APPENDIX A

CORRESPONDENCE, COMMENTS, AND RESPONSES

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Appendix A-1

Public Participation
and Consultation Timeline

Consultation/Public Participation Timeline UMR				
Date	**Action**	**Location**	**Notes**	**Comments/Responses**
1/15/2016	Invitation letter to participate sent to cooperating agencies, 20 THPO's/SHPO and other state and local stakeholders		Cooperating agencies: USFWS + COE. This is the initial consultation with SHPO/Tribes	Rec'd confirmation to participate from Coop agencies: USACE and SHPO. Fort Peck and White Earth Reservations requested to be kept informed of any updates to planned activities. Six State agencies sent responses.
1/6/2016	Public Scoping Meeting	Casselton, ND		
11/5/2018	Formal Consultation Letter sent to tribes		30 tribes were sent a formal request for consultation.	Two tribes responded. Ft Peck gave concurrence conditional on no other tribes objecting; White Earth requested to stay informed of updates.
1/12/16, 2/24/16, 8/3/16, 8/18/16, 11/17/16, 3/22/19, 7/31/19, 12/1/2020	Project Team Meetings	West Fargo and Page, ND	Project Team consisting of federal, state and local agencies and landowners, narrowed the range of alternatives based on comments and watershed analysis	
7/31/19, 12/1/2020	Alternative rankings meetings	West Fargo and Page, ND	Project Team consisting of federal, state and local agencies and landowners, narrowed the range of alternatives based on comments and watershed analysis	
2/8/17, 6/14/17, 8/18/17,6/1/2018, 8/18/2018, 12/1/2020, 6/1/2023	Landowner Meetings	Page, ND		
5/30/2023	2nd Public Scoping meeting due to upgrade from EA to EIS. Invitation sent to 31THPO's, SHPO, Cooperating agencies, project team, landowners and other stakeholders.	Virtual, however some in person attendance at Cass County JWD		Several Comments/Responses documented.
6/21/2023	Notice of Intent to Prepare and EIS published to Federal Register	Federal Register		US EPA provided several comments
8/2/2023	Affected Landowner Meeting	on site Barnes Co	Meeting with sponsor, NRCS and Moore Eng	Several Comments/ Responses documented.
1/19/2024	Class III Cultural Resource Survey Report sent with a formal request for Continued Consultation to 30 tribes and SHPO. NRCS recommended "No Effect to Historic Properties"			Nine tribal responses (six concurring or had not interest, 2 requesting further consultation). ND SHPO requested additions and corrections.
12/10/2024	ND SHPO Concurred with revised recommendation of "No Adverse Effect to Historic Properties."			

12/19/2024	Thirty tribes were consulted on the Revised Class III Cultural Resource Survey Report			Two responses received, both deferring to local tribes.
1/27/2025	NRCS Section 106 Consultation responsibilities completed.			
3/13/2025	Draft Plan-EIS sent to NWMC for comments		5/30/25 Comments rec'd from NWMC	
7/8/2025	Draft Plan-EIS sent to NHQ for comments		1/22/26 Comments rec'd from NHQ	
TBD	Public Meeting to review Draft Plan/EIS			
TBD	Final Draft EIS may be submitted to EPA (USDI) concurrently or after it is made available to public and agencies.			
TBD	EPA publishes NOA for Draft EIS		Official 45 comment day period begins	
TBD	Final Draft EIS posted to website		Final Draft Plan-EIS completed based on scoping comments.	
TBD	Draft Plan-EIS public mtg invite mailed to Tribes + NDSHPO. USFWS and USACE sent link			
TBD	Public notices to begin running in newspaper - 3x (at least 15 days prior) . All other stakeholders mailed or emailed invitation		And link to Draft Plan-EIS on NRCS website	
TBD	Public Informational Meeting for watershed residents and watershed stakeholders			
TBD	All Tribes and Cooperating Agencies have received the Draft Plan/EIS.		45 day comment period begins	
TBD	End Tribal/SHPO Review of Plan-EIS (NEPA)			
TBD	Substantive comments summarized in FINAL-EIS/AppA,		Comment table and letters added to App A	
TBD	Distribute Final EIS to EPA (USDI)			
TBD	EPA publishes NOA for FINAL EIS		30 day administrative action period begins	
TBD	ROD		Cannot be issued until 30 days after publishing FINAL EIS OR 90 days after NOA of DRAFT EIS (whichever is longer)	

Appendix A-2

Initial Scoping Documents and Responses

January 15, 2016

Recipient
Company
Address
Address
City, State Zip

Re: Cass County Joint Water Resources District
Watershed Planning Process for Swan Creek, Rush River, and Upper Maple River Watersheds

Dear Name:

The Cass County Joint Water Resources District (District), in cooperation with the Natural Resources Conservation Service (NRCS) Regional Conservation Partnership Program (RCPP), is initiating watershed planning processes for the Swan Creek, Rush River, and Upper Maple River watersheds, as shown on the enclosed **Watershed Maps**. The watershed planning processes will rely on local input and a team of stakeholders to identify water-related concerns within each rural watershed, such as overland flooding, delayed planting, crop damages, infrastructure failures, etc. Moore Engineering Inc. and Barr Engineering Co. are assisting the District with the NRCS RCPP watershed planning processes.

The District has obtained grant funding from the NRCS RCPP to facilitate the watershed planning process for each watershed. Due to this nexus, environmental review under the National Environmental Policy Act (NEPA) of 1969, as amended, will be required to fully assess impacts associated with alternatives developed to address water-related concerns.

To ensure that all social, economic, and environmental effects are considered in the development of this project, we are soliciting your views and comments on the proposed project pursuant to Section 102 (2) (D) (IV) of NEPA. We are particularly interested in any property which your department may own or have an interest in. We would also appreciate being made aware of any proposed developments your department may be contemplating in the watershed areas. Any information that might help us in our studies would be appreciated.

Information or comments relating to environmental or other matters that you might furnish will be used in determining if these projects are a "categorical exclusion" or whether an "Environmental Assessment" or a "Draft Environmental Impact Statement" will be prepared.

It is requested that any comments or information your agency is willing to contribute for use in project development be forwarded to our office on or before **February 15, 2016**. If no reply is received by this date, it will be assumed that you have no comment on these projects.

If further information is desired regarding the proposed projects, please contact Pat Downs at 701-551-1041. Thank you for your time and cooperation.

Sincerely,

Pat Downs

Enclosures:
Watershed Maps

First Name	Company Name	Department	Address Line 1	City
Craig Odenbach	ND State Water Commission		900 East Blvd Ave, Dept 770	Bismarck, ND 58505-0850
Karl Rockeman	ND State Health Department	Environmental Health	918 East Divide Ave	Bismarck, ND 58501-1947
Susan Quinnell	ND-SHPO Ref: 16-0390	ND State Historical Society	612 E Blvd Ave	Bismarck, ND 58501
Greg Link	ND Game & Fish Department		100 N Bismarck Expressway	Bismarck, ND 58501-5095
Joyce Schmidt	ND Department of Transportation		608 E Boulevard Ave	Bismarck, ND 58505-0700
Elgin Crowsbreast	Three Affiliated Tribes, THPO		PO Box 429	Parshall ND 58770
Waste` Win Young	Standing Rock Sioux Tribe, THPO		PO Box D	Fort Yates ND 58538
Dr. Erich Longie	Spirit Lake Sioux Nation THPO		PO Box 359	Fort Totten ND 58335
Curley Youpee	Director Cultural Resource Dept. & NAGPRA Coordinator	Fort Peck Tribes	Box 836	Poplar Mt 59255
Dennis Gill	Wahpekute Band OF Dakotah		3322 Gill Rd	Waubay SD 57273
Emerson Bull Chief	THPO	Crow Nation	PO Box 159	Crow Agency MT 59022
Darrel Ziphier	Crow Creek Sioux Tribe, THPO		PO Box 50	Fort Thompson SD 57339
Perry Little	Yankton Sioux Tribe, THPO		PO Box 1153	Wagner SD 57380
Chippewa Cree Cultural Resources Preservation Dept.			PO Box 230	Box Elder MT 59521
Pete Coffey	Three Affiliated Tribes THPO Office		PO Box 429	Parshall ND 58770
Dianne Desrosiers	Tribal Historic Preservation Office	Sisseton-Wahpeton Oyate	PO Box 907	Sisseton SD 57262
Bruce Nadeau	THPO	Turtle Mountain Band of Chippewa Indians	PO Box 2022	Belcourt ND 58316
Conrad Fisher	Northern Cheyenne Nation, THPO		PO Box 251	Lame Deer MT 59043
Russell Eagle Bear	Tribal Historic Preservation Office	Rosebud Sioux Tribe	PO Box 809	Rosebud SD 57570
Michael Catches Enemy	Oglala Sioux Tribe , THPO		PO Box 1606	Pine Ridge SD 57770
Steve Vance	Cheyenne River Sioux Tribe, THPO		PO Box 590	Eagle Butte SD 57625
Rick Thomas	Santee Sioux Nation, THPO		52948 Highway 12	Niobrara NE 68760
Robert Farmer	Acting Regional Administrator	Federal Insurance & Hazard Mitigation Divison	Bldg 710, Box 25267	Denver CO 80225
Kevin Shelley	North Dakota Acting Supervisor	U.S. Fish and Wildlife Service	3425 Miriam Ave	Bismarck ND 58501-7926

Title	First Name	Last Name	Company Name	Department	Address Line 1	City	State	ZIP Code
Mr.	Bob	Christensen	Cultural Resource Specialist	NDSHPO	608 E. Boulevard Ave.	Bismarck	ND	58505-0700
Mr.	Bruce	Renville			PO Box 509	Sisseton	SD	57262-0267
Mr.	Myra	Pearson			PO Box 359	Ft. Totten	ND	58335
Mr.	Mark	Fox			404 Frontage Road	New Town	ND	58763
Mr.	Richard	McCloud			PO Box 900	Belcourt	ND	58316-0900
Mr.	Dave	Archambault II			PO Box D	Fort Yates	ND	58538
Mr.	Timothy	LaPointe	Regional Director	BIA	115 4th Ave. SE, Suite 400	Aberdeen	SD	57401
Mr.	Joe	Hall	Chief, Environmental and Resource Management		PO Box 1017	Bismarck	ND	58502-1017
Mr.	Patricia	McQueary	Manager	ND Regulatory Office USACE	1513 S. 12th St.	Bismarck	ND	58504
Mr.	Brad	Thompson	Chief, Planning Branch	Omaha District Attn: CENWO-PM-A	1616 Capital Avenue	Omaha	NE	68102-4901
Mr.	Aaron	Snyder	Chief, Project Management & Development Branch	St. Paul District	180 5th St. E., Ste 700	St. Paul	MN	55101-1678
Ms.	Mary	Podoll	State Conservationist		PO Box 1458	Bismarck	ND	58502-1458
Mr.	Kirk	Keysor	EPA	Economic Development Administration	1244 Speer Blvd., Suite 431	Denver	CO	80204
Mr.	Gerald	Paulson	Director, Transmission Lines and Substations	Western Area Power Admin.	PO Box 1173	Bismarck	ND	58502-1173
Ms.	Suzanne	Bohan	NEPA Transportation Coordinator	Region 8, EPR-N	1595 Wynkoop Street	Denver	CO	80202-1129
Mr.	Richard	Clark	Wetlands Coordinator	Region 8, EPR-EP	1595 Wynkoop Street	Denver	CO	80202-1129
Mr.	Scott	Davis			600 E. Blvd. Ave., 1st Floor, Judicial Wing, Rm 117	Bismarck	ND	58505-0300
Mr.	Cody	Schulz	Disaster Recovery Chief	Department of Homeland Security	PO Box 5511	Bismarck	ND	58506
Mr.	Larry	Kotchman	State Forester		307 1st St. E.	Bottineau	ND	58318-1100
Mr.	Steve	Dyke	Supervisor	Conservation Section NDG&F	100 Bismarck Expressway	Bismarck	ND	58501-5095
Mr.	Mark	Zimmerman	Director	ND Park and Rec	1600 E. Century Ave., Suite 3	Bismarck	ND	58503-0649
Mr.	Scott	Hochhalter	State Soil Specialist	NDSU Extension Service	2718 Gateway Ave., #104	Bismarck	ND	58503
Mr.	Jeff	Person	Paleontologist		600 E. Blvd. Ave.	Bismarck	ND	58505

First Name	Company Name	Department	Address Line 1	Address Line 2	City
Keith Berndt	Cass County Administrator		P.O. Box 2806		Fargo, North Dakota 58108-2806
Cass County Sheriff Paul Laney	Sheriff's Department		P.O. Box 488		Fargo, ND 58107-0488
Cass County Emergency Management			4630 15 Avenue North		Fargo, ND 58102
Jason Benson, Cass County Engineer	Cass County Highway Department		1201 Main Ave West		West Fargo, ND 58078
Mary Scherling	Chairwoman, Cass County Commission		P.O. Box 2806		Fargo, North Dakota 58108-2806
Bill Stansbery, Mayor			301 Gridley Ave		Amenia, ND 58004-4010
Lee Anderson, Mayor			PO Box 327		Casselton, ND 58012

Discussion and Disposition of Comments from Letter Received on the Draft Watershed Plan and Environmental Assessment

Not all agencies and groups requested to comment on the Draft Watershed Plan and Environmental Assessment submitted comments. The responding agencies' and groups' comments and the dispositions of each are as follows:

United States Army Corps of Engineers (USACE) Omaha District – North Dakota Regulatory Office

Comment: A section 10 permit would be required for work impacting navigable waters, this includes work over, through or under Section 10 waters. A Section 404 permit would be required for the discharge of dredge or fill material (temporarily or permanently) in waters of the United States.

Response: Comment noted. Permitting requirements have been addressed in the Draft Watershed Plan and EA.

USACE - Omaha District – Planning, Programs, and Project Management Division

Comment: The project area is land located outside of the Corps, Omaha District's civil works boundary; therefore, we cannot provide specific comments on impacts to Corps owned or operated lands or environmental-based comments on the project. Contact the St. Paul District as they have civil works jurisdiction over this area.

Response: Comment noted.

Comment: This project is located within the Corps' State of North Dakota regulatory boundary. As such, any proposed placement of dredged or fill material into waters of the United States will require Department of the Army authorization under Section 404 of the Clean Water Act. Inquiries on Section 404 permit requirements should be directed to the Omaha District Bismarck Regulatory Office.

Response: Comment noted. Permitting requirements have been addressed in the Draft Watershed Plan and EA.

North Dakota Forest Service

Comment: The project will likely impact riparian forests. Our riparian forests have been identified in North Dakota's Statewide Assessment of Forest Resources and Forest Resource Strategy as high priority forest areas. We encourage the project proponent to consider the impacts of any management decisions on riparian forests, utilize construction techniques that will avoid or minimize loss of these limited natural resources, and encourage the replacement of any trees or shrubs destroyed as a result of this project.

Response: Comment noted. Impacts to riparian forests have been addressed in the Draft Watershed Plan and EA.

North Dakota Geological Survey

Comment: No fossil sites have been identified in the Project Area. It is unlikely that paleontological sites will be encountered in the Cass, Barnes, Griggs, Steele, or Traill County tracts because those areas are covered with generally unfossiliferous glacial deposits.

Response: Comment noted.

North Dakota Parks and Recreation

Comment: The project as defined does not affect state park lands that we manage but may affect state Land and Water Conservation Fund (LWCF) project sites that we manage. A map with LWCF project locations has been attached.

Response: Potential impacts to LWCF lands are addressed in the Draft Watershed Plan and EA.

Comment: The North Dakota Natural Heritage biological conservation database has been reviewed to determine if any plant or animal species of concern or other significant ecological communities are known to occur within and approximate one-mile radius of the project area. Based on this review, there are several documented occurrences in our database within or adjacent to the project area.

Response: Potential impacts to species of concern or other significant ecological communities are addressed in the Draft Watershed Plan and EA.

North Dakota Department of Emergency Services

Comment: The North Dakota Department of Emergency Services has done numerous projects within the Upper Maple River Watershed, including the following:

- Acquisition/Demolition of Private Real Property
    - 1225 126th Ave SE, Hope, ND 58046 – Barnes County
    - Lat 47.23228, Long -97.83367

The North Dakota Department of Emergency Services requests that during the planning process of the Upper Maple River Watershed that the CCJWRD, Moore Engineering, and Barr Engineering take into consideration the above mentioned projects when developing new strategies, goals, and projects associated with water related concerns within these watersheds.

Response: Comment noted.

North Dakota Department of Transportation

Comment: The North Dakota Department of Transportation (NNDOT) has state and interstate highways that are located within the watershed areas. It is necessary to know of any changes in those watershed areas would impact our transportation system. If drainage modifications are proposed, NDDOT would like consideration given to modifications that would improve flooding as historically happens to some of the highways in the watershed areas.

Response: Potential impacts to transportation is addressed in the Draft Watershed Plan and EA.

Comment: If because of this project any work needs to be done on highway right of way, appropriate permits and risk management documents will need to be obtained from the department of Transportation District Engineer, Robert Walton.

Response: Comment noted.

North Dakota Game and Fish Department

Comment: It is important to identify and mitigate potential impacts to fish and wildlife resources associated with the watershed plan. We also believe this process must be conducted from a comprehensive perspective that includes not only future activities but past as well.

Response: Potential impacts to fish and wildlife are addressed in the Draft Watershed Plan and EA.

Comment: The construction of dams or "dry" dams within the river channel interrupts the river's continuum by impeding the physical and biological processes in the river system. The construction of a dam across rivers and streams will have more than a de minimis (i.e. inconsequential) effect on the river system and will cause identifiable individual and cumulative adverse effects on aquatic function (i.e. fish and wildlife life history requirements).

Response: Comment noted. Potential impacts to fish and wildlife are addressed in the Draft Watershed Plan and EA.

Comment: With any alternative analysis, the Department's primary concern is maintaining a relatively natural hydrography and stream connectivity in the Red River and its tributaries while still providing flood protection to the citizens. It is also important that the least damaging alternative be implemented to minimize impacts to fish and wildlife resources.

Response: Comment noted.

Natural Resources Conservation Service – North Dakota

Comment: A review of our data indicates that the Natural Resources Conservation Service-North Dakota does not own any properties in the proposed watersheds. In addition, the Natural Resources Conservation Service-North Dakota has four Wetland Reserve Program (WRP) easements in the Upper Maple River Watershed (maps enclosed in comment)

Response: WRP easements are discussed in the Draft Watershed Plan and EA.

Department of Energy (Western Area Power Administration)

Comment: Western Area Power Administration has three transmission lines within Cass County that may be impacted by one or more watershed areas. A primary concern is to maintain access to all of our structures in order to perform routine and/or emergency maintenance. A second concern would be the

creation of any holding pond or pool whose elevation can fluctuate. Our concern in that case would be reducing vertical clearances and not meeting National Electrical Safety Code requirements.

Response: Comment noted.

Dyan R. Youpee – Fort Peck Tribal Historic Preservation Officer

Comment: I've reviewed the following projects and give the concurrence to proceed with the proposed ground disturbing/earth moving activity, they do not have adverse effects on cultural/historical properties significant to the Fort Peck Tribes. However, first and foremost, my concurrence will stay in consensus with the closest THPO's to these selected project areas. Should they NOT comment on the selected projects, then I give this concurrence to proceed for:

> Projects: PL – 566 Watershed plans under NRCS, RCPP in ND. Rush River, North Branch Park River, and Upper Maple River.

Should there be any updates to the proposed activities (other than listed on the review request), please provide an update to the T.H.P.O. with new information regarding further construction than proposed. AND should there be unanticipated inadvertent discoveries (human remains, archaeological and cultural resources uncovered), contact the Fort Peck T.H.P.O. along with your intended contacts for the projects. If there are any questions as to what these resources are, please do not hesitate to contact me. I am also willing to assist in a site visit if needed.

Response: Comment noted.

Jaime Arsenault - White Earth Reservation Tribal Historic Preservation Officer

Comment: Based upon a preliminary inquiry, there are no known cultural resources that I have on internal file for this area. This determination is based upon available information provided to this office. However, this review does not preclude the possibility of previously unknown cultural resources especially near areas of water, or elevated ground. If cultural materials are uncovered in the course of construction, all work must cease and the Tribal Historic Preservation Office must be contacted immediately at (413) 522-2345. Furthermore, I am requesting to remain in contact/consultation with you regarding all watershed projects that involve waterways that run into lakes or rivers on or near the White Earth Reservation and surrounding areas where ricing and fishing occur. Lastly, I am requesting that you reach out directly to Jim Jones at jim.jones@state.mn.us because Mr. Jones has done some recent cultural resource survey work in ND and may be able to provide valuable insight.

Response: Comment noted.

Upper Maple River - Public Meeting #1 Comments	
	1/06/2016
1	Landowner expresses concerns about road and culvert washout, transportation disruption, and stranded homeowners.

Upper Maple River - Public Meeting #2 Comments	
	7/31/2019
1	Landowner questions on potential impacts to property and types of easement/land purchase
2	Landowers requested to be informed as the project progresses
3	No other significant comments

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NORTH DAKOTA REGULATORY OFFICE
1513 SOUTH 12TH STREET
BISMARCK ND 58504-6640

February 9, 2016

North Dakota Regulatory Office

Mr. Pat Downs
Moore Engineering, Inc.
925 10th Avenue East
West Fargo, North Dakota 58078

Dear Mr. Downs:

This is in response to your letter dated January 15, 2016, requesting comments on the Cass County Joint Water Resource District Watershed Planning Process for Swan Creek, Rush River, and Upper Maple River Watersheds. The United States Army Corps of Engineers is aware of the watershed planning process mentioned in your letter and will be acting as a cooperating agency.

U. S. Army Corps of Engineers Regulatory Offices administer Section 10 of the Rivers and Harbors Act (Section 10) and Section 404 of the Clean Water Act (Section 404). A Section 10 permit would be required for work impacting navigable waters, this includes work over, through, or under Section 10 waters. A Section 404 permit would be required for the discharge of dredge or fill material (temporarily or permanently) in waters of the United States. Waters of the United States may include, but are not limited to, rivers, streams, ditches, coulees, lakes, ponds, and their adjacent wetlands. Fill material includes, but is not limited to, rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mines or other excavation activities and materials used to create any structure or infrastructure in waters of the United States.

If the project requires a Section 10/404 permit, a permit application and instructions for completion may be found at http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/ObtainaPermit.aspx. If you do not have access to a computer, you may call this office and request a copy of the permit application and instructions be sent to you.

If we can be of further assistance or should you have any questions regarding our program, please do not hesitate to contact this office by letter or phone at (701) 255-0015.

Sincerely,

Patricia L. McQueary
Regulatory Program Manager
North Dakota

Printed on Recycled Paper

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
1616 CAPITOL AVENUE
OMAHA NE 68102-4901

REPLY TO
ATTENTION OF

February 1, 2016

Planning, Programs, and Project Management Division

Mr. Pat Downs
Moore Engineering, Inc.
925 10th Avenue East
West Fargo, North Dakota 58078

Dear Mr. Downs:

The U.S. Army Corps of Engineers, Omaha District (Corps) has reviewed your letter dated January 15, 2016 (received January 20, 2016) regarding the environmental review of the Cass County Joint Water Resource District Watershed Planning Process for Swan Creek, Rush River, and the Upper Maple River Watersheds in North Dakota. The project area is land located outside of the Corps, Omaha District's civil works boundary; therefore, we cannot provide specific comments on impacts to Corps owned or operated lands or environmental-based comments on the project. For these type of comments you will need to contact our St. Paul District as they have civil works jurisdiction over this area. Please direct all future correspondence regarding this project to the following address:

U.S. Army Corps of Engineers
St. Paul District
Attention: Mr. Aaron Snyder, CEMVP-PM-B
180 Fifth Street East, Suite 700
St. Paul, Minnesota 55101

This project is located within the Corps' State of North Dakota regulatory boundary. As such, any proposed placement of dredged or fill material into waters of the United States will require Department of the Army authorization under Section 404 of the Clean Water Act. Inquiries on Section 404 permit requirements should be directed to the Omaha District Bismarck Regulatory Office. Preliminary and final project plans should be sent to the following address:

U.S. Army Corps of Engineers
Bismarck Regulatory Office
Attention: Ms. Patricia McQueary, CENWO-OD-R
1513 South 12th Street
Bismarck, North Dakota 58504

If you have any questions, please contact Ms. Amanda Ciurej of my staff at (402) 995-2897 or amanda.k.ciurej@usace.army.mil and reference PD# 6806 in the subject line.

Sincerely,

Eric A. Laux
Chief, Environmental Resources and Missouri River Recovery Program Plan Formulation Section

NORTH DAKOTA FOREST SERVICE

"Enhancing the Quality of Life Through Forestry"

February 3, 2016

Pat Downs, Project Coordinator
Moore Engineering, Inc.
925 10th Avenue East
West Fargo, ND 58078

Re: Cass County JWRD, Watershed Planning Process for Swan Creek, Rush River and Upper Maple River Watersheds

Dear Mr. Downs,

The North Dakota Forest Service has reviewed the information concerning the above-referenced project with regard to possible impacts on North Dakota's forest resources. While we own no land in or adjacent to the proposed project we note that the project will likely impact riparian forests within the watersheds.

Our riparian forests have been identified in North Dakota's Statewide Assessment of Forest Resources and Forest Resource Strategy as high priority forest areas. Riparian forests provide many environmental and social benefits. Trees and woody plants along watercourses help to control soil erosion and filter agricultural chemicals from reaching rivers. In addition, riparian forests provide recreational opportunities and provide habitat for numerous wildlife species.

We encourage the project proponent to consider the impacts of any management decisions on riparian forests, utilize construction techniques that will avoid or minimize loss of these limited natural resources, and encourage the replacement of any trees or shrubs destroyed as a result of this project. If you have any questions regarding our comments, please feel free to contact this office.

Sincerely,

Liz Smith

Liz Smith, ND Forest Service
Cc: Larry Kotchman, State Forester

Liz Smith, Forestry Incentives Specialist, NDSU-ND Forest Service
Jamestown Field Office 300 2nd Ave NE, Suite 208A Jamestown, North Dakota 58401
701-400-8330 liz.smith@ndsu.edu www.ndsu.edu/ndfs

North Dakota Geological Survey

Edward C. Murphy - State Geologist

Department of Mineral Resources

Lynn D. Helms - Director

North Dakota Industrial Commission

www.state.nd.us/ndgs

February 4, 2016

Pat Downs
Project Coordinator
Moore Engineering, Inc.
925 10th Ave. East
West Fargo, ND 58078

Pat,

I have reviewed our records to determine if any paleontological sites have been reported from the tracts listed for the:

Cass County Joint Water Resource District
Watershed Planning Process for Swan Creek, Rush River, and Upper Maple River Watersheds

No fossil sites have been identified in any of the tracts listed.

It is unlikely that paleontological sites will be encountered in the Cass, Barnes, Griggs, Steele, or Traill County tracts because those areas are covered with generally unfossiliferous glacial deposits.

Sincerely,

Jeff Person
Paleontologist
North Dakota Geological Survey

Jack Dalrymple, Governor
Mark A. Zimmerman, Director

1600 East Century Avenue, Suite 3
Bismarck, ND 58503-0649
Phone 701-328-5357
Fax 701-328-5363
E-mail parkrec@nd.gov
www.parkrec.nd.gov

February 12, 2016

Moore Engineering
Pat Downs
925 10th Ave. East
West Fargo, ND 58078

Re: Cass County Joint Water Resource District – Watershed Planning Process for Swan Creek, Rush River and Upper Maple River Watersheds

Dear Pat:

The North Dakota Parks and Recreation Department has reviewed the above referenced proposal for Cass County Joint Water Resource District – Watershed Planning Process for Swan Creek, Rush River and Upper Maple River Watersheds

Our agency scope of authority and expertise covers recreation and biological resources (in particular rare plants and ecological communities). The project as defined does not affect state park lands that we manage but may affect state Land and Water Conservation Fund (LWCF) project sites that we manage. A map with LWCF project locations has been attached. All LWCF sites received assistance from the federal LWCF program and are under protection of section 6(f) of the LWCF Act. Any property taken from within the 6f boundary of these sites must be replaced with property of equal market value. Should any public or private utilities need to be added or relocated on the LWCF recreational lands, the NDPRD must be consulted prior to any action taken. Please contact Kevin Stankiewicz (701-328-5364 or kstankiewicz@nd.gov if additional LWCF information is needed.

The North Dakota Natural Heritage biological conservation database has been reviewed to determine if any plant or animal species of concern or other significant ecological communities are known to occur within an approximate one-mile radius of the project area. Based on this review, there are several documented occurrences in our database within or adjacent to project area. Because this information is not based on a comprehensive inventory, there may be species of concern or otherwise significant ecological communities in the area that are not represented in the database. The lack of data for any project area cannot be construed to mean that no significant features are present. The absence of data may indicate that the project area has not been surveyed, rather than confirm that the area lacks natural heritage resources.

