an hour and the rumors of names of different people that may have been involved in the accident I got worried. There were no positive identifications. I started to get an uneasy feeling and after looking at the calendar I realized that today was the day that Mom was going to New Town. I called the dental clinic and asked if I could talk to my Mom. They said that she never made her appointment. And then the sad realization set in. **It was her in the accident; my Mom, my 17 year old Cousin and her 6 month old Baby Boy were killed** by an impaired driver. One person from that vehicle was also killed. There was no way to avoid the oncoming car as the accident occurred at the crest of a small hill.
- "I try not to travel this road because it brings back memories. Memories that I do not want to think, did she suffer long? Were they killed instantly? What were her last thoughts?
- " I have traveled these roads and I know they have potholes and need major work. They need to be made wider so that if something did happen, you could have a little more area to move to try to get out of the way. If these roads were wider, could she have avoided the oncoming truck? Would I still have my Mom today?"
- *We may never know the what could have been. Pictured below are the roads today. With the traffic up 120% there needs to be wider lanes, hills and sharp curves need to be removed and ultimately a two divided or two lane highway.; It is the consensus of the area residents that this needs to happen soon.*
- See pictures below.

Four Bears Council Representative, V. Judy Brugh comments on road safety on the highways that span the segment she represents.

- "With the traffic increasing over three hundred fold on North Dakota highway 22 and 23 over the past two years and the toll it has taken on the roads, the people who travel it are increasingly at risk of serious injury. If a four lane highway cannot be built, we need highways that, at a minimum, have a shoulder we can pull over on in case of an emergency without being afraid we might get run into by another vehicle. We need help here!"



Two years ago, traffic such as this on Hwy 22 would never be seen. Note: Minimal attempts to address traffic issues include rumble strips placed on the center line and fog-lines of the highways; but lanes are still much to narrow.

News Articles Attached:

<Reprinted from THE MINOT DAILY NEWS, July 4, 2010, Opinon Section>:

"Oil patch roads are in bad shape" by Roger Brabandt, Minot

There seems to be extensive discussion concerning the dire road conditions in the oil patch of western North Dakota.

Recently, I decided to find out for myself by traveling nearly 500 miles (with one speeding ticket) through parts of Burke, Dunn, McKenzie, Mountrail, Ward and Williams counties.

What I discovered was, although the paved roads appeared to be in serviceable condition, the graveled farm-to-market and school bus roads were generally in need of major upgrades.

According to one western area school superintendent, $100,000 school buses can fall into disrepair in a matter of two years as well as student safety concerns and extended route times due to the enormous increase in traffic.

The unacceptable number of traffic accidents (**primarily ND Highway 23 and ND Highway 9**) is due to the need for increased numbers of passing lanes and/or four lanes required to facilitate the traffic flow.

Pipeline construction, in various stages of utilization, will ultimately alleviate a portion of this situation; until then, however, roads and "safety first" must be priorities.

As a legislative candidate, I feel that a temporary diversion of additional available fund for this infrastructure is crucial in maintaining our current and future levels of prosperity in North Dakota.

By ELOISE OGDEN, Regional Editor eogden@minotdailynews.com
POSTED: June 21, 2010

NEW TOWN Every day an average of 6,358 vehicles travel a stretch of N.D. Highway 23 between the Four Bears Bridge and east of New Town, North Dakota Department of Transportation say. Many of the vehicles on that road are oil-field related vehicles.
That also means 44,506 vehicles a week or 2.3 million vehicles a year are on that section of the road.
When a transportation hearing was held in Watford City June 1, Francis Ziegler, Bismarck, director of the Transportation Department, reported that U.S. Highway 85, which goes through Watford City, is not the busiest highway in the area.
He said the busiest highway is that approximately 4 1/2-mile section of Highway 23 in the New Town area.
"Director Ziegler was referring to a section of N.D. 23 which showed an average daily traffic count of 6,358 from east of the Four Bears Bridge to east of New Town, compared to an average daily traffic count on the entire U.S. 85 corridor in North Dakota of 1,548," said Peggy Anderson, a spokeswoman for the Transportation Department.
The traffic count on Highway 85 would come to 10,836 vehicles a week and 563,472 a year, giving the 4 1/2-mile stretch of highway in the New Town area more than four times the traffic than on Highway 85.
The numbers are from the Transportation Department's 2009 traffic counts and could very well be even higher now with the increasing activity in the oil fields.
Sen. Kent Conrad, D-N.D., held the U.S. Senate Budget Committee hearing in Watford City to gather information for the upcoming federal transportation bill.
Conrad is planning to hold another hearing on roads in the New Town area but no date has been set for it, a spokesman in his Washington, D.C., office said.
Highway 23, an east-west route, connects U.S. Highway 85 at Watford City and U.S. Highway 83 south of Minot.
Request to four lane highways
Marcus Levings, chairman of the Three Affiliated Tribes on the Fort Berthold Reservation, said he has met with North Dakota's congressional delegation about the need to four lane N.D. Highway 23, and also Highway 22, to make them safer because of the high volume of traffic on them.
Besides the oil-field traffic, the traffic on those roads includes farmers and ranchers moving equipment and recreational vehicles going to and from recreation sites. Minot Air Force Base missile crews also use Highway 23, traveling to and from missile facilities.
Highway 22 is a north-south route running through the Mandaree and Killdeer areas, which are hotspots for oil activity.
Levings said mayors in the area have given their support to the four-lane plan.
"All of the mayors have come on board. The mayor from Stanley said they'd help us if we can help get No. 8 (N.D. Highway 8) done and the Williston mayor said 1804 (N.D. Highway 1804). All of us are working in the same direction. We're united in our efforts," Levings said.

Conrad to talk road conditions

By ELOISE OGDEN, Regional Editor
NEW TOWN Sen. Kent Conrad, D-N.D., will hold a Senate Budget Committee field hearing on the deteriorating conditions of N.D. Highway 23 Thursday in the 4 Bears Casino & Lodge west of New Town. The hearing will begin at 9 a.m. in the Arikara Room.
Conrad, chairman of the Senate Budget Committee, is holding the hearing to learn more about the road, which is heavily used by oil-field traffic and other traffic. He has been holding a series of hearings on North Dakota roads before debate on the next highway bill is held.
The hearing will consists of two panels. The first panel will include Francis Ziegler, director of the North Dakota Department of Transportation; Marcus Levings, chairman of the Three Affiliated Tribes; and Dan Uran, New Town mayor. The second panel will include Rep. Kenton Onstad, D-Parshall; and Steve Kelly, of Trustland Oil Services.
Primary discussion topics will include highway safety, roads maintenance/construction, development costs and road impacts due to area oil and gas developments and activity.
Those attending the hearing can bring extra copies of their comments/testimony to share with the hearing witnesses and participants.
Lynn Helms, director of the North Dakota Department of Mineral Resources, said during a speech in Minot recently there is a major problem in the state that the oil and gas industry is maxing out the use of roads, groundwater resources, etc.
Highway 23 is a major artery in the oil patch and a section of it between the Four Bears Bridge and the east side of New Town has more than four times the traffic than the entire North Dakota corridor of U.S. Highway 85, according to N.D. Transportation Department officials.
Levings has met with the state's congressional delegation about the need to make Highway 23 and also Highway 22 safer. Highway 22 runs through Mandaree and Killdeer, which also are hotspots for oil activity. Levings said mayors in the area have given their support to a four-lane plan.
Curtis Wells, administrator of the Three Affiliated Tribes' Roads Department, said the high volume of truck traffic on Highways 23 and 22 have made both of those roads dangerous for many people to drive on them.
Conrad will also hold a Budget Committee field hearing with local leaders on U.S. Highways 52 and 281 Friday at 9 a.m. in The Chieftain Conference Center in Carrington.
He will be in Devils Lake Thursday at 1:30 p.m. for a Senate Budget Committee field hearing to gather comments and testimony from area leaders on how best to combat the challenges of the rising waters of Devils Lake. The hearing will be held in the cafeteria at Lake Region State College.
Conrad will also explore concerns downstream from the uncontrolled overflow of Devils Lake when he meets with local leaders in Valley City Friday.
Testimony will be given by selected community and industry leaders at the hearings and meetings. If time permits, others will be given time to speak. Written comments and testimony will be accepted from everyone.

ATTACHMENT 2

Minot Daily News posted September 19, 2009

BISMARCK - State officials have confirmed to Three Affiliated Tribes' leaders Thursday that work is being done to make N.D. Highway 23 a safer road. However, some of the work is contingent on funding.

Highway 23 is heavily impacted with oil-field and other traffic and many have been concerned that it has become a dangerous highway.

Francis Ziegler, director of the North Dakota Department of Transportation, said Northern Improvement Company has been contracted for a paving project on Highway 23 between N.D. Highway 8 and the junction of U.S. Highway 83. He said the paving will be done now and through the fall.

Currently, he said turnouts are being designed for several intersections on Highway 23 with the work to be done between 2010 and 2011. He said the turnouts are in the Transportation Department's plans, however, funding will be needed for the project.

Ziegler said the turnouts will be done at six intersections on Highway 23, including north of Parshall, Highways 8 and 23, Plaza corner and Highways 23 and 28 north of Ryder.

The meeting on Thursday in Bismarck was held at the request of the Three Affiliated Tribes, said Vonnie Alberts, congressional/legislative officer for the Three Affiliated Tribes. She said it was a follow-up to an earlier meeting held in August at New Town called by Marcus Levings, tribal chairman, where Transportation Department engineers, tribal, county and city officials, and congressional delegation representatives discussed the traffic on Highway 23 and its dangers. Those attending that meeting also offered suggestions for improvements to the highway.

Ziegler also said N.D. Highway 1804, which is in the White Shield area, has load restrictions but they will be modified. He said that road also has extensive oil-field traffic. Next year Transportation Department officials will see what can be done to improve the road.

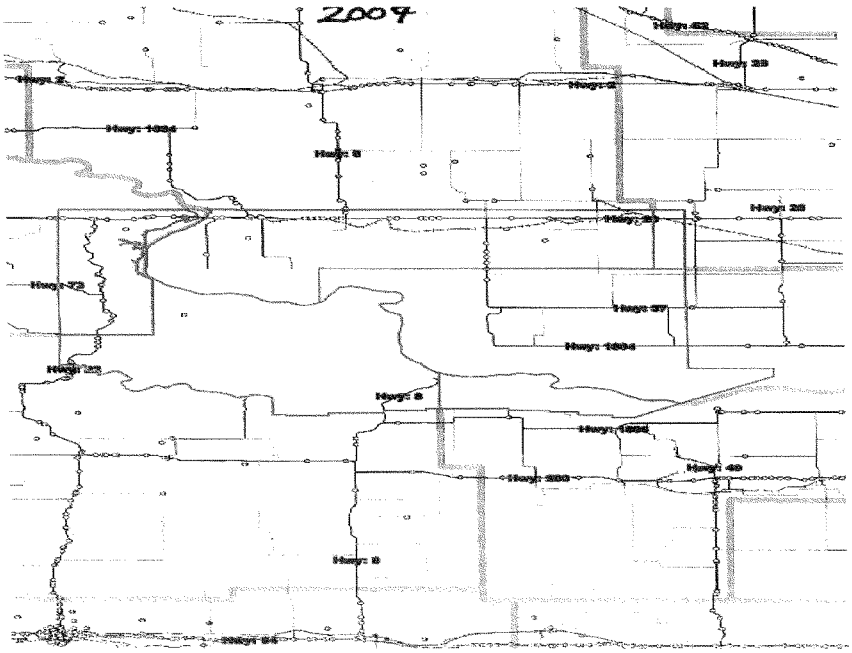
The Transportation Department is paving N.D. Highway 37 from Parshall area to the White Shield area this year. Next year, if funding is available, Ziegler said more work will be done in the White Shield area.

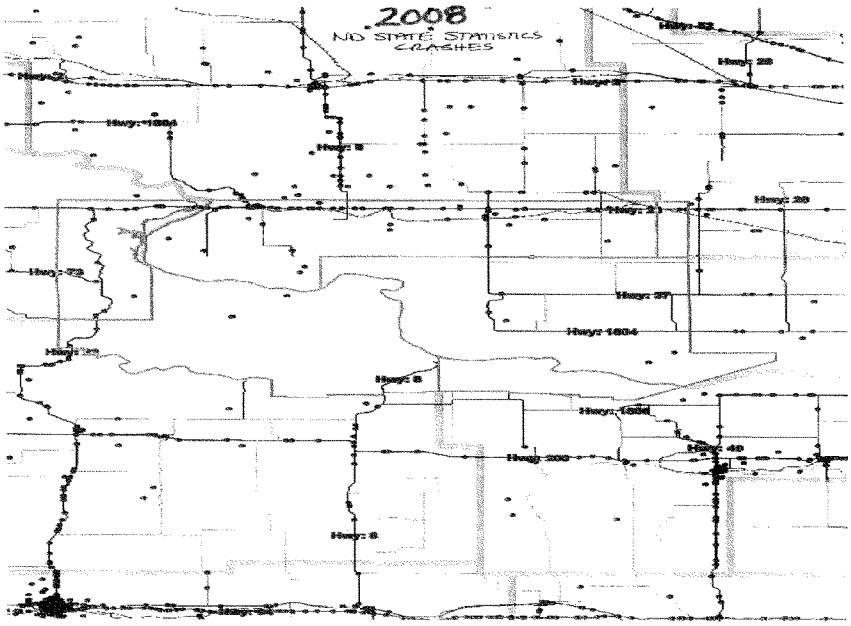
Ziegler said rumble stripes have been added to N.D. Highway 8 and Highway 23. More will be added to Highway 23 when the paving project is finished. The rumble stripes alert drivers when they leave their lane.

N.D. Highway Patrol troopers, at the request of the Governor's office, will be providing more assistance on the Fort Berthold Reservation in regard to non-Indian vehicle operators since tribal officers do not have authority over non-tribal vehicle drivers on the reservation, Alberts said.

Besides Ziegler and Levings, the meeting on Thursday included Ryan Bernstein, Gov. John Hoeven's attorney; Grant Levi, deputy director for engineering for the Transportation Department; tribal business council representatives Barry Benson and Arnold Strahs; and Howard Bemer, superintendent of the Bureau of Indian Affairs Fort Berthold Agency in New Town.

Both Ziegler and Levings said the meeting provided a good discussion between the groups and that they are working together on the highway concerns.





CONCLUSION:

- THE ISSUES OF THE UNSAFE HIGHWAYS ON THE FORT BERTHOLD RESERVATION NEED IMMEDIATE ATTENTION AND AN AGGRESSIVE, COOPERATIVE, APPROACH TO REMEDY THE UNSAFE CONDITIONS. PEOPLE ARE LITERALLY AFRAID TO DRIVE ON THE HIGHWAYS. MAIN ROADWAYS LOOK LIKE WAR ZONES WITH POTHOLES AND CRATERS; DAMAGING VEHICLES AND CAUSING UNSAFE DRIVING CONDITIONS.
- THE ISSUE OF RESPONSE TO OIL INDUSTRY RELATED FIRES, SPILLS, EXPLOSIONS ETC…THIS NEEDS IMMEDIATE ATTENTION. WHO WILL RESPOND? AND HOW LONG WILL IT TAKE? WHO IS TRAINED TO ADDRESS THESE TYPE OF INCIDENTS?

Conclusion Cont… an email from a Tribal Member driving on Highway 23:

Commuting to New Town has become a real experience on Highway 23! Last evening 3 vehicles (2 trucks and a white SD license van) took turns throughout the 17 mile drive to Parshall trying to pass each other and any other vehicle on the route. The white van passed on hills, on one of the bridges, nearly hit two other vehicles; the blue Ford pickup passed vehicles in the 7 vehicle caravan and then on the other side of Gevings, turned in the approach and headed back towards New Town! A Wyoming pickup didn't seem to know what gravel road to turn off on and would slow down causing all traffic to slow and then went on to the next turn off. It really does little good to call in the erratic driving. The Highway Patrol was out near New Town yesterday, but nowhere around when I marveled at the Dukes of Hazard driving around us; I guess I was more shocked at what that highway has become. There are still some of us that obey the traffic sign and try to maintain some semblance of sane and proper rules of the road---watch out for those others and drive defensively! I found the last line of the following article by Lauren Donovan of Bismarck Tribune to be so true.

FIELD HEARING: DEVILS LAKE FLOODING DISASTER: HOW SHOULD THE FEDERAL GOVERNMENT RESPOND?

THURSDAY, JULY 8, 2010

U.S. SENATE,
COMMITTEE ON THE BUDGET
Devils Lake, North Dakota

The committee met, pursuant to notice, at 1:30 p.m. in the Cafeteria of the Lake Region State College, Devils Lake, North Dakota, Hon. Kent Conrad, chairman of the committee, presiding.

Present: Senator Conrad.

OPENING STATEMENT OF SENATOR CONRAD

The CHAIRMAN. The hearing will come to order. I want to welcome everyone today to the hearing of the Senate Budget Committee. This is an official hearing of the committee, so we will be operating under the rules of the U.S. Senate, and an official record of this hearing is being kept.

The title of this hearing is, "Devils Lake Flooding Disaster: How Should the Federal Government Respond?" I want to begin by welcoming our distinguished witnesses today. I am pleased to welcome Governor Hoeven, he is on his way, I'm told, and we will recognize him when he arrives.

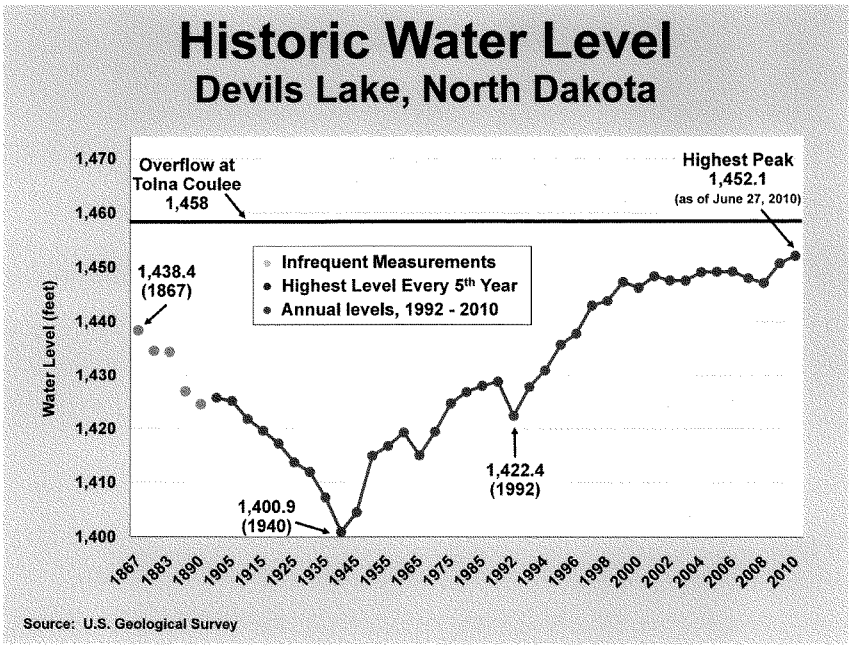
We will have two panels of witnesses today. The Acting State Engineer of the Water Commission, Todd Sando; and the Director of North Dakota's Department of Transportation, Francis Ziegler; and our good Mayor, Devils Lake City Mayor, Dick Johnson.

Our second panel will include Spirit Lake Chairwoman, Myra Pearson, and I see Myra is here, welcome, good to have you here; Minnewaukan's City Mayor Trish McQuoid, Trish—Trish is there, I see her. Yeah, it's a challenge. Ramsey County Commissioner Joe Belford, I know Joe is there, good, and Devils Lake Basin Joint Water Resource Board Manager, Jeff Frith. Jeff is here, as well. Good.

Each of you is on the front lines of this flood fight, and it is a fight that has grown even more urgent. Here are some of the headlines from North Dakota papers describing the disaster, "Tens of Thousands of Acres of Productive Farmland Have Been Flooded, and Hundreds of Homes Have Been Moved," "The Transportation Network, Including The Roads and Rail Lines has Been Disrupted and the Local Economy Continues to be Affected."

Here are NASA satellite photos showing the dramatic increase in the size of the lake between August 1984 and September of 2009. I might say that has had a—probably one of the greatest impacts on colleagues when they see this dramatic increase in the size of the lake. This lake, as I explained to my colleagues in Washington, is now four times the surface size of the District of Columbia, our Nation's capital.

Since 1992, Devils Lake has risen nearly 30 feet. Last year, alone, the lake rose more than 3.5 feet. Recent heavy rains have pushed it to record elevation this year. Devils Lake is now within 6 feet of a level that would have an uncontrolled release out of the east end. Finding solutions to prevent an uncontrolled outflow is in everyone's best interest, upstream and downstream.



Tomorrow, I will be holding a hearing in Valley City to get their input, and to share with them the serious consequences of an uncontrolled release of water from the east end. Experts tell us that the wet cycle in the basin will likely continue for years, there's no way to predict when a normal cycle of drier conditions will emerge, there is a 72 percent chance that the wet cycle will continue for 10 years or more. Let me repeat that—a 72 percent chance that this wet cycle will continue for 10 years, or more. A 37 percent chance that it will continue for 30 years, and a 14 percent chance that it will continue for at least 60 years.

Simulations show a substantial risk the lake will reach the spill elevation of 1458 feet—that is only six feet from where the lake is today. An uncontrolled outflow would cause significant damage downstream. The cities of Valley City and Lisbon would be dev-

astated by flooding, and drinking water supplies would be wiped out if there was an uncontrolled outflow from the east end.

When the flooding disaster began, we worked cooperatively on a three-pronged strategy—upper basin storage, protecting infrastructure, and the construction of an outlet. It is a strategy we pursued aggressively.

We have successfully won over $700 million in Federal help that has been allocated, so far, to protect the region. To keep the road network intact, over $400 million has now been spent since 1995 to raise roads and address the roads acting as dams. FEMA has spent $84 million since 1993 in repairing damage to public infrastructure caused by the rising lake and relocating threatened structures, and buying out Church's Ferry. The Corps of Engineers has spent $200 million since 1993 on the levy, the evaluation of the Federal outlet, and other protective measures. HUD has provided more than $70 million, and more than $11 million since 1997 to mitigate damages.

Here are some of the specific steps that have been taken by the Federal Government to be of assistance. The levy protecting Devils Lake has been raised three times. Without those raises, Devils Lake would, today, be underwater. More than 500 homes have been relocated through the National Flood Insurance Program. We secured a policy waiver, to allow roads to be raised before they're inundated, and $70 million was provided to address roads acting as dams.

A 300-cubic-feet per second Pelican Lake Federal outlet was approved, and initial funding secured. And the decision was made by State and local governments that they did not feel they could afford their cost-share, which would have been $72 million for that project. $9.2 million was provided for a new water supply for the city of Devils Lake and more than $4 million was provided to relocate Church's Ferry and the BTR Farmer's Cooperative Elevator. This Federal help has been important in mitigating the impact of flooding. But neither the Federal Government nor anybody else can control Mother Nature.

Flooding has stayed, and grown, imposing more hardships. And I fully understand the frustration, the anger, and the anxiety with this ever-growing crisis and clearly, more needs to be done.

The Federal Government has, and will continue to be a critical partner with us in responding to this crisis, but it's clear, we're in uncharted territory.

So, what are the options, going forward? What additional steps can be taken? Should we continue to raise roads and the levy, relocate threatened structures, provide other infrastructure protection? For Minnewaukan, should permanent protection be built, or should residents and businesses be relocated? Should we focus on maximizing operation of the State outlet? Should we construct an east-end outlet and/or a control structure via the Jerusalem or the Tolna coulee? And, if so, how do we protect downstream residents?

Should the Federal Government reexamine options for upper basin storage, and finally, should discharges out of the west end of the lake be enhanced, and if so, what are the best options to accomplish that?

So, those are options that are on the table, there are others, as well. We have asked the Corps of Engineers to examine the option of moving water west to the oil fields to provide water supply for fracking the oil fields and the development of the Bakken Formation, and so that option is also being examined.

There are many options that must be considered, but there is no quick or easy solution, that's the hard reality here; nothing is going to happen overnight. It will take time and it will take a coordinated effort and it will require close consultation and cooperation with downstream interests, because we know that even if we make a decision, if we get everybody to agree—the Federal Government, the State government, the local governments, they all agree—people still have the ability to go to court, and we have experienced what that can mean. So, we have to work hard, we have to work smart, and we have to work fast.

Since the May Flood Summit, the working group has been convened with the Corps of Engineers put in the lead. The working group has representation from all of the representative—or, all of the relevant Federal agencies including the Army Corps of Engineers, FEMA, the Department of Transportation, USDA, the Bureau of Indian Affairs, the Environmental Protection Agency, the U.S. Geological Survey. The group's final and full recommendations are expected by September 9th. I am particularly interested in hearing from our witnesses on where they think the working group should focus its attention and intend to share your input here today with the working group next week.

I'm delighted that Colonel Price, the new head of the Corps of Engineers District Office in St. Paul is with us today, as is Judy Deharney, who—I always pronounce her name incorrectly. Deharney? I'm doing better. I always want to say Desharney. I don't speak foreign languages very well. My French isn't what it should be. But, we're delighted that you're here representing the working group, to listen and report back to them, as well.

I'm also told that next Tuesday, Wednesday, and Thursday, representatives of the working group will be here in town to meet with local leaders, county Commissioners, mayors, auditors, local emergency managers. This is one of several trips to the area that are planned by representatives of the working group, leading up to their final report in early September. The focus of this particular trip, as I understand it, will be on individual assistance, infrastructure, water level management, the levy, and Minnewaukan. There are other teams that are coming after this one to look at different aspects of the challenges that we confront.

Again, we are delighted that Colonel Price, the new commander at St. Paul, is here. Colonel, maybe you could stand, we'd all get to know you. We've gotten to know Colonel Christianson very well over the years, I'm sure we'll get to know you, as well.

I understand Representative Ben Vigg is here, if you'll put up your hand, Ben, in back. If there are other legislators here, if you'd just stand and identify yourself, we want to recognize any State legislators that are here.

Ms. HECKERMAN. I'm Senator Joan Heckerman from District 23, we have the south side of the lake.

The CHAIRMAN. Yes, good to see you, Joan. Didn't see you there. Thank you very much.

Mr. HASET. Kurt Haset from District 15, right here in Devils Lake.

The CHAIRMAN. Thank you, sir. Thank you for being here.

Mr. ALKEE. Ed Alkee, Senator, District 13.

The CHAIRMAN. Thank you, sir, good to have you here.

Any other State legislators?

[No response.]

The CHAIRMAN. All right.

Let's go now to the Governor. Before we do that, if I could, if we could just observe a moment of silence. As many of you know, we lost one of our best, Keenan Cooper, from Wahpeton, North Dakota, serving in the United States Army, was killed Monday in Afghanistan. We'd like to just observe a moment of silence in his memory, and in respect for what he did.

[Moment of silence observed.]

The CHAIRMAN. Thank you.

We are delighted Governor Hoeven is here. Thank you so much for, once again, coming to the Devils Lake region to discuss these challenging issues. I appreciate very much your taking the time to be with us today.

So, Governor Hoeven, why don't you make your initial statement, then we'll go to our panels, and hopefully you can stay with us during the whole hearing and have a chance to comment in conclusion, as well.

STATEMENT OF HON. JOHN HOEVEN, GOVERNOR, STATE OF NORTH DAKOTA

Governor Hoeven. Thank you, Senator. Good to be with you, I appreciate you being here, and also very much appreciate the moment of silence for one of our soldiers.

Whether it's our National Guard, of course, we have Camp Grafton up here, or any branch of the service, our men and women in uniform are doing an amazing job. And we extend our condolences to the Cooper family and we thank Keenan Cooper for his service.

It's, again, good to have you up here. I'm dressed this way because we were out looking at the west side outlet, which is now running at 250 cubic feet per second. And some of you may want to get a look at that—that is a significant amount of water. And if you go about 7 miles west of Oberon and 1 mile south, there, that's where the water actually comes from, the outlet into the Cheyenne. So, it's about 7 miles west of Oberon, 1 mile south.

Carl Dukeshire is the individual with the Water Commission who is overseeing the outlet operations, and if you call him, that's probably the best way, if you want to take a look at it. But, it has been running at 250 cubic feet a second, now, since about a week ago Monday.

You know, in terms of just, kind of, some opening comments, Senator, you know, this needs to be a Federal, State and local partnership to address the challenges, here, in the Lake Region. So, I appreciate the opportunity to be here, because it is truly going to take all of us working together—Federal, State and local partnership—to address this challenge.

And we need to get people working together, too. And by that, I mean, both in the upper basin and downstream. So, this communication effort is very, very important, because we need to get people working together as we work on this challenge. And that's an ongoing communication challenge, and opportunity.

Senator Conrad referred to it, but the approach is a three-part approach. Storing water in the upper basin, mitigation—which means building up roads and dikes in the region, and moving water out of the lake.

First, in terms of water being stored in the upper basin. Devils Lake has increased in size from 1993 to the present from about 49,000-acre feet, to I believe more than 180,000-acre feet. That's well over 100,000-acre feet of storage. That lake, getting that much bigger, flooding land, is storing water. Right there in the lake, in the basin, we're storing a huge amount of water in the upper basin.

In addition, travel the area around the lake, to the north, to the west—all around the lake. There are a tremendous number of potholes, slooves, wetlands—there's a tremendous amount of water stored in all of those wetlands.

Now, some of the experts can quantify that for us, but the point I'm making is, there are hundreds of thousands of acre feet of water being stored in the basin. We are storing a tremendous amount of water in the upper basin, OK?

Second, mitigation—building up roads and dikes. You, maybe, touched on some of those figures, Senator, but in terms of building up roads, and building up dikes, I mean, right now we are working on Highway 19, we are working on Highway 20, we are working in Highway 57 and we are even working on Highway 2. So, pretty much all of the highways in the region, we are building up. We are putting rip-rap along them, we are expanding them out with dirt to try to offset the wave action, both to reduce erosion, but also so that when cars drive on them, you feel safe. And, we've got all of the county roads, the township roads and everything else, right?

So, there's a tremendous effort on roads, and there's a big effort on dikes—you see all of the dirt work going up. So there's, I think, $650 million, plus. And somebody else can update that number if it's not quite right, but I'm—there's $650 million plus, between Federal, State and local putting dollars into mitigation. It's a monumental effort, and it's ongoing, right now. So, that's the second part of the strategy.

The third part of the strategy is moving water out of the lake. And that's what I said, we were just up looking at that outlet. We are now moving 250 cubic feet a second out of the lake. That can move 6 to 8 inches off the lake, if we get the same amount in evaporation, now you're getting somewhere between a foot and a foot and a half that we can take off the lake.

But, to do that, and to take more water out, we need cooperation from the Corps, and from the EPA, right? So, both to continue to remove water from the west side, and increase it, which we can do, and to build a control structure and an outlet on the east side, we need cooperation from the Corps, and from EPA, and we need to continue to communicate with everybody both here in the upper basin, and downstream, that this is a controlled, managed way to address the problem.

But, we're getting closer to the point where we can stabilize and hopefully even reduce the size of the lake, but it's going to take some more work, here. It's going to take all of us working together, it's going to take the help and the cooperation of, like I say, the Corps and the EPA. And, as far as the sulfates, you know, for example, the case of Valley City, and I know you're going to be down there tomorrow, Senator, we have already—through the State Water Commission—provided funding to help them build a new treatment plant which will have reverse osmosis to treat their water. So, actually, their water quality for the community—not only are we increasing their capacity, but it will improve the water quality, because it will have full RO—reverse osmosis—treatment.

So, again, I'm just trying to bring that from a high level. We've got to do all three of these, we've got to move more water out of the lake, OK? That's what we're working to do. And like I say, when you take a look at it you realize, I mean, this is—it's a huge lake. But when you go down to southwest of Oberon, there, you'll see—we're moving a lot of water, now. So, we're getting closer. Now, we need to keep working, together, to get the job done.

So, again, I thank you, Senator, for the opportunity to be here. And I know that you're—this is a hearing and so you'll be working with the witnesses, and I won't do any questioning or anything during the hearing, but it's good to be here with you, working with you, and to listen and maybe have some more comments at the end.

Thank you.

The CHAIRMAN. I appreciate it very much, Governor Hoeven, that you're here.

We'll start with the Acting State Engineer of the State Water Commission, Todd Sando.

Welcome, Todd. I'm delighted that you're here. Please proceed with your testimony. Let me, before we begin, perhaps explain a bit more why a Budget Committee hearing. Anything that the working group comes back with in terms of recommendations will require Federal expenditure. And that means that we're going to have to be able to convince colleagues to make those expenditures. And, typically, when large Federal expenditures are contemplated, hearings are held to lay down a record, to make a case, to justify those levels of expenditure. That's what we're here doing today. To lay down a formal record to justify the additional Federal expenditures that will be required to deal with the ongoing crisis in the Devils Lake basin. That's the purpose of this hearing, today.

Mr. Sando?

Governor Hoeven. Senator, could I add one more comment before you get rolling, here?

The CHAIRMAN. Yes.

Governor Hoeven. Mayor McQuoid's here, and I also want to mention Minnewaukan, because they're right there on the edge of the lake, and also super Byron Jerry is here, too. We have our Water Commission, so I want to mention Minnewaukan, as well, as part of this effort, we were up there, recently. But, we have our Water Commission people, and that's led by both Mike Hall and Enray Morel with Emergency Management, working with the FEMA Section 22 Program and the community to figure out what

our options are. And also, we have now applied for funding assistance for the school, up to about $6 million, and we're working with the superintendent on that.

So, I just wanted to—that's part of the overall effort, I should have mentioned that.

The CHAIRMAN. No, I'm glad that you did, because again, it's very, very important that we lay out, as clearly as we can, the financial needs that are connected to what is being done, and what needs to be done.

Mr. SANDO.

STATEMENT OF TODD SANDO, ACTING STATE ENGINEER, STATE WATER COMMISSION

Mr. SANDO. Thank you, Senator. I do have six pages of testimony and I do have 25 copies, here, so I can submit that.

The CHAIRMAN. All right. Very good. We appreciate that.

Mr. SANDO. Six pages is going to take a little while to go through, I don't know if you just want it summarized, or if——

The CHAIRMAN. Yeah, if you could summarize, that would be helpful.

Mr. SANDO. OK.

The CHAIRMAN. And then we'll get into more of it as we go into the questioning.

Mr. SANDO. OK.

I won't, you know, we've had a flood going on here for 17 years and $650 million have been spent, you know, protecting infrastructure, so I won't go into all of the impacts that have taken place the last 17 years.

As you know, Devils Lake is a 3800-square mile watershed, and one of the big things is, what's happening at Devils Lake, we've entered into this wet cycle, and the amount of inflow, and the amount of precipitation has dramatically changed coming into Devils Lake.

And in the testimony, one of the points that I wanted to make and it's was, this wet cycle has changed the average inflow dramatically. From, previously, the inflow into Devils Lake from like the time period of 1950 to 1992, that 42-year period, the average inflow was 33,800-acre feet. So, 33,800. Now, in 1993, that's when we got this big flood event that hit mostly the eastern half of the Devils Lake basin, we had 7 inches of rain and probably 35- 40 inches of rain fell the whole summer of 1993, so that's when the wet cycle really started. And since 1993 through this last year, the average inflow has changed from this 33,800—so, for this, the past 16 years, now—it averages 243,700-acre feet. So, the inflow coming into the lake is 7 times greater than it had been for, you know, four decades. So, that's that real dilemma, we're in a very wet period, and that's what the scientists and the scientific have been saying.

And one of the points I have, wanted to make in the testimony, too, is related to this wet cycle, and how long it could last. Some experts say this wet cycle—National Weather Service, we did have a water topics legislative hearing up here a few weeks ago and we had National Weather Service here and the USGS. And they were talking about, they could see this wet cycle easily continuing for another 10 years, before it gets to the peak, and then it would still be wet and on the way down.

So, we're on a real critical time period right now, and they think this wet cycle—the news they brought to that committee meeting was pretty dire, I mean, it wasn't a very rosy picture they were painting, and they think we're going to see lots of big events and lots of runoff for the coming years. So, that's a major fear to have.

Some of the issues, you know, the lake has come up so much since 1993, it was at 1442, and now it's at 1452, so it's 30 feet higher from 1993, the spring of 1993 to now. So, we're—the real issue is we're within 6 feet over overflow. The lake reached 1452 when we go this 3 to 4-inch rainfall a couple of weeks ago, and the natural outlet elevation is 1458, so we only have 6 feet to go. And that's 6 feet that's remaining, but the amount of storage in that 6 feet is 1.3 million-acre feet of water.

To put that into perspective, last year alone the inflow to Devils Lake was 590,000-acre feet. So, if we had a 2009 event, back to back, there would be enough inflow in those two events to get us to the overflow elevation. So, there's a high risk that this lake—if we continue and have some of these big events—2009 is the biggest event, so 2009, at 590,000-acre feet, that's the No. 1 inflow event in recorded time. But if we would have back-to-back, we would be there.

Another thing to point out, when we only have 1.3 million acre feet of storage remaining, I know the city of Devils Lake and the Corps has been working on the levy raise, and they say about half of PMP or PMF event would produce a runoff event of 1.4 million acre feet. So, right now, the basin can not even handle the half problem, maximum precipitation. So, I wanted to point that out, and it's well laid out in the testimony, too, so I wanted to make that point clear.

USGS has done a lot of technical modeling for the Water Commission and for the Corps and for everyone. They've been, really, our technical expert on doing still castic modeling and seeing where the lake could go based on the past history.

And Skip Veccia's model points out there's a 13 percent chance that the lake could spill in the next 20 years. That is a very high risk. Thirteen percent's very high. And we can't—we've really got to do something about it.

And one of the things we're doing is this outlet that we built. It's 250 CFS and they did model, to see what the benefit would be with this outlet. An outlet of 250 CFS, we could get 500-acre feet a day. If we could pump for 7 months out of the year, nonstop, we could get 100,000-acre feet out. So, if we could 100,000-acre feet a year out of the lake, over the long haul, actually, the computer models and the still castic model shows the risk being reduced by half for an overflow. We cannot eliminate the risk; the risk goes down to 7 percent in the next 20 years. But it does reduce it in half. So the outlet does make—you know, reduces the risk a lot, but we still have the risk that it still could overwhelm us and still fill up and overflow.

The CHAIRMAN. Did they do an analysis how much—what the discharge level would have to be to eliminate the risk?

Mr. SANDO. We've—there has been some numbers, I just don't—off the top of my head I don't—it would—it would have to—it would take an awfully——

The CHAIRMAN. I just—if it cuts it in half to be at 250 CFS for 7 months, I'm wondering if you go to 500 CFS, if that would eliminate it?

Mr. SANDO. Yeah, 500 wouldn't eliminate it, I think it's more I—this is not a factual number, but I would say more like, on the lines of 1,000 CFS, maybe we could get it down there.

Skip Veccia and Bruce Englehart from my staff have been working on some numbers and trying to see how they could get it down to 1 percent. I don't know, Mike Graftsguard, he might even know that, too, I'm not even sure.

Do you know that there's a way they could get it down to—because you—the city of Devils Lake was asking that question. If we could ask Mike, Mike might know that answer.

Mr. GRAFTSGUARD. Senator, I don't have the number off the top of my head.

The CHAIRMAN. This is—for the purpose of the hearing record, Mike Graftsguard, the City Engineer.

Mr. GRAFTSGUARD. I don't have the number. Skip did do some modeling for that percentage. But to eliminate the risk would require very excessive discharges from the lake. But to minimize that risk, what we were kind of looking at is going to be that 1 percent chance, and it was still, you know, a large amount of discharge if there's extremely wet cycles.

The CHAIRMAN. If you could get to us the calculations that have been made for the purposes of the hearing record, that would be helpful.

Mr. GRAFTSGUARD. I will do that, Senator.

The CHAIRMAN. All right. Thank you, Mike.

Back to Mr. Sando.

Mr. SANDO. OK. That kind of sets the stage about the wet cycle and the risks and those types of things.

Next point, we'll talk about the State outlet, and some of the things that, you know, we could do to try—try and make some improvements.

Some of the issues with the west end outlet—our biggest problem the last 5 years is water quality constraints of the Cheyenne River. And the water quality constraint was a sulfate standard of 450 mg/liter. And so, until last year, we were trying to operate within that 450 mg/liter. The problem with the Upper Cheyenne River, a lot of times the sulfate levels even exceed 450, in fact, there's even measurements of 1600 mg/liter in the Cheyenne River.

So, like, once we got the outlet up and operating, back a few years ago, for example, summer of 2006 came, and it was a hot summer, June was over 100 degrees several days in a row, the Upper Cheyenne River really got low, and basically dried up and the sulfate levels got extremely high, and in 2006, we couldn't run the outlet at all, because there wasn't water in the Cheyenne River to dilute Devils Lake water with. And we had these strict standards that, we couldn't put water in there because of that 450 standard. And, so we went along with these issues with the 450 standard, and we couldn't degredate the water quality by more than 15 percent so, the first, you know, several years of operation we didn't get much water out of the lake until last year, things really changed. We asked for an emergency rule change for the Upper

Cheyenne River and that would change the water quality constraints on the Upper Cheyenne, and what ended up taking place, just summarizing, there was an emergency rule put in place that we could go—raise the standard from a 450 mg/liter to 750 mg/liter, and that would be from Bald Hill all the way through the Upper Cheyenne, past our point where we put the Devils Lake water in.

So, at that point, once we got that 740, the water quality in Devils Lake at Round Lake has been, last year averaged between 550 and 600 mg/liter. So, based on that, 550 to 600, we got the standard up to 750, we weren't constrained at all at the insertion point, so we were able to run wide open. So, at this point, we were able to start the outlet and run it more, so we were able to run at our full capacity last year of 100 CFS. So, we were running at 100 where the previous years we were averaging, sometimes, single digits, sometimes 10, sometime 20 CFS—rarely 100. Until we got that standard changed, and got that emergency rule in place, we didn't move much water.

So, July of last year, we started moving a lot of water, and we were able to move 100 CFS every single day, and that's 200-acre feet a day and that's really started making a difference.

At that same point we got that emergency rule, we began the process of designing and upsizing the outlet from 100 CFS outlet, to 250 CFS outlet. So, we put the plans in place last summer and last fall and we actually constructed an upsizing to the outlet. We actually hired contractors, industrial builders and several other contractors and they worked all winter long, all spring long, and we got everything completed a week and a half ago. And that when we got the outlet up to 250 CFS. And that upsizing cost us another, like $14 million. The original outlet was, like, $26 million, so we have $40 million into the outlet.

And now that we're running at 250 CFS, now we're getting 500-acre feet a day out. And if you get down to—go over by Oberon and go to the terminal structure and see what 250 looks like, it's a lot of water. So, we are moving water, now.

The CHAIRMAN. How would you describe it? What do you see there?

Mr. SANDO. It looked like a river going out. It looked like a river going—it was like—it was a bigger river going into the Cheyenne River, because we have it go—flowing into an oxbow of the Cheyenne River, so there's 250 there, and the actual Cheyenne River is probably around 100 CFS, so it's even bigger.

The CHAIRMAN. So it's 2.5 times the Cheyenne.

Mr. SANDO. Two and a half times the Cheyenne River size at that point. So, it looks like—it looks like we're really moving water, now.

The CHAIRMAN. Yeah. OK.

Mr. SANDO. So, but now the issue, we still—we got this emergency rule from down to Bald Hill Dam, and the problem now is, the standard didn't change from one mile downstream of Bald Hill Dam for the entire lower Cheyenne River because of beneficial use for municipal water supply needs, so the——

The CHAIRMAN. And that our issue of——

Mr. SANDO. That's——

The CHAIRMAN [continuing]. The ability of the Valley City structure to be able to treat the water.

Mr. SANDO. Right, so——

The CHAIRMAN. We're going to have the new plant onstream next year?

Mr. SANDO. I'm not sure of when it's going to be complete.

The CHAIRMAN. Because that will use reverse osmosis, that will be able to handle increased sulfate levels in the Cheyenne and we will—hopefully that will strengthen our case.

Mr. SANDO. Right. It's going to be membrane treatment process that will remove the sulfates. They'll actually have even better water quality than they have been producing.

The CHAIRMAN. Than they have right now.

Mr. SANDO. Than they have right now, that's correct. So, it would be—so they're going to be upgrading their treatment plant.

So, continuing on, this issue of downstream—as the water—the travel time, say, you know, we started this outlet here in July, back up, we had problems this year because of flooding downstream, we weren't about to operate, plus we're in the middle of upsizing the outlet that we didn't start running until July. So we, the month of June we—well, we started running in June, excuse me, so we ran at 100 CFS for the month of June, and now we're up to this 250.

Travel time fro this Devils Lake water to work down the Upper Cheyenne to get to the head waters of Ashtabula is like 2 weeks, like 15 days. So, that water will be entering in to Lake Ashtabula at that point.

The CHAIRMAN. The water that you're releasing today will take 2 weeks to get there?

Mr. SANDO. Yes, that's correct. So, we've been doing some extensive modeling with the USGS of trying to model, and we've collected a lot of data last year once we were able to start running at 100, and we monitored it as it moved down the Cheyenne River, and as it moved through Ashtabula, at several different road crossings, through Ashtabula. And some of the modeling results we're seeing, it takes 45 to 60 days for the water to move through Ashtabula. It just doesn't move—I mean it, so, it takes even longer, once it gets to the lake, the lake's really, you know, it's flat, it's not current, you know, it's—so it moves through that at a slower rate. So, we say it takes another 60 days for that water to buildup in Lake Ashtabula, and before it starts coming out Lake Ashtabula.

The CHAIRMAN. How much additional capacity do we have in Lake Ashtabula? That is, in fact we were able to get even an enhanced discharge, either out of the west end, or the east end, or a combination of west and east end, because that's also being examined. Having water—an enhanced outlet out of the west end as well as water out of the east end, is in—I know one of the things they're looking at is Lake Ashtabula's ability and capacity. What percentage of Lake Ashtabula's capacity is realize at this moment, do you know?

Mr. SANDO. Currently, Lake Ashtabula has a lot of store—I mean, they have spillway gates to that they can release the water, so what comes in can go out, too. So, you know, they operate within the conservation pool levels, that type of thing, so—and they do

have flood storage, so they—you know, the reservoir bounces up and down during spring runoffs and that type of stuff, so there's plenty of capacity in Lake Ashtabula to deal with water coming from Devils Lake, is what I'm trying to say.

The CHAIRMAN. OK.

Mr. SANDO. OK, so trying to paint this picture, as this water enters into Lake Ashtabula, how we're going to operate the outlet as Lake Ashtabula's sulfate levels rise, what happens, when the Devils Lake water starts getting in there and say the water quality in Lake Ashtabula is like—sulfates like 200 and starts building over the next month and the next month and the next. As it starts moving up toward that standard of 450, we're going to have to throttle back and not release 250 CFS. And our model results show that this will happen most years, that we will not be able to run nonstop at 250 CFS, we'll run into this water quality constraint.

And we feel we can only run Lake Ashtabula up to about 400 mg/liter sulfate, not all the way to the 450, because what happens—once we get this big, you know, 70,000-acre feet of water in Lake Ashtabula at this level, it's going to be there for months on end, through the wintertime to meter out.

So, what happens, when winter comes, we have ice forming on Lake Ashtabula, and what happens, it freezes all of the fresh water, so it concentrates—the dissolved solids are still there, so it concentrates it even more, so the water that was 400 mg/liter before the ice came now could be up to 450 mg/liter.

So, that's why this constraint—we're getting constrained by 450 standards, so——

The CHAIRMAN. What would the 450 standard need to be in order to prevent us from having to throttle back on the amount of the discharge from the Devils Lake outlet that's been constructed?

Mr. SANDO. That's a good question. Basically, I would need to be a number higher than what's coming out of Brown Lake and Devils Lake. And that number, last year we averaged between 550 and 600 mg/liter. So, if we could have—have a standard of 600 mg/liter, instead of the 450, then we wouldn't be turning the outlet off and we would be able to keep moving water, 24 hours a day, nonstop.

The CHAIRMAN. In Valley City, as I understand it, when their new plant comes on, they'd be able to handle a level of 600, on sulfates.

Mr. SANDO. Oh yeah. They could handle much higher than that, even.

The CHAIRMAN. Much higher.

Mr. SANDO. Yes.

The CHAIRMAN. Lisbon's not an issue because they don't use water treatment. They use wells, is that correct?

Mr. SANDO. That's correct.

The CHAIRMAN. So, Lisbon, not an issue. So, what, then, becomes the issue? What are we going to face in terms of an argument against going to a level of 600 on sulfates?

Mr. SANDO. OK, as we go down, then there's West Fargo, Fargo. Fargo, sometimes, in the Red River, when their numbers—sulfate levels in the Red River get high, they switch over to the supplemental water supply, and they take water off the Cheyenne River, so——

The CHAIRMAN. But that's their secondary source?

Mr. SANDO. That's their secondary, it's not their primary source.

The CHAIRMAN. It's not like——

Mr. SANDO. It's not like Valley City, right. Where Valley City's primary source is Cheyenne River water. Fargo's is not the Cheyenne, they just use it.

The CHAIRMAN. And how about West Fargo?

Mr. SANDO. West Fargo, I'm not—off the top of my head, I'm not——

The CHAIRMAN. OK. They tell me West Fargo utilizes aquifers.

Mr. SANDO. OK, yeah, it's ground water, so that's not——

The CHAIRMAN. They shouldn't be a problem.

Mr. SANDO. Right.

The CHAIRMAN. OK?

Mr. SANDO. So, now, say if we can get through there and get—have 600-standard and deal with the, you know, from municipal water supply and domestic use, the next issue is once it enters the Red River.

The CHAIRMAN. Right.

Mr. SANDO. And the standard in the Red River is even more strict. It's 250 mg/liter. And a lot of times, the baseline condition of the Red is even actually higher than that. So, now we've got other jurisdictions that we need to deal with, we need to deal with Minnesota EPA, a different region of EPA, because our region—the EPA is different from Minnesota. So, we'd have to work that angle, too, to get some relief on the standards on the Red River, too.

The CHAIRMAN. Isn't it in their interest to work with us? Because if there's an uncontrolled release of water, if it comes out of the east end, then you're talking 2500, 2600 sulfate level?

Mr. SANDO. You're—yeah, you're exactly right on the money, there. That's if, we continue on, down this path, we could have a release of very high-sulfate water. So, I think, it's to the point now, it makes more sense to start putting out water that is at higher levels then we would need to try to get a variance and, you know, loosen these standards because it could be really nasty if it comes un—comes from the east end.

The CHAIRMAN. Do you know what the level would need to be—we've talked about for between here and Valley City and Lisbon, we've got to get 600. Red River is 250. What would that have to go to, to permit us to have greater releases continuing from Devils Lake?

Mr. SANDO. That gets a lot more complicated because we have a lot of tributary inflow, a lot of water coming from Minnesota, a lot of water coming from south of Fargo into there, so you wouldn't have to go even close to that 600 number on the Red River, because there is a lot more water from dilution purposes that it's fresher, so——

Just off the top of my——

The CHAIRMAN. Just notionally, would 350—?

Mr. SANDO. I think that would help a lot, yeah.

The CHAIRMAN. That's one thing we really need to know. We need to get that number.

Mr. SANDO. Yeah, we can, yeah—work with the Health Department and try to get some better numbers on that, but——

The CHAIRMAN. OK.

Mr. SANDO. Yeah, you know, we've just been working our way down the Cheyenne, and you know, we've had—our bigger roadblock's Lake Ashtabula, right now, than the Red River. If we can't get through Lake Ashtabula——

The CHAIRMAN. Right.

Mr. SANDO [continuing]. It's——

The CHAIRMAN. No, I understand.

Mr. SANDO. No use in concentrating on that.

The CHAIRMAN. Yeah. I understand. Well, that makes perfect sense.

Mr. SANDO. OK. So, you know, the big thing is to try to reduce the water quality standards. The other I feel that we could really use some help on is permitting issues, NEPA compliance, whatever we end up doing. Say if we want to—say if we think we need to get another 100 CFS out, if it's either out the east end. Each Devils Lake through Black Slew or some other location, or if it's additional water out the west end, we're going to need help with NEPA compliance and 404 jurisdiction and those type of things and permit issues.

When we built the State outlets we did not acquire any of those types of permits. We avoided all wetland issues. It would be a lot better if we can, you know, get the permits and that would really make the engineering solution a lot easier. So, if we could get help from the Federal Government to expedite the process to get permits, if we want to try—upsize the west end, or it's like, "Hey, we want to turn it into wintertime releases or to take some off the east end, we could use more help with the Federal Government on permit issues.

I have a bunch of stuff, too, on Boundary Waters Treaty and dealing with Canada and that, and maybe I just won't summarize it, since I'm taking up a lot of time right now.

The CHAIRMAN. Yeah. Let's do this, Todd, because that part of it is really kind of the next stage of what we have to deal with. You know, frankly, one of our biggest challenges has been the Canadians. When we got approval for a Federal outlet, back in 2005, the biggest problem we had was with the Canadians, and frankly, Minnesota.

Mr. SANDO. Yeah.

The CHAIRMAN. Those were the two toughest hurdles we had. And so we know we're going to have to deal with that, as well.

Mr. SANDO. OK.

The CHAIRMAN. Anything you want to add on that?

Mr. SANDO. I will just leave it at that, but yeah, that is a—that's some—that's another major hurdle, real tough, is State Department issues and dealing with.

The CHAIRMAN. You know, we had to meet with Condoleezza Rice at the time, who was Secretary of State because she was going to a meeting in Canada, and Canada was in very strong opposition to doing anything. That was very, very challenging.

All right?

Mr. SANDO. OK. So, then just to summarize, you know, relax the standards. One of the things we'd really like to see is, once this Federal task force completes its work that the Federal Government

needs to quickly fund implementation of those recommendations. So, if we can get additional Federal funding, you know, the State outlet was all State dollars and if we could get some funding to help us with the east end outlet or controlled structure combination type thing, over in that end, if we could get some help, too, if we need to try to move some more water off the west end.

The CHAIRMAN. That's really why we're doing this hearing today.

Mr. SANDO. OK.

The CHAIRMAN. So that we're ready, we've laid the record, we've made the case if the decision is made.

Mr. SANDO. OK.

The CHAIRMAN. OK?

Mr. SANDO. Thank you.

[The prepared statement of Mr. Sando follows:]

Testimony to the
Senate Budget Committee Devils Lake Hearing
"Devils Lake Flooding Disaster: How Should the Federal Government Respond?"
July 8, 2010
Lake Region State College, Devils Lake, North Dakota

Todd Sando, PE
Interim North Dakota State Engineer

My name is Todd Sando and I am speaking as the Interim North Dakota State Engineer and Chief Engineer/Secretary of the State Water Commission. Thank you Senator Conrad for hosting this hearing and to the members of the committee for their interest in learning about, and helping to resolve the devastating flooding problems facing the people of the Devils Lake region and eastern North Dakota. I will not focus my testimony on the magnitude of the problem as it has evolved since serious flooding began 17 years ago. You have heard that over $650 million will have been spent by the end of 2011 to address infrastructure and other needs around Devils Lake. Others will talk about the hardships that this long-term flood has forced on the area residents. Instead, I will try to highlight what we see as steps needed to reduce additional damages that can become even more catastrophic both in terms of geographic area affected and environmental and economic damages.

Solving the problems we face with ever increasing water levels will require that all local, state and federal entities work closely together in a partnership to decide our course of action and implement decisions quickly. For nearly 17 years we have been working within restrictive physical, financial and legal constraints. While we have made some progress, much more is needed. As I see it, there must be unprecedented actions taken to prevent an uncontrolled overflow from Devils Lake to the Sheyenne and ultimately Red River. A few years ago, the Corps of Engineers estimated that an uncontrolled overflow could cause $21.3 million in damages annually to infrastructure downstream. At a minimum, the cities of Valley City and Lisbon would be devastated.

Devils Lake is a natural lake at the bottom of a 3,800 square mile watershed. The outlet elevation connecting this lake to the rest of the Hudson Bay drainage basin is quite high resulting in a lake level that rises and falls widely over time. Devils Lake only infrequently rises high enough to spill naturally doing so only a few times in the last several thousand years. The last time it overflowed was prior to statehood. Our studies show the changing water levels in Devils Lake provide a fairly accurate a barometer of whether we are in a climatic wet or dry cycle. As demonstrated by Devils Lake flooding and severe and frequent flooding along the Red River, the entire region is currently experiencing a very wet climatic cycle. The impact of the wet cycle is demonstrated by the inflow to the lake. The average annual inflow from 1950 through 1992 was 33,800 acre-feet, while from 1993 through 2009 it was 243,700 acre-feet. Climate experts and those who study historic trends tell us the wet cycle may continue another 10 or more years. Many fear that the worst is not over.

The Army Corps of Engineers is currently building another congressionally and state funded raise to the embankment that protects the City of Devils Lake. Due to the depth of water standing against the embankment, what was once called a levee is now considered a high hazard dam. As such, the new structure must have an emergency spillway that will pass one-half of the probable maximum flood (PMF). In this case, the natural outlet at the Tolna Coulee is the emergency spillway. Unfortunately, the soil materials at the natural outlet are comprised of a mix of silt and gravel left over from ancient beaches and sediment blown in from the surrounding countryside. Once water begins to flow over those soils, there is little question that the outlet, or emergency spillway in this case, will erode. The Corps of Engineers has determined that one-half the PMF represents about 1.4 million acre-feet of runoff. The storage capacity of Devils Lake between its current elevation and the natural outlet elevation is only about 1.3 million acre-feet. As Devils Lake rises to its spill elevation additional land (78,800 acres) will be flooded around Devils Lake. There is not sufficient storage in Devils Lake to contain a one-half PMF event.

The record annual runoff of approximately 590,000 acre-feet occurred in 2009. Today, there is ten times more acres of water in sloughs and small lakes in the Devils Lake watershed than there was in 1991 and more that twice as many acres than there was in 1995. The soil profile is full and the many small lakes and wetlands in the watershed are full and overflowing. In 1993, the year when severe flood damages began to occur, a seven inch rain over part of the watershed caused the lake to rise about five feet. This was at the end of a five-year drought with an extremely dry soil condition and bone-dry upper basin lakes and wetlands. A similar rain over a large portion of the watershed today could push Devils Lake to the brink of a natural spill. The region has seen several rainstorm events of that magnitude and much larger in recent years. Summer storms at Ada and Roseau Minnesota and the 15 inch rainstorm along the Turtle River in North Dakota are examples of near misses. As I mentioned earlier, climate and statistics experts are telling us the wet cycle is not over and that it is entirely possible that the Devils Lake watershed will experience additional large runoff events whether as a result of summer storms or spring snowmelts.

The USGS has estimated that there is a 13 percent chance Devils Lake will spill in the next 20 years without an outlet and 7 percent chance with North Dakota's current emergency outlet. They have also estimated that there is a 10 percent chance Devils Lake will spill in the next ten-years without the state outlet. We have expanded, and are operating the state emergency outlet at 250 cubic feet per second. Other options are being explored but authorizing, funding and building a new and/or enlarged outlet could take one to two years. Even then it could take some years to remove enough water to prevent a spill. The situation is critical.

Solutions to the Devils Lake flooding problem are complicated. Because Devils Lake is a terminal lake in a very large watershed, dissolved sulfates and other elements from the soils have naturally washed down into the lake over the years with each runoff event. As the water evaporates, sulfate and other minerals are left behind. Sulfate concentrations in Devils Lake change as the lake level changes over time. The nature of the way runoff

enters Devils Lake results in a gradient of sulfate concentrations increasing from west to east in Devils Lake. The highest concentrations occur in the eastern part of the lake system. That happens to be where the natural outlet is located, at the Tolna Coulee. Herein lies one of the most difficult problems challenging a solution to the Devils Lake flooding problem. It is not just about too much water, but it is also about the quality of the water versus what exists in the receiving waters.

In building and operating the state's emergency outlet, it is necessary to strike a delicate balance between moving the greatest amount of water possible from Devils Lake while at the same time preventing exceedance of the water quality standards set for the Sheyenne River. Construction also required very careful design in order to avoid triggering the need for an environmental impact study under National Environmental Protection Act. This added greatly to the complexity and cost of the state's project. To maximize the potential for moving Devils Lake water, the state's outlet was built to take water from the west bay where the sulfate levels are the lowest.

The West Bay of Devils Lake including the Round Lake portion of Devils Lake where the outlet is located had sulfate levels of between 500 and 600 mg/L in 2009 and so far this year. Without Devils Lake water, the sulfate level in the Sheyenne River in the area where the outlet discharges into the river has generally been between 200 and 400 mg/L since 2005 although levels as high as 1600 mg/L have been measured during low flows. The water quality standard for the Sheyenne River was 450 mg/L until last year when an emergency rule modified the standard to 750 mg/L above Baldhill Dam. The standard remains at 450 mg/L below the dam. The 450 mg/L standard below Baldhill Dam will constrain the operation of the outlet at times, and challenges discharges of significant quantity of water from the east end of the lake.

Discharging water from Devils Lake also raised concerns in Canada and Minnesota that unique, harmful biota might be transferred to the Sheyenne and Red Rivers thus negatively affecting sport and commercial fisheries. Working with committees of technical experts, North Dakota has participated in exhaustive studies on biota present in Devils Lake comparing that to what is known about biota that already exists in the rest of the Hudson Bay basin. After years of sampling and analysis, no unique biota have been found in Devils Lake that do not already exist the Hudson Bay basin. In fact, these studies have shown that Manitoban waters harbor far more threatening aquatic organisms. Despite this, and the fact that the state outlet has moved more than 29,000 acre-feet of Devils Lake water through a gravel filter to the Sheyenne River, Manitoba continues to raise concerns about any Devils Lake outlet. I should note that the upgraded state outlet includes an enlarged gravel filter system.

Many contend that modifying the Tolna Coulee to remove more water more quickly from Devils Lake must be done as soon as possible. Unfortunately, the naturally high sulfate levels and other dissolved solids in the far eastern end of the Devils Lake system, makes this very difficult. If an east end outlet is to be considered it may be best to move water from East Devils Lake through Jerusalem Coulee or the Black Slough area to the Sheyenne River to reduce the water quality impact downstream. Sulfate concentrations

in East Devils Lake are 1,000 milligrams per liter versus 2,600 milligrams per liter in Stump Lake compared with the 575 milligrams per liter in the western portion of the lake. The sulfate concentration is East Devils Lake exceeds the new, higher limits set for the upper Sheyenne River by 250 milligrams per liter.

From our years of experience battling the Devils Lake flood, we know there are no simple solutions. Many factors have limited our ability to make as much progress as we would have liked. Foremost among them has been meeting the water quality standards of the Sheyenne River when Devils Lake water, even from the west end, is added. We are grateful that the North Dakota Department of Health has eased the constraints to the degree they have but even with these altered stream standards, our ability to remove floodwater from the lake is severely limited. We fully understand the need to protect downstream water users from harmful effects, however, the risk of a natural overflow and the potential damages an overflow would cause outweigh the impacts of a controlled discharge even from the east end of the lake. If the wet cycle continues, additional water must be removed from the lake in a controlled fashion.

The specific question posed by the committee in scheduling this hearing - "Devils Lake Flooding Disaster: How should the Federal Government respond?" – I have several suggestions:

First, the most expedient and effective way to move more floodwater than is being accomplished today is through further modifications to the water quality standards downstream from Valley City. This would require approval by the North Dakota State Department of Health and concurrence of the U.S. Environmental Protection Agency. Based on our experience, this would require a specific directive from Congress. It will also require adjustments by downstream municipal water users to adjust or modify their treatment plants to handle higher concentrations of Devils Lake water. Should these steps be accomplished, the state outlet could operate at a higher rate for a longer period of time. Downstream communities should recognize and agree with the Devils Lake elevations at which would trigger moving even more floodwater, possibly from East Devils. Moving floodwater, even poor quality water, in a measured fashion is much better than the alternative of an uncontrolled, natural spill.

Secondly, the permitting processes at local, state and federal levels must be adjusted to accommodate more rapid decision-making. As one example, federal decisions requiring NEPA compliance are one area where we have experienced difficult, if not impossible time delays. Considering the dire consequences of a natural Devils Lake overflow, an emergency directive to speed environmental reviews to address the Devils Lake situation would be helpful.

A third area would be diplomatic participation. As was pointed out earlier, Canada has steadfastly continued their objection to operation of any type of Devils Lake outlet. Their stated concerns are two-fold; one being biota transfer; and the other being the need to meet water quality guidelines established in response to the Boundary Waters Treaty Act for the Red River as it comes into Canada. North Dakota has been in court several times

on these issues and has thus far prevailed. Canadian concerns should not be ignored, however, the flooding situation in Devils Lake has been a growing catastrophe for many years. Therefore, it is necessary that the State Department be enlisted to seek an accommodation with Canada in order to avoid the dire consequences of an increasingly likely uncontrolled, natural overflow that would result in rapid and substantial impacts to the quality of water crossing the boarder. The more desirable outcome would be a controlled, much less significant water quality impact with a managed discharge from Devils Lake.

Canadian leaders must understand that an unregulated spill from Devils Lake is indeed a very real possibility. They must understand that removing as much water as possible from Devils Lake as soon as possible is critical. Moving floodwater from Devils Lake is a temporary emergency action that will be necessary only during this extreme wet cycle. This is not a permanent alteration of the drainage system. We do not believe this action will have detrimental affects in Canada.

As I draw to a conclusion, there is one final point that needs to be made to clarify the situation regarding wetland drainage in the Devils Lake basin and its relationship to Devils Lake flooding. No one can contest that there are wetland drains across the Devils Lake watershed with nearly all constructed prior to 1985. The question has been whether Devils Lake has risen appreciably because of it.

Over the course of an eight-year-long lawsuit, every aspect of that issue was carefully considered, beginning in 1999, when approximately 100 individuals who own land around Devils Lake sued the State of North Dakota and other local government entities, alleging that drainage and other water projects in the upper Devils Lake basin caused the lake to flood their property. During that trial, the court admitted over 1,000 exhibits, and heard testimony from numerous experts on statistics, computer models, geology, hydrology, Devils Lake, the Devils Lake basin, and climatology.

In the fall of 2007, the North Dakota Supreme Court ultimately concluded the plaintiffs failed to establish that *any* of the alleged projects were the cause of flooding to their property. The court further concluded that a dramatic shift in Devils Lake area climate conditions over several decades, and especially during the 1990s, was the *sole proximate cause* for increased water elevations in Devils Lake – not the alleged drainage or other water projects.

In summary, these are the specific things Congress and the federal government can do to address the Devils Lake flooding issue:

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ATTACHMENT:

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Senate Budget Committee Devils Lake Hearing
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July 8, 2010
Lake Region State College, Devils Lake, North Dakota

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Continue financial assistance via FEMA to home and business owners flooded by increasing Devils Lake water levels – consider the unique conditions affecting homeowners around Devils Lake and alter rules etc. accordingly to provide assistance in this unusual flood circumstance

As NEPA requirements have continued to delay mitigation projects, Congress should direct CEQ to abbreviate and/or accelerate NEPA compliance reviews relative to Devils Lake flood relief

The CHAIRMAN. Francis Ziegler, our excellent Director of North Dakota Department of Transportation. Welcome. Good to be with you this morning in a new town, and good to be with you here today.

STATEMENT OF FRANCIS ZIEGLER, P.E., DIRECTOR, NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

Mr. ZIEGLER. Thank you. Thank you, Mr. Chairman.

I'm Francis Ziegler, Director of North Dakota Department of Transportation and I want to thank you for the opportunity to appear before the committee today and thanks for your interest in improving transportation in the Devils Lake area and in the State of North Dakota as a whole.

Today, I'm going to include in my testimony not only discussion of the Devils Lake issues, but some broader Federal transportation issues.

Continued Federal support through programs such as the Emergency Relief Program is extremely, extremely important, if we're to meet the challenges dealing with the rising water in the Devils Lake Basin.

Since 1993, the lake elevation has risen 29 feet. The current lake elevation is at 1452. The table that's before you in your testimony indicates how much we have spent, just over $191.1 million—now this is just on transportation. And $161 million of that if Federal funding, $28.7 is State and local. This includes $149.4 million for State highways, $25.9 for county roads, and $14.4 million for BIA roads.

Maintaining traffic flow is a major challenge when these projects are under construction. Currently, 18 projects are planned for 2010 and 2012 on State highway as the Governor—as Governor Hoeven mentioned that we're working on just about every road in this area. In fact, on every road that surrounds this area. And Table I shows the total cost of these projects is estimated to be $168.4 million. Which, $143.8 is Federal, and $24.6 State. Upon completion of these projects, the roadways will be at elevation 1460.

Another element on the top of page 2 of the road—of what we're doing is roads acting as dams. We're doing a grade raise on Spring Lake on Highway 20, we're installing dam components on Highway

20, Acorn Ridge next to Camp Grafton and we've done culvert installations on Highway 20 in addition to the Highway 19, 281, 2 and then all of those efforts that we're making on those.

I'd like to talk about some future concerns that we have in the transportation world, here. If the lake reaches a natural spill elevation of 1458, the DOT anticipates raising all essential State highways to an elevation of 1465. This would require an additional $250 to $300 million in investment and take 2 years to complete the work. By law, the Federal Highway Administration can provided $100 million in ER funding for repairs in a State for each natural disaster or catastrophic failure that's eligible for Federal funding under the ER Program, it's commonly known as $100 million State cap. If the roadways need to be raised to 1465, we may very well need Congress to pass special legislation, lifting that cap.

A recent storm in the area caused two closed basic slooves——

The CHAIRMAN. By the way, I just met with Secretary LaHood, and I asked him for administrative relief. And he said, told me, they don't have authority to give us administrative relief, so it would require legislative action.

Mr. ZIEGLER. That's correct. We've heard that same—that same point.

Again, recent rain in the area caused two closed basin slooves along Highway 2 east of Penn to overflow onto the roadway. The temporary grade raise is going to be put into place at a cost of $865,500 and a permanent grade raise taking the roadway to elevation 1460 is estimated to cost $7.976 million.

Local jurisdictions are also faced with the challenge of providing access to certain areas, especially from a Commerce perspective. Graham's Island Road on Highway 19, or right off of Highway 19 that connects the Graham's Island State Park, also needs to be raised. Very recently, the Upper Great Plains Transportation Institute completed a study on the economics of access to Graham's Island and the State Park, but study looked at raising the road from 1455 to 1461 and the cost of that 4.8-mile project is estimated at $14.4 million.

Ramsey and Benson County will each have to come with $1.45 million in local match to complete the project. And, Senator, I know they're working on that and that's a big issue for them.

Also, the AMTRAK line running through the Devils Lake Basin is in danger of being inundated. The line has already stopped coming through here, but planning a feasibility stuffy is being looked at to see what can be done with it.

The Department of Transportation, of a $700,000 study has put in 50 percent of that to pay for the study costs. But a preliminary estimate to raise that grade on the railroad embankment is about $60 million.

The Devils Lake Basin is not the only area in the State of North Dakota dealing with high water issues. As a recent result of heavy rains, 22 sites—that's 22 sites on State highways on the West James River Basin were at, or close to being, closed. Four sites are inundated with water, you actually have to stop on the highway and take turns driving through the water. So, those have become eligible for ER funding, and we are going to raise those grades this summer.

Senator I've shared with you before very strong reasons, I believe, for continued Federal investment in our transportation system. I believe we've created the record this morning, Senator, so in the interest of time, what I'd like to do is go right from page three of my testimony to a conclusion statement, Senator, and the rest of the testimony that I have is available to you, to the committee, but it's also available to the folks here. But, the fact is, I just want to make sure that you get that information and we've created the record on it before.

But——

The CHAIRMAN. Let me just stop you there and say to you that the entire statement of yours will be made part of the record. And you're exactly right—we went in great detail this morning, laying out what is provided in this part of your testimony, so that's been given live to the committee, so that's all on tape, which is available to members and their staffs. So, I don't think there's any need to repeat it, here.

Mr. ZIEGLER. So, this afternoon is a conclusion statement. I'd like to simply say that, in the transportation world, we're anxiously awaiting a new highway bill. As you know, the existing bill expired on September 30th of 2009, and we've been working on continuing resolutions, and we appreciate the Federal money continuing to come.

What happens, though, in working with continuing resolutions, it's very difficult to plan for long-range projects. And if we have to continue going with continuing resolutions, I would appreciate at least a year, if not 18 months, of an extension—for the next extension.

In a conclusion statement, it's essential that Congress—through the reauthorization process—recognized that increased investments in highways and surface transportation in rural States and—is, and will remain—important to the National interest. The citizens and businesses of our Nation's more populated areas—not only residents of rural America—benefit from a good transportation network in and across rural States like North Dakota. Such legislation would be better equipped to address transportation issues in North Dakota and specifically here, today, in the Devils Lake Basin.

Thank you for the opportunity, again, to appear here before this committee today, and I hope to answer any questions that you may have.

[The prepared statement of Mr. Ziegler follows:]

Statement of Francis Ziegler
Director, North Dakota Department of Transportation
before the
Committee on the Budget, United States Senate
on
"Devils Lake Flooding Disaster: How Should the Federal Government Respond?"
Devils Lake, North Dakota, July 8, 2010

Mr. Chairman:

Good afternoon. I am Francis Ziegler, Director of the North Dakota Department of Transportation (NDDOT). Thanks for the opportunity to appear before the Committee today and thanks for your interest in improving transportation in North Dakota.

Today, I include in my testimony not only a discussion of Devils Lake issues, but some discussion of broader federal transportation issues. Continued federal support through programs such as the emergency relief program is extremely important if we are to meet the challenges of dealing with rising water in the Devils Lake Basin.

Rising Water Levels in the Devils Lake Basin

Impacts of Rising Water

Since 1993, the lake elevation has risen almost 29 feet. The current lake elevation is 1452 feet. Table 1 illustrates that just over $191.1 million ($161.4 million federal funding $28.7 million state/local funding) has been spent from 1994 through November of 2009 to raise roadways that have been impacted by high water levels. This includes $149.4 million for state highways, $25.9 million for county roads and $14.4 million for BIA roads. Maintaining traffic flow is a major challenge when these projects are under construction.

Table 1
DEVILS LAKE BASIN HIGHWAY EXPENDITURES

Year	Total Costs	Federal Share	State/Local Share
1994 – Nov 2009	$190,117,000	$161,438,500	$28,678,500
Estimated Costs 2010 -2012	$168,400,000	$143,768,000	$24,632,000
Estimated cost to raise State Highways to 1465 ft.	$250 - $300 Million		

Currently 18 projects are planned from 2010 – 2012 on state highways in the Devils Lake Basin. Table 1 shows that the total cost of these projects is estimated to be about $168.4 million, $143.8 million federal and $24.6 million state funding. Upon completion of these projects the roadways will be raised to an elevation of 1460 feet.

Roads acting as dams (RAAD) continues to be a major challenge for the NDDOT and local entities. These roads were never designed to hold back water. Included in the 2010 -2012 estimate are the following RAAD projects:

- Grade raise to elevation of 1460 on ND 20 at Spring Lake.
    - Estimated cost $14.2 million.
- Install dam components on ND 20 at Acorn Ridge. Raise grade to 1465.
    - Estimated cost $28.9 million.
- Culvert installations on ND 20 and ND 57.
    - Estimated cost $295,000.

When these RAAD projects are completed the immediate concerns with RAAD on the state highway system will be taken care of. However, while the immediate state highway system needs have been addressed, the RAAD system within the Sioux Lake Nation must still be dealt with.

Attachment 1 shows the location of about $233 million of planned projects in the Devils Lake area for the years 2010 – 2014. This includes the $168.4 million worth of emergency relief projects identified in Table 1. Projects include major and minor rehabilitation, overlays, seal coats, and structural and safety improvements.

Future Concerns

If the lake reaches its 'natural spill' elevation of 1458 feet, the NDDOT anticipates raising all essential state highways to an elevation of 1465 feet. This would require an additional $250 - $300 million, and would take two years to complete.

By law, FHWA can provide up to $100 million in ER funding for repairs in a state for each natural disaster or catastrophic failure that is eligible for funding under the ER program (commonly referred to as the $100M per State cap). If roadways need to be raised to 1465 feet we may very well need Congress to pass special legislation lifting the cap.

A recent rain storm in the area caused two closed basin sloughs along US Highway 2 east of Penn to overflow onto the highway. A temporary grade raise to provide safe passage of traffic through the area is estimated to cost about $865,500. A permanent grade raise to an elevation of 1460 feet is estimated to cost about $7,976,000.

Local jurisdictions are also faced with the challenge of providing access. The Grahams Island road connecting State Highway 19 to Grahams Island and Grahams Island State Park needs to be raised. In June, 2010, the UGPTI completed a study on the Economics of Access to Grahams Island and Grahams Island State Park. The study looked at raising the Grahams Island access road from its current elevation of 1455 feet to 1461 feet. The cost of this 4.8 mile project is estimated to be $14.4 million. Ramsey and Benson County will each have to come up with $1.45 million in local match to complete the project.

The AMTRAK rail line running through the Devils Lake Basin is also in danger of being inundated by water. A Planning and Feasibility Study will be undertaken to look at this segment

of the AMTRAK line. The study will cost about $700,000. NDDOT and AMTRAK have each agreed to pay 50 percent of the study costs. A preliminary estimate to raise the grade of the rail bed between Devils Lake and Churchs Ferry is about $60 million.

The Devils Lake Basin is not the only area in North Dakota dealing with high water issues. As a result of recent heavy rains, 22 sites on state highways in the West James River Basin were, or are close to being, inundated with water. Cost estimates are being developed to raise the grades at these sites. Many county and township roads are also under water in this area.

Let me turn now to a discussion of why a strong Federal investment in surface transportation in North Dakota is not just in North Dakota's interest, but also very much in the national interest.

North Dakota is Working Hard to Improve Transportation

Transportation infrastructure investment results in many benefits. It creates jobs and strengthens the economy. It improves safety. It improves mobility for our citizens and businesses. With these and other benefits in view, NDDOT is working hard to improve transportation in the state.

NDDOT and the Upper Great Plains Transportation Institute (UGPTI) recently held public input meetings across the state to discuss transportation. During the sessions, UGPTI presented results of a study on highway service levels and investments in North Dakota and gathered input about prioritizing transportation funds and levels of service.

Preliminary input indicates that:

- Residents want more transportation infrastructure across the state.
- Residents are concerned about traffic increases, especially in western North Dakota due to the energy industry.
- Public expectations are growing – for load carrying capacity and wider roads.

Recognizing the benefits of transportation, the State of North Dakota increased its financial commitment to transportation infrastructure by enacting a $1.35 billion transportation funding bill. This comprehensive transportation package for North Dakota funds maintenance and enhancement of the state's transportation system. It includes an unprecedented sum in non-matching State General Fund dollars. It also includes almost $600 million more to rebuild our roads and help cities, counties and townships recover from statewide flooding.

This year the NDDOT has undertaken the largest construction season in the history of the department. There are approximately $450 million in projects on nearly 2,000 miles of roadway statewide. The work includes projects under the regular federal program, stimulus (ARRA), emergency relief and state funding.

While the State of North Dakota is doing more than ever in this area, Federal investment in transportation is critically important. Federal aid accounts for 52% of our State's current biennial transportation budget, 57% if ARRA is included. So, federal dollars are important to our efforts

to preserve and improve North Dakota highways. It is, therefore, critically important that legislation reauthorizing the federal highway program serve the needs of rural states like North Dakota. This will allow us to continue to meet the demands being placed on our state's highway network.

Even though our state's large road network has few people to support it – North Dakotans pay more than the national average to support Federal surface transportation programs. The per capita contribution to the Highway Account of the Highway Trust Fund attributed to North Dakota is $161 compared to a national average of roughly $109 per person. This is a per capita contribution 48 percent above the national average.

So, while North Dakota is investing in transportation, federal investment in surface transportation in our state is critically important.

I would now like to spend some time focusing on the situation in the Devils Lake Basin.

Benefits from Transportation Infrastructure Investment

There are many benefits from transportation infrastructure investments. Job creation is one. Jobs are created on the site of projects. Jobs are created in supplier and support industries. There is also a boost to the general economy from the onsite and supplier jobs.

Safety is another benefit. Preserving and improving roads in pursuit of smooth surfaces, appropriate roadway width, guardrails, signage and pavement marking is essential to our mission of providing a safe transportation system. Better highways and the availability of public transit help us in our daily lives, ensuring good access to school, medical facilities, work, and other important destinations.

These investments are also important to the economic competitiveness of North Dakota and the nation. Businesses reviewing whether to stay or locate in North Dakota want to be sure that goods arriving at or leaving their facilities move safely and efficiently.

Federal Surface Transportation Issues

Clearly, our ability to continue to invest in surface transportation infrastructure in North Dakota will depend in part on Federal surface transportation funding levels. The needs are there to justify increased investment. Various commissions and reports have called for increased surface transportation infrastructure investment. For example, the American Association of State Highway and Transportation Officials (AASHTO) has recommended, for the six-year period 2010-2015, proportional increases in the highway and transit programs over the prior six years -- to $375 billion and $93 billion, respectively -- plus funding for other programs.

Another factor relevant to funding levels is inflation. The highway industry has been hit hard by inflation during the past decade. From 2001 through April of 2010, North Dakota's overall construction cost index increased by 87 percent. The purchasing power of highway dollars has

been reduced significantly and program funding has not kept pace with these rising costs (Attachment 2). A transportation bill without significant growth for North Dakota will severely hurt our ability to invest in transportation infrastructure throughout the state.

Beyond the overall funding level, however, to achieve continued progress in North Dakota it is essential that rural states like North Dakota participate at least proportionately in any growth of the Federal highway and transportation program, both as to formula and other funds.

In the authorizing committee in the House of Representatives a proposal has been outlined and partial legislation reported from a subcommittee to the full committee. This proposal apparently calls for increases in federal highway program authorizations of about $110 billion over the next 6 years compared to the last 6 years ($337 billion compared to $227 billion).

We are concerned about a number of aspects of this proposal. It would: create a large new program funding only metro areas with a population of 500,000 or more; and provide funds for large nationally significant projects, a high speed rail program and infrastructure banks, all of which seem geared to assist urban areas of the country. We recognize that there are major needs in urban areas; however, rural needs are essential too. It does not appear that rural states like North Dakota would be able to utilize the funds in these new programs – even though these new programs seem to represent most of the proposed increase in the federal highway program.

In that regard, we were very pleased that bipartisan rural mobility legislation, S. 3485, was recently introduced in the United States Senate by Senator Barrasso, you, Mr. Chairman, and 11 other Senators. That legislation basically takes the position that, if new legislation is to dedicate significant funds to discretionary highway programs only for large metropolitan areas, the legislation must also include a significant counterpart program of funding for rural states. We are hopeful that efforts like this will ensure that final legislation will not ignore the national interest need to continue to invest significant Federal transportation funds in rural states as well as urban ones.

In addition, we do not support funding new large discretionary programs, particularly programs that are not accessible to North Dakota. We would prefer that increased funding be provided to highway formula programs, enabling all states to participate in program growth.

The House proposal also would increase the share of overall transportation investment dedicated to transit. North Dakota joins AASHTO in supporting, instead, proportional growth in the highway and transit programs.

In short, even though all details of this proposal are not set, we are very concerned that the House legislation could provide North Dakota with a considerably reduced share of transportation program dollars compared to current law. We will appreciate your efforts, Mr. Chairman, to avoid any such adverse result in the final legislation.

The Nation Benefits from Federal Transportation Investment In and Across Rural States

Let me turn now to reasons why authorization legislation should provide rural states like ours at least their current share of the Federal highway and surface transportation programs.

Federal-aid highways in our state, not just those on the National Highway System --

- serve as a bridge for truck and personal traffic between other states, advancing interstate commerce and mobility;
- enable agricultural exports and serve the nation's ethanol production and energy extraction industries, which are located largely in rural areas;
- are a lifeline for remotely located and economically challenged citizens;
- enable people and business to traverse the vast tracts of sparsely populated land that are a major characteristic of the western United States; and
- provide access to scenic wonders and facilitate tourism.

In addition, the scope of the Federal-aid system, extending beyond the NHS, enables enhanced investment to address safety needs on rural routes.

Further, Federal investment in rural transit helps ensure personal mobility, especially for senior citizens and people with disabilities, connecting them to necessary services. Federal public transportation programs must continue to include funding for rural states and not focus entirely on large metropolitan areas.

Bridge States Serve a National Connectivity Interest for People and Business

Let me amplify a few of these points. Highway transportation between major metropolitan areas is simply not possible without excellent roads that bridge those vast distances. This connectivity benefits the citizens of our nation's large metro areas because air or rail frequently will not be the best option for moving people or goods across the country. The many commercial trucks on our rural interstate highways demonstrate every day that people and businesses in major metropolitan areas benefit from the nation's investment in highways in rural states.

The most recent FHWA data on tonnage origins and destinations shows that just over 59 percent of the truck traffic using North Dakota's highways does not either originate or terminate within the State. This is well above the national average of about 45 percent, underscoring that North Dakota's highways help connect the nation in a way that benefits other states.

Essential Service to Agriculture, Natural Resources, Energy

A significant portion of the economy in our State is based on agriculture, energy production, and natural resource extraction. Governor Hoeven's economic strategic plan has identified agriculture, energy, advanced manufacturing, technology-based businesses, and tourism as growth industries because North Dakota holds a competitive advantage in those areas. These have been the focus of much of North Dakota's investments in economic development.

Agriculture is one sector of the economy where the United States has consistently run an international trade surplus, not a deficit. Over the last two decades roughly 30 percent of all U.S. agricultural crops were exported.

Apart from its value to the state, there is a strong national interest in ensuring that agricultural products and natural resources have the road network that is needed to deliver product to markets, particularly export markets. In 2009, North Dakota led the nation in the production of barley, durum wheat, spring wheat, navy beans, pinto beans, canola, flaxseed, honey, lentils, dry peas, sunflowers, and dry edible beans. Last year North Dakota was the fastest growing export state in the nation. A key part of the road network supporting the movement of agricultural products is roads below the National Highway System, where crops begin their journey from point of production to destination.

North Dakota is a major contributor of energy production in the nation. Our state is currently fourth in the nation in oil production and contains large coal reserves. Good roads throughout the State are important to our nation becoming energy independent and providing agricultural products to feed a hungry world.

Over the last three decades, tens of thousands of rural rail branch lines have been abandoned nationwide. In North Dakota since 1980, over 1,500 miles of railroad branch lines have been abandoned. The reduced reach of the rail network means that many areas, particularly rural areas, must rely more heavily on trucks to move goods. This was noted by USDA in its April 2010 "Study of Rural Transportation Issues."

With increased truck traffic in North Dakota and much of the upper Midwest, it is a challenge for us to continue to move these products. That challenge is compounded by the necessity of imposing spring load restrictions. The underlying reason for imposing spring load restrictions is inadequate roadway thickness. During the spring thaw, the ground is waterlogged and can't support a fully loaded 18-wheeler on a highway of standard thickness. Many states, especially those in the north, have little choice given their current funding but to limit the amount of weight on highways in the spring. Like congestion, load restrictions slow down commerce and add greatly to the cost of doing business.

Tourism Access

Without a strong road network in rural states, access to many scenic destinations would be limited. Tourism is vital to the economy of North Dakota.

Funding and Financing Considerations

Rural states like North Dakota face a number of serious obstacles in preserving and improving the Federal-aid highway system within their borders. We:

- are very rural,
- are geographically large,
- have low population densities, and

- have extensive highway networks.

These factors make it very challenging for rural states to provide, maintain, and preserve a modern transportation system that connects to the rest of the nation. Our low population and traffic densities also mean that tolls are not an answer to funding transportation needs in rural areas. Our budget to maintain (plow snow, apply pavement marking, patch roads, seal cracks, repair signs and guardrails) the state transportation system is approximately $9,200 per mile each year. It takes approximately 2,700 vehicles per mile per day, using today's Corporate Average Fuel Economy (CAFÉ) standards, to generate this amount of revenue from state motor fuel taxes. Very few state highways average 2,700 vehicles per mile per day in North Dakota.

Avoid Program Complications or Increases in Regulatory Requirements

The next authorization bill should not make federal highway program delivery more complicated. The current highway and transportation program is complex. We would like to see processes streamlined so we can deliver projects more efficiently. We see proposals for additional requirements as counterproductive. It takes three to four years in North Dakota to complete a project that requires full environmental process clearance. We support the Federal Highway Administration's "every day counts" initiative to streamline the project development process. However, any new statutory provisions that add requirements and regulations will add time to program and project delivery and increase project costs.

One area where new regulation is being actively discussed concerns performance standards and targets. Performance measures are important, and we in North Dakota use them in our state. We believe, however, that national performance standards should be general in nature and that each state should be allowed to establish its own specific targets.

Areas being discussed that may involve some program changes and may involve new regulation concern "livability" and transportation planning to address climate change. These are often discussed in terms of providing options for transit, biking, and walking. From the perspective of this state, that raises concern. For many Americans, particularly in rural areas, those options will not serve their transportation needs. Good highways will also be essential to livability in rural and many other areas. If livability is to be part of the next highway and transit legislation, it must be framed in a flexible way that allows rural states and communities to pursue solutions that are practical for them.

We are strong supporters of the approach to program delivery in current law – that most funds are apportioned to the states. We, like other states, conduct public outreach and then prioritize project selection. We are concerned that various proposals would give more emphasis to distribution of funds to projects based on decisions at USDOT, not in the states. Disproportionate growth in Federal discretionary dollars inevitably would reduce the portion of the program distributed to states. While we do not expect a Federal program without some discretionary funding decisions made by USDOT, we think rapid growth in discretionary Federal programs should be avoided.

Let me also note that while we want a surface transportation reauthorization law that is good for

North Dakota enacted as soon as possible, without a reauthorization law, states and business are faced with operating under program extensions. While we are currently operating under an extension through the end of 2010, we suspect that some will say that any next extension should be short. Short extensions make program delivery less effective and discourage investment by the private sector. So, if there are to be extensions, they should be of practical length, perhaps a year.

Transportation is a Good Investment

Much of today's surface transportation infrastructure was built by our forefathers as an investment in our country. Today that investment is taken for granted as everyone automatically expects a strong transportation network. Many people have invested in new forms of communication in their home, spending more than ever before on items such as cell phones and Internet. Today it is not unusual for an individual consumer to spend $500 a year on a cell phone bill, compared to the national per capita average contribution of $109 a year into the Highway Account of the Highway Trust Fund. We think this illustrates that transportation is a good buy.

Conclusion

In conclusion, it is essential that the Congress, through the reauthorization process, recognize that increased federal investment in highways and surface transportation in rural states is, and will remain, important to the national interest. The citizens and businesses of our nation's more populated areas, not only residents of rural America, benefit from a good transportation network in and across rural states like North Dakota. With such legislation, we will be better equipped to address transportation issues in North Dakota.

That concludes my statement. I'll be happy to respond to any questions you may have.

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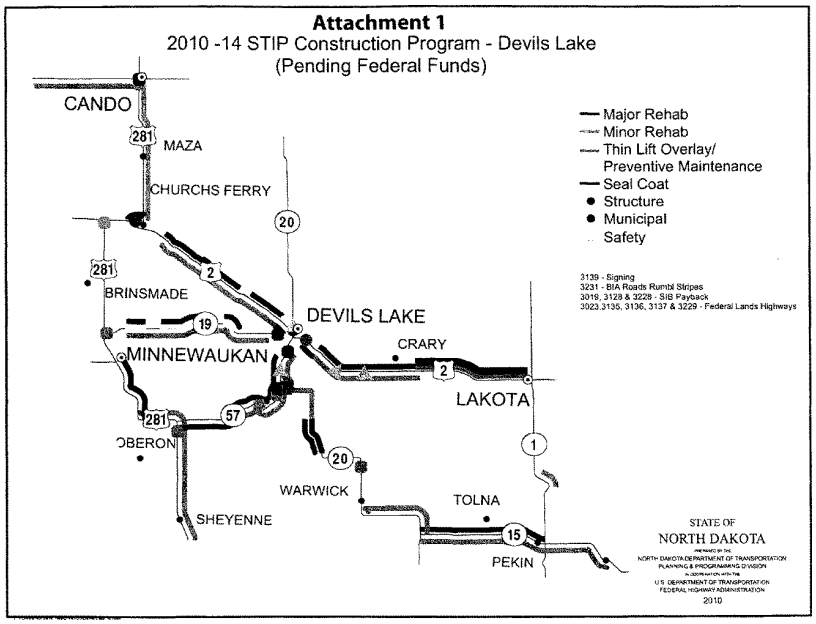


The CHAIRMAN. All right, maybe I could just go to page one, here. You have total costs, Devils Lake Basin Highway expenditure of $190 million, $161 million Federal, $28 million State and local. As I calculate, that's about an 85 percent Federal share?

Mr. ZIEGLER. Senator, that is correct. Mr. Chairman, that's correct. And what happens when we work with the ER part of the Federal bill, the first 180 days after disaster is declared, the match becomes 100 percent.

The CHAIRMAN. One hundred percent.

Mr. ZIEGLER. And that——

The CHAIRMAN. That was going to be my question, because this is a higher percentage than we see in the rest of the Federal Highway Program, which is typically 57 percent when we put in the ARRA funding, 57 percent Federal—that's the State——

Mr. ZIEGLER. That 57 percent is the actual percentage of Federal aid in the DOT's budget. The typical Federal aid percentage is 80/20, and when we go to ER in the first 180 days becomes 100 percent, that Federal aid becomes a larger percent of the total cost.

The CHAIRMAN. So, let me just make sure that we have this correct for the record. So, in this case, in the Devils Lake Basin, with respect to the road funding that's been done so far under your calculation, that's approaching $200 million, and 85 percent Federal, 15 percent State. And the reason for that is, part of it is emergency funding, which is 100 percent Federal.

Mr. ZIEGLER. That is correct, Mr. Chairman. It's 100 percent for the first 180 days.

The CHAIRMAN. The first 180 days.

Now, 2010, how much will be expended in 2010?

Mr. ZIEGLER. Mr. Chairman, we have—we're anticipating contracts in the neighborhood of $80 million.

The CHAIRMAN. Eighty million? So, that would take the total to $270 million by the end of this year.

Mr. ZIEGLER. That's correct.

The CHAIRMAN. Now, Federal Highway gave us the number of $404 million. I would assume that they are including BIA roads in that total. Is that the reason for the difference?

Mr. ZIEGLER. Mr. Chairman, that's what I'm estimating, here. I looked at your number and compared it to ours and I believe that would be the difference.

The CHAIRMAN. The difference. Because you are not—you don't capture the money that is spent on the BIA side of it in your figures?

Mr. ZIEGLER. That is correct.

The CHAIRMAN. Yeah. They gave us a number of—I remember 404? $402 million spent so far, so the difference, there, would be the money that has been spent through the BIA system?

Mr. ZIEGLER. I believe that's the case.

The CHAIRMAN. OK. Let me just say, that goes back to the total funding and I think the Governor used the number of $650 million. Our running total on just the Federal side is $700 million, so far. And I don't know, maybe the difference—maybe the discrepancy, there, is the BIA money may not be in your total and as in ours.

Director Ziegler, if I can go to the final point on your chart on page one, which is the estimated charge to raise State highways to 1465 would be an additional $250 to $300 million.

Mr. ZIEGLER. That is correct.

The CHAIRMAN. Well, all of these things should be very sobering to anybody that's listening. I know that the amount of money that's been spent here is huge, and it's going to take a lot more. I think that confirms the point that many of us have been making, is that absent an ability to release additional quantities of water from the lake, is going to increase the cost of mitigation dramatically, both in terms of raising of levies, and raising of roads, and raising of bridges and all of the other classes, is that not the case?

Mr. ZIEGLER. That is the case.

The CHAIRMAN. One final point that I should make to you, and that is, look. We all know that the Federal Government has a very serious deficit and debt problem. And while I, personally, believe it was imperative that we spend money to provide liquidity to the economy at a time of downturn, we are now going to have to pivot and start focusing on our deficit and debt, because it is growing at an alarming rate. But that means things have to be paid for.

And as I reviewed your testimony, and we discussed this, this morning, in Newtown, ASHTO, which is the group of your compatriots from around the country are telling us that we need about $468 million in a new transportation bill. Four hundred and sixty eight billion dollars. Is that the correct number?

Mr. ZIEGLER. That's the correct number.

The CHAIRMAN. And if you divide that over 6 years, that's roughly $73 billion a year, $78 billion a year, somewhere in there. Let's say, $75 billion a year, that'd be $460. Seventy-five, seventy-six billion a year.

The trust fund is only throwing off $31 billion a year in revenue. So, that leaves us a shortfall of $45 billion a year. Is that approximately the gap that we have to fill in?

Mr. ZIEGLER. Mr. Chairman, that's approximately correct.

The CHAIRMAN. And so, we either gotta do it through cuts, or more revenue from someplace. And I'd just say to you if we made cuts of that magnitude, what would happen to the highway program, transportation program all across the country?

Mr. ZIEGLER. The program would be about cut in half, Senator.

The CHAIRMAN. And what would that mean for what you're doing, here, in North Dakota?

Mr. ZIEGLER. Well, our program would be cut substantially. There's no doubt about it. Our needs are shown to be there, as we talked this morning, and as we're talking this afternoon, and so our program would have to be cut.

The CHAIRMAN. Let's go now to Mayor—we had a chance to visit with him at noon today. I want to wish him every success in this new challenge as Mayor, of course, he's been a long-term member of the City Commission, so he's very, very familiar with the issues that we're confronting, here. I want to welcome our new Mayor, Mayor Johnson.

STATEMENT OF HON. RICHARD JOHNSON, MAYOR, CITY OF DEVILS LAKE

Mr. JOHNSON. Thank you, Senator.

First off, on behalf of the City, I thank you for coming here, today, and holding your hearing, here, because it is important to the City and our area. And along with that, to thank you for all your support you've given to us in the past for our embankment, for all of the infrastructure work that's been put into the city, and our new water line—all of those types of items. Because without your hard work, and others, it wouldn't have happened. So, we thank you for that and thank you for being here.

I, too, have prepared a statement, much as the other witnesses have, and I think I'll do as they did—pick out some of the highlights. We've talked about a lot of the items already, but I think being on the ground floor as we are, here in Devils Lake, we probably get a little more personal touch to it sometimes than maybe those from a distance. And, we see every day what goes on because of the flooding, we see the pain it causes, we see the hardships that go on. And certainly, we have a lot of partners working with us to help us get out of this mess, if you want to call it that. But, it's the people down here right—their feet in the ground, you might say boots to the ground—that you see the suffering it's caused, and it takes its toll on the community, it takes its toll on, I think, its civic leaders, too.

So, I guess the comments that I have today, we know how devastating the flooding can be to our farmers, we see that by the land view—fly the area like I did last week, it's devastating. You see our road system is deteriorating. With inside the city, we have issues with ground water, we have—our streets are, the subgrade is falling apart, causing the cracking and heating of pavement, and a lot of it's hydraulic pressure caused by the lake. So, those are big issues.

We all know about the economic impacts. When the producers can't produce their products, they can't spend money. And I think there's a lot of things that we could be doing, our community could thrive if a lot of these areas were handled. Get water off the lake, of course, is No. 1.

But, as Director Ziegler mentioned, just about every arterial route into the city has some type of construction going on. And that is a deterrent for economic development, it's a deterrent for our business community because it might be just as easy for someone to drive a few extra miles and not have to hassle with the pilot cars, and with delays in roadways, and, of course, the safety issues.

I think just last Tuesday, there were two calls to search and rescue for vehicles in the water. So, safety issue, life safety issues are a huge issue, as well.

And I think a lot of the other stories have been told about the loss of revenue and that type of thing. But, the title of our gathering here today was, "What Can the Federal Government Do?" And what should they—what should be their impetus.

And I really feel, obviously, the first thing we need to do is get more water off the lake. I think the west end outlet is great, I haven't seen it since it's been pushing the 250 out, but that's huge. But, we need more than that. And it's the position of the city that, you know, and we have to look out to the east side, there's no question about that. We have to blend the east side with the water from the State outlet, and do it in a responsible fashion. But, if we do nothing, if we let nature take its course, and Mother Nature do what it might do, it could prove to be a true disaster. And we don't want that for anybody, we don't want to spread our problems downstream. And I think how you can mitigate that is by, you do something about that now. You prepare a structure, you have the Corps help design that, along with the State, whoever. And we do a controlled structure out the east side, blend the water from the west side, and hopefully we can meet some EPA standards, and we're hoping we get change.

And, I think that's No. 2. Get water off the lake, off the east side. No. 2 is to work with the EPA as Mr. Sando said. We have to do that, we have to get some of these standards relaxed, to do that. And if we have those two things, that will really get the ball rolling.

Another thing I think that needs to be looked at, and I don't know if its been mentioned here, today, but we have to look at the channel capacities. Do we have to do some work on those to allow more water to go through the river channels? I think in areas, it gets choked down a bit because of the capacity. And if we can do that, if we can widen those, take appropriate measures, that would be a helpful thing, too. So, that's something I think the Federal people can look at, too.

And then to help out with the financial end of things, due to all of the damages that's been caused to the roads, to the township roads, county roads, city streets, and other infrastructure items—Ramsey Rural Sewer has a huge issue with their lift stations and things like that—if money could be provided to do those types of things through the Federal Government to help, again, mitigate some of the damages that have been done, that would be huge. I

know we have a lot of street work that has to be done, and the counties, townships, they're suffering, and farmers can't get to their fields—it was amazing when you fly it, it's an eye-opener. You can see pictures, but it doesn't hit home until you've met it face-to-face.

So, I think those are some of the things that the Federal Government could do. I think another thing I'd like to point out, is we've talked about the amount of money that's been spent, and $700 million is the number that pops up. And I don't think that includes lost revenue. The money had—the production agriculture had been able to produce. You add that into the mix, and I'm sure it's well over a billion, would be my guess. And that's just a layman's guess. But that should be factored in, it's a real number. It's not contrived, it's a real thing. And that money rolls around our community and helps us do things with that money, too.

So, I guess those are the four things, recapping would be, to get water off the lake off the east side, blend it with some west side stuff—continue the west end and all of that—get the EPA standards, and whatever necessary standards need to be changed to allow more of full, the riverings, the rivers to have the—create the capacity to move this water so we can get some water off the lake, and then money for mitigating some of the damages to the affected areas—not just the city, but our whole area. And if we—well, if that were my wish list, that'd be pretty good.

The CHAIRMAN. All right.

Mr. JOHNSON. I'd be pretty happy, actually. And my term would get off to a good start.

But, having said that, it's important. Our community can't take another foot of water, I'll tell you that. We, this last foot that came on, this year, was devastating. We got to four inches of rain in the upper basin, and people were running scared. You could see it. And, I've lived here since 1970 and I've never seen as much desperation, hopelessness, fear, anger, as I have, probably, this spring.

So, again, I thank you for being here, and would answer any questions you may have.

[The prepared statement of Mr. Johnson follows:]

Testimony of
Dick Johnson,
President of the Devils Lake City Commission,
before the
Senate Budget Committee

Devils Lake Flooding Disaster:
How Should the Federal Government Respond?

July 8, 2010

Senator Conrad:

Thank you for the opportunity to speak with you today regarding the current challenges facing the City of Devils Lake and surrounding area. My name is Dick Johnson. I am the President of the Devils Lake City Commission.

First and foremost, I would like to thank you for the ongoing support you have provided our community throughout the years of flooding. The embankment protecting the City, the roads leading to our great community, and the development of our new drinking water supply project would not have been possible without your unrelenting support.

As you are aware, the City of Devils Lake has faced a multitude of challenges resulting from fluctuating lake levels. Last fall the City reluctantly agreed to enter into a Project Cooperative Agreement with the Corps of Engineers to increase the protection level of the embankment protecting the City and surrounding area. The City was extremely concerned about entering into this agreement because we feel that continued flooding and increasing lake elevations will have dire economic impacts to our City. We understand that if the lake continues to rise, it could flood an additional 100,000 acres or more of prime farmland, flood countless homes and be devastating to our neighboring communities. Therefore, the City of Devils Lake fully supports efforts to remove water from the lake to reduce flood damages.

With the drastic rise in Devils Lake again this year and the continuing rain that we have been receiving, we feel that it is imperative that emergency measures be taken to address our continued flooding. The City of Devils Lake does not want to pass our problems along downstream, but it appears obvious to us that if adjustments to downstream water quality/quantity requirements are not made to allow increased flows from the lake, a natural overflow could result in EXTREME water quality and flooding impacts downstream in the future. Even with the expansion of the embankment protecting our area, it will not be able to contain the lake should it continue to rise. Therefore, working

together now to develop effective flood relief measures, rather than waiting to see if Mother Nature will address the issue on her own in the future, is the most logical approach to solve this issue.

The City's recommendation regarding how the federal government should respond to our flooding crisis is four-fold. First, we are in an emergency situation. As such, emergency measures should be taken to address water quality rules along downstream rivers that may restrict discharges from Devils Lake. We recommend EPA work with the ND Department of Health to adjust water quality standards along the upper and lower portions of the Sheyenne River to allow water to be discharged not only from the west end State outlet, but allow controlled discharges from the east end of the lake as well. East outlet flows could augment west end discharges and offer better flood control for the area and downstream. Water quality adjustments may also be needed on the Red River. The water quality adjustments should be made to address the emergency nature of the situation and be limited to discharges from Devils Lake and not industrial pollutants.

Second, we ask the Corps work with State and Local officials to develop, design and build a control structure and discharge works for the east end of the lake. We feel a gravity control structure would allow the lake to be controlled, similar to a pool behind a dam, and allow the lake to absorb flood events and slowly release these flows to our downstream neighbors. Such a project would not only provide flood benefits to our area, but also resolve potential uncontrolled flooding that could occur downstream should the lake continue to rise. Further, we understand significant water quality improvements can be obtained from discharging water from various areas on the east end of the lake. Therefore, this option should be further explored when reviewing east end alternatives.

We understand that potential exists to enhance the outlet on the west end of the lake. We further understand these improvements are estimated to cost between $35 to $40 million. Based on flood control effectiveness, we feel this money would be much better spent developing a control structure on the east end of the lake.

Third, a review of the Sheyenne River channel capacity needs to be completed and determinations made on what can be done to increase the rivers channel capacity while minimizing impacts of larger river flows. Increasing the allowable channel capacity and extending outlet discharge durations could have a dramatic effect on the lake elevation.

Fourth, we ask that funding be provided to mitigate the effects flooding has had on our area as well as impacts Devils Lake discharges may have on our downstream neighbors. Flooding has impacted many roadways in the area, making them impassable. High ground water has weakened roadway bases in the city causing excessive deterioration of our road system. Adequate funding is essential to mitigate these impacts in the short term while the other flood control measures are implemented.

If the aforementioned steps are taken in swift fashion, the potential still exists to save approximately $90 million by halting expansion of our flood protection system. These

funds could be used to develop an east end flood control project, improve the river capacity, and mitigate downstream impacts associated with Devils Lake discharges.

In conclusion, we feel that the Federal government should take immediate steps to solve the flooding situation and prevent a potentially catastrophic spill of the lake rather than spending millions continually mitigating the effects of the ongoing flood. In addition, we ask the Federal government to support the infrastructure improvements required to maintain transportation and utility services until the flooding has been alleviated.

Thank you again for the work you have done for our area. We appreciate that you continue to understand the great challenges that lie ahead of us and hope we are able to work together to find effective, comprehensive solutions.

The CHAIRMAN. Thank you. Thank you for that excellent testimony. It's been a very good panel and I think we've made a very important part of the record, here.

Let me just ask, Mayor Johnson, if I could, you know, there's a lot of challenging news, there's also some good news in this community you were sharing with me at noon, and maybe it would be appropriate to share some of that in terms of new employers who are coming to town, in terms of the investment that's been made at the National Guard training center, and that's proving to be a magnet for units around the country that are coming, now, to Devils Lake to do their training. And, also, the construction activity—there's a positive side of that, as well, because it's generated a lot of additional sales tax revenue in the community. And maybe you could share with us a new employer coming to town?

Mr. JOHNSON. Sure. There's—Devils Lake has been working with a couple of major projects and one looks like it's being finalized and that would be good for our community, a number of good jobs, good-paying jobs.

This I got an invite in the mail here, last week, to Summers Manufacturing. They're going to open their paint processing area before they sub that out, and they're going to start doing that here, and I think they're having some type of an open house in August. So, that's good news.

Our sales taxes are up, so that's good. Housing market appears to be strong. Camp Grafton, what a gem that is for us. They're opening up their new RTI, they're going to have an open house out there, I believe, the first weekend in August, and they've got another project online. I can just tell you, up from where I live in town, there's a number of Guard families within two or three blocks of where I live. And young families, good-paying jobs. And that's good for our community. Thank God for them. Let alone the services they provide the community when we need it.

But—so, there are some good things, and our sales taxes are going to be high—artificially high, maybe, because of the construction, it's not sustainable. So, once the construction's done, you know, then trouble will be around the corner.

But, hopefully by then, hopefully by—I'll be optimistic—hopefully by next spring, we're going to have some more water moving, and then we'll get to more normal times.

The CHAIRMAN. Very good. Thank you.

I thank this panel. And I'll call now the second panel. Spirit Lake Nation Chairwoman, Myra Pearson; the Minnewaukan City Mayor, Trish McQuoid; Ramsey County Commissioner, Joe Belford; and the Devils Lake Basin Joint Water Resource Board Manager, Jeff Frith.

Welcome, good to have you all here. Why don't we begin with Spirit Lake Chairwoman, Myra Pearson?

Myra, thank you very much for being here, and please proceed with your testimony.

STATEMENT OF HON. MYRA PEARSON, CHAIRWOMAN, SPIRIT LAKE NATION

Ms. PEARSON. Good afternoon, and thank you, Senator, for inviting me to your hearing this afternoon. My name is Myra Pearson, and I'm the Tribal Chairwoman for the Spirit Lake Tribe, which is located in North Dakota in a region of the State that's been plagued by flooding for more than—going on two decades, actually. And I've heard a lot of good comments, here, this afternoon. I have copies of my testimony that I'm going to leave with you, and I hope you can include that, you know, as part of the record.

The CHAIRMAN. Without objection, it will be included.

Ms. PEARSON. OK. And I—for the record, I've served as Chairwoman for the Spirit Lake Tribe Reservation for, on two occasions—once during the late 1990's, from 1997 to 1999 and presently I'm serving my final year of a 4-year term, but that 4-year term began in 2005, and my term will be up next spring.

And the reason I want to mention that is I was here in the nineties when we sat out at the Elks Club, talking about these very

issues. I'm here again, you know, these past few years, still talking about the same issues. And, you know, shame on us. Shame on us today. Shame on me, shame on, you know, on us for not demanding a permanent fix for all of the heartache that we've caused ourselves.

It's frustrating, and I want to commend Mayor Johnson—welcome to the, you know, to your new position, post, here in Devils Lake. You know, he kind of tapped on a lot of stuff that's very true. There's so much frustration. I went out to Washington and I couldn't quite do what I was supposed to without, you know, getting emotional about this whole thing. And, you know, we've suffered greatly, but we've all managed to adapt to it.

This morning we had, at our office, during our meeting we were—we had a couple of people from FEMA. And it's being discussed that, you know, we're waiting for the big disaster to hit. I don't want to see that happen, because I think we've got too many generations behind us—and ahead of us—that we should have looked out for. And we've got those that are up and coming, you know, that we need to do something now, so that they can be protected in the future.

Earlier, you know, I heard it mentioned, you know, we've got to look at the Nation's deficit, as well. That's very true, we're all a part of this Nation. And we have to look at ways of, how can we ask the Government to give us more money without showing them that we're going to do something with it this time? How many years have we sat here, now? And I say, I mean, we've wasted this money. We haven't done anything with it, let's do something with it, now. Let's make our lives more safer, and let's do something with whatever we're going to ask for. But, I'd be ashamed to ask for anything more, because of, you know, we haven't done anything with what they've given us already. And I think it's a shame, because our Nation—as everyone in this room knows—we are in deficit problem. And, you know, we need to do something—we need to do something that—we also better respect Mother Nature. We should have done that a long time ago. We should have respected her laws, as well as our own—our local, our Federal, our State laws, we should have respected all of those things, including hers. And I think we would all be sitting in a much higher ground today, but a respectable one—not asking the people downstream for permission to run this water, or the people into Canada. We shouldn't have to sit here and do that today.

We've created this problem for ourselves, now. Let's all work together and try and fix it. But let's think of the future generations that are coming up, yet.

I'm just going to jump to the conclusion of my testimony, because I know time is running short, here. And I didn't mean to, you know, get into it this harshly, but I'm also going to leave inundation maps, and I want—you know, I wanted a part of the record on the land loss that Spirit Lake Tribe has lost to this flood—we all hurt. We all hurt, and in that land that we have out there is all we've got, so it's a big, you know, it's a big loss to us.

But I'd like to, excuse me, read through the latter part of my testimony, here. But for years, you know, I say we've watched this millions and millions of dollars that have been used to secure exist-

ing roadways, and yet we have no solution to our flooding. We watched as our communities, such as those in the Red River Valley that have been ravaged by flooding, but have recovered from the floods with the support of the Federal Government and the knowledge of the local governments, our flooding issues are like those in the Red River Valley, but we have yet to recover from that.

Everything happens around us, but it never gets to us. But we're in the heart of the whole problem, you know, in this lake region.

At this point, there are several measures that have been taken by the Federal Government which can support our efforts to alleviate the impact of the flooding. First and foremost, the Spirit Lake Tribe has agencies and programs in place that are ready, able and willing to respond to the crisis, but we need direct funding so that we can take the necessary steps toward our resolution. The Tribe has the infrastructure in place to fix our own roads, respond to emergencies for our constituents, protect and preserve our natural resources, and address health impacts, but we need direct funding to implement many of the plans that we have already developed.

In terms of cross-jurisdictional issues that impact, not only the tribe, but also farmers and ranchers, nearby towns and the State, we are committed to working together to develop a long-term, sustainable solution to the flooding, through a water diversion project that will be feasible and sustainable.

In closing, I want to state for the record that I am committed to working with the elected officials at the Federal and State levels of government to develop both short-term and long-term solutions to this emergency. Waiting for another decade is simply not an option.

I thank you all for your time and your consideration of my testimony.

The CHAIRMAN. Thank you very much. Thanks for being here, and thanks for your testimony and thank you for your leadership.

On my list, we have next the Minnewaukan City Mayor, Trish McQuoid, and then Commissioner Belford, and then Jeff Frith from the Devils Lake Water Resource Board.

STATEMENT OF HON. TRISH MCQUOID, MAYOR, CITY OF MINNEWAUKAN

Ms. MCQUOID. Hello, and thank you for inviting me here today. I am Trish McQuoid, Mayor and business owner in Minnewaukan. I am here today to inform you of some our current statuses and doings in our town. I, unfortunately, don't have a lot to report, but there is a lot going on for our city, currently.

It seems that the waters of Devils Lake have somewhat leveled off for us at this point in our town. Behind our school the water hasn't come up much more, we've been protected, right now, our wave action is—we've been saved by some of that, it's come from the right direction every time, so far.

So, I have been out to the outlet, I went out there the other day, a gentleman came and I took him out there and talked to Carl Doushire, and it is running at 250 and, boy, the water really is flowing through there. And that is such an awesome sight to see, for all of us.

Will it be enough? I don't know, you know. I know that everybody is working on trying to make sure it can go up and we can get rid of more water as fast as we can. Will it be fast enough? I also don't know that.

So, here we sit. And hopefully, I guess, there won't be any hiccups in any of your plans, there, to have it shut down temporarily as it was last year, and so on and so forth. So, if we could get something on a Federal level taken care of, knowing that this emergency for our lake and our people of our community, and get those levels higher, like Mr. Sando said, I mean, it would just be so huge and give some relief to some citizens, and to some of us city officials.

Currently, our town has the Army Corps of Engineers working on a Section 22 study of feasibility for us, and I'm sure you're all aware of that. I'm hoping to receive some results of that in the next four to 6 weeks. I was called on Tuesday and asked to get some citizens together of business owners and different people that live around and get some of their input, and I believe they want to come and meet with us one evening—I don't know that date or time, yet—but it would be real important for that to take place.

Right now, I currently feel that the relocation—or even a partial relocate—across Highway 281 would be a great thing for us. I have not investigated anything as far as land or certain landowners or anything like that. I do know Mr. Jerry now has put in some money, or put in an application for some money to build us a new school. I think that's all really important, and hopefully one of our local farmers or landowners outside there for the west on 281 will come through and help us out with something like that.

If we would get a possible relocate—even a partial relocate across the highway—then again, our town can grow, we can regain tax base that we've lost. You know, the homes that leave our town with the NFIP, we don't gain anything from that, we lose from that. And I wish the—somewhere the Federal Government could help us out on that. They put that rule in effect, and maybe they can take that rule out of effect, as long as a basement isn't put on that home, or it is a mobile home or such, I'm not sure.

I feel that being a closed basin city that we're basically dying a slow death, there, because we're not really allowed to do anything right now—our hands are tied.

We currently have seven homes that are leaving in the next two to 3 months, some starting next week. And there again, I understand that they're working on our Section 22 and they're going to come back with the best opportunity for our town. Living in limbo is really hard for us, and not knowing when the rain storm's going to come.

If we were able to obtain land and funding for infrastructure, we do have our water treatment plant and our lagoon system which would save a lot of Federal money and State money to do the relocate. So, I think that's a big bonus for us, on our side. But, basically, what I would like to see done here, and I'm not sure how the Federal Government should respond, but I think the west-end outlet is—now that it is up and running at 250 CFS is a great thing. If we can bump it up and get it going higher for the summertime, and even if we could keep it at a lower rate through the winter.

I mean, if we have a rough winter, and we can get as much off as we can right now, I think it's just going to be huge for us, as the whole lake region area.

The CHAIRMAN. OK. Thank you very much.

Ms. MCQUOID. Thank you very much.

The CHAIRMAN. I know you're going through a tremendous strain, and I can't even imagine what it would be like to be Mayor of a community that has so many incredible challenges. We really admire the work that you're doing and the leadership that you're providing.

Ms. MCQUOID. Thank you.

[The prepared statement of Ms. McQuoid follows:]

Hello and Welcome!!

I am Trish McQuoid Mayor and Business owner in Minnewaukan. I am here today to inform you of our current status and doings.

It so seems the waters of Devils lake have some what leveled off for us at this point, If this weather can continue with out huge rains we may survive this summer. I will keep praying I guess.

I have been out to our outlet and it is now running at 250cfs. It is pushing lots of water thru there but will it be enough? We don't know that yet. But every little bit helps at this point. Hopefully there won't be any hick ups that will happen that will shut it down.

Currently we have the Army Corps of Engineers working on a Section 22 study of feasibility. I am hoping to receive some results in the next 4-6 weeks. I was called Tuesday and asked to get some citizens together for a meeting with a few of the engineers to talk about what the city would like to see happen here. Currently I feel relocation or even a partial relocate across hwy 281 would be a great thing for us as we could actually grow our town and have new tax base come to us!! As a closed basin city we are not allowed to regain any tax base so we are a city that's basically dieing a slow death!! We currently have 7 homes that will be being moved out of our town in the next 2-3 months some starting next week!!

If we were able to obtain land and funding for infrastructure we have our water treatment plant and lagoon system that could be ran under the hwy and be used which would save a lot of $$. I have not at this point started to ask land owners to see if this would be possible, but would like to start soon to see if this is even a possibility. At this point I am waiting to see what this Section 22 study comes back as to move forward. I am at a real stand still of not knowing what will happen next for us. So for now us residents of Minnewaukan are remaining somewhat positive and going about our daily business. It is not easy by any means. People come to town and stop by the grocery store and like to talk and ask questions, which is fine. But the reality is of that it's hard to think of our town not being here in the future. What's going to happen? Where will everyone go? Etc Etc. And then: It's such a beautiful town I will hate not to come here with my family! We love it here it's so quiet compared to most vacation spots! We feel so safe coming here with our kids! ETC. ETC. I just want you all to know how emotional this all can be!!

The CHAIRMAN. Next we'll go to our Ramsey County Commissioner, Joe Belford. Welcome, Joe. Good to have you here.

STATEMENT OF JOE BELFORD, COMMISSIONER, RAMSEY COUNTY

Mr. BELFORD. Thank you, Senator. I'm going to move around. I use a map, I learned that from you.

[Laughter.]

Mr. BELFORD. Traveling the halls of Washington.

The CHAIRMAN. Yep, I like maps.

Mr. BELFORD. And while he's bringing it up—is this thing on? I thought the Mayor had fixed this when he was here, but I guess not.

[Laughter.]

Mr. BELFORD. You see that map in front of you that talks about the history of Devils Lake. And again, of course, when this fun started in 1993, we were sitting on a 40,000-acre lake. And basi-

cally, here—and we had, over at Stump Lake there was a small portion. And I was part of a group—and some of the rest of them are here—that formed a Lake Preservation Coalition to get water into the lake, and boy, I've been sorry I've been on that committee ever since.

[Laughter.]

Mr. BELFORD. Because we were successful.

Governor Hoeven. The Chairman. I'll never forget, when I was first elected to the Senate and I was called to a meeting with the Devils Lake leadership, and we met in a little schoolhouse that no longer is, because it's in the lake, and I was told, "Senator, you've got to get water into this lake. And you've got to do it now."

Mr. BELFORD. So, you're the guy we can blame.

The CHAIRMAN. No.

[Laughter.]

The CHAIRMAN. You know, there's a higher power that's involved in all of this.

Mr. BELFORD. Anyhow——

The CHAIRMAN. I think we all understand, you know, Mother Nature is a powerful force. And we know in the history from 4,000 years, we look back—this lake has gone through this cycle. And those who think it's not going to happen again, I think are making a bad bet. And it's very important for people downstream to understand that this is not a crisis confined to the Devils Lake area. If there is an uncontrolled release of water, this is going to create havoc for people downstream, as well.

And so, all of us really are in this together. This isn't—this isn't a matter of the Devils Lake Basin being on the opposite side of people downstream. Because what starts here, ends up down there. So, it's critically important that our neighbors to the south understand, we're in this together.

Mr. BELFORD. And that's correct, and of course, not only that, but there are four counties involved in this lake, there's Nelson, and Downer and Benson and Ramsey and most of those folks are here today, as well.

The lake, as I indicated, was 40,000 acres, and now it's sitting up at about 188,000 acres as we speak. And we don't want it to get to the red, which you see up here is the 58 elevation and the different areas. And then, of course, the Tolna coulee is right down here. And we don't—we can't afford to let it get up to the 1458 elevation.

Millions of dollars have been spent—millions of dollars—as we've talked about and heard from some of the people who are testifying today. Constructing the levies, relocation, and of course, the water and sewer infrastructure that had to be either relocated or increased, not only by the city, but the rural district and everybody else as this has gone on.

The buying of homes—and I want to tell you, that is really, a real experience, in particular in 1997 when 400 of them had to be taken out of here. And you're standing beside some family that's just losing their home or it's having to be moved; or, in the case of some of them, the addition out the south of town—not the addition, but the other one—where we had to burn homes. Couldn't get them out. Standing beside a lady with her home being burnt is not

fun. I have had the opportunity to do that, and I'll tell you, it's a real experience. So, we need to get something handled, so that we can stop doing all of these things with the homes that are happening and—not only the homes, but the farm homes, and the farm buildings, which you're going to see some pictures of a little bit later.

And that holds true with Spirit Lake Nation. Myra and I work together very closely, and they have homes going under, roads and of course, land which has affected both of us—Ramsey County, and Downer, Benson, Nelson—have lost thousands and thousands of acres of land in the lake. And, of course, one of the things that's really hurt that loss is the fact of the tax base eroding. When that land goes under water, we reduce at the end of the day acres that's a very minimal amount, because it's the farmers' for theirs to keep, and when the lake recedes—I don't know when that's going to be, but we certainly—it's not the county's to take it over. So, the tax loss for the school districts, the townships, the counties, and so forth, has been absolutely devastating through this whole thing, as well.

The other towns of Church's Ferry, of course, as you know, has bought out, the first town that we had to take out, and that was a heart wrenching thing. I know you were out there, and so was I and we—and now Penn has 9 homes that have to be taken out—not because the city of Penn is in the lake, but because the groundwater, which was spoken about earlier, the sewer systems, which are NODAC systems, will not function. And so there's problems there.

And, of course, you heard from Mayor McQuoid of Minnewaukan, and I've been over to several meetings that she's had and she's doing a great job over there. She got thrust into that, made it to high point, but she's only up well, but—and that's a county seat. And well in Benson county and imagine if Minnewaukan does have to be bought out—where's the county seat going to go? That'll be another big issue, as we all know, in sitting here and speaking and talking about this stuff.

And then, of course, the agricultural land. Very devastating, you can see all of this up here. Quality of farmland, down and around in here, and it's all along, and it's all over. The loss——

The CHAIRMAN. Can I stop you, just on that point, because the Governor made a point, earlier, that I think is very, very important to repeat for the record. And that is, the amount of water that is being stored in the Upper Basin, already.

You know, we built, I think it was in the tens of millions of dollars, of Upper Basin storage. But, just what's naturally occurring in terms of Upper Basin storage, last time I was here we took a helicopter tour and what is—the amount of water in the Upper Basin, here, is really hard to get your mind around.

So, people that don't think—there's no storage in the Upper Basin occurring, they just not—it's not right. There's an enormous amount of storage occurring in the Upper Basin.

Mr. BELFORD. And if you look over at your map, you can see all of the little mini-Devils Lakes, over in Nelson County, like Loretta and Kislew and so there's a lot of water being stored in the Basin, as well. All them dark spots are water. And, of course, it's forcing

some of the farmers off and it's—or leaving them with very little income, and it's very, very stressful, where agriculture is the lifeblood of all of the communities around here, we have to figure out a way to maintain that revenue that has been lost.

The roads—loss of roads, raising of roads, in all directions—Francis probably went over that very well, and that has been very, very—Highway 96 and 7, when 57 was closed, Myra remembers, we were running school buses out of Devils Lake leaving at 6:30 in the morning, picking up first-graders, and getting them back out there at 5, 5:30 in the afternoon. I hope we never have to go through that again. And 7 buses, leaving this town, going out, picking up students on the Reservation. And the other thing that really bothers me about that is the high winds, when the waves blowing over, and hauling kids in buses, driving through that type of thing. Just, one of them buses into that lake would be an absolute—money could never bring that back. And so that's—these are all issues that we need to continue to not leave our grips.

And, of course, all of the roads that Francis went over but we also have county and township roads. We—up till the other day—we did not have a north/south county road in Ramsey open, except for Highway 20. And we got a contractor, awarded the contract, and he's working on Ramsey 3 and Ramsey 4 to get them open. And fire service, and all of those people.

In fact, we got to the point as the Governor knows, on ambulance service, we've got country roads that we cannot get a normal ambulance into, particularly at a rainy time, because of the narrow shoulder, the water on the shoulders, and so forth. And the Guards, General Spriztenatti and the Governor's office were able to procure a four-wheel drive ambulance to be housed at our ambulance service for those kinds of emergencies. And we have to keep preparing for those kinds of things.

But, it just keeps going on. The rail service, losing AMTRAK would be devastating, or even if the AMTRAK train someday, with the grade raising let go, when it was crossing. Can you imagine? I can't, I don't want to. But it's very, very—could be very real.

Emergency services—the shopping and the marketing of the farm products is getting tougher because of the roads. In fact, a lot of the country roads—and I've traveled these roads for years, I know them well, I've been the Commissioner for 22 years, and I was in the business for 35 years, these farmers are going to have a real problem getting their grain out of their fields, to their beds, and to market until it freezes up. In fact, one farmer told me that he has six quarters, planted and seeded, he thinks he can get a combine in before the rains that wash the roads—and this is mini-Devils Lake, this has nothing to do with the main lake—and before he lost the roads, and he thinks he can get a combine in this fall to harvest it, but he'll have to pile the grain on the ground, and take the grain out of there after it freezes, because the transportation network in the townships will not handle these types of loads.

So, these are other things that we're dealing with, and struggling. We've had a population loss for the area. Citizens, to get away from it, they're sick of fighting the elements. It's definitely—you can feel it. And the counties, the school districts, the town-

ships, cities suffering loss of tax base that have to keep operating or cut back the needs of their budgets. And all of these things, for us elected officials that have to deal with it, it's timely and it's frustrating, and we do things that we don't want to do.

The other thing is the mental and physical stress to keep operating with less revenue, not only for farmers, but for the businesses, with the shortage of traffic. Right now, with the traffic—or the work on 57, all of the roads, Francis indicated—people get sick of fighting this, and they go other directions, if there's anything on the outer edge. And we really saw that at 97. My business dropped 40 percent in 1997 when Highway 57 was closed.

And the time is long overdue for something to happen for relief from the rising waters of Devils Lake. We can not wait any longer, we need to move water out of the east end, in addition to the State's outlet, and that is working very well, I was out there, I've had a couple of tours out there. And it's great to see that canal running, full and heavy.

And as you can see from the damages, and the stress, and the loss of population, it's really—there's no place else in the United States like it, what we're going through. The great Salt Lake encroached Salt Lake City in 1982, Senator Bennett, when I was out on one of the trips, they put them pumps in and that retreated. So, we are one of our own.

And so, with that, I certainly want to thank you, Senator, for being here today and all that you've done in the Congressional delegation, and of course, Governor Hoeven is here and has done a great job, and a great asset to our community. But we need action, and we need it now. Not tomorrow. We cannot wait any longer. The downstream cities cannot wait any longer, either, because if it breaks out, it occurs at the Tolna coulee, it will be a huge disaster for all. From here, clear on to the Red River.

So, we're all in this thing together, it's time we put something together, east end outlet, spillway, whatever it be, we are overdue because we've got so much water in the lake, I'm not sure now that we can handle it, if we got a real disaster.

So, thank you.

The CHAIRMAN. Thank you, Joe. Thank you very much. And I appreciate very much your being here, and I appreciate all of your years of effort.

Mr. BELFORD. I'd like to have Scott show a couple of the farmsteads, now.

The CHAIRMAN. OK.

Mr. BELFORD. That's the Towleson. A little dark but that—and we labeled them, though. So, there should be another couple of more in there. Is the Starstein one in there?

[Laughter.]

Mr. BELFORD. Anyhow, the reason I mention the Starstein family—I've been one of the family for years, they have lived on that farm for years. They're here today, but they're no longer able to be there, because they can't get there. A homestead farm. And that's just one of the many that are out there that are in trouble. And if you get pushed out of your home, it's not fun.

Thank you.

The CHAIRMAN. Thank you.

Next, we'll go to Jeff Frith, Devils Lake Basin Joint Water Resource Board Manager. Welcome. If you could get a microphone in front of Jeff, there.

Mr. FRITH. I don't know, I'm usually pretty loud, so I may not need it.

STATEMENT OF JEFF FRITH, BOARD MANAGER, DEVILS LAKE BASIN JOINT WATER RESOURCE BOARD

Mr. FRITH. Thank you, Senator, for allowing me the privilege to address this Senate committee, and I'd like to welcome the distinguished members of the panel, as well.

We do have some visualizations to go along with my presentation, and I'm more of a visual person, and I hope some of you are, as well.

Scott, if you want to run through some of these slides. Devils Lake Basin, we're a rather large basin, 3810 square miles, 2.5 million acre feet, or two and a half million acres—go ahead, Scott—in Northeastern North Dakota. And next, we'll kind of go through what has happened in the lake region.

And Devils Lake Basin, currently in a wet cycle that began approximately 1980. Precipitation averaged about 4 inches per year during—more per year—from 1980 to 2010 than during the previous 30 years. Increase in precipitation resulted in dramatic increases in inflows in Devils Lake beginning in 1993.

Much of the increase in precipitation during 1980 to 1993 went toward filling soil moisture deficits, the upstream chain of lakes, and thousands of smaller lakes and wetlands in the Upper Basin, thus little of the precipitation entered the Devils Lake system.

Following the summer flood of 1993, most of the lakes, wetlands in the Upper Basin were full, and inflow to Devils Lake increased dramatically. These are the basin flows from 1993 through 2009, and as you can see on the side, here, these are hundreds of thousands. And we have well over, you know, 500,000-acre feet a couple of times, and as was mentioned last year we had a peak of 590—close to 600,000-acre feet. Four times in the previous 30 years, or the 17 years—just four times—we've not reached the 100,000-acre mark.

On the next slide, you'll see in the previous 30 years, there were just a couple of times that we've reached over the 100,000-acre feet. So, a very dramatic difference in climatic changes.

Pictures are worth a thousand words. And I have some visualizations—this is 1992, a satellite image, you can see the separation of the lakes in through here, Stump Lake is way over here, East Devils Lake, you know, the upper chain of lakes a long distance away from the main body of water, down in here. Pelican Lake, we have Ervin, Alice, Mike, Chain, Dry Lake, Cavanaugh, Sweetwater, and Morrison. All separated lakes, and clearly definable.

And if we go through these images, this is 1994, we can see a dramatic increase in wetlands, you can see the size of the lakes, here, see in the Upper Basin they're increased, as well. 1998, more water, again, this is after the 1997 inflows that we've had, and here, the Upper Basin Lakes are starting to become one—Pelican and Devils Lake are merged, and we're getting close to running over into Stump Lake.

This is 2003, wetlands have increased again, the Upper Basin lakes are full. You can see the Devils Lake and how much it has increased. We're currently at an elevation, here, of 1446.4. We're covering 120,000 acres, and we've started to fill up Stump Lake.

This is 2006, again, this is part of their—our dry years within our wet cycle, if you would, and we've completely filled, or put on, about 43 feet onto Stump Lake, over here, and if we go next, 2009, this is November of 2009, and you can see, Alice, Ervin, Mike's, Chain—they've all become one. They're merging with Dry Lake, over in here, and we're becoming an island, you know? Channel A is here, we've got the Mave here, so we've got this—virtually an island over in here. These townships have been absolutely devastated with the amount of water put on them, and the amount of water over in the basin over here, and just the wetlands.

And the next slide is 2010. And I have a printed out copy of that behind me, and people can see the amount of wetlands. And, you look at that and you wonder, "How are people farming that?" How do you get from Point A to Point B, and it's just an absolutely incredible image. That was from the 15th of May, this year.

