



Navigating North Dakota Riverlands:

The Evolution of Title, Sovereign Ownership & the 2025 *Continental* Decision

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Historical Overview – A New World

Treaty of Paris (1783)



- East of the Mississippi River
- North of Spanish Florida
- South of the Great Lakes

Louisiana Purchase (1803)



- First Lands West of Mississippi River
- Doubled the size of our country

Treaty of 1818



- Treaty of 1818 – sets Northern boundary at the 49th parallel
- Resolved boundary issues with the UK

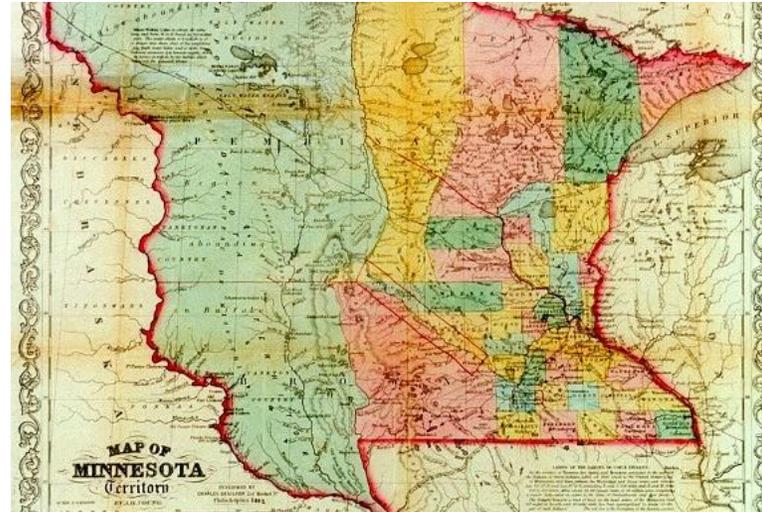
Historical Overview – Pre-Statehood: MI, WI & MN Territories

West of The Missouri River



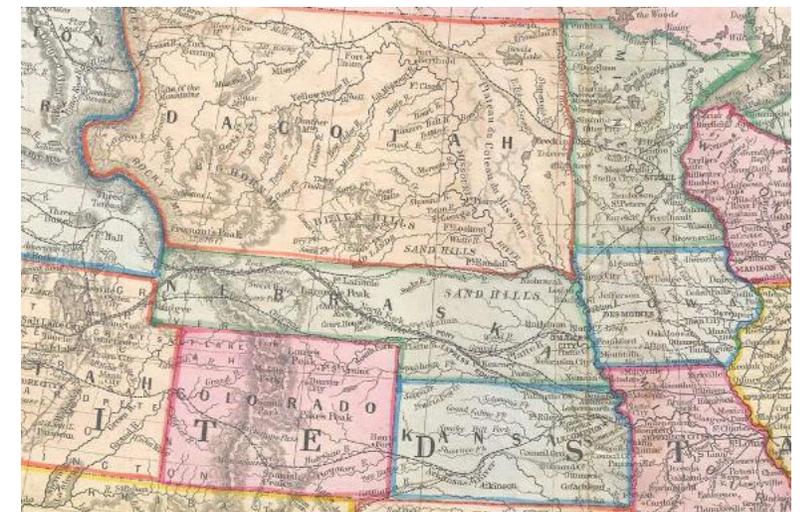
- Nebraska Territory (1854 until 1867)

East of the Missouri River



- Michigan Territory (1805 to 1837)
- Wisconsin Territory (1836 to 1848)
- Minnesota Territory (1849 until 1858)

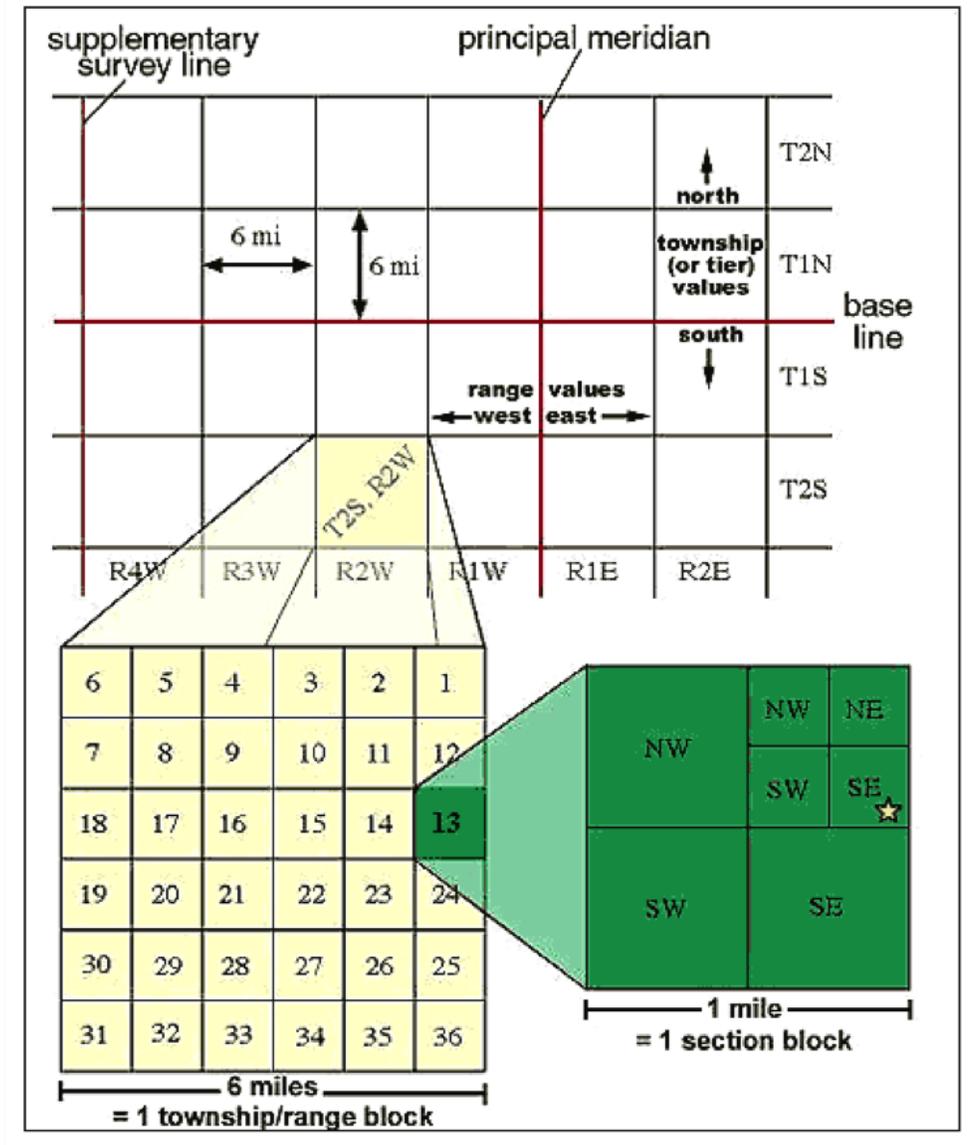
Dakota Territory



- Dakota Territory (1861 to 1889)

