



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Great Plains Regional Office  
115 Fourth Avenue S.E., Suite 400  
Aberdeen, South Dakota 57401

NOV 09 2012

IN REPLY REFER TO:

DESCRM

MC-208

## MEMORANDUM

TO: Superintendent, Fort Berthold Agency

FROM: Regional Director, Great Plains Region

SUBJECT: Environmental Assessment and Finding of No Significant Impact

In compliance with the regulations of the National Environmental Policy Act (NEPA) of 1969, as amended, an Environmental Assessment has been completed and a Finding of No Significant Impact (FONSI) has been issued. The EA authorizes land use to construct a water depot on the Fort Berthold Indian Reservation.

All the necessary requirements of the National Environmental Policy Act have been completed. Attached for your files is a copy of the EA, FONSI and Notice of Availability. The Council on Environmental Quality (CEQ) regulations require that there be a public notice of availability of the (40 C.F.R. Section 1506.6(b)). Please post the attached notice of availability at the Agency and Tribal buildings for 30 days.

If you have any questions, please call Marilyn Bercier, Regional Environmental Scientist, Division of Environment, Safety and Cultural Resources Management, at (605) 226-7656.

### Attachment

cc: Tex Hall, Chairman, Three Affiliated Tribes (with attachment)  
Elgin Crows Breast, Tribal Historic Preservation Officer (with attachment)  
Daniel Velder, BLM, Bureau of Land Management (with attachment)  
Grady Wolf, SWCA (with attachment)  
Carson Hood/Fred Fox, MHA Energy (with attachment)  
Jonathon Shelman, Corps of Engineers (e-mail)  
Jeff Hunt, Fort Berthold Agency (e-mail)

## **Finding of No Significant Impact**

**Bird Industries Inc.**

**Environmental Assessment for a  
Water Depot**

**Fort Berthold Indian Reservation  
Dunn County, North Dakota**

The U.S. Bureau of Indian Affairs (BIA) has received a proposal to construct a water depot located as follows:

- T149N, R92W, NW¼ of Section 31 (Dunn County)

The potential of the proposed action to impact the human environment is analyzed in the following Environmental Assessment (EA), as required by the National Environmental Policy Act. Based on the EA, I have determined that the proposed project will not significantly affect the quality of the human or natural environment. No Environmental Impact Statement is required for any portion of the proposed activities.

This determination is based on the following factors:

1. Agency and public involvement solicited for the preceding NEPA document was sufficient to ascertain potential environmental concerns associated with the currently proposed project.
2. Protective and prudent measures were designed to minimize impacts to air, water, soil, vegetation, wetlands, wildlife, public safety, water resources, and cultural resources. The remaining potential for impacts was disclosed for both the proposed action and the No Action alternatives.
3. Guidance from the U.S. Fish and Wildlife Service has been fully considered regarding wildlife impacts, particularly in regard to threatened or endangered species. This guidance includes the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.) (MBTA), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.) (NEPA), the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d, 54 Stat. 250) (BGEPA), Executive Order 13186 "Responsibilities of Federal Agencies to Protect Migratory Birds", and the Endangered Species Act (16 U.S.C. 1531 et seq.) (ESA).
4. The proposed action is designed to avoid adverse effects to historic, archaeological, cultural and traditional properties, sites and practices. Compliance with the procedures of the National Historic Preservation Act is complete.
5. Environmental justice was fully considered.
6. Cumulative effects to the environment are either mitigated or minimal.
7. No regulatory requirements have been waived or require compensatory mitigation measures.

8. The proposed project will improve the socio-economic condition of the affected Indian community.

  
\_\_\_\_\_  
Regional Director

  
\_\_\_\_\_  
Date

# ENVIRONMENTAL ASSESSMENT

United States Bureau of Indian Affairs

Great Plains Regional Office  
Aberdeen, South Dakota



Bird Industries Inc.

Water Depot

Fort Berthold Indian Reservation

October 2012

*For information contact:  
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# CHAPTER 1 PURPOSE AND NEED FOR ACTION

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## 1.1 Introduction

This Environmental Assessment (EA) was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the regulations of the Council on Environmental Quality (CEQ), 40 CFR parts 1500 through 1508. An EA is an informational document intended for use by both decision-makers and the public. It discloses relevant environmental information concerning the proposed action and the no-action alternative.