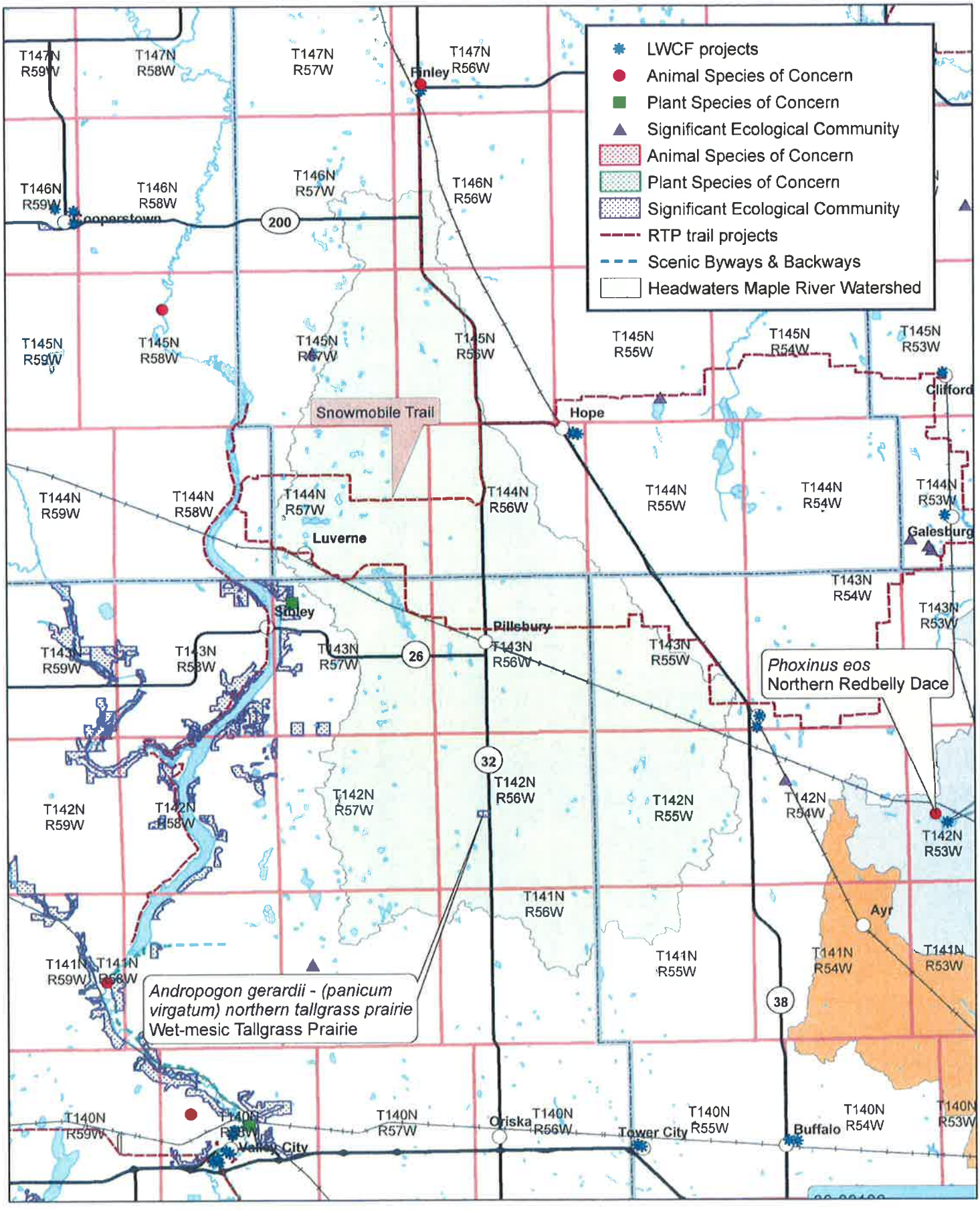
We appreciate your commitment to rare plant, animal and ecological community conservation, management and inter-agency cooperation to date. For additional information please contact me at (701-328-5370 or kgduttenhefner@nd.gov). Thank you for the opportunity to comment on this proposed project.

Sincerely,

Kathy Duttenhefner, Coordinator
Natural Resources Division

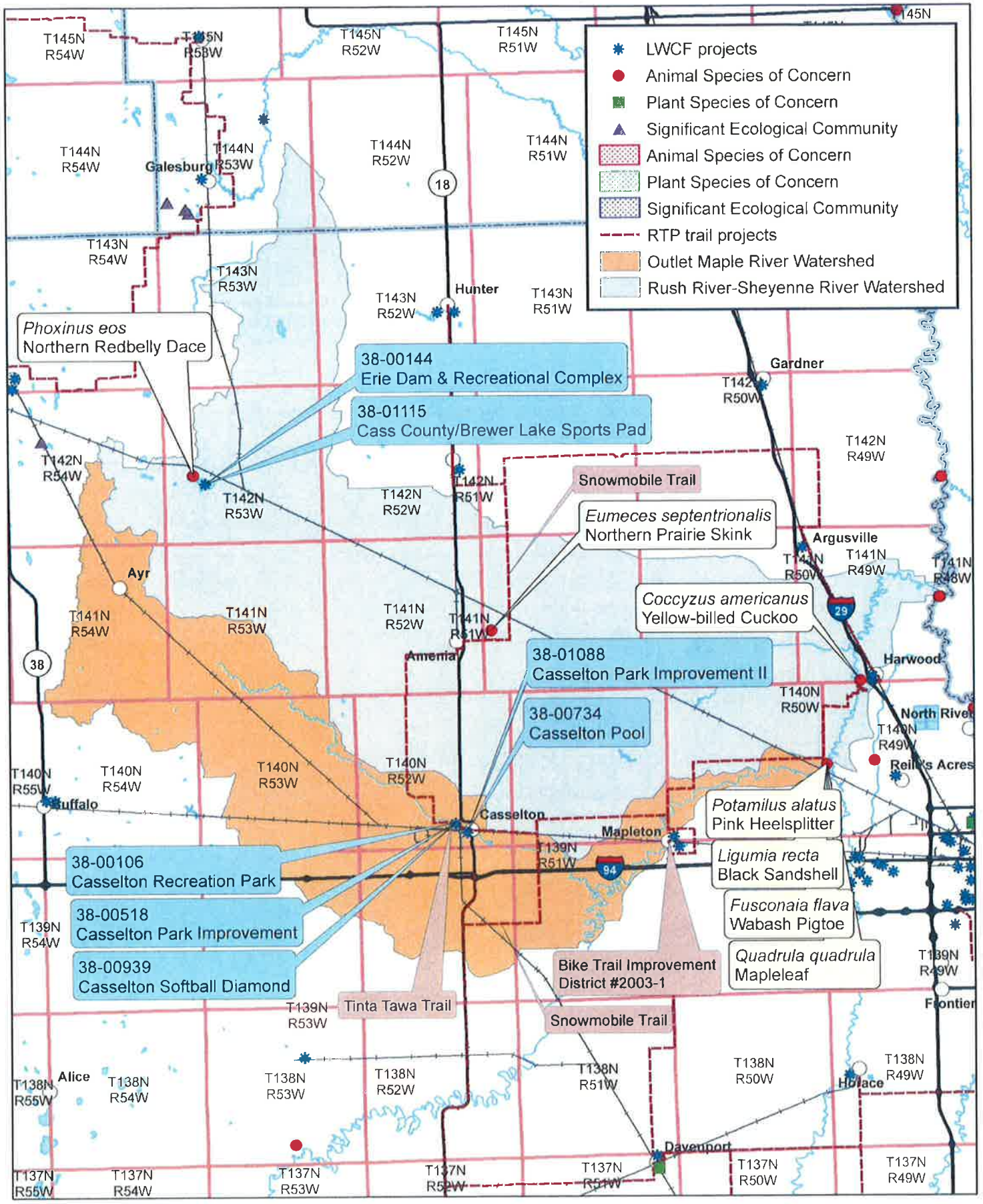
R.USNDNHI*2016-024KD2.12.2016DL2.15.2016

North Dakota Parks and Recreation Department
North Dakota Natural Heritage Inventory



February 2016

North Dakota Parks and Recreation Department
North Dakota Natural Heritage Inventory



February 2016

North Dakota Natural Heritage Inventory

Rare Animal and Plant Species and Significant Ecological Communities

State Scientific Name	State Common Name	State Rank	Global Rank	Federal Status	Township Range Section	County	Last Observation	Estimated Representation Accuracy	Precision
Andropogon gerardii - (panicum virgatum) northern tallgrass prairie	Wet-mesic Tallgrass Prairie	S1	GNR		142N056W - 21; 142N056W - 20; 142N056W - 17; 142N056W - 16	Barnes		Very High	
Coccyzus americanus	Yellow-billed Cuckoo	SU	G5	PS	140N049W - 05; 141N049W - 33; 140N049W - 06; 141N049W - 29; 140N049W - 09; 141N049W - 27; 141N049W - 34; 141N049W - 32; 141N049W - 28; 140N049W - 07; 140N049W - 04; 140N049W - 08	Cass	1934-06-24		M
Eumeces septentrionalis	Northern Prairie Skink	S2S3	G5		141N051W - 19; 140N052W - 13; 141N051W - 20; 141N051W - 11; 142N051W - 33; 140N052W - 12; 141N052W - 20; 142N051W - 29; 141N051W - 31; 142N051W - 31; 140N052W - 05; 142N052W - 26; 141N052W - 25; 141N051W - 15; 140N052W - 04; 140N051W - 05; 141N052W - 35	Cass			G
Fusconaia flava	Wabash Pigtoe	S4	G5		140N049W - 19	Cass	1974		S
Ligumia recta	Black Sandshell	S4	G5		140N049W - 19	Cass	1974		S
Phoxinus eos	Northern Redbelly Dace	S4	G5		142N053W - 20; 142N053W - 17; 142N053W - 30; 142N053W - 28; 142N053W - 18; 142N053W - 19; 142N054W - 24; 142N054W - 13; 142N053W - 21; 142N053W - 29; 142N053W - 16	Cass	1972-06-20		M
Potamilus alatus	Pink Heelsplitter	S4	G5		140N049W - 19	Cass	1974		S
Quadrula quadrula	Mapleleaf	S3	G5		140N049W - 19	Cass	1974		S

Land and Water Conservation Fund Projects

Project Name	Project Number
Cass County/Brewer Lake Sports Pad	38-01115
Casselton Park Improvement	38-00518
Casselton Park Improvement II	38-01088
Casselton Pool	38-00734
Casselton Recreation Park	38-00106
Casselton Softball Diamond	38-00939
Erie Dam & Recreational Complex	38-00144

Recreational Trails Program Projects

Project Name	Project Number
Bike Trail Improvement District #2003-1	23008
Snowmobile Trail	Multiple
Tinta Tawa Trail	Multiple

ND Department of Emergency Services

PO Box 5511
Bismarck, ND 58506-5511

Tel: (701) 328-8100
Fax: (701) 328-8181

Email: nddes@nd.gov
Website: www.nd.gov/des

Ensuring a safe and secure homeland for all North Dakotans

February 3, 2016

Mr. Pat Downs
Project Coordinator
Moore Engineering, Inc.
925 10th Ave E
West Fargo, ND 58078

RE: Cass County Joint Water Resource District - Watershed Planning process for Swan Creek, Rush River, and Upper Maple River Watersheds

Dear Mr. Downs,

The ND Department of Emergency Services (NDDES) has received your letter requesting any views or comments our agency may have concerning the proposed Cass County Joint Water Resource District (CCJWRD) watershed planning process of the Swan Creek, Rush River, and Upper Maple River Watersheds, especially in reference to any properties we may have acquired or future developments planned within these three water sheds.

NDDES has done numerous projects within the Swan Creek, Rush River, and Upper Maple River Watersheds. The following is a full list of completed projects that have taken place in these areas, as well as addresses and/or GPS coordinates when applicable:

Swan Creek Watershed:

- Lift Station and Force Main Improvements
  - 9th Ave S Lift Station, Casselton, ND
  - Lat 46.95154, Long -97.28401
- Guy Wire Additions – Minnkota Power Cooperative Structure 1160 – Also in Rush River Watershed
  - Lat 46.95154, Long -97.28401
- Guy Wire Additions – Minnkota Power Cooperative Structure 1143
  - Lat 46.94867, Long -97.3396
- Guy Wire Additions – Minnkota Power Cooperative Structure 1102
  - Lat 46.94843, Long -97.48219

Rush River Watershed:

- ND State Water Commission/ US Geological Survey Gaging Station Satellite Telemetry Installation – Rush River by Amenia
  - Lat 47.01531, Long -97.21372
- Guy Wire Additions – Minnkota Power Cooperative Structure 1160 – Also in Swan Creek Watershed
  - Lat 46.95154, Long -97.28401
- Guy Wire Additions – Minnkota Power Cooperative Structure 1294
  - Lat 46.95212, Long -97.17768

Jack Dalrymple
Governor

Greg M. Wilz
Director - Division of Homeland Security

Major General Alan S. Dohrmann
Director – Department of Emergency Services

Mike Lynk
Director - Division of State Radio

Upper Maple River Watershed

- Acquisition/Demolition of Private Real Property
    - 1225 126th Ave SE, Hope, ND 58046 – Barnes County
    - Lat 47.23228, Long -97.83367

NDDES requests that during the planning process of the Swan Creek, Rush River, and Upper Maple River Watersheds that the CCJWRD, Moore Engineering, and Barr Engineering take into consideration the above mentioned projects when developing new strategies, goals, and projects associated with water related concerns within these water sheds.

Additionally, the Acquisition/Demolition of Private Real Property located at 1225 126th Ave SE, Hope, ND 58046 has a FEMA Hazard Mitigation Assistance (HMA) deed restriction placed on the property in order to prevent the construction or placement of any permanent structures on this land in perpetuity pursuant to 44 CFR Part 80.19. Any construction that happens on this property will need to remain compliant with 44 CFR Part 80.19 or the local applicants responsible for this lot will be considered non-compliant with federal regulations until all identified violations are remedied.

Beyond the above mentioned projects, NDDES does not have any other projects in these watersheds currently planned or in development. If you have any other questions or need additional information, please contact Justin Messner, State Mitigation Officer, at 701-328-8107.

Sincerely,



Cody Schulz
Disaster Recovery Chief

North Dakota Department of Transportation

Grant Levi, P.E.
Director

Jack Dalrymple
Governor

January 25, 2016

Pat Downs
Moore Engineering, Inc.
925 10th Avenue East
West Fargo, ND 58078

WATERSHED PLANNING PROCESS FOR SWAN CREEK, RUSH RIVER, AND UPPER MAPLE RIVER WATERSHEDS, CASS COUNTY, NORTH DAKOTA

We have reviewed your January 15, 2016, letter.

The North Dakota Department of Transportation (NDDOT) has State and Interstate Highways that are located within the watershed areas. It is necessary to know of any changes in those watershed areas that would impact our Transportation System. If drainage modifications are proposed, NDDOT would like consideration given to modifications that would improve flooding as historically happens to some of the highways in the watershed areas.

Additionally, if because of this project any work needs to be done on highway right of way, appropriate permits and risk management documents will need to be obtained from the Department of Transportation District Engineer, Robert Walton at 701-239-8903.

Robert Fode

ROBERT A. FODE, P.E., DIRECTOR – OFFICE OF PROJECT DEVELOPMENT

57/raf/js
c: Robert Walton, Fargo District Engineer

"VARIETY IN HUNTING AND FISHING"

NORTH DAKOTA GAME AND FISH DEPARTMENT

100 NORTH BISMARCK EXPRESSWAY BISMARCK, NORTH DAKOTA 58501-5095 PHONE 701-328-6300 FAX 701-328-6352

February 9, 2016

Pat Downs
Moore Engineering
925 10th Avenue East
West Fargo, ND 58078

Dear Mr. Downs:

Re: Swan Creek, Rush river and Upper Maple River Watershed Planning

The North Dakota Game and Fish Department (Department) has received notification of Cass County Joint Water Resource District's proposal to initiate watershed planning processes for Swan Creek, Rush River and Upper Maple River watersheds. The watershed planning process will rely on local input and a team of stakeholders to identify water-related concerns within each rural watershed, such as overland flooding, delayed planting, crop damages, infrastructure failure and other potential impacts.

The Department realizes the importance of protecting infrastructure and private property, but it is important for us to identify and mitigate potential impacts to fish and wildlife resources associated with watershed plans. We also believe this process must be conducted from a comprehensive perspective that includes not only future activities but past as well. Landscapes are becoming increasingly altered and fragmented over time. These changes are impacting water quality and sediment transport, changes in the timing of stream hydrology and peak flows, loss of wetlands and upstream retention to name a few. A comprehensive flood control plan should look to incorporate numerous features (i.e. wetland restoration, voluntary buyouts, setbacks, river continuity, etc.) which could protect farmland and still protect the integrity of a natural river system.

Nationally, there has been a push to remove barriers from waterways thereby reestablishing migration corridors for fish, mussels, amphibians, and other aquatic and riparian organisms. 'The River Continuum Concept' is based on the premise that a river or stream's ecosystem is constantly interacting with the river bank, its flood plain and the organic and biological components in the watershed. There is a balance that needs to be maintained between the rivers geomorphological characteristics (i.e. width, depth, velocity, sediment load) and biological factors. The construction of dams or "dry" dams within the river channel interrupts the river's continuum by impeding the physical and biological processes in the river system. The construction of a dam across rivers and streams will have more than a de minimis (i.e. inconsequential) effect on the river system and will cause identifiable individual and cumulative adverse effects on aquatic function (i.e. fish and wildlife life history requirements).

With any alternative analysis, the Department's primary concern is maintaining a relatively natural hydrograph and stream connectivity in the Red River and its tributaries while still providing flood protection to the citizens. It is also important that the least damaging alternative be implemented to minimize impacts to fish and wildlife resources. As an example, the Department encourages the project sponsors to consider projects off the mainstem of tributaries such as the North Ottawa Project in the Bois de Sioux Watershed District. This project was designed on lateral drainage ditches to provide flood control benefits as well as numerous environmental benefits. Management of the project allows portions of the area to remain in agricultural production while providing migratory bird and shorebird habitat, water quality improvements, downstream environmental flows and public recreation.

Depending on the type of projects proposed, the Department could request in-kind mitigation for all impacts of a project including but not limited to river channel habitat, riparian impacts, aquatic organism passage, wetland impacts and geomorphological impacts.

Sincerely,

Steve Dyke

(for) Greg Link
Chief
Conservation & Communication Division

blk

USDA

United States Department of Agriculture

Natural Resources
Conservation Service

Bismarck State Office
PO Box 1458
Bismarck, ND
58502-1458

Voice 701.530.2000
Fax 855-813-7556

January 27, 2016

Pat Downs
Project Coordinator
Moore Engineering
925 10Th Ave East
West Fargo, ND 58078

Dear Mr. Downs:

The Natural Resources Conservation Service-North Dakota (NRCS-ND) has conducted a review of properties that we may have ownership or an interest in for Swan Creek, Rush River and Upper Maple Watersheds.

A review of our data indicates NRCS-ND does not own any properties in the proposed project watersheds. A further examination has concluded we do have four Wetland Reserve Program (WRP) easements in the Upper Maple Watershed. I have enclosed maps of the WRP easements for your reference. We do not have any conservation easements in the Swan Creek or Rush River Watersheds.

We look forward to working you on this endeavor. If you have questions, please contract Todd Hagel, Assistant State Conservationist for Water Resources, at (701) 530-2004.

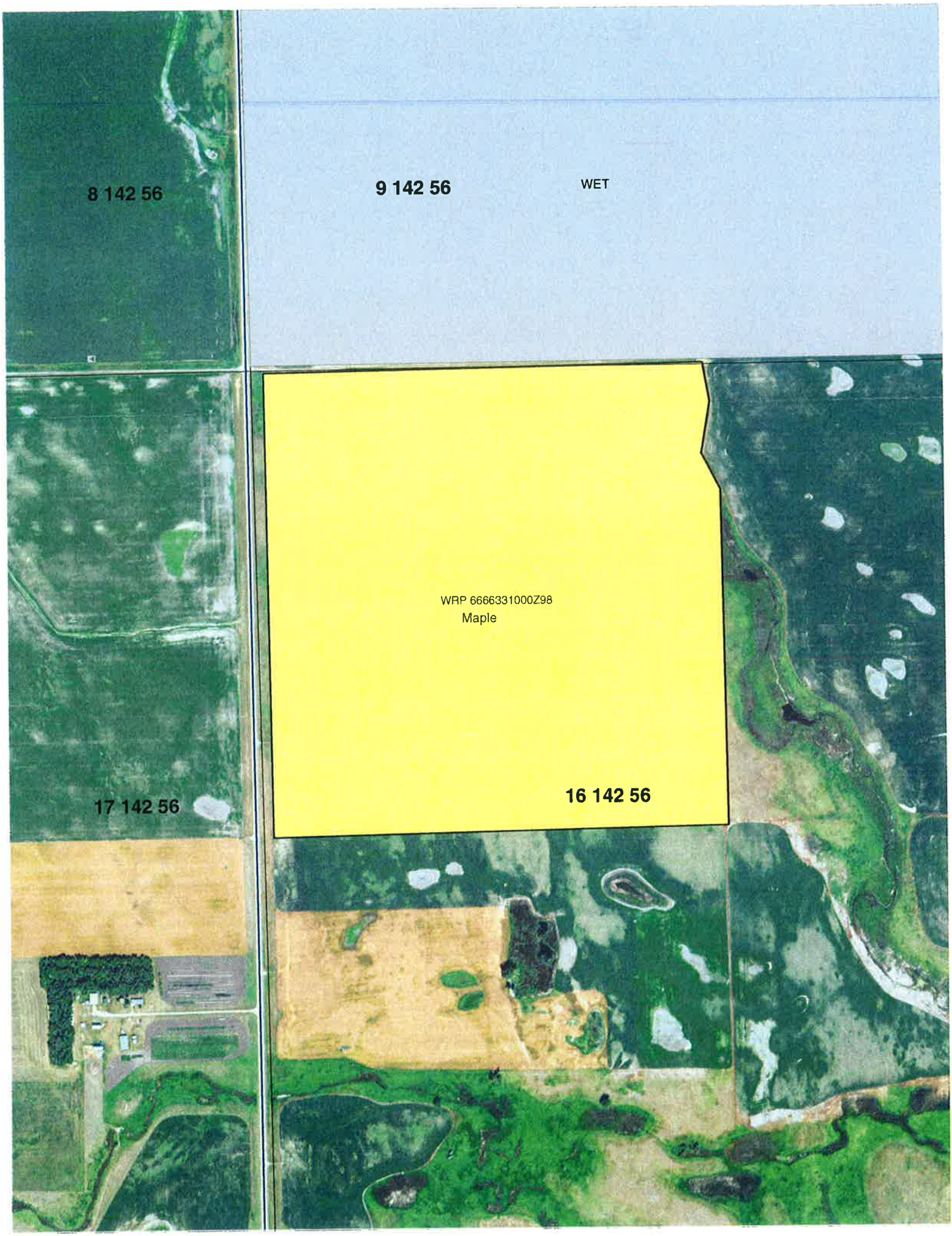
Sincerely,

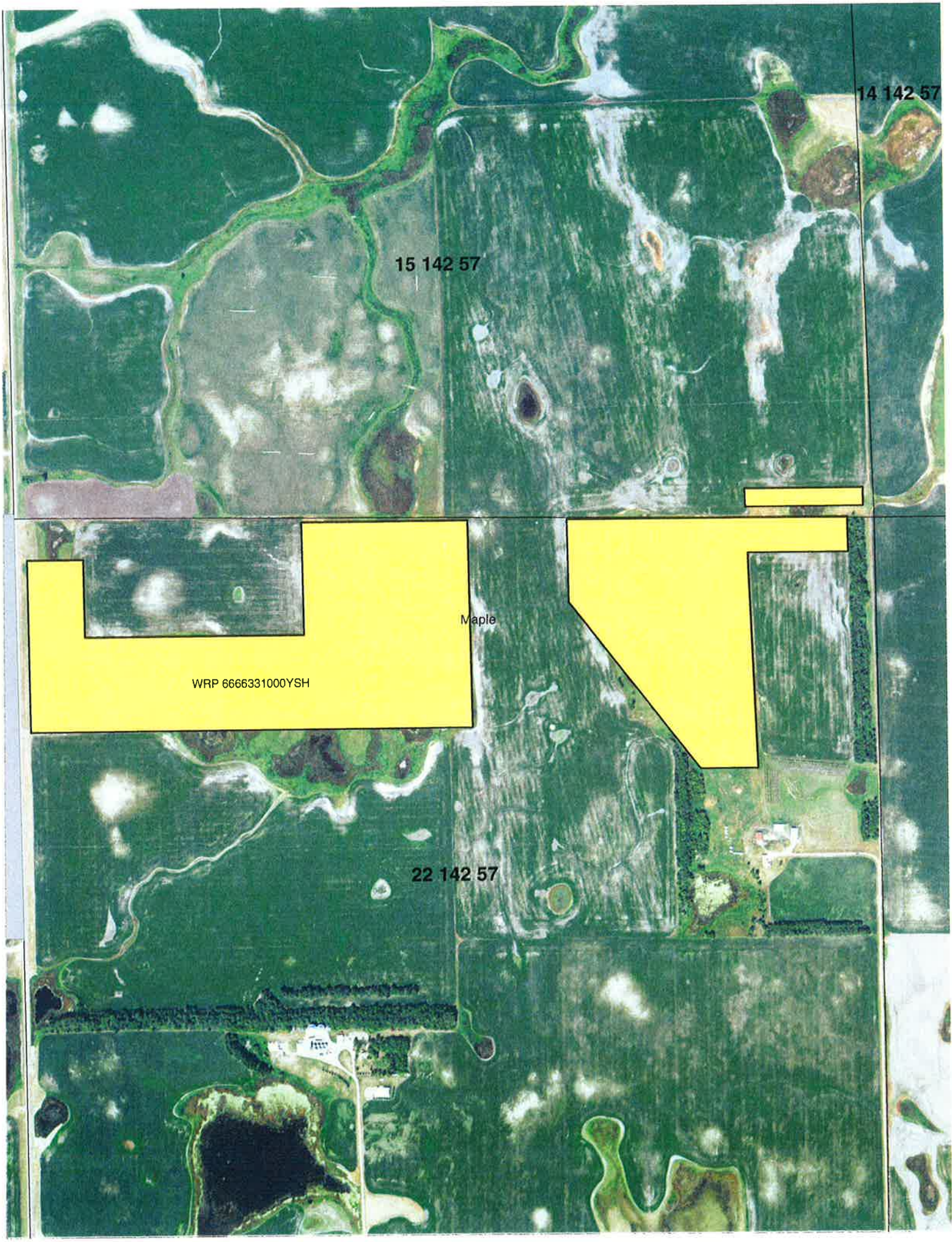
William P. O'Donnell

William P. O'Donnell
Acting State Conservationist

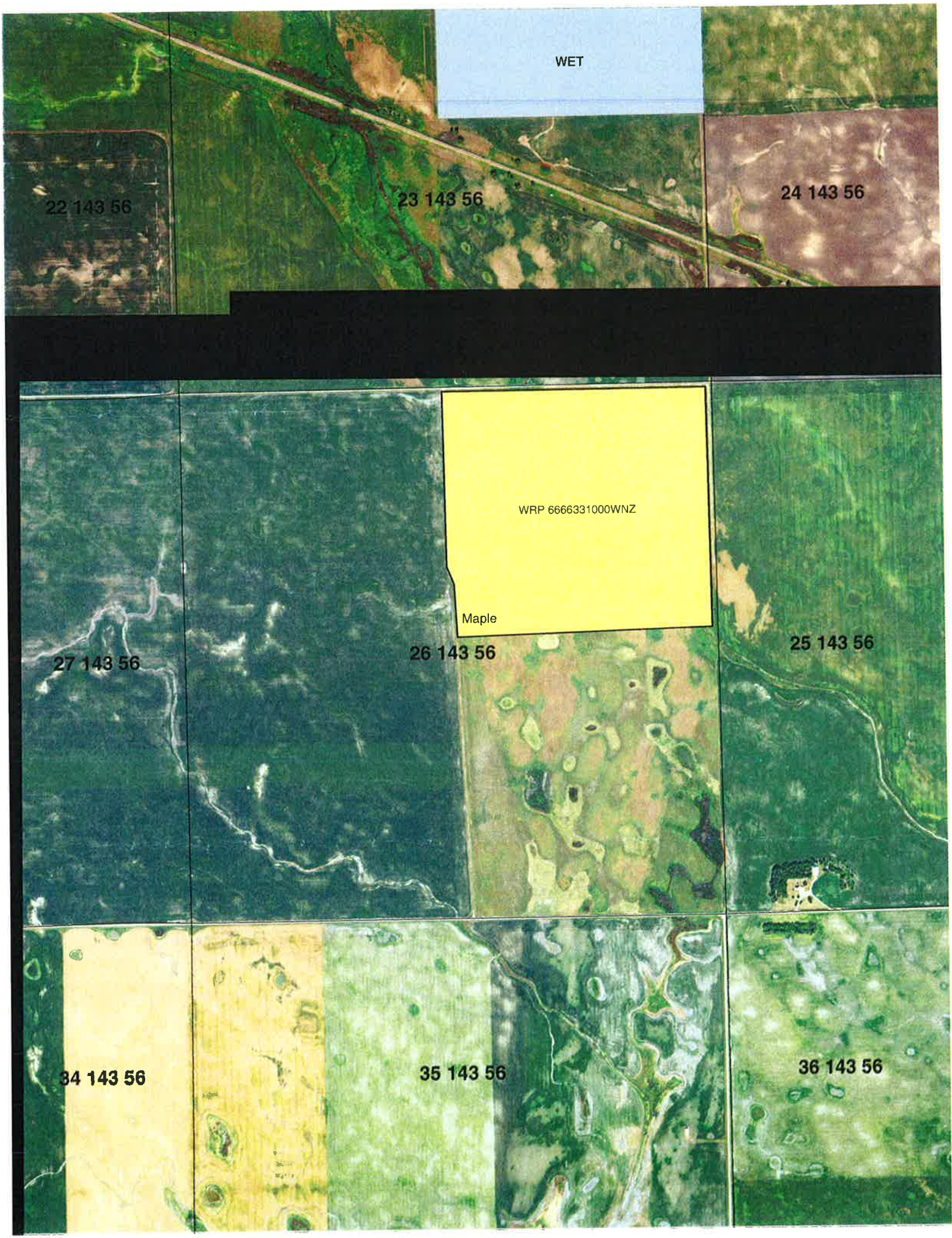
Enclosures

Cc: w/o encl.
Todd Hagel, Acting Assistant State Conservationist for Programs, NRCS, Bismarck, ND


8 142 56
9 142 56
WET
WRP 6666331000Z98
Maple
16 142 56
17 142 56


14 142 57
15 142 57
Maple
WRP 6666331000YSH
22 142 57


20 144 57
21 144 57
29 144 57
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WRP 6666331000VNJ
Maple
32 144 57
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WET
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WRP 6666331000WNZ
Maple
27 143 56
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25 143 56
34 143 56
35 143 56
36 143 56

Department of Energy
Western Area Power Administration
North Dakota Maintenance Office
P.O. Box 1173
Bismarck, ND 58502-1173

6430 January 21, 2016

SENT VIA EMAIL ONLY

Moore Engineering, Inc.
ATTN: Pat Downs
925 10th Avenue East
West Fargo, ND 58078

Dear Mr. Downs:

I have reviewed your letter dated January 15, 2016 pertaining to the Cass County JWRD Watershed Planning Process for Swan Creek, Rush River and Upper Maple River Watersheds. Western has three transmission lines within Cass County that may be impacted by one or more of the watershed areas.