This is the railroad bridge that had been in everybody's discussion, this is right east of Church's Ferry—this is barely out of the water. Freight trains no longer cross that intersection, it's just left up to AMTRAK, and AMTRAK's going to banish that if the lake rises another foot. city of Church's Ferry, this was bought out in the early 2000's, and very few local residents remain there. People that have chose not to participate in the buyout, but you can see the water around that.

The city of Minnewaukan, you know, Trish has her hands full. That's the city of Minnewaukan, flooded farms, we have several. Joe talked about the Starstein farm, I think that's in the next slide. That's in 1990, that's what it looked like. It was a viable, producing small grain farm, typical of any in Northeastern North Dakota, and the next slide shows what it looked like last year, and it's even worse this year. That road going into it is completely underwater, and as Mr. Belford mentioned, Mr. Starstein and his wife had to move to town.

After how many years of being on that homestead, Joe?

Mr. STARSTEIN. I've lived there since 1949.

Mr. FRITH. Yeah. So, farmlands are—this is what the farmlands—that's not a picture of the Florida Everglades, folks. That's Northeastern North Dakota. And that was taken the spring of 2009, so that picture has actually increased dramatically from last year, as well.

The CHAIRMAN. Can we go back to that one, Jeff?

Mr. FRITH. Yeah.

The CHAIRMAN. Can we go back to that one, because I think this is very, very important, for those who think there is a lot of capacity for additional Upper Basin storage. I think those of us who have seen what's happened over this last decade know that there just isn't a whole lot more capacity in the in the Upper Basin, the Upper Basin is saturated. The Upper Basin is absolutely soaked. So, this idea that there is a lot of room for additional Upper Basin storage, I don't think fits the reality that we can see on the ground.

Mr. FRITH. Agricultural impacts, a lot of people have mentioned those. And for every foot of elevation, we lose nine to ten thousand acres. We've lost 13,000 so far this year. Almost 400,000 acres within the Basin have been lost, so far—212,588 in Ramsey County, alone.

The annual economic impact of $83 million—this is numbers from the NDSU study, that's just Ramsey and Benson County, that's a multiplier of economic impact that we've lost within the last 5 years on an annual basis, so you multiply that past the—you know, for the 17 years that we've been fighting this. And then 530 ag-related jobs lost in our communities. That's an awful lot of jobs lost for a State the size of North Dakota.

What's being done? We're doing some Upper Basin storage. We have a couple of projects, we work in cooperation with the State Water Commission and an ESOP Program, and the ESOP Program stores about 1,000-acre feet of water on 338 acres. We also have the Sweetwater Morrison Storage Program, which pays about 30 landowners to store an additional half foot around the Sweetwater-Morrison Lake area, currently they're storing almost a foot more.

Other entities storing water in the Upper Basin include U.S. Fish and Wildlife, Natural Resource Conservation Service, and the North Dakota Natural Resource Trust Fund.

Difficulties in doing more—closing drains, legal or natural, would be very difficult and prohibitively expensive. The North Dakota Supreme Court upheld the determination that drains did not cause the Devils Lake flooding, that's within the landowners' lawsuit.

The CHAIRMAN. Let's stop on that point, if we can. And that's a very, very important point to make. The Supreme Court of the State of North Dakota made a determination that this flooding in Devils Lake is not caused by drains. You know, we've heard a lot of commentary, both in Washington and here, downstream, and from our neighbors in Minnesota, interestingly enough, that this is caused by drains. And our Supreme Court has made a determination that is not the case. So, if we're dealing with facts, here, facts are very important, the notion that drains caused what's happened in Devils Lake is not—it's just not correct.

Mr. FRITH. Thank you.

Would storing more water help? Let's take a look. In the inflows in 2009 was about 590,000-acre feet. If you assume a vertical-side water storage site's two feet deep, you would have—you would need 295,000 acres of wetlands to hold that water. Often the two foot evaporation, evapo- transferation number is used in figuring out how much water would be lost to the atmosphere, or through plant respiration or metabolism in a wetland, which in a perfect world might be accurate. However, in some years, like last year, for example, the weather was cooler, cloudier, and as a result, ET was quite low. So low, in fact, that despite the fact that they—that after a very wet spring, the summer and fall were dry as compared to the 1993 standards, there was a greater surface water in the Devils Lake Basin in November of 2009 than there was in November of 2008. And if you recall, the November of 2008, the fall of 1908 was extremely wet in the Upper Basin.

So, the high that Devils Lake reached in the spring of 2009, we never really backed off that high elevation last year. So, the mini-

mal inflows that we're seeing from June, onwards, seemed enough to compensate for any evaporation loss that we had.

This is what happens to some of the homes around the shores of Devils Lake. As Joe mentioned, that's not a very pretty site to have to go through with a landowner.

What we don't need, we don't need false promises and false hopes. We don't need an opposition and ignorance, we don't need more homes lost, we don't need more acres lost, and farmers displaced, and please, no more studies.

[Laughter.]

Mr. FRITH. What we do need is understanding and acceptance, a workable compensation plan for inundated farm acres. Senator, I know you worked tirelessly to try to get that passed in the 1908 Farm Bill, and what was passed is workable, but it's not being implemented as you intended, or you would like. So, that's—a workable compensation plan for inundated farm acres. Right now, we're storing, you know, some 400,000 acres of wetlands, and—for nothing. For free. Farmers are doing that out of—and I don't know if they're, certainly not out of the kindness of their heart, but it's certainly involuntarily. They would like to have that land back.

A comprehensive plan of action for moving more water off the lake. 250 CFS out of the State outlet is greatly appreciated—we appreciate all the State is doing and we need to eat some of those Federal standards that the EPA has, the Clean Water Act and different things like that, certainly an east end outlet to compensate or blend that water to move more water off this lake is something that's needed, and it's needed soon.

Fargo is working on their flood diversion plan, and I know your Budget Committee is probably heavily involved in that aspect, as well. From a mitigation standpoint, they're looking at—is it a 500-year flood diversion? So, that's a quarter of a percent of risk responsibility. So, when we're talking about a 13 to 14 percent risk that Devils Lake could reach its natural elevation, overflow elevation, that's really got to be an unacceptable elevation for our downstream communities. And, you know, a lot of it is, you know, we mentioned a lot of downstream mitigation, we want to mitigate against downstream. But what about the mitigation for the upstream, as well? Mitigating against upstream damages has to come into play at some point in the conversation, whether it be compensation for lands that are inundated, or some type of aspect like that, but we need to move water off the lake, and we need to do it soon.

We're all part of the same watershed. So, moving water out of Devils Lake shouldn't be a real big concern. Devils Lake Basin, as big as it is, it's very small compared to the Red River Basin that it's a part of, and an even smaller aspect when you look at the sub-basin that it's a part of in the Nelson River Basin in Canada, and globally in the Hudson Bay watershed.

This is the old post guard, people have seen it. You know, that lady is standing at the junctions of Highway 20 and 57 and I believe that's about a 14—I can't read that, Scott, 1419 elevation. And the top of it—the very top—is 1437, I believe. So, we're 15 feet higher than the top of that pole, currently. So, to put that in perspective, that's an awful lot of water.

I'd be happy to take any questions.

The CHAIRMAN. Thank you very much, Jeff.

Mr. FRITH. And if we could also, Senator, State Water Commission put together a Devils Lake flood fax, and we printed a whole bunch of them out, if we could enter that into——

The CHAIRMAN. Yeah, we'd be pleased to enter that in the record, and that could be very valuable to have in the record.

[INFORMATION]

Devils Lake Fact Sheet 2010

Devils Lake has reached its spill elevation and overflowed into the Sheyenne River at least twice during the past 4,000 years. The last time it occurred was less than 2,000 years ago.

The water quality on the east end of the lake where an uncontrolled overflow would occur is 5 times worse than the water quality o the west end of the lake.

At its spill elevation, the lake will cover more than 261,000 acres.

The surface area of Devils Lake has increased from 44,230 acres in 1993 to more than 177,000 acres today, making it more than 4 times the size of the District of Columbia.

The volume of water has grown by more than 6 times.

The lake has risen nearly 30 feet since 1993. Between 2004 and 2007, Devils Lake spilled into Stump Lake and the two lake are now equalized. During this time, Stump Lake road 43.5 feet. With each one foot increase in the level of the lake, another roughly 10,000 acres is inundated.

Jeff, if I could, I'd like to turn to the agricultural side of this.

Mr. FRITH. Certainly.

The CHAIRMAN. You're right, we've worked very hard, in fact, Scott is one of my two lead negotiators on the Farm Bill, had this as part of his portfolio, Scott Stoffren who is here, getting help for our farmers in the Devils Lake Basin.

And it was incredibly hard to get those provisions included, we had enormous opposition to doing it. And at the end of the day we were so pleased to get a program that was supposed to help farmers with land that had been inundated.

Now, it required a 30-year easement. And farmers don't want to sign 30-year easements, we understand that. They hope against hope that the lake will go down, and that they will get this land back sooner than 30 years, so they're reluctant to sign a 30-year easement, I understand that.

There's also a limitation, it can only be on water that's up to six and a half feet. And so, what's been happening is people don't want to sign a 30-year easement until the water gets, you know, to over six and a half feet, and then they wish, maybe, they had.

But that's the problem that we're confronting, and of course we dealt with this question of not being able to get the payments, not being able to get—because people were concerned title would pass to the State—that's all been resolved, thanks to the Attorney General here for his help with that.

So, we've got to go back and try to get some changes made to make this more acceptable, more attractive to farmers. What I'd like to see is something like a CRP or Wetlands Reserve Program, so that farmers could get what would, in essence, be a rental payment every year to replace that lost income. Now that we have the assurance the State's not going to seek title on that land, we're still going to confront this question of, you know, length of an easement. Thirty years is just too long, I think we see that. We had a hard time getting thirty years, they wanted it to be 50 years.

So, you know, it seems to me, unless we can get it down to five or 10 years, we're probably not going to get a lot of takers.

Can I just see a show of hands, those who are farmers, here, would a five or a 10-year thing be attractive? A five or a 10-year rental?

OK, five would be certainly more attractive than ten, I understand that.

[Show of hands.]

The CHAIRMAN. But the people—I can see by the show of hands, that's much more attractive to people than 30 year.

All right, any other ideas, Jeff, that you can share with us on that part of it?

Mr. FRITH. Well, Senator, we have a—our Sweetwater-Morrison contract expired and we re-negotiated that. Initially, that was a 5-year contract and I had to lower that to a 3-year contract to get the landowners to agree to that.

The CHAIRMAN. You did?

Mr. FRITH. So, a 30-year—you're absolutely right—will not work. And the idea of an annual payment works out very nice. When you put pencil to paper, that 30-year easement and the one-time payment come out to, in some cases, less than $20 an acre, you know, per year. So——

The CHAIRMAN. Where would we have to be, do you think, to attract signup?

Mr. FRITH. I think you really need to stay in that cash rent value category.

The CHAIRMAN. And what's cash rent now, here?

Mr. FRITH. Oh boy, I don't know, I'm getting 55 bucks an acre for the stuff that I have, so, you know, I think——

The CHAIRMAN. Would $40, could we get people on $40?

Audience Member. Forty, Senator, is kind of a low average right now.

The CHAIRMAN. Low—below average.

Mr. FRITH. Yep.

The CHAIRMAN. Odell, what would you think? How much would we have to—what would it have to be at to attract a signup?

Audience Member. Well, right now, on the cash ranch has been going up, there's more cash value in that. Forty dollars is pretty low. A lot of it now is 50, 55 and in the valley it's a lot higher.

The CHAIRMAN. Here's the deal that we've got to understand is, you know, this land's under water. So, it has no productive value. And, the question is, between getting nothing, and getting something, and something that makes a difference to people's lives.

I'll tell you, I've seen just heartbreaking situations here in the Devils Lake Basin. People I have known for 30 years, honest as the

day is long, and they've lost most of the productive value of their land, and they have nothing. You know, that just can't be.

So, try as we might, we had a hard time getting this 30-year deal in.

Mr. FRITH. Yep.

The CHAIRMAN. But, I think, we have to demonstrate that that's not working in order to get people to accept something different.

Any other? Yeah, Joe?

Mr. BELFORD. Senator, we still have to maintain and get this lake elevation down, because even with easements on the land, people, nothing can be farmed there. So, we have to get the water down to where it's manageable so that people have the land to stay here and farm it. And the same way with these small communities—that's their lifeblood. And we've got to put a process in place.

The CHAIRMAN. Yeah.

All right, let me just say we're about at the end of our time, here, but I wanted to give the Governor a chance for any last-minute observations after he's had a chance—first of all, I want to thank him very, very much for being here today and thank him very, very much for sitting through all of this. And I'd welcome any observations he has before we close the hearing.

Governor Hoeven. Thank you, Senator.

Really, I don't have any additional comments. I think, you know, the testimony that we've heard bears out the comments that I made in an overview fashion on the front end. So, again, while we need to work together—State, Federal, local—I want to thank all of the—everyone who's here today. Certainly, local officials, Mayor McQuoid, Mayor Johnson, our legislators that are here, City Commissioners, County Commissioners, you know, you've just got the whole gamut—Arnie Berg who is on the Water Commission, Senator Heckaman, Senator Dave Elkie, Representative Vigg, Kurt Hofstead, Representative Hofstead. You know, really, we've all—it's got to be a team effort, here, and we certainly need the cooperation of the Corps and the EPA to move more water out. And, I think that's been made very clear in the testimony.

And then the communication effort. I thank you all—again, thank you for all you're doing and your perseverance. Your efforts to continue to communicate—not only throughout the Basin, but with people downstream. And this is something we have to work on together for the greater good, both within the lake region, and downstream. You know, that's the only way we're going to make this work for all of us—for all of us. And when I say that, I mean, in North Dakota, but I also mean for Minnesota and Canada, as well.

And that's what we're trying to do, you know, if you look at NAWS, the Northwest Area Water System, we've been tied up in litigation since 2002, is that right, Todd?

Mr. SANDO. Yep.

Governor Hoeven. I mean, we are working to do that right, and well, and take care of people, just like we're working to address the issues here in Devils Lake. And we have been tied up in a Federal Circuit Court in Washington, DC since 2002.

The CHAIRMAN. And that's a—if I can interject—that's after we agreed to the best treatment that was available at the time we built the system. We went to the best—I will never forget the phone call, we had a conference call with all of us, the delegation, the Governor, on what kind of treatment facility we were going to have, and we opted for the very best that was available at the time, to do everything we could to avert lawsuits. And I just—I don't want to predict what others might do, but we've got to be mindful of people who are willing to go to court at the drop of a hat. And our Canadian neighbors have done that in other instances, and have hung us up, now, for 8 years.

Governor Hoeven. Right. And that's why it's so important, again, we all work together, and keep moving this forward. And, you know, that's absolutely what we're working to do and, again, appreciate being here, Senator, and thank you very much, both on behalf of myself, as well as Francis and the Department of Transportation and also Todd Sando with our Water Commission.

And, again, to all of you who have been working on this very hard for a long time, thanks for being here today. Thanks for your ongoing efforts and again, as we go forward, let's keep making sure that we're communicating, both throughout the Basin and downstream so we can keep this going.

Thanks.

The CHAIRMAN. Thank you, again, Governor. Thank you for your whole team. Thanks for Francis Ziegler, thank you for Todd, thank you for everybody that testified here today. Thanks to each member of this panel. I think you've made very valuable contribution to this effort. And I think we've laid out a record that's about as clear as it can be in this hearing this afternoon.

Thank you very much. The hearing will stand adjourned.

[Whereupon, at 3:46 p.m., the hearing was adjourned.]

FIELD HEARING: TRANSPORTATION INVESTMENTS: PROMOTING ECONOMIC GROWTH ALONG THE U.S. 52 AND U.S. 281 CORRIDORS

FRIDAY, JULY 9, 2010

U.S. SENATE,
COMMITTEE ON THE BUDGET
Carrington, North Dakota

The committee met, pursuant to notice, at 9 a.m. in the Teepee Room of the Chieftain Conference Center, 60 4th Avenue South, Carrington, North Dakota, Hon. Kent Conrad, chairman of the committee, presiding.

Present: Senator Conrad.

OPENING STATEMENT OF SENATOR CONRAD

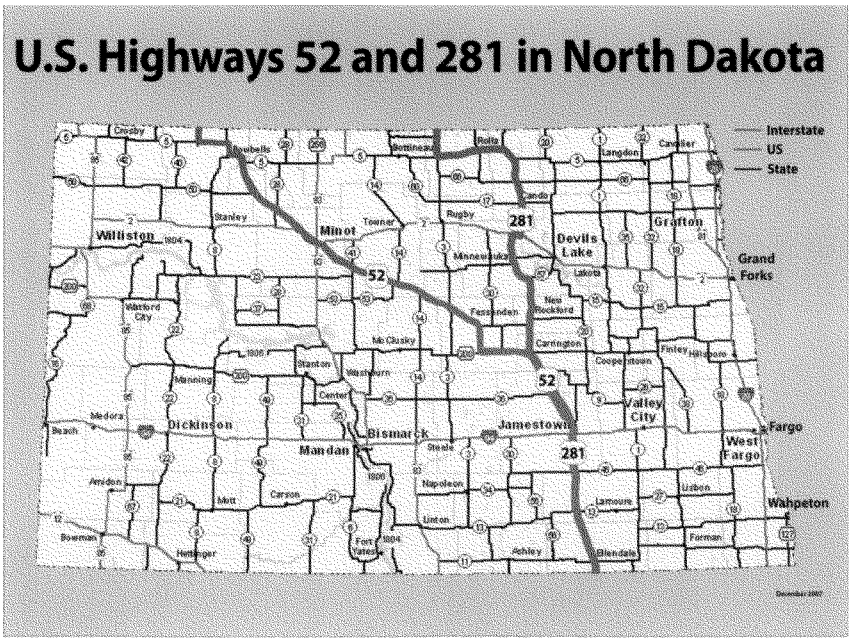
The CHAIRMAN. The hearing will come to order. I want to welcome everyone to this hearing of the Senate Budget Committee. This is an official hearing of the committee, and as a result we will be operating under the rules of the U.S. Senate, and an official record of this hearing is being kept.

The title of this hearing is, "Transportation Investments: Promoting Economic Growth Along U.S. 52 and U.S. 281 Corridors." As the title suggests, we'll be focusing on what investments may be needed to upgrade and improve Highways 52 and 281, to promote the economy and agriculture in Central North Dakota. But I also want to focus on how to make our roads safer. I am concerned about the safety of local residents and want to make certain that we have done everything we can to establish the record, as the new transportation bill is written, to justify additional expenditures on this corridor. We held a similar hearing on Highway 52 in Jamestown last year, and it was very helpful and informative, and I think helped establish a strong record that we can take to our colleagues when the next transportation bill is written.

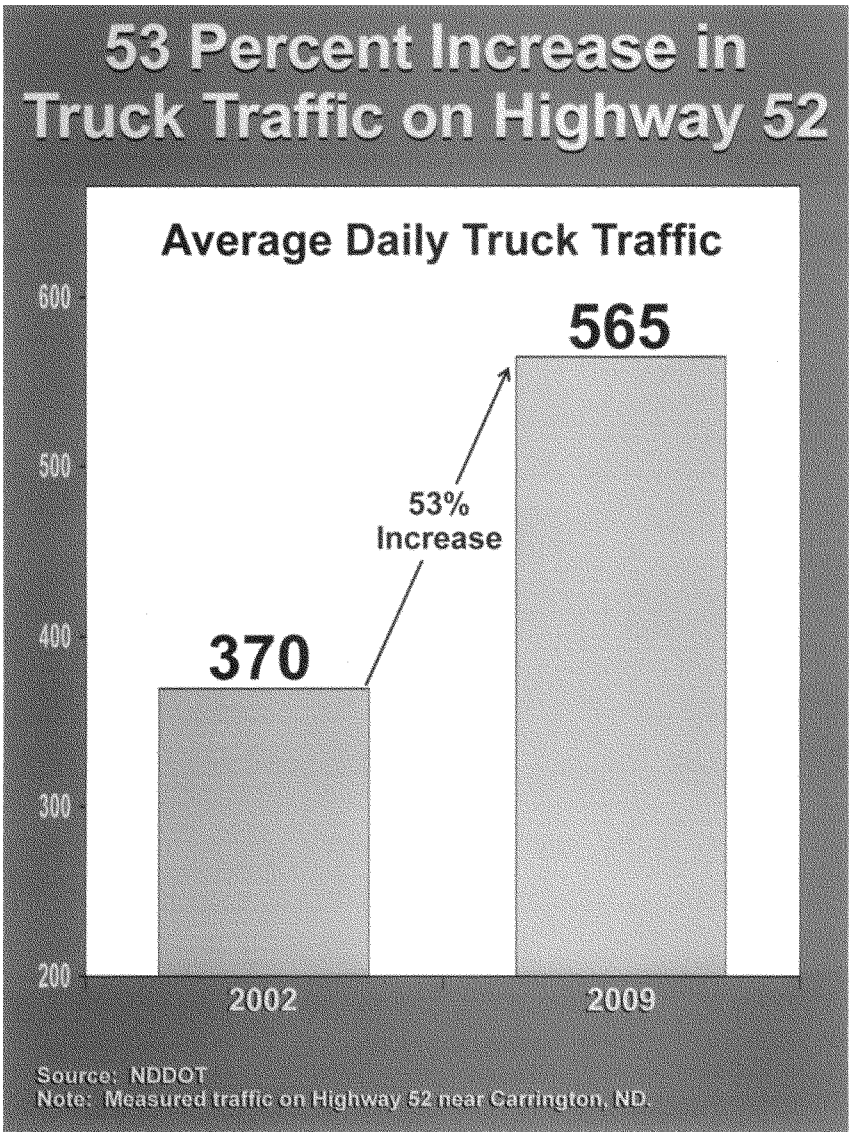
I want to begin by welcoming Mr. Pomeroy. I'm delighted that he is here. Of course he serves on the all important Ways and Means Committee that will have a lot to say about the funding of a new transportation bill. We have a series of distinguished witnesses with us today. We have two panels. Our first group includes our the North Dakota Transportation Director, Mr. Francis Ziegler. Thank you, Francis, very much for being with us again today. Carrington Mayor, Don Frye, good to have you with us Don. I can't

help but notice as we've gone around Carrington—I had the chance to stay here last night—how impressed I am with what's been happening in Carrington. I mean it really looks good and you can feel that this community is on the move. Our additional witnesses includes the Fessenden and Coop Association General Manager Mark Hovland, good to have you here Mark, Towner County Economic Development Board of Directors member J.R. Gibbens, good to see you. Thank you for being here. And Dave Irmen from the North American Bison Cooperative. I look forward to hearing from all of you momentarily.

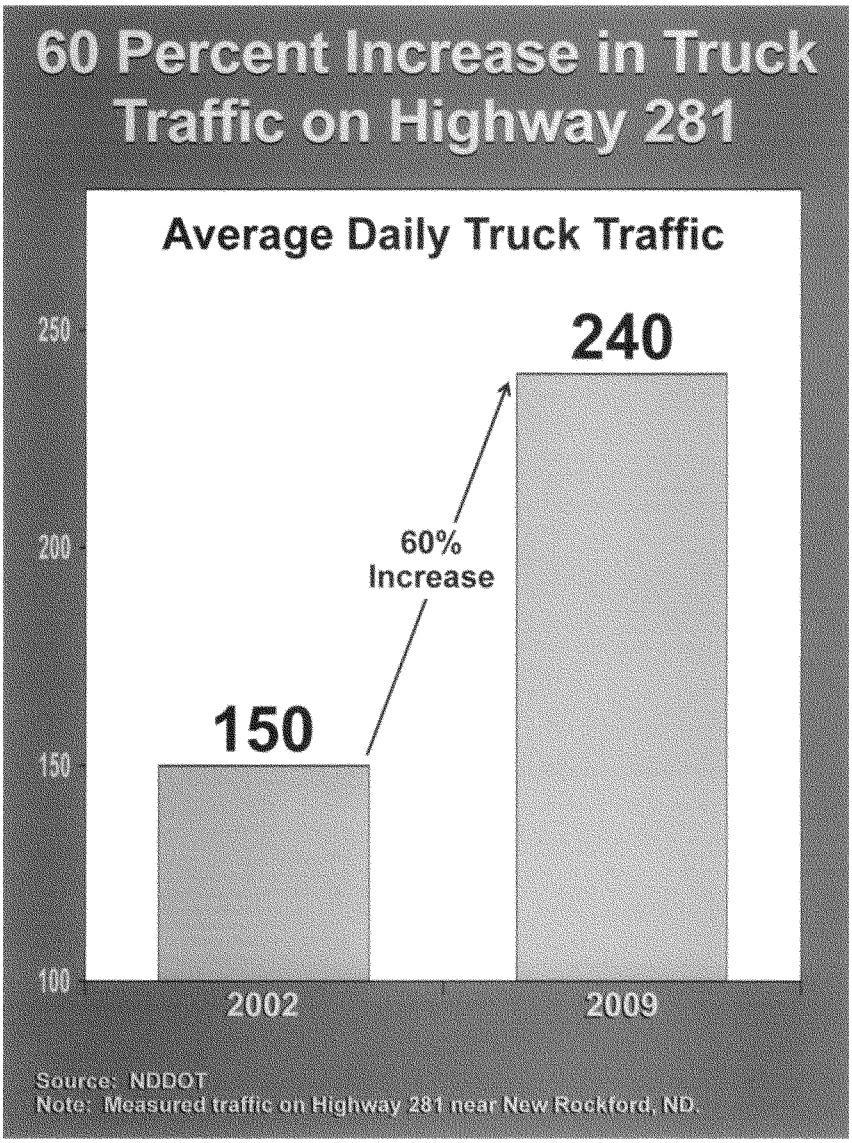
Just a couple of charts to kind of lay the background. Highways 52 and 281 provide critical connections to Canada and I–94. They are vital trucking routes for agricultural and manufacturing industries, which are important to economic growth and job creation the State of North Dakota. Sixty-nine percent of the goods shipped annually from North Dakota are carried by truck, and in the next 10 years commercial trucking in North Dakota is expected to increase by 42 percent.



The next slide shows the dramatic spike in truck traffic on Highways 52 and 281. Truck traffic on Highway 52 near Carrington has increased 53 percent from 2002 to 2009.


53 Percent Increase in Truck Traffic on Highway 52
Average Daily Truck Traffic
600
500
400
300
200
565
370
53% Increase
2002
2009
Source: NDDOT
Note: Measured traffic on Highway 52 near Carrington, ND.

Similarly, truck traffic on Highway 281 near New Rockford has increased by 60 percent, a very dramatic increase there.


60 Percent Increase in Truck Traffic on Highway 281
Average Daily Truck Traffic
250
200
150
100
240
150
60% Increase
2002
2009
Source: NDDOT
Note: Measured traffic on Highway 281 near New Rockford, ND.

The agriculture industry in particular has relied on the State's road network to move products and services. Significant and growing agriculture businesses in this region rely heavily on Highways 52 and 281 to receive raw goods and transport their finished products to market. The continued growth of these value added businesses in dependent on a transportation system that is both efficient and reliable. And our ability to attract new companies and new businesses is dependent on the quality of our transportation system. Unfortunately Highways 52 and 281, like many of our nation's highways are deteriorating. Heavy truckloads have put added strains on these highways, and they need repairs to foster continued growth to ensure safe travel and to better serve the surrounding communities.

Improvements to Highways 52 and 281 will pay dividends for agriculture in the region. They'll enhance the transportation of crops and livestock, they'll increase opportunities with enhanced access to Canada, and they will help further diversify North Dakota's agricultural economy by attracting more value added agricultural businesses to the region. Now is an important time to focus on our transportation infrastructure needs, because the administration is in the process of developing its highway bill reauthorization plan. And they're not alone, Congress is also moving on a new transportation bill.

I think it's worth recalling how much we benefited from the last bill. As a conferee on the last transportation bill, that is I was selected to represent the Senate in negotiations with the House to work out the differences between the two bills. I was able to secure significant added investment for North Dakota, a 31 percent increase in our funding to $1.5 billion. That works out to about $234

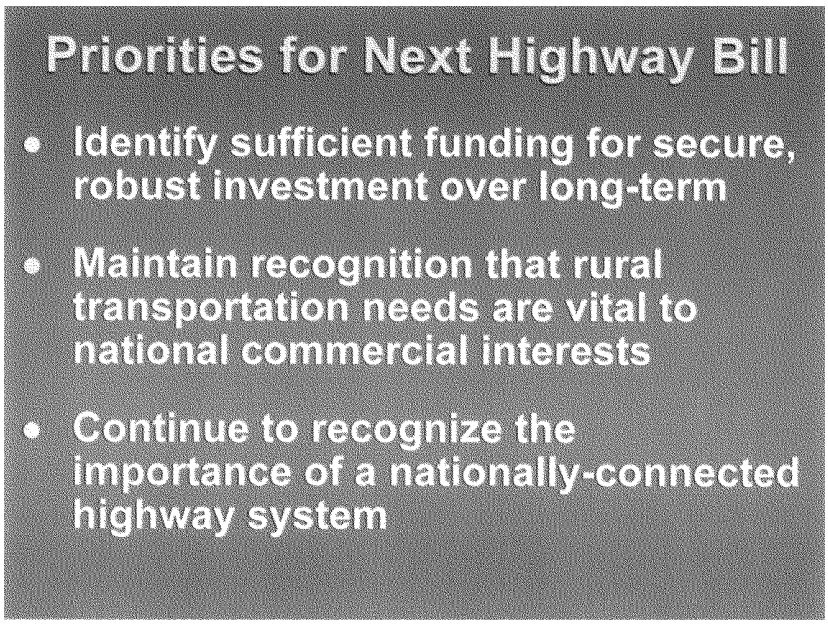
million a year with additional funding provided for transit programs. And of course, in the Stimulus Bill, we got about $180 million for North Dakota for transportation as well. That's over and above what was provided in the Highway Bill.

We did very well by securing about $2 for every dollar in gas tax money collected in the State, ranking us among the top four States in the Nation for return on our gas tax dollars, that is we're in the first four States out of the 50 in terms of the amount of money we get back for the amount of money we send.

I also worked to direct investments to Highway 52, including the Jamestown bypass and other high priority projects in the previous highway bills. And let me say, our delegation works very closely with the State and Director Ziegler and Governor Hoeven's administration to establish the priorities. We don't cook up our own list of priorities. The State has a rigorous process that they go through to determine the priorities for the expenditure of highway funds, and we go by that process of determining the priorities. And I think that's an important discipline to impose.

Here are some of the priorities I'll focus on as we consider the next highway bill. We've got to have sufficient funding so that infrastructure investments are secure and robust over the long term. States and communities must be able to rely on that funding actually being forthcoming. And any new highway bill must maintain recognition that rural transportation needs are vital to the nation. When our colleagues see that we are getting $2 for every dollar we send in, they're quick to say, "That's not fair." I think it's very important for us to indicate it is entirely fair if we're going to have a national transportation system. That system is only as strong as its weakest link, and we have a vast State and we are sparsely

populated. If we are only to rely on our own resources within this State, our highway network would soon crumble and fail.



I am particularly interested in hearing from our witnesses on the immediate investments that are needed on Highways 52 and 281, and what future investments are needed to support the growth in this community and in this area going forward.

With that we'll turn to Congressman Pomeroy for his initial observations. And I also want to indicate that Lance Gabbey, the Governor's Vice Chief of Staff is here with us. Lance, thank you so much for being here, thanks to the Governor as well for assigning you to be here, as well as the other members of the Governor's administration, especially Francis Ziegler, who will testify momentarily.

The CHAIRMAN. Congressman Pomeroy, welcome.

STATEMENT OF HON. EARL POMEROY, U.S. CONGRESSMAN FROM NORTH DAKOTA

Mr. POMEROY. Mr. Chairman, thank you and thank you for allowing me to participate in the hearing, making it bicameral event. I would start by saying, when it comes to road infrastructure in North Dakota, this has entirely been a bipartisan matter. We have, as you indicated in your opening statement, the Highway Department or now the Department of Transportation has given us by way of roads priorities, that's what we move forward. You'll see very different strategies play out across the States. Basically the official recommendations often mean very little as legislators pave favorite routes, take care of perfect—different constituencies, or even seek named arteries in various areas, not to name names, but the Bud Schuster Highway in Pennsylvania comes to mind. We

don't do it like that here. What we need, we try to get the funding in place.

Now, Senator Conrad is developing an official record, which means that these projects would be eligible for funding as the legislative process moves forward. In addition to that, with his prior experience as a conferee—the group that meets, representing the Senate with Representative of the House to try and iron out differences—his prior experience as a conferee, we have some reason to hope that he would be a future conferee as well, and nothing could be more important to North Dakota's fate in the highway bill than having him at that critical table at that critical period of time.

House bills tend to be urban oriented, a lot more interest in transit systems than farm to market roads, as you might expect given the fact that population is allocated where the people live, they live in the cities, it's a different focus. The U.S. Senate, two votes per State, provides the balance and brings into ply then the considerations of rural roads. We're going to hear this morning from the panel about the critical interstate and national interests of such things as farm to market roads or energy roads. This is the third hearing that Senator Conrad has held, one in Watford City, one in New Town, obviously focused on energy impacted areas.

But it's not as though things have not changed and evolved in the heart of the rural ag areas as well, and that's why I'm so pleased we're in Carrington this morning to focus on 52 and 281, in light of changing circumstances relative to the utilization of these roads principally driven by agriculture.

I had a pre-hearing briefing from very credible sources up at the truck stop, around the coffee table. But here we had three lifers in the area, farmers, one fella says he lives seven miles from town, he routinely counts the cars as he drives home. He frequently gets over 30 running seven miles north up on 52. He'd never seen traffic like that before. Another man said he live here all his life, never seen this kind of traffic, and most notably truck traffic beyond what he's seen before. Changing the circumstances, increasing the dangers, means we need to focus on this, something is happening here. You'd like to think sometimes that, well, by golly, in a changing world, at least your infrastructure ought to stay the same. That doesn't work either because things change within the State, energy, agriculture, always paying attention to what's evolving and moving within the State so that we can keep our infrastructure adequate to deal with the commercial opportunities developing in North Dakota.

So, I'm very pleased to be part of this hearing, Senator Conrad, and will be listening with great interest to our witnesses. Thank you.

The CHAIRMAN. Thank you, and again, thank you so much for being here Congressman Pomeroy.

Before we begin, I'd like to observe just a moment of silence in memory of Keenan Cooper, a young soldier from North Dakota who just lost his life on Monday in Afghanistan. At 10 o'clock I'm going to be leaving, stepping out for a moment to speak to the parents, and out of respect, I'd hope we'd just observe a moment of silence before we hear from the witnesses.

[Moment of silence.]

The CHAIRMAN. Thank you, and again, at 10 o'clock I think we'll take just a brief recess so that Congressman Pomeroy and I can talk to the—to the parents.

With that, welcome Francis. I appreciate very, very much your participation here today, and why don't you proceed and then we'll go to the rest of the panel. I think we'll do all five in a row, and then we'll open it up to questions.

STATEMENT OF FRANCIS ZIEGLER, DIRECTOR, NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

Mr. ZIEGLER. Mr. Chairman, good morning, I'm Francis Ziegler, Director of the North Dakota Department of Transportation. I want to thank you again for the opportunity to come before the Committee today and thanks for your interest in improving transportation in North Dakota, and thank you, Congressman Pomeroy for being here also.

I'm going to talk about some specifics of the Highway 52 and 281 corridors, and then about some general transportation issues that we may have—that we do have. And I will ad lib the latter part of my testimony, Senator, Mr. Chairman, in the interest of time. I believe we got the record established and we have handed out the document that I will be speaking from this morning. I think you have copies of that before you, and there are copies for the audience also.

But transportation is vitally important to our states' economic growth and is critical to many freight movements, connecting manufactures to retailers, farms to markets, and shippers to railroads, airports, and seaports. Transportation infrastructure plays a key role in supporting the growing needs of business, industry, and the traveling public. The US 52 and 281 corridors are important in serving these needs in the northwest and central part of the State. These corridors also play an essential role is supporting international trade with the Canadian provinces of Saskatchewan and Manitoba. These two provinces have the fastest growing economies in Canada.

Specifically, on Highway 52, The DOT has recognized the importance of 52 Corridor, the 252 miles of it running from Jamestown northwest to the Canadian border. From 1994 to 2009, we put $147 million into preserving and improving that corridor. Some of the major improvements were truck climbing and turning lanes, reconstruction overlays between Minot to the Canadian border. That was to improve safety and load carrying capacity. In the late 90's there were major improvements from Fessenden to Carrington in load carrying capacity. With these improvements the entire corridor is 105,500 pound capable year round without having any load restrictions. And as we've heard at prior hearings, load restrictions are a big issue for movements in the spring.

In the late 90's, we also four-laned, just out of Minot to the southeast, and the legislative assembly by House Bill 1166, has indicated that they'd prefer that we would four-lane from Minot, continuing on all the way to Velva when that job comes up for reconstruction. And so, if we can get the environmental clearances done on that, that's what we'll be doing.

In 2002, a truck bypass went around Jamestown to help improve that traffic flow, and safety, as you indicated. Mr. Chairman, safety is paramount to you and certainly to us and to our customers.

There are about $28 million worth of projects scheduled on 52 for the years 2010 to 2014. I have an attachment, it's attached to your testimony, and it shows all the projects that we're going to be doing. And after we get all that finished, hopefully the corridor will be in great shape. But one thing about roads, we drove Highway 52 and 281 south this morning, and we need some work and we're going to be doing that in 2012. That's how it's been scheduled now and our district engineers are here, Wade Swenson from the Devil's Lake district, and John Thompson from the Valley City district, are here, along with Lance and we made that tour this morning just to take a look at what we've got for infrastructure here and some of the concerns we've got.

So, we're always looking at what needs to be happening. But as you can see in my testimony there, traffic volumes are high here. The largest truck volumes, ranging from 650 to just over 700 vehicles per day, are between Jamestown and Carrington. Those are significant numbers, and that's pretty much ag movement and movement out of—the finished products that we produce here in the State of North Dakota. And so we're constantly looking at what it is we need to do.

On the 281 corridor, we also recognize that important corridor, running from the Canadian border to South Dakota. In the last 15 years, $138 million was devoted to preserving and improving the corridor. We've regraded and widened from Jamestown to the South Dakota border, making that 105,500 pound year round load carrying capacity.

The urban section of I–94 through Jamestown, replacement of overhead rail structures in Carrington and New Rockford, and realignment of 281 west of Minnewaukan to avoid the rising water of Devils Lake. And then, as you probably drove—obviously drove the main street here in Carrington, the department helped the city, we're really appreciative of the partnership that we've developed on that. It was a North Dakota street project, and that was finished just last year and there's still some work left to do on it, but it's a nice piece of work and it's a nice street.

The CHAIRMAN. I'd just say that it is very impressive. I mean, I really—it really catches your attention as a substantial improvement.

Mr. ZIEGLER. Thank you.

In addition, there are about $36 million worth of projects scheduled for 281 for the years 2010 to 2014. Again, on attachment 1, we show what we're going to be doing and that's where we show the major work that's going to happen south of Carrington also.

Traffic volume on 281, and that corridor is distinguished from 52 a little bit because it's—while it's a common corridor, we consider that north of Jamestown—north of Carrington only. But the annual traffic is about 1,465 vehicles per day. The average daily truck traffic is 290 vehicles, with the largest volume, about 400 vehicles per day, just south of Jamestown. And so, that was reflected in your charts also, Senator.

Total traffic volume on US 281 from Carrington to the Canadian border ranges from 360 vehicles per day just south of the Canada to just over 6,000 vehicles a day near Belcourt. The average daily traffic volume is about 1,465 vehicles per day. And with 160 vehicles to 345 trucks per day, so, you know, as we give you these numbers, Senator, one thing that happens to us, close to the urban areas, we find the numbers to be higher and we'll share those with you. But that's why we also give you averages so you get a feel for what the entire corridor is carrying. And, so the traffic volumes can change somewhat, as we talk about it, but they only change of what we see in those urban areas, as being more significant traffic, it's that loop of traffic does business with the major communities.

The CHAIRMAN. Can I just stop you there and ask you to remind me—I've asked you in a previous hearing. What are the rules of thumb for four-laning? What kind of traffic counts? And I know that it's not rigid, but the basic rule of thumb.

Mr. ZIEGLER. The basic rule of thumb in some of the neighboring States, South Dakota is at 6,000 vehicles per day, and Minnesota is at 12,000 vehicles per day. Our national association, ASHTO, has come out with new guidelines that talk about, in the 6,000 to 12,000 vehicles a day, that you would super–2, they're getting onboard with the super–2 concepts. And then over 12,000 vehicles a day to seriously consider four-laning. The rules are never totally cut and dried. It depends on the mix of truck traffic with car traffic and so on. And it depends on how steady that traffic is throughout the day rather than having heavy movements of traffic early in the morning, to get back and forth from business and employment, and in the evening again. But fundamentally, those are the criteria.

The CHAIRMAN. What would we have on 94, for example?

Mr. ZIEGLER. On 94 it varies considerably. If you start out on the east end of 94, we have up to 80,000 vehicles a day crossing the Red River Bridge. And that varies a little bit during the winter months. Last winter I saw a number about 70,000 vehicles a day. So, it also depends on—a lot of students go back and forth to Morehead State from Fargo, and so there's some variability there.

But I'll just say 70 to 80,000 on that piece of 94, and that goes all the way over to 45th and 25th and I–29. And then as we go farther east it drops off to about 40,000, and then it drops off to about 25,000 between West Fargo and Castleton. But, on an average, I–94 carries about 20,000 vehicles a day, is what we would call an average.

But we look at those segments. As you know, there is six-laning being done again, we're adding to that all the way from 45th Street to Red River now, because there is so much traffic in that area now. I–29 carries 40,000 vehicles a day north for about 20 miles north of Fargo. And, then from there it drops to about 10 to 15,000 vehicles a day. So the interstate carries significant traffic and it has more truck traffic. In my testimony later on, I'll be talking about the fact that North Dakota is a bridge State, 59 percent of the traffic doesn't originate here or have a destination here. And so what happens is, cross-country trucking is done on the interstates. Typically they have, you know, less access, so they don't have to worry about vehicles coming on from approaches, so to

speak. And they're just quicker to move across the country on the interstate, so that's where the heavy truck movement is focused.

The CHAIRMAN. OK.

Mr. ZIEGLER. You know, it's essential to preserve and improve our transportation system to ensure it meets the present and future demands, and it's a continuous thing. A reporter asked me not too long ago, "Why is it that we have so much road construction during the summer months?" And I said, "Well, the math is easy. We have 8,500 miles, 8,511 miles to be exact, in the State of North Dakota that the DOT cares for." And if we design, which we do, a 20-year life on the pavements, doing the math, we need to reconstruct 420 miles a year. And we all know that a road doesn't last the full 20 years of design life. We have to do seal coating, crack sealing, and those kinds of things because Mother Nature has a—is hard on the system here in North Dakota. So, we are in there working on those in the 20 year period. But, I shared to him, I said, "You know, that would be from Bismarck to Minneapolis." Every year we have to do that many miles of road, and that's to keep it up, that's basically to keep up that life cycle of the pavement.

The interstates are now being designed to a 30 year life, and so even with that, every 10, 15 years, we have to go in and do some, what we call, concrete pavement repair, to make sure that it's kept up, and we do use Federal aid for that. We don't use Federal aid for crack pouring, but we do use Federal aid for the major concrete repair work on the interstates.

North Dakota, like I said, is working hard to improve transportation. We just recently did a regional study with the Upper Great Plains Transportation Institute, and what we got out of that is that the residents want more transportation infrastructure across our State, and I think you shared that traffic counts are up, and they're significant. In the western part of the State, we're seeing, you know, you can look at specific corridors, like we did yesterday, up 600, 700 percent increases since 2006. But on the average, we're seeing 30 percent per year increase in the western part of the State. Here in the eastern part of the State we're seeing 10 percent increases, which is significant on an annual basis. And obviously, on the western part where we now have the oil boom, one would expect that to happen with all the trucks that are needed for the oil wells.

But residents are concerned about traffic increases, especially, like I said, in the western part of the State, and public expectations are growing for load carrying capacity and wider roads. As we—as we put more pavements, preventive maintenance onto our system, our roads get narrower, and we're getting very worried about that. The fact is that we're—we need to get out there to regrade and widen a lot of our roads.

But recognizing all of that, the State of North Dakota increased its financial commitment to transportation by enacting $1.35 billion transportation funding bill in the last legislative session. And that includes an unprecedented sum of non-matching State general fund dollars, but it includes almost $600 million more to rebuild our roads and help cities, counties, and townships recover from the Statewide flooding. And this year, we have the largest construction

program in the history of the department. We're putting $450 million into projects of about 2,000 miles that we're touching. The program that we're using is regular Federal aid, we're using the second year of the American Recovery Act, the ARRA, and then we're using emergency relief in the Devils Lake area, and State funding to do all that work. And so, it's a tremendous workload.

While the DOT—the State of North Dakota is doing more than ever, Federal investment is critically important. Federal aid accounts for 52 percent of our current transportation budget, and if you count the ARRA in there, it's 57 percent. So, Federal dollars are important and certainly appreciate anything that you can do to help us in keeping the Federal dollars coming to North Dakota, because obviously our infrastructure needs that.

Our road network has few people to support it. North Dakotans pay more than the national average to support the Federal aid system. The per capita contribution in North Dakota is $161 compared to the national average of $109 per person, and that is the gas tax that they pay. Federal investment in transportation is, not just for North Dakota, but it's in the national interest, because I said before, we're a bridge State and a lot of people travel across our State.

I've said before, the benefits to the infrastructure are important, and you mentioned safety this morning, and I need to talk about that. As the Director of the department, I have the Statewide responsibilities, we've talked about that before. And from a safety perspective, I take that almost some days too personal. We look at every fatality, we analyze every fatality, we take a look at the police reports to know what's happening and to see if there's anything that we can do in the system that would improve it. Our customers are going to see rumble stripes on every mile of road, every two-lane mile of road in the next 4 years. That's part of our game plan to provide better safety. We're seeing a log of distracted drivers and they're leaving the lanes, and they're getting off on the shoulder of the road. And we have—40 percent of our fatalities in the last 3 years were single vehicle rollovers where people were ejected.

So we believe that if—No. 1, if they were wearing their seatbelts, the automobile manufacturers have done their job, the cab is solid. But people are coming out of that vehicle as it's rolling. But, what we want to do is keep the driver on the road, in their lane, by having rumble stripes on the center line and on the shoulder. So that's our safety program for now, but at the same time, we need to continue to look at whether—what other safety aspects we can take or safety initiatives we can take to make it safer. But, we have improved in—I don't want to jinx anything here, but last year at this time, on July 1st, we had 62 fatalities. This year we were at 40. So a significant improvement this year. And, this rumble stripe——

The CHAIRMAN. Can I just say, you know, all of us have a responsibility, but drivers have a responsibility too. The other day I was driving and we were in a city, and I looked into the car that was next to us. We were both driving, I wasn't stopped, and the woman was texting as she drove. I mean, not just on a phone, she was texting, I couldn't believe it. I don't know how you can drive in traffic in a city, be driving at all and be texting. So, you know, people have part of the responsibility here. And this distractive driver syn-

drome, it really is increasing. I mean, people are talking on the phone, you know, I plead guilty, I've done it. But, this texting, that really takes your breath away.

Mr. ZIEGLER. You're correct, Mr. Chairman. In fact, an anecdotal story—Lance is here today. He and I were visiting about exactly the same thing. It was last winter and he said, "Francis," he lives in North Bismarck like I do, and on his way to work driving down Washington Street, there was a person beside that he passed that was reading the paper on her way to work. So, you're right, there's something—the driver does have responsibilities, but what we're trying to do—I use a line a work, don't point the finger because three point back. And so what is it that we as engineers and transportation officials can do to make things safer, and that's what our job is. And hopefully the drivers will heed their responsibilities.

Talk a little bit—I know, I'll try to condense the rest of it, Mr. Chairman. But, our association recognizes the fact that transportation is important to all of America. And on page four, in the middle of the page there, we talk about what our association has talked about for funding that we believe is needed for the next highway bill, it's $375 billion for the next 6 years, that's for highways and bridges, and the $93 billion for transit. And so, we know those are big numbers. But at the same time, we also need to recognize that inflation has eaten away at the dollars that we do have.

And it's in my attachment, that in 2001, what a dollar bought in road transportation and road building now costs $1.87 in 2010. So it's gone up 87 percent in those 9 years. That's a significant inflationary increase, and typically that's because of the fact that we use a lot of diesel in road building, but the asphalt cements, the—to make the blacktop, that's—that has gone up at least 100 and in some cases to 200 percent. It went in the neighborhood of $300 per ton, it is now $600 and $700 per ton. So it's a significant increase in cost. And so, our purchasing power has decreased, and that's why we're so concerned about the future of the highway bill.

And we also ask that, you know, North Dakota as a rural State, proportionally be able to get some of the proportional increases that there might be. I know that there's a bill out there now through the House, as Congressman Pomeroy talked about, that is more population oriented. And in regard to that, I'm very pleased that the bipartisan rural mobility legislation in 3485 was recently introduced in the U.S. Senate by Senator Barrasso, you Mr. Chairman, and 11 other Senators. The legislation basically takes the position that if new legislation is to dedicate significant funds to discretionary highway programs only for large metropolitan areas, that the legislation must also include a significant counterpart program of funding for rural States, and we really do appreciate that. And those of us in rural States all appreciate that and we've talked about that. We do work very closely with South Dakota, Montana, Wyoming and Idaho as a group to work on rural issues. And so, we've noted that and are appreciative of it.

What I'd like to do now is go out to page six and talk a little bit about essential service to agriculture of natural resources. Ag is the one sector of the economy where the United States is consistently run an international trade surplus and not a deficit. Over the last two decades about 30 percent of the U.S. ag crops were exported.

We think in this—certainly in this part of the State, that's an important notation that the ag part of the State is doing its part to help us with the balance of trade. And so, it's important we recognize that in our movement of goods and services on our transportation system.

Moving on to page seven. We're also, in North Dakota, a major contributor of energy production, whether it's oil production, ethanol production, and our coal. Good roads throughout the State are important to the Nation becoming energy independent, and we all know we need to do that.

Going down to the bottom of page seven, rural States face serious obstacles. We're large, we're rural, and we have low populations. But I want to share with you on the bottom of page seven just what it does take to keep maintaining these roads, and this is just for our maintenance. I call this the orange truck cost. It takes about $9,200 per mile per year to maintain our system. And using the current CAF standards, the Corporate Average Fuel Economy, it takes 2,700 vehicles a day using North Dakota's gas tax income to pay for just the maintenance, which is sanding, salting, sealing the cracks, doing the patching, and so on. It seems like a big number, but we've compared that to what counties have and we're very close to what—I worked with Mercer County on the road between Beulah and that gasification plant, and that's—that's what they're saying, same types of numbers. So, we're very close on that, so it's very pricey to maintain the system.

Moving on to the top of page eight, it takes three, 4 years in North Dakota to complete a project that requires full environmental process. So, in the new bill, I guess we're just asking that we don't make it any more complicated. We believe that our environmental process now is very protective of the environment and streamlining should be considered. The new highway administrator, Victor Mendez, who was director of Arizona, has a new initiative, Every Day Counts. And we have people on our staff working with him and his staff to take a look at what it is that we can do to shorten timeframes building projects. And, we're very appreciative of what Victor is doing, and hopefully we'll come to—when the bill starts being written out, that we'll have some good input in that area.

Going to the bottom of page eight, we're hoping that—and we recognize the difficulty in coming up with a new highway bill, but we're certainly hoping that we get a highway bill soon. And if we can't get one soon, that if we have any continued resolutions or extensions, that they be at least a year and hopefully 18 months, because we need to continue to plan. If we're going to continue to make improvements in our system, we have to plan in order to get out ahead of it. It takes at least a year for a pretty simple project, to get it developed and engineered. But for any complicated project, such as, let's say four-laning, that's a four, 5 year process from an environmental perspective, a design perspective, and all the public input that we ask for. So it takes a long time, so every day does count, and it's important that we—we be able to plan ahead, and that's the point of having a longer continued resolution where we know where we stand financially.

I just want to say, in conclusion, Mr. Chairman, Senator, and Congressman Pomeroy, transportation is a good buy, it's a good buy. After the last session, my wife and I were talking about how much do we pay for gas tax, and we didn't know, so we did the math. And we pay about $500 a year with the amount of driving we do, the mileage we get. And my wife said to me, she said that's kind of high. And I said, really, I just paid the cell phone bill, that was $82 this month. So we did some averages. The average person pays about $500 a year in a cell phone bill, but the average person in America only pays $109 for transportation.

The CHAIRMAN. That's an incredibly good deal.

Mr. ZIEGLER. I may be biased—I may be biased to transportation, but I think I get a whole lot more out of my roads than I do out of my cell phone.

But in conclusion again, I appreciate the opportunity to come before you, to talk to you about transportation, and thank you for what you've done.

And that concludes my testimony, Mr. Chairman.

[The prepared statement of Mr. Ziegler follows:]

Statement of Francis Ziegler
Director, North Dakota Department of Transportation
before the
Committee on the Budget, United States Senate
on
"Transportation Investments: Promoting Economic Growth
Along the US 52 and US 281 Corridors"
Carrington, North Dakota, July 9, 2010

Mr. Chairman:

Good morning. I am Francis Ziegler, Director of the North Dakota Department of Transportation (NDDOT). Thanks for the opportunity to appear before the Committee today and thanks for your interest in improving transportation in North Dakota.

Today, I'd like to address several broad transportation issues as well as US highways 52 and 281.

US 52 and US 281 Corridors

Transportation is vitally important to our states' economic growth and is crucial to many freight movements – connecting manufactures to retailers, farms to markets, and shippers to railroads, airports, and seaports. Transportation infrastructure plays a key role in supporting the growing needs of business, industry, and the traveling public. The US 52 and 281 corridors are important in serving these needs in the northwest and central part of the state. These corridors also play an essential role is supporting international trade with the Canadian provinces of Saskatchewan and Manitoba. These two provinces have the fastest growing economies in Canada.

US 52

The NDDOT has recognized the importance of the US 52 Corridor (252 miles) running from Jamestown northwest to the Canadian border. From 1994 to 2009 approximately $147 million was invested in preserving and improving this corridor. Some of the major improvements include:

- Numerous projects (including truck climbing and turning lanes, reconstruction and overlays) on the segment from Minot to the Canadian border to improve safety and load carrying capacity.
- In the late 90's there were major improvements to the segment from Fessenden to Carrington to improve load carrying capacity. With these improvements the entire corridor is capable of carrying 105,500 lb. loads throughout the year with the proper axle configurations.
- In the late 90's four miles of four-laning was completed southeast of Minot with major reconstruction continuing on to the county line.
- The sixtieth Legislative Assembly passed House Bill No. 1166 which states that the director of the Department of Transportation shall include, as part of the department's

project development process, a four-lane alternative when it develops the environmental document for the next major reconstruction project for US 52 from 4.5 miles south of Business Loop 2 southeast of Minot to 2.5 miles southeast of the junction of State Highway 97. It is recommended that the four-lane alternative be selected as the preferred alternate and be constructed if environmental clearance is obtained.
- In 2002, a truck bypass around Jamestown was constructed to improve traffic flow, safety, and alleviate truck traffic through the city of Jamestown.

There are about $28 million worth of projects scheduled on US 52 for the years 2010 – 2014. Attachment 1 shows the location of these projects. Based on distress scores, rutting and ride data collected by the NDDOT the overall condition of the corridor is very good.

Total traffic volume on the corridor ranges from just over 1,200 vehicles per day near the Canadian border to just over 3,000 vehicles near Velva. Most of the corridor carries about 500 trucks per day. The largest truck volumes, ranging from about 650 to just over 700 vehicles per day, are on the segment between Jamestown and Carrington.

US 281

We also recognize the importance of the US 281 Corridor running from the Canadian border to the South Dakota border. In the last 15 years approximately $138 million was devoted to preserving and improving this corridor. Some of the major improvements include:

- Regrading and widening of the segment from Jamestown to the South Dakota border. As a result of these improvements this section of the corridor is capable of carrying 105,500 lb. loads year around with the proper axle configuration.
- Major improvements to the urban section from I-94 through Jamestown, improving safety and traffic flow.
- Replacement of overhead rail structures in Carrington and New Rockford.
- Realignment of US 281 west of Minnewaukan to avoid the rising water of Devils Lake.

In addition, there are about $36 million worth of projects scheduled on US 281 for the years 2010 to 2014. See Attachment 1. Projects on the corridor include grading, paving, thin lift overlays, seal coats, and safety improvements.

Total traffic volume on US 281 from the South Dakota border to Jamestown ranges from about 975 vehicles per day north of Edgeley to about 3,425 vehicles just south of Jamestown. The average annual daily traffic is about 1,465 vehicles per day. The average daily truck traffic is about 290 vehicles per day with the largest volume, about 400 vehicles per day, just south of Jamestown.

Total traffic volume on US 281 from Carrington to the Canadian border ranges from about 360 vehicles per day south of the Canadian border to just over 6,000 vehicles near Belcourt. The average daily traffic volume is about 1,465 vehicles per day. The average daily truck traffic on this segment is about 160 vehicles per day with the largest volume, about 345 trucks per day, just north of Carrington.

It is essential to preserve and improve our transportation system to ensure that it meets present and future demands. We will continue to monitor traffic, roadway conditions, and safety concerns along the US 52 and 281 corridors to ensure the safe movement of people and commodities.

North Dakota is Working Hard to Improve Transportation

Transportation infrastructure investment results in many benefits. It creates jobs and strengthens the economy. It improves safety. It improves mobility for our citizens and businesses. With these and other benefits in view, NDDOT is working hard to improve transportation in the state.

NDDOT and the Upper Great Plains Transportation Institute (UGPTI) recently held public input meetings across the state to discuss transportation. During the sessions, UGPTI presented results of a study on highway service levels and investments in North Dakota and gathered input about prioritizing transportation funds and levels of service.

Preliminary input indicates that:

- Residents want more transportation infrastructure across the state.
- Residents are concerned about traffic increases, especially in western North Dakota due to the energy industry.
- Public expectations are growing – for load carrying capacity and wider roads.

Recognizing the benefits of transportation, the State of North Dakota increased its financial commitment to transportation infrastructure by enacting a $1.35 billion transportation funding bill. This comprehensive transportation package for North Dakota funds maintenance and enhancement of the state's transportation system. It includes an unprecedented sum in non-matching State General Fund dollars. It also includes almost $600 million more to rebuild our roads and help cities, counties and townships recover from statewide flooding.

This year the NDDOT has undertaken the largest construction season in the history of the department. There are approximately $450 million in projects on nearly 2,000 miles of roadway statewide. The work includes projects under the regular federal program, stimulus (ARRA), emergency relief and state funding.

While the State of North Dakota is doing more than ever in this area, Federal investment in transportation is critically important. Federal aid accounts for 52% of our State's current biennial transportation budget, 57% if ARRA is included. So, federal dollars are important to our efforts to preserve and improve North Dakota highways. It is, therefore, critically important that legislation reauthorizing the federal highway program serve the needs of rural states like North Dakota. This will allow us to continue to meet the demands being placed on our state's highway network, including on highways 52 and 281.

Even though our state's large road network has few people to support it – North Dakotans pay

more than the national average to support Federal surface transportation programs. The per capita contribution to the Highway Account of the Highway Trust Fund attributed to North Dakota is $161 compared to a national average of roughly $109 per person. This is a per capita contribution 48 percent above the national average.

So, while North Dakota is investing in transportation, federal investment in surface transportation in our state is critically important.

Let me turn now to a discussion of why a strong Federal investment in surface transportation in North Dakota is not just in North Dakota's interest, but also very much in the national interest.

Benefits from Transportation Infrastructure Investment

There are many benefits from transportation infrastructure investments. Job creation is one. Jobs are created on the site of projects. Jobs are created in supplier and support industries. There is also a boost to the general economy from the onsite and supplier jobs.

Safety is another benefit. Preserving and improving roads in pursuit of smooth surfaces, appropriate roadway width, guardrails, signage and pavement marking is essential to our mission of providing a safe transportation system. Better highways and the availability of public transit help us in our daily lives, ensuring good access to school, medical facilities, work, and other important destinations.

These investments are also important to the economic competitiveness of North Dakota and the nation. Businesses reviewing whether to stay or locate in North Dakota want to be sure that goods arriving at or leaving their facilities move safely and efficiently.

Federal Surface Transportation Issues

Clearly, our ability to continue to invest in surface transportation infrastructure in North Dakota will depend in part on Federal surface transportation funding levels. The needs are there to justify increased investment. Various commissions and reports have called for increased surface transportation infrastructure investment. For example, the American Association of State Highway and Transportation Officials (AASHTO) has recommended, for the six-year period 2010-2015, proportional increases in the highway and transit programs over the prior six years -- to $375 billion and $93 billion, respectively -- plus funding for other programs.

Another factor relevant to funding levels is inflation. The highway industry has been hit hard by inflation during the past decade. From 2001 through April of 2010, North Dakota's overall construction cost index increased by 87 percent. The purchasing power of highway dollars has been reduced significantly and program funding has not kept pace with these rising costs (Attachment 2). A transportation bill without significant growth for North Dakota will severely hurt our ability to invest in transportation infrastructure throughout the state.

Beyond the overall funding level, however, to achieve continued progress in North Dakota it is essential that rural states like North Dakota participate at least proportionately in any growth of the Federal highway and transportation program, both as to formula and other funds.

In the authorizing committee in the House of Representatives a proposal has been outlined and partial legislation reported from a subcommittee to the full committee. This proposal apparently calls for increases in federal highway program authorizations of about $110 billion over the next 6 years compared to the last 6 years ($337 billion compared to $227 billion).

We are concerned about a number of aspects of this proposal. It would: create a large new program funding only metro areas with a population of 500,000 or more; and provide funds for large nationally significant projects, a high speed rail program and infrastructure banks, all of which seem geared to assist urban areas of the country. We recognize that there are major needs in urban areas; however, rural needs are essential too. It does not appear that rural states like North Dakota would be able to utilize the funds in these new programs -- even though these new programs seem to represent most of the proposed increase in the federal highway program.

In that regard, we were very pleased that bipartisan rural mobility legislation, S. 3485, was recently introduced in the United States Senate by Senator Barrasso, you, Mr. Chairman, and 11 other Senators. That legislation basically takes the position that, if new legislation is to dedicate significant funds to discretionary highway programs only for large metropolitan areas, the legislation must also include a significant counterpart program of funding for rural states. We are hopeful that efforts like this will ensure that final legislation will not ignore the national interest need to continue to invest significant Federal transportation funds in rural states as well as urban ones.

We do not support funding new large discretionary programs, particularly programs that are not accessible to North Dakota. We would prefer that increased funding be provided to highway formula programs, enabling all states to participate in program growth.

The House proposal also would increase the share of overall transportation investment dedicated to transit. North Dakota joins AASHTO in supporting, instead, proportional growth in the highway and transit programs.

In short, even though all details of this proposal are not set, we are very concerned that the House legislation could provide North Dakota with a considerably reduced share of transportation program dollars compared to current law. We will appreciate your efforts, Mr. Chairman, to avoid any such adverse result in the final legislation.

The Nation Benefits from Federal Transportation Investment In and Across Rural States

Let me turn now to reasons why authorization legislation should provide rural states like ours at least their current share of the Federal highway and surface transportation programs.

Federal-aid highways in our state, not just those on the National Highway System --

- serve as a bridge for truck and personal traffic between other states, advancing interstate commerce and mobility;
- enable agricultural exports and serve the nation's ethanol production and

energy extraction industries, which are located largely in rural areas;
- are a lifeline for remotely located and economically challenged citizens;
- enable people and business to traverse the vast tracts of sparsely populated land that are a major characteristic of the western United States; and
- provide access to scenic wonders and facilitate tourism.

In addition, the scope of the Federal-aid system, extending beyond the NHS, enables enhanced investment to address safety needs on rural routes.

Further, Federal investment in rural transit helps ensure personal mobility, especially for senior citizens and people with disabilities, connecting them to necessary services. Federal public transportation programs must continue to include funding for rural states and not focus entirely on large metropolitan areas.

Bridge States Serve a National Connectivity Interest for People and Business

Let me amplify a few of these points. Highway transportation between major metropolitan areas is simply not possible without excellent roads that bridge those vast distances. This connectivity benefits the citizens of our nation's large metro areas because air or rail frequently will not be the best option for moving people or goods across the country. The many commercial trucks on our rural interstate highways demonstrate every day that people and businesses in major metropolitan areas benefit from the nation's investment in highways in rural states.

The most recent FHWA data on tonnage origins and destinations shows that just over 59 percent of the truck traffic using North Dakota's highways does not either originate or terminate within the State. This is well above the national average of about 45 percent, underscoring that North Dakota's highways help connect the nation in a way that benefits other states.

Essential Service to Agriculture, Natural Resources, Energy

A significant portion of the economy in our State is based on agriculture, energy production, and natural resource extraction. Governor Hoeven's economic strategic plan has identified agriculture, energy, advanced manufacturing, technology-based businesses, and tourism as growth industries because North Dakota holds a competitive advantage in those areas. These have been the focus of much of North Dakota's investments in economic development.

Agriculture is one sector of the economy where the United States has consistently run an international trade surplus, not a deficit. Over the last two decades roughly 30 percent of all U.S. agricultural crops were exported.

Apart from its value to the state, there is a strong national interest in ensuring that agricultural products and natural resources have the road network that is needed to deliver product to markets, particularly export markets. In 2009, North Dakota led the nation in the production of barley, durum wheat, spring wheat, navy beans, pinto beans, canola, flaxseed, honey, lentils, dry peas, sunflowers, and dry edible beans. Last year North Dakota was the fastest growing export state in the nation. A key part of the road network supporting the movement of agricultural

products is roads below the National Highway System, where crops begin their journey from point of production to destination.

North Dakota is a major contributor of energy production in the nation. Our state is currently fourth in the nation in oil production and contains large coal reserves. Good roads throughout the State are important to our nation becoming energy independent and providing agricultural products to feed a hungry world.

Over the last three decades, tens of thousands of rural rail branch lines have been abandoned nationwide. In North Dakota since 1980, over 1,500 miles of railroad branch lines have been abandoned. The reduced reach of the rail network means that many areas, particularly rural areas, must rely more heavily on trucks to move goods.

With increased truck traffic in North Dakota and much of the upper Midwest, it is a challenge for us to continue to move these products. That challenge is compounded by the necessity of imposing spring load restrictions. The underlying reason for imposing spring load restrictions is inadequate roadway thickness. During the spring thaw, the ground is waterlogged and can't support a fully loaded 18-wheeler on a highway of standard thickness. Many states, especially those in the north, have little choice given their current funding but to limit the amount of weight on highways in the spring. Like congestion, load restrictions slow down commerce and add greatly to the cost of doing business.

Tourism Access

Without a strong road network in rural states, access to many scenic destinations would be limited. Tourism is vital to the economy of North Dakota.

Funding and Financing Considerations

Rural states like North Dakota face a number of serious obstacles in preserving and improving the Federal-aid highway system within their borders. We:

- are very rural,
- are geographically large,
- have low population densities, and
- have extensive highway networks.

These factors make it very challenging for rural states to provide, maintain, and preserve a modern transportation system that connects to the rest of the nation. Our low population and traffic densities also mean that tolls are not an answer to funding transportation needs in rural areas. Our budget to maintain (plow snow, apply pavement marking, patch roads, seal cracks, repair signs and guardrails) the state transportation system is approximately $9,200 per mile each year. It takes approximately 2,700 vehicles per mile per day, using today's Corporate Average Fuel Economy (CAFÉ) standards, to generate this amount of revenue from state motor fuel taxes. Very few state highways average 2,700 vehicles per mile per day in North Dakota.

Avoid Program Complications or Increases in Regulatory Requirements

The next authorization bill should not make federal highway program delivery more complicated. The current highway and transportation program is complex. We would like to see processes streamlined so we can deliver projects more efficiently. We see proposals for additional requirements as counterproductive. It takes three to four years in North Dakota to complete a project that requires full environmental process clearance. We support the Federal Highway Administration's "every day counts" initiative to streamline the project development process. However, any new statutory provisions that add requirements and regulations will add time to program and project delivery and increase project costs.

One area where new regulation is being actively discussed concerns performance standards and targets. Performance measures are important, and we in North Dakota use them in our state. We believe, however, that national performance standards should be general in nature and that each state should be allowed to establish its own specific targets.

Areas being discussed that may involve some program changes and may involve new regulation concern "livability" and transportation planning to address climate change. These are often discussed in terms of providing options for transit, biking, and walking. From the perspective of this state, that raises concern. For many Americans, particularly in rural areas, those options will not serve their transportation needs. Good highways will also be essential to livability in rural and many other areas. If livability is to be part of the next highway and transit legislation, it must be framed in a flexible way that allows rural states and communities to pursue solutions that are practical for them.

We are strong supporters of the approach to program delivery in current law – that most funds are apportioned to the states. We, like other states, conduct public outreach and then prioritize project selection. We are concerned that various proposals would give more emphasis to distribution of funds to projects based on decisions at USDOT, not in the states. Disproportionate growth in Federal discretionary dollars inevitably would reduce the portion of the program distributed to states. While we do not expect a Federal program without some discretionary funding decisions made by USDOT, we think rapid growth in discretionary Federal programs should be avoided.

Let me also note that while we want a surface transportation reauthorization law that is good for North Dakota enacted as soon as possible, without a reauthorization law, states and business are faced with operating under program extensions. While we are currently operating under an extension through the end of 2010, we suspect that some will say that any next extension should be short. Short extensions make program delivery less effective and discourage investment by the private sector. So, if there are to be extensions, they should be of practical length, perhaps a year.

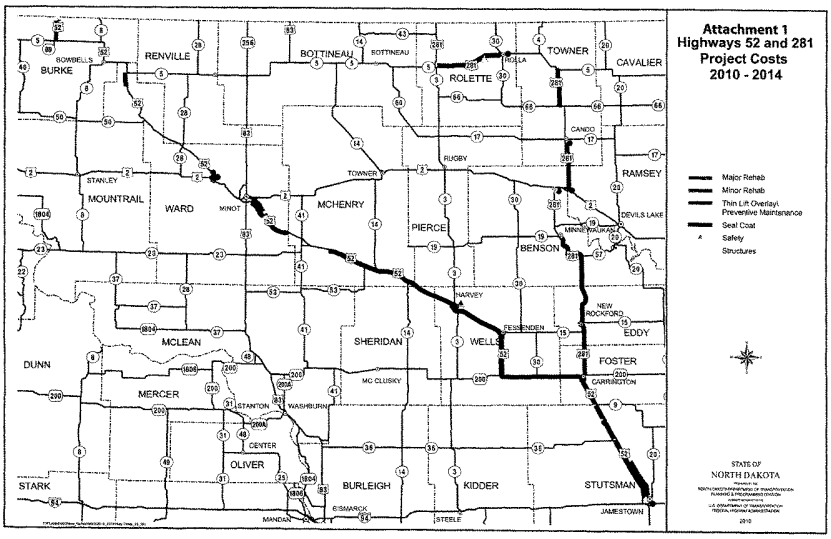
Transportation is a Good Investment

Much of today's surface transportation infrastructure was built by our forefathers as an investment in our country. Today that investment is taken for granted as everyone automatically expects a strong transportation network. Many people have invested in new forms of communication in their home, spending more than ever before on items such as cell phones and Internet. Today it is not unusual for an individual consumer to spend $500 a year on a cell phone bill, compared to the national per capita average contribution of $109 a year into the Highway Account of the Highway Trust Fund. We think this illustrates that transportation is a good buy.

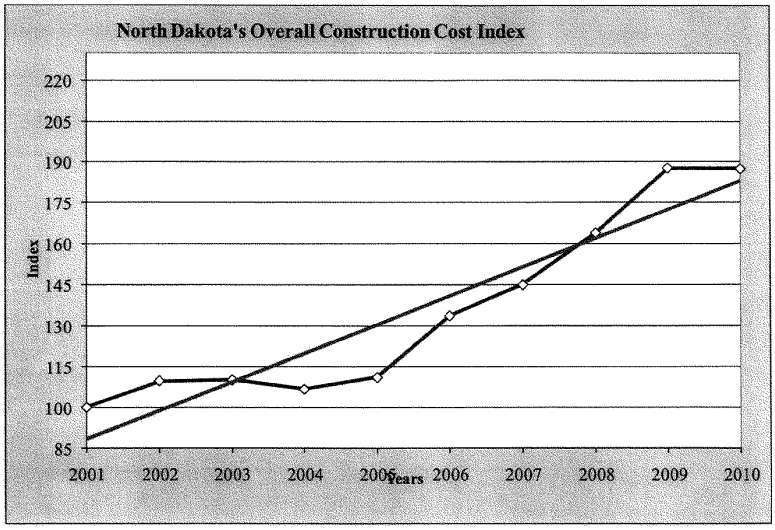
Conclusion

In conclusion, it is essential that the Congress, through the reauthorization process, recognize that increased federal investment in highways and surface transportation in rural states is, and will remain, important to the national interest. The citizens and businesses of our nation's more populated areas, not only residents of rural America, benefit from a good transportation network in and across rural states like North Dakota. With such legislation, we will be better equipped to address transportation issues along US highways 52 and 281 as well as elsewhere in North Dakota.

That concludes my statement. I'll be happy to respond to any questions.



Attachment 2



The CHAIRMAN. Thank you so much. Thanks for being here.

And we'll go now to Mayor Frye and then we'll go to each of the other witnesses in turn and then we'll open it up for questions of the whole panel by both Congressman Pomeroy and myself.

Welcome, Mayor, and congratulations on your recent election.

Mr. FRYE. Thank you.

The CHAIRMAN. It's very rare for anybody to win a write-in election. It almost never happens, especially a write-in that was mounted just 2 weeks before the election itself. So, congratulations on that score, but more important, congratulations on what I see being done in this town under your leadership, because it's very exciting.

STATEMENT OF HON. DON FRYE, MAYOR, CITY OF CARRINGTON

Mr. FRYE. Well, thank you Mr. Chairman, Mr. Pomeroy. Thank you for your continued interest in U.S. Highways 52 and 281 transportation corridors. One of the most important needs of rural North Dakota and Carrington is a viable transportation infrastructure. The success of Carrington over the past 20 years is directly related to our ability to move both commodity Ag products and finished processed foods and feeds to locations all across the U.S. and the World.

Our continued growth and success is threatened by the slow and steady deterioration of U.S. Highways 52 and 281 that serve our community. Thousands of vehicles either travel through or from Carrington each and every day. The success of two major ag related businesses hinge on these transportation arteries, Central City Marketing and Processing and Dakota Growers Pasta Company. I'd like to also add that just recently a new elevator in Rockford has been completed, and the numbers that were shown don't indicate what that traffic is going to add to this system, because that's going to be a unit railcar loading facility, and there will be hundreds of additional semis traveling those arteries.

The Ag community, which is the back bone of Carrington and this region, relies on these transportation arteries to move product to market. Fair market prices will not be received if we are unable to transport these products to markets all across the U.S. and the world. It is critical to reach the market place in a low-cost and timely manner.

Presently our community is working on several development projects that will continue to grow our important Ag community and processing sector. The first project I would like to talk about is the Central Dakota Feeds Initiative. This project will take co-products, waste by-products from food processors all across North Dakota and combine these co-products with selected commodity grains. They will then be combined to form a new "Super Feed" product for livestock all across the U. S. and the world. We anticipate that this alone could add at least 100 to 150 semis a day in transportation in and around the city of Carrington.

This new "super Feed" will provide a nutritional dense, highly palatable feed for livestock. The key component to the project has been identified as transportation. If we do not have a reliable and safe transportation artery to Carrington this project will not be able to bring the raw products to the processing facility. Then, transport the finished product to the market place. Carrington's Central location to the food processing plants in North Dakota is critical to the success of the project, but if the transportation system is not up to the task, Carrington will not be a cost effective location.

The second project I would like to talk about is the development of an ethanol processing facility using non-edible sugar beets as the feed stock for this new renewable fuel. The transportation of the raw material, non-edible sugar beets, for the processing plant will be done entirely by truck transportation. Again, we're probably talking anywhere from 100 to 150 vehicles traveling to that facility.

Transportation again is a key factor in the development of this project and the future success of the region in creating new high paying jobs and market opportunities to the Ag producers in the region.

I have focused on the transportation of these products but I would also like to add that safety on these highways is equally important. Whether it is the safe travel on the highways, providing the passenger vehicles on U.S. 52 and 281 the ability to pass large vehicles safely or the pooling of rain water or moisture retained in the ruts that have developed causing very unsafe travel conditions. This is just as important of an issue as the moving of goods and services. The loss of any life because of poor road surface conditions should never be acceptable.

Thank you for your interest and concern for rural transportation issues that are facing all of us as we move forward in our efforts to grow Carrington and North Dakota.

On a personal note, I'd like to add, that related to my present job I travel approximately 70,000 miles a year inside the city limits and the State limits of North Dakota, never leaving the boundaries. And so, I probably have a better understanding of the highway system and its shortcomings than most people do.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Frye follows:]

TESTIMONY TO THE
SENATE BUDGET COMMITTEE
TRANSPORTATION INVESTMENTS:
PROMOTING ECONOMIC GROWTH ALONG
THE U.S. 52 AND U.S. 281 CORRIDORS
JULY 9, 2010 BY MAYOR DON FRYE
THE CITY OF CARRINGTON, NORTH DAKOTA

Senator Conrad and members of the Senate Budget Committee. Thank you for your continued interest in the U.S. Highways 52 and 281 transportation corridors. One of the most important needs of rural North Dakota and Carrington is a viable transportation infrastructure. The success of Carrington over the past 20 years is directly related to our ability to move both commodity Ag products and finished processed foods and feeds to locations all across the U.S. and the World.

Our continued growth and success is threatened by the slow and steady deterioration of U.S. Highways 52 and 281 that serve our community. Thousands of semi trucks either travel thru or from Carrington each and every day. The success of 2 major Ag related businesses hinges on these transportation arteries. (Central City Marketing and Processing and Dakota Growers Pasta Company)

The Ag community, which is the back bone of Carrington and this region, relies on these transportation arteries to move product to market. Fair market prices will not be received if we are unable to transport these products to markets all across the U.S. and the world. It is critical to reach the market place in a low cost and timely manner.

Presently our community is working on several development projects that will continue to grow our important Ag community and processing sector. The first project I would like to talk about is the Central Dakota Feeds Initiative. This project will take co-products (waste by products) from food processing plants all across North Dakota and combine these co-products with selected commodity grains. They will then be combined to form a new "Super Feed" product for livestock all across the U. S. and the

world. This new "Super Feed" will provide a nutrient dense, highly palatable feed for livestock. The key component to the project has been identified as transportation. If we do not have a reliable and safe transportation artery to Carrington this project will not be able to bring the raw products to the processing facility. Then, transport the finished product to the market place. Carrington's Central location to the food processing plants in North Dakota is critical to the success of the project but if the transportation system is not up to the task Carrington will not be a cost effective location.

The second project I would like to talk about is the development of an ethanol processing facility using non eatable sugar beets as the feed stock for this new renewable fuel. The transportation of the raw material, non eatable sugar beets, for the processing plant will be done entirely by truck transportation. Once again, if the U.S. Highway 52 and 281 corridors are not up to the task this project will go by the wayside. Transportation again is a key factor in the development of this project and the future success of the region in creating new high paying jobs and market opportunities to the Ag producers in the region.

I have focused on the transportation of these products but I would also like to add that safety on these highways is equally important. Whether it is the safe travel on the highways, providing the passenger vehicles on U.S. 52 and 281 the ability to pass large vehicles safely. Or, the pooling of rain water or moisture retained in the ruts that have developed causing very unsafe travel conditions. This is just as important of an issue as the moving of goods and services. The loss of any life because of poor road surface conditions should never be acceptable.

Thank you for your interest and concern for Rural transportation issues that are facing all of us as we move forward in our efforts to grow Carrington and North Dakota.

On a Personal note I drive nearly 70,000 miles on average on North Dakota Highways and clearly understand the issues that face this important infrastructure.

The CHAIRMAN. Thank you, Mayor. And that is pretty remarkable, 70,000 miles around North Dakota. We probably should have you as a consultant to the transportation department.

Next we're going to go to Mark Hovland, the Manager of the Fessenden Cooperative Association. Welcome, Mark, thanks so much for being here and please go ahead with your testimony.

STATEMENT OF HON. MARK HOVLAND, GENERAL MANAGER, FESSENDEN COOP ASSOCIATION

Mr. HOVLAND. Thank you, Mr. Chairman, for allowing me to come. My name is Mark Hovland, I'll just give you a little background on our business and the communities we serve. I'm the general manager up at Fessenden Co-op, we're headquartered at Fessenden which is 38 miles northwest of Carrington on Hwy 52. We are a grain and agronomy co-op which was established in 1943 with 43 members, a manager, and one part time employee, and handles 22O,O00 bushels of grain in the first year of operation. We started out with seven board of directors and we still have seven members on our board, not the same ones that we did in 1943.

The CHAIRMAN. There's been some turnover?

Mr. HOVLAND. Yeah, been a little turnover. We have term limits.

We currently employ 50 full-time people and 10 to 15 part time people, depending on the season. And our territory includes a radius of about 65 miles of Fessenden. And some of the other locations that we serve, we have two facilities in Carrington, as Mayor Frye mentioned, we have Central City Grain and also Central City Marketing and Processing, which is a bird food plant. The other ones are primarily grain and agronomy. We have one facility each in New Rockford, Hamberg, Heimdal, and Esmond. We handle grain at all of these locations and agronomy products at most of them. We currently handle approximately 20 million bushel a year, 40 percent of that is in spring wheat, 28 percent is soybeans, 10 percent is corn, and the balance is sunflowers, pinto beans, black beans, flax, oats, canola and whatever the grower produces we handle.

Highways 52 and 281 are vital to our member owners for allowing them to bring their products to market. We have more than 800 active patrons in our Co-op and the majority of them rely on these two highways to some degree. We have approximately 350 patrons who deliver to our Carrington location and require these highways to get here. The Co-op owns three semis that transport grain full time. We also have a couple others that we use occasionally to transport grain from our substations and also direct from the farms, either to Fessenden or Carrington to load out. We also have several independent truckers that work for us when needed. Most of the wheat and the beans are trucked into Fessenden or Carrington and loaded on 100 car shuttle trains to various points throughout the country.

We truck corn across the State here to the ethanol plants, either Falkirk or occasionally at Richardton. We truck a lot of malt barley out of here to the—there's different plants in the eastern part of the State. Sunflower production we handle is trucked into our Carrington bird food plant which is processed and marketed as bird food. We also sell some of that product to the local crushers in North Dakota, Enderlin or Fargo. We load about 700 trucks per year out of that plant of bird food. At Fessenden we have an edible bean processing plant. We do primarily pinto beans but we also a few black beans. The majority of these are shipped out in bulk hopper cars or boxcars, but we do still ship about 100 to 150 trucks a year, and the all leave town on highway 52.

Our agronomy business is about 22 percent of our annual sales, and most of that, fertilizer and chemical come in by truck and leave by truck. So again, much of this product comes from the east therefore traveling Highways 52 and 281.

These two highways are very important to all of us. Even those who are unaware of these roads are dependent on them. And, if these people eat bread, pasta, beans, drink beer, use soy products, ethanol based fuel, or feed the birds, chances are some of that product originated in central North Dakota and travelled down the U.S. Highway 52 to 281 corridors to the processing destination.

So in conclusion, Mr. Chairman, I urge this committee to consider the maintenance of these highways a priority. I think the fu-

ture of our businesses and communities are dependent on good roads leading up to them.

And I thank you for the opportunity to share our concerns with you today and we appreciate all you guys have done to help and maintain roads throughout the whole State.

[The prepared statement of Mr. Hovland follows:]

Fessenden Co-operative Association

Stations at: Fessenden, Carrington, Esmond, Hamberg, Heimdal, Manfred, and New Rockford

MARK HOVLAND, Manager
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Fessenden, North Dakota 58438

July 9, 2010

Transportation Investments: Promoting Economic Growth Along the US 52 and 281 Corridors

My name is Mark Hovland and I am the general manager of Fessenden Co-op Association headquartered at Fessenden which is 38 miles northwest of Carrington on Hwy 52. Fessenden Co-op is a grain and agronomy co-op which was established in 1943 with 46 members, a manager, one part time employee, and handled 220,000 bushels of grain in the first year of operation. We currently have 7 members who serve on the board of directors and employee 50 full time people and 10 to 15 part time people depending on the season. Our trade territory includes a radius of about 65 miles of Fessenden. Other locations besides Fessenden include 2 facilities in Carrington, New Rockford, Hamberg, Heimdal, and Esmond. We handle grain at all of these locations and agronomy products at most of them. We currently handle approximately 20 million bushels of grain per year. 40% of the handle is spring and winter wheat, 28% is soybeans, 10% is corn and the balance is sunflowers, pinto beans, black beans, flax, oats, and whatever the grower produces.

Highways 52 and 281 are vital to our member owners for allowing them to bring their products to market. We have more than 800 active patrons in our Co-op and the majority of them rely on these 2 highways to some degree. We have approximately 350 patrons who deliver to our Carrington locations and require these highways to get here. The Co-op owns 3 semis that transport grain full time from the substations and also direct from the farms to either the Fessenden or Carrington terminals. We also have several independent truckers that haul for us as needed. Most of the wheat and soybeans are trucked into Fessenden or Carrington and loaded on 100 car shuttle trains to various destinations throughout the country. We truck corn across to the western part of the state to the ethanol plant at Falkirk or occasionally to the ethanol plant in Richardton. Most of the malt barley goes by truck to the eastern part of the state. Much of the sunflower production that we handle is trucked into one of our Carrington plants which is then processed and marketed as bird food. We load about 700 trucks per year out of that plant and the balance moves by rail. At Fessenden we have an edible bean plant where we process primarily pinto beans but also a few black beans. Although the majority of these beans are shipped in bulk hopper cars or boxcars we do still ship 100 to 150 trucks per year which all leave town on highway 52. Our agronomy business consists of about 22% of our annual sales. Most of the fertilizer and chemicals that we handle come in by truck and leave by truck. Again, much of this product comes from the east therefore travelling Highways 52 and 281.

These 2 highways are very important to all of us. Even those who are unaware of these roads are dependent on them. If they eat bread, pasta, beans, drink beer, use soy products, ethanol based fuel, or feed the birds chances are some of that product originated in central North Dakota and travelled down the Highway 52/281 corridor to the processing destination. Mr. Chairman, I urge this committee to consider the maintenance of these highways a priority. The future of our businesses and communities are dependent on good roads leading up to them. Thank you for the opportunity to share our concerns with you today and we appreciate all that you do to keep our highways maintained throughout this great state!

Sincerely,

Mark Hovland

Mark Hovland, GM

The CHAIRMAN. Thank you, Mark, thank you very much.

And now we'll go to our Towner County Economic Development Corporation Board of Directors Member, J. R. Gibbens.

Welcome, J.R.

STATEMENT OF J.R. GIBBENS, BOARD OF DIRECTORS, TOWNER COUNTY ECONOMIC DEVELOPMENT CORPORATION

Mr. GIBBENS. Thank you, Senator Conrad, Congressman Pomeroy for the opportunity to testify here today. Obviously, I can appreciate what happened to Don, there. Don and I were both mayors of the towns for 8 years. Don, the one thing that I did, I found and able bodied replacement to replace me.

[Laughter.]

Mr. GIBBENS. You should have done a little—worked a little harder, you wouldn't have ten roped in, there.

[Laughter.]

Mr. GIBBENS. But, we all do appreciate the opportunity to serve our cities and our communities. I'm obviously from Cando, Towner County is the County that—Cando is the County Seat of Towner County. Highway 281 is vital to the transportation needs for Cando.

Obviously, one of the big concerns that we have in the Cando area is, what's going to happen to 281 from Cando to Church's Ferry. Obviously, I see Joe Belford out here in the audience. We all saw what's happening to Devils Lake, you know, Cando's becoming—it's—we're getting closer to the lake all the time, and Cando's not moving.

[Laughter.]

Mr. GIBBENS. We all know——

The CHAIRMAN. J.R., I don't know if we should really allow you to continue to testify——

[Laughter.]

The CHAIRMAN. Because we need to get you down to one of the shows, you know? There's absolutely no reason you shouldn't be hosting one of those late-night shows. You'd have a huge market share.

Mr. GIBBENS. Anyway, we do have—we do think that it's important to keep 281 viable. If we don't do anything, we know what's

going to happen to the thing. We do appreciate what the State and Federal Government's done relocating 281 west of Minnewaukan. We do need to do some grade raises north of Church's Ferry to preserve that. We also need to consider that the railroad is going to go underwater there, and without a transportation system, you know, we can't do any economic development.

I've been fortunate to be involved in a lot of economic development issues around the Cando area. We've created between 40 and 50 new jobs in last eight or 10 years expanding our agricultural businesses, and we're very dependent on, you know, all of the—not only the pork products to move south out of 281, we have to bring a lot of the corn and stuff comes up that corridor. We use the equivalent in our flying operation, 9,000 acres of corn a year to feed the pigs and the other thing is as I drive up and down the 281, I would assume that there must be some plan where you share the common road bed between Carrington to Jamestown to four-lane, that thing—is that in the works, Francis? To four-lane between Jamestown and Carrington?

Mr. ZIEGLER. Mr. Chairman, at this time, it is not.

Mr. GIBBENS. What is the traffic out there?

Mr. ZIEGLER. The traffic count, as I said, and I have to go back—and the truck traffic is between 600 and 700; 650 and 700, I believe, was my testimony.

Mr. GIBBENS. OK.

The, we know that whole transportation, it's important to have these roads in place, particularly in Central North Dakota, we think that it's important to maintain them, and we know that this whole lake problem is a unique 17-, 18-year problem, that we have to solve that problem, and we're very appreciative of all of the money that's been spent on the roads by there, but at some point we have to pull the plug on this whole deal and do something different.

I really don't have anything else to add to the testimony that we haven't all—that we aren't all aware of right now, and I'd be more than happy to answer any questions. I appreciate the opportunity to testify.

[The prepared statement of Mr. Gibbens follows:]

July 6, 2010

Honorable Senator Kent Conrad and Members of the Committee,

My name is J R Gibbens. I am the past Mayor of Cando with 24 years experience on the City Governing Board, the past President of Towner County Economic Development Board and on the Board of Directors, and the past President of the North Dakota Pork Council and on the Board of Directors. I am the owner operator of a 4th and 5th generation family farm that has seeded its' 128th consecutive crop. I am a stock holder in Sky Can Ltd, a company that is a 6000 head sow (farrow to finish) swine production loop. I also do the Human Resource work for our fifty plus employees within the six agricultural entities I am involved.

The Towner County EDC was organized 30 plus years ago to create jobs, retain existing businesses, recruit new businesses and residents, and support community development projects that make Towner County a good place to live, work, and play. We have partnered with regional, state, and federal entities to leverage limited resources to fulfill our mission to *"interdependently promote the stable growth of population and jobs in the region."*

Most of the first few months of the organization's life centered around assisting Leonard Gasparre in locating a pasta milling and processing plant in Cando. That plant still operates today, and relies as extensively on good transportation now as it did back then. Noodles by Leonardo has been joined by Sky Can Ltd and many other small businesses and farms in our community who also rely heavily on a good transportation network to get supplies and commodities in and out of the community.

Cando is located at the junction of US Highway 281 and ND Highway 17. Hwy 281 is the major north/south highway in east central North Dakota. Hwy 281, like many other roads, has been plagued by the relentless 17 year 28 foot plus rise in Devils Lake. It is very important to keep this road open without any lower than normal load restrictions. The relocation of Hwy 281 west of Minnewaukan should keep that section open. A grade raise north of the junction of US Hwy 2 and 281 should be given the highest priority. Hwy 281 shares a common road bed with US 52 from Jamestown to Carrington and this should be four lanes the entire way. The feeder highways such as Hwy 17 west of Cando should have the weight loads increased to the same as Highway 281 and 2 so we can legally get loads in and out of our trade area.

In order to maintain and grow our economy here in central North Dakota two things need to be dealt with: 1. We need to maintain and build a good modern road system and 2. Devils Lake needs to be stabilized at a maximum elevation of 1448' MSL or less.

There is a growing resentment in the Devils Lake Basin that not enough is being done to develop an east end outlet. Continuing to build up the roads and dike in the City of Devils Lake and a few selective areas while flooding the rest of the community is dividing neighbors against neighbors.

This is all being done to protect the Sheyenne River and Fargo? We need some type of one time controlled release then maintain the level at 1448' MSL or less.

That concludes my testimony. Thank you for this opportunity and I would be happy to answer any questions.

The CHAIRMAN. Thank you so much.

And next we'll go to Dave Irmen from the North American Bison Cooperative. Let's say—it's almost 10, I think we should do this, because, I apologize to you, we have arranged a call with the family of our soldier who was killed in Afghanistan, and I think what we should probably do, because that's supposed to be right at 10:00—that we take a brief recess for—let's try to be back at, let's say, 10 minutes after 10 and then we'll go to questions of the whole panel.

All right? The committee will stand in recess until 10:10 a.m.

[Recess.]

The CHAIRMAN. The hearing will come back to order and we'll go to Dave Irmen, representing the North American Bison Cooperative.

STATEMENT OF DAVE IRMEN, NORTH AMERICAN BISON COOPERATIVE

Mr. IRMEN. Thank you, Senator Conrad Congressman Pomeroy and to your fellow committee members for holding this hearing

today and for continuing discussion on the importance of U.S. Highway 52 and U.S Highway 281.

My name is David Irmen and I work for and represent North American Bison Cooperative and North Dakota Natural Beef, LLC. North American Bison Cooperative was established in 1993 and today harvests approximately 700 head of bison and cattle per week. We sell our products internationally and have sales in most states of the Union.

North Dakota Natural Beef, LLC was established in 2007 and currently has Whole Foods Midwest as its major customer. We proudly represent our North Dakota Heritage in both our bison and beef products. Many of you know, the North American Bison plant in New Rockford and the North Dakota Natural Beef plant in Fargo are the largest beef and bison harvesting and processing facilities in North Dakota. As such, they provide not only North Dakota feeders the ability to market their cattle and bison in North Dakota but also feeders from surrounding states and provinces of Canada. For every dollar in cattle and bison retained in North Dakota, $4.50 of economic activity is generated for the state of North Dakota.

As major a transportation route, U.S. Highway 281 and U.S. Highway 52 are critical routes to the North American Bison Cooperative and North Dakota Natural Beef. First, they are the primary highways that are utilized to bring bison and beef animals to our plant in New Rockford. U.S. Highway 52 is the main artery, and is used by our bison and beef producers from the western regions of North Dakota, Montana, Saskatchewan and Alberta allowing them to bring their animals to the New Rockford plant with excellent highways and with greater speed than other routes.

We currently have over 65 trucks per month delivering animals and another 50-plus trucks per month picking up at our New Rockford plant. That is 115-plus trucks per month using the highway. Additionally, U.S. Highway 52 and U.S. Highway 281 are the primary corridors that allow the New Rockford harvested animal carcasses to be transported to Fargo. These highways are used daily by our trucks which a fellow employee and I personally drive every day. They are critical to the profitable and productive functioning of North American Bison Coop and North Dakota Natural Beef.

The ability to count on the maintenance and functionality of these highways is critical to the operation of NABC and NDNB who, combined, will generate a sales revenue in excess of $40 million this year.

On a personal note, many of my friends and I rely on these highways for travel to and from shopping at grocery stores to clothing stores in Devils Lake and Jamestown as well as using the recreational areas in Devils Lake. To understand the impact of these highways for recreation, just count the number of commercial vehicles, hunters, motor coaches, trailers, and fishing boats that travel this highway and you start to realize how critical these highways are to the State of North Dakota's economy. These highways are major arteries that are relied upon by literally thousands of people and businesses, not the least of which are the two companies I represent.

It is critical to the economy of this region and North Dakota that the roadway system supports consistent and reliable transportation for businesses. This requires a roadway system that is in good condition, has adequate capacity and is well-maintained, even in inclement weather. On a personal note, this makes my family feel much better when I am driving during the winter months, and we know we can count on these highways being maintained.

As a taxpayer and local resident, I know that investments in the public roadway system support the economy through, one, direct job creation through construction activities; two, indirect and induced job support; and, three, productivity gains.

In summary, from both a personal and business perspective U.S. Highway 281 and Highway 52 are critical to the success of our companies and to the success of the region of North Dakota to compete effectively. Driving these highways daily makes me appreciate the diversity of their use. I see farm machinery, buses, commercial trucks, tourists, and recreational vehicles every day. Without maintenance and continued support, this region would stand to lose business, tourism and farming revenue.

Thank you for allowing me to testify today for a highway system I depend on for my livelihood.

[The prepared statement of Mr. Irmen follows:]

Transportation Investments: Promoting Economic Growth Along the US 52 and US 281 Corridors
July 9, 2010
Testimony of David Irmen representing North Dakota Bison Cooperative (NABC) and North Dakota Natural Beef, LLC (NDNB).

Thank you Senator Conrad and also thank you to your fellow committee members for holding this hearing today and for continuing discussion on the importance of U.S. Highway 52. and U.S Highway 281. My name is David Irmen and I work for and represent North American Bison Cooperative and North Dakota Natural Beef, LLC.

North American Bison Cooperative was established in 1993 and today harvests approximately 700 head of bison and cattle per week. We sell our products internationally and have sales in most states of the Union. North Dakota Natural Beef, LLC was established in 2007 and currently has Whole Foods Midwest as its major customer. We proudly represent our North Dakota Heritage in both our bison and beef products.

Many of you know, the NABC plant in New Rockford and the NDNB plant in Fargo are the largest beef and bison harvest and processing facilities in North Dakota. As such, they provide not only North Dakota feeders the ability to market their cattle and bison in North Dakota but also feeders from surrounding states and provinces of Canada. For every dollar in cattle and bison retained in North Dakota, $4.50 of economic activity is generated for the state of North Dakota.

As major transportation routes, U.S Hwy 281 and U.S Hwy 52 are critical routes to NABC and NDNB. First they are the primary highways that are utilized to bring bison and beef animals to our plant in New Rockford, ND. U.S Hwy 52 is the main artery that is used by our bison and beef producers from the western regions of North Dakota, Montana, Saskatchewan and Alberta allowing them to bring their animals to the New Rockford plant on excellent highways and with greater speed than other routes. We currently have over 65 trucks per month delivering animals and another 50 plus trucks per month picking up at our New Rockford plant. That is 115 plus trucks per month using the highways.

Additionally, U.S Hwy 52 and U.S. Hwy 281 are the primary corridors that allow the New Rockford harvested animal carcasses to be transported to Fargo, ND. These highways are used daily by our trucks which a fellow employee and I personally drive every day. They are critical to the profitable and productive functioning of NABC and NDNB. The ability to count on the maintenance and functionality of these highways is critical to

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the operation of NABC and NDNB who combined will generate a sales revenue in excess of $40,000,000 this year.

On a personal note, many of my friends and I rely on these highways for travel to and from shopping at grocery stores to clothing stores in Devil's Lake and Jamestown as well as using the recreational areas in Devil's Lake. To understand the impact of these highways for recreation, just count the number of commercial vehicles, hunters, motorcoaches, trailers, and fishing boats that travel this highway and you start to realize how critical these highways are to the state of North Dakota's economy. These highways are major arteries that are relied upon by literally thousands of people and businesses, not the least of which are the two companies I represent.

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As a taxpayer and local resident, I know that investments in the public roadway system support the economy through: 1) direct job creation through construction activities; 2) indirect and induced job support; and 3) productivity gains.

In summation, from both a personal and business perspective U.S Hwy 281 and U.S. Hwy 52 are critical to the success of our companies and to the success of this region of North Dakota to compete effectively. Driving these highways daily makes me appreciate the diversity of their use. I see farm machinery, buses, commercial trucks, tourists, and recreational vehicles every day. Without proper maintenance and continued support, this region would stand to lose business, tourism and farming revenue.

Thank you for allowing me to testify today for a highway system I depend on for my livelihood.

The CHAIRMAN. Thank you very much for that very excellent testimony. I don't think anybody could hear that and not realize how important it is to people's lives. And that's really what this is about.

I'd like to go back to Francis Ziegler, Director of the North Dakota Department of Transportation and clarify a few things, if I could, for the record.

First is, the Association of State Highway and Transportation Officials have called on the new Transportation Bill to be funded at a level of $468 billion over 6 years. Is that correct, Francis?

Mr. ZIEGLER. Mr. Chairman, that is correct.

The CHAIRMAN. And, if it's a 6-year bill that would be $78 billion a year?

Mr. ZIEGLER. That is correct.

The CHAIRMAN. And the Trust Fund is—to fund transportation legislation is only providing $31 billion a year. So, by my math, that's a $47 billion a year shortfall. And so, obviously, we've got a problem. And we all understand that the United States has a debt that has been growing very dramatically for the last 10 years. In

fact, the debt doubled the previous Administration, it's set to double again in this Administration if we don't take action. I've been asked to serve as a member on the Debt Reduction Commission that the President has put in place, some 18 member, and if 14 of the 18 of us can agree by the end of this year, Congress will vote on our plan. And I can tell you this Commission—we meet every week, we've been spending hours and hours and hours. Last week we had a meeting that started at 9 in the morning and went until 7 at night. So, the debt has to be a focus, because it threatens the long-term economic security of the country.

So, when we look at this transportation need—and I'm not disputing the number that your colleagues have come up with, it is a stunning number, $468 billion over 6 years is a tremendous amount of money. But, if we look at the need across the country, we see what needs to be done with highway and transit, it's not a number that is an unreasonable one in terms of the need.

But, I think it's very important for people to understand, if the need is $78 billion a year and the funding that is available is only $31 billion a year, there are only two options. One is to cut the spending dramatically, cut it more than 50 percent, the other—the only other possibility is to raise revenue. And I don't see many people volunteering to pay a higher gas tax, and that's the funding that we have.

Frankly, I don't think that funding source makes as much sense now as it once did, because now we're moving to vehicles that aren't going to have a gas tax. We're going to see a tremendous explosion in electric vehicles, it's forecast, over the next 10 years. We have other types of fuels that are being used, so this approach clearly has to be faced up to.

I just wanted to ask you, Director Ziegler if, as some of my colleagues are saying—I'll just be very blunt, some of my colleagues are saying, "Cut it by the amount necessary to get down to the Trust Fund revenue level," that would be a cut of almost 60 percent. What would be the affect, Director Ziegler, if the Federal funding was cut by 60 percent?

Mr. ZIEGLER. Mr. Chairman, the outcome of cutting our revenues, or Federal aid by that much would be devastating to the State of North Dakota. That would mean that our program that's been laid out over the next four or 5 years would have to be cut in excess of 50 percent to make it happen. That then we have to reprioritize and work within that system.

But, as we hear about the needs, when we go out to our regional meetings, and as we hear about the needs at these hearings, Mr. Chairman, it's pretty obvious the needs are there, so reprioritizing would be a very difficult task to say the least, and a lot of our work would not get done, and our transportation infrastructure would start crumbling.

The CHAIRMAN. Well, I think that's the truth of the matter. In many ways I wish it weren't the truth of the matter, because this funding gap is enormous—$78 billion of needs that are identified, $31 billion of funding, that's a $47 billion a year difference. Over 6 years, that's 240 and 42—that's $280 billion dollars. That's a big hole to fill.

And so, my hope is people think about the need that exists across the country, certainly in our State. I think these hearings we've held, Director Ziegler, you've been at every one of them, I thank you for that. The need that's been documented is about as clear as it can be. Certainly this hearing today has been, I think, quite persuasive on the need on 52 and 281. What we heard in New Town, very dramatic testimony, certainly we saw that further west of North Dakota in an earlier hearing, a hearing we did in Jamestown last year, it's just very important that we communicate directly with people the reality that we confront here, and it's going to have to be dealt with. Just tacking it on the debt is not an answer. I can tell you, as a member of this debt Commission that have been meeting now for months, the threat to our country's economic security of just adding to the debt is a very serious matter. Because, at some point, people won't loan us the money to finance this debt. And where is this money coming from to finance this debt today? It's coming, primarily, from the Chinese and the Japanese. In fact, the Chinese have now become our No. 1 creditor. We owe them over a trillion dollars.

And so, we've got to face up to the reality that we can't just keep putting it on the charge card, that option's running out. We're going to have to pay for this.

And, does that mean that we can't cut anywhere? No. We're going to have to cut. I don't think there's any way that we're going to fund $468 billion over the next 6 years. I mean, I'll be very direct with you, I don't think that's in the cards, because I don't think anybody's going to come up with the revenue of $47 billion a year difference between what the Trust Fund is currently providing, and what the needs are that have been identified.

So, it's pretty clear to me we're going to have to work both sides of this equation—we're going to have to find some other revenue source, and we're going to have to make cuts. And that's going to be painful, painful business.

Let me—one other question and then turn it over to Congressman Pomeroy and that is, Francis, you've indicated that 52 percent of the program in North Dakota is from the Federal program, 57 percent if one counts the Stimulus funding for the several years that that's operative, and then what would the figure be with emergency funding figured in? Because on the emergency funding, as we discussed yesterday, there the funding is 100 percent Federal. Do you have a calculation on what that would take us to, in terms of the Federal share?

Mr. ZIEGLER. Mr. Chairman, unfortunately I don't have that, but I can tell you where we're at with the ER Program.

The CHAIRMAN. OK.

Mr. ZIEGLER. This year alone, we'll be spending approximately $80 million in ER, that's Emergency Relief, that's raising the grades in Devils Lake and in other parts of the State where they're flooding and the snow melt has caused potholes to rise to where they're inundating our roads, but in total, we are expecting $150 million in ER Program in the 2009 disaster and the 2010 disaster, combined. So, add $150 million to that equation and do the math, and that's what it would amount to. I shouldn't guess, here, as a

witness, but if I—I could do the math and get back to you with the exact number.

The CHAIRMAN. Yeah. Would you do that for us? Because I think for the purposes of the record, I think we need to clear what percentage is Federal when we take all sources, and we look at the expenditure. I think it's fair to say, if we're talking $450 million this year, and $80 million of that is emergency, 100 percent Federal funding money, that would add not quite 20 percent, but getting close to 20 percent—16, 17 percent, to 57—we may be approaching 70 percent Federal share, when we stack everything up.

But, if you could do that for me, I think it's important that we have that for the record.

The CHAIRMAN. Congressman Pomeroy?

Mr. POMEROY. Mr. Chairman, recognizing your role as Budget Chairman and then also on the bipartisan Deficit Reduction Commission, your comments on the funding straits facing our country, the need to deal with these extraordinary deficits are very well made.

I also think, though, the other side of the coin well-presented by the panel, investment in infrastructure is basically growing, directly related to growing and diversifying the economy, we've seen it in the west with the energy explosion in North Dakota, but we've seen it through the panel today, relative to creating new jobs, making new opportunities relative to our own agriculture—tremendous ag output capacity.

The Commissioner's comments note that we ship 30 percent more as a nation in agriculture, being one of the areas of our economy, 16 percent of GDP where we actually run a favorable trade surplus.

If you look at North Dakota in that equation, we pay an enormous role in terms of contributing export and growing the economy. It's important to North Dakotans, it's important to the country as we look at trying to have a healthy mix of exports relative to imports.

Mayor, I would just—I'm impressed with the additional projects you outlined that Carrington is seeking, and even in the face of that, you've seen pretty substantial truck growth going through your community, what would you attribute this growth in traffic to and what are your prospects relative to the projects you told us about?

Mr. FRYE. Well, in regards to the projects it's pretty high that they're going to happen, specifically the feed project, the likelihood of that happening, extremely high.

Mr. POMEROY. Great.

Mr. FRYE. The ethanol project, they're doing a test in Iowa today with test plot beets that were grown right here at the research center at Carrington, and that's being shipped to Iowa, so I would say that that's moving forward rather quickly. The equipment is designed and coming from Europe, I would highly expect that project to happen at some point in time.

We talked about a couple of projects, but we have a new dairy operation that has nearly 1500 cows, that those vehicles are being added to the highway, I talked about the New Rockford elevator, and we have a farmer in town who presently exports all of his flax

to South Africa and several other countries, and he's using the transportation system, it's growing.

And I think the reason is, it's because of our city's name. Our nickname is "The Central City," and if you look at a map, 70 percent of the State's population is within 125, 130 miles of Carrington.

When you look at another map, and a little brochure I'm going to give you today, Congressman, there's a map in there that shows you where all of the processing plants are. Again, nearly 70 percent of those are within that distance. So, Carrington obviously makes sense when you're looking value-added food processing.

Mr. POMEROY. I would reckon that the Chieftain is one of the most recognizable landmarks in the State.

Mr. FRYE. That's right.

Mr. POMEROY. Reflecting traffic that continually goes through here. You talked about your miles while I've got a wife in Grand Forks, kids in Bismarck and I work in Washington, I'm an at least twice a month fixture, maybe more, at the truck stop I referenced earlier, fueling up as I head across the State, so I personally have seen the tremendous growth of truck traffic in this area.

Mark, that co-op of yours has come a long way. Your growth trajectories continue positive as you continue to diversity the products you're bringing to—collecting from your farmers and bringing to market?

Mr. HOVLAND. Yes, we do. This plant here, when we—we purchased this from Carhill back in 2002 and we've actually doubled the handle that they had for the previous 5 years. Now with the new one coming on board, we're probably going to struggle to take that up any higher, but yes, we continue to handle whatever our patron base wants to produce.

Mr. POMEROY. Terrific.

J.R., I was looking at Minnewaukan, here, a couple of weeks ago, and I could not believe that this 281 that we talked about over the years, we're going to have to move it, we're going to have to divert around the town. And Good Lord, that old 281——

Mr. IRMEN. It's gone.

Mr. POMEROY. It's gone. And it is well under water. You can see where the road line is, but it's gone. You see changes like that, obviously, continuing really throughout the infrastructure of that area, not quite reaching to Cando yet, but——

Mr. IRMEN. Well, you know, we need to fill the roads up or stabilize the lake, something's got to be done.

Mr. POMEROY. And that itself has added a traffic dimension. I don't know that we've talked about that as much as the ag dimension, but, you know, when you've got a national disaster area, like the Devils Lake flood has turned into, you've got an awful lot of responsibility continuing for some years on that.

Mr. IRMEN. That's correct.

Mr. POMEROY. Dave, in conclusion, this plant of yours have seen good times and bad times. Your numbers reported today looks like a very strong operating demand and good things for the future.

Mr. IRMEN. Yes, it does.

Mr. POMEROY. Congratulations.

Mr. IRMEN. When we started up, we were built to do 25 head a day, now we are doing anywhere's from 80 to 140, sometimes 150 a day, slaughtering. And that's a lot of animals we have to move between here and Fargo.

Mr. POMEROY. Seven hundred a week, I must say that was beyond what I knew was occurring and I congratulate you for the success and do understand the point relative to infrastructure, again—we're growing the economy, here. We're growing jobs for people, people's kids are going to be able to grow where they grew up, that's a North Dakota dream, but we've got to have the infrastructure.

And so, we got the message, Senator Conrad. I really appreciate you allowing me to participate in this hearing.

The CHAIRMAN. I'm delighted that you did and I'd say this. When we had the debate on Stimulus, I argued strenuously for at least $200 billion on infrastructure. So, we got a package on infrastructure in this Stimulus package that falls far smaller than what I argued for. I really believe the infrastructure investment is the best one. And the reason I believe it so strongly is, that creates jobs in America, there's no leakage. You build an infrastructure in America, those are all jobs in America, and it improves the economic efficiency of America. Nobody can look around what's happening in North Dakota, look, you come to the Washington Metro area, everything at 4 is stopped dead. You go out on 395, or 95, it's stopped, dead. What is the economic cost of that to our country? Not being able to move goods and services as rapidly as we otherwise might? It's got to be enormous.

So, to me, not only would it provide stimulus to our economy, but it would have also improved the economic efficiency of the country, and it would have all been jobs in America, not jobs going to China, not jobs going to Japan, jobs here.

So, I wish—and I'll tell you, the other thing is, infrastructure investment plays out over a number of years. Not all of the money goes through the system in a year, and we've got continuing economic weakness. We've got almost 10 percent of our people unemployed, another 7 percent unemployed. That's one in every six workers in the country is either unemployed or underemployed. And if we had greater infrastructure investment in the Stimulus package or the Recovery Act, as it's called, those dollars would be hitting right now when you need another lift to the economy.

So, you know, I regret that I was not able to persuade some of my colleagues that we should have done more on infrastructure, but I believe it very strongly. And I think the evidence in our State is about as clear as it can be, from the hearings we've been holding—Francis, you've been at every one of them, wouldn't you say the credibility of the presentations that have been made is very high, from the witnesses we've heard?

Mr. ZIEGLER. Mr. Chairman, I totally agree with that statement.

The CHAIRMAN. Well, any other witnesses, any final thoughts you want to register for the record before we close the hearing? Mayor, anything you want to add?

Mr. FRYE. Well, Mr. Chairman, I would just want to emphasize the continued growth or success of our community is directly tied to the infrastructure, and specifically the highway, as we've talked.

And if something isn't done in a positive manner in the next 5 to 10 years, we're not going to be able to continue the growth and success that we've had.

The CHAIRMAN. Thank you very much.

Mark, anything you want to add?

Mr. HOVLAND. I agree. For us to continue to grow and for our communities to thrive, we need to keep these highways working.

The CHAIRMAN. All right. J.R.? Any final thoughts?

Mr. GIBBENS. One of the things, one comment I'd like to make is that our economies there in Towner County and Cando is kind of unique. We're not plagued with the unemployment things that the east and west coast are. I can look everybody in the eye and go on record, the unemployment rate in Cando is zero, if you want to work. We need to have more improved infrastructure so we could—we've worked real hard to grow our economies and everybody that can work is working, and we need to import more people to work. What I do is recruit, train and retain people and that's—but we need roads to do that.

The CHAIRMAN. Yep. All right.

Any final thought? All right, I want to thank all of the witnesses.

[Whereupon, at 10:38 a.m., the hearing was adjourned.]

FIELD HEARING: DEVILS LAKE FLOODING DISASTER: A DOWNSTREAM PERSPECTIVE

FRIDAY, JULY 9, 2010

U.S. SENATE,
COMMITTEE ON THE BUDGET
Valley City, ND

The committee met, pursuant to notice, at 1 p.m. in the Bridges Meeting Room, AmericInn of Valley City, Valley City, North Dakota, Hon. Kent Conrad, chairman of the committee, presiding.

Present: Senator Conrad.

OPENING STATEMENT OF SENATOR CONRAD

The CHAIRMAN. I want to welcome everyone today to the hearing of the Senate Budget Committee. This is an official hearing of the committee, and therefore we will follow the rules of the U.S. Senate for hearings.

One of the rules of any Senate hearing is that there be no open expression of approval or disapproval for the testimony of any witness. That is very important so no witness feels intimidated for giving what might be unpopular testimony. So, we will follow that rule scrupulously here.

An official record of the hearing is being kept. And before we begin the hearing, I'd like to observe a moment of silence for Keenan Cooper, a North Dakota soldier who lost his life on Monday in Afghanistan. The Congressman and I were able to speak to his family this morning, and I think they would very much appreciate this sign of respect.

[Moment of silence observed.]

The CHAIRMAN. Thank you to all of you. We appreciate, very much, the attributions of Keenan Cooper and the sacrifice, the ultimate sacrifice that he paid for our country, and we share in sympathy with his family the deep feelings they have at this.

Let's go now to this hearing. The title of this hearing is, "Devils Lake Flooding Disaster: A Downstream Perspective" I want to begin by welcoming our distinguished witnesses today. We have two panels. Our first group includes the Acting State Engineer of the Water Commission, Todd Sando; the Chief of Environmental Health for the North Dakota Department of Health, Mr. Glatt, David Glatt; and Valley City Mayor Bob Werkhoven.

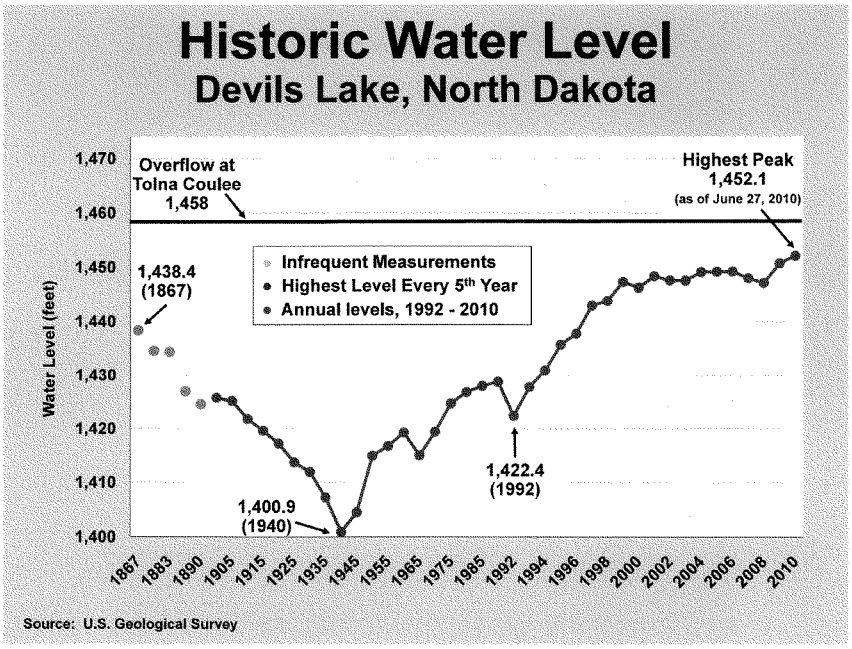
Our second panel will include Lisbon Mayor, Ross Cole; Barnes County Commissioner, Cindy Schwehr; and Secretary for People to Save the Sheyenne, Richard Betting. I look forward to hearing from

each of you on the steps that should be taken to address the flooding crisis in the Devils Lake Basin.

I look forward, as well, to the participation of the Governor if he is able to arrive during the hearing. He was attempting to change his schedule yesterday so that he could be here today, and we're hopeful that he will be able to be in attendance and participate.

I'm going to start with kind of a brief overview of what we are experiencing and what the challenges are that confront this region.

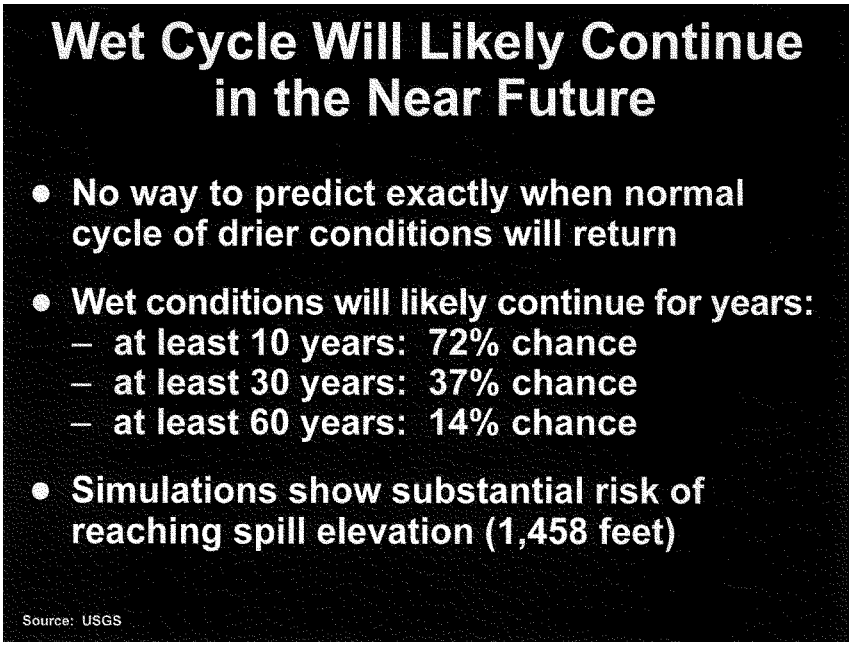
Since 1992, all of us know, that Devils Lake has risen nearly 30 feet. Tens of thousands of acres of productive farmland have been flooded, and hundreds of homes and other structures have been moved. In fact, more than 600 structures have been moved. The transportation network, including roads and the rail lines has been disrupted and the local economy continues to be adversely affected.



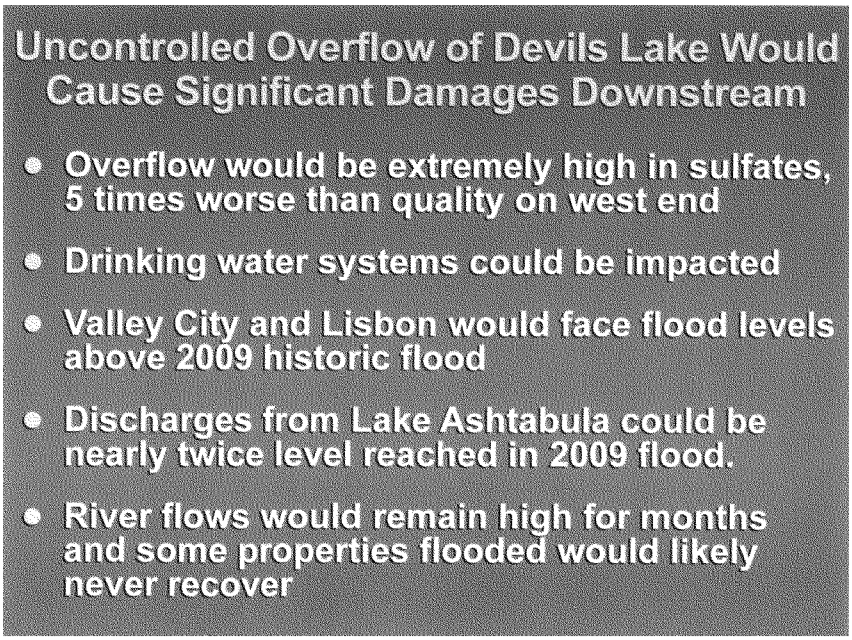
Last year the lake rose more than 3.5 feet. Recent heavy rains have pushed it to a record elevation this year. Devils Lake is now within 6 feet of the natural outflow overflow that would have an uncontrolled release of water into the Sheyenne and beyond. Finding solutions to prevent an uncontrolled outflow is in everyone's best interest. It is particularly important for those who live downstream.

Experts tell us the wet cycle in the basin is likely to continue for years. There's no way to predict exactly when the normal cycle of drier conditions will return. But we have been told that there is a 72 percent chance that the wet cycle will continue for 10 years or more. Let me repeat that—a 72 percent chance that this wet cycle will continue for more than 10 years; a 37 percent chance that it will continue for 30 years, and a 14 percent chance that it will con-

tinue for at least 60 years. No one knows whether these projections are accurate, but it gives us some idea of the threat of a continuing wet cycle.



Simulations show a substantial risk the lake will reach the spill elevation of 1458 feet. Today as we meet, the lake is about 1452, somewhat less than that, but at about 1452 feet. An uncontrolled release of water would cause significant damage downstream. The quality of water released would be extremely high in sulfates, five times worse than if the water had been released out of the west end. This is one of the things that's very hard to kind of get one's mind around, but the quality of the water in that lake is not consistent throughout the lake. The water quality out of the east end is about 10 times worse than the water quality out of the west end. If we had an uncontrolled release of water out of the east end, where the water quality is many times worse, drinking water supplies could be impacted. The cities of Valley City and Lisbon would face river levels exceeding those experienced during the 2009 historic flood. Discharges from Lake Ashtabula could be twice what was experienced during 2009 and some properties could be flooded for an extended period of time, we're talking weeks of very high water, making recovery extremely difficult. Some properties would likely not recover.



When the flooding disaster began, we worked cooperatively on a three-pronged strategy—Upper Basin storage—increasing Upper Basin storage, protecting infrastructure—by raising the dikes, raising roads, and moving water off the lake. We had approved, in the 2000 timeframe, provisions for a Federal outlet that would carry 300 cfs of water out of the lake. That was approved, the initial funding secured, but at the end of the day, State and local units of government decided they could not afford their share, there was a Federal-State cost-share, State and local units would have to provide 35 percent of the money. Thirty-five percent of the cost of the Federal outlet would have been $72 million, and State and local officials told us they could not afford that amount.

As a result, the State constructed an outlet with a capacity of 100 cfs that has now been upgraded to 250 cfs, and that outlet is actually working today.

We have pursued all of the elements of this strategy aggressively—Upper Basin storage, protecting infrastructure and an outlet feature. This chart shows the significant investment the Federal Government has made in mitigation measures in the Devils Lake Basin. In total, we have secured—ah, the Governor is here, welcome. Come join us.

Governor Hoeven. Senator.

The CHAIRMAN. Good to have you here, thanks for coming.

Let me just repeat. In total, we have secured $700 million just in Federal resources to protect the region. To keep the road network intact, over $400 million has been spent since 1995, to raise roads and address the roads acting as dams. As we know, we have roads in the Devils Lake Basin that were never designed as dams but are, in effect, serving as dams today. That is extremely risky,

because they were never designed to act as dams, and under hydrologic pressure they could burst. And because there are people living behind those roads, you could have a loss of life. As a result, we have secured nearly $100 million to deal with those roads acting as dams, to upgrade them to prevent the danger of them breaking.

FEMA has spent $84 million since 1993 in repairing damage to public infrastructure caused by the rising lake, relocating threatened structures, and buying out Church's Ferry. As I indicated earlier, 600 structures have been moved.

The Corps of Engineers has spent $200 million since 1993 on the levy and other protective measures. As you know, we're in the third raise to the levy protecting Devils Lake. If that levy were not in place, and had not been raised, Devils Lake would be under water today.

HUD has provided more than $11 million since 1997 to mitigate damages caused by the disaster. But the lake continues to rise, as I indicated, 3.5 feet last year. It is clear we are now in uncharted territory.

We have always understood that only comprehensive solutions will succeed in the long run. The problems at Devils Lake can not be solved by simply flooding everything downstream. People downstream have a very significant interest in the decisions that are made upstream. In effect, we're all in this together. There is much to be lost in the Devils Lake Basin by a failure to deal with these issues, there is much to be lost downstream by a failure to deal with these issues.

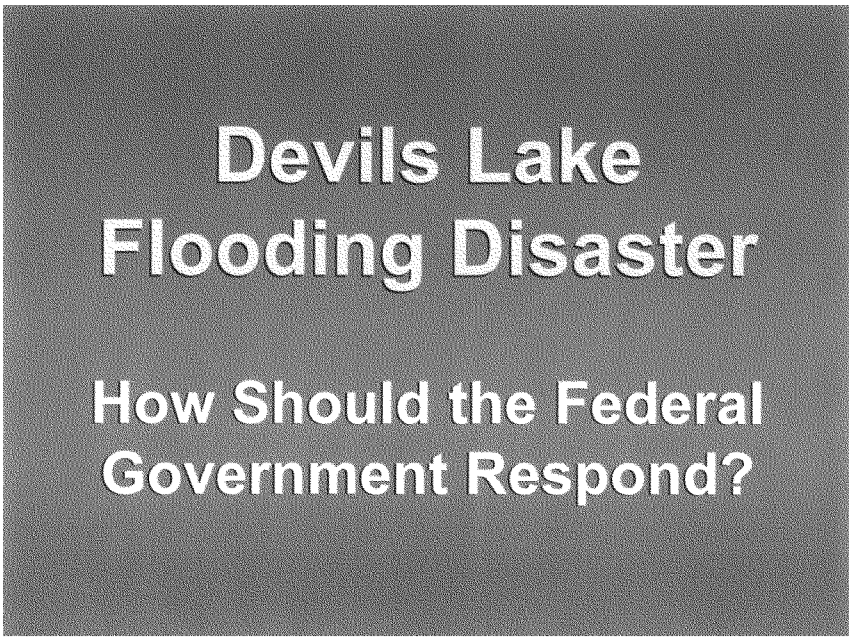
However, this cannot be seen as only a Devils Lake regional problem. It is now far beyond the Devils Lake Basin. This really involves the entire eastern third of the State of North Dakota.

Since the May Flood Summit in Devils Lake, the Administration has convened a working group to evaluate both short-term and long-term options. The working group has representation from all of the relevant Federal agencies including the Army Corps of Engineers, FEMA, the Department of Transportation, USDA, the Bureau of Indian Affairs, the Environmental Protection Agency, the U.S. Geological Survey, and the State Department. The group's recommendations are expected by September 9th. September 9th their full range of options is expected to be provided to us. And they are meeting regularly with people in the affected communities. There's a group coming, as I understand, next week, to do soundings with relevant officials on the whole range of options being considered.

Devils Lake Working Group

- Established June, 2010
- Comprised of representatives from across the Federal government, including:
  - Army Corps of Engineers
  - FEMA
  - DOT
  - USDA
  - BIA
  - EPA
  - USGS
- Evaluating all short-term and long-term options
- Recommendations expected by September

But, the hard reality is, the Federal Government cannot control Mother Nature. The State of North Dakota can't control Mother Nature. So, the critical question is, if the current wet cycle continues, what should be done to prevent the disastrous consequences of an uncontrolled overflow on the east end of Devils Lake? That is, from the perspective of those downstream, what options should the Federal Government be considering to deal with this potential flooding disaster?



I'm particularly interested in hearing from our witnesses on where they think the working group should focus its attention and I intend to share with the working group the results of the hearing here today. And I am delighted that the working group has asked Colonel Price, the new commander of the St. Paul District of the Corps to be here today.

Colonel Price, if you'd stand so everybody could see you? Colonel Price is in the back, put up your hand. Colonel Price is the new man in charge of the St. Paul District. He has been designated by the working group to be here today to carry back the lessons learned as a result of the testimony that we will hear this afternoon. I am delighted that he is here.

I should also indicate that the working group has been headed by now the Corps of Engineers. They have been put in place as the head of the working group to coordinate all of the other Federal agencies.

I also want to indicate how much we appreciate the close cooperation we have had from the State of North Dakota and all of the local units of government—Mayors, County Commissioners, up and down the affected area have all participated in dozens and dozens of meetings.

With that, I want to turn to Congressman Pomeroy who, of course, is a Valley City homeboy, raised and grew up here, and I know has a very deep feeling for Valley City and the people who reside here and in the area.

STATEMENT OF HON. EARL POMEROY, U.S. CONGRESSMAN FROM NORTH DAKOTA

Mr. POMEROY. Thank you, Senator and thank you for bringing this hearing to Valley City. And I am pleased to be a part of it.

Valley City, my hometown. And it's good to be home. Growing up on the Sheyenne River, like I did, had so many events indelibly etched in my mind. Certainly among them, flood fights. And we'd build these dikes and we'd fight like crazy, and after awhile the water would go down and you'd take the dike down, and by the time you finally got everything cleaned up, a few more weeks go by, life back to normal. That's happened just once, my growing up, it happened several times, in fact, the home ultimately the ownership of my sister, the family home, is a FEMA buyout and burned down. It just, under the circumstances, dealing with more water than we ever dealt with for decades in the life of this house, it didn't make sense to have a house there anymore.

Now, in performance of my present responsibilities as the Congressman from North Dakota I've gotten to work very closely with the people of Devils Lake. The fundamental difference between their flooding experience and the ones that I had experienced growing up in Valley City—that flood comes, and it stays. And then it gets a little worse, and it stays. It gets worse beyond what you could ever imagine, and it stays. So, foot by foot of a 28-foot vertical rise in Devils Lake has created the kind of flooding trauma for the people living there that I'd never seen the like of. I certainly had a—I can empathize because of the flooding experiences I had growing up along the Sheyenne, but I've never seen anything like this.

We have, growing up as a North Dakota community, we view ourselves as a North Dakota community. So, I know because my mom's here, my sister's here, I'm in Valley City all of the time, there's been a lot of concern in Valley City about what's going on in Devils Lake and a lot of empathy for the extraordinary property damages taken, the homes moved, the lives disrupted, the economy impacted. But we are now moving to a very different component, a very different place in time in terms of evaluating what's going on in the Devils Lake region. Events have materially changed the risk that the Devils Lake regional flood becomes an eastern North Dakota regional flood with Valley City first down.

In—growing up in this town, growing up across Valley City, anyway, but across North Dakota anywhere, you're raised with the value, you face your problems. You don't wish them away, you don't just pretend you don't have to deal with things, you face your problems.

So, Senator, I think the tremendous public response you've had in the hearings you've held on this topic show this is a North Dakota community facing its problems. We intend to evaluate what are the strategies to best mitigate what would be the catastrophic losses of uncontrolled spillover? There's no getting around it; it's time to face that question, and face it head-on.

The risk has changed. Ten years ago we were talking about the uncontrolled spillover, looks like it's happened a half dozen times over 6,000 years is what geologists tell us. But I will tell you, at that point, it seemed like, certainly within the realm of possibility,

but it seemed somewhat remote. That was many feet of lake rise ago.

We've come up 30, we've got 6 more to go before spillover. Now, that means, again, a material change in the risk of uncontrolled flooding, and that risk has to be addressed.

I've got a brother-in-law that farms one mile south of Ashtabula Dam. And his take on this is, better to proactively deal with the increased water flows than run an unacceptable level of risk that you could end up with uncontrolled water flows. I believe that view is deeply rooted in North Dakota common sense is largely found up and down the Valley as we look at this thing, and our task is now to try and find the strategies that effectively mitigate the risk.

In this regard, I'm very pleased, Senator with the progress on the task force. We had a task force in the nineties and part of it was dealing with the realm of issues we had to deal with, creative ways to use flood insurance to proactively move homes, we moved 500 homes using that strategy. A levy build around the city, we got a levy build really in no time flat when you consider a 9-mile levy, working the way—it would normally be a much longer proposition for the protection we were able to put in place there. Additionally, Rose's Dams—many other facets of this issue were worked through, really, in record time.