## 1.2 Description of the Proposed Action

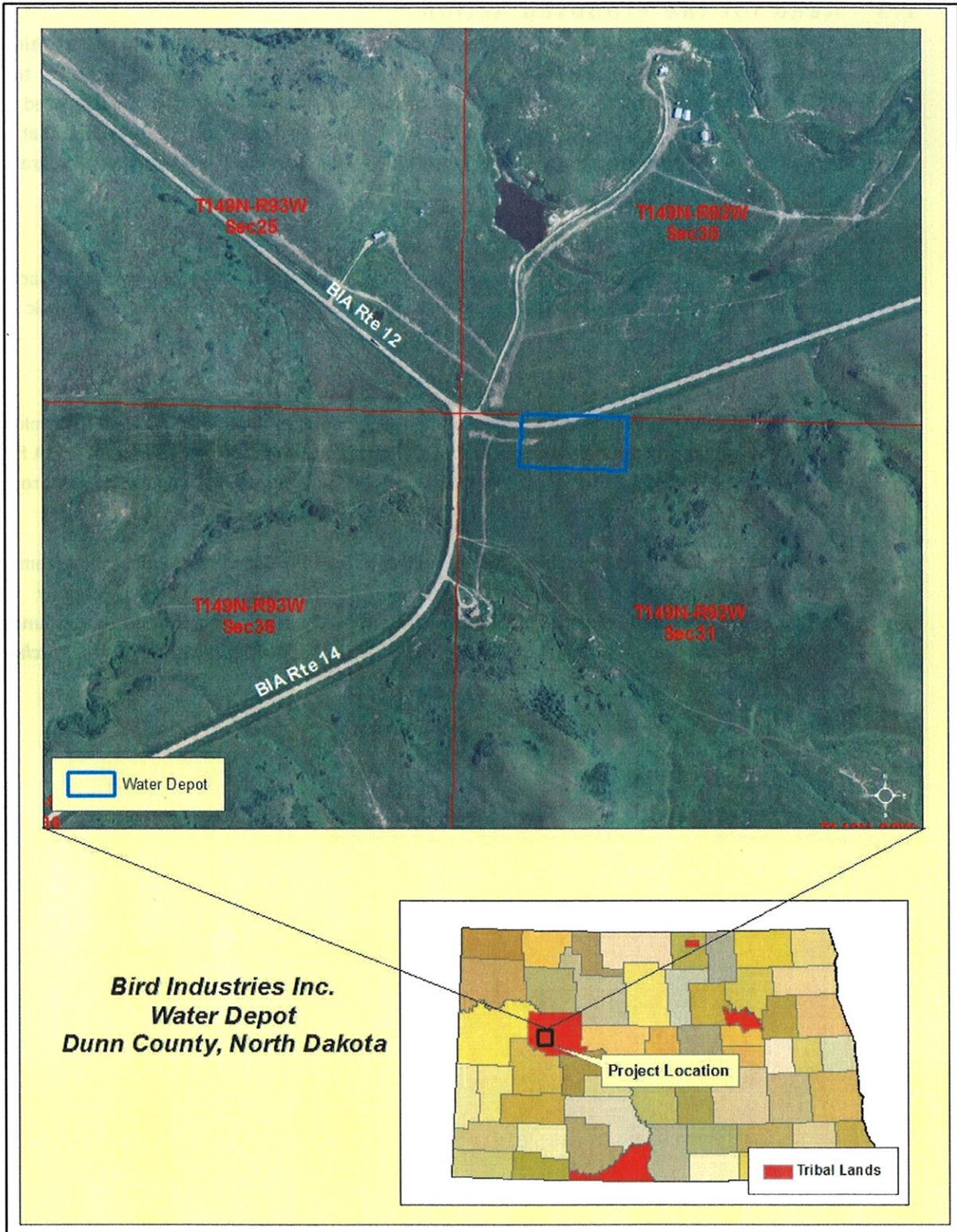
The Fort Berthold Reservation encompasses 988,000 acres, 457,837 of which are in tribal and individual Indian ownership by the Three Affiliated Tribes (Mandan, Hidatsa, and Arikara) and its members. The reservation is located in west central North Dakota and is split into three areas by Lake Sakakawea, which traverses the center of the reservation. It occupies sections of six counties: Dunn, McKenzie, McLean, Mercer, Mountrail, and Ward.

The Fort Berthold Reservation lies atop the Bakken Formation, a geologic formation rich in oil and gas deposits that extends approximately 25,000 square miles beneath North Dakota, Montana, United States and Saskatchewan, and Manitoba, Canada. Approximately two-thirds of the Bakken Formation is beneath North Dakota. The Three Forks Formation lies beneath the Bakken. The North Dakota Department of Mineral Resources (NDDMR) estimates that there are approximately 2 billion barrels of recoverable oil in each of these formations<sup>1</sup>. The NDDMR estimates that there are 30 to 40 remaining years of production, and possibly more if technology improves.

The proposed action includes construction of a water depot consisting of a gravel pad, water tank, and a water line that will connect to an existing rural water line. The proposed action would provide infrastructure to collect water to be used by multiple oil production companies during the hydraulic fracturing process. The proposed water depot would be located on the Fort Berthold Reservation and be positioned in T149N, R92W, NW¼ of Section 31 in Dunn County. Please refer to *Figure 1.1, Project Location Map*.

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<sup>1</sup> The Bakken Formation contains about 169 billion barrels of oil and the Three Forks Formation contains about 20 billion barrels; however, most of this is not expected to be developed.



**Figure 1.1, Project Location Map**

### 1.3 Need for the Proposed Action

The proposed project would have a direct and positive correlation with the oil and gas activities and therefore, would be consistent with the BIA's general mission of using available resources to help with economic development. The BIA's positive recommendation for approval of the proposed water depot would provide important benefits to the Three Affiliated Tribes, including revenue that could contribute to the Tribal budgets, satisfy Tribal obligations, and fund land purchase programs to stabilize its land base.

### 1.4 Purpose of the Proposed Action

The purpose of the proposed action is to make water more accessible during hydraulic fracturing operations by reducing the hauling distance which will, in turn, reduce truck traffic and public safety concerns.

### 1.5 Regulations that Apply to Water Sales

To comply with NEPA, the BIA must conduct an environmental evaluation and issue a determination of effect regarding environmental resources regarding the proposed project. Therefore, an EA for the water depot is necessary to analyze the direct, indirect, and cumulative impacts of the proposed project.

Water sales developments on Indian lands are subject to the terms of a Water Purchase Agreement produced from the Water Sales Policy of the Three Affiliated Tribes (TAT) and administered by Bartlett & West, Inc. Bird Industries Inc. along with associated trucking company, Butch and Sundance LLC, agreed to the terms and conditions on May 29, 2012. **Appendix C** contains the **Water Purchase Agreement**.

## CHAPTER 2 ALTERNATIVES

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### 2.1 Introduction

This chapter provides information on the development and evaluation of project alternatives. The development of alternatives is directly related to the purpose and need for the project. Two alternatives are being considered for this project: a no action alternative and a proposed action alternative.

### 2.2 Alternative A: No Action

Under the no action alternative (Alternative A), the BIA would not approve the proposed construction of the water depot. The water needed for hydraulic fracturing would continue to be consumed from current supply systems and hauling distance would remain the same.

### 2.3 Alternative B: Proposed Action

The proposed action (Alternative B) includes authorization by the BIA to develop a gravel pad and install a water tank that will connect to an existing underground water line using necessary above and below ground appurtenances. The proposed project would also require approval for the associated rights-of-way acquisition.

Through the direction of the BIA Environmental Protection Specialist, an intensive, pedestrian resource survey of the proposed water depot site was conducted on September 5, 2012 by KL&J. The purpose of these surveys was to gather site-specific data and photos with regards to botanical, biological, threatened and endangered species, eagles, and water resources. A study area of the entire potential area of disturbance and a 250-foot wide access road corridor was evaluated for the site. In addition, a 0.5 mile wide buffer around all areas of project disturbance was used to evaluate the presence of eagles and eagle nests. Resources were evaluated using visual inspection and pedestrian transects across the sites.

### 2.4 Construction and Plan Specifications

Construction of the gravel pad, access roads, water tank and piping would be confined within a five acre site and work would begin in the fall of 2012.

