

North Dakota Missouri River Advisory Council

4665 2nd Street Southwest
Dickinson, ND 58601-7231

OUR MISSION - Working collaboratively with North Dakota stakeholders to provide unified representation, advocate for the responsible use of resources, and improve awareness and education relating to the Missouri River and its Tributaries.

July 27, 2017

U.S. Army Corps of Engineers
ATTN: CECC-L
441 G Street NW
Washington, DC 20314

Docket COE-2016-0016

**RE: U.S. Army Corps of Engineers Proposed Water Supply Rule 81 Fed. Reg. 91,556
(Dec. 16, 2016)**

To whom it may concern:

This letter is submitted on behalf of North Dakota's Missouri River Advisory Council and in support of the State of North Dakota's comments regarding the Corps of Engineers' proposed water supply rule. Upon reviewing the proposed rule, we provide the following comments and points of concern:

- The lack of a definition for "stored water" in the rule is an indefensible position since that is the specific subject matter of the proposed water supply rule. How is it you can prepare a federal rule without defining the item for which the rule is written?
- The USACE statements relating to their actions and proposed rule not impacting states' water rights and not interfering with state processes is in direct conflict with the intent and consequences of the rule as proposed.
- There appears to be confusion in the application of a nationwide approach to the issue of stored waters. Specifically, it does not make sense to have a single policy that attempts to manage the longest river in the United States with the same policy for ephemeral streams, and to treat states with practices following western water law the same as those enforcing riparian water laws.

Michael Gunsch, Chairman
Friends of Lake Sakakawea

Martin Dahl, Vice Chairman
McLean Electric Cooperative

Mary Massad, Secretary/Treasurer
Southwest Water Authority

U.S. Army Corps of Engineers, Omaha District

U.S. Army Corps of Engineers Proposed Water Supply Rule 81 Fed. Reg. 91,556 (Dec. 16, 2016)

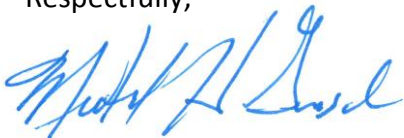
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- The issue of access across USACE or other federally controlled lands prevents North Dakota's constitutional authority to appropriate the use of natural river flows under its control. The State of North Dakota has the authority to allocate the natural flows of the Missouri River for beneficial uses in free-flowing stretches of the Missouri River system *and* within reservoir boundaries. This right must be recognized in any final rule.

We encourage the USACE to reconsider its position regarding defining "stored waters," which must conform to the State of North Dakota's definition to clarify the rules' intent, and avoid the clear conflicts with states' rights and western water law. We also request that the USACE hold a formal public input meeting to gather comments and statements from interested parties on this matter. Please place us on your contact list for future public communications regarding this issue. If you have questions regarding our comments, please contact me at 701-527-2134 or email to mgunsch@outlook.com.

Respectfully,



Michael H. Gunsch, Chairman

C: Honorable Governor Doug Burgum
North Dakota Congressional Delegation
Garland Eberle, North Dakota State Engineer
Duane DeKrey, General Manager, Garrison Diversion Conservancy District