But given the present lake levels and the present new dimension of risk to all of eastern North Dakota it was time to reconstitute the task force, even at a higher level. The conference calls that I've been on with the Senators, with Vice President Biden, with the Office of Management and Budget Director Pete Rorsog, and the meeting we had with the senior representatives of the agencies have left me assured that we're not on the track to another study, some kind of progress to some other study. We're trying to get an action plan, we want an action plan by the end of the summer, in terms of a risk mitigation strategy for this problem.

I believe that the record to be established today will be extremely helpful to this committee. I know there will be professional staff, high-level technical professional staff pouring over all of the testimony coming in today.

You said it, Senator, when you—I think it kind of sums it all up, very literally, in light of the increased risk of uncontrolled flooding—this no longer is an upstream issue, it's no longer a downstream issue—we're all in this together, at this point. I absolutely believe, as a son of the Sheyenne, that we can find strategies to work through that will represent, in my opinion, acceptable up and down the river, up into the Devils Lake region—acceptable strategies to deal with this natural phenomenon that has presented numerous challenges, but challenges we can work through.

Thank you.

The CHAIRMAN. Thank you very much Congressman Pomeroy and thank you for all of the time and effort you have dedicated to trying to find solutions to the challenge.

Let me ask, is there any way to get additional chairs on the side? We have about 20 people, here, who I think are still standing. We have one chair that is available up front if one of the women who are standing back there, we invite one of the women to come up and take a chair. And if we could—there are about 20 people still

standing, it would be nice if we could get chairs for them. I think they're going into the next room to do that.

Right down the middle, here, if people could just scoot their chairs this way, and people who are on this side could scoot their chairs that way, we could get a line of chairs right down the middle.

We'll stand in recess for 5 minutes while that's being done.

[Recess.]

The CHAIRMAN. We are also joined today by our Governor, Governor Hoeven. We very much appreciate him rearranging his schedule to be here today and we ask the Governor for any opening observations he might have. And I welcome him to stay during the meeting today if he'll have any final conclusion at the end of the hearing, I'd be glad to recognize him again at that time.

Governor Hoeven?

STATEMENT OF HON. JOHN HOEVEN, GOVERNOR, STATE OF NORTH DAKOTA

GOVERNOR HOEVEN. Thanks, Senator. Good to be with you, and also Congressman Pomeroy, good to be with you.

Homebody, huh? Was that the term?

Mr. POMEROY. Yes, sir. Yes, sir.

[Laughter.]

Governor Hoeven. That's pretty good.

Good to see all of you here. I'm struck by the fact that we have people here both from Valley City and from the Devils Lake area and all parts in between. I think that's a really good thing. I think that's great. Because we're all going to have to work together on this issue and so I hope that promotes some dialog between people from both the Lake Region and down here in the Lower Basin area. And we continue this effort to work together, because that's how we're going to get on top of this challenge.

I contacted Senator Conrad when I heard that he was going to have these hearings both up in Devils Lake and down here in Valley City and asked if I could maybe be part of them, and he was most gracious and said absolutely. And I appreciate that very much. Because this is a partnership. We need to work together at the State level, with Mayor Werkhoven and all of the local officials, with the County Commissioners, they're here, I know Commissioner Schwehr is going to testify, as well, but we need to be working together in partnership, all of the local officials, the local people, both in the Devils Lake region and here in the Sheyenne Valley, as well, it needs to be local, State, and Federal partnership. This has to be a partnership to deal with a challenge like this.

And so that's the approach we're taking. And I'm going to start with this point, and end with this point—we need all of you working together. I mean, we really need you to work together, and that's the way we're going to solve this challenge, and that's how we're going to do the best job for everybody, whether you're in the Lake Region, or whether you're downstream along the Sheyenne.

And so that's what we're working toward, and I think that if we come out of here with more dialog and people talking to each other, communicating and working together on these challenges, then that's certainly a great result.

The approach that we're taking from the State perspective in meeting this challenge is a three-part approach. And I know you've heard me talk about this before, but it's a three-part approach, so we've doing it in partnership, local officials with the Federal officials. But the three-part approach is storing water in the Upper Basin, mitigation—meaning building up roads and dikes in the Lake Region area around Devils Lake, and working to move water out of the lake. All three. All three. And again, I go back to that's why it takes all of us working together, OK?

Now, the lake has gone up as both Senator Conrad and Congressman Pomeroy just mentioned, and you'll hear from Todd Sando, our State Engineer and also Dave Glatt who's our Chief of our Environmental Section for the Health Department. These guys know what they're talking about, they're very common sense oriented, they know the science behind this stuff, and they'll give you more detail.

But, from 1993 to the present, Devils Lake has gone up about 30 feet—30 feet, OK? We're about 6 feet from an uncontrolled flow off the east side, OK? So, that's the situation. Now, let's talk first about the first part of that three-part plan, storing water in the Upper Basin. In 1993, the lack was about 49 million acre feet of storage—is that the right stat, guys? Forty-nine, excuse me, 49 million acres? Thousand. Excuse me, 49,000 acres, not acre feet. Let's go back to acres, 49,000 acres, OK? And the guys will go through the numbers, here, but 49,000 acres of water stored in Devils Lake. It's now 180,000 acres of water stored, OK? So, right there, in terms of storage, you're talking over 100,000 acres of water that's stored in the lake, all right? So, from 49,000 acres covered by the lake to 180,000 acres. That's more than 100,000 acres inundated, and that's water being stored, OK?

Now, in addition to that, if you go up to the Upper Basin, you go north of the lake, you go west of the lake, you'll see a tremendous number of sloughs, potholes, wetland areas, OK? Now, don't just take my word for it, and these guys will go through some of the statistics; go up and take a look. Go up and take a look at the size of the lake, and realize how much water is stored in the lake now, from 49,000 acres to 180,000 acres, OK? And then go up north and west of lake, drive around up toward Akandu area and so forth and look at how many wetlands there are. And you'll realize how many hundreds of thousands of acres of water is being stored in the Upper Basin, OK? That's Upper Basin storage, it's an incredible amount of water.

You know, I fly from Bismarck to Grand Forks and so I see it, and you look down and I think both the Senator and Congressman will tell you the same thing, it's just endless numbers of wetlands, in addition to this incredible expansion of the lake. So, there's a tremendous amount of water being stored in the Upper Basin. So, that's the first part, storing water in the Upper Basin.

Next thing let's talk about for a minute, is mitigation, OK? Building up roads and dikes around Devils Lake area. Now, here again, the numbers will vary, our numbers are about $650 million has been put into building up dikes and levies, and building up roads. Now, I don't think that counts some of the BIA dollars and

some others, so the numbers may be even bigger, depending on what's included and what isn't.

But, so far, we have numbers that show $650 million that have been put into building up roads and building up dikes to protect the city of Devils Lake to protect homes, to make sure that we can continue to travel on roads up there. And highways like 281 have been completely rebuilt and moved, because Old Highway 281 is underwater, it's now under the lake, and there are many, many other roads in that same situation. Right now, the main highways up there are Highway 19, Highway 20, and Highway 57 and we are working on all of them, trying to protect them from the higher levels of water, and we're even working on Highway 2, right now, as well as raising levies to elevation about 1460 to 1465, OK? So, that's $650 million-plus going into the second part, mitigation, building up roads and dikes. So, storing water, building up roads and dikes, and now we come to the third part, moving water out of the lake.

Now, as I said, we're up 30 feet since 1993. Thirty feet since 1993. We've inundated hundreds of thousands of acres of farmland and we're 6 feet from an uncontrolled spill on the east side. So we need to move water out in an orderly and a managed way, instead of having an uncontrolled flood. And that's exactly what we're doing.

We're now running 250 cfs out of the lake, and we are going to continue to need to move water out of the lake to prevent an uncontrolled overflow. And again, these guys will go through some of those statistics. And so that's what we're trying to do in an orderly, in a managed way, where we make sure we're protecting downstream interests here in Valley City and other places, as well as working to mitigate the flooding up in the Lake Region. And that's the approach we're taking, and that's where we really need people to come together, and to work together to make sure that they understand that we're doing this in a way that benefits everybody, rather than, you know, one group, the upstream group versus the downstream. Or the downstream group versus the upstream group.

So, our objective is to make this work for everybody as well as we possibly can. And when it comes to moving water out of the lake—which is part of this, which needs to be part of this solution—it's doing it in a managed, orderly, and controlled way.

That's why, for example, when it comes to sulfates, we've already worked with the community, here, in Valley City to provide between State and Federal, $14 million of the $16 million cost to help upgrade the water treatment facility, including reverse osmosis, which will ensure that the drinking water is actually—not only will it provide more drinking water for your community to grow, but also even improve the quality. And again, to make sure that we manage sulfates or any other aspect of the water, both in terms of water quality and water quantity, again, so that it works for everybody and addresses the problem.

That's the approach we're taking, we welcome the task force, the cooperation of the Corps, the EPA and the other Federal agencies in this process but ultimately, again, it comes back to all of you, the good citizens of North Dakota and finding ways to work together on this common challenge.

And I look forward to the testimony today and I look forward to visiting with you, and I very much look forward to, again, a good, meaningful dialog between people both in the Upper Basin and in the Lower Basin.

Thank you, Senator.

The CHAIRMAN. Thank you, Governor. Thank you, again, for being here.

And I'm going to ask Congressman Pomeroy to introduce the State legislators who are here, the local State legislators who are with us today.

Congressman Pomeroy?

Mr. POMEROY. This is Senator Mary Robinson and Representative Phil Mueller. Is Ralph here? Oh, yeah, Ralph Metcalf also, he was lucky to get a chair.

Would you introduce yourselves, please, you guys?

Mr. POMEROY. Thanks for joining us.

The CHAIRMAN. Very good.

Now, let's go to the first panel, and we'll start with Todd Sando, the Acting State Engineer. And again, I'd like to remind everybody, if you have a cell phone, please turn it off so the hearing is not interrupted.

Welcome, Todd. Please proceed.

STATEMENT OF TODD SANDO, ACTING STATE ENGINEER, STATE WATER COMMISSION

Mr. SANDO. Thank you, Senator. Yesterday I was able to testify in Devils Lake, too and I submitted six pages of testimony, so I'll be submitting the same testimony today and what I'll do is just summarize.

The CHAIRMAN. Could you just speak directly into that.

Mr. SANDO. OK, can you hear me better now?

I'll just try holding it here.

Yesterday, I was able to speak about the wet cycle and the risk and some of the issues, and I'd like to kind of cover that to begin with today when we talk about the outlet and how it's operating and some of the things that we think the Federal Government can do to help the situation.

So, first off, regarding the wet cycle, there has been a lot of work done by the National Weather Service and the USGS and they've been tracking the water patterns and the lake has been continuing to rise ever since the 1930's drought, so its been marching upward.

The big issue is, things really changed in 1993. From 1950 through 1992, the inflows into Devils Lake averaged 33,800-acre feet. So, 33,800. And we got this big summer rain event that took place in the summer of 1993 and it filled up all of the Basin, the watershed and the wetlands in the Basin and we had a lot of inflow into Devils Lake and from that point forward, Devils Lake has been—the Basin has been generating a lot more runoff and it's been due to the increased precipitation and the, you know, the storage being occupied by water across the watershed. In fact, I want to put this map up.

This is a map of the land setting from May 15th of this year, and just to point this out, this is Devils Lake here, here's the chain of lakes to the north and this is—all of the blue is just water within

the watershed, so you can see that a big portion of the watershed is under water and the lake, as the Governor mentioned, is up to 180,000 acres.

Since 1993, the inflows into the lake have really changed, and the amount of runoff coming into the lake now has been averaging these last 16 years 243,700-acre feet. That's more than 200,000-acre feet more than the average for four decades from the 50's, 60's, 70's and 80's. So, the inflow is seven times greater now during this wet cycle than the last 16 years. So, I really want to point that out, that the conditions have really changed, and the climate hasn't been stationary, that's changed, and the inflows have gone up dramatically.

As you heard, the lake's gone up 30 feet since the spring of 1993, and there's only 6 feet to overflow. The storage in the lake, what's remaining is only 1.3 million acre feet of storage is remaining in the lake before we overflow, so there's 1.3 million acre feet. I just want to point out the event that took place in 2009. The inflow event, it was the No. 1 runoff event for the Devils Lake area, and it was 590,000-acre feet of inflow. And that added 3 feet to the lake last year.

To put it in perspective, if we would have back-to-back 2009s, we would be at—basically be at the overflow elevation. So, what I'm trying to point out, the risk is really high. The USGS has being doing some spill castic modeling for us, and they've been trying to figure out—if this wet cycle continues, and there's a lot of scientists out there thinks that this wet cycle could continue for another 10 years before it's to its peak, and then on—as it's on its way down, it's still really wet. And based on spill castic modeling and looking at the period of record, the USGS has estimated that there's a 13 percent chance risk of Devils Lake overflowing over the Tolna coulee to the Sheyenne River. And this could take place within the next 20 years.

There's so many different ways this could play out, it depends on what type of winters we have and the fall rains, but based on these traces, there's a 13 percent chance that the lake could overflow within the next 20 years.

One of the things we've been doing to combat that is trying to get water out of Devils Lake, and we feel it's very important to get as much water out of Devils Lake as we can. And the last 5 years, we've had an outlet in place, the first several years the outlet was designed—it was a temporary emergency outlet that was designed for 100 cfs. And for the first number of years, the releases were rather low because of constraints due to the water quality. In fact, in the summer of 2006 came, that was one of our really hot summers, June was over 100 degrees 11 days, the Sheyenne River basically became really low, and there wasn't much flow in the river, so the outlet didn't even run in 2006.

In 2007 we got some water out, 2008. And then things took place that we tried to get an emergency rule to change the sulfate standard in the Upper Sheyenne River, so we put in an application with the Health Department to try to change that so we could try to get some more water out, because the lake was continuing to rise, and we just weren't getting much water out.

And so last summer, we were able to get an emergency rule to change the standard in the Upper Sheyenne, so it's the Upper Sheyenne, one mile downstream to Baldhill Lamb, and the standard was changed from seven—450 parts per million to 750 parts per million, and it's basically equivalent to mg/liter, too. And at that point, last year in July we were able to start operating the outlet nonstop at 100 cfs, so we were starting to get 200-acre feet a day off, and we started moving a fair amount of water at that point.

At the same time we decided, the Water Commission approved additional design of an outlet, to increase it to 100 cfs outlet to 250 cfs outlet. So, we're looking at trying to increase the capacity of the outlet by two and a half times. So, we got the design done last fall and we actually, we were in construction the entire winter. We had several contractors working all winter long, and you know it's very difficult working in 20-degrees below weather, but the contractors worked all winter long and all spring. They were able to put in new pumps, so we upsized our pumping stations at Round Lake and Josephine and made some modifications.

And we're—as of about 10 days ago, we've completed the construction of the upsizing of the outlet. So, the outlet's starting—not this past Monday, but the Monday before—we increased the discharge from 100 cfs to 250 cfs. So, for the last 11 days or so, we've been running at 250 cfs.

So, as the summer goes along, here, we'll continue to operate. We do have some of the issues are still related to the standards in the Sheyenne River. One of the issues as the water—the water moves down to Lake Ashtabula, I did discuss yesterday the travel time, it takes a couple of weeks for the water to get from the Devils Lake outlet to the head waters of Lake Ashtabula. I also put in the testimony, it takes another 60 days for that water to move through Lake Ashtabula to make it to Valley City, here.

So as the summer goes along, we see more Devils Lake water added to Lake Ashtabula, and we've been—we have monitoring points up and down the Sheyenne River and in Lake Ashtabula, so we're keeping a very close eye on the water quality and how that reacts. And as the water quality does change, if it starts approaching—the way we have it set up right now, as Lake Ashtabula approaches 400 mg/liters sulfate, we'll start cutting back the discharges on Devils Lake to make sure that we stay within the water quality criteria for the Lower Sheyenne River.

So, that's where the outlet's at right now, so we're probably—it's probably going to be running at 250 most of the rest of this summer and fall, and this all depends upon tributary inflow. It, you know, you could operate anywhere from 60 days all the way up to freezeup at 250 cfs, but it's all going to depend on how the tributary inflow that comes in to blend with Devils Lake water.

Some of the other issues—we're very close to keeping up, now, with the average—average inflow of, say if we get 240 to 3,000 acre feet next year, and all the outlets we can pump at a rate of 250 cfs, we could get at least 100,000 a year out. And that is a significant amount of water. As I explained to you, from 1950 to 1992, we only averaged 33,000-acre feet of inflow. We will be able to dis-

charge three times the amount of the inflow that occurred during those four decades. So, it is a significant amount of water.

But, during this wet cycle, now that the average is up to 243,000, we're still, you know, we can't quite keep up with the amount of water coming in, so it's—evaporation can take, on average, 8.5 inches off the lake. The outlet, under operation now at 250, can probably take anywhere from 6 to 8 inches off the lake.

So, we can probably take a foot, 14 inches off the lake. And looking at this average inflow of 243,000, that's—with an 180,000-acre lake, that's, like 16-inch rise, on average, every year. So, we're getting close to keeping up. So, if we had the weather patterns the same from 1993 to 2010, with a 250 cfs outlet, if we could run it all of the time, we'd be really close to keeping up with the lake. We might need another 150 to 100 cfs to keep up.

So, some of the things that we'd like to try to do and have the Federal Government help out is trying to increase the number of days we can operate, and possibly winter operations. Trying to upsize the outlet even larger, so we can get more water out the west end.

The other thing we would like help with is an east end control structure, outlet, maybe we can come up with some game plan that we can blend west end water with east end water and move some more water out that way. So, if we could get some assistance there from the Federal Government to try and help it get through the NIPA and some of the permitting issues, then that would be really beneficial, and funding.

So, you look at, you know, what you're talking about for other things to help—the other big area would be trying to reduce the, you know, relax the standards on the Lower Sheyenne River and the Red River, too, that would be the other thing. So, there's, you know, three key areas, trying to get, you know, additional funds, help with permitting and have the Federal Government take a look at ways to modify the standards downstream from the lower—in the Lower Sheyenne and take a look at the Red River, too.

So, that's the basically the three main areas that, you know, the State Water Commission based on the situation that's in Devils Lake. Those would also be the areas of assistance that we'd be looking for.

Let's go next to the Chief Environmental Health for the North Dakota Department of Health, Dave Glatt.

STATEMENT OF L. DAVID GLATT, CHIEF, ENVIRONMENTAL HEALTH SECTION, NORTH DAKOTA DEPARTMENT OF HEALTH

Mr. GLATT. Good afternoon, Senator and Congressman, first of all thank you for giving me the opportunity to testify today.

As you had indicated, my name is Dave Glatt and I am Chief of the Environmental Health Section for the North Dakota Department of Health. Our Department is responsible for implementation of many State and Federal environmental programs. Through primacy agreements with the U.S. Environmental Protection Agency, we implement major elements of the Clean Water, Clean Air, Safe Drinking Water and Hazardous Waste Acts. I'm here today to address your questions regarding what steps the Federal Government

can take to assist in providing additional flood protection for the Devils Lake region.

I'll address your inquiry from a water quality perspective, but please note that my comments are not meant to be inclusive of all of the issues associated with the Devils Lake flooding.

From a water quality perspective the Department of Health is well-versed in the issues and in cooperation with other local, State and Federal agencies has developed an extensive water quality data base of the Sheyenne and Red Rivers, as well as Devils Lake. This ongoing data collection effort has enabled the Department to, one, anticipate potential downstream water quality changes in cooperation with the Devils Lake outlet, and two, estimate downstream impacts from various other proposed flood control options.

The State's water quality data has proven extremely valuable in the Department's decision to pursue modification of the sulfate water quality standard for the Sheyenne River from the head waters to just below Baldhill Dam. This modification protects the downstream designated uses of the river.

To address the issues relating to areas of Federal participation and cooperation, I propose the following: One, the Health Department has recently completed a triennial review of the water quality standards for the State of North Dakota. This effort seeks to make a permanent change in the sulfate stream standard for a portion of the Sheyenne river, as previously noted. In proposing the change, an extensive record was developed which includes an examination of the Sheyenne River, and Devils Lake water quality trends, evaluation of other State EPA-approved and Canadian water-quality standards and review of technical documents including the Centers for Disease Control report regarding sulfate in drinking water.

In addition to the Department's solicited public input from three public hearings and review from the water—North Dakota Water Pollution Control Board, the North Dakota State Health Council, the North Dakota Attorney General's Office and the Administrative Rules Committee. Our record shows a transparent public process following applicable science and the law. The State has completed its review process and has submitted the rule-change package to the U.S. EPA for their review and potential approval. We ask your assistance in ensuring that EPA expedites it through due process under the timelines established in law.

I say this, Senator, because under the law it says the EPA has 60 to 90 days to approve or disapprove the standards. After talking to EPA, their comment was, "Well, we never get that time limit." I think, because of the issues associated with this, they should get that time limit. And we would be more than willing to provide any assistance in that area.

Two, if additional changes warrant all of these standard, they should be considered to assist with Devils Lake flood relief, they should continue to be based on the best science. Because the Red River is a shared water source, any modifications to the existing standards will require consensus with the State of Minnesota, two EPA regions, Region 8 and Region 5, and EPA headquarters. Additional consideration may also be required in relation to the Bond Waters Treaty, a potential State Department issue involving Can-

ada. I believe that the water quality issues associated with a temporary, moderate change in the Red River sulfate standard can be addressed while still protecting existing, designated uses.

Finally, as a final request, we would ask for expedited review and approval of the most cost-effective flood relief option that acknowledges downstream impacts. This may include finding ways to move better water quality out of the western lake, or other areas in the lake located in the upper portion of the basin, expedited Federal review of these alternatives, as needed.

As you said earlier, there is a very marked change in the water quality as you go from the west portion of the lake to the east, and while we're trying to balance all of the concerns and the needs, I think it's prudent that we take a look at how do we get water out of the west end so that minimizes downstream concerns and impacts. I know that's a concern for people in the Devils Lake Basin, because they're concerned that you're taking the better water quality out of that lake. But if it's truly about flood control, and about getting some relief in the Basin, I think we need to take a look at and try to balance all of the concerns and, from my perspective, getting water out of the west end is the best way to do it.

As noted earlier, the State has generated significant data and gained considerable knowledge of the water quality associated with Devils Lake flooding. From our perspective, there may be further flood relief opportunities that could be explored to balance Devils Lake flooding and downstream concerns. Local, State, and Federal entities should pursue all options in the true spirit of cooperation to ensure the selection of the most balanced remedy.

I will say that the State does have an Outlet Advisory Committee that is staffed by people in—from the Lake Region area, and also from people that live downstream. I think that is a good opportunity to get those people to the table, and really talk about what we can do to find solutions, and what's the best way to operate the outlet.

This concludes my testimony, Senator, and I'd be happy to answer any questions you may have.

[The prepared statement of Mr. Glatt follows:]

Testimony
Senate Budget Committee Field Hearing
July 9, 2010
North Dakota Department of Health

Good afternoon. My name is L. David Glatt, and I am chief of the Environmental Health Section for the North Dakota Department of Health. Our department is responsible for the implementation of many state and federal environmental protection programs. Through primacy agreements with the U.S. Environmental Protection Agency (EPA), we implement major elements of the Clean Water, Clean Air, Safe Drinking Water and Hazardous Waste Acts. I am here today to address your question regarding what steps the federal government can take to assist in providing additional flood protection for the Devils Lake region.

I will address your inquiry from a water quality perspective; please note that my comments are not meant to be inclusive of all of the issues associated with Devils Lake flooding.

From a water quality perspective, the Department of Health is well-versed in the issues and, in cooperation with other local, state and federal agencies, has developed an extensive water quality database for the Sheyenne and Red rivers, as well as Devils Lake. This ongoing data collection effort has enabled the department to (1) anticipate potential downstream water quality changes due to operation of the Devils Lake outlet and (2) estimate downstream impacts from various other proposed flood control options. The state's water quality data has proven extremely valuable in the department's decision to pursue modification of the sulfate water quality standard for the Sheyenne River from its headwaters to just below Baldhill Dam. This modification protects the downstream designated uses of the river.

To address issues relating to areas of federal participation and cooperation, I propose the following:

1. The Department of Health has recently completed a triennial review of the water quality standards for the state of North Dakota. This effort seeks to make a permanent change in the sulfate stream standard for a portion of the Sheyenne River as previously noted. In proposing the change an extensive record was developed which includes an examination of the Sheyenne River and Devils Lake water quality trends;

evaluation of other state EPA approved and Canadian water quality standards and a review of technical documents including the Centers for Disease Control report regarding sulfate in drinking water. In addition the Department solicited public input from 3 public hearings and review from the North Dakota Water Pollution Control Board, North Dakota State Health Council, North Dakota Attorney Generals office, and the Administrative Rules Committee. Our record shows a transparent public process following applicable science and the law. The state has completed its review process and has submitted the rule change package to the U.S. EPA for their review and potential approval. We ask your assistance in ensuring that the EPA expedites its review process under the timelines established in rule and law.

2. If additional changes in water quality standards are to be considered to assist with Devils Lake flood relief, they should continue to be based on the best science. Because the Red River is a shared water source, any modifications to the existing standards will require consensus with the state of Minnesota, two EPA regions (VIII and V) and EPA headquarters. Additional consideration also may be required in relation to the Boundary Waters Treaty, a potential State Department issue involving Canada. I believe that the water quality issues associated with a temporary, moderate change in the Red River sulfate standard can be addressed while protecting existing designated uses.

3. As a final request, we would ask for expedited review and approval of the most cost-effective flood relief option that acknowledges downstream impacts. This may include finding ways to move better quality water out of the west end of the lake or other areas located in the upper portion of the basin. Expedited federal review of these alternatives is needed.

As noted earlier, the state has generated significant data and gained considerable knowledge of the water quality issues associated with Devils Lake flooding. From our perspective, there may be further flood relief opportunities that could be explored to balance Devils Lake flooding and downstream concerns. Local, state and federal entities should pursue all options in a true spirit of cooperation to ensure the selection of the most-balanced remedy.

This concludes my testimony. I am happy to answer any questions that you may have on this subject.

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The CHAIRMAN. All right, thank you very much for being here.

Next we'll go to Valley City Mayor, Bob Werkhoven and then we'll have a chance for questioning of the entire panel.

Welcome, Mayor, it's good to have you here.

STATEMENT OF HON. BOB WERKHOVEN, MAYOR, CITY OF VALLEY CITY

Mr. WERKHOVEN. Good afternoon, Senator Conrad and Congressman Pomeroy and Governor Hoeven. I'm Bob Werkhoven and I'm the Valley City President of the Valley City Commission.

I'm honored to speak today on behalf of the citizens of Valley City and the entire city Commission regarding the Devils Lake, its impact on the city of Valley City and what can be done to protect Valley City and the entire lower Sheyenne River Valley.

In an ideal scenario, those of us in the Sheyenne River Valley would prefer not to have Devils Lake water in the Sheyenne River or have to deal with, as has often been referred to as the Devils Lake's problem. We've heard arguments and theories from many sources on what caused us to be where we are today, and while

many—if not all—of the arguments and theories have some merit, we are beyond the point where we can look backward and talk about what-ifs, and we now must look at the present and to the future.

One cannot go to the Devils Lake area and not be overwhelmed by the enormity of the situation. Unfortunately, the massive increases to the Devils Lake region over the past 17 years prevent us from considering many options and we must now acknowledge that this is no longer a "Devils Lake problem" but is now an eastern North Dakota problem. The only way to solve this problem is for everyone in North Dakota, especially those of us in eastern North Dakota, to work together.

With information from the National Weather Service that our current wet cycle will not end for several more years, it is imperative that a comprehensive solution be devised that no only mitigates the effects of the flooding in the Devils Lake Basin itself, but also protects those downstream on the Sheyenne River from the effects of the increased sulfate levels from Devils Lake and provides mechanisms to protect the downstream citizens from flooding.

The Sheyenne River Valley experienced record flood levels in 2009 as a result of snow melt, none of which was due to Devils Lake issues. So, while we not have additional spring runoff, flood-related problems from Devils Lake water retention should be planned for the Devils Lake Basin.

Valley City is the only city on the Sheyenne River that uses water from Devils Lake from the Sheyenne River as a primary source of drinking water. Through utilization of the river as a surface water source and groundwater from Valley City Aquifer, which is under direct influence of the river. Due to concerns about the impact of additional sulfates in the water, the city of Valley City is in the design phase—and I want to emphasize design phase—of a project to convert our 38-year-old water treatment plant from a lime-softening treatment plant to a reverse osmosis or membrane treatment facility. We are very pleased for the assistance that has been provided through the efforts of Senator Dorgan and the U.S. Congress and also Governor Hoeven to assist with the funding of this plan.

Through the U.S. Congress, we received two State and Tribal assistance grants of $400,000 each for a total of $800,000; $4.6 million of American Recovery and Reinvestment Act funds were received in the form of a $2.6 million forgivable loan, and a $2 million loan repayable over 20 years with a 1-percent interest rate.

Though these efforts of Governor Hoeven and the North Dakota Water Commission has provided a grant of $8.2 million to the project. We are currently working with the North Dakota Department of Health resolving issues relative to the discharge of the wastewater from the treatment process. Construction on the project should begin in late 2010 with a projected completion date of the end of 2011, which is quite a timeframe.

The recent proposed rule change allowing sulfate levels to reach 750 mg/liter in Lake Ashtabula and up to 1/10th of a mile below Baldhill Dam is of concern to us in Valley City. Even though the rule states the sulfate levels will not exceed 150 mg/liter in Valley City, we are concerned that the level could increase. If this were

to occur prior to the completion of our membrane treatment plan, we are concerned about the potential health risk to our elderly population, first, students in Valley City State University who are transitory throughout the year and would have a difficult time adjusting to the increased sulfate levels.

We are encouraged by the commitment of State officials that they will reduce the flow from the emergency outlet on the west end of Devils Lake when the sulfate levels exceed 400 mg/liter in Lake Ashtabula and we're hopeful that commitment will continue.

For catastrophic failure in Stump Lake or a natural overflow through the Tolna coulee, we think a dike-type structure in this area to alleviate flooding downstream in the Basin is critical. Our efforts to make this a reality are of paramount importance. A catastrophic failure through the Tolna coulee would result in water exceeding 1200—12,000 cubic feet per second, which we are advised would bring the water levels in Valley City to 10 feet higher than our historic levels in 2009.

A recent letter to Lieutenant General Robert Van Akron from Governor Hoeven outlines these concerns and we encourage immediate action on this request. Any effort the Senate Budget Committee can bring forth to fund the next protected measure is critical to the protection of the Lower Sheyenne River Valley.

We, in Valley City are appreciative of the combined efforts of the U.S. Congress, State officials and local efforts to help Valley City to respond to the water treatment issues in a manner that will resulting a treatment plant that will meet all present and all future water treatment requirements, while at the same time, minimizing the long-term cost to the local taxpayer.

Providing a comprehensive solution to the flooding concerns more than the Devils Lake Basin and the Sheyenne River Valley must begin immediately with representatives from the Federal and State agencies and local communities working hand-in-hand.

And, Senator Conrad, Congressman Pomeroy, and Governor Hoeven, on behalf of the citizens of Valley City, I thank you again for the opportunity to present testimony.

[The prepared statement of Mr. Werkhoven follows:]

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Testimony of Robert J. Werkhoven
President, Valley City Commission

Senate Budget Committee
July 9, 2010
Valley City, North Dakota

Good afternoon Senator Conrad and members of the Senate Budget Committee. I am Robert J. Werkhoven, President of the Valley City, North Dakota City Commission. I am honored to speak today on behalf of the citizens of Valley City and the entire City Commission regarding Devils Lake, its impact on the City of Valley City and what can be done to protect Valley City and the entire lower Sheyenne River Valley.

In an ideal scenario, those of us in the Sheyenne River Valley would prefer to not have Devils Lake water in the Sheyenne River or have to deal with what has often been referred to as "Devils Lake's Problem". We have heard arguments and theories from many sources on what caused us to be where we are today and while many, if not all, of the arguments and theories have some merit, we are beyond the point where we can look backwards and talk about "what ifs" and we now must look at the present and to the future. One cannot go to the Devils Lake area and not be overwhelmed by the enormity of the situation.

Unfortunately, the massive increases to the Devils Lake basin over the past 17 years – **a rise of 27 feet** - prevent us from considering many options and we must now acknowledge that this is no longer a Devils Lake problem, but is now an eastern North Dakota problem. The only way to solve this problem is for everyone in North Dakota, especially those of us in eastern North Dakota, to work together. With information from the National Weather Service that our current wet cycle will not end for several more years, it is imperative that a comprehensive solution be devised that not only mitigates the effects of the flooding in the Devils Lake basin itself, but also protects those downstream on the Sheyenne River from the effects of the increased sulfate levels from Devils Lake and provides mechanisms to protect the downstream citizens from flooding. The Sheyenne River Valley experienced record flood levels in 2009, as a result of snowmelt, none of which was due to Devils Lake issues. So that we will not have additional spring run-off flood related problems from Devils Lake, water retention should be included in any long range plan for the Devils Lake Basin.

Valley City is the only city on the Sheyenne River that uses water from the Sheyenne as the primary source of drinking water, through utilization of the river as a surface water source and the groundwater from the Valley City Aquifer which is under direct influence of the river. Due to concerns about the impact of additional sulfates in the water, the City of Valley City is in the design phase of a project to convert our 38-year old water treatment plant from a lime softening treatment plant to a reverse osmosis or membrane treatment facility. We are very pleased with the assistance

Robert J. Werkhoven Testimony
Senate Budget Committee
July 9, 2010
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that has been provided through the efforts of Senator Dorgan and the United States Congress and also Governor Hoeven to assist with the funding of this plant. Through the United States Congress, we received two (2) State and Tribal Assistance Grants (STAG) of $400,000 each for a total of $800,000. $4.6 Million of American Recovery and Reinvestment Act (ARRA) Funds were received in the form of a $2.6 Million forgivable loan and a $2.0 Million loan repayable over 20 years at a 1% interest rate and through the efforts of Governor Hoeven, the North Dakota Water Commission is providing a grant in the amount of $9.2 Million for the project. We are currently working with the North Dakota Department of Health on resolving issues relative to the discharge of the waste water from the treatment process. Construction on the project should begin in late 2010 with a projected completion at the end of 2011.

The recent proposed rule change allowing the sulfate level to reach 750 ppm in Lake Ashtabula and up to one-tenth of a mile below the Baldhill Dam is of concern to those of us in Valley City. Even though the rule states that the sulfate levels will not exceed 450 ppm in Valley City, we are concerned that that level could increase. If this were to occur prior to the completion of our membrane treatment plant, we are concerned about the potential health risks to our elderly population, tourists and students at Valley City State University, who are transitory throughout the year and would have a difficult time adjusting to the increased sulfate levels. We are encouraged by the commitment of State Officials that they will reduce the flow from the emergency outlet on the west end of Devils Lake when the sulfate levels exceed 400 ppm in Lake Ashtabula and are hopeful that commitment will continue.

Of more significant concern to those of us in the Lower Sheyenne Valley is the potential for a catastrophic failure at Stump Lake or a natural overflow through the Tolna Coulee. A dike type structure in this area to alleviate flooding downstream of the basin is critical and efforts to make this a reality are of paramount importance. A catastrophic failure through the Tolna Coulee could result in water exceeding 12,000 cfs which, we are advised, would bring the water levels in Valley City to **ten (10) feet higher than our historic crest in 2009**. A recent letter to Lieutenant General Robert Van Antwerp from Governor Hoeven outlines these concerns and we encourage immediate action on this request. Any effort the Senate Budget Committee can bring forth to fund and expedite this protective measure is critical to the protection of the lower Sheyenne River Valley.

We in Valley City are appreciative of the combined efforts of the United States Congress and State Officials in North Dakota to help Valley City respond to the water treatment issues in a manner that will result in a treatment plant that will meet all current and known future water treatment requirements while at the same time minimizing the long-term costs to the local taxpayers. Providing a comprehensive solution to the flooding concerns both in the Devils Lake Basin and the Sheyenne River Valley must begin immediately, with representatives from federal and state agencies and the local communities working hand-in-hand.

Senator Conrad, on behalf of the citizens of Valley City, I thank you again for the opportunity to address the Senate Budget Committee and share our concerns.

The CHAIRMAN. Thank you very much, Mayor. We appreciate, very much, your being here and your testimony.

And let's go to questions of the panel. I'd like to start with Mr. Sando, and to help us understand better, the situation that exists now on the east side of the lake in the Tolna coulee area, the lake is roughly at 1452, just below that level, the uncontrolled release would occur beginning at 1458, is that correct?

Mr. SANDO. In regards to the outlet of the—to the elevation at Tolna coulee, it is 1458. Last year there was a project done, it was at 1459, they did some maintenance work and took the silt out, so the actual overflow elevation, officially, is 1458.

The CHAIRMAN. 1458. One of the concerns that has been raised repeatedly to me by people in the Valley City area and everybody downstream from Devils Lake has been, is there a possibility, is there a danger that because of the hydraulic pressure there might be a blowout of that area in the Tolna coulee below 1458?

Mr. SANDO. To answer that question, the Tolna coulee, the material in the coulee has varied, the soil conditions are—they're weak soils, they're blowing in either by blowing in sediment or water-

borne sediment, so the materials are not very strong. So, there—there could be a potential that the water could come out of the lake before it reaches an elevation of 1458. So, it could blow out at a lower elevation.

We do have observation wells in place, so we've got wells all along the divide in Tolna coulee and we've been monitoring that real closely to see if there's a gradiance setting up, making it looks like water is starting to move from east Devils Lake into Tolna coulee. And right now, the observation wells are showing that it's just the ground water level, so there isn't a gradient right now, so it's just following the level of that.

The CHAIRMAN. So that's the good news.

Mr. SANDO. So that is good news right now.

The CHAIRMAN. And, do we have any sense of, at what level that we could face a blowout at the Tolna coulee? For example, have your scientists done any analysis of where we reach a level of height and risk? Is it 1456? Is it 1457? Do we have any idea based on scientific analysis?

Mr. SANDO. Yeah, we have no scientific analysis that has determined where it could possible start exiting at an early elevation.

Some of the things we've looked at, the outlet for Tolna coulee comes out the southwest corner of east Devils Lake. So, on this map, here, it comes—it works its way out—out of west Devils Lake, I'm sorry, it comes out around this way and it's tucked in this corner over here, so all of the water in Devils Lake is driven from Mauvais coulee and coming in from the west, northwest, and moves this way. So, when the water moves through east bay and east Devils Lake through Jerusalem all the way into the west and east Stump Lake, the water would have to take a big curve and come out this way.

So, in a way, it's tucked in a corner, and it's protected. Because if you get a northwest wind it's right—some of the big problems in Devils Lake is related to wave action and——

The CHAIRMAN. Yeah. That's one of the grave concerns that's been raised to me by people in Devils Lake that—and in Valley City that, what if you have wave action against that area and that erodes the plug that is there now, and could we have catastrophic failure at 1456, or—but what you're telling us is, the way it's located in a corner, it's less exposed to that kind of wave action?

Mr. SANDO. Yes, it's—that's correct. It's less exposed. You have to have more of a east wind or a northeast wind for the setup and the waves to go out toward Tolna coulee, so——

The CHAIRMAN. OK.

Let me go to the next question which is the question of inflows to the lake, because there is, you know, I've received many letters from people in Valley City, suggesting that the answer to this is to have more Upper Basin storage. And I must say, flying over the Upper Basin, it's hard to see how there's much more storage that could be had there. Wetlands that had been previously drained have been pretty well filled by Mother Nature. I mean, you fly over that, which I did, at the time of the summit in May, we flew north for quite some distance, and it is extraordinary what has happened in that area over the last 6 years. That area is chock-a-block filled with water. That's what your review shows, as well.

Mr. SANDO. Yes, that's correct. We've been monitoring the situation in the Basin, in fact, we put up a different map, here. This is the Devils Lake Basin, that's 3800 square miles. And we have this land-sat image—I had it up before—you know, this is just, I just have a layer of showing water. And this is the purplish color, here, that is Devils Lake, the different color purple is Stump Lake and the green is the Chain Lake, so it's Lake Ervin, Mike's Lake, Dry Lake and over here, Sweetwater-Morrison lake, and all of the other blue is just water within the watershed.

Like I was pointing out, most of the water comes in Mauvais coulee, works its way this way. A lot of water mixes from the eastern part through Edmoor coulee and comes in through Sweetwater-Morrison and works its way through Dry Lake and over through Mike's Lake, Chain Lake, through Lake Alice, Lake Ervin.

So, what we're depicting, what we're seeing, and especially dealing with the issues north and east of Devils Lake and over into Nelson County, if you look over here, we've got huge issues with Lake Loretta, issues over in Michigan and Petersburg, just acres after acres under water, it's like mini Devils Lakes up in this portion of the watershed.

So, as you can see here, we do have water covering a big part of the watershed. In fact, I have a land-sat map, too, that depicts what the—I can show you a comparison. OK, this little figure, here is this bigger map right here. The map over here is before the wet cycle started, so this is a land-sat image from 1991. So, it shows—all of this yellow is just land, and there's—none of it's under water. So, now, in comparison, the amount of water in the basin, just in the Upper Basin, if you exclude Devils Lake and the chain of lakes, there's 10 times the amount of water in the watershed now compared to 1991.

The CHAIRMAN. Ten?

Mr. SANDO. Yeah. Ten times. Yep.

The CHAIRMAN. It is very hard to get your mind around—I mean, unless you go up and go in a helicopter and see for yourself, it is staggering, the amount of increased water being stored in that Upper Basin now.

Now, with that said, if we go back to the most recent study by the Corps, full study, 2001, and you look at what they said was wetlands that had been possibly drained up until that point, they came up with 92,000 acres, with a capacity for storage of water of 132,000-acre feet.

Would they, then, recognize, once you fill up that amount of storage, you know, there's no more to be had. I suspect, if we go back to this study, we'd find much of this has already been filled by Mother Nature. But let's just base—based on this study.

They, then, did an analysis based on a 50 percent restoration, and they came up with reduction of inflow into the lake by restoring wetlands of 15,643-acre feet. 15,643-acre feet. That would be the reduction in inflow with the restoration of half of the wetlands that have been previously taken out.

Let me ask you this. Fifteen—if they reduce the inflow by 15,643 feet, your testimony, as I read it, is that the inflows have been averaging 240,000-acre feet, is that correct?

Mr. SANDO. That is correct.

The CHAIRMAN. So, 15,000—a reduction of 15,000 would certainly help, but it doesn't come anywhere close to solving the problem, is that correct?

Mr. SANDO. Right. For every foot of rise it would be, like 180,000-acre feet, so you divide that by 12, that's not much of a reduction off the lake.

The CHAIRMAN. It's not much of a reduction off. That is the hard reality, as I see it.

Let's say the Corps was wrong in their assessment, because some people have said they've underestimated the wetlands that have been drained previously, so they did an update to their study and they doubled the number. That would still leave you with only reducing the inflows by 31,000-acre feet—31,000, and the inflows have been averaging 240,000. So, that would only solve 13 percent of the problem if my math is right, and I think my math is right, is that correct?

Mr. SANDO. That's correct. One of the things you point out, too, that's a first-time filling. The next go-around the next year, some of that storage is used up, it doesn't all evaporate down, so you don't have that available storage the next year.

The CHAIRMAN. So, now, if it was possible to have additional Upper Basin storage, all of the studies that have been done so far by the relevant Federal Government agencies and by your agency, because you have looked at this previously, is that while it would help us, it doesn't come anywhere close to solving the problem, is that correct?

Mr. SANDO. That's correct, yeah.

The CHAIRMAN. All right.

Congressman Pomeroy?

Mr. POMEROY. Mr. Chairman, I just have one question of the panel, and I would start with the—just affirming their suggestion that folks go up to that Upper Basin and drive around—there is water, water, everywhere. I, for one, would absolutely wish that there were vast amounts of potential water storage capacity and landowners interested in participating with the programs we might develop that would elicit a paid response for the purposes of storing more water, I don't see it. I absolutely don't see it.

And I'm not a technician, but I think the information just put into the record affirms the water storage dimension of this is unfortunately limited. The wet cycle has been punishing the region, throughout the Upper Basin. A million acres of prevent plant along the northern tier of North Dakota this summer show you that not just the sloughs are full, the fields are full. So, they had to pay off a lot of crop insurance to folks that couldn't get their crop in.

The question I have, Mr. Dave Glatt, the water quality issue that the Mayor speaks to, building the water treatment plant's going to have an additional capacity and can handle sulfates and other issues in the water, and right now that's in the design phase, 2 years out from coming online, your testimony talked about the ability to use the dam, use the lake in ways that addressed water quality issues south of Ashtabula Dam, I'd like you to speak to that a little bit.

Mr. WERKHOVEN. Thank you, Congressman. What I meant by that is, by knowing how the river reacts and the influence from

Devils Lake and also the natural conditions from the recent weather we had, we feel that there is a way we can operate the outlet and the dam to minimize downstream impacts.

I'm not going to say that the water quality isn't going to shift, but I think you can minimize that shift to where the designated uses such as municipal supply and agricultural uses can be protected and still maintained. So, it's just getting the people who operate the dam, people who operate the outlet knowledgeable of how the system reacts so they can operate it in a manner that minimizes the downstream impacts.

Mr. POMEROY. And as the—as Mr. Sando testified, the permit was granted for emergency change to the level of solids in the river system. And so, at that time you made that decision, the summer of 2009, this was substantially evaluated by the Health Department?

Mr. GLATT. Congressman, yes, we did have an emergency rule change as it related to the sulfate concentration in the upper portion of the Sheyenne. We felt comfortable with that from the amount of water quality and the testing and the studies that have been done on the river. So, we felt that portion—the upper portion from the headwaters down to basically Baldhill Dam, we were still able to protect all of the beneficial uses and designated uses at that point.

Where we ran into a little bit of a roadblock is that because the designated use downstream of Baldhill Dam that, right now, is Valley City is for municipal use, we were not able to make any changes further down, and that's where EPA has to get involved and make a determination whether or not they would allow that to happen.

Mr. POMEROY. OK.

Thank you, Senator.

The CHAIRMAN. I would like to go back to this water quality issue, because this has significant implications for everybody. It's got significant implications for people in the Devils Lake area, it's got significant implications for everyone downstream—not just Valley City, but right on down, Lisbon over to West Fargo, Fargo, right up to Grand Forks. So, all of us have a lot at stake with respect to this water quality issue.

The water quality as I understand it in Devils Lake goes roughly from, on the west side, about 500 parts per million to, on the east side, up to 2500—is that about correct? About 550 to 2500 from west to east. This is a lake that, in a way is like a river in that it has a flow to it. Most lakes, you know, when you say to a person, "This lake has different water quality in one part than another part," it seems odd to people, because most people don't think of a lake having a flow to it. This lake does have a flow to it, from west to east, is that correct, Todd?

Mr. SANDO. Yes, that's correct. In fact, the west end had a water quality last year, 2009, for sulfate levels, averaged between 550 and 600 parts per million or milligrams per liter. As you move across from west to east, main bay, to east bay to east Devils Lake, the salinity levels of TDS and sulfate levels go up. In fact, east Devils Lake the sulfate levels are 1,000 parts per million, and as you said, Stump Lake is 2600.

The CHAIRMAN. And I'm told that at some point in the past, before Stump Lake got freshened by the overflow from Devils Lake that it had as high a levels as 5,000, is that correct?

Mr. SANDO. To my knowledge, I think it was in the tends of thousands, actually. Yes.

The CHAIRMAN. And no fish could live——

Mr. SANDO. Right.

The CHAIRMAN. Do we know at what point we'd face a fish kill? What levels of dissolved solids we'd face a fish kill?

Mr. GLATT. Senator, I don't know the exact number. I mean, there were some fish, you know, fish are surviving now in Stump Lake and you know, but I think significantly, the higher you go with the sulfate concentration, the more stress it puts on the fish, it makes them more susceptible to other type of diseases.

One thing I'd like to point out to you is that as you from the west to the east, it's more than just sulfate. And then you're going to have issues with things such as arsenic, trace metals in the west, but as you go to the east, those concentrations also go up and those remain, and in addition to sulfate they may be of concern, as well.

The CHAIRMAN. OK, so, there are other issues than sulfates as you go west to east. Not a problem in the west, but a growing problem as you move east in the lake.

Here's another thing I got thinking about after yesterday's hearing. If we're taking waters out of the west in order to reduce affects downstream, what is the potential that the sulfates levels in Devils Lake will rise to levels that are unacceptable? In other words, if we're taking the better water out the west side, what is the possibility, over time, that the sulfate levels in Devils Lake will rise to levels that are unacceptable?

Mr. SANDO. I'm trying to figure out what order to talk about that issue.

Right now, during this wet cycle, actually Devils Lake has been freshening every, you know, because of the inflows and we're averaging this 243,000-acre feet of inflow, it keeps getting better, and better, and better. So, as the lake rises, it has been improving but if the lake starts to become stable or starts to decrease in elevation, then the sulfate concentrations and TDS levels will start to rise.

The CHAIRMAN. And do we have anything that would tell us at what levels those sulfate concentrations would become a problem?

Mr. SANDO. Senator, I don't think we have anything such as that. I think it's good to keep in mind that we are looking at taking enough water out to avoid an east end outlet. And so it's not like we're—so, we're not going to be, like, pumping all of the water out of lake. So, that tells me—and I think we can find the science to back this up, is that the amount of water that we would be taking off to avoid the east end outlet wouldn't create a major shift in the water quality in Devils Lake. Not—especially from what they've seen historically in Devils Lake. I don't think we'd be beyond any of those things. So, I think we'd still be within an area where we'd see—we'd see a good fishery and a good recreational system, but getting that flood relief and that concern, take that concern off the east end outlet.

The CHAIRMAN. OK, final question, and that is, when we talk about sulfates, dissolved solids representing a threat to human health, precisely what is that threat?

Mr. GLATT. Well, Senator, we take a look at what other States do allow, and what Canada and also the Centers for Disease Control—they did a study looking at what is the concerns regarding sulfates? And their conclusion, basically, was, there was no relationship between health effects and sulfate concentrations.

That being said, States such as Minnesota said they'd put 400 milligrams per liter of sulfate concentrations for baby formula. Manitoba has a 500 milligrams per liter concentration for drinking water. South Dakota has, I think it's 500—not in, for a 1-day event, not to exceed 850. So, it's kind of—because there isn't a bright line or there doesn't seem to be any relationship between sulfate and health effects, the numbers are higher, and can be seen higher in the river, without adverse health effects.

The CHAIRMAN. You know, when I asked a gentleman for the Corps of Engineers a number of years ago, I asked him this question because he kept saying to me, we're concerned about health effects downstream. And I asked him, "What health effects?" And at some point he said to me, "Well, Kent, the thing is, at some level, people get diarrhea because of elevated sulfate levels." Is that correct?

Mr. GLATT. Senator, from the CDC report, they weren't able to do that. And kind of in an odd way, they had people drink high-sulfate water and they'd sit around and watch them and see how long it took before they ran to the can.

[Laughter.]

Mr. GLATT. A real scientific study, but they got the point across.

I will tell you that in the State of North Dakota we have several—I think we're in the 30 to 40 public water systems that drink significantly higher sulfate concentrations with no health effects. And we have some systems that are above 1,000.

The CHAIRMAN. Can I just tell you that I had recommended Senator Dorgan for that test?

[Laughter.]

Mr. GLATT. I'll take note of that, Senator.

The CHAIRMAN. All right.

Any other questions?

All right, let's go to the next panel, if we can.

Thank you very much to this panel. Appreciate very much your hard work. And if I could ask you, Mr. Glatt, if you could bring together any of the information that you have that would bear on this question of mine with respect—yeah, at what point does the reduction in the freshest water coming in pose a challenge or a problem, I think that's going to be a very important question for us to get answered. That affects everybody—that affects people in Devils Lake, it affects people downstream.

All right, let's go to the next panel, if we can, again, thank you very much.

Let me invite the next panel up, Lisbon Mayor Ross Cole; Barnes County Commissioner Cindy Schwehr; and Secretary for People to Save the Sheyenne, Mr. Richard Betting.

Welcome, all, good to have you here.

As they're coming, let me just provide this other piece of information because one of the questions that's been raised is, what is our evidence that this lake has ever had an uncontrolled released? And the USGS did a 4,000-year study of the Devils Lake Basin. And they concluded that, as I read their information, and it appears to me, at least three times in that 4,000-year history, we've had an overflow to the Sheyenne. I know that others have read this data and concluded that it's only twice that there's been an overflow to the Sheyenne, but as I look at this chart, it appears to me that three times in 4,000 years, Devils Lake has gone through this cycle and had an uncontrolled release to the Sheyenne.

It appears to me that seven times in that 4,000 years, there has been an overflow into Stump Lake. At least seven times, there's been an overflow into Stump Lake, which of course has occurred this time. And if you look at the trajectory that we're on, only four times in that 4,000- year history have we been as high at the lake as we are today. Only four times in 4,000 years have we been as high as we are today, and it appears to me that three of those four times, it has gone over into Sheyenne.

So, I'd just say, to those who have been hoping against hope that this is not going to keep going up, the odds don't look to me like that's a very good bed.

Let's go, next, to Lisbon Mayor Ross Cole, welcome. Obviously, Lisbon has a lot at stake, here, as well. They faced very serious flooding in 2009 and they would face very serious flooding—threat of flooding—if there were an uncontrolled release in the future.

Welcome, Mayor, please proceed.

STATEMENT OF HON. ROSS COLE, MAYOR, CITY OF LISBON

Mr. COLE. Thank you for asking me to testify today, this is an honor for me to be here and I feel that you guys are behind us on this, coming down the stretch. It's definitely a disaster.

As everybody does know in this room that in 2009 we had the worst flooding we've every had in the history of the Sheyenne or the history that they could keep records. And that was a tough one and that was 30 day's worth. Well, they tell me now that if this water comes uncontrolled from Devils Lake, we're looking at an additional, you know, a cfs coming down the river, and how do we prepare for that without the people sitting up here?

We are very much, as a city, we are in favor of a controlled outlet of Devils Lake. We're lucky enough, we get our drinking water out of wells, so the river water itself isn't a real—the quality of the water doesn't bother us quite as much as it does Valley City and some of these other places, West Fargo, that has to use the water out of the river.

But, we are—have to get along well with our neighbors, too, so whatever it needs to do to get to the point, getting a controlled outlet, and then we also are going to need some help with flood protection. As these guys know up here, Lisbon—the river goes right through the center of our city, and I don't know how we can build dikes high enough to save the city, but hopefully we can. And with the help of the Corps of Engineers and other people, we've done it in the past, and I think we can do it in the future.

I—right now we are in the process of doing a dike, or a levy study with the help of the Water Commission and Governor Hoeven, he got us some dollars to do some core sampling, and we appreciate that very much. It's a start. We need some help with some mitigation, as everybody knows in this room, also, that FEMA isn't real nice to deal with when it comes time to build permanent levies. I don't see the reasoning in that, but nobody can seem to tell me what the reasoning in that is, but we're going to need help.

So, that's all I have, I want to thank you for having me come today, and I appreciate it. If there's any questions, I'm happy to try to answer them.

[The prepared statement of Mr. Cole follows:]

The City of Lisbon

423 MAIN STREET • PO BOX 1079
LISBON, NORTH DAKOTA 58054

July 5, 2010

Honorable Senator Conrad
Federal Building
657 2nd Ave N.
Fargo, ND 58102

Honorable Senator Conrad:

The City of Lisbon is very concerned about the Devils Lake Flooding Disaster. This is a very serious situation for the city and other cities and homeowners in and along the Sheyenne River. The possibility of 10,000 CFS being released on a daily basis for a period of up to ninety (90) days would be devastating to the entire area.

In the year 2009, Lisbon saw unprecedented flooding, with the Sheyenne River reaching a record 22.84 feet, which was approximate 9,000 CFS due to overland flooding and upstream flow. Our community, along with many other volunteers too numerous to mention, was able to save our city from possible disaster. In 2010, we were faced with a similar situation. We had to rebuild levees, when forecasts predicted the same river levels as 2009. We were spared many of the problems we faced in 2009 only because the weather was perfect for our flood fight.

The many volunteers, many who lost income to join the flood efforts, came back to aid our city. We feel it is time for permanent solutions to these ongoing events. Our city engineer is compiling a feasibility study in an effort to ensure that permanent levees can be constructed for future flooding. Volunteers are becoming exhausted with the repetitive flood fight. We cannot rely on volunteers year after year.

Currently, seventeen homes are being considered for possible buy outs. We understand the frustrations of these homeowners, some wishing to stay in their homes, some waiting for a buyout. However, this could cause significant impact to the City of Lisbon's tax base. The loss of tax base will affect our city, school, park, library, and fire district for years to come. Furthermore, the loss of homes, could adversely affect our population and economic growth as a whole.

We have been working on improvements to our infrastructure that in the past has been affected by high river levels and/or flood situations. The improvement is necessary, but as you is aware, is very costly.

With the above being stated, the City of Lisbon encourages you to visit Lisbon and requests your immediate aid to deal with the flood situation which could become a great detriment to our community, along with much of southeast North Dakota.

We feel a controlled outlet release is extremely necessary for Devils Lake and the entire Sheyenne River Valley.

Your utmost attention to this mater would be gratefully appreciated.

Yours truly,

L. Ross Cole, Mayor
City of Lisbon

LRC:rae

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The CHAIRMAN. Great.

Next we'll go to the Barnes County Commissioner, Cindy Schwehr, welcome.

STATEMENT OF HON. CYNTHIA SCHWEHR, COMMISSIONER, BARNES COUNTY

Ms. SCHWEHR. Thank you, Senator Conrad, Congressman Pomeroy, Governor Hoeven. and all of the visitors to Valley City and Barnes County, welcome and thank you for being here.

On behalf of the Barnes County Commission we want to thank you for asking us for the County's perspective on the Devils Lake issue. As we've discussed it, as a group, we feel, in our opinion that Devils Lake needs to be stabilized as much as possible through maximizing the west end pumping station or some other type of a structural solution to control the discharge year-round, if need be. Best case scenario, of course, would be if the water were to be filtered before pumping it into the Sheyenne. We feel water from the east end, if at all possible, shouldn't be considered as an option to be pumped into the Sheyenne. Even though millions of dollars have

been pledged and committed to a reverse osmosis water treatment plant Valley City, we yet don't know the possible negative affects that the higher sulfates may have on the life in the river, Lake Ashtabula and all of the livestock that drink from these bodies of water, and the reverse osmosis system—from what we understand—are expensive to operate and we feel the citizens of Valley City will be bearing the expense of that system, possible until the end of time, even if Devils Lake does—is brought under control.

As a group, we feel that finding and knowing the elevations where things must be done is a critical piece of what has to go on here. We have a lot of numbers and a lot of elevations but would ask that the Federal Government pinpoint exactly where are things going to start to happen.

And as this is all happening, there's no doubt in our minds that planning, concurrent planning needs to take place in the armoring of the Tolna coulee to prevent any natural release, needs to be done as soon as possible.

From some of the information I've heard and obtained, it appears that through the releases into the river and the natural evaporation, it seems as if that won't even quite stabilize or equalize the situation, and that's not taking into consideration the natural moisture we may get through summer rains or winter snow.

A serious concern for the County is, with the increased flows into the Sheyenne no matter what level they are, right now we are seeing very serious bank erosion, and those additional flows, possibly year-round, could be a serious, serious issue for the County. We have many rural homes in Barnes County and farms that have been here for generations that are in danger now, and the additional water moving will expedite the erosion, and we do fear that it would cause near-disaster situations in the county. As a County, we have moved one road in the last couple of years in the Valley, because the river was taking the bank and was going to take the road right with it.

Upper Basin retention, as I've listened today, it doesn't sound like there's a lot of room, but I think it has to continue to be studied. And as a Federal or local government, we can't reasonably expect any landowner to bear the expense of retaining water that they legally drain without being compensated to do so. And we all know taking of private property for public use is an uncomfortable process, and hopefully one that we don't have to look at.

At the beginning of this year, the Barnes County Commission asked the State Health—the North Dakota State Health Department for a comprehensive study as to what's—the effects of the sulfates and everything that comes down the river with that water. And I don't know yet if that's been completed, the actual request for it was for an out-of-State, non-partial firm.

I guess we ask that as you—as we—work to solve the problems of the Devils Lake Basin that we continually keep in mind the potential problems this is going to create for the downstream communities, and I believe that you are. You're here today, that means you're—you are concerned about what's happening downstream.

A common thread between everyone, we all know, would be a Godsend and right now I don't think it's happened, but I think together we can find a common thread and word as a region to solve

the Devils Lake issue, because as you said, it is an eastern North Dakota issue, it's not just a Devils Lake issue any further.

Again, thank you for allowing us to be here, and welcome.

[The prepared statement of Ms. Schwehr follows:]

On behalf of the Barnes County Commission we want to thank you for asking us for the counties perspective on the Devils lake issue.
In our opinion Devils Lake needs to be stabilized as much as possible through maximizing the west end pumping station or some other type of a structural solution to control the discharge year around if need be. Best case scenario would be if they would filter the water before pumping it into the Sheyenne River. We feel water from the east end should not even be considered. Even though millions of dollars have been committed to a reverse osmosis water treatment facility for VC, we do not know the possible negative affects the higher sulfates will have on the life in the river, Lake Ashtabula and all of the livestock that drink from these bodies of water and reverse osmosis systems are expensive to operate and the citizens of VC will have to bear that expense until the end of time, even after DL gets under control.

We do feel that finding and knowing the elevation where things must be done is a critical piece of the puzzle and needs to be obtained. It seems we have a lot of numbers and elevations but I would ask that the federal government try and pin point this information for all of us.

Concurrent planning also needs to take place with the armoring of the Tolna Coulee to prevent a natural and uncontrolled release.

From some of the information I have obtained if 600 cfs were to be released it would take of 1.2 ft. That with evaporation of 2.5 ft per year we will take of only 3.7 ft in a year's time which is just a little over the amount of water being drained in a year's time so we would only be equalizing with this scenario. With the increase flow into the Sheyenne River also comes a serious issue with river bank erosion. Right now we have many places in Barnes County that the river bank is becoming dangerously close to homes and farm stead's that have been in the valley for generations. Pasture and farm land is being lost each year. Additional water moving will expedite that erosion we fear and could cause a near disastrous situation for the county.

Upper basin retention does continue to need to be studied. However, I do not think federal or local government can reasonably expect private landowners to bear the expense of retaining water that was legally drained without being compensated for doing so. Taking of private property for public use is an uncomfortable process but may be one that needs to be looked at.

The Barnes County Commission requested State Health conduct a comprehensive study earlier this year. To the best of my knowledge this has not been done. We feel this needs to be done by and out of state non-partial firm.

As we work to try and solve the problems in the Devils Lake basin we ask that you keep the potential problems that this creates for down stream communities in the fore front of all decision made.

A common thread between everyone one would be a God send but I do not see this happening. That is why things are not getting done. We need to come together and find that common thread.

Cindy Schwehr, Chair
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The CHAIRMAN. Thank you very much for your testimony.

And now we'll hear from Mr. Richard Betting, Secretary for People to Save the Sheyenne.

Welcome, and please proceed with your testimony.

STATEMENT OF RICHARD BETTING, SECRETARY, PEOPLE TO SAVE THE SHEYENNE

Mr. BETTING. Thank you. Thank you for the opportunity to speak on behalf of the downstream Sheyenne River landowners, water users and of all those who are concerned with—and affected by—the methods that will be chosen to deal with high water on Devils Lake.

There are a number of aspects of this issue that I'd like to talk about, and I have handed in some data and so I'm going to skip around and try to cover as many as I can in a short period of time.

The three-legged stool has been mentioned, and water retention is what we would like to advocate, primarily. We define water storage as a restoration of wetlands, not water already in the lake, and so we think that the drained acres in the Upper Basin, which are extensive, in some cases would be—could be used for water storage so that the water would be prevented from ever getting to the lake in the first place. Now, I'll come back to that one in a second.

One, I want to start with, here's the subject how to deal with water and do it in the best possible way and hurt the fewest number of people. It seems to me that one has to wonder why Federal agencies were asked to come up with an answer to the water problem on Devils Lake when the best engineers in North Dakota, as well as the U.S Army Corps of Engineers and others, could not pro-

vide one. Could it be because some people are looking for a political solution to an environmental problem?

The "solution" water managers and politicians seem to be seeking is divine intervention, or at least an "executive exemption" from EPA, Corps, State and Federal rules. With some kind of administrative approval, someone could put as much water as they wanted into the Sheyenne River through both east end and west end Outlets.

The irony is that they want to destroy the Sheyenne River in order to save it, and they want us to agree to its destruction. And afterwards no one would be responsible for the destructive downstream ecological impacts that resulted.

Can outlets solve the problem? We don't think so. Last year 587,000-acre feet came into the lake. If the outlet pumps at 250 cfs. It will take 7 years to remove that. Evaporation will take off thirty inches a year, that helps. A little over thirty. I believe Mr. Sando used the No. 8, that's another difference in definition. He was talking about net evaporation. Evaporation always takes off thirty or so inches. Net means subtract precipitation, and then you get eight inches net, because precipitation from 1993 to 1999 in the Upper Basin of Devils Lake averaged about 21 inches, about four more than it had prior to 1989. But evaporation takes water off every year, year after year.

We think, before I get into restoring drain, wetlands—another issue is that, is there a crisis? If you look at the last chart of the Devils Lake Heights—I don't have enough to hand all of these out to everybody, but I handed out some, you will see that in 2004 the lake rose to 1449, for the first time, 1449 feet, 2004. This year it's 1452. In effect, it went up three feet in 6 years. It was at 1448 in 2001. In other words, it went up four feet in 9 years. It was at 1447.5 in 1999. In other words, it went up 4.5 feet in 11 years.

So, be careful with numbers. If you make the jump from where it used to be in 1993 all at once, it sounds like a lot more than looking at it just in the last few years.

Where do we think that came from? We think that as many as 358,000 acres have been drained in the past 50 years. That means that many of those drained acres, when they got precipitation on them, the water flows and collects in the coulees, as someone had the map up earlier, the coulees all across the Upper Basin of Devils Lake from Edmore Coulees, over the Starkweather Coulee, the Mauvais Coulee to the west, in the spring flow higher than the Sheyenne. Last year, inflows from the Upper Basin totaled 587,000 acre feet, and the coulees flowed at two to three thousand acres—acre feet—or cubic feet per second, while the Sheyenne, at the same time, was flowing less than that. So, they flow like rivers.

Once they get to the basin, there's nothing that you can do with them. People talk about managing water in the basin, once it's in the basin, it can't be managed. All you can hope for is evaporation.

So, it seems to us that the only practical, long-term method of dealing with the rise Devils Lake is to prevent water from drained wetlands from reaching the lake in the first place. Once in the lake, water management is no longer possible. People in the Devils Lake Basin say that their water is everybody's problem, now. If

that's the case, we insist on using restoration of drained wetlands as the next approach.

One of the reasons we object to West Bay water is, as has been mentioned, the water quality is very poor. That's one of the reasons the outlets have not been able to operate, and did—they only began operating a year ago, in fact, in July, when they raised the standard from 450 milligrams per liter to 750 milligrams per liter of sulfate. Along with the other contaminants in West Bay are also bad, including total dissolved solids, calcium, magnesium, sodium, arsenic, phosphorous fluoride, and so on, which add to. One of the panelists was talking about, well, what will that do to the ecology of the river? We don't think that all of the 53 species of fish in the river will be able to reproduce. Live? Maybe. But reproduce hasn't been demonstrated. We don't think that the eight or nine species of mussels in the river will be able to reproduce, because the fluoride is so high. Are there mussels in Devils Lake? So, the damage to the Sheyenne is, and could be, extensive.

The U.S. Fish Hatchery is just north of town—I'll find the right page. Concerning the U.S. Fish Hatchery north of Valley City, the U.S. Fish and Wildlife Service went on to say, "The hatchery's water source from the Sheyenne River will likely be unusable, therefore the hatchery would need to obtain a source of fresh water in order to operate." Furthermore, it's unlikely that the hatchery will be able to maintain its ability to provide fish to the State of North Dakota.

Mr. Glatt said the beneficial uses of the Sheyenne River will be maintained. In 1999, when Devils Lake was going to breach Tolna coulee and put it in the Sheyenne River, they asked the Health Department to tell them what the effects would be. At that time, Francis Schwindt was the water quality and he said the project of digging the ditch through the Tolna coulee would be extremely complex from a water quality perspective, the water quality parameters that are of concern would be total dissolved solids, sulfates, chlorides, copper, lead, arsenic, selenium, boron, ammonia and nutrients, and that he ended up saying, "The designated beneficial uses of the Sheyenne River would not be maintained; these include municipal water supplies, aquatic life, irrigation, industrial water supplies and recreational."

And so we would think that in order to decide what to do next, a thorough and scientific study of the number of, acres of, drained wetlands in the Upper Basin ought to be determined, first of all, probably using lieder. No one has done this yet, we don't have those numbers. How much water comes into the lake, how much could be retained by restoration of Upper Basin drained wetlands and how much that would effect the lake's total height. And so, until those things have been done, we'd prefer not to see water coming out of Tolna coulee and the east end outlet, and no more out of West Bay.

Thank you.

[The prepared statement of Mr. Betting follows:]

THE SHEYENNE RIVER SACRIFICED for POLITICAL EXPEDIENCY?

Date: July 9, 2010

For: THE U.S. SENATE BUDGET COMMITTEE
SENATOR KENT CONRAD, CHAIRMAN
Valley City, North Dakota, Hearing

From: Richard Betting, Secretary
People to Save the Sheyenne
11630 39 St SE
Valley City, ND 58072

I am speaking on behalf of downstream Sheyenne River landowners, water users and all those who are concerned with--and affected by--methods used to deal with high water on Devils Lake.

THE THREE-LEGGED STOOL

Not many people refer to the THREE-LEGGED STOOL when talking about rising water on Devils Lake any more. For those who may have forgotten, the first leg was infrastructure protection, the second, an Outlet into the Sheyenne River, and the third was Upper Basin Water Management--or storage. Justification for an Outlet was that all three legs of the stool would be used. Almost a billion dollars has been spent on moving houses and buildings, many before they were flooded--a special privilege from FEMA--rebuilding roads and dikes and so on. Over forty million was spent on the ND SWC Devils Lake Emergency Outlet. By comparison, almost nothing has been spent to restore drained wetlands in the Upper Basin.

"Solving the Devils Lake Dilemma," an article in the May1998 **North Dakota Water**, states, "In 1995, the Available Storage and Acreage Program (ASAP) was initiated by the State Water Commission (SWC) with **the goal of storing 75,000 acre feet of water in the Upper Basin**, which at the time would have taken nearly a foot off of Devils Lake. Presently, 167 sights [sic] store 22,000 acre feet through this voluntary program. SWC approved an additional $1.5 million for 1998 storage." (p. 27)

In fact, most of the news about Devils Lake in the past two years has been that the lake will soon overflow and a fourteen-foot wall of water will wash down the Tolna Coulee. Senator Conrad even convened a meeting in Devils Lake on May 3 to enlist the help of ten federal agencies (everyone but the Environmental Protection Agency) asking them for a solution to the problem of water on the lake. At the end of the meeting Senator Conrad gave an impassioned shout-out in favor of an East End Outlet to lower water on the lake. Then Joe Belford, Downstream Devils Lake Emergency Acceptance Coordinator, had the audacity to demand a solution from the same group and gave them thirty days to make a decision. That deadline came and went.

One has to wonder why federal agencies were asked to come up with an answer to the water problem on Devils Lake when the best engineers in North Dakota, as well as the U.S Army Corps of Engineers and others, could not provide one. Could it be because some people are looking for a political solution to an environmental problem?

The "solution" water managers and politicians seem to be seeking is divine intervention, or at least an "executive exemption" from EPA and Corps and State and Federal rules or standards. With administrative approval, someone could put as much

degraded Devils Lake water as they wanted into the Sheyenne River through both East End and West End Outlets.

The irony is that they want to destroy the Sheyenne River in order to save it, and they want us to agree to its destruction. And afterwards no one would be responsible for the destructive downstream ecological impacts that resulted.

CAN OUTLETS SOLVE THE PROBLEM?

Most people who understand the details of the issue of high water on Devils Lake believe that trying to remove water from the lake as fast as it comes in is a losing proposition. Yesterday (July 8, 2010) the inflows into the lake were about 600 cubic feet per second. The Outlet was pumping at 250 cfs. At that rate, it would take the Devils Lake Outlet six years to remove last year's inflows. Evaporation will remove about thirty inches from Devils Lake each year, six inches or so in July. More than the outlet will remove all year.

In fact, the more Devils Lake rises, the less good an outlet will do. Should the lake reach 240,000 acres in size, for example, an outlet would remove only three or four inches per year. At the same time, the larger the lake, the more evaporation. From a lake at 240,000 acres in size, evaporation will remove 600,000 acre feet each year.

More outlets won't solve the water problem on Devils Lake. They will only add to downstream Sheyenne River problems.

Misleading the Public

The State Water Commission has known all along that outlets would not work. Unable to pump much water into the Sheyenne River because of water quality issues, those in charge misled all North Dakotans (but especially those around Devils Lake) into believing that outlets would remove more water from Devils Lake than reality would ever allow.

RESTORING DRAINED WETLANDS

Therefore, the only practical, long-term method of dealing with a rising Devils Lake is to prevent water from drained wetlands from reaching the lake in the first place. Once in the lake, water management is no longer possible. People in the Devils Lake Basin say that their water is everybody's problem. If that's the case, we insist on using restoration of drained wetlands as the next approach.

Since nothing else has worked so far, why not try preventing water from reaching Devils Lake in the first place?

Many North Dakotans sent their comments on this issue to the State Water Commission and to Senator Byron Dorgan and his Senate Appropriations Energy and Water Development Subcommittee after the Senator's hearing in Fargo February 19, 2010. Most of what was submitted then could serve a similar purpose today.

In an aggressive attempt to dismiss further discussion by Concerned Citizens about why Devils Lake continues to rise, State Engineer Dale Frink, in a March 30 letter, told them, in effect, to butt out.

Although he did not testify at Senator Dorgan's hearing, Mr. Frink apparently decided to give the committee his version of the Devils Lake story before they came to any conclusions based on the evidence presented to them.

The four issues Mr. Frink outlined in his letter to Concerned Citizens were (1) "the causes of Devils Lake flooding, and effects of drainage"; (2) an "analysis of the Devils Lake outlet impacts on the Sheyenne River"; (3) the "effectiveness of the outlet"; and (4) "the potential for armoring the Tolna Coulee."

WHERE DOES THE WATER COME FROM?

People who live and work along the Sheyenne believe that the way the entire Devils Lake water problem will be handled depends on how the first of these questions is answered: **What causes Devils Lake to rise?**

A few people go so far as to claim that water from drained wetlands "Would have gotten there (into Devils Lake) anyway." Nonsense. Water doesn't drain from a tub until someone pulls the plug. That's what they want to do to Devils Lake now, pull the plug, before the tub is full.

One of the reasons Devils Lake is filling is that precipitation has increased slightly over the past sixty years. Prior to 1989 precipitation in the Devils Lake Basin area averaged 16.98 inches per year, and from 1989 through 2009 precipitation averaged 20.55. From 1992 through 1999 it averaged slightly more than 21.1 inches per year. (West Consultants Study 2001)

Mr. Frink cites the 2001 study done for the US Army Corps of Engineers by WEST Consultants of San Diego, California. According to Mr. Frink, the WEST Study concludes that "less than a 2-inch reduction in water levels" on Devils Lake if all of the available storage were used.

Unfortunately, Mr. Frink failed to tell Concerned Citizens--or Senator Dorgan--the rest of the story. Citing the WEST Study as if it were complete was deliberately misleading.

In fact, the WEST study is deeply flawed. The WEST study used National Wetlands Inventory (NWI) data which were incomplete at the time, and the data "do not include depressions that were completely drained prior to 1979.... [and] are not incorporated into the data set." (page i)

Did the WEST Consultants Report mislead? No, WEST knew its study was incomplete and based on faulty evidence. They said so.

WEST Consultants explicitly stated: "Since the results of this study indicate that depression restoration can reduce the volume of runoff entering Devils Lake, **further studies should be conducted** to more accurately quantify the runoff reduction resulting from depression restoration." (vii)

DRAINED WETLANDS

As wetlands were drained, the water they held flowed into gullies and coulees on their way to the lake below. Wetlands became faucets helping to fill the larger Devils Lake tub. Individually, drained wetlands became small faucets, and when combined by the thousands, their flow became small rivers, churning from the upper basin to the lower through the Edmore Coulees, Starkweather, Mauvais, Little Coulee and others. Late spring and summer flows through these coulees can be measured in the thousands of cubic feet per second.

A study done for the North Dakota legislature--the **1976 Devils Lake Basin Advisory Committee Report**--showed that 569,000 acres of wetlands existed in the basin at statehood. A 1983 US Fish and Wildlife-SWC study--**Wetland Storage Capacity of Natural Depressions in the Devils Lake Basin of North Dakota**-- arrived at a total of about 400,000 acres. And in January1999 the US Fish and Wildlife Service (W. Pearson email "Rationale") estimated that about 400,000 acres of sloughs (wetlands) existed originally.

ORIGINAL WETLAND ACRES IN THE UPPER BASIN OF DEVILS

DEVILS LAKE BASIN ADVISORY COMMITTEE (1976)	569,000 acres
LUDDEN, FRINK and JOHNSON (1983)	412,000 acres

U.S. FISH and WILDLIFE SERVICE (1999) 400,000 acres

REMAINING (NOT DRAINED) WETLAND ACRES IN THE UPPER BASIN

U.S. FISH and WILDLIFE SERVICE & ND STATE ENGINEER (January 1997) 211,000 acres

THEREFORE, TOTAL DRAINED WETLAND ACRES IN THE UPPER BASIN

SUBTRACT REMAINING ACRES FROM ORIGINAL WETLAND ACRES & THE RANGE OF ESTIMATES IS **from 189,000 to 358,000 acres in the upper basin that have been drained**

The West Consultants Report Devils Lake Upper Basin Storage Evaluation (April 2001) estimates the "possibly drained" acres at 92,429 with a volume of 132,729 acre-feet. The West Report estimated **total wetlands at 115,668, with 52,210** as " possibly drained."

INFLOWS INTO DEVILS LAKE FROM UPPER BASIN

WHATEVER the total number of drained acres, from 189,000 to 358,000 acres that once were wetlands, now they no longer hold water. Of the precipitation that falls on those acres, what does not evaporate or sink in, runs off. The results can be seen in the amount of inflows from the upper basin into Devils Lake each year.

1979 inflow into Devils Lake	248,000 ac/ft
1987 inflow into Devils Lake	174,000 ac/ft
1988 inflow into Devils Lake	19,700 ac/ft
1993-1999 average annual inflows into Devils Lake	317,000 ac/ft
1997 previous record inflow	522,000 ac/ft
2009 (record) inflow into Devils Lake	587,000 ac/ft

The maximum water level rise on Devils Lake in a 30-day period was 3.82 feet in 1979. [For this and inflow data see Wiche, Hoetzer and Rankl, "Hydrology of the Devils Lake Basin," NDSWC, 1986; and Wiche and Pusc, "Hydrology of the Devils Lake Area," NDSWC, 1994]

[Another obvious question here is what is the correlation between inflows into Devils Lake and its rise over the years.]

FIND THE ANSWER

In order to begin to make decisions on how to handle the inflows into Devils Lake, a complete and accurate scientific study of the effects of upper basin drainage on the runoff into Devils Lake is absolutely necessary. THE U.S. Fish and Wildlife Service should be given the task of conducting an independent, comprehensive review of Upper Basin Drained Wetlands to determine the amount of drainage and its contribution to the rise of Devils Lake. That information would help lead to a scientifically-based decision on how to deal with the problem.

USE LIDAR

A new technology, known as LIDAR (Light Imaging Data And Radar) might be used.

The process results in topographic elevation mapping within a two-foot elevation contour, with people on the ground checking photo accuracy. This process could determine--for the first time--just how many wetlands in the upper basin of Devils Lake have been drained, how many acre-feet of water they once held, and how much of that water reaches Devils Lake.

The answers to those questions will help reveal to North Dakotans how much of water on Devils Lake is on the lake as a result of drainage. Unless that is done, all of the methods of managing higher water on Devils Lake will deal with results of too much water on the lake, not how and why it got there.

A CRISIS, AN EMERGENCY

To say that this is a crisis and that we don't have time for studies is false.

Devils Lake began its rise in 1993, they say, when this "wet cycle" began. Actually, it could have begun in 1983, when the lake rose six feet in three years and then fell again as far. **In fact, Devils Lake has risen only four feet in the last seven years, going from 1448 feet above msl in 2004 to 1452 feet msl in 2010. Thus the label "emergency" cannot be fairly used in the Devils Lake situation.**

WHEN DID THIS ASSAULT ON THE SHEYENNE RIVER BEGIN?

In response to a request from the City of Devils Lake, July 7, 2009, and the SWC on July 13, on July 15, the North Dakota Department of Health allowed an increase of sulfate in the river through the Devils Lake Outlet from 450 mgL to 750 mgL with no hearings, without adequate study on downstream effects, and without notification of water users, such as Valley City and the Federal Fish Hatchery north of Valley City.

From the ND Department of Health: "The rule changes the maximum limit of sulfate in a segment of the Sheyenne River that runs from its headquarters to 0.1 mile downstream from Baldhill Dam, including Lake Ashtabula, from 450 mg/L to 750 mg/L."

On June 9, 2010, the SWC notified North Dakotans that that permit change was made permanent. As a result, the SWC will pump West Bay water at 250 cfs into the Sheyenne River until the sulfate level in Lake Ashtabula reaches 450 mg/L, its statutory limit.

The North Dakota Water Commission West Bay Outlet has not prevented the lake from rising, nor will the Outlet prevent an overflow. An Outlet cannot keep up with inflows. Even increasing outlet pumping from 100 cubic feet per second (cfs) to 250 cfs will only remove five or six inches annually from the lake. USGS statisticians estimate that there is about a 10% chance of the lake overflowing within ten years. A 90% chance that it won't.

In the unlikely event that Devils Lake fills and overflows--at whatever level--all of the water entering the lake from the Upper Basin will then flow immediately into the Sheyenne River uncontrolled.

For example, if the Tolna Coulee were ditched to 1455 feet above mean sea level (msl)--three feet lower than its present level--and Devils Lake reached that height, all of the water entering the lake from the Upper Basin would flow through the Coulee and into the river uncontrolled. A control structure that could hold all of the annual inflows from 2009 would have to be larger than Baldhill Dam.

SHEYENNE RIVER WATER BETTER THAN DEVILS LAKE

Water quality in the Sheyenne River is much better than in Devils Lake. That is why Devils Lake water must "blended" with river water. Sulfate levels in West Bay are about 600-700 mg/L while the sulfate level in the Sheyenne is usually about 200-250 mg/L below Baldhill Dam.

As Outlet pumping continues, West Bay water will replace Sheyenne River water. When the outlet pumps at 250 cfs, Devils Lake water will overwhelm the river, which flows at less than 25 cfs typically during late summer and fall.

Ten times as much Devils Lake water as normal Sheyenne River water will turn the river into a West Bay ditch.

Filled with Devils Lake water, Lake Ashtabula will become a sink, trapping nutrients and other contaminants, which are much higher in Devils Lake water than in the Sheyenne River. **[Readings below from USGS site: nd.water.usgs.gov.devilslake/science/hydrology.]**

	SHEYENNE RIVER	WEST BAY	STUMP LAKE
sulfate	200-300 mg/L	600-700 mg/	2870 mg/L
total dissolved solids	600-700 mg/L	1200-2000 mg/L	10,000 mg/L
calcium	50-60 mg/L	60-75 "	?
magnesium	30-35 "	80-85 "	?
sodium	75-85 "	150-250 "	?
arsenic	4-5 mic/L	12-15 mic/L	20-30 mic/L
phosphorous	175-250 mg/L	400 mg/L	900 mg/L ?
chloride	10-20 "	125-150 "	515 mg/L
hardness	250-300 "	400-550 "	?

mercury, strontium, cadmium, aluminum and others?

North Dakota antidegradation rules state: "Proposed activities that would lower the ambient quality in a water body of any parameter by more than 15 percent... or increase permitted pollutant loadings to a water body by more than 15 percent will be deemed to have significant effects." [Appendix IV]

From the 2008 "Statement of Basis" from the North Dakota Health Department: "North Dakota's water quality standard for sulfate is 450 mg/L in the Sheyenne River." (p. 2)

The Citizens of Devils Lake do not drink Devils Lake water.

THE SHEYENNE RIVER FISHERY AND ECOSYSTEM

After rising in Sheridan County, The Sheyenne River meanders for 581 miles through eastern North Dakota before joining the Red River of the North on its way to Canada. The 63 miles of river from Lisbon to Baldhill Dam are an integral part of the Sheyenne River Valley National Scenic Byway.

North Dakota Game and Fish described the Sheyenne River fishery as follows: "Native game fish found in the Sheyenne River are the channel catfish, northern pike, walleye and lake sturgeon. Records indicate 53 species known to inhabit the Sheyenne River; about twice the number found in other tributaries of he Red River. There are 30 species of fish above Baldhill Dam and 46 species below the dam. Many of these species are smaller fish that belong to various races of 'minnows.'... Two rare fish, the rosyface shiner and the pugnose shiner; and three rare mussels, the mapleleaf, black sandshell and pigtoe clams live in the Sheyenne." (ND Outdoors, July 1996)

Few fish species are able to reproduce in Devils Lake. No mussels do. What will Devils Lake water do to the fish and mussels in the Sheyenne River? Will they survive? Have definitive studies of adverse effects on the Sheyenne River fishery have been done?

In a letter to the ND State Water Commission, Aug 13, 1999, Francis Schwindt, Chief, Environmental Section, **North Dakota Depart of Health concluded** that the Tolna Coulee drain being planned at the time would be harmful to the Sheyenne River. Schwindt wrote, **"Furthermore, designated beneficial uses of the Sheyenne River would not be maintained; these include municipal water supplies, aquatic life, irrigation, industrial water supplies, and recreation."**

About the results of an overflow from the Tolna Coulee into the Sheyenne River, in a letter to the U.S. Army Corps of Engineers, St Paul District (May 24, 1999) the **U.S. Fish and Wildlife Service** concluded that "the combination of high total dissolved solids (TDS), sulfates, and chlorides (plus unknown levels of other toxic or harmful constituents), would likely devastate the freshwater aquatic life in the Sheyenne River.... little if any natural reproduction of fish species would occur, and survival rates for juvenile fish would be in jeopardy....will significantly degrade water quality, increase erosion and sedimentation, and result in conditions detrimental to aquatic mollusks, such as freshwater mussels, pill clams, and snails."

THE VALLEY CITY NATIONAL FISH HATCHERY

Concerning the U.S. Fish Hatchery north of Valley City, the U.S. Fish and Wildlife Service went on to say, "**The hatchery's water source from the Sheyenne River will likely be unusable.** Therefore the hatchery would need to obtain a source of fresh water in order to operate. Furthermore, it is unlikely that the hatchery will be able to maintain its ability to provide fish to the State of North Dakota."

The Fish Hatchery is an industrial site that relies on Sheyenne River water for its production and its existence. **No state or federal agency has estimated the effects of higher levels of Devils Lake water on its continued function.**

Other NEGATIVE EFFECTS OF DEVILS LAKE WATER ON THE SHEYENNE

Studies done by the U.S. Army Corps of Engineers (FEIS 2003) determined that adding Devils Lake water to the Sheyenne will increase bank erosion and sedimentation and degrade water quality in the river.

High water damages or destroys cattle crossings, pasture, and river access, as banks are eroded. Negative economic impacts to cattle operations due to decrease in water quality (EPA, February 2000) could result. Farm and ranch operators will suffer.

Potential for serious flooding during seasonal heavy rains increases. Will the Outlet be shut down during flood conditions below Devils Lake? Under what conditions?

Loss of riparian trees and plants will increase. Dead trees will increase the cost of riverbank clearing.

HEALTH ISSUES

West Bay of Devils Lake contains over 600 mg/L of sulfate.

About fifty percent of the total dissolved solids in Devils Lake is sulfate.

Sulfate can cause diarrhea.

The EPA suggested standard for sulfate is 250 mg/L.

Baby formula should not be made with water containing more than 450 mg/L sulfate. (Minnesota Department of Health)

The threshold level for sulfates is assumed to be 450 mg/L for all livestock.

From June 29, 2010, Winnipeg Free Press: "The fear is without a filtration system in place, algae, pathogenic bacteria, fish parasites and fish diseases could enter Manitoba's waterways.

Dwight Williamson, director of the water science and management branch of Manitoba Water Stewardship, said the draft results of an International Joint Commission study found seven fish pathogens in Devils Lake that were not found in Lake Winnipeg."

Valley City WATER TREATMENT PLANT

How much will the cost of treating municipal water in VALLEY CITY increase after the reverse osmosis treatment plant is installed?

Adding poor quality Devils Lake water reduces the beneficial uses of Sheyenne River water all the way from Devils Lake into Canada, meaning this act could result in an illegal taking, from municipalities and from individual users.

Note: Devils Lake has risen only three feet in the last seven years.

ROUGH GRAPH OF DEVILS LAKE FLUCTUATIONS

****

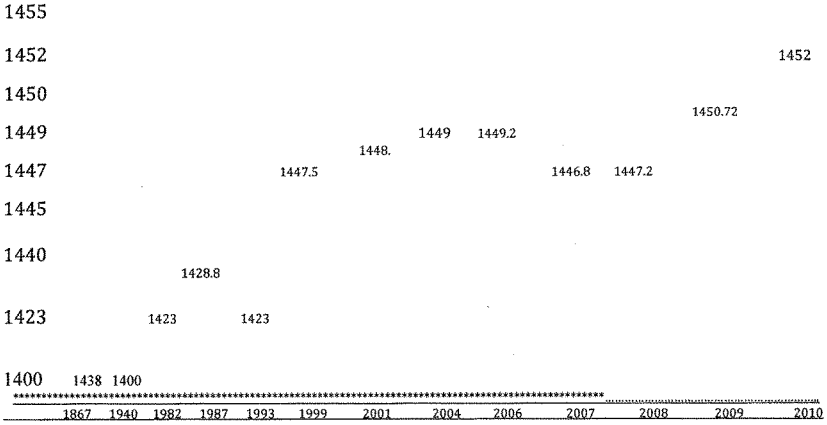
[not to scale]

1449 Former height of Tolna Coulee before the City of Devils Lake removed a foot of dirt.

1458 feet above mean sea level. Devils Lake will begin to overflow at this height.

At the height of 1458 the size of DL will be 261,000 acres; it will contain 5,033,000 acre-feet.

At 1452 the size of DL = 182,244, acres; it contains 3,720,279 acre-feet of water. DEVILS LAKE IS ABOUT 75% FULL.



A POPULAR MISCONCEPTION and SCIENTIFIC NONSENSE.

John Bluemle and others conclude **that since the lake overflowed in the past when no wetlands had been drained, draining will have little to do with whether Devils Lake rises or falls. The lake overflowed before, it can overflow again.**

The fallacy in that logic is that we don't know how much precipitation it took for the lake to rise to the point of overflowing in the past. Scientists don't know if it rained a hundred--or four hundred--inches each year for forty years or four hundred and forty years.

AND THIS: Outlet proponents claim, "All of the wetlands are full."

Drained wetlands no longer hold water. Instead, they shed water and then produce barley, wheat, corn, other crops and pasture. The water they once held now covers someone else's land in the lower part of the Basin. Aerial photos of upper basin farmland reveal thousands of acres of former wetlands now being farmed.

An illustration of drainage in southern Cavalier County from 1954 aerial photographs indicates 1390 acres of intact wetlands in about four sections of land. In 2009 there were only 55 acres of wetlands remaining, a loss of 1335 acres of wetlands.

THE TOLNA COULEE

When the lowest part of the Basin fills, Devils Lake rises, as it did several times in the distant past. With enough runoff, Devils Lake could fill up to a point where it begins to overflow from Stump Lake through the Tolna Coulee (about 13 miles long) into the Sheyenne River. The overflow level used to be 1459 feet msl, but since the city of Devils Lake took a foot off the Tolna Coulee, overflow will now begin at 1458 feet msl. With the lake at 1452 in 2010, the lake will overflow if it rises about six more feet.

USGS soils studies reveal that the Tolna Coulee did not wash out when Devils Lake overflowed several times in the past ten thousand years.

Armoring the coulee would ensure that it would not erode with an overflow.

The City of Devils Lake removed (at a cost of $193,000 for the land and about $30,000 for moving dirt) a foot of dirt from the coulee in the fall of 2009, claiming it was blow dirt and had been added since statehood. Therefore, returning an overflow point to its original condition. (If the entire Devils Lake basin were to be returned to its original condition, however, all of the upper basin drained wetlands would have to be restored.)

Lowering the Tolna Coulee increases the chances of an overflow from Devils Lake into the Sheyenne River. **When the city of Devils Lake removed one foot from the Tolna Coulee, it increased the chances of an overflow within ten years from 5.6% to 8.1%, an increase of 46 %.**

WHAT THE North Dakota DEPARTMENT OF HEALTH SAID ABOUT STUMP LAKE WATER in 1999

Comments from a letter dated August 13, 1999, from Francis Schwindt, Chief, Environmental Section, North Dakota Department of Health, to David A. Sprynczynatyk,

THE SHEYENNE RIVER SACRIFICED for POLITICAL EXPEDIENCY?

Date: July 9, 2010

For: THE U.S. SENATE BUDGET COMMITTEE
SENATOR KENT CONRAD, CHAIRMAN
Valley City, North Dakota, Hearing

From: Richard Betting, Secretary
People to Save the Sheyenne
11630 39 St SE
Valley City, ND 58072

I am speaking on behalf of downstream Sheyenne River landowners, water users and all those who are concerned with--and affected by--methods used to deal with high water on Devils Lake.

THE THREE-LEGGED STOOL

Not many people refer to the THREE-LEGGED STOOL when talking about rising water on Devils Lake any more. For those who may have forgotten, the first leg was infrastructure protection, the second, an Outlet into the Sheyenne River, and the third was Upper Basin Water Management--or storage. Justification for an Outlet was that all three legs of the stool would be used. Almost a billion dollars has been spent on moving houses and buildings, many before they were flooded--a special privilege from FEMA--rebuilding roads and dikes and so on. Over forty million was spent on the ND SWC Devils Lake Emergency Outlet. By comparison, almost nothing has been spent to restore drained wetlands in the Upper Basin.

"Solving the Devils Lake Dilemma," an article in the May1998 **North Dakota Water**, states, "In 1995, the Available Storage and Acreage Program (ASAP) was initiated by the State Water Commission (SWC) with **the goal of storing 75,000 acre feet of water in the Upper Basin**, which at the time would have taken nearly a foot off of Devils Lake. Presently, 167 sights [sic] store 22,000 acre feet through this voluntary program. SWC approved an additional $1.5 million for 1998 storage." (p. 27)

In fact, most of the news about Devils Lake in the past two years has been that the lake will soon overflow and a fourteen-foot wall of water will wash down the Tolna Coulee. Senator Conrad even convened a meeting in Devils Lake on May 3 to enlist the help of ten federal agencies (everyone but the Environmental Protection Agency) asking them for a solution to the problem of water on the lake. At the end of the meeting Senator Conrad gave an impassioned shout-out in favor of an East End Outlet to lower water on the lake. Then Joe Belford, Downstream Devils Lake Emergency Acceptance Coordinator, had the audacity to demand a solution from the same group and gave them thirty days to make a decision. That deadline came and went.

One has to wonder why federal agencies were asked to come up with an answer to the water problem on Devils Lake when the best engineers in North Dakota, as well as the U.S Army Corps of Engineers and others, could not provide one. Could it be because some people are looking for a political solution to an environmental problem?

The "solution" water managers and politicians seem to be seeking is divine intervention, or at least an "executive exemption" from EPA and Corps and State and Federal rules or standards. With administrative approval, someone could put as much

The CHAIRMAN. All right, thank you.

Mr. Betting, if I could just go to you, you pointed out, correctly, that the lake has had very little increase from roughly 2002 to 2008. But, isn't it true that during that period that the reason there was no rise in Devils Lake is that it was going over into Stump Lake, and Stump Lake went up 43 feet?

Mr. BETTING. Yes, that's partly true.

[Laughter.]

Mr. BETTING. But, if you look at Stump Lake, you also see, in quantity, in terms of quantity, it can't quite compete with the number of acre feet stored to West Bay.

The CHAIRMAN. No, that's certainly true. But, I think, you know, as we look at this, the reality that we confront, here, is while the lake didn't go up for an extended period of time, in fact for 8 years, from 2000 to 2008 we didn't see an increase, but a central reason was it was going over into Stump Lake and filling up Stump Lake.

Here's the question that is most on my mind that I'd like to direct to you, Mr. Betting. When we look at the USGS data and they've looked at 4,000 years, they have found that there was a release in the Sheyenne during that period of, it appears to me, three times. The first time, about 4,000 years ago, and the next time about 2200 years ago, and the next time about 1,000 years ago. And if you look at the trajectory we're on, there was one other time that looks to be about five or 600 years ago that the lake was on the trajectory, went over into Stump Lake, but didn't go into the Sheyenne. And the trajectory we're on is the same as each of those times where it's gone into Sheyenne, or at least filled up Stump Lake. That is, we are now higher than any of the times, other than the three times that it went into the Sheyenne, uncontrolled.

And that tells me that we're in a historic pattern, and that the odds are sufficiently high that it represents an unacceptable risk for everyone—not just the people in Devils Lake, but for the people here, the people in Lisbon, the people in West Fargo, the people in Fargo. Is it your belief that the lake won't continue to rise?

Mr. BETTING. The lake is influenced, now, by the results of drained—the water from drained wetlands which never had occurred in the past. And so when you get a half million acre feet of water coming into the lake in the spring of the year, you would have to ask, how much did the drained wetlands add that would not have been there in a normal year, or normal cycle and I believe that the addition of those drained wetlands is considerable, and that the lake would not have risen, as it has, in the last 25 or 30 years, without it. The hundreds of thousands of drained acres that allowed that water to go immediately—if water falls in the Upper Basin today, there are no 300,000 acres of wetlands. They're—they have a ditch out of them. No water stays there. Drained wetlands do not hold water. So, all of that water goes—collects in the coulees, goes in the coulees into the lake, very rapidly. And so that's why, when you're talking about flying the Upper Basin—please allow me to hand out four pictures that I'm going to submit to—I'd like them back at the end because I want to submit them as testimony—but if you look at those pictures, no, go ahead and look at them as you pass them down, I don't have any more. If you look at those pictures, and you can see, for miles, that the drained wet-

lands are now farm. Thousands and thousands of acres of drained wetlands are now farms.

If you look at Google Earth, and I just found out how to do that, if you look at Google Earth and you go up in the Upper Basin, and you enlarge the sites so that you can see every section of land—every one—you can see the drains. If you go up along, from Highway 1 on the east over to Rowell on the left, the Mauvais coulee, you can go up there and see section after section, drained.

And I'm not saying they're illegal or anything. All I'm saying is, if the situation in the lower basin of Devils Lake is serious enough so that you ask—we ask, together, those people whose lands have been drained if they will retain water on that land with gated—with gates, to open and close them when the water is need it, let the water out, it's kind of like a version of the waffle plan. When the situation in Devils Lake gets that serious, we should consider it. And I think we've reached that point.

And so what I'm saying is, will it rise? The result of the drainage is almost inevitably going to mean that more water comes in, and it will rise faster, and sooner.

The CHAIRMAN. All right, here's the question I was trying to get at. Before there was any drainage of wetlands, 1,000 years ago, 2200 years ago, 4,000 years ago, this lake went through a cycle, the scientists tell us, where there was an uncontrolled release of water out of the east end. That was before any drained wetlands. And when I look at the pattern from USGS of this current cycle, it is just closely matching what has happened in those three times, before there was any drained wetlands, that led to an uncontrolled release.

So, isn't it possible, I would say to you, that even though a drained wetlands—no question they contribute to the speed at which it may occur—but isn't it possible that we are in a weather cycle—whether drained wetlands or no drained wetlands—we would have an uncontrolled release of water out of the east end?

Mr. BETTING. I guess I'd have to agree, of course, it's possible.

The CHAIRMAN. The second point I'd make to you, in the most complete study that I've seen that has been done, it was done in 2001 by the Corps, on the question of how much of a contribution do the wetlands, the drained wetlands make to the inflows to the lake? What they concluded is that 92,000 acres were possibly drained with a capacity of 132,000-acre feet. That's on page 6 of the study that was done in 2001.

Mr. BETTING. By the West Consultants, yes.

The CHAIRMAN. By—that's the so-called "West Study."

Mr. BETTING. Yep.

The CHAIRMAN. Daniel Rhineharts made that study and when they went—so, page 6, they talk about possibly drain 92,000 acres. They then convert that on page 15 into how much that leads to an inflow—additional inflow—into the lake. And they say, if you restored 50 percent of those wetlands, you would save 15,643-acre feet going into the lake. That's up against an inflow that we've averaged, since 1993, of 240,000 acres.

So, let's say the West study is wrong. Let's say they underestimated the acres. Let me just conclude this point and then I'll give you all the time you want to respond. Let's say they were off by

100 percent. Let's say, there were double the amount of acres that they estimated. That would still leave you with only 30,000-acre feet that you're averting coming into the lake when we've got a problem of 240,000-acre feet, on average. And as you, correctly, pointed out, nearly 600,000 that came in last year.

The point I'm making is, certainly restoration would help, and it's something we've got to explore, that's why we have asked the working group to go back and explore additional Upper Basin storage, but it just seems so striking to me that doesn't come close to addressing the problem that we confront today.

Mr. BETTING. Well, you're right.

The CHAIRMAN. Let me just ask you to wait for 1 minute, because they need to change the tape for the transcriber, and then——

[Recess.]

The CHAIRMAN. So, they've told us—this is the first I've heard of this, but they have asked us to be out of this room in 15 minutes, so please.

Mr. BETTING. Yes, everybody's planning to hop on the elevator.

Yes, you're exactly right. West Consultants even said, about their own study, the results of this study indicate that restoration can reduce the volume of runoff entering Devils Lake. Further studies should be conducted to more accurately quantify runoff reduction. They did not do an on-the-ground study, they did not use current data, and they did not have anything like lieder available to them. So, the best that they could do was with what they had.

They did summarize and say that the West Report estimates total wetlands at 115,668, with 52,210 possible drained; 115,000 possible wetlands, not acres, wetlands. And 52,000 possibly drained. Well, if there's an average of five acres each, even, that's a considerable number.

So, yes, we could argue a long time about—and my point is that we don't have the kinds of numbers that we would need in order to make those decisions.

The CHAIRMAN. Yeah, and that's why we've asked them, because technology has improved, and we've asked them to go back because it's in all of our interests to find the best set of solutions. And, you know, frankly I hope against hope that what you think would be the case. I just don't see it in the evidence.

When the West Study was updated in 2008, here's what they concluded. Upper Basin storage does have the potential to change the timing and probabilities of increased lake levels. However, with the potential for acceleration in the lake level rise, as observed between 1993 and 1999, Upper Basin storage would not preclude the need to implement flood risk management actions at the city of Devils Lake should the lake level continue to rise. And, of course, we know since 2008, indeed it has risen, another 3.5 feet in the next year, it's going to rise again this year. And here's their conclusion. "Overall effectiveness of this alternative is considered low."

I just have to say to you, looking at the historic record as given to us by USGS. Three times in 4,000 years this lake has had an uncontrolled release out of the east end before there was any drainage of wetlands. And the studies that have been done by the Corps that say they believe the effectiveness of Upper Basin storage, on

its own, the effectiveness of that approach is low, tells me that we've got to think about more than just that.

Mr. BETTING. Could I ask one question?

The CHAIRMAN. Sure.

Mr. BETTING. When you're talking about east and it's our—it's everyone's question. When you're talking about east end or Tolna coulee outlet—what does that mean? Are you digging it down? Yes or no.

The CHAIRMAN. You know, I think it—they're——

Mr. BETTING. We're for armoring it where it is. But, dig it down? Yes or no. Don't answer. If you do—dig it down two feet, four feet, six feet, what you get is a lake that will overflow at two feet lower, and four feet and six feet lower. If the lake ever reaches that level, it will run through completely, automatically without control. But to lower it, to me, means you're wanting it to happen sooner, which is what Devils Lake did. And that's not quite acceptable.

The CHAIRMAN. You know, I think when you ask the question, what is in the mind's eye of people with respect to an east-end outlet, you get a lot of different answers. There are some people who see it as a way of having a controlled release, so that we don't suffer an uncontrolled release with the consequences that have been discussed here.

A second view is, by some, that you lower it, so you take off water earlier to try to have less of an effect. So, you have different views of what constitutes a west-end structure.

But, I would say in Devils Lake, you have many people who believe they would like to have it lower so that the lake can be fresher. And that's a view of many in the Devils Lake basin, I think we heard that loud and clear when we were in Devils Lake.

I think what we've heard here, today, is that from Mr. Glatt, representing the Health Department, that we would be better off taking water from the west end, where it's of much higher quality. And, of course, that's where the State's outlet is today, as you well know.

Mr. BETTING. What's a control structure? In order—if the lake ever reaches the level that it's going to go over the coulee, at whatever level that is, if there's a control structure—which one do you want first—if there's a control structure, the control structure has to be bigger than Baldhill Dam. Because if any water comes from the Upper Basin in the quantities like it did last year and a few years ago, you can't hold 500,000-acre feet back with a small burm, there ain't no way. The dam would have to be as—half as tall as this room and all the way across or it couldn't hold the water back.

And so what I'm saying is, whatever level you choose to make the over—the spill level, it'll either come straight over Harden coulee or if you're putting a control structure in, it would have to be bigger than the overflow level in order to hold water back from the 14-foot. It wouldn't even have to wash out to be, then, high-level overflow.

The CHAIRMAN. OK, that's a fair point.

Let me just say to you, that what we have underway is an analysis by all of the relevant Federal agencies in consultation with the State, in consultation with local officials—many of those consultations will be occurring in the weeks ahead to try to determine what

set of options is the best, for everyone—upstream, downstream, Devils Lake, Lisbon, West Fargo, Fargo, and I don't think anybody should reach a conclusion yet before we have the best analysis.

One of the things we've asked them, and the delegation send a letter asking them, go back and look at Upper Basin storage. Is there an opportunity—I'll tell you, this from my observation looks to me like Mother Nature has done a big job of filling in the wetlands and restoring wetlands. Does that mean there aren't some that are still there that could be useful? That's why the study is requested.

Let me just say—how much time do we have before we have to be out?

Male Speaker. Five minutes.

The CHAIRMAN. Five minutes. Well, I'll give two and a half minutes to the Congressman and two and a half minutes to the Governor.

Mr. POMEROY. Thank you, Senator Conrad. In sensitivities to this birthday celebration, I won't engage in questions of the panel, I appreciate the panel and appreciate, obviously, they offer views that are different from other views that have been expressed, and so to commend you for doing that, you're encouraged to speak your beliefs.

I disagree with you. I disagree with you completely and believe that the testimony just does not reflect the recognition of what's happened, even over the last 17 years. I mean, if this might have been a view plausibly held 17 years ago, we've had 30 feet of lake rise during the period of time where there has not been extensive additional drainage occurring throughout that region. Additionally, we have historical data that shows pre-civilization this thing overflowed.

It's certainly a natural tendency to want to find quick and simple answers and yet in really complicated problems, that rarely is available.

Certainly, I've spoken some in the early days upstream that, they had this, "Gosh dang, we drained this bathtub," but no, that wasn't going to be possible, under the complicated nature of these circumstances. And to my hometown I would say, it isn't possible to say, "This is Devils Lake's deal and they can just find places to put that water and deal with it," that is no more possible than to drain the bathtub. We have to find our way with this mix. The Governor's outlined the strategy the State has initiated and supported with the Federal funding and the Federal efforts, retention where possible, mitigation as required, and now taking some of the water off the lake to mitigate the risk of uncontrolled spillover—there really isn't any other way around it.

And, yeah, as we try to define these strategies, we're going to have the best help available to senior agencies and jurisdictions, but I believe that constructive thinking from the folks on the ground, the real experts, are going to move that project along, or that process along in a very, very helpful way.

So, thank you, Senator, for holding this hearing.

With that, I want to thank all of my hometown friends for participating.

The CHAIRMAN. Governor?

Governor Hoeven. Senator, good to be here with you. Congressman, Earl, good to be with you, as well.

I want to thank all of the other elected officials that are here, as well as all of the citizens that are here, for being here.

And I'm going to go back to where I started, and that is, we've got to work together on this one and as I listen to the testimony here today, I mean it, again, it convinces me we've got to work together on this challenge.

I see a number of legislators, here, I see Senator Robinson, I see Representative Kurt Onstad back there, I saw Representative Dennis Shatson, I thought I saw, earlier, Representative Metcalf, I may be missing some, but Mayor Werkhoven, Mayor Coles, former mayor, Mary Lee Nielson, Commission Schwehr, other Commissioners. We've got to work together as elected officials, but we've got to work together as citizens of this State.

And I, you know, since we're talking about funding, it's kind of like having a boat. And if we're in the boat, and we're wrong, we've got Upper Basin, we've got the people in Devils Lake, we've got Lower Basin. If one's rowing, I guess you can make some progress. If two are rowing you can make a little more, and if all three are rowing you do a lot better, don't you? And particularly if they're rowing in a coordinated way, working together.

So, go back to, do we need to store water in the Upper Basin? Sure we do, and we area. Hundreds of thousands of acres of feet. There are farmers in this room that don't have a farm anymore because they're under water. That's pretty tough. So, we're storing—we're storing a lot of water.

And I mean it, don't just take somebody's word for it, go take a look, honestly. Go up and take a look at the size of a lake that's grown from 49,000 acres to 180,000- plus acres, look at all of the water around it—we're storing a lot of water.

We're building a lot of roads, I mean, it's going to take you a long time, by the way, to get around up there, because every single highway is under construction with rip-rap and raising them and resurfacing them. And some of these county and township roads are under water, you can't drive on them. And we're building up dikes, so you're going to say a lot of construction—road construction, building up dikes—we're doing a lot of that. And we've got to let some—we've got to bring some water out, too.

And the thing is, to do it the right way, to help prevent more flooding up there, and to protect you downstream, we've got to bring it out in an orderly way. We can't do it in 1 day and 1 month or 1 year, we've got to bring it out over time, guys—that's how we manage it the best way.

It used to be everybody was talking biota—but we've studied and studied and studied, we can't find any biota difference between Devils Lake and the Sheyenne and the red, OK? So, now we're talking about sulfates. But, remember, the Canadian drinking water standard, if you're going to go drink the water, untreated, the Canadian drinking water standard is 500 milligrams per liter, 500 parts per million. So under—take some time to understand this sulfate issue and, you know, how big of an issue it is or it isn't, take some time with that and remember that Devils Lake is one of the greatest walleye fisheries, when you talk about fish and

aquatic life, remember—go up and fish Devils Lake, it's a great place to fish walleye.

So, when we're talking about Devils Lake versus the Sheyenne versus the Red or all of these, go up there, spend some time fishing, and, you know, while you're doing that, talk to your friends and neighbors up in Devils Lake, and for our friends and neighbors up in Devils Lake, spend some time talking to our folks in the downstream.

I have great belief in North Dakotans. I think around the country, people are taking notice of the great work North Dakotans are doing, and so I have great belief that you'll come together on this—continue to come together on this, and it's communicating it, and then it's working on it together, and that's what we need to do.

Thanks for being here today, have a great weekend.

Senator Congressman, thank you so much for being here with us, we appreciate it.

The CHAIRMAN. Thank you, Governor for being, thanks to the entire panel. Let me just say, I even caught a fish in Devils Lake.

[Laughter.]

The CHAIRMAN. I held it up to have a picture taken, Governor, so that we could have a record that I caught this fish. It was a very large fish.

[Laughter.]

Governor Hoeven. Oh, there we go, say is this on the record, by the way?

The CHAIRMAN. When that fish saw the water, it was right back into the lake. And I immediately said that I was part of the Governor's catch and release program.

[Laughter.]

The CHAIRMAN. Let me just say this—to people who came here hoping to make an additional statement or ask a question, in a hearing format, we can't take questions. An official hearing doesn't work that way. We could have taken—and I looked forward to, I thought we were going to have the opportunity to take additional statements on the record. Because of this birthday situation that I was unaware of until 15 minutes ago, we can't stay in this room.

We can do this. I will hold the hearing record open for 10 days. So, anybody that wants to contribute a statement for the record, we will hold the record open for 10 days to accept your statement. If anyone has questions, they can submit them back to my office, and we will be happy to answer them. Third, we will be back, this is not the last meeting, not the last opportunity to ask questions or to be heard, because we know this is something that's way too complicated to deal with in just one meeting. We've already had many, many meetings over the years in Devil's Lake, we're going to have to have additional sessions in this community and other communities.

Mayor, we need to come to Lisbon. We also need to have additional sessions in West Fargo and Fargo, because they are affected by these decisions, as well. Senator Dorgan has already had a water quality meeting in Fargo, but we're going to need to do additional sessions there. So there are going to be additional opportunities to be heard for everyone.

Again, I apologize. We—I did not know that they had reserved this room for a 90th birthday but, Richard, as you said, when you get to 90, you really can't wait.

Mr. BETTING. You didn't have to exaggerate.

[Laughter.]

Mr. BETTING. And did you know, Fargo was using the Sheyenne River water yesterday?

The CHAIRMAN. Oh, they were?

Mr. BETTING. Yep.

The CHAIRMAN. I know that is their backup source.

All right, the hearing is concluded.

[Whereupon, at 3:46 p.m., the hearing was adjourned.]

***July 9, 2010* -- "Devils Lake Flooding Disaster: A Downstream Perspective" field hearing**

Testimony by: Vicki Voldal Rosenau
521 4th Ave. NW, Valley City, ND 58072 [vrosenau@csicable.net]

Presented to: Field Hearing of the U.S. Senate Budget Committee, Kent Conrad, Chair
AmericInn, Valley City, ND

Dear committee members:

The decades-long mismanagement of the Devils Lake basin is so egregious that, at Yale University, Dr. James Wallis, professor in Environmental Engineering, has taught his classes that the Devils Lake outlet is the second worst water project in U. S. History. After years of letting the problems get progressively worse by ignoring the huge role played by man-made upper basin drains, it is high-time for state and federal politicians to make a major correction, and remove North Dakota from resource-management ignominy.

Forget all the numbers for a couple minutes, even though the accurate ones really do matter. Just think of Devils Lake as a giant tub with faucets and, unfortunately, a tub drain – rather like the homemade model we brought to the hearing room today. However, Devils Lake is no simple, harmless bathtub, because all the polluted water deliberately sent through that "drain" causes grave, permanent harm down the pipeline.

So what do you do when artificially installed faucets have overfilled that famous tub? Pardon me, but: DUH — you crank down those faucets until you reach the desired tub level. The "faucets" in this case are not Mother Nature's rainfall as it lands on the lake. No, the "faucets" are artificial drains that unnecessarily dump huge quantities of former wetland water into Devils Lake every year. And until those ARTIFICIAL drains are turned off and the natural wetlands are restored, the magnificent Sheyenne River must not be sacrificed by being degraded into another Devils Lake, whose water, NOT drunk by local citizens, supports only 7 species of fish compared to the Sheyenne River's 50+ species!

In 2009 (the year we in Valley City enjoyed Porta-Potty Purgatory during our own special spring flooding trauma), a record 587,000 acre-feet of water gushed into Devils Lake as "inflows." Well, guess what? The 358,000 acres of wetlands that have been artificially and recklessly drained in the Devils Lake basin **used-to-have** the capacity to store over 623,000 acre-feet of water in periods of high precipitation **(such as 2009)** – and that would have been 6% MORE than the entire, record 587,000 acre-feet of inflows during last year's flood.

Can't we learn once and for all from this year's worst-ever environmental catastrophe in the Gulf that we must always implement nature-compatible solutions? Nothing could be more natural than to disable man-made drains and restore the **water-purifying, flood-controlling, God-given wetlands** in the upper Devils Lake basin.

Toward that end, I would like to close by specifically requesting:

(1) That the U. S. Fish and Wildlife Service (FWS)conduct an independent, comprehensive review of the State Water Commission's information on Devils Lake Basin wetlands, including an analysis of deficiencies in the data; *and*

(2) That language be included in the appropriations bill for the U. S. Dept. of the Interior providing funding for the Fish and Wildlfie Service to analyze the LIDAR data from the Devils Lake Basin and their suitability for determining the true acreage of drained wetlands in the Devils Lake Basin and the true potential for wetland restoration in the Upper Basin to reduce inflows to Devils Lake.

Please note: In the North Dakota State Water Commission's information packet distributed to the North Dakota Legislative Management Water-Related Topics Overview Committee at the June 15, 2010 meeting in Devils Lake, only one actual "study" was listed among the 9 titles included in the "Upper Basin Storage Studies" document. And that one, the 2001 WEST Consultants study, is based on admittedly incomplete and flawed data! The other 8 "studies" touted by the SWC are simply extrapolations from other incomplete and flawed data.

Thank you,

Vicki Voldal Rosenau

Vicki Voldal Rosenau

490 – 1325

U.S. Senate Field Hearing on Devils Lake's Flooding Impact on Downstream Communities
AmericInn, 280 Winter Show Road S.E., Valley City, ND
1 pm, Friday, July 9, 2010

Good afternoon, Senator Conrad, panel members, out of town guests, and fellow Valley Citians. Thank you for this opportunity to speak. My name is Sharon Buhr. I have lived in Valley city for over 30 years, one block from the river. I have raised 2 sons here with my husband Dr. James Buhr. I am the chairperson of the School Board and the City- County Health department and have a leadership role in many of the health programs of the city and county.

I feel bad for the farmers around Devils Lake who have been flooded; they should be compensated by the state of ND for their loss as recently proposed by ND Representative Merle Boucher. Losing roads, as has happened in the Devils Lake area, is very difficult and can be life threatening in a medical emergency. However, I do not think that sending down Devils Water through any outlet into the Sheyenne is going to help Devils Lake but surely, it will harm all who live downstream.

Most recently, the cry has been to send release water through the Tolna Coulee. This east end water is the worst in the lake. The Army Corps of Engineers, when asked to design an outlet from Devils Lake in 2003, specifically avoided an east end outlet because of water quality issues. It was bad then, it is still bad now. Fishermen in Devils Lake write to the Forum saying they do not want draw down from the fresher West Bay-they want the cleaner water for their fish. The Tolna Coulee should never be used as an outlet. Such a proposal would not survive an environmental impact study. "Expediting" such a proposal would send a wrong message; the environment and public health cannot be sacrificed at the whim of politics and whichever constituents speak the loudest. Not another foot should be removed from Tolna Coulee. It should be armored to avoid washout of the Coulee should the elevation of the water reach 1458 feet, the present natural overflow level.

Presently, we have a west end outlet that is running at 250 CFS, built by the state of ND without an environmental impact statement, cost benefit analysis, or mitigation plans in place. Whatever plans are instituted henceforth must contain a full explanation of all mitigation costs. This includes money for additional treatment of drinking water for downstream

residents, summer flooding from the increased flows, bank erosion with attendant land and access loss, salinization of land from Devils Lake water leaking out of an outlet, animals sickened from drinking high sulfate water, loss of recreational activities from higher flows such as kayaking and canoeing, loss of tourism from a degraded Scenic Byway and lands lost to wildlife due to erosion and inundation. No one can put a price tag on the ecosystem which will be undeniably changed by the high water volume and poorer water quality.

Any plan must follow prescribed protocol for water transfer. This includes an Environmental Impact Statement and satisfaction of all parties involved. In this case, the downstream communities on the Sheyenne and Red Rivers, Canada and Minnesota must all agree that their environmental concerns have been addressed satisfactorily. Laws to protect the environment were put in place to ensure that our children and grandchildren would have the clean air, water and biological richness that we inherited from our parents. Some of us choose to live in ND because of these very attributes. We should follow the rules we set for ourselves to maintain what we have.

Any plan that is instituted should show a cost-benefit ratio of at least 1. Thus far, 700 million to 1 billion federal dollars have been spent for infrastructure protection, 26 million dollars for the ND west end outlet with no end in sight. The west end outlet running at 100 cfs over the last 4 years has taken off a few inches of water. If the present outlet were to run at 250 cfs everyday for 6 months (which it cannot do because of sulfate restraints) and no water came into Devils Lake, about 90,000 acre-feet would be removed-about 6 inches. Evaporation which is free, takes off 30 inches each year. In 2009, the inflow was 587,000 acre feet which would roughly increase the lake level by 3.5 feet. An outlet cannot remove enough water to make a difference.

Keeping the water out of the lake in the first place is the best solution. Estimates of drained wetlands which previously held the water where it fell range from 189,000 to 335,000 acres. Senator Dorgan authorized a LIDAR flight over eastern ND last year and this data is available for analysis which should be done promptly by out of state experts. These data can show how much and where water could be retained. This may not be a popular solution with the farmers who are farming drained wetlands, but I do not believe getting flooded out was a popular option for the farmers downstream near Devils Lake who were on the receiving end of the flood waters.

Congressmen Peterson from Minnesota is in the process of obtaining one billion dollars to help with retention in regards to the Red River Valley. What would be the cost for a similar program in the Devils Lake basin? Upper basin storage has no negative downstream impact, is environmentally positive and is most likely the most cost effective plan for living with the high waters. It must play a central role in any plan for Devils Lake.

Thank you.

Sharon E. Buhr
613 Chautauqua Blvd
Valley City, ND 58072
701-845-5197 (H)

Madeline Luke, MD
747 6th Street
Valley City, ND 58072
701-845-5407 (H)

Peterson Coulee Outlet Association
3321 54th Ave. N.E.
Maddock, North Dakota 58348

July 18, 2010

Re: U.S. Senate Budget Committee
Field Hearings, July 8 & 9, 2010;
Devils Lake, North Dakota, Dilemma
Senator Kent Conrad, Chairman

Dear Sir;

Thank you for the opportunity to present comments to the United States Senate Budget Committee for the request of United State Federal monies to be used in the implementation of "solving" the lake of Devils Lake, North Dakota, Dilemma.

We would like to correct the inaccurate "fact" that the lake of Devils Lake is a 'closed basin' or 'terminal lake'. The lake of Devils Lake does indeed have a Natural Overflow Elevation (NOSE) at the elevation of 1458 msl, an overflow elevation that a few feel is to high for their liking. At all elevation levels below 1458 msl the lake of Devils Lake is not properly considered to be flooding, at the rising elevation levels below 1458 msl the lake of Devils Lake can only be considered to be filling.

At all lake elevation levels below the elevation of 1458 msl the inundated acreage is legally considered to be Sovereign Land. *North Dakota Century Code 61-33-01, Definitions, No. 3, "Sovereign Lands" means those areas, including beds and islands, laying within the ordinary high watermark of navigable lakes and streams.* North Dakota Century Codes are abundantly clear in stating that Sovereign Lands are to be held in perpetuity for the benefit and enjoyment of all the citizens of North Dakota, not just a select few private land owning individuals who may or may not be permanent residents of North Dakota. *North Dakota Administrative Code, Article 89-10, Sovereign Lands, Chapter 89-10-01, Section 89-10-01-02. Prohibition on permanent relinquishment. Sovereign lands may not be permanently relinquished but must be held in perpetual trust for the benefit of the citizens of the state of North Dakota. All structures permitted or otherwise allowed for private use on sovereign lands are subordinate to public use and values.* Any manmade outlet, with or without a control structure, that has the ability lower the lake's elevation to less than 1458 msl is considered by the state of North Dakota Century Codes to be an unconstitutional, illegal act.

We consider it very disingenuous for our state of North Dakota to come to the United States Senate with hat in hand, begging for federal money when the state of North Dakota is awash in its own oil tax revenue money. North Dakota is one of the few states of the United States of America that has an actual budget surplus in these hard economic times. It is shameful, for us North Dakota citizens to know that the state of North Dakota is more than willing to spend Federal money, willing to increase the Federal deficit, to attempt to "solve" a man made North Dakota "natural" disaster, when the state of North Dakota has the ability in terms of money and resources to "solve" its own problems without any outside help. We North Dakotans are very proud of our ability to take care of ourselves. We have a saying here in North Dakota, that may have already been uttered a few times on the Senate chamber floor, that goes something like this, "When we need a helping hand, we look to the end of our arms".

The Governor of North Dakota has the ability to authorize and spend North Dakota's budget surplus money on the "Emergency" Devils Lake Dilemma as he wishes, he has not done this yet. The Governor of North Dakota has the ability authorize and close all of the drains (permitted and unpermitted, legal and illegal) that discharge into the lake of Devils Lake to help slow the lake's unprecedented rate of rise during this "Emergency" Devils Lake Dilemma as he wishes, he has not done this yet. Instead the Governor of North Dakota has declared the "Devils Lake Basin to be of State Wide Significance" and has issued a moratorium on all new drainage in the basin. It is the old, existing drainage systems that need to be closed, it may be argued by some that the upper basin wetlands, depressional areas, are filled at the moment, however the old, existing drainage systems are still open and operating. North Dakota Senate Bill 2255 grants the state's local water boards the right to condemnation of private lands, if the condemnation action qualifies to be for the greater good, amongst other requirements. The local water boards have also not attempted to use this right of condemnation to close the upper basin drainage systems to help slow the lake's unprecedented rate of rise during this "Emergency" Devils Lake Dilemma.

Therefore, if the state of North Dakota is not willing to use all of its own tools, money, resources & laws, in its own tool box to attempt to "solve" this "Emergency" Devils Lake Dilemma, the United States Federal Government shouldn't either.

Sincerely;
Mrs. Thelma Paulson, President

Peterson Coulee Outlet Association

Peterson Coulee Outlet Association
3321 54th Ave. N.E.
Maddock, North Dakota 58348

March 2, 2010

Dear Sir;

Thank you for the opportunity to submit Outside Witness Testimony to the Senate Committee on Appropriations; Subcommittee on Energy and Water Development; the Subcommittee's February 19th field hearing in West Fargo, North Dakota, on the potential negative impacts on the downstream environment and human communities from the suggested increased release of polluted waters from the Temporary Emergency Devils Lake Outlet.

First let us again, clarify that the lake of Devils Lake is not flooding, ***it is filling***. The lake of Devils Lake has not reached its Natural Overflow Spill Elevation (NOSE). Until the lake of Devils Lake reaches it's NOSE it is not proper to proclaim that the lake is flooding.

In the January 29, 2010, a news article announcing the February 19, 2010, Senate Committee on Energy and Water Development's field hearing on the potential impacts on the downstream aquatic environment and human communities from the suggested increased release of polluted waters from the Temporary Emergency Devils Lake Outlet, Subcommittee Chairman Senator Byron Dorgan of North Dakota was quoted as saying: "We have made all kinds of efforts . . . to help provide the funding necessary to mitigate the damages of flooding at Devils Lake. But I have always insisted, I am not interested in transferring the problem from one region of our state to another." (Daum, 2010) However this is exactly what the Temporary Emergency Devils Lake Outlet has been doing, with absolutely no benefits, what-so-ever, to the lake bed "landowners" adjacent to the present shores of Devils Lake.

At this time, as we understand the situation, the Senate Committee on Energy and Water Development's only concern with the suggested, increased flows from the Temporary Emergency Devils Lake Outlet is whether or not to appropriate a portion of the ever dwindling, very limited Federal money for the upgrade of only two of the downstream North Dakota cities', which use the Sheyenne River as a municipal water source, water treatment facilities. It is estimated that these water treatment facility upgrades that will cost the United States Federal Taxpayers approximately $60,000 million dollars. $60,000 million dollars the United States Federal Taxpayers can ill afford in these financially troubling times, (with absolutely no tangible benefits to the United States Federal Taxpayers from the expenditure of their monies).

The only solution a reasonably thinking person could logically conceive would be for the anticipated downstream North Dakota cities' water treatment facility dilemma, is to

immediately order the discontinuation of discharges of the polluted Devils Lake waters from the Temporary Emergency Devils Lake Outlet.

The Temporary Emergency Devils Lake Outlet is indeed, without any reasonable doubt, transferring one community's manmade problem to many other downstream communities, including the ongoing, unwanted, bulk biota transfers along with the sulfates and other pollutants.

When one's bath tub is filling and may overflow, one does not drill a hole in the side of the tub and in the floor to drain the potential overflow water onto the people living beneath them, one simply turns off the faucet. The Devils Lake Upper Basin storage program now in place, to prevent unwanted inflows into the lake of Devils Lake (turning off the faucet, so to speak) is a joke! At the present time and since the year 2000, the Devils Lake Upper Basin, Extended Storage Acreage Program (ESAP) has only been able to enroll 395 acres of land, capable of storing a potential total of 769 acre-feet of water. Preventing 769 acre-feet from entering a lake that already contains approximately 3,375,692 acre-feet, at the present elevation of approximately 1450 means sea level (msl) {see attachment}, is an insult and a joke. That joke is being played on the United States Federal Taxpayers. The state of North Dakota (one of the only states in the United States of America, that is not awash in Red Ink, during these financially troubling times) seemingly refuses to use its own money for this Temporary Emergency Devils lake dilemma.

In fact it appears to any reasonably thinking person, that the state of North Dakota has been deliberately exacerbating the Devils Lake dilemma for the sole purpose of using the manmade Temporary Emergency as an economic development project to bring in United States Federal Taxpayers dollars to the state, by discontinuing the Available Storage Acreage Program (ASAP). The Executive Summary of the 2006, Devils Lake Basin Water Management Plan, page 3, third paragraph, states;

"The Water Commission enacted ASAP *(Available Storage Acreage Program)* **in 1996. This program paid landowners to store water that would have contributed to the flooding around Devils Lake. The program ran from 1996-1999 and stored 8,000-22,000 acre-feet per year at a total cost of $3.5 million. In 2000, the ASAP evolved into the Extended Storage Acreage program (ESAP), which involved extended (typically ten-year, rather than one-year) contracts. Under ESAP, the Water Commission signed contracts for eight sites in 2,000 which covered 395 acres, and had an approximate storage volume of 800 acre-feet. Those contracts are scheduled to expire on December 31, 2008. In 2003, an additional ESAP contract was signed for 18 acres, with 35 acre-feet of storage. That contract will also run through December 31, 2008."**

As far as we know, all (all eight {8}, only eight {8}) of the ESAP contracts that had expired on December 31, 2008, have all been renewed for another ten years. If the state of North Dakota deemed it prudent, necessary and had the where-with-all to pay for and store 8,000-22,000 acre-feet from entering the lake of Devils Lake, from 1996 through 1999, the state of North Dakota must now have other undisclosed reasons for not continuing the ASAP program, especially now when the state of North Dakota is awash in Oil Tax Revenue money!

The United States of America is, has been and will continue to be, facing an imminent Health Care Crisis, meanwhile the North Dakota State Water Commission used the majority of North Dakota's share of the Tobacco Lawsuit Settlement money to finance, build, operate and maintain the Temporary Emergency Devils Lake Outlet as a solution to a North Dakota manmade disaster.

Now the state of North Dakota, through its effected downstream cities, is asking for even more United States Federal Taxpayers dollars to continue this manmade disaster, economic development project.

We pray that you the members of the Senate Committee on Appropriations, Subcommittee on Energy and Water Development do not allow this fiscal irresponsibility be continued.

Sincerely;
Mrs. Thelma Paulson, President
Peterson Coulee Outlet Association

Enclosures
Attachments

Peterson Coulee Outlet Association
3321 54th Ave. N.E.
Maddock, North Dakota 58348

February 26, 2010

Re: North Dakota Department of Health's
Triennial Review of the
Standards of Quality for Water of the State
as Required by
33 U.S.C. ~ 1313(c)

Mr. Dennis Fewless, Director
Division of Water Quality
Environmental Health Section
North Dakota Department of Health
Gold Seal Center, 918 E. Divide Ave.
Bismarck, North Dakota 58501-1947

Dear Sir;

Thank you for the opportunity to provide comments to the North Dakota Department of Health's (ND DoH) Triennial Review of the Standards of Quality for Water of the State as Required by 33 U.S.C. ~ 1313(c).

The ND DoH's website's home page public notice of the announcement of the (ND DoH) Triennial Review of the Standards of Quality for Water of the State as Required by 33 U.S.C. ~ 1313(c) appears to be deliberately misleading by only emphasizing and discussing the effects of the "intent to amend administrative rules relating to standards of water quality" for the proposed Sheyenne River segment reclassification in order to accommodate the discharging of even more polluted Devils Lake waters, for a longer period of time into an *out of basin* location, to a point source in the Sheyenne River. However that is not our understanding of the purpose of a Triennial Review. The ND DoH's statutory and fiduciary responsibilities to maintain and improve the quality of waters of the State of North Dakota as required by 33 U.S.C. ~ 1313(c), as we understand a Triennial Review, are to include all of the ND DoH's handling of water quality issues in the state of North Dakota for the last three (3) years.

The North Dakota Department of Health has a seemingly, long, unimpressive history of upholding the Standards of Quality for Water of the State as Required by 33 U.S.C. ~ 1313(c).

Examples of this unimpressive history are numerous, only a few will be cited in these comments, at this time.

An example of the failure of the ND DoH's statutory and fiduciary responsibilities to maintain and improve the quality of waters of the State of North Dakota as required by 33 U.S.C. ~ 1313(c), is the ever changing, site specific, study standards of groundwater aquifers for the needed ND DoH's permit approval of private or public projects, such as the Grand Forks Landfill and the many Confined Animal Feeding Operations' (CAFOs, Animal Factories) sewage ponds scattered around the State. The study standards appear to be tailored to meet the very lowest, if even that, of the newly lowered acceptable limit of each of the individual projects' required needs for permit approval.

Another example(s) of the abysmal failure of the ND DoH's statutory and fiduciary responsibilities to maintain and improve the quality of waters of the State of North Dakota as required by 33 U.S.C. ~ 1313(c), is the lack of substantive, regular inspections of facilities, infrastructures and procedures that are capable of producing irrevocable harm to the Quality for Waters of the State of North Dakota are the ***two*** oil well, salt water spills into the Charbonneau Creek, a tributary of the Yellowstone River. "(David) *Glatt said the company did not report the August 2005 spill, and* ***regulators learned of it only while investigating the spill that occurred more than a year later.*** " Quote taken from the Associated Press - Monday, October 27, 2008, article titled "Federal lawsuit filed in huge saltwater spill". Enclosed.