A primary concern for Western is to maintain access to all of our structures in order to perform routine and/or emergency maintenance. A second concern would be the creation of any holding pond or pool whose elevation can fluctuate. Our concern in that case would be reducing vertical clearances and not meeting National Electrical Safety Code requirements.

Being this project is only in the investigative stage, we will await a specific proposal(s) if it appears that they will involve our transmission line easement areas.

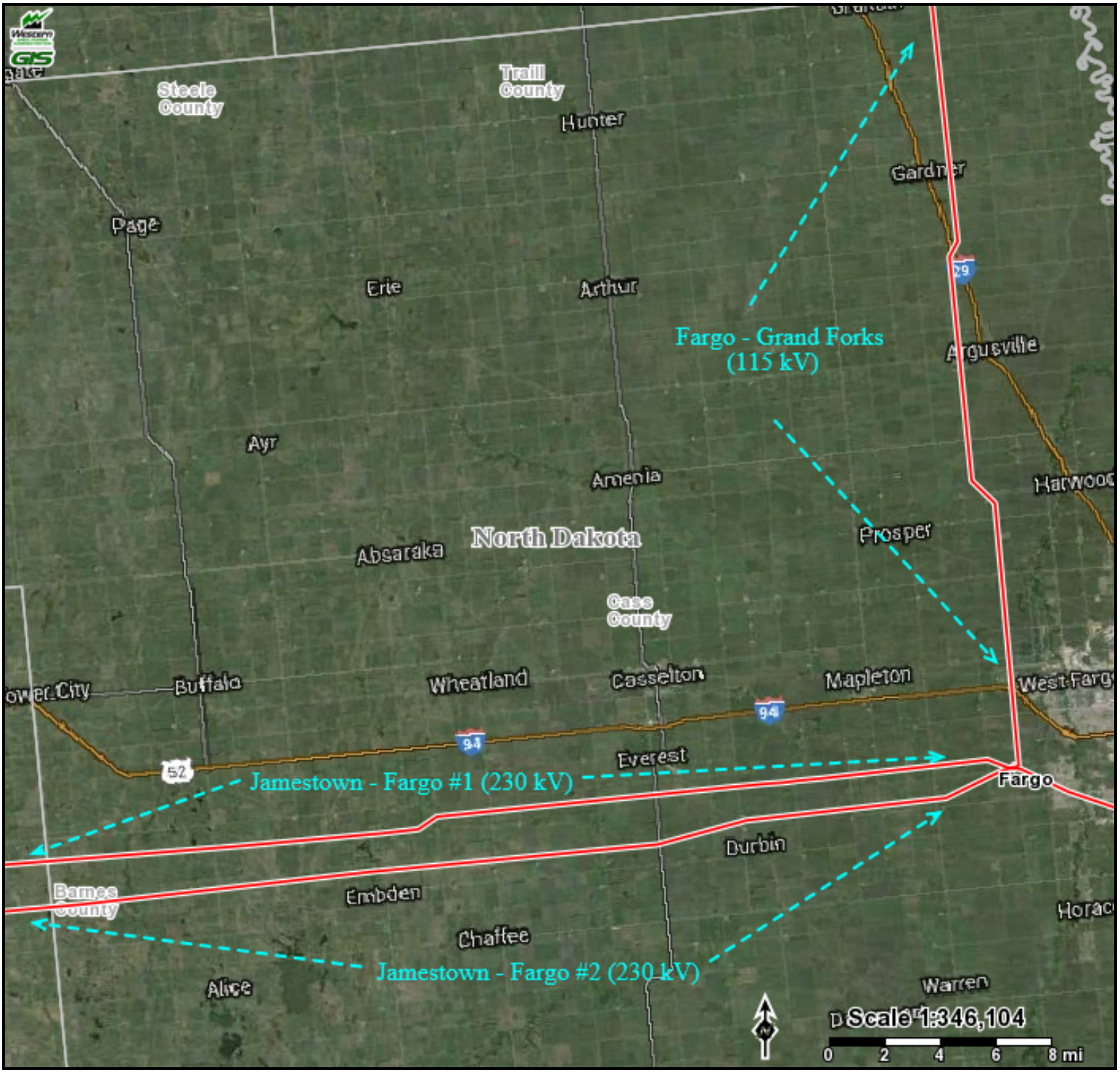
If you need additional information or have questions, please contact me at 701-221-4531 or email me at gpaulson@wapa.gov.

Sincerely,

Gerald T. Paulson, Director
Transmission Line Division

cc:
B5210.FAO, S. Scholl, West Fargo, ND
B5522.BS, A. Wood, Bismarck, ND

Western Area Power Transmission Lines in Cass County, ND





Western Area Power Administration
An agency of the U.S. Department of Energy

This map and data are the property of WAPA/DOE and are intended for planning and analysis only. No reproduction or copying of this product is allowed without the sole consent of WAPA/DOE. To contact WAPA about this map, please call 1-800-336-7288.

Appendix A-3

Project Team Documents

Upper Maple River Watershed Project Team Meeting #2

February 24, 2016 - 1:00 pm

Cass County Highway Dept. – 1201 W Main Ave - West Fargo, ND

Agenda

- Review Meeting #1
- Review Public Meeting Comments (From Jan 6)
- Review Agency Comments (Letters received)
- Watershed Damages – Economic Summary Report
- Review the Draft Purpose and Need Statement
    - Then Adopt it
- Review the Draft Desired Outcomes/Goals for the Watershed Area
    - Then adopt them
- Review Flood Damage Reduction Measures (Potential alternatives to help solve our problems)(Watershed improvements)
    - Definitions
    - Alternative worksheet
- Looking ahead – Next Meeting
    - Set tentative next meeting date – July 2016

Upper Maple Objectives/Resource Concerns			
Ranking of Objectives			
	2/24/2016		
Objective/Concern		RANK	
Reduce adverse impacts to agriculture caused by flooding.		# 1	
Reduce adverse impacts to transportation system cause by flooding.		# 2	
Reduce Flood Risk to Rural Residences & Private Property		# 3	
Improve Water Quality.		# 2	
Reduce impacts to existing dams and water mgmt. systems		# 5	
Maintain (at a minnium) existing natural resources in the watershed.		# 6	
·Focus and accelerate watershed protection within the Highway 32 corridor		# 4	
Maintain or enhance soil health.		# 7	
Other:		n/a	

Appendix A-4

Initial Tribal Consultation and Responses

United States Department of Agriculture

Natural Resources
Conservation Service

Bismarck State Office
PO Box 1458
Bismarck, ND
58502-1458

Voice 701.530.2000
Fax 855-813-7556

November 5, 2018

North Dakota State Historical Society
Attn: Ms. Claudia Berg, Director
612 East Boulevard Ave.
Bismarck, North Dakota 58505

RE: Initial Consultation regarding seven PL-566 Watershed plans under the Natural Resources Conservation Service (NRCS) Regional Conservation Partnership Program (RCPP) in North Dakota

Dear Ms. Berg:

In accordance with 36 CFR 800.3, North Dakota NRCS is providing this initial consultation letter regarding seven PL-566 Watershed Planning Efforts being completed under funding through the NRCS Regional Conservation Partnership Program (RCPP) in North Dakota. The local Sponsoring Water Resource District for each plan, as well as the watershed boundary, and the specific objectives for that plan are outlined on the attached fact sheets. In general, reduction of risks or damages to public safety, natural resources, and economic damages from flooding, as well as related erosion and nutrient delivery, are the goals of the plans. Multiple structural alternatives such as on channel dams, off channel storage structures, diversion channels, levees, wetland restoration, and river channel restoration are identified and evaluated through the course of each effort. An Environmental Assessment will be prepared for each PL-566 Watershed Plan, which are expected to be completed by October 2019.

At this point, three of the seven plans are to the point of having final structural alternatives chosen for detailed study. The remainder are in the technical evaluation phase. Further feasibility analysis is currently being completed on these three alternatives, including preliminary environmental and cultural resource impact assessments. See attached conceptual alternatives maps for the Rush River (levees and channel), North Branch Park River (channels and off channel flood storage reservoirs), and Upper Maple River (on channel dams).

Due to the complexities of the seven PL-566 Watershed plans and the numerous alternatives being formulated under the NEPA process, NRCS would like to complete the Section 106 process using the Phased Identification and evaluation process as allowed under 36 CFR 800.4(b)(2) and 36 CFR 800.8.

(MORE)

Enclosed with this initial consultation letter, you will find project maps and other pertinent documents related to the proposed Areas of Potential Effect (APE).

We look forward to working with your office on these proposed RCPP Watershed plans and if you have any questions, please contact me at (701)530-2104 or by email at chuck.carrig@nd.usda.gov.

Sincerely,

CHUCK CARRIG
State Cultural Resources Specialist

Enclosures

cc:

TRIBAL HISTORIC PRESERVATION OFFICE

Fort Peck Assiniboine & Sioux Tribes

January 2, 2019

To: Department of Agriculture
Natural Resources Conservation Services
Bismarck State Office
P.O. Box 1458, Bismarck ND 58502-1458

Fr: Dyan R. Youpee, Fort Peck Tribal Historic Preservation Officer

Cc: Mary E. Podoll, State Conservationist
Chuck Carrig, State Cultural Resources Specialist – chuch.carrig@nd.usda.gov

Chuck Carrig,

The laws and policies that protect historic and cultural resources, whether they be at the local, state or federal level, are essential and often the most effective tools to accomplishing historic preservation; yet no other approach is as controversial or misunderstood.

Information is a powerful tool. The most basic, yet critical information for successful preservation activity is the simple identification of historic and cultural resources. If we don't know what exists, how can we preserve it, let alone, use it effectively for the betterment of our communities? With every year, more properties are viewed as historic. Many are different property types and architectural styles become acknowledged as significant. T.H.P.O. survey and inventory are an ongoing and constant evolving endeavor. Once a community is aware of the historic resources it has, information on the tools, funding, methods and technologies of preservation become essential.

I've reviewed the following projects and give the concurrence to proceed with the proposed ground disturbing / earth moving activity, they do not have adverse effects on cultural / historical properties significant to the Fort Peck Tribes. ***However**, first and foremost, my concurrence will stay in consensus with the closest THPO's to these selected project areas. Should they NOT comment on the selected projects, then I give this concurrence to proceed for:*

Projects: PL – 566 Watershed plans under NRCS, RCPP in ND. Rush River, North Branch Park River, Upper Maple River

Should there be any updates to the proposed activities (other than listed on the review request), please provide an update to the T.H.P.O. with new information regarding further construction than proposed. AND should there be unanticipated inadvertent discoveries (human remains, archaeological and cultural resources uncovered), contact the Fort Peck T.H.P.O. along with your intended contacts for the projects. If there are any questions as to what these resources are, please do not hesitate to contact me. I am also willing to assist in a site visit if needed. Thank you for your cooperation and request for review. If there is anything further you need, please contact the office.

FORT PECK ASSINIBOINE & SIOUX TRIBES
CONCURRENCE
DATE: 1-2-2019
TRIBAL HISTORIC PRESERVATION OFFICER

MS. DYAN YOUPEE, T.H.P.O.
501 Medicine Bear Road
P.O. Box 1027
Poplar, MT 59255
O: 406.768.2382
E: d.youpee@fortpecktribes.net

Fisher, Christi - NRCS, Bismarck, ND

From: Carrig, Charles - FPAC-NRCS, Bismarck, ND
Sent: Tuesday, January 22, 2019 6:16 AM
To: Fisher, Christi - NRCS, Bismarck, ND
Cc: Schwagler, Todd - NRCS, Bismarck, ND; Podoll, Mary - NRCS, Bismarck, ND
Subject: FW: Initial Consultation regarding upcoming watershed projects (ND)

Christi,

This is email is for the PL566 Admin record and contains the written response from the White Earth Reservation THPO: no issues and a request to remain in contact (as NRCS should).

Let me know if you have any questions.

Chuck

From: Jaime Arsenault <Jaime.Arsenault@whiteearth-nsn.gov>
Sent: Sunday, January 20, 2019 5:36 PM
To: Carrig, Charles - FPAC-NRCS, Bismarck, ND <Chuck.Carrig@nd.usda.gov>
Subject: Initial Consultation regarding upcoming watershed projects (ND)

Mr. Carrig

Cultural Resource Specialist

Bismarck State Office

PO Box 1458

Bismarck, ND 58502

RE: Initial Consultation regarding seven PL-566 Watershed plans under the Natural Resources Conservation Services (NRCS) Regional Conservation Partnership Program (RCPP) in North Dakota

Dear Mr. Carrig:

Thank you for providing this office with information regarding the above initial consultation outreach for Rush River Watershed Project, North Branch Antelope Creek Watershed Project, Forest River Watershed Project, Upper Maple River Watershed Project, Short Foot Creek Watershed Project, and Tongue River Watershed

Project, pursuant to Section 106 of the National Historic Preservation Act, and its implementing regulation 36 CFR part 800.

Based upon a preliminary inquiry, there are no known cultural resources that I have on internal file for this area. This determination is based upon available information provided to this office. However, this review does not preclude the possibility of previously unknown cultural resources especially near areas of water, or elevated ground. If cultural materials are uncovered in the course of construction, all work must cease and the Tribal Historic Preservation Office must be contacted immediately at (413) 522-2345. Furthermore, I am requesting to remain in contact/consultation with you regarding all watershed projects that involve waterways that run into lakes or rivers on or near the White Earth Reservation and surrounding areas where ricing and fishing occur. Lastly, I am requesting that you reach out directly to Jim Jones at jim.jones@state.mn.us because Mr. Jones has done some recent cultural resource survey work in ND and may be able to provide valuable insight.

Thank you again for providing our office with this information. Please contact me with any questions regarding this correspondence.

Sincerely,

Jaime Arsenault

Tribal Historic Preservation Officer

PO Box 418

White Earth, MN 56569

Office: (218) 983-3285 Ext. 5807

Cell: (413) 522-2345

E-mail: Jaime.arsenault@whiteearth-nsn.gov

Appendix A-5

Project Alternatives

Meeting Documents

Meeting Sign-In Sheet

Cass County Joint Water Resource District

West Fargo, North Dakota

July 31, 2019

	Name	Address / Whom Representing
1	Chad Miller	
2	JERRY MELVILLE	
3	Jake Gust	
4	Harvey Abrahamson	1711 129 Ave SE Page
5	Ruth Eberle	
6	Tom Soucy	Cass Co Hwy.
7	RALPH THOMPSON	
8	Joe HARBEKE	2108 RIDGE CREEK BLVD S FARGO ND
9	Wade Bruns	Oriska
10	Mike Ahrens	Mirror Lake Twshp
11	Marilyn Henderson	Page, ND.
12	George Gubrud	Tower City
13	Terrence Davis	Page ND
14	Gaylord Beach	"
15	Keith Weston	RRRA
16	Richard Satrom	Page ND
17	Mary Satrom	Page ND
18	Randy Gjestvang	ND SWC
19	Jerry Harvey	Oriska, ND
	Barrett Vogt	Cass County
	MARK STOWMAN T.C.	

Meeting Sign-In Sheet

Cass County Joint Water Resource District

Page, North Dakota

December 1, 2020

		Name	Address / Whom Representing
*	* 1	Harvey Abraham	1711 125 Ave SE Page ND 58064
✓	2	Marilyn Henderson	106 - 1st Ave Apt 103 - Page N.D. 58064
✓	3	Aaron Henderson	2069 - 128th Ave. S.E. Oriska N.D. 58063
*	4	James Gray	13115 17ST SE Page ND 58064
*	* 5	Mike Abraham	1880 130 Ave SE Page Minnie Lake
✓	6	Wade Bruns	Oriska
*	* 7	Keith Weston	1120 28th Ave N, ste C, Fargo
✓	8	Jon Petersen	NRCS - Bismarck
*	9	Ruth Ekre	4346 44 St S Fargo
✓	10	Jerry Gaarder	2243 130th AVE SE Oriska, ND
✓	11	Brad McKay	1926 128th Ave SE Page, ND 58064
	12		
	13		
	14		
	15		
	16		
	17		
	18	Pat Downs	
	19	Josh Hassell	

✓ Attended Alt 2A Meeting

** Attended both meetings

* Attended Alt 5 meeting

Upper Maple River Alternatives

Meet Watershed Goals	
Highly Likely	5
Moderately Likely	4
Unsure	3
Not Likely	2
No	1

Meet Purpose & Need - Further Consideration	
Primary Consideration	Primary
Secondary Consideration	Secondary
Not Applicable to the Plan	Not Applicable

Priority Weighting (If used)			1	1	1	1	1	1	1	1	NO		
Points (If used)		Upper Maple River Alternatives	Outcome/Goal: Reduce flood impacts to Agriculture	Outcome/Goal: Reduce flood impacts to roads, bridges & culverts	Outcome/Goal: Reduce Flood Risk to Rural Residences & Private Property	Outcome/Goal #4: Improve Water Quality. (reduce sediment and erosion)	Outcome/Goal: Reduce impacts to existing dams and water mgmt. systems	Outcome/Goal: Reduce impacts-targeted area 2 miles on either side of Hwy 32	Ability to implement and manage	Other	Likely to create downstream impacts (Yes - No)	Locally desirable for additional evaluation (Primary, Secondary, or Not Applicable)	Additional Comments
30	Increase Temporary Flood Storage	Dams and Impoundments (Gated & Ungated)	5	5	5	4	4	4	3	0	No	Secondary	land - acceptability - effectiveness
28		Restored or Created Wetlands (new added storage - acting as impoundments - control)	5	5	4	4	4	4	2	0	No	Secondary	voluntary
18		Alter ground water through drainage (tile management)	3	3	3	1	3	3	2	0	No	Secondary	voluntary
16		Culvert sizing to meter runoff (close to the source)	2	2	2	1	3	3	3	0	No	Secondary	local impacts
13		Overtopping Levees - Levee Setbacks (use floodplain storage areas) (combined)	2	2	2	1	2	2	2	0	Yes	Secondary	acceptability
14	Increase Conveyance Capacity	Channelization of existing water ways and flowages - Added surface Drainage (combined)	2	2	2	1	2	2	3	0	yes	Not Applicable	downstream impacts
14		Diversions	2	2	2	1	2	2	3	0	yes	Secondary	downstream impacts
13		Set-back Levees (restore floodway capcity - wider channel)	2	2	2	1	2	2	2	0	yes	Secondary	n/a
14		Increasing road crossing capacity	2	2	2	1	2	2	3	0	Yes	Not Applicable	downstream impacts
22	Reduce Flood Volume	Restore or Create Wetland (infiltration - evapotransporation) (natural function)	3	3	3	5	3	3	2	0	No	Secondary	voluntary
22		Cropland BMPs - better infiltration-evapotransporation	3	3	3	5	3	3	2	0	No	Secondary	voluntary
21		Cropland Conversion (Back to Grass or Forest) (combined)	3	3	3	5	3	3	1	0	No	Not Applicable	Agriculture is the primary economic source for the region, and removing land from production would likely result in adverse impacts to the local economy.
22		Other Beneficial Uses (irrigation - municipal/industrial - augment streamflow)	3	3	3	4	3	3	3	0	No	Secondary	need - desire - voluntary
13	Protection/Avoidance	Urban Levees	2	2	2	1	2	2	2	0	Yes	Not Applicable	n/a
16		Farmstead Levees	2	2	4	1	2	2	3	0	No	Not Applicable	How many farms? Other structrures?
16		Agricultural Levees (protecting farmland)	4	2	2	1	2	2	3	0	Yes	Not Applicable	not prevalent
14		Evacuation of the floodplain	2	1	4	1	2	2	2	0	No	Not Applicable	cropland
17		Flood proofing	3	3	4	1	2	2	2	0	No	Not Applicable	where applicable
16		Flood warning system	3	3	1	1	2	2	4	0	No	Secondary	implementation - fast flow increases
0		**Other**	0	0	0	0	0	0	0	0	0	Not Applicable	as noted

Appendix A-6

NED Exception Correspondence

USDA
United States Department of Agriculture

Natural Resources
Conservation Service

State Office
PO Box 1458
Bismarck, ND
58502-1458
Voice 701.530.2000
Fax 855.813.7556

April 8, 2022

Mr. Clint Evans
Deputy Chief for Programs
USDA-Natural Resource Conservation Service
14th and Independence Ave SW, Rm 5109-S
Washington, DC 20250

Dear Mr. Evans,

I am writing to support the attached request for an exception to the National Economic Development (NED) plan alternative from the Cass County Joint Water Resource District for the Upper Maple River Watershed Plan. As outlined in GM390, Part 502, the Chief may grant an NED exception for water resources plans in situations where other federal, state, local, or international concerns are not fully addressed by the NED plan alternative.

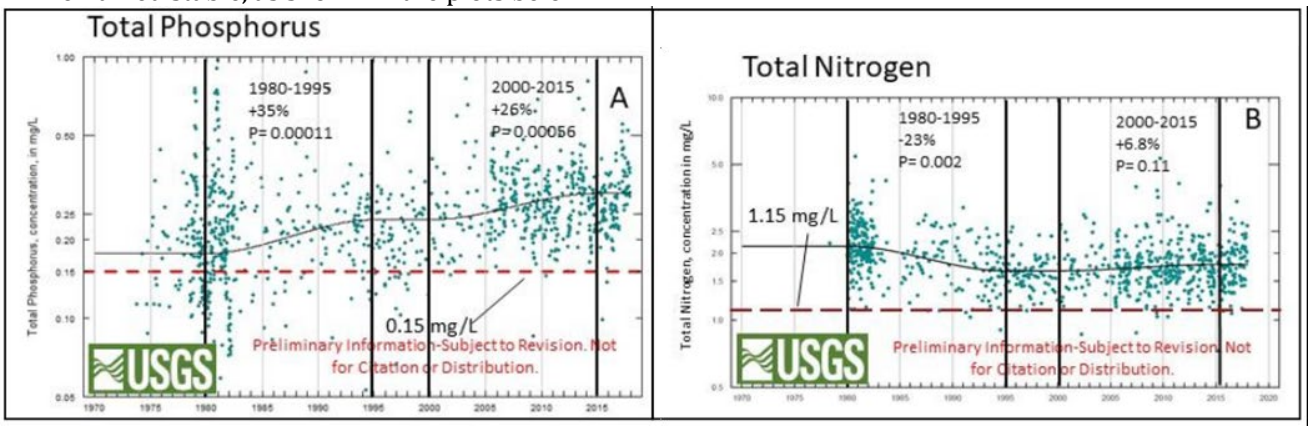
In 2015 the Red River Retention Authority initiated twenty PL-566 watershed planning efforts through their member organizations via a single RCPP project. The Upper Maple River Watershed was one of the 20 watershed plans in ND and MN initiated through the RCPP and is the 3rd to finish the rather herculean task of completing a full draft Watershed Plan/Environmental Assessment. Only 2 additional plans are continuing to make progress towards completion, putting the overall effort at a 25% success rate if this (and the 2 subsequent) exception requests are approved. An NED exception was granted in 2020 by Jimmy Bramblett for a similar combined flood damage reduction and watershed protection dry dam project in the North Branch Park River Watershed. Project Sponsors have invested well over $300,000 in non-federal funds to match the $500,000 NRCS investment, demonstrating their commitment to follow through to implementation on this project.

As with other planning efforts in the Red River Basin, the combination of very low population density, high agricultural input costs relative to revenues, and high construction costs for flood damage reduction projects in this low topographic relief landscape create a challenge in meeting a 1:1 benefit cost ratio. The Sponsor has been frustrated by the low B:C ratio resulting from economic analysis on this plan (O.1:1), given that they feel the flood damage reduction benefits are substantial from the project and well worth taxpayer investment. Likewise, public comment indicates strong local support for the flood damage reduction benefits of the project. Of note is the fact that my staff believe that while the sophisticated hydraulic modeling and highly detailed agricultural economics analysis we are doing in ND incorporates the most accurate techniques available, it does penalize our projects in comparison to others around the country. Discussion with other states indicates that it is not uncommon for cropland economics to be completed on the assumption that re-planting after a flood would not happen, and that if any part of the field is flooded the crop on the entire field is lost. Despite the short growing season in ND, we accurately account for a crop being re-planted after a flood in late spring or early summer, with resulting yield reductions applied. In addition, we closely evaluate flood duration and seasonality to determine the extent of damage for individual crops based on hydraulic model gridded output, over individual 30-foot by 30-foot cells within the field.

While having a frustrated local Sponsor is always unfortunate, this situation opened the door to the current preferred alternative, which provides a unique opportunity to leverage PL-566 funding to generate an incentive for nutrient reduction, wetland and river channel restoration, and wildlife habitat improvement. NRCS engineering and ecological sciences staff evaluated the temporary flood pools of each dam site and developed a plan that would maximize environmental quality benefits in each. That plan was provided to the planning team and Sponsor, hashed over at meetings for a year, and ultimately selected as the final preferred alternative. Figures 19 and 20 of the attached watershed plan appendix provide maps showing the proposed watershed protection features, and the appendix supplies scientific background for the quantified environmental benefits listed in the attached OMB Summary sheet. Operation and maintenance of nutrient removal and wildlife habitat elements of the project will require a large investment by the local Sponsor, but after due consideration they have determined that the 50-year O&M commitment is worth their investment in return for NRCS PL-566 investment in the flood control projects. From the standpoint of the federal government, these projects warrant investment due to the following benefits that would not be provided by the NED alternative (no action) and cannot be achieved through other USDA Programs:

1. Nutrient reductions (EQ Account) of 17,437 pounds of phosphorus, 79,231 pounds of nitrogen, and 1,628 tons of sediment a year delivered to downstream waterways over the 50-year project lifespan. While there are numerous conservation practices available through CSP and EQIP proven effective for reduction of sediment and nitrogen, the form and seasonality of phosphorus transport precludes effectiveness for that nutrient. Research in the Red River Basin indicates that constructed wetlands within the pools of dry dams, with regular biomass removal, has a high level of effectiveness. There is no incentive for farmers to take land out of production and engage in the extreme expense of constructing and operating this type of practice, for the benefit of downstream rivers. In addition, the EQIP payment limitation of $450,000 would amount to less than 2% of the overall project cost.

2. Contribution to Boundary Waters Treaty obligation of the United States (OSE Account), in the form of federal investment in phosphorus and nitrogen load reductions. The International Joint Commission has adopted target objectives for phosphorus and nitrogen at the international border crossing of the Red River. Lake Winnipeg has been designated as one of the most eutrophic large lakes in the world, with agricultural nonpoint pollution from the U.S. generating 69% of phosphorus loading despite making up only 11% of the lake's watershed. Despite all of the USDA, partner organization, and agricultural producer efforts, phosphorus concentrations continue to increase and nitrogen concentrations have remained stable, as shown in the plots below.



U.S. efforts towards meeting the Boundary Waters Treaty are critical to negotiating similar investments from Canada for addressing pollutants impacting U.S. waterways. For example, contaminants originating from mining activities in Canada are causing deformities and reproductive failure to trout and other aquatic species in the U.S. portion of the Kootenai River watershed of Montana, impacting endangered species, the recreation-based economy of the area, and threatening human health. Negotiations for Canadian investment in the Kootenai would be strengthened if the U.S. invests in reducing pollutant loadings that have caused significant declines to the commercial fishing industry, recreational uses, and First Nations subsistence fishing in Lake Winnipeg.

3. Restoration and enhancement of wetlands and wildlife habitat (EQ Account). The Prairie Pothole Region of the northcentral Great Plains is one of the most threatened waterfowl habitats in the world due to habitat fragmentation and degradation. Drainage and cropping of the few remaining wetlands has continued; from 1997 to 2009 more than 50,000 individual wetlands were lost to draining and filling in North Dakota. The NRCS WRE and ACEP programs over the last 25 years have resulted in 50 acres of wetland restoration/enhancement within 4 contracts in Cass County. By comparison the Upper Maple PL-566 project will restore, enhance, or create a net 458.8 acres of wetlands. Scoring wetland Functional Capacity Units indicates the range of riverine gain as being 26-32 FCUs and pothole gain of 111-415 FCUs. None of the WRE/ACEP easements resulted in improvements to riparian wetlands, and the PL-566 O&M easements will be for a longer time period (50 versus 30 years) and require a higher level of management than WRE/ACEP easements do.

