

Testimony before the U.S. House of Representatives Committee on Natural Resources

**Carter Vander Wal
North Dakota Irrigation Association**

May 12, 2022

Good afternoon Chairman Huffman, Ranking Member Bentz, and distinguished members of the Subcommittee on Water, Oceans, and Wildlife.

I am Carter Vander Wal, a producer and irrigator in southcentral North Dakota. I serve on the board of directors for the North Dakota Irrigation Association and on the board of my local electric cooperative. I am proud to be here in support of H.R. 3081, a critical piece of legislation in order to advance irrigation in the state of North Dakota and fulfill a promise made to the people of North Dakota nearly 80 years ago.

As I'm sure many in this room today can relate for your own states, the history and progress in North Dakota has long been tied to water. The Missouri River has always played an important role in much of the state, particularly since the Flood Control Act of 1944.

This consequential piece of legislation forever changed the landscape of North Dakota. The construction of the Garrison Dam created Lake Sakakawea, the third largest reservoir in the United States; the construction of the Oahe Dam created Lake Oahe which has its northern boundary just south of Bismarck, ND. In all, the state of North Dakota lost 584,060 acres of land, much of it prime farmland, to the implementation of the Flood Control Act of 1944. While the damming of the Missouri River provided numerous benefits to states up and down the system, it also changed forever the flow of the river and had large impacts on North Dakota producers who used the river and surrounding areas for agricultural production.

Irrigation has long been a practice up and down the Missouri River in North Dakota. The changes made to the river due to the Flood Control Act of 1944 also changed irrigation opportunities. The creation of the lakes pushed producers from fertile lowlands, where access to water was relatively easy, up to higher ground where access was more difficult and more costly.

Recognizing this reality, the federal government offered reduced rate power, known as project pumping power, to offset the increased costs associated with relocating irrigation to higher ground. Project pumping power is a critical benefit making irrigation in parts of North Dakota, and other Missouri River states, a possibility. Project pumping power is not applied to all power used by an irrigator, but simply to what is referred to as "first lift power", that power that is needed to get water from the river to the field.

The rate producers pay for project pumping power is set by the Bureau of Reclamation and changes over time. Currently, the rate for project pumping power in eligible areas in North Dakota is about 13.7 mills/kilowatt hour or about 1.37 cents/kilowatt hour.

Since 1944, the federal government and the state of North Dakota have renegotiated the various federal benefits the state receives in compensation for the building of the dam system along the

river, including the acres and areas eligible for project pumping power. The most recent renegotiation was codified in the Dakota Water Resources Act of 2000 (DWRA).

The DWRA authorized project pumping power for specific areas in the state, including the McClusky Canal, an important irrigation water source built as part of the 1944 Flood Control Act. The DWRA also authorized the availability of project pumping power for up to 28,000 acres outside those designated areas. Those undesignated acres, according to the DWRA and the Bureau of Reclamation, would be treated as federally authorized projects, although not developed by the federal government, and therefore eligible for project pumping power.¹

Unfortunately, while implementing the DWRA, the Department of the Interior felt the language regarding the 28,000 undesignated acres was not clear enough to provide project pumping power to those undesignated areas. The legislation you have before you today would provide the Department of the Interior, and the Bureau of Reclamation, the clarity it needs to provide project pumping power to additional irrigators in North Dakota, up to 28,000 acres, as was envisioned by Congress and the many stakeholders who worked to pass the DWRA in 2000. In addition, according to a 2005 report from the Bureau of Reclamation, this legislation aligns with their original recommendation to allow up to 28,000 acres in these specific areas to receive project pumping power while not becoming federal projects.

Access to the promised project pumping power for these 28,000 acres will make a concrete difference for the people of North Dakota, and the agriculture community in particular. There are irrigators, some of whom are my neighbors, whose families have been farming and ranching along the river for decades. They have been waiting for access to project pumping power since the 1950s. Access to this benefit could reduce their power bill to run their irrigation systems significantly. The Association conservatively estimates that access to project pumping power reduces an irrigator's power bill by 30%.² This benefit could go a long way to making their operations profitable for irrigators today and the next generation looking to continue the proud legacy of farming along the river.