Construction of the gravel pad would require clearing and grading of an approximately 200-foot by 400-foot site. **Appendix D** contains the **Site Layout**. Reasonable efforts would be made to minimize disturbance during the construction process. Erosion control would be installed as needed. Topsoil would be separated and stockpiled to be used for prompt reseeding and reclamation of the disturbed area. The surface of the pad would consist of crushed scoria or gravel from a previously approved location. Livestock grazing would be allowed to continue during construction via the use of a temporary fence around the five-acre site.

The proposed water depot pad would be accessed from the north side. Two access roads approximately 50 feet long by 40 feet wide would be constructed off of BIA Route 12. Cattle guards, culverts and erosion control measures would be installed as needed. The out slope portions of the constructed access roads would be re-seeded upon completion of construction to reduce access road

related disturbance. The access roads would be improved as necessary to eliminate overly steep grades, maintain current drainage patterns, and provide all-weather driving surfaces.

The gravel pad would be used to support an open top water tank. The tank would come in several pre-fabricated pieces and the curved-panel design could be set up on site. The tank would be lined for added leak prevention.

The water source would come from the Fort Berthold Rural Water (FBRW) pipeline which is adjacent to the five-acre site. When excavating and tapping into this line, the trench would be excavated to a depth sufficient to maintain a minimum of 48 inches of ground coverage over the pipeline. After the trench is backfilled, disturbed areas would be re-graded to original contours, stockpiled topsoil would be reset over the right-of-way, pipeline marking signs would be installed, and reclamation would be finalized.

## 2.5 Reclamation

All reclamation is the responsibility of Bird Industries Inc. Reclamation would be implemented after initial construction, after any maintenance activity, and after final abandonment.

Re-grading, contouring, and reseeding of disturbed areas would occur as soon as practical after construction but no later than the next appropriate planting season. The ROW would be reseeded with certified seed mixtures approved by the BIA. All reseeding and planting would comply with BIA directions to ensure successful reclamation. Further, the ROW would be monitored for areas of excessive erosion and subsidence. Periodic monitoring would be performed and repeated reclamation efforts would be undertaken in problem areas until the ROW is certified as reclaimed.

Decommissioning of the water depot would result in final reclamation of the pad. All surface facilities would be removed. Compacted areas would be ripped, and re-contoured. All areas would be re-contoured to match topography of the original landscape as closely as possible and re-seeded with vegetation consistent with surrounding native species to ensure a healthy and diverse mix free of noxious weeds. Stockpiled topsoil would be redistributed and re-vegetated. Long-term monitoring would ensure successful reclamation and implementation of any necessary remedial efforts. The pipelines would be capped and abandoned in place.

## 2.6 Operation and Maintenance

After construction is complete, operation and maintenance of the water depot would be confined to the gravel pad with associated ROWs. Excessive erosion or other surface disturbances would be immediately repaired and reclaimed under guidelines from the previous section. If any surface damages that would affect adjacent property would occur, repairs would be made immediately. Landowners would be compensated for damages accordingly.

The BIA will be contacted immediately if damages are discovered. All applicable regulations and best management practices (BMPs) would be followed.

## 2.7 Preferred Alternative

The preferred alternative is to install a water depot and associated infrastructure in order to reduce truck traffic and public hazards, and facilitate economic development.

## CHAPTER 3 DESCRIPTION OF THE AFFECTED ENVIRONMENT AND IMPACTS

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### 3.1 Introduction

This chapter describes the existing conditions within the project area. The existing conditions, or affected environment, are the baseline conditions that may be affected by the proposed action. This chapter also summarizes the positive and negative direct environmental impacts of the project alternatives, as well as cumulative impacts. Indirect impacts are discussed in impact categories where relevant. Information regarding the existing environment, potential effects to the environment resulting from the proposed alternative, and avoidance, minimization, and/or mitigation measures for adverse impacts is included.

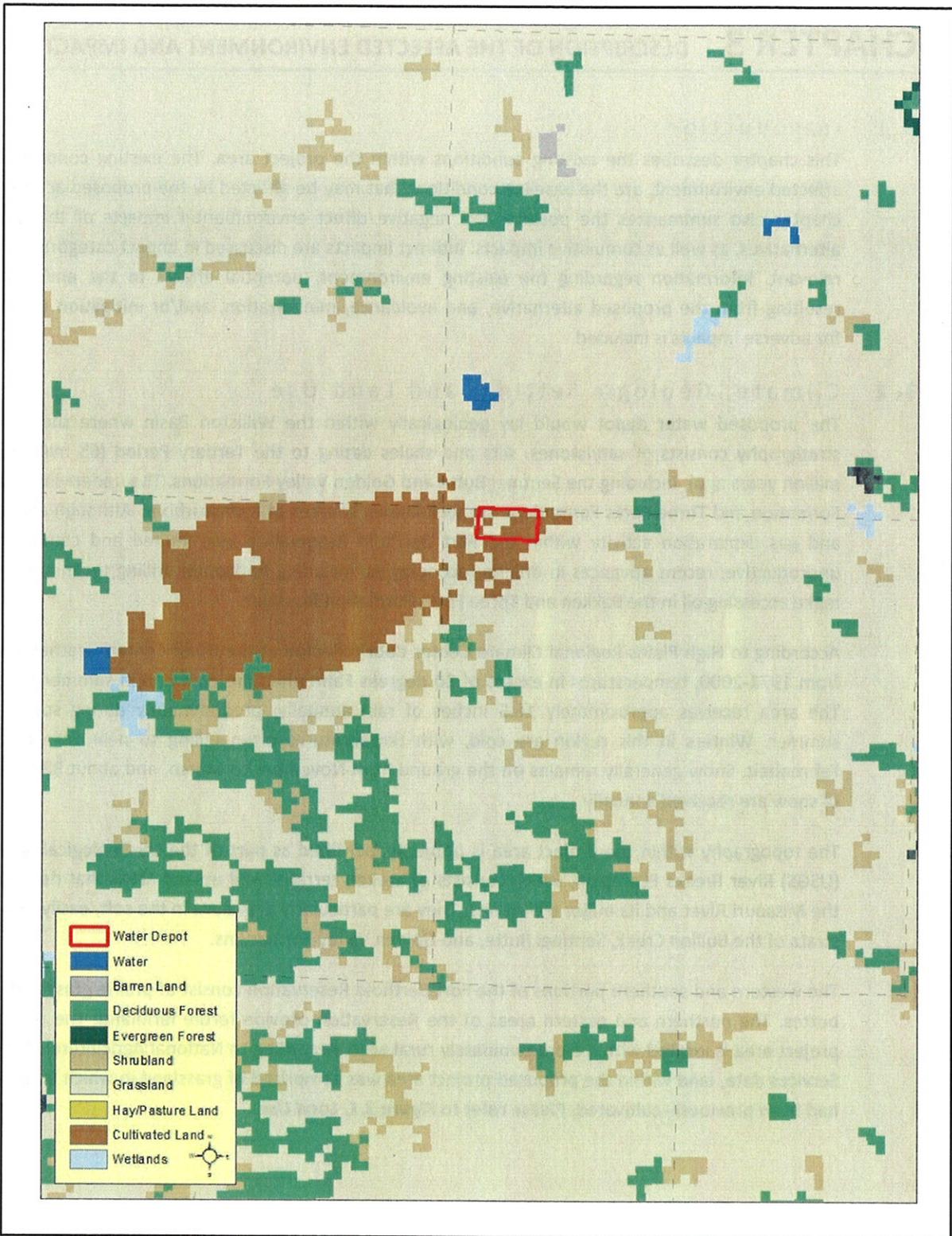
### 3.2 Climate, Geologic Setting, and Land Use