The lack of awareness by the ND DoH of the aforementioned incident(s) does not appear to be an isolated incident. Again, another example; *"But the department's water quality director, Dennis Fewless, said* ***he hadn't even heard about the practice*** *until asked about it this week by The Associated Press."..... "Transportation engineer Brad Darr said the saltwater has been used on state roads in the Dickinson area of southwestern North Dakota* ***since the late 1960s****, and the practice has expanded to some other parts of the state in the past decade."* For approximately 40 plus years, the ND DoH's statutory and fiduciary responsibilities to maintain and improve the quality of waters of the State of North Dakota as required by 33 U.S.C. ~ 1313(c) has been seriously compromised by the ND DoH's (willful?) lack of awareness due to the ND DoH's lack of substantive, regular inspections of facilities, infrastructures and procedures that are capable of producing irrevocable harm to the Quality for Waters of the State of North Dakota. Quotes taken from the Associated Press - Saturday, February 03, 2007, article titled "N.D. State de-ices highways with oil well saltwater". Enclosed.

With the ongoing and anticipated long lasting oil boom in North Dakota's Bakken Shale Formation, the Three Forks-Sanish Formation and a crude-bearing cache known as the Birdbear, and with the ND DoH's history of the lack of awareness, the ND DoH's lack of substantive, regular inspections of facilities, infrastructures and procedures, are the North Dakota citizens really expected to entrust the ND DoH to inspect, regulate, and enforce generally accepted industrial standards & procedures for oil well produced water, produced water transportation, storage and disposal, the regulation of coal ash ponds, etc., for another three years without an on-going program of intensive over-sight of the ND DoH's activities in regulating water quality in the navigable waters of the United States within North Dakota? The oil boom is so intense that there is now talk by the oil industry, in their rush to exploit all possible oil bearing formations, of their intentions of constructing offshore oil drilling and pumping platforms in the middle of Lake Sakakawea, under the bed of the Missouri River. With the potential to allow and permit such activities the ND DoH risks that pollutants, such as drilling mud, petroleum products, the BTEX chemicals and other pollutants may be released, whether intentionally or accidentally, into the Waters of the State of North Dakota, the Waters of the United States causing irrevocable harm to the Quality of the Waters.

Since none of our, Peterson Coulee Outlet Association (PCOA), previous concerns dealing with the Temporary Emergency Devils Lake Outlet (TEDLO, Outlet) have ever been substantively addressed, we would like to submit those concerns at this time. A great number of these concerns have been published in the form of Letters to the Editor(s) in the local county newspapers of record and are therefore, a matter of public record which can be found in the local county newspaper of records' archives; the ND DoH must consider those previous Letters to the Editor(s), PCOA's oral testimony at the February 17, 2010, ND DoH's Bismarck, North Dakota, hearing and PCOA's written submitted comments of November 4, 2009, along with the new concerns outlined in this document when considering the desirability of the ND DoH's Intent to Amend Administrative Rules Relating to Standards of Water Quality in a Segment of the Sheyenne River.

By the ND DoH's approval of the Amending of Administrative Rules to change the Classification of a Segment of the Sheyenne River, for the sole purpose of allowing the uninterrupted, continual discharge of polluted Devils Lake water into the Sheyenne River, the ND DoH is also approving the construction of a *permanent* Round Lake intake structure and is therefore, willfully attempting to change the North Dakota legislative policy and intent of a Temporary (not intermittent) Emergency Devils Lake Outlet.

Page 3 and 4 of the of the 52 page ND DoH's "Notice Of Intent To Amend Administrative Rules Relating To Standards Of Water Quality" states in part:
North Dakota Administrative Code 33-16-02.1(2)(a), specifies that: "The 'quality of waters' (of the State) shall be the quality of record at the time the first standards were established in 1967, or later if these indicate improved quality. Waters with existing quality that is higher than established standards will be maintained at the higher standard unless affirmatively demonstrated, after full satisfaction of the intergovernmental coordination and public participation provisions of the continuing process, that a change is necessary to accommodate important social or economic development ***in the area which the waters are located.*** In allowing the lowering of existing quality, the (North Dakota Department of Health) shall assure that existing uses are fully protected and that the highest statutory and regulatory requirements for all point sources and cost-effective and reasonable best management practices for nonpoint sources are achieved." [Emphasis Added]

In February of 2006, the Peterson Coulee Outlet Association asked the United States Army

Corp. if the closed basin of Devils Lake was now considered connected to the Red River/Sheyenne River system because of the operation and discharge flows from the Temporary Emergency Devils Lake Outlet. The United States Army Corp. response letter is attached and states in part, "When Devils Lake is below elevation 1459, Devils Lake is considered 'non-contributing' and, therefore, not hydrologically connected to the Sheyenne or Red River basins". And will not be considered 'contributing' to the Sheyenne or Red river basins, until the lake of Devils Lake naturally overflows the elevation of 1459 msl., therefore, it is the PCOA's contention that the ND DoH can not legally change the Sheyenne River classification, because the closed basin of Devils Lake is not in ***'in the area which the waters are located'*** which are the waters that will be degraded by the proposed Sheyenne River reclassification.

Due to the diminutive size and the minute discharges from the Temporary Emergency Devils Lake Outlet, the Outlet is too small to ever be considered any real relief to the Devils Lake lakebed's inundated acres. With the lake of Devils Lake at a present level, of approximately 1450 msl, with a prediction of an additional two (2) foot rise this spring and the Temporary Emergency Devils Lake Outlet, discharging at 100 cubic feet per second (cfs) or even at a discharge rate of 250 cfs, the Outlet will not have any substantive effect on lowering a lake with a volume of approximately 3,375,692 acre feet (at the 1450 msl elevation) or even substantially slowing the rate of rise of a lake that has had averaged inflows into the lake of Devils Lake of 317,000 acre-feet per year from 1993 to 2000 (U. S. Army Corps of Engineers, 2002). The Temporary Emergency Devils Lake Outlet is more symbolic than significant. The Temporary Emergency Devils Lake Outlet's Application to Drain, No. 3457 and the ND DoH's Intention to Amend Administrative Rules Relating to Standards of Water Quality for a Segment of the Sheyenne River may be some sort of a psychological relief but it is not any real relief to the inundated lake bed acres. A psychological relief is not a legally, defensible reason that accommodates important social or economic development in the area, for the granting of a permit for the Application to Drain, No. 3457 or for the ND DoH's Intention to Amend Administrative Rules Relating to Standards of Water Quality for a Segment of the Sheyenne River.

At the present time, Devils Lake's current elevation of approximately 1450 means sea level (msl), has a vast number of acres above the numerous various meanderline elevations, yet below the Ordinary High Water Mark and are owned in fee simple, by private individuals and by the deliberate actions by man, to cause the draining of Sovereign Lands, by the granting of a permit for the Application to Drain, No. 3457 and the ND DoH's Intention to Amend Administrative Rules Relating to Standards of Water Quality for a Segment of the Sheyenne River, it would be considered the willful conversion of the Sovereign Lands to private ownership in the judicial system. Sovereign Lands are lands held in perpetual trust for the benefit of all the citizens of the State of North Dakota, the conversion of Sovereign Lands for the sole benefit of a select few private individuals' economic enjoyment is in it-self an illegal act. Only through acts of nature, such as evaporation, could the lake bed acres perhaps, perhaps legally revert back to those select few private individuals.

The laws of North Dakota are quite clear;

North Dakota Administrative Code, Article 89-10, Sovereign Lands, Chapter 89-10-01, Section 89-10-01-02. Prohibition on permanent relinquishment. Sovereign lands may not be permanently relinquished but must be held in perpetual trust for the benefit of the citizens of the state of North Dakota. All structures permitted or otherwise allowed for private use on sovereign lands are subordinate to public use and values.
and;

North Dakota Century Code 61-33-01, Definitions, No. 3, "Sovereign Lands" means those areas, including beds and islands, laying within the ordinary high watermark of navigable lakes and streams.

The ND DoH's "Intent to Amend Administrative Rules Relating to Standards of Water Quality" for the proposed Sheyenne River segment reclassification is not;
Legally Defensible,
Economically Defensible,
Morally Defensible or,
Environmentally Defensible!

For all of the afore mentioned cases cited above and because North Dakota Department of Health officials have failed miserably to act in a professional, truthful and responsible manner to meet their statutory and fiduciary responsibilities to maintain and improve the quality of the water of waters of the State of North Dakota as required by 33 U.S.C. ~ 1313(c), and have instead decided to compromise their professional integrity, the ND DoH clearly lacks the credibility and the competence to regulate the administering, inspecting and enforcing the Standards of Quality for Waters of the State. Therefore, the Administrator of the United States Environmental Protection Agency should immediately implement a comprehensive review of all of the Department's actions under the Federal Clean Water Act and establish an on-going program of intensive over-sight of the Department's activities in regulating water quality in the navigable waters of the United States within North Dakota.

We will leave you with this one parting comment to ponder, taken from the Final Biennial Report for 1911-1912, North Dakota State Engineer to the Governor, which states in part:

"The water level of any lake possessing no outlet depends on the amount of evaporation, seepage, rainfall and runoff into the Lake from the drainage area tributary to it. The drainage area of Devils Lake is nearly two thousand square miles, but the land lies so nearly level, and there are so many marshes, meadows, small ponds and lakes which arrest the flow of the water and ***from which it evaporates*** that it is not likely that the runoff from more than seven hundred or eight hundred square miles of the total area ever reaches the lake." [Emphasis Added]

The PCOA would also humbly request that our comments and enclosures be included in any submissions that the ND DoH makes to the Untied States Environmental Protection Agency in connection with the Triennial Review of the Standards of Quality for Waters of the State of North Dakota under 33 U.S.C. ~ 1313(c).

Sincerely;

Mrs. Thelma Paulson, President
Peterson Coulee Outlet Association

Enclosure

Attachment

Federal lawsuit filed in huge saltwater spill

By JAMES MacPHERSON Associated Press Writer
The Associated Press - Monday, October 27, 2008

BISMARCK, N.D.
A rancher is suing an Oklahoma oil company over a pipeline that twice spilled saltwater into a creek and on land where she runs her cattle in northwestern North Dakota.
Linda Monson, of Alexander, said nothing but weeds have grown where Zenergy, Inc., of Tulsa, Okla., spilled salty water.
"There's nothing growing where they had those spills, and my cows still refuse to drink from the creek," she said.
Monson was one of about a dozen ranchers affected by the saltwater spill near Alexander that was discovered in January 2006. The spill has been described as the worst in North Dakota's oil history.
The saltwater, a byproduct of oil production, flooded a stock pond and a beaver dam, and flowed into Charbonneau Creek, a tributary of the Yellowstone River.
Monson said a similar spill occurred in August 2005 that never was reported to authorities.
Saltwater from the pipeline, containing water 10 times as salty as sea water, killed fish, turtles and plants along the creek after both spills, she said.
Monson's federal lawsuit seeks at least $75,000 from Zenergy.
Company officials did not return telephone calls on Monday seeking comment.
State officials last year reached a $123,000 settlement with Zenergy, said Dave Glatt, the director of the state Health Department's environmental health section.
A fine of $31,750 was suspended "for following through on their corrective action plan," Glatt said.
Glatt said the company did not report the August 2005 spill, and regulators learned of it only while investigating the spill that occurred more than a year later.
Zenergy is continuing with the cleanup, which has cost the company more than $2 million so far, Glatt said.
The company has excavated tons of contaminated soil from the spill site. It has said the creek is as clean as it was before the spill and has been repopulated with turtles and fish.
"That's my understanding, and leads us to believe the cleanup is headed in the right direction," Glatt said.
Monson and her attorney, Derrick Braaten of Bismarck, are not convinced. They worry about the long-term effect of the spills.
"One of the main concerns is that there is still saltwater underground and it's not static - it can move," Braaten said.
Monson and Braaten also said the company's cleanup operation has worsened the flow of water into the creek.
"They've cut off the main water veins that feed the creek," Monson said.
"A fairly large chunk of the creek is dried up now," Braaten said.
The creek had never been dry before the spills, Monson said.
Zenergy has offered a total of about $7,000 to Monson to settle the issue, though she has declined, Braaten said.
"I haven't taken anything from them," Monson said.
The company has one oil well on Monson's land. She says the horizontal well is aimed at government land adjacent to her property and says she receives no royalties from the well's production.
Zenergy has drilled a new water well on Monson's ranch so she can water her cattle without the creek. She says it's not enough.
"I just want some fairness," she said.

N.D. state de-ices highways with oil well saltwater

By James MacPherson, Associated Press
Published Saturday, February 03, 2007

BISMARCK
For about 40 years, state workers have dumped saltwater left over from oil production on some North Dakota roads, including those in the Devils Lake area. That's news to the Health Department, which wants the practice stopped.
The Transportation Department claims oil well wastewater up to 10 times saltier than sea water is a safe, effective and cheap deicer.
Environmentalists are stunned that workers have dumped tens of thousands of gallons of the potentially contaminated stuff on roads every year, causing unknown harm to wetlands, streams and water supplies.

Sierra Club view

"I can't imagine anybody would sign off on this," said Wayde Schafer, a North Dakota spokesman for the Sierra Club.
"When it leaves the well site and is in an oil company truck, it's considered toxic material," he said. "If they have just one drip from the truck, they're fined. But when it's transferred to a state truck, it's spread wholesale along the interstate. It definitely makes one wonder."

Health Dept. view

Transportation spokeswoman Peggy Anderson said the state Health Department had approved the use of the salty wastewater for deicing. But the department's water quality director, Dennis Fewless, said he hadn't even heard about the practice until asked about it this week by The Associated Press.
"In our opinion, we did not give them our blessing on this practice," Fewless said Friday.
Fewless said the wastewater pulled from oil wells may contain oil and chemicals from drilling operations.
"The bottom line is, we need to look to the future and look for better options and phase this process out," Fewless said.

NDDOT's view

Transportation Department officials say they have not seen any ill effects caused by the saltwater, such as dead vegetation along highways or rustier-than-normal vehicles.
Transportation engineer Brad Darr said the saltwater has been used on state roads in the Dickinson area of southwestern North Dakota since the late 1960s, and the practice has expanded to some other parts of the state in the past decade.

Saltwater is free

Darr said the Transportation Department had no exact figure, but uses "tens of thousands of gallons" of the saltwater each year, at no charge from the oil companies who otherwise would have to pay someone to haul it off.
"They can have all they want," said Dave Wanner, a manager at Missouri Basin Well Service in Belfield, N.D.
Darr said the use of the oil field wastewater has been expanded in the past decade to state roads in Williston, Minot and Devils Lake.
Larry Gangl, the district engineer for the Transportation Department in Dickinson, said about 30 gallons of the undiluted saltwater is applied each mile to slick highways. Sometimes, it is mixed with sand, he said.
"It cuts through the ice and helps sand stick to the ice," Gangl said.
Gangl said the salty water has been applied in just the past couple of years before a predicted storm. That led to a few complaints, he said, but he believes it helps keep roads safe.

"We're doing it for the safety of the traveling public," Gangl said. "Once they hear that, they are pretty fine with it."
Schafer, of the Sierra Club, said his group has found no other states that use oil well saltwater for deicing.
Montana DOT view
Charity Watt Levis, a spokeswoman for the Montana Department of Transportation, said the state does not use the salt brine from oil wells.
"It is something that we looked at not something that we've really studied closely but on the surface, it looks as though the heavy metals that might be in there wouldn't meet the Montana Department of Transportation specifications," she said.
Wanner, a manager at Missouri Basin Well Service in Belfield, N.D,
said the saltwater may contain traces of oil residue with a "little tiny film to it," but that it is not dangerous to the environment if applied sparingly.
"It's not that nasty at all. You don't see dead grass along the highways out here," Wanner said. "They don't put it on that heavy."

Peterson Coulee Outlet Association
3321 54th Ave. N.E.
Maddock, North Dakota 58348

February 22, 2010

Re: Application To Drain
Application No. 3457

Ramsey County Water Resource District
Att: Mr. Jim Herda, Office Manager
524 4th Avenue North East, Unit #12
Devils Lake, North Dakota 58301-2490

Dear Sir;

Thank you for the opportunity to provide comments to the Application to Drain, No. 3457.

Since none of our, Peterson Coulee Outlet Association (PCOA), previous concerns dealing with the Temporary Emergency Devils Lake Outlet have ever been substantively addressed, we would like to resubmit those concerns at this time. A great number of these concerns have been published in the form of letters to the Editor(s) in the local county newspapers of record and are therefore, a matter of public record which can be found in the local county newspaper of records' archives; you must consider those previous Letters to the Editor(s) along with the new concerns outlined in this document when considering the desirability of approving the Application to Drain, No. 3457.

Clearly, the Governor of North Dakota, in conjunction with the North Dakota State Water Commission, is attempting to shift the liability for any and all damages caused by the Temporary Emergency Devils Lake Outlet to the Joint Ramsey-Towner County Water Resource Board. The Governor of North Dakota has the legal power, granted to him by the people of North Dakota, to proclaim an Executive Order, for the greater good of the all the citizens of North Dakota and proceed with this drainage scheme, Application to Drain, No. 3457, without the need for the solicitation and involvement of any local County Water Resource Board(s). Are the individual board members of the Joint Ramsey-Towner County Water Resource Board willing to accept their fiduciary responsibilities associated with the potential liabilities of the Application to Drain, No. 3457?

By the granting of a permit for the Application to Drain, No. 3457, the Joint Ramsey-Towner County Water Resource Board is also approving the construction of a *permanent* Round Lake intake structure and is therefore, willfully attempting to change the North Dakota legislative policy and intent of a Temporary (not intermittent) Emergency Devils Lake Outlet. The PCOA has not been able to find, anywhere, the Joint Ramsey-Towner County Water Resource Board's legally required reclamation plan for the Temporary Emergency Devils Lake Outlet real properties, after the emergency has passed.

The Joint Ramsey-Towner County Water Resource Board is premature in considering the Application to Drain, No. 3457, until all of the other necessary components (that is permits, reclassifications, etc., which are needed for the workability of the application to Drain, No. 3457), have been obtained, such as the interconnection permit, from the Western Area Power Administration (WAPA, along with WAPA's Federally required cost/benefit for the entire drainage scheme), needed for the additional electricity to power the pumps for the proposed increase in the drainage discharge flows, the North Dakota Department of Health's (ND DoH) permanent reclassification standards for the Sheyenne River, the application is incomplete without the obtaining of all of the required downstream flowage easements by the petitioners for the approval of the Application to Drain, No. 3457, to name just a few.

North Dakota Administrative Code 33-16-02.1(2)(a), specifies that:
"The 'quality of waters' (of the State) shall be the quality of record at the time the first standards were established in 1967, or later if these indicate improved quality. Waters with existing quality that is higher than established standards will be maintained at the higher standard unless affirmatively demonstrated, after full satisfaction of the intergovernmental coordination and public participation provisions of the continuing process, that a change is necessary to accommodate important social or economic development ***in the area which the waters are located.*** In allowing the lowering of existing quality, the (North Dakota Department of Health) shall assure that existing uses are fully protected and that the highest statutory and regulatory requirements for all point sources and cost-effective and reasonable best management practices for nonpoint sources are achieved." [Emphasis Added]

In February of 2006, the Peterson Coulee Outlet Association asked the United States

Army Corp. if the closed basin of Devils Lake was now considered connected to the Red River/Sheyenne River system because of the operation and discharge flows from the Temporary Emergency Devils Lake Outlet. The United States Army Corp. response letter is enclosed and states in part, "When Devils Lake is below elevation 1459, Devils Lake is considered 'non-contributing' and, therefore, not hydrologically connected to the Sheyenne or Red River basins". And will not be considered 'contributing' to the Sheyenne or Red river basins, until the lake of Devils Lake naturally overflows the elevation of 1459 msl., therefore, it is the PCOA's contention that the ND DoH can not legally change the Sheyenne River classification, because the closed basin of Devils Lake is not in '*in the area which the waters are located*' which are the waters that will be degraded by the proposed Sheyenne River reclassification.

The Application to Drain, No. 3457, forum is incomplete. Question number nine of the application forum reads;

(9) Do you own the land to be drained in fee? __YES X NO
If NO, give the name and address of the legal landowner(s):

And the partial answer was;

Majority of the land is sovereign land held in trust by the State of North Dakota

A "*Majority of the land*".... **is not all of the land**, the other names and addresses of the legal landowner(s) have **not** been provided with the Application to Drain, No. 3457. Until such time when the other names and addresses of all of the legal landowner(s) have been provided, the Joint Ramsey-Towner County Water Resource Board can not legally grant a permit for the Application to Drain, No. 3457.

At the present time, Devils Lake's current elevation of approximately 1450 means sea level (msl), has a vast number of acres above the various meanderline elevations and are owned in fee, by private individuals, by the deliberate actions by man, to cause the draining of Sovereign Lands, by the granting of a permit for the Application to Drain, No. 3457, it would be considered the willful destruction of the Sovereign Lands, in the judicial system. Sovereign Lands are lands held in perpetual trust for the benefit of the citizens of the state of North Dakota, the destruction of Sovereign Lands for the sole benefit of a select few private individuals' economic enjoyment is in it-self an illegal act. Only through acts of nature, such as evaporation, could the lake bed acres perhaps, perhaps legally revert back to those select few private individuals. The laws of North Dakota are quite clear;

North Dakota Administrative Code, Article 89-10, Sovereign Lands, Chapter 89-10-01, Section 89-10-01-02. Prohibition on permanent relinquishment. Sovereign lands may not be permanently relinquished but must be held in perpetual trust for the benefit of the citizens of the state of North Dakota. All structures permitted or otherwise allowed for private use on sovereign lands are subordinate to public use and values.

and;

North Dakota Century Code 61-33-01, Definitions, No. 3, "Sovereign Lands" means those areas, including beds and islands, laying within the ordinary high watermark of navigable lakes and streams.

Since the Temporary Emergency Devils Lake Outlet has been operating and discharging the drained waters from the large wetland, that is referred to by the name of Devils Lake, (whether the Temporary Emergency Devils Lake Outlet has been effective at draining and maintaining the lake at a set elevation or not) the Untied States Department of Agriculture (USDA) through its subordinate agencies, the Farm Service Agency (FSA) and the Natural Resources Conservation Service (NRCS) will consider any drained, inundated croplands recovered, to be unpermitted, drained, converted wetlands and unless those drained, converted wetlands are properly mitigated with an equal number of restored wetland acres, within the same hydrological area, a landowner, farmer, operator will not be able to harvest agricultural commodities from those drained, converted wetlands. To do so would put the landowner, farmer, operator out of compliance with the USDA's subordinate agencies' regulations. The potential consequence of such compliance violations, the landowner, farmer, operator will lose all of their USDA, FSA, NRCS federal agricultural subsidies for the year in which the violation occurred, all future subsidy payments will be withheld until the violation has been corrected or mitigated and the mandatory repayment of all agricultural subsidies received for the previous ten years from/for the USDA's FSA, NRCS federal agricultural subsidy programs, if the landowner, farmer, operator had so chosen to enroll in the USDA's FSA, NRCS federal agricultural subsidy programs. The Joint Ramsey-Towner County Water Resource Board will be putting their constituents at a great risk of harm by granting the permit for the Application to Drain, No. 3457.

Due to the diminutive size and the minute discharges from the Temporary Emergency Devils Lake Outlet, the Outlet is too small to ever be considered any real relief to the Devils Lake lakebed's inundated acres. With the lake of Devils Lake at a present level, of approximately 1450 msl, and the Temporary Emergency Devils Lake Outlet discharging at 100 cubic feet per second (cfs) or even at a discharge rate of 250 cfs, the Outlet will not have any substantive effect on lowering a lake with a volume of approximately 3,375,692 acre feet (at the 1450 msl elevation) or even substantially slowing the rate of rise of a lake with averaged inflows to the lake of Devils Lake of 317,000 acre-feet per year from 1993 to 2000 (U. S. Army Corps of Engineers, 2002). The Temporary Emergency Devils Lake Outlet is more symbolic than significant. The Temporary Emergency Devils Lake Outlet's Application to Drain, No. 3457 may be some sort of a psychological relief but is not a real relief to the inundated lake bed acres. A psychological relief is not a legally, defensible reason that accommodates important social or economic development in the area for granting a permit for the Application to Drain, No. 3457.

As of today's date, the PCOA has not found anywhere a social/economic report of the potential costs/impacts/benefits of the proposed Application to Drain, No. 3457.

As of today's date, the PCOA has found no evidence of any attempt by Joint Ramsey-Towner County Water Resource Board to obtain the required downstream flowage easements for the Application to Drain, No. 3457.

As of today's date, the PCOA is aware of less than 10 general public comments indicating the desire for the approval of Application to Drain, No. 3457. This lack of general public support in favor of approval for the Application to Drain, No. 3457, indicates an overwhelming desire by the public **to not grant** the permit for the Application to Drain, No. 3457.

The Application to Drain, No. 3457, is not;
Legally Defensible,
Economically Defensible,
Morally Defensible or,
Environmentally Defensible!

For all of the above reasons the Peterson Coulee Outlet Association opposes the approval and granting of the permit associated with the Application to Drain, No. 3457.

We will leave you with this one parting comment to ponder, taken from the Final Biennial Report for 1911-1912, North Dakota State Engineer to the Governor, which states in part:

"The water level of any lake possessing no outlet depends on the amount of evaporation, seepage, rainfall and runoff into the Lake from the drainage area tributary to it. The drainage area of Devils Lake is nearly two thousand square miles, but the land lies so nearly level, and there are so many marshes, meadows, small ponds and lakes which arrest the flow of the water and ***from which it evaporates*** that it is not likely that the runoff from more than seven hundred or eight hundred square miles of the total area ever reaches the lake." [Emphasis Added]

Sincerely;

Mrs. Thelma Paulson, President
Peterson Coulee Outlet Association

Enclosure

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Peterson Coulee Outlet Association
3321 54th Ave. N.E.
Maddock, North Dakota 58348

February 12, 2010

Re: Request for Information

Western Area Power Administration
Att: Mr. Dirk Shulund
P.O. Box 35800
Billings, Montana 59107-5800

Dear Mr. Shulund,

We are aware that the North Dakota State Water Commission (ND SWC) is required to obtain and has requested, an interconnection permit for the electricity that will travel through the newly constructed electrical transmission line to power the additional electrical motors needed to increase the discharge of Devils Lake waters through the Temporary Emergency Devils Lake Outlet (TEDLO) project.

1. What is the status of the requested ND SWC's TEDLO interconnection permit?
2. If the requested ND SWC's TEDLO interconnection permit has been granted what is the cost/impact/benefit ratio for the ND SWC's TEDLO associated with the granted interconnection permit?
3. What is the estimated additional newly created "carbon foot print" associated with the granting of the ND SWC's TEDLO interconnection permit?
4. What is the estimated increase of the cost of electricity to the other consumers of electricity in the region, because of the increased demand for the limited available, existing electrical capacity in North Dakota, associated with the granting of the ND SWC's TEDLO interconnection permit?
5. What provisions by the Western Area Power Administration (WAPA) are in place or are being proposed by WAPA, for achieving compliance with the requirement of the National Environmental Policy Act (NEPA), Section 102 (C), for an Environmental Impact Statement (EIS) covering the issuance of the interconnection permit?

Sincerely;

Mrs. Thelma Paulson, President
Peterson Coulee Outlet Association

Cc: Ms. Lisa Jackson, EPA
Mr. Tony Medrano, Region 8, EPA

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Peterson Coulee Outlet Association
3321 54th Ave. N.E.
Maddock, North Dakota 58348

November 4, 2009

L. David Glatt, P.E., Chief
Environmental Health Section
North Dakota Department of Health
Gold Seal Center, 918 E. Divide Ave.
Bismarck, North Dakota 58501-1947

RE: Comments on the North Dakota Department of Health's,
July 15, 2009
Proposal to Adopt an Emergency Rule
Adding a New Section to
North Dakota Administrative Code Chapter 33-16-02.1
Standards of Quality for Waters of the State
To Change the Classification of the Upper Sheyenne River
And Increase the Maximum Limit for Sulfate in
The River From 450 MG/L to 750 MG/L

Dear Sir;

Thank you for the opportunity to address a few of the numerous concerns from the citizens of North Dakota in the form of comments to the North Dakota Department of Health's, July 15, 2009, Proposal to Adopt an Emergency Rule adding a New Section to North Dakota Administrative Code Chapter 33-16-02.1, Standards of Quality for Waters of the State to Change the Classification of the Upper Sheyenne River and Increase the Maximum Limit for Sulfate in the River From 450 MG/L to 750 MG/L.

North Dakota State law states: "Sovereign lands may not be permanently relinquished but must be held in trust for the benefit of the citizens of North Dakota". This has not been the case with the lake bed of Devils Lake, located in the state of North Dakota. Since the time of North Dakota

statehood, the North Dakota state government has known that the lake of Devils Lake's Ordinary High Water Mark (OHWM) is between 1458 to 1459 Means Sea Level (MSL), with a Natural Overflow Elevation (NOE) of 1459 MSL. The Lake of Devils Lake's natural tendency is to fluctuate. Devils Lake has not yet reached its OHWM or its NOE. Sometime in the past, during one of the lake's naturally occurring low fluctuations, the North Dakota State government, in all its combined wisdom, deeded, permanently relinquished, the temporarily dried lake bed bottom, Sovereign lands, to private individuals for their personal economic gains. At that time the North Dakota state government had breeched the trust of the citizens of North Dakota by condoning the illegal sale of the People of North Dakota's lands. Now the North Dakota Department of Health (ND DoH), by declaring an Emergency, with an Imminent Peril to life and property on the, privately owned, illegally deeded lake bed, and because of the lake's natural fluctuation, the lake is now filling its previously dry lake bed area, the ND DoH is now an active accomplice to this illegal act of stealing the Sovereign Land's away from the good citizens of North Dakota. If the ND DoH had been unbiased and by actually taking their responsibilities seriously, thereby doing their required due diligence of taking a hard look at the laws of North Dakota, the ND DoH would have known better than to declare an Emergency of Imminent Peril for lands below the OHWM and NOE. This comment is not beyond the scope of the issues regarding the North Dakota Department of Health's, July 15, 2009, Proposal to Adopt an Emergency Rule adding a New Section to North Dakota Administrative Code Chapter 33-16-02.1, Standards of Quality for Waters of the State to Change the Classification of the Upper Sheyenne River and Increase the Maximum Limit for Sulfate in the River from 450 MG/L to 750 MG/L.

The proposed ***PERMANENT*** Upper Sheyenne River Reclassification by the ND DoH, runs counter intuitive to the clear intent of the North Dakota's 58th Legislative Assembly to construct a ***TEMPORARY*** Emergency Devils Lake Outlet. The ND DoH is deliberately attempting to circumvent the desires of the North Dakota citizen's legislature by this permanent Upper Sheyenne River Reclassification in order to allow the operation of the Temporary Emergency Devils Lake Outlet to be come in reality a Permanent Emergency Devils Lake Outlet. This comment is not beyond the scope of the issues regarding the North Dakota Department of Health's, July 15, 2009, Proposal to Adopt an Emergency Rule adding a New Section to North Dakota Administrative Code Chapter 33-16-02.1, Standards of Quality for Waters of the State to Change the Classification of the Upper Sheyenne

River and Increase the Maximum Limit for Sulfate in the River from 450 MG/L to 750 MG/L.

The ND DoH's proposed, Permanent Upper Sheyenne River Reclassification is seriously lacking statewide support. There has been absolutely no overwhelming North Dakota public out cry demanding a Permanent Upper Sheyenne River Reclassification. None, absolutely none, of the State's major population centers, the cities of Fargo, Grand Forks, Bismarck, Minot, Williston, Dickinson have passed any resolutions in support of, petitioned the North Dakota legislature for, or even sent letters to the Environmental Protection Agency begging, for this degrading Upper Sheyenne River Reclassification, which would permanently allow the pumping greater quantities, of ever lower quality waters, into the Upper Sheyenne River. If the ND DoH would have taken their responsibilities seriously, had taken a hard look and did their required due diligence, the ND DoH would have known better than to suggest that the filling of a lake is an Emergency of Imminent Peril and of State Wide Significance therefore a proposed permanent river reclassification for a temporary emergency would never have been considered. This comment is not beyond the scope of the issues regarding the North Dakota Department of Health's, July 15, 2009, Proposal to Adopt an Emergency Rule adding a New Section to North Dakota Administrative Code Chapter 33-16-02.1, Standards of Quality for Waters of the State to Change the Classification of the Upper Sheyenne River and Increase the Maximum Limit for Sulfate in the River from 450 MG/L to 750 MG/L.

If the ND DoH had seriously taken a hard look, completed their required due diligence, for the citizens of North Dakota, the ND DoH would be aware that they are premature in proposing a Permanent Emergency Upper Sheyenne River Reclassification. The North Dakota State Water Commission (ND SWC) {one, of the *only two* entities, petitioning for the Permanent Emergency Upper Sheyenne River Reclassification, the other being the City of Devils Lake} has applied for, months ago, but has not yet, at this time, received the approval for an Interconnection Permit from the Western Area Power Administration (WAPA, a Federal Governmental Agency) that is needed for the additional electrical power to operate the four additional Temporary Emergency Devils Lake Outlet discharge pumps in order to increase the outlet's discharge capacity to 250 Cubic Feet per Second (CFS). The granting of an Interconnection Permit from WAPA is highly unlikely. If WAPA grants an Interconnection Permit for the electricity to operate the four additional Temporary Emergency Devils Lake Outlet discharge pumps, the Temporary Emergency Devils Lake Outlet

automatically becomes a federal project. In order for a Federal Governmental Agency to grant a permit for a project, the project must first meet the Federal Government's, mandated, stringent legal, environmental and economical requirements. In order for WAPA to insure that the Public's resources will not be wasted on an uneconomical endeavor, the project must be determined to have a positive cost/benefit ratio. At the last Devils Lake Task Force meeting, October 29, 2009, in the city of Devils Lake North Dakota, an engineer from the ND SWC was asked (and we are paraphrasing here), *"That if the Temporary Emergency Devils Lake Outlet could have been discharging at the full 250 CFS for the full operating season this year, how much would the operation of the outlet lowered the lake elevation (assuming that the Permanent Upper Sheyenne River Reclassification was in effect for the whole season)?"* He answered hesitantly, and finally said about four to six inches, depending on the beginning lake level of course and any additional inflows to the lake during the pumping season. A better question to have asked would have been, *"How many inches of shore line, from around the whole of the lake [or the combined aggregate of acres, derived from the inches of shoreline recovered], would have been recovered due to the discharges attributed to the Temporary Emergency Devils Lake Outlet?"* The question wasn't asked, so there is no official answer, to the question. According to our calculations the answer would be, very few inches of shoreline recovered, less than five acres would have been recovered. Not many bushels of agricultural commodities can be raised (at below cost of production, hence the need for agricultural commodity subsidizations) on less than five acres of recovered, unproductive, saline lake bed. These factors do not meet the Federal Government's permitting requirements for a positive cost/benefit ratio. It is highly unlikely that WAPA will grant the Interconnection Permit. This comment is not beyond the scope of the issues regarding the North Dakota Department of Health's, July 15, 2009, Proposal to Adopt an Emergency Rule adding a New Section to North Dakota Administrative Code Chapter 33-16-02.1, Standards of Quality for Waters of the State to Change the Classification of the Upper Sheyenne River and Increase the Maximum Limit for Sulfate in the River from 450 MG/L to 750 MG/L.

The ND DoH has not, beyond a reasonable doubt, begun to not even have consider, in a substantive manner, any of the numerous downstream ecological damages to the beneficial uses of, not only the Upper Sheyenne River, but the entire Sheyenne River and Red River, that are being and will continue to be, caused by the degradation of the excessive amounts of nutrient loading in the Rivers by the enactment of the ND DoH's, July 15,

2009, Proposal to Adopt an Emergency Rule adding a New Section to North Dakota Administrative Code Chapter 33-16-02.1, Standards of Quality for Waters of the State to Change the Classification of the Upper Sheyenne River and Increase the Maximum Limit for Sulfate in the River from 450 MG/L to 750 MG/L. On Tuesday, 10:58 am, September 29, 2009, a member of the Peterson Coulee Outlet Association (PCOA) E-mailed a request for information from the ND NoH. After not having received a reply from the ND DoH in a timely manner, the PCOA then sent a written letter to the ND DoH on October 8, 2009 (enclosed). On October 22, 2009, the PCOA received a reply letter from the ND DoH, dated October 20, 2009 (enclosed). The POCA did not believe that the ND DoH's October 20, 2009, was a substantive answer to the PCOA's "Request for Information on the Background studies for the North Dakota Department of Health's July 15, 2009 proposal to Adopt an Emergency Rule....". On October 27, 2009, the PCOA sent yet another letter to the ND DoH informing the ND DoH of such (enclosed). On November 2, 2009, PCOA received a Federal Express Airmail, certified letter {only 4 days before the ND DoH's, July 15, 2009, Proposal to Adopt an Emergency Rule.... comment deadline date} dated October 30, 2009, from the ND DoH (enclosed). Although the October 30, 2009, letter from the ND DoH, did contain a computer disc of spreadsheets compiled from the, 2005 - 2009, United States Geological Survey (USGS) and the North Dakota State Water Commission (ND SWC) of the raw data of nutrient loads gathered from the various monitoring gauges along the Sheyenne River, the disc did not contain any interpretations of the data or the estimated increase in the nutrient loads being introduced by the additional flows of the polluted waters from the lake of Devils Lake or the effects of the additional nutrient load will have on the receiving navigable waters, the Sheyenne and Red Rivers. This is not the Due Diligence required by the ND DoH under North Dakota statutes for a July 15, 2009, Proposal to Adopt an Emergency Rule adding a New Section to North Dakota Administrative Code Chapter 33-16-02.1, Standards of Quality for Waters of the State to Change the Classification of the Upper Sheyenne River and Increase the Maximum Limit for Sulfate in the River from 450 MG/L to 750 MG/L. The ND DoH's October 30, 2009, still seems to confuse the PCOA's request for information with North Dakota's Open Records law by stating 'a public entity is not required "to create or compile a record that does not exist". Be that as it may, the ND DoH did admit that **"At this time, the Department does not have in its possession any records that contain the results of these calculations or that specifically answer PCOA'S questions."** Nor did the ND DoH October 30, 2009 letter offer any general

answers to the PCOA's questions either. This is not the Due Diligence required by the ND DoH under North Dakota statutes. The ND DoH has not begun to attempt any, hard look, and begin under taking any substantive studies of the effects on the receiving waters beneficial uses by the introduction of massive amounts of extremely low quality water, that are being caused by their own, North Dakota Department of Health's, July 15, 2009, Proposal to Adopt an Emergency Rule adding a New Section to North Dakota Administrative Code Chapter 33-16-02.1, Standards of Quality for Waters of the State to Change the Classification of the Upper Sheyenne River and Increase the Maximum Limit for Sulfate in the River from 450 MG/L to 750 MG/L. The ND DoH's stead-fast refusal to fulfill, or even acknowledge, its legal responsibility to "maintain or improve, or both, the quality of the waters of the state and to protect existing uses" under NDAC Chapter 33-16-02.1. Clearly, the ND DoH cannot assure that existing uses of the Sheyenne River will be protected unless the impacts of the proposed emergency rule on those existing uses are identified and quantified through the review and analysis of scientific data regarding the resulting changes in water quality in the river. NDAC section 33-16-02. 1-02 2c states explicitly: "Any public or private project or development which constitutes a source of pollution shall provide the best degree of treatment as designated by the ND DoH in the North Dakota pollutant discharge elimination system. [*Note that this requirement is under the "Standards of Quality for Waters of the State" and is separate from the regulations in NDAC 33-16-01 governing the North Dakota Pollution Discharge Elimination System permit.*] **If review of data and public input** indicates **any** detrimental water quality changes, appropriate actions will be taken by the department following procedures approved by the Environmental Protection Agency. (North Dakota Antidegradation Implementation Procedure, Appendix IV.)" (Emphasis added) Clearly, the regulation requires "review of data" to determine whether "detrimental water quality changes" will occur and their severity, and the failure to review that data will result in failure of the ND DoH to discharge its responsibilities under its own regulations to 'take appropriate actions following procedures approved by the Environmental Protection Agency.' The statement by Mr. Glatt that "the Department does not have in its possession any records that contain the results of these calculations" constitutes his admission of the ND DoH's willful failure to perform the review required by NDAC Chapter 33-16-02.1. Moreover, by failing to "specifically answer PCOA's questions" about the impacts of the proposed emergency rule on water quality in the Sheyenne River, the ND DoH is deliberately thwarting the very "public input [regarding] detrimental water

quality changes" provided in its own regulations. This comment is not beyond the scope of the issues regarding the North Dakota Department of Health's, July 15, 2009, Proposal to Adopt an Emergency Rule adding a New Section to North Dakota Administrative Code Chapter 33-16-02.1, Standards of Quality for Waters of the State to Change the Classification of the Upper Sheyenne River and Increase the Maximum Limit for Sulfate in the River from 450 MG/L to 750 MG/L.

North Dakota Governor John Hoeven wrote a letter to Secretary of State, the Honorable Condoleezza Rice, dated April 20, 2005, (enclosed) assuring the Secretary of State that all beneficial uses of waters downstream of the Temporary Emergency Devils Lake Outlet will be protected. Paragraph five of that letter reads; *"The permit to discharge water from Devils Lake to the Sheyenne River is designed to protect all beneficial uses of the water downstream. It has extensive compliance requirements including establishment of baseline conditions, monitoring, adaptive management and reporting. As part of the adaptive management plan, the permit includes a mechanism for recognizing and rapidly addressing issues that may arise."* Although North Dakota Governor Hoeven was at the time speaking about the first ND DoH's discharge permit, there were at least some minor protections to all of the downstream water's beneficial uses. The North Dakota Department of Health's, July 15, 2009, Proposal to Adopt an Emergency Rule adding a New Section to North Dakota Administrative Code Chapter 33-16-02.1, Standards of Quality for Waters of the State to Change the Classification of the Upper Sheyenne River and Increase the Maximum Limit for Sulfate in the River from 450 MG/L to 750 MG/L, willfully and totally disregards Governor Hoeven's previous commitment to the Secretary of State, the citizens of the United States of America, the citizens of North Dakota and Minnesota, the Federal Canadian Government and the Province of Manitoba. This comment is not beyond the scope of the issues regarding the North Dakota Department of Health's, July 15, 2009, Proposal to Adopt an Emergency Rule adding a New Section to North Dakota Administrative Code Chapter 33-16-02.1, Standards of Quality for Waters of the State to Change the Classification of the Upper Sheyenne River and Increase the Maximum Limit for Sulfate in the River from 450 MG/L to 750 MG/L.

The Lake of Devils Lake is filling, according to its own normal natural fluctuation cycle. The North Dakota Department of Health is deliberately, shifting, perpetuating and intensifying the problems of this natural fluctuation cycle of the closed basin lake of Devils Lake, by this ill-conceived, July 15, 2009, Proposal to Adopt an Emergency Rule adding a

New Section to North Dakota Administrative Code Chapter 33-16-02.1, Standards of Quality for Waters of the State to Change the Classification of the Upper Sheyenne River and Increase the Maximum Limit for Sulfate in the River from 450 MG/L to 750 MG/L, to the artificially created (by way of the man made, Temporary Emergency Devils Lake Outlet) connection to the downstream Upper Sheyenne River regions. The Temporary Emergency Devils Lake Outlet is not a natural phenomenon; it takes an act of man to throw the switch and turn on the discharge pumps. This comment is not beyond the scope of the issues regarding the North Dakota Department of Health's, July 15, 2009, Proposal to Adopt an Emergency Rule adding a New Section to North Dakota Administrative Code Chapter 33-16-02.1, Standards of Quality for Waters of the State to Change the Classification of the Upper Sheyenne River and Increase the Maximum Limit for Sulfate in the River from 450 MG/L to 750 MG/L.

Hence, the North Dakota Department of Health's, July 15, 2009, Proposal to Adopt an Emergency Rule adding a New Section to North Dakota Administrative Code Chapter 33-16-02.1, Standards of Quality for Waters of the State to Change the Classification of the Upper Sheyenne River and Increase the Maximum Limit for Sulfate in the River from 450 MG/L to 750 MG/L ***is not***;

Legally Defensible,
Economically Defensible or,
Environmentally Defensible!

Sincerely;

Thelma Paulson, President
Peterson Coulee Outlet Association

Cc: Mr. Tony Medrano, Acting Laboratory Director, U.S. E.P.A., Region 8
Ms. Lisa P. Jackson, Administrator, U.S. E.P.A

Enclosures

Peterson Coulee Outlet Association
3321 54th Ave. N.E.
Maddock, North Dakota 58348

October 8, 2009

Mr. Mike Ell
Environmental Health Section
Surface Water Quality/Lakes/Rivers
North Dakota Department of Health
Gold Seal Center, 918 E. Divide Ave.
Bismarck, North Dakota 58501-1947

RE: Request for Information on
Background Studies for the
North Dakota Department of Health's,
July 15, 2009
Proposal to Adopt an Emergency Rule
Adding a New Section to
North Dakota Administrative Code Chapter 33-16-02.1
Standards of Quality for Waters of the State
To Change the Classification of the Upper Sheyenne River
And Increase the Maximum Limit for Sulfate in
The River from 450 MG/L to 750 MG/L

Dear Mr. Ell;

On Tuesday, 10:58 am, September 29, 2009, you were sent the following E-mail from the Peterson Coulee Outlet Association. As of today's date, October 8, 2009, we have not had any type of reply from you, perhaps you did not receive our letter. Hence we feel it necessary to send this written letter, to rectify the uncertainty.

We request substantive answers to our questions within fifteen (15) calendar days from today's date, October 8, 2009.

We realize that no reply or non answers, to these questions are, yet another indication of the North Dakota Department of Health's lack of background studies for the proposed adoption of an Emergency Rule, Adding a New Section to North Dakota Administrative Code Chapter 33-16-02.1, Standards of Quality for Waters of the State, to Change the Classification of the Upper Sheyenne River and will be viewed as such.

Thank you in advance.

Sincerely;

Thelma Paulson, President
Peterson Coulee Outlet Association

Cc: Mr. John Glover, Washington. D.C., United States Department of Agriculture
Ms. Jennifer Heglund, North Dakota, United States Department of Agriculture
Mr. Tony Medrano, Acting Laboratory Director, U.S. EPA, Region 8

FW: Devils Lake Downstream Issues Question: What's Ugly, Smells, Kills Dogs? Blue-Green Algae

From: **Leo Walker** (ndleo@hotmail.com)
Sent: Tue 9/29/09 10:58 AM
To: mell@nd.gov; thomas.scherer@ndsu.edu; roxanne.m.johnson@ndsu.edu
Good Morning,
It was suggested (see the following) that maybe you folks would be able to answer our simple questions in a meaningful manner.
Thank you in advance.
Sincerely,
Leo Walker
Peterson Coulee Outlet Association

From: John.Glover@wdc.usda.gov
To: ndleo@hotmail.com; keith.weston@nd.usda.gov; dennis.reep@nd.usda.gov; Andy.Wingenbach@nd.usda.gov; toni.yow@nd.nacdnet.net; Mike.Collins@nd.usda.gov; Brent.Gustafson@nd.usda.gov
CC: Jennifer.Heglund@nd.usda.gov
Date: Tue, 29 Sep 2009 11:27:58 -0400
Subject: Re: Devils Lake Downstream Issues Question: What's Ugly, Smells, Kills Dogs? Blue-Green Algae

Mr. Walker.

In response to your following e-mail message, the Natural Resources Conservation Service does not have the technical background to address questions you have posed.

Some of the questions being asked may very well require detailed literature research or even new scientific study to adequately address the issue. I am recommending you contact North Dakota State University, Water Quality Staff, Thomas Scherer, Associate Professor, Thomas.Scherer@ndsu.edu 701-231-7239 <mailto:Thomas.Scherer@ndsu.edu 701-231-7239> or Roxanne Johnson Roxanne.M.Johnson@ndsu.edu
701-231-8926.

The North Dakota Department of Health would be another source with such expertise, and have the legal statutory authority to address such an issue. Mike Ell, Environmental Administrator, would be an excellent contact for this concern. His number is 701-328-5214.

John Glover
Sent from Blackberry Wireless Device (202) 834-2404.

From: Leo Walker <ndleo@hotmail.com>
To: Glover, John - Washington, DC; Weston, Keith - Bismarck, ND; Reep, Dennis - Bismarck, ND; Wingenbach, Andy - Devils Lake, ND; Yow, Toni - Fessenden, ND; Collins, Mike - Jamestown, ND; Gustafson, Brent - Valley City, ND
Sent: Mon Sep 28 14:54:02 2009
Subject: Devils Lake Downstream Issues Question: What's Ugly, Smells, Kills Dogs? Blue-Green Algae

Good Morning,

The following article comes to you from the September 27, 2009, Grand Forks Herald.

Quotes: "Blue-green algae are common in waters but not every lake develops serious problems **until plentiful "man-induced" nutrients like phosphorous arrive**, said Jim Vennie, a Wisconsin Department of Natural Resources expert."....

"Some people say they have gotten nauseous and vomited from smelling it," said Ken Schreiber, a Wisconsin Department of Natural Resources water quality specialist."....

"John Plaza, president of the Chetek Lakes Protection Association, which represents six lakes in northwest Wisconsin, said farm runoff, lawn fertilizers, septic systems and even ashes from leaves being burned on the shorelines are among factors contributing to the algae problems."

We are attempting to write comments concerning the North Dakota Department of Health's reclassification of the Sheyenne River (North Dakota) in order to increase the discharges from the Temporary Emergency Devils Lake Outlet into the Sheyenne River. October 16, 2009, is the deadline.

Can anyone help us calculate;

1. How much phosphorous, phosphates (in mg/L or tons, whichever is more appropriate for illustration purposes) from the West Bay of Devils Lake that Lake Ashtabula can accommodate before the Blue-Green algae takes over and poisons Lake Ashtabula?

2. How many years it will take, at the following estimated rate inflows from Devils Lake, before the accumulation of phosphates reaches critical mass in Lake Ashtabula?

3. Will the downstream receiving cities' water treatment facilities be able to remove the Blue-Green algae toxins?

When the North Dakota State Water Commission completes it's scheme to increases the Temporary Emergency Devils Lake Outlet pumping capacity from 100 cfs (cubic feet a second) to 250 cfs (approximately 100,000 acre/feet a year), Lake Ashtabula's waters will be replaced over one and a half times a year with Devils Lake water. The volume of Lake Ashtabula is approximately 60,000 acre/feet.

We believe most of the phosphorous, phosphates from Devils Lake will accumulate and remain in Lake Ashtabula and will not be flowing through Baldhill Dam. We believe Lake Ashtabula is, will become more of, a nutrient trap for Devils Lake waters, the cumulative effects on Lake Ashtabula will be devastating and irreversible.

	WEST BAY of DEVILS LAKE	SHEYENNE RIVER
Total Dissolved Solids	1200-2000 mg/L	600-700 mg/L
Calcium	70-75 mg/L	50-60 "
Magnesium	80-85 "	30-35 "
Sodium	240-250 "	75-85 "
Arsenic	12-15 "	4-5 "
Phosphorous	.400 "	.175-.250 "
Chloride	125-150 "	10-20 "
Hardness	450-550 "	250-300 "

There is Mercury, Strontium, Cadmium, Aluminum and others that we don't know

about, that need to be considered also.
Thank you in advance.
Best Regards,
Leo Walker
Peterson Coulee Outlet Association

What's ugly, smells, kills dogs? Blue-green algae

By ROBERT IMRIE Associated Press Writer , The Associated Press - WAUSAU, Wis.
Published Sunday, September 27, 2009

Waterways across the upper Midwest are increasingly plagued with ugly, smelly and potentially deadly blue-green algae, bloomed by drought and fertilizer runoffs from farm fields, that's killed dozens of dogs and sickened many people.
Aquatic biologists say it's a problem that falls somewhere between a human health concern and a nuisance, but will eventually lead to more human poisoning. State officials are telling people, who live on algae-covered lakes to close their windows, stop taking walks along the picturesque shorelines and keep their dogs from drinking the rank water.
Peggy McAloon, 62, lives on Wisconsin's Tainter Lake and calls the algae blooms the "cockroach on the water."
"It is like living in the sewer for three weeks. You gag. You cannot go outside," she said. "We have pictures of squirrels that are dead underneath the scum and fish that are dead. ... It has gotten out of control because of the nutrient loads we as humans are adding to the waters."
Blue-green algae are common in waters but not every lake develops serious problems until plentiful "man-induced" nutrients like phosphorous arrive, said Jim Vennie, a Wisconsin Department of Natural Resources expert. The toxins released by the algae can be deadly. Symptoms include rash, hives, runny nose, irritated eyes and throat irritation.
No people have died in the U.S. from the algae's toxins, according to Wayne Carmichael, a retired aquatic biologist and toxicology professor in Oregon.
Many, however, have gotten sick: "Sooner or later, we are going to have more acute human poisoning," Carmichael said.
The scum has killed dozens of dogs over the years _ including at least four in Oregon, three in Wisconsin and one in Minnesota this summer. Wisconsin wildlife experts are warning duck hunters with dogs to be extra cautious this fall. "If the water is pea-soup green, be sure to have clean water along to wash the dog off," Vennie said. "Don't let it drink the water."
Fewer than 100 lakes in Wisconsin typically have some problems with algae bloom each summer and the ones in western Wisconsin causing so much discomfort this year are being fueled by a perfect storm, Vennie said. The last month has seen little rain, warm, sunshiny days and little wind.
The blooms just sit there, growing, then decaying and smelling.
"Some people say they have gotten nauseous and vomited from smelling it," said Ken Schreiber, a Wisconsin Department of Natural Resources water quality specialist.
Officials have banned recreational activities at some lakes in Washington state because of blooms. And in Oregon, the blue - green alga is the number one water quality issue, Carmichael said.
Yet other countries have worse problems, Carmichael said, because many have waters

with even more nutrients than exist in U.S. lakes.
In France, a horse died on a beach in July after falling into some decaying algae sludge. Last year, the Chinese government brought in the army to remove the slimy growths so the Olympic sailing competition could be held.
Stephanie Marquis, a spokesman for the Wisconsin Department of Health Services, said her agency had received 41 complaints related to health concerns with blue-green algae so far this season. Rashes, sore throats and eye irritation among the problems, she said.
In Minnesota, Matt Lindon is a pollution control specialist for the state and he called 2009 a typical year for complaints about algae scums. But for some reason this summer, Bagley Lake in northwest Minnesota, an "historically clean lake," generated respiratory and odor problems, he said. "It may be related to the water level or some new runoff source," he said.
Loren Hake, 71, has lived about two blocks from a Lake Menomin in western Wisconsin since 1963.
He feels like a prisoner in his own home, isolated by a stench "something like a pig pen" that forces he and his wife to run the air conditioner although it's not that hot because they can't leave the windows open, he said. For the first time, the couple hasn't set on an outside deck because of the smell from the algae-covered bay.
"I don't know what they can do about it," Hake said.
There's little anybody can do besides wait for cooler temperatures, Vennie said.
John Plaza, president of the Chetek Lakes Protection Association, which represents six lakes in northwest Wisconsin, said farm runoff, lawn fertilizers, septic systems and even ashes from leaves being burned on the shorelines are among factors contributing to the algae problems.
"I have been a user of these lakes since 1962," he said. "I have never experienced anything like this before. It's nasty. People are saying we can't live with this any more."

This photo provided by John Kuglin shows some green algae on Thursday, Sept. 3, 2009,

on Lake Pokegama near Chetek, Wis. Waterways across the upper Midwest are increasingly plagued with ugly, smelly and potentially deadly blue-green algae, bloomed by drought and fertilizer runoffs from farm fields, that's killed dozens of dogs and sickened many people. (AP Photo/John Kuglin)

Peterson Coulee Outlet Association
3321 54th Ave. N.E.
Maddock, North Dakota 58348

October 27, 2009

Mr. Dennis Fewless, Director
Division of Water Quality
Environmental Health Section
North Dakota Department of Health
Gold Seal Center, 918 E. Divide Ave.
Bismarck, North Dakota 58501-1947

RE: Denial of Request for Information,
Necessary for Informed Public Comments
to the Background Studies for the
North Dakota Department of Health's,
July 15, 2009
Proposal to Adopt an Emergency Rule
Adding a New Section to
North Dakota Administrative Code Chapter 33-16-02.1
Standards of Quality for Waters of the State
To Change the Classification of the Upper Sheyenne River
And Increase the Maximum Limit for Sulfate in
The River from 450 MG/L to 750 MG/L

Dear Mr. Dennis Fewless;

On October 8, 2009, the Peterson Coulee Outlet Association (PCOA) sent the North Dakota Department of Health (ND DoH) a written request for information. See enclosed.

PCOA has now received a letter in response to our request for information from the ND DoH dated October 20, 2009. See enclosed.

It appears to PCOA that the ND DoH has mistakenly confused the PCOA's request for information as a comment to the North Dakota Department of Health's, July 15, 2009, Proposal to Adopt an Emergency Rule, Adding a New Section to North Dakota Administrative Code Chapter 33-16-02.1, Standards of Quality for Waters of the State to Change the Classification of the Upper Sheyenne River and Increase the Maximum Limit for Sulfate in the River from 450 MG/L to 750 MG/L. This is not case.

PCOA's request for information is simply that, a request for information. If the ND DoH feels the need to include the public's requests for information in the public record as comments to the North Dakota Department of Health's, July 15, 2009, Proposal to Adopt an Emergency Rule, Adding a New Section to North Dakota Administrative Code Chapter 33-16-02.1, Standards of Quality for Waters of the State to Change the Classification of the Upper Sheyenne River and Increase the Maximum Limit for Sulfate in the River from 450 MG/L to 750 MG/L, the ND DoH may certainly do so.

However, PCOA's October 8, 2009, request for information has not been substantively answered in the ND DoH October 20, 2009, response.

Therefore, by the ND DoH apparent refusal to provide the information to the PCOA, in a timely manner, information that the PCOA had requested well in advance of the public's comment deadline period, the ND DoH is preventing the PCOA from substantively commenting on a major issue involving the North Dakota Department of Health's, July 15, 2009, Proposal to Adopt an Emergency Rule, Adding a New Section to North Dakota Administrative Code Chapter 33-16-02.1, Standards of Quality for Waters of the State to Change the Classification of the Upper Sheyenne River and Increase the Maximum Limit for Sulfate in the River from 450 MG/L to 750 MG/L.

Hence, it appears that the ND DoH is thereby deliberately subverting and thwarting the public participation process mandated by law.

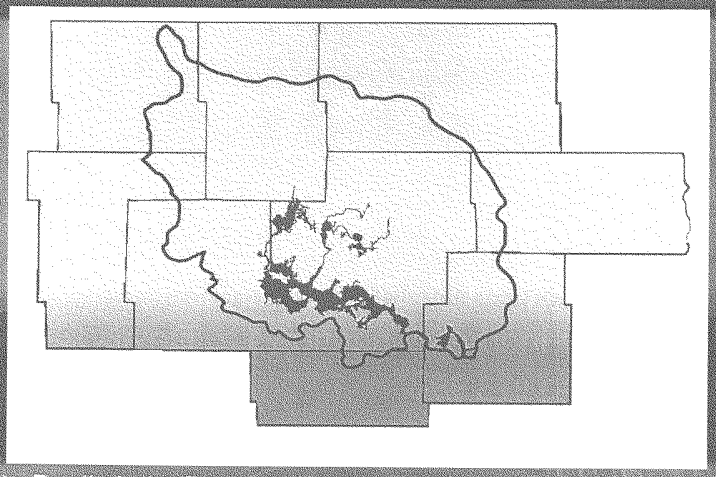
At this time, POCA, again will make the request for substantive information to answer our questions (to be received well in advance of the public comment deadline), so that we, PCOA, will be able to fully participate and make factual, informed comments in the Public Comment process mandated by law.

Thank you in advance.
Sincerely;

Thelma Paulson, President
Peterson Coulee Outlet Association
Cc: Mr. John Glover, Washington. D.C., United States Department of Agriculture
Ms. Jennifer Heglund, North Dakota, United States Department of Agriculture
Mr. Tony Medrano, Acting Laboratory Director, U.S. EPA, Region

Enclosures

The Devils Lake Basin



- Devils Lake Basin encompasses 3810 Square Miles or 2.5 Million Acres in Northeastern North Dakota.

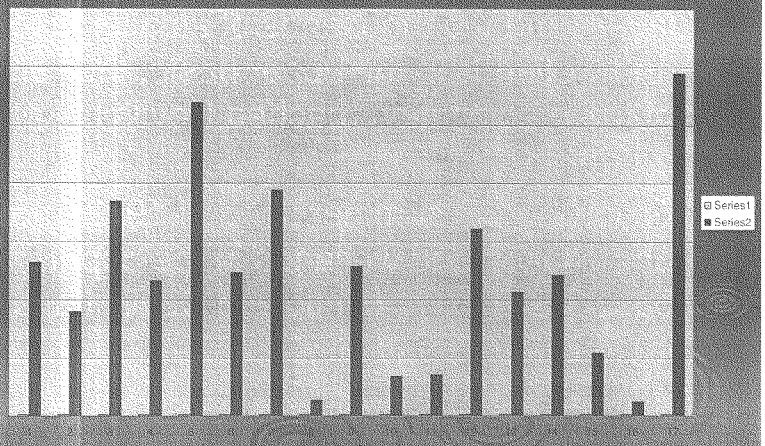
What has happened?

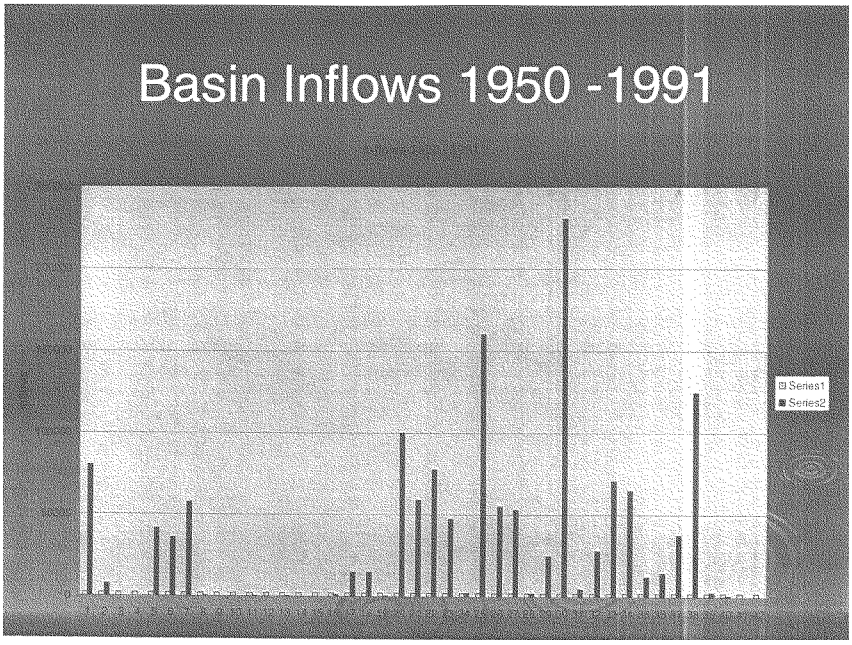
- The Devils Lake Basin is currently in a wet cycle that began in about 1980*.
- Precipitation averaged about 4 more inches per year during 1980–2010 than during 1950–79*.
- The increased precipitation resulted in a dramatic increase in inflows to Devils Lake beginning in 1993*.

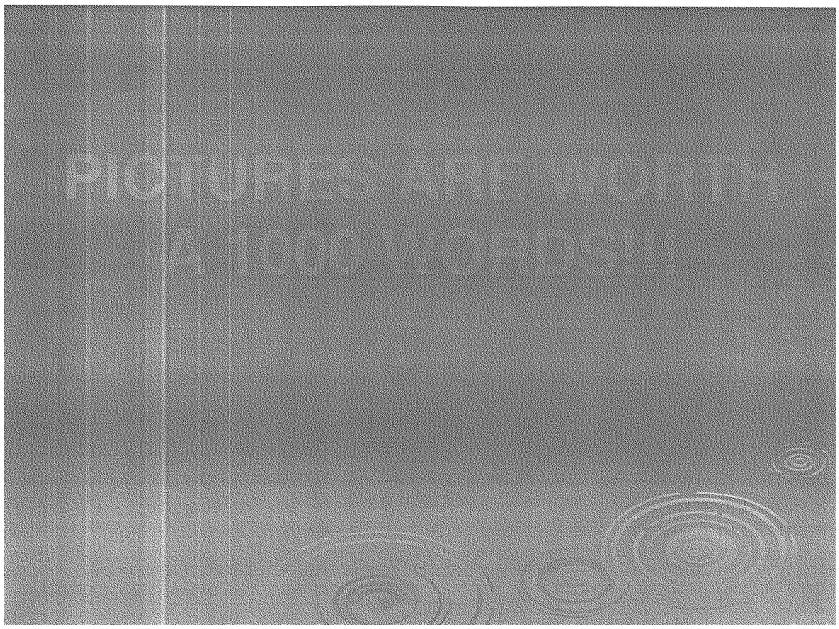
- Much of the increase in precipitation during 1980–93 went toward filling soil moisture deficits, the upstream chain of lakes, and the thousands of smaller lakes and wetlands in the upper basin; thus little of the precipitation reached Devils Lake as runoff*.
- Following the summer flood of 1993, most of the lakes and wetlands in the upper basin were full and inflow to Devils Lake increased dramatically*.

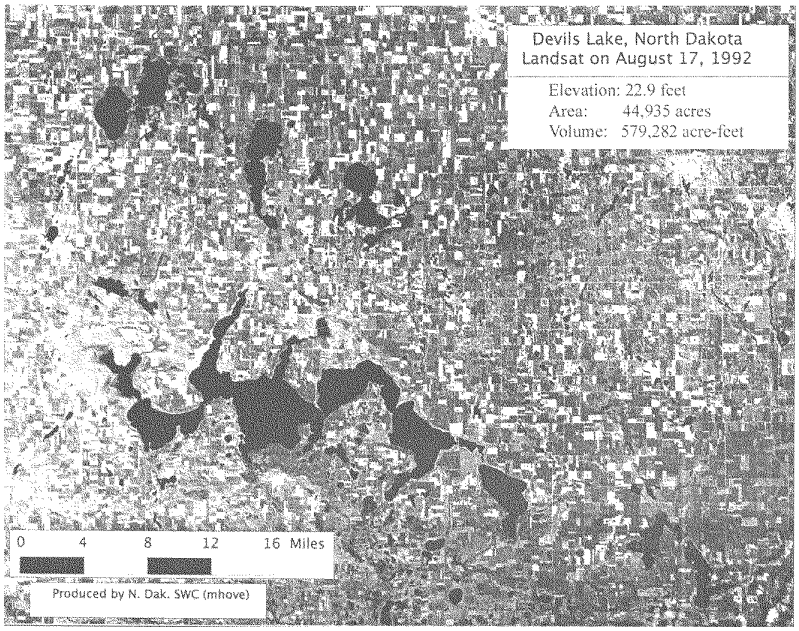
*Source USGS

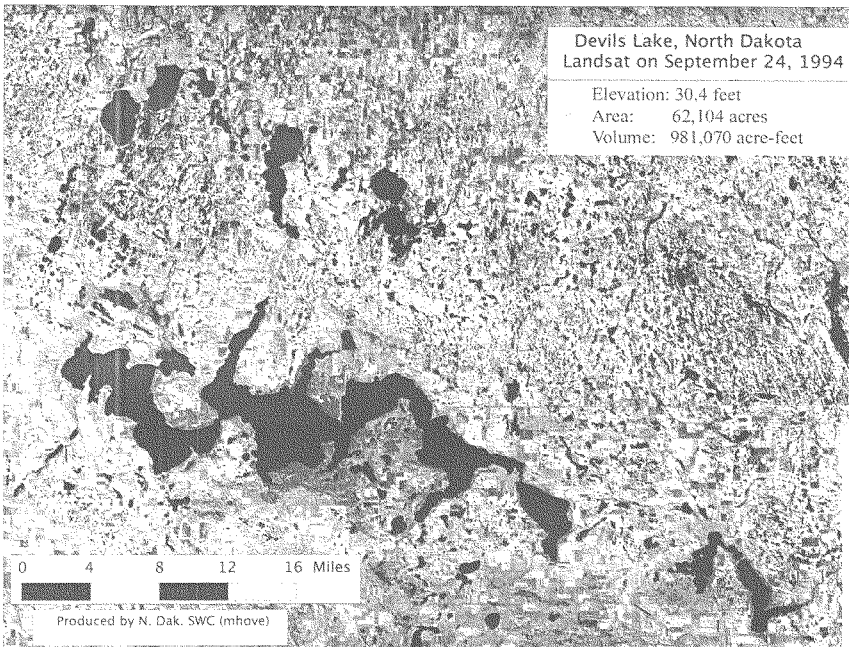
Basin Inflows 1993 -2009

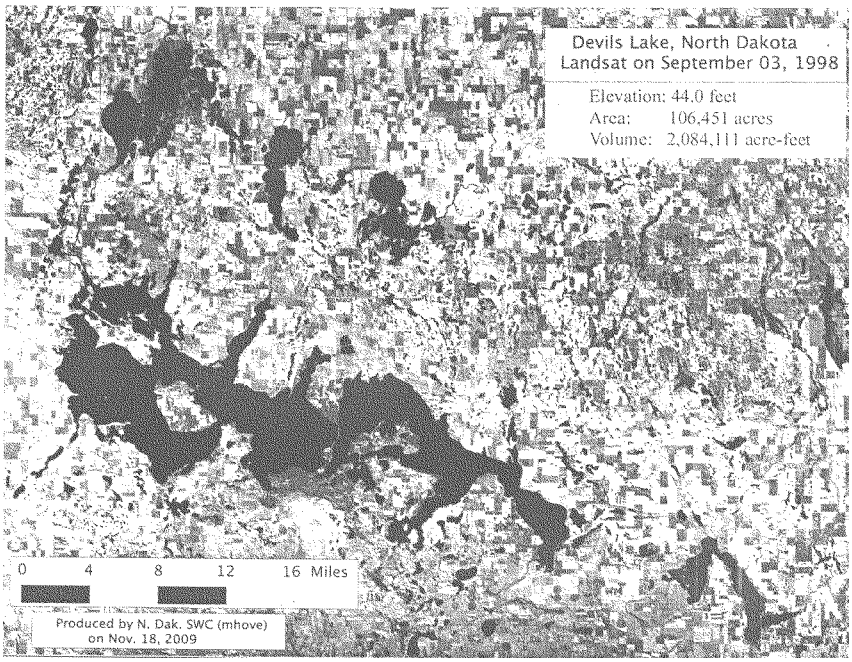


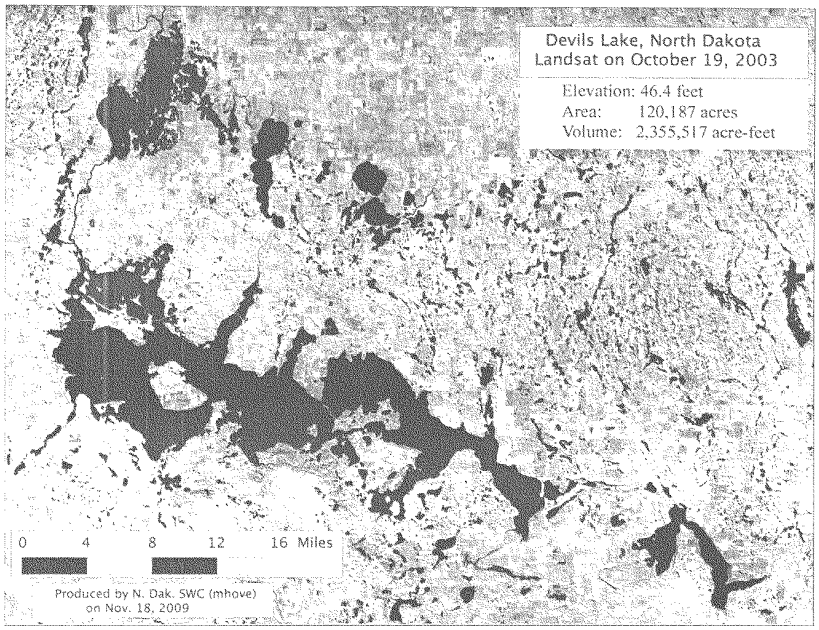

Basin Inflows 1950 -1991
Series1
Series2

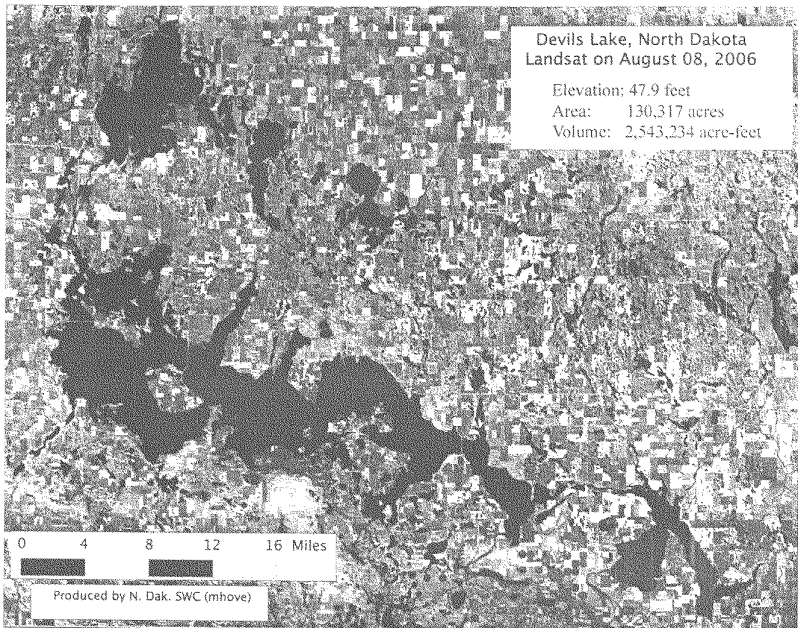


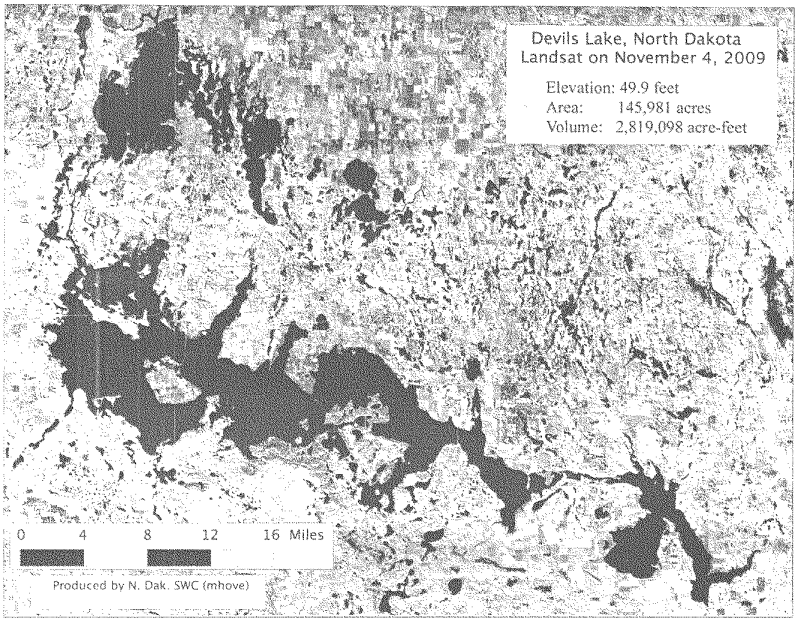

Devils Lake, North Dakota
Landsat on August 17, 1992
Elevation: 22.9 feet
Area: 44,935 acres
Volume: 579,282 acre-feet
0 4 8 12 16 Miles
Produced by N. Dak. SWC (mhove)

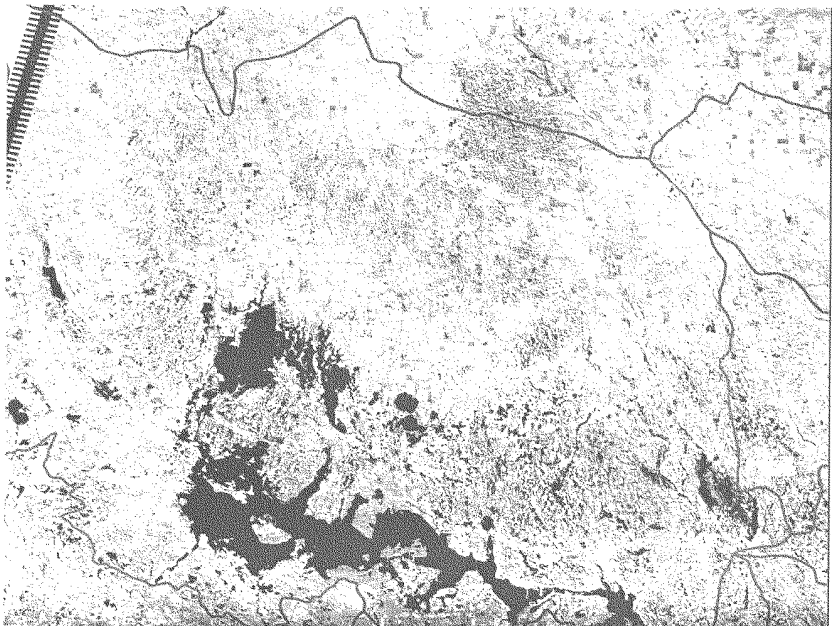

Devils Lake, North Dakota
Landsat on September 24, 1994
Elevation: 30.4 feet
Area: 62,104 acres
Volume: 981,070 acre-feet
0 4 8 12 16 Miles
Produced by N. Dak. SWC (mhove)

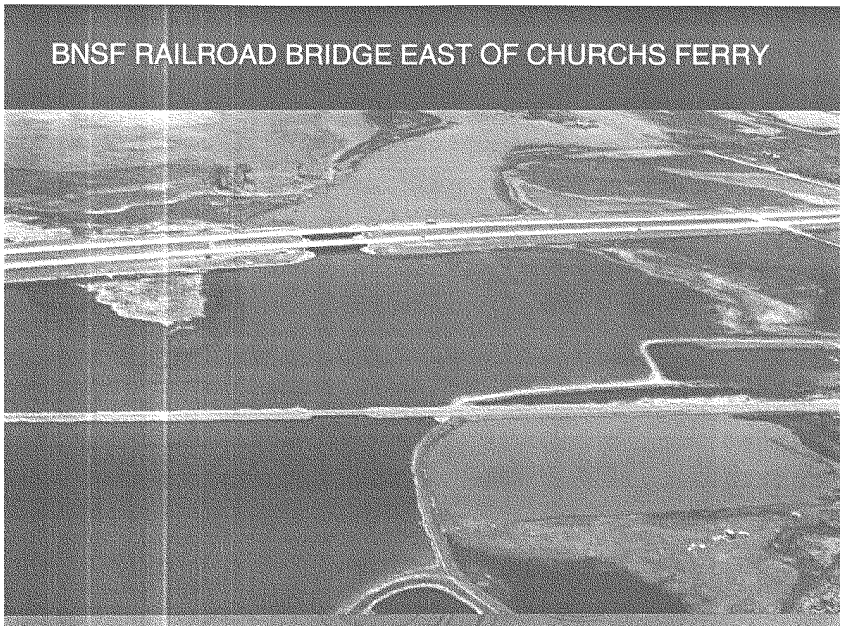

Devils Lake, North Dakota
Landsat on September 03, 1998
Elevation: 44.0 feet
Area: 106,451 acres
Volume: 2,084,111 acre-feet
0 4 8 12 16 Miles
Produced by N. Dak. SWC (mhove)
on Nov. 18, 2009

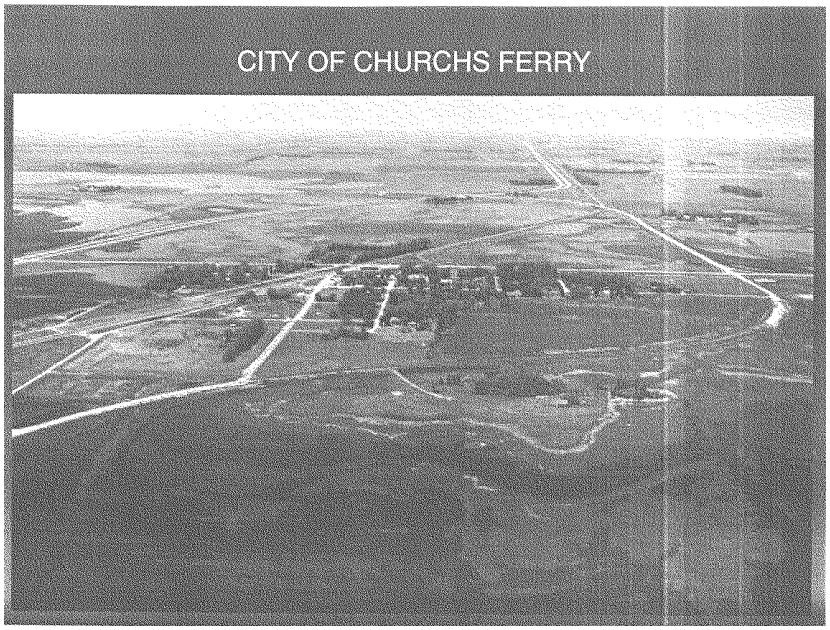

Devils Lake, North Dakota
Landsat on October 19, 2003
Elevation: 46.4 feet
Area: 120,187 acres
Volume: 2,355,517 acre-feet
0 4 8 12 16 Miles
Produced by N. Dak. SWC (mhove)
on Nov. 18, 2009

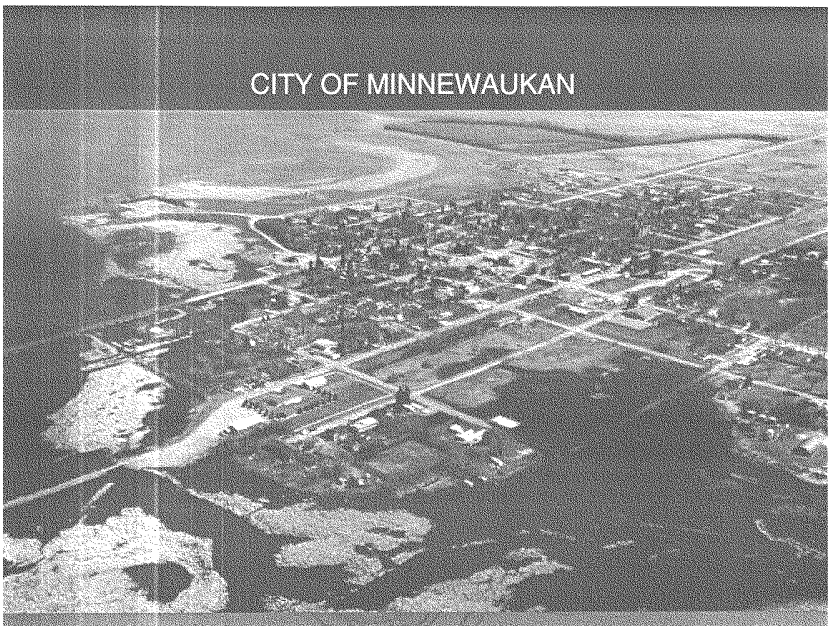

Devils Lake, North Dakota
Landsat on August 08, 2006
Elevation: 47.9 feet
Area: 130,317 acres
Volume: 2,543,234 acre-feet
0 4 8 12 16 Miles
Produced by N. Dak. SWC (mhove)

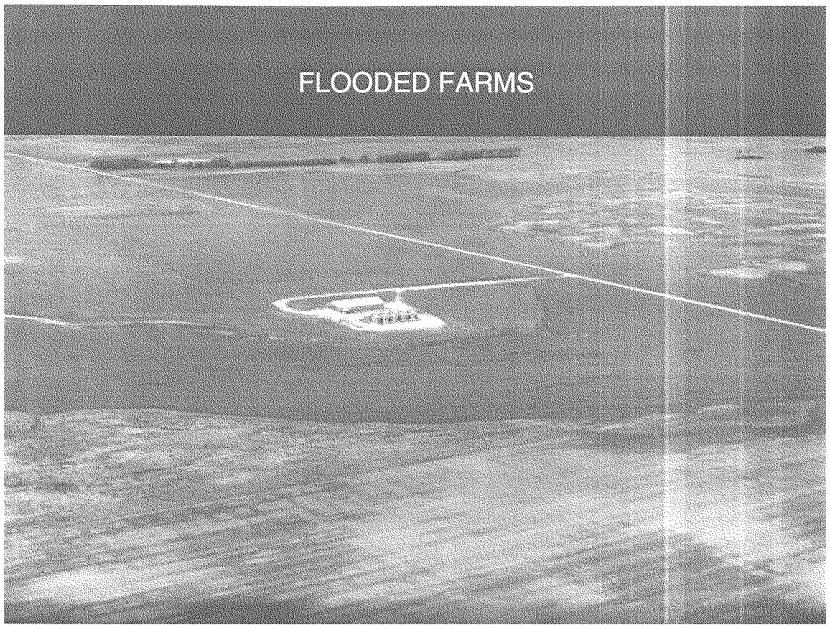

Devils Lake, North Dakota
Landsat on November 4, 2009
Elevation: 49.9 feet
Area: 145,981 acres
Volume: 2,819,098 acre-feet
0 4 8 12 16 Miles
Produced by N. Dak. SWC (mhove)




BNSF RAILROAD BRIDGE EAST OF CHURCHS FERRY

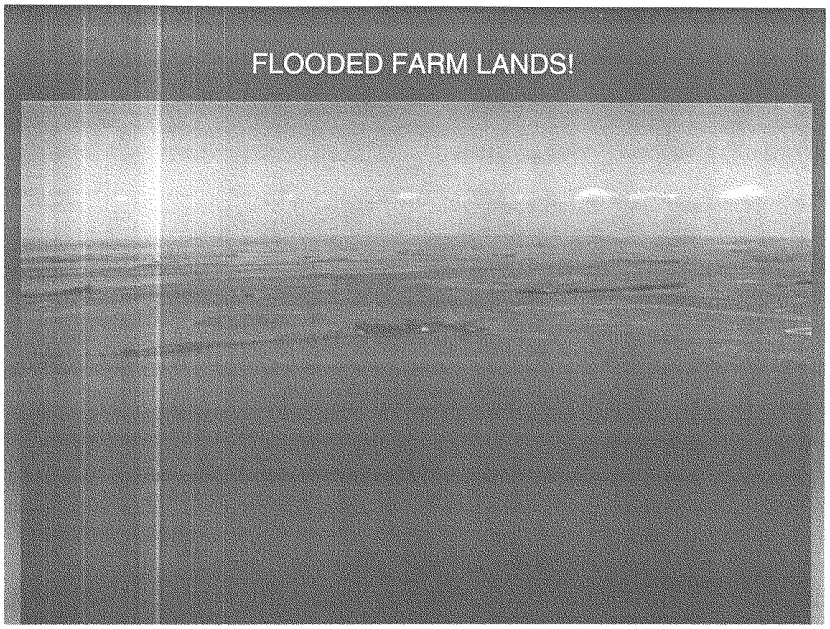

CITY OF CHURCHS FERRY

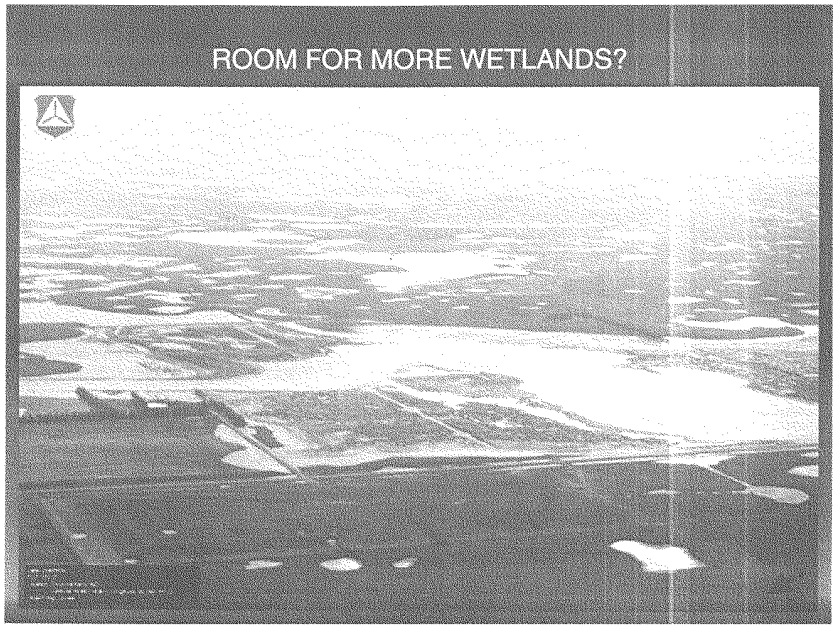

CITY OF MINNEWAUKAN


FLOODED FARMS

The 1990
Peace
Garden State

Storsteen farm – 2009


FLOODED FARM LANDS!



AGRICULTURAL IMPACTS

- For Every Foot of Elevation Increase 9 – 10 Thousand Acres of Farmland LOST!
- Almost 400,000 Acres Lost Within The Basin So Far, 212,588 Acres In Ramsey County Alone!
- Annual Economic Impact of $83 Million Dollars LOST (Just Ramsey & Benson Counties)!
- 530 Jobs lost!

WHAT IS BEING DONE?

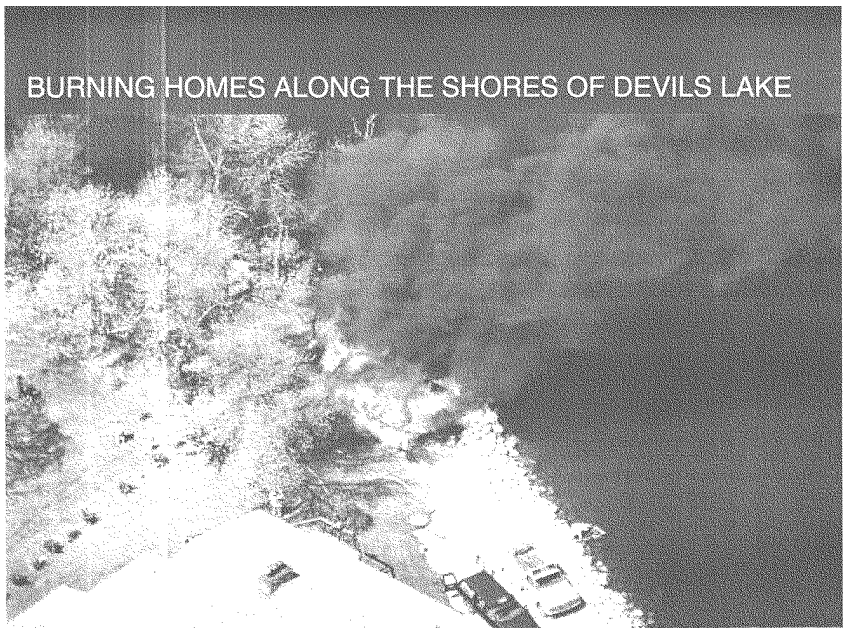
- Upper Basin Storage
  - ESAP Storage Program: About A 1000 Acre Feet Of Water Is Being Stored On 338 Acres
  - Sweetwater/Morrison Storage Program:
  - Other Entities Storing Water In The Upper Basin – US Fish & Wildlife, Natural Resource Conservation Service & The North Dakota Natural Resource Trust

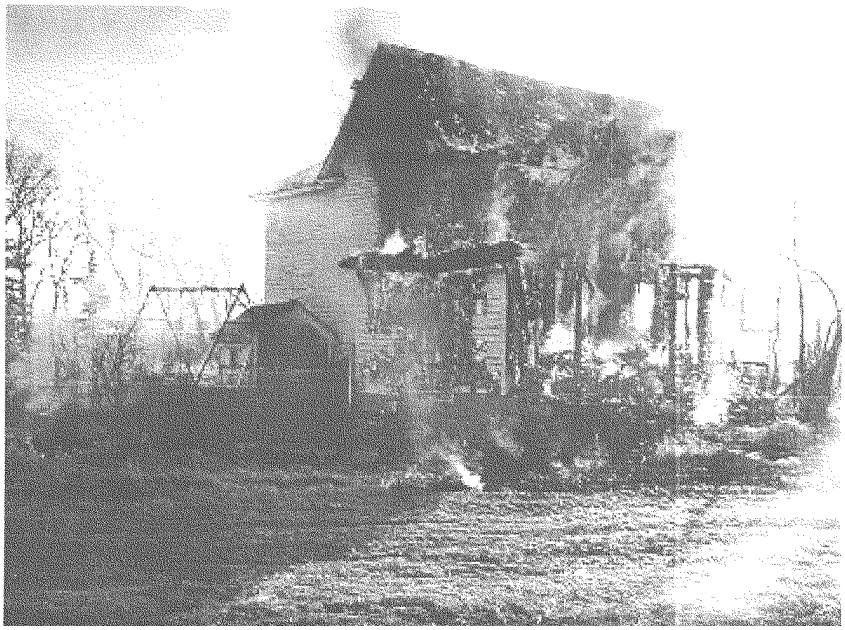
DIFFICULTIES IN DOING MORE?

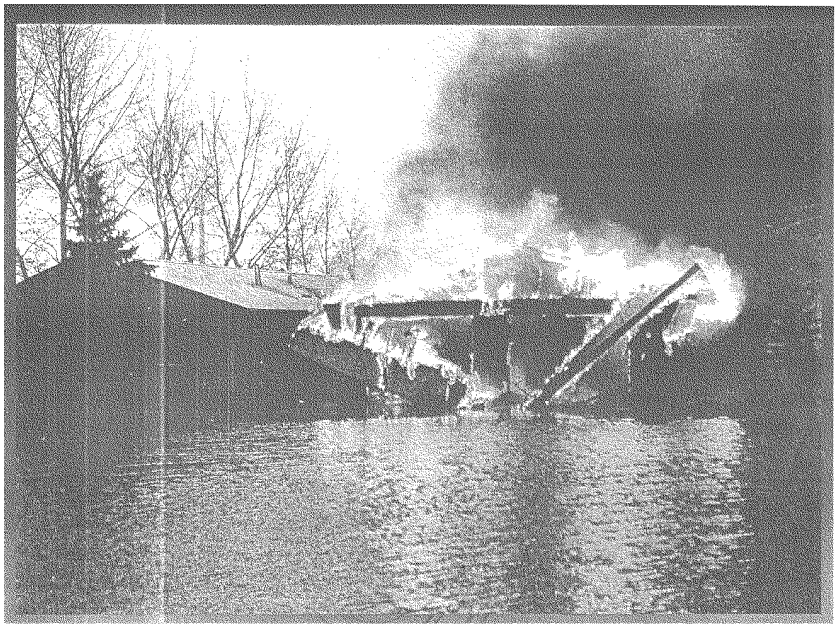
- Closing Drains (legal and/or natural) Would Be Very Difficult & Prohibitively Expensive.
  - ND Supreme Court Upheld The Determination That Drains Did NOT Cause Devils Lake Flooding. (Landowner's Lawsuit)

WOULD STORING MORE WATER HELP?

- Well, the inflow into DL in 2009 was about 590,000 acre-feet. If you assume vertical-sided water storage sites two feet deep you would have needed 295,000 (460 square miles) acres of wetlands to hold the water. Often the 2 feet of evapotranspiration (ET) number is used in figuring how much water would be lost to the atmosphere or through plant respiration/metabolism in a wetland, which in a perfect year, might be accurate. However, in some years, like last year for example, the weather was cooler and cloudier, and as a result ET was quite low. So low, in fact, that despite the fact that after a very wet spring, the summer and fall were dry by post-1993 standards, there was still a greater surface area of water in the DL basin in November of 2009, than there was in November of 2008, which was extremely wet. And, DL never really backed off of the high elevation it reached last spring. The minimal inflows that were seen from June onwards seemed to enough to compensate for any evaporative loss.





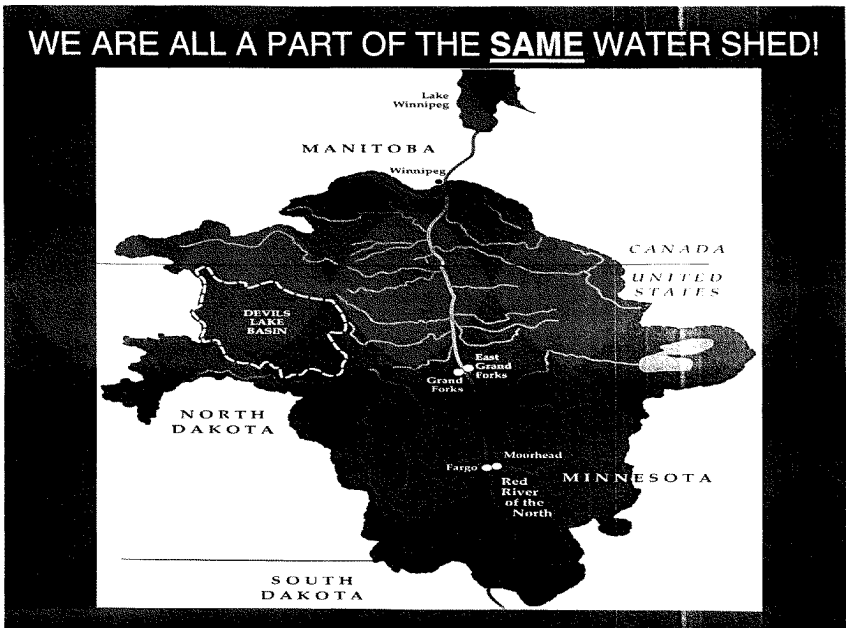


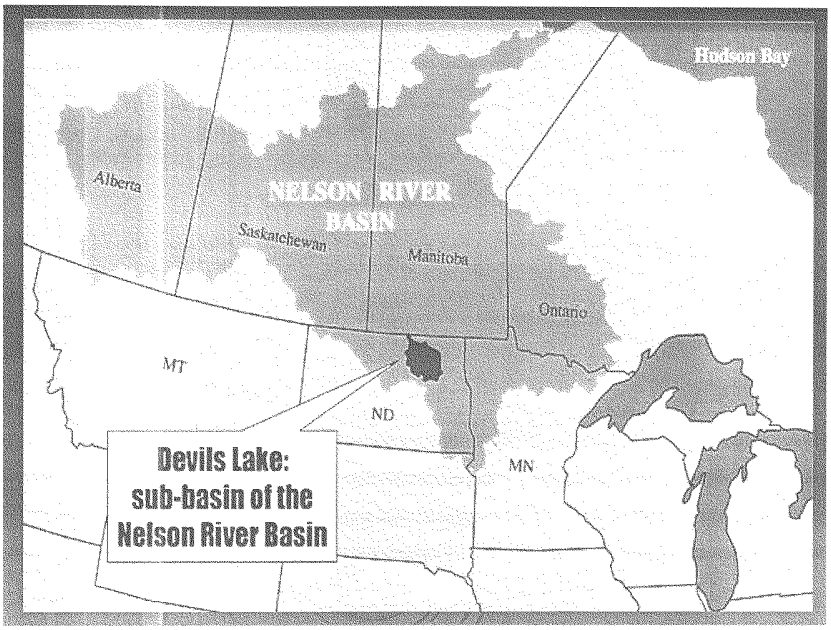
WHAT WE **DON'T** NEED?

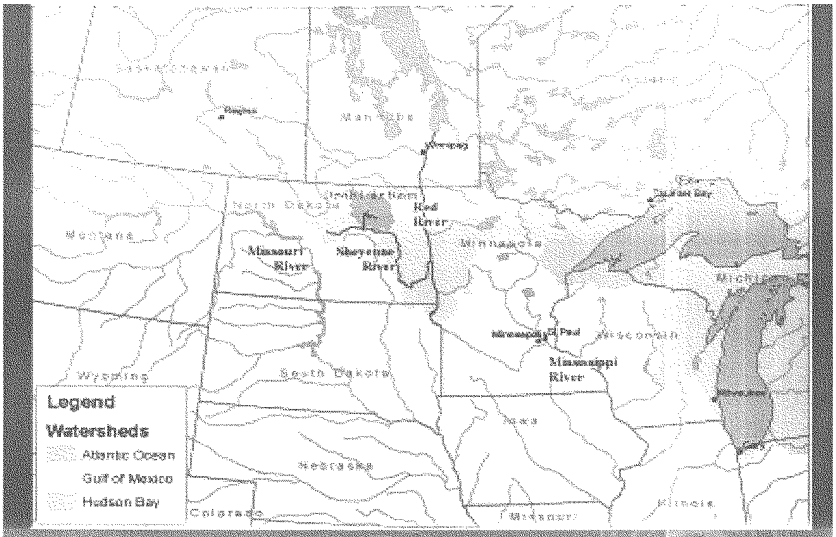
- FALSE PROMISES & FALSE HOPE
- OPPOSITION & IGNORANCE
- MORE HOMES LOST
- MORE ACRES LOST & FARMERS DISPLACED
- **MORE STUDIES!!**

WHAT WE **DO** NEED?

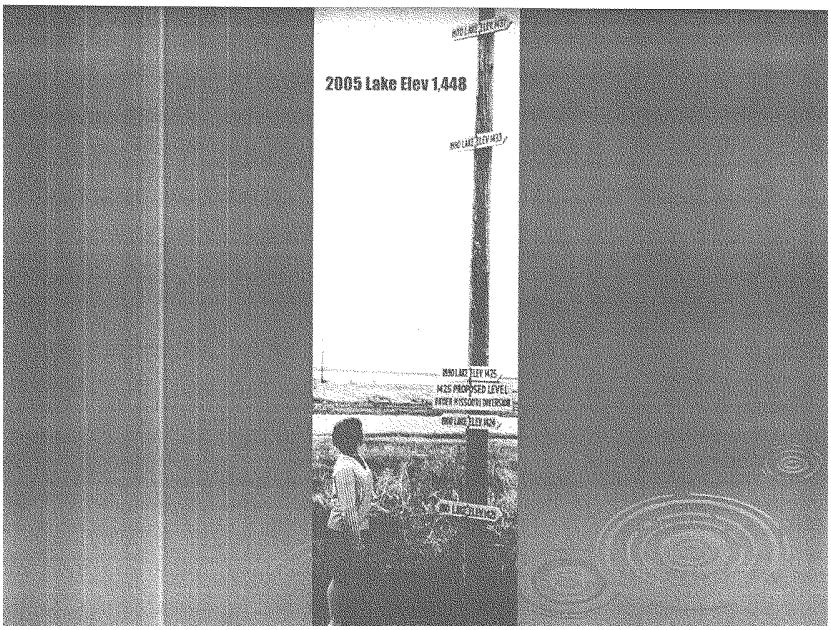
- UNDERSTANDING & ACCEPTANCE
- A WORKABLE COMPENSTATION PLAN FOR INUDATED FARMLAND
- A COMPREHENSIVE PLAN OF ACTION FOR MOVING MORE WATER OFF THE LAKE


WE ARE ALL A PART OF THE SAME WATER SHED!
Lake Winnipeg
MANITOBA
Winnipeg
CANADA
UNITED STATES
DEVILS LAKE BASIN
East Grand Forks
Grand Forks
NORTH DAKOTA
Mourhead
Fargo
Red River of the North
MINNESOTA
SOUTH DAKOTA


Hudson Bay
Alberta
NELSON RIVER BASIN
Saskatchewan
Manitoba
Ontario
MT
ND
MN
Devils Lake: sub-basin of the Nelson River Basin



➢ Sub-Basin of the Red River Basin & part of the Hudson Bay Water Shed.



QUESTIONS?

Contact Information

- Jeff Frith
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- www.dlbasin.com
- manager@dlbasin.com
- 701-662-7076

FIELD HEARING DEVILS LAKE FLOODING DISASTER: A RED RIVER VALLEY PERSPECTIVE

Monday, August 16, 2010

U.S. SENATE
COMMITTEE ON THE BUDGET
West Fargo, North Dakota

The Committee met, pursuant to notice, at 9:05 a.m., at the Vector Conference Room, Cass County Highway Department Building, 1201 Main Avenue West, West Fargo, North Dakota, Hon. Kent Conrad, Chairman of the Committee, presiding.

Present: Senator Conrad [presiding].

OPENING STATEMENT OF SENATOR CONRAD

The CHAIRMAN. The hearing will come to order.

I want to welcome everyone this morning to this hearing of the Senate Budget Committee.

And I want to welcome Governor Hoeven, who is joining us today. Welcome.

Governor Hoeven: Senator.

The CHAIRMAN. Good to have you here.

Governor Hoeven: Thank you.

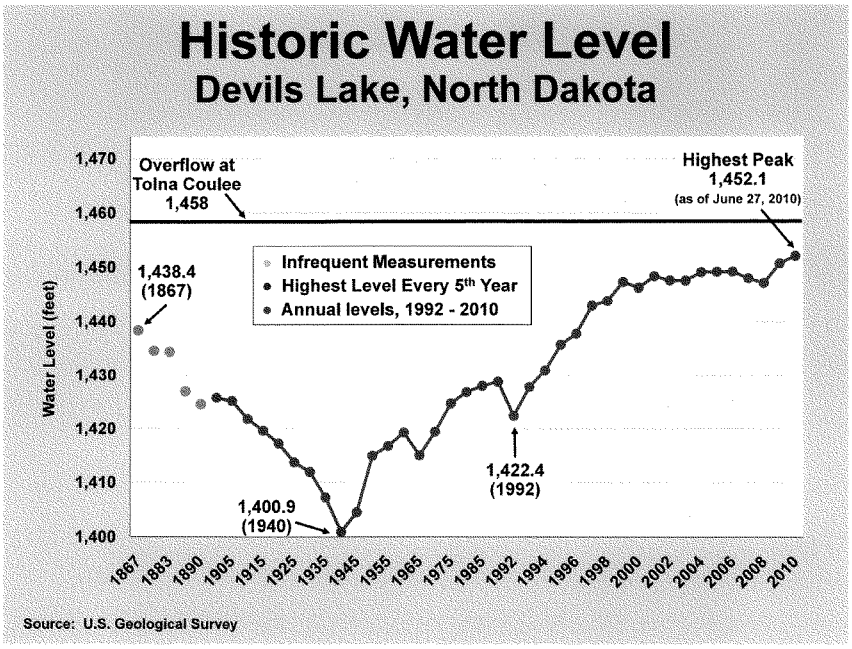
The CHAIRMAN. I want to emphasize that this is an official hearing of the Senate Budget Committee, so we will be operating under the rules of the United States Senate. An official transcript is being kept of this hearing.

The title of this hearing is the "Devils Lake Flooding Disaster: A Red River Valley Perspective." I want to begin by introducing our distinguished witnesses today. We will have two panels. We'll first hear from the Governor, and then we'll have a chance to hear from the other witnesses that are part of the first panel: Dave Glatt, the chief of environmental health section of the North Dakota Department of Health; West Fargo Mayor Rich Mattern; and Fargo Mayor Dennis Walaker. Our second panel will include Darrell Vanyo, chairman of the Cass County Commission—good to have you here, Darrell; and Steve Burian, chief executive officer of Advanced Engineering and Environmental Services, Incorporated.

I look forward to hearing from each of you on what steps should be taken to address the flooding disaster in Devils Lake and the effects of that flooding downstream.

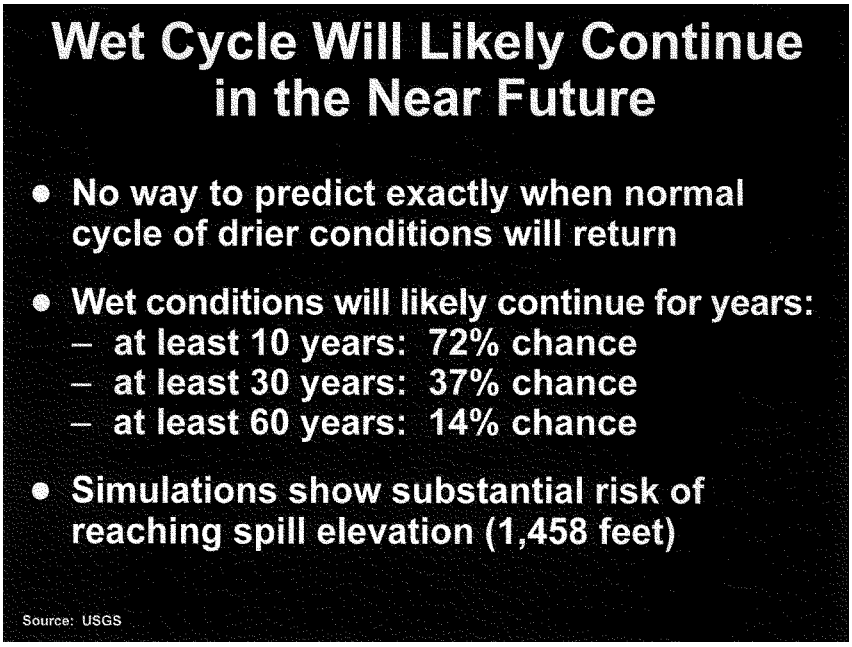
Since 1992, Devils Lake has risen nearly 30 feet. It's hard to fully appreciate how a lake of that size could rise 30 feet, but that's

what has happened. Tens of thousands of acres of productive farmland have been consumed, and hundreds of homes have been moved. The transportation network, including the roads and rail line, has been disrupted, and the local economy continues to take a hit.



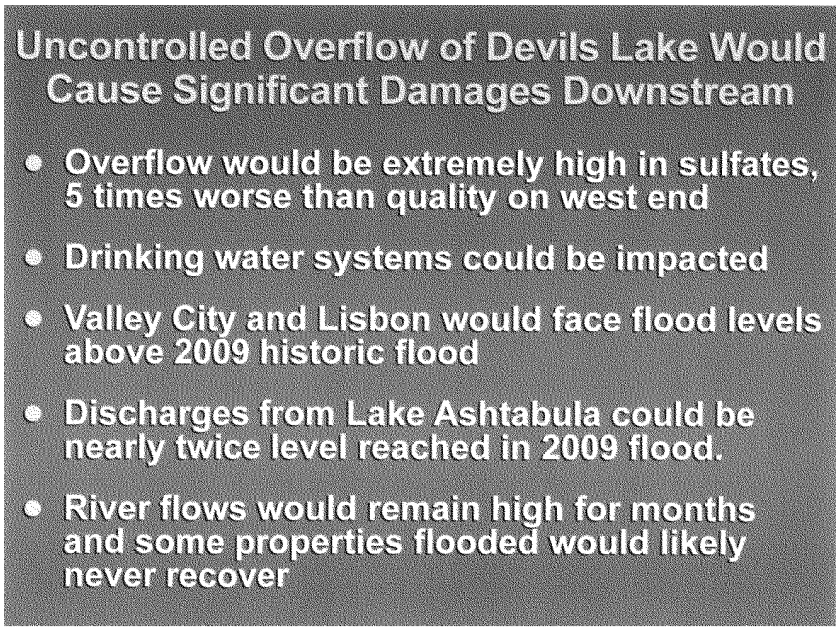
Last year alone, the lake rose 3 and a half feet, and this year it reached a record elevation. Devils Lake is now within 6 feet of the natural overflow. Let me just say, an uncontained release, an uncontrolled release, of water would have devastating consequences, not only for the Devils Lake Basin, but for every city and town downstream. Finding solutions to prevent an uncontrolled overflow is in everyone's best interest.

Experts tell us that the wet cycle in the Basin will likely continue for years. There is no way to predict exactly when a normal cycle of drier conditions might return. There is, according to the projections, a 72-percent chance that the wet cycle will continue for 10 years or more, a 37-percent chance it will continue for 30 years, and a 14-percent chance that it will continue for at least 60 years. Simulations show a substantial risk the lake will reach the spill elevation of 1458 feet. An uncontrolled release of water would cause significant damage downstream. The quality of water released would be extremely high in sulfates, five times worse than if the release of water were to occur from the west end of the lake. This is one thing that's hard to get your mind around, but the quality of the water in this lake is not even throughout the lake. The water quality out of the west end is much higher than the water quality out of the east end. And if there is an uncontrolled release of water, it will come out of the east end.



The reason there is different levels of water quality in this lake is because there is a natural flow to the lake. The fresh water comes in on the northwest, and then there is a flow to the lake, moving to the east. That is why there is such a dramatic difference in the water quality out of the east end compared to the west end.

Drinking water systems drawing from the Sheyenne River could be impacted if there was an uncontrolled release of water. Discharges from Lake Ashtabula could be nearly twice what was experienced during the flooding of 2009. Twice what was experienced during the flooding of 2009. And some properties would be flooded for an extended period of time, making it almost impossible for recovery.



There are a number of unresolved issues for the Red River Valley. For example, how would the region be impacted by floodwaters from an uncontrolled release of water? How would the drinking water supplies be impacted in an uncontrolled release? Could existing water systems handle a temporary increase in sulfates in the lower Sheyenne? What are the operational costs to address increased sulfates? What new treatment plants would be needed? And what would be the impacts on the fishery? I'd like to use this hearing to address all of these issues.

When the flooding disaster began, we worked cooperatively on a three-pronged strategy: upper basin storage, protecting infrastructure, and construction of an outlet. It's a strategy that we have pursued aggressively.

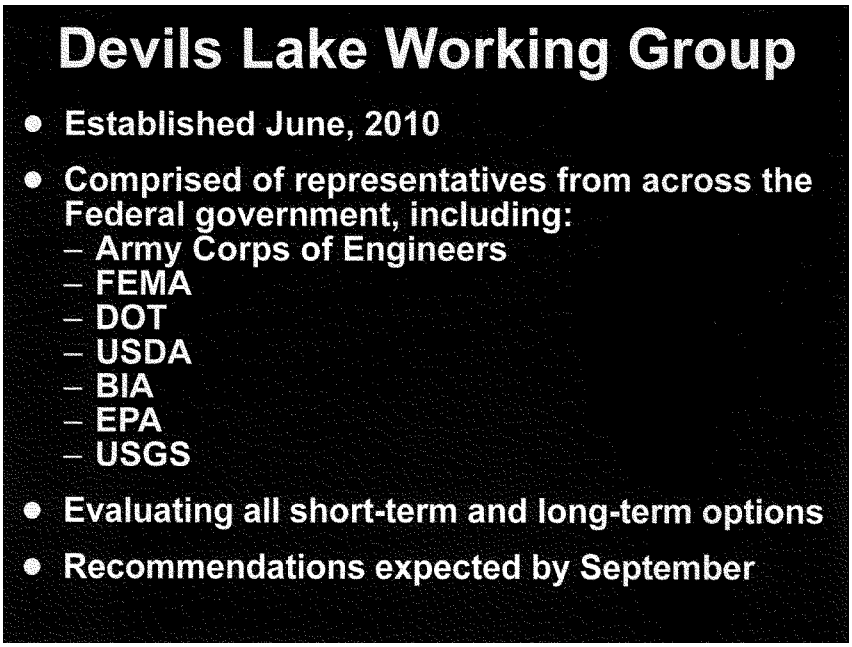
We have secured more than $700 million of Federal resources that have been allocated, so far, to protect the region. Keep the road network intact, over $400 million has been spent since 1995. FEMA has spent $84 million, since 1993, on repairing damage to public infrastructure caused by the rising lake, relocating threatened structures, and buying out Churchs Ferry. The Corps of Engineers has spent $200 million since 1993 on the levee protecting Devils Lake; and, without that Levee, and without the rises in that levee, Devils Lake would be under water today.

HUD has also provided more than $11 million since 1997 to mitigate the damages caused by the disaster, but the lake continues to rise, and it's clear we're in uncharted territory.

We've always understood that only comprehensive solutions will succeed in the long run. The problems of Devils Lake cannot be solved by simply flooding everything downstream. However, we can no longer write this off as just a Devils Lake problem; this is all of our problem. This is a problem for not only the Devils Lake Basin, but for every city and town downstream: Valley City, Lisbon, West Fargo, and right up the Red.

Since the May Flood Summit in Devils Lake, the administration has convened a working group to evaluate both short- and long-term options. The working group has representation from all of the relevant Federal agencies, including the Corps of Engineers, FEMA, the Department of Transportation, the United States Department of Agriculture, the Bureau of Indian Affairs, Environmental Protection Agency, the U.S. Geological Survey and others. The group's recommendations are expected in September. In fact, we are anticipating their recommendations on September 9th. We are now talking about a meeting in Washington on September 3rd with local leaders, State leaders, and the Federal task force. They have told us, if that meeting is held on September 3rd, it could delay the report by a week, or even two. So, we are making a judgment now on that issue. But, I think most of us believe it is absolutely in our interest to deal with the Federal working group face to face rather than in a phone call or in some other venue. I think most of us believe it would be more effective for us to talk to them face to face before they come out with their recommendations. They have already had working groups on location in Devils Lake, in

Valley City, in Lisbon; and they are working toward conclusion. They say they are on track for that September 9th date.



So, from the perspective of those downstream, what options should the Federal Government be considering to deal with this flooding disaster? And what, specifically, should be done to mitigate downstream impacts? I am particularly interested in hearing from our witnesses on where they think the working group should focus its attention as it relates to downstream impact.

With that, we'll turn to our witnesses. And, Governor, thank you so much for being here. I appreciate very much your participation in the Summit in Devils Lake and your participation in Devils Lake on other occasions, and in Valley City, when we had a hearing there. And I appreciate very much your taking the time to be here this morning.

STATEMENT OF HON. JOHN HOEVEN, GOVERNOR OF NORTH DAKOTA

Governor Hoeven: Thank you, Senator. Good to be with you. Appreciate the invitation to join you.

As you mentioned, this is, I think, the third hearing where we've come together to not only get input, but to make sure that we're all working together to do everything we can to help with the flooding in the Devils Lake Basin, but also make sure that we're protecting interests downstream. And so, I want to thank you for your efforts.

And clearly, this has to be a local, State, and Federal team effort to make this work. And so, I want to also thank both Mayor Walaker, Mayor Mattern for joining us, as well as Dave Glatt,

who's the chief of the environmental section at our State Health Department, and, as well, the commissioners—Commissioner Vanyo and Commissioner Pollock, the other commissioners that are here, Joe Belford, the crew from Devils Lake.

As I say, it's just imperative that we all work together to make sure that this works for everybody. But, clearly we need to move forward.

And so that—we're hopeful that the Federal task force, which I believe now is set to come out with its recommendations on September 7th. I talked to Colonel Price, with the Corps of Engineers, last week—Thursday or Friday—and I had the 9th, but now they're saying September 7th, and, as you say, unless that date slips some. But, very, very important that we get help from the Corps and—cooperation from the Corps and the EPA so that we can continue to move forward.

Our—and our approach, which Senator Conrad touched on here just a minute ago, is a three-part plan, and it includes storing water in the upper basin, mitigating around the Devils Lake area, which is roads and dikes, and moving water out of the lake. And we need to do all three. We absolutely need to do all three; again, to protect both upstream interests and downstream interests. So, again, it comes down to all of us working together, both upstream and downstream, to get this done.

First off, in terms of storing water in the upper basin. The size of the lake—Devils Lake—has increased from—1993, it was about—covered about 49,000 acres. So, in 1993, it covered about 49,000 acres. Today, it covers about 180,000 acres. So, it—the lake has inundated more than 100,000 acres. Well, that's a tremendous amount of storage of water. Now, that's for storage, because the lake's growing and it's flooding, but that's a huge amount of water, over—almost 130,000 acres of water, right there, that's being stored in the upper basin. And that doesn't even count all of the wetlands that have grown throughout the north and the western part of the basin, as well.

And so, what I recommend to anybody that has a question about whether or not water is being stored in the Devils Lake Basin is, "Go take a look." You know? And I know Joe Belford and Mayor Dick Johnson up there, and others, would be happy to take you out and take you around. But, don't just take, you know, my word for it, or the Senator's word for it, or the numbers. Go take a look, and see how much water is being stored in the upper basin. It's a huge amount of water. So, clearly, that—you know, that water is being stored in the upper basin. And again, I encourage people to go up and just take a look.

The second part of the plan is mitigation in and around the Devils Lake area, which means raising roads and raising dikes.

Now, on the conservative end, between local, State, and Federal, we spent $650 million. And I think Senator Conrad has numbers that go up—upwards to, like, a billion dollars that we have spent, or are spending, on raising roads and dikes. Right now, for example, this year, we're riprapping and raising and resurfacing, and so forth, on highways—State Highways 19, 20, 57—and we're also doing emergency work on Highway 2, which, of course, is the four-lane highway that goes across the north side. Now, on that, I'm not

even sure we have Federal approval yet to do it, but we're doing it, because when water starts crossing the road, you know, our State DOT has to step in and raise the road. And that's exactly what we're doing, and have done in parts, to make sure that it continues to be passable for traffic. And obviously we're going through the Federal process to make additional improvements to Highway 2, as well. And then, you've got all the diking, as well as the work on the reservation through BIA. And I think that may be some of the numbers difference, Senator. But, again, conservatively, we've spent, on raising roads and dikes, $650 million, and we're spending more.

So, clearly, water storage in the upper basin, mitigating in and around Devils Lake, and this has had a tremendous impact on the people in the upper basin and in Devils Lake.

And so, the third part has to be there for us to deal with this issue, as well, and that's moving water out of the way.

Now, we had constructed a State outlet at 100 cfs, which we'd run to some extent, but we'd run into the sulfate standard. And so, that's going to be an important part of addressing, you know, moving water out of the lake, is how we deal with that sulfate standard. And Dave Glatt's here; he can talk about that some more.

But, we've increased the size of that State outlet to 250 cubic feet a second. And we've got our Department of Transportation; they actually, I think, have worked to get some video of that outlet. But, 250 cubic feet of—a second—is a lot of water. And so, if you go up and take a look—now, that's running, and it is bringing a lot of water out. And so, between what we can bring out of the west end outlet and evaporation, we have significantly increased what we can take off the lake; like I say, both in terms of moving water out and evaporation. But, the reality is, we need to do more there, and that means either—or probably a combination of both running that outlet longer or increasing the capacity, as well as developing a control structure on the east side of the lake to prevent an uncontrolled overflow—right?—but then also looking at options for gravity flow in a controlled way out of the lake, as well.

Now, again, that has to be done in a way that we manage water quality downstream and make sure all downstream interests are protected, as well as mitigating the flooding in the lake region. And that's where it takes both communication, cooperation amongst all of us in North Dakota, and then help with the Corps and EPA so that we can continue to advance that ball and move forward.

And so, that's exactly what we're working to do. We need to continue to move the water out, which is what we are doing. And I'm hopeful that the task force, the Federal task force, will help us in that endeavor so that we can continue to bring some water out, get that lake level down some; because, remember, we go through the next winter period, and, you know, we're going to see substantial runoff again. So, we've got to stay after this now. It's very, very important that we continue with this third piece, the third leg of the stool, if you will, to move water out in an orderly way.

The last comment I'd make in that regard is the water treatment aspect. Valley City does draw water, essentially, from the river. Dave can explain that better than I can. But, we have already worked with our Federal partners to provide funding for Valley

City to add reverse osmosis to their water treatment plant so that they can actually take sulfates out of the water.

Now, the reality is, if you look at the CDC report, they have not indicated any deleterious effects from sulfate at the levels we're talking about, so I don't know that they need to remove them. But, nevertheless, we've provided that funding assistance. And I have talked to the good mayors, both Walaker and Mattern—and you will hear from them shortly—about providing that assistance, as well, for a possible new joint facility, that may be developed in this region, for water treatment or for their backup source. I know that Fargo uses the Sheyenne as a backup source on, you know, some number of days of the year.

But, it's good to see Fargo and West Fargo working together on a joint facility. That's great. I congratulate you for that. And, on behalf of the State, we're certainly going to work with you in that process, to make sure that, again, any treatment aspects that you feel need to be there are properly addressed.

So, with that—and we'd had a—Senator Dorgan had a hearing, and so we'd covered some of this before, but I think it's very good to go through it again. Part of the effort, keeping—or, getting and keeping everybody working together is this communication effort.

And so, Senator Conrad, again, good to be here with you and to be working, not only with our local partners, but the Federal partners, on addressing this flooding issue in a way that works for everyone.

The CHAIRMAN. Thank you. Thanks again for being here.

And again, just to clarify, the difference between the numbers that I'm citing, the $700 million Federal expenditures so far, and the number the Governor's using—we've sorted it out—it's between our people, and it—we're including expenditures by BIA, that are not included in the Governor's numbers, to try to give a full reading of what's been spent so far, and for what is being committed.

When we go higher—that's looking ahead; the 700 million is sunk costs, that's what's already been spent or committed—to go higher, one has to look at additional expenditures that are going to be required, in terms of transportation, in terms of moving threatened structures and the rest.

With that, we'll turn to—

Governor Hoeven: Senator, if I—just to follow up that—

The CHAIRMAN. Yeah.

Governor Hoeven: —point, which is a very good one.

For example, when Senator Conrad talks about increased expenditures—if you take that, say, $700 million, right now we're at an elevation where—for example, the Empire Builder, that northern line—if we don't get that lake level down some, that—the bridge up there becomes at risk, which means—just raising that bridge, alone, is $65 million. The town of Minnewaukan, we're, right now, at a point where—What do we do with the town of Minnewaukan?—because the water is right there, really, at the edge of the school, you know, in Minnewaukan. So, do you build dikes? Do you move the town?

So, we're at that point where, now, to raise—to do more mitigation, you've got significant—you know, you're talking hundreds of millions of dollars. And so, you know, we're at a very important

point, in terms of trying to get this lake level down. If we don't, the investment that has to be made to protect these other—this other infrastructure is, you know, very significant.

The CHAIRMAN. Yeah, I'm—

Governor Hoeven: Just to follow up—

The CHAIRMAN. —I'm glad you—

Governor Hoeven: —with your—

The CHAIRMAN. —mentioned it. We've been talking to Burlington Northern, for example—the delegation, the Governor—

Governor Hoeven: Right.

The CHAIRMAN. —and the costs, as he outlined, just on the bridge, $65 million, one structure. Moving Minnewaukan—and by the way, I'll be there at 2 o'clock today—if we have to move the town of Minnewaukan, that'll be tens of millions of dollars. So, those are realities.

We'll turn now to Dave Glatt, the chief of environmental health section of the North Dakota Department of Health.

Welcome. Good to have you here.

Mr. GLATT. Great to be here, Senator.

The CHAIRMAN. Please proceed. And why don't you put the microphone right in front of you; that'll help our transcriber.

STATEMENT OF L. DAVID GLATT, ENVIRONMENTAL HEALTH CHIEF, NORTH DAKOTA DEPARTMENT OF HEALTH

Mr. GLATT. Well, good morning, Senator. It's good to see you again.

The CHAIRMAN. Good to see you, sir.

Mr. GLATT. For the record, my name's Dave Glatt, chief of the environmental health section for the North Dakota Department of Health.

Our Department is responsible for the implementation of many State and Federal environmental protection programs. Through primacy agreements with the U.S. Environmental Protection Agency, we implement major elements of the Clean Water, Clean Air, Safe Drinking Water, and Hazardous Waste Acts.

From a water quality perspective, the Department of Health is aware of the issues associated with Devils Lake flooding, and, in cooperation with other local, State, and Federal agencies, has developed an extensive water quality database for the Sheyenne and Red Rivers, as well as Devils Lake.

This ongoing data collection effort has enabled the Department to anticipate potential downstream water quality changes due to the operation of the Devils Lake outlet, and, two, to estimate downstream impacts from various flood mitigation options. This data has proven extremely valuable in the Department's decision to pursue an alteration to the sulfate water quality standard for a portion of the Sheyenne River. It is important to note that the alteration to the standard continues to protect the applicable designated uses in the Sheyenne River.

As State and Federal agencies continue to evaluate additional flood mitigation options, it is clear that any option will change water quality downstream of Devils Lake.

National Weather Service reports of a continued wet cycle for the foreseeable future raise concerns that a do- nothing scenario sig-

nificantly increases the potential for a natural overflow to occur along Tolna Coulee. Based upon existing water quality in Stump Lake, a natural overflow through Tolna Coulee would result in significant water quality changes downstream in the Sheyenne and Red Rivers. A natural discharge through Tolna Coulee would have a major impact on all downstream designated uses, which include municipal, aquatic life, agricultural, industrial, and recreational uses.

Therefore, the challenge is to identify an effective flood mitigation alternative that will lower the lake level, reduce the potential for a natural outlet, and minimize impacts on downstream water quality. In evaluating the potential flood mitigation alternatives, the Department has partnered with the U.S. Geological Survey to model water quality changes resulting from the following options: do nothing, increasing the window of operation for the west-end outlet, doubling the flow from the west end, combining a west end and east Devils Lake outlet, developing only a Stump Lake outlet, and combining a west end and Stump Lake outlet. Preliminary modeling results for the above options indicate—depending on how they are operated, length of time, that type of—and time of year—the protection of designated beneficial uses for aquatic life, agriculture, industry, and recreation in the Sheyenne and Red Rivers—the river waters could still be used for municipal supplies and comply with the Safe Drinking Water Act standards. But sulfate concentrations could be anticipated to exceed 450 milligrams per liter in the lower reaches of the Sheyenne River and a portion of the Red River. The commingling of Sheyenne River and Red River water results in sulfate concentrations which only slightly exceed, or is below, the 450-milligrams-per-liter limit. In some cases, the concentration is below the 250-milligram-per-liter sulfate standard for the Red River. A report clearly defining the model results should be available by the end of September.

It is important to note that, due to the level of the lake, currently around 1451.75 feet mean sea level, and the projected continued wet cycle, an emergency exists, where additional efforts to lower the lake level should be implemented as soon as possible. We believe this action is needed to avoid a natural overflow through Stump Lake.

This concludes my testimony. I'm happy to answer any questions you may have.

[The prepared statement of Mr. Glatt follows:]

Testimony
August 16, 2010
North Dakota Department of Health

Good morning. My name is L. David Glatt, chief of the Environmental Health Section for the North Dakota Department of Health. Our department is responsible for the implementation of many state and federal environmental protection programs. Through primacy agreements with the U.S. Environmental Protection Agency (EPA), we implement major elements of the Clean Water, Clean Air, Safe Drinking Water and Hazardous Waste Acts.

From a water quality perspective, the Department of Health is aware of the issues associated with Devils Lake flooding and in cooperation with other local, state and federal agencies, has developed an extensive water quality database for the Sheyenne and Red rivers, as well as Devils Lake. This ongoing data collection effort has enabled the department to (1) anticipate potential downstream water quality changes due to the operation of the Devils Lake outlet and (2) estimate downstream impacts from various flood mitigation options. This data has proven extremely valuable in the department's decision to pursue an alteration to the sulfate water quality standard for a portion of the Sheyenne River. It is important to note that the alteration to the standard continues to protect the applicable designated uses in the Sheyenne River.

As state and federal agencies continue to evaluate additional flood mitigation options, it is clear that any option will change water quality downstream of Devils Lake. National Weather Service reports of a continued wet cycle for the foreseeable future raise concerns that a "do-nothing" scenario significantly increases the potential for a natural outlet to occur along Tolna Coulee. Based upon the existing water quality in Stump Lake, a natural outlet through Tolna Coulee would result in significant water quality changes downstream in the Sheyenne and Red rivers. A natural discharge through Tolna Coulee would have a major impact on all downstream designated uses which include municipal, aquatic life, agricultural, industrial and recreational uses.

Therefore, the challenge is to identify an effective flood mitigation alternative that will lower the lake level, reduce the potential for a natural outlet and minimize impacts on downstream water quality. In evaluating the potential flood mitigation alternatives, the department has partnered with the U.S. Geological Survey to model water quality changes resulting from the following options: (1) doing nothing, (2) increasing the window of operation for the west end outlet, (3) doubling the flow from the west end, (4) combining a west end and east Devils Lake outlet, (5) developing only a Stump Lake outlet and (6) combining a west end and Stump Lake outlet.

Preliminary modeling results for the above options indicate designated beneficial uses are protected for aquatic life, agriculture, industry and recreation in the Sheyenne and Red rivers for all scenarios except those that include a Stump Lake discharge. The river waters could still be used for municipal supplies and comply with Safe Drinking Water Act standards, but sulfate

concentrations could be anticipated to exceed the standard of 450 milligrams per liter (mg/l) in the lower reaches of the Sheyenne River and a portion of the Red River. The co-mingling of Sheyenne River and Red River water results in a sulfate concentration which only slightly exceeds or is below the 450 mg/l limit. In some cases, the concentration is below the 250-mg/l sulfate standard for the Red River. A report clearly defining the model results should be available by the end of September.

It is important to note that, due to the level of the lake (currently around 1451.90 feet mean sea level) and the projected continued wet cycle, an emergency exists where additional efforts to lower the lake level should be implemented as soon as possible. We believe this action is needed to avoid a natural overflow discharge through Stump Lake. It is our opinion that any lake discharge would be considered temporary until a lake water level is reached which would prevent a natural overflow through Tolna Coulee. With selection of the right flood mitigation alternative, water quality changes downstream of Devils Lake would be temporary and not result in adverse human health impacts.

2

The CHAIRMAN. All right.

Why don't we finish with this panel, and then we'll open it to questions.

Mayor Mattern, thank you so much for being here. And please proceed.

STATEMENT OF HON. RICH MATTERN, MAYOR, CITY OF WEST FARGO

Mr. MATTERN. Thank you, Senator Conrad, for inviting me. And it's a pleasure to see you again.

At a State hearing on an outlet for Devils Lake back in the year—August of 2000—I was quoted in a forum news article saying, "At what point do you say enough is enough? When will State and Federal officials decide they've studied the basin's flooding sufficiently and are ready to do something to solve it?"

Senator that was a question I asked almost 10 years ago. Today, I would have to ask that same question, "At what point do we say enough is enough?" Much has been done, don't get me wrong. But,

we need to move forward now. The Devils Lake Basin has been studied and studied, and it's time to move forward.