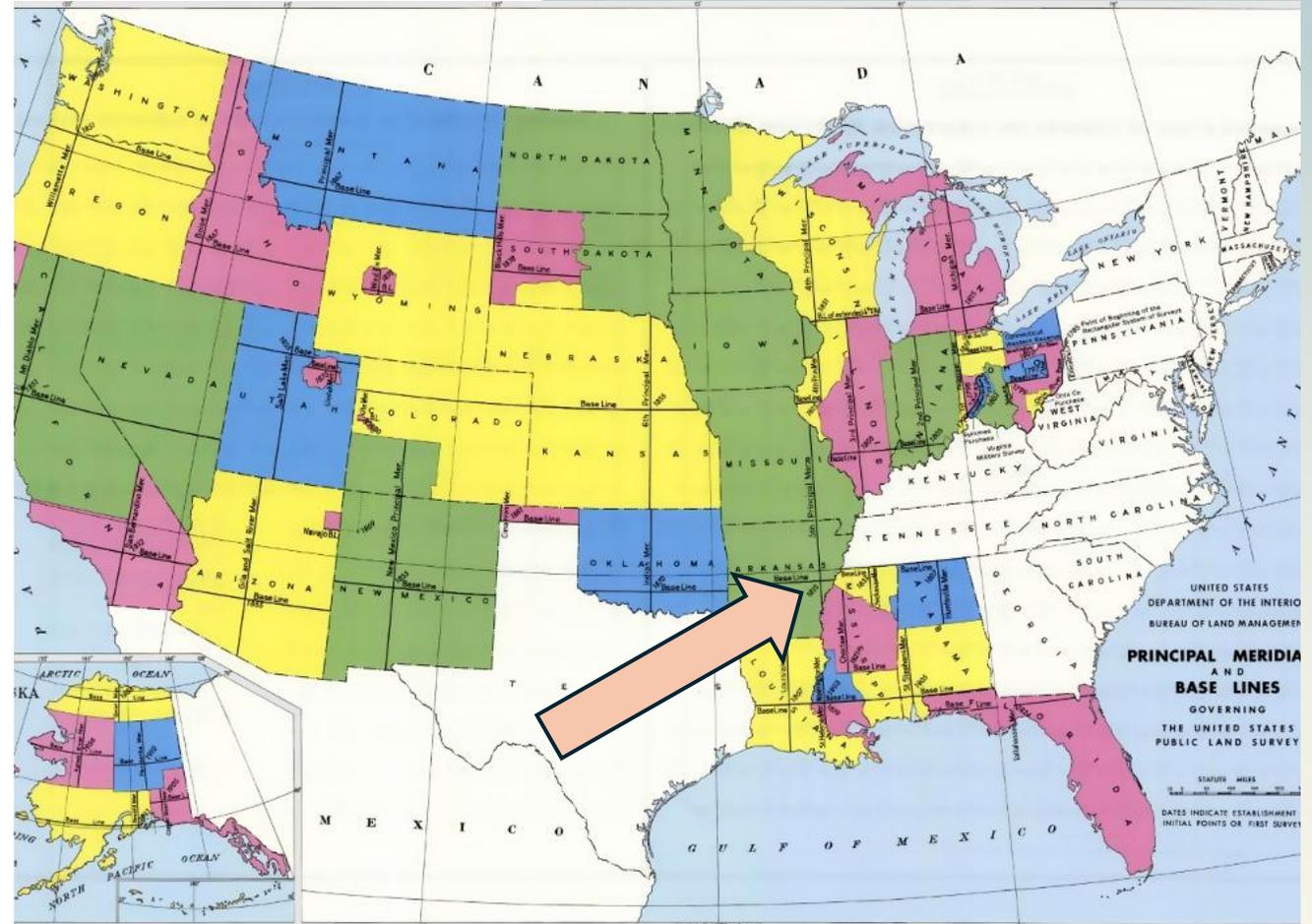
Public Land Survey System

- Land Ordinance Act of 1785
 - Orderly disposition of public lands
 - Revenue generation and settlement
 - Avoidance of metes and bounds chaos
 - Survey precedes patent
- Divided the western lands into grid-shaped townships and sections.
- Largest subdivision of land is the township and measures of six (6) miles square.
- Each township is comprised of 36 sections, and each section has an area of one (1) square mile (640 acres).



Public Land Survey System

- Principal Meridians and Base Lines
 - Fifth Principal Meridian
 - Base Line in Arkansas
 - All lands in North Dakota are north of the Base Line and west of the Fifth Principal Meridian



Statehood

Enabling Act

- When most states in the western United States were admitted into the Union, they were granted sections of land for the support of common schools. In many states, such as North Dakota and Montana, they received Sections 16 and 36 in every township.
 - Act of February 22, 1889, Ch.180, 25 Statutes at Large 676, Section 10.
 - Exception: In cases where portions of sections 16 and 36 had been sold prior to statehood, or if the subject section was “undesirable” / covered by water, an indemnity or “in lieu” selections were allowed.

Statehood

Equal Footing Doctrine

- “[T]he municipal sovereignty of the new States will be complete, throughout their respective borders, and they, and the original States, will be upon an equal footing, in all respects whatever.”
 - See *Pollard's Lessee v. Hagan*, 44 U.S. 212 (1845)
- Under the equal footing doctrine, the State of North Dakota, upon admission to the Union, acquired title to the beds of navigable bodies of water.
 - *Reep v. State*, 2013 ND 253, 841 N.W.2d 664 (N.D. 2013). See also *Hogue v. Bourgois*, 71 N.W.2d 47 (N.D. 1955).

State of North Dakota Ownership – Conveyancing & Reservations

- Common school lands may be leased (surface or mineral).
- Caution: The State may convey state-owned lands, but mineral reservations vary by type, date, and grant/non-grant.
- See, generally, N.D. Mineral Title Standards 2-02.1 through 2-02.4.



SUMMARY OF MINERAL RESERVATIONS IN STATE OF NORTH DAKOTA CONVEYANCES

2-02.4

Comment: Here is a table summarizing State of North Dakota mineral reservations in patents and conveyances:

History of North Dakota State Mineral Reservations

Grant Lands

Prior to March 13, 1939 (NDMTS 2-02.1)	No mineral reservations; Conveyance by State included all substances
From March 13, 1939 and prior to February 20, 1941 (NDMTS 2-02.2)	State reserved 5% of all oil, natural gas or other minerals (excludes, gravel, clay or scoria)
From February 20, 1941 and prior to June 28, 1960 (NDMTS 2-02.2)	State reserved 50% of all oil, natural gas or other minerals (excludes, gravel, clay or scoria)
From June 28, 1960 to present (NDMTS 2-02.3)	State reserves 100% of all minerals and a number of other substances as specifically listed in the ND Constitution, Article IX, § 5

Non-Grant Lands

Prior to March 13, 1939 (NDMTS 2-02.1)	No mineral reservations; Conveyance by State included all substances
From March 13, 1939 and prior to February 20, 1941 (NDMTS 2-02.2)	State reserved 5% of all oil, natural gas or other minerals (excludes, gravel, clay or scoria)
From February 20, 1941 and prior to June 28, 1960 (NDMTS 2-02.2)	State reserved 50% of all oil, natural gas or other minerals (excludes, gravel, clay or scoria)
From June 28, 1960 and prior to July 1, 1973 (NDMTS 2-02.3-02.1)	State reserves 50% of all minerals (excludes, gravel, clay or scoria)
From July 1, 1973 and prior to July 1, 1977 (NDMTS 2-02.3-02.2)	State reserves 100% of all minerals (excludes, gravel, clay or scoria)
From and after July 1, 1977 (NDMTS 2-02.3-02.3)	State reserves 100% of all minerals and a number of other substances as specifically listed in N.D.C.C. § 15-08-27 (same as for grant lands in 1960 Constitutional amendment)

United States Ownership – Conveyancing & Reservations

- Mineral reservations in federal patents vary based upon authority and date.
- Check BLM Patent Records
- See, generally, N.D. Mineral Title Standards 2-01.

FEDERAL PATENTS

2-01

Standard: (a) Prior to March 3, 1909, a federal patent passed the mineral estate as well as the surface estate.

(b) A federal patent issued pursuant to the Act of March 3, 1909, 30 U.S.C. 81 reserved coal to the United States of America.

(c) A federal patent issued pursuant to the Act of June 22, 1910, 30 U.S.C. 83 reserved coal to the United States of America.

(d) A federal patent issued pursuant to the Act of July 17, 1914, 30 U.S.C. 121-123 reserved oil, gas and other stated non-metallic minerals to the United States of America.

(e) A federal patent issued pursuant to the Act of December 29, 1916, 43 U.S.C. 291-301 reserved all minerals to the United States of America.



Navigability

What are navigable waters?

- "Navigable waters" means waters that were in fact navigable at the time of statehood, and that are used, were used, or were susceptible of being used in their ordinary condition as highways for commerce over which trade and travel were or may have been conducted in the customary modes of trade on water.
 - N.D.C.C. §61-33-01(3)
- The test for navigability is whether the body of water, in its natural and ordinary condition was used, or was susceptible to being used, for commerce at the time of statehood.
 - *State of N.D. v. U. S.*, 972 F.2d 235, 237-38 (8th Cir. 1992)
- A federal question to be determined according to federal law and usage.
 - *Ozark-Mahoning Co. v. State*, 37 N.W.2d 488 (N.D. 1949); *State of N.D. v. U. S.*, 972 F.2d 235 (8th Cir. 1992)
- Absent a legislative determination of navigability, the presumption is in favor of non-navigability.
 - *Amoco Oil Company v. State Highway Department*, 262 N.W.2d 726 (N.D. 1978)



What bodies of water have been determined to be navigable?

N.D. MTS 7-01.1

- Missouri River
- Yellowstone River
- Red River
- Devils Lake
- Heart River
- Little Missouri River
- Mouse/Souris River
- Knife River