The proposed project will not unilaterally address the significant flooding, water quality, and wetland habitat issues within the larger Red River Basin. The lead RCPP partner on the project, the Red River Retention Authority and its member organizations have, however, demonstrated longstanding commitment to implementing distributed retention projects across the region. Over the next decade, as more and more similar projects are built across the landscape, benefits will continue to accrue and dissolved phosphorus loads will be reduced. My staff installed gauges and have been completing water quality sampling at the project sites in 2020, which will allow us to demonstrate the success of the projects in the future. The two sites in the Upper Maple plan will join the North Branch Park River (approved by NRCS in 2020), Shortfoot Creek (PL-566 plan in progress), North Branch Antelope Creek (PL-566 plan in progress), North Ottawa (a state of MN project), and several sites in Manitoba to begin to meaningfully address these significant issues. USDA-NRCS has the ability to be a key player in this important effort, through the PL-566 program. IPPC climate predictions indicate an additional 10-20% increase in volume for the 20-year recurrence interval precipitation event over the next three decades in this region. Maintaining the production of northern cropland, as southern areas of the Midwest become subject to higher frequencies of drought, will be critical for the nation's food supply over time.

While the planning phase of these projects takes substantial time, moving to final design and construction will be efficient given all of the effort put forth in planning. Our federal cooperating agencies on the plan, the U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service, are excited about the environmental benefits of the project and intend to utilize nationwide permits to speed implementation. Likewise, state dam safety and environmental agencies support the project and neither the Tribes nor the State Historical Preservation Office have concerns. We anticipate requesting $ 2.3 million in 2022-23 for final design and $18.3 million in 2024-24 for construction through available PL-566 / Infrastructure Act funding. Alternatively, as a way to

efficiently obligate BIL funds, we could obligate both design and construction funds within a single cooperative agreement this fiscal year.

Thank you,

Mary Podoll
ND NRCS State Conservationist

Attachments: Sponsor Exception Request Letter, Cass County Joint WRD 3-21-22
Red River Retention Authority Exception Support Letter
OMB Summary Sheet, Upper Maple River Plan-EA
Appendix D-5, Upper Maple River Plan-EA

cc: Kevin Farmer, Watershed Programs Branch Chief
Kari Cohen, Programs Projects Branch Chief
Timothy Wilson, National Water Management Center Acting Director
Ralph Smith, Watershed Operations Program Manager
Christi Fisher, State Conservation Engineer

United States Department of Agriculture

SUBJECT: Upper Maple River Watershed Plan, National Economic Development (NED) plan Exception Request

File Code: 390-11

TO: Mary Podoll
State Conservationist, North Dakota

This memo is in response to your letter dated April 8, 2022 in which you requested that an National Economic Development (NED) plan exception be approved for the Upper Maple River Watershed Plan.

The National Watershed Program Manual (NWPM), 502.0 - Exceptions to the NED Plan Requirement, states in part that" … exceptions will be considered based on other Federal, State, local or international concerns not fully addressed by the NED plan." In addition, NWPM, 502.1 - Timing and Documentation, dictates that "Exceptions must be supported by sufficient documentation, as set forth in Principle 6 of Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (P&G)."

After a review of the documentation provided, including the estimated overall project Benefit/Cost of 0.1/1.0 and the non-monetized benefits within the P&G Environmental Quality (EQ) account (nutrient reduction and restoration and enhancement of wetlands and wildlife habitat) and the Other Social Effects (OSE) account (contribution to boundary waters treaty obligation), we have determined there are insufficient benefits to justify an exception. Therefore, your request for a plan exception is not approved.

In order for this plan to move forward, the overall Benefit/Cost ratio will need to be increased to at least 0.5/1. This would require the removal of Dam Site 5 from the alternatives. Also, the project purpose needs to be changed from flood protection to watershed protection.

If you have additional questions, please contact Ralph Smith, National Watershed Operations Program Manager, at (202) 260-8036 or at ralph.smith@usda.gov.

KAREN WOODRICH
Acting, Deputy Chief for Programs

Xavier Montoya, Acting, Regional Conservationist, Central, NRCS, Washington, DC
Astrid Martinez, Director, Conservation Planning and Technical Assistance Division (CPTAD), NRCS, Washington, D.C
Claudia Hoeft, Acting, Conservation Engineering Division (CED), NRCS, Washington, D.C.
Tim Wilson, Director, National Water Management Center, Little Rock, Arkansas
Kevin Farmer, Branch Chief Watershed Programs, CPTAD, NRCS, Washington, D.C.

Ralph Smith, Watershed Operations Program Manager, CPTAD, NRCS, Washington, D.C.
Christi Fisher, State Conservation Engineer, NRCS, Bismarck, ND

USDA
United States Department of Agriculture

Natural Resources
Conservation Service

State Office
PO Box 1458
Bismarck, ND
58502-1458
Voice 701.530.2000
Fax 855.813.7556

September 29, 2022

Ms. Karen Woodrich
Deputy Chief for Programs
USDA-Natural Resource Conservation Service
14th and Independence Ave SW, Rm 5109-S
Washington, DC 20250

Dear Ms. Woodrich,

On April 8 of this year, I submitted a request to your predecessor, Clint Evans, supporting an exception request to the National Economic Development (NED) watershed plan alternative from the Cass County Joint Water for two multi-purpose dry dams in the Upper Maple Watershed. As of July 29, the Sponsor had invested $ 529,723 in state and local funding towards the planning effort based on advice from NRCS, including the July 8-9 tour/meetings with Kevin Farmer and Doris Washington. Similarly, NRCS has invested over $500,000 in the planning effort and believes the environmental and international benefits of the project to be of high value.

The NHQ response to the ND/Sponsor request was provided via a Teams meeting on July 29 followed by a letter from you dated August 5. At the meeting, NHQ concerns regarding the low Benefit/Cost (B/C) ratio of the preferred plan alternative were discussed as well as options for moving forward. A summary of that conversation is provided below:

- Previously, NHQ approved a very similar NED exception request in the Red River Basin, for the NB Park River Plan. The B/C for that plan was 0.5. As a result, NRCS will be providing 100% construction share for the exterior dam/spillways on that project (flood damage reduction rate) and 75% share for the interior water quality and wildlife features (watershed protection rate).

- The Upper Maple NED exception request originally submitted was for two multi-purpose dry dams, at the rate breakdown previously approved for NB Park River. NHQ responded that they could not approve, since the B/C of Upper Maple was only 0.1, substantially lower than that of the NB Park Plan.

- During the meeting ND NRCS pointed out that the environmental / international benefits of the proposed Upper Maple project exceeded that of NB Park. ND also pointed out that we are taking a conservative (yet accurate) approach to quantifying cropland damages that tends to yield lower dollar estimates for flood damages than approaches taken by other states. We take damage reductions based on flood depth and duration, on a 10-meter grid size, for example. So, while economists using less sophisticated methods would count an entire crop field as being lost when inundated, ND only counts the loss on 10m x 10m portions of the field, and only when the depth/duration curves predict full crop loss. Likewise, we assume replanting will occur for events that occur early in the growing season and therefore count only the net difference in income for damages. While the economics approach ND is using is the most accurate possible, using current modeling capabilities, it does result in our projects having a lower B/C than others in the country doing less detailed work. NHQ acknowledged these points, but indicated their hands were tied given the low B/C.

- ND NRCS then proposed the following compromise to be able to move the project forward (noting that we had not presented this yet to the Sponsor):

- Convert the project to a 100% watershed protection purpose. As a result, federal share of dam construction would only be at the 75% rate. That technically eliminates B/C as a consideration given the threshold for watershed protection projects is simply to document the selected alternative as the least cost approach to addressing a resource concern. In this case, the plan documents that is the case for dissolved phosphorus reduction in this watershed (with the related tie to international treaty commitment).

- NHQ indicated that even under a full watershed protection plan, they wanted to see a higher B/C. Therefore, ND proposed that we go back to the Sponsor and suggest that we eliminate Site 5 from the plan, given it had the lower B/C of the two structures.

- NHQ agreed with the proposed approach. In follow up conversations, NHQ also encouraged ND to take a hard look at economics for Site 2A to see if there was anything missed that could raise the B/C higher. Presumably, if the B/C could be raised to a 0.5 (identical to NB Park) then NHQ could approve an exception allowing a joint flood damage reduction/watershed protection purpose project on that site.

My staff met with the Sponsor in August and provided the agency response as outlined above. Several board members had rather negative reactions, particularly to the removal of Site 5, after their large local investment in watershed planning to date. Ultimately, the board agreed that moving forward with a PL-566 Plan with only Site 2A as proposed was in their best interest. They approved additional local funding to their engineering consultant to revise and "sharpen the pencil" on the economics for Site 2A, understanding that any B/C below a 0.5 would result in reduced construction funding.

The original economics for Site 2A, as a stand-alone project, were 0.2 after removing Site 5A (when rounded to a single decimal point). Engineers typically are quite conservative when doing project cost estimates, taking the high end of rates to ensure projects come in under budget. As shown in the attached adjustment, both construction costs and real estate acquisition costs were recalculated using median values rather than 75th percentile vales as a basis. O&M costs were adjusted to be less conservative. NRCS and the Sponsors consultant spent a good amount of time combing through the details and could not come up with any additional adjustments. Results were that we were able to get to a B/C of 0.3 on Site 2A. Accordingly, we went back to the Sponsor, explained that as a result the project would need to be under a watershed protection purpose with a lower federal share on dam construction. Although not pleased, they intend to move forward to implementation under these conditions and are in the process of securing grant funding for their consultant to fully revise the Plan-EA to remove Site 5 after NHQ approval to move forward from NRCS.

Attached is the revised OMB Summary, Project Map, and the Appendix D- Environmental Quality Benefit Analysis report as well as a cost comparison showing the changes made. ND NRCS requests approval of the project under a 100% watershed protection purpose so that we can work with the Sponsor to complete revisions to the plan and submit to NWMC for review.

Thank you,

MARY PODOLL Digitally signed by MARY PODOLL
Date: 2022.09.29 14:36:08 -05'00'

Mary Podoll
ND NRCS State Conservationist

Attachments: Site 2A Cost Comparison
OMB Summary Sheet, Upper Maple River Plan-EA
Appendix B- Project Map
Appendix D-5- Environmental Quality Benefits Analysis

cc: Kevin Farmer, Watershed Programs Branch Chief
Kari Cohen, Programs Projects Branch Chief
Ralph Smith, Watershed Operations Program Manager
Christi Fisher, State Conservation Engineer

USDA

United States Department of Agriculture

SUBJECT: Request for Upper Maple Watershed Supplemental Plan-Environmental Assessment (EA) Change of Program Purpose

October 26, 2022

TO: Mary Podoll
State Conservationist, North Dakota

This memo is in response to your letter dated September 29, 2022, in which you requested approval to have all measures planned in the Upper Maple Watershed Supplemental Plan-Environmental Assessment (EA) analyzed under the watershed protection purpose.

NWPM 501.11.B. states that if a watershed project plan only has the purpose of watershed protection, the project can be considered a "non-water-resource project". "Non-water-resource project plans must be formulated in accordance with P&G procedures, but development of the NED alternative is not required. The recommended alternative plan must be the least costly socially and environmentally acceptable method of achieving the agreed-upon level of resource protection." As such, this eliminates the issue related to the benefit-ratio as outlined in your correspondence.

Your request to make this adjustment and complete revisions to the plan as needed is approved.

If you have additional questions, please contact Ralph Smith, National Watershed Operations Program Manager, at ralph.smith@usda.gov or Sonya Keith, National Watershed Operations Program Coordinator at sonya.keith@usda.gov.

Karen Woodrich
Acting, Deputy Chief for Programs

Astrid Martinez, Director, Conservation Planning and Technical Assistance Division (CPTAD), NRCS, Washington, D.C
Kevin Farmer, Branch Chief Watershed Programs, CPTAD, NRCS, Washington, D.C.
Ralph Smith, Watershed Operations Program Manager, CPTAD, NRCS, Washington, D.C.
Sonya Keith, National Watershed Operations Program Coordinator, CPTAD, NRCS, Washinton, D.C.
Kari Cohen, Program Projects Branch Chief

Appendix A-7

Second Public Scoping Meeting Documents

ND Affidavit No. 224008

AFFIDAVIT OF PUBLICATION

RECEIVED
MAY 26 2023

STATE OF NORTH DAKOTA
ss.
COUNTY OF CASS

Taylor Herhold,The Forum of Fargo-Moorhead, being duly sworn, states as follows:

1. I am the designated agent of The Forum of Fargo-Moorhead, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspaper listed on the attached exhibit.

2. The newspaper listed on the exhibit published the advertisement of: ***Legal Notice***; *(2) time: Wednesday, May 17, 2023, Wednesday, May 24, 2023*, as required by law or ordinance.

3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

Dated this 24th day of May, 2023

Legals Clerk

Notary Public

NICHOLE SEITZ
Notary Public
State of North Dakota
My Commission Expires Jan 3, 2024

UPPER MAPLE RIVER WATERSHED PUBLIC MEETING NOTICE

A public meeting will be held virtually on May 30, 2023, for the Upper Maple River Watershed Plan sponsored by the Cass County Joint Water Resource District.

The purpose of the meeting is to provide a planning update and to seek additional public input on the environmental scope for the plan's Environmental Impact Statement. This meeting is the third in a series of public meetings including ones held in 2016 and 2019 to solicit input into the planning process. Public input was used in formulating plan alternatives to address the flood damages to cropland and roads, as well as addressing water quality and wildlife habitat concerns in the watershed. The proposed improvements would be partially funded by NRCS through the Watershed Protection and Flood Prevention Act of 1954 (Public Law 83-566). Further opportunities to comment on the Draft Watershed Plan - EIS will be advertised on the Federal Register and in local newspaper public notices in the upcoming months.

Public Scoping/Plan Update Meeting:
Date: May 30th, 2023
Time: 10:00 am
Location: Virtual A link to the meeting (and meeting recording) may be found at: https://www.nrcs.usda.gov/conservation-basics/conservation-by-state/north-dakota/watershed-operations-north-dakota-nrcs . The meeting is virtual only, however, individuals without computer access may contact your local NRCS office or the Cass County Joint Water Resource District (701-298-2381) for assistance to attend at a physical location.

Comments may be sent to Christi Fisher, ND NRCS State Conservation Engineer, christi.fisher@usda.gov, 220 E Rosser Ave, PO Box 1458, Bismarck, ND 58502-1458

(May 17 & 24, 2023) 224008

Stakeholders invited to Public Scoping meeting held on 5/30/2023

Name	Title	Affiliation
Jaimie Smith	County Road Supervisor	Barnes Co Hwy Dept
Randy McClaflin	Sheriff	Barnes County
Beth Didier	Auditor	Barnes County Commission
Shawn Olauson	Commissioner	Barnes County Commission
Jessica Jenrich	Director	Barnes County Emergency Mgmt
Jill Olson	District Clerk	Barnes SCD
Jerry Hieb	Chairman	Barnes WRD
Heather Manson		Barnes WRD
Robert Wilson	County Administrator	Cass County
Jesse Jahner	County Sheriff	Cass County
Chad Peterson	Chairman	Cass County Commission
Jim Prochniak	Emergency Manager	Cass County Emergency Services
Jason Benson	Cass Co Engineer	Cass County Highway Department
Jeff Miller	SCD Manager	Cass County Soil Conservation District
Carol Lewis	Secretary	Cass Joint Water Resource District
Eric Dahl	319 Coordinator	Cass SCD_NDDEQ
Joshua Hassel	PE, CFM	Moore Engineering
Pat Downs	Project Coordinator	Moore Engineering
Eric Jensen	Communications Chief	ND Department of Emergency Services
Aaron Caranza	Regulatory Division Director	ND Department of Water Resources
Emilee Lachenmeier	Watershed Program Manager	NDDEQ
Karl Rockeman	Water Quality Division Director	North Dakota Department of Environmental Quality
Ed Pavlish	District Engineer	North Dakota Department of Transportation
Chad Orn	Dept Director of Planning	North Dakota Department of Transportation
Bruce Kreft	Conservation Biologist	North Dakota Game and Fish Department
Richard Webb	State Resource Conservationist	NRCS
Thomas Schanandore	Engineer	NRCS
Jonathan Petersen	Hydrologist	NRCS
Rita H. Sveen	Watershed Planner	NRCS
Paul DuBourt	Acting ASTC(FO)	NRCS
Christi Fisher	State Conservation Engineer	NRCS
Nathan Jones	Acting State Conservationist	NRCS
Curt Bradbury	State Biologist	NRCS
Dana Whippo	Economist	NRCS
Janelle Harrison	State Cultural Resource Specialist	NRCS
Bobbie Ostrom	CDU Supervisor	NRCS - Maple River CDU
Joshua Monson	District Conservationist	NRCS- Fargo
Shelby Larson	District Conservationist	NRCS- Valley City
Randy Gjestvang	Red River Engineer	Red River Joint WRD
Keith Weston	Executive Director	Red River Retention Authority
Lisa Steckler	Historic Preservation Specialist	State Historical Society of North Dakota
Melissa McCoy		USEPA
COOPERATING AGENCIES		
Toni Erhardt	Senior Project Manager	USACE
Heidi Riddle	Biologist	USFWS

TRIBAL GOVERNMENTS/SHPO

Aaron Brien	Tribal Historic Preservatio	The Crow Tribe of Montana
Allan Demaray, THPO	Tribal Historic Preservatio	The Three Affiliated Tribes
Amy Burnette, THPO	Tribal Historic Preservatio	Leech Lake Band of Ojibwe
Cheyanne St. John, THPO	Tribal Historic Preservatio	Lower Sioux Indian Community
Crystal Bearing, THPO	Tribal Historic Preservatio	Northern Arapaho
Dianne Desrosiers, THPO	Tribal Historic Preservatio	Sisseton-Wahpeton Oyate
Dyan Youpee, THPO	Tribal Historic Preservatio	Fort Peck Assiniboine and Sioux Tribes
Evan Schroeder, THPO	Tribal Historic Preservatio	Fond du Lac Band of MN Chippewa Tribe
Garrie Kills A Hundred, THPO	Tribal Historic Preservatio	Flandreau Santee Sioux Tribe
Ione Quigley, THPO	Tribal Historic Preservatio	Rosebud Sioux Tribe of Indians
Jamie Arsenault, THPO and NAGPRA	Tribal Historic Preservatio	White Earth Nation of Minnesota Chippewa
Jaylen Strong, THPO	Tribal Historic Preservatio	Bois Forte Band of the MN Chippewa Tribe
Jeffrey Desjarlais, THPO	Tribal Historic Preservatio	Turtle Mountain Band of Chippewa
John Eagle, THPO	Tribal Historic Preservatio	Standing Rock Sioux Tribe
John Murray, THPO	Tribal Historic Preservatio	Blackfeet Indian Reservation of MT
Jonathan Windy Boy, THPO	Tribal Historic Preservatio	Chippewa Cree Tribe of the Rocky Boy's Reser
Joshua Mann, THPO	Tribal Historic Preservatio	Shoshone Tribe of the Wind River Reservation
Kade Ferris, THPO	Tribal Historic Preservatio	Red Lake Band of Chippewa Indians
Kathryn McDonald, THPO	Tribal Historic Preservatio	Confederated Salish and Kootenai Tribes
Kip Spotted Eagle, THPO	Tribal Historic Preservatio	Yankton Sioux Tribe
Lisa Steckler	Historic Preservation Spec	State Historical Society of North Dakota
Merle Marks, THPO	Tribal Historic Preservatio	Crow Creek Sioux Tribe
Michael J. Black Wolf, THPO	Tribal Historic Preservatio	Fort Belknap Indian Community
Misty Frazier, THPO	Tribal Historic Preservatio	Santee Sioux Nation
Noah White, THPO	Tribal Historic Preservatio	Prairie Island Indian Community in MN
Rob Hull, THPO	Tribal Historic Preservatio	Grand Portage Band of MN Chippewa Tribe
Samantha Odegard, THPO Coordinato	Tribal Historic Preservatio	Upper Sioux Community
Steven Vance, THPO	Tribal Historic Preservatio	Cheyenne River Sioux Tribe
Susie Fox	Tribal Historic Preservatio	Spirit Lake Tribe of Fort Totten
Teanna Limpy, THPO	Tribal Historic Preservatio	Northern Cheyenne Tribe
Mike Wilson, THPO	Tribal Historic Preservatio	Mille Lacs Band of Ojibwe
Tomas Brings	Tribal Historic Preservatio	Oglala Sioux Tribe

LANDOWNERS

18 Landowners Invited

EMAIL sent 4/28/2023 – Notice of public meeting Upper Maple River – [GENERAL STAKEHOLDERS]

Dear Upper Maple River Stakeholder

You are cordially invited to a public meeting which will be held virtually on May 30, 2023, for the Upper Maple River Watershed Plan sponsored by the Cass County Joint Water Resource District.

The purpose of the meeting is to provide a planning update and to seek additional public input on the environmental scope for the plan's Environmental Impact Statement. This meeting is the third in a series of public meetings including ones held in 2016 and 2019 to solicit input into the planning process. Public input was used in formulating plan alternatives to address the flood damages to cropland and roads, as well as addressing water quality and wildlife habitat concerns in the watershed. The proposed improvements would be partially funded by NRCS through the Watershed Protection and Flood Prevention Act of 1954 (Public Law 83-566). ***In the upcoming months, you will receive a separate invitation to comment on the Draft Watershed Plan – EIS when it becomes available.***

Public Scoping/Plan Update Meeting:

Date: May 30th, 2023

Time: 10:00 am

Location: Virtual

Link: Upper Maple - Agency Scoping Meeting (the meeting is virtual *only*, however individuals without computer access may contact Cass County Joint Water Resource District (701-298-2381) for assistance to attend at a physical location.

A recording of the meeting and other planning documents will be posted as they become available at: https://www.nrcs.usda.gov/conservation-basics/conservation-by-state/north-dakota/watershed-operations-north-dakota-nrcs

Comments may be sent to Christi Fisher, ND NRCS State Conservation Engineer, christi.fisher@usda.gov, 220 E Rosser Ave, PO Box 1458, Bismarck, ND 58502-1458

EMAIL – Notice of public meeting Upper Maple River – [TRIBES/SHPO]

SUBJECT: Invitation to Upper Maple River Public Scoping Meeting - NEPA

> *Special Note: The following invitation pertains only to the Natural Resource Conservation Services NEPA policy which requires we invite Tribes to all of our Watershed Planning Meetings: "Notice of public meetings or hearings should be submitted to State and areawide clearinghouse if they exist; submitted to Indian Tribes; published in local papers;…" (USDA National Watershed Program Handbook Section 601.24 B(8)).* ***This invitation is not part of our Section 106 Consultation responsibilities. Section 106 Consultation for this project was initiated on November 5, 2018. You can expect another formal Section 106 Consultation request (including the Class III Survey) in the next few months.***

Dear Tribal and SHPO representatives,

You are cordially invited to a public meeting which will be held virtually on May 30, 2023, for the Upper Maple River Watershed Plan sponsored by the Cass County Joint Water Resource District. The Upper Maple Watershed is within Cass, Barnes, Steel and Griggs Counties in North Dakota.

The purpose of the meeting is to provide a planning update and to seek additional public input on the environmental scope for the plan's Environmental Impact Statement. This meeting is the third in a series of public meetings including ones held in 2016 and 2019 to solicit input into the planning process. Public input was used in formulating plan alternatives to address the flood damages to cropland and roads, as well as addressing water quality and wildlife habitat concerns in the watershed. The proposed improvements would be partially funded by NRCS through the Watershed Protection and Flood Prevention Act of 1954 (Public Law 83-566). ***In the upcoming months, you will receive a separate invitation to comment on the Draft Watershed Plan – EIS when it becomes available.***

Public Scoping/Plan Update Meeting:
Date: May 30th, 2023
Time: 10:00 am
Location: Virtual

Link: Upper Maple - Agency Scoping Meeting (the meeting is virtual *only*, however individuals without computer access may contact Cass County Joint Water Resource District (701-298-2381) for assistance to attend at a physical location.

A recording of the meeting and other planning documents will be posted as they become available at: https://www.nrcs.usda.gov/conservation-basics/conservation-by-state/north-dakota/watershed-operations-north-dakota-nrcs

Comments may be sent to Christi Fisher, ND NRCS State Conservation Engineer, christi.fisher@usda.gov, 220 E Rosser Ave, PO Box 1458, Bismarck, ND 58502-1458

EMAIL – Notice of public meeting Upper Maple River – [Cooperating Agencies]

Dear Cooperating Agency Representative,

You are cordially invited to a public meeting which will be held virtually on May 30, 2023, for the Upper Maple River Watershed Plan sponsored by the Cass County Joint Water Resource District.

The purpose of the meeting is to provide a planning update and to seek additional public input on the environmental scope for the plan's Environmental Impact Statement. This meeting is the third in a series of public meetings including ones held in 2016 and 2019 to solicit input into the planning process. Public input was used in formulating plan alternatives to address the flood damages to cropland and roads, as well as addressing water quality and wildlife habitat concerns in the watershed. The proposed improvements would be partially funded by NRCS through the Watershed Protection and Flood Prevention Act of 1954 (Public Law 83-566). ***In the upcoming months, you will receive a separate invitation to comment on the Draft Watershed Plan – EIS when it becomes available.***

Public Scoping/Plan Update Meeting:

Date: May 30th, 2023

Time: 10:00 am

Location: Virtual

Link: Upper Maple - Agency Scoping Meeting

A recording of the meeting will be available afterward at the website listed below.

Additional plan documents will be posted as they become available at:
https://www.nrcs.usda.gov/conservation-basics/conservation-by-state/north-dakota/watershed-operations-north-dakota-nrcs

Comments may be sent to Christi Fisher, ND NRCS State Conservation Engineer, christi.fisher@usda.gov, 220 E Rosser Ave, PO Box 1458, Bismarck, ND 58502-1458

UPPER MAPLE RIVER WATERSHED PUBLIC MEETING NOTICE – [PAPER]

A public meeting will be held in virtually on May 30, 2023, for the Upper Maple River Watershed Plan sponsored by the Cass County Joint Water Resource District.

The purpose of the meeting is to provide a planning update and to seek additional public input on the environmental scope for the plan's Environmental Impact Statement. This meeting is the third in a series of public meetings including ones held in 2016 and 2019 to solicit input into the planning process. Public input was used in formulating plan alternatives to address the flood damages to cropland and roads, as well as addressing water quality and wildlife habitat concerns in the watershed. The proposed improvements would be partially funded by NRCS through the Watershed Protection and Flood Prevention Act of 1954 (Public Law 83-566). Further opportunities to comment on the Draft Watershed Plan - EIS will be advertised on the Federal Register and in local newspaper public notices in the upcoming months.

Public Scoping/Plan Update Meeting:

Date: May 30th, 2023

Time: 10:00 am

Location: Virtual

A link to the meeting (and meeting recording) may be found at: : https://www.nrcs.usda.gov/conservation-basics/conservation-by-state/north-dakota/watershed-operations-north-dakota-nrcs . The meeting is virtual *only*, however individuals without computer access may contact your local NRCS office or the Cass County Joint Water Resource District (701-298-2381) for assistance to attend at a physical location.

Comments may be sent to Christi Fisher, ND NRCS State Conservation Engineer, christi.fisher@usda.gov, 220 E Rosser Ave, PO Box 1458, Bismarck, ND 58502-1458

Meeting Sign-In Sheet

Cass County Joint Water Resource District

West Fargo, North Dakota

May 30, 2023

	Name	Address / Whom Representing
1	Pat Downs	Moore Eng
2	Josh Hassell	Moore Eng
3	Kurt Lysne	Moore Eng.
4	Rick Steen	SECWD & CCJWRD
5	Marilyn Henderson	Oriska - Land Owner
6	Carol Rike	Barnes Co.
7	Dana Henderson	2069 128th AVE SE Oriska N.D.
8	Keith Weston	CCJWRD & RRRA
9	Duane R. Breiting	Cass County Comm.
10		
11		
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18		
19		

Aaron & Marilyn Henderson
2069 - 128th Ave. S.E.
Oriska, N.D. 58063
668-3115 - Marilyn - Home
668-2966 - Aaron - Home
701-840-5021 Aaron Cell

Public Comment Form: Upper Maple River Watershed Plan

Please complete this form to provide comments on the information presented at the Upper Maple River public meeting held virtually on May 30, 2023. Materials from this meeting are available via the Cass County Joint Water Resource District website : https://www.casscountynd.gov/government/water-resources-board/cass-county-joint-water-resource-district Comment forms will be accepted for all forms postmarked by July 17, 2023. Completed comment forms can be mailed to:

Cass County Joint Water Resource District
Cass County Hwy Dept
1201 Main Ave W
West Fargo, ND 58078

Or via email to:
LewisC@casscountynd.gov

Name: _____

Address: _____

_____

Affiliation: _____
(agency, resident, commissioner, mayor, etc…)

Questions:

1. Please provide comments or concerns regarding Environmental Concerns such as: soils, water quantity, water quality, landuse, wildlife habitat, threatened and endangered species, cultural resources, health and safety, social justice or any other environmental concerns:
   _____

   _____

   _____

   _____

   _____

2. Please provide any other comments or concerns such as project alternatives, operation and maintenance, or any other items presented at the meeting:

   _____

   _____

   _____

   _____

(Please attach any additional pages or supporting information as necessary)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region08

August 7, 2023

Ref: 8ORA-N

Carol Lewis
Cass County Joint Water Resources District
1201 Main Avenue West
Fargo, ND 58078-

RE: Scoping for Upper Maple River Watershed Plan

Dear Ms. Lewis:

The U.S. Environmental Protection Agency Region 8 has reviewed the June 21, 2023, Scoping Notice for the Upper Maple River Watershed Plan (Project) Environmental Impact Statement (EIS) prepared by the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS). The following scoping comments were prepared in accordance with our responsibilities under the National Environmental Policy Act (NEPA) and the Clean Water Act (CWA).