A few weeks ago, I was shown some aerial photographs of Devils Lake. The devastation caused by the rising lake is hard for us to sometimes understand, as the Governor and you have pointed out, from the ground level. When you see it from the air, it—it's hard to imagine the helplessness that farmers and city residents must feel at watching something happen, and there's nothing, really, that they can do right now.

Through the years, when asked, the West Fargo City Commission always has supported doing something to alleviate the problem of rising water. I'm confident that the City Commission will continue to do so in the future.

Today, as a city, we do have some concerns about an outlet. These concerns are not insurmountable, by any means, and by working together we certainly can solve these problems, as you and the Governor have pointed out.

Again, we need to move forward to help our neighbors, and this is certainly not any kind of fingerpointing testimony, by any means.

First of all, West Fargo is protected from high flows in the Sheyenne River by two Army Corps of Engineers diversion projects. Those are, of course, the Horace and Sheyenne diversions. The intent is to divert excess Sheyenne River water around the city during flood events. There is some concern by city staff that the two diversion projects could run continuously, depending upon the amount of water that is released from Devils Lake. The two diversion projects were not really built to run continuously, so the Army Corps of Engineers may have to consider changes, such as lining the diversion with cement or something to kind of alleviate any problems. Again, this depends upon the flow.

Of larger concern, West Fargo gets all of its water, currently, from groundwater sources. That may have to change soon, because of our rapid growth. In the year 2000, we were at 14,500, today we are predicting that we are at about 26,000. So, West Fargo is analyzing the need for a water treatment plant, along with the city of Fargo and, hopefully, some other entities. The treatment plant would utilize water from the Sheyenne River.

A study by Advanced Engineering that was completed by the city of West Fargo states that increased sulfate levels in the Sheyenne River, due to releases from Devils Lake, potentially—again, potentially—could cost the city an additional $15 million to build a water treatment plant. Annual operating and maintenance costs also could be increased by up to a million dollars per year due to the added equipment and treatment requirements.

So, again, those are two of our major concerns, Senator. And again, thank you for inviting the city of West Fargo to testify. And it was a pleasure to be here. And I'll—again, I'll answer questions when you're ready.

The CHAIRMAN. Thank you very much.

And now we'll go to the mayor of Fargo, Mayor Walaker.

Welcome, good to have you here. Please go ahead.

STATEMENT OF DENNIS WALAKER, MAYOR, CITY OF FARGO

Mr. WALAKER. It's good to be here. I can make some comment about being last, but that's all right.

[Laughter.]

Voice: Saved the best for last.

Mr. WALAKER. Yeah, right.

Well, I will make a couple of personal comments, and then I have a letter, here, that—there's copies in the back.

We usually go fishing up in Devils Lake once a year. We didn't make it this year. And I have met nobody that could have forecast where the river or the lake is today. Absolutely nobody. The size of that is amazing. And it's big water right now. It's huge. And you think of all the farms and so forth along that area; it's just very traumatic. And we're going through some of those situations here. My concerns, of course, are with Valley City and Lisbon, and then, of course, ourselves, to a certain extent. And we can talk about water quality and so forth, and we'll talk about that shortly.

But, our biggest concern is life and property. And I'm sure if everybody would have known what was going to happen, things would have been different—different solutions and so forth. But, in 1992–93, everybody was complaining about the lack of water, and today you've got to pick a date to fish up there, because of the winds. It's that big. It's huge. Absolutely huge.

And I'm pleased, Senator Conrad, that you guys are taking this and trying to resolve the process. There's a lot of people out there—is—"Why isn't something being done?" Well, a lot of things have been done. You can't spend 600 to 700 million dollars and not accomplish something, so forth. And when you—when the forecasters talk about the future, I mean, you know, 50 years? I mean, I know the National Weather Service pretty well. Anything beyond 24 hours is a pure guess. But—

[Laughter.]

Mr. WALAKER. So, the solution really gets down to—you know, it's—we need to move this forward. Is a drought—I mean, I have never, ever seen the corn in this part of the State and Minnesota as lush as it is this year. And what makes that? Usually, the tops in Minnesota—corn gets a lot shorter because of the lack of moisture. This year, it's phenomenal. And then our wet cycle continues. I think, the last I checked, that we're about 4 and a half inches above normal right now. And what is normal? My goodness, it just continues to be exceeding any expectations.

So, I'll start with my letter, here, and I'll try and make this as brief as I possibly can. It's about two pages.

Thank you for providing the city of Fargo with the opportunity to provide testimony with regard to the "Devils Lake Flooding Disaster: A Red River Valley Perspective." A

field hearing of the U.S. Senate Budget Committee to address this important topic is greatly appreciated.

As you know, the city has previously expressed concerns about the changing water quality conditions in the city's water source, the Sheyenne River, due to the operation of the Devils Lake emergency outlet. The primary water quality concern has been elevated sulfate concentrations being transported downstream to the city of Fargo intake on the Sheyenne River, near West Fargo.

The city of Fargo understands the necessity of moving water out of Devils Lake, and it should be noted that the problems in Devils Lake have expanded beyond the immediate Devils Lake Basin to become a regional issue that warrants regional solutions for all stakeholders.

The city of Fargo relies upon the Sheyenne River as a vital component of its current and future water supply. In fact, the city of Fargo has utilized the Sheyenne River for our water supply on over 40 percent of the days since 2007, 559 of 1,308 days from January 1, 2007, through July 31 of 2010. Impacts to our source water quality, especially with elevated sulfate concentrations in the Sheyenne River, are concerning because the water—Fargo water treatment plant was never designed with process capable of moving—removing sulfates.

Historical concentrations below the EPA's secondary maximum contaminant level of 250 milligrams per liter did not warrant sulfate treatment at that time of the design. During the design of our water treatment plant, we did make significant commitment to provide our consumers with high quality, aesthetically acceptable water. Elevated sulfate concentrations in our source water will impact taste and odor, quality of our drinking water, and may have potential health impacts, including diarrhea and dehydration, which are most severe with infants, the elderly—that's myself—

[Laughter.]

Mr. WALAKER. —and transient consumers. As a major economic center for the region that hosts a significant transient population for healthcare and employment, shopping, conventions, entertainment, and higher education, we have a very large group of potentially impacted consumers.

As the stakeholders work to develop a satisfactory solution to Devils Lake flooding, the city of Fargo strongly encourages efforts to prevent an uncontrolled release from Devils Lake. Some time ago, I went up, with the Corps of Engineers, and we tried to find Tolna Crossing. My goodness, we searched for almost an hour and a half before we finally got it, and you could barely see Stump Lake from Tolna Crossing. And then, Joe Belford, at—informed me that when they drilled down, took soil samples, there was sod at 20 feet. So, if you think that's going to prevent an overflow, what's there right now will erode very quickly. An uncontrolled discharge from a natural outlet on the east side of Devils Lake has many uncertainties that could impact downstream communities, including the strong possibility of flooding and significant water quality degradation.

The city would also like to encourage the investigation of a year-round operation of the emergency outlet. A year-round operation could remove additional water from the lake and could alleviate large fluctuations in sulfate concentration in the Sheyenne River. Given historical Sheyenne River usage patterns by the city of Fargo, it is likely that the city will be drawing water from the Sheyenne—it is less likely that the city of Fargo will be drawing water from the Sheyenne during the winter months.

The city of Fargo currently supplies drinking water to its residents and to the customers of Cass rural water users district. City of Fargo also provides regional waste water treatments serving sev-

eral neighboring communities and sanitary districts. With the city's increasing service boundaries, the impact of our drinking water quality extends beyond the boundaries of our city limits and into the metropolitan area and county, which is—combined statistical population of over 200,000.

Recently, the cities of Fargo and West Fargo have begun negotiations and discussions related to a regional water supply system that would provide both communities in the Cass County water users district with a reliable water system. Additional planning and coordination are necessary before moving forward with this regional water supply, but it's clear that the Sheyenne River will be an integral part of the water supply and drought mitigation for this system.

We expected that one solution to the elevated sulfate concentrations in the Sheyenne River could be provided to satisfy the city of Fargo, the city of West Fargo, and Cass rural water users district.

In order to minimize the drinking water impacts associated with the elevated source water sulfate concentrations, the city has estimated that the capital improvements, approximately 50 to 70 million dollars, will be needed for our water treatment plant. The cost is based on concentration of sulfate in the Sheyenne River ranging from 450 milligrams per liter to 750 milligrams per liter.

The city is prepared to address the capacity expansion of its water treatment plant to accommodate our growth, but we are not prepared to fund these necessary capital improvements for sulfate treatment without financial burden to our consumers. As such, the funding in Devils Lake flooding disaster should include funds necessary to mitigate the downstream impacts of the Devils Lake outlet, including State and Federal funding for the city's—for Fargo's drinking water system.

Your efforts to achieve a comprehensive solution to the Devils Lake flooding situation are greatly appreciated. These challenges now associated with Devils Lake are very significant and could have potentially long-term devastating impacts to the region.

As you continue your work to develop these solutions to regional Devils Lake issue, solutions must address the prevention of additional local flooding, prevention of an uncontrolled discharge to the Sheyenne River, increased flows from the lake, including consideration of year-round discharges, sulfate treatment for downstream water treatment plants on the Sheyenne River.

With State and Federal funding to provide sulfate treatment processes at our water treatment plant to meet the treatment standard of 250 milligrams per liter, the city has prepared a stream standard variance for sulfate in the Sheyenne River up to 750 milligrams per liter. We understand this variance would allow a much more aggressive discharge of water from Devils Lake to prevent further flooding impacts. Without this funding as part of the regional solution, however, the city desires to continue use of the Sheyenne River supply with sulfate concentrations that do not exceed the national historic levels.

Note as a supplement to this testimony I have attached the testimony that I provided Senator Byron Dorgan at the

U.S. Senate and Energy Water Appropriations Subcommittee hearing on February 19th, 2010. Along with the attachment, please accept this letter as Fargo's formal submittal to the Budget Committee hearing, "Devils Lake Flooding Disaster: A Red River Valley Perspective."

[The prepared statement of Mr. Walaker follows:]

Mayor Dennis R. Walaker
200 3rd Street North
Fargo, North Dakota 58102
Phone (701) 241-1310
Fax (701) 476-4136

August 16, 2010

The Honorable Kent Conrad
Chairman
Senate Budget Committee
United States Senate
Washington, DC 20510-6100

The Honorable Judd Gregg
Ranking Member
Senate Budget Committee
United States Senate
Washington, DC 20510-6100

Dear Senator Conrad and Senator Gregg:

Thank you for providing the City of Fargo with the opportunity to provide testimony with regard to the "Devils Lake Flooding Disaster: A Red River Valley Perspective." A field hearing of the US Senate Budget Committee to address this important topic is greatly appreciated. As you know, the City has previously expressed concerns about the changing water quality conditions in the City's water source, the Sheyenne River, due to operation of the Devils Lake Emergency Outlet. The primary water quality concern has been elevated sulfate concentrations being transported downstream to the City of Fargo intake on the Sheyenne River near West Fargo.

The City of Fargo understands the necessity of moving water out of Devils Lake, but it should be noted that the problems in Devils Lake have expanded beyond the immediate Devils Lake Basin to become a regional issue that warrants regional solutions for all stakeholders. The City of Fargo relies upon the Sheyenne River as a vital component of its current and future water supply system. In fact, the City has utilized the Sheyenne River for our water supply on over 40 percent of the days since 2007 (559 of 1,308 days from January 1, 2007 through July 31, 2010).

Impacts to our source water quality, especially elevated sulfate concentrations in the Sheyenne River, are concerning because the Fargo Water Treatment Plant was not designed with processes capable of removing sulfates. Historical concentrations below the EPA's secondary maximum contaminant level of 250 mg/L did not warrant sulfate treatment at the time of design. During the design of our Water Treatment Plant, we did make a significant commitment to provide our consumers with high quality, aesthetically acceptable water. Elevated sulfate concentrations in our source water will impact the aesthetic (taste and odor) quality of our drinking water and may have potential health impacts, including diarrhea and dehydration, which are most severe with infants, elderly, and transient consumers. As a major economic center for the region that hosts a significant transient population for health care, employment, shopping, conventions, entertainment, and higher education, we have a very large group of potentially impacted consumers.

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As the stakeholders work to develop a satisfactory solution to Devils Lake flooding, the City of Fargo strongly encourages efforts to prevent an uncontrolled release of water from Devils Lake. An uncontrolled discharge from a natural outlet on the east side of Devils Lake has many uncertainties that could impact downstream communities, including the strong possibility of wide spread flooding and significant further water quality degradation. The City would also like to encourage the investigation of year-round operation of the Emergency Outlet. Year-round operation could remove additional water from the lake and could alleviate large fluctuations in sulfate concentration in the Sheyenne River. Given historical Sheyenne River usage patterns by the City of Fargo, it is less likely that the City will be drawing water from the Sheyenne River during winter months.

The City of Fargo currently supplies drinking water to its residents and to the customers of the Cass Rural Water Users District. The City of Fargo also provides regional wastewater treatment, serving several neighboring communities and sanitary districts. With the City's increasing service boundaries, the impact of our drinking water quality extends beyond the boundaries of our City limits and into the metropolitan area and county, which has combined statistical area population of over 200,000.

Recently, the Cities of Fargo and West Fargo have begun discussions related to a regional water supply system that would provide both communities and the Cass Rural Water Users District with a reliable water system. Additional planning and coordination are necessary before moving forward with this regional water system, but it is clear that the Sheyenne River will be an integral part of the water supply and drought mitigation plans for this system. We expect that one solution to the elevated sulfate concentrations in the Sheyenne River could be provided to satisfy the City of Fargo, the City of West Fargo, and the Cass Rural Water Users District.

In order to minimize the drinking water impacts associated with elevated source water sulfate concentrations, the City has estimated that capital improvements of approximately $50 to $70 million will be needed for our Water Treatment Plant. The cost range is based on the concentration of sulfate in the Sheyenne River ranging from 450 mg/L to 750 mg/L. The City is prepared to address capacity expansion of its Water Treatment Plant to accommodate our growth, but we are not prepared to fund these necessary capital improvements for sulfate treatment without financial burden to our consumers. As such, funding of the Devils Lake flooding disaster should include funds necessary to mitigate the downstream impacts of the Devils Lake outlet, including state and federal funding for the City of Fargo's drinking water system.

Your efforts to achieve a comprehensive solution to the Devils Lake flooding situation are greatly appreciated. The challenges now associated with Devils Lake are very significant, and

could have potentially long-term devastating impacts to the region. As you continue your work to develop solutions to the regional Devils Lake issue, the solutions must address the following:

- Prevention of additional local flooding.
- Prevention of an uncontrolled discharge to the Sheyenne River.
- Increased flows from the lake, including consideration of year-round discharges.
- Sulfate treatment for downstream water treatment plants on the Sheyenne River.

With state and federal funding to provide sulfate treatment processes at our Water Treatment Plant to meet the treatment standard of 250 mg/L, the City is prepared to support a stream standard variance for sulfate in the Sheyenne River of up to 750 mg/L. We understand this variance would allow a much more aggressive discharge of water from Devils Lake to prevent further flooding impacts. Without this funding as part of the regional solution, however, the City desires to continue use of its Sheyenne River supply with sulfate concentrations that do not exceed the natural historic levels.

Note that as a supplement to this testimony, I have attached the testimony that I provided to Senator Byron Dorgan at the US Senate Energy and Water Appropriations Subcommittee Hearing on February 19, 2010. Along with the attachment, please accept this letter as Fargo's formal submittal to the Budget Committee Hearing "Devils Lake Flooding Disaster: A Red River Valley Perspective."

Sincerely,

Dennis R. Walaker
Mayor

c. Commissioners
Pat Zavoral, City Administrator
Bruce Grubb, Enterprise Director
Erik Johnson, City Attorney

The CHAIRMAN. Thank you, Mayor. Thank you very much.

Let me start with the first question that I haveten, which is, Why is the Budget Committee holding a hearing on this question? Well, simply put, the reason is money. In order to fund all of this, it has to go through the Budget Committee and then be appropriated by the appropriators. And so, you've got two committees that have jurisdiction here. You have the Budget Committee and then you have the appropriations committees.

With what is contemplated, in terms of additional cost, if nothing is done, we could be looking at billions of dollars. If there was an uncontrolled release of water, we know the costs would be staggering.

Let me give you a reason why that would be. In a worst-case scenario, we could have Valley City getting water, if there was an uncontrolled release out of the east end, 10 feet above flood stage, 5 feet above where flooding was in Valley City in 2009. Similarly, Lisbon would be devastated. Both of those communities, in this worst-case scenario, would have to be evacuated, and they would have to be evacuated for a considerable period of time. You think

about the extraordinary cost of an incident like that. That is the potential risk that we have to balance all of our other decisions against. What is the worst-case scenario? And, frankly, it's not very farfetched. It assumes that the Tolna Coulee goes down to 1450, and that's—goes to the observation the Mayor was making with respect to what is there that is stopping the release of water now. And I think it's just very important that we understand—all of us understand—the consequences, yes, for the Devils Lake Basin, but for the downstream cities and town, as well.

Let's go the question of sulfate levels, very quickly, because that really becomes the crux of the issue, I believe, for the downstream cities and towns. And I think the first thing I want to do is go to Mr. Glatt. The current standard, without a waiver, is at what level, Dave, of sulfates—

Mr. GLATT. The—

The CHAIRMAN. —in the river?

Mr. GLATT. Well, Senator, the current river standard is—for the Sheyenne—will be from Baldhill down to the Red River—is 450 milligrams per liter, and that's the river standard. And the river standard for the Red River is 250. For a drinking water supply, it's called a secondary standard, which is a non-enforceable standard, and that's 250.

The CHAIRMAN. Okay. So, we've got two standards at work, here. That contributes to confusion that we've seen in some of the stories. You've got a river standard, which is at 450, in the Sheyenne, and you've got, for the Red, 250. Is that correct?

Mr. GLATT. That's correct.

The CHAIRMAN. And what is the—you mentioned an analysis that's been done with respect to that standard and the acceptability of a higher level than 250. And as I heard you describe it—well, why don't you describe it for me and make sure we have it right for the record.

Mr. GLATT. Senator, as it relates to the drinking water standard, is that what—

The CHAIRMAN. Correct.

Mr. GLATT. Currently, under the Safe Drinking Water Act, there's primary standards and secondary standards.

Primary standards relate to health issues, concentrations of various chemicals—parameters—that can be in your drinking water that, if exposed to them over a period of time, can result in health impacts to a percentage of the population. So, those are more health- related standards.

Secondary standards deal more with aesthetics—taste, odor, color—you know, like iron can impart a color to it. It's not a health issue, but it's an aesthetic standard that people may find unpleasing, not desirable, in their drinking water supply.

The CHAIRMAN. So—

Mr. GLATT. And so, those are the two. The primary is enforceable, that they have to comply with; secondary is not enforceable.

The CHAIRMAN. And what would the primary standard be for sulfates?

Mr. GLATT. There is no primary for sulfates, because it's not considered to be a health issue, as it relates to the concentration.

The CHAIRMAN. So, there's no standard for sulfates for the purposes of health.

Mr. GLATT. Senator, that's correct. There's no enforceable—

The CHAIRMAN. Standard.

Mr. GLATT. —primary standard for sulfates.

The CHAIRMAN. It's the secondary standard that becomes the concern, and that involves aesthetics.

Mr. GLATT. That's correct.

The CHAIRMAN. And again, that standard would be, in Red River, 250?

Mr. GLATT. Now we're—Senator, we're talking in—for—we have two different things. We have standards for water quality for surface waters in the State, and that is for your rivers, the lakes, that type of thing. Then we also have standards for drinking water, under the Safe Drinking Water Act, which is separate than that. The—for the Red River, the standard for the Red River surface water is 250 milligrams per liter for sulfate.

The CHAIRMAN. Okay. Is there anything more we should know about these sulfate levels?

Mr. GLATT. Senator, that—well, that—the CDC has studied the sulfate levels, and determined what—that there isn't really a bright line between any health issues related for that. And that's why—one of the reasons they did not make it a primary standard. I will tell you that, statewide, we have several communities that drink very high concentrations of sulfate without any health issues.

The CHAIRMAN. What—

Mr. GLATT. But—

The CHAIRMAN. What concentrations would they be drinking?

Mr. GLATT. We have up to 1,000 milligrams per liter. But that becomes a local decision and issue on what is acceptable for their community.

The CHAIRMAN. So, you are—there are communities in North Dakota right now who have a sulfate level of 1,000 parts, and they're not experiencing health issues that can be seen.

Mr. GLATT. That's correct, Senator. And—but, I will tell you, in all honesty, there are some communities that are looking to hook up to rural water because—you know, it's—not it's only—not only sulfates, but other minerals in the supply that they're looking for something, aesthetically, a little more pleasing.

The CHAIRMAN. Currently, what is permitted above Ashtabula? Is there a difference in standard, at the current time, for above Ashtabula, and below?

Mr. GLATT. Senator, right now we are operating an emergency standard that will allow the stream standard to be up to 750 milligrams per liter. We have also gone through what is called a triennial review of our statewide water quality standards, and we've asked for a permanent change of that standard to be from the headwaters of the Sheyenne to a tenth of a mile below the Baldhill Dam. And that would permanently change it to 750.

The CHAIRMAN. 750. And what is the water quality coming out of the State outlet?

Mr. GLATT. Right now, the most recent testing, we're about 550 milligrams per liter.

The CHAIRMAN. So, well below the 750.

Mr. GLATT. That's correct.

The CHAIRMAN. If the water were to come out in an uncontrolled way out of the east end, what would be the sulfate level there?

Mr. GLATT. East end, meaning Stump Lake through Tolna Coulee?

The CHAIRMAN. Correct.

Mr. GLATT. Right now, we're at about 2500 milligrams per liter for sulfate, plus other elements that may be of concern.

The CHAIRMAN. So, when I referenced, earlier, the water quality being five times worse out of the east end than out of the west end, that is supported by the sulfate levels that we see between the two—500, roughly, out of the west end, 2500 out of the east end.

Mr. GLATT. That's correct, Senator.

The CHAIRMAN. If we were to have a continuation of up to 750 out of the west end, which is permitted above the dam, what would the effect be on levels of West Fargo and Fargo?

Mr. GLATT. Senator, first of all, we—I—we don't see that we would get to 750. We'll be in that 550 to 600 range. And so, that's the highest it would ever get. What we have seen from our monitoring—we've done extensive monitoring from the point of discharge, down to through the Sheyenne, into the Red River, all the way up to Canadian border—that there is some dilution that occurs, so that level would be less than that. If we were to operate the west-end outlet for 9 months out of the year with no stoppage, you would see concentrations probably in that 450 to 500 range in the Sheyenne, the lower Sheyenne.

The CHAIRMAN. In the lower Sheyenne. And what would that effect be, then, on the Red? Because there would be other sources for the Red.

Mr. GLATT. Yeah. And we—and that's one of the—Senator, that's one of the things we're looking at modeling with USGS, is that—Under different scenarios and different flows, what can we anticipate in the Red River? Clearly, the amount of flow that we've seen in the Red in the last few years is significantly greater than what the Sheyenne would add to it. So, you would see a considerable amount of dilution occurring. And—to the point where our preliminary results say that we may even meet the 250 milligrams per liter for sulfate at certain times of the year.

And so, those are the things that—

The CHAIRMAN. So, without any additional treatment being done, your initial studies indicate that, in the Red, you might still achieve the 250 parts, even without any additional treatment being made, for certain times of the year.

Mr. GLATT. Yeah. Senator, that's true. And it's all dependent upon what type of flows we can anticipate in the Red and what type of dilution flows we get in the Sheyenne. But, clearly, there are times when we can see the 250, and be in compliance with that. Clearly, there will be times we'll be above that. But, we're trying to get that modeling refined enough to give us a good indication of what the—

The CHAIRMAN. Of—

Mr. GLATT. —downstream impacts—

The CHAIRMAN. Of how much above it we might be.

Mr. GLATT. That's correct.

The CHAIRMAN. Okay. All right.

Mayor Mattern, in terms of West Fargo, I heard you loud and clear, you want to be part of a solution.

Mr. MATTERN. Absolutely, Senator.

The CHAIRMAN. And we appreciate that. Frankly, I think it's in all of our interests to be part of a solution, because I think—

Mr. MATTERN. Absolutely.

The CHAIRMAN. —we can see, from this testimony, if we have an uncontrolled release of water out of the east end, at 2500—level of sulfates, 2500—that becomes an issue for everybody downstream.

Mr. MATTERN. Absolutely, Senator.

The CHAIRMAN. The—what assurance would West Fargo need to support an increase in sulfate levels from what's already been approved? That is, the 750—Dave, correct me if I'm wrong—that's just for above the dam.

Mr. GLATT. That's correct.

The CHAIRMAN. If we had to raise sulfate levels—what are the sulfate levels permitted below the dam?

Mr. WALAKER. As it relates to—Senator, as it relates to the current water quality standards, it's 450 from below the dam to the Red River, and 250 from there on. I would point out—for—in the Red—250 in the Red.

The CHAIRMAN. Yeah.

Mr. WALAKER. I would point out that, when you—we—through the monitoring, we've been able to show that, naturally occurring—the river fluctuates naturally, and it naturally goes above 250, up to 350 at times. So, that—does it without any influence from Devils Lake. But, as the standards are set, today, the emergency standards—750 from the headwaters to Baldhill, 450 from Baldhill to the Red, 250 in the Red.

The CHAIRMAN. Have—has the city had any discussions about what levels that they would want to be assured of to support increasing the level of sulfates that are permitted?

Mr. GLATT. Senator, I—to me, I don't know that that—certainly, that's an issue, but—and, as we talked about, it's going to raise the costs of a water treatment plant that we are working on jointly. And I think that's the—going to be, with residents, somewhat of an issue, when you—I think you talk to any resident in West Fargo, and they'd probably, 99 percent, support doing something. I don't think that's an issue. I think when you start talking about an added $10–15 million, then, of course, that becomes an issue. And that's, I think, what we'll have to work on to mitigate that somewhat with our city residents.

The CHAIRMAN. Is the consideration of a water treatment facility—are there other reasons, other than water quality effects that might come as a result of Devils Lake?

Mr. GLATT. I guess I didn't quite understand the—

The CHAIRMAN. Yeah. Are there other reasons for considering a joint water treatment facility, other than changes in quality caused by a release of water from Devils Lake?

Mr. MATTERN. No, I think—help me out, here, Mayor, but—I think we're looking at the high costs of a water treatment plant, and that's why we're—we want to work together with Fargo, and

any other entity or cities around them, to make—take a more regional approach to the whole water issue.

The CHAIRMAN. So, you would be looking at this potential for a new water treatment plant, regardless.

Mr. MATTERN. Yes. Yes. I'm sorry—

The CHAIRMAN. You'd be—

Mr. MATTERN. —I guess I misunderstood.

The CHAIRMAN. You'd be—

Mr. MATTERN. Yes, we—

The CHAIRMAN. I want to be clear, on the record here, that you're looking at a new water treatment plant because of the economics of water treatment, whether or not Devils Lake is in the picture.

Mr. MATTERN. Yes. As I mentioned, all of our water right now comes from aquifers, and when you have a—terrific growth that we have had, those will not last forever, and it's time for us to take a look.

I've—you can correct me if I'm wrong—right now, we're in the portion of the study to take a look again at just how much water is left in that aquifer—or, aquifers—for us to—but, clearly, I think the handwriting is on the wall that a water treatment plant is in our future.

The CHAIRMAN. Water treatment plant is in the—I think it's just very, very important that it be clear to people that you're not talking about a new water treatment plant between Fargo and West Fargo because of Devils Lake.

Mr. MATTERN. No.

The CHAIRMAN. You're looking at it because of explosive growth in your population, you're looking at it because of the economics of water treatment, that you might be able to get lower costs for your constituents by going together on a water treatment facility.

Mr. MATTERN. Absolutely, Senator.

The CHAIRMAN. But, the construction of that water treatment facility would give us an opportunity to improve the ability to remove sulfates as well

Mr. MATTERN. Yes.

The CHAIRMAN. That would be an additional benefit.

Mr. MATTERN. Yes.

The CHAIRMAN. Is that the way you see it, Mayor Walaker?

Mr. WALAKER. Anything that Rich says, I agree with.

[Laughter.]

Mr. MATTERN. Gosh, he's agreeable today.

Mr. WALAKER. This graphic, right here, explains—and, I mean—people have to understand is that we paid for over one-half the cost of the construction of Baldhill Dam. That's our reserve. We have about—we anticipate about 2 years of water in the Baldhill Dam area, Lake Ashtabula. So, we're very concerned with what happens to that.

If you look at this whole thing historically, we have been somewhere in the vicinity—for the majority of years, somewhere around 250 milligrams per liter. We have a—I think there's one spike there that goes up to 300, but, for the majority, it's been at that. And that's very acceptable. We think we produce a good quality water for our community and the people that we serve.

But, as you can see here by the blue lines, that's when we took water out of the Sheyenne. So, building this water plant is—between Fargo and West Fargo—the cost of treating sulfates is something that Devils Lake will add to this process. Very simply.

And as far as we can tell, there's very little dilution from the dam to Fargo. And there probably won't be any, and so forth.

Now, when you start talking about the quality of water, there's lots of people that won't drink the water in West Fargo.

Mr. MATTERN. I knew you were going to say that.

[Laughter.]

Mr. WALAKER. And we understand that. Bottled water is not the answer. You know, use it for cooking or sanitary purposes or whatever. But, the taste of the water right now in Fargo is excellent, and this would be a dramatic change in that whole process. And all we're doing is—you know, granted, 50 to 70 million dollars is a lot of money, but that's what we're talking about. We need some help with that process if you're going to talk about increasing the sulfates to 500 to 600. You know, even though you changed the rules, historically Fargo has not had to deal with sulfates for the last 50 years. And the problem very—gets down to is priorities—we need some priorities, number one, to attend to what Devils Lake needs first. That's number one. And the process of Valley City and Lisbon having all of that water, because it'll come at one shot, that's unacceptable. We've had years and years to see this going, and hopefully the answer has been that it's going to quit, that the process would quit pretty soon, and we would get through these wet years and so forth. But, it doesn't seem to be anything on the horizon, and that's what we have to deal with.

I've been in Minnewaukan. I mean, I can't believe it. I mean, I was there when the water was beyond the parking lot at the high school and the grade school, and that was there before 281 was moved, you know, a mile or so to the west and so forth. But, now people are fishing off of the old highway. I mean, they're standing there on the rocks, and fishing in an area that used to be farmland. So, that's the number-one priority, is the protection of Devils Lake.

And Joe has taken us around on a bus tour from the Red River Basin Board and showed us some areas that I wasn't acquainted with, the area. And in the military camp, they're talking about their—losing their area and so forth. And there's a lot of options that—I mean, Devils Lake is a real, significant problem, and we sit here and we argue about sulfates and so forth. But, the reality is, the city of Fargo would like some assistance in the—just like what was done for Devils Lake. And the Governor has mentioned that, and we'd like the Federal Government also to participate in sulfate removals, because we have never had to do that in the past. We never have. We've had—you know, granted, the water quality, years ago, was because of the treatment process, but we just spent a significant amount of money building a brand new water plant, and we think it's doing a very good job and so forth. And we want to continue doing that.

I mean, I live in an area—or used to live in an area—that had artesian water. You could even taste it in the coffee and the Kool–Aid. That's the only way you could actually drink it. And this—and the process is—is not that the people that are in these communities

that are using higher levels of sulfates, the problem is acclimating themselves to getting used to it. And there is an acclimation process in the—and so forth. So—

The CHAIRMAN. All right.

Mr. WALAKER. Okay?

The CHAIRMAN. I think we've explored this pretty completely. I think we've—we have already dealt with Valley City, in terms of upgrading their water plant, a commitment to do so, substantial Federal help there, and would not be unreasonable to have Federal help to deal with that part of the water treatment issue that might be exacerbated by decisions that were made with respect to releases from Devils Lake.

Again, I want to emphasize, and close on, this point: An uncontrolled release of water out of the east end would have sulfate levels coming at us of 2500. Out of the west end, on a controlled basis, the water quality, in terms of sulfates, is roughly 500. So, that is a tremendous difference, in terms of what we'd face downstream. And I think that's just got to be kept in mind, in terms of what is in our collective interest, in terms of a solution.

Governor, any statement—final statement you want to make, in terms of this panel?

Governor Hoeven: No. I'd just echo your closing comments, there, that we can work together and manage this, and keep the sulfates at a manageable level downstream, and also work with the communities, as we've done with Valley City, on your water treatment needs.

And I want to express my appreciation to both Mayor Walaker and to Mayor Mattern for your willingness to work with us on it. We appreciate it very much.

Thank you.

The CHAIRMAN. Thank you.

Thanks, to the entire panel.

And now we'll call the second panel: Darrell Vanyo, chairman of the Cass County Commission, and Steve Burian, chief executive officer of Advanced Engineering and Environmental Services.

Governor, if you're able to stay, we'd love to have you —

Governor Hoeven: Yeah, I'm going to stay.

The CHAIRMAN. —stay.

Governor Hoeven: I'm going to—

The CHAIRMAN. Why don't we proceed with Darrell Vanyo, the chairman of the Cass County Commission.

Welcome. Thank you so much for taking time to provide testimony at this hearing. And please proceed.

STATEMENT OF HON. DARRELL VANYO, CHAIRMAN CASS COUNTY COMMISSION

Mr. VANYO. Thank you, Senator, for giving me the opportunity to appear before this committee hearing today.

I think I want to applaud you and the people in the Devils Lake area for being concerned about the downstream impacts relating to any solution with the Devils Lake issue.

That type of concern has been going on for many, many years. I can recall—I was a city commissioner in West Fargo from 1986 until 1999, and during that time, I remember Commissioner Joe

Belford coming before us a handful of times because of his concern in getting the support of people downstream. So—and that's—concern still goes on. And I applaud you for that.

As indicated, I'm the chair of the Cass County Commission. I believe that a timely solution to the current devastation and downstream threat created by the continued rise of Devils Lake must be a priority to the Federal Government, the State government, and local governments across the State of North Dakota.

The risk associated with an uncontrolled spill from Stump Lake into the Sheyenne River is substantial, and would result in catastrophic consequences to downstream communities, including those in Cass County.

The best available evidence suggests that the Devils Lake has spilled from Stump Lake into the Sheyenne River more than once in the past 2,000 years during wet cycles. A recent USGS report suggests, as you indicated on your chart, Senator, a 72-percent chance that the current wet cycle will last at least another 10 years, and a 37-percent chance it will last 30 years. We simply cannot afford to gamble on the possibility of a quick end to the wet cycle. One exceptionally large rain event could escalate the current crisis to a catastrophic event with significant damages and associated costs.

The 250-cubic-feet-per-second pumping station recently put into operation is a step in the right direction that provides some reduction in the probability of an uncontrolled outflow. However, it does not solve the problem. In a recent USGS simulation model exercise, one- half of the random models resulted in a spill within the next 20 years, even with the State outlet. Therefore, more is needed and time is of the essence. The risk to downstream interests is unacceptably high.

Of additional concern are the large expenditures for raising roads and other temporary infrastructure that continue with no end in sight. We understand that, by the end of 2011, 650 million will have been spent to address infrastructure needs in the Devils Lake area since the wet cycle started. This includes several hundred million on roads. The North Dakota Department of Transportation estimates possibly 250 to 300 million in—more in highway expenditures necessary to raise essential highways to an elevation of 1465 if the lake reaches its natural spill elevation of 1458.

Scarce Federal, State, and local resources would be better applied to a permanent solution instead of continued expenditures on short-term fixes. Whether they realize it or not, all taxpayers in the United States—and certainly within North Dakota—all are already paying a high price for the flooding in Devils Lake region.

A controlled outlet, with appropriate downstream mitigation, may be the only viable solution. Ideally, the outlet should draw water from the West Bay, where sulfur—sulfate levels are between 500 and 600 milligrams per liter, instead of the much higher east Devils Lake or Stump Lake area. We understand that there are technical and financial challenges with a West Bay outlet, but believe this option needs significant and thoughtful evaluation before being ruled out.

Additional consideration must be given to the following:

Downstream water quality standards will have to be further modified for any outlet option to be effective.

NEPA compliance inevitably poses unreasonable time delays.

Emergency legislation to speed up the permit process must be explored.

Leaders in downstream communities in the United States and Canada must be educated to understand that the environmental impacts of an uncontrolled discharge would far exceed those of a smaller, controlled discharge.

While we recognize and support the need for an outlet, we must also emphasize the need to mitigate adverse consequences to the fullest extent practical. These mitigation steps may include, but are not limited to, new or improved treatment facilities, flood protection measures for downstream communities, erosion protection measures.

During flood periods, a high percentage of the floodwater in the Sheyenne River now spills out and flows overland through Northern, Richland, and Southeastern Cass Counties. The Sheyenne diversion channel picks up part of the Sheyenne River near Horace. If levees were constructed, containing all flows in the Sheyenne River channel through Southeastern Cass County, the existing Sheyenne diversion channel may not have adequate capacity to provide the necessary protection. However, if large flows from a Devils Lake spill were allowed to enter the Sheyenne River without levees, communities of Kindred, Davenport, and Horace, as well as many rural residences, would be threatened from the breakout flows. Harwood and many rural residents would be threatened by a Sheyenne River flooding to the north of Fargo and West Fargo. These downstream impacts must be considered and dealt with as part of any outlet plan.

The proposed North Dakota Red River diversion would do much to address the concerns created by a sustained increase in Sheyenne River flows. The need for a Devils Lake outlet increases the urgency of also completing the diversion in a timely manner.

Speaking on behalf of the entire Cass County Commission, I would like to say that we all understand the issues of too much water very clearly. Our years of organizing, planning, and funding projects for minimizing the impact of rising waters have not been enough. The temporary measures have been costly for both the Devils Lake area and Cass County for battling their respective water issues.

The time for permanent solutions is now. The time for addressing the Devils Lake rising-water issue, the flooding in Cass County, and mitigating any downstream effects, is now. Federal, State, and local funding of permanent solutions will save millions of dollars in the long run.

Cass County supports a planned and controlled process to solving the rising waters of Devils Lake. Likewise, I believe that the people of Devils Lake support the Red River diversion as a means, not only to protect a highly populated metro area, but to allow for the additional water coming to our area through the Sheyenne River. The two are mutually beneficial.

Once again, thank you for allowing me to comment.

[The prepared statement of Mr. Vanyo follows:]

Testimony to the

Senate Budget Committee Devils Lake Hearing

August 16, 2010

Darrell Vanyo

Chair, Cass County Commission

Good Morning. I'm Darrell Vanyo and I currently serve as the Chair of the Cass County Commission. I'd like to thank Senator Conrad for the opportunity to appear before this Committee today.

A timely solution to the current devastation and downstream threat created by the continued rise of Devils Lake must be a priority to the Federal Government, The State Government, and local governments across the State of North Dakota.

The risk associated with an uncontrolled spill from Stump Lake into the Sheyenne River is substantial and would result in catastrophic consequences to downstream communities including those in Cass County. The best available evidence suggests

that Devils Lake has spilled from Stump Lake into the Sheyenne River more than once in the past 2000 years during wet cycles. A recent USGS report suggests a 72 percent chance that the current wet cycle will last at least another 10 years and a 37 percent chance that it will last at least another 30 years. We simply cannot afford to gamble on the possibility of a quick end to the current wet cycle. One exceptionally large rain event could escalate the current crisis to a catastrophic event with significant damages and associated costs.

The 250 cubic feet per second pumping station recently put into operation is a step in the right direction that provides some reduction in the probability of an uncontrolled outflow. However, it does not solve the problem. In a recent USGS simulation model exercise, one half of the random models resulted in a spill in the next 20 years even with the State outlet. Therefore more is needed and time is of the essence.

The risk to downstream interests is unacceptably high. Of additional concern are the large expenditures for raising roads and other temporary infrastructure that continue with no end in sight. We understand that by the end of 2011, $650

million will have been spent to address infrastructure needs in the Devils Lake area since the wet cycle started. This includes almost $200 million on roads. The North Dakota Department of Transportation estimates another $250 - $300 million in highway expenditures will be necessary to raise essential State highways to an elevation of 1465 if the lake reaches it's "natural spill" elevation of 1458.

Scarce Federal, State, and local resources would be better applied to a permanent solution instead of continued expenditures on short term fixes. Whether they realize it or not, all taxpayers in the United States and North Dakota are already paying a heavy price for the flooding in the Devils Lake region.

A controlled outlet with appropriate downstream mitigation may be the only viable solution available. Ideally, the outlet should draw water from the West Bay where sulfate levels are between 500 and 600 milligrams/liter instead of the much higher East Devils Lake or Stump Lake. We understand that there are technical and financial challenges with a West Bay outlet but believe this option needs significant and thoughtful evaluation before being ruled out.

Additional consideration must be given to the following:

- Downstream water quality standards will have to be further modified for any outlet option to be effective.
- NEPA compliance inevitably poses unreasonable time delays. Emergency legislation to speed up the permit process must be explored.
- Leaders in downstream communities in the United States and Canada must be educated to understand that the environmental impacts of an uncontrolled discharge would far exceed those of a smaller controlled discharge.

While we recognize and support the need for an outlet, we must also emphasize the need to mitigate adverse consequences to the fullest extent practical. These mitigation steps may include but are not limited to:

- New or improved water treatment facilities
- Flood protection measures for downstream communities
- Erosion protection measures

During flood periods a high percentage of the flood water in the Sheyenne River now spills out and flows overland through Northern Richland and Southeastern Cass Counties. The Sheyenne Diversion channel picks up part of the Sheyenne River near Horace. If levees were constructed to contain all flows in the Sheyenne River channel through Southeastern Cass County, the existing Sheyenne Diversion channel would not have adequate capacity to provide the necessary protection. However, if large flows from a Devils Lake spill were allowed to enter the Sheyenne River without levees, the communities of Kindred, Davenport, and Horace as well as many rural residences would be threatened from the breakout flows. Harwood and many rural residences would be threatened by Sheyenne River flooding to the north of Fargo and West Fargo. These downstream impacts must be considered and dealt with as a part of any outlet plan.

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Once again, thank you for allowing me to comment on behalf of Cass County.

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The CHAIRMAN. Thank you for that excellent testimony.

And now we'll hear from Steve Burian, chief executive officer of Advanced Engineering and Environmental Services. And I might add, parenthetically, that his father was my deputy when I was tax commissioner, so I'm always glad to see a Burian. Welcome.

STATEMENT OF STEVE BURIAN, CHIEF EXECUTIVE OFFICER, ADVANCED ENGINEERING AND ENVIRONMENTAL SERVICES, INC. (AE2S)

Mr. BURIAN. Good morning. And thank you, Senator Conrad.

For the record, my name is Steve Burian. I'm an engineer specializing in water supply and treatment, and I'm here this morning as a consultant to the City of Fargo.

Like to thank you, Senator Conrad, as well as Cass County, for hosting this hearing focused on the Devils Lake flooding disaster.

I fully understand the immediate issues surrounding Devils Lake, and the need for flood relief, but I'm going to actually shift my focus of my testimony to issues related to the discharge of Devils Lake into the Sheyenne River.

Specifically, I would like to address implications related to the increased sulfate concentrations in drinking water, increased sulfate concentrations within the Sheyenne River, and how these sulfate concerns will affect downstream users, including the City of Fargo.

Sulfate is an anion with high solubility that—it naturally exists in water sources primarily in the forms of sodium sulfate, calcium sulfate, and magnesium sulfate. United States Environmental Protection Agency, or the EPA, and the North Dakota Department of Health have adopted a secondary standard of 250 milligrams per liter—talked about that earlier—for sulfate in drinking water. Estimates indicate that only 3 percent of drinking water supplies in the country have provided water in excess of this 250-milligram-per-liter recommendation, although sulfate is more common in North Dakota.

Sulfate, especially sodium sulfate, is known to give a bitter, astringent, and an undesirable taste even at low concentrations. One study by Zetman indicated that sodium sulfate, in any concentration, affects the taste of drinking water. Another study, by the National Academy of Science, indicated that sulfate concentrations between 250 to 1,000 milligrams per liter caused reported taste impacts and varied depending on all the species, with sodium sulfate being the worst.

Based on water-quality sampling data from the North Dakota Department of Health, sodium sulfate appears to be the most prevalent form of sulfate in the water discharged from Devils Lake into the Sheyenne River, though all three forms are present.

Regarding health implications, the EPA and the World Health Organization have identified many resources that indicate that sulfates in higher concentrations can cause diarrhea anhydration, particularly for infants, elderly, and transient populations that aren't acclimated to sulfate. The specific concentration for these health effects is variable and inconclusive, as Dave Glatt mentioned. The World Health Organization has set a health advisory level for drinking water containing sulfate concentrations above 500 milligrams per liter.

In 1994, the EPA proposed its primary standard, which is the enforceable standard, of 500 milligrams per liter for sulfate. But it was not enacted, because the field experiment was inconclusive, primarily because the researchers could not secure a large enough statistical population of exposed infants, and the adult trials produced nonstatistically-significant results. As a result, in the absence of an enforceable health-effect standard, the only published standard for sulfates is based on aesthetics, at 250 milligrams per liter.

The United States Geological Survey historic water quality data from 1969 to 2005 indicates an average sulfate concentration of approximately 146 milligrams per liter on the Sheyenne River at West Fargo, with higher concentrations occurring since the mid–1990s. A closer look at the source water quality data indicates that prior to the Devils Lake emergency outlet, only 3 of 65 samples, or 4.6 percent, from the Sheyenne River at West Fargo exceeded the secondary standard of 250 milligrams per liter, with a maximum recorded concentration of 310 milligrams per liter.

With the operation of Devils Lake emergency outlet, however, the sulfate concentration throughout the Sheyenne River is increasing. Water quality sampling performed by the City of Fargo from October 2009 until the present, at the City of Fargo Sheyenne River intake at West Fargo, indicates an average sulfate concentration of 270 milligrams per liter and a maximum concentration of 383 milligrams per liter. Sixty-three percent of the samples taken by the City of Fargo over this time period are above the 250-milligram- per-liter secondary standard.

Unfortunately, USGS water quality sampling data from 1975 to 2005, as well as more recent data since operation of the emergency outlet began, indicate that the Sheyenne River offers almost no dilution of sulfate concentrations between Baldhill Dam and West Fargo.

It is understood recent discussions have suggested extending the temporary emergency sulfate stream standard of 750 milligrams per liter in the upper reaches of the Sheyenne River to the lower reaches of the Sheyenne River. If this variance is approved, historical data suggests the sulfate concentration in the Sheyenne River at West Fargo will be similar to the sulfate concentration released from Baldhill Dam.

Data from 2009 and early 2010 indicate that operation of the emergency outlet has a significant impact on sulfate concentrations in the Sheyenne River. Sulfate concentrations in the below–Baldhill–Dam sampling site rose from just over 114 milligrams per liter in May of 2009 to 279 milligrams per liter in October of 2009, with near constant operation of the emergency outlet at 100 cubic feet per second.

Sulfate concentrations at West Fargo continued to rise to 383 milligrams per liter by the end of January 2010 as a result of the lag time between the dam location in West Fargo before falling as a result of spring runoff.

The pumping capacity of the emergency outlet was expanded in June 2010 from 100 to 200 cubic feet per second, but sufficient data is not yet available to evaluate how the expanded capacity will impact the sulfate concentrations in the Sheyenne River.

The City of Fargo relies upon the Red River to the north and the Sheyenne River as its water supplies. Throughout the year, the sources are used independently, as well as blended at different ratio. Having redundant water supply sources provides the city with important operational flexibility in the event of infrastructure failures, contamination of one source—of the sources, and undesirable discharges from poor-quality upstream reservoirs or point sources. The City of Fargo has made significant investment to secure the redundant source water supplies. It would be irresponsible for the City of Fargo to rely exclusively on a single source.

The City of Fargo successfully provides consumers with safe and aesthetically pleasing drinking water. The current Fargo water treatment plant, which was constructed in 1997, with the related—along with related facility improvements, at a cost of approximately $75 million, includes five main mechanisms for treating its Red River and Sheyenne River sources: one, high-rate clarification to remove solids; two lime—two-stage lime-soda ash softening to reduce hardness; three, filtration to remove particulate matter; four,

ozonation for organic taste and odor control and primary disinfection; and, five, chloramination for disinfection, byproduct control, and secondary disinfection.

These technologies were selected based on the historic water quality of the Red River and Sheyenne River. Ozone was specifically incorporated for taste and odor treatment to provide an aesthetically pleasing water to the—quality—to the Fargo consumers. Because of its solubility, however, sulfate is very difficult to remove from drinking water using conventional technologies, and none of the treatment technologies incorporated at the Fargo water treatment plant is capable of removing sulfate.

Based on the historic water quality of the Red River and Sheyenne River, sulfate removal technologies were not historically necessary for the City of Fargo to provide acceptable drinking water to its consumers.

If increased sulfate concentrations in the Sheyenne River persist, and further increases stem from the necessity to move additional water from Devils Lake to prevent further flooding impacts in an uncontrolled release, sulfate treatment to the Sheyenne River by the city of Fargo will be warranted. Advanced technologies capable of sulfate removal include reverse osmosis, ion exchange, and electrodialysis, and reverse electrodialysis.

Of these technologies, reverse osmosis is likely the only practical alternative for a large-scale drinking-water system. City of Fargo staff and consultants have begun preliminary analysis of the scope and estimated costs to incorporate reverse osmosis treatment to the Sheyenne River to maintain a treated-water sulfate concentration of 250 milligrams per liter.

The preliminary concept developed for the City of Fargo includes a new 8-million-gallon-per-day reverse osmosis facility to treat water from the Sheyenne River prior to blending and polishing treatment at the existing 30-million- gallon-per-day Fargo water treatment plant.

Another option that could be considered is partial reverse osmosis treatment of the Fargo water treatment plant effluent prior to pumping finished water into the city's distribution system. Further facility planning is necessary to identify the most cost-effective treatment alternative.

Although reverse osmosis in—for drinking water has become more common in recent years, the estimated capital costs and operation and maintenance costs to incorporate reverse osmosis for sulfate removal within the City of Fargo water system are significant. The required size and associated cost for the reverse osmosis system are directly related to the source water quality.

Based on the preliminary analysis, the new sulfate treatment facility is estimated to cost approximately $50 to $70 million in capital costs, with additional operational and maintenance costs ranging from 3.7 to 5.5 million dollars per year. These cost ranges are based on maximum sulfate concentrations in the Sheyenne River of 450 and 750 milligrams per liter, respectively. Higher sulfate water concentrations result in higher estimated costs.

It is also important to note that reverse osmosis will be capable of removing the cations that are paired with the sulfates in the Sheyenne River; namely, sodium, calcium, and magnesium.

In conclusion, I would like to reiterate five key points in my testimony:

Research indicates that sulfate starts to impact the taste of drinking water at relatively low concentrations. Research also suggests that sulfates at higher concentrations can potentially impact health. The only published drinking-water standard for sulfate is the secondary standard of 250 milligrams per liter, based on aesthetics.

Two, sulfate concentration in the Sheyenne River are increasing due to the operation of Devils Lake emergency outlet, and little dilution has been observed between Baldhill Dam and West Fargo. Further sulfate concentration increases in the Sheyenne River may be required to limit further Devils Lake flooding impacts and prevent an uncontrolled discharge.

Three, the Sheyenne River is a critical component of the redundant Fargo water supply system. Based on a significant water treatment investment in the mid–1990s, the City of Fargo has been able to routinely provide its consumers with safe and aesthetically pleasing drinking water. The existing Fargo water treatment plant, however, is not capable of removing sulfates.

Lastly, with increasing sulfate concentrations in the Sheyenne River, reverse osmosis treatment by the City of Fargo to maintain the treated water sulfate concentration of 250 milligrams per liter will be warranted, with very significant new capital and operational and maintenance costs.

Thank you once again for the opportunity to testify regarding the downstream drinking water impacts of the Devils Lake flooding disaster. I'll be glad to answer any questions you have, along with the other panel member.

[The prepared statement of Mr. Burian follows:]

Testimony of Steve L. Burian, P.E.

Senate Budget Committee Field Hearing

"Devils Lake Flooding Disaster: A Red River Valley Perspective"

West Fargo, North Dakota – August 16th, 2010

Introduction

Good morning, I am Steve Burian, an engineer specializing in water supply and treatment, and a current consultant to the City of Fargo. I would like to thank Senator Conrad and Cass County for hosting this hearing focusing on the Devils Lake Flooding Disaster.

I fully understand the immediate issues surrounding Devils Lake flooding and the need for flood relief, but I am going to shift the focus of my testimony to issues related to the discharge of Devils Lake into the Sheyenne River. Specifically, I would like to address implications related to increased sulfate concentrations in drinking water, increased sulfate concentrations within the Sheyenne River, and how these sulfate concerns will affect downstream users, including the City of Fargo.

Sulfates in Drinking Water

Sulfate is an anion with high solubility that naturally exists in water sources primarily in the forms of sodium sulfate, calcium sulfate, and magnesium sulfate. The United State Environmental Protection Agency (EPA) and North Dakota Department of Health have adopted a secondary standard of 250 mg/L for sulfate in drinking water. Estimates indicate that only three (3) percent of drinking water supplies in the country have provided water in excess of this 250 mg/L recommendation, although sulfate is more common in North Dakota.

Sulfate, especially sodium sulfate, is known to give water a bitter, astringent, and undesirable taste even at low concentrations. One study by Zoeteman (1980) indicated that sodium sulfate, in any concentration, affects the taste of drinking water. Another study by the National Academy of Science (1977) indicated that sulfate concentrations between 250 to 1,000 mg/L caused reported taste impacts and varied depending on the sulfate species, with sodium sulfate being the worst. Based on water quality sampling data from the North Dakota Department of Health, sodium sulfate appears to be the most prevalent form of sulfate in the water discharged from Devils Lake into the Sheyenne River, though all three (3) forms are present.

Regarding health implications, the EPA and World Health Organization have indentified many resources that indicate that sulfates in higher concentrations can cause diarrhea and dehydration, particularly for infants, elderly, and transient populations. The specific concentration for these health effects is variable and inconclusive. The World Health Organization has set a health advisory level for drinking water containing sulfate concentrations above 500 mg/L. In 1994, the EPA proposed a primary standard of 500 mg/L for sulfate, but it was not enacted because the field experiment was inconclusive, primarily

because the researchers could not secure a large enough statistical population of exposed infants and the adult trials produced non-statistically significant results. In the absence of an enforceable health effects standard, the only published standard for sulfate is based on aesthetics at 250 mg/L.

Sulfates in the Sheyenne River

United States Geological Survey (USGS) historic water quality data from 1969 to 2005 (36 years) indicates an average sulfate concentration of approximately 146 mg/L on the Sheyenne River at West Fargo, with higher concentrations occurring since the mid-1990s. (**Attachment 1 shows historic sulfate concentrations in the Sheyenne River at West Fargo from 1969 to July, 2010.**) A closer look at the source water quality data indicates that prior to the Devils Lake Emergency Outlet only three (3) of 65 samples (4.6 percent) from the Sheyenne River at West Fargo exceeded the secondary standard of 250 mg/L, with a maximum recorded concentration of 310 mg/L. With the operation of the Devils Lake Emergency Outlet, however, the sulfate concentration throughout the Sheyenne River is increasing. Water quality sampling performed by the City of Fargo from October 2009 until the present at the City of Fargo's Sheyenne River intake at West Fargo indicates an average sulfate concentration of 270 mg/L and a maximum concentration of 383 mg/L. Sixty three percent of the samples taken by the City of Fargo over this time period are above the 250 mg/L secondary standard. (**Attachment 2 shows sulfate concentrations in the Sheyenne River at West Fargo from October, 2009 to July, 2010.**)

Unfortunately, USGS water quality sampling data from 1975 to 2005 as well as more recent data since operation of the Emergency Outlet began indicate that the Sheyenne River offers almost no dilution of sulfate concentrations between Baldhill Dam and West Fargo. (**Attachment 3 shows the median and maximum sulfate concentration at various gauging stations along the Sheyenne River.**) It is understood recent discussions have suggested extending the temporary emergency sulfate stream standard of 750 mg/L in the upper reaches of the Sheyenne River to the lower reaches of the Sheyenne River. If this variance is approved, historical data suggest the sulfate concentration on the Sheyenne River at West Fargo will be similar to the sulfate concentration released from Baldhill Dam.

Data from 2009 and early 2010 indicate that operation of the Emergency Outlet has a significant impact on sulfate concentrations in the Sheyenne River. (**Attachment 4 shows the Emergency Outlet operations and Sheyenne River sulfate concentrations and the 'Below Baldhill Dam' and the 'West Fargo' gauging stations.**) Sulfate concentrations at the 'Below Baldhill Dam' sampling site rose from just over 114 mg/L in May 2009 to 279 mg/L in October 2009 with near constant operation of the Emergency Outlet at 100 cubic feet per second. Sulfate concentrations at West Fargo continued to rise to 383 mg/L by the end of January 2010 before falling as a result of spring runoff. The pumping capacity of the Emergency Outlet was expanded in June 2010 from 100 to 250 cubic feet per second, but sufficient data is not yet available to evaluate how the expanded capacity will impact the sulfate concentrations in the Sheyenne River.

City of Fargo Water Supply

The City of Fargo relies upon the Red River of the North and the Sheyenne River as its water supplies. Throughout the year, the sources are used independently as well as blended at different ratios. **(Attachment 5 shows City of Fargo's monthly raw water usage from the Sheyenne River and Red River from 2005 to 2009.)** Having redundant water supply sources provides the City with important operational flexibility, in the event of infrastructure failures, contamination of one of the sources, and undesirable discharges from poor quality upstream reservoirs or point sources. The City of Fargo has made significant investments to secure redundant source water supplies, and it would be irresponsible for the City of Fargo to rely exclusively on a single source.

City of Fargo Water Treatment Plant

The City of Fargo successfully provides its consumers with safe and aesthetically pleasing drinking water. The current Fargo Water Treatment Plant, which was constructed in 1997 along with related facility improvement at a cost of approximately $75 million, includes five (5) main mechanisms for treating its Red River and Sheyenne River sources:

1) high rate clarification to remove solids
2) two-stage lime / soda ash softening to reduce hardness
3) filtration to remove particulate matter
4) ozonation for organic taste and odor control and primary disinfection, and
5) chloramination for disinfection by-product control and secondary disinfection.

These technologies were selected based on the historic water quality of the Red River and Sheyenne River. Ozone was specifically incorporated for taste and odor treatment to provide an aesthetically pleasing water quality to the Fargo consumers. Because of its solubility, sulfate is very difficult to remove from drinking water using conventional technologies, and none of the treatment technologies incorporated at the Fargo Water Treatment Plant is capable of removing sulfate. Based on the historic water quality of the Red River and Sheyenne River, sulfate removal technologies were not historically necessary for the City of Fargo to provide acceptable drinking water to its consumers.

Sulfate Treatment Strategies

If increased sulfate concentrations on the Sheyenne River persist and further increases stem from the necessity to move additional water from Devils Lake to prevent further flooding impacts and an uncontrolled release, sulfate treatment of the Sheyenne River by the City of Fargo will be warranted. Advanced technologies capable of sulfate removal include:

- Reverse Osmosis (RO)
- Ion Exchange
- Electrodialysis / Reverse Electrodialysis (ED/EDR)

Of these technologies, reverse osmosis is likely the only practical alternative for a large scale drinking water system. City of Fargo staff and consultants have begun preliminary analysis of the scope and estimated costs to incorporate reverse osmosis treatment of the Sheyenne River to maintain a treated water sulfate concentration of 250 mg/L. The preliminary concept developed for the City of Fargo includes a new eight (8) million gallon per day (MGD) reverse osmosis facility to treat water from the Sheyenne River prior to blending and polishing treatment at the existing 30 MGD Fargo Water Treatment Plant. Another option that could be considered is partial reverse osmosis treatment of the Fargo Water Treatment Plant effluent prior to pumping finished water into the City's distribution system. Further facility planning is necessary to indentify the most cost effective treatment alternative.

Although reverse osmosis treatment for drinking water has become more common in recent years, the estimated capital costs and operation and maintenance costs to incorporate reverse osmosis for sulfate removal within the Fargo water system are significant. The required size and associated costs for the reverse osmosis system are directly related to the source water quality.

Based on the preliminary analysis, the new sulfate treatment facility is estimated to cost approximately $50 to $70 million, with additional operation and maintenance costs ranging from $3.7 million to $5.5 million per year. These cost ranges are based on maximum sulfate concentrations in the Sheyenne River of 450 mg/L and 750 mg/L, respectively. Higher source water sulfate concentrations would result in higher estimated costs. It is also important to note that reverse osmosis will be capable of removing the cations that are paired with the sulfate in the Sheyenne River, including sodium, calcium, and magnesium.

Conclusion

In conclusion, I would like to re-iterate five key points of my testimony:

1. Research indicates that sulfate starts to impact the taste of drinking water at relatively low concentrations. Research also suggests that sulfates at higher concentrations can potentially impact health. The only published drinking water standard for sulfate is the secondary standard of 250 mg/L based on aesthetics.

2. Sulfate concentrations in the Sheyenne River are increasing due to the operation of the Devils Lake Emergency Outlet and little dilution has been observed between Baldhill Dam and West Fargo. Further sulfate concentration increases on the Sheyenne River may be required to limit further Devils Lake flooding impacts and prevent an uncontrolled discharge.

3. The Sheyenne River is a critical component of the redundant Fargo water supply system.

4. Based on a significant water treatment investment in the mid 1990's, the City of Fargo has been able to routinely provide its consumers with safe and aesthetically pleasing drinking water. The existing Fargo Water Treatment Plant, however, is not capable of removing sulfates.

5. With increasing sulfate concentrations in the Sheyenne River, reverse osmosis treatment by the City of Fargo to maintain a treated water sulfate concentration of 250 mg/L will be warranted with very significant new capital and operation and maintenance costs.

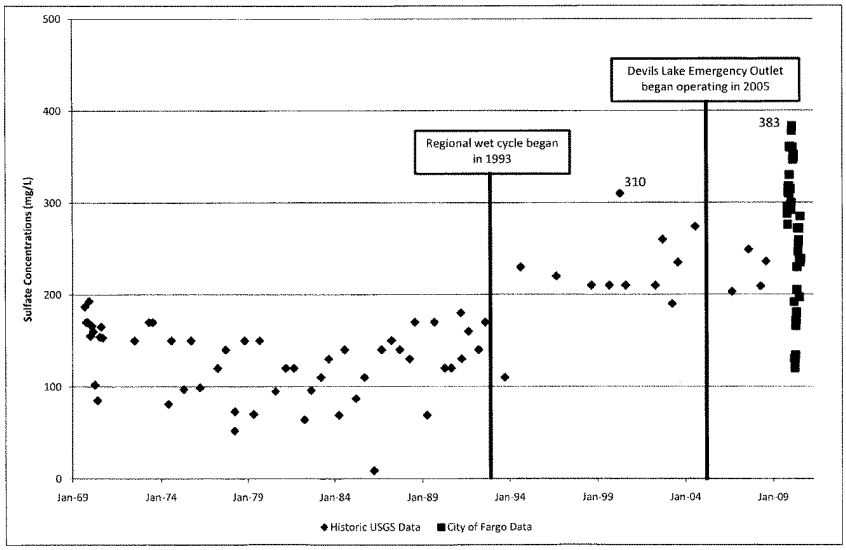
Thank you once again for the opportunity to testify regarding the downstream drinking water impacts of the Devils Lake flooding disaster. I would be happy to join the other panel members in answering any questions you might have.

Attachments

Attachment 1

Historic Sulfate Concentrations in the Sheyenne River at West Fargo

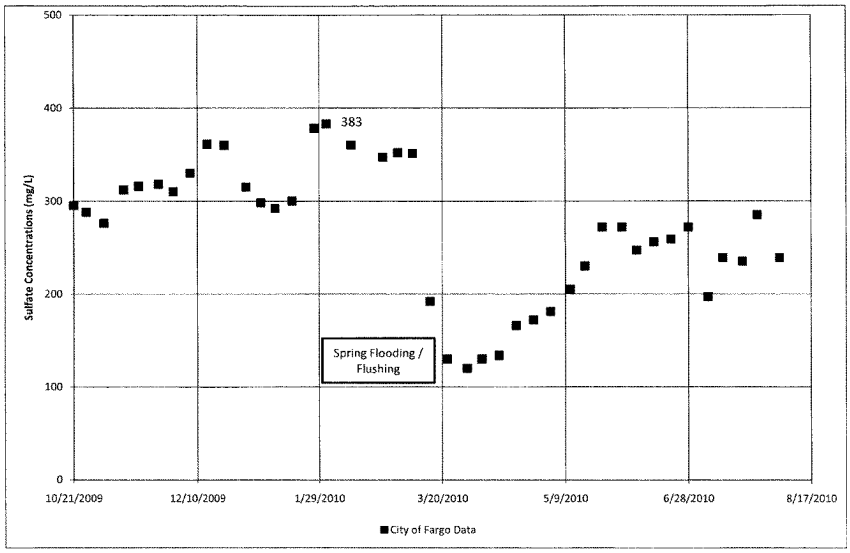
USGS and City of Fargo Data



Attachment 2

Historic Sulfate Concentrations in the Sheyenne River at West Fargo

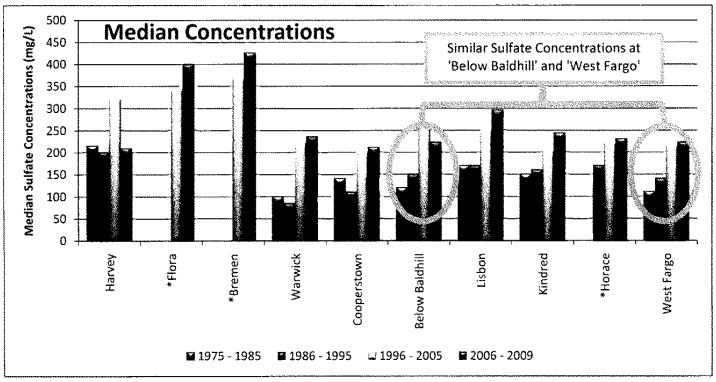
City of Fargo Data

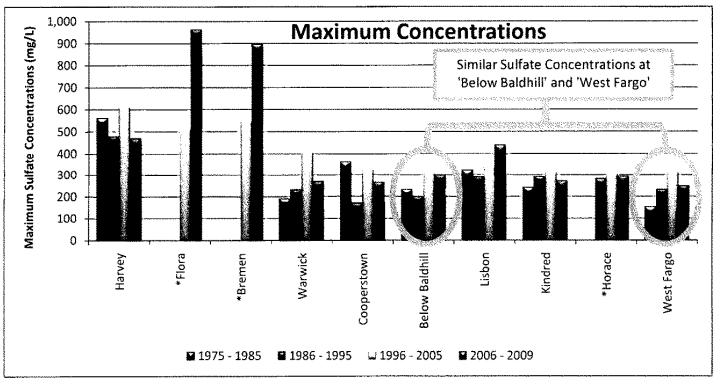


Attachment 3

Historic Median and Maximum Sulfate Concentrations

At Locations Along the Sheyenne River (Following Flow Direction)



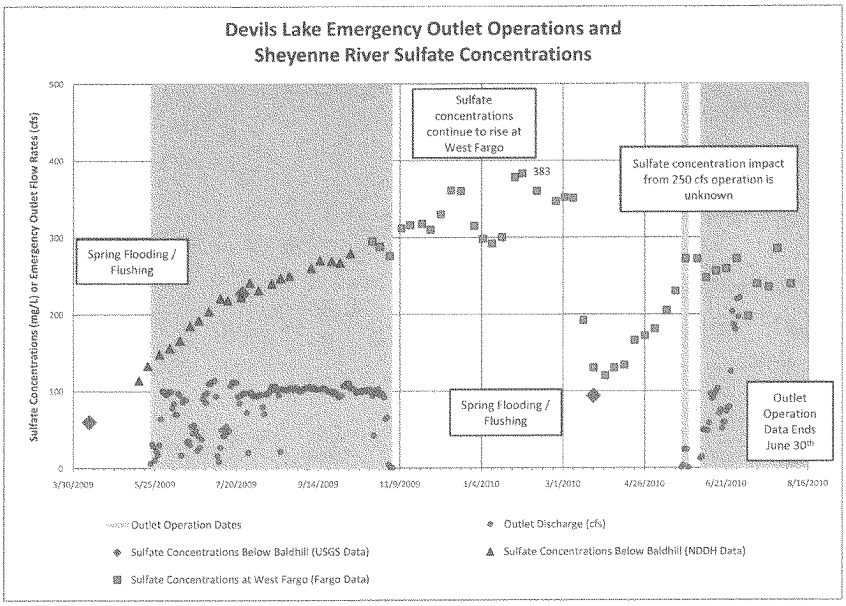


*Flora: Data Ranges are 2005 & '06-'07

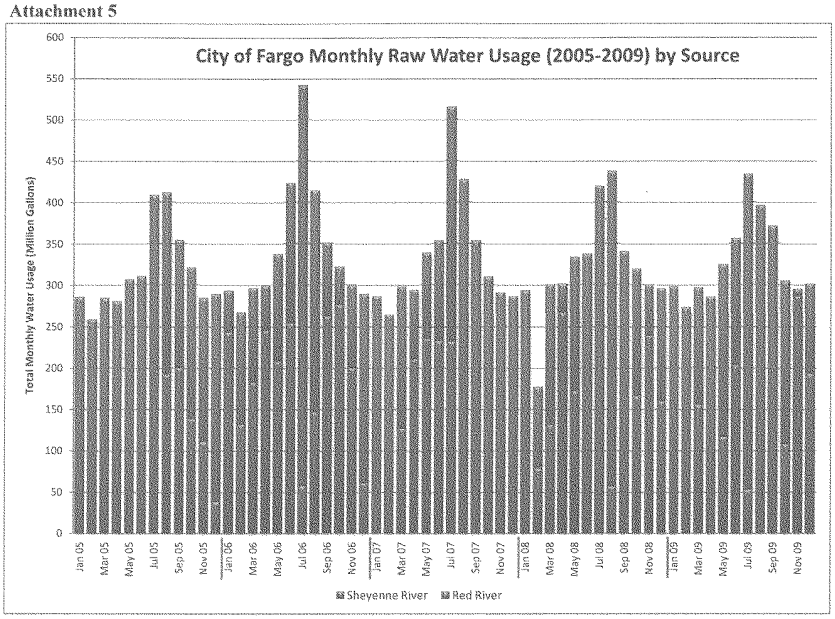
*Bremen: Data Ranges are 2005 & '06-'07

*Horace: Data collection began in 1992

Attachment 4



Attachment 5



The CHAIRMAN. Steve, I'd like to go to the question of the cost of a facility. The estimated cost, as I heard you describe it, was 50 to 60 million?

Mr. BURIAN. Fifty to seventy.

The CHAIRMAN. Fifty to seventy million dollars. And that would be—is that the reverse osmosis plant, that would be on the front end, that would treat Sheyenne River water?

Mr. BURIAN. Those are the incremental costs of treating specifically for sulfates using reverse osmosis. And we looked at two different concepts. One, we would either treat the water at the Sheyenne River intake at a location to see if Fargo's retained, and then transport that water to the water treatment plant for blending before it goes out. The other approach would be to treat all of the water at the Fargo water plant, and then just treat a portion of it to get the blended portion down to about 250 milligrams per liter.

Right now, it appears like the independent plant on the Sheyenne River has a little bit more flexibility, but we were—we've been hired by the City of Fargo to look at a facility plan to look at both of those options, as well as incorporate the City of West Fargo into that analysis.

The CHAIRMAN. Okay. And the additional operational cost, you testified, was $3 and a half, $4 million a year?

Mr. BURIAN. Yeah, 3.7 to 5.5 million per year.

The CHAIRMAN. $3.7 to $5.5 million dollars a year additional operating costs. And in your assessment, this would get you down to a sulfate level of—in the 250 range.

Mr. BURIAN. Yeah. We didn't try to completely remove sulfate; we took it down to the recommended secondary standard of 250.

The CHAIRMAN. Was any analysis done at assuring a lower level, then, would come through the Sheyenne River, but not as low as 250?

Mr. BURIAN. In other words, the analysis of treating 300 milligrams per liter?

The CHAIRMAN. Yeah.

Mr. BURIAN. I guess—you saw that we have experienced 300 milligrams per liter in the past. The—we're starting to approach 400 now. And I'm presuming that, with the operation of the—at 250 cfs, that we're going to see numbers, as Dave testified, approaching or even—you know, getting very close to 450 milligrams per liter. And so, our analysis, at this point, focused on treating at those higher levels. It's also our presumption that, if they want to do something meaningful—and we've heard a series of testimonies today about not waiting, but, you know, taking as much—get as much as done you can, given that time is—probably be—only thing that we have—and if that were to increase, you know, that would either provide further impetus for treating the water. Not to duck your question. If we did have to treat something at—if we had a better source of water quality, the cost would likely be less. But, given—

The CHAIRMAN. What I'm sort of grasping at here, and trying to understand, is, Is there a significant difference in cost if you are to achieve sulfate levels that are above 250?

Mr. BURIAN. You mean—

The CHAIRMAN. In other words, is there is there a big difference—

Mr. BURIAN. If—

The CHAIRMAN. —in cost—

Mr. BURIAN. If we allow—

The CHAIRMAN. —getting down to 250, versus getting down to 350, since we've already experienced above 350?

Mr. BURIAN. There—it's not linear, but the—to answer your question, if we decided that the acceptable threshold was 300, because we'd seen 300 under natural conditions, there would be a slight reduction from those numbers I showed you. Because what we're looking at doing is a blend, and only treating enough water to get that blend down to the—

The CHAIRMAN. Okay.

Mr. BURIAN. —my own objective.

The CHAIRMAN. All right. And we've seen—can you give us some sense of the frequency that of—we've seen levels above 300?

Mr. BURIAN. Well, the—everything to the left of the first red line is kind of pre–1993, so that's the dry period. And you see there, we don't have any data that exceeds 200 milligrams per liter. And then, just from natural effects, as both Dave and I testified, from 1993 to somewhere in 2004, where they began the outlet operation, you can see that all of the data was below 300, except for the one extraneous point there that went up to 310. And then, more recently, you can see—and obviously the data gets much more compressed, but you can see the impact of the Devils Lake outlet, particularly because of sulfate limitations, they weren't able to operate it very much, and so it really mimicked the 1993 to 2004 data, until this most recent change that the Health Department implemented. But, at that point, you can see, all of those red dots are data points that are above 300 milligrams per liter, so we're dealing with a water that—

The CHAIRMAN. And have we gotten—what has been consumer response? With all those data points above 300, were there complaints?

Mr. BURIAN. Well, there—the—you also have to—I suppose, if we didn't parallel that—but, if you showed the other one, it has—go along with the amount of the time that they're using that. But, so far, because they've never used the—haven't been forced to use the Sheyenne River exclusively, and because they have—so they can blend it; and there are certain times of the year where they weren't using it, which would have been the winter tail—we haven't heard a lot of complaints at this point.

The CHAIRMAN. Have there been any complaints?

Mr. BURIAN. There have been complaints. I guess the question would be, Are they due to organics in the water or are they due to—because you get taste-and-odor complaints kind on a routine basis with surface water. Can we tie that to the sulfate concentration, or would that be tied to MIB or geosmin in the water? It would be hard to discern that.

The CHAIRMAN. Okay. Because there are other things that would contribute to people complaining, is what you're saying.

Mr. BURIAN. Yup.

The CHAIRMAN. And the 310—there was a data point on the previous slide—that occurred before there ever was a State outlet.

Mr. BURIAN. Right.

The CHAIRMAN. That occurred naturally. Okay.

Mr. BURIAN. We—I guess, in looking at it, we had to pick a defendable number in—to which to treat it,—. We picked a secondary standard of 250, because it was the published data that was out there. If, collectively, everybody decided that 300 or 310 was acceptable, we would revise our cost estimates, and I would expect our cost estimates to go down slightly.

The CHAIRMAN. But not significantly. Okay. That's important to know.

I—any final statement you'd want to make, Darrell?

Mr. VANYO. Well, summing up my testimony, it simply is that we certainly support moving forward with, you know, trying to resolve the Devils Lake situation. We certainly encourage the West Bay, as—you know, for better water quality. And mitigation of any downstream—in terms of the cities I mentioned—I happen to live on the Sheyenne River, between Horace and I–94, which is protected, but it's a 100-year level of protection, although new numbers might indicate it's less than 100 years. And during the last couple of years, even though we have the diversion at Horace, the water has been within—there's been about 2 feet of freeboard, and there have been people in our area that we have—for. So, if you—a controlled outlet is obviously the best, but we have to be concerned about the spring flooding and, you know, timing of everything, there. So, that would be my statement, is simply concern about water quality, and the amount of water, when it comes.

The CHAIRMAN. Yup.

Let me just say, I'm drinking West Fargo water right now. It is very good. Far superior to Washington, DC, water, I'll tell you that.

[Laughter.]

The CHAIRMAN. So, you're doing something right, here, because this is very good water quality.

Mr. BURIAN. Senator, are you sure it's not coming out of that—

[Laughter.]

Mr. BURIAN. I'm sorry.

The CHAIRMAN. Did you know that the source of water is West Fargo?

[Laughter.]

Mr. BURIAN. But, I bet it's been spruced up a little bit.

The CHAIRMAN. You think?

[Laughter.]

The CHAIRMAN. It's very good.

Any final statement you'd want to make, Steve?

Mr. BURIAN. I might have in trouble with the last one.

[Laughter.]

The CHAIRMAN. Let me just say that law enforcement is waiting for you outside.

[Laughter.]

Mr. BURIAN. I guess the only point that I made as I was sitting in—or thought that I had, sitting through the previous panel and the questions you asked, were—there were some comparisons made to other systems across the State that are drinking water that has higher levels of sulfate, and how that's deemed acceptable. I'd like to point out a couple of things.

I have tracked down that data. And if you start to list some of the communities which I think would—may be unfair to start

pointing them out in the testimony, even though I have them in front of me—these are communities that are, you know, sometimes 30 people or 40 people. Some of them have already been switched to rural water since the data was published, and a lot of them have plans to do that.

There are a couple of systems that start to approach maybe 1,000 people or 2,000 people. Every one of them, to a city, are looking at supplemental treatment to try to address the aesthetics of their water.

And then, I would also guess that, when you say they're drinking it, and everything's safe, that, when you get a water that has that marginal quality, I'll bet every one of them is using that same trick that I pointed to you— behind you, where they may bathe in it, and they may do other things in it, but, when it comes to drinking water and coffee and other things, they're probably either treating that with home treatment units or hauling water to mitigate the impacts.

The CHAIRMAN. Okay. Very important to know.

Governor, any final statement you'd want to make?

Governor Hoeven: Well, again, Senator, good to be here with you, and also to the Mayors and to the Commissioner and the Commission members—I saw Ken Pollock and other Commission members here, as well.

Appreciate the spirit of cooperation. The approach, again—I mean, it's everybody working together. It's storing water in the upper basin, it's all the mitigation we talked about, in and around Devils Lake, and it's moving water out of the lake in a way that not only helps with the flooding upstream, which we need to do, but protects downstream interests.

As was pointed out very clearly in the testimony, we need to move water out in a controlled way, both in terms of the amount of water, so that we don't have flooding, and also so that we manage water quality. And I think everyone that's testified here, both from the State level, from the community level, the county level, and private individuals—experts, engineers—in terms of talking about the approach we're talking—it's an approach that protects downstream interests, as well. And so, that funding's already in place, from a Federal and State level, to help Valley City with their water treatment, so that they have the reverse osmosis that Steve and others have talked about. And that's exactly what we're talking about with this joint effort between Fargo and West Fargo. And it's got the added element of Fargo and West Fargo coming together on a joint water supply system.

Again, I would comment that this is actually the backup, the secondary system. The main system comes off the Red itself; the Sheyenne comes into this community north of the Red. So, this is a backup system.

But, I think, from the State of North Dakota, there's a real commitment to work with Fargo and West Fargo and local communities to make sure that they have the water treatment facilities in place that they want, and that best serves the citizens.

And so, now we turn to the Federal task force. And, like I say, we're looking at that September 7th date for them to come forward

with us so that we can continue to move water out of the lake, and also take these other steps, as well.

Thanks. And again, Senator, thanks, to you. And we've had good dialogue, I think, both at these hearings, but as well as just offline between us, this joint effort, and that needs to continue.

So, thank you.

The CHAIRMAN. And it will, and we appreciate very much, Governor, your taking your time to be here. I think that was important for these communities. We're listening, paying close attention to their concerns. And I think the witnesses have done an excellent job of making clear what these downstream communities face. And these concerns are fully legitimate and have to be addressed.

I think the final point I want to make is, we are all in this together. Some have posited this as the Devils Lake Basin against the downstream. That just isn't the circumstance, as I see it. After hours and hours of testimony, after hundreds—literally hundreds of meetings over the last 15 years, it is as clear as it can be that we are all in this together, because if there is an uncontrolled release out of the east end of Devils Lake, everybody suffers. Certainly, the Devils Lake Basin is the first to suffer, but it is no—by no means exclusively their suffering, because every community downstream would suffer immeasurably; first of all, by flooding, beyond anything we have ever seen since this area of the State was populated; secondly, by water quality levels that the treatment facilities can't handle, that our human systems can't handle if there is an uncontrolled release of water out of the east end.

So, it is entirely in all of our interest to find alternatives. And as we examine the various options, one that presents itself is releases out of the west end. A State outlet that has now been expanded from 100 cfs to 200 cfs, but is limited in duration of how it can operate, under the current regulations, presents itself as something that has to be considered. And if it is, if that becomes part of the solution, then we're going to have to deal with additional water treatment downstream. I think that becomes clear, based on the testimony that we've heard here from the mayors, and from Mr. Vanyo and Mr. Burian.

So, with that, I thank everybody for their patience. I thank them for the professionalism of the testimony that we heard here.

And again, Governor, my personal thanks for your being here to hear this, as well.

With that, the hearing stands adjourned.

[Whereupon, at 10:46 a.m., the hearing was adjourned.]

FIELD HEARING DEVILS LAKE FLOODING DISASTER: HOW SHOULD DOWNSTREAM IMPACTS BE ADDRESSED?

TUESDAY, AUGUST 17, 2010

U.S. SENATE,
COMMITTEE ON THE BUDGET
Lisbon, North Dakota

The Committee met, pursuant to notice, at 1 p.m., at the Stake Out Supper Club and Lounge, 6840 Highway 32, Meeting Room, Lisbon, North Dakota, Hon. Kent Conrad, Chairman of the Committee, presiding.

Present: Senator Conrad.

[presiding].

OPENING STATEMENT OF SENATOR CONRAD

The CHAIRMAN. Is that better?

[Laughter.]

The CHAIRMAN. OK.

Voice:——

The CHAIRMAN. Yeah. Sorry for that little technical glitch. Want to welcome everyone to this hearing of the Senate Budget Committee. This is an official hearing of the committee, and so we will be abiding by the rules of the U.S. Senate. And an official record of this hearing is being kept. The title of this hearing is, Devils Lake Flooding: How Should Downstream Impacts Be Addressed?

I want to begin by welcoming our distinguished witnesses today. We have two panels. I will have the Governor go first. I'm delighted that Governor Hoeven has joined us again today. He was with us yesterday in West Fargo, and he has been with us, previously, in Valley City and Devils Lake. I very much appreciate his taking his time to come and testify and be part of this listening session as well. We also have, as part of the first panel, Todd Sando, the State engineer for the State Water Commission—Todd, thank you very much for being here—Lisbon Mayor, Ross Cole; and Fort Ransom Mayor, Jim Thernes.

Our second panel will include Neil Olerud, chairman of the Ransom County Commission; Teresa Rotenberger—I hope I'm pronouncing that right—is it Rotenberger—is that the correct——

Voice: It's Rotenberger.

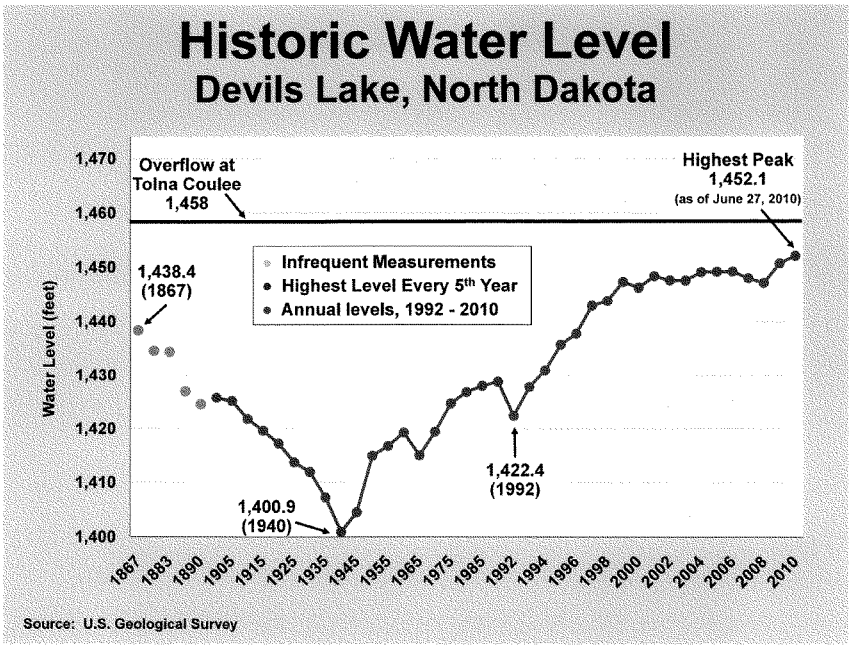
The CHAIRMAN. Rotenberger? Is that correct?—the emergency manager for Ransom County; and former Lisbon mayor, Morrie Saxerud.

I understand the Valley City mayor, Bob Werkhoven is here, as well. I think I saw Bob.

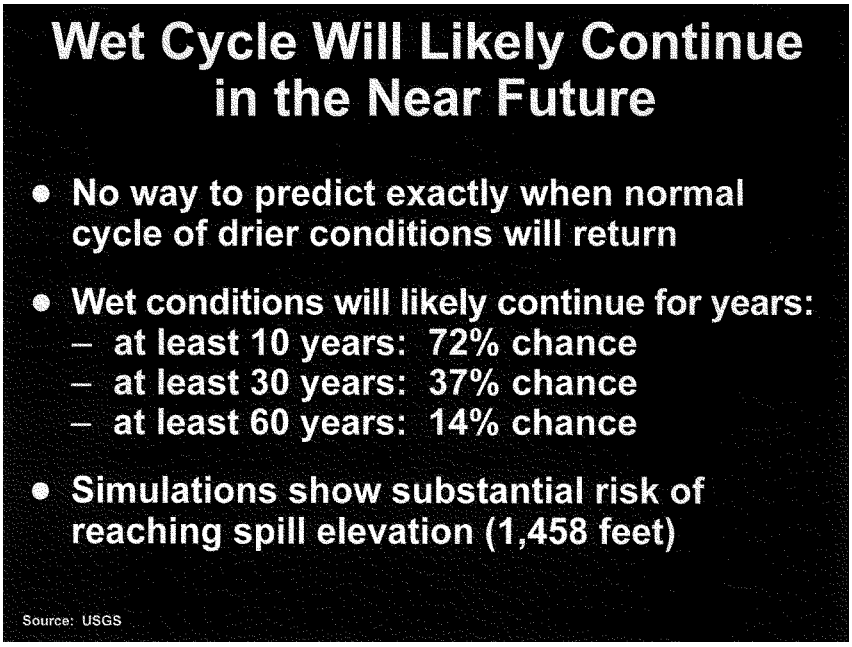
Welcome. Good to have you here as well.

I look forward to hearing from each of our witnesses here today on how we should address the flooding disaster in Devils Lake and the impacts downstream.

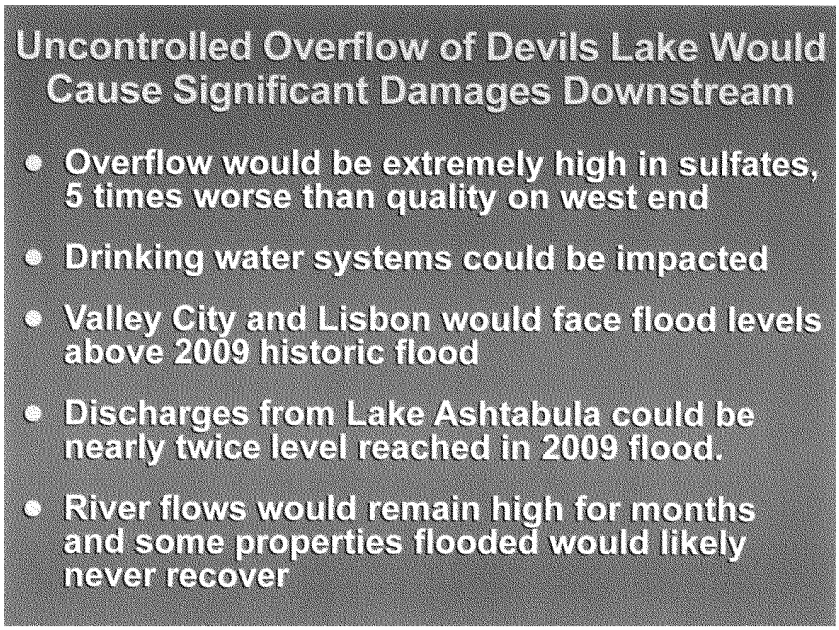
Since 1992, Devils Lake has risen nearly 30 feet. Tens of thousands of acres of productive farmland have been subsumed, and hundreds of homes have been moved. The transportation network, including the railroads and the roads, have been disrupted, and the local economy continues to be affected. Last year alone, the lake rose 3 and a half feet, and this year it reached a record elevation. Devils Lake is now within 6 feet of the natural overflow. Finding solutions to prevent an uncontrolled release of water is in everyone's best interest, I believe.



Experts tell us the wet cycle in the Basin is likely to continue for years. There's no way to predict exactly when the normal cycle will return, but we have been told, by those who forecast long-term weather trends, that there is a 72 percent chance the wet cycle will continue 10 years or more, a 37 percent chance it will continue for 30 years, and a 14 percent chance that it will continue for at least 60 years. I don't know how much credibility, frankly, any guy that can put in a forecast that goes for these very long periods of time, but that is the forecast that we have been provided.



An uncontrolled overflow would clearly cause significant damage downstream. The quality of the water released would be extremely high in sulfates, five times worse than if the water was released from the west end. Let me just say, parenthetically, that that's one of the things that—hard to appreciate about this lake. You know, you'd think of a lake, that the water quality be pretty much the same any place in the lake. That is not true of Devils Lake. There is a natural flow to the lake. The water coming in from the northwest flowing east, picking up sulfates and other dissolved solids as it moves east. And so, the water quality is about five times worse out of the east end, which is where the natural outlet occurs, versus the west end, where the State outlet has been constructed.



Drinking water systems, drawing from the Cheyenne River, could be impacted if there is an uncontrolled release of water. Discharges from Lake Ashtabula could be nearly twice what was experienced during 2009—twice what was experienced during 2009. And some properties would be flooded for an extended period of time, making recovery extremely difficult.

The unprecedented flooding, experienced in Lisbon, Fort Ransom, and Ransom County, in 2009, gave a preview of what we could potentially see if Devils Lake overflows in an uncontrolled manner. We won the flood fight then, but it took a Herculean effort in every community south of Devils Lake. And victory came at a considerable cost. A cost of rapidly building protective defenses; a cost of damaged infrastructure, including many homes; and a cost of lost income for residents who left their jobs to aid in the fight.

The Mayor has just taken me on a brief tour of parts of the town heavily impacted by the last flood. Many homes, that still have dike right up against them, and many other homes that have the dike running through their backyards even today.

I think all of us understand the stress created by previous floods. And all of us want to avert another experience like that one, one that has the potential to be even more serious.

When the flooding disaster began we worked cooperatively on a three-pronged strategy and there was strong agreement between the Federal Government, State leadership, and local leadership on the three elements of the strategy. No. 1, Upper Basin storage. No. 2, protecting vital infrastructure, including roads, bridges, buildings, water systems. And, the third leg, was the construction of an outlet.

I want to indicate that, in 2000, we secured approval of a Federal outlet, and there was a determination made at the time, by State

and local leadership, that they could not afford their 35 percent share of the cost of that structure, which would have been about $200 million. State and local share would have been some $72 million. The State believed that they could construct an outlet at less cost and went forward with that project with our support. That project started with 100 cfs capacity outlet that has now been increased to 250 cfs.

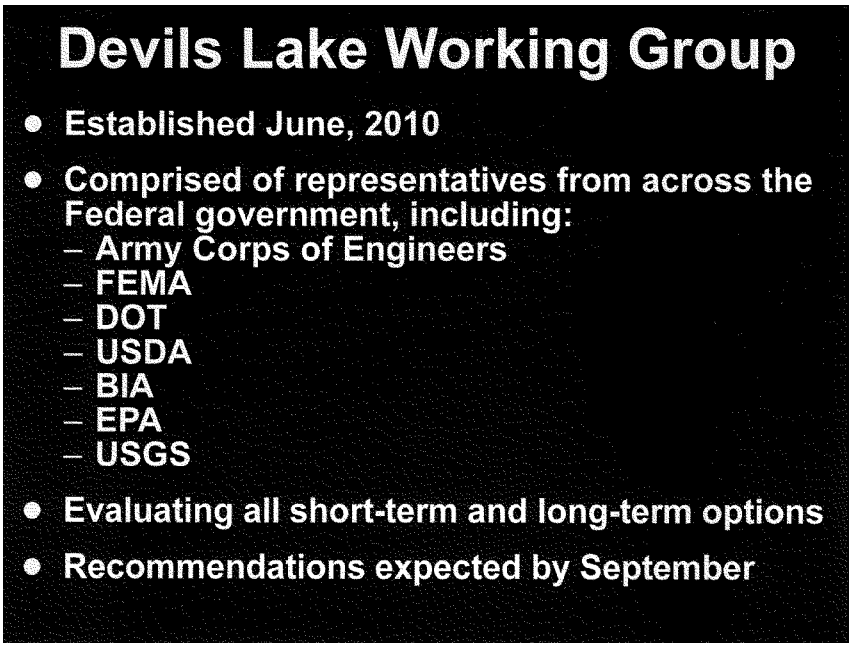
Just in terms of a Federal commitment of dollars to this crisis, it has now reached—more than $700 million has been allocated, with another $200 million to be spent in the next, approximately, 12 months. So, we'll be talking, by a year from now, of more than $900 million of Federal dollars committed here. 400 million for the road network; FEMA has spent 84 million, since 1993, on repairing damage to public infrastructure; the Corps of Engineers has spent 200 million, since 1993, on the levee, evaluation of a Federal outlet, and other protective measures; HUD has provided more than 11 million. In terms of going forward, in this next year, we have another $100 million of road work scheduled, we have another almost $100 million being spent on the dike protecting Devils Lake.

And, by the way, if that dike had not been raised—had not been raised several times now, the entire town of Devils Lake, or virtually all of Devils Lake, would be under water. Some of Devils Lake would be under 20 feet of water today. That is the reality. And the lake continues to rise.

We've always understood that only comprehensive solutions will succeed in the long run. The problems of Devils Lake can't be solved by simply flooding everything downstream. This is a shared responsibility, this is not just a Devils Lake Basin problem, this is

now a problem for the entire region. And the region extends from Devils Lake to Valley City, here to Lisbon to Fort Ransom, and then goes over to West Fargo—that's why we had a hearing there—and right up the Red. So, we're talking about something that has an effect far beyond the boundaries of the Devils Lake Basin.

Since the May Flood Summit in Devils Lake, the administration has convened a working group to evaluate both short- and long-term options. The working group has representation from all the relevant Federal agencies, including the Corps of Engineers, which is heading up the effort, FEMA, the Department of Transportation, USDA, the Bureau of Indian Affairs, the Environmental Protection Agency, the U.S. Geological Survey, and others. The group's recommendations are now expected in September. I have emphasized, to this group, that the interest of downstream communities must be fully considered as options to manage this devastating slow-motion flood are identified.



I am pleased that members of the working group were in Valley City last month to hear directly from local leaders on these options. And, next month, a delegation of local and State officials will be invited to Washington to meet with the working group as its recommendations are finalized. So, from the perspective of those downstream, what options should the Federal Government consider to deal with this flooding disaster? And what, specifically, should be done to mitigate downstream impacts?

I am particularly interested in hearing from our witnesses on where they think the working group should focus its attention, as it relates to downstream impacts. I intend to share that informa-

tion with the working group as they finalize their recommendations.

With that, we'll turn to the Governor for his opening observations and comments. Again, I want to thank the Governor for his taking his time, repeatedly, to address this issue and for his participation in each of the hearings that we have held, both in the Devils Lake Basin and outside the Devils Lake Basin. Again, Governor, welcome, and please proceed with your testimony.

STATEMENT OF HON. JOHN HOEVEN, GOVERNOR OF NORTH DAKOTA

Governor Hoeven: Thanks, Senator. Good to be with you. Appreciate you holding these hearings.

Clearly, communication is an important part of meeting this challenge. And, it has to be a team effort. And it has to be a team effort in a number of respects. One, is it needs to have local, State, and Federal representatives working together. And so, it's great to see so many of you here from, not only Lisbon, but the surrounding area in Sheyenne Valley.

Mayor Thernes, thank you for being here, from Fort Ransom.

Of course, Mayor Cole, former Mayor Morrie Saxerud—it—you know, it's interesting to be here and see so many of you, as well as Teresa, John Cameron, and Mayor Werkhoven, and others, so many that, you know, we've worked on the flood battles through the years. And, of course, that, again, dealing with it this spring, dealing with it, in a big, big way, in 2009. But, great to see so many of you here.

Senator Dotzenrod, thank you for coming as well.

Former Representative Bob Hunter. Bob, thank you for being here. I saw—yeah, here he is.

And, you know, like I say, there's got to be a team effort. It's got to be local leaders, State officials, our Federal delegation all working together on this. And it's got to be an approach where we have people, throughout the region, working together.

Good to see you again, Joe Belford, thank you for being here and for your efforts to pull people together and to communicate our efforts to deal with the Devils Lake flooding situation.

We really are working to go forward with a three-part plan that includes storage of water, in the Upper Basin; mitigation in and around Devils Lake, building up roads and dikes; and moving water out of the lake in a way that protects downstream interests. And it takes all three, so it takes people in the Upper Basin, people in and around Devils Lake, and people in the Sheyenne Basin and lower basin—downstream areas—as well as along the Red; all of us working together to meet this challenge.

First, in terms of storage in the Upper Basin: the lake, in 1993, covered about 49,000 acres; today it covers more than 180,000 acres. I'll repeat that. So, in 1993, the lake covered about 49,000 acres, today it's 30 feet higher and it covers 180,000 acres. That's almost 130,000 acres that are inundated. That is an incredible amount of water, right there, that's being stored in the Upper Basin. And that doesn't even take into account all the wetlands and other areas where we have water stored in the Upper Basin.

In addition to listening to those numbers, I would encourage you to just go up and take a look. Just go up and drive—and it's a long drive, right Joe?

Mr. BELFORD. Yeah.

Governor Hoeven: Drive around Devils Lake. Drive around the west side, up along the north side and east side. The lake is huge. But, what you're going to see, all the way up to—and other areas, is huge amounts of water that is being stored in the Upper Basin. So, we're storing a lot of water up there, right now.

Second, Senator Conrad just mentioned, about $700 million, between local resources, State resources, and Federal resources, have been put into raising roads and dikes in and around Devils Lake. Another 200 million is planned. OK? Now, that's 700-million-plus dollars going into raising roads and dikes.

For example, right now, we are raising State highways 19 and putting in a riprap and other production features, and resurfacing and so on and so forth. But, Highways 19, Highways—Highway 20, Highway 57, and even Highway 2 had water across it this year, after one of those heavy rains. And we had to go in and start doing emergency work before we even had Federal approval to do it. And we'll work to get that Federal approval, but we had to go in and raise the road, so that traffic could continue to pass. In addition, then you've got all the dike work, as well you've got all the IA work on the reservation. So, an incredible amount of mitigation, but understand we're at the point now, where we're within feet of a whole new round of infrastructure that's going to be impacted. Right? I mean we already moved Highway 281 further to the west, but right now we're in a situation where if it goes up a couple more feet——

For example the Empire Builder Rail Line, there's a bridge up there that we're going to have to raise. Just to raise that one bridge alone is $65 million. And, again, we've worked with the delegation, with Burlington and that, but just that one bridge is $65 million. And we're within a foot or two of not being able to have the Empire Builder Train go across that northern tier, and that's a track that goes coast to coast.

Another example, town of Minnewaukan, working with Mayor McCoy, your counterpart up there, who's been tremendous. And, again, great example of local leadership, but we're right at the point where we're going to have to move the community. The water is right there up against the school grounds, and that's a growing school district.

You know, so, we're right at the point where we have significant infrastructure impacts, that another foot or so means huge expenditures. So, we've got to move water out of the lake as well. And we're doing that. The outlet that we've built is running at 250 cubic feet a second. That's a lot of water. The key is that we bring it out in a way that also protects downstream interests. But, we need to continue to move that water out, and we need to do it over a longer period of time, and we—or we need to, actually, continue to increase the volume.

And so, that's really a big part of what we're working on, with our Federal partners, is, the task force now is going to come out with recommendations, on September 7th, I believe is the target date right now. And we'll be back working with the delegation—

local leadership will be back; they're looking at some draft reports beforehand. But, about September 7th they're going to come out with some recommendations, and it's very important that the Corps and the EPA work with us to bring more water out, in a controlled way, so that we, you know, have some margin, even going into next spring, in terms of that lake level.

So, we've got to continue to bring the water out, to address this problem, as part of a three-part strategy. We need help from Federal authorities and this task force to do that. We also need help from you. We have to be working with you. We have to do it in a way that is protective of downstream interests and we're working to do that.

One of the issues that—obviously, that we've talked about—Mayor Werkhoven and others and John Cameron, in the Valley City area—is the sulfate levels. And, between the State of North Dakota and the Federal Government, we've provided additional resources to Valley City to add reverse osmosis to their water treatment plant. So, we're actually building a new water treatment plant that will provide significantly—will provide capacity for growth, but also reverse osmosis to take sulfates out of the water, so that—protect their water quality. Very important we keep moving on that and keep that going, because of the situation where we need to continue to move water out.

At the same time, down here, you don't take your water from the Sheyenne, but we want to make sure that, in terms of, you know, flood protection, that the diking that we're looking at working with FEMA and the Corp to do, along the river here, the mitigation of housing, that it's all coordinated. And that's the real challenge, as Mayor Cole is probably going to testify, we have study going on, right now, that we funded through the Water Commission, with more engineering on behalf of the city, to really take a look at, How do we do this diking down here, with our Federal partners, with the Corps, with FEMA? How do we do this in a way that's good for this community?

And, Senator Conrad, you mentioned about some of these dikes right up against houses. I mean, I can remember, as we were working on flooding, particularly in 1909, some of those dikes were incorporated right into the wall of, like, the house or the garage. You know, here'd come the dike, and then part of the dike was the wall of the garage in some of these homes. Just an amazing thing to see what the Corps and our National Guard people could do. But it's very important that we work with the community to get this set up—this flood protection set up in a way that works well.

And so, all of this goes together, is the point I'm making. In terms of Devils Lake, you know, as far as bringing water out of there, we'll do that in a controlled way so that it wouldn't add to the flooding, but at the same time we need to have a control structure on the east end to make sure that you don't get an uncontrolled overflow and flooding in that regard. So, all of this ties together, whether it's water quality issues, whether it's flood mitigation or protection from flooding. And that's absolutely what we're working to do here. And making sure that we're working with local leadership to do it in a way where people know exactly what's going on, and that it protects downstream interests, as well as

helps address this flooding, which we have to do for the Upper Basin and for Devils Lake.

So, with that, thank you, Senator. Appreciate it very much. And I'll look forward to our panels.

The CHAIRMAN. Thank you very much, Governor. And, again, we appreciate your taking your time to be here and participate in all of this set of hearings.

We'll go to our first panel. Todd Sando, State engineer for the State Water Commission, to help us understand better the technical issues that we're confronting.

Todd, welcome.

STATEMENT OF TODD SANDO, STATE ENGINEER, NORTH DAKOTA STATE WATER COMMISSION

Mr. SANDO. Thank you, Senator.

And my name is—for the record, my name is Todd Sando. I'm the State engineer, and chief engineer and secretary for the North Dakota State Water Commission.

I do have 25 copies here, for Tracy. I do have written testimony; I'll just kind of paraphrase the testimony. I do also have attached to the testimony—on July 8th, there was a hearing held in Devils Lake, and I went into great detail—and that testimony was rather lengthy—about the history and the background on some of the issues with Devils Lake flooding, and plus the—what we've been looking at to try to alleviate the situation, several of the things that the Senator and the Governor had explained. So, that's also attached to the testimony.

So, for today, the things I want to concentrate on, just a quick rundown on the history. We've been in this flooding situation for 17 years. And you've heard that the lake's risen 30 feet, so it's—spring of 1993 it was at 1422, and now we're at 1452 and the lake's not dropping at all right now. Usually, at this time of year, we start seeing the lake fall and—but, we've continued to have precipitation events week after week after week. So, it's been above normal temperatures and above normal precipitation.

So, the lake's really at a dangerous level. We're within 6 feet of an overflow, the overflow elevation's 1458. There's only 1.3 million acre-feet of storage remaining between 1452 and 1458. And, for this late in the summer, not—to see the lake still right around the peak elevation for the year, it does not bode well for next year. Usually, that's a sign that we'll see, you know, new record highs. So, there's a major risk that we'll see new record highs again next year. And the weather forecasts still talk for above normal precipitation, and there could be another winter of excessive precipitation, too. So, lots needs to be done in the very—coming months. And, hopefully, the Federal task force comes up with some good recommendations and we can start really pushing forward with some funding and implementation of the alternatives.

What's taken place—we did build an emergency outlet and it was completed in 2005. So, you've heard about this three-pronged approach. And the third part of the solution and, probably, the most critical part of the solution, is to get water out of Devils Lake. And so, we worked a few years on constructing a temporary emergency outlet, that was 100 cfs outlet, and that was completed in 2005.

And we started running it late that year and we were able to get a little bit of water out. One of the big issues, we want to protect downstream interests, so we have constraints on the outlet; it's related to water quality and to flood control.

So, 2006 came, it was an extremely hot, hot year and the Sheyenne River flows were really low. So, the Sheyenne River is needed to help lend Devils Lake water. In 2006 the outlet did not run, because we could not meet the water quality constraints. So, then in 2007, 2008, we started getting some water up, but we were constrained a lot by the water quality issues on the Sheyenne River, the set standard is 450 milligrams per liter. And so, we weren't able to get a lot of water out. So, in 2009, after the big flood event we had, last year was the No. 1 inflow event into Devils Lake. It was 590,000 acre-feet.

And we when—we had the Governor and the Water Commissioner went to Devils Lake last summer—in fact, they were there many times, but on one of the tours up there we've made a decision that we needed to upsize the outlet. And the water commission acted on that, and we started designing construction of an outlet late last summer. And we built it all last winter, and we had it in operation by the, you know, the end of spring this year. So, the outlet now can be run at 250 cubic feet per second. So, we expanded the outlet from 100-cfs temporary emergency outlet to a 250-cfs. So, it's 2 and a half times larger.

So, now, if we could operate that 7 months a year—the goal is to operate April 1st through November. We do get constrained because of flooding, a lot of times, in April and early May, but the goal is to try to get 100,000 acre-feet of water out a year, during a 7-month operation. So, our outlet is just designed to operate during the open water season, not during the wintertime. So, last year——

The CHAIRMAN. Can I stop you on that point?

Mr. SANDO. Sure.

The CHAIRMAN. And ask, Why is that the case? Is there the possibility of running the outlet in winter months? And I ask, because a gentleman stopped me yesterday, after our hearing in West Fargo, and said, "Why don't you consider running that outlet more during the winter, when you'd have less problem of bank erosion?"

Mr. SANDO. OK. Senator, to answer that question, it's—there's many reasons why we didn't go with winter operation. First of all, the sulfate levels, you talked about that, and the levels of sulfate. During the open water season, sulfate levels are a lot less—the numbers are lower. So, right now, when we've been operating the outlet, the west end of the outlet has been between 550 and 600 milligrams per liter, or parts per million. But, what happens when we have ice—when ice forms, all the freshwater form in the ice, so all the concentrated dissolved solids are still in the water column. So, the water that we would pump out, in the wintertime, would have—be much more concentrated. So, the Health Department's got samples that show—like, West Bay is 800 milligrams per liter, and that's even above this temporary emergency rule that we have right now, through the Health Department, to operate. So, that's our biggest problem is, in the wintertime the concentrations go much higher than the open water season.

Next big issue with our outlet, we have a 14-mile long outlet and 10 miles of it's open canal—and it's an open channel. So, we'll—we have issues with icing on this open channel. So, we got this channel at a gradient, and if ice starts forming, in November, around Thanksgiving or whatever, we're worried about—the first couple miles of open channel goes to our second pumping plant, called Josephine Pump Station—so when ice starts forming with—the ice would move down the channel, because, you know, the channel's at a slope, so there's velocity. It's not like a lake where the lake just freezes. So, the ice, once it starts forming, it's going to move toward our pumping station. So, the best way to have winter operation is a closed system. Our system, right now, of the temporary emergency outlet that was built as an open system, has 10 miles of open channel. So, ice is a big problem.

Another problem with ice is, at the very bottom end of our outlet, we have—when we drop the water in, from the outlet to the Sheyenne River, we weren't able to build the outlet all the way right in to the Sheyenne River. We had to stop short of an oxbow channel, because environmental compliance, NEPA, 404 jurisdictional issues are—all that stop there. So, our water comes out this terminal structure and just flows over it, and flows over land into this oxbow channel and then it works its way down this oxbow channel into the river. So, if we'd run that in the wintertime we would just form a major glacier and iceberg right there.

And, you know, the best way to do that is have a pipe go right to the Sheyenne River, right in the bottom. Now, if we could get permits to do that, that's what we—you know, that would be the best way. So, in order to operate in this winter we really need a closed system. We've got to enclose a lot of our stuff, our pumping plants, our channel. Really, probably the best thing to do is build a parallel outlet next it, a closed system to operate in the winter. But, our—still our biggest problem is sulfate constraints.

The CHAIRMAN. And what would the cost be of a closed system?

Mr. SANDO. We got some real rough numbers. I mean I don't have a good cost estimate. But——

The CHAIRMAN. And do——

Mr. SANDO. And——

The CHAIRMAN [continuing]. You know if it's in order of magnitude? And are we talking——

Mr. SANDO. Yeah.

The CHAIRMAN [continuing]. Like——

Mr. SANDO. I could do that——

The CHAIRMAN. 10 million, 50 million——

Mr. SANDO. Yeah.

The CHAIRMAN. —100 million?

Mr. SANDO. Yeah. We're talking 100 million for only, like, 50 cfs. And we feel we don't—you know, there probably isn't much of a need to have a real big outlet in the wintertime. So, one of the things we've been looking at is like a 50 cfs, in the wintertime, closed system. And it'd probably be on the lines of $100 million. So, when we try and get winter operations it's very expensive alternative.

The CHAIRMAN. OK.

Mr. SANDO. OK. Well, I was, you know, talking about—well, I can just continue on, on options of—you know, for ways to relieve the flooding at Devils Lake. And the—one of the things was this winter operation, like you're talking about, try to get additional days to operate, so we can get more water out.

The other big way we can benefit, to get more water out, you know, at 250 cfs we can get 500 acre-feet a day. If we could add additional capacity, too—not just lengthen the days that we operate, but have more capacity than 250. So, you know, if we can add another 100, 200, 250 cfs, somewhere, to come out of the lake that would really help, because right now, at 100—100,000 acre-feet—at a—250 cfs can remove up to 100,000 acre-feet a year. And I testified, like in Valley City and in Devils Lake, evaporation would probably take another 100,000 acre-feet off. So, that's 200,000 acre-feet. And the hydrology, during this wet-cycle that we've been in, since 1993 to current, the average inflows to Devils Lake are—I got a number—it's 240-some thousand acre-feet.

The CHAIRMAN. The inflows——

Mr. SANDO. So—Yeah, the inflows. Yeah, to be exact, 243,700 acre-feet. So, between running the outlet nonstop, if we wouldn't be constrained by water quality and flood constraints and we'd have some decent evaporation, where we could get 100,000 acre-feet out, between the two we could get 200,000. So, we're getting closer to keeping up with this wet-cycle average inflow, but the averages are made out of extremes. And, like I'd mentioned, 2009 was 590,000 acre-feet. So, if we get another big year, like we had in 2009 or 1997, real soon, Devils Lake——

The CHAIRMAN. Let's repeat that so the people—that we can help people understand. 2009, the inflows were 590,000 acre-feet. Typically, we've been averaging 240,000. If we ran the State outlet at the 250 cfs, full tilt, year round—year round, that would take off 100——

Mr. SANDO. That would be——

The CHAIRMAN [continuing]. Thousand cfs?

Mr. SANDO. That would be for 7-month operation. We could get——

The CHAIRMAN. 7 months.

Mr. SANDO. —100,000——

The CHAIRMAN. If we were——

Mr. SANDO [continuing]. Acre-feet.

The CHAIRMAN [continuing]. Running at full tilt for 7 months that would be 100,000?

Mr. SANDO. Right.

The CHAIRMAN. And we typically get 100,000 of evaporation. So, even that wouldn't quite keep the lake stable. The lake would still be going up, assuming the wet cycle continues.

Mr. SANDO. That's correct.

The CHAIRMAN. But, even more—of more concern, is 590,000 acre-feet came into the lake in 2009. If we have another event like that we got a really serious problem.

Mr. SANDO. Yeah. That would put at least 3 more feet on the lake, so we'd be at 55 within—you know, less than 3 feet from overflow.

The CHAIRMAN. And, is the way of thinking about this is, we got 180,000 acre-foot lake, now, in terms of surface area, so if you have 590,000 acre-feet coming in, you're going to raise the lake more than 3 feet.

Mr. SANDO. Right. So, I——

The CHAIRMAN. That's the way that calculation works.

Mr. SANDO. Right. At 100,080—180,000 acres at one foot, that's 180,000 acre-feet. Surface area keeps getting bigger, so the next foot the surface area might be 195,000 acre-——

The CHAIRMAN. So——

Mr. SANDO. —195,000——

The CHAIRMAN [continuing]. To take——

Mr. SANDO [continuing]. Acre-feet.

The CHAIRMAN [continuing]. The lake down a foot, we would have to take off 180,000 acre-feet net. And if we've got 240,000 coming in, you got 100,000 evaporation, you got 100,000 if you're running the outlet full tilt, you got to have another 180,000—or actually 220 in order to take the lake down a foot.

Mr. SANDO. Yeah.

The CHAIRMAN. So, that kind of puts it in perspective, what we're dealing with here, as this lake continues to rise.

Mr. SANDO. OK. So, I've mentioned what we could do for our west end, that'd be either, you know, trying to operate more days out of the year or adding additional capacity.

The next thing would be looking at, you know, with this risk, the probability, right now, of overflow in the next 20 years shows a 13 percent chance of the lake overflowing. This is a stochastic model that the USGS has put together. So, you know, there's a high risk of it overflowing. And, with the outlet rate now, we could cut that risk in half to about 7 percent with a 250 cfs outlet. So, a 7 percent risk is still—I mean, when you develop a 100-year floodplain, that's a 1 percent risk, so the risk is still unacceptable—it's unacceptable risk for that region of the State.

So, really, the next thing to do—to look at would be try to get water out further toward the east end of the lake. So, one of the things we're looking at is—as you know, the water quality, as you mentioned, gets much worse as you go from west to east. And you kind of summarized it saying, it's like five times worse. And so, basically, the sulfate levels in these—in East Stump Lake and West Stump Lake are like 2600 milligrams per liter, or parts per million. And we've——

The CHAIRMAN. Let's go over that again, so that people hear this as simply as we can state it. Basically, the sulfate concentrations are about 500 in the western part of the lake and 2500 in Stump Lake, is that roughly——

Mr. SANDO. Yeah, that's roughly a fair scenario. Yeah. We were operating last year the outlet, and the sulfate levels were between 550 and 600 out of Round Lake which is the west end of the lake.

The CHAIRMAN. OK.

Mr. SANDO. So, what this 2600—that's, you know, parts per million sulfate levels in Stump Lake, I mean, that's way over the standards. The standard's 450, we have emergency rule for 750, we wouldn't be able to get any drop of water out with—unless, you know, there's a variance or something drastically done differently.

So, Stump Lake—it's going to be very difficult to get any type of water out of there. So, if we try—add, you know, more capacity—one of—alternatives of the Water Commission, and we've been looking at is take water out of East Devils Lake, which is one lake further to the west, that's before it flows through Jerusalem Coulee into the Stump Lakes.

The CHAIRMAN. And what's the water quality level at Jerusalem?

Mr. SANDO. Sulfate levels there are like 2 and a half times better than Stump Lake. They're like 1000 milligrams per liter, or 1000 parts per million, for sulfate levels. So——

The CHAIRMAN. Still that is well above even what we have on the variance, because right now you've got 750—right?

Mr. SANDO. That's correct.

The CHAIRMAN [continuing]. That is permitted to—although we're not—we don't see that high a level. What's coming out of the west is more like 550?

Mr. SANDO. Yeah.

The CHAIRMAN. 550 parts per million. What's permitted is up to 750, but at Jerusalem that would be 1000.

Mr. SANDO. That's correct.

The CHAIRMAN. So, that's well above what is permitted, even with the variance that we have.

Mr. SANDO. Right. So—you're exactly right, Senator. So, in order to get water out of East Devils Lake, there, you'd have to even modify the standards even more on the Sheyenne River. And, what we'd look at to do, if that we're the case, we would like to try to blend west end water with east end water. So, say if there's 1000 milligrams per liter, east end water coming out, and, say, 600 west end, that averages to 800, so we're getting close to that 750 number. So, if we have a class 1-A stream at a 750 standard, blending west and east end equally, we could be around 750 to 800. We would—maybe we could just run a, you know, a smaller outlet out of East Devils Lake, so it would—you know, so when we'd blend it, we'd blend it up to 750. So——

The CHAIRMAN. And have there been any estimates of what the cost of that would be?

Mr. SANDO. We don't have a cost estimate, but it would be a much simpler way to get water out of Devils Lake, because that's another—not only does the water quality change, from one end to the other, the divide elevation for water to flow out of Devils Lake's a lot different. Our west end, we have to pump it up over a 100-foot hill. The water's only got 6 feet to get out of Stump Lake, and probably only has 12 feet to get out of East Devils Lake. So——

The CHAIRMAN. So, the cost of an outlet structure there would be considerably less than an additional structure out at the west end.

Mr. SANDO. That's correct, Senator. It'd be much less money to spend on an East Devils Lake outlet. We could build a gravity channel out of there. And it would really—where it would really save us money, right now, it'd cost us $5 million a biennium to operate the west end outlet. And, say, if we wanted to double the capacity—say, if we wanted to—out the west end—we'd be spending $10 million just to operate, to pump water up a 100-foot hill. So, if we could have a gravity channel, our own annum costs would be a lot lower. So, it'd be, from, you know, an economic standpoint,

make a lot of sense to, you know, not pump it up over a 100-foot hill, and just take it out over a 10-foot hill, and the best way to do that is actually cut a channel—a gravity channel out to allow the water to flow out East Devils Lake. And that would flow into the Tolna Coulee into the Sheyenne River. So, that's another thing I would like the Federal Government to, you know, be part of and look at, too, is possibly a blended outlet—west end, east end.

So, those are the main things that we would like to look at is, you know, operate additional days, upsize west end outlet, look at East Devils Lake. I mean, anything's on the table. We're looking at going to any river or any direction too, but that's kind of what's coming to the surface, for us, in our analysis. And then, relaxing the standards, on the Sheyenne River, so we can get more water out.

The CHAIRMAN. We've, actually, also asked the Corps of Engineers to look at running a pipeline from Devils Lake to the oilfields, for providing water for fracking in the oilfields. And, you know, we've tried to take every idea that's come to us and asked them to test it.

We have also asked them to evaluate additional storage in the Upper Basin. The Governor is quite right, in the statistics that he's provided, of the expansion of this lake alone, from 49,000 to 180,000. That's a substantial amount of storage. He's also right, if you go north of the lake—we just flew over it a couple of months ago in a helicopter, there's water everywhere. I mean, a lot of what was drained wetlands have been restored by Mother Nature. They are under water. We saw farmstead after farmstead after farmstead surrounded by water. And, you know, that's water storage that's occurring in the Upper Basin.

Todd, go.

Mr. SANDO. OK. And, just to conclude then, the Federal agencies—the areas that—the ones that we really need help with are EPA, you know, dealing with the water quality standards; FEMA, that would—you know, if we can really get some waivers and variances so we can get the structures. We did an inventory on structures and all, that got inundated and there's 200 structures in the water, right now, that we need to deal with. And so, I mean, we—some better ways to get some of these structures out and get, you know, flood insurance programs, that type of thing, would be beneficial. State Department would be another big thing, with Boundary Waters Treaty, dealing with our neighbors and with Canada to the north. So—

The CHAIRMAN. So—

Mr. SANDO [continuing]. Hopefully our—

The CHAIRMAN [continuing]. We have 200 structures—now we've already moved some 600 structures out of harm's way. But, there are 200 structures that have been engulfed in the flood waters there. Is that what—

Mr. SANDO. 200 more since the spring of 2009, basically.

The CHAIRMAN. 200 that have—not—that did not get moved. Now, part of this is, you know, we got waivers that allowed people to move their houses before they were inundated, but counties had to agree to a plan in order for that waiver to be enforced. Some decided they didn't want to go that route, and so, as a result, they

don't qualify to get paid for a move before they're wet. So, that contributes to that issue.

Mr. SANDO. Right.

The CHAIRMAN. You know, you can lead a horse to water and not necessarily—can't make them drink. It's too bad, because that program was working very well to get threatened structures moved, before they got wet. OK?

Mr. SANDO. OK. Basically, that completes my testimony. It's just—I mean, it's—like you said, it's not just a Devils Lake issue—

The CHAIRMAN. Right.

Mr. SANDO [continuing]. It's a State of North Dakota issue. It's one of our most critical issues for our entire State, so we'd like to, you know, do whatever we can to help alleviate the situation. So, thanks for your time.

[The prepared statement of Mr. Sando follows:]

Testimony Presented to the
Senate Budget Committee
"Devils Lake Flooding Disaster:
How Should Downstream Impacts Be Addressed?"

By
Todd Sando, P.E.
North Dakota State Engineer,
and Chief Engineer-Secretary to the
North Dakota State Water Commission

Lisbon, North Dakota

August 17, 2010

Mr. Chairman and committee members, my name is Todd Sando, North Dakota's State Engineer, and Chief Engineer-Secretary to the North Dakota State Water Commission. Before I begin my testimony, let me express my gratitude to you and your committee for your continued interest in the Devils Lake flooding crisis. Resolving this problem is one of the most pressing issues facing North Dakota today. On July 8, 2010, I delivered testimony to your committee when it held a hearing in Devils Lake to address what the federal government might do to respond to the Devils Lake flooding disaster. In that testimony I provided background information along with suggestions for your committee to consider that I believe are pertinent to the topic of this hearing. I have included that testimony with what I am providing today.

Devils Lake flooding problems are not new. They began in earnest 17 years ago with a major summer storm event. Since then, the shift to an extreme wet cycle in the region's climate has caused Devils Lake to rise nearly 30 feet. We are concerned that Devils Lake is now dangerously close to a natural spill to the Sheyenne River. The six feet or so of rise necessary to spill is well within the realm of possibility and probability. While about 1.3 million acre-feet of storage still remains in Devils Lake and other now-connected lakes, the watershed is saturated. Very little storage is available in the watershed's wetlands, small lakes and soil profile to capture yet another major runoff event whether from summer storms, spring runoff or a combination of the two.

We have struggled since the mid-1990s to find acceptable solutions to Devils Lake's growing flood crisis. All studies thus far tell us the best way to address the rising water level and minimize the risk of downstream impacts from a natural spill to the Sheyenne River is to remove as much of the flood water as possible from Devils Lake as soon as possible in a controlled fashion from the west end. A west end outlet is important because water quality there is better than that found on the east end where the natural spill would occur. The west end's better water quality allows us to blend more Devils Lake with Sheyenne River flows to stay within water quality constraints established for the river.

Many possible solutions have been considered since flooding began in 1993. The most practical has been the construction of a state emergency outlet on Round Lake/West Bay to the Sheyenne River. The state's outlet was completed in 2005 with an original capacity of 100 cubic feet per second (cfs). However, with the ever-growing risk of an uncontrolled natural spill, the state in 2010, increased the outlet's capacity to 250 cfs. After months of working toward changes in water quality limits on the Sheyenne River, this spring we were able to begin pumping at the higher rate and have removed almost 28,000 acre-feet so far this year. If the state's outlet were to pump at its new capacity for a full seven-month operating season, it could remove over 100,000 acre-feet a year. For perspective, the average annual inflow from 1993 through 2009 was 243,700 acre-feet. The record annual runoff of approximately 590,000 acre-feet occurred in 2009.

The state's emergency outlet has significantly reduced the risk of a potentially devastating Devils Lake overflow to the Sheyenne River, and can reduce the risk even more. To do so, water quality constraints will have to be temporarily modified to allow higher sulfate concentrations. The consequences of higher sulfates in the Sheyenne River are not a serious threat to public health as some would have you believe. Changing water quality in the Sheyenne River is a tradeoff that can be made to address the potentially devastating flood damages that could occur if Devils Lake is allowed to spill out through the Tolna Coulee. We continue to work with the North Dakota Department of Health to obtain this critical, temporary change. They, in turn, are working with the U. S. Environmental Protection Agency, who ultimately administers the federal Clean Water Act that governs water quality management. If we are to avert an uncontrolled natural spill from Devils Lake to the Sheyenne River, we must have changes in the water quality constraints.

Addressing the impacts of the higher sulfate levels will require modifications to community water treatment plants who use water from the Sheyenne River. The State Water Commission has already approved $9.2 million to enhance the new treatment plant being built at Valley City. We have also discussed additional modifications that may be needed at other communities.

Should a natural, uncontrolled overflow from Devils Lake occur, it could happen in a variety of ways. Regardless of how it happens, an overflow can be expected to cause unprecedented flood damages in Valley City and Lisbon who are already struggling with historic and recent Sheyenne River flood damages. Private property and public infrastructure along the Sheyenne River would be significantly impacted.

Specific recommendations made at the end of my testimony to this committee on July 8, 2010 in Devils Lake would also apply in addressing the downstream impacts which is the topic of this hearing. Those points are included in the attached copy of my earlier testimony.

In closing, we have concluded that the only real option available to address the serious flooding in Devils Lake and reduce or eliminate the risk of a catastrophic overflow is to quickly remove more water through the Sheyenne River in a controlled manner. Uninterrupted operations and/or enlargement of the current state emergency outlet must be allowed to move forward. Installing a second outlet further east in the lake should be considered if the risk of an overflow warrants it. These actions will require a temporary change to water quality standards that must be sanctioned by the Environmental Protection Agency. In addition to regulatory concessions, substantial funding for necessary construction and operations must be made available.

Lastly, FEMA must be more responsive to the unique nature of the Devils Lake flood situation and must provide waivers/variances that adequately address these unusual circumstances.

We sincerely ask that you to do what you can from the federal level of government to make this happen. The lives and livelihoods of the Devils Lake region residents and others downstream depend upon doing what can be done as quickly as possible to address further devastating social and economic impacts.

Thank you.

The CHAIRMAN. Yeah. Thank you very much for your time.

We'll go next to Mayor Cole, mayor of Lisbon, who has dealt with these flood issues. I just want to say, on a personal note, during the 2009 flood event, I was so impressed by Mayor Cole, and the way he hung in there and was looking out for people in this community night and day. And I really admire the leadership that you provided, Mayor. Thank you for being here.

STATEMENT OF HON. ROSS COLE, MAYOR, CITY OF LISBON

Mr. COLE. Thank you, Senator. And thank you for coming to Lisbon. We appreciate you guys being here, Governor, and you, to take your time to come to town and put on this hearing. We appreciate it very much.

I just want to welcome you, and thank you for coming here today. I thank you for those comments, Senator, but I would have never been able to do it without the help of Morrie and my council members. That 2009 flood was not a one-person operation by a long shot. The Corps of Engineers were wonderful to work with, and it kind of went on from there. Just—it was a well oiled machine, basically. And, I don't know if we'd have been here today without it. But, thank you everybody. And let that be to the record.

I did a lot of—a little talking with the Senator today over lunch, and we had a good visit. Lisbon, I think, is in favor of a—definitely, we know there needs to be an outlet in—coming out of Devils Lake. We've talked about, we know we have our friends down the—up the river and down the river that use the Sheyenne for drinking. And so, the sulfate contents need to be a very major part of the scenario for the outlet. Whether—you know, so—because they need the water, and it just—you know, we got them in our prayers and on our mind all the time, too. So, it needs to be part of the scenario. We——

What needs to happen downstream for Lisbon? Well, we visited a little bit today, is that we have—had 18 homes in the FEMA buyout. So, did have a chance to buy one out in 2010 flood, and we got that out of the way so we could build the levee, thanks to Morrie.

[Laughter.]

Mr. COLE. It was—we got in a little trouble over it, but we got through it. Anyways, we got one out of the way, and we have 17 more homes in the FEMA buyout.

I was visiting with Tracy Essinger, our engineer here, the other day a little bit, along with Mike Hollen and we were looking at the proposed levies that we would like to see built in Lisbon. And all 17 homes are right in the middle of the levee. Well, you know, with FEMA—using FEMA dollars, you know, where does that put Lisbon? You know, and I hope we can work on some sort of a—some help, with FEMA, to try to let us—to maybe do some policy changes or something, that we can use FEMA dollars to buyout these homes. I don't know how we can come up with dollars otherwise. I think we could probably work with the State Water Commission, maybe, and work with some other, you know, Lake—, but I think it's getting to be time that—time is becoming a factor for us.

The CHAIRMAN. Let me stop you there and just say, would—you're being very diplomatic about—if we use FEMA dollars to buy

out these 17 homes, FEMA policy then says we cannot build a new structure where those homes were taken from. And we understand that it doesn't make any sense to build another house there, doesn't make any sense to build another building there. But, their interpretation is that we can't build a dike there. That doesn't make any sense. We need to be able to build dikes where those homes are taken from, because those are the exact vulnerable spots, as we go down the river. And so, as we met, at noon today, we drafted a letter—rough-drafted a letter to FEMA asking them for a variance for Lisbon to, specifically, look at permitting, not another house, we understand that, that doesn't make any sense; not a building, that wouldn't make any sense; but to build a dike to continue the dike structure that comes into that area already. And that's what the mayor is very diplomatically asking for here. And it's an entirely reasonable request.

Mr. COLE. Thank you. In 2000—and we talk about the waterflows. If something were to happen—in Lisbon, we are kind of—I was visiting a little bit with somebody from the—and I wish that I had gotten his name—but he was really good to work with, was a gentleman from the Corps—and we were talking about what would happen if there was a catastrophe, if Devils Lake is to overflow, things were to washout; if Tolna Coulee were to break loose, you know, there are, you know, probabilities, probably they aren't that strong, but it could happen. And, in 2009 we had cfs running through Lisbon, at 10,000 cfs—is that correct Morrie? Isn't that what we had?

Mr. SAXERUD. Just under that.

Mr. COLE. Just under 10,000. And talking to—and, I think, probably, in that time—that was probably over 7 days or longer, you know, give or take, not a lot. But, if something were to happen, they'd kind of—are looking that—they're telling me that we could have between 12,000 and 14,000 cfs coming through Lisbon. And this is where the kicker is, we're not talking 7 days anymore, we're talking 30 to 60, you know. That's a lot of water to try to keep out of the city for a long period of time.

So, you know, it just—what doesn't make sense to me, is another issue, and I hate to keep bringing up the FEMA word, but they're talking to me now that—we do have some nice temporary levies up, in place. And they did a good job this last winter, we had time to get things done and they built well. Now they're coming around and—we had a little visit the other day, and it sounds like they want us to take levies down that are—anything that's in the floodway. Well, you know, that's not all the levies in the city, but it's portions that just—all it does is extend our time—readiness time to build, and we'd have to rebuild them.

The CHAIRMAN. Let me just go to this point too, because, you know, I've spent—had many conversations with FEMA on this subject and their answer is, "Look, we're not in the dike building business. The dikes that we build are temporary structures, and those dikes cannot be relied on to work long-term. They are short-term answers. And so, we don't want to give a community a false sense of security by all of a sudden turning temporary structures into permanent flood works." But, that's really not what the Mayor is asking for here. We're not asking to turn something that was put

up in an emergency into a permanent structure. We are asking to be able to retain these levies, to retain these dikes, for an indeterminate period because we're in a wet cycle. Every bit of evidence we have tells us we're in a wet cycle and that it is continuing, including the forecast for this next year. So, it doesn't make any sense, to us, to take down these, even, temporary levies, which we might then, come spring, and in all probability will, have to turn around and put right back. That doesn't make any sense from a Lisbon perspective, doesn't make any sense from a North Dakota perspective, doesn't make any sense from a Federal taxpayer perspective. So, that's the second issue, here, that we're dealing with.

Mr. COLE. I kind of got lost here. But any—well, we are in the process—and thanks to the State Water Commission, and to the Governor, that we've do a feasibility study. We're in the process of doing some core sampling, looking at the riverbanks to—and trying to lay out some—a permanent levee system that—maybe that we can afford to put up. And then it becomes an issue too, that I don't know—I don't think we're looking at trying to put up a system that's going to get us out of the floodplain, or out of the flood. You know, we're—we've put up—we can put up with the flood insurances and the floodplain and whatnot, but we're just asking for some protection. And I don't think that I can put it any other way.

And, I guess—and that's the end of my presentation.