N.D. State Water Commission

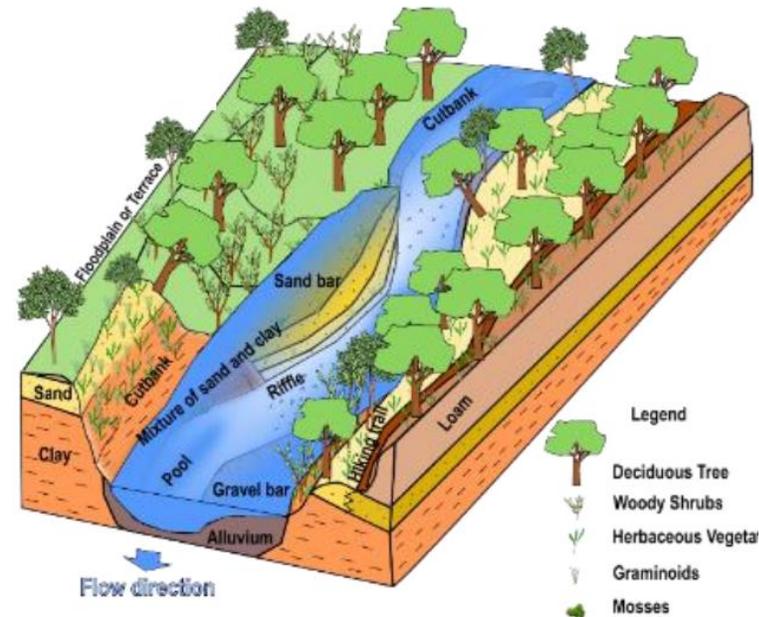
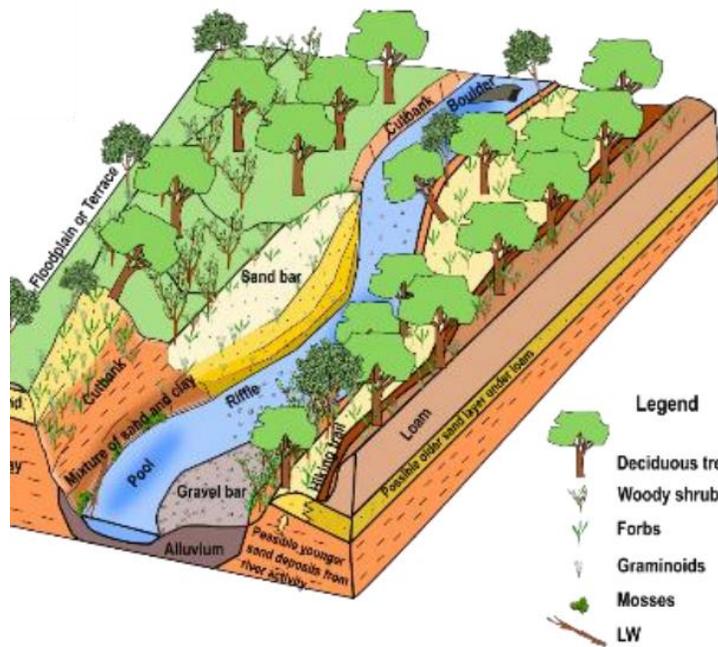
- James River (from the railroad bridge in Jamestown to the S.D. border)
- Painted Woods Lake
- Sweetwater Lake
- Sheyenne River

Non-Navigable

- Williams County
 - Alkali Lake
 - Blue Ridge Wildlife Management Area Lakes
- Mountrail County
 - Carpenter, Clearwater, Cottonwood, Powers, Timothy J. Uhl, Tolley, Redmond Township, NWPA, Shell, Tagus, and White Lakes
- Divide County
 - Johnson, Miller, Musta, North, Skerjmo, Stink, and Willow Lakes

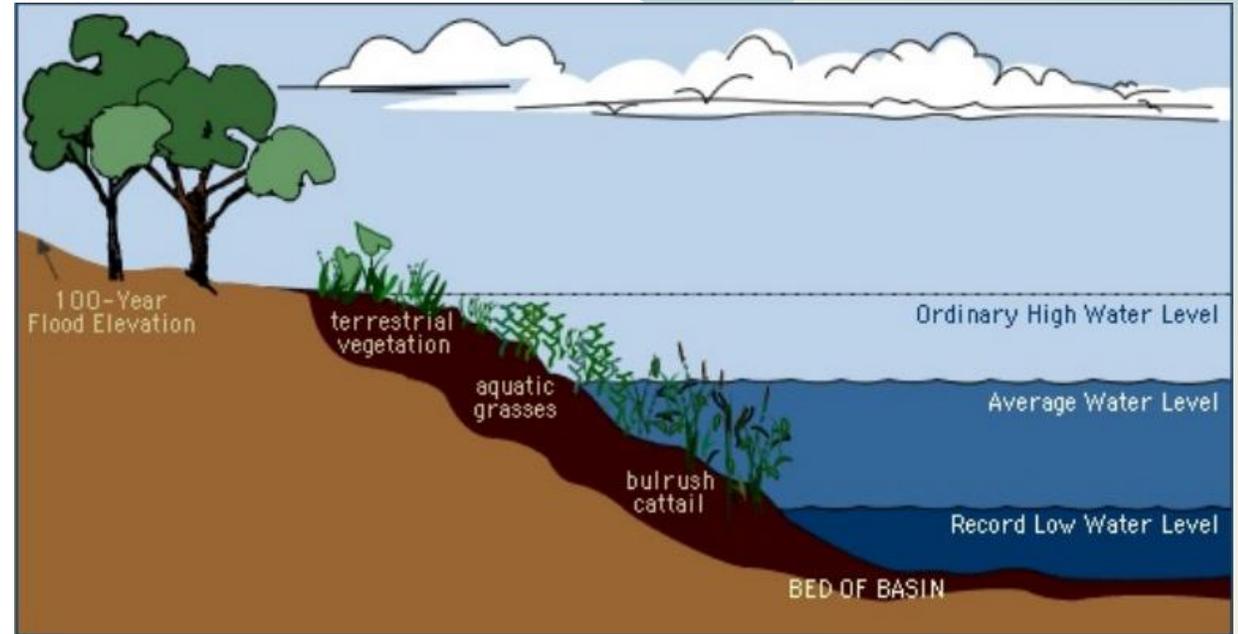
Water Marks

Ordinary low or high watermark?



Difference Between Ordinary Low & High Water Mark

- The ordinary low watermark is the legal boundary line on a shore or bank where water naturally recedes to its lowest level during typical, average conditions.
- Ordinary low water mark:
 - Montana (M.C.A. § 70-16-201)



Water Marks

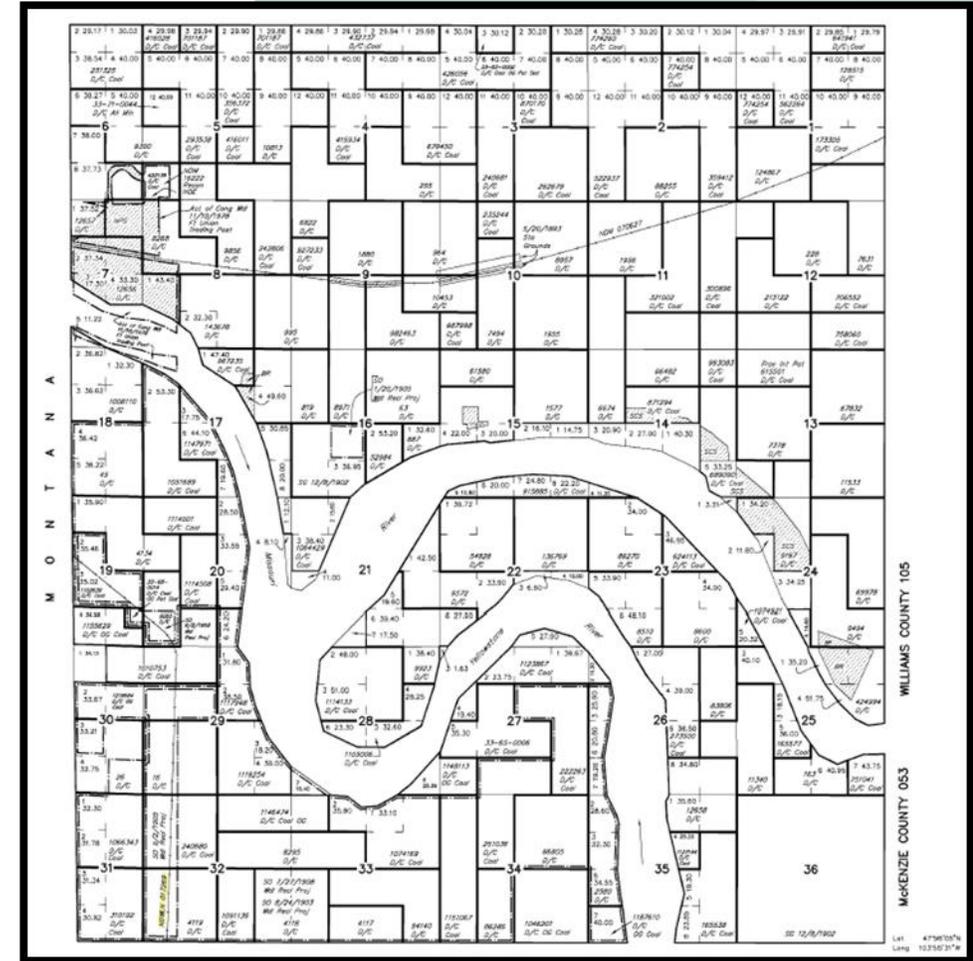
North Dakota is an ordinary high water mark state

- Significant portions of the Yellowstone and Missouri Rivers traverse the Bakken-producing regions.
- *Reep v. State*, 2013 ND 253, 841 N.W.2d 664 confirmed that the State of North Dakota owns the minerals underlying navigable bodies of water from ordinary high water mark to ordinary high water mark.
- "Ordinary high water mark" means that line below which the presence and action of the water upon the land is continuous enough so as to prevent the growth of terrestrial vegetation, destroy its value for agricultural purposes by preventing the growth of what may be termed an ordinary agricultural crop, including hay, or restrict its growth to predominantly aquatic species.
 - N.D.C.C. §61-33-01(4)



Riparian Principles – Meander Lines & Navigable Waters

- A meander line is a survey line, described by courses and distances taking into consideration the difficulties of surveying the body of water, for the purpose being to determine the quantity of land to be charged for by the government.
- However, the water line, not the meander line, ordinarily forms the boundary of land abutting a navigable body of water. NDMTS 7-01.3.