The proposed water depot would lay geologically within the Williston Basin where the shallow stratigraphy consists of sandstones, silts and shales dating to the Tertiary Period (65 million to 2 million years ago), including the Sentinel Butte and Golden Valley Formations. The underlying Bakken Formation and Three Forks Formations are well-known sources of hydrocarbons. Although earlier oil and gas exploration activity within the Fort Berthold Reservation was limited and commercially unproductive, recent advances in drilling technologies, including horizontal drilling techniques, now make accessing oil in the Bakken and Three Forks Formation feasible.

According to High Plains Regional Climate Center data collected at the Dunn Center weather station from 1971-2000, temperatures in excess of 80 degrees Fahrenheit are common in summer months. The area receives approximately 16.5 inches of rain annually, predominately during spring and summer. Winters in this region are cold, with temperatures often falling to near zero degrees Fahrenheit. Snow generally remains on the ground from November to March, and about 38.5 inches of snow are received annually.

The topography within the project area is primarily identified as part of the US Geological Survey's (USGS) River Breaks Ecoregion, which consists of broken terraces and upland areas that descend to the Missouri River and its major tributaries. They are particularly prevalent in the soft, easily erodible strata of the Bullion Creek, Sentinel Butte, and Golden Valley Formations.

The western and southern portions of the Fort Berthold Reservation consist of prairie grasslands and buttes. The northern and eastern areas of the Reservation provide fertile farmland. The proposed project area is located within a predominately rural area. According to National Agricultural Statistics Services data, land within the proposed project area was comprised of grassland in which 60 percent had been previously cultivated. Please refer to **Figure 3.1, Land Use**.



**Figure 3.1, Land Use**

3.2.1 Climate, Geologic Setting and Land Use Impacts/Mitigation

Alternative A (No Action) – Alternative A would not impact land use, climatic conditions, or geology within the study area.

Alternative B (Proposed Action) – Alternative B would result in the conversion of less than five acres of land from its present use into an industrial water depot. The land use of the affected area is grassland.

3.3 Soils

The Natural Resources Conservation Service (NRCS) Soil Survey of Dunn County dates from 1982, with updated information available online through the NRCS Web Soil Survey. There are three soil types identified within the project impact area. The location and characteristics of these soils are identified in **Table 3.1, Soils**.

The project site is comprised of 60 percent Farland silt loam, 35 percent Shambo loam, and 5 percent Savage-Rhoades silty-clay loam. The soils listed are well drained and not susceptible to flooding or ponding. Depth to the water table is greater than 80 inches and the soils have moderate susceptibility to sheet and rill erosion and can tolerate high levels of erosion without loss of productivity.

**Table 3.1, Soils**

M A P U N I T S Y M B O L	SOIL NAME	P E R C E N T S L O P E	COMPOSITION (IN UPPER 60 INCHES)					ER OSI ON FA CT OR <sup>2</sup>	HYDR OLOGI C SOIL GROU P <sup>3</sup>
1 0 2	Farland silt loam	0 t o 2						B	
2 7	Shambo loam	0 t						B	

<sup>2</sup> Erosion Factors indicate susceptibility of a soil to sheet and rill erosion by water. Kf indicates the erodibility of material less than two millimeters in size. Values of K range from 0.02 to 0.69. Higher values indicate greater susceptibility. T Factors estimate maximum average annual rates of erosion by wind and water that will not affect crop productivity. Tons/acre/year range from 1 for shallow soils to 5 for very deep soils. Soils with higher T values can tolerate higher rates of erosion without loss of productivity.

<sup>3</sup> Hydrologic Soil Groups (A, B, C, and D) are based on estimates of runoff potential according to the rate of water infiltration under the following conditions: soils are not protected by vegetation, soils are thoroughly wet, and soils receive precipitation from long-duration storms. The rate of infiltration decreases from Group A (high infiltration, low runoff) to D (low infiltration, high runoff).

		0 2						
6 9 B	Savage- Rhoades silty-clay loam	0 t o 6						C

### 3.3.1 Soil Impacts/Mitigation

Alternative A (No Action) – Alternative A would not impact soils.

Alternative B (Proposed Action) – The construction of the proposed water depot would disturb subsoil and topsoil within the project area. Soil impacts would be localized, and surface disturbance caused by the water depot development would result in the removal of vegetation from the soil surface. This can damage soil crusts and destabilize the soil. As a result, the soil surface could become more prone to accelerated erosion by wind and water. To reduce these impacts, the following would be done. Segregating topsoil from subsurface material for future reclamation, and incorporating it into topsoil stockpiles, laying gravel on the pad surface, re-seeding of disturbed areas immediately after construction activities are completed, the use of construction equipment appropriately sized to the scope and scale of the project, ensuring the road gradient fits closely with the natural terrain, and maintaining proper drainage.

Another soil resources issue is soil compaction, which can occur by use of heavy equipment. When soil is compacted, its permeability is decreased permeability and its surface runoff is increased. This is especially evident in silt and clay soils. In addition, soils may be impacted by the mixing of soil horizons. Soil compaction and the mixing of soil horizons would be minimized by the previously discussed topsoil segregation. Disturbed areas would be reseeded following construction. No further mitigation for soil impacts is anticipated.