[The prepared statement of Mr. Cole follows:]

CITY OF LISBON
P. O. BOX 1079
LISBON, ND 58054
Phone 701-683-4140; Fax 701-683-9710

August 12, 2010

Honorable Senator Conrad
Federal Building
657 2 Ave N
Fargo, ND 58102

RE: Testimony for Devils Lake Downstream Impact

Honorable Senator Conrad:

The City of Lisbon is currently working on a feasibility study for permanent levees for future flood protection.

There are seventeen homes considered for buyouts. These homes, with the exception of one are located in the proposed permanent levee per Moore Engineering study. If the current temporary levees are removed from the floodway, this will leave us more in harms way.

Furthermore, if they are bought out by FEMA, no levee may be placed on these properties for permanent protection in the future.

A solution needs to be implemented now to avoid an emergency created as a result of an uncontrolled spill from Devils Lake. A controlled outlet needs to be established today, to both protect cities downstream and the quality of drinking water for the public. Also, if we have to take out levees, it would take more time to prepare for another flood event.

We feel the citizens are better served with the levees that are in place at this time. We realize that they are temporary levees, but they serve as better assurance to people than having to place new levees during an emergency. This emergency could come with snow compact still on the ground, which creates a loss of stability for any new levees.

The State and Federal Governments need to reconsider removal of the temporary levees, especially those constructed in the floodway until a permanent solution can be achieved.

Financial assistance from State & Federal entities must be considered as the City of Lisbon has incurred extensive expenses in the last two years from flooding. We have been working closely with FEMA for reimbursement, but as you are aware they do not cover expenses at one hundred percent.

Time is of essence to ensure protection of people's property and their personal safety.

Your consideration and timely action is of utmost important to us all.

Yours truly,

L. Ross Cole, Mayor
City of Lisbon

LRC:rae

The CHAIRMAN. It's very good. Appreciate your testimony and appreciate your hard work. Appreciate your leadership in dealing with these issues.

Next, we'll go to the mayor of Fort Ransom. And Fort Ransom has been right in the crosshairs too. And it was pretty intense there in 2009. Welcome, Mayor. Thank you so much for being here.

OPENING STATEMENT OF MR. JAMES THERNES, MAYOR OF THE CITY OF RANSOM

Mr. THERNES. Thank you. I want to thank you for the opportunity to speak with you today regarding the Devils Lake Flooding Disaster and the downstream impacts to the city of Fort Ransom and the surrounding area, how they can be addressed.

I attended your Senate Budget Committee hearing on July 9th, and the U.S. Army Corps of Engineer technical input session on July 19th. I have read numerous testimonies, letters, and various handouts, presented at the various hearings and the Corps of Engineer input session. There's been an incredible amount of numbers, facts, figures, maps, photos presented at these meetings outlining the pros and cons of various ways to address the Devils Lake problem.

After reviewing all that information, I've come to the conclusion that there are no simple solutions that will mitigate the devastating flooding of Devils Lake and have the approval of all of the affected communities, both upstream and downstream. I sympathize with you on that.

It is quite apparent that the communities of Devils Lake are in need to have the lake's water level lowered. To accomplish this, the Devils Lake communities have recommended discharging water, not only from the lake's current west-end State outlet, but allowing discharges from the east end of the lake as well, to augment the west end discharges. Some downstream communities are opposing this idea, of the possible—because of the possible negative effects that higher sulfate levels will have on water quality and life in the river, and because of the effects the additional discharging, from the east end, will have on the river—riverbank erosion.

The downstream community's recommendations are to enhance the outlet at the west end of the lake, armoring of the Tolna Coulee, at the east end of lake, to prevent a natural uncontrolled release, and the utilization of Upper Basin wetlands for added retention. We concur with those recommendations.

With regards to water quality, we feel that any improvement would be appreciated, even though we do not get our potable water from the Sheyenne River. Indeed, by the time the river water gets to our city it is so degraded and polluted with pesticides, herbicides, nitrates, phosphorus, and suspended silt, from farming runoff and riverbank erosion, that many of the local residents choose not to eat the fish they catch from it. Therefore we do not support—therefore we support any practical and beneficial measures that could be taken upstream to improve the river's quality overall, and enhance its aquatic life. We, therefore, request the approval of the most cost-effective flood relief option that acknowledges downstream impacts and encompasses a way to move better quality

water out of the west end of the lake. This request is also supported by the North Dakota Department of Health.

With regards to allowing additional discharges from the east end of the lake, we are uncomfortable with that idea, because the increased flows—with increased flows comes the serious problem of increased riverbank erosion. Even under low-flow conditions, we have experienced the loss of up to about 35 feet of rear yard, at 9 homes, and at downstream portion of the city, because of the extensive riverbank erosion.

With the collapse of the river's embankments, there now is a danger that the residential septic tanks and, eventually, the homes themselves and the street they front on will soon collapse into the river. Further, there is a potential that access to a large portion of the city's residential area, and the entire business district could be severed, if the river were to erode the bridge embankments—abutments at the Walter——

The CHAIRMAN. Hjelle.

Mr. THERNES. —"Gile"—"Jelle"——

The CHAIRMAN. Hjelle.

Mr. THERNES. —Hjelle Parkway Bridge, which is the main——

The CHAIRMAN. That's those Scandinavian names.

Mr. THERNES. Yeah. Gets me every time.

[Laughter.]

Mr. THERNES [continuing]. Which is a year-round—you know, our main year-round route into the city. Additional water coming down from Devils Lake will expedite that—this erosion in our—of our riverbanks, and ultimately will have significant impact to our citizens and our economic stability.

We are currently working with the Natural Resource Conservation Service on a stream bank restoration and stabilization project which will help protect our city. The NRCS goal was to implement and construct the project this year. Unfortunately the project is being delayed because of the U.S. Army Corps of Engineer permit process, and we have been told that Federal funding for the project could be lost if the project is not moving forward. We respectfully request your support in this vital and important project, and ask that you take all steps necessary to ensure that we do not lose our funding while it is going through the lengthy U.S. Army Corps of Engineer permitting process.

The city of Fort Ransom is not unique in its riverbank erosion problem. Erosion is occurring in all the communities and farmsteads along the entire length of the Sheyenne River. With our stream bank restoration and stabilization project in place, we believe we could temporarily accept controlled outflow rates of 250 to 500 cubic feet per second, during times of nonflooding, in an effort to reduce the potential risk of a natural and uncontrolled release from the Tolna Coulee. However higher rates extend—over an extended period of time will, in all likelihood, cause damages to property and infrastructure in our city as well as along the entire length of the Sheyenne. Therefore we are—therefore we ask that you keep the potential problems that additional discharges and higher rates of outflow will create for the downstream's communities in the forefront of any decisions made.

We, in Fort Ransom, foresee the solving of the Devils Lake flooding issue as not one step, but a two-step process. The first step is finding out what can be done immediately to keep the water level in the lake from rising any higher, thereby halting the increase in flooding to the lake's communities, and lessening the chances of an uncontrolled release from the lake's east end at Tolna Coulee.

The second step, which could begin simultaneously with the first step, is to come up with and economically feasible and cost-effective long-term solution that would substantially lower the lake's water level, and also control the water level in the future during high rainfall events and excessive seasonal wet spells.

Completing steps—step two allows the Devils Lake communities to recover their loss of property and benefit economically. Up to this point, all we've—after this point in time, all we have heard is discussions on the pros and cons of the first step. We have not heard any mention of meaning—or meaningful discussions on long-term solutions, which would substantially lower the water level of the lake and then maintain it at a controlled level. It appears that we have locked into the idea that discharging the lake's water into the Sheyenne will somehow solve both the immediate and the long-term problem; however, we know that that is not the case, because of the impacts downstream to the communities will endure with a long-term discharge.

I've had a number of discussions with local residents, and asked them what they thought could possibly could be done with the long-term to solve the Devils Lake flooding issue. I've been pleasantly surprised at the number of possible ideas that have been expressed. I learned a long time ago, that non-experts can sometimes come up with ideas that are outside of the box, and lead to a real solution of the problem. A few of the possible long-term solutions that residents presented are listed below.

Possible solution No. 1: Why can't the existing McClusky Canal system be reengineered and constructed to take water from the Devils Lake to the Missouri River? In 1996, proposals called for $800 million worth of water projects related to the canal system, including stabilization of Devils Lake. They ask, Whatever happened with these projects?

Possible solution No. 2—which you just alluded to—Why not build a pipeline to carry water from Devils Lake to the western North Dakota oilfields to use in filling wells after the oil has been extracted. Currently the oil companies are trucking water to the oil wells at a great expense. Given the opportunity, they possibly could cost-share, or would cost-share, with Federal and State governments in the development of such a pipeline.

Possible scenario No. 3—or, solution No. 3: Why not build an earthen dam and create a retention basin downstream from the Tolna Coulee? This would provide additional protection for the downstream communities, should the Tolna Coulee fail.

Possible solution No. 4: Why not build a canal or pipeline system to carry water from the Devils Lake directly to the Red River, above Fargo? Considering the billions of dollars that it will cost in damage——

The CHAIRMAN. Can I just interrupt you there and say——

Mr. THERNES. Sure.

The CHAIRMAN [continuing]. Every one of those proposals has been considered——

Mr. THERNES. Has it?

The CHAIRMAN [continuing]. Is being studied. So, I know that it's not necessarily in the public—it doesn't get public attention. I have spent hours and hours and hours, as Joe Belford has, in meetings, in which every one of those has been discussed, evaluated, cost estimates made. And what you find, and I—without going through the detail of each one, is you're dealing with two big problems. Cost: the cost of many of these options are in the billions of dollars. Billions. No. 2—and all of this has to have a State and local share, so it's not just going to Washington and ask them for Federal money, we got to come up with a State and local share as well. So, many of these things become cost prohibitive.

Second major issue is the original plan to hook up the McClusky Canal, bring water into Devils Lake from the Missouri. When we passed the Dakota Water Resources Act, which provided $400 million of authority to North Dakota for municipal and residential projects in North Dakota—for example southwest pipeline, northwest pipeline, other water projects across North Dakota, funding for the tribe's water improvement projects—$200 million authorized to move water from the western part of our State to the eastern part of the State. It was specifically precluded—specifically precluded—to connect up the McClusky Canal and Devils Lake. So, you know?

Mr. THERNES. Uh-huh.

The CHAIRMAN. These are good thoughts and it's not as though people haven't thought about every kind of option imaginable. It's just, when you start pulling the thread on these things and you bring back the curtain, what you find is often not something that looks as attractive as it does at first blush.

Mr. THERNES. Well, I think, you know, that the residents are, you know, of my city at least, it would—hearing this, would be happy. I mean, everybody's been saying, "Well, what—why haven't we heard anything about these kinds of projects?"

The CHAIRMAN. The oil thing is still under review. The movement of water—I can tell you, their initial impression is, again, cost prohibitive, but still being analyzed, and they've not done a final analysis. So, you know, there's still——

Mr. THERNES. Could the oil companies contribute to a cost-share with this?

The CHAIRMAN. Absolutely. And, I mean, that's——

Mr. THERNES. I mean, it's costing them big bucks, right now, to——

The CHAIRMAN. It's costing them a lot of money——

Mr. THERNES [continuing]. Truck it in.

The CHAIRMAN. —1,000 truckloads, on average, to a well—1,000 truckloads.

Mr. THERNES. How many miles do they have to go, I wonder, too.

The CHAIRMAN. Yeah. Well, they're—you know, it depends, of course, on the location of the well, and where the water site is, but we're talking about huge issues, as the Governor well knows. Yeah.

Mr. THERNES. OK. And then, I guess in summary we respectfully request that you ensure that any approval of a flood-relief option

acknowledges downstream impacts and includes a way to discharge better quality water out of the lake; take all necessary steps to ensure that the city of Fort Ransom does not lose its funding while going through the Army Corps of Engineers permitting process for its stream bank restoration and stabilization project; keep the potential problem of the additional discharge and the higher rates of outfall from the east end of the lake—that the outfall east end of the lake will create for the downstream communities at the forefront of any decisions made; and ensure that all possible ideas and alternatives are studied and investigated before arriving at a solution addressing the Devils Lake flooding disaster.

Thank you for the work that you have done for us, in trying to solve the Devils Lake issue. We appreciate your understanding of the challenges which are still ahead of us. And we hope all communities can work together to bring about comprehensive, cost effective, and economically feasible projects.

[The prepared statement of Mr. Thernes follows:]

Testimony of
James Thernes
Mayor of the City of Fort Ransom, North Dakota
Before the
Senate Budget Committee

Devils Lake Flooding Disaster:
How Should Downstream Impacts be Addressed:

August 17, 2010

Senator Conrad:

My name is James Thernes and I am the Mayor of the City of Fort Ransom (City), North Dakota. I want to thank you for the opportunity to speak with you today regarding the Devils Lake Flooding Disaster and how the downstream impacts to the City of Fort Ransom and surrounding area should be addressed.

I attended your Senate Budget Committee Hearing on July 9, 2010, and the U.S. Army Corps of Engineers Technical Input Session on July 19, 2010. I have read the numerous testimonies, letters, and various handouts presented at the various hearings and the Corps of Engineers Input Session. There has been an incredible amount of numbers, facts, figures, maps, and photos presented at these meetings outlining the pros and cons of various ways to address the Devils Lake problem. After reviewing all this information, I have come to the conclusion that there are no simple solutions that will mitigate the devastating flooding of Devils Lake and have the approval of all the affected communities both upstream and downstream.

It is quite apparent that the communities of the Devils Lake area need to have the lake's water level lowered. To accomplish this, the Devils Lake communities have recommended discharging water not only from the lake's current west end State outlet, but allowing discharges from the east end of the lake as well to augment the west end discharges. Some downstream communities are opposing this idea because of the possible negative effects that higher sulfate levels will have on water quality and life in the river, and because of the effects that additional discharging from the east end will have on riverbank erosion.

The downstream communities' recommendations are to enhance the outlet on the west end of the lake, armoring of the Tolna Coulee at the east end of the lake to prevent a natural and uncontrolled release, and the utilization of upper basin wetlands for added retention. We concur with these recommendations.

With regards to water quality, we feel that any improvement would be appreciated even though we do not get our potable water from the Sheyenne River. Indeed, by the time the river water gets to our City it is so degraded and polluted with pesticides, herbicides, nitrates, phosphorous, and suspended silt from farming runoff and riverbank erosion that many local residents choose not to eat the fish they catch from it. Therefore, we do support any practical and beneficial

measures that can be taken upstream to improve the river's water quality overall and enhance its aquatic life. We therefore request the approval of the most cost effective flood relief option that acknowledges downstream impacts and encompasses a way to move better quality water out of the west end of the lake. This request is also supported by the North Dakota Department of Health.

With regards to allowing additional discharges from the east end of the lake, we are not comfortable with that idea because with the increased flows comes the serious problem of increased riverbank erosion. We have experienced the loss of up to thirty-five feet of rear yard at nine homes in the downtown portion of the City because of extensive riverbank erosion. With the collapse of the river's embankments, there now is danger that some residential septic tanks, and eventually the homes themselves and the street they front on, will soon collapse into the river. Further, there is the potential that access to a large portion of the City's residential area and the entire business district could be severed if the river were to erode the bridge abutments of the Walter Hjelle Parkway Bridge which is the main year-round route into the City. Additional water coming from Devils Lake will expedite the erosion of our riverbanks and ultimately will have a significant impact on our citizens and our economic stability.

We are currently working with the Natural Resource Conservation Service (NRCS) on a streambank restoration and stabilization project which will help protect our city. The NRCS goal was to implement and construct the project this year. Unfortunately, the project is being delayed because of the US Army Corps of Engineers (USACE) permit process and we have been told that federal funding for the project could be lost if the project is not moving forward. We respectfully request your support of this vital and important project and ask that you take all steps necessary to ensure that we do not lose our funding while we go through the lengthy USACE permitting process.

The City of Fort Ransom is not unique in its riverbank erosion problem. Erosion is occurring in all the communities and farmsteads along the entire length of the Sheyenne River. With our streambank restoration and stabilization project in place, we believe we can temporarily accept controlled outfall rates of 250 to 500 cubic feet per second from the west end of the State outlet during times of non-flooding in an effort to reduce the potential risk of a natural and uncontrolled release from the Tolna Coulee. However, higher outfall rates or these outfall rates for an extended period of time will in all likelihood cause damages to property and infrastructure in our City, as well as along the entire length of the Sheyenne.

Therefore, we are not in agreement with our neighbors in the Devils Lake area who want to see additional discharges from the east end of the lake. We ask that you keep the potential problems that additional discharges and higher rates of outfall will create for the downstream communities in the forefront of any decisions made.

We in Fort Ransom foresee the solving of the Devils Lake flooding issue as not a one-step but a two-step process. The first step is finding out what can be done immediately to keep the water level in the lake from rising any higher, thereby halting the increase in flooding to the lake's communities and lessening the chances of an uncontrolled release from the lake's east end at the Tolna Coulee.

The second step, which could begin simultaneously with the first step, is to come up with an economically feasible and cost effective long-term solution that would substantially lower the lake's water level and also control the water level in the future during high rainfall events and excessive seasonal wet spells. Completing step two allows the Devils Lake communities to recover their loss of property and benefit economically. Up to this point in time all we have heard is discussions on the pros and cons of the first step. We have not heard any mention or meaningful discussion on long-term solutions which would substantially lower the water level of the lake and then maintain it at a controlled level. It appears that we have locked into the idea that discharging of the lake's water into the Sheyenne River somehow solves both the immediate and long-term problems. However, we know that is not the case because of the impacts the downstream communities will endure with a long-term discharge.

I have had discussions with local residents and asked them what they thought possibly could be done in the long term to solve the Devils Lake flooding issue. I have been pleasantly surprised at the number of possible ideas that have been expressed. I learned a long time ago that non-experts can sometimes come up with ideas that are outside of the box and lead to real solutions to a problem. A few of the possible long term solutions the residents presented are listed below:

Possible Solution #1;
Why can't the existing McClusky Canal system be re-engineered and constructed to take water from Devils Lake to the Missouri River? In 1996 proposals called for $800 million worth of water projects related to the canal system, including stabilization of Devils Lake. They ask what ever happened to these projects?

Possible Solution #2;
Why not build a pipeline to carry water from Devils Lake to the western North Dakota oil fields to use in filling wells after the oil has been extracted? Currently, the oil companies are trucking water to the oil wells at great expense. Given the opportunity, they possibly would cost share with federal and state governments in the development of such a pipeline.

Possible Solution #3;
Why not build an earthen dam and create a retention basin down stream from the Tolna Coulee? This would provide additional protection for the downstream communities should the Tolna Coulee fail.

Possible Solution #4;
Why not build a canal or pipeline system to carry water from Devils Lake directly to the Red River above Fargo?

Considering the billions of dollars that it will cost in damaged or destroyed properties, loss of businesses and income, and the significant impact to thousands of people should a catastrophic overflow of the Tolna Coulee happen, we feel that all possible short term and long alternatives should be investigated.

In summary we respectfully request that you:

Ensure that any approval of a flood relief option acknowledges downstream impacts and includes a way to discharge better quality water out of the west end of the lake;

Take all necessary steps to ensure the City of Fort Ransom does not lose its funding while going through the USACE permitting process for its streambank restoration and stabilization project;

Keep the potential problems that additional discharges and higher rates of outfall from the east end of the lake will create for the downstream communities in the forefront of any decisions made; and

Ensure that all possible ideas and alternatives are studied and investigated before arriving at a solution addressing the Devils Lake Flooding Disaster.

Thank you for the work you have done for us on trying to solve the Devils Lake issue. We appreciate your understanding of the challenges which are still ahead of us and we hope all communities can work together to bring about comprehensive, cost effective, and economically feasible solutions.

The CHAIRMAN. Thank you very much for your testimony. I would say, I've always thought Fort Ransom was one of the jewels of our State. As just a—I love going to Fort Ransom, a spectacular spot.

We'll go to the next panel now.

Thank you. Thanks to each of the——

Mr. THERNES. You're welcome.

The CHAIRMAN [continuing]. Witnesses. We appreciate very much.

Our next panel is Neil Olerud, Teresa Rotenberger, and former Lisbon Mayor Morrie Saxerud. Neil Olerud is chairman of the Ransom County Commission. Teresa Rotenberger, emergency manager for Ransom County. And, of course, we all know, Morrie Saxerud is the former mayor here.

Welcome.ahead and we'll just go right down the panel. And then, we'll have a chance for questions, and then any additional observations the Governor would have, before we reach conclusion.

Mr. OLERUD. OK.

The CHAIRMAN. Welcome.

STATEMENT OF HON. NEIL OLERUD, CHAIRMAN, RANSOM COUNTY COMMISSION

Mr. OLERUD. Thank you. I guess I'm not very prepared. I don't have notes or anything. I left that up to Teresa.

[Laughter.]

The CHAIRMAN. That's fine.

Mr. OLERUD. So——

The CHAIRMAN. Just give us your observations.

Mr. OLERUD. She's prepared.

The CHAIRMAN. What——

Mr. OLERUD. Yeah.

The CHAIRMAN. What do you think?

Mr. OLERUD. We kind of talked about, at our meeting this morning, thinking—we would like to see another outlet for the water, rather than the Sheyenne itself. You know, divvy it up, put some in the James River, McClusky Canal. Another thing we discussed is putting up a permanent dam in the Tolna Coulee area, something more stable. It's a very unstable outlet right now, full of sand, and it starts to go, I'm afraid we're in big trouble. And, I guess another thing we had talked about is looking, in the future for water, when things start drying up. And that cycle will happen. So, that's just some of the studies that we would like to see implemented and some money put in.

The CHAIRMAN. OK. Let me just say, if I can, that, when Dakota Water Resources Act was approved, which provides $400 million of authority to North Dakota for water projects, much of these—many of these alternatives were evaluated at the time. Because, remember the old plan was for the McClusky Canal to carry water to Devils Lake, and then we would continue to move water over into eastern North Dakota, through a series of canals—open-air canals.

As part of the Dakota Water Resources Act, 200 million was reserved—we were given authority for 200 million—to move water from western North Dakota to eastern North Dakota. And, one of the options still is to connect up the McClusky works with a con-

veyance system to get water to eastern North Dakota, because we know, at some time in the future, that's going to be needed, just as you say. This wet cycle's not going to last forever. And, for North Dakota's economic development—long-term economic development potential, we need to move water from the western part of the State to the eastern.

But, we could not get agreement to pass the Dakota Water Resources Act if the water was going to have an inlet to Devils Lake. We couldn't get an outlet approved if there was going to be an inlet. And this has to do with the politics of the downstream States, especially the State of Missouri, who thinks they have a special interest in this matter. If you study a map, it's a little hard to understand how they have anything of interest to do with what happens to Devils Lake water, because Devils Lake water never goes to the State of Missouri. But, at least some people in Missouri, apparently, have a hard time understanding that, and think that somehow if we have water coming out of Devils Lake, that's somehow going to affect them. Doesn't have anything to do with them, as anybody who knows North Dakota geography understands. So, that's part of the issue. So, we lost the ability to have water go into Devils Lake, in order to preserve the ability to get water moved to eastern North Dakota, and to have the possibility of an outlet. Because, at that time, the No. 1 priority was, clearly, not getting more water into Devils Lake, it was to get water out of Devils Lake.

So, it's very important. And this was a decision, not just of Senator Dorgan, myself, Congressman Pomeroy, but our Governor, at the time, Governor Schafer, and State leadership, the leaders of the legislature. Everybody was in on this decision, because we felt it was so important to get the Dakota Water Resources Act approved, because of the resources it made available to North Dakota for water development. So, that's the circumstance that we face with the question of the McClusky Canal.

Mr. OLERUD. OK. I guess that has—all I've got to say.

The CHAIRMAN. Alright.

Teresa, welcome.

STATEMENT OF TERESA ROTENBERGER, EMERGENCY MANAGER, RANSOM COUNTY

Ms. ROTENBERGER. Thank you. First of all, Senator Conrad and Governor Hoeven, thank you for coming to Ransom County to listen to our concerns. With the continuous wet-weather conditions that have impacted our county and the Devils Lake Basin, and the word "flooding" being spoken daily, the people are still recovering from the record flooding of 2009 and 2010, and they're calling my office asking for answers for their concerns over the abundance of water in Devils Lake.

And, as I said before, I appreciate you coming to Ransom County so that I can express some of their concerns.

I've been the emergency manager for 10 years. I've worked with disaster planning and recovery. One of our—one of the requirements, as an emergency manager, is to work on the multi-hazard mitigation plan. And, with that, you cover all of the natural and manmade hazards that can happen in the county. You—we have to

document where each hazard—you know, what each hazard is, where it can occur, and how you're going to mitigate the damages for improving the response. It's kind of like trying to look into a crystal ball and figure out what could happen.

As I listen to the news headlines continuing to address the rising waters in Devils Lake and into the Sheyenne River, I—it's time to ask for help and guidance in planning for the possibility of an outflow. I mean, I really hope that all the control things can work that we're trying for. But, just in case, it's my job, as an emergency manager, is to be—is to plan and prepare. And, I guess, throughout my documentation, and I won't read all of it, that is my main goal. Is, just, I need—we need more information.

If an outbreak would occur it would affect, not just Ransom County, the 111 miles, within Ransom County, which would split our county in half, Barnes County, you know, and all along the river. Resources and assets, to come to a response for that, need to be coordinated. It goes far beyond what we, locally, have and we need to do our planning together with State and Federal agencies to know how we could react.

So, you know, if it—we need to know so many different things, that—you know, we talked about the cfs; how high would dikes have to be. We talked a little bit about duration; just more information—we need more technical guidance and we need some funding to help with planning.

The CHAIRMAN. OK. You make very good points.

I think, you know, we have what's been called the "Tiger Report," that the Corps of Engineers Produced, in an earlier evaluation. Very controversial, I must say, that report. But, it paints a scenario—if there was an uncontrolled release, out of the east end, and if there were erosion down to 1450—that is, if you had a blowout occur there—it's really very serious. We've had a description here of what would happen at Valley City. And we would be 5 feet above, not flood stage, but 5 feet above the flood that occurred in 2009. That's a worst case scenario. And it would continue for a prolonged period. That's the—you know, not only is it a very high wall of water coming at us, but it goes on for an extended period of time. That, obviously, would affect this community dramatically, as well.

Now, what's the probability of something like that occurring? I think, all the scientific assessment that has been made and provided to us, is that that has a very low level of probability. Right now, the lake is at roughly 1452, just under that, isn't it Joe?

Mr. BELFORD. Yeah.

The CHAIRMAN. 1451.9? Something like that?

Mr. BELFORD. 51.7——

The CHAIRMAN. 51.779, I think I was told last. So, you can see, at that level, you know, you wouldn't have much coming our way. It's when you get up to 1458——

Ms. ROTENBERGER. Fifty-eight.

The CHAIRMAN [continuing]. Where you have the natural outflow that you'd have the pressure build in a way that the danger of an uncontrolled release rises. Nobody knows for certain. They say the State Water Commission and Governor may want to comment on this, after we go to our next witness, that they are doing sampling.

They have tests being done constantly to monitor that, to make sure that we're not in danger of an immediate blowout.

Ms. ROTENBERGER. And, I guess, visiting with General Sprynczynatyk, it was after the flood in 2009, we're down in the park in Lisbon, and he talked about, in past history, that Devils Lake has overflowed six times. And I'm hoping it's far out of our—you know, my—our lifetime, but it can happen. It's just——

The CHAIRMAN. Yeah.

Ms. ROTENBERGER [continuing]. It is good to——

The CHAIRMAN. No. I——

Ms. ROTENBERGER [continuing]. Be prepared.

The CHAIRMAN [continuing]. Tell you, well, you know, we know, in 4,000 years of history, the scientists tell us at least twice, maybe more, but at least twice, it's gone over. So, I mean, I tell you, we've dealt with Federal officials all these years, who want to believe it's not going to happen. That this lake is going to quit rising. Well, you know, it hasn't happened. It does keep rising. And so, you are absolutely right, and, I think, all the rest of us are right, to try to come up with options to pursue to reduce the risk—none of us can eliminate the risk, we're not God. We don't—we're—you know, Mother Nature, far more powerful than anything we've got to put on this. So, I think, that, you know, a certain amount humility is required here too. But, we can do things to reduce the risk—reduce the risk—and that's what this effort is focused on.

The CHAIRMAN. Morrie? Mr. Saxerud, former Mayor, welcome.

STATEMENT OF HON. MORRIE SAXERUD, FORMER MAYOR, CITY OF LISBON

Mr. SAXERUD. Thank you, Senator Conrad and Governor Hoeven, for coming to Lisbon.

My personal opinion is, that the State and the Federal response should be one of two things: either we should start immediately to discharge enough water from Devils Lake Basin to ensure there will not be an uncontrolled spill, or start now, to protect the downstream cities with adequate levies to sustain the predicted uncontrolled flow of a period of time—for the period of time it will be spilling, which, from what I read in the newspapers, could be up to 90 days. And I don't know of too many earthen dikes that'll take that without a contractor sitting right on top of them, taking care of the breaches in them.

Attached is an email and charts showing the flow information and the flow charts from Mark Coring, PE, MBP emergency manager with the Army Corps of Engineers. He sent me this information in response to my questioning—asking, What would be needed for a levee that would handle 12,000 cfs? The lines on this—the black line on the chart shows the proposed dike for the 2010 flood event. It was at 27.5 feet and provides 2 feet of freeboard, at a 9,000 cfs flow. There were some levees put in at this height, in 2010, but the height of the dikes were stepped down as the forecast changed and went down.

The 12,000 cfs event, a figure picked out of the newspaper, that would require a dike of 30.5 feet, where the levee system starts and the rivers enters the city of Lisbon, at Oak Ridge Drive. Oak Ridge Drive is used as a reference line only, to align with the levee that

is below the hill in the park. It does not mean we would need a levee at the top of the hill on Oak Ridge Drive.

The step-down reflects the drop in elevation, as the river flows through the city, and also reflects a lower dike requirement, as the city clears the bridges and moves faster as it exits the city.

My understanding is, there is talk of removing the levees again. We know there is concern, by FEMA, that too much confidence is put into the nonpermanent dikes that are not build to spec, and they could fail. This is a legitimate concern. But, until permanent levees are built, a nonpermanent levee system, built under controlled conditions, not on frost, snow, or water lapping at the top, would have a better—would be better than a hastily built dike in response to a spill out of Devils Lake.

There are people that are thinking of selling their homes and leaving the city to protect their investment. The city needs to quell these—those fears by putting an emergency plan in place that addresses the spill. The cities along the Sheyenne River need an affirmative action from the State of North Dakota and the Federal Government to remove the "uncontrolled" from the uncontrolled spill. I believe a control structure on Stump Lake is the most logical. And the sooner it is put in place, the lower the discharge requirement. If the level of Devils Lake cannot be lowered to prevent an uncontrolled spill, then permanent levees need to be put in place.

[The prepared statement of Mr. Saxerud follows:]

DEVILS LAKE FLOODING DISASTER

August 17, 2010

Testimony of Morrie Saxerud

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My understanding is that there is talk of removing the levees again. We know there is a concern by FEMA that to much confidence is put into non permanent dikes that are not be built to spec and could fail. This is a legitimate concern but until permanent levees are built a non permanent levee system built under controlled conditions and not on frost, snow and water lapping at the top would be better then a hastily built dike in response to a spill out of Devils Lake.

There are people that are thinking of selling there homes and leaving the city to protect their investment. The city needs to quell those fears by putting an emergency plan in place that addresses the spill. The cities along the Sheyenne River need an affirmative action from the State of North Dakota and the Federal Government to remove the emergency from an emergency spill. I believe a control structure out of Stump Lake is the most logical and the sooner it is put in place the lower the discharge requirement. If the level of Devils Lake cannot be lowered by one method or another, then permanent levees need to be put in place.

Thank you,

The CHAIRMAN. OK. Very good testimony and very clear, we appreciate that.

Governor, you've been very patient. I'd like to turn to you, for any additional observations that you'd have, at this point.

Governor Hoeven: Thanks, Senator, a couple of comments.

One, I want to echo, what Senator Conrad said, and that is, you know, we're looking at all options. But just, again, some of the realities. For example, taking the water out to the oilfields or even moving water from Devils Lake to the Missouri River, in addition to the Dakota Water Resources Act, which you mentioned.

Lake elevation, on Devils Lake, is about 1452 feet, roughly—a little bit under. We're working to get that down some more. Lake elevation at Sakakawea, now, is about 1840. So, if you do the math, that's 400 feet higher. So, No. 1, every single gallon you'd have to pump 400 feet higher, uphill. OK? 400 feet. In addition, you've got to move it several hundred miles, or 150 miles. OK? Every single gallon. So, you can imagine the cost. And, if you're going to get it out to the oilfields, now you've got to move it another hundred miles. OK? So, understand, when you talk about these different options, the incredible costs that you get into. And, sometimes somebody will say, "Well, yeah, but, you know, I know of a project, in another place, where they're doing something." In some cases that's true, and in some cases they have millions of people that are sharing the cost of that project.

For example, if we were to try to desalinate the water on the east end, and then use a gravity flow, which Todd talked about a little bit—we've looked at that extensively—but you're talking about building a water treatment plant, probably bigger than is used for a city the size of Tampa, Florida or San Diego. And then, trying to desalinate the water, so you're talking, you know, hundreds of millions—or, as Senator Conrad said, you know, potentially billions of dollars, in essence, then, to put water back in the river that has almost the same sulfate content as the water you took out. For example, right now, the water out of the west side of Devils Lake is 5-—it's coming down—it's down to 550 parts per million, in sulfates. 550 parts per million, OK? And that's down from what it was when we were pumping earlier.

So, when we talk about the difference between 450 parts per million, or maybe 750 parts per million, remember you're talking the difference between 450 or 750 parts per million. So, go start stacking—you know, maybe stack a few pennies here, and then stack millions over here, and you realize you're talking relatively small differences, but phenomenally huge costs to try to completely desalinate it, if you're talking about the volumes of water we're talking about. So, at moving 250 cubic feet a second—and if you don't think that's a lot of water, go take a look. It's a lot of water. This is a big, big lake. But, that's why we're bringing funds to Valley City; it looks like we'll probably end up bringing funds to Fargo and to West Fargo, to treat the water there, to take the sulfates down to some very low level.

Now, the EPA doesn't have a standard that you're required to treat it, but for taste and aesthetics we—you know, we're coming to the communities and saying, we'll work with you to do that. It's important we keep that moving fast, because we need to move

water out, OK? But those are just some of the economic cost, and practical, realities to these different options.

And so, again, that's just to piggyback on something the senator went through very well. But, people do have questions about these things, and we want to make sure that we're communicating on these things. The Corps of Engineers is going through all of these options. I mean, they've—I think, they've got more than 20 options that they're going to look at. But, we've been working on this for while, and we have a lot of engineers that have been working on this for a long time. So, those are the practical realities that we absolutely have to deal with.

As far as the Tolna Coulee, we do have monitoring wells there. And, if you have questions—to monitor that, to make sure we're watching it, so that we don't have a uncontrolled flow, and that we're——

The CHAIRMAN. So we're not surprised.

Governor Hoeven: Yeah. So, we have a early warning system.

The CHAIRMAN. Yeah.

Governor Hoeven: So we're not surprised. And so, they have monitoring wells. Todd can talk about that some more, if you want. Doesn't mean we shouldn't plan, of course. We need to continue our planning efforts.

And, Teresa, you're great at that. You know, we've been through a lot of flooding, and your work is wonderful and much appreciated.

So, that's absolutely appropriate, but we do have monitoring wells up there.

But, the other thing is, what we're looking for, from the task force, in addition to going through these options, is we need to move more water out. And so, they're going through the options on the west side and the east side. We need to do it in a way where we manage the sulfate levels, as we've gone through here at great length, and we will do. We also need their help on a control structure on the east side, so that you would protect an uncontrolled flow, OK?

And we want FEMA's help, as we've talked about, with how we protect downstream on the flooding, as Morrie's talking about. Again, you know, take out homes under the hazard mitigation program, and then to not being able to put in—a dike in there makes no sense in communities like Lisbon. We need help to get these approvals, whether it's the Corps, the EPA, or the FEMA, this task force needs to give us some of these authorities so we can do these things that make sense. And that's what we're looking for, on September 7, and, you know, that's why your input is extremely important, but that's why it's so important to communicate with everybody upstream, in Devils Lake, and downstream, that this is a shared task. That means we all have to give a little to make it work, but that we can make it work. And that's, of course, what we're shooting for.

So, those were the main comments I had. And, again, I want to echo, Senator, I know you're appreciation, not only to the panelists, but to everyone else that's come, and for all the hard work and the consideration that you're putting into this effort as well.

The CHAIRMAN. I—Frank, thank you, Governor, again, for those comments.

And, I think for the purposes of the record, it would be important that we ask Todd to come back to the stand. Maybe he could just use the microphone there at the Governor. If you'd just draw a chair up, Todd. If you could tell us, for the record, about the monitoring wells that are in place, so that we get an early warning system that would let us know if there is water filtration through the Tolna Coulee.

Mr. COLE. Can I ask one question Mr. Senator?

The CHAIRMAN. Let me—Ross, if I can, let me go to him, for the purpose of the record, then we will——

Mr. SANDO. OK. For the record, we do have observation wells in Tolna Coulee, right where it would flow out from Stump Lake. And, right now, the wells—we're—what we're looking for is to see if there's a gradient forming, so to see if water starts migrating through the Tolna Coulee. And the big concern is, like you said, if we have blowout at a lower elevation, it's not necessarily that water's going to start flowing when it gets up to 1458, it could start migrating underground. So we have wells—a whole network of observation wells in place—to watch the water level underground to see if there is a gradient forming. And to see if there is, actually, Devils—you know, Stump Lake water moving through Tolna Coulee.

The CHAIRMAN. And isn't it the case that, at this moment, that we see no water migration?

Mr. SANDO. At this—at the—currently, there is no migration of water from Stump Lake into Tolna Coulee. It's just all ground water from the area that's in the observation wells.

The CHAIRMAN. Yeah. OK.

Mayor?

Mr. COLE. My question is, you know, we talked about this September 7th deadline for some answers, is that something we can count on? I mean, one of these days FEMA's going to come to us and——

The CHAIRMAN. Yeah.

Mr. COLE [continuing]. They're going to be ready to buy out these homes.

The CHAIRMAN. Here is the best way I can put it to you. The actual deadline is September 9th. That is 60 days after the commitment was made. We—the community asked for decisions to be made within a timeframe. I think, they'd asked for 30 days. They said they couldn't do it within 30. They actually asked 90. We negotiated. They agreed to produce the options in 60 days. That deadline is September 9th. They have moved that up a bit and said that their intention is they're on track to produce a report by September 7th.

Let me indicate that we have been working on a meeting, in Washington, with the working group, by the State officials and the local officials that have responsibilities for these areas. We have been trying to get everybody's schedule together. It's a bit of a challenge. And, the best date we could come up with, to get everybody's schedule together, was September 3rd. They have told us, "Look, if the meeting is September 3rd, that might push the September 7th report, for the September 9th deadline, several weeks later." So, we have had to consult everybody and say, "Look, is—would we

rather have a conference call, as a way of giving, you know, additional input; or do we think it's so important to have a face-to-face meeting, that we would potentially delay the report for several weeks?" The overwhelming feedback we've gotten is people think it is far more important to have face-to-face meeting, on these very difficult issues, even if it means a several-week delay.

So, that's where we are. They have said to us, all along, they are committed to the September 9th deadline, but, look, we've made requests. We've made requests that they come out here, which they have answered. As you know, they've had teams out here, in the communities, upstream and downstream. And, we have made requests that we have an additional chance for the Devils Lake leadership, for the State leadership, for this community's leadership, to come to Washington and get an initial review of what their options are, and what their preferred option might be, before they finalize it. So, I just want to be very, very clear that that may mean this date slips a little bit. But, certainly in September.

I think it is—let me just say, by way of conclusion, my own view of all this, after all of these hearings, after all these meetings, 17 years of paying attention to these issues, we are all in this together. This is not Devils Lake Basin versus downstream. The risk to all of us—all of us—is an unacceptable risk. None of us could live with a prospect of having 10- to 12,000 cfs for 30 days, going through these communities. None of us can afford the risk of a water quality, out of the east end, undiluted, five times worse than the water quality of the west end.

I mean, I know that they don't say there's a specific level of health risk that's been established for sulfates, but I tell you, as I've examined what happens—hey, when it gets to a certain level, and peoples systems aren't used to it, they get diarrhea, that's what happens. And, you know, this is not something that we can take lightly. You've got people getting dehydrated; you got people getting sick at these high levels of concentration. So, this is serious business.

And, can you imagine, I mean, Valley City cannot handle a flood stage 5 feet above 2009 for an extended period of time, nor can Fort Ransom, nor can Lisbon. We'd have to be—we'd be talking about potential evacuation of these towns, and maybe for an extended period of time. So, you know, we don't take this lightly. This is serious business. And, all of you take it seriously because you've been on the front-end of the fight. And you know how painful it has been to win these flood fights. Can you imagine what would happen if we would lose? I've been through that before, in Grand Forks, North Dakota, in 1997, where we lost a flood fight. And it was a disaster. People's lives were sometimes altered irrevocably.

So, we've got a heavy responsibility here—a very heavy responsibility. And we've got an obligation to look at all options and to use our level best judgment on what has the best prospect of working for everybody, downstream, upstream, and in between. And, that's why we're doing these hearings, that's why we're doing these listening sessions, that's why we have tasked the Corps with examining all options. And we told them, "We don't want just to revisit, we don't want you to go out and dust off the old studies. That's not good enough. We need you to think outside the box. To look at

every kind of option." And that's what's going to presented to us, now, in September.

With that, I want to give a chance for people, who are here, to—because this is a hearing, we have a format that is approved and accepted, which is, we can take statements. If somebody has a written statement, we're happy to include that in the record. If somebody would just like to stand and be recognized, and give their point of view, for the record, we're happy to do that.

Yes, sir. And if you'd——

Voice: Thank you, Senator. I'm——

The CHAIRMAN. If you'd just stand and give your name——

Voice: OK. So——

The CHAIRMAN [continuing]. And the community that you're from.

Voice:—I'm a commissioner here in Ransom County.

The CHAIRMAN. OK.

Voice: I appreciate you guys being here—I really appreciate you guys being here, and we have gone through Valley City and Lisbon and Fort Ransom.

The CHAIRMAN. You can——

Voice: And I would like—I think, maybe something that should be studied as well—and you Governor too—what the economic impact a breakout would have on all the bridges up and down the Sheyenne Valley. Another 5 feet and I don't think we'd have many bridges left in the Sheyenne Valley. Not to mention the rural—farms and ranches, up and down that Sheyenne Valley. Now, if that can be considered—I hope it is considered, as well, when we're trying to make a decision, "Is it worth it to do this or that"——

The CHAIRMAN. Yeah.

Voice:—"or the other thing."

The CHAIRMAN. It absolutely is. In the——

Voice: Thank you.

The CHAIRMAN. You're very good to raise the point, because it's a very important point. It's one that the Corps has assured us is part of the calculation. We have asked them to examine all impacts—all economic impacts of the various scenarios that we could confront. And so, when we talk about "all impacts," we're talking to landowners; we're talking farmers, ranchers, communities, counties, State; we're talking private sector; we're talking a comprehensive look. Now, this is not easy to do. You know, I must say, it's easy to say. It's very hard to do and do it with credibility. But, that's the task they've been given.

Yes, sir.

If you'd stand—anybody, that wants to give additional testimony, if you'd stand, give your name and your location, where you're from.

Mr. SCHULTZ. Yes, my name is Virgil Schultz, and I live along the Sheyenne River.

I think you do have one option that—you talk about how critical this situation is, and that would be to pull the plug on the Baldhill Dam and use that a retention area. You know, it would——

The CHAIRMAN. OK.

Mr. SCHULTZ [continuing]. It would basically save us—I mean, we lose the fish, but it is an option that you have. Lowering the——

The CHAIRMAN. You know——

Mr. SCHULTZ [continuing]. Instead of having it 80 percent recreation and 20 percent flood control——

The CHAIRMAN. Yeah.

Mr. SCHULTZ [continuing]. Put it 100 percent until the crisis passes.

The CHAIRMAN. Flood control.

Mr. SCHULTZ. Thank you.

The CHAIRMAN. You know, it's a thought that—former Governor called me one night at home. And he said, "You know, Kent, during my administration we were dealing with a number of flood threats, and we started examining natural retention areas that could be enhanced to deal with water." And to, you know? I mean, we've examined every option. So, we went to the Corps, we asked him to talk to the Corps about areas that they had examined, that would be natural areas for potential retention, that could be enhanced to help reduce what had to be done, in terms of releases—what had to be done. And they have promised us that that's part of their assessment.

Governor Hoeven: We added 4 feet—is it 4 feet to Baldhill Dam?

Voice: Five.

Voice: Five foot.

Governor Hoeven: Five foot.

Voice: Five.

Governor Hoeven: You can imagine what the 2009 flood would have been like without that extra 5 foot on the dam. So, we have already added to it.

Mr. SCHULTZ. Why not use it for a retention—drain it and use it for a retention——

Voice: 70,000 acre-feet—I mean, you'd have to expand it significantly. I don't know if you could expand it enough. Todd, do you know? Could you expand it enough, really, to—you're talking about so much water, you couldn't hold it—enough water, but——

Mr. SANDO. 70,000 acre-feet, that's how much is in Ashtabula, and that's only 5 inches off of Devils Lake.

Voice: Yeah. I mean, it's a matter of scale, I think, is the challenge. But, again, something that's being looked at, but matter of scale, I think, is the issue.

The CHAIRMAN. And not only there, but other retention areas as well. Because, you know, you do the math on these things, it seems like such an amazing amount of water, doesn't it? 70,000 acre-feet. But, then when you translate it into what's happening in Devils Lake, that is less than one-eighth of the inflow—one-eighth of the inflow in 2009, 590,000 acre-feet inflow.

Yes, sir.

Mr. JONES. Senator——

The CHAIRMAN. If you'd give your name and——

Mr. JONES. Wayne Jones, Ransom County Commissioner.

The CHAIRMAN. Yes, sir.

Mr. JONES. Going way outside the box, we pump water up from wells, we pump it down, after we take the heat out of it. What

about—what do we have underground, for underground rivers, et cetera for putting some of this water down? Has that been——

The CHAIRMAN. Yeah.

Mr. JONES [continuing]. Thought of?

The CHAIRMAN. Aquifers. Recharging aquifers. It's an issue that is being looked at. As you know, in West Fargo, they draw their water from aquifers, those aquifers are being depleted. There are lots of complicated issues. I'm not a water engineer, but one thing I've learned a lot about, as I listen to a lot of water engineers, and when you start recharging aquifers, that's got a series of issues attached to it as well. But, that is also being looked at.

Yes, sir.

Mr. CROWLEY. John Crowley, Barnes County commissioner. This morning, at our meeting, we passed a resolution to request that the Army Corps of Engineers, State Water Commission immediately start to armor the Tolna Coulee. Now, you have mentioned, everybody talks about blowout. If it's armored, there is no blowout, period. So, that is the first thing that needs to be done. And, I guess, I was the one that suggested pumping water all winter, and I'll still stand by that, but I'm not talking about a pumping outlet, I'm talking about a gated outlet, with a channel that's cut to the Sheyenne River, that would be capable of handling 1,000 cfs, so you could really lower the lake.

Now, it was discussed that the water quality is poorer in the wintertime. But, if you're going to blend it from the west end and East Bay, you've got the same number. So, you might as well pump it during the winter and get rid of it.

The CHAIRMAN. You know, I think, John, that, frankly, this is something that is being examined. Because, if we could operate an outlet more than 7 months a year, that would help. We do get into this question of water quality, that the State engineer mentioned. But—we got water quality issues no matter what we do. But, obviously, they're much less severe out of the west side than the east.

Yes, sir.

Mr. BEDDING. I'm Dick Bedding. I live south of Valley City, and I represent People to Save the Sheyenne.

You've mentioned it, but it gets short shrift, and that would be retention. So, Upper Basin retention of water, restoration of Upper Basin drained wetlands is where we'd like to start. I agree with John about, armor the Coulee first, then deal with how to keep water out of Devils Lake, getting there in the first place.

Several of our—I've flown up above the basin several times. Several of our members flew, July 4th. There goes my notes. We have pictures that we took, like it is, we have 99 pictures showing that the—a lot of the land in the Upper Basin is free of wetlands, free of water. You can see the drains going down into the Coulees. And so, there are several hundred thousand acres there. I agree it's a terribly difficult job to get farmers, now, who are farming that land, to agree to revert to wetlands, but if we could do that, I really think that would be a good way to go.

The CHAIRMAN. If you'd like to present those, we'd be happy to make them part of the record, Richard.

Mr. BEDDING. Sure will.

The CHAIRMAN. I think it'd be good for the record, if we'd have them. Yeah.

Mr. BEDDING. OK.

The CHAIRMAN. Let me just say, on this issue, you know, I've flown over that area repeatedly. I've seen—you know, I think you've—you probably saw, yourself, as you flew over, I mean, there is water everywhere. Are there places that are drains, in effect? Yes, there are. Could that help, if people would agree to reverse their drains? Yes, it would. Here's the—we face a legal problem, that we cannot compel people to store water on their land. You know, our North Dakota supreme court has ruled on that issue. And so, there is nothing we can do to compel people to store.

We did spend a fair amount of money, in the first phases of this effort, to use Federal resources to build additional storage, in the Upper Basin. I can tell you, those places not only have stored tens of thousands acres-feet of water, but all of the areas around them have filled up with water. But, it is true that there are drains that are in place, and there are places that are dry, because of those drains. And, if we could get people to store water on those it would help.

Wouldn't solve the problem, because of the massive amount of inflows into the lake. It would help. The problem is, there's nothing we can do to compel people to store water on their land. We'd have to have some incentive system to encourage them to do so. We've investigated that as well. And, we have asked—as part of this report—we have asked the Corps to come back and evaluate, What is the potential for Upper Basin storage? And, what would it take to incentivize people to store water? Because, it would have to be voluntary, according to North Dakota law.

Other—I know we're very close to the time that we have committed to leaving this facility, but if there are others who want to be heard, we want to give them a chance.

[No response.]

The CHAIRMAN. If not, let me, again, thank the witnesses here today, Todd Sando, the State engineer; Lisbon Mayor Ross Cole; Fort Ransom Mayor Jim Thernes; Neil Olerud, chairman of the commission here, Ransom County Commission; Teresa Rotenberger, the emergency manager; and former Lisbon Mayor Morrie Saxerud.

And, of course, to the Governor, thank you so much for, again, being part of these listening and hearing sessions as—we've conducted around the State.

Governor Hoeven: Thank you, Senator.

The CHAIRMAN. Thank you all.

Hearing stands adjourned.

[Whereupon, at 2:53 p.m., the hearing was adjourned.]

FIELD HEARING TRANSPORTATION INFRASTRUCTURE'S ROLE IN ECONOMIC GROWTH: ND–13

Wednesday, August 18, 2010

U.S. SENATE
COMMITTEE ON THE BUDGET
Wahpeton, North Dakota

The Committee met, pursuant to notice, at 9:00 a.m., at the Red River Valley Room, Student Center, North Dakota State College of Science, Wahpeton, North Dakota, Hon. Kent Conrad, Chairman of the Committee, presiding.

Present: Senator Conrad [presiding].

OPENING STATEMENT OF SENATOR CONRAD

The CHAIRMAN. The hearing will come to order.

I want to welcome everyone to this hearing of the Senate Budget Committee.

This is an official hearing of the committee, so we

will be following the rules of the United States Senate. And that means an official record will be kept, and this will be shared with our colleagues.

I want to specially recognize State Senator Arden Anderson, who is with us.

Arden, will you stand and be recognized? We appreciate that you are here.

Mr. ARDEN. Senator.

The CHAIRMAN. County Commissioner Perry Miller, who is here.

Perry, if you'd stand and be recognized. Thanks for being here.

The title of this hearing is "Transportation Infrastructure's Role in Economic Growth: North Dakota 13." We'll be focusing on what investments may be needed to upgrade and improve Highway 13 to promote the economy and agriculture in North Dakota. I also want to focus on how we can make Highway 13 even more safe.

I want to begin by welcoming our especially distinguished panel of witnesses today: North Dakota Department of Transportation director, Francis Ziegler.

Welcome, Francis. It's excellent that you are here, and we appreciate, so much, your being with us in this series of hearings, in preparation for the new transportation bill.

Wahpeton mayor, Jim Sturdevant.

Good to have you, Jim. Delighted that you're here.

Dan Antrium, the vice president for North American Operations at Bobcat. And I was with Jim yesterday in Gwinner. He gave me a tour of the plant, and I asked him if they had repaired the damage I had done.

[Laughter.]

The CHAIRMAN. He said it's all cleaned up.

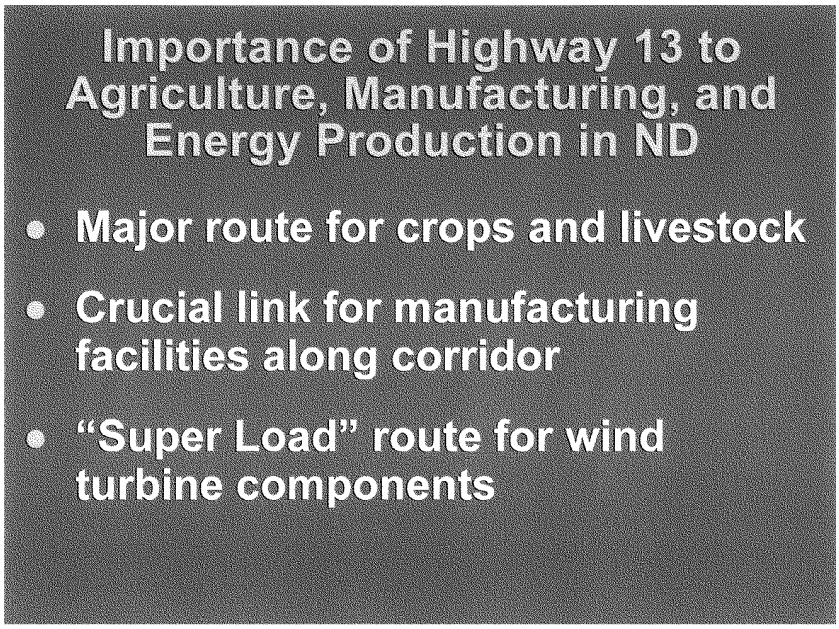
And Pat Pithey, merchant manager at Cargill.

I hope I've pronounced that correctly, Pat.

I look forward to hearing from all of you, and I will share your concerns and ideas with our colleagues back in Washington.

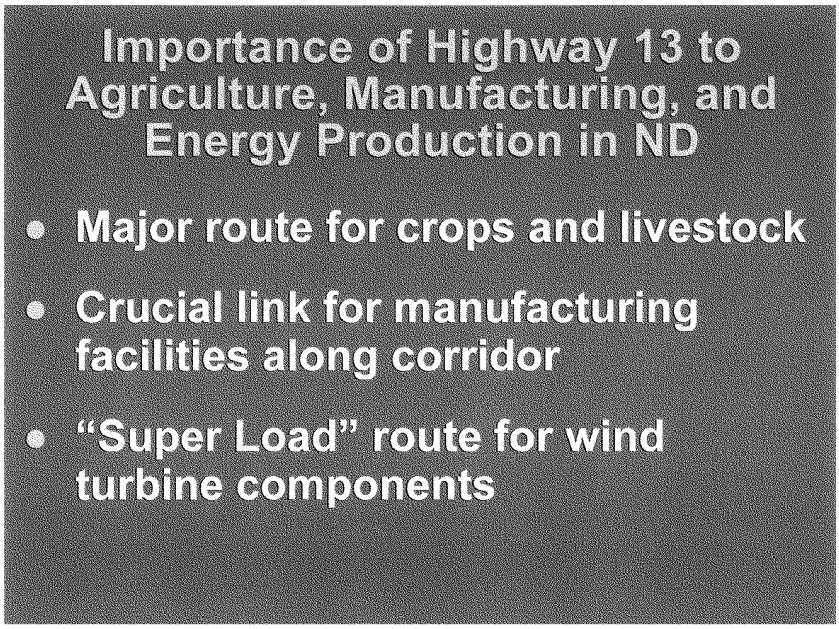
Let me just, first, explain why we're doing this series of hearings. This is a Budget Committee hearing because the Budget Committee has the first obligation to deal with the new transportation bill, in terms of the funding that will be made available to write that bill. But, beyond that, the committee of jurisdiction has told us that, unless hearings have been held, there will not be project funding over and above the basic formula funding made available to any project across the country. If that standard is adhered to, that is very important for us to know, because we then need to make sure that we have had hearings on any projects that may require additional funding, over and above formula funding.

As you all know, there is a basic formula that distributes money to the States; then, on top of that, there is special funding that is approved for individual projects. And we have been very successful at getting that kind of special funding in the past, partly because I have been a conferee on the transportation bills. We hope to be successful—again, because we have special needs. With the energy development in North Dakota and with the agriculture development in North Dakota, we have special needs that go beyond the simple formula funding.



Highway 13 provides a critical east-west trucking route for agriculture, manufacturing, and energy industries in this area. These industries are vital to economic growth and job creation in North Dakota. I certainly saw it yesterday at the Bobcat plant. We are so proud of what they are doing there. They're headed for more than 1,000 employees there, turning out a world-class product. And I told Dan and Troy, and others in the leadership there yesterday, that one of that's a point of pride with me as I go and travel around the world is, everywhere I go, there's a Bobcat. You know? Makes you feel good and proud that that kind of product is being produced right here in North Dakota.

It's—the improvements to Highway 13 will pay dividends, I believe, for North Dakota's economy. North Dakota 13 is a major route for crops and livestock. It's a crucial link for manufacturing facilities along the corridor. And it is a superload route, allowing oversized truckloads for wind turbine components, which is, we know, a growing emphasis here in North Dakota.



Highway 13 is particularly important to agriculture in the State. In the eight counties on the Highway 8—13 corridor, there was $1.1 billion in agriculture production in 2007, the most recent year for which we have full records. Many of North Dakota's key agricultural commodities are produced in this area, including 41 percent of North Dakota's corn crop, with 117 million bushels produced just last year; 31 percent of North Dakota's soybean crop, with 32 and a half million bushels produced last year; 19 percent of North Dakota—North Dakota's cattle are on this corridor, with 339,000 head on ranches last year; 11 percent of North Dakota's sugar beet crop, with 554,000 tons produced last year. And, by the way, this morning we were up a little early and went by the Minn–Dak plant and saw the beet campaign getting underway, truck after truck after truck after truck, hauling beets to that facility. And we know the implications that has for the road network in the area. Ten percent of North Dakota's wheat crop, with 30 million bushels produced last year. So, Highway 13 is part of the road network that gets these products to market.

Now is an important time to focus on our transportation infrastructure needs, because the administration is in the process of developing its transportation reauthorization bill. It's worth remembering that North Dakota benefited greatly from the last highway bill, which was completed in 2005. As a conferee on that bill—and conferees are those members who are selected to work out the differences between the Senate bill and the House bill—and as chairman of the Budget Committee and as a senior member of the Finance Committee, I was asked to serve on that Conference Committee in the previous Congress, and anticipate a similar responsibility this next year.

Specifically, we were able to secure $1.5 billion for North Dakota, a 31-percent increase over the previous bill. Annually, that average—about $234 million for highways, bridges, and the rest, with additional funding provided for transit programs.

We did very well by securing 2 dollars, roughly, for every dollar in tax money collected in our State, ranking us among the top four States in the Nation for return on tax dollars sent to Washington. In other words, we're getting almost 2 dollars back for every dollar we send in.

I also fought hard for direct investments for specific priorities identified by the North Dakota Department of Transportation. And that's the way we operate in this State; we depend on the excellent work that Director Ziegler and his team does to establish the priorities in our State. We follow that priority list in priority order. When we get additional funding, we apply that; we don't just go around and base it on, you know, what road I—Kent Conrad was on, and whether he's hit a hot pothole. We base it on an analysis that has been done by the North Dakota Department of Transportation on, What are the priority needs of the State? And again, that's why hearings like this are important.

Here are some of the priorities I will focus on as we consider the next highway bill:

The next legislation must identify sufficient funding so that the infrastructure investments are secure and robust over the longer term, and are paid for. I want to emphasize that it is imperative that the money not be borrowed. We already have too much debt. So, things are going to have to be paid for.

States and communities must be able to rely on the money that is committed. Francis has made this point to me over and over during this last year.

Next, any new highway bill must maintain recognition that rural transportation needs are vital to the Nation.

And finally, I'll fight for continued for recognition of the importance of a nationally connected highway system. What does that mean? Well, you can't have a national highway system without every part of the system being in good shape. And, you know, sometimes we get criticized for the level of spending in North Dakota on highways, in comparison to what other States receive. The hard reality is, we are a rural State, we're a very large State; we're sparsely populated. And if we don't get disproportionate funding, there won't be a national network to serve the transportation needs of America. That is an economic security matter, it is a military security matter, and it is critically important that we have a national network that can provide for the transportation needs of the country.

I am particularly interested in hearing from our witnesses on the immediate investments that are needed in Highway 13, and what future investments are needed to support the growth in this area.

With that, we will turn to our witnesses. And I want to start with Director Ziegler.

Again I say to you, Francis, how much we appreciate your taking your time, and the time of your team, to come and testify at this series of hearings, and to also say what strong credibility you enjoy in Washington and around the country with your colleagues and with national transportation officials. And I can tell you, when we have a hearing transcript and Francis Ziegler has testified, that is

considered to have credibility with national transportation officials in Washington. So, I especially value your participation.

Mr. ZIEGLER. Thank you.

The CHAIRMAN. Welcome.

STATEMENT OF FRANCIS ZIEGLER, P.E., DIRECTOR, NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

Mr. ZIEGLER. Well, good morning, Mr. Chairman. Thank you. I'm Francis Ziegler, director of North Dakota Department of Transportation, and I want to thank you, Senator, for the opportunity to appear before the committee today, and thanks for your interest and support for improving transportation in North Dakota.

Transportation, as we all know, is vitally important to supporting our country's economic, competitive, and our State's economic growth. It's also critical to moving freight, connecting manufacturers to retailers, farms to markets, shippers to railroads, airports, and seaports, and motorists to jobs, schools, and stores.

This year, the Department of Transportation has undertaken the largest construction program in the history of the Department. Approximately $450 million in projects on nearly 2,000 miles of roadway are being done, statewide. This includes projects under the regular Federal aid program, under the stimulus, or ARRA, the American Recovery and Reinvestment Act, under the emergency relief—much of that is in the Devils Lake area—and then State funding.

Today, I'd like to address the State Highway 13 corridor—as you've indicated, Mr. Chairman—challenges facing North Dakota's transportation system, and the need for a long-term Federal transportation bill that serves North Dakota and the Nation.

North Dakota State Highway 13 corridor, I'll start with that. State Highway 13 is a major east-west corridor serving the southwestern part of North Dakota. It links ag producers with value-added processing facilities, such as ProGold, managed by Cargo, and—that's near Wahpeton—and manufacturing facilities, such as Bobcat and Gwinner. The Department recognizes the importance of the North Dakota 13 corridor, all 183 miles of it, between 1804 and the Minnesota border. From 1999 to 2009, approximately $43.7 million was invested in preserving and improving 163 miles of this corridor. In 2009, the average daily traffic on Highway 13 was just over 1100 vehicles a day. This ranges from a low of 230 vehicles near Highway 1804 to just over 12,700 vehicles at the Minnesota border. The average truck traffic is about 170 trucks per day, with a low of 30 at the west end of the corridor, to about 780 trucks east of the corridor.

The combined average annual daily traffic volume in the east-westbound between here and Wahpeton and I–29, which is the largest component of our traffic volume, and the Minnesota border, is just over 6100 vehicles a day, and that ranges from a low of 3655, just east of I–29, to a high, like I've said before, of over 12,700 near the Minnesota border. The average truck traffic is about 650, and a low of 460 to a high of 780 trucks per day on this route between here and I–29.

There are about $41 million worth of projects scheduled on Highway 13 for the years 2010 to 2014. This summer, as you can see,

the Dakota Avenue project is being completed in Wahpeton. We're very happy to have the mayor here today, and we've talked a little bit about the project this morning. He feels it's going well, and we're happy with that.

We—I also have with me today chief engineer Grant Levi and Bob Walton, our district engineer, who oversee that—get that ball rolling on those projects, to keep 'em going. So—

The CHAIRMAN. Especially want to recognize Grant, who's with us, and has been with us in each one of these hearings. Appreciate very much his professional work.

Voice: Thank you. Thank you.

Mr. ZIEGLER. We have the chart there, Senator, for you. It's just in your foldout, and it—like I said, the projects go all the way—from 1804 all the way to the Minnesota border, and some of it is minor rehab with seal coats—that's to preserve the pavement—to think-lift overlays, to major reconstruction. We have an area that we have to do a major reconstruction on between Wishek and Lehr, where the water is eating away on the road. And actually that's an area that has water over the road now, so we're designing that as we speak, and that needs to be built next year, because the wind and the wave action is taking that road out. So, we're working on it.

The CHAIRMAN. So, just to be clear on that, that's a major rehab.

Mr. ZIEGLER. Mr. Chairman—Senator, that is a major rehab. That's a major grading. We're going to have raise that grade 5, 6 feet just to keep the water away from the top of the roadway.

It was interesting, Senator—just a side note—Grant and I made a trip to that area, and as we parked in the area and looked at it, we'd look to the southeast, and there was water as far as the eye could see. And there was a southeast wind, and it was really just eating away at the road. And so, it needed—needs a lot of work.

So, from there I'll go on, Senator, to North Dakota's transportation system challenges. The DOT and the Upper Great Plains Transportation Institute recently held public input meetings across the State to discuss transportation issues. Input from those meetings indicates that—and these are the—really, the two most important points that we learned from them—is that residents want more transportation infrastructure across the State. Public expectations are growing for load-carrying capacity, increased shoulder width and passing lanes, and some want more four-lane roads. And obviously the desire is to have year-round capacity with not only snow and ice removal, but also with load-carrying.

But, our most critical challenges are:

First of all, it's to provide a transportation system to move commodities year-round. The DOT utilizes load restrictions to reduce damage to roadways caused by heavy loads at a time of the year when the highway pavement's most vulnerable; typically, during the spring of the year. Load restrictions add to the cost of doing business. We can eliminate load restrictions if we put enough pavement on it so that the soft sub-base doesn't affect the pavement, so it doesn't beak up under the heavier loads.

But, just as an example there, Senator—Mr. Chairman—farmers incur additional transportation costs as they must deter around load restrictions or make more trips via the same route with re-

duced loads. It costs about $4 per loaded mile to ship a five-axle semi that is fully loaded. For example, to ship a load of corn 75 miles to the ProGold plant, it costs about $300. If the same amount of product was shipped on a road with a 6-ton load restriction, it costs 1.62 times more, or $486. And the 1.62 times comes from a study that the Upper Great Plains Transportation Institute did for us a number of years ago, and it—I'm very confident in that number, that it costs that much more to move that same amount of corn, or wheat, or whatever commodity you have; and corn is that one that we're talking about here.

Secondly, adding grade-raises to the Devils Lake area and the Prairie Pothole Region. Eighteen projects are currently planned from 2010 to 2012 in the Devils Lake Basin, at an estimated cost of $168.4 million. Upon completion of these projects, the roadways will be raised to an elevation of 1460 feet. Senator, we've talked to you a lot about these numbers, really appreciate the ER program. And I know these numbers, as you see 'em, as you remember 'em, they keep growing. The fact is that some of the costs are going up, but there's always more damage that's being done to riprapp and whatever else we have out there. And so, the number is a big number, and we do appreciate the ER funding that comes to help us with those projects.

As a result of recent heavy rains, 22 sites on State highways in the Prairie Pothole Region—that's south of Devils Lake, all the way down to the south-central part of the State, the Ashley–Wishek area, and then farther east, to the Allendale area—but, there are 22 sites that are inundated—or, 22 sites that we're closer being—close to being, or are, inundated with water; four, where the water has run over the road and they qualify for emergency relief funding. For those four, it'll cost an estimated 3.9 million to raise the grade.

What's interesting there is that you find stop signs in the middle of the highway, out in the middle of nowhere, so to speak, and you have to stop. And there's a sign, says, "Take turns." And that means you take turns driving through the water, going down the center of the road. Because if you happen to get into that ditch, there's a lot of—there's deep water there.

There are 16 additional sites where the water is close to the edge of the driving lane. It's estimated to cost about 24.1 million to raise these 16 sites to 5 feet above the water level. Unfortunately, these 16 sites aren't eligible for ER funding under the present criteria. We'd appreciate it if we could obtain ER eligibility based on the 3-foot freeboard criterias used in the Devils Lake Basin. We will be working with the Federal Highway Administration on that issue.

Due to the aging of the State's transportation system, the Department has had to move to a preventive maintenance program. And, basically, that's seal coats and overlays—thin-lift overlays. Preventive maintenance reduces shoulder width and the ability to continue such a program. Load capacity and ride will further deteriorate without widening many miles of road in the future.

And then, the fourth and most important point is the most—is the funding. Most recent multiyear Federal transportation bill expired September 30th of 2009. Since then, Congress has passed a series of short-term extensions. The situation results in consider-

able uncertainty as we attempt to prepare our budget and do long-range planning. We'd appreciate a long-term transportation bill that's good for North Dakota, enacted as soon as possible. However, if there are to be further extensions, we would ask that they be extended for at least a year so that—a year to 18 months—so that we can help industry and the Department kind of plan for the future.

The long-term Federal legislation, and just making a few points about the pending authorizing proposal that's out there now. The DOT and other rural States in the Midwest have looked at that bill, or that proposal, and have some concerns with it. The fact that it would, number one, create a large new funding only for metropolitan areas with a population of 500,000 or more, and provide significant funding for large nationally significant projects—a high-speed rail program and infrastructure banks, all of which are geared to assist large urban States —reduces the proportion of overall program funding for the highway portion of the program. It provides a significant increase in the share of overall funding to transit, relative to highways. While we support transit in North Dakota, Mr. Chairman, we believe the current ratio of funding for roads and bridges to transit should remain the same, and that's about a four-to-one.

It would give increased emphasis to discretionary and nonformula programs compared to formula funds. We don't support funding large new discretionary programs, particularly that are—programs that aren't accessible to North Dakota. We're concerned that the House legislation could provide North Dakota with a considerably reduced share of overall funding, compared to the current law.

To offset some of those proposals in the House, we're pleased that bipartisan rural mobility legislation, Senate bill 3485, was recently introduced by you, Mr. Chairman, Senator Barrasso, and 11 other Senators. That legislation basically takes the position that if new legislation is to dedicate significant highway program funding only for large metropolitan areas, the legislation would also include a counterpart program for funding rural States. And we do appreciate that action.

Some of the things that we talk about nationally with—on the next highway bill—and what we would appreciate is a long-term, balanced bill, funding that addresses rural as well as metropolitan needs. And we certainly recognize the metropolitan needs, and—but, we also recognize the fact that North Dakota and other rural States need connectivity to those rural metropolitan areas, as you've indicated before, Mr. Chairman.

Increase the overall size of the Federal highway program to address the growing needs and counteract the impacts of highway construction inflation. Mr. Chairman, today I did not put the chart in here for you, but I can share with you that, from 2001 to 2010, inflation increased by 87 percent. So, what cost a dollar to build in 2001 costs $1.87 today. And it's not that people are getting wealthy on it. What it is, is the cost of the raw materials in products that go into the roadway system.

We'd also ask that the new bill provide for rural States, like North Dakota, to participate at least proportionately in any growth of the overall Federal highway and transportation program, both as

to formula and other funds; ask that it continue to provide funding for the entire Federal aid system, not just the national highway system—Mr. Chairman, I believe you addressed that early on; to allocate a higher percentage of the overall program through the formula process rather than through discretionary or allocation programs; and to maintain the funding ratio for the highway and transit programs at a four-to-one, like I indicated before.

Streamlining the program and project delivery process. Victor Mendez, the Federal Highway administrator, has done a good job in starting that. He's working with our Association of State Highway and Transportation Officials on an Every Day Counts Program, and we're all working toward making sure that, when we decide on a project, that we can get it from concept to construction in as short a time as possible, while not ignoring the environment and the cultural issues that go with that type of a development.

Provide flexibility to rural States and communities to pursue solutions that are practical to them if programs to advance livability, complete streets, and climate change are implemented. We've talked to Victor a lot about the livability program, and he understands that. In rural America, we do have large communities, and we work hard to make sure that we address the livability issues and the street issues, but, when it comes to rural America, we're just looking for a basic transportation system to move people and goods.

In conclusion, Mr. Chairman, I believe it's essential for Congress to recognize that increased Federal investment in highways and surface transportation for rural States is important to the national interest. This increased investment is important to all 50 State transportation departments that deal with safely moving people and goods.

That concludes my formal testimony, Mr. Chairman. I'd be happy to respond to any questions that you might have.

[The prepared statement of Mr. Ziegler follows:]

Statement of Francis Ziegler
Director, North Dakota Department of Transportation
Before the
Committee on the Budget, United States Senate
on
"Transportation Infrastructure's Role in Economic Growth
Along the North Dakota State Highway 13 Corridor"
Wahpeton, North Dakota, August 18, 2010

Mr. Chairman:

Good Morning. I am Francis Ziegler, Director of the North Dakota Department of Transportation (NDDOT). Thank you for the opportunity to appear before the Committee today and thanks for your interest and support for improving transportation in North Dakota.

Transportation is vitally important to supporting our country's economic competitiveness and our state's economic growth. It is also crucial to moving freight, connecting manufacturers to retailers, farms to markets, shippers to railroads, airports, and seaports, and motorists to jobs, schools, and stores.

This year the NDDOT has undertaken the largest construction program in the history of the department, approximately $450 million in projects on nearly 2,000 miles of roadway statewide. This includes projects under the regular federal program, stimulus (AARA), emergency relief, and state funding.

Today, I'd like to address the State Highway 13 Corridor, challenges facing North Dakota's transportation system, and the need for a long term federal transportation bill that serves North Dakota and the Nation.

North Dakota State Highway 13 Corridor

State Highway 13 is the major east-west corridor serving the southeastern part of North Dakota. This corridor links agriculture producers with value added processing facilities such as ProGold near Wahpeton and manufacturing facilities such as Bobcat in Gwinner.

The Department recognizes the importance of the ND 13 corridor (183 miles) between ND 1804 east to the Minnesota border. From 1999 to 2009, approximately $43.7 million was invested in preserving and improving 163 miles of this corridor.

In 2009, the average annual daily traffic on ND 13 was just over 1100 vehicles per day. This ranges from a low of 230 vehicles near ND 1804 to just over 12,700 vehicles at the Minnesota border. The average truck traffic is about 170 trucks per day with a low of 30 trucks at the west end of the corridor to about 780 trucks on the east end of the corridor.

The combined average annual daily traffic volume on the east and west bound lanes between I-29 and the Minnesota border was just over 6,100 vehicles per day. This ranges from a low of 3,655 just east of I-29 to a high of just over 12,700 near the Minnesota border. The average truck traffic per day on this segment is about 650, ranging from a low of 460 to a high of 780 trucks per day.

There are about $41 million worth of projects scheduled on ND 13 for the years 2010 to 2014. This summer you can see the Dakota Avenue project being completed in Wahpeton. Attachment 1 shows the location of the projects. Emphasis will be on preventative maintenance activities to protect our investment in this corridor.

North Dakota's Transportation System Challenges

The NDDOT and the Upper Great Plains Transportation Institute (UGPTI) recently held public input meetings across the state to discuss transportation issues. Input from those meetings indicates that:

- Residents want more transportation infrastructure across the state.
- Public expectations are growing – for load carrying capacity, increased shoulder width and passing lanes- and some want more four lane roads.

The NDDOT's most critical challenges are:

1. Providing a transportation system to move commodities year round.
    - The NDDOT utilizes load restrictions to reduce damage to roadways caused by heavy loads at a time of the year when highway pavements are most vulnerable, typically during the spring of the year. Load restrictions add to the cost of doing business.
    - Farmers incur additional transportation costs as they must detour around the load restrictions or make more trips via the same route with reduced loads. It costs about $4.00 per loaded mile to ship a five-axle semi that is fully loaded. For example, to ship a load of corn 75 miles to the ProGold Plant it would cost about $300. If the same amount of product was shipped on road with a 6-ton load restriction it would cost about 1.62 times as much or $486.

2. Adding grade raises in the Devils Lake area and the prairie pothole region.
    - Eighteen projects are currently planned from 2010 – 2012 in the Devils Lake Basin at an estimated cost of $168.4 million. Upon completion of these projects the roadways will be raised to an elevation of 1460 feet.
    - As a result of recent heavy rains, 22 sites on state highways in the prairie pothole region were, or are close to being, inundated with water. There are four sites where the water has run over the roadway and they qualify for emergency relief (ER) funding. It is estimated to cost about $3.9 million to raise the grade at these sites. There are 16 additional sites where the water is close to the edge of the driving lane. It is estimated to cost about $24.1 million to raise these 16 sites to five feet above the water level. Unfortunately these 16 sites are not eligible for ER funding under the present criteria. We would appreciate obtaining ER eligibility based on the three-foot freeboard criteria used in the Devils Lake basin.

3. Due to the aging of the state's transportation system the Department has had to move to a preventative maintenance program. Preventative maintenance reduces shoulder width and the ability to continue such a program. Load capacity and ride will further deteriorate without widening many miles of road in the future.
4. Funding - The most recent multi-year federal transportation bill expired September 30, 2009. Since then, Congress has passed a series of short-term extensions. This situation results in considerable uncertainty as we attempt to prepare our budget and do long-range planning. We would appreciate a long term transportation bill that is good for North Dakota enacted as soon as possible. However, if there are to be further extensions, they should be for at least a year, to help states and industry plan and implement programs and projects.

Long Term Federal Legislation to Reauthorize Highway and Transportation Programs

A reauthorization proposal is pending in the House authorizing committee. The NDDOT and other rural states in the Midwest have several concerns with the proposal:

1. It would create a large new program funding only metro areas with a population of 500,000 or more, provide significant funding for large nationally significant projects, a high speed rail program and infrastructure banks, all of which are geared to assist the large urban states.
2. It reduces the proportion of overall program funding for the highway portion of the program. It provides a significant increase in the share of overall funding to transit, relative to highways. While we support transit, we believe the current ration of funding for roads and bridges to transit should remain the same.
3. It would give increased emphasis to discretionary and non-formula programs compared to formula funds. We do not support funding new large discretionary programs, particularly programs that are not accessible to North Dakota.
4. We are concerned that the House legislation could provide North Dakota with a considerable reduced share of overall funding compared to current law.

To offset some of the proposals in the House, we are pleased that bipartisan rural mobility legislation, S. 3485, was recently introduced by you, Mr. Chairman, Senator Barrasso, and 11 other Senators. That legislation basically takes the position that if new legislation is to dedicate significant highway program funding only for large metropolitan areas, the legislation must also include a counterpart program of funding for rural states.

The Next Highway Reauthorization Legislation Should:

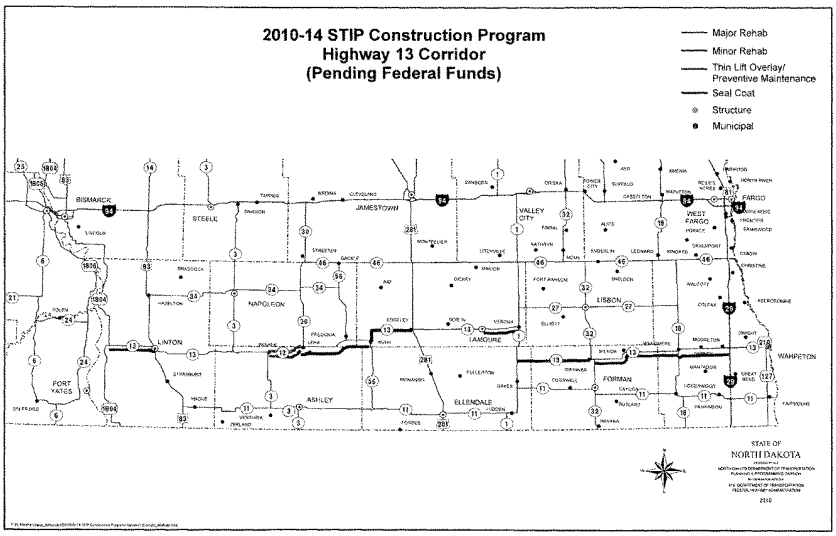
- Provide a long-term balanced bill and funding that addresses rural as well as metropolitan needs.
- Increase the overall size of the federal highway program to address growing needs and counteract the impacts of highway construction inflation.

- Provide for rural states like North Dakota to participate at least proportionally in any growth of the overall federal highway and transportation program, both as to formula and other funds.
- Continue to provide funding for the entire federal-aid system, not just the National Highway System.
- Allocate a higher percentage of the overall program through the formula process rather than through discretionary or allocation programs.
- Maintain the funding ratio for the highway (not including NHTSA and FMCA) and transit programs at 4:1.
- Streamline the program and project delivery process.
- Provide flexibility to rural states and communities to pursue solutions that are practical to them if programs to advance livability, complete streets, and climate change are implemented.

Conclusion

It is essential for Congress to recognize that increased federal investment in highways and surface transportation for Rural States is important to the national interest. This increased federal investment is important to all fifty State Transportation Departments that deal with safely moving people and goods.

That concludes my testimony. I'll be happy to respond to any questions.



The CHAIRMAN. Thank you, Director Ziegler, for once again providing excellent and important testimony.

Your organization—that is, the transportation directors across the country—have called for a level of funding in a new 6-year bill. Could you share with us what that level of funding is that your counterparts, and you, are recommending?

Mr. ZIEGLER. Yes. Mr. Chairman, based on what AASHTO—is our American Association of State Highway and Transportation Officials—has gone on record as saying that, for roads and bridges, we're looking at a need of 375 billion in a 6-year program, and then

a $93-billion program for transit, for a total of $468 billion for roads, bridges, and transit.

The CHAIRMAN. And that is on a 6-year bill, so that's $78 billion a year, by my calculation.

Mr. ZIEGLER. That's correct, Mr. Chairman.

The CHAIRMAN. $78 billion a year. And the trust fund—refresh my memory, here—the trust fund, I believe, is providing about 31 billion a year?

Mr. ZIEGLER. That is correct, Mr. Chairman.

The CHAIRMAN. So, we have a shortfall of $47 billion a year.

Mr. ZIEGLER. That's correct.

The CHAIRMAN. And I just think it's very important to put on the record, this is the reality that we confront. The need, as determined by the transportation directors all across the country, is roughly $78 billion a year. And I can tell you, I've had my people review that estimate, and we think it's pretty much on target. We don't think you've gilded the lily here on us. We think you've given a pretty accurate assessment of the need.

And, on the other hand, the trust fund that's funded by gas tax is only providing $31 billion a year of income to pay for that bill. So, that is a yearly shortfall of $47 billion a year.

And the question is, Where does that money come from? Obviously, one possibility is to increase the gas tax. I can tell you, that's not very popular. Second possibility is to provide some under—other funding mechanism. Because what's happening to the gas tax is, as cars become more fuel efficient—and now we're moving to electric vehicles; there won't be any gas tax at all—we've got a funding mechanism that really doesn't meet the needs that we confront today.

And, Francis, what have your—what has your organization thought of, in terms of options? Are there other things? Obviously, toll roads is another option that has been considered for at least parts of the country. It doesn't work well in our part of the country. I mean, are there other considerations, other options that your group thinks needs to be considered?

Mr. ZIEGLER. Mr. Chairman, SAFETEA–LU had a requirement that—and they were established as part of the SAFETEA–LU—let me say it another way. There was a Commission on Transportation Funding, and they took input from around the country. And they have about 10 different options for funding. I can't recite them all to you, Mr. Chairman, but I know you've hit the top three. Gas tax was one of them. VMT—vehicle miles traveled—was another. Toll roads was another. And public/private partnerships was another. And there were quite a number of others, but the —those were the big four.

And what we've done here in North Dakota—obviously, we don't, as you said, have toll roads, because it just doesn't work, with the volumes of traffic that we have. While we have needs to move commodities, we don't have enough volumes to pay for a road. So, the toll road doesn't work. But, we have used, not public/private, but public/public partnerships. The City of Fargo, West Fargo—and obviously you'll be hearing from the mayors soon—they do contribute to the project as a percentage participation.

And so, in the future, I would expect that there would probably be more of those public/public partnerships, but, at the same time, we need the fundamental funding to address the big needs. And I'm not sure how much private funding that we would be able to get for infrastructure.

But, the Commission did come up with quite a number of options that are all on the table for discussion.

The CHAIRMAN. All right. I appreciate that. And, you know, it's—I just want to make this point, that this is not going to be easy to resolve. This bill must be paid for. We have too much debt, but we can't add to the debt, so it's going to have to be—the cost is going to have to be covered.

And could we cut back some on the spending proposal? Yes. And, no doubt, that will have to be part of the solution, as well. But, you can see, there is a chasm here between what the trust fund is providing and what the established needs are.

With that, again, Francis, thank you for being here. I think we'd, at this point in the hearing, turn to the rest of the panel, ask each of them to testify, and then we'll close it out with additional questions for the whole panel.

Mayor Sturdevant, welcome, good to have you here. Please—

Mr. STURDEVANT. Thank you, Senator. And welcome to—

The CHAIRMAN. —please proceed.

And, before you do, I want to recognize that Andrea Trevneck, who is Governor Hoeven's senior policy advisor, is with us.

Andrea, why don't you stand and be recognized. Thank you very much for being here.

Thank the Governor, as well, for having his team here, representing the State of North Dakota. I very much appreciate that.

STATEMENT OF HON. JIM STURDEVANT, MAYOR, CITY OF WAHPETON

Mr. STURDEVANT. Okay. My name is Jim Sturdevant, mayor of Wahpeton. And, first of all, I'd like to welcome you here, Senator Conrad, and to have you holding your Senate Budget Committee meeting here in Wahpeton, I think, is very important. Highway 13 is a link to Wahpeton. Very important to us. And so, my comments will be, basically, on the importance of Highway 13 to our community and our region. So—

North Dakota State Highway 13 is an essential and robust part of the infrastructure and economy serving the southeastern region of North Dakota and the city of Wahpeton. Highway 13 connects the region from the Red River to the Missouri River with 200 miles of roadway linking agriculture, industry, tourist, and education to our communities. And I'd just like to reference and make a few comments on each one of those areas.

First, agriculture. Richland County is the second highest agriculture revenue-producing county in the State of North Dakota, with agricultural sales exceeding $261 million annually, and that's per the USDA Census of Agriculture of 2007. The presence of value-added agriculture serves as an economic multiplier, creating jobs in the manufacturing, transportation, wholesale, and service industries. Local processors, including Minn–Dak Farmers Co-op in Cargill, employs over 600 people and process crops from more than

500 farms dispersed over a seven-county area adjacent to Wahpeton, and they all depend on Highway—the Highway 13 corridor. The annual sugar beet harvest requires a—trucking of up to 3 million tons of product in 25-ton increments, or 120,000 truck trips, from farm to point—first point of delivery. Highway 13 is an essential asset that makes this possible.

The other area would be industry. Wahpeton has a diverse manufacturing base ranging from millwork production to data storage technology. More than 1162 people work in manufacturing in the Wahpeton area, with an estimated economic impact of over $59 million. The Highway 13 corridor is a asset that links major interstate highways I- 29 and I–94, giving our community a logistical advantage to prospective employers.

Another area of importance is the tourism to Wahpeton. Wahpeton's Chahinkapa Zoo hosts approximately 50,000 visitors annually. It is estimating 60 percent of these visitors are from out of State, representing all 50 States and 15 foreign countries in its guest registries. The State of North Dakota estimates 1 in 12 jobs are tied to tourism, a strong framework of infrastructure is essential to the tourism industry. North Dakota Highway 13 provides access to two national wildlife refuges, three State historical sites, three State parks, and multiple hunting and fishing destinations.

And the other important aspect of Highway 13 to our community is education. North Dakota State College of Science is a 2-year comprehensive residential college which is—main campus located in Wahpeton—that offers degrees, certificates, and diplomas in over 50 academic options in traditional career and technical studies, as well as liberal arts. Approximately 2400 students are enrolled at NDSCS, representing every county in North Dakota. The academic, athletic, and cultural activities of the college are dependent on strong transportation infrastructure and North Dakota State Highway 13.

North Dakota Highway 13 is a gateway to Wahpeton and essential to the economy of the southeast regions of North Dakota.

I want to thank you very much.

[The prepared statement of Mr. Sturdevant follows:]

Transportation Infrastructure's Role in Economic Growth:
North Dakota State Highway 13

Senator Kent Conrad
Budget Committee Testimony
Presented by Jim Sturdevant, Mayor
Wahpeton, ND

North Dakota State Highway 13 is an essential and robust part of the infrastructure and economy serving the south east region of North Dakota and the City of Wahpeton. Highway 13 connects the region from the Red River to the Missouri River with 200 miles of roadway linking agriculture, industry, tourism and education to our communities.

Agriculture: Richland County is the second highest agricultural revenue producing county in the State of ND with agricultural sales exceeding $261 million dollars annually. (per the USDA Census of Agriculture 2007) The presence of value-added agriculture serves as an economic multiplier creating jobs in the manufacturing, transportation, wholesale, and service industries. Local processors including Minn-Dak Farmers Cooperative and Cargill employee over 600 people and process crops from more than 500 farms dispersed over a seven county area adjacent to Wahpeton and dependent on the Highway 13 corridor. The annual sugar beet harvest requires the trucking of up to 3,000,000 tons of product in 25 ton increments or 120,000 truck trips from farm to first point of delivery. Highway 13 is an essential asset that makes this possible.

Industry: Wahpeton has a diverse manufacturing base ranging from mill work production to data storage technology; More than 1,162 people work in manufacturing in the Wahpeton area with an estimated economic impact of over $59 million dollars. The Highway 13 corridor is an asset that links major interstate highways I-29 and I-94 giving our community a logistical advantage to prospective employers.

Tourism: Wahpeton's Chahinkapa Zoo hosts approximately 50,000 visitors annually. It is estimated 60% of these visitors are from out of state, representing all 50 states and 15 foreign countries in its' guest registries. The State of North Dakota estimates 1 in 12 jobs are tied to tourism. A strong framework of infrastructure is essential to the tourism industry; ND Highway 13 provides access to 2 national wildlife refuges, 3 state historic sites, 3 state parks and multiple hunting and fishing destinations.

Education: The North Dakota State College of Science is a two-year, comprehensive, residential college with its main campus located in Wahpeton that offers degrees, certificates, and diplomas in over 80 academic options in traditional career and technical studies as well as the liberal arts. Approximately 2,400 students are enrolled at NDSCS representing every County in North Dakota. The academic, athletic and cultural activities of the college are dependent on strong transportation infrastructure and North Dakota State Highway 13.

North Dakota Highway 13 is the gateway to Wahpeton and essential to the economy of the south east region of North Dakota.

Respectfully submitted,
Jim Sturdevant, Mayor

The CHAIRMAN. Thank you, Mayor. Your testimony is right on point and exactly what we need for the purposes of this hearing, which is to emphasize the critical role that Highway 13 plays. So, thank you very much.

Mr. STURDEVANT. Thank you.

The CHAIRMAN. Exactly what we needed.

Let me turn to our next witness. And please proceed with your testimony.

STATEMENT OF DAN ANTRIUM, VICE PRESIDENT, NORTH AMERICAN OPERATIONS, BOBCAT COMPANY

Mr. ANTRIUM. Thank you, Chairman Conrad, Director Ziegler, Mayor Sturdevant, and Mr. Pithey, for the opportunity to discuss the importance of North Dakota Highway 13 to Bobcat and Doosan, our parent company.

As, you know, Gwinner, which is our main facility for Bobcat North America, is situated right on Highway 13 and has been our home to our primary production facility for more than 60 years, dating back to when we were Melroe Manufacturing, even before the development of the Bobcat Loader, for which we are known and named for today.

For six decades, North Dakota Highway 13 has been central to our distribution and supply chain systems, serving as a primary artery for shipments going to and from anywhere east of Gwinner, a direction that has been very important to our business. Most of what we produce goes east, and most of our supplied materials and components come in from the east.

We have historical data that details truck runs and tonnages loads in and out of Gwinner, using North Dakota Highway 13. But, today we'll focus on current figures that demonstrate its importance to both our Gwinner plant and our newer Wahpeton plant, which produces our valves and cylinders production, which is also, of course, situated on this vital transportation link.

We estimate that more than 141,000 tons of material and product to and from Bobcat will be transported in and out of Gwinner and through Wahpeton via North Dakota Highway 13 this year. That covers more than 527,000 miles driven by various trucks, some of which are carrying Bobcat-produced parts and equipment, and others with supplied components that are critical to our manufacturing operations. The total number of truckloads is 10,000.

The shipments in and out of Gwinner through Wahpeton can be split into five categories: Gwinner inbound shipments to valve and cylinders from our Wahpeton facility, and return trips to Wahpeton; Bobcat equipment being shipped from Gwinner to our Brooklyn Park, Minnesota, facility for load consolidation and distribution to points east in our dealer network; inbound shipments to Gwinner, partial truckloads of Bobcat supplies, utilizing third-party public carriers, such as Yellow Freight; inbound shipments to Gwinner, full truckloads of Bobcat supplies utilizing our dedicated fleet or carriers; inbound shipments to Gwinner, coming direct from the suppliers utilizing dedicated fleet or carriers.

The following numbers are based on current-year estimates. So, we—using current-year estimates, but you have to remember, the prior years, we've seen dramatic— more impacts to this number, based on volumes, because we all know what's happened to the economy recently. Annual freight, in pounds, moved from Wahpeton to Gwinner along Highway 13, 22,500,000 pounds; annual freight, in pounds, moved from Gwinner to our Brooklyn Park facility along Highway 13, 217,336,000 pounds; annual total freight, in pounds, coming in from Bobcat/Doosan suppliers, using our fleet or carriers—supplier fleet or carriers or third- party shipping companies is 42,500,000 pounds. As you can see, freight that includes Bobcat-produced equipment headed toward our Brooklyn

Park facility makes up the bulk of this; 70 percent of our out-bound volume goes east through Brooklyn Park, and North Dakota Highway 13 is the primary conduit in getting there.

Other impressive numbers, the inbound supplies are not coming from Wahpeton, 70 percent of the total freight from our outside suppliers, including—, comes from the east. Again, the numbers we are providing are based on this year's estimates. Please note that our business volume is down substantially, as I talked earlier, roughly 40 percent from 2006.

So, these are three key factors that could lead to freight pounds or tonnage in truckloads increase in the future: Number one, our general business rebound or growth, and our markets resulted in more equipment shipments east. The Wahpeton facility, previously our valves and cylinder operations, was located in Bismarck. We relocated that to Wahpeton late last year. As production at Gwinner plant increases, so will the need for valves and cylinders out of Wahpeton, and the number of trips associated with that.

Increased number of equipment lines produced in Gwinner. Previously, Gwinner only made loaders at the plant in Gwinner. Late last year, we consolidated those operations and moved Excavator, our Toolcat utility work machine, and our mini-track loader production from Bismarck to Gwinner. So, again, additional lines being produced at the Gwinner facility could result in more shipments, if business, overall, increases.

As I stated, North Dakota Highway 13 has always been vital to our distribution of our products and receiving of supply and components shipments. With the addition of our Brooklyn Park facility in 2006, the addition of the Wahpeton facility in 2009, and the consolidation of our manufacturing operations in 2009, this artery has even become more vital.

Specific to the last example, Interstate 94 was previously a critical link, from our Bismarck plant to all points east, including Brooklyn Park. With Gwinner now the only North Dakota plant producing whole-good products, Highway 13 is our only link east. Plus, it connects our only two North Dakota manufacturing locations.

If you like, we obviously have some more—additional figures on details of truckloads and whatnot, freight volumes, miles, coverage in shipments during various times of the week and over various time periods. But, the total numbers we have here today should demonstrate the importance of North Dakota Highway 13 to Bobcat/Doosan. It is, indeed, a vital transportation link for us.

Thank you, Chairman and other panelists. Thank you for your time today. I'd be happy to answer any questions you may have.

[The prepared statement of Mr. Antrium follows:]

Bobcat and Doosan Testimony, Budget Committee Hearing

Wednesday, August 18, 2010, Wahpeton, North Dakota

Providing testimony for Bobcat and Doosan:
Dan Antrim, vice president, North American Operations

TESTIMONY TRANSCRIPT

Thank you, Senator Conrad, Director Ziegler, Mayor Sturdevant, and Mr. Pithey, for the opportunity to discuss the importance of North Dakota Highway 13 to Bobcat and Doosan, our parent company.

As you know, Gwinner — situated right on Highway 13 — has been home to our primary production facility for more than 60 years, dating back to when we were Melroe Manufacturing, even before the development of the Bobcat loader, for which we are known and named today. For six decades, North Dakota Highway 13 has been central to our distribution and supply chain system, serving as a primary artery for shipments going to and coming in from anywhere east of Gwinner — a direction that has been very important to our business. Most of what we produce goes east; most of our supplied materials and components come in from the east.

We have historical data that details truck runs and tonnage of loads in and out of Gwinner using North Dakota Highway 13, but today we will focus on current figures that demonstrate its importance to both our Gwinner plant and our newer Wahpeton valves and cylinders production facility, which is also, of course, situated on this vital transportation link.

We estimate that more than 141,000 tons of materials and product — to and from Bobcat — will be transported in and out of Gwinner and through Wahpeton, via North Dakota Highway 13, this year. That covers more than 527,000 miles driven by various trucks, some of which are carrying Bobcat-produced parts and equipment, and others with supplied components that are critical to our manufacturing operations. The total number of truckloads: 10,000.

Shipments in and out of Gwinner, and through Wahpeton, can be split into five categories:

- Gwinner inbound shipments of valves and cylinders from our Wahpeton facility, and return trips to Wahpeton
- Bobcat equipment, being shipped from Gwinner to our Brooklyn Park, Minn. facility for load consolidation and distribution to other points east
- Inbound shipments to Gwinner, partial truckloads of Bobcat supplies, utilizing third-party public carriers such as Yellow Freight
- Inbound shipments to Gwinner, full truckloads of Bobcat supplies, utilizing our dedicated fleet or carriers
- Inbound shipments to Gwinner, coming direct from suppliers, utilizing their dedicated fleet or carriers

The following numbers are based on current-year estimates:

- Annual freight, in pounds, moved from Wahpeton to Gwinner along Highway 13: 22,500,000 lbs.
- Annual freight, in pounds, moved from Gwinner to our Brooklyn Park facility along Highway 13: 217,336,000 lbs.
- Annual total freight, in pounds, coming in from Bobcat/Doosan suppliers, utilizing our fleet or carriers, supplier fleets or carriers, or third-party shipping companies: 42,500,000 lbs.

As you can see, freight that includes Bobcat-produced equipment, headed toward our Brooklyn Park facility, makes up the bulk of this. Seventy percent of our outbound volume goes east, through the Brooklyn Park facility, and North Dakota Highway 13 is the primary conduit in getting there.

Another impressive number is the inbound supplies not coming from Wahpeton. Seventy percent of the total freight from outside suppliers, including raw materials, comes from the east.

Again, the numbers we are providing are based on this year's estimates. Please note that our business volume is down some 40 percent versus 2006. So, there are three key factors that could lead to the freight pounds or tonnage and truckloads increasing in the future:

Bobcat and Doosan Budget Committee Hearing Testimony
Page 3

1. General business rebound or growth, resulting in more equipment shipments east
2. The Wahpeton facility. Previously, our valves and cylinders operation was located in Bismarck, but we relocated it to Wahpeton late last year. As production at the Gwinner plant increases, so will our need for valves and cylinders, and so will trips between Wahpeton and Gwinner.
3. Increased number of equipment lines produced in Gwinner. Previously, only loaders were made at the Gwinner plant. Late last year, we consolidated manufacturing operations, and moved excavator, Toolcat™ utility work machine, and mini track loader production from Bismarck to Gwinner. So, again, additional lines being produced at the Gwinner facility could result in more shipments if business overall increases.

As I stated before, North Dakota Highway 13 has always been vital to our distribution of products and receiving of supply and component shipments. With the addition of our Brooklyn Park facility in 2006, the addition of the Wahpeton facility in 2009, and the consolidation of manufacturing operations in 2009, this artery has become even more vital. Specific to the last example, Interstate 94 was previously a critical link from the Bismarck plant to all points east, including Brooklyn Park. With Gwinner now the only North Dakota plant producing wholegood products, Highway 13 is our only link east. Plus, it connects our only two North Dakota manufacturing locations.

If you'd like, we have additional figures that detail truckloads, freight volume, and miles covered in shipments during various times of the week, and over various time periods. But the total numbers we have here today should demonstrate the importance of North Dakota Highway 13 to Bobcat and Doosan. It is indeed a vital transportation link for us.

Mr. Senator and other panelists, thank you again for your time today. I'd be happy to answer any questions you may have.

A Doosan Company

The CHAIRMAN. Thank you, Dan, really excellent testimony. It's pretty startling, isn't it? The numbers really jump out at you—10,000—10,000 truckloads.

Mayor Sturdevant, in your testimony, in the beet harvest, 120,000 truck trips in the beet harvest?

Mr. STURDEVANT. That's correct.

The CHAIRMAN. So, there's really—I mean—

Mr. STURDEVANT. It's amazing.

The CHAIRMAN. —it's amazing. But, we saw—today—we saw the beginning of the beet campaign. And, you know, those trucks were rolling, one after another after another.

Again, thank you very much, Dan. That really, I think, will provide important testimony. And I think that will catch the attention of our colleagues when they see these really eye-popping numbers.

Next, we'll go—final witness is Patrick Pithey, the merchandising manager for Cargill Corn Milling, here in Wahpeton.

Welcome. Good to have you here.

STATEMENT OF PAT PITHEY, MERCHANT MANAGER, CARGILL

Mr. PITHEY. Honorable Senator Conrad, members of the panel, and distinguished guests, I thank you for the opportunity to appear before you today.

My name is Patrick Pithey. I am the merchandising manager for Cargill Corn Milling, here in Wahpeton.

Cargill's an international producer and marketer of food, agricultural, financial, and industrial products and services. Founded in 1865, our privately-held company employs 131,000 people, in 66 countries. We help customers succeed through collaboration and innovation, and are committed to sharing our global knowledge and experience to help meet economic and environmental and social challenges.

We have 476 employees in North Dakota, at five different locations. And I'm proud to say that our chairman and CEO, Gregory Page, is a native of North Dakota and a graduate of UND.

Sustainable transportation infrastructure is essential for economic growth. North Dakota, and specifically the southeastern region, enjoy a diverse economic base that deploys light and medium manufacturing and distribution, commercial retail, financial and medical services, educational and recreational opportunities, along with a continuum of expanding agricultural production, processing, and distribution activities. The capability to move raw materials in and finished products to market; employees to and from home, work and Main Street; students to campus and patients to care, happens only when a safe and effective transportation infrastructure is maintained.

Transportation infrastructure is critical to our business in Wahpeton on a day-to-day basis, and North Dakota Highway 13 is a primary route. It impacts our 120 employees and additional 50 onsite contractors as they commute to and from work. It facilitates the annual delivery of over 26,000 loads of corn from farmers within the region. It enables the shipments of over 13,000 loads of finished product to reach our customers around the country.

Over the past 10 years, corn production in Richland County has increased by over 60 percent, similar to agricultural production trends across the region, as well as the State. Being able to safely and efficiently transport that production to market is vital for the producer, the processer/marketer, and the consumer.

Continued investment in maintenance of roadway infrastructure is vital for economic growth in this region. While we do not have specific comments today on transportation funding strategies, we view transportation funding as an important part of economic growth, and vital to agricultural markets.

Thank you.
[The prepared statement of Mr. Pithey follows:]

Transportation Infrastructure's Role in Economic Growth: ND 13.

Budget Committee Hearing: August 18, 2010

Honorable Senator Conrad, Members of the Panel and distinguished guests,

I thank you for the opportunity to appear before you today.

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Cargill is an international producer and marketer of food, agricultural, financial and industrial products and services. Founded in 1865, our privately held company employs 131,000 people in 66 countries. We help customers succeed through collaboration and innovation, and are committed to sharing our global knowledge and experience to help meet economic, environmental and social challenges.

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Over the past 10 years, corn production in Richland County has increased by over 60%, similar to agricultural production trends across the region and the state. Being able to safely and efficiently transport that production to market is vital for the producer, the processor / marketer and the consumer.

Continued investment and maintenance of roadway infrastructure is vital for economic growth in this region. While we do not have specific comments today on transportation funding strategies – we view transportation funding as an important part of economic growth and vital to the agricultural markets.

The CHAIRMAN. Thank you, again. More really eye-popping numbers—26,000 loads of corn, 13,000 loads of finished product.

You know, I don't think many of us, probably, have numbers like that in our heads when we think about the activity of these facilities, how really tremendous the loads are, and the demands on our transportation system. And it takes us back to the point that Director Ziegler was making with respect to new transportation bill, the needs that have been identified by the transportation directors across the country is $78 billion a year. Now, can that be cut back somewhat? There's no doubt in my mind it's going to have to be, because the funding that's available is only $31 billion a year from the trust fund, leading a—leaving a $47-billion-a-year hole. That is a big hole.

But, I don't think there's any way to cut from a projected need of 78 billion a year back to the funding source that currently exists, of 31 billion, and not do significant damage to the quality of our transportation systems across the country.

Francis, let me just go back to you first. Let me ask you for your professional assessment. If we had to cut transportation funding back to the amount of revenue that is provided by the trust fund—in other words, cut back from the 78 billion a year, that your group has determined is the need, to $31 billion, which is the amount of the funding source—what, in your professional judgment, would be the effect on the transportation systems across the country and here in North Dakota?

Mr. ZIEGLER. Mr. Chairman, if we have to cut back to that point, our program here in North Dakota—we've looked at it very closely—will be cut in half, and that seriously affects what you heard here from the rest of the panelists, about the needs for transportation. It is going to cut back on what we can do, and it's ultimately going to create a system that is flawed.

I think I testified to you once before, Mr. Chairman, that, you know, it's not far from saying that we could go back to a Third

World country if we don't get a transportation system that is good and strong.

Here in the eastern part of the State, we have worked hard to make sure that Highway 13 is in good shape. It has a thicker pavement section. But, if you look at some of our pavement sections that are thin, it doesn't take many loads—truckloads to break it up—very seriously break it up. And so, it's not far—certainly, I can say to you, without a shadow of doubt, that, if we don't get some funding, our system's going to deteriorate significantly.

The CHAIRMAN. So—and, in your professional judgment, if we had to cut back to the level of funding provided by the trust fund, we would see significant deterioration in the transportation system of North Dakota.

Mr. ZIEGLER. That is correct, Mr. Chairman.

The CHAIRMAN. Jim, before the hearing began—Mayor Sturdevant—I see you so often, I feel I can call you "Jim."

[Laughter.]

Mr. STURDEVANT. That's just fine, Chairman Conrad.

The CHAIRMAN. —that—your comment to me is that 13 is in good shape now. I think, all of us who travel over it—you know, I've just traveled over it in the last 12 hours—is in good shape, and I think that's certainly an assessment all of us would share.

The director of transportation has told us, if we had to cut back to the funding level provided by the trust fund, we'd see significant deterioration. In your judgment—you're a local leader—what would be the effect if we saw significant deterioration in Highway 13?

Mr. STURDEVANT. Well, maybe what I can do is point to our Dakota Avenue, which is part of Highway 13; it's the mile that runs downtown, our main corridor, in the city of Wahpeton. We have been waiting for—we were waiting, and it was on the drawing board for—I don't know, a number of years, probably 6 or 8 years, or maybe even longer—to redo that—our Dakota Avenue. And, it was an asphalt- based road. And we have a lot of grain trucks that use that routing to go over to the elevators in Minnesota. We can't get them out on the bypass, so they go downtown through our main district. And we've seen a lot of deterioration, over the last 5 or 6 years, of that road. And I believe that road was our—Dakota Avenue, Highway 13, was about 35–40 years old before we started working on it this summer. So, that's one good example of what happens to highways that aren't maintained and not rebuilt.

Now, this year, we are putting concrete down, and we're spending a few extra dollars—city of Wahpeton's money also—to put concrete down, rather than asphalt, that'll give us a good solid highway.

The CHAIRMAN. Well, it's a very important point.

Dan, what would the—what would be the implications for your company if there was significant deterioration as a result of having to cut back, by 50 percent or more, on the highway program here in the State?

Mr. ANTRIUM. Well, there—it'd probably be, Mr. Chairman, in two areas. One is around our commuting of our employees to work. As you know, because of the rural local of Gwinner, we have a significant number of employees that commute to work fairly long distances. So, obviously the safety of their commute is very important

to us, especially during the winter months. So, keeping that road clear, being able to keep it clear, with our local and State agencies, is very important to us. So, you know, the safety of our employees is obviously paramount to be able to travel on that highway, especially during the winter months.

The other key part is the delivery of our product, especially of our inbound shipments of product to our plant. We have daily schedules of product that we rely on, almost down to the hour, for our production lines in our facility. And if those shipments are delayed, literally by more than an hour or two, for whatever reason, we can see some dramatic impacts to our production lines in that facility—whether it's because of holdups on the highway or, you know, excessive traffic in certain areas of the highway, so forth.

I mean, I've driven on that road for close to 20 years, to and from Gwinner, and it's been through, I believe, two major upgrades during that time. And I agree with Mayor Sturdevant's assessment, that it's in very good shape, it's a very good roadway today; but, during those times where we did have those—you know, where we got to the point where we had to do those upgrades, we did see delays in our shipments of product coming in, and it did affect our production in our Gwinner facility.

The CHAIRMAN. You know, one of the things that was striking when I was at your plant yesterday—of course, it's really quite remarkable, what's going on there, because they are completely putting out, over a 3-year period, as I understand it, all new products.

Mr. ANTRIUM. Yup.

The CHAIRMAN. And they're about halfway through that process. And the timing of all of this—we—you were talking yesterday to me about the outbound shipments, how you like to hold things there to built the right size loads, so things are held a day or two so that you right size the loads to make them as efficient as possible. Isn't that—

Mr. ANTRIUM. Yup.

The CHAIRMAN. —the case?

Mr. ANTRIUM. That's correct—

The CHAIRMAN. So—

Mr. ANTRIUM. —Mr. Chairman.

The CHAIRMAN. —the timing of inbound shipments, so that you are in adjusted time schedule, so that you're not wasting a lot of money holding inventory that's not being productively turned—

Mr. ANTRIUM. That's correct.

The CHAIRMAN. —I assume, is important to the overall profitability of the company.

Mr. ANTRIUM. That's exactly right. That's—my second point is around the supplies from our—70 percent of our inbound product comes from—through Highway 13, from the east. And we rely on, literally, daily shipments of that product, in some cases, and certain intervals during the day. And, you know, the—so, that's why that—keeping the flow of that product on that roadway is very important.

The CHAIRMAN. Patrick, I go to your point again. You know, these numbers—26,000 loads of corn. And your corn production in Richland County has increased by over 60 percent in the last 10

years. So, we see those load numbers going up. Do you anticipate that that is going to continue?

Mr. PITHEY. Well, I think the production capabilities certainly has an upside. As for our plant, at this stage we're finite in inbound, because of our production capability. But, the ProGold plant was always built with a potential for expansion. And so, again, we'd continue to want to go down the path of looking to expand that. So, yes, we do see that—

The CHAIRMAN. And, you know, Patrick, let me ask you what I asked Dan, because—if we had to have a 50-percent cut in transportation funding here in North Dakota, from what the projected needs are, according to the Department of Transportation, what would the implications be for your company?

Mr. PITHEY. I think the first—primary impact would be to our customers, or the growers, as far as an outlet and a market for their corn. The—as a first purchaser, that would impact their decision. If the transportation does not allow them to safely and efficiently get their product to market, they would then have to look to a secondary—I don't mean any disrespect to any other buyers—but, obviously having an option no longer available will definitely be an impact to the supplier/grower.

Secondly, from a customer output standpoint, we have trouble, again, safely and efficiently getting product out of the plant to market. Both of those are really ultimate net cost to both the supplier/grower, for having a lack of market accessibility, and to the end consumer. If you no longer have a primary transportation route and have to look at secondary choices, secondary choices usually tend to be more costly.

The CHAIRMAN. Okay. I think a final element here—Francis, I should come back to you—on the question of, What is the share of Federal funding for our transportation program here in the State? Can you give us that percentage?

Mr. ZIEGLER. Mr. Chairman, the current biennium budget for the North Dakota Department of Transportation is $1.35 billion. The Federal aid, when we include the ARRA funding, is—

The CHAIRMAN. That'd be the Recovery Act—

Mr. ZIEGLER. —the Recovery Act funding—that is 57 percent of our total budget of 1.35 billion.

The CHAIRMAN. And is—are ER funds included in that calculation?

Mr. ZIEGLER. Mr. Chairman, not all of them. We anticipated some of the ER for Devils Lake, but we've gotten additional ER for the 2010 event. And so, we're going to be putting those numbers into our next biennium's budget.

The CHAIRMAN. Okay. Can you—

Mr. ZIEGLER. But, I can—Mr. Chairman, I can tell you that we had $80 million of ER funds in that $1.35 billion.

The CHAIRMAN. Okay. So, roughly, we're talking—60 percent is Federal money that is in our program at this point?

Mr. ZIEGLER. That's correct.

The CHAIRMAN. Sixty percent Federal money. So, if the Federal share got cut back as dramatically as would be necessary to meet the funding source, that would lead to the kind of reductions in the overall State program that you testified to.

Mr. ZIEGLER. Mr. Chairman, that is correct.

The CHAIRMAN. And what you said, just again for the record, is, we'd be talking of a—somewhere—about a 50-percent cut in the transportation program in this State if we were to cut back to the current funding level.

Mr. ZIEGLER. That is correct, Mr. Chairman.

The CHAIRMAN. All right. One other thing I should indicate is, Jane Priebe, the director of Wahpeton Area Economic Development, is with us.

Welcome. Good to have you here, as well.

And are there any other things that any member of the panel would like to get on the record before we close the hearing?

Mr. ZIEGLER. Mr. Chairman, I just want to thank you for your interest in transportation. As you know, I'm obviously very pro-transportation, and one of the things that—one of the examples that I've used in previous hearings is that transportation is a good buy. We did a study on national costs of those things that we use every day. And we all have cell phones. I have two cell phones strapped on me. And the average household pays $500 a year for cell phone use. But, we pay $109 for transportation. That's in every household in America.

So, it's interesting, when you look at some of the— you know, I guess it's setting our priorities in our own lives. But, basically, my point here is that transportation is a good buy.

The CHAIRMAN. Well, it is a good buy, and it's a critically important buy. I think the testimony here today is as clear as it can be with respect to the economic strength of our State, the ability of our companies to compete. If we don't have an excellent transportation system, we're going to have a hard time being competitive.

It's also an important matter with respect to jobs, because—For every billion dollars, Francis, what is the estimate of the number of jobs created by every billion dollars of transportation expenditure?

Mr. ZIEGLER. Mr. Chairman, the latest estimate from the Federal Highway Administration—it's 28,900 jobs that are created for every billion dollars of transportation funding that is put out there.

The CHAIRMAN. So, you know, we put that in perspective. Every billion dollars of transportation funding—28,900 jobs. And those are jobs here in America. These are not jobs that are in some other country, these are jobs that are here.

And it also—it's always struck me as giving us a double boost, because not only is it creating jobs here in this country, but it is also strengthening the competitive position of America, because if you have a strong transportation network, that improves the competitive ability of all of our businesses, our companies, and of our country as a whole, so there is a double benefit, not only of jobs, but of improving the economic efficiency of our country.

And I think that is clear from the testimony here today. And I want to thank the witnesses very much for your participation.

Again, any final thoughts that any witness would like to make?

[No response.]

The CHAIRMAN. If not, before we close the hearing, I'd like to—we've got a few minutes remaining; I think we're very close to the time that we were supposed to conclude—but, if there's any person

in the audience who would like to testify, if you'd stand and give your name and say whatever you would want to say on this subject, you are welcome to do so at this point.

Mr. MILLER. Thank you, Senator.

The CHAIRMAN. Perry?

Mr. MILLER. I'm Perry Miller, a Richland County commissioner. And our highway engineer officials have just completed our budget hearings for this year. And this is the one issue that—. We have roads in the county that are—probably could be deemed unsafe to travel. —every other county and State—for more money, and, you know, the situation there—. But,—a lot of it was driven by the weather conditions that we've had, and the high water tables—the road—area, and the—just the—of the ground is just—. And—same thing in the—. And—

But, the question I have is—it seems obvious to me—none of us like to pay more taxes, but a gas tax, to me, is really a simple solution is—as long as—funding and not be spent on some other project. And I'm just amazed that we can't get that done in Washington. I know that people have tried, but it goes back to politics.

And if you could maybe comment on that a little bit—. To me, it's the most efficient way of doing it. And it just doesn't seem to—

The CHAIRMAN. You know, you can imagine, any tax increase has enormous resistance. Gas tax increase, after what happened to fuel prices, when oil prices ran up to more than $100 a barrel, I can tell you there was no appetite for increasing gas taxes.

And we have the additional problem of, as we go forward, gas tax is less and less connected to transportation usage. That's our fundamental problem. You know what's happening. We're moving to cars and vehicles that don't use gasoline. So, we've got a disconnect, here.

You know, Chevrolet has just announced their Volt, an electric car, can go 40 miles without using any gasoline. But, of course, it puts a burden on the roads. So, our—is somebody who own a Volt not going to contribute at all to transportation funding? That doesn't seem fair.

We have other considerations like that as we see the fundamentals of our transportation change. And so, relying solely on the gas tax, going forward, is not going to work. The trust fund is throwing off—producing about $31 billion of income. We've heard the testimony, here this morning, that the need, according to the transportation officials across the country—and this is their considered judgment—is $78 billion a year. That is a huge gap. And, of course, as chairman of the Budget Committee, I'm—they look to me to—Where is this money going to come from? And it's one reason I'm doing these hearings, to get a very clear assessment of what the need is. And, of course, it needs to translate to North Dakota, as well. I've got a responsibility to my colleagues with respect to the budget for the country. I also have a responsibility to my constituents here with respect to how we fund needs that have been clearly described by panels across the State, including the one here this morning. So, it's fair to say this is a real challenge.

Thank you for your observation, Perry.

And I—one thing I should also emphasize is, Director Ziegler and his team have a very tough challenge because of these weather con-

ditions. You heard his testimony with respect to the Devils Lake Basin. Twenty- two places, I think the testimony was, where we've got water encroachment on roads that are going to have to be dealt with, some places where the water is over the road. And it doesn't have to be over the road for it to have a big negative impact. You've seen it here in Richland County. These overly wet conditions create a real problem for the roadbeds. And then, when we put heavy loads on 'em in the spring, and when that ground is mushy, it does a lot of damage, as the Director testified here today.

Again, any final thoughts, anybody?

[No response.]

The CHAIRMAN. If not, we'll close the hearing. I want to, again, thank you everybody for being here, and especially thank our witnesses.

[Whereupon, at 10:10 a.m., the hearing was adjourned.]

FIELD HEARING: TRANSPORTATION INFRASTRUCTURE'S ROLE IN ECONOMIC GROWTH: US 12 AND US 85

TUESDAY, AUGUST 24, 2010

U.S. SENATE,
COMMITTEE ON THE BUDGET
Bowman, North Dakota

The committee met, pursuant to notice, at 1:05 p.m. in the Bowman City Hall, 101 1st Street, NE, Bowman, ND 58623, Hon. Kent Conrad, chairman of the committee, presiding.

Present: Senator Conrad.

[presiding].

OPENING STATEMENT OF SENATOR CONRAD

The CHAIRMAN. The hearing will come to order. I want to welcome everyone to this hearing today in Bowman.

This is a hearing of the Senate Budget Committee. It is an official hearing of the committee and so we will follow the Rules of the U.S. Senate in conducting it. An official record is being kept.

The title of this hearing is Transportation Infrastructure: The Role in Economic Growth, US 12 and US 85.

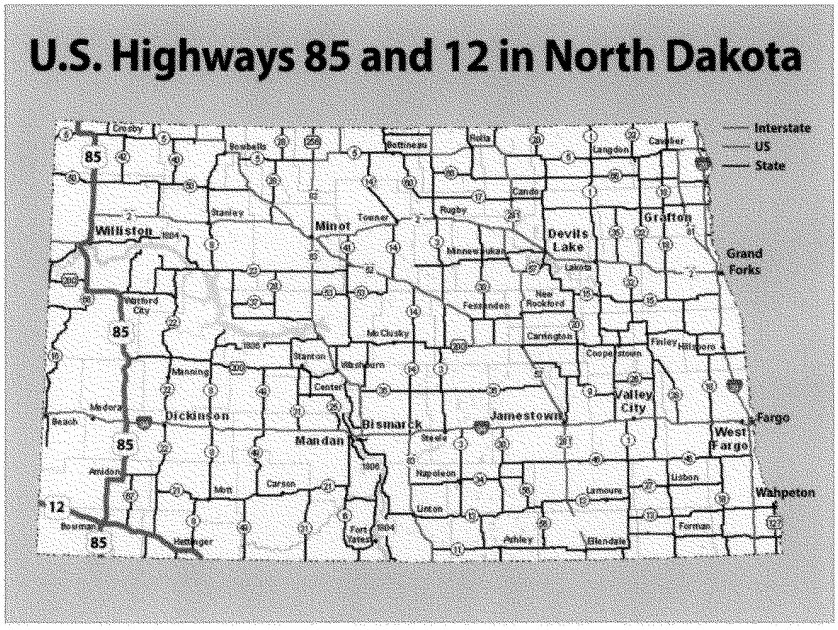
We'll be focusing on what investments may be needed to upgrade and improve Highways 12 and 85 to promote the economy in North Dakota and specifically in this region. I also want to focus on how we can make these roadways more safe.

I want to begin by welcoming our distinguished witnesses today. Our Director of North Dakota Department of Transportation Francis Ziegler, who we have especially high regard for, one of the best transportation directors in the country; Bowman Mayor Lyn James, who was with us yesterday in Williston, as well, as we hosted the Secretary of Housing and Urban Development for the United States in that community; and Cal Klewin, the Executive Director of the Theodore Roosevelt Expressway, always good to see you, Cal, as well.

I look forward to hearing from each of you. I'll share your concerns and ideas with my colleagues in Washington.

This map shows why Highways 12 and 85 are so important to North Dakota's economy, particularly its energy production. Highway 85 is the main north-south link, all of us know that, connecting the gas plants and the oil fields in the Williston Basin. And Highway 12 provides an important east-west connection to High-

way 85 in this corner of North Dakota. The agriculture industry is also a very heavy user of these roads as are tourism and we see tourism being an important part of the economy in this part of our state, as well.



Unfortunately, these roadways, like many of our nation's highways, are in need of improvements. Heavy truckloads, much of it from trucks traveling the oil boom in the Bakken Formation, have put added strains on the roadways and, of course, now we've got to add the Three Forks Formation to the Bakken Formation.

The roads need further investments to foster continued growth and to ensure safe travel of area residents and tourists and others who are using them.

This is a recent article in Bismarck Tribune. The title is Bowman Grapples With Heavy Truck Traffic: Safety Concerns in Residential Neighborhood. The article talks about the recent special meeting held here to discuss the traffic problem. I'd like to hear from Mayor James about the findings from that meeting and make that a part of the record of this hearing, as well.

TUESDAY, JULY 27, 2010

The Bismarck Tribune

www.bismarcktribune.com

Bowman grapples with heavy truck traffic

Safety concerns in residential neighborhood

By LAUREN DONOVAN
Bismarck Tribune

Bowman will hold a special meeting at 7 p.m. tonight at city hall to share and get ideas about truck traffic running up and down a residential street in town.

Some is oil traffic, along with a mix of farm and construction trucks, and Mayor Lyn James said residents worry about their safety with small children and elderly people using 11th Avenue on the west side of Bowman.

James said truck drivers are using the street for quick north-south access, causing problems for people who live there.

"That's not what it's meant for," James said.

Bowman leaders haven't forgotten the death of a pedestrian that occurred on an even busier street in town 10 months ago. That death of 42-year-old Belinda Messer, a developmentally disabled woman who was crossing Highway 85, remains unsolved. A witness described the striking vehicle as a white Freightliner semi truck carrying a pipe load, but no one has come forward and the State Highway Patrol is out of leads to pursue, said Patrol Sgt. Bill Vance.

The patrol had hoped that it could get usable information from an outdoor security camera at a gas and convenience store on the corner of U.S. Highways 85 and 12 in Bowman. Vance said a cooperating police agency tried to enhance the video, but couldn't get a readout on plates or the truck's identification number.

"We really have nothing further to go on," Vance said. He said no one provided tips of a possible driver, but said if any information comes in, it will be pursued.

In the aftermath of the fatality, the state Department of Transportation improved the intersection where Messer was killed.

James said the crosswalk pattern and signs were improved there and better street lighting is in the works.

"I think it's much better," James said of Highway 85 through Bowman.

As to 11th Avenue, James said the city engineer has come up with some options. She said the city could restrict truck traffic in that area.

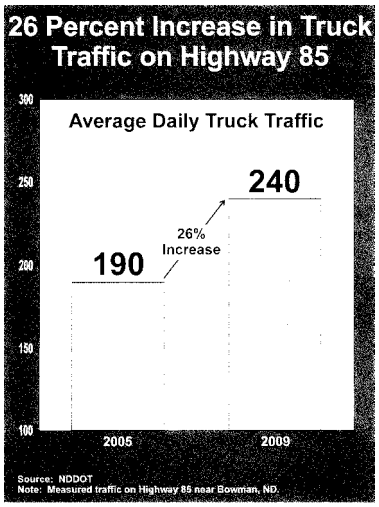
Bowman Police Chief Chuck Headley said he and his officers are vigilant about traffic since it's so heavy through town, partly because of semi loads of oil equipment moving to the Bakken fields further north.

"It's been a constant topic of conversation," he said.

(Reach reporter Lauren Donovan at 701-748-5511 or lauren@wesnet.com.)

According to North Dakota's Department of Transportation, truck traffic on Highway 85 increased nearly 26 percent between 2005 and 2009. The highway was simply not designed to handle the increasing number of heavy trucks and oversized loads currently traveling it.

Now is an important time to focus on our transportation needs because we're about to write a new transportation bill. I anticipate that that will be done next year.



In the last bill, I served as a conferee. Conferees are selected to work out the differences between legislation that's come out of the U.S. Senate and legislation that's come out of the House.

As Chairman of the Budget Committee, as a senior member of the Finance Committee, I was asked to serve on that Conference Committee and have been advised that I will be asked to serve on the next Conference Committee, as well.

In that bill, I was able to secure a billion and a half dollars for North Dakota, a 31 percent increase. That included 13 million to make improvements to Highway 12 from Bowman to Hettinger, and annually the total average is out to 234 million a year for highways, bridges, and the rest, with additional funding for transit.

We did very well overall getting $2 for every dollar we send Washington in gas tax money, ranking us among the top four states in the Nation for return on gas tax dollars.

We also secured roughly a $180 million in Recovery Act money over and above the Highway Bill. That Recovery money is being deployed over this year and last.

Francis Ziegler, our Head of the Department of Transportation, no doubt will be able to give us further detail on that.

In addition, we have been able to secure certain ER funds, Economic Recovery funds, Emergency funds, that have been used, as well as especially in the Devils Lake area, where we see such extraordinary demands being made.

We also worked hard to have Highway 85 designated as a high-priority corridor. That designation means Highway 85 is eligible for Special Corridor funding and I think that's going to be increasingly important as we look ahead.

These are some of the priorities I will focus on in the next Highway Bill. We must identify sufficient funding so the infrastructure investments are secure and robust over the long term. States and communities must be able to rely on them. Any new highway bill must maintain recognition that rural transportation needs are vital to the nation, and, finally, I'll fight to secure funding for longer-term investments in our nationally important corridors, like Highway 85.

I'm particularly interested in hearing from our witnesses on the immediate investments that are needed in Highways 12 and 85 and what future investments are needed to support the growth in the area and the safety of those who travel these roadways.

With that, we'll turn to our witnesses and we know that time is short. I'm doing five counties today. So we've got to move quickly in order to reach all of our locations on time.

Tim or Matt, maybe we could ask somebody to adjust the air conditioner. It's a little chilly in here, isn't it? Am I the only one?

We'll go to Francis Ziegler. Welcome, Francis. I'm delighted that you are here. Francis Ziegler, our Director of Transportation, has been at every one of the hearings that we have held, and let me just specify why we're doing this.

We have been told that in the next Highway Bill there will be no funding granted for special projects beyond formula funding, unless a hearing has been held to document the need. So if they hold to that position and nobody can predict what other committees might do, but this is what I have been advised of informally, if they hold to that position, it's critically important that we hold hearings like this and, Francis, I just want to express my public thanks to you for helping us meet that requirement.

Director Ziegler.

STATEMENT OF FRANCIS ZIEGLER, DIRECTOR, NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

Mr. ZIEGLER. Good afternoon, Mr. Chairman. I'm Francis Ziegler, Director of the North Dakota Department of Transportation.

I want to thank you again for the opportunity to appear before the committee today and thanks for your interest and support for improving transportation in North Dakota.

As you know, transportation is vitally important to supporting our country's economic competitiveness. It's critical to moving freight, connecting manufacturers to retailers, farmers to markets, shippers to railroads, airports and seaports, and motorists to jobs, schools, and stores.

This year, the Department of Transportation is investing $450 million on 2,000 miles of roadway. That money comes from the regular Federal aid, from ARRA, and from the Emergency Relief Fund and state funding. Our total budget——

The CHAIRMAN. Francis, if I could just stop you on that point and just say you and I are very familiar with ARRA, but we probably just should say for the record that's the Recovery Act money.

Mr. ZIEGLER. ARRA is the American Recovery and Reinvestment Act, oftentimes called Stimulus money.

The department's total budget is $1.35 billion, of which 52 percent is regular Federal aid. If the stimulus funding is put in there, it's at 57 percent of the current biennial budget, and if the ER is included, we're at just over 60 percent for the Federal aid that is part of this budget.

The CHAIRMAN. Can I just say this is especially good news to me, Francis, because your numbers match ours?

Mr. ZIEGLER. That's good. Today, as you said, Senator, I'd like to address the US 12 and 85 corridors and challenges that the North Dakota DOT is facing and the need for long-term transportation bill, as you've already talked about.

In the interest of time, Senator, we have outlined for you some traffic counts and one of the things about traffic counts, your traffic count is absolutely right, and it was a point count that we had provided to you. What we try to do is try to get averages for the whole corridor so that when we're designing projects and getting ready for them, that we can know exactly what it is that we need to design for and so I'm sharing with you, on the bottom of Page 1 and top of Page 2, what some of those counts are and you're right. They are increasing significantly and so the department does have challenges. There's no doubt about it.

But to improve the traffic flow, enhance safety, preserve the system, a variety of construction projects are going to be undertaken in the next few years. Attachment 1, which is the foldout in the back of the testimony, has all the projects shown and the color code. Some is major rehab. We're doing major rehab west of Bowman as we speak, minor rehab which includes seal coats and thin lift overlays, seal coat structures and municipal items, and so you can see the entire Highway 85 corridor has something going on, all the way from the state line to Williston, and Bowman——

The CHAIRMAN. Francis, can I again just stop you on that point? I drove yesterday from Killdeer up to Williston for a meeting there and I can confirm that there is construction everywhere. I can also confirm these truck counts are really, really dramatic. I mean, we didn't even try 85 until we got up to Watford City. We went over on 22 because of all the work that's being done on 85.

Mr. ZIEGLER. Thank you, Mr. Chairman. But you know how I say it, is that we love orange cones at DOT. It's a sign of progress.

We have about 32 million worth of projects included and scheduled for Highway 12. There's major rehab, as I said, from Raymond to the Montana line and then overlays after that grading is finished. There are about $75 million in projects on Highway 85 and I have reported earlier 60 million on 65 but as we go down the road of designing the projects, they're getting more expensive. We're adding, we're lengthening the passing lanes on the Super 2 Concept between Watford City and Williston. So the prices are going up as we speak and inflation, as I've shared with you before, Mr. Chairman, inflation is about 8.7 percent per year since 2001. So our purchasing power's eroding as we speak.

We have a lot of transportation system challenges. I met with Upper Great Plains and the public this past spring. We had eight regional meetings to get input from the public and basically the residents are looking for more transportation infrastructure across the state. They're concerned about increased traffic, especially in the oil impact areas in Western North Dakota.

At the top of Page 3, we also have a lot more public expectations for load-carrying capacity, increased shoulder width, and passing lanes. We have received requests from groups now to four lane Highways 85, 281, 52, and 23, and so a lot of money needs to be invested to make all of those things happen for the future.

But our most critical challenges to date are providing a transportation system to move commodities year-round. We have to do load restrictions in the spring and that gets to be very difficult and adds to cost of doing business there. In the second bullet, just to give you an example, if a farmer hauled a load of wheat from Hettinger to Gladstone, the cost normally if you went with the outload restrictions, it'd be about $300 for that load, but if they have to make two trips, Upper Great Plains says it's 1.62 times more. So it costs $486 to move that load of wheat from Hettinger to the Gladstone plant to get it off to the markets and the rail.

Other issues, of course, is adding grade raises in the Devils Lake area. You mentioned that already, but we also have the Prairie Pothole Region that has had a lot of rain this spring. We had 22 sites there where there's water either on the road or on the shoulder of the road. Four sites it was over the road and we're going to be working with Federal Highway Administration. That is $3.9 million to raise the grade where the water's over the road and another 24 million to raise the grades where the water's right up to the shoulder.

Then we have, on Point 3 there, the aging of the state's transportation system. The department's had to move to preventive maintenance. Preventive maintenance is basically putting on two-two and a half-three inches of pavement over the top of what's there and what it does is it narrows the roadway and ultimately we lose the shoulder and so we're getting a lot of comments about that, that people are looking for more grading so that we can widen those shoulders again.