Riparian Principles

Accretion & Erosion

- **Accretion** refers to gradual deposit and addition of soil along the bank of a waterbody caused by the gradual shift of the waterbody away from the accreting bank.
- **Erosion** refers to the gradual loss of soil along the bank of a waterbody caused by the gradual encroachment of water into the eroding bank.
 - See *J.P. Furlong Enterprises, Inc. v. Sun Explor. and Prod. Co.*, 423 N.W.2d 130 (N.D. 1988).
- **Riparian accretions.** Where from natural causes land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, **such land belongs to the owner of the bank**, subject to any existing right of way over the bank.
 - N.D.C.C. § 47-06-05.
- When leasing riparian lands, including catch-all (Mother Hubbard) provisions helps reduce risk.
 - See *Borth v. Gulf Oil Exploration & Production Co.*, 313 N.W.2d 706 (N.D. 1981); *Hallin v. Inland Oil & Gas Corp.*, 903 N.W.2d 61 (N.D. 2017)



Riparian Principles

Who owns islands in navigable waters?

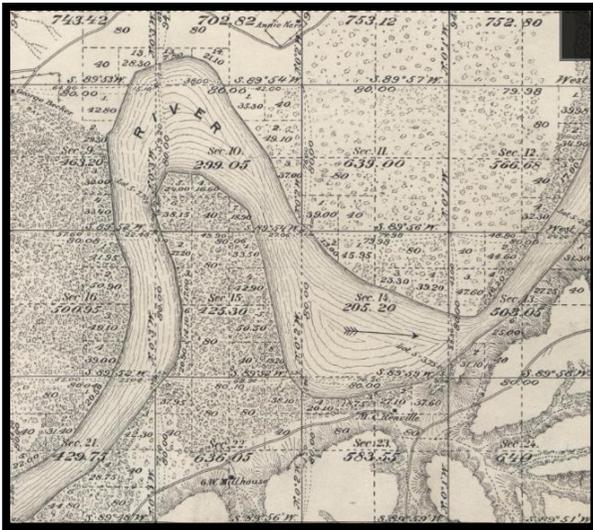
- Generally, the owner of the bed of the navigable body of water owns all islands forming therein, including the minerals thereunder. However, the examiner must consider when and how the island formed.
- When:
 - Island formed *prior to statehood* remains in ownership of the United States.
 - Islands forming *after statehood* as an alluvial accretion to the bed in navigable bodies of water belong to the State. See N.D.C.C. § 47-06-08.
- How:
 - N.D.C.C. § 47-06-10 provides: “If a stream, navigable or not navigable, in forming itself a new arm divides itself and surrounds land belonging to the owner of the shore and thereby forms an island, the island belongs to such owner.”



Riparian Principles

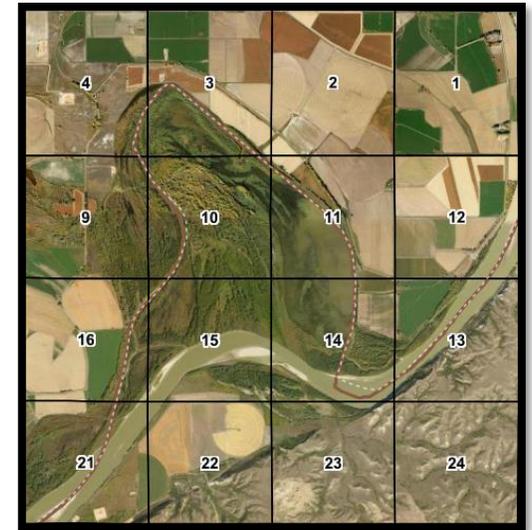
J.P. Furlong Co. v. Sun Exploration & Production Co., 423 N.W.2d 130 (N.D. 1988)

Original Survey



When an avulsion event creates a new riverbed, who owns the mineral estate in both the new and abandoned riverbeds?

Current Aerial Map



J.P. Furlong Co. v. Sun Exploration & Production Co., 423 N.W.2d 130 (N.D. 1988)

Competing claims to the abandoned riverbed

- Leases taken by various companies for Section 9 oxbow
 - Sun Exploration & Production Company
 - Lessor: Grace M. Oyloe – owned lands adjacent to abandoned riverbed
 - Ladd Petroleum Corporation
 - Lessor: State of North Dakota – owner of riverbeds under Equal Footing Doctrine
 - J.P. Furlong Enterprises, Inc. (succ. To Marc A. Chorney)
 - Lessor: David A. Papineau, successor to Emery Papineau – prior owner of Section 15 lands in the new riverbed
- Which company leased the correct party?



J.P. Furlong Co. v. Sun Exploration & Production Co., 423 N.W.2d 130 (N.D. 1988)

Statute departs from Common Law

- Common Law – Title did not change after avulsion
- “If a stream, navigable or not navigable, forms a new course abandoning its ancient bed, the owners of the land newly occupied take by way of indemnity the ancient bed abandoned, each in proportion to the land of which he has been deprived.”
 - N.D.C.C. § 47-06-07
- Court held that 47-06-07 controlled and awarded mineral title to the former riverbed to the Furlong plaintiffs.

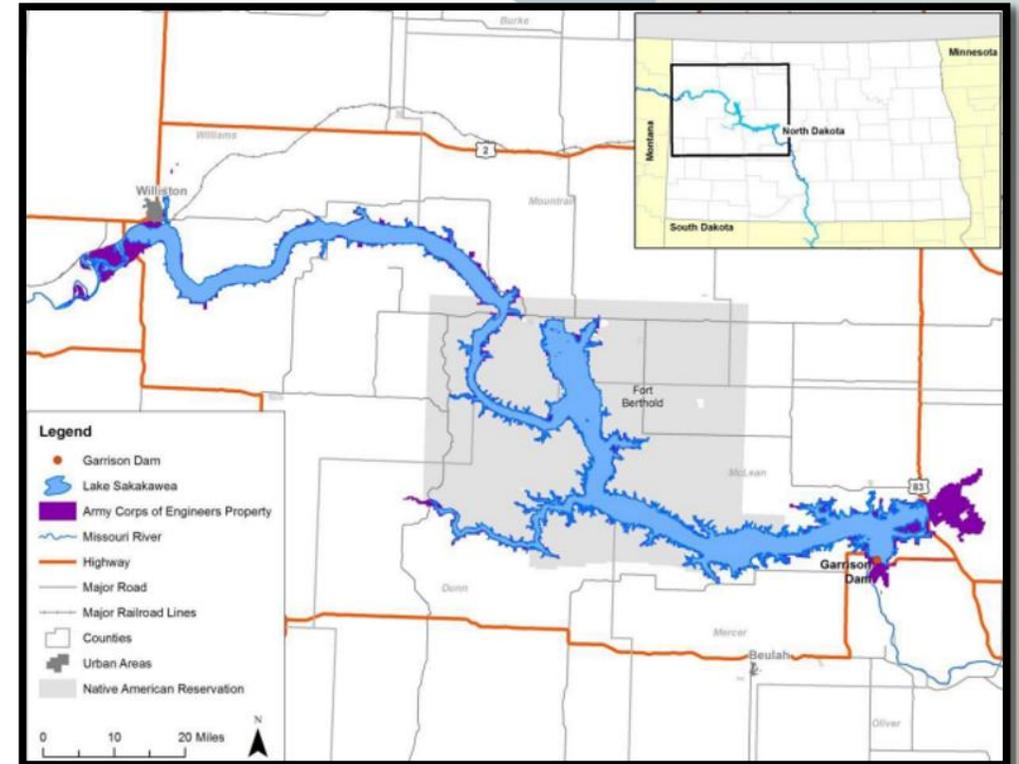
Kim-Go v. J.P. Furlong Enters. 460 N.W.2d 694 (N.D. 1990) (“Kim-Go I”)
Kim-Go v. J.P. Furlong Enters. 484 N.W.2d 118 (N.D. 1992) (“Kim-Go II”)

In proportion?

- “...owners of the land newly occupied take by way of indemnity the ancient bed abandoned, each **in proportion** to the land of which he has been deprived.”
 - N.D.C.C. § 47-06-07
- Furlong/Papineau owned western 76% of the new riverbed; Kim-Go/Erickson owned eastern 24% of the new riverbed, and (successfully) argued ownership of abandoned bed should be undivided.
- On appeal, the Court reversed, concluding the statute authorizes ownership of the new bed in severalty (if the former ownership was in severalty).
- In Kim-Go II, the Court upheld lower court’s decision for shoreline apportionment.