## 3.4 Water Resources

The Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, provides the authority to the Environmental Protection Agency (EPA) and the United States Army Corps of Engineers (USACE) to establish water quality standards, control discharges into surface and ground waters, develop waste treatment management plans and practices, and issue permits for discharges (Section 402) and for dredged or fill material (Section 404).

Within the Fort Berthold Reservation, the Missouri River and Lake Sakakawea are both considered navigable waters and are, therefore, subject to Section 10 of the Rivers and Harbors Act of 1899.

The EPA also has the authority to protect the quality of drinking water under the SDWA (Safe Drinking Water Act) of 1974. As amended in 1986 and 1996, the SDWA requires many actions to protect drinking water and its sources: rivers, lakes reservoirs, springs, and ground water wells<sup>4</sup>.

### 3.4.1 Surface Water

The project area is located in the Great Plains region of North Dakota that borders the Badlands. This is an arid area with few isolated surface water basins. The majority of the surface waters in the region are associated with the Missouri River, Lake Sakakawea, and tributaries to these water bodies. Surface water generally flows overland until draining into these systems.

The proposed project is located in the Lake Sakakawea basin: surface waters within this basin drain to Lake Sakakawea. In addition, the proposed project is located in the Lower Little Missouri River Watershed. Please refer to **Figure 3.2, Surface Water Resources**. Runoff throughout the project area is by sheet flow until collected by ephemeral and perennial streams draining to Lake Sakakawea. Runoff from the project area drains northeast into South Fork creek in the Lake Sakakawea

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<sup>4</sup> The SDWA does not regulate private wells that serve fewer than 25 individuals.

Watershed. The creek would then flow to the northeast approximately four miles into Lake Sakakawea.

*3.4.1.1 Surface Water Impacts/Mitigation*

Alternative A (No Action) – Alternative A would not impact surface water.

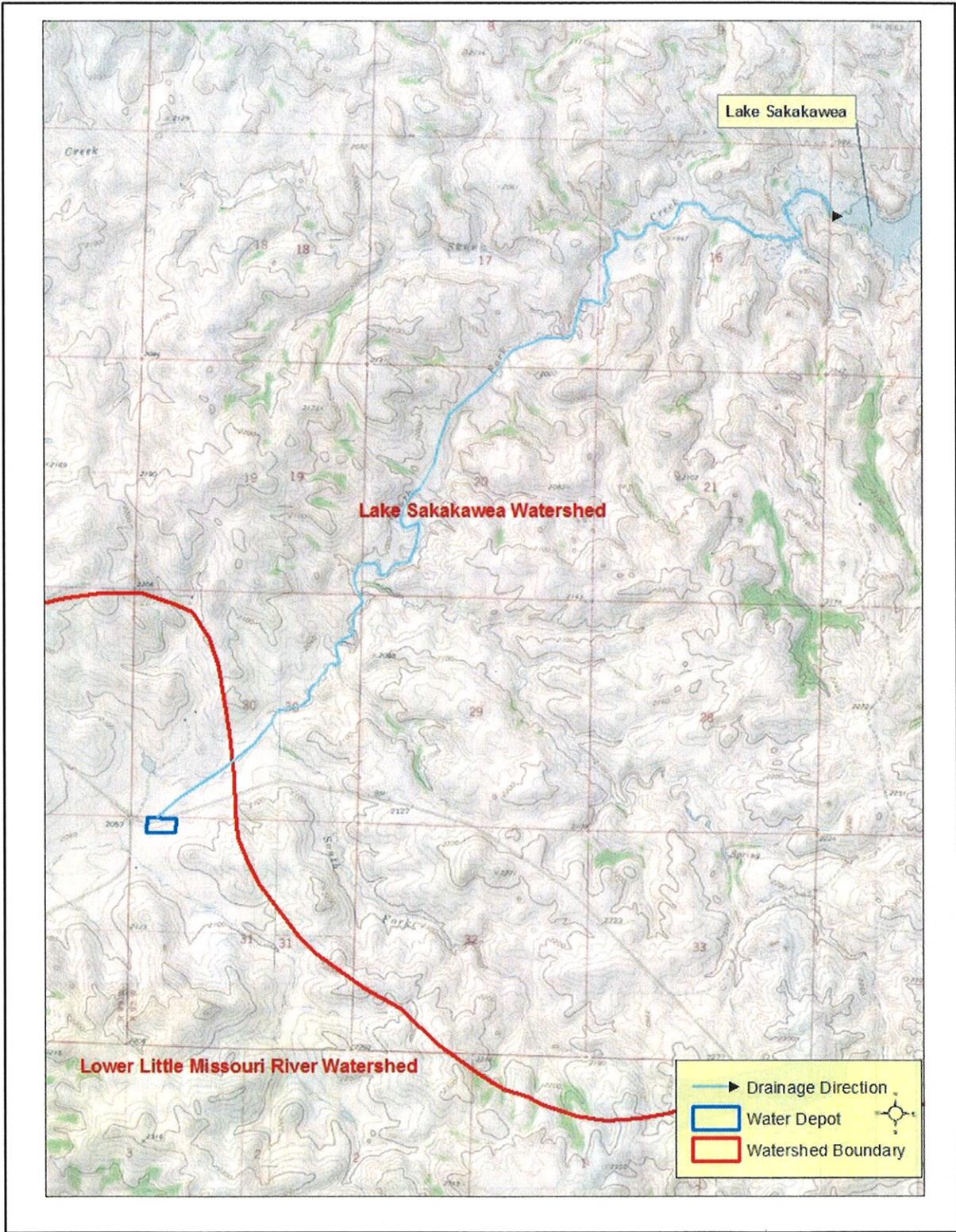
Alternative B (Proposed Action) – No significant impacts to surface water are expected to result from Alternative B. The proposed project has been sited to avoid direct impacts to surface waters and to minimize the disruption of drainage patterns across the landscape. No measurable increase in runoff or impacts to surface waters is expected.

The North Dakota State Water Commission’s electronic records reveal that there are two active or permitted groundwater wells within one mile of the proposed water depot. The Fort Berthold Rural Water system pipeline runs adjacent to the five-acre site. Also, the Squaw Creek Aquifer is located south of the proposed site and the Missouri River-Lake Sakakawea Aquifer is located north of the site. No sole source aquifers have been identified within the state of North Dakota. Please refer to **Figure 3.3, Aquifers and Groundwater Wells**.