The CHAIRMAN. I can just say to you I noticed that on 8. We were just in Mott and Hettinger before being here in Bowman and I was saying to the people that were with me, you can see this is what

Francis has been talking about, right, where you—and, you know, you can see over time where that would become a growing concern because, in effect, you have a much sharper falloff to the shoulder.

Mr. ZIEGLER. That is correct, Mr. Chairman.

The CHAIRMAN. What do you call that? What's the term of art?

Mr. ZIEGLER. The term of art is it's a pavement slough.

The CHAIRMAN. Pavement slough.

Mr. ZIEGLER. It's the slough of the pavement. It's not a term of art, but it's lack of shoulders.

We're concerned about where we're headed with that and the public is concerned about the fact that we want the shoulders back again, to have a little bit of reprieve in case of flat tire, whatever.

On Point 4, Funding, the most recent multiyear Federal transportation bill provided authorizations through September 1909. Since then, Congress has passed a series of short-term extensions and that results in considerable uncertainty as we attempt to prepare ourselves as the Department of Transportation not only for Highway 85 and Highway 12 corridor construction but for all of the work that we do.

So I guess what we're asking, Mr. Chairman, if there are going to be further short-term extensions, that they be at least a year to 18 months in length, so that the industry and the Department of Transportation can plan.

On Page 4, Senator, in the interest of time, I'll just ad lib. There are four points there that the Department of Transportation in North Dakota and other rural states have concerns with on the Federal legislation that's there to reauthorize the Highway Transportation Programs.

We know that that legislation's there. We also appreciate what you've done, Senator, yourself, Mr. Chairman, Senator Kurt Barrasso and 11 others that says that if the new legislation is going to dedicate a lot of funding to major metropolitan areas, that about 33 percent of it needs to be dedicated to rural states and so we really do appreciate that.

Clearly, our——

The CHAIRMAN. I think we got very good advice from your department on how we could do that.

Mr. ZIEGLER. Well, clearly, our ability to continue to invest in surface transportation in North Dakota depends on Federal surface transportation funding.

Our AASHTO or our Association of State Highway Transportation Officials has indicated that there's a need for $375 billion for roads and bridges and 93 for transit. Unfortunately, the Federal Highway Trust Fund has been declining and currently the revenues are about 31 billion a year but they're about 42 billion in expenditures and the reasons are, first of all, higher fuel taxes in 1908 resulted in increased use of mass transit.

I read an article just this weekend and people aren't going back to their cars. They're using mass transit and so there's a downturn in the use there. The economic downturn has impacted highway travel. Travel actually declined a 108 million vehicle miles from 1907 to 1908.

Increased overall fuel efficiency of vehicles. Although increased fuel efficiency has positive environmental impacts and reduces our

dependence on foreign oil, it's a negative impact on motor fuel tax collections, and then, of course, on top of Page 4, the increased use of hybrid and electric vehicles.

As you've said previously, Senator, and we recognize it, that the Chevy Volt that's going to be coming out this year, this fall, doesn't pay any gas taxes but it certainly depends on the same transportation system we're all using and so that's a concern for us, and if you look at the fuel economy of the vehicles going from 20 to 25, that's a 25 percent increase in the economy of the vehicle and obviously a corresponding decrease in the revenue to the Trust Fund.

So those are some of the key reasons why the Trust Fund is reducing in value.

The CHAIRMAN. Can I just stop you on that point, Francis, and indicate, as we've said in previous hearings but for the purposes of people who are here, what you and your fellow commissioners around the country and directors, transportation directors have determined is what's necessary in a 6-year highway bill is a level of funding at about $78 billion a year.

What is available from the Trust Fund, as you have correctly stated in your testimony, is $31 billion a year. So there is a shortfall there of $47 billion a year. That is a chasm and, you know, the director has quite accurately pointed out some of the reasons the Trust Fund is not anywhere close to matching the need and, you know, you got higher vehicle miles. You have more people going mass transit. You have electric vehicles, for example the Chevy Volt. So those are things that we need to understand as we approach the next transportation bill.

As I asked you in a previous hearing, and I would ask you again, Francis, for the record here, if we were required to cut back to the level of funding available from the Trust Fund, what would be the implication for transportation funding here in North Dakota?

Mr. ZIEGLER. Mr. Chairman, the implication of the Trust Fund or the funding for North Dakota being based on $31 billion current revenues would cut our program about in half.

The CHAIRMAN. So the funds for 85 and Highway 12 and all of the other high-priority corridors would be dramatically affected in a negative way obviously?

Mr. ZIEGLER. Mr. Chairman, that is correct. What we'd have to do is reprioritize and take a look at our highest priorities and then go to work with the money that we have available.

The CHAIRMAN. Director Ziegler, if I could just ask further, in your judgment, in your professional judgment, you've been at this a long time, you enjoy a high level of credibility both here in North Dakota and in Washington.

I can tell you when you testify at a hearing like this, people in the Department of Transportation pay attention because you and your team have credibility.

If we had to cut the program in half in North Dakota over the 6-years of the next transportation bill, what would that mean for communities across the state? What would it mean to the traveling public? What would it mean to our agriculture and energy industries? What would it mean to tourism? What would be—you know, sometimes when we say something's cut in half, what's the qualitative effect in your judgment? How would you characterize it?

Mr. ZIEGLER. Mr. Chairman, the first thing the Department of Transportation does when we have a road that gets in trouble because we can't fund it is to put on load restrictions and I've already talked about that. We would have to put on more and more load restrictions to keep the trucks lighter.

Second, what we're going to be encountering a whole lot more potholes.

Mr. Chairman, you talked about the travel between Watford City and Williston that you took yesterday. Grant Levy, our Chief Engineer, is here and he had talked to Walt Peterson, our District Engineer at Williston, just this morning, and we had our materials folks look at that piece of road and it is deteriorating very quickly. Fifteen push-outs have happened in the last month.

The CHAIRMAN. And can you tell the people and for the record what is a push-out?

Mr. ZIEGLER. A push-out is where you start getting the pothole where, on the shoulder of the road, the loads are so heavy and so numerous that it starts pushing the pavement out toward the shoulder and once you have that type of failure, that means the entire structure is in trouble and we're looking now at what it is that we're going to have to do to maintain that.

So if we don't get the funding that we need, those kinds of situations are going to get us in bigger trouble and ultimately a system that just isn't going to function.

The CHAIRMAN. OK. Thank you.

Mr. ZIEGLER. Mr. Chairman, as I've testified previously, our next highway reauthorization legislation should certainly provide a long-term balanced bill and funding that addresses rural as well as metropolitan needs, increase the overall size of the program to address the growing needs and counteract the impacts of inflation, provide for rural states, and funding for the entire Federal aid system, not just the National Highway System, allocate an entire percentage through formula rather than discretionary, maintain a funding ratio of 4:1 for roads and bridges compared to transit, and streamline the program to the extent possible, and as I've mentioned to you that we're working with Victor Mendez, who was the Director of Arizona. I got to know him personally. He's now the Administrator of the Federal Highway Administration. He's working on every day accounts initiative and so we're working with him on that to try to streamline the process and get our projects done quicker.

And then, of course, provide some flexibility to rural states to pursue solutions that are practical, if livability, complete streets, and climate change issues are advanced. We certainly recognize those issues. We do those in urban areas. I think you're familiar with Memorial Bridge where we did a lot of work on bike trail. Right here in Bowman, North Dakota, we put a bike trail over the bridge or over the railroad, excuse me, along with the bridge and so we recognize those livability issues, but on rural highways, what we need, what we need on rural highways is just a lot of money to take care of the road itself.

Mr. Chairman, that concludes my presentation or my testimony, and we feel, in conclusion, that it's essential for Congress to recog-

nize the increased investment in highways and surface transportation in rural states is important and is in the national interests.

This increased investment is important to all 50 states that deal with safely moving people.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Ziegler follows:]

Statement of Francis Ziegler
Director, North Dakota Department of Transportation
Before the
Committee on the Budget, United States Senate
on
"Transportation Infrastructure's Role in Economic Growth
Along US 12 and US 85 in North Dakota,
Bowman, North Dakota, August 24, 2010

Mr. Chairman:

Good Morning. I am Francis Ziegler, Director of the North Dakota Department of Transportation (NDDOT). Thank you for the opportunity to appear before the Committee today and thanks for your interest and support for improving transportation in North Dakota.

Transportation is vitally important to supporting our country's economic competitiveness and our state's economic growth. It is also crucial to moving freight, connecting manufacturers to retailers, farmers to markets, shippers to railroads, airports, seaports; and motorists to jobs, schools, and stores.

This year, the Department has undertaken the largest construction program in history, approximately $450 million in projects on nearly 2,000 miles of roadway statewide. This includes projects under the regular federal program, stimulus (ARRA), emergency relief, and state funding.

Today, I'd like to address the US Highway 12 and US 85 Corridors, challenges facing North Dakota's transportation system, and the need for a long term federal transportation bill that serves North Dakota and the Nation.

North Dakota Highway US 12 and US 85 Corridors

US Highway 12 and US Highway 85 are essential transportation corridors serving the southwestern part of North Dakota. The tables below illustrate annual traffic counts for US 12 and US 85. North Dakota Highway 23 counts are included for comparison.

TABLE 1 – Annual Average Daily Traffic (AADT) count for all types of vehicles

Highway	Location	Year	Average AADT	High* AADT	Low AADT	% Growth 2006-2009
US 12	Montana border to SD line	2009	958	3780	630	6%
US 85	SD line to I 94	2009	1302	3758	1110	7%
US 85	I 94 to Watford City	2009	1748	4210	1385	15%
US 85	Watford City to Williston	2009	2828	4335	2490	22%
ND 23	Watford City to ND 1804	2009	2304	6460	1270	70%
ND 23	ND 1804 to US Hwy 83	2009	2095	7300	1268	31%

The High AADT reflects traffic volumes that occur within or adjacent to local cities and towns.

TABLE 2 – Truck Annual Average Daily Traffic (TAADT) count

Highway	Location	Year	Average TAADT	High* TAADT	Low TAADT	% Growth 2006-2009
US 12	Montana border to SD line	2009	184	680	120	22%
US 85	SD line to I 94	2009	268	433	223	15%
US 85	I 94 to Watford City	2009	456	990	395	43%
US 85	Watford City to Williston	2009	713	890	675	40%
ND 23	Watford City to ND 1804	2009	625	880	70	274%
ND 23	ND 1804 to US Hwy 83	2009	369	920	218	167%

The High TAADT reflects traffic volumes that occur within or adjacent to local cities and towns.

The Department recognizes the importance of US 12. From 1999 to 2009, approximately $46 million was invested in preserving and improving this corridor.

The Department also recognizes the importance of US 85. From 1999 to 2009, approximately $34 million was invested in US 85 from the South Dakota border to US 2, and $4.4 million from US 2 to the Canadian border.

To improve traffic flow, enhance safety and preserve the system, a variety of construction projects will be undertaken over the next few years. Attachment 1 shows project locations for US 12 and US 85 for the years 2010-2014.

- We have approximately $32.5 million worth of projects scheduled on US 12, including a major rehabilitation project taking place this summer from Rhame to the Montana line.
- There are about $75 million worth of projects scheduled on US 85.
  - Improvements for Highway 85, working toward the Super 2 highway concept include:
    - Adding a three-lane section which includes intermittent left and right turning lanes from US Highway 2 to the Missouri River.
    - Adding several turning lanes at numerous intersections between ND Highway 200 and the Missouri River.
    - Re-grading and adding a climbing lane south of the Long X Bridge.
    - Adding multiple passing lanes between Watford City and Williston.
  - Additional projects on US 85 include:
    - Thin lift overlay from Bowman to the South Dakota border.
    - Slurry Seal = 9.7 Miles N of Amidon
    - Structure Repairs south of the I-94 junction.

North Dakota's Transportation System Challenges

The Department and Upper Great Plains Transportation Institute (UGPTI) recently held public input meetings across the state to discuss transportation issues. Input from those meetings indicates that:

- Residents want more transportation infrastructure across the state.
- Residents are concerned about increased traffic, especially in the oil impact areas in western North Dakota.

- Public expectations are growing – for load carrying capacity, increased shoulder width and passing lanes. Over the past few years we've had received increased requests to four lane roadways such as 85, 281, 52 and 23.

The Department's most critical challenges are:

1. Providing a transportation system to move commodities year round.
    - The Department utilizes load restrictions to reduce damage to roadways caused by heavy loads at a time of the year when highway pavements are most vulnerable, typically during the spring of the year. Load restrictions add to the cost of doing business.
    - Farmers incur additional transportation costs as they must detour around the load restrictions, or make more trips via the same route with reduced loads. It costs about $4.00 per loaded mile to ship a five-axle semi that is fully loaded. For example, to ship a load of wheat 75 miles from near Hettinger to the Gladstone elevator, it would cost about $300. If the same amount of product was shipped on the same route with a 6-ton load restriction, it would cost about 1.62 times as much, or $486.

2. Adding grade raises in the Devils Lake area and the prairie pothole region.
    - Eighteen projects are currently planned from 2010 – 2012 in the Devils Lake basin at an estimated cost of $168.4 million. Upon completion of these projects the roadways will be raised to an elevation of 1,460 feet.
    - As a result of recent heavy rains, 22 sites on state highways in the prairie pothole region were, or are close to being, inundated with water. There are four sites where the water has run over the roadway and they qualify for emergency relief (ER) funding. It is estimated to cost about $3.9 million to raise the grade at these sites. There are 16 additional sites where the water is close to the edge of the driving lane. It is estimated to cost about $24.1 million to raise these 16 sites to five feet above the water level. Unfortunately, these 16 sites are not eligible for ER funding under the present criteria. We would appreciate obtaining ER eligibility based on the three-foot freeboard criteria used in the Devils Lake basin.

3. Due to the aging of the state's transportation system the Department has had to move to a preventative maintenance program. Preventative maintenance reduces shoulder width and the ability to continue such a program. Load capacity and ride will further deteriorate without widening many miles of road in the future.

4. Funding - The most recent multi-year federal transportation bill provided authorizations only through September 30, 2009. Since then, Congress has passed a series of short-term extensions. This situation results in considerable uncertainty as we attempt to prepare our budget and do long-range planning. We would appreciate enactment of a long term transportation bill that is good for North Dakota as soon as possible. However, if there are to be further extensions, they should be for at least a year, to help states and industry plan and implement programs and projects.

Long Term Federal Legislation to Reauthorize Highway and Transportation Programs

A reauthorization proposal is pending in the House authorizing committee. The NDDOT and other rural states have concerns with the proposal, including:

1. It would create a large new program, funding only metro areas with a population of 500,000 or more, provide funding for large nationally significant projects, a high speed rail program and infrastructure banks, all of which are geared to assist the large urban states.
2. It reduces the proportion of overall program funding for the highway portion of the program. It provides a significant increase in the share of overall funding to transit, relative to highways. While we support transit, we believe the current ratio of funding for roads and bridges to transit should remain the same.
3. It would give increased emphasis to discretionary and non-formula programs compared to formula funds. We do not support funding new large discretionary programs, particularly programs that are not accessible to North Dakota.
4. We are concerned that the House legislation could provide North Dakota with a considerably reduced share of overall funding compared to current law.

By contrast, we are pleased that bipartisan rural mobility legislation, S. 3485, was recently introduced by you, Mr. Chairman, Senator Barrasso, and 11 other Senators. That legislation basically takes the position that if new legislation is to dedicate significant highway program funding only for large metropolitan areas, the legislation must also include a counterpart program of funding for rural states.

Clearly, our ability to continue to invest in surface transportation infrastructure in North Dakota will depend in part on Federal surface transportation funding levels. The needs are there to justify increased investment. Senator as indicated before, the American Association of State Highway and Transportation Officials (AASHTO) has gone on record recommending, for the six-year period 2010-2015, proportional increases in the highway and transit programs over the prior six years -- to $375 billion and $93 billion, respectively -- plus funding for other programs.

Unfortunately, federal revenue coming into the federal highway trust fund has been declining. Currently, the federal highway trust fund brings in about $31 billion in revenue annually, but has approximately $42 billion in expenditures. There are several reasons for the reduction in revenue going into the trust fund.

1. Higher fuel prices in 2008 resulted in an increased use in mass transit in the urban areas. Many of these individuals continue to use transit.
2. The economic downturn of our nation's economy has impacted highway travel. For example, travel in the United States declined by approximately 108 billion vehicle miles from 2007 to 2008.
3. The increased overall fuel efficiency of vehicles. Although increased fuel efficiencies have positive environmental impacts and reduce our dependence on foreign oil, it has a negative impact on motor fuel tax collections.

4. The increased use of hybrid and electric vehicles. There currently is no mechanism in place for collecting federal user fees on electric cars or vehicles that run on hydrogen.

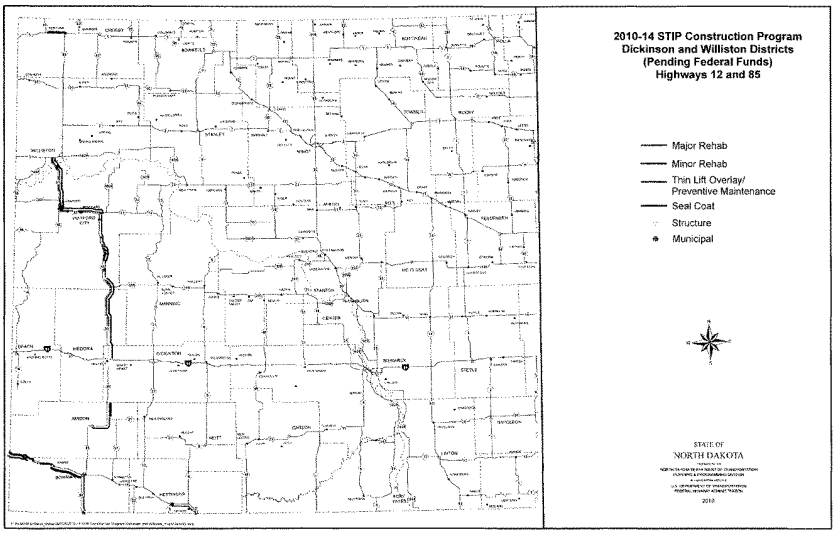
The Next Highway Reauthorization Legislation Should:

- Provide a long-term balanced bill and funding that addresses rural as well as metropolitan needs.
- Increase the overall size of the federal highway program to address growing needs and counteract the impacts of highway construction inflation.
- Provide for rural states, like North Dakota, to participate at least proportionally in any growth of the overall federal highway and transportation program, both as to formula and other funds.
- Continue to provide funding for the entire federal-aid system, not just the National Highway System.
- Allocate a higher percentage of the overall program through the formula process rather than through discretionary or allocation programs.
- Maintain the funding ratio for the highway (not including NHTSA and FMCA) and transit programs at 4:1.
- Streamline the program and project delivery process.
- Provide flexibility to rural states and communities to pursue solutions that are practical to them if programs to advance livability, complete streets, and climate change are implemented.

Conclusion

It is essential for Congress to recognize that increased federal investment in highways and surface transportation in rural states is important to the national interest. This increased federal investment is important to all fifty state transportation departments that deal with safely moving people and goods.

That concludes my testimony. I'll be happy to respond to any questions.



The CHAIRMAN. Thank you, and one other question, if I could before we go on to Mayor James, and that is a question I was asked in Mott earlier today, meeting with leaders from that county, adjoining cities and towns, was about the Enchanted Highway and great concern on the part that is in their county.

That is, Stark County has been able to do some work on the Enchanted Highway. The area from New England—well, it's not in New England but going north in their county has—they just don't have the funds to address it and that is not a state road.

Is there anything that is available in a circumstance like that where we have kind of a special circumstance? The Enchanted Highway obviously hasten a great deal of attention for tourism purposes, increasingly important with the energy activity which is only going to grow because of the Three Forks Formation, in addition to the Bakken.

Is there anything available for a circumstance like that?

Mr. ZIEGLER. Mr. Chairman, what the North Dakota Department of Transportation does is we share 25 percent of our Federal aid with cities and counties, local governments, and we will work with, certainly work with the county, if that's one of their priorities, to help address that issue.

The CHAIRMAN. Yeah. They're very concerned. I think they have about 15 miles that's in their county. I think the rest is in Stark and Stark County has been able to address the situation on their side and it's clearly quite a concern to them.

We had a number of county commissioners there, mayors there, and quite a number of them raised the concern.

Mr. ZIEGLER. Well, we'll work with them, Mr. Chairman.

The CHAIRMAN. All right. Next, we'll go to Mayor James. Thank you, Mayor James, for all the attention and leadership you've provided this community and it's really more broadly.

I thought you did an excellent job in Williston yesterday——

Ms. JAMES. Thank you.

The CHAIRMAN [continuing]. Expressing the needs on housing which we were focused on there.

So please proceed with your testimony and thanks again for your leadership.

STATEMENT OF LYN JAMES, PRESIDENT, CITY COMMISSION, CITY OF BOWMAN, NORTH DAKOTA

Ms. JAMES. Thank you. It's a pleasure. Good afternoon, and thank you for giving me the opportunity to speak about transportation and the role it plays in our economic growth here in Bowman.

The city of Bowman takes pride in the fact that we serve as the business hub for Southwestern North Dakota, Northwestern South Dakota, and Southeastern Montana. Being located at the crossroads of Highways 12 and 85 has put us in a unique position. Many small communities struggle to maintain their existing businesses together with their population.

Bowman has the privilege of enjoying the commerce and trade that come with the traffic that funnels through our community. Of course, population growth has been a benefit, as well.

Commerce is a key component in the success of our community. The intersecting highways bring many different trades to and through Bowman. Agriculture-related traffic supports our grain elevator, seed buyers and sellers, chemical suppliers and water sales, fuel suppliers, farm implement dealers, truck and auto dealers, automotive part sales, livestock auction market, farm and ranch sales, veterinarian services, and feed sales.

The energy traffic supports some of those same businesses, as I mentioned previously, as well as welding shops, engine repair, trucking, construction business and tire sales.

Some of the energy traffic originates from the Bowman area with the various oil-related businesses located here.

The tourism traffic supports our motels, restaurants, fuel and convenience stores sales, as well as many main street businesses. Motels, restaurants, and bars also collect hospitality and lodging taxes which assist in funding various tourism-related projects and local promotions.

Of course, the dollars spent in all of these areas trickle down to the healthcare providers, grocery stores, banking, the retail trade on our main street, the lumber yards, and contractors, and the list, of course, goes on and on.

A strong economy also is a key factor in the support of our churches and our civic organizations.

Highway 12 sometimes is lost in the shuffle due to the hot topic of Highway 85. Presently, Highway 12 west of Bowman is the route taken to the oil field in Bowman County, carrying numerous vehicles every day. The Three Forks Formation extends into Eastern Bowman County and when exploration gravitates in that direction Highway 12 East of Bowman will bear that same burden.

Not only will Bowman see more commerce due to future exploration but Scranton and Gas Point in Eastern Bowman County will see some activity, as well, I'm sure.

Safety is also a very important issue and I know we've addressed that before, but I would like to just speak of that again. Its impor-

tance parallels the economics of this transportation issue. Many members of our community and the surrounding area travel Highway 12, as well as Highway 85, to work each and every day.

The enhancements that are being done today, as well as the proposed enhancements that are being researched at this time, are of great importance to the safety and well-being of the people who drive it.

Future funding is critical to the continued growth of Bowman County and all of Western North Dakota.

Chairman Conrad, thank you and I commend you for the time and attention you are giving to the issue of transportation here in Bowman or in Western North Dakota.

[The prepared statement of Ms. James follows:]

Senator Conrad

Senate Budget Committee Field Hearing

"Transportation Infrastructure's Role in Economic Growth: US 12 and 85 "

August 24, 2010

Lyn James, President, City Commission

City of Bowman, North Dakota

Good afternoon Senator Conrad.

Thank you for the opportunity to speak about transportation and the role it plays in our economic growth.

The City of Bowman takes pride in the fact that we serve as a business hub for southwestern North Dakota, northwestern South Dakota and southeastern Montana. Being located at the crossroads of Highways 12 and 85 has put us in a unique position. Many small communities struggle to maintain their existing businesses together with their population. Bowman has the privilege of enjoying the commerce and trade that come with the traffic that funnels through our community. Of course population growth has been a benefit as well.

Commerce is a key component in the success of our community. The intersecting highways bring many different trades to and through Bowman. Agriculture related traffic supports our grain elevator, seed buyers and sellers, chemical suppliers and water sales, fuel suppliers, farm implement dealers, truck and auto dealers, automotive parts sales, livestock auction market, farm and ranch sales, veterinarian services, and feed sales. The energy traffic supports some of the same businesses as I mentioned previously, as well as welding shops, engine repair, trucking, construction business, and tire sales. Some of the energy traffic originates from the Bowman area with the various oil related businesses located here. The tourism traffic supports our motels, restaurants, fuel and convenience store sales, as well as main street businesses. Motels, restaurants and bars also

collect hospitality and lodging taxes which assist in funding various tourism related projects and local promotions. Of course, the dollars spent in all of these areas trickle down to healthcare providers, grocery stores, banking, the retail trade on our main street, the lumber yards and contractors, and the list goes on and on. A strong economy also is a key factor in the support of our churches and civic organizations.

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Safety is also a very important issue. Its importance parallels the economics of this transportation issue. Many members of our community and the surrounding area travel Highway 12 as well as Highway 85 to work each and every day. The enhancements that are being done today, as well as the proposed enhancements that are being researched at this time are of great importance to the safety and well being of the people who drive it.

Future funding is critical to the continued growth of Bowman County and all of western North Dakota.

Senator Conrad, I thank you and commend you for the time and attention you are giving to the issue of transportation here in western North Dakota.

The CHAIRMAN. Thank you, Mayor James. I appreciate very much your participating today. It's very important to laying on the record the views of those who are elected representatives and it's been made clear to us by the authorizing committees that if we want to have credibility, if we can have the Director of Transportation and local elected officials testify and lay on to the record that they think these are priorities, that makes a difference to our colleagues when they consider the really tough choices that are going to have to be made.

Cal, welcome. Good to have you here. Please proceed.

Ms. JAMES. Senator Conrad, before I give the mike to Cal, I just wanted to also mention that I have testimony that I have offered from Ashley Alderson who is our Economic Development Director.

The CHAIRMAN. Great. Be happy to make that part of the record, as well.

Ms. JAMES. And it is here in print, as well, for you to review.

The CHAIRMAN. Very good. Without objection, we'll make that part of the record, as well.

[The information referred to follows:]

The CHAIRMAN. Now, Cal, we've been debating whether we'd actually have you testify or not.

Mr. KLEWIN. I can tell a story.

The CHAIRMAN. OK. Welcome. It's always good to have you here.

STATEMENT OF CAL KLEWIN, EXECUTIVE DIRECTOR, THEODORE ROOSEVELT EXPRESSWAY ASSOCIATION

Mr. KLEWIN. Thank you. I'm Cal Klewin, Executive Director of the Theodore Roosevelt Expressway, the Northern Leg of the Ports-to-Plains Alliance, which stretches through America's rural heartland, connecting North Dakota with the common north-south corridor, reaching domestically across nine states, from Texas to Montana, and internationally to markets in Canada and Mexico.

Senator Conrad, thank you for coming to Southwestern North Dakota and holding a hearing on 12 and 85. You've always been a champion for transportation and we do appreciate you coming out here.

A safe, sound, and efficient transportation is the foundation of a vibrant rural economy. With efficient transportation, the costs of inputs to agriculture and the cost of living for inhabitants of rural areas decreases, the net price to producers and manufacturers increases, market access of competitiveness increases, and job opportunities are increased. Successful businesses and producers contribute to the quality of life and increased opportunities for a living.

Nowhere is the need for efficient transportation more evident than in Southwestern North Dakota where our primary east-west corridor, US Highway 12, and our primary north-south corridor, US Highway 85, are both under significant stress that stifles regional economic growth.

A bit of history. US 12 was recognized in the early years of the automobile to have potential to move people from the state of Washington to Massachusetts. This northern tier system was promoted by the Yellowstone Trail Association to provide access to Yellowstone Park, a growing tourist destination. In those days, a two-lane road was adequate.

Today, US 12 still moves people to Yellowstone Park, but the region's economy is growing and much more diversified and a two-lane road is no longer adequate. As you know, Mr. Chairman, North Dakota, including the Southwestern area, is an exporting region. We produce more energy and commodities than we consume. We must have modern, safe, and efficient roads to move these commodities to the U.S. and world markets, accommodating visiting tourists and local traffic.

Our region helps to feed America. The agriculture industry, with the diversity of barley, pulse crops, and livestock, has led the regional economy. It relies heavily on trucks that use Highways 12 and 85. For example, the livestock and grain industry of this region, from Billings, Montana, to Aberdeen, South Dakota, rely on US 12 for the delivery of product traveling to, from, and through North Dakota on US 12.

US 12 provides service to grain terminals. Ninety- 5 percent of the trucks are large semis hauling up to 900 bushels each of grain to Bowman and Scranton. Scranton, the second largest terminal to

Gladstone located on 94, handled in excess of 10 million bushels of grain. These grain terminals load railroad unit trains for shipments to Minneapolis and the West Coast.

Freight movements of grain to markets in Billings, Montana, and Minneapolis, Minnesota, move on a portion of US 12 and then link to the interstate system terminating at exporting terminals. These shipments are by large truck, including 105,000 pounds of grain commodity.

The CHAIRMAN. If I could just stop you there, Cal. I would just say when we were on 12 driving over here, we had four huge custom combiners come down the road. We had to actually get off the road, go over into the ditch to get out of their way because they filled up the entire road. They had four large custom combines and then large truck and some other vehicles.

You know, we were wondering what are we going to do here because it's clear somebody's going to have to give way and it wasn't going to be them.

Mr. KLEWIN. Well, I think that's how it's changed. I mean, now you've got those type of movements using pilot cars and, you know, there's stress on the roads.

That last paragraph that I did read, in those movements from Aberdeen to Billings, those movements by semis and agriculture commodities, it's basically because maybe the elevators are full and can't get unit cars, so they have to move to those markets because the market conditions are right and that's the same way as I'll point out to you later in the oil and gas. They'll move where the money is. So that's the part of that last paragraph we wanted to stress.

Our region also helps to power America. The oil and gas industry also places significant demands on the local highway system, including Highways 12 and 85. Bowman County, until recently, was the Number 1 oil and gas- producing county in the state of North Dakota.

With the new development of Bakken play in Northwestern North Dakota, it became Number 2 behind Montreal County. The production of oil and gas in the Cedar Hills, Marmarth, Badlands, and Little Beaver fields in Bowman County is served by US 12. They're all west of here. They're located south of US 12. That's where the major production is in Bowman County. They connect the township and county roads that are also stressed.

Delivery of the oil and gas production often moves by truck when pipelines are inadequate or market conditions are of a probable nature to move product north and south along US 85 and east and west along US 12 to pipelines in Guernsey, Wyoming, or north moving on US 12, then on to US 85 to Enbridge in Williams County.

The exploration and production of oil and gas in Western North Dakota continues at increased record levels. This will increase the demands of surface transportation in this region.

Each new oil well requires 1,250 trucks with 10 wheels or more from the beginning of the process until the well is put into production. With over a hundred drilling site operations, and I did this a week or two ago, I believe it was a 142 drilling rigs in the state of North Dakota today, is that correct?

The CHAIRMAN. Yeah.

Mr. KLEWIN. So it increased so significantly and so fast that it puts almost a 125,000 large and often oversized trucks on our two-lane highways on a monthly basis and this does not count the increased traffic associated with servicing the wells already in production or hauling oil to the pipeline locations.

The coal industry relies on surface transportation as well and is placing significant demands on Highways 12 and 85. Surface transportation along the eastern portion of US 12 in Bowman County serves the lignite coal industry with huge deposits available for energy development as the technology for clean coal becomes available.

American Colloid located on US 12 at Gascoyne also ships by truck. Many of their products, such as drilling mud, component products used for fertilizer from the plant located along Highway 12, are shipped along the US 12 route.

An industrial rail loop also located along US 12 receives pips and support equipment for various pipeline projects developing in the region. It is shipped by rail to the Gascoyne site, then disbursed to the constructionsite by truck by way of US 12 and other connecting routes. You may have seen that as you passed Gascoyne, saw the pipe.

The CHAIRMAN. Yeah. I sure did.

Mr. KLEWIN. That's the railroad I'm referring to and that transportation all goes on Highway 12 and then to the locations.

In local distributing in Bowman, for example, Colorado Tubular is a company that relocated here from Colorado, expanded here, just off US Highway 12, west of Bowman. The pipe inventory is shipped into Bowman from the distribution yards located in Texas, Oklahoma, Wyoming, and Nebraska.

Colorado Tubular has received a 135 truckloads of pipe rod and tubing during the month of July 2010 in the Bowman yard. The route to Bowman was west on US 85 and US 12. Keep in mind these trucks did have to return to the place of origin, most likely using the same routes.

In July 2010, Colorado Tubular moved 97 shipments of pipe in the Williston Basin to locations south, west, and north using both 12 and 85.

Wind energy is another truck-intensive industry impacting Highways 12 and 85. Wind industry has been expanding into Western Bowman County with the 19.5 megawatts of wind energy at Cedar Hill. I need to make a correction to my testimony. Cedar Hill was developed by Montana Dakota Utilities and I have that on the next boiler point. So that particular expansion or that wind energy was developed by Montana Dakota Utilities.

The CHAIRMAN. At Cedar Hill?

Mr. KLEWIN. Yes.

The CHAIRMAN. OK.

Mr. KLEWIN. Another proposed wind project, Diamond Willow, will be located in Eastern Montana and will be served by US Highway 12.

It takes approximately eight oversized trucks per tower to haul the major components of each wind tower, not including the rebar, concrete, road materials, water, crane, and electrical components.

North Dakota's growth, due to its wind potential, will lead to ever-increasing stress for platforms, substations, and transmission systems.

North Dakota is currently Number 10 in wind energy development and has the potential to be Number 1 in the nation. This potential development will put additional stress on an already-antiquated and stressed highway system.

And, finally, tourism. Two popular national attractions, Mount Rushmore to the south and Theodore Roosevelt National Park to the north, are both located on the Theodore Roosevelt Expressway and connected to the east and west by US 12.

Unfortunately, US 12 and 85 are narrow two-lane highways and were never designed for these loads and this kind of traffic. They are simply not adequate to carry the existing traffic along with trucks carrying freight through the region, trucks carrying food to our major cities, vehicles carrying tourists, and vehicles carrying our citizens to their jobs, healthcare, and schools. It is in this mix of vehicles and patterns of movement that increases our accident rates so significantly.

If our economy is to continue to grow, these inadequate roads must be upgraded to modern four-lane highways capable of safely serving local, regional, and national needs. The new Federal transportation bill must provide the policies and resources to make this a reality, not only in this region but in other rural areas across America, as well.

The sanctity and integrity of the Federal Highway Trust Fund be preserved and the Trust Fund must have adequate resources to meet the needs of rural areas as well as large metropolitan areas.

It is also imperative that the transportation bill, as well as any climate change legislation Congress might enact, recognize that rural areas are different than major metropolitan areas and that additional highway capacity in rural America is critical if these areas are to be a part of the national and global economies.

Senator Conrad, this concludes my testimony, but thank you for this opportunity to testify. Working together as North Dakotans and as Americans, we hope we can improve the surface transportation in this region and North Dakota can compete economically in a changing world economy.

[The prepared statement of Mr. Klewin follows:]

STATEMENT OF CAL KLEWIN

EXECUTIVE DIRECTOR, THEODORE ROOSEVELT EXPRESSWAY ASSOCIATION

BEFORE

COMMITTEE ON BUDGET

UNITED STATES SENATE

HEARING ON

TRANSPORTATION INFRASTRUCTURE ROLE IN ECONOMIC DEVELOPMENT: U.S. 12 AND U.S. 85

AUGUST 24, 2010, 1:00 p.m.

BOWMAN, NORTH DAKOTA

I am Cal Klewin, Executive Director of the Theodore Roosevelt Expressway Association, the northern leg of the Ports-to-Plains Alliance, which stretches through America's rural heartland connecting North Dakota with a common north-south corridor reaching domestically across nine states from Texas to Montana and internationally to markets in Canada and Mexico.

Senator Conrad, thank you for coming to southwestern North Dakota to address transportation infrastructure's role in economic development in rural America, with a focus on Highways 12 and 85. You have been a champion of transportation investment in North Dakota and rural America, and we are very grateful to you for your support over the years.

A safe, sound and efficient transportation system is the foundation of a vibrant rural economy. With efficient transportation, the costs of inputs to agriculture and the cost of living for inhabitants of rural areas decreases, the net price to producers and manufacturers increases, market access and competitiveness increases, and job opportunities are increased. Successful businesses and producers contribute to the quality of life and increase opportunities for rural residents.

Nowhere is the need for an efficient transportation system more evident than in southwestern North Dakota, where our primary east-west corridor, U.S. Highway 12, and our primary north-south corridor, U.S. Highway 85, are both under significant stress that threatens to stifle regional economic growth.

U.S. 12 was recognized in the early years of the automobile to have the potential to move people from the state of Washington to Massachusetts. This northern tier system was promoted by the Yellowstone Trail Association to provide access to Yellowstone Park, a growing tourist destination. In those days, a two-lane rural road was adequate.

Today, U.S. 12 still moves people to Yellowstone Park. But the region's economy is growing and much more diversified, and a two-lane rural road is no longer adequate. As you know, Mr. Chairman, North Dakota--including the southwestern area--is an exporting region. We produce more energy and commodities than we consume. We must have modern, safe, and efficient roads to move these commodities to the U.S. and world markets while accommodating visiting tourists and local traffic.

Our region helps to feed America. The agricultural industry, with the diversity of wheat, barley, pulse crops and livestock, has led the regional economy. It relies heavily on trucks that use Highways 12 and 85. For example:

- The livestock and grain industry in this region--from Billings, Montana, to Aberdeen South Dakota--rely on U.S. 12 for the delivery of product, traveling to, from, and thru North Dakota on U.S. 12.
- U.S. 12 provides service to grain terminals by truck. Ninety-five percent of the trucks are large semi's hauling up to 900 bushels of grain to Bowman and Scranton. Scranton, the second largest terminal to Gladstone located on Interstate 94, handled in excess of 10 million bushels of grain. These grain terminals load railroad unit trains for shipment to Minneapolis and the west coast.
- Freight movements of grain to markets in Billings, Montana and Minneapolis, Minnesota, move on a portion of U.S. 12 and then link to the Interstate System terminating at exporting terminals, these shipments are by large truck hauling 105,00 pounds of grain commodity.

Our region also helps to power America. The oil and gas industry also places significant demands on the local highway system, including Highways 12 and 85.

- Bowman County was until recently the # 1 oil and gas producing county in the State of North Dakota, with new development in the Bakken play in northwestern North Dakota. The production of oil and gas from the Cedar Hills, Marmarth, Badlands and Little Beaver fields in Bowman County is served by U.S. 12 with its connectivity to the county and township roads that access these fields.
- Delivery of oil and gas production often moves by truck when pipe lines are inadequate or market conditions are of a profitable nature to move product north-south along U.S. 85 and east-west along U.S. 12 to pipelines in Guernsey, Wyoming, or to the north moving on U.S. 12 then on U.S. 85 to Enbridge in Williams County, North Dakota, to be delivered to refineries.
- The exploration and production of oil and gas in western North Dakota continues to increase at record levels, which will increase the demands of surface transportation in this region.
- Each new oil well requires 1,250 trucks with ten wheels or more from the beginning of the process until the well is put into production. With over 100 drilling site operations in North Dakota alone, that puts almost 125,000 large and often oversized trucks on our rural two lane highways on a monthly basis. And this does not count the increased traffic associated with servicing the wells already in production or hauling oil to pipeline locations.

And the coal industry relies on the surface transportation system as well and is placing significant demands on Highways 12 and 85.

- Surface transportation along the eastern portion of U.S. 12 in Bowman County serves the lignite coal industry with huge deposits available for energy development as technology for clean coal becomes available.
- American Colloid located along U.S. 12 at Gascoyne, North Dakota also ships by truck many of the products such as drilling mud, component products for use as fertilizers from the plant located along

the U.S. 12 route. An industrial rail loop also located along U.S. 12 receives and pipe, and support equipment for various pipe line projects developing in the region, is shipped by rail to the site at Gascoyne, then disbursed to the construction site by truck, by way of U.S.12 to other connecting routes.

Local distributing is also a user.

- Colorado Tubular/Aztec Pipe is located just off of U.S. Highway 12 west of Bowman. The pipe inventory is shipped into Bowman from distribution yards located in Texas, Oklahoma, Wyoming, and Nebraska. CTAP received 135 truck loads of pipe, rod, and tubing during the month of July, 2010, at the Bowman Yard. The route to Bowman was U.S. 85 and 12 in North Dakota, and keep in mind these trucks have to return to their place of origin, most likely using these same routes.
- In July 2010 CTAP moved 97 shipments of pipe in the Williston Basin to locations south, west, and north using both U.S. 12 and 85.

Wind energy development is another truck intensive industry impacting Highways 12 and 85.

- Wind energy development has expanded into western Bowman County, with 19.5 megawatts of wind energy at Cedar Hill.
- Developed by Montana Dakota Utilities, another proposed wind project, Diamond Willow, will be located in eastern Montana and will be served by U.S. Highway 12.
- It takes approximately eight oversized trucks per tower to haul the major components of each wind tower, not including the rebar, concrete, road materials, water, crane, and electrical components. North Dakota's growth, due to its wind potential, will lead to ever increasing transportation stress for platforms, substations, and transmission systems.
- North Dakota is currently #10 in Wind Energy development and has to potential to be the #1 wind energy state in the Nation. This potential development will put additional stress on an already antiquated and stressed highway system.

And finally, tourism in the area continues to grow. Two popular national attractions--Mount Rushmore to the south and Theodore Roosevelt National Park to the north--are both located on the Theodore Roosevelt Expressway and connected to the east and west by U.S. 12.

Unfortunately, U.S. 12 and 85 are narrow two-lane highways and were never designed for these loads and this kind of traffic. They are simply not adequate to carry the existing traffic, along with trucks carrying freight through the region, trucks carrying food to our major cities, vehicles carrying tourists, and vehicles carrying our citizens to their jobs, health care, and schools. It is this mix of types of vehicles and patterns of movement that increases our accident rates so significantly.

If our economy is to continue to grow, these inadequate roads must be upgraded to a modern, four-lane highways capable of safely serving local, regional and national needs. The new federal transportation bill must provide the policies and resources to make this a reality, not only in this region but in other rural areas across

3

America as well. The sanctity and integrity of the Federal Highway Trust Fund be preserved and the Trust Fund must have adequate resources to meet the needs of rural areas as well as large metropolitan areas.

It is also imperative that the transportation bill, as well as any climate change legislation Congress might enact, recognize that rural areas are different than major metropolitan areas and that additional highway capacity in rural America is critical if these areas are to be a part of the national and global economies.

This concludes my testimony; I thank you for this opportunity to testify. Working together as North Dakotans and Americans we can hopefully improve the surface transportation in this region and North Dakota to compete economically in a changing world economy.

Thank You

Cal Klewin, Executive Director

Theodore Roosevelt Expressway Association

The CHAIRMAN. Thank you, Cal. Thank you not only for your testimony but especially my thanks for your leadership over the years on developing this corridor. This is important certainly to our state, certainly to these communities, but I really believe it's important to the country, as well.

If we do map, as you have done, and show where the major agricultural production of America is, where the major energy production of America is, it's right on this corridor and that's something we have to continue to educate our colleagues about because it is going to take a significantly increased investment if we're going to do everything we could do to help our country reduce its dependence on foreign energy and develop the agricultural potential we have as well as our wind energy potential which you quite rightly indicate we're Number 10 now in actual production but we're Number 1 in potential.

So I think, as you have done, anybody that examines this closely, it just jumps out at you the need for additional investment here.

Let me go back to, if I could, for a moment to the Director, Director Ziegler.

When we say there the Trust Fund is producing $31 billion a year, that's based on a gas tax at what level?

Mr. ZIEGLER. Mr. Chairman, that is based on a Federal gas tax of 18.4 cents per gallon.

The CHAIRMAN. So 18.4 cents is producing $31 billion a year in revenue. To get to the level of funding that you and your colleagues have determined is important, which is $78 billion, that's roughly two and a half times, if my math is right, roughly two and a half times what the current Trust Fund is producing. Is that your understanding?

Mr. ZIEGLER. Mr. Chairman, that is correct.

The CHAIRMAN. So if we did it all on gas tax, and I'm not suggesting we do, and I know you're not suggesting that we do, two and a half times 18.4 cents would be 36 and 9, 45 cents, about 46 cents a gallon, something like that, am I right?

Mr. ZIEGLER. [Confirmed by Nodding.]

The CHAIRMAN. So 46 cents a gallon, if it was all to be done on gas tax—now again I want to emphasize I don't favor that. Director Ziegler is not testifying supporting that. That's not the point here.

I'm trying to put in perspective, if it was all to be done on gas tax where we'd have to go. It really doesn't make sense to do it all on gas tax for the reasons the Director's outlined. The gas tax is increasingly disconnected from the need and it's increasingly disconnected from the cost of the cost.

Why do I say that? Because of all the reasons Director Ziegler gave. When you increase the mileage of automobiles, when you're increasingly going to have vehicles that don't use gasoline at all, the Chevy Volt for 40 miles is going to pay nothing in gas tax, nothing. Most commutes in the country are less than 40 miles, are they not, Director Ziegler?

Mr. ZIEGLER. Mr. Chairman, we heard the General Motors President actually speak to that. The Chevy Volt was designed with the idea in mind that the average worker travels 30 miles to and from a job. That's why they went with 40 to be sure they got there and back, so they could plug it back in.

The CHAIRMAN. Well, that really goes right to the point. So we've got a reality that is increasingly disconnected from the funding source, the reality of the need increasingly disconnected from the funding source.

Director Ziegler, can you review what your organization, who are the Directors of Transportation around the country, have talked about in terms of alternatives to using the gas tax as the sole provider of revenue?

Mr. ZIEGLER. Yes, I can, Mr. Chairman. The SafetyLou, the bill that expired September 30th, 2009, required that a commission for transportation policy and funding be set up. That commission went around the country, I believe they had four or five hearings. I testified on one of those hearings, the one in Minneapolis, April 2007, and what their conclusion was that there isn't one particular revenue source that can or should be used.

Mr. Chairman, as you indicated, the gas tax, we already recognize the fact that we're going to get more fuel efficiency out of vehicles, more electric vehicles. So they talked a lot about gas tax was one, even though it's decreasing. They talked about VMT, which is Vehicle Miles Traveled, and so there's two states, Oregon and Minnesota. Oregon has completed their pilot study on VMT.

What that means is that there's something on the vehicle that records and at every fill, gasoline fill you record as to how many miles you traveled and you pay taxes accordingly. So that's another——

The CHAIRMAN. So this would be—just help me understand because I remember from a previous hearing you testifying on this vehicle mile travel concept.

There would be something in your vehicle that would keep track of how many miles you've gone and you would pay based on vehicle miles, not on—you wouldn't be paying gas tax the way we do now?

Mr. ZIEGLER. That is correct.

The CHAIRMAN. Or maybe it'd be some combination?

Mr. ZIEGLER. It could be a combination, Mr. Chairman, but that is the idea. There's a tracking device on the vehicle that says how many miles you've traveled.

The CHAIRMAN. OK.

Mr. ZIEGLER. Then there are others. Public/private partnerships and those the Secretary, current Secretary of Transportation is also talking about those. Mr. Chairman, the State of North Dakota is doing public/public partnerships.

Cities of Fargo and West Fargo helped us build the last interchange that was built on 9th Street in between Fargo and West Fargo. Fargo, the city of, is also helping the Department of Transportation pay for the added lane on I–94. So that's a significant public/public partnership that we have with Fargo and West Fargo.

All the urban areas that we've built, whether it's at Wahpeton, whether it's at Bowman, there is local participation up to the amount of 20 percent, but those communities and those public/public partnerships and the public/private partnerships that the Secretary of Transportation's talking about would have more investment from the private sector.

The CHAIRMAN. If we were looking at—one of the things that's been recommended is toll roads and when I was in Mott earlier today, they told me on the Enchanted Highway, for example, that somebody had recommended to them toll roads. Well, you know, that doesn't work out here for lots of reasons, but, Director Ziegler, can you tell us why? Tolls have been analyzed here, right?

Mr. ZIEGLER. Mr. Chairman, that was about the fourth or fifth item that the commission talked about, was toll roads, and here in North Dakota we don't have enough traffic to support the system with toll roads alone, and kind of facetiously, Mr. Chairman, I made the statement that if we started tolling our roads, our section lines would get pretty heavy use.

But the fact is that we don't have enough vehicles to pay for the roads.

The CHAIRMAN. And is there a rule of thumb, Director Ziegler, with respect to, on this issue of toll roads, at what level of traffic you have to have to make that a practical alternative?

Mr. ZIEGLER. Mr. Chairman, what our department has studied is what it takes just to maintain our system. When we finished with our last budget, we analyzed what it's going to cost us to just maintain it. Those are the orange trucks, the materials that they use, and that does not include the investment in the infrastructure, but it takes 2,700 vehicles a day to make that happen.

The CHAIRMAN. 2,700 vehicles a day just to—that's the gas tax return on those vehicles——

Mr. ZIEGLER. That is correct.

The CHAIRMAN [continuing]. Just to do the maintenance.

Mr. ZIEGLER. Just to do the maintenance.

The CHAIRMAN. One other thing I should have to enter the record is the rule of thumb with respect to four-laning.

I know there are rules of thumb for this in transportation circles. Can you help us understand what is the rule, the basic rule of thumb to justify four-laning, the level of traffic?

Mr. ZIEGLER. Mr. Chairman, different states have different rules of thumb and I know that South Dakota is at 6,000 vehicles a day. Our neighbors south, South Dakota, I talked to their director recently, they're at 10,000 vehicles a day. Minnesota's at 12,000 vehicles a day. Our AASHTO, our Association, studies those types of things and they recommend between 4 and 12,000 vehicles. You take a look at Super 2 and after 12,000, you look at four-laning.

The CHAIRMAN. After 12,000. Now just to put that in perspective, what do we have on 85 and Highway 12?

Mr. ZIEGLER. 85 and Highway 12? Looking back on the chart, on 85, South Dakota 294, we're at an average of 1,302 vehicles per day. The high is 3,758 and the high is right here in Bowman proper where, as you can see if you drive around the city, there's an influence of each one of the communities where people are traveling to businesses, back and forth, restaurants, schools, churches, and those types of things, but that's within the communities. So that's—but we work on the basis of averages.

So from South Dakota to I–94, it's 1,300 average. I–94 to Watford City it's 1,748 average and that includes trucks, and then Watford City to Williston is 2,828, and that was one of the reasons that I had recommended a Super 2 so that we could get some quicker action so that we could get cars to be able to pass all the caravans of trucks that we have.

The CHAIRMAN. OK. Let me just say this. We have just a few minutes left in this hearing. If there's anybody here in the audience that would like to provide testimony to the committee, we will leave the record open for 10 days, but if somebody would want to

stand and be recognized now to make a statement for the record, we'd be happy to take that testimony at this point.

Yes, sir. If you'd identify yourself for the record and who you're affiliated with or if you're just representing yourself?

Mr. BOWMAN. Senator Conrad, I'm Senator Bowman. All of Highway 12 is within my district and three-fourths of 85. So I'm currently familiar with the traffic, but the one thing that's been left out of this discussion is that the potential even for Bowman's oil, after the pressure goes down, ConocoPhillips said they're going to come in and re-energize the field.

Well, here we go with all this traffic again and all these new trucks and all this equipment is going to be back in here. What's the benefit of that? A lot more production for a lot longer time and that also has its toll on the roads that we're discussing.

We haven't even talked about that up north yet because we're just seeing the beginning of production, but the long term from what I've read, we're going to see this for a long, long time and then we don't know how much commerce is going to be developed because of the huge vast amount of oil. That can lead to a lot more truck traffic or other traffic down the road in 10 or 15 years.

Are we preparing ourselves for the future or are we only going to talk about that? I think it's important that we start to visualize the future out here and what great potential we have.

With that, I thank you.

The CHAIRMAN. Thank you, Senator Bowman, and I think the point you're making is very important because so much of what is done in terms of building is based on historic counts, isn't it, and with the point that you're making, which we really have to pay attention to, is where's all this headed?

Mr. BOWMAN. Correct.

The CHAIRMAN. When we've got, by probably the most conservative estimate, 4.5 billion barrels that's recoverable between Bakken and Three Forks, I say that's very conservative. I believe it is substantially more than that that's going to prove to be recoverable.

So we really have to not only look in the rearview mirror, we got to look in the windshield at where we're headed, and I think that's the point Senator Bowman is making here, and we better be paying attention to where this is all headed because it'll be upon us and then we're reacting and we'll be behind the curve. I think that's the point Senator Bowman is making and he's exactly right.

Francis, would you like to respond?

Mr. ZIEGLER. Mr. Chairman, Senator Bowman's comments are right on. We certainly need to look ahead and when I look ahead, Mr. Chairman, there are times when there's an overwhelming feeling, the fact that the entire state's infrastructure system's suffering, whether it's in the oil country, whether it's in the Devils Lake area, Pothole Region, or where we were last week at Wahpeton.

We have just an overwhelming job and I guess the best start that I can suggest is that we get a transportation bill, a long-term bill that will address the funding needs that we have.

The CHAIRMAN. Let me just conclude the hearing on this note. Direct Ziegler's pointed out what some of the more urban states are

trying to do. They are trying to, in effect, wall off a big chunk of highway spending and transit spending for them because the current formula recognizes that we've got a national transportation structure and that the more rural sparsely populated places of the country need more money. We get $2 for every dollar we send in.

The more urban parts of the country see that and they want to get money that has traditionally come to us. I mean that's what this is about. So they have come up with this new proposal, I could say—call it something else, but I'll call it a proposal and they're trying to wall off money for communities that have 500,000 people and more.

Those of us who represent more rural areas have said, OK, if you're going to do that, you got to dedicate at least a third of it to rural areas and that's the proposal that Senator Barrasso and I introduced before this most recent break in Congress. We have 11 of our colleagues have joined us, about evenly divided between Republicans and Democrats, all from more rural parts of the state.

But, look, we understand. The House is based on population. The membership is based on population. So California's got more than 50 representatives in the House of Representatives. North Dakota's got one. So we've got to use our position in the Senate where every state gets two in order to get any kind of fair result. That's just reality and so that's why these hearings are important.

I want to thank all of the witnesses for taking their time to be here today, to help us build the record. I want to thank Senator Bowman for your testimony, as well, and to indicate we're going to be a very tough fight.

Before we conclude, Francis or any of the other witnesses, any final comment you'd want to make for the record?

Mr. ZIEGLER. Mr. Chairman, again, I appreciate the opportunity to testify to you and your committee and certainly look forward to working with you for a long-term transportation bill.

The CHAIRMAN. Yeah. We're going to have a challenge.

Anything else you'd like to add, Mayor James or Cal?

Mr. KLEWIN. Just quickly. One of the things that we're trying to do as far as the Theodore Roosevelt Expressway and one of the things that I think you are familiar with, we're working through a corridor management plan right now, taking a look at some of the things, the potential for economic development, issues as far as transportation, and that's what we're trying to do, is look into the future——

The CHAIRMAN. Yeah.

Mr. KLEWIN [continuing]. And get a vision of that and we're working on that as we can with our alliance and showing the entire corridor and hopefully we'll get a vision of what the potential is with that corridor management plan.

The CHAIRMAN. Thank you for that and thank all of the witnesses. Director Ziegler, Mayor James, Cal, thank you very, very much. Thanks all of you for being here, and we'll declare the hearing adjourned.

[Whereupon, at 2:09 p.m., the hearing was adjourned]

FIELD HEARING: STUMP LAKE FLOODING ISSUES

FRIDAY, AUGUST 27, 2010

U.S. SENATE,
COMMITTEE ON THE BUDGET
Lakota, North Dakota

The committee met, pursuant to notice, at 9:19 a.m. in the Sunlac Inn, 310 4th Avenue, SE, Lakota, ND 58344, Hon. Kent Conrad, chairman of the committee, presiding.

Present: Senator Conrad.

[presiding].

OPENING STATEMENT OF SENATOR CONRAD

The CHAIRMAN. The hearing will come to order. I want to welcome everyone this morning to this hearing of the Senate Budget Committee. This is an official hearing of the committee and so we will be operating by the Rules of the U.S. Senate.

An official record of this hearing is being kept. The title of this hearing is The Devils Lake Basin Flooding Disaster: A Stump Lake Perspective.

Devils Lake Basin Flooding Disaster

A Stump Lake Perspective

I want to begin by welcoming our distinguished witnesses here today. Todd Sando, the State Engineer for the State Water Commission, no longer the Acting State Engineer but now the fully fledged State Engineer. Congratulations, Todd, and it's good to have you here.

Odell Flaagan, the Chairman of the Nelson County Board of Commissioners. Ben Varnson, the Chairman and Manager of the Upper Sheyenne Water Resource Board. Sharon Young, the Emergency Manager for Nelson County.

Welcome to all of you. Thank you for testifying. I look forward to hearing from each of you and look forward very much to filling out the record in the series of hearings that we have been holding on the crisis in the Devils Lake Basin.

As you know, we have held hearings in Devils Lake. We have held hearings in Valley City. We have had a hearing in Lisbon. We have had a hearing in West Fargo, and now Stump Lake completes this series of hearings.

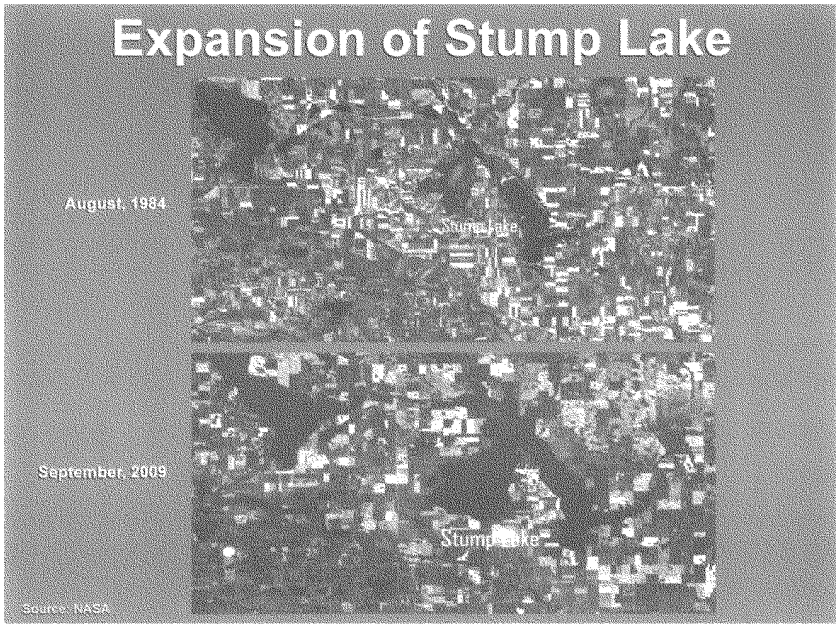
There will be a critically important meeting in Washington on September 3rd and everyone now has agreed to attend that meeting or be represented at that meeting, both upstream and downstream, the state leadership, the Governor, the congressional delegation, as well as the full membership of the Federal task force.

As a result of the flooding, we know that tens of thousands of acres of productive farmland have been flooded and hundreds of homes have had to be moved. The transportation network, including the roads and rail line, has been disrupted and the local economy continues to take a hit.

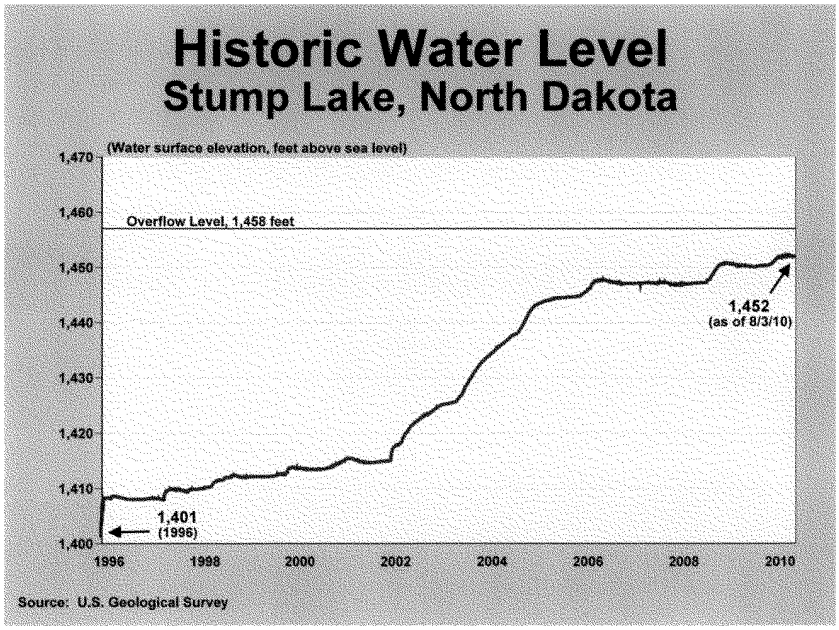
Federal Steps to Address Devils Lake Flooding Disaster

- Raised levee protecting city of Devils Lake three times
- More than 500 homes relocated through National Flood Insurance Program
- Secured policy waiver to allow roads to be raised before inundated and $70 M to address roads acting as dams
- Approval of 300 cfs Pelican Lake federal outlet
- $9.2 M for new water supply for city of Devils Lake
- More than $4 M to relocate Churchs Ferry and BTR Farmers Co-op Elevator

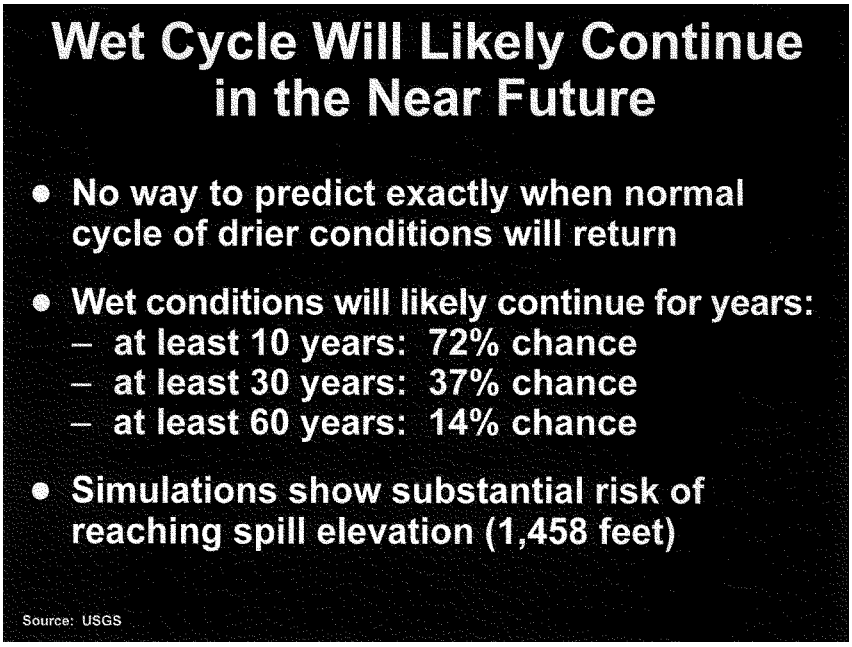
Here are NASA photographs showing the dramatic increase in the size of Stump Lake between August 1984 and September of 2009. I don't know if those in the back can see it but this shows the very dramatic expansion of Stump Lake.



Since 1996, Stump Lake has risen more than 50 feet. In 1999, Devils Lake began to flow into Stump Lake and in 2007 the lakes equalized. Since then, the combined lakes have continued to rise, reaching a record elevation this year of 1,452 feet. The lake is now within six feet of the natural overflow. Finding solutions to prevent an uncontrolled overflow is in everyone's best interest.



The next slides tell us what the experts are saying about the continuation of this wet cycle. They are saying that there is no way to predict exactly when a normal cycle will return, but they have told us there is a 72 percent chance that the wet cycle will continue for 10 years or more, a 37 percent chance it will continue for at least 30 years, and a 14 percent chance that it will continue for at least 60 years.



Simulations show a substantial risk that the lake will reach the spill elevation of 1,458 feet. When this flooding crisis began, we worked cooperatively on a three-pronged strategy: upper basin storage, protecting infrastructure, and the construction of an outlet. It is a strategy that we have pursued aggressively.

So far we have secured more than $700 million in Federal resources that have been allocated to protect the region and there will be an additional $200 million spent this year for a total of more than $900 million in Federal resources. Over $400 million to keep the road network intact. There has been FEMA expenditures of more than $84 million repairing damage to public infrastructure.

The Corps of Engineers has spent $200 million since 1993 on the levee and evaluation of the Federal outlet and other protective measures.

Just parenthetically, I want to say that in 2000–2001, the delegation secured agreement for a Federal outlet of 300 cfs. The cost at that time was over $200 million. When we shared that information—and, by the way, we got initial funding for the construction of that outlet, as well. When we shared that information with the state and local leadership, they determined that a 35 percent share of that $200 million was more than they can afford. Their share would have been $72 million.

I regret very much that we did not go forward with that Federal outlet. We had the Federal funding secured. We had the approval of every level of the Federal Government, including the Council on Environmental Quality, but the determination was made that 72 million of state and local costs was simply too much, that a state outlet could be constructed for less, and, of course, it could be constructed for less.

But, of course, it was also an outlet with much less capacity. The initial capacity of the state outlet was a 100 cfs, now increased to 250 cfs. The Federal outlet at 300 cfs, if that had been in place for these years, would have made a meaningful difference, but there's no sense looking back because we've got to deal with what is today and what is today is we have the state outlet at 250 cfs and it is moving a substantial amount of water. Anyone who doubts that need only go look at the state outlet to see how much water is being moved.

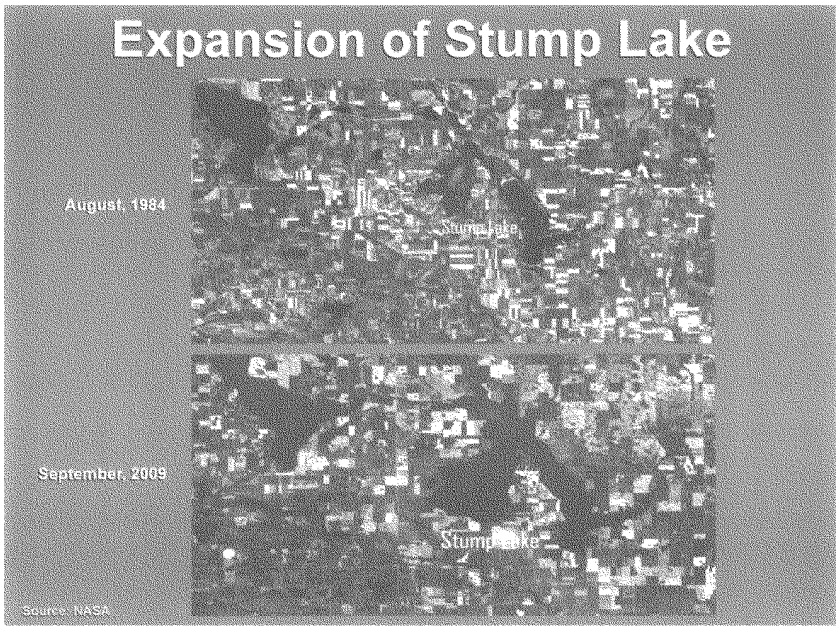
There are many options to be considered and the options going forward include what can we do about additional protective meas-

ures, including raising roads and the levee, relocating threatened structures, providing other infrastructure protection. We can focus on maximizing operation of the state outlet. We can construct an east end outlet and/or control structure via the Jerusalem or Tolna Coulee.

Options to Address the Devils Lake Flooding Disaster

- Continue to raise roads and the levee, relocate threatened structures, and other infrastructure protection
- Maximize operation of the state outlet
- Construction of an east end outlet and/or control structure via the Jerusalem or Tolna Coulees
- More upper basin water storage
- Enhanced discharges on the west end

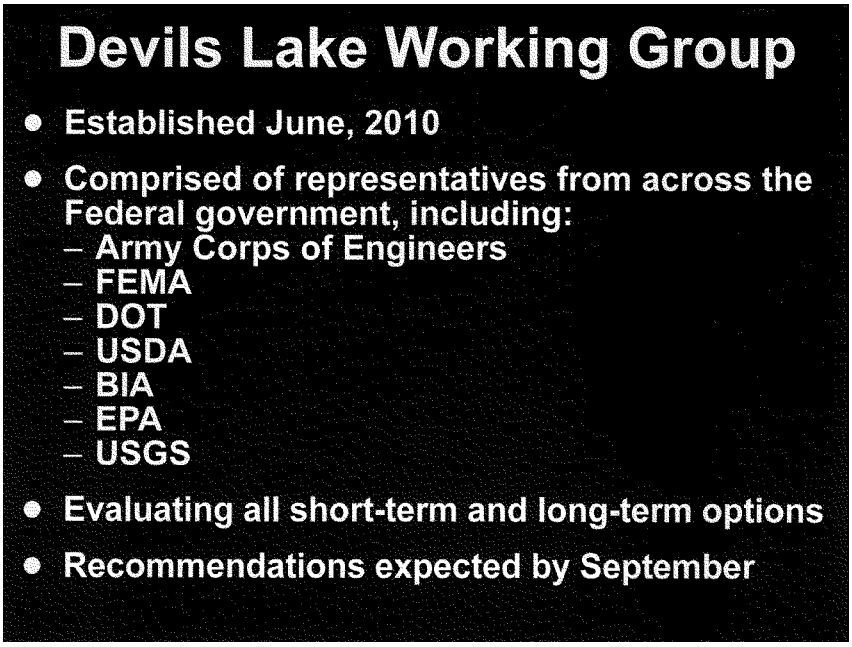
We are re-examining upper basin storage, although I think it's quite clear that Mother Nature has done a pretty big job of upper basin storage. This lake has expanded from 49,000 acres to a 180,000 acres. That's a huge amount of storage just in the lake and, of course, anybody who's gone north, and I think probably everyone in this room has, knows how much of the wetlands have been already filled by these incredibly wet conditions.



Finally, should discharges out of the west end of the lake be enhanced and, if so, what are the best options to accomplish that? So there are many options to be considered and it will take time and a coordinated effort to choose the best ones going forward, and it will require close consultation and cooperation with downstream interests, as well.

This is now much more than a Devils Lake Basin crisis. This is a crisis that threatens not only upstream but downstream, as well, and we've tried to make that point in hearings in Valley City and West Fargo and Lisbon, helping them see what could happen to them if there's an uncontrolled release of water here.

Since the May Flood Summit, the Administration has convened a working group at our request to evaluate all options and everything has been on the table, including every kind of suggestion that has come to us, everything from armoring the coulee on the east end to additional west end outlet and capacity to moving water to the oil fields of Western North Dakota. We've also looked at piping water directly over to the Red. So every conceivable option is being evaluated.



The working group at the Federal level has representation from all of the relevant Federal agencies, including the Corps of Engineers, and in fact is led by the Corps of Engineers, FEMA, the Department of Transportation, USDA, the Bureau of Indian Affairs, the Environmental Protection Agency, the U.S. Geological Survey, and others.

As I've indicated before, the group's recommendations are now anticipated in September. We'd given them a deadline of September 9th. They were on track to report by September 7th, but in coordination and consultation with all of the relevant players, we have decided that it is critically important before they reach conclusion that we have another meeting in Washington on September 3rd and we have been advised, if we choose to do that, that that will put back the report until approximately September 20th.

So we had to make a decision. Would we prefer to have a conference call and keep to the reporting date of September 7th or did we think it was so important that we have an additional face to face meeting on September 3rd which was the only date that we could coordinate everyone's schedules, that the final report be put off to September 20th? We made the decision that it was so important that we have everyone together face to face that we would do the meeting on September 3rd, even though we know that that puts off the report until probably September 20th.

I know there are those here today who favor an outlet at the Tolna Coulee. This option is being carefully considered by the working group and is clearly one of the options that is before us.

I look forward to hearing this area's perspectives today and intend to share what we learn at this hearing with all the participants.

With that, we'll turn to our witnesses and again want to thank them very much for being here today. Thank all of those who are in attendance, as well.

Let me just say this is an official hearing. That means we follow the Rules of the U.S. Senate and the Rules are this. Number 1, that each of the witnesses is recognized in turn, that they are given a full chance to express their views, that we don't express openly our agreement or disagreement with the views expressed, so that people feel that they can express their views fully and clearly without fear of being shouted at or harangued. That's one of the rules that we follow.

Second rule that we follow is that when the witnesses are done and the questioning period is done, we will open it up for public comment. That is, for additional testimony. If somebody wants to stand and be recognized and give their name, they will be permitted to testify, as well.

So those are the Rules that we will follow today. With that, Todd, welcome. Good to have you here, and why don't you proceed with your testimony?

STATEMENT OF TODD SANDO, P.E., NORTH DAKOTA STATE ENGINEER, AND CHIEF ENGINEER-SECRETARY TO THE NORTH DAKOTA STATE WATER COMMISSION

Mr. SANDO. OK. Thank you, Senator. My name's Todd Sando. I'm the State Engineer and Chief Engineer and Secretary to the State Water Commission.

I've been able to speak before you at four of the five hearings that started July 8th in Devils Lake and now almost 2 months later we're here at Stump Lake. So my comments today, I'll just summarize them, they'll be more related to the east end and dealing with Tolna Coulee and Stump Lake.

Just for a little background, I just want to point——

The CHAIRMAN. Can I just interrupt you for 1 minute because I want to——

Mr. SANDO. Sure.

The CHAIRMAN [continuing]. Introduce Andrea Trevnick who is here representing the Governor? Andrea, why don't you stand? Andrea is the Senior Policy Analyst, I believe, for the Governor, and has been at others of our hearings. Of course, the Governor's been at all of our hearings so far, could not be with us today, but we're very glad that Andrea's here.

Thank you. I apologize. Go ahead, Todd.

Mr. SANDO. OK. No problem. As you know, Devils Lake flooding is one of our most critical issues in the state of North Dakota and we've been at this for 17 years, fighting this flood, and as you pointed out with your graphs, you pointed out how Stump Lake has risen dramatically, from 1,401 up to 1,452.

We've been working toward, like you said, a three- pronged solution and Stump Lake and Tolna Coulee is a critical part of our solutions for alleviating the flood situation here at Devils Lake and as you know, since 1993, lake after lake has been consumed by Devils Lake and it's been spreading and spreading and now, you know, Stump Lake is part of Devils Lake, as well as Chain Lakes, Lake Alice, Lake Irvine, Dry Lake, Pelican Lake. They've all been

consumed by Devils Lake, and we're approaching the natural overflow elevation and that is at 1,458.

East Stump Lake and West Stump Lake are the bottom of the Devils Lake chain. So all the water moves from west to east and has been filling up all the Chain Lakes to the north and now it's filled up Stump Lake and the current elevation of Devils Lake is at 1,451.6. So the last few weeks we've had some significant evaporation, so that's been good, some winds. It's been running hard at 250 cfs, so we peaked out at 1,452. We're at 1,451.6 right now.

The issue at Tolna Coulee is all the divides at 1,412. A couple of years ago there's a lot of sediment that's been deposited and it was up around 1,459. The city of Devils Lakes bought the Tolna Coulee where it comes out of East Stump Lake and they did a project there. They lowered the divide elevation by removing the sediment that's accumulated since statehood and they lowered that from 1,459 to 1,458. So that's what the elevation is right now, the natural elevation that's been determined is 1,458. So we're about six feet from overflow.

And the issue at hand with Tolna Coulee is a lot of it has to do with the water quality issues, too. As you know, Stump Lake has sulfate levels of 2,500 mg/l, where the main part of the lake and where we're been taking water off of ground lake for the west end, all that is like 575 mg/l. So one of the issues we've had is receiving waters downstream which is the Sheyenne River where we've been taking water out of Devils Lake and we had a standard on the Upper Sheyenne of 450 mg/l and we had emergency rule put in place last year when we started running the outlet nonstop at a 100 cfs.

The emergency rule was able to put water with sulfate levels up to 750 mg/l. So we——

The CHAIRMAN. So let's go over this math once again, Todd, because it's very important that we understand the different sulfate levels.

This lake, I think, kind of defies the common understanding of what a lake would be like. You know, in my mind's eye, the quality of water in a lake would be pretty much from one part of the lake to another. That's not the case in this lake, is it?

Mr. SANDO. That's correct. Most of the fresh water that comes in to the lake comes in through Mahvay Coulee, the northwest end of the lake, comes through the Chain of Lakes or through Channel A, through Dry Lake. So the fresher water comes in that way. So the fresher water is in the northwest and as you move from West Bay to Main Bay to East Bay to East Devils Lake to East Stump Lake to—the water quality deteriorates and the levels of sulfate increase. So there is a dramatic difference from one end of the lake to the other.

The CHAIRMAN. Let me just say people in the back are having a hard time hearing. So if you can speak directly into the microphone as you can, can people hear that in the back? That's OK? OK. So even hold it up would be fine, Todd.

So let me ask you this. Let's go over the numbers again. Sulfate levels in the west part of Devils Lake are what?

Mr. SANDO. OK. Currently, sulfate levels at Brown Lake in the west part of the lake are at 575 mg/l or it's equivalent to ppm, too.

The CHAIRMAN. 575 ppm. That's sulfate levels in the western part of the lake which is where the state outlet is.

Mr. SANDO. That's correct.

The CHAIRMAN. You are permitted to go to 750 ppm of sulfates?

Mr. SANDO. Yep. That's why we have the emergency rule in place for the Upper Sheyenne to one mile below Lake Ashtabula. We can go up to 750 mg/l and we haven't had to push up to that because Devils Lake water is only 575.

The CHAIRMAN. OK. And why is there a limit on sulfates at 750 ppm?

Mr. SANDO. It's related to municipal domestic use and to the environment and it's an environmental and also issue with water quality for using for municipal irrigation, for all the other types of purposes downstream.

The CHAIRMAN. And what would be wrong with having higher levels of sulfates than the 750 ppm?

Mr. SANDO. Higher than 750? You know, that's monitored by the health department and the health department has primacy over, EPA over the program for water quality standards. Above 750, I don't know what the criteria are. I really couldn't answer those questions. It'd have to be the state health department.

The CHAIRMAN. At previous hearings, the state health department has said the general rule of thumb is you don't want to go above 450 sulfate levels, that 750 is something that we can handle in terms of water treatment downstream, but when you go above that, you begin to have question about health issues and the ability of people's systems to handle those higher sulfate levels, and, you know, the problem is if you go substantially higher, you then risk people getting sick downstream.

So what are the sulfate levels out of Stump Lake, according to your measurements?

Mr. SANDO. Our measurements, USGS does the measurements for us and most recent readings are 2,500 mg/l or ppm in Stump Lake.

The CHAIRMAN. OK. And in terms of places in between, so it goes from 575 ppm in the west to 2,500 in Stump Lake, how about places in between?

Mr. SANDO. OK. We've been looking at the Main Lake and East Devils Lake and as you move from, you know, east back toward the west, the water quality does start improving and, for example, East Devils Lake, the sulfate levels in East Devils Lake are about 1,100 ppm. So that's significantly different than the 2,500 ppm in Stump Lake.

The CHAIRMAN. OK. Please continue.

Mr. SANDO. OK. Regarding that, you know, when we're talking sulfate levels, since the standard is this 750, we're unable to discharge water above that number because—so right now, with the standards the way they are in the Sheyenne River, we wouldn't be able to discharge any water from Stump Lake through Tolna Coulee and actually would not be able to discharge water from East Devils Lake unless, you know, we had water to blend and mix with it to bring it down to 750.

So what we've been doing for the last couple years, we've built that outlet on the west end and we initially built it for a 100 cfs.

That completed construction in 2005. We were able to get a little bit of water up, but because of the constraints, the constraints at that time were 450, and we could hardly get any water out the west end outlet.

In fact, in 2006 we were unable to even turn the west end outlet on. So in 2006 we did not even move any water out of Devils Lake. Then 2007 came and we started discharging a little bit of water and 2008 got a little bit more out. Then in the Winter of 2009, as everyone knows, that was one of our worst winters on record and we had record inflows into Devils Lake. We had 590,000 acre feed enter Devils Lake and the lake came up three feet and the emergency just got really, really critical.

So at that point, that's when we started to design upsizing the outlet to go from a 100 cfs to 250 cfs and this past winter we constructed it, did winter construction and upsized the outlet from a 100 to 250 cfs and in June we started operations, additional operations by discharging 250 cfs instead of 100. So since the middle of June we've been running at 250 cfs. So we've been getting a significant amount of water out.

As you know, you know, this has been ongoing for 17 years and the lake's up 30 feet and there's only six more feet to go. We're kind of behind the eight ball now and the probabilities and risks, I've testified about that, how the risks of the overflow's very significant.

The CHAIRMAN. What—I think it's important that you repeat that testimony here that you provided at previous hearings with respect to the risk.

Mr. SANDO. OK. Regarding risk, the stochastic model that the Federal Government, USGS, has been modeling Devils Lake with and they show that there's a 13 percent probability that Devils Lake could overflow in the next—within the next 20 years.

The CHAIRMAN. A 13 percent chance, 1–3.

Mr. SANDO. Yeah.

The CHAIRMAN. You know, it seems odd to many of us that the odds—that they put the odds that low, given the fact the lake went up three and a half feet last year, went up two feet this year.

How do they come up with the calculation that there's only a 13 percent chance that there is an uncontrolled release of water?

Mr. SANDO. The period of record's very critical in determining, you know, the risk and what the statistics show and they've been actually showing 1980 to current. So they actually—their statistics include a drought period, 1988 to 1992. 1988 was a very severe drought and that's back when Devils Lake was down around 1,422 and we're worried about a major fish kill and so the GS has been using that 1980 to 2000, that 30-year period, as their record.

So that's why the probabilities look lower. In fact, now the GS has even taken another look at it, just taking wet years, 1993 to current, and the statistics and risk is even higher. I think the numbers are over 20 percent chance if you use the wetter period of it overflowing, not this 13 percent number, but they didn't want to be seen as, you know, kind of like cooking the books and just taking the worst years. So they put in the 1980's drought with their statistics.

The CHAIRMAN. Can I just say this? I mean, it just seems to me they're not dealing with reality and I've seen this year after year after year. Their predictions have been wrong by a huge factor. Over and over they say you've got a 1:100 chance of it going up X feet and we do it. I mean, I went through this in a previous meeting. Their predictions of what the odds were about this lake going up and they have been so far off, they're not even in the same ballpark as to what's happened.

So I think one message we need to send today is they need to throw these models out. They've been wrong by a country mile year after year after year. So I personally put about zero credibility behind their estimates. We know in 4,000 years of history that this lake has gone over three times and we are on the exact same trend line as what we've seen before.

So this notion that there's only a 13 percent risk to me just lacks credibility and I know that's not your prediction. I'm not faulting you for that. This is a message we need to send to USGS. As far as I'm concerned, it just has no credibility.

Mr. SANDO. And that's why they did look at a wetter period now, too, to see what the potential is for overflow and the lake continuing to rise and they have to look at all the different—I mean, they look at 10,000 different traces. So they've looked at a whole range. I'm not here to defend them or anything, but that's how they develop it.

It's not actual forecasts that they think the lake's going to do that in a given year. They just say, OK, here's the probabilities based on the longer-term trend. It's not——

The CHAIRMAN. If we get predictions from them, I mean, I've read them at previous meetings, their predictions of what the lake would do and repeatedly—I mean, I remember at one point we had 3 years in a row where they said it was a 100:1 shot that it would go up that much and we've done it. So they've got year by year predictions and none of them have been right. I mean not even close to being right.

Mr. SANDO. OK. Continuing on then to talking about this risk, even this last 2 months, the probabilities have changed even in their model. Their models, I had testified earlier, if you had operated at 250 cfs in conjunction with the conditions out there, there's a 9-percent—we'd reduce the risk from 13 to 9 percent—I mean to 7 percent.

Well, now that the summer's been wet all summer long and the lake's stayed, you know, high all summer, the risk now has gone from a 7-percent in my earlier testimonies to 9 percent, even with a 250 cfs outlet, and that does include the 1980's drought period, too. So the risk is very high and, you know, when we develop floodplains, we're worried about a 1-percent risk.

So that's why, you know, not to defend the GS and everything but when we start seeing numbers, you know, double digit numbers, it's an extremely high risk.

The CHAIRMAN. The other thing I just want to say before we go further, I want to make sure, Tracy, that when we have the meeting in September 3rd, that we have the year-by-years of what they said was the chance of the lake going up by the amounts that it has and that we have that for a presentation because if we don't

start out with the proper evaluation of the risk, we're not going to make the right decisions about how we avoid what would be a catastrophe not only here but for everybody downstream, as well.

Mr. SANDO. OK. That kind of explains the risk and what's been happening, getting back to things that are on the table. As I testified earlier, we'd like to try to move additional water out the west end, you know, upsizing, longer periods of operation.

We'd also like to do something else somewhere out the east end and I want to talk about that a little bit more, what some of the options are there. Like you said, everything's on the table. We're looking every direction out in Devils Lake Basin to try and move water, if it's the Forest River, if it's the Goose River, if it's the Sheyenne River, if it's the Souris River.

So we've been doing a lot of analyzing and one of them that's been kind of coming to the forefront is trying to get water out of East Devils Lake because the water quality is significantly different there than actually in Stump Lake. So we've been looking at trying to design a gravity channel and I'd really like the Federal task force to give that very good consideration, trying to take water out of East Devils Lake through the Black Slough Area.

You can follow right through the Black Slough. That is another area that the lake has overflowed in the last 10,000 years. The elevations there are higher than Tolna Coulee. Tolna Coulee is at 1,458. We think the Black Slough Area's at 1,465. So it's like seven feet higher over in that area.

The CHAIRMAN. And how much are we pumping? To what height are we pumping on the west end?

Mr. SANDO. We're—OK. To answer that question, we're actually pumping it over a hundred-foot hill. So there's a hundred feet that we're going up.

The CHAIRMAN. And that's expensive to pump water.

Mr. SANDO. Right.

The CHAIRMAN. So if we could come out of East Devils Lake, we'd only have to pump up 10 feet?

Mr. SANDO. If we could come out of East Devils Lake, I mean, you could have—if it's at 65, ideally, I think we'd look at trying to cut a gravity channel so it would just flow out and naturally put a control structure of some type, a gate on it, and let it come out that way, and then there wouldn't be any operating costs with electricity. For example, our west end outlet right now, it costs us $2 million a year just in electricity to run the outlet. It's $325,000 a month for 250.

So if we go upsize the west end, let's say if we want to double it, it'd cost us $4 million a year just in electricity costs just to run the outlet. So that's why we've been—we're trying to look at getting further to the east where we don't have such hurdles of, you know, high hills and lifting so much water out. But as you move from west to east, the water quality deteriorates.

So I think it's a good balance over at East Devils Lake, you know. The water quality's at 1,100. The lift isn't much there. So we can get the water out a lot easier. So I'd really like the Federal task force to really give that a closer consideration.

The CHAIRMAN. OK.

Mr. SANDO. In conclusion, Tolna Coulee, there's a lot of different perspectives out there. I just want to mention downstream people, we've got to take them into consideration, too. They are really concerned about the amount of water that would come out of Tolna Coulee and the quality of water. So there's people downstream that are interested in hardening Tolna Coulee at the 1,458 elevation. There's even people out there that would like to see it higher.

The people in the Devils Lake Region would like to see a controlled structure/outlet out at Tolna Coulee and they'd like to see it lower. As you'll hear from additional testimony today, you know, different perspectives. So it's one of our most difficult decisions that needs to be made in water resources in our state right now, how to handle Tolna Coulee and how to get the water out, because it impacts people in so many different ways, from the people in the Devils Lake Region to the people downstream. So it's going to have—we're going to have to find some type of happy medium, but it's a tough decision.

So as of right now, there's been resolutions from all different sides on this issue, from legislature, even the Water Commission staff, Water Commission members, you know, wanting to do certain things, and as you'll hear today, there's a lot of different perspectives.

So that concludes my testimony.

[The prepared statement of Mr. Sando follows:]

Testimony Presented to the
Senate Budget Committee
"Devils Lake Flooding Disaster:
A Stump Lake Perspective"

by
Todd Sando, P.E.
North Dakota State Engineer,
and Chief Engineer-Secretary to the
North Dakota State Water Commission

Lakota, North Dakota

August 27, 2010

Mr. Chairman and committee members, my name is Todd Sando, North Dakota's State Engineer, and Chief Engineer-Secretary to the North Dakota State Water Commission. I appreciate the opportunity to address you and the committee regarding the Devils Lake flooding crisis. Resolving this problem is one of the most pressing issues facing North Dakota today. On July 8, 2010, I delivered testimony to your committee in Devils Lake to address what the federal government might do to respond to the Devils Lake flooding disaster. In that testimony, I provided background information along with suggestions for the federal government to consider that I believe are pertinent to the topic of this hearing. I have included that testimony in addition to what I am providing today.

I would like to begin by pointing out that the same issues of flooded homes, infrastructure and agricultural land that have plagued areas adjacent to Devils Lake have equally impacted the people around Stump Lake. Addressing the Devils Lake flooding problems will go a long way in addressing the needs at Stump Lake.

Today's hearing on Stump Lake is important because decisions regarding potential actions at the Tolna Coulee will have tremendous implications not only to people around Stump Lake but also to people inundated by Devils Lake and those living downstream along the Sheyenne River. Stump Lake is a critical piece in the Devils Lake flooding disaster puzzle.

Since 1993, Devils Lake has risen to a level that has inundated several otherwise separate lakes in the 3,800 square mile watershed. The upstream series of lakes from Pelican Lake, to Lake Irvine, Lake Alice, Chain Lake and Dry Lake are all now inundated and part of Devils Lake and continue to increase in size. Downstream from Devils Lake are east Devils Lake and Stump Lake. Like the upstream lakes, these lakes are also now part of Devils Lake. Stump Lake is at the bottom of the drainage system and is the location of the watershed's natural outlet to the Sheyenne River via Tolna Coulee.

The Devils Lake water level is currently about 1451.6 feet msl. Based on information generated by climate and statistical experts, Devils Lake can be expected to continue its rise over the next several years. As I've explained in previous testimony to this committee, North Dakota built an emergency outlet project on the west end of the lake system to enable us to move as much Devils Lake flood water as possible to the Sheyenne River in a controlled manner. The objective is to reduce flood damages around Devils Lake, but most importantly, to reduce the risk of a natural, uncontrolled overflow through the Tolna Coulee. With the project's increased capacity of 250 cubic feet per second (cfs), the latest model runs show there is about a 9 percent chance Devils Lake will reach its spill elevation of 1,458 feet msl within 20 years. The increase of risk of an overflow from the 7 to 9 percent is the result of updated modeling that includes wet conditions experienced this summer.

The very real potential of a natural overflow from Stump Lake, now Devils Lake, poses a serious risk for downstream interests. If Devils Lake spills, the contributing drainage area of the Sheyenne River near Cooperstown will quadruple from 1,270 square miles to 5,070 square miles because the entire Devils Lake basin would then contribute to the river's flow. This will have many consequences including long-term elevated flows in the Sheyenne River and a serious impact to downstream water users due to high sulfate and other dissolved solids. Stump Lake is at the extreme downstream end of the Devils Lake drainage basin and, as such, has been the collecting point for sulfates and other water quality constituents carried to the lake in runoff for centuries. Sulfate levels in Stump Lake today are about 2,500 mg/l while the water in West Bay near the state's emergency outlet is about 575 mg/l. Water quality impacts were discussed at length in your West Fargo and Lisbon hearings last week.

As Devils Lake continues to rise, the decision of what will be done at the natural outlet near Tolna Coulee is the subject of heated debate. Many people downstream are concerned about water quality impacts and high flood flows of long duration on the Sheyenne River. Valley City passed a resolution arguing the natural outlet should be hardened and Barnes County has suggested the spill elevation should be raised by a foot. On the other side of the issue, people who have suffered with rising Devils Lake flood waters for years argue the outlet should not be hardened with some saying it should be excavated by as much as several feet below its current 1458 feet msl level to move flood water out of Devils Lake as soon as possible. I believe the controversy over management options at the natural outlet is one of the most difficult issues being addressed by the Devils Lake federal task force. We are looking forward to seeing their recommendations.

The debate over a control structure at Tolna Coulee stems, in part, from the nature of the soil structure at the outlet location. Over the centuries since the last glacier, Devils Lake's repeated rise and fall has deposited beach sand and gravel

at the outlet location leaving a highly erodible soil structure at the outlet. If Devils Lake is allowed to fill and overflow, the outlet elevation could change drastically as soil is washed away. Several variables will determine how much or how fast the outlet will erode.

The State Water Commission initiated monitoring of Stump Lake and four observation wells located in the outlet area between Stump Lake and Tolna Coulee in 2006. The purpose was to address the concerns over Stump Lake water, or ground water influenced by Stump Lake elevations potentially breaching the divide. An initial report published in 2007 and a supplemental report published in 2009 conclude that there is no indicated influence of Stump Lake waters on ground-water elevations or chemistry in Tolna Coulee ground water. Monitoring is continuing.

Investigations have shown that the Tolna Coulee is not the only natural outlet for Devils Lake. An ancient drainway that includes Black Slough located south of East Devils Lake is another. A survey of this area shows that Devils Lake would spill through Black Slough at elevation 1,465 feet msl. While this outlet is 7 feet higher than the Tolna Coulee, it offers some advantages as an east end outlet alternative. Foremost is the better quality water in East Devils Lake versus Stump Lake. The latest readings at East Devils Lake indicate about 1,100 mg/l sulfate concentration while Stump Lake has about 2,500 mg/l. It is possible to build a gravity outlet along the Black Slough route to supplement the water removed with the state's emergency outlet on the west end of Devils Lake. Here again, water quality constraints in the Sheyenne River are a major obstacle. If an accommodation were made allowing temporary higher sulfate levels in the Sheyenne River, a significant additional amount of flood water could be removed from Devils Lake. This would further reduce the risk of an overflow at Tolna Coulee where water quality is worse and there is no current way to control the flow volume to the Sheyenne River. This is a worthwhile option that I hope is being considered by the federal task force.

In closing, I would request that the specific actions I recommended in my July 8, 2010 testimony be considered by your committee and appropriate federal agencies. Specifically, I hope that the Black Slough outlet from East Devils Lake will be given serious consideration. It would be a relatively inexpensive measure that could help preclude devastating downstream damages should Devils Lake spill uncontrolled through Tolna Coulee.

Thank you.

ATTACHMENT:

Testimony to the
Senate Budget Committee Devils Lake Hearing
"Devils Lake Flooding Disaster: How Should the Federal Government Respond?"
July 8, 2010
Lake Region State College, Devils Lake, North Dakota

Todd Sando, PE
Interim North Dakota State Engineer

My name is Todd Sando and I am speaking as the Interim North Dakota State Engineer and Chief Engineer/Secretary of the State Water Commission. Thank you Senator Conrad for hosting this hearing and to the members of the committee for their interest in learning about, and helping to resolve the devastating flooding problems facing the people of the Devils Lake region and eastern North Dakota. I will not focus my testimony on the magnitude of the problem as it has evolved since serious flooding began 17 years ago. You have heard that over $650 million will have been spent by the end of 2011 to address infrastructure and other needs around Devils Lake. Others will talk about the hardships that this long-term flood has forced on the area residents. Instead, I will try to highlight what we see as steps needed to reduce additional damages that can become even more catastrophic both in terms of geographic area affected and environmental and economic damages.

Solving the problems we face with ever increasing water levels will require that all local, state and federal entities work closely together in a partnership to decide our course of action and implement decisions quickly. For nearly 17 years we have been working within restrictive physical, financial and legal constraints. While we have made some progress, much more is needed. As I see it, there must be unprecedented actions taken to prevent an uncontrolled overflow from Devils Lake to the Sheyenne and ultimately Red River. A few years ago, the Corps of Engineers estimated that an uncontrolled overflow could cause $21.3 million in damages annually to infrastructure downstream. At a minimum, the cities of Valley City and Lisbon would be devastated.

Devils Lake is a natural lake at the bottom of a 3,800 square mile watershed. The outlet elevation connecting this lake to the rest of the Hudson Bay drainage basin is quite high resulting in a lake level that rises and falls widely over time. Devils Lake only infrequently rises high enough to spill naturally doing so only a few times in the last several thousand years. The last time it overflowed was prior to statehood. Our studies show the changing water levels in Devils Lake provide a fairly accurate a barometer of whether we are in a climatic wet or dry cycle. As demonstrated by Devils Lake flooding and severe and frequent flooding along the Red River, the entire region is currently experiencing a very

wet climatic cycle. The impact of the wet cycle is demonstrated by the inflow to the lake. The average annual inflow from 1950 through 1992 was 33,800 acre-feet, while from 1993 through 2009 it was 243,700 acre-feet. Climate experts and those who study historic trends tell us the wet cycle may continue another 10 or more years. Many fear that the worst is not over.

The Army Corps of Engineers is currently building another congressionally and state funded raise to the embankment that protects the City of Devils Lake. Due to the depth of water standing against the embankment, what was once called a levee is now considered a high hazard dam. As such, the new structure must have an emergency spillway that will pass one-half of the probable maximum flood (PMF). In this case, the natural outlet at the Tolna Coulee is the emergency spillway. Unfortunately, the soil materials at the natural outlet are comprised of a mix of silt and gravel left over from ancient beaches and sediment blown in from the surrounding countryside. Once water begins to flow over those soils, there is little question that the outlet, or emergency spillway in this case, will erode. The Corps of Engineers has determined that one-half the PMF represents about 1.4 million acre-feet of runoff. The storage capacity of Devils Lake between its current elevation and the natural outlet elevation is only about 1.3 million acre-feet. As Devils Lake rises to its spill elevation additional land (78,800 acres) will be flooded around Devils Lake. There is not sufficient storage in Devils Lake to contain a one-half PMF event.

The record annual runoff of approximately 590,000 acre-feet occurred in 2009. Today, there is ten times more acres of water in sloughs and small lakes in the Devils Lake watershed than there was in 1991 and more that twice as many acres than there was in 1995. The soil profile is full and the many small lakes and wetlands in the watershed are full and overflowing. In 1993, the year when severe flood damages began to occur, a seven inch rain over part of the watershed caused the lake to rise about five feet. This was at the end of a five-year drought with an extremely dry soil condition and bone-dry upper basin lakes and wetlands. A similar rain over a large portion of the watershed today could push Devils Lake to the brink of a natural spill. The region has seen several rainstorm events of that magnitude and much larger in recent years. Summer storms at Ada and Roseau Minnesota and the 15 inch rainstorm along the Turtle River in North Dakota are examples of near misses. As I mentioned earlier, climate and statistics experts are telling us the wet cycle is not over and that it is entirely possible that the Devils Lake watershed will experience additional large runoff events whether as a result of summer storms or spring snowmelts.

The USGS has estimated that there is a 13 percent chance Devils Lake will spill in the next 20 years without an outlet and 7 percent chance with North Dakota's current emergency outlet. They have also estimated that there is a 10 percent chance Devils Lake will spill in the next ten-years without the state outlet. We have expanded, and are operating the state emergency outlet at 250 cubic feet per second. Other options are being explored but authorizing, funding and

building a new and/or enlarged outlet could take one to two years. Even then it could take some years to remove enough water to prevent a spill. The situation is critical.

Solutions to the Devils Lake flooding problem are complicated. Because Devils Lake is a terminal lake in a very large watershed, dissolved sulfates and other elements from the soils have naturally washed down into the lake over the years with each runoff event. As the water evaporates, sulfate and other minerals are left behind. Sulfate concentrations in Devils Lake change as the lake level changes over time. The nature of the way runoff enters Devils Lake results in a gradient of sulfate concentrations increasing from west to east in Devils Lake. The highest concentrations occur in the eastern part of the lake system. That happens to be where the natural outlet is located, at the Tolna Coulee. Herein lies one of the most difficult problems challenging a solution to the Devils Lake flooding problem. It is not just about too much water, but it is also about the quality of the water versus what exists in the receiving waters.

In building and operating the state's emergency outlet, it is necessary to strike a delicate balance between moving the greatest amount of water possible from Devils Lake while at the same time preventing exceedance of the water quality standards set for the Sheyenne River. Construction also required very careful design in order to avoid triggering the need for an environmental impact study under National Environmental Protection Act. This added greatly to the complexity and cost of the state's project. To maximize the potential for moving Devils Lake water, the state's outlet was built to take water from the west bay where the sulfate levels are the lowest.

The West Bay of Devils Lake including the Round Lake portion of Devils Lake where the outlet is located had sulfate levels of between 500 and 600 mg/L in 2009 and so far this year. Without Devils Lake water, the sulfate level in the Sheyenne River in the area where the outlet discharges into the river has generally been between 200 and 400 mg/L since 2005 although levels as high as 1600 mg/L have been measured during low flows. The water quality standard for the Sheyenne River was 450 mg/L until last year when an emergency rule modified the standard to 750 mg/L above Baldhill Dam. The standard remains at 450 mg/L below the dam. The 450 mg/L standard below Baldhill Dam will constrain the operation of the outlet at times, and challenges discharges of significant quantity of water from the east end of the lake.

Discharging water from Devils Lake also raised concerns in Canada and Minnesota that unique, harmful biota might be transferred to the Sheyenne and Red Rivers thus negatively affecting sport and commercial fisheries. Working with committees of technical experts, North Dakota has participated in exhaustive studies on biota present in Devils Lake comparing that to what is known about biota that already exists in the rest of the Hudson Bay basin. After years of sampling and analysis, no unique biota have been found in Devils Lake that do

not already exist the Hudson Bay basin. In fact, these studies have shown that Manitoban waters harbor far more threatening aquatic organisms. Despite this, and the fact that the state outlet has moved more than 29,000 acre-feet of Devils Lake water through a gravel filter to the Sheyenne River, Manitoba continues to raise concerns about any Devils Lake outlet. I should note that the upgraded state outlet includes an enlarged gravel filter system.

Many contend that modifying the Tolna Coulee to remove more water more quickly from Devils Lake must be done as soon as possible. Unfortunately, the naturally high sulfate levels and other dissolved solids in the far eastern end of the Devils Lake system, makes this very difficult. If an east end outlet is to be considered it may be best to move water from East Devils Lake through Jerusalem Coulee or the Black Slough area to the Sheyenne River to reduce the water quality impact downstream. Sulfate concentrations in East Devils Lake are 1,000 milligrams per liter versus 2,600 milligrams per liter in Stump Lake compared with the 575 milligrams per liter in the western portion of the lake. The sulfate concentration is East Devils Lake exceeds the new, higher limits set for the upper Sheyenne River by 250 milligrams per liter.

From our years of experience battling the Devils Lake flood, we know there are no simple solutions. Many factors have limited our ability to make as much progress as we would have liked. Foremost among them has been meeting the water quality standards of the Sheyenne River when Devils Lake water, even from the west end, is added. We are grateful that the North Dakota Department of Health has eased the constraints to the degree they have but even with these altered stream standards, our ability to remove floodwater from the lake is severely limited. We fully understand the need to protect downstream water users from harmful effects, however, the risk of a natural overflow and the potential damages an overflow would cause outweigh the impacts of a controlled discharge even from the east end of the lake. If the wet cycle continues, additional water must be removed from the lake in a controlled fashion.

The specific question posed by the committee in scheduling this hearing - "Devils Lake Flooding Disaster: How should the Federal Government respond?" – I have several suggestions:

First, the most expedient and effective way to move more floodwater than is being accomplished today is through further modifications to the water quality standards downstream from Valley City. This would require approval by the North Dakota State Department of Health and concurrence of the U.S. Environmental Protection Agency. Based on our experience, this would require a specific directive from Congress. It will also require adjustments by downstream municipal water users to adjust or modify their treatment plants to handle higher concentrations of Devils Lake water. Should these steps be accomplished, the state outlet could operate at a higher rate for a longer period of time. Downstream communities should recognize and agree with the Devils Lake

elevations at which would trigger moving even more floodwater, possibly from East Devils. Moving floodwater, even poor quality water, in a measured fashion is much better than the alternative of an uncontrolled, natural spill.

Secondly, the permitting processes at local, state and federal levels must be adjusted to accommodate more rapid decision-making. As one example, federal decisions requiring NEPA compliance are one area where we have experienced difficult, if not impossible time delays. Considering the dire consequences of a natural Devils Lake overflow, an emergency directive to speed environmental reviews to address the Devils Lake situation would be helpful.

A third area would be diplomatic participation. As was pointed out earlier, Canada has steadfastly continued their objection to operation of any type of Devils Lake outlet. Their stated concerns are two-fold; one being biota transfer; and the other being the need to meet water quality guidelines established in response to the Boundary Waters Treaty Act for the Red River as it comes into Canada. North Dakota has been in court several times on these issues and has thus far prevailed. Canadian concerns should not be ignored, however, the flooding situation in Devils Lake has been a growing catastrophe for many years. Therefore, it is necessary that the State Department be enlisted to seek an accommodation with Canada in order to avoid the dire consequences of an increasingly likely uncontrolled, natural overflow that would result in rapid and substantial impacts to the quality of water crossing the boarder. The more desirable outcome would be a controlled, much less significant water quality impact with a managed discharge from Devils Lake.

Canadian leaders must understand that an unregulated spill from Devils Lake is indeed a very real possibility. They must understand that removing as much water as possible from Devils Lake as soon as possible is critical. Moving floodwater from Devils Lake is a temporary emergency action that will be necessary only during this extreme wet cycle. This is not a permanent alteration of the drainage system. We do not believe this action will have detrimental affects in Canada.

As I draw to a conclusion, there is one final point that needs to be made to clarify the situation regarding wetland drainage in the Devils Lake basin and its relationship to Devils Lake flooding. No one can contest that there are wetland drains across the Devils Lake watershed with nearly all constructed prior to 1985. The question has been whether Devils Lake has risen appreciably because of it.

Over the course of an eight-year-long lawsuit, every aspect of that issue was carefully considered, beginning in 1999, when approximately 100 individuals who own land around Devils Lake sued the State of North Dakota and other local government entities, alleging that drainage and other water projects in the upper Devils Lake basin caused the lake to flood their property. During that trial, the court admitted over 1,000 exhibits, and heard testimony from numerous experts

on statistics, computer models, geology, hydrology, Devils Lake, the Devils Lake basin, and climatology.

In the fall of 2007, the North Dakota Supreme Court ultimately concluded the plaintiffs failed to establish that *any* of the alleged projects were the cause of flooding to their property. The court further concluded that a dramatic shift in Devils Lake area climate conditions over several decades, and especially during the 1990s, was the *sole proximate cause* for increased water elevations in Devils Lake – not the alleged drainage or other water projects.

In summary, these are the specific things Congress and the federal government can do to address the Devils Lake flooding issue:

As the federally led inter-agency task force completes its work, the federal government must be prepared to quickly fund implementation of it's recommendations;

Further ease water quality limits along the entire Sheyenne and Red Rivers;

Develop alternatives for an east end control structure and outlet from Devils Lake amongst federal entities that would have jurisdiction;

Continue federal funding necessary to support infrastructure protection and modifications required by rising Devils Lake water levels;

Continue financial assistance via FEMA to home and business owners flooded by increasing Devils Lake water levels – consider the unique conditions affecting homeowners around Devils Lake and alter rules etc. accordingly to provide assistance in this unusual flood circumstance

As NEPA requirements have continued to delay mitigation projects, Congress should direct CEQ to abbreviate and/or accelerate NEPA compliance reviews relative to Devils Lake flood relief

The CHAIRMAN. OK. Thank you, Todd. Thank you very much.

Next, we'll go to Odell Flaagan. Odell, the Chairman of the Nelson County Commissioners and Park Board.

Welcome, Odell. Thank you. Let me just say before you begin how much I appreciate the extraordinary amount of effort and time that you have dedicated to this issue.

Year after year after year, you have been unflagging in coming to the meetings, giving Nelson County perspective to these difficult issues, and I just want to publicly thank you for your long leadership on these issues.

STATEMENT OF ODELL FLAAGEN, CHAIRMAN OF NELSON COUNTY COMMISSIONERS AND PARK BOARD

Mr. FLAAGAN. Thank you, Senator. Honorable Senator Conrad and Committee Members, for the record, my name is Odell Flaagan, Chairman of the Nelson County Commission and Park Board.

I'm here today to discuss the flooding issues of Stump Lake and Nelson County. Our first roads went underwater on May 25th,

2005, at 1425. Today, these roads are 27 feet underwater at 52. We have lost many farms, including thousands of acres of tillable farmlands, since the lake started to rise.

On August 4th, 2010, we have 573,083 acre feet of water in Stump Lake that covers 16,756 acres. We have lost many thousands of dollars to property tax due to decreased land values. We have one east-west county road left in the north side of Stump Lake which is in trouble, causing concerns about the accessibility to fire, ambulance, school buses, mail carriers, and agricultural base.

As of today, we have three new housing units being built in the South Shores of Stump Lake, one major camping park on the north side, and our county park which has 85 permanent campsites and 45 additional weekend sites.

A major concern of the developers in the county is we don't want the lake to become a lagoon or a holding pond in Nelson County. Nelson County is proposing to the State Water Commission and the Corps of Engineers to build a control structure in the Tolna Coulee just northwest of Tolna on our County Road 4, Leval Township, Section 29 and 30. This location is approximately one and a half miles southeast of the property owned by the city of Devils Lake.

The proposed outlet would be at 1,446 to 48, so the water would stay at a natural flow for the Jerusalem Coulee and the West Outlet of Stump Lake. We feel that if the outlet breaks out naturally, we would lose three major roads north and east of Tolna, including the railroad trestle, and eventually take every road between Stump Lake and West Fargo.

Nelson County feels that the cheapest way to avoid this scenario is to have no pumping costs and the State of North Dakota to control the flow of water in the Sheyenne River. This letter is to clarify the views of Nelson County Commission regarding Stump Lake.

We support control structure in the Tolna Coulee outlet at Sump Lake and the gradual drawdown of the water to 1,447 and 48. We do not support the armoring of the Tolna Coulee at the present elevation. The Tolna Coulee is a natural outlet to Stump Lake and would not require any pumping costs. The drawdown of water to this elevation of 1,447 would free up about 50,000 acres of agricultural land in the Devils Lake-Stump Lake Basin that is currently flooded.

We, the Commission of Nelson County, strongly support the control structure on the Tolna Coulee and do not support the armoring of the Tolna Coulee. We ask for your support.

Thank you for your time and cooperation, Senator Conrad and Committee Members. We appreciate your time and support given to us in Nelson County.

[The prepared statement of Mr. Flaagan follows:]

BOARD OF COUNTY COMMISSIONERS
NELSON COUNTY
210 B Ave W, Ste 201
Lakota, North Dakota 58344

Ronald Dahlen
Donald Fougner

Odell Flaagan, Chairman

Maynard Loibl
Harold Bergquist

Honorable Senator Conrad and Committee Members:

For the record, my name is Odell Flaagan, Chairman of Nelson County Commissioners and Park Board.

I am here to discuss the flooding issues of Stump Lake in Nelson County.

- Our first road was lost in May 2005 when the lake was at 1425 feet. This road is now 27 feet under water.
- We have lost many farmsteads including thousands of acres of tillable farmland since the lake started to rise.
- As of August 4, 2010 we have 573,083 acres of water in Stump Lake that covers 16,756 acres.
- We have lost many thousands of dollars of property tax due to decreased land valuations.
- We have one east-west county road left on the north side of Stump Lake, which is in trouble, causing concern about the accessibility for fire, ambulance, school buses, mail carriers and our agriculture base.
- As of today we have three new housing units being built on the south shores of Stump Lake, one major camper park on the north side and our county park which has 85 permanent camper sites and 45 additional weekend sites.
- A major concern of the Developers and the County is we don't want the lake to become a lagoon or just a holding pond.
- Nelson County is proposing to the State Water Commission and The Corps to build a control structure in the Tolna Coulee just northwest of Tolna in our County Road 4, Leval Township, Section 29/30. This location is approximately 1 1/2 miles southeast of the property owned by the City of Devils Lake.

- The proposed outlet would be at 1446-1448 feet so the water would stay at a natural flow through the Jerusalem Coulee to the west outlet of Stump Lake.

- We feel that if the outlet breaks out naturally, we would lose three of our major county roads north and east of Tolna including the railway trestle and eventually take every road between Stump Lake and West Fargo.

- Nelson County feels the cheapest way to avoid this scenario and have no pumping costs to the State of North Dakota is to control the flow of water to the Sheyenne River.

Thank you very much for your time and cooperation, Senator Conrad and Committee members. We appreciate your time and effort and support of Nelson County.

Respectfully submitted,
Nelson County Commissioners

Odell Flaagan
Chairman

The CHAIRMAN. Thank you, Odell. Thank you very much for that important testimony, and now we'll go to our other witnesses. We appreciate very much their being here, as well.

Ben Varnson, the Chairman and Manager of the Upper Sheyenne River Joint Water Resource Board.

STATEMENT OF BEN VARNSON, CHAIRMAN, NELSON COUNTY WATER RESOURCE DISTRICT

Mr. VARNSON. Thank you, Senator. Apparently I wear several hats. I'm a member of the Nelson County Water Resource District and vis a vis Chairman. I'm a representative and serve on the Upper Sheyenne Joint Board where I am also Chairman of the 11 counties that make up that Upper Sheyenne and Symbollio Dam to Sheridan County, as you well know, and I'm pleased to represent those folks, as well.

This is a brief overview from our Water Resource District that I will present to you at this time. Following this presentation, there is a resolution that the Red River Joint Board, that we are also members of and serve on, and the Upper Sheyenne are accompanying my remarks. I won't be reading that but that should also be placed in the record.

The CHAIRMAN. Without objection, that will be part of the record.

Mr. VARNSON. Thank you, sir. The Nelson County Water Resource District has in the past and will continue to help our region and county from adverse impacts caused by flooding. We will continue to work in concert with our watershed partners, the Red River Joint Board, the Upper Sheyenne Joint Board, the Devils Lake Basin Joint Board, into the future.

Our County Water Resource District is a member of all of these three joint boards. Most recently, the Nelson County Water Board helped develop and approved the Red River Joint Water Resource Board's support of a resolution for a Devils Lake structural outlet. The Upper Sheyenne Joint Board has written a letter of concurrence of this resolution. A copy of this resolution, as previously stated, is accompanying these brief remarks.

Our county has for the past 15 years been proactive in the need of a cleanout of the Tolna Coulee. We have been involved with minor work on and below that outlet divide. We have helped facilitate meetings with downstream folks, including Valley City, Cass County, and the city of Devils Lake, to name a few.

Stump Lake began filling in 1993 with heavy rains. This extreme wet cycle has continued and weather experts report that it may continue five–10 years out, as you very eloquently portrayed at the beginning of the hearing, or for future years.

In 1993 and the few years that followed, our Water Resource District was challenged with replacing a washed- out culvert in Dutch Point Road resulting from heavy rains. At that time the water elevation of Stump Lake was 1,396. Today, there are over 30 miles of township and county roads that are presently lost to Stump Lake. Our records show maybe 10 more miles than what may more accurately be portrayed in other documents, but in our view our work with landowners and so forth, section lines and other prairie trails, we enhance that mileage.

The water has risen approximately 56 feet to its present elevation of almost 1,452. Landowners, farmers, and ranchers continue to feel these negative impacts. Financial and other personal losses are devastating families here and in the entire region.

Programs need to be adjusted fast to make dollars available to compensate the people who are losing all or large portions of their livelihoods. A recent finding is that CRP enrollments may not be available if water looks to be permanent. This must be corrected now because these landowners need to pasture for the new condition of their land. It is important that this be handled correctly and not be too shortsighted.

Any measures to help landowners for income lost during a disaster, such as this, seems to get removed. It is our hope that this will be corrected as agriculture and recreation development need to be balanced.

Nelson County Water Resource District supports the economic development of Stump Lake and the surrounding area but we need a wise review of water elevations and a natural water course release. Our Board has supported using the Tolna Coulee and a control protection plan from 1,447 to 52 elevation. We have been delayed by bad judgments and avoidance as to what may happen in a natural and serious discharge of water. This is certainly now an Eastern North Dakota dilemma.

This concludes my remarks, along with the resolution previously mentioned.

Thank you, Senator.

[The prepared statement of Mr. Varnson follows:]

Nelson County Water Resource District

P.O. Box 446
Lakota, North Dakota 58344-0446

Phone: 701.247.2682 Fax: 701.247.2692 E-mail: ncwrd@polarcomm.com

August 27, 2010

The Nelson County Water Resource District has in the past and will continue to help our region and county from adverse impacts caused by flooding. We will continue to work in concert with our watershed partners, the Red River Joint Water Resource Board, the Upper Sheyenne River Joint Water Resource Board, and the Devils Lake Basin Joint Water Resource Board. Our county water resource district is a member of all 3 of these joint boards. Most recently, the Nelson County Water Resource District helped develop and approve the Red River Joint Water Resource Board's support of a Resolution for a Devils Lake Structural Outlet. The Upper Sheyenne River Joint Water Resource Board has written a letter of concurrence to this resolution. A copy of the resolution and the Upper Sheyenne River Joint Board's letter is attached.

Our county has, for the past 15 years, been proactive in the need for a cleanout of the Tolna Coulee. We have been involved with minor work on and below that outlet divide. We have helped facilitate a meeting with downstream folks including Valley City, Cass County and the City of Devils Lake, to name a few.

Stump Lake began filling in 1993 with heavy rains. This extreme wet cycle has continued and weather experts report it may continue for 5 to 10 years or more into the future. In 1993 our Water Resource District was challenged with replacing a washed out culvert in Dutch Point Road resulting from heavy rains. At that time the water elevation of Stump Lake was 1396. Today there are over 30 miles of township and county roads that are presently lost around Stump Lake. Water has risen approximately 56 feet to its present elevation of 1452. Landowners, farmers, and ranchers continue to feel these negative impacts. Financial and other personal losses are devastating families here and in the entire region.

Programs need to be adjusted fast to make dollars available to compensate the people who are losing all or a large portion of their livelihoods. A recent finding is that CRP enrollments may not be available if water looks to be permanent. This must be corrected now because these landowners need to posture for the new condition of their land. It is important that this be handled correctly and not be too short sited. Any measure to help landowners for income lost during a disaster such as this seems to get removed. It is our hope that this will be corrected as agriculture and recreation development need to be balanced.

The Nelson County Water Resource District supports the economic development at Stump Lake and the surrounding area but we need a wise review of water elevations and a natural water course release. Our board has supported using the Tolna Coulee Outlet and a controlled protection plan from 1447 to 1452 elevation. We have been delayed by bad judgments and avoidance as to what may happen in a natural and serious discharge of water.

This is certainly now an eastern North Dakota dilemma.

Board Members

Ben Varnson	Gene Gehrke	Michael Donohue	Richard Daws	Charlene Varnson, Secr.-Treas.
Lakota, ND	Aneta, ND	Pekin, ND	Michigan, ND	Lakota, ND
701.259.2127	701.326.4248	701.262.4996	701.259.2257	701.247.2682

Upper Sheyenne River Joint
Water Resource Board
P.O. Box 446
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Providing a coordinated and cooperative approach to planning and implementing a comprehensive water management program in the Upper Sheyenne Watershed

August 10, 2010

TO: Governor John Hoeven
Todd Sando, State Engineer
Mayor Richard Johnson, City of Devils Lake
Jeff Frith, Devils Lake Joint WRB
David Johnson, Garrison Conservancy District
Red River Joint Water Resource Board

RE: Resolution of Support for Devils Lake Structural Outlet

FROM: Upper Sheyenne River Joint Water Resource Board
Ben Varnson, Chairman

The Upper Sheyenne River Joint Water Resource Board unanimously concurred with the resolution provided by the Red River Joint Water Resource Board regarding the support for a Devils Lake Structural Outlet. A copy of the Resolution is attached.

Ben Varnson, Nelson County WRD
Chairman, USRJWRB
Lee Monson, Griggs County WRD
Vice Chairman, USRJWRB
Pat Hurley, Barnes County WRD
Brian Maddock, Benson County WRD
Peter Larson, Eddy County WRD
David Ashley, McHenry County WRD
Marvin Gisi, Pierce County WRD
Walter Filler, Sheridan county WRD
Tor Bergstrom, Steele County WRD
Joel Lees, Stutsman County WRD
Norm Remboldt, Wells County WRD

RED RIVER JOINT WATER RESOURCE DISTRICT
RESOLUTION OF SUPPORT FOR DEVILS LAKE STRUCTURAL OUTLET

WHEREAS, the Red River Joint Water Resource District (the "Joint Board") is a joint water resource district and political subdivision under N.D. Cent. Code § 61-16.1-11.

WHEREAS, the Joint Board is comprised of the following member water resource districts in the Red River Basin in North Dakota:

a. Ransom County Water Resource District;

b. Richland County Water Resource District;

c. Sargent County Water Resource District;

d. Pembina County Water Resource District;

e. Walsh County Water Resource District;

f. Grand Forks County Water Resource District;

g. Traill County Water Resource District;

h. Barnes County Water Resource District;

i. Maple River Water Resource District;

j. North Cass Water Resource District;

k. Southeast Cass Water Resource District;

l. Rush River Water Resource District;

m. Nelson County Water Resource District; and

n. Steele County Water Resource District.

WHEREAS, the Joint Board and its member districts have a significant stake in conditions downstream of Devils Lake.

WHEREAS, the Devils Lake region has experienced substantial flooding to the significant detriment of government entities, communities, the local agriculture industry, property owners, and others.

WHEREAS, since 1993, the substantial rise in Devils Lake has flooded over 130,000 acres of land.

WHEREAS, to date, expenditures associated with raising roads, building dams, relocating homes, protecting infrastructure, and other costs associated with Devils Lake flooding exceeds $700,000,000.

WHEREAS, United States Geological Survey modeling suggests there is a significant likelihood Devils Lake will continue to rise and that, as a result, the continued flooding will result in an uncontrolled discharge into the Sheyenne River.

WHEREAS, additional flooding leading up to an uncontrolled discharge would lead to substantial local damages, including inundation of an additional 100,000 acres of farmland, and flooding of additional homes and communities adjacent to Devils Lake.

WHEREAS, the State of North Dakota has invested significant amounts of State funds to remedy impacts of flooding and to construct a 100 cubic feet per second outlet on the west end of Devils Lake.

WHEREAS, most recently, the State of North Dakota constructed improvements to its western outlet to increase discharges to 250 cubic feet per second.

WHEREAS, despite efforts by the State of North Dakota and by local government entities in the Devils Lake region, Devils Lake continues to rise, and an uncontrolled discharge at a lake elevation of approximately 1,458 feet into the Sheyenne River is possible.

WHEREAS, while communities downstream of Devils Lake have similarly experienced elevated precipitation levels over the past 17 years, and the introduction of additional water in many of those communities would create difficult circumstances, an uncontrolled discharge of Devils Lake into the Sheyenne River could have potentially devastating impacts downstream of Devils Lake.

WHEREAS, communities downstream from Devils Lake, and Manitoba and other Canadian entities, have opposed enhanced discharges of Devils Lake into the Sheyenne River due to concerns regarding water quality standards.

WHEREAS, in conjunction with the North Dakota State Water Commission's increase of the western Devils Lake outlet from 100 c.f.s. to 250 c.f.s., the North Dakota Department of Health amended water quality standards for the Sheyenne River immediately downstream of the western Devils Lake outlet to accommodate the increase.

WHEREAS, the Joint Board recognizes that communities have concerns regarding water quality standards, but the Joint Board further recognizes that an uncontrolled discharge of Devils Lake into the Sheyenne River could potentially have devastating impacts on water quality standards downstream from Devils Lake, including devastating impacts to water quality standards in the Red River of the North, into Canada.

WHEREAS, the Joint Board and its member districts are concerned about the potential for substantial flooding downstream of Devils Lake due to an uncontrolled discharge into the Sheyenne River and the significant damages that would occur as a result of the flooding.

WHEREAS, similarly, the Joint Board is concerned about the adverse impacts to water quality standards in the Sheyenne River and the Red River of the North as a result of an uncontrolled discharge of Devils Lake into the Sheyenne River.

WHEREAS, the Joint Board supports efforts to provide flood relief to the Devils Lake region, and to provide safeguards for communities downstream of Devils Lake for the benefit of the Joint Board; the Joint Board's member districts; counties, cities, and communities downstream of Devils Lake, the agriculture industry downstream of Devils Lake; and landowners downstream of Devils Lake.

NOW, THEREFORE, BE IT RESOLVED that the Joint Board supports immediate efforts to develop, facilitate, construct, and operate a control structure on the eastern end of Devils Lake with the capability to retain water when the Sheyenne River is flooding and to release water when the Sheyenne River is not flooding, and that will prevent catastrophic erosion of the outlet between the lake and the Sheyenne River.

BE IT FURTHER RESOLVED that the Joint Board supports adjustments to water quality standards downstream of Devils Lake on the Sheyenne River and the Red River of the North to accommodate a control structure on the eastern end of Devils Lake.

BE IT FURTHER RESOLVED that the Joint Board supports construction of a control structure and water quality standard adjustments to avoid an uncontrolled discharge of Devils Lake into the Sheyenne River for the benefit of the Devils Lake region, and also for the benefit of downstream communities and other stakeholders.

APPROVED:

Jim Lyons, Chair

ATTEST:

Joan Svaleson
Secretary-Treasurer

Date Approved: July 15, 2010

F: WATER RRJT DEVILS LAKE RESOLUTION OF SUPPORT FOR STRUCTURAL OUTLET.WPD

OhnstadTwichell
attorneys

-4-

The CHAIRMAN. Thank you, Ben. Thank you very much for that important testimony, and next we'll go to Sharon Young, who is the Head of Emergency Management here in Nelson County.

Welcome and please proceed, Sharon.

STATEMENT OF SHARON YOUNG, EMERGENCY MANAGER, NELSON COUNTY EMERGENCY MANAGEMENT

Ms. YOUNG. Thank you. Thank you, Senator Conrad. For the record, my name is Sharon Young, and I'm the Emergency Manager here at Nelson County.

I thank you for this opportunity to present some testimony about the flooding issues and their impact within the Nelson County portion of the Devils Lake Basin and in particular the Stump Lake area.

I also thank you for this opportunity to provide input as you work toward a plan of action to deal with the chronic flooding and the threat of an uncontrolled spill to the Sheyenne River.

I'm more or less going to give you some history, Senator Conrad. Here are some of the things that have gone on in our county since I've become emergency manager.

Stump Lake was at an elevation of 1,414.6 when I became Nelson County's emergency manager in October of 2003. Earlier this summer, as it's already been testified, it reached an all-time high of 1,452.1 on June 27th. That's an increase of 37 and a half feet in the time that I've been emergency manager.

The lake has risen almost 50 feet since the wet cycle began in 1993 and in just the past 2 years it has risen almost five feet with an increase of 77,477 acre feet, an increase of 1,855 acres. That's almost three sections of land that have disappeared under the water in just these last 2 years.

Stump Lake flooding has taken homes, farm buildings, and productive ag land, along with its property tax valuation. Area residents have lost portions of their livelihood with little or no compensation for their loss. Some have relocated to nearby farmsteads and some have actually had to move their homes.

The lake has devoured 18 miles of county and township roads. We have citizens that are traveling many miles out of their way because all their roads are either closed or underwater. County Road 23 north of the lake will be lost next if the water rises another two feet. The elevation of that road is 1,454.5. This is a major route between Lakota and Tolna and is very important also for our emergency responders.

Flooding has resulted in increased response time for ambulance, fire, and law enforcement vehicles and also increased our travel distances for school bus routes, mail routes, and getting to work and for our farmers getting to and from their fields.

Flooding has caused some mental health issues related to long-term stress. We have experienced problems with water on private driveways, water in basements, and the accompanying mold, mildew, and cleanup issues, damage to electrical systems, plumbing systems, furnaces, water heaters, appliances, furniture, and carpet. We have had requests for pumps and sandbags by citizens trying to fight the flood fight.

Rising Stump Lake has also created issues at Stump Lake Park. Stump Lake Park is county-owned and as such is a critical source of revenue for Nelson County. Over 16,000 people use our park annually, enjoying the park's 100 campsites, three ball diamonds, docks, fishing stations, cafe, pavilion, and Pioneer Village.

The county has spent over $200,000 on improvements over the last few years and the park property, its buildings and infrastructure are currently valued at two million. Our 90-year-old pavilion is a historic landmark and was recently added to the National Register of Historic Places.

Much of Northern Nelson County, which is also in the Devils Lake Basin, has been flooding for more than a decade, also a result of the prolonged wet cycle. The flooding has washed out roads, flooded crops and forced some rural residents from their homes.

Over the past several years, Lake Loretta and McHugh Slough have spread over thousands of acres of land. The high water table in this part of the county has taxed water and sewer systems in the city of Michigan. The city has a drain that moves water from town to Lake Loretta in the northwest and in May, heavy rains along with lagoon problems, caused a water emergency wherein that city was without water for over a week.

With that said as far as historical things, Nelson County has had Presidential declarations in 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, and we skipped till 2004, 2005, and last in 2009 and 2010, all for flooding and ground saturation. We have received public assistance for each of those years but individual assistance for only two.

With all that said, though, Nelson County has been proactive in its approach to the flood fight. In 2005, the County Commission and others lobbied the legislature for funding and received a half million earmarked for Nelson County flooding, over half of which was used for road repairs and the other half for water management projects.

In November of 2009, again because of numerous flooding problems, Nelson County residents voted their approval to increase by 10 mils to fund the maintenance of our farm-to-market roads.

The county also contracted with the Red River Regional Council and the U.S. Department of Agriculture in May of 2009 to develop the Stump Lake Master Plan. The purpose of this document was to review the existing park facilities and make recommendations on how to develop future activities. Relocation of the pavilion and the cafe were addressed in this plan.

Nelson County has recently requested assistance from the U.S. Corps of Engineers, Army Corps of Engineers, in constructing a permanent levee in Stump Lake Park. HESCO barrier was installed in May of 2009 and does provide protection to 1,453 but this is a temporary solution and the HESCO barrier began leaking and eroding this spring due to wave action.

Governor Hoeven has sent a letter on our behalf to the Corps requesting flood protection techniques, emergency construction methods and inspection of existing flood projects.

Nelson County has supported and sponsored a buyout or home acquisition through the hazard mitigation grant for one of our residents with historic flooding. Our county has obtained and prepositioned sandbags, Red Cross cleanup kits and maintained a close working association with the Red Cross, the Salvation Army, and the other voluntary organizations active in disaster.

Our County Road Department and its road superintendent and staff have worked diligently maintaining and repairing our roads,

working within the oftentimes cumbersome parameters of FEMA requirements.

The last proactive measure I'm going to mention is that recently our landowners voted to approve a $2.6 million Michigan spillway control project to divert pooling sheet water away from that city and also relieve about 40,000 acres of ag land and rural road flooding.

This project is estimated to lower the level of Lake Loretta by about seven feet and if the spillway can operate at 50 cubic feet per second, it will remove about 18,000 acre feet annually.

In conclusion, the state faces water quantity and water quality challenges in its quest for a workable solution to Devils Lake flooding. Ground saturation level is so high that we are just a couple rains, heavy rains away from a possible uncontrolled overflow. We need a control structure on the natural outlet from Stump Lake to Tolna Coulee to the Sheyenne River to manage water releases.

When I first became emergency manager, one of my tasks was to go through the things in the office from the past years and to sort through and reorganize the office. I have an entire file drawer full of past studies done on the Devils Lake Basin, the Devils Lake flooding situation.

Studies provide important information to those having to make big decisions and those trying to come up with the best solution that is best for all but we've just about run out of time for more studies.

Senator Conrad and your Committee Members, we need your help now. We need to be a part of the solution here, too. Nelson County asks for your support of a control structure on the Tolna Coulee.

Thank you for your time and effort.

[The prepared statement of Ms. Young follows:]

Nelson County Emergency Management

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August 27, 2010

Honorable Senator Conrad and Committee Members:

For the record, my name is Sharon Young, Emergency Manager for Nelson County.

I thank you for this opportunity to present testimony about the flooding issues & their impact within the Nelson County portion of the Devils Lake Basin, and in particular the Stump Lake area. I also thank you for this opportunity to provide input as you work towards a plan of action to deal with the chronic flooding and the threat of an uncontrolled spill to the Sheyenne River.

- Stump Lake was at an elevation of 1414.6 when I became Nelson County's emergency manager in October of 2003. Earlier this summer it reached an all time high of 1452.10 on June 27, 2010. That is an increase of 37.5 feet in the time I have been emergency manager.

- The elevation of Stump Lake on Monday, August 23 was 1451.55.

- The lake has risen almost 50 ft since the wet cycle began in 1993. In just the past two years, it has risen almost 5 feet, with an increase of 77,477 acre ft, and an increase of 1,855 acres. That's almost 3 sections of land that have disappeared under the water in just the past two years.

- Stump Lake flooding has taken homes, farm buildings, and productive agriculture land along with its property tax valuation. Area residents have lost portions of their livelihood, with little or no compensation for their loss. Some have relocated to nearby farmsteads; others have been forced to move their home.

- The lake has devoured 18 miles of county and township roads. Citizens are travelling many miles out of their way because of all the roads that are closed or under water in their area. County Road 23 north of the lake will be lost if the lake rises another 2 feet. The elevation of this road is 1454.5. This is a major route between Lakota and Tolna, and is very important for emergency responders.

- Flooding has resulted in increased response time for ambulance, fire and law enforcement vehicles, and increased travel distances for school bus routes, mail routes, getting to work, and for farmers getting to their fields.

- Flooding has caused mental health issues related to long term stress. We have experienced problems with water on private driveways, water in basements & the accompanying mold, mildew, & clean-up issues; damage to electrical systems, plumbing systems, furnaces, water heaters, appliances, furniture, carpet. We have had requests for pumps and sandbags by citizens trying to fight flood affects.