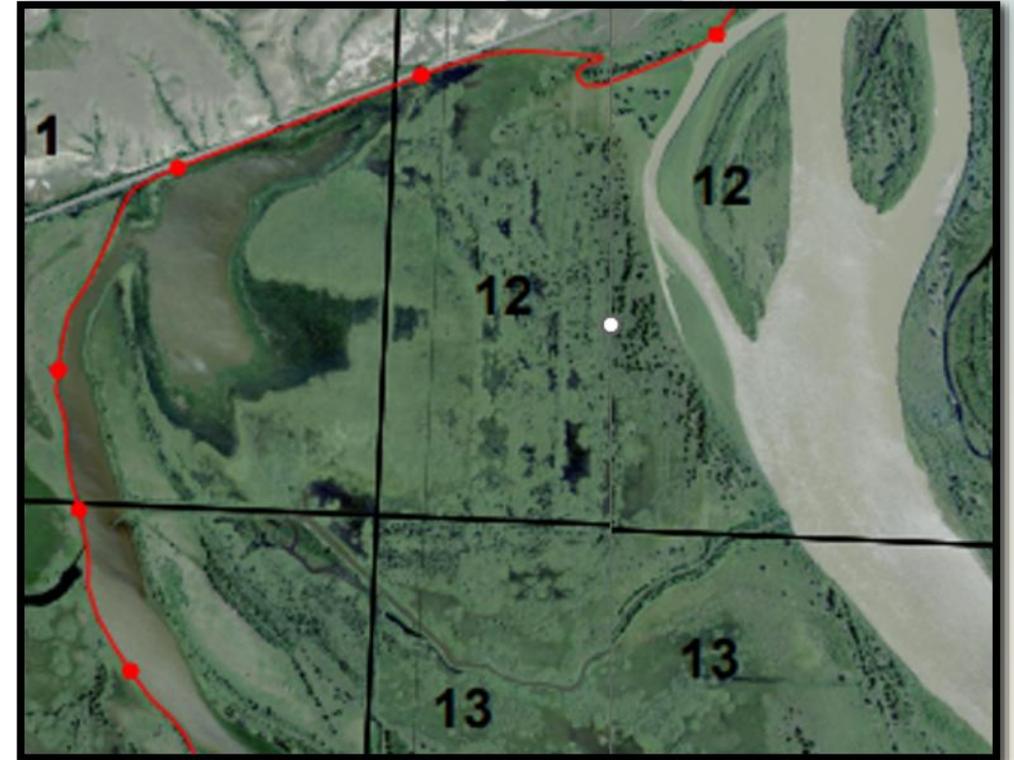
Ordinary High Water Mark (OHWM) – Missouri River & Lake Sakakawea

- Flood Control Act of 1944 authorized construction of Garrison Dam on Missouri River, forming Lake Sakakawea
- Army Corps of Engineers (ACE) surveys captured location of high water mark and acquired uplands by deed or condemnation
- Title disputes around location of the Ordinary High Water Mark led to litigation between oil and gas operators with competing claims to the mineral leasehold



Wilkinson v. Board of Univ. & Sch. Lands, (2017 ND 231) ("Wilkinson I")

- In 1958, J.T. and Evelyn M. Wilkinson conveyed lands in Section 12 and 13-T153N-R102W to the United States for the Garrison Dam project, reserving all oil and gas
- In 2012, their successors sued the Land Board to determine ownership of the minerals in and under the property, claiming same under the 1958 deed
- District Court decided the lands were below the *current* ordinary high water mark and belonged to the State
- N.D.C.C. ch. 61-33.1 enacted during pendency of litigation



Ordinary High Water Mark (“OHWM”) N.D.C.C. ch. 61-33.1

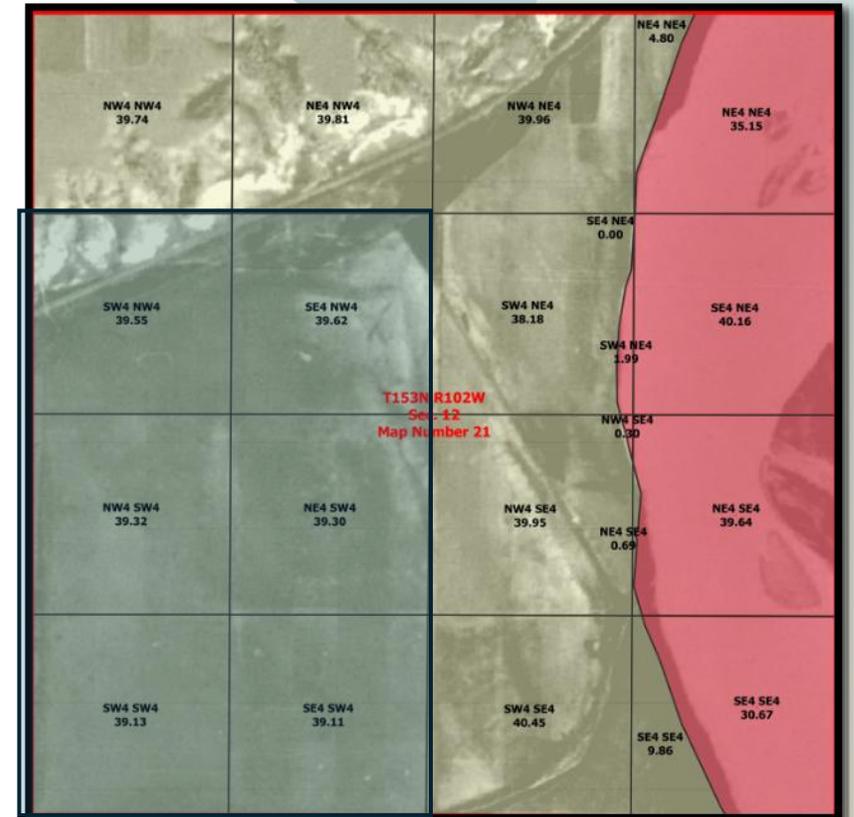
State ownership of Missouri Riverbed

- Determine the OMHW of the *historical* Missouri riverbed channel
- Limited geographically from northern boundary of FBIR to southern border of 33, 34-T153N-R102W
- Findings of the Wenck Study presented to NDIC and adopted September 27, 2018 under Order No. 29129 – setting the OHWM of the historical Missouri riverbed channel
- Land Board contracted with KLJ to determine acreage above and below the OHWM, and as of November 29, 2021 adopted the acreage adjustment survey



Wilkinson v. Board of Univ. & Sch. Lands, (2020 ND 179) ("Wilkinson II")

- On remand, the District Court determined Chapter 61-33.1 applied, the Wilkinson's land was above the OHWM, and they owned the minerals in dispute
- These holdings were upheld by the Supreme Court of North Dakota
- "Notwithstanding any provision of this chapter to the contrary, the ordinary high water mark of the historical Missouri riverbed channel abutting nonpatented public domain lands owned by the United States must be determined by the branch of cadastral study of the United States bureau of land management in accordance with federal law."
 - N.D.C.C. 61-33.1-06 Public Domain Lands.