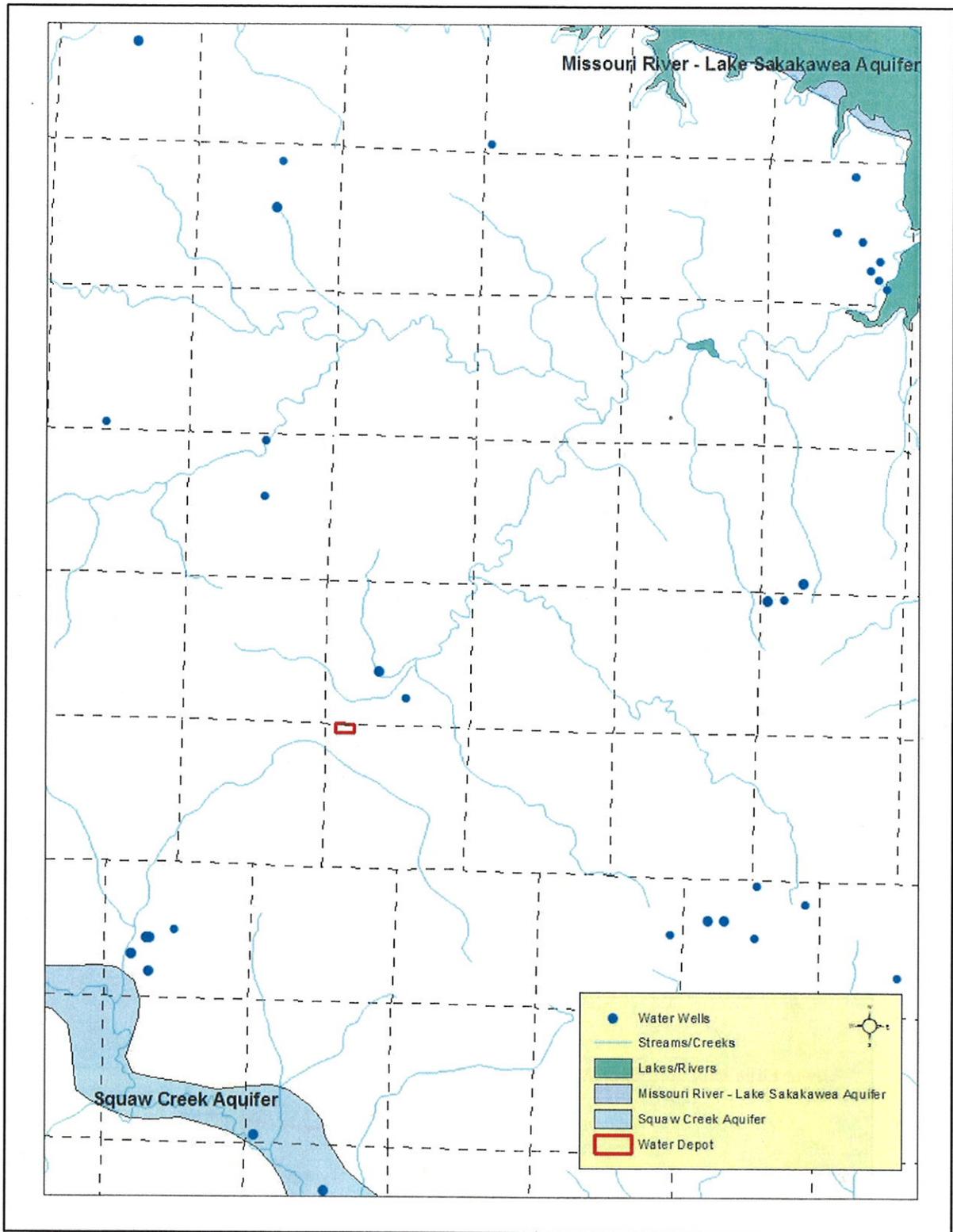
*3.4.1.2 Ground Water Impacts/Mitigation*

Alternative A (No Action) – Alternative A would not impact groundwater.

Alternative B (Proposed Action) – No measurable or permanent impacts to groundwater, including aquifers, groundwater wells, and the rural water supply, are expected to result from Alternative B.



**Figure 3.2, Surface Water Resources**



**Figure 3.3, Aquifers and Groundwater Wells**

### 3.5 Wetlands

Wetlands are defined in both the 1977 Executive Order 11990, Protection of Wetlands, and in Section 404 of the Clean Water Act of 1986, as those areas that are inundated by surface or groundwater with a frequency to support and under normal circumstances do or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Three parameters that define a wetland, as outlined in the Federal Manual for Delineating Jurisdictional Wetlands (US Army Corps of Engineers, 1987), are hydric soils, hydrophytic vegetation, and hydrology. Wetlands are an important natural resource serving many functions, such as providing habitat for wildlife, storing floodwaters, recharging groundwater, and improving water quality through purification.

No wetlands or riparian areas were identified within the project area for the proposed water depot during the field surveys.

#### 3.5.1 Wetland Impacts/Mitigation

Alternative A (No Action) – Alternative A would not impact wetlands.

Alternative B (Proposed Action) – Due to the absence of wetlands within the proposed water depot site, Alternative B would not impact wetlands.

### 3.6 Air Quality

The Clean Air Act, as amended, requires the EPA to establish air quality standards for pollutants considered harmful to public health and the environment by setting limits on emission levels of various types of air pollutants. The North Dakota Department of Health (NDDH) operates a network of Ambient Air Quality Monitoring (AAQM) stations. The nearest AAQM station is located in Dunn Center, North Dakota, approximately 24 miles south southwest of the proposed water depot. Criteria pollutants tracked under EPA's National Ambient Air Quality Standards include sulfur dioxide (SO<sub>2</sub>), particulate matter (PM), nitrogen dioxide (NO<sub>2</sub>), ozone (O<sub>3</sub>), lead (Pb), and carbon monoxide (CO). In addition, the NDDH has established state air quality standards. State standards must be as stringent as (but may be more stringent than) federal standards. The federal and state air quality standards for these pollutants are summarized in **Table 3.2, Federal and State Air Quality Standards and Reported Data for Dunn Center** (EPA 2006, NDDH 2010, Dunn Center 2010).