The primary purpose of the proposed action is watershed protection. Watershed protection goals consist of reducing nutrient loads from the watershed, particularly dissolved phosphorus (DP), and increasing quantity and quality of wetlands and wildlife habitat. In its current state, the watershed contributes an average of 19,841 pounds of phosphorus and 50,233 pounds of nitrogen annually to the Maple River due to inundation. The proposed action would reduce peak flows by 82 percent and 56 percent of the 10-year and 100-year recurrence interval flood events immediately downstream of the retention site, and 14 percent and 19 percent of the 10-year and 100-year recurrence interval flood events at the downstream confluence between the Maple River and an unnamed tributary where site 2A is located. Immediately downstream of the retention site, average annual loads of total phosphorus, total nitrogen, and total suspended solids are expected to be reduced by 60 percent, 66 percent and 38 percent, respectively. This would result in significant surface water quality improvement in the Maple River, and the downstream Red River and Lake Winnipeg.

The EIS is expected to evaluate two alternatives: one Action Alternative, Upper Maple River Site 2A, and one No Action Alternative. The proposed action would be a multi-purpose dry dam with interior features designed and operated for the purpose of dissolved phosphorus and nitrogen reduction, and wetlands and uplands managed for wildlife habitat. The primary dam structure would provide 2,863 acre-feet of temporary (less than 10 days inundation at the 10-year recurrence interval flood) floodwater retention for a 59.7 square mile drainage area and would consist of a 2.3-mile embankment with a maximum height of 31 feet, 48-inch principal spillway conduit, and structural concrete auxiliary spillway.

Reduction of dissolved inorganic phosphorus via the Action Alternative would be through two primary means. The first involves construction and operation of three shallow retention cells, totaling 240 acres, in the interior of the dry dam to which water would be routed and held to depths of 2-3 feet through the growing season. Vegetation would uptake DP as it grows and in the early fall the cells would be drained via automated control structures and tile drains below the cells to allow vegetation to be cut, baled, and removed from the cells prior to the first frost in 2 out of 3 years. The second primary means of DP reduction would occur through reducing the extents, frequency, and duration of cropland inundation downstream of the dam through modification of the peak flow hydrograph. The alternative would also result in enhancement of approximately 200 acres of existing wetlands, and enhancement of approximately 500 acres of uplands which would be managed to maximize wildlife habitat benefits.

Based on our current understanding of the Project and the area, EPA has identified the following key topics that we recommend evaluating in the NEPA analysis so that potential impacts or benefits to public health and the environment can be fully understood: (1) purpose and need, (2) Project alternatives, (3) water resources, (4) air resources, (5) special status species, and (6) environmental justice.

In addition, it is unclear from the scoping notice what the long-term maintenance approach for this strategy would be, and whether NRCS or another entity has funding to support ongoing maintenance of these activities. If there is a potential end date to the vegetation removal from the retention cells, the Draft EIS should disclose any potential water quality, wetland habitat, and other resource impacts such a future stop may have.

Our detailed comments are enclosed. We appreciate the opportunity to provide scoping comments for the Upper Maple River Watershed Plan EIS. We hope our recommendations assist the NRCS in preparing the EIS. If you would like to discuss our comments, please contact me at (303) 312-6155 or mccoy.melissa@epa.gov. You may also contact Jody Ostendorf, Lead Reviewer for the EIS, at (303) 312-7814 or ostendorf.jody@epa.gov.

Sincerely,

Melissa W. McCoy, Ph.D., J.D.
Chief, NEPA Branch
Office of the Regional Administrator

Enclosure – EPA's Detailed Comments
Natural Resource Conservation Service: Upper Maple River Watershed Plan EIS

Purpose and Need

Implementation of the proposed action will require a CWA Section 404 permit from the U.S. Army Corps of Engineers, which is a cooperating federal agency on the planning effort. For purposes of complying with both the CWA and NEPA, EPA recommends adopting a purpose and need statement that is broad enough to encompass a range of alternatives that are both "reasonable" (per NEPA) and "practicable" (per CWA Section 404) to meet the underlying Project purpose, including the proposed action and other available options for watershed protection. A broad purpose and need statement allows for analysis of a range of watershed protection alternatives without eliminating the least environmentally damaging practicable alternative under the CWA Section 404 implementing regulations. Developing a purpose and need statement that meets the requirements of NEPA and the CWA Section 404 can provide a more efficient regulatory process, while using a narrow Project purpose has the potential to require additional NEPA documentation to meet the NEPA and CWA Section 404 requirements.

Alternatives

An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. To ensure that an alternative is permittable under CWA Section 404, the Draft EIS should include a range of alternatives with the goal of avoiding and minimizing impacts to waters of the U.S., while meeting the basic purpose of the action. According to the scoping notice, the proposed alternative would result in a total loss of 21.4 acres of wetlands through fill placement and excavation, which will be mitigated via onsite wetland restoration. EPA recommends that the Draft EIS summarize the regulatory criteria and processes utilized to develop the reasonable and practicable alternatives, including any environmental, logistical, technological, and cost criteria used to identify and screen potential alternatives. We also recommend documenting the rationale for retaining or eliminating each alternative. The rationale should be consistent with the requirements of the CWA Section 404(b)(1) Guidelines (40 C.F.R. Part 230) including "practicable alternatives" as defined in 40 C.F.R. § 230.10 (b) and described in additional detail in the preamble to the Guidelines at 45 Fed. Reg. 85336 (Dec. 24, 1980).

EPA recommends using existing environmental conditions as a baseline for comparison of impacts across all alternatives, including the No Action Alternative. Although alternatives can also be compared against a projected no action scenario that includes reasonably foreseeable future conditions, this approach can result in additional uncertainty for the alternatives analysis. By comparing the alternatives to current conditions, the Draft EIS can provide a clearer understanding of each alternative's potential impacts and benefits. Furthermore, by using existing environmental conditions as a point of comparison, future changes to environmental resources can be more accurately assessed for each alternative, including the No Action Alternative.

Water Resources

General Comments

The CWA Section 404(b)(1) Guidelines require analysis of the direct, indirect, and cumulative effects to stream systems, which may include the alteration of streamflow and resulting impacts to water quality and aquatic life. The Draft EIS should analyze impacts to all perennial, intermittent, and ephemeral stream systems in the immediate project area, downstream of the dry dam, and any areas that could be affected by inundation or diversions.

The Draft EIS should analyze the direct, indirect and cumulative impacts to all wetlands within the project area, including indirect impacts to wetlands from changes in hydrology due to dam construction. Also, the Draft EIS should assess impacts associated with dry dam construction and subsequent inundation by quantifying any lost aquatic and riparian habitat areas.

If there are any sole source aquifers or CWA Section 303(d) listed impaired waters that overlap the project area, the Draft EIS should identify them and discuss potential impacts. Also, the Draft EIS should discuss potental groundwater impacts from the operation of the dry dam, whether positive or negative.

Biomass Harvest Areas

The scoping documents provided account for wetland losses due to fill for embankments and cutoff hydrology, though the preliminary impacts analysis does not appear to account for loss of wetland function due to change in wetland type in the biomass harvest areas (BHAs) of the proposed Action Alternative. While portions of the BHAs may meet the federal definition of a wetland in most years, these areas by design will be converted mostly to open water habitats (up to three ft in depth), cultivated and drained biennially. In addition, the preliminary wetland impact analysis does not appear to consider the backwater effects of the dam as shown on the Alternative 2A Backwater Map. For example, the areas subject to inundation and backwater effects will not only experience the direct impact of hydrodynamic changes (and the vegetation changes that follow) but will likely experience accelerated accumulation of sediments from uplands during runoff events, inhibiting recolonization that may otherwise occur within the existing wetlands. Therefore, in the wetland impact analysis, EPA recommends considering the existing wetlands that would be impacted via inundation or converted to open water habitats as part of the backwater effect from the dam construction.

Wetland Restoration

Wetland restoration can be divided into two categories:

- Re-establishment: the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former wetland. Re-establishment results in rebuilding a former wetland and *results in a gain in wetland acres.*
- Rehabilitation: the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions of degraded wetland. *Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres.*

EPA recommends the EIS identify the primary categories and methods of restoration and describe how restoration of wetlands will be achieved in each of the parcels selected for restoration. For example, the anticipated return of groundwater hydrology to the site through seasonal inundation of the BHAs may be

the primary driver of restoration at some of the targeted restoration areas. Planting and/or revegetation plans for the proposed wetlands restoration areas should also be included as part of the EIS.

Air Resources

Existing Air Quality and Air Quality Related Values (AQRVs)

Establishing the existing environment for air quality and AQRVs provides the baseline from which changes in air quality resulting from the alternatives can be judged. Therefore, we recommend characterizing the existing air quality baseline for criteria pollutants and AQRVs, including visibility and resources sensitive to deposition. For criteria pollutants we recommend coordinating with the North Dakota Department of Environmental Quality to establish representative design values (background pollutant concentrations) for criteria pollutants based on the most recent monitoring data. Alternatively, data are available from EPA at our design values webpage.[1] Monitoring locations and data can also be accessed by the public through EPA's outdoor air monitor webpage,[2] as well as through the EPA's Air Quality System (AQS) for AQS users.[3]

We recommend characterizing trends in visibility near the project area and in adjacent sensitive areas. Data are available through the IMPROVE monitoring network as well as information prepared by the Federal Land Managers (FLMs). We suggest working with the relevant FLMs regarding existing AQRVs in the areas they manage. Information is also available online at:

- https://www.epa.gov/outdoor-air-quality-data/interactive-map-air-quality-monitors;
- http://vista.cira.colostate.edu/Improve/;
- https://www.nps.gov/subjects/air/park-conditions-trends.htm; and
- https://www.fs.usda.gov/air/technical/class1/alpha.php

Existing deposition may be characterized by utilizing the National Atmospheric Deposition Program (NADP) monitoring network in conjunction with total deposition (TDEP)[4] estimates and information available from the FLMs and websites bulleted above. We recommend characterizing AQRVs for airsheds within North Dakota for which data exist and correlating existing AQRV data with the location of the proposed alternative(s). Due to the location of the project it may be appropriate to include deposition maps provided by the TDEP program. Additionally, the nearest upwind Class I area appears to be Theodore Roosevelt National Park for which data are summarized and available. An example of the type of information on visibility and nitrogen deposition we recommend including in the Draft EIS is provided below for Theodore Roosevelt National Park .

Visibility:

"Condition: Visibility is fair at Theodore Roosevelt NP based on the 5-year average (2017–2021) measured visibility (haze index) on mid-range days of 10.3 deciviews (dv) compared to NPS visibility benchmarks. This is 5.6 dv above the estimated natural condition of 4.7 dv. In 2021, the measured visual range is between 43 and 145 miles. Without the effects of pollution estimated visual range would be between 118 to 194 miles.

[1] https://www.epa.gov/air-trends/air-quality-design-values

[2] https://www.epa.gov/outdoor-air-quality-data/interactive-map-air-quality-monitors

[3] https://www.epa.gov/aqs

[4] https://nadp.slh.wisc.edu/committees/tdep/

Trend: For 2012–2021, the 10-year trend in visibility at Theodore Roosevelt NP improved on the 20% clearest days and remained relatively unchanged (no statistically significant trend) on the 20% haziest days, resulting in an overall unchanged visibility trend (IMPROVE Monitor ID: THRO1, ND). The Clean Air Act visibility goal requires visibility improvement on the 20% haziest days, with no degradation on the 20% clearest days. Learn more about NPS trend methods."[5]

Nitrogen Deposition:
"Wet nitrogen deposition levels create fair condition for ecosystem health at Theodore Roosevelt NP. This is based on the 5-year average (2017–2021) estimated 2.4 to 2.6 kilograms per hectare per year (kg/ha/yr) range of wet nitrogen deposition compared to NPS nitrogen deposition benchmarks. To maintain the highest level of protection, the maximum of this range (2.6 kg/ha/yr) is used. Ecosystems in the park were rated as having high sensitivity to nitrogen-enrichment effects relative to all Inventory & Monitoring parks (Sullivan et al. 2016a; Sullivan et al. 2016b). Nitrogen-enrichment effects may include disruption of soil nutrient cycling and reduced biodiversity of some plant communities, including arid, grassland, and wetland plants at the park."[6]

Air Quality and AQRV Impact Analysis
To disclose the potential impacts of the alternatives, we recommend the Draft EIS include a narrative of the activities necessary to construct and manage the alternatives. We recommend creating an equipment roster and schedule of activities. Based on the narrative of activities, equipment roster, and schedule, we recommend generating an emission inventory to provide the foundation for understanding potential impacts on air quality.

EPA recommends that the NEPA analysis assess all impacts on air quality resulting from construction and ongoing operation of the alternatives. We are available to work with NRCS and other federal and state agencies on the approach for the air quality impact analysis after completing the emission inventory. Based on the level of potential emissions, existing emissions, proximity to sensitive receptors and areas, and input from other state and federal agencies, it may be appropriate to conduct additional analysis. We recommend that NRCS work with EPA, FLMs, and state agencies to address the following analysis components:

- Impacts from each of the criteria pollutants (ozone, particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide, and lead). We recommend the magnitude of impacts be given context, including with respect to the National Ambient Air Quality Standards (NAAQS);
- Impacts to AQRVs in potentially impacted Class I areas and any other relevant areas identified in collaboration with Tribes, Cooperating Agencies and FLMs; and
- If emissions estimates and potential receptors of pollutants are of concern it may be appropriate to assess impacts that could result from exposure to Hazardous Air Pollutants (HAPs) based on

[5] https://www.nps.gov/subjects/air/park-conditions-trends.htm?tabName=summary&parkCode=THRO&paramCode=Visibility&startYr=2009&endYr=2021&monitoringSite=THRO1%20(IMPROVE)&timePeriod=Summary
[6] https://www.nps.gov/subjects/air/park-conditionstrends.htm?tabName=summary&parkCode=THRO&paramCode=Nitrogen%20Deposition&startYr=2009&endYr=2021&monitoringSite=ND00%20(NADP-NTN)&timePeriod=Summary

relevant health-based risk thresholds for HAPs. We are available to assist with methods of analysis, and appropriate characterization of available thresholds.

Special-Status Species

The project area may contain special-status species, such as the bald eagle (protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act) and Endangered Species Act-listed threatened and endangered species, such as the whooping crane and the western prairie fringed orchid. The EPA recommends engaging the U.S. Fish & Wildlife Service (USFWS) and the North Dakota Game and Fish Department (NDGFD) as early in the analysis as possible to determine potential impacts of the project on wildlife and plant species. We also recommend that the Draft EIS summarize the status and trends in the project area regarding threatened, endangered, and special status/sensitive species (TES), as well as potential suitable habitat acreage. The document should disclose any direct, indirect and cumulative impacts to TES species and habitat resources, including habitat fragmentation. The EPA recommends coordinating with the USFWS and the NDGFD on design criteria, mitigation and monitoring measures to ensure that the project does not impact any TES species. The Draft EIS should summarize any biological assessment prepared through consultation with those agencies, and demonstrate that the proposed action is consistent with the biological assessment. Finally, we recommend the Draft EIS commit to any USFWS recommendations to reduce potential impacts to TES species from the project.

Environmental Justice

On April 21, 2023, President Biden signed Executive Order (EO) 14096, *Revitalizing Our Nation's Commitment to Environmental Justice for All*, which strengthens the federal government's commitment to provide meaningful opportunities for engagement of environmental justice (EJ) communities.[7] The government-wide approach in Section 3 of the EO requires each agency "identify, analyze, and address disproportionate and adverse human health and environmental effects (including risks) and hazards of Federal activities, including those related to climate change and cumulative impacts of environmental and other burdens on communities with environmental justice concerns." Specifically, it directs agencies to conduct NEPA reviews that analyze direct, indirect, and cumulative effects of Federal Actions on communities with environmental justice concerns. Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,* sets expectations for a whole-of-government approach to advancing equity for all. Consistent with those executive orders and CEQ's Environmental Justice Guidance Under NEPA,[8] the EPA recommends that the Draft EIS analysis include the following:

- Identify people of color, low-income, and indigenous communities within the geographic scope of the impact area that are living with environmental justice (EJ) concerns, including the sources of data and a description of the methodology and criteria utilized.
- Meaningfully engage with such communities on NRCS decision making, and with Tribal Historic Preservation Officers if cultural or historical artifacts are found in the project area.
- Assess EJ and other socioeconomic concerns for people of color, low-income, and indigenous communities, including:

[7] https://www.energy.gov/nepa/articles/eo-14096-revitalizing-our-nations-commitment-environmental-justice-all-2023
[8] https://www.epa.gov/environmentaljustice/environmental-justice-and-national-environmental-policy-act

    - An assessment of historic, ongoing, and cumulative baseline environmental impacts, including health impacts from cumulative pollution loads, and identification of disproportionate impacts in overburdened communities
    - A discussion of potential direct, indirect, and cumulative impacts of the proposed project on the health of these communities.
    - An evaluation of socioeconomic impacts, including the potential for additional burden on local communities' ability to provide necessary public services and amenities
- Establish mitigation measures or alternatives to avoid or reduce any adverse impacts, and involve the affected communities in developing those measures

We encourage the use of EJScreen in analysis efforts.[9] EPA's nationally consistent EJ screening and mapping tool can highlight locations that may be candidates for further analysis. The tool identifies potential community vulnerabilities by calculating EJ indexes in basic geographic units of census block groups and displaying information on pollution sources, health disparities, critical service gaps, and climate change data in color-coded maps and standard data reports. EJScreen can also help focus outreach efforts by identifying potential language barriers, meeting locations, tribal lands and indigenous areas, and lack of broadband access. For a NEPA review, a project is considered an area of potential EJ concern when the area shows one or more of the twelve EJ Indexes at or above the 80th percentile in the nation and/or state. However, scores under the 80th percentile should not be interpreted to mean there are definitely no EJ concerns present.

While EJScreen provides access to high-resolution environmental and demographic data, it does not provide information on every potential community vulnerability that may be present. The tool's standard data report should not be considered a substitute for conducting a full EJ analysis, and efforts to use the tool should be supplemented with local knowledge when reasonably available. Also, in recognition of the inherent uncertainties with screening level data and to address instances when the presence of EJ populations may be diluted (e.g., in large project areas or in rural locations), EPA recommends assessing each block group in the project area individually and adding a one-mile buffer around the project area. Please reference the EJScreen Technical Documentation for a discussion of these and other issues.[10]

[9] https://www.epa.gov/ejscreen
[10] https://www.epa.gov/sites/default/files/2021-04/documents/ejscreen_technical_document.pdf

Appendix A-8

Notice of Intent to Prepare an EIS

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be available without change, including any personal information provided, for inspection online at *http://www.regulations.gov* and at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Comments will be summarized and included in the submission for OMB approval.

Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact *RARequest@usda.gov*.

Daniel Whitley,

Administrator, Foreign Agricultural Service.

[FR Doc. 2023–13086 Filed 6–20–23; 8:45 am]

BILLING CODE 3410–10–P

DEPARMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2023–0008]

Notice of Intent To Prepare an Environmental Impact Statement for the Upper Maple River Watershed Plan, North Dakota

AGENCY: Natural Resources Conservation Service, Department of Agriculture.

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: The Natural Resources Conservation Service (NRCS) North Dakota State Office, announces its intent to prepare an EIS for the Upper Maple River Watershed located within Cass, Barnes, Steele, and Griggs Counties, North Dakota. NRCS will examine alternative solutions through the EIS process to provide watershed protection. NRCS is requesting comments to identify significant issues, potential alternatives, information, and analyses relevant to the Proposed Action from all interested individuals, Federal and State Agencies, and Tribes.

DATES: We will consider comments that we receive by August 7, 2023. Comments received after the close of the comment period will be considered to the extent possible.

ADDRESSES: We invite you to submit comments in response to this notice. You may submit your comments through one of the methods below:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for docket ID NRCS–2023–0008. Follow the online instructions for submitting comments; or
- *Mail or Hand Delivery:* Carol Lewis, Cass County Joint Water Resource District, 1201 Main Avenue West, West Fargo, ND 58078–1301. In your comment, specify the docket ID NRCS–2023–0008.

All comments received will be posted and made publicly available on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Christi Fisher; telephone: (701) 530–2091; email: *christi.fisher@usda.gov.* Individuals who require alternative means of communication should contact USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Purpose and Need

The U.S. Army Corps of Engineers (USACE) and U.S. Fish and Wildlife Service (USFWS) are cooperating federal agencies in the watershed planning effort. NRCS is the lead federal agency implementing the National Environmental Policy Act and the National Historic Preservation Act (NHPA). An interagency team consisting of the following agencies are participating in the planning effort: Federal Emergency Management Agency; U.S. Environmental Protection Agency; North Dakota Department of Water Resources (ND DWR); North Dakota Department of Environmental Quality; North Dakota Game and Fish Department; North Dakota Department of Transportation; Cass County Joint Water Resource District; Cass County Highway Department; Cass County Sheriff's Office; Cass County Commission; Cass County Emergency Management; City of Amenia; and City of Casselton. NRCS is consulting on both the National Environmental Policy Act (NEPA) and section 106 of the NHPA with the North Dakota State Historical Preservation Office and 31 Tribal Nations.

The primary purpose of the proposed action is watershed protection. The proposed action will also result in flood damage reduction to cropland, structures, roads, drain ditches, structures, and vehicles in the watershed. Watershed protection goals consist of reducing nutrient loads from the watershed, particularly dissolved phosphorus, and increasing quantity and quality of wetlands and wildlife habitat.

The Watershed Project Plan is authorized under the authority of the Watershed Protection and Flood Prevention Act of 1954 (Pub. L. 83–566), as amended, and the Regional Conservation Partnership Program Project (16 U.S.C. chapter 58, Subchapter VIII). This action is needed because:

- The Upper Maple River Watershed, with a drainage area of 186,400 acres, annually contributes an estimated 30,200 pounds of phosphorus and 331,600 pounds of nitrogen to the Red River downstream. Approximately 88 percent of the watershed is farmed for row crops consisting predominantly of soybeans, corn, spring wheat, dry beans, and sunflowers.
- The average slope of the Upper Maple River is 4 foot per mile and the downstream Red River averages 1 foot per mile. The low topographic relief landscape results in floods over wide swaths of cropland for long durations, allowing for phosphorus dissolution from soils and vegetation into the overlying stagnant floodwaters. Within the Upper Maple Watershed, 17,684 acres of cropland are inundated by the 2-year recurrence interval (RI) flood event, 29,418 acres at the 10-year RI flood, and 37,246 acres are inundated by a 100-year RI flood.
- In addition to generating nutrient transport from cropland to the Maple River, the average annual flood inundation of 12,600 acres of cropland generates $2.1 million annual damages to agricultural producers. Total economic losses due to flooding, considering damage to cropland, structures, roads, drain ditches, structures, and vehicles in the watershed are estimated at $3.8 million a year.
- Agricultural non-point source nutrient loads in the Red River are of international significance. The Red River discharges to Lake Winnipeg, the 10th largest freshwater lake in the world, also designated one of the most eutrophic large lakes [1] in the world. Eutrophication has resulted in negative effects on the aquatic food web within the lake, resulting in declines to critical species which support recreational and commercial fisheries, tourism, and subsistence fishing of indigenous people. While the Red River contributes only 10 to 15 percent of overall annual runoff to the lake by volume, it

[1] A eutrophic lake is rich in nutrients and supports a dense phytoplankton or plant population, the respiration and decomposition of which results in depletion of dissolved oxygen levels. Eutrophication generates adverse effects on aquatic species due to zones of low dissolved oxygen in the lake and impacts recreation, public safety, and drinking water supply due to algal blooms on the lake surface.

contributes 69 percent of the total phosphorus load, largely in the form of inorganic dissolved phosphorus, and it is also a major contributor of nitrogen. Nitrogen loads have remained relatively stable in the Red River since 2000, however phosphorus loads at the U.S. and Canadian border have continued to steadily increase over the last two decades despite significant USDA–NRCS program investments in the installation of on-farm conservation practices throughout the North Dakota and Minnesota portions of the Red River Basin.

- Cropland conservation practices promoted by NRCS are effective at reducing particulate bound phosphorus, nitrogen, and sediment loss; however, have been largely ineffective in reducing dissolved phosphorus runoff from cropland in this watershed. This is demonstrated not just in the upward trend of dissolved phosphorus at the U.S. Geological Survey (USGS) gauge on the international border, but through published research from Red River Basin study sites. Other flood prone, flat, cold climate, agricultural landscapes with predominantly fine-grained soils, such as those found in Finland, Sweden, and the Netherlands, experience similar challenges with dissolved phosphorus management.
- Federal investment in nutrient reduction within the Red River Basin is an important contribution to the Boundary Waters Treaty (BWT) obligation of the United States. Article IV of the BWT states that ''boundary waters or waters flowing across the boundary shall not be polluted to the injury of health and property to the other.'' The International Joint Commission (IJC) acts as the arbitral body for the BWT, with the Red River Basin Commission (RRBC) established as a sub-entity between the two countries for management in the international Red River Basin. In 2020, based on the recommendations of the RRBC, the IJC adopted nutrient concentration objectives for the international border crossing of the Red River. Meeting the target for phosphorus will require an approximately 50 percent reduction in the average concentrations from the last two decades, which in turn will require implementation of new and innovative techniques for phosphorus reduction from cropland. U.S. negotiations with the Canadian government for similar investments to protect U.S. waterways from pollutants originating in Canada, through the IJC, will be bolstered by U.S. investments in the Red River Basin.
- The Prairie Pothole Region (PPR) in the northcentral Great Plains is one of the most threatened waterfowl habitats in the United States. The Red River Valley is one of the largest artificially drained landscapes in the world, with hundreds of miles of publicly owned drainage ditches, privately owned lateral ditches, and thousands of acres of surface tile drains. The remaining wetlands and grasslands of the PPR are one of the most productive areas in the world for breeding waterfowl and are important habitat for migratory grassland and shore birds as well. Drainage of remaining wetlands continues in the region, from 1997 to 2009 more than 50,000 individual wetlands were lost within North Dakota alone, a –3.3 percent overall change.

Preliminary Proposed Action and Alternatives

The Upper Maple Watershed planning process was initiated in 2016 with a public scoping meeting, which was not advertised in the **Federal Register** because it was assumed that an Environmental Assessment would be completed for the project. Through the course of the planning process since 2016, 38 different alternatives were evaluated with comments solicited. Based on technical analysis results and comments, all but one alternative was selected. Both the EIS and the second public scoping meeting, dated May 30, 2023, will provide a summary of the preliminary alternatives analysis and opportunity for input. The EIS is expected to evaluate two alternatives: one action alternative and one no action alternative. The alternatives we intend to carry forward to final analysis are:

Alternative 1—No Action: Taking no action would mean that no federal action would be taken in the Upper Maple River Watershed and implementation of significant flood damage reduction or watershed protection projects would not occur. The watershed will continue to contribute an average of 19,841 pounds of phosphorus and 50,223 pounds of nitrogen annually to the Maple River, and the downstream Red River and Lake Winnipeg. Wetlands and wildlife habitat will remain unchanged barring a significant change in federal conservation programs.

Alternative 2—Upper Maple River Site 2A (Proposed Action): Upper Maple River Site 2A would be a multi-purpose dry dam with interior features designed and operated for the purpose of dissolved phosphorus (DP) and nitrogen reduction, and wetlands and uplands managed for wildlife habitat. The primary dam structure would provide 2,863 acre-feet of temporary (less than 10 days inundation at the 10-year recurrence interval flood) floodwater retention for a 59.7 square mile drainage area and would consist of a 2.3-mile embankment with a maximum height of 31 feet, 48-inch principal spillway conduit, and structural concrete auxiliary spillway. Reduction of dissolved inorganic phosphorus will be through two primary means. The first involves construction and operation of three shallow retention cells, totaling 240 acres, on the interior of the dry dam to which water would be routed and held to depths of 2 to 3 feet through the growing season. Vegetation would uptake DP as it grows and in the early fall the cells would be drained via automated control structures and tile drains below the cells to allow vegetation to be cut, baled, and removed from cells prior to the first frost in 2 out of 3 years. The second primary means of DP reduction occurs through reducing the extents, frequency, and duration of cropland inundation downstream of the dam through modification of the peak flow hydrograph. The alternative would also result in enhancement of approximately 200 acres of existing wetlands, and enhancement of approximately 500 acres of uplands which would be managed to maximize wildlife habitat benefits.

Summary of Expected Impacts

An NRCS evaluation of this federally assisted action indicates that the proposed alternative may have a significant local, regional, national, or international impact on the environment. Hydrologic impacts include peak flow reductions of 82 percent and 56 percent of the 10- and 100-year recurrence interval flood events immediately downstream of the retention site, and 14 percent and 19 percent of the 10- and 100-year recurrence interval flood events at the downstream confluence between Maple River and unnamed tributary which site 2A is located. Immediately downstream of the retention site, average annual loads of total phosphorus, total nitrogen, and total suspended solids are reduced by 60 percent, 66 percent, and 38 percent respectively. The proposed alternative would result in a total loss of 21.4 acres of wetlands through fill placement, excavation, which will be mitigated via onsite wetland restoration. The project is expected to generate a net increase of 230.3 acres of wetlands and enhances approximately 30 acres of existing wetlands because of restored hydrology and vegetative communities, and enhancement of approximately 500 acres upland wildlife habitat for the benefit of migratory birds and other

wildlife species. Short term negative impacts during construction are anticipated to be local only, and may occur in relation to soils, vegetation, noise, and traffic.