Access to project pumping power could also spur new development along the river. The Missouri River in North Dakota today is an underutilized resource when it comes to irrigation. The water is there but other factors, the cost of power being one, have limited the development. Should access to project pumping power be granted on these 28,000 undesignated acres, I am confident that we would see existing and new irrigators make good use of this benefit promised them by the federal government decades ago.

This legislation will have an impact not only on my neighbors and irrigators in and around the Missouri River, but will also help bolster the overall agriculture industry. Irrigation provides important risk mitigation to producers and provides agricultural processors and the livestock industry a reliable supply of grain and vegetables. The irrigation we currently have in the state makes possible a strong specialty crop industry and processing to get those products into the hands of consumers.

¹ Bureau of Reclamation, "Finding of Economic, Financial and Engineering Feasibility as it Relates to the 28,000 Undesignated Acres, For the Garrison Diversion Unit, Required by the Dakota Water Resource Act of 2000." Attached to this testimony.

² This is largely dependent on scale of the operation and the terrain.

The impact that this legislation could have on the state is recognized by the many stakeholders in North Dakota who support this legislation. Those stakeholders include the North Dakota Department of Water Resources, the Garrison Diversion Conservancy District, the North Dakota Association of Rural Electric Cooperatives, the North Dakota Ethanol Producers Association, the North Dakota Corn Growers Association, the North Dakota Soybean Growers Association, Northern Plains Potato Growers Association, North Dakota Farmers Union, and the North Dakota Farm Bureau. Several letters of support are attached to this testimony.

As the North Dakota Irrigation Association, we are actively looking for ways to increase viability for irrigation across the state. While not a silver bullet, passage of H.R. 3081 would go a long way to increasing viability of irrigation, both current and potential, within the Missouri River corridor. It also brings a long-awaited promise to many producers up and down the river who saw their operations change dramatically due to the Flood Control Act of 1944.

Mr. Chairman and members of the Committee I thank you for your time today and respectfully ask for your favorable consideration of H.R. 3081.

**FINDING OF ECONOMIC, FINANCIAL AND ENGINEERING FEASIBILITY AS IT
RELATES TO THE 28,000 UNDESIGNATED ACRES, FOR THE GARRISON
DIVERSION UNIT, REQUIRED BY THE
DAKOTA WATER RESOURCE ACT OF 2000**

Public Law 106-554, the Dakota Water Resource Act of 2000 (DWRA) provides for the Secretary to present a "finding" which satisfies the requirements in Section 5(e) (1) and (2) of the DWRA relative to the 28,000 undesignated acres which are authorized in Section 5(a) (3) of DWRA. The aforementioned Sections require the Secretary to prepare a report which includes a finding on the economic, financial, and engineering feasibility of the proposed irrigation unit, but shall be limited to the 28,000 acres. The 28,000 acres of irrigation that is authorized in Section 5 includes existing irrigation districts that have been partially developed with private funding. The DWRA provides that irrigation development authorized by this section shall be considered authorized units of the Pick-Sloan Missouri Basin Program and eligible to receive project pumping power. The Secretary shall investigate and prepare a detailed report on the undesignated 28,000 acres in as to costs and benefits for any irrigation units to be developed under Reclamation law.

The Garrison Diversion Unit (GDU) is one of the principal developments of the P-SMBP authorized by the Flood Control Act of 1944. Studies indicated that 1 million acres would be developed for irrigation. Associated features completed by the Corps of Engineers (COE) are Garrison Dam (1956), Lake Sakakawea, Snake Creek Embankment (1953), and Audubon Lake. Snake Creek Embankment and Audubon Lake were planned and developed by the COE to provide Missouri River water for the GDU.

The Initial Stage of the GDU was authorized in 1965. The plan was to provide water for 250,000 acres of irrigation and numerous other uses defined in House Document 325, 86th Congress, and a 1962 Reclamation Report. Construction of the main supply works was initiated in July, 1967.