Surveys

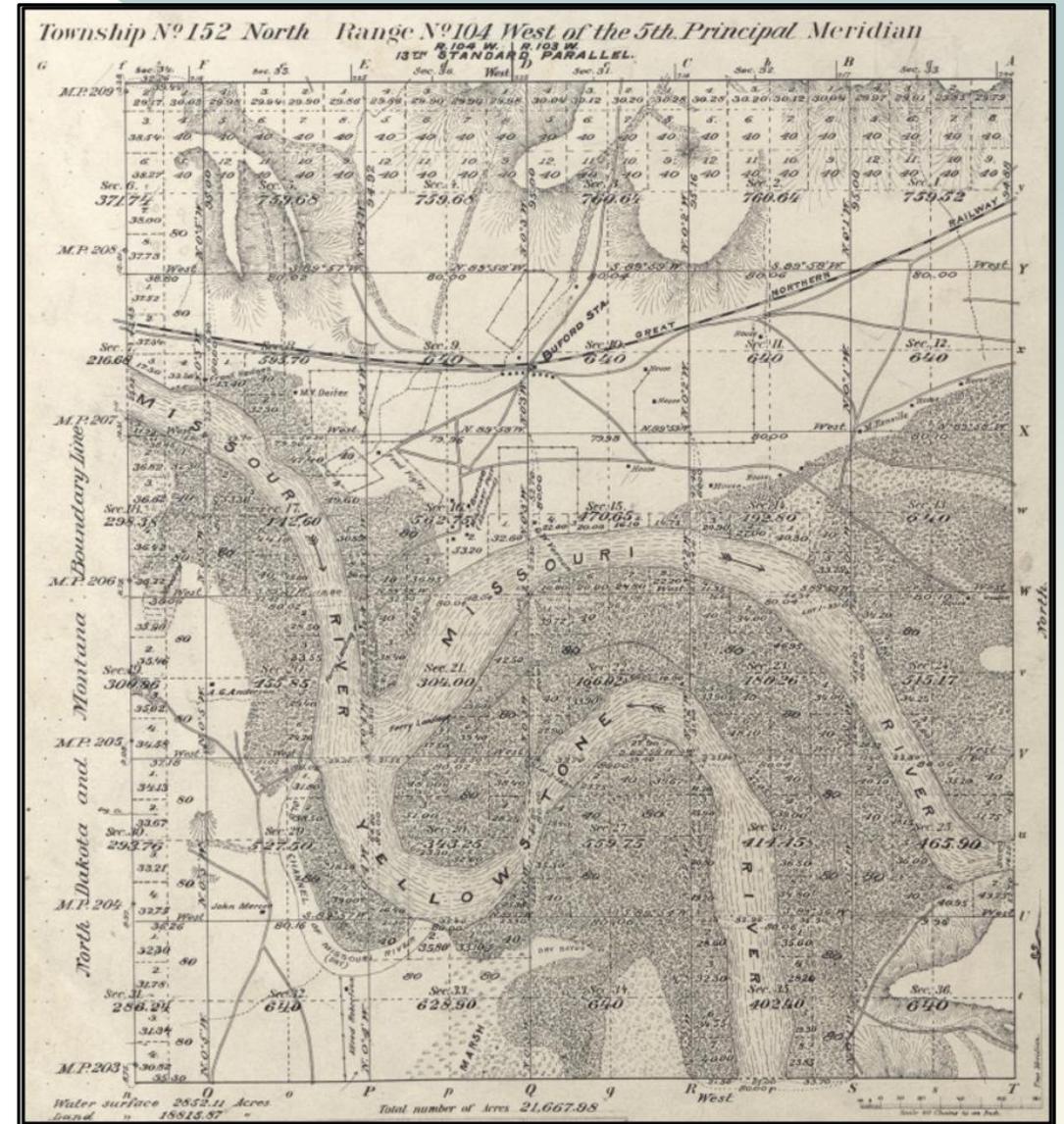
Common surveys encountered

- Original Survey
 - Between mid-1800s and early 1900s
 - Some topographic features and notes
 - “Snapshot”
- Land Status Records: MT Plat and OG Plat
 - Ongoing state of a township's Federal and private land regarding title, lease, rights, and usage
- Segment Maps
 - Army Corps of Engineers
 - Depict the riverbed and OHWM as it existed in 1952
- State's OHWM Surveys
- Fee/Private Surveys



Original Survey

- Between mid-1800s and early 1900s
- Some topographic features and notes
- Patent and federal information missing
- Available online via BLM's GLO Records
 - gloreCORDS.blm.gov/default.aspx
 - Search documents by type
 - Surveys



Original Survey

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT PRIVATE CLAIMS
General Land Office Record

Search Documents Reference Center Support Pathfinder Shopping Cart

Search Documents

Search Documents By Type Search Documents By Location Search Documents By Identifier

Patents
Surveys
LSR
CDI
Tract Books

Search Clear Form

Location
State: NORTH DAKOTA
County: Any County

Land Description
Township: / North
Range: / West
Meridian: Any Meridian

To search for surveys

1. Start by selecting the state.
2. **You do not have to fill in all fields**, but provide *at least one* additional field.
3. Click the **Search Surveys** button.
4. You will be switched to the "Search Results" page.

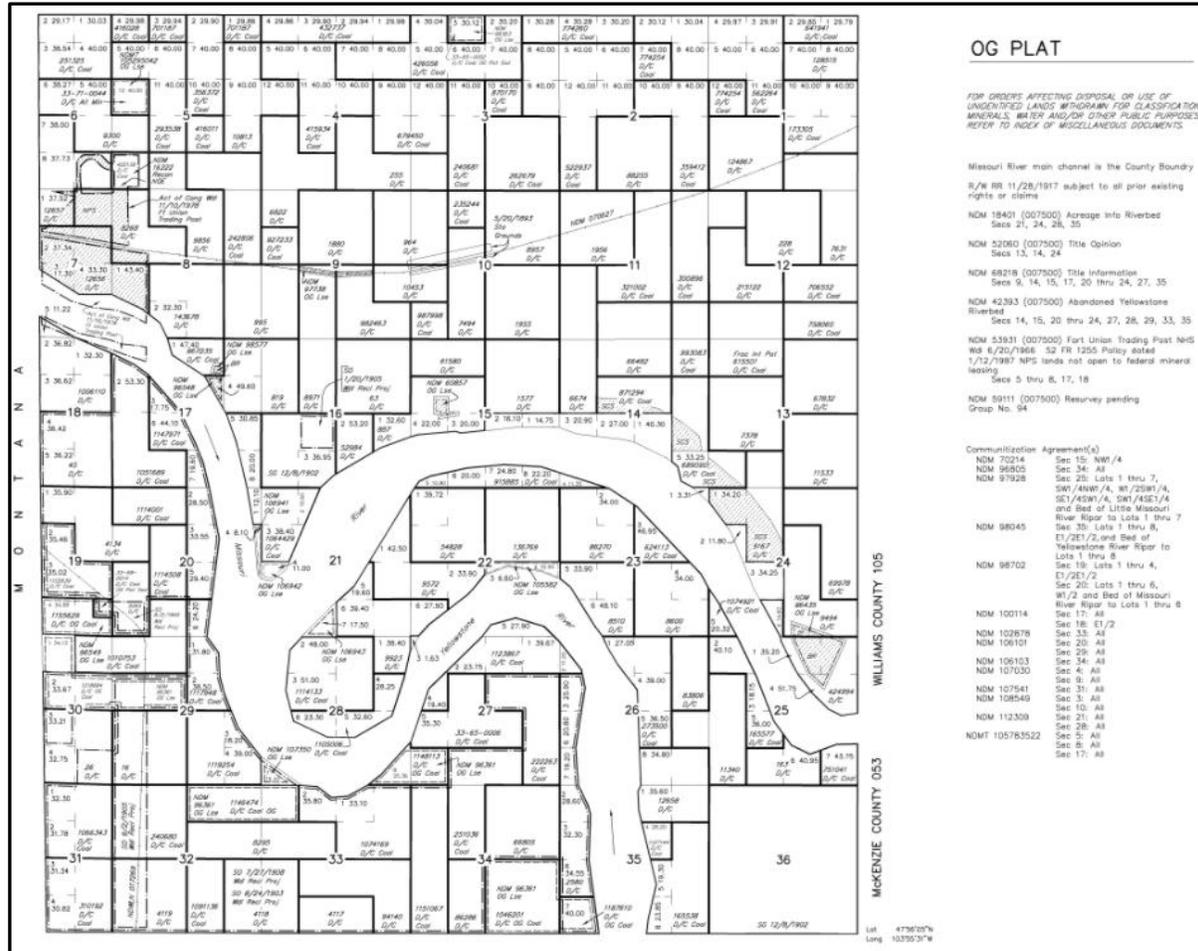
You can get a brief description of what each field means by hovering your mouse over it. You can get more detailed information by checking the [Glossary](#) in the Reference Center. For more tips and help, check out our [Survey Search Overview](#).

Miscellaneous
Survey Type: Any Survey Type Contract/Group Nr: Survey Nr:
Surveyor: Any Surveyor Approved Date: to

Search Surveys *Note: This site does not cover every state. We do have [resource links](#), though, for most states.*

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OG Plat



OG PLAT

FOR ORDERS AFFECTING DISPOSAL OR USE OF UNIDENTIFIED LANDS WITHDRAWN FOR CLASSIFICATION, MINERALS, WATER AND/OR OTHER PUBLIC PURPOSES, REFER TO INDEX OF MISCELLANEOUS DOCUMENTS.

Missouri River main channel is the County Boundary
S/W RR 11/2B/1917 subject to all prior existing rights or claims

NDM 18401 (007500) Acreage Info Riverbed
Secs 21, 24, 28, 35

NDM 52060 (007500) Title Opinion
Secs 13, 14, 24

NDM 68218 (007500) Title Information
Secs 9, 14, 15, 17, 20 thru 24, 27, 35

NDM 42333 (007500) Abandoned Yellowstone Riverbed
Secs 14, 15, 20 thru 24, 27, 28, 29, 33, 35

NDM 53931 (007500) Fert Unim Tract NWS 4/20/1964
1/12/1987 NPS lands not open to federal mineral leasing

Secs 5 thru 8, 17, 18

NDM 50111 (007500) Resurvey pending
Group No. 94

Communication Agreement(s)

NDM 70214 Sec 15: NW 1/4

NDM 96505 Sec 34: All

NDM 97928 Sec 25: Lots 1 thru 7, SW 1/4NW 1/4, NE 1/4SW 1/4, SW 1/4SW 1/4, SW 1/4SW 1/4 and Bed of Little Missouri River Ripar to Lots 1 thru 7

NDM 98045 Sec 20: Lots 1 thru 8, E1/2E1/2 and Bed of Yellowstone River Ripar to Lots 1 thru 8

NDM 98702 Sec 19: Lots 1 thru 4, E1/2E1/2

Sec 20: Lots 1 thru 6, W1/2 and Bed of Missouri River Ripar to Lots 1 thru 6

NDM 100114 Sec 17: All

NDM 102678 Sec 18: E1/2

NDM 106101 Sec 33: All

NDM 106103 Sec 20: All

NDM 107030 Sec 4: All

NDM 107541 Sec 8: All

NDM 107541 Sec 31: All

NDM 108549 Sec 5: All

NDM 112309 Sec 10: All

NDM 112309 Sec 21: All

NDM 105783522 Sec 5: All

NDM 105783522 Sec 8: All

NDM 105783522 Sec 17: All



Land Status Records: MT Plat & OG Plat

- Provide ongoing state of a township's Federal and private land regarding title, lease, rights, and usage.
- "Master Title Plat" (MT Plat) is a composite of all Federal surveys for a township.
- "Oil and Gas Plat" (OG Plat) focuses specifically on oil and gas leasehold statuses.
- Available online via BLM's GLO Records:
 - glorerecords.blm.gov/default.aspx
 - Search documents by type
 - LSR