Anticipated Permits and Authorizations

The following permits and other authorizations are anticipated to be required:

- *CWA Section 404 permit.* Implementation of the proposed federal action would require a Clean Water Act (CWA) Section 404 permit from the U.S. Army Corps of Engineers, which is a cooperating federal agency on the planning effort. Consultation is ongoing and no significant challenges are anticipated given the overall environmental benefits of the project.
- *CWA Section 401 permit.* The project would also require water quality certification under Section 401 of the CWA and permitting under Section 402 of the CWA (National Pollutant Discharge Elimination Permit), both of which would be issued by the North Dakota Department of Environmental Quality, which is participating on the interagency team for the watershed plan. Consultation is ongoing and no significant challenges are anticipated given the overall environmental benefits of the project.
- *Permit to Construct or Modify a Dam.* The project will require authorization from the ND DWR for construction of a dam. ND DWR is participating on the interagency team for the watershed plan and has also provided funding for the planning effort. No significant challenges are anticipated given the project is being designed to meet State of North Dakota dam safety standards.
- *Water Appropriation Permit.* The project may require a conditional water use permit from ND DWR for construction of a dam that will temporarily retain water during flood events. ND DWR is participating on the interagency team for the watershed plan and has also provided funding for the planning effort.
- *Floodplain Permit.* The project will require a floodplain development permit from Cass County. Cass County is participating on the interagency team for the watershed plan and no significant challenges are expected given the beneficial flood damage reduction effects of the project.
- *NHPA Section 106 Consultation.* Consultation with 31 Tribal Nations and the North Dakota State Historical Society is ongoing, as required by the NHPA. To date no concerns have been raised about NHPA, however consultation is ongoing.

Schedule of Decision-Making Process

A draft EIS will be prepared and circulated for review and comment by agencies and the public for at least 45 days per 40 CFR 1503.1, 1502.2, 1506.11, 1502.17, and 7 CFR 650.13. The draft EIS is anticipated to be published in the **Federal Register** approximately 6 months after publication of this NOI. A final EIS is anticipated to be published within 6 months of completion of the public comment period for the draft EIS. NRCS will then decide whether to implement one of the alternatives as evaluated in the EIS.

NRCS will provide technical and financial assistance for the proposed project through the NRCS Watershed Protection and Flood Prevention Program if an action is selected. A Record of Decision will be completed after the required 30-day waiting period and will be publicly available. The responsible Federal official for the NRCS is Nathan Jones, North Dakota Acting State Conservationist.

Public Scoping Process

Public scoping meetings will be held to further develop the scope of the draft EIS. A preliminary scoping meeting was held on February 24, 2016, in Casselton, ND. An additional public scoping meeting was held on May 30, 2023. The meeting was virtual only. A recording of the meeting may be accessed at: *https://www.nrcs.usda.gov/conservation-basics/conservation-by-state/north-dakota/upper-maple-river-watershed-plan.*

Comments received for both meetings, including names and addresses of those who comment, will be part of the public record.

NRCS will coordinate the scoping process as provided in 36 CFR 800.2(d)(3) and 800.8 (54 U.S.C. 306108) to help fulfill the NHPA, as amended, review process. The USACE and USFWS have declined to participate in the NRCS led NHPA process and instead intend to use their agency specific NHPA processes.

Identification of Potential Alternatives, Information, and Analyses

NRCS invites agencies, Tribes, and individuals who have special expertise, legal jurisdiction, or interest in the Upper Maple Watershed and the Red River Basin to provide comments concerning the scope of the analysis and identification of potential alternatives, information, and analyses relevant to the Proposed Action in writing.

Authorities

This document is published pursuant to NEPA regulations regarding publication of a notice of intent to issue an EIS (40 CFR 1501.9(d)). The EIS will be prepared to evaluate potential environmental impacts as required by section 102(2)(C) of NEPA, the Council on Environmental Quality regulations (40 CFR parts 1500–1508); and NRCS regulations that implement NEPA in 7 CFR part 650 and 7 CFR 622. Watershed planning is authorized under the Watershed Protection and Flood Prevention Act of 1954, as amended, (Pub. L. 83–566) and the Flood Control Act of 1944 (Pub. L. 78–534).

Federal Assistance Program

The title and number of the Federal Assistance Programs, as found in the Assistance Listing,[2] to which this document applies is 10.904, Watershed Protection and Flood Prevention.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. This program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the

[2] See *https://sam.gov/content/assistance-listings.*

responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and text telephone) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any phone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.*

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Nathan Jones,

North Dakota Acting State Conservationist, Natural Resources Conservation Service.

[FR Doc. 2023–13129 Filed 6–20–23; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2023–0010]

Notice of Intent To Prepare an Environmental Impact Statement for the St. Mary Canal Modernization Project, Glacier County, MT

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: The Natural Resources Conservation Service (NRCS) Montana State Office, in coordination with the U.S. Bureau of Reclamation, announces its intent to prepare a Watershed Plan and EIS for the St. Mary Canal Modernization Watershed Project (Milk River Project), located east of Babb, in Glacier County, Montana. The proposed Watershed Plan will examine alternatives through the EIS process for improving the St. Mary Canal system to provide for agricultural water management. NRCS is requesting comments to identify significant issues, potential alternatives, information, and analyses relevant to the proposed action from all interested individuals, Federal and State agencies, and Tribes.

DATES: We will consider comments that we receive by August 7, 2023. Comments received after close of comment period will be considered to the extent possible.

ADDRESSES: We invite you to submit comments in response to this notice. You may submit your comments through one of the methods below:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for docket ID NRCS–2023–0010. Follow the online instructions for submitting comments; or
- *Mail or Hand Delivery:* Alyssa Fellow, Environmental Compliance Specialist, 10 East Babcock Street, Room 443, Bozeman, MT 59715. For written comments, specify the docket ID NRCS–2023–0010.

All comments received will be posted without change and made publicly available on *www.regulation.gov.*

FOR FURTHER INFORMATION CONTACT: Alyssa Fellow; telephone: (406) 587–6712; email: *Alyssa.Fellow@usda.gov* for questions related to submitting comments; or visit the project website: *https://www.milkriverproject.com/projects/watershed/.* Individuals who require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Purpose and Need

The primary purpose of the proposed watershed project is to improve agricultural water management by rehabilitating and modernizing the St. Mary Canal along its existing alignment in Glacier County, Montana. Watershed planning is authorized under the Watershed Protection and Flood Prevention Act of 1954 (Pub. L. 83–566), as amended, and the Flood Control Act of 1944 (Pub. L. 78–534).

The proposed project is needed due to existing St. Mary Canal system inadequacies, as well as the risk of infrastructure failure. The current St. Mary Canal system inadequacies have reduced the water delivery reliability to users who rely on the St. Mary Canal for agricultural, municipal, residential, industrial, and recreational uses. Failure could lead to environmental damage on the Blackfeet Indian Reservation, the St. Mary River, and the North Fork Milk River.

The Milk River Joint Board of Control (MRJBOC) is the umbrella organization that works with the U.S. Bureau of Reclamation to operate and maintain the St. Mary Canal for the users that receive Milk River Project water. Milk River Project water diverted from the St. Mary River is conveyed through the St. Mary Canal to the North Fork Milk River. The Milk River Project supplies water to approximately 120,000 acres, including eight irrigation districts, the Blackfeet Indian Reservation, numerous private irrigators, several municipalities, and the Bowdoin National Wildlife Refuge.

The proposed Milk River Project will address the deteriorating state of the St. Mary Canal and associated infrastructure including the 29 mile St. Mary Canal, siphons, and concrete drops. Most of the structures have exceeded their design life and require major repairs or replacement. Aging of the St. Mary Canal system has resulted in reduced flow rates from the original design of 850 cubic feet per second (cfs) to around 600 cfs. The steel siphons are at risk of failure due to slope stability problems and leaks, and the concrete in three of the five drop structures are severely deteriorating. According to a report published by the Montana Department of Natural Resources and Conservation (DNRC), many hydraulic components of the conveyance system have an elevated risk of failure with potential damages ranging from minor to catastrophic (DNRC 2010.[1])

Agriculture is an essential part of the north-central Montana economy and agricultural production depends on the structural integrity of the St. Mary Canal and associated infrastructure. Water diverted from the St. Mary River and conveyed to the North Fork Milk River through the St. Mary Canal comprises a range of 70–95 percent of the total flow in the Milk River, as measured in Havre, MT, from May through September, depending upon whether it was a dry or average year for precipitation (DNRC 2006.[2]) Correspondingly, water conveyed through the St. Mary Canal comprises over half of the Milk River Project's water supply in an average year (Reclamation 2012.[3])

A Preliminary Investigation Feasibility Report (PIFR), completed in

[1] Montana Department of Natural Resources and Conservation (DNRC). 2010. *St. Mary Diversion and Conveyance Facilities Failure and O&M Reference Guide.* Helena, MT.

[2] DNRC. 2006. *St. Mary Diversion Facilities Data Review, Preliminary Cost Estimate, and Proposed Rehabilitation Plan.* Helena, MT.

[3] U.S. Bureau of Reclamation (Reclamation). 2012. *St. Mary River and Milk River Basins Study Summary Report.* Billings, MT.

Appendix A-9

Cooperating Agency Correspondence

USDA Natural Resources Conservation Service
U.S. DEPARTMENT OF AGRICULTURE
Bismarck State Office
PO Box 1458
220 E. Rosser Ave
Bismarck, ND 58502-1458

Benjamin Soiseth
USACE
3319 University Dr.
Bismarck, ND 58504

December 19, 2024

Dear Mr. Soiseth,

RE: Request to Participate as a Cooperating Agency on the Upper Maple River Watershed Plan - EIS

We appreciate your participation as a cooperating agency to date in the planning process for the Upper Maple River Watershed project. We recently realized an error was made in having the Sponsor's engineering firm send the original letter requesting your participation as a federal cooperating agency, back in 2016. This letter is to retroactively correct that by sending a request directly from the NRCS.

Patricia McQueary was our original contact from USACE on this planning effort and in the 2016-2019 time period was included in multiple planning meetings related to NEPA scoping, strategy evaluation, and identification/evaluation of 38 potential projects within the watershed. Ultimately, the planning team identified 2 dry dam projects with environmental enhancements on their interiors, Site 2A and Site 5, as ones that merited detailed analysis in a Plan – EA. Ultimately, NRCS did not support Site 5, given high costs and limited economic benefits, therefore only a single action alternative was moved forward; Site 2A. Given positive contributions that the project makes towards Red River nutrient reduction goals committed to by the U.S. government through the International Joint Commission, in 2022 NRCS determined the Environmental Assessment needed to be converted to an Environmental Impact Statement (EIS). The Notice of Intent to Prepare an EIS was published to the federal register on 6/21/23 and a new public scoping meeting for the project was conducted on 5/30/23. NRCS and the local project sponsor, Cass County JWRD, are finishing up the preliminary draft EIS document currently and intend to start the internal agency technical review process in January. We anticipate releasing the draft EIS for comment in the summer of 2025.

In accordance with the Council on Environmental Quality regulations implementing the National Environmental Policy Act (NEPA) at 40 CFR Section 1501.6, NRCS is formally requesting your agency become a cooperating agency in the planning and development of the Upper Maple River Watershed Plan - EIS. This request is being made because your agency has been identified as having special expertise or jurisdiction by law related to this project. The EIS is being prepared to fulfill NRCS's NEPA compliance responsibilities pertaining to our potential federal financial

assistance through Section 14 of PL-83-566, as amended. Your agency may also have NEPA compliance responsibilities concerning this project or other future projects that may be evaluated in this EIS. Preparation of this EIS should also assist in fulfilling environmental review requirements for your agency or other Federal agencies and meet NEPA's intent of reducing duplication and delay between agencies.

Please provide written confirmation of acceptance or denial to participate. If your agency chooses to accept, please indicate the name and contact information for your agency's point of contact. If your agency is unable to participate as a cooperating agency, then please return a written explanation why your agency cannot participate. Please note that a response declining to be a cooperating agency is required to also be submitted to the Council on Environmental Quality per 40 CFR Section 1501.6(c). Upon acceptance of this invitation, roles can be defined in an informal agreement (as our agencies have been operating to date in ND) or formal MOU can be established.

If you have any questions or comments, please contact the ND NRCS Watershed Program Manager, Christi Fisher at Christi.Fisher@usda.gov or by phone at (701) 530-2091. Thank you for your timely response and cooperation with this project.

Sincerely,

RICHARD WEBB

Digitally signed by RICHARD WEBB
Date: 2024.12.19 12:34:14 -06'00'

Acting for

DAN HOVLAND
State Conservationist

Enclosures: Project Summary & Map

USDA Natural Resources Conservation Service
U.S. DEPARTMENT OF AGRICULTURE
Bismarck State Office
PO Box 1458
220 E. Rosser Ave
Bismarck, ND 58502-1458

Christopher Swanson
U.S. Fish and Wildlife Service
3425 Miriam Ave
Bismarck, ND 58501

December 19, 2024

Dear Mr. Swanson:

RE: Request to Participate as a Cooperating Agency on the Upper Maple River Watershed Plan - EIS

We appreciate your participation as a cooperating agency to date in the planning process for the Upper Maple River Watershed project. We recently realized an error was made in having the Sponsor's engineering firm send the original letter requesting your participation as a federal cooperating agency, back in 2016. This letter is to retroactively correct that by sending a request directly from the NRCS.

Kevin Shelley was our original contact from USFWS on this planning effort and in the 2016-2019 time period was included in multiple planning meetings related to NEPA scoping, strategy evaluation, and identification/evaluation of 38 potential projects within the watershed. Ultimately, the planning team identified 2 dry dam projects with environmental enhancements on their interiors, Site 2A and Site 5, as ones that merited detailed analysis in a Plan – EA. Ultimately, NRCS did not support Site 5, given high costs and limited economic benefits, therefore only a single action alternative was moved forward; Site 2A. Given positive contributions that the project makes towards Red River nutrient reduction goals committed to by the U.S. government through the International Joint Commission, in 2022 NRCS determined the Environmental Assessment needed to be converted to an Environmental Impact Statement (EIS). The Notice of Intent to Prepare an EIS was published to the federal register on 6/21/23 and a new public scoping meeting for the project was conducted on 5/30/23. NRCS and the local project sponsor, Cass County JWRD, are finishing up the preliminary draft EIS document currently and intend to start the internal agency technical review process in January. We anticipate releasing the draft EIS for comment in the summer of 2025.

In accordance with the Council on Environmental Quality regulations implementing the National Environmental Policy Act (NEPA) at 40 CFR Section 1501.6, NRCS is formally requesting your agency become a cooperating agency in the planning and development of the Upper Maple River Watershed

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Plan - EIS. This request is being made because your agency has been identified as having special expertise or jurisdiction by law related to this project. The EIS is being prepared to fulfill NRCS's NEPA compliance responsibilities pertaining to our potential federal financial assistance through Section 14 of PL-83-566, as amended. Your agency may also have NEPA compliance responsibilities concerning this project or other future projects that may be evaluated in this EIS. Preparation of this EIS should also assist in fulfilling environmental review requirements for your agency or other Federal agencies and meet NEPA's intent of reducing duplication and delay between agencies.

Please provide written confirmation of acceptance or denial to participate. If your agency chooses to accept, please indicate the name and contact information for your agency's point of contact. If your agency is unable to participate as a cooperating agency, then please return a written explanation why your agency cannot participate. Please note that a response declining to be a cooperating agency is required to also be submitted to the Council on Environmental Quality per 40 CFR Section 1501.6(c). Upon acceptance of this invitation, roles can be defined in an informal agreement (as our agencies have been operating to date in ND) or formal MOU can be established.

If you have any questions or comments, please contact the ND NRCS Watershed Program Manager, Christi Fisher at Christi.Fisher@usda.gov or by phone at (701) 530-2091. Thank you for your timely response and cooperation with this project.

Sincerely,

RICHARD WEBB

Digitally signed by RICHARD WEBB
Date: 2024.12.19 12:23:19 -06'00'

Acting for

DAN HOVLAND
State Conservationist

Enclosures: Project Summary & Map

From: Swanson, Christopher (Chris)
To: Sveen, RitaHarmsen - FPAC-NRCS, ND
Cc: Fisher, Christi - FPAC-NRCS, ND; Toso, Luke B
Subject: Re: [EXTERNAL] Upper Maple River Cooperating Agency Request
Date: Tuesday, January 7, 2025 4:10:04 PM
Attachments:

Hello Rita,

I sincerely appreciate the opportunity to collaborate as a cooperating agency for the Upper Maple River Project. We are however down in our capacity right now in our North Dakota Field Office, so we won't be able to take on this role this at this time. We will plan to engage when you are ready to discuss conservation for ESA listed species via section 7 consultation.

Thank you,
Chris

Chris Swanson
Field Supervisor
U.S. Fish and Wildlife Service
North and South Dakota Ecological Services
420 S. Garfield Ave.
Pierre, South Dakota 57501
(605) 222-0228 (cell)

From: Sveen, RitaHarmsen - FPAC-NRCS, ND <rita.sveen@usda.gov>
Sent: Thursday, December 19, 2024 1:25 PM
To: Swanson, Christopher (Chris) <christopher_swanson@fws.gov>
Cc: Fisher, Christi - FPAC-NRCS, ND <christi.fisher@usda.gov>
Subject: [EXTERNAL] Upper Maple River Cooperating Agency Request

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hi Christopher,

Please see the attached formal request for cooperation. We had discovered our earliest communications were sent by the sponsor rather than by NRCS as required by policy.
Let us know if you have any questions or concerns. A formal response for the Plan/EA record would be much appreciated.

Regards,

Rita H. Sveen
Watershed Conservationist
417 Park St W Ste 1
Park River, ND 58270
Natural Resources Conservation Service
United States Department of Agriculture
http://www.nd.nrcs.usda.gov
Tel: 701-284-7771 ext124
Cell: 701-331-1386

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United States Department of the Interior

FISH AND WILDLIFE SERVICE
North Dakota Ecological Services Field Office
3425 Miriam Avenue
Bismarck, ND 58501-7926
Phone: (701) 250-4481 Fax: (701) 355-8513

In Reply Refer To: January 29, 2024
Project Code: 2024-0041847
Project Name: Upper Maple River Watershed Plan - EIS

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

Section 7 of the Endangered Species Act

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the IPaC system by completing the same process used to receive the enclosed list.

The Act requires that actions authorized, funded, or carried out by Federal agencies not jeopardize federally threatened or endangered species or adversely modify designated critical habitat. To fulfill this mandate, Federal agencies (or their designated non-federal representative) must consult with the Service *if they determine their project and associated actions "may affect" listed species or critical habitat*. If Federal agencies or their non-federal representatives determine their project and associated actions will have "no effect" on listed species, their habitats, or designated critical habitat, consultation is not required. However, if a "no effect" is determined, we recommend that you maintain a written record in support of your conclusion.

Bald and Golden Eagle Protection Act and Migratory Bird Treaty Act

Additionally, while not all are listed as threatened or endangered, eagles and migratory birds

have protections under the Bald and Golden Eagle Protection Act (BGEPA) and the Migratory Bird Treaty Act (MBTA). The BGEPA prohibits take which is defined as, “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb” (50 CFR 22.3). Disturb is defined in regulations as, “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.”. The MBTA makes it unlawful without a waiver to pursue, hunt, take, capture, kill, or sell birds listed as migratory birds, including eagles. The statute does not discriminate between live or dead birds and also grants full protection to any bird parts including feathers, eggs, and nests.

Service Property Interests

As part of the National Wildlife Refuge System, the Service administers fee title Refuge and Waterfowl Production Areas, as well as wetland and grassland easements, throughout North Dakota. For exact locations of Service interest lands, please contact the appropriate Wetland Management Districts (WMD) for guidance regarding FWS easements.

Northwest ND WMD Complex: Kyle Flanery, (701) 768-2548
Eastern ND WMD Complex: Dave Azure, (701) 285-3341
Central ND WMD Complex (also covers south and west): Todd Luke, (701) 442-5474

Attachment(s):

- Official Species List
- USFWS National Wildlife Refuges and Fish Hatcheries
- Wetlands

OFFICIAL SPECIES LIST

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

North Dakota Ecological Services Field Office
3425 Miriam Avenue
Bismarck, ND 58501-7926
(701) 250-4481

PROJECT SUMMARY

Project Code: 2024-0041847

Project Name: Upper Maple River Watershed Plan - EIS

Project Type: Review/Preparation of Integrated Natural Resources Management Plan

Project Description: Project is located in sections 9,16,17 and 21 of T142 R56, Barnes Co, North Dakota. Project size aprox 1,000 acres.Alt 2A entails construction of a dry dam with interior features for the purpose of nutrient reduction and wildlife habitat. The primary dam structure will provide temporary (less than one week) floodwater retention during peak flow events and has a drainage area of 59.7 square miles, embankment length of 2.3 miles, maximum height of 31 feet, 48-inch principal spillway conduit, and structural concrete auxiliary spillway to create 2,863 acre-feet of flood storage to the auxiliary spillway crest. Other features include:Reinforced concrete pipe with 2-way covered riser (principal spillway); 2 concrete drop structures (Aux spillway); 2 farmstead levees (to prevent backwater from encroaching on existing structures); berms, outlet control structures, subsurface drains, pumps and 5800' PVC pipeline for 3 biomass harvest areas (BHA); 251,000 cu yd of fill derived from onsite excavation for the spillways, wetland creation and BHA's; road raise; and 11 drain plugs for wetland restorations. Woody plant materials impacted include willow and dogwood shrubs (No mature trees).

Project Location:

The approximate location of the project can be viewed in Google Maps: https://www.google.com/maps/@47.11960865,-97.77985520233653,14z



Counties: Barnes County, North Dakota

ENDANGERED SPECIES ACT SPECIES

There is a total of 2 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries[1], as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

---

1. NOAA Fisheries, also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

MAMMALS

NAME	STATUS
Northern Long-eared Bat *Myotis septentrionalis* No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Endangered

INSECTS

NAME	STATUS
Monarch Butterfly *Danaus plexippus* No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743	Candidate

CRITICAL HABITATS

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

YOU ARE STILL REQUIRED TO DETERMINE IF YOUR PROJECT(S) MAY HAVE EFFECTS ON ALL ABOVE LISTED SPECIES.

USFWS NATIONAL WILDLIFE REFUGE LANDS AND FISH HATCHERIES

Any activity proposed on lands managed by the National Wildlife Refuge system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

The following FWS National Wildlife Refuge Lands and Fish Hatcheries lie fully or partially within your project area:

FACILITY NAME	ACRES
BARNES COUNTY WATERFOWL PRODUCTION AREA https://www.fws.gov/our-facilities?$keywords="%5C%22BARNES+COUNTY+WATERFOWL+PRODUCTION+AREA%5C%22"	0

WETLANDS

Impacts to NWI wetlands and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local U.S. Army Corps of Engineers District.

Please note that the NWI data being shown may be out of date. We are currently working to update our NWI data set. We recommend you verify these results with a site visit to determine the actual extent of wetlands on site.

FRESHWATER EMERGENT WETLAND

- PEM1Cx
- PEM1A
- PEM1Ad
- PEM1Cd
- PEM1C

OTHER

- Pf

FRESHWATER FORESTED/SHRUB WETLAND

- PSS1C

FRESHWATER POND

- PABFx
- PABF

RIVERINE

- R4SBC

- R4SBAx

IPAC USER CONTACT INFORMATION

Agency: Department of Agriculture
Name: Rita Sveen
Address: 417 Park St W Ste 1
City: Park River
State: ND
Zip: 58270
Email rita.sveen@usda.gov
Phone: 7013311386

United States Department of the Interior

FISH AND WILDLIFE SERVICE
North Dakota Ecological Services Field Office
3425 Miriam Avenue
Bismarck, ND 58501-7926
Phone: (701) 250-4481 Fax: (701) 355-8513

In Reply Refer To: January 29, 2024
Project code: 2024-0041847
Project Name: Upper Maple River Watershed Plan - EIS

Federal Nexus: yes
Federal Action Agency (if applicable): Department of Agriculture

Subject: Federal agency coordination under the Endangered Species Act, Section 7 for 'Upper Maple River Watershed Plan - EIS'

Dear Rita Sveen:

This letter records your determination using the Information for Planning and Consultation (IPaC) system provided to the U.S. Fish and Wildlife Service (Service) on January 29, 2024, for 'Upper Maple River Watershed Plan - EIS' (here forward, Project). This project has been assigned Project Code 2024-0041847 and all future correspondence should clearly reference this number. **Please carefully review this letter. Your Endangered Species Act (Act) requirements may not be complete.**

Ensuring Accurate Determinations When Using IPaC

The Service developed the IPaC system and associated species' determination keys in accordance with the Endangered Species Act of 1973 (ESA; 87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.) and based on a standing analysis. All information submitted by the Project proponent into IPaC must accurately represent the full scope and details of the Project.

Failure to accurately represent or implement the Project as detailed in IPaC or the Northern Long-eared Bat Rangewide Determination Key (DKey), invalidates this letter. ***Answers to certain questions in the DKey commit the project proponent to implementation of conservation measures that must be followed for the ESA determination to remain valid.***

Determination for the Northern Long-Eared Bat

Based upon your IPaC submission and a standing analysis completed by the Service, your project has reached the determination of "May Affect, Not Likely to Adversely Affect" the northern long-eared bat. Unless the Service advises you within 15 days of the date of this letter that your

IPaC-assisted determination was incorrect, this letter verifies that consultation on the Action is complete and no further action is necessary unless either of the following occurs:

- new information reveals effects of the action that may affect the northern long-eared bat in a manner or to an extent not previously considered; or,
- the identified action is subsequently modified in a manner that causes an effect to the northern long-eared bat that was not considered when completing the determination key.

15-Day Review Period

As indicated above, the Service will notify you within 15 calendar days if we determine that this proposed Action does not meet the criteria for a "may affect, not likely to adversely affect" (NLAA) determination for the northern long-eared bat. If we do not notify you within that timeframe, you may proceed with the Action under the terms of the NLAA concurrence provided here. This verification period allows the identified Ecological Services Field Office to apply local knowledge to evaluation of the Action, as we may identify a small subset of actions having impacts that we did not anticipate when developing the key. In such cases, the identified Ecological Services Field Office may request additional information to verify the effects determination reached through the Northern Long-eared Bat DKey.

Other Species and Critical Habitat that May be Present in the Action Area

The IPaC-assisted determination for the northern long-eared bat does not apply to the following ESA-protected species and/or critical habitat that also may occur in your Action area:

- Monarch Butterfly *Danaus plexippus* Candidate

You may coordinate with our Office to determine whether the Action may affect the species and/or critical habitat listed above. Note that reinitiation of consultation would be necessary if a new species is listed or critical habitat designated that may be affected by the identified action before it is complete.

If you have any questions regarding this letter or need further assistance, please contact the North Dakota Ecological Services Field Office and reference Project Code 2024-0041847 associated with this Project.

Action Description
You provided to IPaC the following name and description for the subject Action.

1. Name

Upper Maple River Watershed Plan - EIS

2. Description

The following description was provided for the project 'Upper Maple River Watershed Plan - EIS':

> Project is located in sections 9,16,17 and 21 of T142 R56, Barnes Co, North Dakota. Project size aprox 1,000 acres.Alt 2A entails construction of a dry dam with interior features for the purpose of nutrient reduction and wildlife habitat. The primary dam structure will provide temporary (less than one week) floodwater retention during peak flow events and has a drainage area of 59.7 square miles, embankment length of 2.3 miles, maximum height of 31 feet, 48-inch principal spillway conduit, and structural concrete auxiliary spillway to create 2,863 acre-feet of flood storage to the auxiliary spillway crest. Other features include:Reinforced concrete pipe with 2-way covered riser (principal spillway); 2 concrete drop structures (Aux spillway); 2 farmstead levees (to prevent backwater from encroaching on existing structures); berms, outlet control structures, subsurface drains, pumps and 5800' PVC pipeline for 3 biomass harvest areas (BHA); 251,000 cu yd of fill derived from onsite excavation for the spillways, wetland creation and BHA's; road raise; and 11 drain plugs for wetland restorations. Woody plant materials impacted include willow and dogwood shrubs (No mature trees).

The approximate location of the project can be viewed in Google Maps: https://www.google.com/maps/@47.11960865,-97.77985520233653,14z



DETERMINATION KEY RESULT

Based on the answers provided, the proposed Action is consistent with a determination of “may affect, but not likely to adversely affect” for the Endangered northern long-eared bat (*Myotis septentrionalis*).

QUALIFICATION INTERVIEW

1. Does the proposed project include, or is it reasonably certain to cause, intentional take of the northern long-eared bat or any other listed species?

   Note: Intentional take is defined as take that is the intended result of a project. Intentional take could refer to research, direct species management, surveys, and/or studies that include intentional handling/encountering, harassment, collection, or capturing of any individual of a federally listed threatened, endangered or proposed species?

   No

2. The action area does not overlap with an area for which U.S. Fish and Wildlife Service currently has data to support the presumption that the northern long-eared bat is present. Are you aware of other data that indicates that northern long-eared bats (NLEB) are likely to be present in the action area?