In the late 1960's, Canada became concerned about construction of the GDU due to drainage return flows that would accrue to Canada from about 75 percent of the proposed irrigation. Resolution through discussion of these issues between the United States and Canadian governments did not proceed as anticipated. As a result of the consultation process, a United States-Canadian Joint Technical Committee was established to monitor the proposed phased construction and associated environmental matters. The 1985 Energy and Water Development Appropriations Act required that a commission be established to examine the contemporary water needs of North Dakota and propose alternatives which would lead to resolution of the problems that had confronted the GDU. The Commission's work culminated in the Garrison Diversion Reformulation Act of 1986 (Reformulation Act). The Reformulation Act deauthorized all but 130,940 acres of irrigation development and substituted a federally subsidized municipal, rural, and industrial (MR&I) program for the entire State of North Dakota including Phase I MR&I systems for Standing Rock, Fort Berthold and Spirit Lake Indian Reservations.

In the early 1990's Congress and the Administration would not support funding to complete the principal supply works or the non-Indian irrigation features. In 1994 the North Dakota Congressional Delegation began working toward another reformulation of the project. This

culminated in the Dakota Water Resource Act (DWRA). The DWRA further reduced the irrigation component to 75,480 acres and federal financing was only included for the 2,380 acres on the Standing Rock Indian Reservation. DWRA also increased the federal cost ceiling for the MR&I component by over \$400 million. DWRA also provided a \$200 million Federal cost ceiling increase for reservation wide MR&I systems on Standing Rock, Fort Berthold, Spirit Lake and Turtle Mountain Indian Reservations.

GDU has evolved from primarily an irrigation project in the 1940's, to a project that focuses on meeting the contemporary MR&I water needs of the four Indian reservations and the State of North Dakota. DWRA has provided authority for Reclamation to enter into appropriate contracts for providing project pumping power and for the repayment of assigned P-SMBP costs for the 28,000 acres identified in the DWRA.

Capital costs associated with the construction of power facilities in the Missouri River Basin have been assigned to irrigation for the purpose of providing project pumping power. Irrigation development did not occur as planned and these sunk costs have been deferred indefinitely. Irrigation authorized under the DWRA would benefit Reclamation in that repayment on a portion of these sunk costs would be realized when repayment contracts are executed for a portion of the assigned power investment costs associated with DWRA irrigation facilities. Repayment contracts will be developed based on each irrigation district's ability-to-pay, the costs over 40 years.

The districts will also enter into separate contracts for P-SMBP project pumping power and payment of OM&R costs associated with the demand and energy delivered to the specific district in accordance with the prevailing P-SMBP rate.

At the present time in North Dakota based on current studies new irrigation development under Reclamation Law is not economically or financially feasible. Reclamation currently has found that only currently developed irrigation (financed with non-Federal funding) in existing, partially developed, irrigation districts is economically and financially feasible. Since the GDU was constructed primarily for irrigation and irrigation development did not occur as outlined in the original authorization, repayment of the construction costs will never be realized as originally intended. With the enactment of the DWRA, repayment of a portion of those costs could be realized. The Dakotas Area Office has conducted initial studies which indicate some of the districts have enough payment ability to repay an allocated share of the assigned power investment costs as well as the operation and maintenance costs associated with maintaining P-SMBP power facilities. There are a number of other existing districts interested in receiving project pumping power, as authorized in Section 5(a)(4) of DWRA of 2000. A payment capacity analysis along with other required project prerequisites (i.e., land classification, National Environmental Policy Act compliance, toxic element analyses, etc.) will be completed for each district prior to entering into a repayment contract and project pumping power contract for P-SMBP project pumping power.. No project water would be delivered to the districts, only project pumping power.

Should economic conditions for new irrigation development improve in the future, it may be necessary to prepare another "finding" report.

May 10, 2022

U.S. House Natural Resources Committee
Subcommittee for Water, Oceans, and Wildlife
1324 Longworth House Office Building
Washington, DC 20515

Distinguished Members of the Water, Oceans, and Wildlife Subcommittee of the House Natural Resources Committee,

On behalf of the North Dakota Department of Water Resources and North Dakota State Water Commission, I would like to thank you for your consideration of H.R. 3081. I would also like to express our strong support for H.R. 3081, as its purpose is to make certain that North Dakota's irrigation districts would be eligible for Pick-Sloan Missouri Basin Program pumping power. This important piece of legislation is a long-overdue and critical step to support and advance irrigation in North Dakota.