	LSR Type	State	Meridian
LSR	Master Title Plat	ND	5th PM
	Oil and Gas	ND	5th PM
	Historical Index Page	ND	5th PM
	Acquired Historical Index Page	ND	5th PM



U.S. Army Corps of Engineers Segment Maps

- Garrison Dam constructed in the 1950s
- Surveys prepared on conjunction with the condemnations and taking in late '40s and early '50s
- Evidence of the historical OHWM for the acquired lands along the Missouri River (prior to inundations from Lake Sakakawea)
- Available at Garrison Riverdale Project Office
 - 201 1st St, Riverdale, ND 58565
 - 701.654.7411



State's Ordinary High Water Mark Surveys

- Available at land.nd.gov/minerals-management/ordinary-high-water-mark-ohwm-surv
- Other surveys available at the bottom of the page

The screenshot shows the North Dakota Trust Lands website. The header includes the logo and navigation links: Home, About, Land Board, Divisions, Unclaimed Property, Resources, Contact, and Customer Portal. A search bar is also present. The sidebar lists various divisions, with 'Minerals Management' and 'OHWM Surveys' highlighted. The main content area is titled 'Ordinary High Water Mark (OHWM) Surveys' and features a section for 'Acreage Adjustment Survey (Wenck)'. This section provides information for operators and private mineral owners, and includes instructions on how to use the interactive map. At the bottom, a box labeled 'ACREAGE ADJUSTMENT INTERACTIVE MAP' contains a list of links for various resources, including a PDF map book, technical reports, GIS databases, shapefiles, signed plats, and acreage spreadsheets, all dated as November updates.

Recent Decisions

Continental Resources, Inc. v. N.D. Bd. of Univ.

Case No. 1:17-cv-00014-DLH-CRH, Doc. 114 (D.N.D. Mar. 21, 2023)

- Background:
 - N.D. and U.S. had competing claims to riparian tracts
 - U.S. claimed the tracts were above the OHWM according to its surveys
 - N.D. claimed the tracts were below the OHWM according to its survey
 - Continental Resources, Inc. held leases from both N.D. and U.S.
- Procedurally: interpleader action brought by Continental seeking clarity to controlling OHWM survey between state-owned riverbed and federal riparian lands.



Recent Decisions

Continental Resources, Inc. v. N.D. Bd. of Univ.

- Question: Which survey(s) to apply? Does federal law continue to define the OHWM?
- Positions:
 - BLM applying federal law and its surveys in determining the OHWM
 - State applying its OHWM survey
- BLM published Supplemental Plats between 2013 and 2014.
- N.D. protested these plats; BLM rejected.
- Appeal to the Interior Board of Land Appeals, which rejected the appeal on March 25, 2020.

Recent Decisions

Continental Resources, Inc. v. N.D. Bd. of Univ.

- For non-patented public domain lands owned by the U.S., the OHWM of the historic Missouri River on these lands must be determined in accordance with federal law.
- But what about “acquired lands”?
 - Those lands in which the U.S. yields title and then later reacquires via purchase or eminent domain.
- Does state law or federal law governs the determination of the historical OHWM as to those lands that pass out of federal ownership and are re-acquired by the U.S.?

Recent Decisions

Continental Resources, Inc v. U.S., et al.

Case No. 23-2249, 136 F.4th 778 (8th Cir. 2025)

- Background:
 - The U.S. appealed the “Board” decision.
- The 8th Circuit confirmed:
 - U.S. relinquished title to the lands at issue by conveyance to third parties.
 - Later U.S. reacquire them under eminent domain or purchase in order to construct the Garrison Dam.
- Conclusion:
 - Once the U.S. ceded title to the lands it had retained under the equal-footing doctrine, the location of the OHWM became subject to the laws of the State.



Recent Decisions

N.D. Bd. of Univ. v. United States

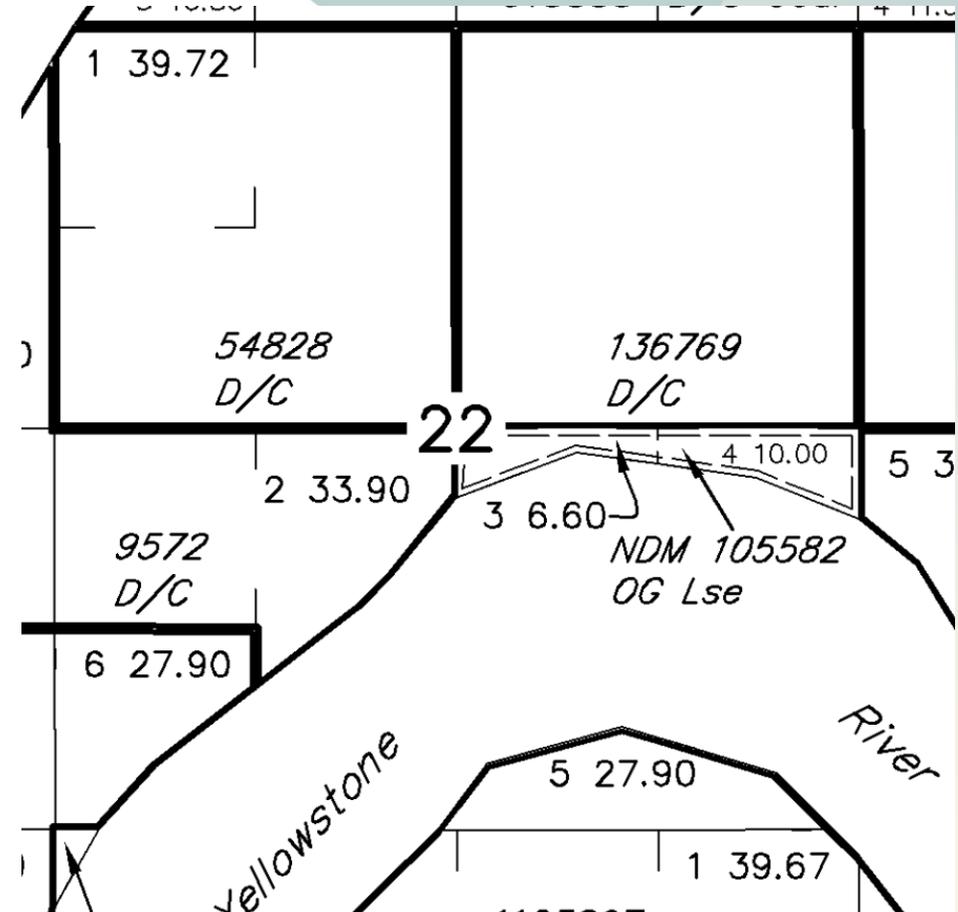
Case No. 1:2020-cv-00185 (D.N.D. Dec. 8, 2025)

- Similar case as *Continental Resources, Inc. v. N.D. Bd. of Univ.*, the parties filed a joint motion to stay this matter on November 19, 2020.
- After resolution of the *Continental* case, the court requested a joint status report.
- The Board filed a notice of voluntary dismissal on December 3, 2025.
- Finally, the case was ordered dismissed without prejudice on December 8, 2025.



How can I tell if a U.S. tract is public domain land or acquired lands?

- Review the OG Plat
 - Locate federal lands
 - Identify whether a patent is described
- Review BLM GLO's patent records
- Review Acquired Historical Index Page



OG Plat & Patent Search Results

OG Plat



Patent Search Results

Image	Accession	Names	Date	Doc.#	State	Meridian	Twp - Rng	Aliquots	Sec. #	County
	1123867	AURDAL, PAUL O	8/27/1948	021248	ND	5th PM	152N - 104W	Lot/Trct 5	22	Mckenzie
								Lot/Trct 2	26	Mckenzie
								Lot/Trct 1	27	Mckenzie
								Lot/Trct 2	27	Mckenzie
								Lot/Trct 4	27	Mckenzie
	9923	BERRY, CLAY L	8/27/1908	362	ND	5th PM	152N - 104W	NW¼NE¼	27	Mckenzie
								SE¼SE¼	21	Mckenzie, Williams
								Lot/Trct 5	21	Mckenzie, Williams
								Lot/Trct 6	21	Mckenzie, Williams
								Lot/Trct 6	22	Mckenzie
	136769	NOGGLE, JOHN H	6/13/1910	25076	ND	5th PM	152N - 104W	NE¼	22	Mckenzie
								Lot/Trct 1	28	Mckenzie
	ND1960_492	RIDDLE, SIMON	12/30/1905	9572	ND	5th PM	152N - 104W	NE¼SE¼	21	Mckenzie, Williams
								Lot/Trct 1	21	Mckenzie, Williams
								NW¼SW¼	22	Mckenzie
	54828	SULLIVAN, ALLEN J	4/5/1909	02908	ND	5th PM	152N - 104W	S½NW¼	22	Mckenzie
								NE¼NW¼	22	Mckenzie
								Lot/Trct 1	22	Mckenzie