North Dakota was one of thirteen states in 2010 that met standards for all criteria pollutants. The state also met standards for fine particulates and the eight-hour ozone standards established by the EPA (NDDH 2010).

In addition, the Fort Berthold Reservation complies with the North Dakota National Ambient Air Quality Standards and visibility protection. The Clean Air Act affords additional air quality protection near Class I areas. Class I areas include national parks greater than 6,000 acres in size, national monuments, national seashores, and federally designated wilderness areas larger than 5,000 acres that were designated prior to 1977. There are no Federal Class I areas within the project area. The Theodore Roosevelt National Park is the nearest Class I area, located approximately 35 miles southwest of the proposed water depot.

**Table 3.2, Federal and State Air Quality Standards and Reported Data for Dunn Center**

POLLUTANT	AVERAGING PERIOD	EPA AIR QUALITY STANDARD		NDDH AIR QUALITY STANDARD		DUNN CENTER 2010 REPORTED DATA	
		µg/m <sup>3</sup>	PARTS PER MILLION	µg/m <sup>3</sup>	PARTS PER MILLION	µg/m <sup>3</sup>	PARTS PER MILLION
<b>SO<sub>2</sub></b>	24-Hour	365	0.14	365	0.14	—	.0037
	Annual Mean	80	0.030	80	0.030	—	.0007
<b>PM<sub>10</sub><sup>5</sup></b>	24-Hour	150	—	125	—	31.0	—
	Annual Mean	50	—	50	—	9.7	—
<b>PM<sub>2.5</sub><sup>6</sup></b>	24-Hour	35	—	35	—	12.0	—
	Weighted Annual Mean	15	—	15	—	3.87	—
<b>NO<sub>2</sub></b>	Annual Mean	100	0.053	100	0.053	—	.0014
<b>CO</b>	1-Hour	40,000	35	40,000	35	—	—
	8-Hour	10,000	9	10,000	9	—	—
<b>Pb</b>	3-Month	1.5	—	1.5	—	—	—
<b>O<sub>3</sub></b>	1-Hour	—	—	—	—	—	.068
	8-Hour	—	0.075	—	0.075	—	.066

### 3.6.1 Air Quality Impacts/Mitigation

Alternative A (No Action) – Alternative A would not impact air quality.

Alternative B (Proposed Action) – The Fort Berthold Reservation complies with North Dakota National Ambient Air Quality Standards and visibility protection. In addition, the Dunn Center AAQM Station reported air quality data well below the state and federal standards. Construction activities would temporarily generate minor amounts of dust and gaseous emissions of PM, SO<sub>2</sub>, NO<sub>2</sub>, CO and volatile organic compounds. Emissions would be limited to the immediate project area and not anticipated to cause or contribute to a violation of NAAQS. No long-term or continuous emission sources are associated with the project. Mitigation or monitoring measures are not recommended.

<sup>5</sup> PM<sub>10</sub> refers to particulates 10 micrometers (µ) or less in size.

<sup>6</sup> PM<sub>2.5</sub> refers to particulates 2.5 micrometers (µ) or less in size.

### 3.7 Threatened and Endangered Species

In accordance with Section 7 of the Endangered Species Act (ESA) of 1973, 50 CFR Part 402, as amended, each federal agency is required to ensure the following two criteria. First, any action funded or carried out by such agency must not be likely to jeopardize the continued existence of any federally-listed endangered or threatened species or species proposed to be listed. Second, no such action can result in the destruction or adverse modification of habitat of such species. An endangered species is in danger of extinction throughout all or a significant portion of its range. A threatened species is one that is likely to become endangered in the foreseeable future. A candidate species is a plant or animal for which the USFWS has sufficient information on its biological status and threats to propose it as endangered or threatened under the ESA, but for which development of a proposed listing regulation is precluded by other higher priority listing activities. While candidate species are not legally protected under the ESA, it is within the spirit of the ESA to consider these species as having significant value and worth protecting.

The proposed project area was evaluated to determine the potential for occurrences of federally-listed threatened, endangered, and candidate species. The USFWS September 2012 Endangered, Threatened, and Candidate Species and Designated Critical Habitat in North Dakota County List identified the gray wolf, black-footed ferret, interior least tern, pallid sturgeon, and whooping crane as endangered species that may be found within Dunn County. The piping plover is listed as a threatened species and the Dakota Skipper and Sprague's pipit are listed as candidate species. In addition, Dunn County contains designated critical habitat for the piping plover adjacent to Lake Sakakawea. None of these species were observed in the field. Habitat requirements, the potential for suitable habitat within the project area, and other information regarding listed species for Dunn County are discussed below.

#### 3.7.1 Endangered Species

##### Gray Wolf (*Canis lupus*)

The gray wolf is the largest wild canine species in North America. It is found throughout northern Canada, Alaska, and the forested areas of Northern Michigan, Minnesota, and Wisconsin and has been re-introduced to Yellowstone National Park in Wyoming. Historically, its preferred habitat includes biomes such as boreal forest, temperate deciduous forest, and temperate grassland. The gray wolf lives in packs of up to 21 members, although some individuals will roam alone. While the gray wolf is not common in North Dakota, occasionally individual wolves do pass through the state. The project area is located far from known wolf populations. Therefore, the gray wolf is not expected to occur in the project area.

##### Black-Footed Ferret (*Mustela nigripes*)

The black-footed ferret historically could be found throughout the Rocky Mountains and Great Plains its preferred habitat includes areas around prairie dog towns, as it relies on prairie dogs for food and lives in prairie dog burrows. The black-footed ferret requires at least an 80-acre prairie dog town to survive. In North Dakota, the black-footed ferret could potentially be present within prairie dog towns. However, the species has not been confirmed in the state for over 20 years and is presumed extirpated. No prairie dog towns were identified in the project area during the field surveys.

*Interior Least Tern (Sterna antillarum)*

The interior least tern nests along inland rivers. The interior least tern is found in isolated areas along the Missouri, Mississippi, Ohio, Red, and Rio Grande Rivers. In North Dakota, it is sighted along the Missouri River during the summer nesting season. The interior least tern nests in sandbars or barren beaches, preferably in the middle of a river for increased safety while nesting. These birds nest close together, using safety in numbers to deter predators.