Irrigation promotion and development has long been a goal of the State of North Dakota, particularly in conjunction with the benefits promised the state in the 1940s through the Pick-Sloan Missouri Basin Program. At that time, when the federal government created two of the country's largest reservoirs in North Dakota when dams were built on the Missouri River, the state was promised support for irrigation development, including access to project pumping power as mitigation for hundreds of thousands of flooded acres. Unfortunately, nearly 80 years later, that promise remains to be fulfilled.

The Missouri River remains the largest surface water resource for North Dakota and accessing project pumping power is a critical step in fully utilizing this asset. H.R. 3081 makes the necessary technical correction to the Dakota Water Resources Act of 2000 to allow project pumping power to be utilized on up to 28,000 irrigation acres along the Missouri River. Passage of this legislation will help to partially fulfill the decades-old promise made to the people of North Dakota as it will bolster current and future irrigation opportunities for our agricultural producers who deserve the advantages of Pick-Sloan Missouri Basin Program pumping power.

Thank you for your attention to this important piece of legislation. Your favorable consideration is greatly appreciated.

Sincerely,



Andrea Travnicek, Ph.D.
Director, Department of Water Resources

AT:JP:PF/AOCIRA



May 10, 2022

U.S. House Natural Resources Committee
Subcommittee for Water, Oceans, and Wildlife
1324 Longworth House Office Building
Washington, DC 20515

Distinguished Members of the House Natural Resources Subcommittee for
Water, Oceans and Wildlife:

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The Garrison Diversion Conservancy District (Garrison Diversion) is committed to the enhancement and development of irrigation across North Dakota, particularly on irrigable acres authorized through the Dakota Water Resources Act of 2000 (DWRA).

We would like to express our favorable support for H.R. 3081, as it relates to the ability for irrigators to access Project Pumping Power on federally authorized projects, specifically the 28,000 undesignated acres in the DWRA.

Irrigation is economically beneficial to farm operations and provides extensive economic benefits to North Dakota, as determined in a study performed by North Dakota State University in 2014.

Irrigation provides the opportunity for producers to grow high-value crops that meet high-quality standards and market requirements and is, therefore, economically beneficial to farm operations. Without irrigation, meeting market standards would not be feasible due to the need for consistent high levels of moisture on high-value crops.

Continued irrigation investments will also generate one-time and long-term economic benefits for North Dakota, through job creation and increased local returns.

When pursuing irrigation development, affordability is a critical factor considered by producers. The ability for producers and landowners to access Project Pumping Power would allow for more affordable irrigation development, as ongoing irrigation power expenses would be reduced up to 30%.

Accessing Project Pumping Power within the 28,000 undesignated acres in the DWRA is critical to future irrigation development within the state. As agriculture remains an important element of Garrison Diversion's foundation, we ask that you favorably consider H.R. 3081 to ensure family farmers can affordably fulfill North Dakota's irrigation potential.

Sincerely,

Duane DeKrey
General Manager

Alan Walter
Board Chairman



May 12, 2022

U.S. House Natural Resources Committee
Subcommittee for Water, Oceans, and Wildlife
Washington, DC 20515

Distinguished Members of the House Natural Resources Committee Subcommittee for Water, Oceans, and Wildlife,

Thank you for your consideration of H.R. 3081, an important piece of legislation to support and advance irrigation in North Dakota. With last year's historic drought in North Dakota, many in agriculture are exploring ways to mitigate risk when it comes to drought. Irrigation can provide just such risk mitigation, as many irrigators in our state have seen. However, there are many barriers to establishing or expanding irrigation, cost being the predominant barrier. While there are state and federal programs to assist with infrastructure costs to establish irrigation, power remains a significant cost to producers.

While not a solution for all irrigators across North Dakota, clarifying eligibility of certain producers to receive project pumping power would significantly increase the affordability of irrigation within the Missouri River corridor. The building of the Garrison and Oahe Dams in the 1950s flooded thousands of acres that were well suited to irrigation. These acres were also lower in elevation, thus requiring significantly less power to irrigate. The state of North Dakota was promised access to project pumping power to offset the increased power cost when irrigation was forced to relocate to higher ground. Project pumping power can reduce the power costs for individual irrigators up to 30% on a yearly basis depending on the scale of the operation and the terrain. Unfortunately, many producers in the Missouri River corridor remain ineligible for this important benefit promised by the federal government due to a misinterpretation of the Dakota Water Resources Act of 2000 by the Department of Interior.