   Bat occurrence data may include identification of NLEBs in hibernacula, capture of NLEBs, tracking of NLEBs to roost trees, or confirmed NLEB acoustic detections. Data on captures, roost tree use, and acoustic detections should post-date the year when white-nose syndrome was detected in the relevant state. With this question, we are looking for data that, for some reason, may have not yet been made available to U.S. Fish and Wildlife Service.

   No

3. Does any component of the action involve construction or operation of wind turbines?

   Note: For federal actions, answer ‘yes’ if the construction or operation of wind power facilities is either (1) part of the federal action or (2) would not occur but for a federal agency action (federal permit, funding, etc.).

   No

4. Is the proposed action authorized, permitted, licensed, funded, or being carried out by a Federal agency in whole or in part?

   Yes

5. Is the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), or Federal Transit Administration (FTA) funding or authorizing the proposed action, in whole or in part?

   No

6. Are you an employee of the federal action agency or have you been officially designated in writing by the agency as its designated non-federal representative for the purposes of Endangered Species Act Section 7 informal consultation per 50 CFR § 402.08?

   Note: This key may be used for federal actions and for non-federal actions to facilitate section 7 consultation and to help determine whether an incidental take permit may be needed, respectively. This question is for information purposes only.

   Yes

7. Is the lead federal action agency the Environmental Protection Agency (EPA) or Federal Communications Commission (FCC)? Is the Environmental Protection Agency (EPA) or Federal Communications Commission (FCC) funding or authorizing the proposed action, in whole or in part?

   No

8. Is the lead federal action agency the Federal Energy Regulatory Commission (FERC)?

   No

9. Have you determined that your proposed action will have no effect on the northern long-eared bat? Remember to consider the effects of any activities that would not occur but for the proposed action.

   If you think that the northern long-eared bat may be affected by your project or if you would like assistance in deciding, answer “No” below and continue through the key. If you have determined that the northern long-eared bat does not occur in your project’s action area and/or that your project will have no effects whatsoever on the species despite the potential for it to occur in the action area, you may make a “no effect” determination for the northern long-eared bat.

   Note: Federal agencies (or their designated non-federal representatives) must consult with USFWS on federal agency actions that may affect listed species [50 CFR 402.14(a)]. Consultation is not required for actions that will not affect listed species or critical habitat. Therefore, this determination key will not provide a consistency or verification letter for actions that will not affect listed species. If you believe that the northern long-eared bat may be affected by your project or if you would like assistance in deciding, please answer “No” and continue through the key. Remember that this key addresses only effects to the northern long-eared bat. Consultation with USFWS would be required if your action may affect another listed species or critical habitat. The definition of Effects of the Action can be found here: https://www.fws.gov/media/northern-long-eared-bat-assisted-determination-key-selected-definitions

   No

10. [Semantic] Is the action area located within 0.5 miles of a known northern long-eared bat hibernaculum?

    Note: The map queried for this question contains proprietary information and cannot be displayed. If you need additional information, please contact your State wildlife agency.

    Automatically answered
    No

11. Does the action area contain any caves (or associated sinkholes, fissures, or other karst features), mines, rocky outcroppings, or tunnels that could provide habitat for hibernating northern long-eared bats?

    No

12. Does the action area contain or occur within 0.5 miles of (1) talus or (2) anthropogenic or naturally formed rock crevices in rocky outcrops, rock faces or cliffs?

    No

13. Is suitable summer habitat for the northern long-eared bat present within 1000 feet of project activities?
    (If unsure, answer "Yes.")

    Note: If there are trees within the action area that are of a sufficient size to be potential roosts for bats (i.e., live trees and/or snags ≥3 inches (12.7 centimeter) dbh), answer "Yes". If unsure, additional information defining suitable summer habitat for the northern long-eared bat can be found at: https://www.fws.gov/media/northern-long-eared-bat-assisted-determination-key-selected-definitions

    Yes

14. Will the action cause effects to a bridge?

    No

15. Will the action result in effects to a culvert or tunnel?

    Yes

16. Do the interior dimensions of the culvert or tunnel equal or exceed 4.0 feet (1.3 meters) in height and 130 feet (40 meters) in length? Answer "No" if the affected culvert(s) or tunnel is smaller in either of these two dimensions.

    Yes

17. Has a site-specific bridge/structure (e.g., culvert) assessment following USFWS guidelines been completed?

    Note: For information on conducting a bridge/structure assessment see Appendix D of the User's Guide for the Range-wide Programmatic Consultation for Indiana Bat and Northern Long-eared Bat and the associated Bridge/Structure Bat Assessment Form?

    No

18. Will the proposed action result in the cutting or other means of knocking down, bringing down, or trimming of any trees suitable for northern long-eared bat roosting?

    Note: Suitable northern long-eared bat roost trees are live trees and/or snags ≥3 inches dbh that have exfoliating bark, cracks, crevices, and/or cavities.

    No

PROJECT QUESTIONNAIRE

Will all project activities by completed by April 1, 2024?

No

IPAC USER CONTACT INFORMATION

Agency: Department of Agriculture
Name: Rita Sveen
Address: 417 Park St W Ste 1
City: Park River
State: ND
Zip: 58270
Email rita.sveen@usda.gov
Phone: 7013311386

Natural Resources Conservation Service
U.S. DEPARTMENT OF AGRICULTURE
Bismarck State Office
PO Box 1458
220 E. Rosser Ave
Bismarck, ND 58502-1458

Christopher Swanson
U.S. Fish and Wildlife Service
3425 Miriam Ave
Bismarck, ND 58501

April 1, 2025

Dear Mr. Swanson,

RE: Section 12 Consultation Upper Maple River Watershed Plan–EIS , Project Code 2024-0041847

I appreciate the ongoing contributions USFWS has provided to the Upper Maple River Watershed Plan, including the recent Section 7 ESA consultation provided on January 29, 2024.

In accordance with Section 12 of the Watershed Protection and Flood Prevention Act, Public Law 83-566 (U.S.C. Section 1008), this letter serves as notification to the U.S. Fish and Wildlife Service (USFWS) of the opportunity to submit survey reports or investigations regarding wildlife resources that will be considered in the development of the Upper Maple Watershed Plan- EIS.

NRCS understands that USFWS is unable to commit the resources to participating as a cooperating federal agency on the planning effort, per your response on January 7, 2025.

If you have any questions or comments, please contact the ND NRCS Watershed Program Manager, Christi Fisher at Christi.Fisher@usda.gov or by phone at (701) 530-2091.

Sincerely,

DANIEL HOVLAND
Digitally signed by DANIEL HOVLAND
Date: 2025.04.01 07:16:29 -05'00'

DAN HOVLAND
State Conservationist

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From: Swanson, Christopher (Chris)
To: Fisher, Christi - FPAC-NRCS, ND
Cc: Sveen, RitaHarmsen - FPAC-NRCS, ND; Toso, Luke B
Subject: Re: [EXTERNAL] Upper Maple River Watershed Plan - Section 12
Date: Tuesday, April 1, 2025 7:35:22 AM
Attachments: image001.png

Thank you Christi. I will share this with my team to see if there are any survey reports that would be helpful to NRCS in the development of the Upper Maple River Watershed EIS. They will reach out directly to you if we have something to contribute in the next week or so. If you do not hear from us during this time, we don't have pertinent information to share.

Cheers,

Chris

Chris Swanson
Field Supervisor
U.S. Fish and Wildlife Service
North and South Dakota Ecological Services

From: Fisher, Christi - FPAC-NRCS, ND <christi.fisher@usda.gov>
Sent: Tuesday, April 1, 2025 7:24 AM
To: Swanson, Christopher (Chris) <christopher_swanson@fws.gov>
Cc: Sveen, RitaHarmsen - FPAC-NRCS, ND <rita.sveen@usda.gov>; Toso, Luke B <luke_toso@fws.gov>
Subject: [EXTERNAL] Upper Maple River Watershed Plan - Section 12

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Chris,

We were made aware, during a national review, that we neglected to address Section 12 consultation in our last letter. The attached letter is intended to remedy that issue.

Thanks,

Christi

Christi Fisher, P.E.
State Conservation Engineer
North Dakota NRCS

USDA
U.S. DEPARTMENT OF AGRICULTURE
Natural Resources Conservation Service
220 E Rosser Ave, Bismarck, ND 58502-1458
p: (701) 530-2091 | c: (701) 426-3396

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From: Fisher, Christi - FPAC-NRCS, ND
To: Sveen, RitaHarmsen - FPAC-NRCS, ND
Subject: FW: Upper Maple River Watershed Plan
Date: Tuesday, April 1, 2025 8:35:35 AM

From: Reinisch, Jerry D <jerry_reinisch@fws.gov>
Sent: Tuesday, April 1, 2025 8:34 AM
To: Fisher, Christi - FPAC-NRCS, ND <christi.fisher@usda.gov>
Subject: Upper Maple River Watershed Plan

Christi

After checking my records in reference to this request, I find no survey work for Western prairie fringed orchids in that area. You should contact Kathy Duttenhefner at North Dakota Parks and Recreation Department as she coordinates most of the survey work for that species in North Dakota. There are a few active bald eagle nests along that drainage.

Regards

Jerry

Jerry D. Reinisch
U.S. Fish & Wildlife Biologist-Energy
Tribal Liason
3425 Miriam Avenue
Bismarck, North Dakota 58501
(O) 701-333-0267
(FWS) 701-226-7763
(C) 701-425-2133
jerry_reinisch@fws.gov

From:	Duttenhefner, Kathleen G.
To:	Sveen, RitaHarmsen - FPAC-NRCS, ND
Subject:	RE: Upper Maple River Watershed Plan
Date:	Tuesday, April 22, 2025 12:54:48 PM
Attachments:	image003.png USDA_Upper_Maple_River_Watershed_Plan_EIA_CL_KD_Responce_Letter_DL4.22.2025.pdf USDA_Upper_Maple_River_Watershed_Plan_USFWS letter2_HERITAGE.pdf USDA_Upper_Maple_River_Watershed_Plan_USFWS letter2_LWCF.pdf USDA_Upper_Maple_River_Watershed_Plan_USFWS letter2_MAP.pdf

---

Re: Upper Maple River Watershed Plan/EIS

North Dakota Parks and Recreation Department's Environmental Review Response letter is attached.

Kathy Duttenhefner

Natural Resources Division Chief

701.328.5370 • 701.220.3377 • parkrec.nd.gov

NORTH Dakota | Parks & Recreation

Be Legendary.

From: Sveen, RitaHarmsen - FPAC-NRCS, ND <rita.sveen@usda.gov>
Sent: Tuesday, April 8, 2025 2:35 PM
To: Duttenhefner, Kathleen G. <kgduttenhefner@nd.gov>
Subject: FW: Upper Maple River Watershed Plan

***** **CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe. *****

Hi Kathy,

We recently sent a draft watershed plan for the Upper Maple River Watershed Plan/EIS to the National Watershed Management Center for review. One of their review comments was to reach out to USFWS for consultation specific to section 12 of the Watershed Protection Act, PL 83-566 (section 1008) and provide an opportunity for USFWS to submit survey reports or investigations regarding wildlife resources. Our letter was referred to Jerry Reinisch. Mr. Reinisch's reply was a recommendation to contact you in regards to survey work for western prairie fringed orchid in this area.

I'm attaching the project map. The project is located in Barnes County , ND T142 R56 Sections 9,9,15-17,20-22.

Do you have any survey's in that area? We would welcome any correspondence with your input on species of concern for this area. All the draft planning documents can be found at our

website: https://www.nrcs.usda.gov/state-offices/north-dakota/upper-maple-river-watershed-plan. Please let me know if you have questions or if you would like to discuss the project.

Regards,

Rita H. Sveen
Watershed Conservationist
NRCS-ND | State Engineering

USDA Natural Resources Conservation Service
U.S. DEPARTMENT OF AGRICULTURE
417 Park St. W Ste1, Park River, ND 58270
p: (701) 284-7771 ext.124
e: rita.sveen@usda.gov

Helping People Help the Land
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From: Fisher, Christi - FPAC-NRCS, ND <christi.fisher@usda.gov>
Sent: Tuesday, April 1, 2025 8:36 AM
To: Sveen, RitaHarmsen - FPAC-NRCS, ND <rita.sveen@usda.gov>
Subject: FW: Upper Maple River Watershed Plan

From: Reinisch, Jerry D <jerry_reinisch@fws.gov>
Sent: Tuesday, April 1, 2025 8:34 AM
To: Fisher, Christi - FPAC-NRCS, ND <christi.fisher@usda.gov>
Subject: Upper Maple River Watershed Plan

Christi
After checking my records in reference to this request, I find no survey work for Western prairie fringed orchids in that area. You should contact Kathy Duttenhefner at North Dakota Parks and Recreation Department as she coordinates most of the survey work for that species in North Dakota. There are a few active bald eagle nests along that drainage.
Regards
Jerry

Jerry D. Reinisch
U.S. Fish & Wildlife Biologist-Energy
Tribal Liason
3425 Miriam Avenue
Bismarck, North Dakota 58501
(O) 701-333-0267
(FWS) 701-226-7763
(C) 701-425-2133
jerry_reinisch@fws.gov

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April 22, 2025

Rita H Sveen
USDA Natural Resources Conservation Service
417 Park Street West Suite 1
Park River, ND 58270

Re: Upper Maple River Watershed Plan/EIS

Dear Rita,

The North Dakota Parks and Recreation Department (NDPRD) has reviewed the above-referenced Upper Maple River Watershed Plan/EIS in North Dakota.

NDPRD's scope of authority and expertise covers properties that NDPRD owns, leases, or manages; properties protected under Section 6(f) of the Land and Water Conservation Fund (LWCF); rare plants; and ecological communities established through the Natural Heritage Program.

The project does not appear to affect the properties NDPRD owns, leases, or manages.
The project may affect properties protected under Section 6(f) of the LWCF.

Several LWCF projects has been identified near the proposed project's vicinity. Attached is a map identifying the approximate location. Properties that have received funding from the LWCF program have a designated 6(f) property boundary that carries restrictions on modifications to the property, including but not limited to utilities or any divesture of land. For additional information regarding LWCF properties, don't hesitate to contact Char Langehaug, ND Parks and Recreations Department's Grants Coordinator, at clangehaug@nd.gov or 701-328- 5364.

A North Dakota Natural Heritage biological conservation database query determines whether any current or historical plant or animal species of concern or other significant ecological communities are known to occur within an approximate one-mile radius of the project area. Based on this review, no known plant and animal species of concern or significant ecological communities are documented within or immediately adjacent to the project site.

We appreciate your commitment to rare plant, animal, and ecological community conservation, management, and inter-agency cooperation. For additional information, contact Natural Resources Division Chief Kathy Duttenhefner at 701-328-5370, 701-220-3377 (cell), or kgduttenhefner@nd.gov. Thank you for the opportunity to comment on the proposed project.

Sincerely,

Kathy Duttenhefner

Kathy Duttenhefner, Chief Natural Resources Division

604 E Boulevard Ave Dept. 750 | Bismarck, ND 58505
PHONE: 701-328-5357 | FAX: 701-328-5363 | EMAIL: parkrec@nd.gov | WEBSITE: www.parkrec.nd.gov

Appendix A-10

Tribal/ND SHPO

Consultation Correspondence

Tribal/SHPO Consultation 1/19/2024

Jonathan Windy Boy, THPO	Tribal Historic Preservation Officer	Chippewa Cree Tribe of the Rocky Boy's	PO Box 544	Box Elder	MT	59521	rep32jwb@gmail.com
Harlan Baker	Chairman	Chippewa Cree Tribe of the Rocky Boy's	96 Clinic Rd	Box Elder	MT	59521	hidatsa_cree@yahoo.com
Michael J. Black Wolf, THPO	Tribal Historic Preservation Officer	Fort Belknap Indian Community	656 Agency Main St	Harlem	MT	59526	mblackwolf@ftbelknap.org
Jeffery Stiffarm	President	Fort Belknap Indian Community	RR 1 Box 66	Harlem	MT	59526	jeffery.stiffarm@ftbelknap.org
Dyan Youpee, THPO	Tribal Historic Preservation Officer	Fort Peck Assiniboine and Sioux Tribes	PO Box 10	501 Medic	Poplar	MT	59255 d.youpee@fortpecktribes.net
Floyd Azure	Chairman	Fort Peck Assiniboine and Sioux Tribes	PO Box 1027		Poplar	MT	59255 fazure@fortpecktribes.net
Kenneth Graywater Jr., THPO	Tribal Historic Preservation Officer	Spirit Lake Tribe of Fort Totten	PO Box 189		Fort Totten	ND	58335 thpo@spiritlakenation.com
Lonna Street	Chairwoman	Spirit Lake Tribe of Fort Totten	816 3rd Ave N		Fort Totten	ND	58335 slt-adminsec@spiritlakenation.com
Jon Eagle, Sr. THPO	Tribal Historic Preservation Officer	Standing Rock Sioux Tribe	PO Box D		Fort Yates	ND	58538 j.eagle@standingrock.org
Janet Alkire	Chairperson	Standing Rock Sioux Tribe	PO Box D		Fort Yates	ND	58538 PO Box D Fort Yates, ND 58538-0522
Larus Longie, THPO	Tribal Historic Preservation Officer	Turtle Mountain Band of Chippewa	PO Box 900		Belcourt	ND	58316 larus.longie@tmbci.org
Jamie Azure	Chairperson	Turtle Mountain Band of Chippewa	PO Box 900		Belcourt	ND	58316 jamie.Azure@tmbci.org
Cheyanne St. John, THPO	Tribal Historic Preservation Officer	Lower Sioux Indian Community	PO Box 308		Morton	MN	56270 cheyanne.stjohn@lowersioux.com
Robert Larsen	President	Lower Sioux Indian Community	PO Box 308		Morton	MN	56270 robert.larsen@lowersioux.com
Jamie Arsenault, THPO and NAGPRA Rep.	Tribal Historic Preservation Officer	White Earth Nation of Minnesota Chippe	PO Box 418		White Eart	MN	56591 jaime.arsenault@whiteearth-nsn.gov
Terrence Tibbetts	Chairperson	White Earth Nation of Minnesota Chippe	PO Box 418		White Eart	MN	56592 terrence.tibbetts@whiteearth-nsn.gov
Kade Ferris, THPO	Tribal Historic Preservation Officer	Red Lake Band of Chippewa Indians	PO Box 274		Red Lake	MN	56671 kade.ferris@redlakenation.org
Darrell Seki	Chairperson	Red Lake Band of Chippewa Indians	PO Box 550		Red Lake	MN	56671 dseki@redlakenation.org
Merle Marks, THPO	Tribal Historic Preservation Officer	Crow Creek Sioux Tribe	PO Box 50		Fort Thom	SD	57339 cchistory@midstatesd.net
Lester Thompson Jr.	Chairperson	Crow Creek Sioux Tribe	PO Box 50		Fort Thom	SD	57339 PO Box 50 Fort Thompson, SD 57339-0050
Garrie Kills A Hundred, THPO	Tribal Historic Preservation Officer	Flandreau Santee Sioux Tribe	PO Box 283		Flandreau	SD	57028 garrie.killsahundred@fsst.org
Anthony Reider	Chairperson	Flandreau Santee Sioux Tribe	PO Box 283		Flandreau	SD	57028 ~~president@fsst.org~~
Dianne Desrosiers, THPO	Tribal Historic Preservation Officer	Sisseton-Wahpeton Oyate	PO Box 907		Sisseton	SD	57262 dianned@swo-nsn.gov
J. Garrett Renville	Chairperson	Sisseton-Wahpeton Oyate	12554 BIA Hwy 711		Agency Vill	SD	57262 chairman@swo-nsn.gov
Colton Archambeau, THPO	Tribal Historic Preservation Officer	Yankton Sioux Tribe	PO Box 1153		Wagner	SD	57380 yst.thpo@gmail.com
Robert Hawk	Chairperson	Yankton Sioux Tribe	PO Box 1153		Wagner	SD	57380 robertflyinghawk@gmail.com
Justin Pourier	Tribal Historic Preservation Officer	Oglala Sioux Tribe	PO Box 129		Kyle	SD	57752 j.pourier@oglala.com
Julian Bear Runner	President	Oglala Sioux Tribe	PO Box 2070		Pine Ridge	SD	57770 president.bearrunner@oglala.org
Samantha Odegard, THPO Coordinator	Tribal Historic Preservation Officer	Upper Sioux Community	PO Box 14	5722 Trave	Granite Fa	MN	56241 samanthao@uppersiouxcommunity-nsn.gov
Kevin Jensvold	Chairman	Upper Sioux Community	PO Box 147		Granite Fa	MN	56241 kevinj@uppersiouxcommunity-nsn.gov
Kathryn McDonald, THPO	Tribal Historic Preservation Officer	Confederated Salish and Kootenai Tribe	PO Box 278		Pablo	MT	59855 kathryn.mcdonald@cskt.org
Tom McDonald	Chairman	Confederated Salish and Kootenai Tribe	PO Box 278		Pablo	MT	59855 council@cskt.org
Aaron Brien	Tribal Historic Preservation Officer	The Crow Tribe of Montana	PO Box 159		Crow Agen	MT	59022 aaron.brien@crow-nsn.gov
AJ NotAfraid	Chairperson	The Crow Tribe of Montana	PO Box 159		Crow Agen	MT	59022 aj.notafraid@crow-nsn.gov
Joshua Mann, THPO	Tribal Historic Preservation Officer	Shoshone Tribe of the Wind River Reserv	PO Box 538		Fort Washa	WY	82514 jmann@easternshoshone.org
John St Clair	Chairperson	Shoshone Tribe of the Wind River Reserv	PO Box 538		Fort Washa	WY	82514
Allan Demaray, THPO	Tribal Historic Preservation Officer	The Three Affiliated Tribes	404 Frontage Rd		New Town	ND	58763 ademaray@mhanation.com
Mark Fox	Chairperson	The Three Affiliated Tribes	404 Frontage Rd		New Town	ND	58763 ~~markfox@mhanation.com~~
Steven Vance, THPO	Tribal Historic Preservation Officer	Cheyenne River Sioux Tribe	PO Box 590		Eagle Butte	SD	57625 stevev.crstpres@outlook.com
Ryman LeBeau	Chairperson	Cheyenne River Sioux Tribe	PO Box 590		Eagle Butte	SD	57625
Ione Quigley, THPO	Tribal Historic Preservation Officer	Rosebud Sioux Tribe of Indians	PO Box 809		Rosebud	SD	57570 ione.quigley@rst-nsn.gov
Scott O. Herman	President	Rosebud Sioux Tribe of Indians	PO Box 430		Rosebud	SD	57570 PO Box 430 Rosebud, SD 57570-0430
Gina Lemon, THPO	Tribal Historic Preservation Officer	Leech Lake Band of Ojibwe	190 Sailstar Dr NE		Cass Lake	MN	56633 gina.lemon@llojibwe.net
Faron Jackson	Chairman	Leech Lake Band of Ojibwe	190 Sailstar Dr NE		Cass Lake	MN	56633 faron.jackson@llojibwe.org
Teanna Limpy, THPO	Tribal Historic Preservation Officer	Northern Cheyenne Tribe	PO Box 128		Lame Deer	MT	59043 teanna.limpy@cheyennenation.com
Serena Wetherelt	Vice-President	Northern Cheyenne Tribe	PO Box 128		Lame Deer	MT	serena.wetherelt@cheyennenation.com
Timothy Davis	Chairman	Blackfeet Indian Reservation of Montana	PO Box 850		Browning	MT	59417 tdavis@blackfeetnation.com
John Murray	THPO	Blackfeet Indian Reservation of Montana	PO Box 5809/527		Browning	MT	59417 jmflysdown@gmail.com
Jaylen Strong	THPO	Bois Forte Band of the Minnesota Chipp	1500 Boix Forte Rd		Tower	MN	55790 blatady@boisforte-nsn.gov
Catherine Chavers	Chairperson	Bois Forte Band of the Minnesota Chipp	5344 Lakeshore Dr		Nett Lake	MN	55772 chavers@boisforte-nsn.gov
Evan Schroeder	THPO	Fond du Lac Band of the Minnesota Chip	1720 Big Lake Rd		Cloquet	MN	55720 evanschroeder@fdlrez.com
kevin Dupuis	Chairperson	Fond du Lac Band of the Minnesota Chip	1720 Big Lake Rd		Cloquet	MN	55720 kevindupuis@fdlrez.com
Rob Hull	THPO	Grand Portage Band of the Minnesota Cl	PO Box 428		Grand Port	MN	55605 thpo@grandportage.com
Beth Drost	Chairwoman	Grand Portage Band of the Minnesota Cl	PO Box 428		Grand Port	MN	55605 bethdrost@grandportage.com
Noah White	THPO	Prairie Island Indian Community in Minn	5636 Sturgeon Lake		Welch	MN	55089 noah.white@piic.org
Johnny Johnson	President	Prairie Island Indian Community in Minn	5636 Sturgeon Lake		Welch	MN	55089 Sbartell@piic.org
Mike Wilson	THPO	Mille Lacs Band of Ojibwe	43408 Oodena Dr		Onamia	MN	56359 mike.wilson@millacsband.com
Melanie Benjamin	Chief Executive	Mille Lacs Band of Ojibwe	43408 Oodena Dr		Onamia	MN	56359 melanie.benjamin@millelacsband.com
Ben Ridgely	THPO	Northern Arapaho Tribe	PO Box 67		St. Stevens	WY	82524 benridgley007@gmail.com
Lee Spoonhunter	Chairperson	Northern Arapaho Tribe	PO Box 396		Fort Washa	WY	82514 lee.spoonhunter@northernarapaho.com
Lisa Steckler	Historic Preservation Specialist	State Historical Society of North Dakota	612 East Boulevard Av		Bismarck	ND	58505 701-328-2666

Example Letter sent to 30 tribes

USDA United States Department of Agriculture

Natural Resources
Conservation Service

Bismarck State Office
PO Box 1458
Bismarck, ND
58502-1458

Voice 701.530.2000
Fax 855-813-7556

January 19, 2024

Chairman Faron Jackson
Leech Lake Band of Ojibwe
190 Sailstar Dr NE
Cass Lake, MN 56633

RE: Request for Continued Section 106 Consultation for the Upper Maple River Watershed Project; Preferred Alternative 2A

Honorable Chairman Jackson,

In accordance with 36 CFR 800.5, the North Dakota Natural Resources and Conservation Service (NRCS) is requesting your comments on a proposed Watershed undertaking NRCS' findings discussed in the Attached Class III Cultural Resources Intensive Survey Report. The location of the survey is in sections 9,16,17,20 and 21 of Barnes County in SE North Dakota.

On November 5, 2018, North Dakota NRCS' State Conservationist sent out the initial Section 106 consultation letter to ND SHPO and several Tribal Government offices for this plan as well as several others. At this time the Draft Plan EIS is in the later stages of editing.

Purpose and Need

- Purpose: The purpose of the proposed action is watershed protection.
- Need: The Upper Maple River watershed annually contributes 30,200 pounds of phosphorus and 331,600 pounds of nitrogen to the Red River, for which U.S. agreed to nutrient objectives at the international border have not been achieved. Average annual cropland inundation by flooding in the watershed is 12,600 acres which results in high transport of nutrients to the Maple River, in addition to detrimental impacts to agricultural production and infrastructure. Historic loss of wetland and upland habitat throughout the Red River Basin, including the Upper Maple River watershed, threaten multiple species.

A scoping process was used to determine the issues significant in defining the problems and formulating and evaluating alternatives narrowed the potential Area of Potential Effect (APE) for cultural resources to the preferred alternative 2A. Scoping included a public meetings and a written requests for input from federal, tribal, state, and local agencies. The NRCS convened a group of interdisciplinary agency experts to review the alternatives being evaluated.

APE for Preferred Alternative 2A.

Legal Location: T142N; R56W, Portions of Section 9, 16, 17, 21.
County: Barnes County
USGS 7.5' Quadrangle: Pillsbury and Pillsbury SE (2018)

The Preferred Alternative entails construction of a dry dam with interior features for the purpose of nutrient reduction and wildlife habitat. The primary dam structure will provide temporary (less than one week) floodwater retention during peak flow events and has a drainage area of 59.7 square miles, embankment length of 2.3 miles, maximum height of 31 feet, 48-inch principal spillway conduit, and structural concrete auxiliary spillway to create 2,863 acre-feet of flood storage to the auxiliary spillway crest. The alternative also includes one farm levee 535' feet, one farm ring levee of 2578 feet. The auxiliary spillway is the primary source of borrow for the dam. Three biomass harvest areas (278 acres) will be constructed behind the dam; these will be constructed with berms, fill, excavation, 3 outlet control structures, 5,800 feet of pipeline and the biomass areas will also be underlaid with tile drainage. Eleven ditch plugs will be installed to restore wetlands. One 5.7 ac wetland creation will also serve as borrow source. All disturbed areas will be seeded to wildlife suitable herbaceous species. See Attached Project Map.

Record Search and Pedestrian Survey of APE

A Class I literature review was conducted by SWCA Environmental Consultants (SWCA) for the entire Upper Maple River Watershed between February 15 through 22, 2016. The results of this review can be found in the 2016 Class I Letter Report enclosure.

Former State Cultural Resources Specialist-East Zone Christopher A. Plount (PI) conducted a pedestrian survey on May 28, 2020, of the entire APE for Preferred Alternative 2A and completed a reconnaissance survey on June 8, 2020. A Draft Class II report was written for this survey, however there was no consultation or submission due to a need for additional survey.