Acquired Historical Index Page

S E C T I O N	SUBDIVISION																Other Description	Acres	Kind of Entry or Purpose of Order	Serial # Order #	Action Date	Remarks		
	NE¼				NW¼				SW¼				SE¼										Lots	
	N E	N W	S W	S E	N E	N W	S W	S E	N E	N W	S W	S E	N E	N W	S W	S E								
	For orders effecting disposal or use of unidentified lands withdrawn for classification, minerals, water, Indian treaties, and/or other public purpose, refer to index of misc. documents.																							
24																		See Rmks						That portion in Farm Unit 109 A, M&B
25	X																	1, 4	See Rmks	60.04	OG Lse	NDM 53122	11/30/1984	That portion in Farm Unit 109 A, M&B; Eff 12/1/1984; Exp 11/30/1994
13																			See Rmks					That portion outside Farm Unit 102, M&B
14			X																See Rmks					That portion outside Farm Unit 102, M&B
24					X			X										1	See Rmks	123.05	OG Lse	NDM 60000	2/14/1985	That portion outside Farm Units, M&B; Eff 3/1/1985; Exp 2/28/1995
15																		See Rmks	Part SWNW	15.40	OG Lse	NDM 60857	4/24/1985	Eff 5/1/1985; Parts of Lots 3 & 4, 8.62 A; Canc 2/29/1988
17																		1	M&B	2.89	OG Lse	NDM 66542	12/10/1985	Eff 1/1/1986; Exp 12/31/1995
17																			M&B	7.75	OG Lse	NDM 61930	8/29/1986	Eff 9/1/1986; Exp 8/31/1996
5																		12						
21																		4						
27																								
28																								
32	X	X																						
33						X																		



OG Plat vs. OWHM Survey

OG Plat



OWHM Survey



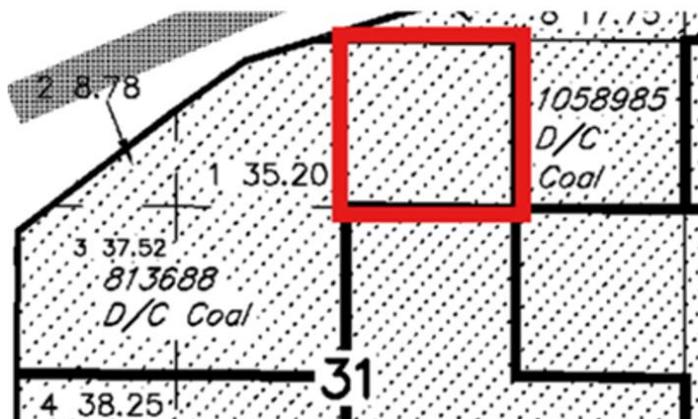
Recent Decisions

Garaas v. Continental Resources, Inc.

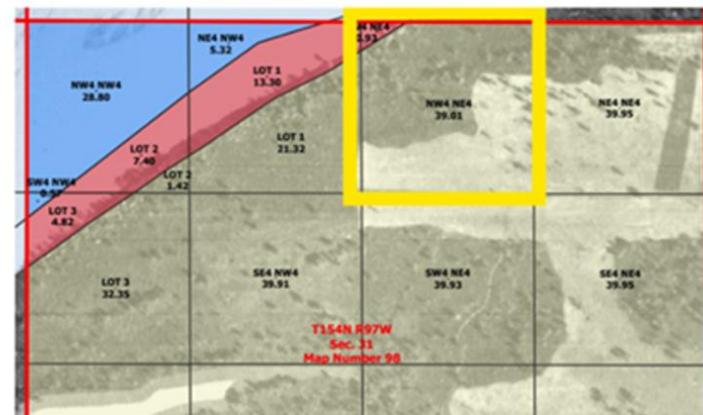
2025 ND 146, 25 N.W.3d 505

- Grantors owned a mineral interest in the NW/4 NE/4 of Section 31-T154N-R97W, originally a 40.00-acre, non-riparian tract.
- However, the Missouri River has migrated into this tract:

BLM's MT Plat



State's OHWM Survey



Recent Decisions

Garaas v. Continental Resources, Inc.

- In 1951, Grantors conveyed a royalty of 2% “from the following described lands situate in McKenzie County, North Dakota, to-wit:
The Northwest Quarter of the Northeast Quarter (NW/4 NE/4) of Section Thirty-one (31) in [T154N-R97W], containing forty (40) acres.”
- The parties to the subject litigation stipulated that this tract contains only 39.94 acres, based upon the Wenck report, of which 0.93 acres are below the OHWM.
- Query – Should the royalty be calculated based upon:
 - a) 40.00 acres, as described in the conveyance;
 - b) 39.94 acres, based on the number of acres in the tract per Wenck; or
 - c) 39.01 acres, based on the number of acres above the OHWM per Wenck?



Recent Decisions

Garaas v. Continental Resources, Inc.

- Rules for interpreting the language of a deed: (a) Primary purpose is to ascertain and effectuate the grantor's intent; which is to be (b) Intent ascertained from the writing alone, if possible.
- Holding:
 - The plain language of the royalty deed was unambiguous.
 - The language showed the grantors' intent that grantees receive a 2% royalty "of all" oil and gas "produced and saved" from the entire tract of land described.
- Conclusion: royalty calculated based on 40.00 acres.



Recent Decisions

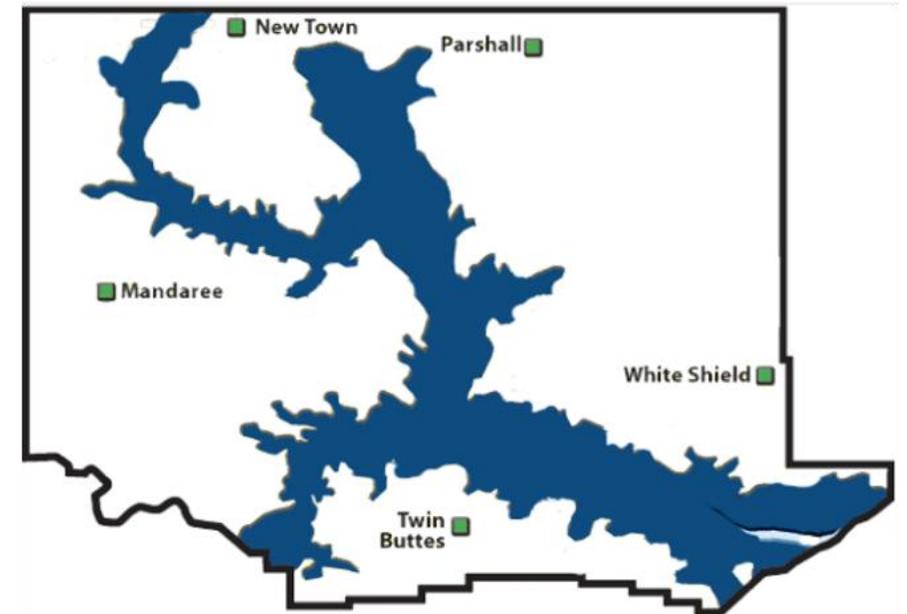
- *Mandan, Hidatsa, and Arikara Nation v. U.S. Department of the Interior*
- Case 1:20-cv-01918-ABJ (D.C. Cir. 2023)
- Question:
 - Who owns the riverbed underlying the portion of the Missouri River that runs through the Fort Berthold Indian Reservation in central North Dakota?



Recent Decisions

Mandan, Hidatsa, and Arikara Nation v. U.S. Department of the Interior, et al.

- Historically, the DOI held the position that the riverbed did not pass to the State at statehood. However, that position has waffled in recent years.
- Arguments:
 - North Dakota contends that the state owns the riverbed because, under the “Equal Footing Doctrine,” title passed to the state upon its admission to the Union in 1889.
 - MHA Nation maintains that the federal government possesses legal title to the riverbed and holds it in trust for the MHA Nation.



Recent Decisions

Mandan, Hidatsa, and Arikara Nation v. U.S. Department of the Interior, et al.

- *Alaska v. United States*, 545 U.S. 75, 100 (2005) (“Alaska II”) provides a two-step test to determine whether a new state possesses title to submerged land within a federal reservation:
 1. Whether “the United States *clearly intended* to include submerged lands within the reservation.”
 2. Whether “the United States *expressed its intent to retain* federal title to submerged lands within the reservation.”
- Holding:
 - The “Reserving Documents” alone do not clarify whether the federal government intended to include the submerged lands in the Reservation.
- Therefore:
 - A. The court must look beyond the plain language of the Reserving Documents; and
 - B. Accordingly, the motions for judgment on the pleadings and summary judgment failed.

Recap & Takeaways

1. Surveys

- Locate the surveys covering your land
- Ascertain whether the State of North Dakota or U.S. is involved in your lands
- Determine applicability and priority of surveys

2. State of North Dakota involvement

- Review OHWM surveys and N.D. Trust Lands website to confirm riverbed lease acreages are consistent

3. United States involvement

- Review LSR records to determine whether lands are public domain or acquired lands
- Ensure acreages in opinion match federal lease and unit acreage; if not, BLM may refuse to approve communitization agreement



Recap & Takeaways

4. Accretions in front of fee lands/bed of non-navigable body of water
 - Surveys and stipulations of interest may be required
5. Conveyancing
 - Utilize “Mother Hubbard” or catch-all provisions
6. Protective leases
7. Suspension
 - Fee: N.D.C.C. § 47-16-39.1
 - State: N.D. Admin Code § 85-06-01-09
 - Federal: None

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