- Rising Stump Lake has created flooding issues at Stump Lake Park. Stump Lake Park is county owned and as such is a critical source of revenue to Nelson County. Over 16,000 people use the park annually, enjoying the park's 100 campsites, three ball diamonds, docks, fishing stations, café, bath house, pavilion, and Pioneer Village. The county has spent over $200,000 on improvements over the last few years. The park property, buildings and infrastructure are currently valued at $2 million. The 90 year old pavilion is a historic landmark, and was recently added to the National Register of Historic Places

- Much of northern Nelson County has also been flooding for more than a decade, also a result of the prolonged wet cycle that began in 1993. The flooding has washed out roads, flooded crops and forced some rural residents from their homes. Over the past several years, Lake Laretta & McHugh Slough have spread over thousands of acres of land.

- The high water table in this part of the county has taxed the water and sewer system in the city of Michigan. The city has a legal drain that moves water from town to Lake Laretta to the northwest. In May, heavy rains along with lagoon problems caused a water emergency wherein the city was without water for over a week.

- Nelson County has had Presidential Declarations in 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2004, 2005, 2009, and 2010 for flooding and ground saturation. We have received Public Assistance each of those years, but Individual Assistance only two.

Nelson County has, however, been proactive in its approach to the flood fight:

- In 2005 the County Commission & others lobbied the legislature for funding and received $500,000 earmarked for Nelson County flooding (half to cover road repairs and half for various water management projects).

- In November 2008 because of numerous flooding problems, Nelson County residents voted their approval of an increase of 10 mills to fund maintenance of farm to market roads.

- The county contracted with the Red River Regional Council & the USDA in May 2009 to develop the Stump Lake Master Plan. The purpose of the document was to review the existing park facilities and make recommendations on how to develop future activities. Relocation of the pavilion and café were also addressed within the plan.

- Nelson County has requested assistance from the US Army Corps of Engineers in constructing a levee in Stump Lake Park. HESCO barrier installed in May 2009 currently provides protection to only 1453 msl, and the HESCO began leaking and eroding this spring due to wave action. Governor Hoeven has sent a letter to the USACE requesting flood protection techniques, emergency construction methods, and inspection of existing flood protection projects.

- Nelson County supported and sponsored a home acquisition (buyout) in 2009 through the Hazard Mitigation Grant Program for a residence with a history of flooding. Citizens have relocated threatened structures.

- The county has obtained sandbags, Red Cross clean-up kits, and maintained a close working association with the Red Cross, Salvation Army, and other VOAD (Voluntary Organizations Active in Disaster) groups.

- Our County Highway Department has worked diligently maintaining and repairing roads, working within the often-times cumbersome parameters of FEMA requirements.

- Recently landowners voted to approve the $2.66 million Michigan Spillway flood control project that will divert pooling sheet water away from the city, and relieve about 40,000 acres of agricultural and rural road flooding. The project is estimated to lower the level of Lake Laretta by about 7 feet. If the spillway operates at 50 cubic feet per second, it will remove about 18,000 acre feet annually.

The state faces water quantity and water quality challenges in its quest for a workable solution to Devils Lake Basin flooding. Ground saturation level is so high that we are just a couple heavy rains away from a possible uncontrolled overflow. We need a control structure on the natural outlet from Stump Lake to Tolna Coulee to the Sheyenne River to manage water releases.

When I first became emergency manager, one of my tasks was to go through everything from past years and to sort, throw, and reorganize. I have an entire file drawer full of past studies done on Devils Lake flooding. Studies provide important information to those having to make big decisions, and those trying to do their best to come up with a solution that is the best for all. But we have just about run out of time for more studies.

Senator Conrad and Committee Members, we need help now. And we need to be a part of the solution. Nelson County asks for your support of a control structure on the Tolna Coulee. Thank you very much for your time, effort, and cooperation.

Respectfully submitted,

Sharon Young
Nelson County Emergency Manager

The CHAIRMAN. Thank you, Sharon, for really excellent testimony. I wish every member of the task force could have heard that for themselves and hear the testimony of this panel. It is very powerful about what's happened here in Nelson County and the risk that exists to even further damage. I think it just is clear as it can be from the testimony of this panel.

Let me ask if there's any further comment that any of the witnesses here would want to make before we open it for testimony from those who are here in the audience. Odell?

Mr. FLAAGAN. Senator, yes. I've had this comment that you heard before. It's not the quality of water that's killing us in Stump Lake. It's the quantity and something's got to be done with that.

The CHAIRMAN. Yeah. You know, it is an enormously complicated situation, isn't it, because we have so many different interests and they're weighing in now with resolutions, as you quite appropriately have. We've got a need to prevent an uncontrolled release out of the east end.

I think all of us would agree on that. I think downstream, not unanimously, there are people who have testified at these hearings in opposition to doing that. They just want to armor the Tolna Coulee. That is not a solution. That is not a solution.

Water will find a way to move and we all know that and so just armoring Tolna Coulee, I must say with respect to those downstream who've advocated that, that is not a solution to the problems that we confront here. There are other outlets from this lake, other than through Stump Lake and the Tolna Coulee. We know that. So I just don't see—some are saying just armor Tolna Coulee. That doesn't solve the problem.

Second. We have the issue here of the Stump Lake now being full and, you know, what is the future?

Odell, you had in your testimony very clearly, you want this just to become a stagnant lake that's not refreshed. Its water quality is not improved by the natural flow of this lake. That is a legitimate, very legitimate concern, and in fairness to the downstream, it is also fair to say they have a legitimate concern about the quality of water coming toward them.

Already, we are spending millions of dollars to upgrade the water treatment at Valley City, but we know this water, if it comes out either side the lake, goes downstream and will have an effect on water quality and water quality is hugely important to everyone.

So this is a very complicated set of issues and enormous resources have already been spent. As I indicated, the Federal Government has already spent $700 million, by the end of this year will have spent 900 million. Some have said, well, that's a waste of money. I disagree. If we hadn't spent that money, Devils Lake would be under 20 feet of water today. If we hadn't done these things, Devils Lake would be cutoff already, and I do wish that the Federal outlet had been constructed. I wish that had been done.

I think the 70 million that would have been state and local costs would have been money well spent, but, look, the decision was made to go in a different direction. We got to deal with what is. We got to deal with the circumstance we face now, and the circumstance we face now at 1,452 feet or close to that really requires urgent action.

It requires urgent action to move water. That's in all of our interests. That's in the interest of Devils Lake. That's in the interest of Stump Lake. That's in the interest of Ramsay County, of Nelson County, and of every county downstream.

As I tried to emphasize in the hearings in Valley City and the hearings in Lisbon and the hearings in West Fargo, we are all in this together. We are all in this together. Anybody downstream that thinks, well, you can just wall the water off up here and it's not coming their way, I'll tell you that's not what history tells us. That is not what history tells us.

So we together have to find actions that we can take and that is the agenda for the September 3rd meeting in Washington that many of you will participate in.

Let me now open it to those who are here in the audience. If anybody would like to provide testimony under the Rules, stand, be recognized, give your name, who you represent. If you just represent yourself, so state, and then say for the record. We'd ask you to confine it 2 minutes. Say whatever you think is important to be part of this record.

Would anybody like to be recognized? Let me just indicate I will also leave the hearing record open for 10 days. So if you want to

send a letter, you want to send—doesn't have to be a formal letter. If you want to jot down some notes about what you think should be done, I would be happy to make that part of the formal record, and as I say I will leave the record open for 10 days so that people have an opportunity. If you leave here and you think, gee, I wish I would have said this or I wish I'd haveten this on to the record, you don't have to provide it to us today to be included.

Would anybody like to be recognized? Yes. Yes, sir.

Mr. BERG. Senator, I'm Harold Berg from Lakota. I think, as you wonder about accountability and the rise of this lake, you're right on target. It's faulty data. I suggest to you that the people who are providing that data ought to be taken into consideration. We may need a period of time of change which would totally modify all of the projections because the climate has changed in this county.

When I became a citizen here in 1993,

[off microphone] and I'd suggest that whoever has some expertise ought to think about that factor, as well, as they consider the probability of the rise of this lake.

I think you are right that we can't depend on the old data. It is based on history, recurrent history, and that is not adequate. We have no basis for knowing what's going to happen.

The CHAIRMAN. Well, I thank you for that. I hope I've been as clear as I can be. I personally have no confidence in the projections on what the level of risk is. I don't believe it's a 13 percent risk. I don't believe it's a 20 percent risk. I believe it is approaching a 100 percent level of risk.

Now I can't quantify that, but I look at history and the scientists tell us at least three times in 4,000 years this lake has gone through a cycle where it's had an uncontrolled release of water and I think it's just irresponsible to be betting against that happening.

You know, I mean, I hear—I am so tired of hearing people tell me this lake's going to stop rising. I mean, how long have we heard that? It's going to stop rising. Well, it hasn't. It hasn't stopped rising and if you do a map and you show the trajectory that this lake has followed at least three times in 4,000 year, we are right on that trajectory.

So to me, this notion that we can bet on this lake going to stop some way, well, it stopped between 2000–2008. That gave a lot of ammunition to those who have told us over the years it's going to stop rising.

The problem is it was filling up Stump Lake. So sure it quit rising. Stump Lake, the water all coming in to Stump Lake. Stump Lake went up 50 feet. Now Stump Lake's full. Where's it going now?

So we've got to deal with reality, not what we hope, not what we wish it were. We've got to deal with what is happening.

Others who might want to—yes?

Ms. QUOM. I'm Darlene Quom, and I live by the lake. You said we're in all this together. To me, if they send it out the east, the south end of East Stump Lake, you're abandoning Stump Lake. We need a lagoon. If you send the water where it's intended to go, just the way it's going now, to Tolna Coulee, put a control structure in there so we can protect the downstream people, it would freshen our lake with fresh water flow through, eventually it would im-

prove our water quality more. It's been improving over the years. It would be a win-win situation for the people around Stump Lake. We could develop land. We could contribute to our economic aspect of what happens around the lake. We could develop our fishery. We could do a lot of things, but as the way it is now, we don't know what's going to happen.

We may be ending up with a lagoon or we may end up with no water. We may end up with God only knows, but to me it's the common sense approach of let it go the way God intended it to go and the quality will only improve. As I learned in General Science in 8th Grade, that moving water purifies itself.

There may be a time when it's not so good but eventually it would freshen and everybody would benefit.

The CHAIRMAN. OK. All right. Thank you. Yes, ma'am?

Ms. CLUTE. I'm Delores Clute, and I'm on the City Council.

The CHAIRMAN. Could you spell your name for the transcriber so they get it right?

Ms. CLUTE. C-l-u-t-e.

The CHAIRMAN. C-l-u-t-e. All right.

Ms. CLUTE. And I'm also—my son and I are landowners and I've sat and watched this lake get just like a giant coming along and I can talk of water down where—my farm is right across the south end of Stump Lake Park and down on our area, there are two fresh water lakes now that are underwater. The springs have come up underneath and all along the west of our land, our spring's fresh water.

We have a government well on the south end of our yard. It's the best water. Two of them in North Dakota. That's one well that's the best water and that's the water that's coming up in Stump Lake at that south end, but they have never taken a sample out of that south end.

Also, I watched the water come up to our farmstead this summer, starting with a little tiny spot like this, due to the tornado that went through here and over the summer it just spread. So now it's going out into the farmland on the south of the road. It's gone up to our buildings which have been in our family for four generations and I know it's a problem for everybody.

This spring I had, since 1993, all the studies of the engineers and they talk about this high. I'm sorry but I burned them all because they didn't do anything and so I'm sorry but it's awful to me and there's no stopping it and at the rate we're losing roads now, we might as well get out of Tolna pretty soon. Those people, Darlene, are like four-five miles from town. They drive 18 miles to get to town. Farmers can't get to their fields. It's a terrible situation.

The CHAIRMAN. That's very good testimony. Thank you for doing it.

Anyone else that would want to be recognized? Yes, sir.

Mr. UGLEM. Hi. I'm Don Uglem. I have a question.

The CHAIRMAN. Can you just spell for the record?

Mr. UGLEM. U-g-l-e-m. As far as water quality of the lake, what's the water quality actually going to be like after the water leaves Devils Lake at 1,450? I assume that it's still going to be relatively the same.

Mr. SANDO. I can try to answer that. Every year what happens at Lake Ashtabula, it freshens up when you get the snow melt in the spring time. So the water quality in Ashtabula Lake this spring was between 2 and 250 mg/l ppm.

As we've been operating the outlet this summer now, the water at Cooperstown and the headwaters in Lake Ashtabula, the salinity levels are changing and the sulfate levels are in the low 400's now.

So what happens, you know, we're going to have to monitor that closely as the fall goes along because we had the issue of 450 standard below Balt Hill Dam. So what will happen this winter when Lake Ashtabula freezes, the concentration of sulfates even goes higher then and so we'll have our highest levels in the winter time and then when the ice goes back out next spring we'll get inflow again that will refreshen Ashtabula and the whole cycle will start again with the way we're operating the outlet.

Mr. UGLEM. When you talk about hardening Tolna Coulee, wouldn't it be better to put in a little flow pipe dam so that when you have excess salinity you could use—it could go—it could freshen Stump Lake to some extent by letting out some higher-level salt water to blend with the spring flow or whatever after spring flow? And also going east, if you could put in a small flow that wouldn't probably affect the Goose River or the Forest River, that you could start getting some water out of the lake? Doesn't have to be a big yield, just get started getting the salinity out and the further it goes down each year.

Mr. SANDO. Those are very good points because the water quality in Stump Lake has been freshening all along. As you look, when the lake was back at 1,396, it was well over 10,000 ppm. Now we're down to 2,500. So if you can bleed water and move water out of Stump Lake, it will continue to freshen. So that's correct.

The CHAIRMAN. I'll tell you one thing that I've been persuaded of from all these hearings is I think we've got to have a multipronged approach. I think we've got to move, continue to move water out of the west end, maybe even increase that.

I think we've also got to move water out of the east end for all the reasons that have been given here. It really—I don't think it would be good to, as Odell says, create a lagoon or a pond out of Stump Lake. It needs to be naturally freshened and move water out, but we're going to have to do that and not have a big problem downstream. We're going to have to blend.

So the more I hear, the more I see, the more convinced I am that we need to blend west end water that's at 500 with water out of the east end and maybe even we need to be taking water not only from Stump Lake but we need to be maybe taking some water from east end of Devils Lake. That's at about, what, 1,100, Todd?

You know, the more I hear, I don't think just a one approach works here. I think we're going to have to continue to take water out of the west end, which gives us water that's below the 750 ppm limit, take water out of Stump Lake, so that continues to be refreshed, so that doesn't become stagnant, take water maybe even out of east end of Devils Lake, so that the combined effect is we move more water, blend it to make sure we meet the water quality standards, and at the same time meet some of the objections of

downstream people because they've got a legitimate concern about water quality and, of course, water quality affects us all.

Anyone else that wants to be recognized? Yes, sir.

Mr. EAGEN. Thank you, Senator Conrad, for giving this matter your attention. I'm Bob Eagen from Tolna. I've served many years on the Town and City Council. For many years I've operated the bank at Tolna.

I don't think anyone here today would argue of the adverse effects of this flooding, how it's impacted our communities. Farmers, landowners, homeowners live on the lake, it's impacted everyone. Fire departments, emergency services.

One of the things that's getting passed over, I believe, is the unimaginable economic opportunity that this lake has given us. For years, our community, the city of Tolna, the bank, has tried to operate with less and less and less, less students in our schools, less, less, less. How do we grow in a shrinking market?

Some years ago, we quietly accepted water coming from Devils Lake into Stump Lake without raising opposition to hold that water back. We've accepted that water and taken our lumps.

We're in a position right now to make something good out of something that's evil. This lake, like the development that's been on Devils Lake, has driven our community to a community that it wouldn't have been without it. Yes, a lot of farmland has been lost but it's lost. Short of lowering the lake, that land is not coming back.

Now, an approach to lower the level of the lake to some acceptable level and to bring water through the whole system, everyone in this region would—it seems that money has never been the obstacle in fighting the Devils Lake flooding, whether it's building a west end outlet, increasing dyke levels in Devils Lake.

I don't know how the dyke's going to hold water back the way it is. I would hate to be sleeping below a 20-foot wall of water. I couldn't do it.

Anyway, my point is I think we have an opportunity here for this community to finally strive toward growing rather than shrinking. We are already seeing that happen, whether it's traffic through this hotel that we're in right now, traffic through the Tolna area, housing developments being built. We've got about 75 houses, lots being plotted right now for development.

I realize that——

The CHAIRMAN. And where are those, Bob?

Mr. EAGEN. There's one development right directly north of Tolna, two and a half miles. There's another development approximately 10 miles northeast of Tolna, and then the Eichland development which is about 15 miles northeast of Tolna just on Highway 1 North, and the Shrader Capsize north of town, there's another proposed campsite of Tolna of a hundred units.

The CHAIRMAN. And why are those things happening?

Mr. EAGEN. Because our lake has become one of the best fisheries in the country.

The CHAIRMAN. So it makes it attractive for people to develop?

Mr. EAGEN. Absolutely. We see boats come through our main street every morning from Iowa, South Dakota, Minnesota, all over the country, and even downstream people are coming to Tolna to

go fishing. So it isn't the—the science says the quality it is what it is but it does support the magnificent fishery and homes are being built. People are moving to our community, not just fishermen but people are moving here.

The CHAIRMAN. So part of this response, I don't want to put words in your mouth, but what I hear you saying is part of this response needs to be to, while we're dealing with the flood threat, to take advantage of the opportunity that's been presented, as well.

Mr. EAGEN. We've accepted the devastation already. Let's do something good with it.

The CHAIRMAN. OK. And, Bob, can you spell your last name, so they get it for the record.

Mr. EAGEN. Eagen, E-a-g-e-n.

The CHAIRMAN. Yes, sir. Thank you very much. Anyone else that wants to be recognized? Yes, ma'am?

Ms. SCHMIDT. Janice Schmidt from Petersburg. I just want to acknowledge the research that's been done to move water to Western North Dakota. There's a shortage of water out there.

The CHAIRMAN. A great deal of research has now been done because one of the ideas that was given to us fairly early on in this process was that. So that is part of what the Federal team is reviewing, to see if it would be feasible to take water out of the west end of the lake for the oil fields in Western North Dakota.

There are major challenges to that, the geography of our state and the high lift that's required to get to Western North Dakota and the pumping costs associated with that, but that is being very closely analyzed.

Any other? I know that we are to be out of here in 5 minutes, but I want to make sure if there's anybody else who wants to be recognized. Yes, sir?

Mr. JOHNSON. I'm Roger Johnson. I'm on the high part of the Tolna Coulee of Devils Lake and I saw on a sheet of paper where a separate outfit took soil or water samples and they were down to 800 and some, 7 and 800.

Mr. FLAAGAN. I can answer that, Senator.

The CHAIRMAN. Odell.

Mr. FLAAGAN. We had our Water Commission take some the other day. We sent them to Northwood and they give us some reports back and they forgot to tell us you got to multiply them by three cause Bruce Inglehart from the Water Commission called us and we didn't know at the time but that's what it comes out. So it comes out to about 2,400. So it was a mistake. We talked to Northwood and they said they should explain it to us and they didn't and State Water Commission caught it and it is true it's multiplied by three, comes out about right.

The CHAIRMAN. OK.

Mr. JOHNSON. And there's a slough that had been marked all summer long and that had struck higher than it ever has been and it's only about a quarter of a mile from the lake. I've never seen it stay up that high for this time of the year. There must be water coming in from underneath.

The CHAIRMAN. OK. Anyone else that would want to be recognized, and again I want to repeat if you leave here and you say, gee, I wish I would have said something, if I had some idea that

I want to make sure that they think about, don't hesitate to get in touch with my offices and we'll make it part of the record. It doesn't have to be a formal letter. If you just jot down some notes about something that you're thinking about, we'll make sure it becomes part of the record.

[No response.]

The CHAIRMAN. All right. Anything, Todd, Odell, Ben, Sharon, anything you'd like to add?

Mr. VARNSON. Senator, there's a comment. As we work with our neighboring counties, Water Resource Districts and Road Departments, about 20 minutes ago some comments were mentioned regarding something newly developing concerns east of Devils Lake or Ramsay County coming through Nelson, Western Walsh.

The term that's coming to mind is that the whole region outside and near the lakes, north of Devils and Stump Lake, is liquefying. Our roads are—railroads are—well, the infrastructure and the water isn't seeping through these minor watersheds but help needs to be looked at and I know drainage should not go into Stump Lake or Devils Lake but a view of releasing water over roadways may need to take place. It's not going to get any better.

The CHAIRMAN. You know, I was in Candu yesterday and they tell me there, they're seeing effects of the water table rising, pressure on basements, water in basements that haven't had water before. It's like the whole watershed is just, you know, chock-a-block full of water, and, you know, it's creating issues in places that we've not previously seen it.

Mr. VARNSON. Thank you.

The CHAIRMAN. Any other last-minute?

[No response.]

The CHAIRMAN. All right. Thank you very much. Thank you, Todd. Thank you, Odell. Thank you, Ben. Thank you, Sharon, for your testifying. Thanks, all of you, for being here. Thanks to everyone who stood up and was recognized and provided additional testimony. I appreciate that very much.

With that, the hearing will stand adjourned.

[Whereupon, at 11:30 a.m., the hearing was adjourned.]

WRITING THE NEXT FARM BILL

MONDAY, OCTOBER 11, 2010

U.S. SENATE,
COMMITTEE ON THE BUDGET
Mohall, N.D.

The committee met, pursuant to notice, at 1:05 p.m. in the Mohall Emergency Services Facility Community Room, 104 Central Avenue North, Mohall, North Dakota 58761, Hon. Kent Conrad, chairman of the committee, presiding.

Present: Senator Conrad.

[presiding].

OPENING STATEMENT OF SENATOR CONRAD

The CHAIRMAN. Hearing will come to order.

I want to welcome everyone here today. This is a hearing—official hearing of the U.S. Senate Budget Committee. As an official hearing, we will be operating under the rules of the U.S. Senate. An official record is being kept.

The title of this hearing is Writing the Next Farm Bill. I'm pleased to say this is the very first hearing in North Dakota looking ahead to the next farm bill. So this is the beginning of a long process we're beginning right here in Mohall—Mohall.

I want to begin by wel—welcoming our distinguished witnesses today: Robert Carlson, President of the North Dakota Farmers Union; Scott Backes, a farmer from Glenburn; Larry Neubauer, President of the U.S. Durum Growers Association; Steve Edwardson, Executive Director of the North Dakota Barley Council; Ryan Pederson, Northern Canola Growers Association President; and Jeff Oberholtzer, a Director with the National Sunflower Association.

This is truly a distinguished panel, and I am deeply appreciative that you've all agreed to testify here today.

Before I turn to our witnesses, I'd like to just reflect on the last farm bill and how important and good it has been for North Dakota. During the August recess, I visited 45 counties across North Dakota, and what I saw in every corner of our state was that North Dakota is looking as prosperous as I've ever seen it.

Now, one of the reasons is we've got the development of the Bakken Formation, and only God can take credit for that. None of us had a thing to do with placing that oil under our ground, but thank goodness for it.

But we also have the agricultural sector, and agriculture is still the No. 1 part of our economy. The farm bill plays a big role in how

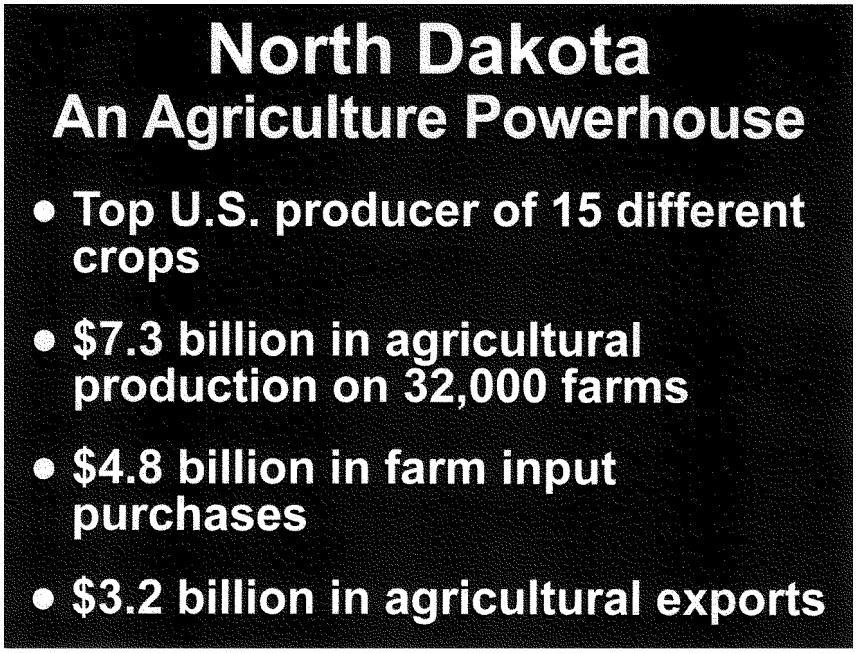
effective agriculture—the agricultural economy is for our state. And I'm pleased to report to you that North Dakota came out No. 1 in terms of per capita payments under the farm bill, and we are No. 1 by a big margin. The next state, South Dakota, they got half as much per capita as we get. So we're talking $700 million in a year flowing to North Dakota producers through the farm bill.

This is absolutely the best farm bill we've ever had for North Dakota, and part of the reason was—was, of course, Congressman Pomeroy and I were at the table; Congressman Pomeroy, because he is on both the Agricultural Committee and the Ways and Means Committee that provides some of the money to fund the farm bill, and I was there in my role on the Finance Committee, senior member there, senior member on the Agriculture Committee, and Chairman of the Budget Committee.

Always before, it's been the Southerners at the table when the final farm bill was written. This time, Congressman Pomeroy and I were there, joined by Collin Peterson, our neighbor in Minnesota, Chairman of the House Agriculture Committee, and, of course, Max Baucus, Chairman of the Finance Committee. So the first time ever, we had Northerners in the final negotiations, not just a group of Southerners, and it made a profound difference in the result.

The 2008 farm bill has been a big win for farm and ranch families. Our per capita payments are $2,628 per person per year; again, more than double second-place South Dakota. And according to USDA data, since 2000, farm safety net payments accounted for almost 50 percent of net farm income in North Dakota. Let me repeat that. Those who are running around the countryside saying, "Well, let's just eliminate the farm program," what would the con-

sequence be in North Dakota? It would reduce farm income, if the past is any guide, by 50 percent. Fifty percent of net farm income is accounted for by payments under the farm bill.

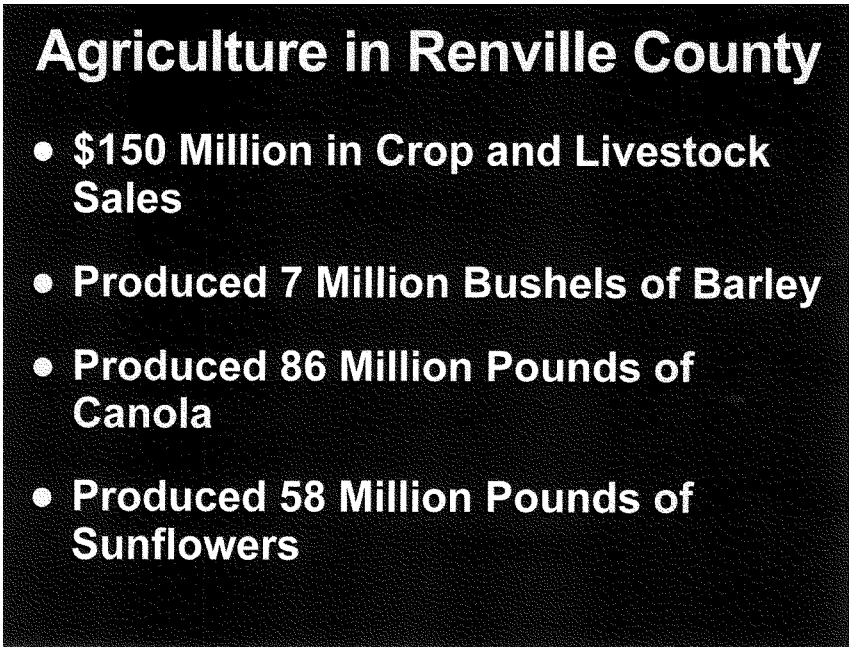


As a state, agriculture leads North Dakota's economic engine. We lead the Nation in the production of 15 different crops, including wheat, barley, sunflowers, canola, dry edible peas, crops that are familiar to growers right here in Renville County.

In 2009, North Dakota's farm and ranch families produced almost $7.3 billion in crops, livestock, and other agricultural goods on 32,000 farms. Producers also paid 4.8 billion for various farm inputs, hired labor, land rent, interest payments. North Dakota exported almost 3.2 billion in agricultural commodities in 2009.

Now, just in 2009 the total domestic state product for North Dakota, the total economic output of this state, was $32 billion. Agriculture, 7.3 billion.

By the way, payments and remittances by the Federal Government, $8.6 billion in 2009. Twenty-five percent of this state's economy are payments from the Federal Government: Social security, Medicare, farm program payments, activity at our air bases, highway construction, education. And anybody that doesn't think the Federal Government is playing a huge role in the economic lifeblood of North Dakota just hasn't done their homework, and agriculture is critically important to our long-range economic prosperity.



The importance of agriculture is no different here in Renville County. Crop and livestock sales totaled 150 million in Renville County in 2008. Renville County produced 7 million bushels of barley on 95,000 acres, enough to produce almost 2.6 billion bottles of beer, and that's why I've asked Scott Backes here to testify.

[Laughter.]

The CHAIRMAN. No, that's not true. That's a joke. But isn't that amazing? That's a lot of beer, even in Renville County, 2.6 billion bottles of beer.

Renville County also produced almost 86 million pounds of canola and 58 million pounds of sunflowers. Those are big numbers, and Renville County can be justifiably proud of how productive they've been.

But as good as these numbers are, we all know that sometimes our hopes for a bumper crop fall short and producers need a backstop. Here in North Dakota, things aren't any different. From floods to droughts, we have seen it all, and North Dakota farmers need help when Mother Nature turns against us.

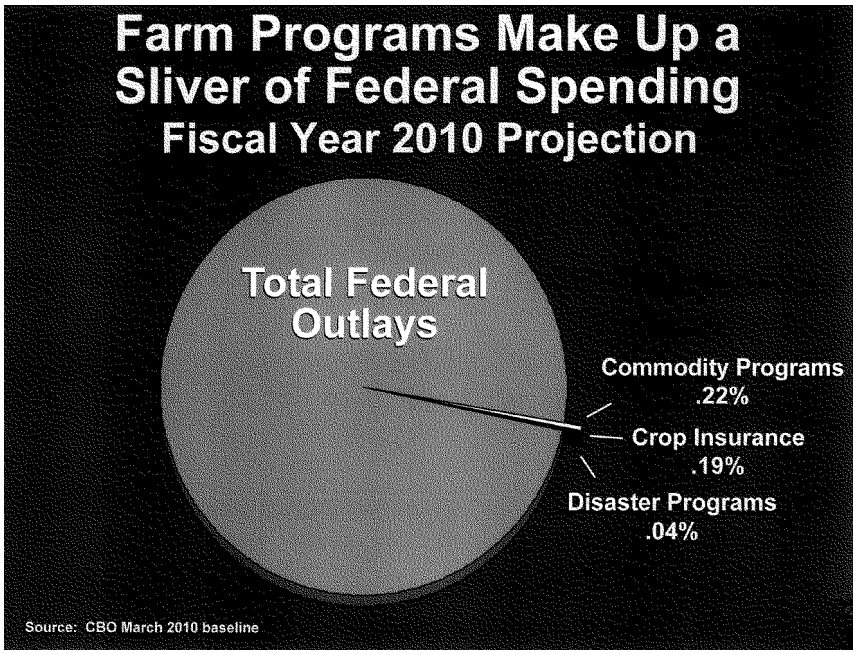
Even though it seems like we just passed the last farm bill, we're beginning to see the debate on the 2012 farm bill already begin to take shape. No surprise, Chairman Peterson has told me he helps—he hopes to write most of the bill next year. Now, that will be very unusual if it happens because usually farm bills are delayed, not written ahead of time, but Chairman Peterson has already talked to me about what he thinks is the importance of moving quickly.

And there is an important reason to move quickly, and that is the budget pressure that we are going to be under. Make no mistake, I think we all understand that we're on an unsustainable

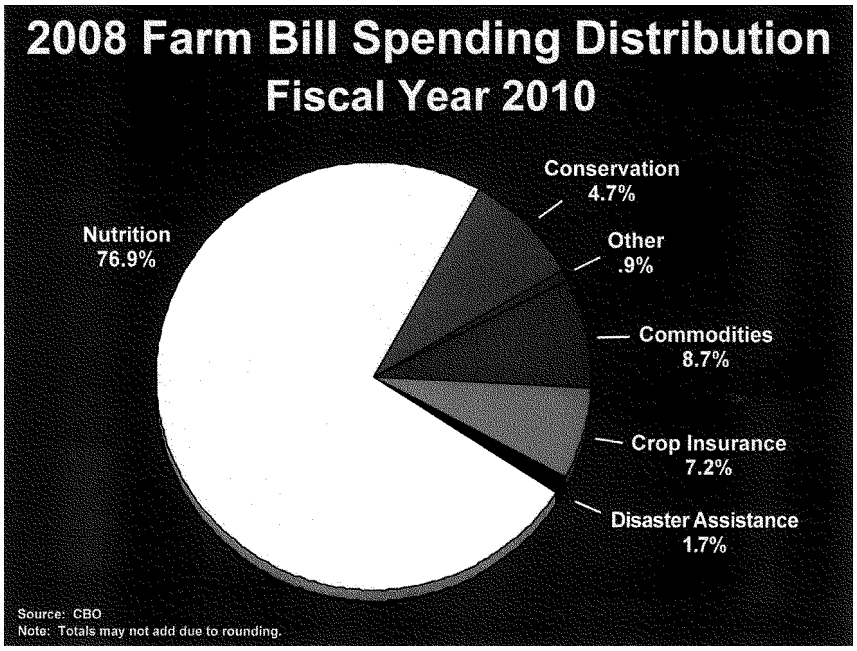
force as a country with our deficits and debt. I am part of the commission, the Fiscal Commission. There are 18 of us given the responsibility to come up with a plan to deal with our debt. We have been given the responsibility to come up with a plan by December 1, and I'm spending a great deal of my time in the work of that commission.

And, you know, every part of the Federal budget is being scrutinized for cuts, and it is going to have to be done because we are borrowing 40 cents of every dollar we spend. That cannot be continued. We understand at a time of economic downturn, Federal Government has to step forward; otherwise, we'd have faced a collapse.

But now, we're going to have to turn our attention to focus on bringing down the deficit and the debt, and every part of the budget is being scrutinized. I can testify to that because I've been working at least 1 day a week on the work of this commission.



It's important—so important that we share the facts of the farm bill with our colleagues. How much of the Federal budget is devoted to supporting farm income? As a percentage of total Federal spending, farm programs, crop insurance, disaster assistance make up less than one-half of 1 percent of Federal spending. Said another way, for every dollar the Federal Government spends, less than half of a penny, one-half of a penny, goes for farm programs. These programs provide our country with the safest, most affordable, most abundant food supply on the face of the earth. One-half of one cent is a pretty good deal for the taxpayers of this country.

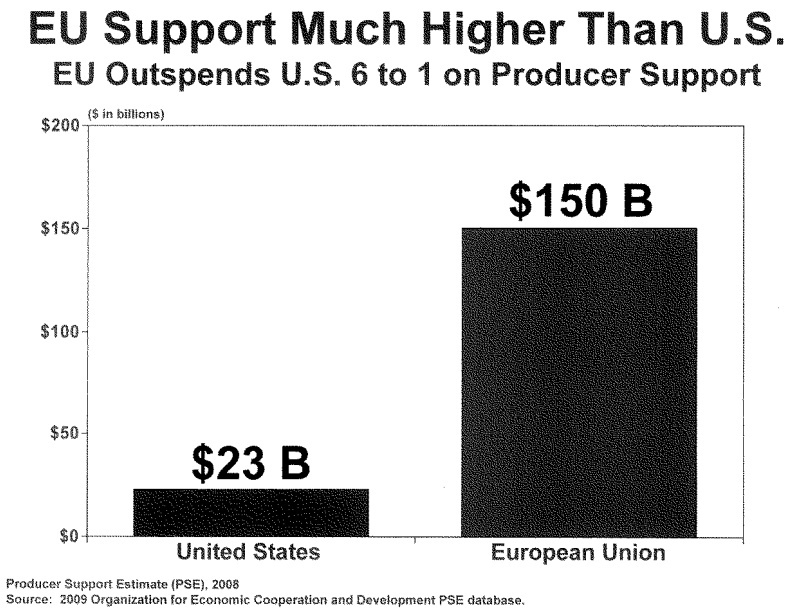


Another misconception that we face is where is the money going? Most people seem to think that a large majority of farm bill spending goes to support farm and ranch families. They could not be more wrong. The numbers tell a very different story. As you can see, for the current fiscal year, almost four out of every five farm bill dollars goes to support nutrition programs. Farm supports, crop insurance, the disaster programs account for less than 18 percent, one eight, 18 percent of the farm bill.

Here you see it, nutrition programs are absorbing 76.9 percent of all the money that's in the farm bill. So if you have your friends in more urban states say, "Oh, all that money's going to farm and ranch families," no, it's not. The money is being spread all across the Nation in every district. In every part of every state, those nutrition dollars are flowing. 76.9 percent of the farm bill spending is for nutrition programs that go into every community, large and small, all across the country.

And I want to emphasize, when we wrote this farm bill, we did not add one penny to the debt. It is completely paid for. In fact, we more than paid for it. We actually helped reduce the deficit a little bit because we produced more savings and more pay-fors than we did impose cost. So anybody tells you the farm bill is adding to the deficit and the debt, no, it is not. That is absolutely untrue. We didn't add a dime to the deficit, and I'm proud of it.

If you listen to the critics, you'd never know that almost 80 percent of the farm bill goes to support the nutritional needs of our citizens. The way they describe it, the farm bill only supports corporate agribusiness millionaires. The facts and the—and the—the details tell a very different story.



It's also worth noting how our biggest competitors, the Europeans, subsidize their producers. If you make a—an equal comparison what we do for our producers and what they do for theirs, here is the comparison according to the international scorekeeper, the OECD, the Organisation for Economic Co-operation and Development. They are the international scorekeepers on farm support. Here's what they report: The United States, $23 billion in farm support for 2008; the European Union, $150 billion. That is more than six times as much what the Europeans are doing for their producers compared to what we're doing for ours.

So don't let anybody tell you that somehow the United States is out there buying these markets. The fact is we are trying to provide somewhat of a fair fighting chance for our producers up against the European juggernaut, which truly is out trying to buy these markets.

As you can see, we face many challenges as we enter this farm bill debate, but as producers, you have an incredibly good story to tell. You produce the safest, most affordable, most abundant food supply in the world. You contribute enormously to our economic well-being. Not only does agriculture have a positive trade balance, but agriculture has weathered the economic downturn much better than other industries.

Now I'd like to hear from our witnesses about what they think of the current farm bill and what they think we should do for the future. Establishing common objectives and priorities will give us an advantage once formal negotiations begin. That's why today's hearing is so important, the very first hearing on the farm bill in the state of North Dakota, and we're doing it right here in Renville County.

With that, I'd like to turn to our distinguished witnesses, and we'll start with Robert Carlson. My intention is to go right down the table, so we go to you next, Scott, and then we'll go to Steve and right on down. We'll have the testimony from each of you and then we'll open it up to questions, and we'll also have time at the end to hear from people who are here in the audience, any testimony that you might want to provide.

With that, Robert, we turn to you. Welcome.

STATEMENT OF ROBERT CARLSON, PRESIDENT, NORTH DAKOTA FARMERS UNION, JAMESTOWN, NORTH DAKOTA

Mr. CARLSON. Well, thank you very much, Senator Conrad, and welcome to this beautiful part of North Dakota, which is near where my farm is, just across the line in Ward County. So we're glad that you came up and we're glad that Scott Backes arranged the day to be so nice for us to all be here.

On a—on a serious note, thank you, Senator Conrad, along with Congressman Pomeroy, for the work you did in getting the SURE program included in the farm bill. That was a major step forward to get a permanent disaster program and, as I'm sure you know, it has really paid off for North Dakota. I just heard on the news driving up here this morning, on the farm news, that North Dakota, for the 2008 year, received almost $250 million in SURE payments, and included in that is something we don't think about too often, and that is that about 80—a little over $80 million of that total was stimulus—so-called stimulus money. So that has been very important, especially for the livestock producers in our state and in—actually, to all of animal—agriculture, in particular, to have that SURE program included. So thanks for that, and I sure hope we can continue that in this upcoming farm bill. I think it's very important to maintaining a base of family farm agriculture and ranching in the United States and—and in North Dakota as well.

To answer your question about the farm bill, I think the 2007 farm bill is working well and I think it's popular. I think that we were very fortunate to get that bill passed with the elements that are in it in 2007. Looking ahead, I think if you ask most North Dakota farmers what they want, they'd say, "Let's just continue that." I recognize, though, that the political realities and the budget realities are a little bit different this time around, so we may need to look at spending that money that we have in the farm bill a little bit smarter and we may need to view the politics of getting it passed a little bit—a little bit differently. So I think looking ahead, we need to continue the safety net for SURE in a new farm bill.

New factors in the mix since 2007 are that we do have a tight budget, as everybody recognizes, and so we should—we should, I think with justification, protect agriculture's baseline in the budget. And I know that sounds sort of technical to most of us in North Dakota, but in the budget process in Washington, protecting what is in the baseline—and the baseline is where you sort of start in negotiations on a new spending bill with Congress—is very important, and if we have that historical precedent, it usually gives us some—some credibility going in to fight for the number that you've gotten before. So I think we need to protect the baseline.

Our members would like to see a change in the farm program in that the money that's in the baseline for direct payments be rolled into counter-cyclical and loan rate improvements so that we get paid when prices are poor and we need the help and not get an automatic direct payment.

Now, I know we like to get—and, as a farmer, I can't say that I ever threw away the check I got in the mailbox, either, for a direct payment, but I think in the upcoming budget, if we have to give someplace, that would be a place to give. Not give the money up, but put it into the loan rate or into the counter-cyclical payment so that we get those payments when we really need them. And in the years when prices are good, like they've been generally for the last 3 years, we wouldn't get so much in terms of price support.

Second thing I think we need to be sensitive to are the press reports. I think you alluded to, Senator, about certain individuals or corporate interests who haveten multimillion dollar payments under the farm program, and that's always good fodder for the news. I know that it doesn't amount to much in the aggregate, but it makes us look bad as—as farmers. I think the—the payment limits on direct payments and on counter-cyclical payments are good limits; however, on the loan—on the loan program, that's basically unlimited. I think we need to look at doing some kind of a targeted program for those loan—the loan program.

I recognize, at the same time, that the South needs to be appreciated, if I can put it that way. We need to—we need their support to pass the farm bill, so I know it isn't—it isn't easy to pick a number. But I do know that we can't continually stand the bad publicity of people manipulating rules and collecting amounts beyond congressional intent.

On the second part of what I have to say, and I'll try to keep within my time—or I will keep within my time limits, I suppose this message, Senator, is maybe really more for farmers and ranchers and my—my fellow farm leaders at this table and other places, and that would be a message that there's a lot at stake for farmers and ranchers in a new farm bill. There's a lot at stake in this election because the upcoming Congress will write the new farm bill.

We've done quite well in agriculture in North Dakota since 2007. There have been exceptions, and I know there will probably be some of you who will call me right after this meeting and tell me that you're an exception, but, generally, since 2007, we've had pretty good production, we've had pretty good prices, we've done quite well. We shouldn't allow that to lull us into complacency. We shouldn't—we shouldn't, if we're kind of so-called fat and happy, not pay attention to what's going on as we write a new farm bill because historically we need it. And I have lived through at least three times when we thought we were in a new plateau and a new era when prices rose and we thought this is going to continue and every time we thought that, we've been proven wrong and it's come close to bringing us to disaster: The late 1970's, one case; after the 1996 farm bill, another case. We thought the future was paved with gold. We overproduced, we wrecked the markets, and we had nowhere to turn because all we had gotten in that 1996 farm bill were decoupled payments. And I spent the next four or 5 years as

the new president of North Dakota Farmers Union going and trying to get emergency payments or disaster payments, and that wasn't any fun, and I—I don't want to go back to that. So let's not take our eye off this farm bill.

And I think, further, we need to tell voters about farming and tell them what a good deal for them that ag programs are, not just for farmers, but for the whole country. And I'm worried about the revival of antigovernment sentiment, which has sort of morphed now. Nothing new about antigovernment sentiment, I guess, but the fact that it's kind of morphed into a political movement is new. It's not wrong. It's not wrong for citizens in a democracy to take their goals and try to make a political movement out of it. There's nothing wrong with that. But I think there is wrong—something wrong with the sentiment that's behind it or the assumptions or the history that they're trying to show.

Their cry is get the government out of everything, deregulate all economic activity, including agriculture. To them, I would say when was the last time that agriculture let you down? When was the last time you went hungry? When was the last time you went to the grocery store and there wasn't bread on the shelf, or milk or sugar, or meat in the meat case? Well, the answer is never. Ag has never let you down.

Why is that? It's because almost since the founding of this country, we have had the Federal Government involved in agriculture. In the early—very early 1800's, of course, we had the Louisiana Purchase. President Jefferson purchased that so that—he thought it would be hundreds of years in which farmers could move westward. Well, it didn't take us that long, but it took us a few generations to populate and—and make agricultural land out of the West, including North Dakota. We've had, in the 1800's, import tariffs and quotas to protect agriculture. In the 1850's we had a giant leap forward with government support for ag when President Lincoln established the agricultural land-grant university system, college system for ag experiment stations, established the U.S. Department of Agriculture, I think in 1862 or something like that, and created, of course, the Homestead Act that many of our ancestors—or predecessors used to begin farming. So we've had at least 150 years of very active government involvement in agriculture.

Since then, we've added food inspection services. We've added export promotion. We've had programs to manage surplus production. We've had dozens of programs to support, preserve, and improve ag production in this country, and it has worked. We've had a history of using the Federal Government to support farmers and ranchers and it has assured consumers of a bountiful and affordable food supply. There's nothing more important to a society than food security. We have it. We should be grateful for it. We shouldn't—if I can use a colloquialism, we shouldn't screw it up. It would be extremely foolish to threaten that food security by losing a farm program in 2012.

And if we sit idly by because we're contented right now and let this nascent antigovernment movement set the agenda for the next Congress, we'll pay a heavy price in North Dakota. Let's not forget that the last farm bill got passed over President Bush's veto twice.

Thanks to congressional leadership, we got it passed over a veto. So elections do matter.

Senator Conrad, we look forward at Farmers Union to working with you and other Members of Congress as we develop this new farm bill, and I'll be happy to, I guess, answer questions or assist on that in any way.

Thank you very much.

[The prepared statement of Mr. Carlson follows:]

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Testimony of North Dakota Farmers Union
Senate Budget Committee • Field Hearing
October 11, 2010

Thank you, Chairman Conrad and members of the Senate Budget Committee, for this opportunity to testify on behalf of family farmers and ranchers in North Dakota.

North Dakota Farmers Union appreciates the opportunity to provide comments on the development of future farm bill policy. As the largest farm organization in North Dakota, we represent over 40,000 farm and ranch families. We are dedicated to protecting and enhancing the economic well-being and quality of life of families on the land and in their rural communities.

When considering farm policy, it is important to identify the reason for its formation. Our country has prided itself on providing a plentiful and safe food supply for its citizens. Think of Farm Bills as a sort of contract between producers and consumers: U.S. consumers provide federal programs that support and protect producers, who then provide those consumers with a good, dependable food chain. When we look at the abundance of top quality, inexpensive food currently in our nation, we can only assume that the current farm bill is realizing its purpose.

This sort of relationship between U.S. citizens and its government has been in existence for centuries. Think back to when this country was started. If it were not for the Louisiana Purchase and the Homestead Act, farming and ranching in this country would not have been feasible. Public schools were started by federal legislation. Federally-mandated legislation created the land grant schools, giving North Dakota State University the opportunity of agricultural research

and education. Federal support helped make railroads possible in this state. Food inspection, which is important to producers and consumers alike, was enacted by the federal government.

The nascent, anti-government movement that has infected the political landscape seems to threaten agricultural policy. Our organization is concerned about what this attitude may do to future farm policy if it reaches the United States Congress. The nation would be negatively impacted if we had a food system that was based on just-in-time inventory, which would hold no surplus to meet needs in case of natural disasters. Commodity price fluctuations without a safety net for producers would disrupt the food security that American consumers enjoy. Few places in the world can offer consumers the diversity and amount of food at such incredibly affordable prices that the farm bill helps provide. If our nation had to rely on food imports like we rely on petroleum imports, we would face a bleak future of uncertain supplies and wildly fluctuating prices at the supermarket. In an economy without farm programs, farmers would not be able to plan for the future and make the capital investments in technology and land that makes us so efficient and productive. Our agricultural infrastructure would gradually crumble. As a result, the small portion we spend on the U.S. agriculture budget is one of the best investments we make for the benefit of our nation.

The current Food, Conservation, and Energy Act of 2008 and the previous farm bill have been successful and generally accepted by farmers and ranchers. The main concern from farmers regarding previous bills is that there has not been an adjustment to counter-cyclical payments and loan rates to reflect the higher costs of production that we, as farmers and ranchers, are currently facing.

To continue this success, farm policy must be based on the following:

- A Counter-Cyclical Program is critical. Any proposal must contain a safety net that is counter-cyclical, is not decoupled and is indexed to current production costs.

- Continue permanent disaster program. The SURE (Supplemental Revenue Assistance Payments program), LIP (Livestock Indemnity program), LFP (Livestock Forage Disaster program) and ELAP (Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish program) programs in the farm bill should be continued and fully implemented in a timely manner. In recent years, we have had an incredible amount of extreme weather from ice storms to rain storms that would be considered an abnormal pattern. Farmers are paying taxes and other maintenance costs on land that has been out of production for years. It is essential to have these permanent disaster programs that allow for some recovery from these uncontrollable disasters to help defray costs without having to visit D.C. for emergency spending on a regular basis.

- Crop insurance needs to be strengthened and continued. In order to adequately cover a farmer's expenses, we need the continuation and improvement of crop insurance and coverage on all North Dakota crops. Coverage should include lower premiums for greater coverage or other revenue and production concepts to more directly represent the cost of production and inflation.

- Must target family farmers. Our members believe that the farm bill should be tied to production and must be targeted to support the production levels of family farmers in order to avoid further agricultural consolidation. Targeting would reduce government costs, further the sustainability of family farms and rural communities and limit further consolidation.

- A shift of direct payments to a new or better program that reflects cost of production plus inflationary safety nets is also favored by our members. The Average Crop Revenue (ACRE) program was an attempt to begin this process, but was complicated from a farmer's perspective. The program has two levels of payment triggers to meet before it would make payments. It also involves a commitment from all landlords and a commitment for the life of the program that may not match the land rent agreement. A program like ACRE may work

The CHAIRMAN. Thank you. Next we'll go to Scott Backes. Scott, welcome and please go ahead with your testimony.

STATEMENT OF SCOTT BACKES, NORTH DAKOTA FARMER, GLENBURN, NORTH DAKOTA

Mr. BACKES. Thank you for having this field hearing today, Senator. I've been farming in the Glenburn area for approximately 35 years, and I'm testifying today in support of the farm bill, particularly the last one that you helped pass.

The safety net has helped farmers re—remain viable. Some years, you are going to—in some years in farming, you're going to have certain crops don't do well—very well and you're simply going to take a loss, but the farm safety net, particularly the preventive plant portion of it that was implemented after the last farm bill,

is used in the event of a catastrophic loss of a crop, such as hail, fire, or wind or severe flooding.

And in farming there's always the unknown, such as a hailstorm that wipes out two-thirds of your crop or 17 inches of rain in 2009 and 30 inches of rain on my farm in 2010.

If—if—if you don't have a Federal crop program in place to cover you in the event of a catastrophic failure, you will not survive financially. It cannot be done. Young farmers that there's a lot less of these days cannot get loans to—to seed their crops unless their father or somebody else is willing to, you know, back them up, and that's why that portion of the farm bill is very—what I feel is the most important portion of it. It helps farmers in the time of catastrophic failures remain viable and remain on land, because we have nowhere else to turn, Senator. There is no private insurance that will come out, aside from just hail insurance, to back me up in the case of a failure. And all's we have right now of that portion is—is what we use and it's not designed to make money on. It's designed to give you three-quarters back of your expenses and to keep you viable on the land for the next year.

Thank you.

[The prepared statement of Mr. Backes follows:]

2012 Farm Bill Hearing

October 11, 2010

Re: Scott Backes
Talking points

1. Federal crop as a tool in farming:
   a. Began seeding on April 18, 2010. We seeded approx 1500 acres of wheat and then it began raining.
   b. From April 28 to July 1 we received 15 inches of rain
   c. Approximately 1000 acres that were 50% - 60% under water
   d. We seeded 2 quarters to wheat that should have been PP. Because those 2 quarters were @ 60 % under water, both quarters failed to produce a viable crop.
   e. We used PP as a risk management tool in farming.
   f. July was fairly dry. August 2 – Sept 28 we received another 15 inches of rain.
   g. Combining was almost impossible and crops suffered quality issues because of all the rain.
   h. Had to hire custom combiners to pull crop off between rain storms resulting in an additional $35 per acre and 21 cents per bushel drying expense at the elevator.
   i. September 15 began spiking stubble to dry out the land. We haven't done this for 5 years.
   j. Have had to hire aircraft to spray PP on two occasions because it was too wet to do myself.

2. Prior to this year, following are some examples of how the Federal Crop Program has allowed our operation stay viable:
   a. 1988 – severe drought resulted in very low yields for all crops seeded.
   b. 1991 – lost sunflowers due to drought
   c. 1996 – entire durum crop valued at .60 due to scab
   d. 1997 – entire durum crop valued at .90 due to scab. At this point, planned never to seed it again.
   e. 1999 – excessive moisture prevented most of the crop from getting seeded.
   f. 2002 - August 26, 2002 severe hail storm destroyed all of our wheat and canola crops.
   g. 2009 – excessive moisture resulted in ¼ of our land not getting seeded.
   h. 2010 - ?? (not over yet)

The CHAIRMAN. Well, I think a critically important point. I—I just want to stop at this point because I want to rivet the point Scott's making.

We have to preserve crop insurance. Without crop insurance, we cannot get financing. What Scott is saying, and I think said very well, is if we didn't have crop insurance assistance, when we do suffer a crop failure because of natural disaster, what happens? Without crop insurance as a foundation, you wouldn't get the financing to begin with.

And the lenders have made this very clear to us. I mean just saying testimony I have had on the previous farm bill all across North Dakota, the major lenders have made it very clear to us without that crop insurance backstop and, frankly, without a good disaster program, financing would be infinitely harder to get and only those with the highest equity positions would be able to secure the financing that's needed.

So the—the—the point Scott's making here is absolutely critical.

Let's go to Steve Edwardson, representing the North Dakota Barley Council. He is the executive director. Welcome, Steve, and please proceed.

STATEMENT OF STEVE EDWARDSON, EXECUTIVE ADMINISTRATOR, NORTH DAKOTA BARLEY COUNCIL, FARGO, NORTH DAKOTA

Mr. EDWARDSON. Thank you, Senator, and thank you very much, of course, for the opportunity to—to be able to provide testimony and—and, hopefully, some facts and figures that are helpful as we start to move forward to the—to the next farm bill.

I've basically taken my remarks and tried to put them into I hope what is somewhat of a story format. I want to look with barley, just briefly review some of the trends we've had, what farm policy is toward barley and how it's impacted it, and then looking ahead toward risk management mostly through improved crop insurance programs because this is the direction that we'll clearly need to be moving.

Just a little history lesson here on some of the trends. First off, as far as barley production goes, North Dakota is the major player. Thirty-five percent of U.S. production; we are the—are the largest producer in the nation. But nationally, we have watched our production drop. In the mid-1980's we produced, as a nation, approximately 600 million bushels. In 2010, we were down to around 200 million bushels. That's a 65 percent drop in the past approximately 25 years. That's—that's significant.

Acres harvested. Mid-1980's, 11.4 million acres were harvested in the U.S. This year, 2.4 million acres harvested in the U.S. North Dakota used to raise over 4 million and we're—we're well under that. Our acres followed a very similar story, and we've seen our acres come from, oh, that late 1990's, when we thought things would turn around, to a million and a half to 2 million acres. This year we were at 650,000 harvested acres in the state. So we've dropped off.

And what—what's caused some of this? Well, part of it is we've seen less utilization of feed barley, more shifting toward corn. We've seen more efficiency in malt extraction, malting technology.

Competition in the global marketplace for feed barley exports has been equally difficult. We've seen our own production trends drop. We've dropped—as a state, we've dropped 50 percent in our—in our production since 2008. So we're starting to see inductive volatility in this marketplace.

Prices have been volatile as well. I—I found this interesting that in January of 2006, malt barley price was at $2.10 a bushel in this particular region and feed barley was at $1.25. By February of 2008, we were at approximately 5.50 a bushel for feed barley and over $7 a bushel for—or up to $7 a bushel for malt. Now our trend is similar. We're still in the two- to three-dollar range between both crops. So we—we're starting to see more volatility in the marketplace, but we've got to try to stabilize that somehow.

If we look at Federal farm program spending, as—as it—as you've clearly pointed out, the farm programs are relatively minor in the big—in the big scheme of the budget, and of the farm program payments, barley is—receives approximately 2 percent of total farm program expenditures. So we're—we're—we're down toward the bottom.

Direct payments, those account for roughly 84 percent of the farm program payments that are allocated to barley; and the marketing loans, they're a good tool. It was raised from $1.85 to $1.95 a bushel in the last farm bill and it generates some cash-flow while the growers wait for the markets to improve, but they're used relatively sporadically. Strengthening and rebalancing of that program, it's a good start that we probably need to take another look at in this next go-around.

If we look at our farm bill, trying to harmonize the components, we think from a grower's standpoint would—would make some sense. ACRE has its place. SURE has its place. The loan programs, crop insurance all individually provide a safety net that, if harmonized maybe a little bit more comprehensively and holistically, could provide a—hopefully, something that's more stable and secure, maybe a little easier for USDA to administer, because we have to look at it through those—through their eyes too.

Risk management tools. I think every grower in the room would—would agree that without crop insurance, trying to have operating capital is just about an impossibility. But we've seen a change in barley because in the 1980's the majority of barley planted in the U.S. was utilized for feed. Now approximately two-thirds of the barley planted in the United States is utilized for malting and brewing purposes. And as that has shifted, we're shifting in our—our pricing mechanisms as well.

If we're going to integrate that with risk management, there's basically three things that we need to consider, and this would work for barley, but is a consideration for—for any crop in the farm program. Particularly with regard to—that's probably a little more barley specific is price. Risk Management Agency current—currently utilizes an antiquated formula where they take the Chicago Board of Trade December corn futures, multiply it by a factor of .821, and that becomes the barley price. That's OK, but we need better—we just simply have to do new research to re—revitalize that price derivation. That decision that was made was right at the time of the mid-1980's when you had 10 to 15 million acres of bar-

ley in the U.S. When you're under 3 million and it's become more specialized, that—that factor has to be reevaluated. Corn may not be the best proxy crop on comparison. It may be spring wheat or something else. So we're starting to actually take some steps in that direction.

Visiting with growers, most will indicate that one thing they need to protect is the gross margin. We try to protect the yield. We try to protect price or gross revenue by—through some type of a revenue assurance with a price-yield combination. But being able to protect the margin is absolutely critical. And some of the next generation crop insurance products that need to be considered and are currently being—being considered would look at a way to indirectly insure some of the energy costs because the volatility occurs in the fertilizer, the fuel, a lot of those particular areas where growers just have absolutely no control over it. Think of the fuel price spikes in 2005 and what that did to a lot of people, especially at harvesttime.

Mar—margin coverage concept for spring wheat. Currently we've got something like that in the development, and that's largely thanks to the efforts of yourself and Congressman Pomeroy in changing Section 508(h) of the Ag Risk Protection Act of 2000, and we got that changed through the last farm bill. That was—that was critical and—and, as growers, we thank you for that. That was—that's—we're starting to get a good step in the right direction. But as spring wheat achieves something, it will be good for the other crops. We think barley needs to have something similar, maybe not identical, but sim—similar.

Finally, disaster. Don't have to tell the growers in Renville County that—I know Scott would probably like to have lakefront property on his 17 inches of—of—of rain, but probably not right out his backyard. We know those environmental conditions, it's beyond the growers' control. There's not much—there's nothing they can really do about it. SURE is a very good step. Taking SURE and harmonizing it a little bit more closely with crop insurance may provide that balancing act that—that we need to get this to move forward in a—in a good, positive manner.

Holistic safety net, absolutely critical, and the risk management products, coupled with our current system, we're guardedly optimistic that we're looking at a good future, but we—we do need the safety net in place.

So with that, I close. I thank you for this opportunity. I'll entertain questions.

[The prepared statement of Mr. Edwardson follows:]

North Dakota Barley Council
Farm Bill Field Hearing Testimony
Monday, October 11, 2010
Mohall, North Dakota

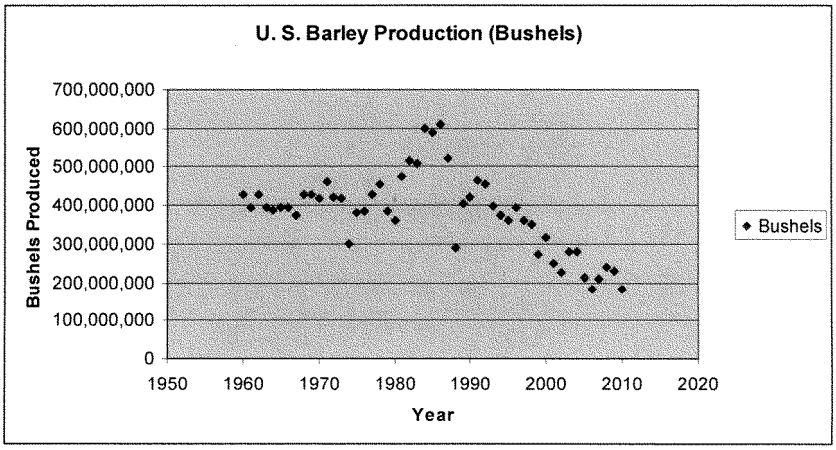
Overview

The following testimony is presented by Steven Edwardson, Executive Administrator, North Dakota Barley Council. The testimony, which is focused on stabilizing barley production, is divided into three components: 1) barley trends; 2) farm policy impact on barley; and 3) barley risk management via improved crop insurance programs. This testimony is in a point outline format, thus providing specific facts regarding the current status and future direction of barley as a crop enterprise.

Barley Trends

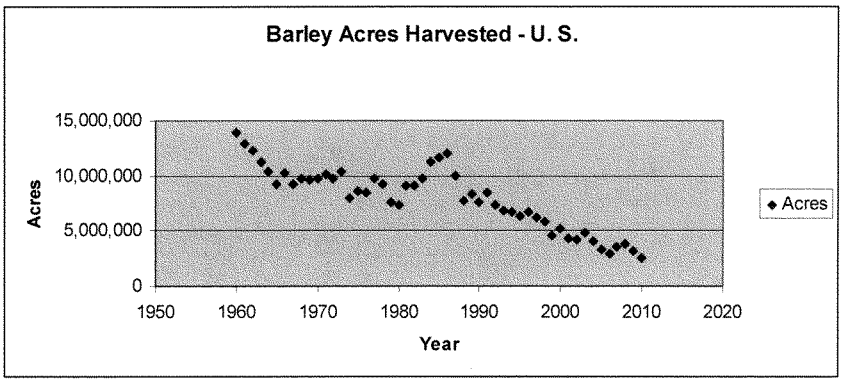
- North Dakota is the largest producer of barley in the United States, accounting for approximately 35% of national production (source: USDA-NASS).

- Nationally, barley production has been trending downward, as evidenced in the following chart (source: USDA-NASS).

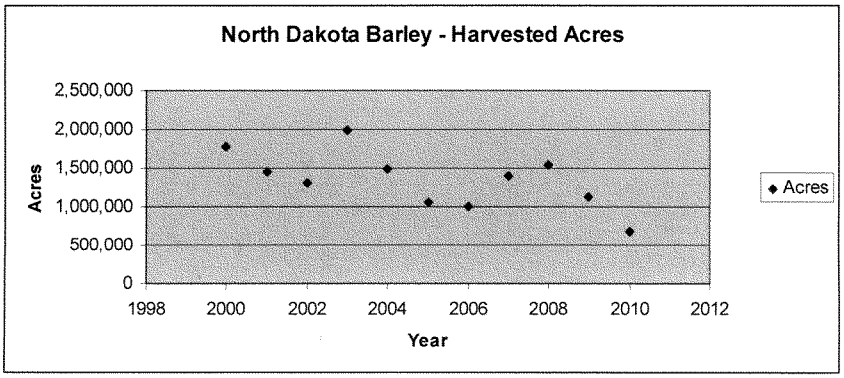


- Since the mid 1980's, barley production has fallen from approximately 600 million bushels to approximately 200 million bushels (a decrease of approximately 65%).

- The number of acres of barley harvested in the U. S. has fallen dramatically as well, from approximately 11.4 million acres in the mid 1980's to approximately 2.4 million acres in 2010. This is a decrease of approximately 75% (chart data source: USDA – NASS).



- North Dakota barley acres have followed a similar trend, as evidenced in the following table (source: USDA – NASS).



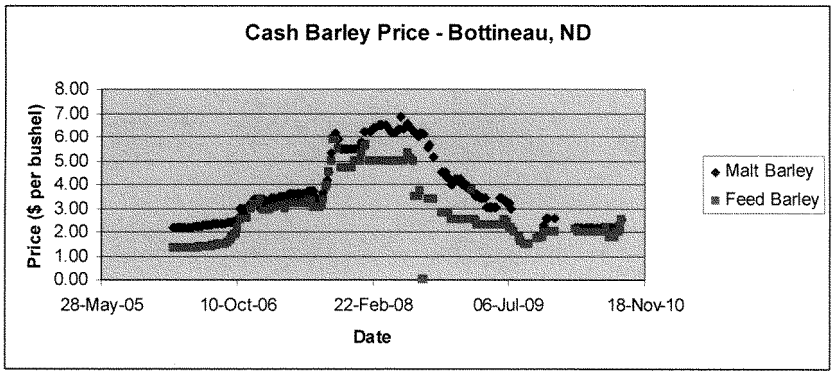
- North Dakota barley acres have exhibited more volatility in recent years due to a number of factors, such as: 1) more focus on achieving malt quality; 2) less utilization of feed barley due to increased use of corn; 3) competition in global markets (namely Japan) for feed barley exports. In general, acres devoted to barley have been trending downward.

- Production trends for North Dakota barley are also exhibiting volatility, but in general are trending downward. Barley production in North Dakota has decreased approximately 50% since 2008, as evidenced in the following table (source: USDA – NASS).

PRODUCTION TRENDS FOR NORTH DAKOTA BARLEY
Source: USDA - NASS

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Yield											
--Bushels per acre	55	55	45	60	62	54	49	56	56	70	65
--Kilograms per hectare	2,956	2,956	2,419	3,225	3,333	2,903	2,634	3,010	3,010	3,763	3,494
Area Planted											
--Acres	1,900,000	1,500,000	1,600,000	2,050,000	1,600,000	1,200,000	1,100,000	1,470,000	1,650,000	1,210,000	720,000
--Hectares	769,500	607,500	648,000	830,250	648,000	486,000	445,500	595,350	668,250	490,050	291,600
Area Harvested											
--Acres	1,770,000	1,450,000	1,300,000	1,980,000	1,480,000	1,060,000	995,000	1,390,000	1,540,000	1,130,000	675,000
--Hectares	716,850	587,250	526,500	801,900	599,400	429,300	402,975	562,950	623,700	457,650	273,375
Production											
--Bushels	97,350,000	79,750,000	58,500,000	118,800,000	91,760,000	57,240,000	48,755,000	77,840,000	86,240,000	79,100,000	43,875,000
--Metric Tonnes	2,119,568	1,736,369	1,273,700	2,586,592	1,997,859	1,246,267	1,061,526	1,694,784	1,877,674	1,722,217	955,275

- Volatility in barley prices, coupled with export market limitations, better profitability from competing crops (e. g. corn, soybeans, wheat, canola, etc.), and gaps in crop insurance coverage have collectively contributed to price decreases, thus making barley too risky for growers to include as a crop enterprise. The graph below depicts weekly cash prices for barley in Bottineau, ND from January 2006 through August 2010.



Farm Policy Impact

- Allocation of federal funding to barley is relatively minor. Barley receives approximately 2% of total farm program expenditures, as evidenced in the following Table (source: CBO).

2011-2020 Spending by Crop ($59.4 B Total)
Mar 10 CBO ($ Millions)

Crop	Funding (Millions)	Percent
Oats	57	0%
Barley	980	2%
Other Oilseeds	269	0%
Pulse	42	0%
Wool/Mohair/Honey	102	0%
Sorghum	2,011	3%
Peanuts	1,371	2%
Rice	4,398	7%
Cotton	11,165	19%
Corn	21,175	37%
Soybeans	6,662	11%
Wheat	11,145	19%

- Direct payments account for 84% of farm program payments allocated to barley, as evidenced in the table below (source: CBO). Marketing loans are utilized sporadically, and are typically utilized when prices are low and growers need to generate cash flow while waiting for market prices to improve. The loan rate for barley was increased from $1.85 per bushel to $1.95 per bushel in the 2008 farm bill, and needs to be higher if it is to be utilized effectively.

2011-20 Barley Payments ($980 Million)

Program Component	Funding ($Millions)	Percent
ACRE,	23	2%
Marketing Loans	52	5%
Counter-Cyclical	89	9%
Direct Payments	816	84%

- As Congress begins discussions on the 2012 farm bill, it will be necessary to evaluate the various components of the current farm program to develop mechanisms which harmonize programs and provide a holistic safety net for growers. ACRE, SURE, loan programs, and crop insurance each have strengths and weaknesses that need to be carefully evaluated for developing a comprehensive risk management program.

Barley Risk Management

- Growers need risk management tools for barley that are reflective of market conditions and production practices. In the 1980's, the majority of barley planted in the U. S. was utilized for feed. Since 2005, the majority of barley planted in the U. S. is utilized for malting and brewing. This shift to malt barley has resulted in a shift in pricing for growers, but this shift is not fully recognized in crop insurance.

- Stabilization of barley production will require development of risk management tools that are inclusive of the following components:
    - Price: research needs to be conducted to develop a new price derivation mechanism for barley crop insurance that is reflective of the shift from feed barley to malt barley. At present, USDA-RMA utilizes a factor of 0.821 multiplied by the CBOT December corn price. This factor was adequate when the vast majority of barley production was feed barley. With more malt barley being contracted and less feed barley being produced, the price derivation procedure needs to be updated to be more reflective of current market conditions (which may require correlation with spring wheat instead of corn).
    - Margin: growers need to protect their gross margin. Next generation crop insurance products are targeting margin coverage, thus providing an mechanism for indirectly insuring energy costs (e. g. fuel), fertilizer, and pesticides (many of which are petroleum based). A margin coverage concept for spring wheat is currently in development. Barley needs a similar product.
    - Disaster: environmental conditions beyond the control of the grower can result in complete crop failure (e. g. drought). Consideration needs to be given to harmonizing crop insurance with disaster assistance. SURE provides a positive step. Further refinement of SURE with enhanced crop insurance can significantly enhance the safety net for growers.

Summary

Providing growers with a holistic safety net is critical to maintaining stability in agricultural production and the supply of human food and livestock feed. Improved risk management products are a primary component of a safety net, and will assist in preventing further erosion in the downward trend of barley production.

The CHAIRMAN. Thank you. Thank you, Steve, very much. Excellent testimony.

Let's go next to Larry Neubauer, U.S. Durum Growers Association President. Welcome.

STATEMENT OF LARRY NEUBAUER, PRESIDENT, U.S. DURUM GROWERS ASSOCIATION, BOTTINEAU, NORTH DAKOTA

Mr. NEUBAUER. Thank you, Senator Conrad, for the opportunity to testify today. I'm going to—I represent durum today. I want to point out that I am a third-generation farmer from Bottineau and I have four children, all of which have participated in crop production in their years coming up through high school, junior high, and on. This particular year, I can honestly say that three of my sons out of three raised durum, so we have a perspective. I guess I believe in promoting durum.

One of the biggest concerns that durum has been focused on in the last several years is the declining acreage that's been seeded of durum in the United States, primarily in North Dakota. And there is a factor that has been responsible for most of this and it is Fusarium head—head blight or scab.

There is not a genetic answer to this yet for durum, as there is with spring wheat. So our association looked in—very hard trying to find ways to lower that risk or offset the risk or some opportunities here to ensure that durum would be produced in North Dakota.

Historically, North Dakota produced 90 percent of the durum in the United States. Currently, we are down to just under 70 percent. The decrease has been in North Dakota. The Desert Southwest has maintained their acres.

Not only is durum important to us as producers, but to the state of North Dakota. North Dakota mills more than 85,000 bushels a day of durum and—and is the home to several pasta plants.

A little background on Fusarium and our efforts to combat the problem. I'm going to address you, Senator, and with thanks for championing our Durum Wheat Quality Program in the last farm bill, and not only getting it in the farm bill, but the efforts of you and your staff. I have to personally mention John Fuher. And——

The CHAIRMAN. Gee, I wish you hadn't done that because I'm just in salary negotiations with John and, you know, anything positive you say about him here will probably be thrown right back at me when I get back.

[Laughter.]

Mr. NEUBAUER. He has—he's been very helpful.

[Laughter.]

Mr. NEUBAUER. There, John, I told him I would take—told you I would take care of you.

[Laughter.]

Mr. NEUBAUER. Also with your—the efforts of your colleagues. Senator Dorgan has been very helpful in the money side of getting this program.

This program was authorized for $3 million this particular year. The regulations finally got put in place for implementation of this program this summer. This is a very—in the heart of durum area. There are probably several producers here that has used the Durum Wheat Quality Program this year. We look forward to the continuation of this.

We do hope that in the next farm bill that this program could be continued, and I guess it's our request if there is some way that it could be with the lack of having to have annual appropriations requests because what—for the people in the—here, we annually request—make a request with applications and go through the process and a lot of times a decision from Washington on how much of the up to $10 million that's in the program, farm bill, how much of that will we get, and it's difficult to take to the producers. It's—you know, the producers want to know when it's fungicide application time, "Is"—you know, "Is this program in effect? Will there be dollars here for me this year?" So—and I have not heard any final data on—on how many request dollars there were this year, if the $3 million was consumed. I assume it is and look forward to more usage of it in the future.

Another factor declining—or contributing to the decline of durum production was the lack of adequate price coverage and crop insurance products for durum. Steve highlighted some of these crops and—and the problem of price coverage. One thing that—that the Durum Growers have done is we went to RMA and we talked to them, explaining to them that historically durum has a price premium in the marketplace over spring wheat, and their factoring or their formulas for determining pricing of these price selections for durum kind of got muddled when there were no futures for durum in the Minneapolis Grain Exchange.

So what we did is we did a study. We had Dr. Won Koo in—at NDSU went through and—and with the help of the North Dakota Wheat Commission and mills in—in the state of North Dakota, which we have more than one, and we determined the historical price premium for durum, and understanding that, yes, sometimes durum is worth less than spring wheat; sometimes it is worth more. But historically, we came up with a number in that 16 to 18 percent.

So it prompted RMA to do their own study, and in conversations with—and dialog with them, they did agree to address this. It did not get for the revenue and the APH products in 1909 because they have a different time factor of when they have to be discovered for their price. But in 1909, we did see a 95-cent price premium for durum with the APH product of crop insurance. For 2010, the price premium on the revenue side was $1.03 a bushel and on the APH side was $1.10. And they have indicated to us that—that they have their—their formula. They won't, of course, disclose what it is, but they were comfortable going forward with this and, needless to say, there was a lot of scrutiny that they come under before approving it.

I think that maybe this is something for barley to look at, malt versus feed. I mean there are some examples that we can learn from each other on.

I think that both of these policy and program changes can encourage and incentivize farmers to raise durum.

You know, pasta industry, we think of here locally where we have some in-state pasta. We have limited knowledge of out-of-state. There are actually pasta milling industries in Arizona, California, Montana, North Dakota, Wisconsin, Missouri, Virginia, Iowa, South Carolina, and Minnesota. And I think it's important

for all commodities that we look for these states and these key people that can provide assistance for these. It's not just the raw product. We have to look into the—the end product or into the industry side of it.

One thing that, I guess, looking at the—what we'd like to see going forward is we, too, voice adequate crop insurance coverage. There is some concern that crop insurance quality factors don't necessarily mirror those used by the government for loans and LDPs. I do know that falling numbers is going to be in—addressed in crop insurance for 2011. That's an example of how we can, you know, look at addressing some of these differences.

I had mentioned the Durum Wheat Quality Fact—Program.

We also support a permanent disaster program, whether it be a combination of—of—of current ones that are implemented, but I think the—the big message from producers on the disaster programs are, whether it's the livestock program that covered a lot of losses in two—a little over 2 years ago in the Southwest or if it's the SURE program that targeted more on the crop side of it, if there's a disaster program, we need to see it be implementable soon after the disaster. You know, these 2 years later created a lot of economic burdens for—for producers.

We have also always advocated higher loan rates. I know Steve kind of touched on loan rates for barley, you know, indicating a slight increase, but, still, it's just kind of temporary.

One thing that was mentioned last that—for the 2007–8 farm bill, there was a mention from the—from leadership to the commodity groups, like for wheat, for instance, asking would we be look—satisfied with a $5 loan rate? Needless to say, we didn't take a $5 loan rate.

Is this loan rate important? We believe it is. For our commodity especially, durum, last year and this year, the commodity prices have been less than the loan rate and there have been—in 2009, there was over a hundred million dollars worth of loan deficiency payments that were paid out to producers of durum. That hundred million dollars was very critical to durum producers. This year with LDP being a—received by producers and the fact that durum loan rate is an option there for revenue, the—durum believes that the loan rate is very important and that maybe the direct payments are of much of a less importance.

It was mentioned here that if the direct payments were—I think Robert Carlson mentioned that if the direct payments were—were withheld and still kept as far as baseline, but use that to fund other angles here for disaster, I guess that's what durum would support.

So we appreciate—appreciate your invite to this hearing for us to testify and understand that the environment in any congressional arena is leaning continually toward more hostility toward ag, and if there's anything that we can do to assist or work with other commodity groups, we're—we're fully willing.

[The prepared statement of Mr. Neubauer follows:]

U.S. Durum Growers Association
PROMOTING THE PRODUCTION AND MARKETING OF DURUM AND SEMOLINA
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Senator Conrad, thank you for providing me the opportunity to testify today.

My name is Larry Neubauer and I am a third generation farmer from the Bottineau area. My wife of 25 years, Tami, and I have 4 children. My oldest, a daughter, just graduated from the Air Force Academy last May and 3 sons ranging from a high school freshman to a college junior at NDSU. All of our children participated in crop production enterprises and I look forward to turning over the farm to one or more of them in the future. We raise durum, spring wheat, barley, canola, sunflowers and flax in a minimum tillage farming practice.

I am here today as President of the United States Durum Growers Association. The USDGA is the voice for durum grower's concerns in national and state legislative decisions as well as regulatory agencies' decisions affecting agriculture. The USDGA's mission is *USDGA provides a voice for durum producers on agricultural policy and the durum industry, while striving to keep producers informed about the latest technology in durum production.* We are responsible to the North Dakota Wheat Commission for durum domestic policy.

Over the last several years, the USDGA has been focused on addressing the significant decline of durum production in North Dakota. Historically, North Dakota produced almost 90% of the U.S. durum, however, that has fallen to about 70% while other growing regions including California and the Southwest United States have maintained their durum production. Not only is North Dakota the largest durum producer, but has the nation's highest durum milling capacity of over 85,000 bushels per day and is home to several pasta plants.

Fusarium Head Blight (scab), changes in historical growing regions and increased imports threaten to reduce North Dakota durum production to a minor crop status. Minor crop status could lead to reduced priority for research dollars and production development. In North Dakota, the eastern third of the state, especially the northeastern sector has experienced the greatest impact of scab. Most of North Dakota's durum and a large portion of U.S. durum was grown in this area. Since 1993 substantial losses in durum production due primarily to scab infestation has forced a dramatic shift in the areas of production towards the west and south. The

northern half of the state produced 71% of the state's durum in 1991 (NASS). By 1998 that had fallen to 61% and by 2005 only 39% of the state's durum was produced in that region.

The industry has high hopes for the success of the Durum Wheat Quality Program in addressing the decline of durum production. The DWQP, enacted in the last farm bill, is a cost-share program between growers and USDA to offset part of the cost of fungicide applications for scab until genetic resistance is found. Congress has provided funding for the program and USDA recently released the final implementation regulations enabling durum producers to sign up for the program. USDGA has requested producers compile data on the effectiveness of treated crops vs. untreated crops to corroborate the effectiveness of the program.

Another factor contributing to the decline of durum production was the lack of adequate price coverage for durum in Federal Crop Insurance products. The primary reason for this discrepancy was instead of coverage being based on actual market prices, it was based on spring wheat prices. While the Risk Management Agency (RMA) could provide a premium for durum price selection over the spring wheat price, the premium failed to properly reflect the significant historical market price differential of durum to spring wheat.

In response to USDGA's concerns, RMA worked to provide an additional price election by type for durum for the Revenue and APH-90 (Actual Production History) crop insurance coverage products for the 2010 growing season. Since there was no durum futures market, RMA agreed to USDGA's recommendations to include historical market premium data for durum in a new formula that continues to use historical data, actual cash bids and projected market prices. While RMA could not secure these changes for the 2009 crop year Revenue products, the agency's 2009 APH price selection of $7.65 per bushel was a testament to RMA's understanding and responsiveness to the concerns raised by USDGA regarding the historical price differentials between durum and spring wheat. This premium was .95 above the spring wheat selection price of $6.70 and was a significant increase over the .20 premium provided in 2008. 2010 crop year prices elections resulted in durum at $8.11 (Revenue products) and $6.00 (APH) verses $7.08 and $4.90 for spring wheat, respectively. USDGA continues to work with RMA on insurance issues.

I believe both of these policy changes will not only encourage and incentivize farmers to produce more durum, but will directly benefit the growing domestic pasta and milling industry. This pasta and milling industry consumes 75-80 million bushels of durum each year. A consistent supply of quality domestic durum is

critical to the pasta and milling industry of Arizona, California, Montana, North Dakota, Wisconsin, Missouri, Virginia, Iowa, South Carolina, and Minnesota. The vitality and growth of the durum industry is critical to the continued employment of thousands of people throughout the industry.

What can be done to address the uncontrollable and sometimes unforeseen risks associated with raising durum?

1. Continued public and Congressional support for adequate crop insurance at a price that is affordable to the producer. The quality and grading factors need to mirror those used by FSA for the purpose of Loans and LDPs. Crop insurance needs to cover the gaps that are currently present due to quality issues. Falling numbers are going to be addressed in crop insurance for 2011. HVAC is very important to durum quality.
2. The 2012 Farm Bill needs to fund the DWQP without the need for annual appropriation requests. This program aims at producing the safest quality (reduces toxins) durum for food.
3. The 2012 Farm Bill needs to include a permanent Disaster Program. If dollars are to be cut, maybe some fixed payment money could fund the program. Do producers need the fixed payments in profitable years?
4. USDGA has always advocated higher loan rates. The current formula uses prices from multiple years to determine the loan rates. This is a counter cyclical program that only is utilized in times of depressed prices and is only applies to bushels actually produced. 2009 and 2010 are examples of durum production qualifying for LDPs because of depressed market values. My sons all had cash flow needs and had to sell their durum into the market at prices less than the loan rate. The LDP program worked properly to ensure my sons the loan rate value based on the quality criteria.

Senator Conrad, I appreciate you taking the time to provide us with this forum as you begin to prepare for the next Farm Bill. The USDGA looks forward to working with you to enact policies which will ensure the continued ready supply of high quality food for this country.

The CHAIRMAN. Well, thank you.

On that point, let me just say that I think our unity is more important than ever before. It is absolutely critically important that agriculture America stand together as we work on this new farm bill.

We did in the last farm bill more successfully than I have ever seen. It was pretty good the previous farm bill; even better in the most recent one. It is absolutely essential. If we—if we look ahead here at what we confront, with the budget pressure on the one side and the increasing demands to be included in the farm bill on the other, because, you know, now crops that were never program crops are asking to be included, and we're seeing a growing momentum in that direction. We're going to see tremendous pressure on the nutrition side.

So you've put it all together. We face, I think, one of the toughest challenges we'll ever have in writing this next farm bill. Already we're down, John tells me today, $5.9 billion on the baseline. What Robert started by discussing is the baseline. That is, if you continued the programs as they are, what would it cost? That is the baseline. We are 5.9 billion below that already because of the changes to crop insurance. And we don't get credit for those savings. That doesn't—that money does not come back to us. That money goes into the general fund of the United States.

So we've already lost almost $6 billion off of the baseline. The baseline is roughly $140 billion. So we've already taken a substantial hit before we ever begin to write a new farm bill, and it's important for people to understand that.

Next we'll go to Jeff Oberholtzer, National Sunflower Association Director. Welcome. It's good to have you here, and I think you're attired in the right color and ready to go.

STATEMENT OF JEFF OBERHOLTZER, DIRECTOR, NATIONAL SUNFLOWER ASSOCIATION, MOHALL, NORTH DAKOTA

Mr. OBERHOLTZER. Yeah, thank you, Senator, for the opportunity to speak at this hearing today.

The National Sunflower Association is a combined grower and industry commodity group representing growers from the Canadian border all the way to southern Texas. At this time, we have not formulated any specific recommendations for the new farm bill—for the next farm bill, but we have agreed to general principles.

First of all, the board is made up of five—growers from five different states and five industry representatives from the processors and com—seed company side. We all have agreed, too, that the current farm bill is working in providing a safety net for sunflower producers and the crops that fall in the rotation.

Obviously, it is much easier to come to a general agreement when the environment and when the com—commodity—commodity prices are higher than the established loan—loan rates and target prices.

The following are some specific points I'd like to address that the board of directors have agreed to.

The first one is crop insurance. This is the No. 1 tool for sunflower producers to use to protect farm income. Further strengthening of crop insurance programs will be supported by the NSA.

We have worked hard to make crop insurance relevant to our producers.

Some key provisions that have made the program more workable is the separate insurance programs for confection and oil-type sunflowers. Also, RMA maintained the revenue assurance program after they initially recommended it to be eliminated. Also, RMA increased the revenue value of oil-type sunflowers after acreage was shifted to the higher value NuSun type.

The second one is direct payments. There is a general agreement among the board that direct payments should be reinvented if this is the lightning rod for farm program opponents. Obviously, no one is going to want to give up the income stream that comes from direct payments, but if it's viewed negatively by the public, then some readjustments should be made. We would support redirecting at least a portion of these payments to further strengthen crop insurance programs or possibly SURE and ACRE programs.

The third one is counter-cyclical program. The structure of this program for minor oilseeds largely eliminates an income support for sunflowers. It—this program does have a safety net potential, but does need to be redefined. And at this time we're not sure if that will be necessary.

The fourth one is ACRE. Overall, this program has good merits and potential, but it does need some tinkering to make it more appealing to producers. Participation in this program has been disappointing.

Some suggestions that the board has come up with for possible improvements is breaking down state boundaries where state geographies are highly diverse. An example of this can be northern and southern Minnesota. And also maybe having crop reporting districts to more represent the demographics of the area.

And another point is reduce the administration oversight, if possible, of the ACRE program. The board did hear a lot of producers report that the amount of paperwork required is one of the reasons they opted out of the program.

And adjust T yields to recognize rotation for crops like sunflowers where it's only grown every fourth or fifth year.

The fifth one is the SURE and disaster programs. We have not had much experience with the SURE program, but do give Congress high marks for putting in a permanent disaster program. We do—we do assume amendments can be made to this program to make it a better overall program. But we do believe the recent commitment of funds to cover a portion of 2008 losses incurred by some producers is a bad precedent and could jeop—easily jeopardize meaningful and needed programs in the future.

The sixth is market loans. This program has proven itself as a key provision in providing a safety net. However, the established loan levels are too low. We understand budget implications and the WTO compliance issues. This has not been discussed in detail, but our organization may be willing to support a higher loan rate in exchange for reduced direct payments.

Overall, the existing farm program is working well. We are sensitive to the amount of money that was taken from the baseline and hope that further reductions will not be necessary. It is impor-

tant that all commodities be treated equally to eliminate non-market planting signals.

As a young farmer, I am sensitive to what my urban friends think of farm program budgets. The future looks very bright for production agriculture with record crops combined with record demand and attractive prices. But I'm fully aware that production and market disasters do occur. For that reason, a Federal safety net and insurance program is required to keep me producing for an ever-increasing hungry world.

The CHAIRMAN. Very——

Mr. OBERHOLTZER. Thank you.

[The prepared statement of Mr. Oberholtzer follows:]

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October 11, 2010

RE: U.S. Senator Kent Conrad Senate Agriculture Committee: 2012 Farm Bill Hearing
Mohall, ND

FROM: Jeff Oberholtzer, Member: National Sunflower Association Board of Directors

The National Sunflower Association (NSA) is a combined grower and industry commodity group representing members throughout the growing region from the Canadian border to southern Texas. At this point the NSA has not formulated specific recommendations for the next farm bill. However, we have agreed to general principles.

First of all, the board, which consists of growers from five different states and five industry representatives from the processing and seed company side, agree that the present farm bill is working and providing a safety net for sunflower producers and the crops that follow in rotation. Obviously it is much easier to come to a general agreement in this environment when commodity prices are well above established loan rates and target prices. The following are some specific points I would like to address that the board of directors has agreed to:

1. **Crop Insurance**: This is the number one tool for sunflower farmers to protect farm income. Further strengthening of crop insurance programs will be supported by the NSA. We have worked hard to make crop insurance relevant to our producers. We have found RMA officials receptive and very willing to work with us. The following are key provisions that have made the program more workable:
    a. Separate insurance programs for oil and confection types
    b. RMA maintained Revenue Assurance for sunflower after initially recommending its elimination
    c. RMA increased the revenue value of oil type sunflower after acreage was shifted to the higher value NuSun type
    d. RMA will include sunflower as an eligible crop in the new combined 'Combo Policy'.
    e. The NSA would like to see the RMA move faster in adding eligible counties in new production areas like southern Texas and areas in the southeast US.

2. **Direct Payments**: There is general agreement within the board that direct payments should be reinvented if this program is a lightning rod for farm program opponents. Obviously no one wants to give up an income stream like direct payments. However, if

direct payments are viewed negatively by the public then adjustments should be made. We would support redirecting at least a portion of these payments to further strengthen crop insurance programs or possibly SURE and ACRE programs.

3. **Counter Cyclical:** The structure of this program for minor oilseeds largely eliminates an income support for sunflower. This program has safety net potential but would need to be redefined. At this point we are not sure if this will be necessary.

4. **ACRE:** Overall this program has good merits and potential. However, it needs 'tinkering' to make it more appealing to producers. Participation in this program has been disappointing. In some cases local FSA offices may have dissuaded farmers from signing up. Suggestions for improvement include:
    a. Breaking down state boundaries in cases where state geographies are highly diverse
        i. Northern and southern Minnesota is one example
        ii. Crop reporting districts might be a more realistic demarcation
    b. Reduce the administration oversight if possible
        i. Producers reported that the 'paper work' requirement was so great they opted out
    c. Adjust T-Yields to recognize rotations where a crop like sunflower is grown every 4th or 5th year.
    d. Insure that all county FSA offices present an 'unbiased' view of the program.

5. **SURE and Disaster Programs:** We have not had much experience with the SURE program but give Congress high marks for putting a permanent disaster program in place. We assume amendments can be made to this program to make it a better overall program. We believe the recent White House commitment of funds to cover a portion of 2008 losses incurred by some producers is bad precedent and could easily jeopardize meaningful and needed programs in the future.

6. **Market Loans**: This program has proven itself as a key provision in providing a safety net. However, the established loan levels are too low. We understand budget implications and WTO compliance issues. Although we have not discussed this in detail, our organization may well support a higher loan rate in exchange for a reduced direct payment.

7. **Summary**: Overall the existing farm program is working well. We are sensitive to the recent $3.9 billion that was taken from the baseline and hope that further reductions will not be necessary. It is important that all commodities be treated equally to eliminate non-market planting signals. As a young farmer I am sensitive to what my urban friends think of farm program budgets. The future looks very bright for production agriculture with record crops combined with record demand and attractive prices. But I am fully aware production and market disasters do occur and for that reason an efficient federal safety net and insurance program is required to keep me producing for an ever increasing hungry world.

The CHAIRMAN. Very, very good testimony. I appreciate it, Jeff. I take to heart very much the suggestions of you and your board. I think they're right on point, and thank you for it.

Next we'll go to Ryan Pederson, the Northern Canola Growers Association President. Good to have you here.

STATEMENT OF RYAN PEDERSON, PRESIDENT, NORTHERN CANOLA GROWERS ASSOCIATION, VICE PRESIDENT, U.S. CANOLA ASSOCIATION, ROLETTE, NORTH DAKOTA

Mr. PEDERSON. Good afternoon. Thank you for inviting us. And if I may take a moment—you complimented Jeff's shirt—I'd like to compliment Steve on his exquisite eye for fashion, if you will.

[Laughter.]

The CHAIRMAN. I noticed that you guys coordinated before. I—I thought we probably should have you two seated together.

Mr. PEDERSON. Well, John said this was a dress code, so——

The CHAIRMAN. Well, yeah. Yeah.

Mr. PEDERSON [continuing]. In his e-mail, so——

Mr. EDWARDSON. Part of the small grains Mafia.

Mr. PEDERSON. But, no, thank you again. I'm Ryan Pederson. I farm in Rolette, North Dakota, in partnership with my father. We do canola, wheat, barley, soybeans, and have done flax in the past. I currently serve as President of the Northern Canola Growers, Vice President of the U.S. Canola Association. I would just like to take a few minutes to share our ideas in the next farm bill as we move forward.

As many of us know, canola has enjoyed good press lately for being a healthy vegetable oil and as the country moves into the health-consciousness and the trans-fat ban, we need canola oil, sunflower oil, and currently we have to import canola oil to meet the U.S. demand. Over the past 10 years, canola has seen a wide variation of planted acres. This year we had over one and a half million acres, similar to what we saw in 2000. But during this 10-year period, we have had acres down as low as 700,000.

And if we're going to satisfy this demand the American consumers put on our crop, we need to figure out ways to stabilize production and increase it, and that's what our organization has been working on.

But we also understand that as Congress moves forward in writing the next farm bill, we have a responsibility to make recommendations to a farm bill that's going to be defensible to the American public and to be efficient. And with that, I just have some ideas on the current provisions in the farm bill.

First, marketing loans. We need to make sure, No. 1, they're equitable. As I mentioned, in the middle of the decade our acres really suffered, half of what we have now, and some of that could be tied into nonmarket signals that were given to other crops as far as planting intentions. And we need to make sure that as we look at loan rates—and hopefully we're able to adjust them higher because right now they're kind of a nonfactor in our farm—they need to be equitable so crops are grown based on what the market is demanding, not what the loan rates suggest. So that would be our suggestion on that.

The next one, I think the most important one, is crop insurance. We need an adequate crop insurance. Crop insurance is good now, but there's always room for improvement. You know, in this area, it was really hit with spring rain, and for my crop, canola, it's not—no crop needs to be mudded in, but canola really suffers if you try to mud it in. And we've been working with RMA to try to extend the planting dates for canola and it's a bit of a struggle. And

the struggle with canola, it's a relatively young crop as far as genetic breeding. We're just now getting into seeding hybrids and as these hybrids come onto the market, they can handle summer heat better than the open-pollinateds could in the past and we need to work with RMA and they need to understand that the genetics are changing so we can put our seeding dates later and still expect good yields.

The next one, and when I wrote this, I wasn't sure how the rest of the panel would be, and I'm—I guess I'm relieved, but it's direct payments. Like Robert Carlson said, we always like getting the direct payments, but they are tough to defend, you know, and if direct payments need to come out, we definitely want them redistributed into risk management, counter-cyclical-type activity because that's—that's what we're going to need moving forward.

And as far as the ACRE program goes, a lot of farmers I talked to said they didn't go into it because it was confusing. Some farmers didn't think so, but most of them thought it was confusing. You have the state trigger, your local trigger, and, as Jeff said, we think maybe let's get—get it more down to a smaller recording area instead of just the whole state level.

And, also, the reduction in loan rates concerns certain farmers, so that would be something to look at.

The CHAIRMAN. Could I stop you right on the point on ACRE, because I don't want to lose this point, and as I—I think it's very, very important for the hearing record.

ACRE, I think, as a concept, has enormous potential. The problem is there is a tremendous difference if it's applied nationally, at the state level, or closer to home. The closer to home it gets, the more expensive it becomes. That's the reality that we have to confront here.

We had a tremendous fight behind the scenes on ACRE because some wanted to impose it as a national program. That would have been potentially a disaster for us because we have more variability in production than the "I" states, Indiana, Iowa, Illinois. They would love to have a national program. But you think about what it could mean to us. If we had severe losses here, but we were being measured by a national standard, we might get nothing. We might get nothing. The rest of the country does well, we have a disaster, we get nothing. And, believe me, these guys understood exactly who was going to be the beneficiary and who was going to be left holding the bag, those who were advocating and pushing this.

So we really have to have our heads up when we go into these negotiations and into this fight with respect to how it's applied. We insisted on at least a state level, and we knew all along that we would be better off with a smaller reporting subset. I mean that—that really is what you need to have to make this program make the most sense. Because even at a state level, you could have most of the state do well, one part of the state do poorly, and, you know, you not get anything, you not get any help.

So this—this is something that we've got to be very, very sensitive to as we go into this fight. And I wanted to make the point as you raised it so it's very clear on the hearing record that out here we get it. We understand what the implications are for us and we're not going to buy a pig in a poke. We're not going to have,

you know, the big national boys roll in here and write us up for a program that then leaves us holding the bag if we just have a regional or a subregional failure.

So just enough said, but I wanted to make sure that's on the record at this point.

Mr. PEDERSON. Absolutely, and we appreciate it—appreciate that.

Next one is SURE. My only thoughts on SURE, it's—it's great to have it in there, but it brings up a point that was brought up earlier. As we move forward on these farm bills, we need to make sure that our county offices are supported adequately. In our county, we still have producers, myself included, that don't know if we qualified for the SURE. And it's not that they're not doing their job. It's just they need to be supported to have the staff and the infrastructure there. So these disaster bills or programs, if they come and you get the check 2 years later, the damage is already done.

Finally, I'd like to talk about something of a commodity title, but on a conservation title. Programs like CSP have been gaining popularity and I can see them as being more easily defendable because, as a farmer, in order to qualify for these, we need to make capital investments in our farm, whether it be different machineries or different planting techniques, and they're—they're defendable that way and it's doing what we've always done as farmers, taking care of our natural resources. But when we look at funding these, we need to make sure that the funding there doesn't come at the expense of the commodity title and that they aren't—they're not counter-cyclical. So they need to be, you know, thought of that way.

And then the only other thing is when these programs are written, we can't punish the producers who are already doing conservation, you know, and only give the money to the producers who start doing it after the program's out, but——

In summary, you started the hearing very well in saying that North Dakota is as prosperous as you've seen it, and I think as farmers, as we help with the farm bill, we can't deny that. I think it would be foolish and somewhat selfish to do so. But whenever I start feeling too good, Dad reminds me that the 1980's weren't that far away. I don't remember them, but he does. And he said, "Things aren't always going to be this good, and with the increase in input costs, we're one bad year away from having a disaster." So our top priority in this next farm bill would be risk management.

Again, I appreciate the time.

[The prepared statement of Mr. Pederson follows:]

Statement by Ryan Pederson, President
Northern Canola Growers Association

USDA Farm Bill Hearing

Mohall, ND October 11, 2010

Good afternoon. My name is Ryan Pederson and I farm in Rolette, ND, where I raise canola, wheat, barley, flax and soybeans in partnership with my father. I serve as President of the Northern Canola Growers Association and as 2nd Vice President of the U.S. Canola Association. I would like to offer the following comments on the next Farm Bill and how it may affect our industry.

Canola has enjoyed a solid reputation as a healthy vegetable oil as it has the lowest saturated fat of any vegetable oil on the market. The recently published U.S. Dietary Guidelines even acknowledged that Americans should consume more of the good fats, like those found in canola oil. North Dakota produces 90% of the nation's canola and the industry has been attempting to grow the acres here and in other states to meet consumer demand. However, we still depend heavily on imports to meet the demands of the American consumer.

Over the past ten years Canola has seen a wide variation in planted acres. In 2010 there were over 1,500,000 acres planted to Canola, similar to the 2000 level. However, within this time frame Canola acres have fallen as low as just over 700,000 acres. If we are to provide adequate domestic supply for the American consumer we need policies in place to first help stabilize, and then increase production of Canola both in North Dakota and other states.

We understand that Congress must look at ways to make farm programs more defensible and efficient in the next Farm Bill. I would like to offer the following comments on key provisions in the Farm Bill that affect canola growers.

Marketing Loan Program

Canola growers, along with other oilseed organizations, have long supported adjusting target prices and marketing loan rates to make them equitable among commodities. Recently, canola market prices have been well above the minor oilseed loan rate, indicating that the safety net from this program is nowhere near what it used to be.

CBO's March 2010 baseline projects $28 million in outlays in canola marketing loan gains and loan deficiency payments through the year 2020. This represents 10% of total support for canola through this time period. The total projected outlays reflect how far below expected prices current support levels are. In order to provide meaningful income support in current markets, they would need to be significantly increased. The NCGA continues to support equitable adjustments in target prices and loan rates. And we would note that the cost of doing so would likely be moderate, based on continued higher canola prices projected in the current baseline.

Crop Insurance

We feel that agriculture has already endured significant cuts in the crop insurance program as approximately $3.9 billion was trimmed recently. A significant portion of that cut was allocated to deficit reduction, which shows that agriculture has already made some necessary contributions to aid in our nation's deficit problem. This has to be taken into account when cuts are demanded of growers during the discussions of the 2010 Farm Bill.

A sound crop insurance program is critical to growers to protect against losses that can result from factors beyond our control. It is even more critical as input costs continue to increase at rates beyond the rate of inflation. The NCGA opposes cuts in the crop insurance baseline. Any reallocation of spending under the program should be used to pay for reforms needed to make it more effective on a nationwide basis.

Direct Payments

Direct payments have been a stable source of assistance for producers. Estimates of total direct payments provided through 2020 for the 'other oilseeds' portion of the Farm Bill are $166 million, or 62% of total support for other oilseeds. However, we do understand that direct payments are hard to defend given the current budget situation facing our country. If changes to direct payments are to be made, we would ask that these funds be redirected into additional risk management tools such as crop insurance.

ACRE

We would like to see the ACRE Program focused at a more local level than is currently the case. At present, a grower would have to meet a farm trigger level and a state trigger level would also have to be met in order for payments to be made through ACRE. If the state level trigger could be localized more to perhaps a crop reporting district level (of which there are nine in North Dakota) or even a county level, participation in ACRE would increase as more growers would see the benefit of the program. As it stands now, no canola growers have received a payment from the ACRE Program, although the CBO projects total support from this program will be $29 million through 2020 for 'other oilseeds'. This would represent 11% of expected support.

Also, the 30 percent reduction in marketing loan rates as a mandatory requirement for participation in the program is a roadblock that currently makes it difficult for growers to choose to participate. If this reduction were eliminated, it may also increase participation in the program.

The NCGA also supports simplifying the ACRE program to make it more understandable and accessible to producers. The amount of paperwork required to participate in ACRE is excessive, and the complexity is daunting according to reports I have heard from fellow growers.

CSP

Such programs as the Conservation Stewardship Program have been gaining interest in my area. Programs such as these seem easily defendable as farmers are often required to make capital investments to participate, and do demonstrate the commitment to our natural resources that farmers have always had. However, these programs should not be developed in a way to exclude proactive producers who are already practicing conservation activities from receiving payments, and only give payments to those who adopt the practice once enrolled in a program. Additionally, conservation programs should not be

implemented at the expense of risk management programs, as conservation programs do not provide any type of counter-cyclical support.

Summary

As a young producer, I am fortunate enough not to remember to 80's and the terrible struggles many producers went through. However, I am often reminded by my father that things are not always going to be "*this good*", and that with the ever increasing costs of inputs things can go bad in a single season. With that in mind as I look to the next farm bill I feel that we must make improving the risk management tools within the farm bill the top priority.

The CHAIRMAN. Well, I think—I—I want—the testimony has been very consistent here today. I think it's about as clear as it can be. One after another of you have testified risk management is at the top of your list. Risk management. Witness after witness, risk management at the top of your list, and it really has to be.

You know, it's always hard to know what we will confront when we go into a farm bill fight, but I don't think this farm bill is going to get any easier to write the more we wait.

We always have those voices in a farm bill fight who say, "Wait. Wait." And in the last two bills, if we'd have followed their advice, it would have been a disaster for agriculture because in both cases, the money dried up, and had we waited, we would have been left with far less than what we were able to achieve.

So I'm always very wary of those who counsel and suggest that we ought to delay, and I believe it's true again this time. We simply cannot wait.

The thing with the budget of the United States is only going to get worse. What I mean by that is the pressure is only going to build because we're going to have to do more and more to rein in bud—budget deficits and debt as we go into the outer years. The next 2 years, there's going to be less pressure because people understand if you cut too quickly, you endanger putting the economy back in a recession. So we're probably going to get the best result sooner rather than later.

And one thing I'd like to do is go to each of the witnesses and talk a little more about ACRE and the basic concept of a revenue program. A number of you—I think, Steve, you mentioned this, you used the word "harmonize," as I recall. What do you mean by that?

Mr. EDWARDSON. If you look at—if you look at ACRE, you look at SURE, you look at crop insurance, you look at direct payments, you look at the marketing program, each one in and of itself is a safety net in its own right.

The discussions that we've been having amongst barley and others as well, if you have five general components that are attempting to do the same thing, but shore up the—the safety net in a different manner, is there a way to have those harmonized a little bit closer so that, one, there's no overlap in it and, No. 2, any program that would be maybe a little bit administratively cumbersome, you could remove that by letting one of the other programs provide the strength. So if you're—if you're going to have a true net, all five of them, or six components, however you wish to view it, is fine. It's just a matter of looking at some of the administrative efficiencies in it, and that—that's one of the first steps I think we have to take.

ACRE conceptually is a very good idea, and as—if I—if I look at it from an Iowa corn and soybean farmer where your variability of production is relatively minimal, it's a fairly straightforward thing. If I'm a North Dakota farmer that raises nine different crops, I've got a battle on my hands because that program is incredibly farm specific. You just can't give a—it put FSA in a very difficult situation because you cannot make an absolute blanket recommendation for all growers. Each grower had to sit down and try to almost outguess what the—what the future was going to be, and I know my crystal ball is usually pretty cloudy, so it—it's difficult.

The CHAIRMAN. OK.

Mr. EDWARDSON. But that—that's our take on it.

The CHAIRMAN. OK. I—I'd be interested in others' take on it, and then the reason I—I raise this is because conceptually it seems to have great promise and great potential, acknowledging the special challenges that we have here with any revenue assurance program. The—the concept of taking these disparate programs and harmonizing them in the sense of taking the resources and providing a program that is directed at assuring a revenue stream has at least superficially an attractiveness to it.

Any other observations on that? Yeah, Larry.

Mr. NEUBAUER. Senator, Larry Neubauer with the U.S. Durum Growers. We have discussed this as a board and a lot of the input that we get from our directors back, several concerns. One is that most of the crops up here that we raise—I mean on my farm, we raise five or six different crops in a rotation, and determining your—your yields are difficult when you don't get credit for consecutive—you know, the requirement for consecutive years of production for yield, and we might only have that crop on there once out of every three, 4 years.

So it—it leaves a—a gap there of which we don't actually get credit for. We still have—we feel that we have our production, our yields, whether we raise them once out of 5 years or if we raised them every year on the same unit.

Another—another issue that comes up, I have 13 different landlords. Try to explain it—it was confusing. I—I couldn't really comfortably explain it to any of them. But the fact that it was locked in and that no changes in decision could be made rightfully scared a lot of them away and scared me from actually even introducing the topic to some of them.

So I think, you know, there's continual change in not necessarily land ownership, but operating or—and that locking in is—is a very difficult thing, looking into the future, with a—without a clear crystal ball.

The CHAIRMAN. Yeah, let me just say that as is, it's not the answer, but I tell you, I think there's going to be heightened interest in revenue assurance-type programs going forward for some of the reasons that Steve mentioned in talking about the need for harmonization because when you have these different attempts to provide safety-net treatment, there is complexity in that. There is confusion in that.

Now, ACRE as it is has its own set of confusions and its own set of complexities, and I don't think, unless it is dramatically improved, will it be very attractive to people here. I mean what—

what you just said is what I've heard all across the state of North Dakota, just too confusing. But the concept—the concept of a revenue assurance program is really what I'm trying to get at. Does it have appeal? Is it something we ought to pursue and see if we can perfect? That's really the question I have.

Robert.

Mr. CARLSON. Well, we think a revenue program really has some merits, like you say, and—and that ACRE is worth working with. There are problems with it. The biggest one being—well, I think actually two of them are big problems. The biggest problem, perhaps, is—is that the—the—the trigger beyond your farm's trigger, the next trigger being the state, it—it's just too big of geographical area, like you say. Maybe the counties are too small for that to be cost effective. So what could be in between? Somebody in this panel suggested in their written testimony that it might be the crop reporting districts, of which there are nine in North Dakota. That—that's an interesting idea and that might be worth doing a little analysis on. So that's one issue.

The CHAIRMAN. Who—whose testimony was that, crop reporting?

Mr. PEDERSON. Jeff's.

The CHAIRMAN. Jeff.

Mr. CARLSON. The——

The CHAIRMAN. I saw that too.

Mr. CARLSON. Yeah. The other one is—is just plain information. Our organization did some information sessions on it, along with the FSA director, last year and there's just a lot—there's a lot of confusion about it. What Larry mentioned as far as the landlord is a really big issue. To go to an elderly landlord that you're maybe cash renting from and try to explain the SURE program is—well, it's just about impossible. So—so the administration part of it needs to be simplified.

The other part is that it's got kind of a—in parts of North Dakota, it has a bad reputation now because for durum producers in northwest——

The CHAIRMAN. You're talking about ACRE now?

Mr. CARLSON. ACRE.

The CHAIRMAN. Yeah.

Mr. CARLSON. In northwest——

Did I say something——

The CHAIRMAN. You said SURE.

Mr. CARLSON. I meant ACRE. I'm sorry.

The CHAIRMAN. I thought maybe you were trying to confuse me.

Mr. CARLSON. Well, I know that would be impossible, so I'd never try. No, I meant ACRE.

And the other part of ACRE that—that gives it a little bit of a bad reputation is that in northwestern North Dakota some producers who were primarily durum producers signed up for ACRE thinking that their loan deficiency payments that they were eligible for would be reduced by 30 percent. They didn't understand that the loan rate, the top rate, would be reduced by 30 percent. So we had some calls at our office from some people that were pretty upset about that and as—you maybe heard about Montana. That happened there too.

The CHAIRMAN. Mm-hmm.

Mr. CARLSON. So——

The CHAIRMAN. And it's not hard to understand.

Mr. CARLSON. It's got some hurdles to—it has some hurdles to overcome, and you're right; your—your bottom line that it's not a good alternative the way it is is correct, but I think a revenue program is really worth working on.

The CHAIRMAN. You know, one of the things we've talked about is holding—you—you remember preparation for the 2008 farm bill, I held a summit, an agricultural summit. We had some of the top agricultural economists in the country. We had Larry Combest, the Chair—the former Chairman of the House Agriculture Committee, here and it was really a good kickoff to the national farm bill debate. We had all the top agricultural publications in the country there at that summit. We had 26 Ph.D.s providing ideas, not that Ph.D.s have all the ideas on agriculture, but, certainly, there was a lot of out-of-the-box thinking that was helpful, I think, as we zeroed in on what we could actually achieve in the farm bill.

We've been talking about having a—an agriculture summit next year here in North Dakota, bring in the major players from the committee, from the commodity groups, and really start talking about things we need to have more time to consider before we actually start writing the bill. And we—we talked about possibly doing this in the spring of next year. You know, re—remember, our—our summit leading into the 2008 farm bill was done in the fall. We—we need to consider when it's done. But I—I think it's absolutely essential that we provide kind of the thought leadership as well on writing that next farm bill.

Any other observations from the panel? Anything that somebody heard somebody else say that they want to react to or anybody else have a—an observation with respect to a revenue program and whether that's worth pursuing at least conceptually as we prepare for the run-up to the next farm bill?

Mr. NEUBAUER. I—I guess I would. I probably didn't directly state, but that's—the ACRE program was of a great interest to—to myself as a producer and to others that I'm aware of that I've talked to, and the—the concept of simplifying to, as Steve's indicated, you know, one type of safety net, but be it based on revenue of some—some structure, is, I think, producer-accepted widely across the state.

The CHAIRMAN. You know, the devil's in the details, isn't it? I mean, really, the devil is in the details. That program, the way it is, is just too—you know, the distance between your farm gate to the state border, that doesn't work. But, you know, here—here's what we were faced with. We were faced with those who were trying to impose a national. I mean you talk about a big distance between, I know, our individual farms and the national borders. I mean, boy, I tell you, there—there's room for a real disaster for a state like ours that has so much variability.

You know, the "I" states are just very different than we are. The "I" states, Indiana, Iowa, Illinois, they have much less at—at risk. Their crop insurance, totally different circumstance. And remember what they tried to do to us in the last farm bill. They tried to pull themselves out of the national insurance program, have a separate risk pool just for them. Well, wouldn't that have been sweet? And

I said to them during the discussion, I said, "Now, let me understand this. You want to take your low-risk situation, remove it from the pool that all the rest of us are part of, and then what happens to us and what happens to our rates?" Do you know what their answer was? "Nothing will happen to your rates. You'd all be ratable. It all will be treated"——

And I—I said, "Look, I may look like I don't get it, but I think I do. I think I know exactly what you guys are trying to do. You're trying to put yourselves into a preferential pool and leave all the rest of us out there with much higher levels of risk, much higher rates, much higher costs, and"—"and," you know, "we aren't going for that." I mean we're the United States of America. We're not the Separate States of America, and we're not going to have a risk pool that's just the "I" states and all the rest of us are off on the side. But that's exactly what they tried to pull off in the last farm bill and, thank God, we were able to stop them.

Any other—yeah, Scott.

Mr. BACKES. One other thing that doesn't pertain to insurance, but in writing the next farm bill, I'd like to see a clarification that would help me out in the wet years on Type 1 wetlands, what is consistent sheetwater on my farm. I don't con—consider it a Type 1 wetland, but the government does. I believe this needs to be changed so we can move some of this sheetwater in times of torrential rains, either on the lowland or move it downstream. We need to have them basically make a redetermination of that.

The CHAIRMAN. You know, let me just say it is one of the most frustrating parts of writing a farm bill because our experience with the realities of some of these definitions is so different from others in other parts of the country who have a different agenda. Let—let's——

Mr. BACKES. Mm-hmm.

The CHAIRMAN [continuing]. Let's be very direct. They have a different agenda. And being able to—to move sheetwater, to me, is just common sense. But you know the fight that we have and it is a—it is—you—you—you talk about some tough fights that go on behind the scenes, these are the toughest of them all. I wish Scott Stofferahn was here. Scott, I think all of you know, was one of my two lead negotiators on the last bill, and we fought this behind the scenes for weeks and weeks and weeks.

And, you know, the original Swampbuster—somebody was, yesterday, criticizing former Senator Andrews to me because Swampbuster got in the 1985 farm bill. And I said, you know, I went back and reviewed the record when I got to Senate Agriculture Committee to see if Senator Andrews had somehow let us down or misunderstood, and he did not. He was misled. He asked very directly in testimony before the committee, "Would Swampbuster apply to North Dakota?" He was assured in testimony that it would not. Well, we all know what happened. When the regulations were written, all of a sudden it did apply to North Dakota.

So, you know, it's not my job to defend former Senator Andrews who I defeated in election in 1986, but in fairness to him, he was absolutely misled. He was told directly it would not apply to North Dakota.

Mr. BACKES. Mm-hmm.

The CHAIRMAN. So we know. The—there—these people have a different agenda and—and, you know, they are—they can be very unreasonable in terms of the application and—and the result when we're out here on the farm and we're dealing with overly wet conditions, you know, I—I don't think they really understand the impact of the regulations they're imposing on us. But they're not reasonable.

Mr. BACKES. Those regulations were mostly brought on by direct aid payments. Once you don't have the direct aid payments anymore, you know, I wonder what they're going to start thinking if—you know, they're going to have to tie it to something else.

The CHAIRMAN. Yeah.

Mr. BACKES. And that would be unfortunate if they were able to do that.

The CHAIRMAN. Well, let's not—let's not—let's not help them figure that out.

[Laughter.]

The CHAIRMAN. I—this is one of the things we've got to be prepared to deal with in this next farm bill, to try to—look, we all understand there is a conservation ethic. I think we all share it. We believe in it. It's important, but it's got to be reasonable, you know. It—it's got to make some common sense. And some of these things defy common sense.

Let's open it up to those who are in the audience. If there's anybody here that would like to testify, make a comment, we'd be happy to give you that opportunity at this point. Anybody that wants to be recognized, wants to give us some observations about writing the next farm bill, we'll be happy to listen.

Senator O'Connell, good to have you here. Welcome.

STATEMENT OF HON. DAVID O'CONNELL, NORTH DAKOTA SENATOR, LANSFORD, NORTH DAKOTA

Senator O'CONNELL. Welcome to District 6, Senator. Excellent testimony you had here today. And Scott and I, our operations are about three miles apart, so I get all his sheetwater, you know, so——

[Laughter.]

Senator O'CONNELL. But all kidding aside, just so you're aware, some of the conditions that we faced in Bottineau and—and Renville County up here is basically, I don't think a bushel of grain was ever trucked out of the field. Representative Hunskor is sitting here too. He runs a grain cart for our operation. And the grain carts have been stuck and there's a—a contractor from Maxbass that works in the oil field. Their winch truck has been out, and Scott can testify better to what I'd have because he's around the guys more than I am, that winch truck is out every day just about all day long because four-wheel-drive tractors can't pull these combines out.

So, again, all the low areas are full of water yet, Senator. Normally we combine through them, but they're all full of water, and the sheetwater has flooded out. In my area, at least a third of the crop has been drowned out and you can't even get in there. I was on a payloader on Saturday. One scoop in and I dropped the front

wheels all the way—way in. It took a four-wheel-drive tractor with triples on to get me out. So that's the kind of conditions we've got this year.

By next summer or next spring with prevent plant and insurance, it's really going to be critical to—to this area. Quality control is going to be—quality is going to be another big area. I just helped a neighbor combine. Winter wheat had been laying on the ground for two—for 2 months now in windrows and it's green in the windrows that you're trying to pick up. So quality loss is going to be a big—a big area again.

I don't know if rural water is going to be in the farm bill this time, Senator, or not, but the two ladies sitting in front—front of me from District 7, we were in Berthold last week and the NAWS project to bring rural water up through this whole area is really critical, Senator, so just to—I don't want to get you off—off track here, but——

The CHAIRMAN. Don't get me started.

Senator O'CONNELL. No, we won't.

The CHAIRMAN. You know, we just had 2 days of negotiations with our Canadian neighbors to the north on NAWS, on Devils Lake, and other vexing water issues. The—the—the dike that they call a road up in Canada and on the northeastern part of our state, we showed them pictures of that road that they've got signs up don't drive on it. They don't want to drive on it because it's not a road. It's a dike. It's just as clear as it can be. Forty-four miles long and it's blocking the water on the North Dakota side.

And NAWS, you can imagine the exchange going back and forth for 2 days on NAWS and Devils Lake. And, you know, this was a negotiation with the Ambassador from Canada, with the Premier from Manitoba, with the American ambassador to Canada, and the Governor and Congressman Pomeroy and Governor—Senator Dorgan and myself, and it was very, very intense and very intense on both Devils Lake and NAWS.

Look, we—we think we've put in place the best treatment of water on NAWS and that water would go in an enclosed pipeline to a treatment facility that would deliver drinking-quality water. Now, that's the fact.

And what they want to do is they want us to treat the water before it goes in the pipeline to drinking-quality status, then pipe it in a pipeline and treat it again. Wow! I mean you think about that. I said, "Well, do you guys want to pay for it? I mean if this is so important to do, why don't you pay for it?" And it gets pretty quiet when that gets to be the choice.

Let me just say that I'm very aware of the conditions that you've had here. Really, some of the most difficult conditions in the state this year are right here. It's one of the reasons we wanted to come here for the first farm bill hearing.

Others who might want to testify? Yes, sir.

STATEMENT OF DEL GATES, DIRECTOR, U.S. DURUM GROWERS ASSOCIATION, AND DIRECTOR, NORTH DAKOTA CROP IMPROVEMENT & SEED ASSOCIATION, MOHALL, NORTH DAKOTA

Mr. GATES. Senator Conrad——

The CHAIRMAN. If you could——

Mr. GATES. —Del Gates.

The CHAIRMAN. Yeah, if you'd identify yourself for the record so——

Mr. GATES. Yep, Durum Grower Director, State Crop Improvement Director.

One of the true—and—and I've had both. We've had prevent plant before and, well, we've had drowned-out. We've had to where you can seed wall to wall and everything. But one of the true tragedies of the—the crop insurance program is no protection on these drowned-out areas. That—you've got all the expense into it and there—there is a point in time where you do stop seeding. Because of prevent plant, the program, the benefits you can get from it, you say, "Well, the heck with it," when there is people that are still trying to seed and then the rains come and drown that out, which there is no protection over.

If you have 160 acres and lose 80 to—to drowned-out that's there, now you take your yield of 80 acres times that and—and produce that off 160 acres you've seeded. So that is a true—true disaster all in all, and we need something to cover that, whether we've got—we can buy up to 70 percent on prevent plant, virtually, and you're a hundred percent coverage if you're fully seeded. Well, maybe there needs to be an 85 percent or something in there to make the person go seed and try to get it. There needs to be a coverage in there for what drowns out.

The CHAIRMAN. Yeah, I—I think you're exactly right. You know, all of these things get to be a negotiation where we've got a dollar amount we've got to hit; all right? And I can tell you we looked at 85 percent and we could not afford it in this bill. We set a standard early on that this bill had to be paid for. We're not going to add anything to the deficit. Nobody's going to be able to come and say to us, "You in agriculture added to the deficit." And so that's really where this fell out because, obviously, if you have that intermediary step, it's additional cost, and, you know—but it makes perfect sense. We'll fight very hard in the next to try to—to provide that kind of intermediate step.

Mr. GATES. One other point, I think, in this harmonization talks of all of these mechanisms working. I go back, I guess, a little bit to—to 2004 when we were down in your office with a disaster and then we were having such a hard time with RMA coming there and not listening to us when we wanted to separate the durum and the wheat yields out. They wanted to separate, but we still couldn't get identified yields on each one of those.

The CHAIRMAN. Right. I remember it very well.

Mr. GATES. Yep. And then in 2004, we had a teleconference——

The CHAIRMAN. We actually got the RMA director fired over that.

Mr. GATES. Well, we did that, yeah, but we also had a teleconference and that's what I—I tried getting that for so long. There had to be a board of farmers. And I think it was in August of 2004, we got a teleconference with the board that was crop improvement and they went down their list, and Keith Collins happened to even be sitting in there——

The CHAIRMAN. Yeah, I remember that.

Mr. GATES [continuing]. In the—in the room, yeah, as we were talking to him on the phone. But one of the things, the tobacco person says, "Well, I'm a South"—"from South Carolina"—"Carolina. I'm a tobacco grower." And the one key one—everyone an—announced what they were, but one of the key ones was this guy from Iowa. He was a corn and bean farmer. And that's kind of the one I wanted to identify with. I said—introduced myself then. I said, "I'm Del Gates from Mohall, North Dakota, but," I said, "I can't identify myself as a corn and bean grower because North Dakota is No. 1 in 14 different crops and," I said, "it's not by not growing them."

And little did we know that we would end up coming with T yields then. But he was the key one and I—I said—you know, I said, "When you buy a quarter of land," I said, "80 acres is seeded to"—"to beans and the other 80 acres is to corn and," I said, "you rotate that so your history in 5 years is huge," you know. And I said, "We don't do that. So," I said, "we need some other mechanism of backing."

Similar to like you say with the crop insurance. They want to be alone. Well, that's the part. Same with this ACRE program. I think we do need, now that we've got T yields, maybe go back to the farm. It may be a little bit—look a little bit complex, but the harmonization, we've got crop insurance to the farm——

The CHAIRMAN. Yeah.

Mr. GATES [continuing]. You know, to harmonize this and get it back to where the true economic return does come from so it is on how the producer does his job.

The CHAIRMAN. You know, let me say this because I—I think it's an important point. Technology is going to change everything. With better technology, I think we're going to be able to get back to on a farm basis, which is really where it belongs, because then you're really—you're—you're—you're really at where the rubber meets the road. But we're not there yet. I mean, USDA's computer systems are in dreadful shape. You know, there was no money put into them for years and now we've got a lot of catching up to do. But with technology, we're going to be able to really fine-tune things in a way we haven't been able to do in the past, but it's going to take time, and I doubt very much it will be done in time for this next farm bill.

Yeah——

Mr. GATES. Even——

The CHAIRMAN. —Del.

Mr. GATES. Even if we could on those drowned-outs, just another thought, go to our T yields or something on that, get coverage for T yields on—on those—you know, those areas or whatever. Get the T yield at least thrown in——

The CHAIRMAN. Yeah.

Mr. GATES [continuing]. Instead of the actual yield going across——

The CHAIRMAN. Yeah.

Mr. GATES [continuing]. The whole——

The CHAIRMAN. Yeah. No, I—I get it. It's a very good—it's a very rational point.

Mr. BACKES. Del, was—wasn't 1 year they had flooded acres program? Didn't we have 1 year of that at one time here several years ago and, I don't know, whatever happened to it?

Mr. GATES. Well, I think if we could get—get declared a national disaster, then doesn't that flood program kind of kick in and then we'll be able to go back and——

The CHAIRMAN. Yeah.

Mr. GATES [continuing]. Kind of get credit?

The CHAIRMAN. Yeah.

Mr. GATES. But it has to be a national, if I'm not mistaken.

The CHAIRMAN. Got to be national.

Mr. BACKES. You know, it can't be a statewide?

The CHAIRMAN. Right.

Mr. BACKES. It's got to be a national?

The CHAIRMAN. Right.

Mr. BACKES. OK. That's why.

The CHAIRMAN. And God forbid we have a national. You know, let's pray we don't have it.

Any other—anybody else that wants to provide testimony, give an observation? We want to make sure that everybody has a chance.

STATEMENT OF BECKY BRAATEN, INSURANCE AGENT, FARM CREDIT SERVICES OF NORTH DAKOTA, WESTHOPE, NORTH DAKOTA

Ms. BRAATEN. Senator Conrad——

The CHAIRMAN. Yeah.

Ms. BRAATEN. —Becky Braaten with Farm Credit.

The CHAIRMAN. Yeah.

Ms. BRAATEN. I know several of the panel members have already addressed this, but I think the preservation of crop insurance is extremely important. Crop insurance already gave with the—you guys addressed——

The CHAIRMAN. Oh, yes.

Ms. BRAATEN [continuing]. This 6.9 billion off of the baseline, the SRA——

The CHAIRMAN. Yeah.

Ms. BRAATEN [continuing]. Negotiations.

The complications that have come with crop insurance, the regulations, I think it's critically important that we maintain the program. It does work. Yes, there are some things that need to be addressed, like prevent plant, the drown-out acres. But, again, the SRA negotiations, crop insurance already gave.

The CHAIRMAN. We already gave at the office.

Ms. BRAATEN. Exactly.

The CHAIRMAN. And we gave big-time——

Ms. BRAATEN. And I appreciate you——

The CHAIRMAN [continuing]. In terms of the baseline.

Ms. BRAATEN. In terms of the baseline.

The CHAIRMAN. In terms of the baseline, right.

Ms. BRAATEN. Yes. Exactly.

And I think it's critically important that we maintain the delivery service of the crop insurance program. I think if you talk to any of the farmers, competition is important, not only to keep the com-

panies, but also the agents. And it's a very complicated program, and I think Ryon can attest with me here that coming into a year of the COMBO policy, it's not as easy as everybody says. Definitions have changed. Malt barley has changed. There's a lot of things out there, and I think we need to keep that service out there and make sure that the agents are in business to help all of the farmers, so——

The CHAIRMAN. Well, that's an important point.

Anyone else?

STATEMENT OF RYON BOEN, INSURANCE AGENT, WESTERN AGENCY, MINOT, NORTH DAKOTA

Mr. BOEN. Just to expand on that a little bit——

The CHAIRMAN. And if you'd just give your name——

Mr. BOEN. Ryon——

The CHAIRMAN [continuing]. So she——

Mr. BOEN. Ryon Boen.

You know, you guys talked a lot about risk management and it sure—why is there—and some of this is a question, why is there risk management through FSA and RMA? And it's so duplicative. The—the clients just hate it. They—"Just whatever I can do to not go into the FSA office," is what I hear as a crop insurance agent all the time is, "I just"—"I've got to report my acres to you and then I've got to report it to them."

SURE and ACRE are trying to do similar things. They're extending the revenue protection period for sure, but really what they're just—they're both doing ostensibly the same thing and you could probably combine those programs, your $6 billion that—that got cut out. Is there that much duplication? Probably not, but you might get half of it back by figuring out a way to streamline it.

I would—you know, the FSA offices were not geared up for this program. I would be in constant communication with those guys to understand it so I could explain it to my clients. My clients come to me to explain to them a program that I don't administer. But they—they're not equipped for these changes that are prescribed through these farm bills, either. I think the private delivery of crop insurance is much more geared up toward these dynamic changes because it's more—you know, it's just—it's just faster. You know, I think——

The CHAIRMAN. You know, I—I—let—let me be very blunt here. There are people who want the farm program to fail, and one way to make it fail is to starve the FSA system so it can't be administered.

Mr. BOEN. Mm-hmm.

The CHAIRMAN. And I've had senators tell me flat-out, not in public, but they've told me in private, that that is exactly what they're trying to do. They want the whole thing to fail because they absolutely don't believe in it.

I—I had a farmer—or a senator tell me that we shouldn't farm in North Dakota. He's on the Agriculture Committee. I mean he flat-out told me we shouldn't be farming here. It's too marginal. I said, "Have you ever been to the Red River Valley of North Dakota?"

"No."

I said, you know, "When I was growing up, every time we drove through the Red River Valley, my grandfather used to say the same thing, 'Never been a crop failure in the Red River Valley,'" and my grandfather would say the same thing every time we drove through.

Now, this guy, I—I won't identify him further because I—I could tell you some more things that he said, but that would more further identify him. I mean he was dead-serious. I mean, and he said this to me more than once, "You should not be farming in North Dakota." Wow! Now, that—that's kind of the thing we're up against here. We've got people who actually think like that.

Yeah.

Mr. PEDERSON. Ryan Pederson. To that point, I went to graduate school at Purdue, Indiana, and was at a speech with Senator Lugar and he made the same point, and I thought to myself——

[Laughter.]

The CHAIRMAN. OK.

[Laughter.]

The CHAIRMAN. OK. I was trying to protect him. Go ahead.

Mr. CARLSON. He said it to me once too.

The CHAIRMAN. Huh? Did he?

Mr. CARLSON. He said it to me once too.

The CHAIRMAN. Yeah, he—he said it—and he said it to me more than once.

Mr. CARLSON. But he apologized later. He apologized later.

Mr. PEDERSON. But you know we've——

The CHAIRMAN. He was—he was not kidding, either.

Mr. PEDERSON. No, he wasn't, I mean.

And we've talked about water issues. You ask the people in the "I" states where would they be without drain tile.

Mr. CARLSON. Yeah.

Mr. PEDERSON. You know, they had it all done before any of these rules came in.

Mr. CARLSON. Yeah.

Mr. PEDERSON. If they didn't have the drain tile, they'd probably be in worse shape than we are. I just think that——

Mr. BACKES. They're doing it now against the rules——

Mr. CARLSON. Yeah.

Mr. BACKES [continuing]. And nobody does anything about it, either.

Mr. CARLSON. No, they don't.

Mr. PEDERSON. So it's—it's something to remind them of that——

The CHAIRMAN. You know what he said to me, one of the things he said to me? Never been a crop failure on his farm. Never been a crop failure on his farm. Well, you know, you guys have been blessed. You've been blessed. But that is not all of American agriculture. And the idea that you would just say you don't farm in North Dakota, I mean, really, what would the consequence of that be? That is twenty—25 percent of this state's economy just out the window. And what would it mean to the country since we are the No. 1 producer in commodity after commodity? As I started my—my remarks today, 15 commodities, we're No. 1.

So this idea that somehow North Dakota should not be an agricultural producer because there is risk to production here is, to me,

absolutely detached from any economic reality. But, I mean, that—that is—that's the kind of thing that we're dealing with.

Any other? I know that we've about come to the end of our time. I want to make sure anybody else that's got something they want to testify to has a chance.

If not, I want to again thank this panel. I appreciate very much your participating. As we think about a summit on agricultural policy for next year, we'll be in conversation with all of you. Love to have you participate. I think it could be extremely important to farm bill deliberations to have North Dakota once again lead the way as we think through what the issues are.

I want to thank everybody that's in attendance here today. We certainly appreciate that.

With that, the hearing will be adjourned.

[Whereupon, at 2:51 p.m., the hearing was adjourned.]

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