Since the previous Class I and Reconnaissance Report a second updated Class I Literature Review search was completed between December 15 to January 5, 2023, for the entire Upper Maple River Watershed and focused on Preferred Alternative 2A. The record search produced no known cultural resources or previous surveys within the Area of Potential Effect (APE) in Preferred Alternative 2A. The focused record search area covered a 2-mile radius of the preferred alternative 2A. In the Preferred Alternative 2A, a total of four previous surveys (010570, 010817, 016808, and 016872) and five recorded sites or site leads (32BA297, 32BA305, 32BAX89, 32BAX160, and 32BAX161) were identified within two miles of the APE; one newly recorded site was documented during the 2020 reconnaissance survey and a ND- archaeology site form completed in 2023. Site 32BA1212 is located within the APE but has been recommended not eligible by NRCS.

The project agreement and the construction contract will specify that if there are any inadvertent or unanticipated discoveries of cultural resources during construction or

operation, work shall immediately be stopped, the affected site secured, and the state archaeologist notified. In addition, the construction contract will prohibit project workers from collecting artifacts or intentionally disturbing cultural resources in any area under any circumstances. All borrow material is anticipated to come from onsite, however should the project require additional borrow material from an offsite or unevaluated location, the location will be evaluated by the NRCS Archeologist and Tribes, and the State Historic Preservation Office consulted to its utilization outlined in 36 CFR800.13B.
If an inadvertent discovery is encountered all work will stop within 100 feet of the discovery and the ND SHPO and the consulting Native American Indian Tribes will be contacted.

NRCS requests your concurrence with its determination of "No Effects to Historic Properties" for Preferred Alternative 2A.

If you have any questions regarding this project, please contact Ms. Harrison at (701) 516-2280 or by email at janelle.harrison@usda.gov.

Sincerely,

DANIEL HOVLAND Digitally signed by DANIEL HOVLAND
Date: 2024.01.19 11:14:17 -06'00'

DAN HOVLAND
State Conservationist

Cc: THPO Amy Burnette

February 22, 2024

Janelle Harrison
NRCS
Bismarck State Office
PO Box 1458
Bismarck, ND 58502-1458

ND SHPO Ref.: 16-0390 Continued Section 106 Consultation for the Upper Maple River Watershed Project; Preferred Alternative 2A

Dear Janelle,

We reviewed ND SHPO Ref.: 16-0390 Continued Section 106 Consultation for the Upper Maple River Watershed Project; Preferred Alternative 2A and we require additional information in order to complete our review. Please address the following points and we will be happy to review your project again.

1. Please reattach the proposed project map.
2. Based on historic aerial imagery site 32BA1212 is within an extensive historic farmstead that was well established by the 1957. Although most of the remains were removed and plowing occurred in the area, the area may still have potential for intact cultural resources. Therefore, the area will require further work.

Thank you for the opportunity to review this project. If you have any questions please contact Lisa Steckler, Historic Preservation Specialist at (701) 328-3577, e-mail lsteckler@nd.gov

Sincerely,

for William D. Peterson, PhD
State Historic Preservation Officer
(North Dakota)

16-0390

September 13, 2024

Rita H. Sveen
Watershed Conservationist
417 Park St W Ste 1
Park River, ND 58270
Natural Resources Conservation Service
United States Department of Agriculture

ND SHPO Ref.: 16-0390 "A Cultural Resources Reconnaissance Survey of the Upper Maple River Watershed Alternative 2A 142N; R56W, Portions of Section 8, 9, 15, 16, 17, 20, 21, and 22 Barnes County, ND"

Dear Rita

We reviewed ND SHPO Ref.: 16-0390 "A Cultural Resources Reconnaissance Survey of the Upper Maple River Watershed Alternative 2A 142N; R56W, Portions of Section 8, 9, 15, 16, 17, 20, 21, and 22 Barnes County, ND" and we require additional information in order to complete our review. We request a meeting to discuss the attached comments and look forward to speaking with you soon.

Thank you for the opportunity to review this project. If you have any questions please contact Lisa Steckler, Historic Preservation Specialist at (701) 328-3577, e-mail lsteckler@nd.gov

Sincerely,



for William D. Peterson, PhD
State Historic Preservation Officer
(North Dakota)

16-0390

December 10, 2024

Rita H. Sveen
Watershed Conservationist
417 Park St W Ste 1
Park River, ND 58270
Natural Resources Conservation Service
United States Department of Agriculture

ND SHPO Ref.: 16-0390 "A Cultural Resources Reconnaissance Survey of the Upper Maple River Watershed Alternative 2A 142N; R56W, Portions of Section 8, 9, 15, 16, 17, 20, 21, and 22 Barnes County, ND"

Dear Rita

We have reviewed ND SHPO Ref.: 16-0390 "A Cultural Resources Reconnaissance Survey of the Upper Maple River Watershed Alternative 2A 142N; R56W, Portions of Section 8, 9, 15, 16, 17, 20, 21, and 22 Barnes County, ND". We concur with a determination of “No Adverse Effect” for this project provided it takes place in the location and manner described in the documentation and provided 32BA1212 is monitored during construction.

Thank you for the opportunity to review this project. If you have any questions please contact Lisa Steckler, Historic Preservation Specialist at (701) 328-3577, e-mail lsteckler@nd.gov

Sincerely,

for William D. Peterson, PhD
State Historic Preservation Officer
(North Dakota)

16-0390

From: John Birdinground
To: Harrison, Janelle - FPAC-NRCS, ND
Subject: [External Email]Upper Maple River Watershed Project
Date: Wednesday, March 13, 2024 12:50:18 PM

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The Crow Tribal Historic Preservation Office has no interest in the Upper Maple River Watershed Project; Preferred Alternative 2A located at T142N; R56W, Portions of Section 9, 16, 17, 21. Barnes County, North Dakota.

If any unexpected discoveries of historic/cultural properties are found during any ground disturbance, please call our office immediately.

Thank you,

John Bird In Ground

Aaron B. Brien, Director
Crow Tribal Historic Preservation Office
PO Box 159
Crow Agency, MT 59022
Cell: 406-679-2511
Office: 406-839-3817
aaron.brien@crow-nsn.gov

John Bird In Ground
NAGPRA Tech./Section 106 Reviewer
Crow Tribal Historic Preservation Office
PO Box 159
Crow Agency, MT 59022
Office:406-839-3817
john.birdinground@crow-nsn.gov

From: gary.lafranier@cheyennenation.com
To: Harrison, Janelle - FPAC-NRCS, ND
Subject: [External Email]Upper Maple River Watershed Project - Preferred Alternative 2A
Date: Wednesday, February 21, 2024 12:33:50 PM
Importance: High

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Good Morning,

After reviewing the project, Northern Cheyenne concurs with No Effect and Preferred Alternative 2A.

Thank You,

Gary LaFranier
FCC/ Section 106 Coordinator
(406) 477-8114
Lame Deer, MT. 59043

From: Steve Vance
To: Sveen, RitaHarmsen - FPAC-NRCS, ND
Subject: Re: Upper Maple River Watershed Plan - Request for Continued Consultation
Date: Wednesday, January 24, 2024 5:16:30 PM

Rita,
The Cheyenne River Sioux Tribe will concur with the "no historic property effected" for the proposed action.
We recommend a representative from NRCS be present during all ground disturbance.
For future reference use Chairman Ryman LeBeau.

From: Sveen, RitaHarmsen - FPAC-NRCS, ND <rita.sveen@usda.gov>
Sent: Monday, January 22, 2024 3:44 PM
To: Steve Vance <Steve.Vance@crstmail.com>
Subject: Upper Maple River Watershed Plan - Request for Continued Consultation

Dear THPO Vance,

A hard copy of the attached Class III Cultural Resource Survey was mailed to your tribal leader on January 19, 2024. Please review the attached cover letter which summarizes this project and our request for consultation from your tribe. The Class III Survey is also attached. We welcome your comments and input on the survey.

You will be invited to provide comments in regards to NEPA, on the Draft Plan EIS when it becomes available later in 2024 Additional planning documents may be found on this website: https://www.nrcs.usda.gov/conservation-basics/conservation-by-state/north-dakota/upper-maple-river-watershed-plan

Please direct survey questions and comments to Janelle Harrison, NRCS State Cultural Resource Specialist: Janelle.harrison@usda.gov

Regards,

Rita H. Sveen
Watershed Conservationist
417 Park St W Ste 1
Park River, ND 58270
Natural Resources Conservation Service
United States Department of Agriculture
http://www.nd.nrcs.usda.gov
Tel: 701-284-7771 ext124
Cell: 701-331-1386

This electronic message contains information generated by the USDA solely for the intended

From: Harrison, Janelle - FPAC-NRCS, ND
To: Sveen, RitaHarmsen - FPAC-NRCS, ND; Fisher, Christi - FPAC-NRCS, ND
Subject: FW: [External Email]Chairman Update! - Maple River Watershed Project
Date: Monday, February 5, 2024 11:39:22 AM
Attachments:

Good morning,

Spirit Lake Nation has requested to be a formal consulting party to the UMR project.

v/r
Janelle Harrison, M.A., RPA
ND- NRCS Cultural Resource Specialist
U.S. Department of Agriculture (USDA)
Natural Resources Conservation Services (NRCS)
220 East Rosser Ave, PO Box 1458
Bismarck, ND 58502-1458
Work Cell: (701)-516-2280
Janelle.harrison@usda.gov

USDA United States Department of Agriculture
Natural Resources Conservation Service
"Helping People Help the Land"

From: Susie Fox <sfox@spiritlakenation.com>
Sent: Monday, February 5, 2024 11:34 AM
To: Harrison, Janelle - FPAC-NRCS, ND <Janelle.Harrison@usda.gov>
Subject: [External Email]Chairman Update! - Maple River Watershed Project

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Please update your US Mail address, Myra Pearson is no longer Chairperson, she left office over 5 years ago! Lonna Jackson is the new elected Chairperson effective May 01, 2023. Please inform you office. See attachement for project submission.

Thank you.

Susie Fox
FCC Compliance
Spirit Lake THPO

Box 198
Fort Totten, ND 58335
OFFICE# 701.766.4031
CELL# 701.230.2133
sfox@spiritlakenation.com

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Spirit Lake Tribal Historic preservation Office
PO Box 198
Fort Totten, ND 58335

GREETINGS FROM SPIRIT LAKE TRIBAL HISTORICAL PRESERVATION OFFICE

SLT THPO

Thank you for sending the Spirit Lake Tribal Historic Preservation Office your proposed project. The Spirit Lake Nation has an interest in this project and under 36CFR8003f.2 we are formally requesting to be a consulting party on this project. Under 36 CFR 800.2B consultation with Native American Tribes and Native Hawaiian organizations must be conducted in a sensitive manner respectful of tribal sovereignty recognizing the special government to government relationship the Spirit Lake Tribe has with the United States Government. We are looking forward to working with you. Unfortunately, we cannot accept mailed or emailed submissions.

To comply with our environmental practices, speed up our response time, provide a digital timestamp of when we received your project, and maintain an auditable record of all files, correspondence, and work done on your project, we must request that you submit your proposed project to our Spirit Lake consultation portal.

When you go to our website, enter in your contact information, location information of your project, and upload the pertaining digital files and maps. You should receive a confirmation email after your project is successfully added to the system. Please submit your project to us at:

http://cms.spiritlakeconsulting.com

Our online method is required under Spirit Lake Tribal Resolution for all National Historic preservation Act Section 106 related requests - organization, documentation, and financial regulation, all projects must be processed through our website. **We will not accept any other form of consultation request including mail, paper, phone, or emailed submissions.**

If you have any questions please feel free to contact Susie Fox anytime at (701)766-4031 or cell (701)230-2133. You can also email me at sfox@spiritlakenation.com

Thank you,

From: Harrison, Janelle - FPAC-NRCS, ND
To: Sveen, RitaHarmsen - FPAC-NRCS, ND
Subject: FW: [External Email]New form submission to The Sisseton Wahpeton Oyate
Date: Wednesday, February 14, 2024 8:21:14 AM

For the admin record

v/r
Janelle Harrison, M.A., RPA
ND- NRCS Cultural Resource Specialist
U.S. Department of Agriculture (USDA)
Natural Resources Conservation Services (NRCS)
220 East Rosser Ave, PO Box 1458
Bismarck, ND 58502-1458
Work Cell: (701)-516-2280
Janelle.harrison@usda.gov

Natural Resources Conservation Service
"Helping People Help the Land"

-----Original Message-----
From: Apache <apache@heritageconsultation.com>
Sent: Tuesday, February 6, 2024 8:45 AM
To: Harrison, Janelle - FPAC-NRCS, ND <Janelle.Harrison@usda.gov>
Subject: [External Email]New form submission to The Sisseton Wahpeton Oyate

[External Email]
If this message comes from an unexpected sender or references a vague/unexpected topic; Use caution before clicking links or opening attachments.
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Hello Janelle, thank you for your recent form submission to the Sisseton Wahpeton Oyate Tribal Historic Preservation Department. We will be looking over this shortly and will get back to you as soon as we can.

The unique ID for your project, Upper Maple River Watershed Projecy, is:
thpo65c245fd97c3f

Please include this with any questions you may have via email

Submission summary:

Your Name: Janelle Harrison
Your Phone: 7015162280
Your Email: janelle.harrison@usda.gov
Your Project: Upper Maple River Watershed Projecy Project Description: The Upper Maple River Watershed Project Preferred Alternative 2A, as proposed, has benefited from two Class I literature reviews; one conducted by SWCA Environmental Consultants in March 2016 and the second by Janelle Harrison, NRCS- State Cultural Resources Specialist in March 2023. A Class III survey encompassing 380 -acres of the Upper Maple River (UMR) Watershed Project APE was completed in June 2020. Portions of the APE were surveyed in 2020, except for the existing wetland areas or other areas inundated with water that could not be surveyed.

Project Additional Information: The draft EIS is not complete. NRCS has contacted the public, local gov. and Tribal governments of public scoping meeting via email and hard copy letters. A draft EIS will be uploaded once available.
Files Attached: UMR Tribal Consultation Letter January 18 2024.pdf,

UMR_Survey_Report_update_11jan24_rhs.pdf,
Submission Date: 2024/02/06 07:45:17
Your TCNS Number:
Number of Exempt PTC Towers:
Number of NON Exempt PTC Towers:

Please contact our portal administrator if any of the project details are incorrect in the summary above or are empty and should contain values!
Portal Administrator: cms@heritageconsultation.com janelle.harrison@usda.gov

LEECH LAKE BAND OF OJIBWE

Tribal Historic Preservation Office

Gina M Lemon, Tribal Historic Preservation Officer
Anita M Cloud, Tribal Historic Preservation Assistant

January 25, 2024 Via Internet

USDA - NCRS
Attn: Dan Hovland, State Conservationist
National Resources Conservation Service (NRCS)
Bismarck State Office
P.O. Box 1458
Bismarck, ND 58502-1458

RE: Request for Continued Section 106 Consultation for the Upper Maple River Watershed Project; Preferred Alternative 2A
The proposed action action is watershed protection.
Location; Section(s); 9, 16, 17, 21. Barnes County, SE North Dakota.

LL THPO No. 24-036-NCRI

Dear Dan Hovland,

Thank you for the opportunity to comment on the above referenced project. This has been reviewed pursuant to the responsibilities given to the Tribal Historic Preservation Officer (THPO) by the National Historic Preservation Act of 1966, as amended in 1992, and the Procedures of the Advisory Council on Historic Preservation (38CFR800).

I have reviewed the documentation. After careful consideration of our records, I have determined that the Leech Lake Band of Ojibwe does not have any known recorded sites of religious or culturally identified resources in these areas.

Should any human remains or suspected human remains be encountered, all work shall cease and the following personnel should be notified immediately: County Sheriff's Office and the Office of the State Archaeologist. If any human remains or culturally affiliated objects are inadvertently discovered, this will prompt the process to which the Band will become informed.

Please note the above determination does not "exempt" future projects from Section 106 review. In the event of any other tribe notifying us of concerns for a specific project, we may reenter into the consultation process.

You may contact me at (218) 335-2940 if you have questions regarding our review of this project. Please refer to the **LL-THPO Number** as stated above in all correspondence with these projects

Respectfully submitted,

Gina M Lemon
Tribal Historic Preservation Officer

Leech Lake Tribal Historic Preservation Office - Established in 1996
190 Sailstar Drive NE * Cass Lake, MN 56633
Phone (218) 335-2940 * Fax (218) 335-2974
Gina.lemon@llojibwe.net

MILLE LACS BAND OF OJIBWE
DEPARTMENT OF NATURAL RESOURCES

Daniel Hovland
Bismark State Office
PO Box 1458
Bismark, ND 58502

Re: Request for Continued Section 106 Consultation for the Upper Maple River Watershed Project; Alternative 2A

Thank you for the opportunity to comment on the above referenced project. It has been reviewed pursuant to the responsibilities given the Tribal Historic Preservation Officer (THPO) by the National Historic Preservation Act of 1966, as amended in 1992 and the Procedures of the Advisory Council on Historic Preservation (38CFR800).

The Mille Lacs Band THPO department has reviewed the project. At this time the Mille Lacs Band of Ojibwe would like to be consultations on said project

You may contact our Office (320) 532-7450 Cell (320)364-0058 if you have questions regarding our review of these projects. Please refer to the MLB-THPO Number as stated above in all correspondence with these projects.

Sincerely,

Tribal Historic Preservation Officer
Mille lacs Band of Ojibwe
43408 Oodena Drive
Onamia MN 56359

United States Department of Agriculture

Natural Resources
Conservation Service

Bismarck State Office
PO Box 1458
Bismarck, ND
58502-1458

Voice 701.530.2000
Fax 855-813-7556

April 24, 2024

Mike Wilson, THPO
Millie Lacs Band of Ojibwe
43408 Oodena Drive
Onamia, MN. 56359

RE: Response to Continue as a Consulting Party for the Upper Maple River Watershed Project; Alternative 2A

Dear THPO Wilson,

The NRCS would like to thank you for your response letter for continued consultation under Section 106 of the National Historic Preservation Act of 1966, as amended.

As one of the State Cultural Resource Specialists, I am working with the NEPA team to address questions or concerns regarding cultural resources and the Section 106 consultation process.

The Upper Maple River Watershed Project: Alternative A, Environmental Impact Study is currently being drafted and has not been released for public comment. To address any potential cultural resources concerns, the NRCS has initiated the Section 106 consultation process as early as possible in the planning process.

NRCS' NEPA coordinator or I will provide you with a copy of the draft EIS once it is released for public comment. At this time, if you have any comments or concerns regarding the Class III report sent to your office in support of this project consultation, I can try and address them. Below are my contact details, please reach out to me if you have any comments, questions, or concerns.

If you have any questions, please contact me at (701) 516-2280 or by email at janelle.harrison@usda.gov

Sincerely,

Janelle Harrison
State Cultural Resources Specialist

From: Larus Longie
To: Sveen, RitaHarmsen - FPAC-NRCS, ND
Subject: RE: Upper Maple River Watershed Plan - Request for Continued Consultation
Date: Tuesday, January 30, 2024 9:32:37 AM

On behalf of the TMBCI we give concurrence for this project. Larus Longie THPO

From: Sveen, RitaHarmsen - FPAC-NRCS, ND <rita.sveen@usda.gov>
Sent: Monday, January 22, 2024 3:44 PM
To: Larus Longie <larus.longie@tmbci.org>
Subject: Upper Maple River Watershed Plan - Request for Continued Consultation

Dear THPO Longie,

A hard copy of the attached Class III Cultural Resource Survey was mailed to your tribal leader on January 19, 2024. Please review the attached cover letter which summarizes this project and our request for consultation from your tribe. The Class III Survey is also attached. We welcome your comments and input on the survey.

You will be invited to provide comments in regards to NEPA, on the Draft Plan EIS when it becomes available later in 2024 Additional planning documents may be found on this website: https://www.nrcs.usda.gov/conservation-basics/conservation-by-state/north-dakota/upper-maple-river-watershed-plan

Please direct survey questions and comments to Janelle Harrison, NRCS State Cultural Resource Specialist: Janelle.harrison@usda.gov

Regards,

Rita H. Sveen
Watershed Conservationist
417 Park St W Ste 1
Park River, ND 58270
Natural Resources Conservation Service
United States Department of Agriculture
http://www.nd.nrcs.usda.gov
Tel: 701-284-7771 ext124
Cell: 701-331-1386

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Hinono'einino'

Northern Arapaho Tribe

TRIBAL HISTORIC PRESERVATION OFFICE

P.O. Box 67 - St. Stephens, Wyoming 82524

PH: 307.856.1628 FX: 307.856.1974

Date: 3/18/24

Contact Name: Rita H. Sveen **Contact Phone:** 701-284-7771
Email Address rita.sveen@usda.gov
Company Name: USDA NRCS Bismarck State Office
Company Address: 417 Park St. Ste1
City: Park River **State:** ND **Zip Code:** 58270

RE: ***Request for Continued Section 106 Consultation for the Upper Maple River Watershed Project***

Dear Sir or Madam:

After reviewing your request under the Section 106 process of the NHPA, and NEPA, our office would like to comment on the proposed project. The Northern Arapaho Tribal Historic Preservation Office makes the following determination:

ADVERSE EFFECT ON ONE OR MORE HISTORIC PROPERTIES IN THE DIRECT AND VISUAL APE

Site Visit: No Tribal Monitor: No

Our office has come to this determination by drawing conclusions from the survey and file search from maps depicting the provenience of sites regarding the Direct and Visual APE.

Within the Area of Potential Effect, there are:
Cultural Resources: NONE
Eligible Historic Properties: NONE
Probability of properties of religious and cultural significance to the Northern Arapaho: LOW

If traditional cultural properties, rock features, or human remains are found during excavation with any new ground disturbance, we request to be contacted and a report provided.

Thank you for consulting with the Northern Arapaho THPO.

Sincerely,
Crystal C'Bearing
THPO Director
crystal.cbearing@northernarapaho.com

From: Sveen, RitaHarmsen - FPAC-NRCS, ND
To: Crystal C"Bearing
Cc: Harrison, Janelle - FPAC-NRCS, ND
Subject: RE: [External Email]Upper Maple River Watershed Project
Date: Monday, April 22, 2024 7:55:00 AM

Hello Ms. C'Bearing,

Thank you for your response. We will include your advisement regarding any discoveries during excavation in the construction specifications and contact you and include a report if there are any discoveries.

Rita H. Sveen
Watershed Conservationist
417 Park St W Ste 1
Park River, ND 58270
Natural Resources Conservation Service
United States Department of Agriculture
http://www.nd.nrcs.usda.gov
Tel: 701-284-7771 ext124
Cell: 701-331-1386

From: Crystal C'Bearing <crystal.cbearing@northernarapaho.com>
Sent: Friday, April 19, 2024 11:48 AM
To: Sveen, RitaHarmsen - FPAC-NRCS, ND <rita.sveen@usda.gov>
Subject: [External Email]Upper Maple River Watershed Project

You don't often get email from crystal.cbearing@northernarapaho.com. Learn why this is important

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Hello,

Attached is our determination for this proposed project.

Thank you,

Crystal C'Bearing
Northern Arapaho THPO Director
Mailing: P.O. Box 67, St. Stephens, Wyoming 82524
Physical: 1010 Railroad Avenue, Riverton, Wyoming 82501
Office: 307.856.1628
Cell: 307.840.2903
Fax: 307.856.1974

crystal.cbearing@northernarapaho.com
~When we show our respect for other living things, they respond with respect for us.~

Example Consultation letter sent to 31 tribes.

USDA United States Department of Agriculture

Natural Resources Conservation Service

Bismarck State Office
PO Box 1458
Bismarck, ND
58502-1458

Voice 701.530.2000
Fax 855-813-7556

December 19, 2024

Chairperson Rodney Gervais
Blackfeet Indian Reservation of Montana
PO Box 850
Browning, MT 59417

RE: Request for Continued Section 106 Consultation for the Upper Maple River (UMR) Watershed Project; Preferred Alternative 2A – Revision 2 of Class III Survey

Honorable Chairperson Gervais,

On January 19, 2024 you were sent a request for continued Section 106 Consultation for the above UMR Project. You received a copy of the Class III Survey for the project which is located sections 9,16,17,20 and 21 of Barnes County in SE North Dakota. We did not receive a response from your tribe; however our intent is to make sure all tribal governments with potential ties to this region are kept informed with corrections and updates.

The North Dakota State Historic Preservation (NDSHPO) provided several points of feedback during consultation which resulted in a revision to the Class III Survey. **A hard copy of the revised survey is available upon your request.** An electronic copy has been emailed to the THPO for your tribe. The revisions to the Class III Survey include the following:

Revision #	Document Section(s)	Summary of change
1	Abstract, Section 7	NRCS Recommendation changed from "No Effect to Historic Properties" to "No *Adverse* Effect to Historic Properties". This change in recommendation was based on the NDSHPO recommendation to consider two farmstead properties as potentially historic (site leads: 32BAX353 and 32B01212).
2	Sections 1, 2,2, & 5.0	ND SHPO requested clarification of surveyed acres vs APE acres
3	Sections 1,4.4-4.8 & 5.4-5.7	ND SHPO requested more detailed descriptions of the project design features,
4	Section 4, Table 10 and Figures 13-18	ND SHPO requested a viewshed analysis for the 5 farmsteads in close proximity to the project. Site lead 32BAX353 (abandoned farmstead) has a viewshed affected by the project.
5	Sections 5.7.1 & 6.0, new Figure 24 and Table 11	ND SHPO requested more detail, a figure and soil probe results table for the 1959 farmstead site lead 32BA1212.
6	Appendix A	Appendix A was amended to add site leads 32BAX353 and 32BA1212
7	Appendix B	Added maps - NDSHPO required that site maps in the 2 mile search area be formated to a 1:24,000 acre scale.
8	Appendix C	Added Ortho Maps

NRCS requests your concurrence with its revised determination of "No Adverse Effects to Historic Properties" for Preferred Alternative 2A. **If you would like a hard copy of the revised Class III survey, please call or email Rita Sveen 701-284-7771 ext3 rita.sveen@usda.gov .**

The project agreement and the construction contract will specify that if there are any inadvertent or unanticipated discoveries of cultural resources during construction or operation, work shall immediately be stopped, the affected site secured, and the state archaeologist notified. In addition, the construction contract will prohibit project workers from collecting artifacts or intentionally disturbing cultural resources in any area under any circumstances. All borrow material is anticipated to come from onsite, however should the project require additional borrow material from an offsite or unevaluated location, the location will be evaluated by the NRCS Archeologist and Tribes, and the State Historic Preservation Office consulted to its utilization outlined in 36 CFR800.13B. If an inadvertent discovery is encountered all work will stop within 100 feet of the discovery and the ND SHPO and the consulting Native American Indian Tribes will be contacted.

If you have any questions regarding this project, please contact Ms. Harrison at (701) 516-2280 or by email at janelle.harrison@usda.gov.

Sincerely,

RICHARD WEBB Digitally signed by RICHARD WEBB
Date: 2024.12.19 10:42:30 -06'00'

Acting for

DAN HOVLAND
State Conservationist

Cc: THPO

From: Larus Longie
To: Sveen, RitaHarmsen - FPAC-NRCS, ND
Subject: RE: Request for Continued Consultation UMR
Date: Friday, December 20, 2024 9:43:32 AM

Please direct your request to the nearest THPO office to the APE. Spirit Lake THPO office in this case. Each THPO office have an area they cover because their office is familiar with the APE.

From: Sveen, RitaHarmsen - FPAC-NRCS, ND <rita.sveen@usda.gov>
Sent: Thursday, December 19, 2024 4:06 PM
To: Larus Longie <larus.longie@tmbci.org>
Subject: Request for Continued Consultation UMR

Dear THPO Longie,

Please see the attached Section 106 request letter and documents for the Revised Upper Maple River Watershed Class III Survey. Your tribal leader has been sent the letter via USPS.
Hard copies of the documents are available upon request.

Regards,

Rita H. Sveen
Watershed Conservationist
417 Park St W Ste 1
Park River, ND 58270
Natural Resources Conservation Service
United States Department of Agriculture
http://www.nd.nrcs.usda.gov
Tel: 701-284-7771 ext124
Cell: 701-331-1386

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From: cchistory@midstatesd.net
To: Sveen, RitaHarmsen - FPAC-NRCS, ND
Subject: Re: Request for Continued Consultation UMR
Date: Tuesday, December 31, 2024 9:21:27 AM

Hello Rita,The Crow Creek Sioux Tribe THPO defers the proposed Upper Maple River Watershed project to the local North Dakota tribes.

Merle Marks
Crow Creek Sioux Tribe
THPO - Director
605.245.2221

From: "RitaHarmsen Sveen, NRCS, Park River, ND" <rita.sveen@usda.gov>
To: cchistory@midstatesd.net
Sent: Thursday, December 19, 2024 2:52:08 PM
Subject: Request for Continued Consultation UMR

Dear THPO Marks,

Please see the attached Section 106 request letter and documents for the Revised Upper Maple River Watershed Class III Survey. Your tribal leader has been sent the letter via USPS.
Hard copies of the documents are available upon request.

Regards,

Rita H. Sveen
Watershed Conservationist
417 Park St W Ste 1
Park River, ND 58270
Natural Resources Conservation Service
United States Department of Agriculture
http://www.nd.nrcs.usda.gov
Tel: 701-284-7771 ext124
Cell: 701-331-1386

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Appendix A-11

Draft Plan -EIS

Public Meeting Documents

Appendix A-12

NOA Draft plan EIS

Appendix A-13

Comment and Disposition Summary

Appendix A-14

NOA Final Plan – EIS