H.R. 3081 will correct this misinterpretation and will certainly help promote and expand irrigation in North Dakota, and in particular, in the Missouri River corridor. We would ask, on behalf of the agriculture industry in North Dakota, for your favorable consideration of H.R. 3081. Securing this promised benefit for North Dakota producers will help increase the resiliency of production agriculture within the Missouri River corridor.

Sincerely,


ND Ethanol Producers Assoc.


ND Corn Growers Assoc.


ND Farmers Union


Northern Plains Potato Growers Assoc.


ND Farm Bureau



North Dakota Association of Rural Electric Cooperatives
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May 9, 2022

U.S. House Natural Resources Committee
Subcommittee for Water, Oceans, and Wildlife
1324 Longworth House Office Building
Washington, DC 20515

Distinguished Members of the House Natural Resources Committee Subcommittee for Water, Oceans, and Wildlife,

The North Dakota Association of Rural Electric Cooperatives urges your support in consideration of H.R. 3081 to advance irrigation in North Dakota. H.R. 3081 clarifies the eligibility of certain producers to receive promised reduced rate power, known as project pumping power. This eligibility would significantly increase the affordability of irrigation within the Missouri River corridor. While there are state and federal programs to assist with infrastructure costs to establish irrigation, power remains a significant cost to producers.

The state of North Dakota was promised access to project pumping power to offset the increased power cost when irrigation was forced to relocate to higher ground. Many producers in the Missouri River corridor remain ineligible for this important benefit due to a misinterpretation of the Dakota Water Resources Act of 2000 by the Department of Interior.

H.R. 3081 will correct this misinterpretation and promote and expand irrigation in North Dakota in the Missouri River corridor. We ask for your favorable consideration of H.R. 3081 in support of an authorized irrigation project. By allowing for additional irrigation, farmland will become even more productive, which benefits local cooperative members and local communities.

Sincerely,

Josh Kramer
Executive Vice President & General Manager

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May 9, 2022

U.S. House Natural Resources Committee
Subcommittee for Water, Oceans, and Wildlife
1324 Longworth House Office Building
Washington, DC 20515

Distinguished Members of the House Natural Resources Subcommittee for Water, Oceans and Wildlife,

Thank you for your attention to H.R. 3081, a piece of legislation key to the viability of irrigation in North Dakota as well as a fulfillment of a promise made to the people of North Dakota eight decades ago. The North Dakota Water Users Association was organized in 1959 to protect, develop, and manage North Dakota's water resources. It is currently comprised of over 300 local, statewide, and regional organizations in North Dakota who have an active interest in water.

The North Dakota Water Users has a strong interest in seeing fulfillment of the promises made by the federal government to the state of North Dakota through the Pick Sloan Agreement and the Flood Control Act of 1944. The Pick Sloan Agreement, which led to the damming of the Missouri River throughout Montana, North Dakota, and South Dakota, detailed a variety of benefits the state of North Dakota was to receive in exchange for the nearly 600,000 acres of land lost when the Garrison and Oahe dams were created. In the original agreement, North Dakota was promised more than one million acres of irrigation development. Through the decades, that acreage number has been renegotiated to just over 70,000 acres, promised in the Dakota Water Resources Act of 2000.

H.R. 3081 provides necessary clarification to the Dakota Water Resources Act regarding 28,000 of those 70,000 acres. These 28,000 acres were promised access to project pumping power, but due to a misinterpretation by the Department of the Interior, that benefit has yet to be realized. Project pumping power, which can significantly reduce the expense of power for eligible irrigators, can make irrigating along the Missouri River economically feasible. As we look at the many water resources North Dakota has, the Missouri River is by far our greatest asset. It is also largely underutilized. Access to project pumping power will help North Dakota develop this important resource.

Thank you for your consideration of this important piece of legislation. We would respectfully ask for your support for H.R. 3081.

Sincerely,

A handwritten signature in black ink that reads "David Lang". The signature is written in a cursive, flowing style.

Dave Lang
President