There is no existing or potential habitat for the interior least tern within the project area. According to USFWS data, habitat occurs throughout the entire shoreline of Lake Sakakawea. However, due to increasing water levels in Lake Sakakawea, sparsely vegetated shoreline beaches composed of sand, gravel, or shale that once provided suitable habitat for the interior least tern, may now be inundated with water. Lake Sakakawea is located approximately four miles from the proposed project site at the closest point.

*Pallid Sturgeon (Scaphirhynchus albus)*

The pallid sturgeon is known to exist in the Yellowstone, Missouri, middle and lower Mississippi, and Atchafalaya Rivers, and seasonally in some tributaries. Dating to prehistoric times, the pallid sturgeon has become well adapted to living close to the bottom of silty river systems. According to the USFWS, its preferred habitat includes "a diversity of water depths and velocities formed by braided river channels, sand bars, sand flats, and gravel bars." Weighing up to 80 pounds, pallid sturgeons are long lived, with individuals possibly reaching 50 years of age.

In North Dakota, the pallid sturgeon is found principally in the Missouri River and upstream of Lake Sakakawea in the Yellowstone River. According to USFWS data, habitat for the pallid sturgeon occurs within Lake Sakakawea, which is located approximately four miles from the proposed project site at the closest point. There is no existing or potential habitat within the project area.

*Whooping Crane (Grus americana)*

The whooping crane is the tallest bird in North America. In the United States, this species ranges through the Midwest and Rocky Mountain regions from North Dakota south to Texas and east into Colorado. The whooping crane uses shallow, seasonally and semi-permanently flooded palustrine (marshy) wetlands for roosting and various cropland and emergent wetlands for feeding. During migration, it is often observed in riverine habitats, including the Missouri River. Currently, there are three wild populations of whooping cranes, with total species population of about 383. Only one of the populations is self-sustaining.

The whooping crane migrates through North Dakota along a band running from the south central to the northwest parts of the state. The proposed water depot is located in this band where 75 percent of confirmed whooping crane sightings have occurred. The proposed project site itself does not contain wetlands or cropland. Lake Sakakawea, which provides potential stopover habitat for whooping crane migration, is approximately four miles away.

*3.7.1.2 Endangered Species Impacts/Mitigation*

Alternative A (No Action) – Alternative A would not affect endangered species.

Alternative B (Proposed Action) – Due to a lack of preferred habitat characteristics and/or known populations, the proposed project is anticipated to have no effect on the black-footed ferret or the gray wolf.

Suitable habitat for the interior least tern and pallid sturgeon is largely associated with Lake Sakakawea. The water depot is located on upland rangeland, with Lake Sakakawea located approximately four miles to the north. The topographic features of the area and distance from the shoreline should assist in providing sight and sound buffers for shoreline-nesting birds. Due to the temporary nature of the disturbance associated with the proposed project, it is anticipated to have no effect on the interior least tern or pallid sturgeon or their associated habitats.

The proposed project is located within the Central Flyway where approximately 75 percent of confirmed whooping crane sightings have occurred. However, there are no shallow, emergent wetlands or cropland food sources were observed within or near the project site and thus, the whooping crane would not be expected to occur in the project area. Nevertheless, if a whooping crane is sighted within one mile of the site during construction, all work would cease and the USFWS would be contacted immediately. In coordination with USFWS, work would resume after the bird(s) leave(s) the area. Considering the above factors, the proposed project may affect, but is not likely to adversely affect, the whooping crane or its associated habitat.

### 3.7.2 Threatened Species

#### Piping Plover (*Charadrius melodus*)

The piping plover is a small migratory shorebird. Historically, the piping plover could be found throughout the Atlantic Coast, Northern Great Plains, and the Great Lakes. Sparse populations presently occur throughout this historic range. Preferred habitat for the piping plover includes riverine sandbars, gravel beaches, alkali areas of wetlands, and flat, sandy beaches with little vegetation. In North Dakota, breeding and nesting sites can be found along the Missouri River where the USFWS has identified critical habitat. Critical habitat includes reservoir reaches composed of sparsely vegetated shoreline beaches, peninsulas, islands composed of sand, gravel, or shale, and their interface with water bodies.

According to USFWS data, critical habitat occurs throughout the entire shoreline of Lake Sakakawea. However, due to increasing water levels in Lake Sakakawea, sparsely vegetated shoreline beaches composed of sand, gravel, or shale that once provided suitable for the piping plover, may now be inundated with water. Lake Sakakawea is located approximately four miles away from the proposed project site at the closest point. There is no existing or potential habitat within the project area itself.

#### 3.7.2.2 Threatened Species Impacts/Mitigation

**Alternative A (No Action)** – Alternative A would have no effect on threatened species and would not destroy or adversely modify critical habitat.

**Alternative B (Proposed Action)** – Suitable habitat for the piping plover is largely associated with Lake Sakakawea and its shoreline. The proposed water depot is located on upland rangeland, with Lake Sakakawea and its shoreline located approximately 160 feet below and four miles to the north. The topographic features of the area and distance from the shoreline would provide sight and sound buffers for shoreline-nesting birds. Due to the proximity of the proposed project to Lake Sakakawea, the proposed project is anticipated to have no effect on the piping plover or piping plover habitat.

### 3.7.3 Candidate Species

#### *Dakota Skipper (Hesperia dacotae)*

The Dakota skipper is a small butterfly with a one-inch wing span. This species historically ranged from southern Saskatchewan, across the Dakotas and Minnesota, to Iowa and Illinois. The preferred habitat for the Dakota skipper consists of flat, moist bluestem prairies and upland prairies with an abundance of wildflowers. The Dakota skipper is visible in its butterfly stage from mid-June to early July.

The project area is located on grazed rangeland that does contain bluestem prairies and wildflowers. Although grazing is evident, it is moderate in nature; therefore, the project site does contain suitable habitat for the Dakota skipper<sup>7</sup>.

#### *Sprague's Pipit (Anthus spragueii)*

The Sprague's pipit is a small songbird found in prairie areas throughout the Northern Great Plains. Preferred habitat includes rolling, upland mixed-grass prairie habitat with high plant species diversity. The Sprague's pipit breeds in habitat with minimal human disturbance. The proposed project area consists of grazed rangeland which may provide potential habitat for the Sprague's pipit<sup>8</sup>. The Sprague's pipit was not observed during the field survey.

#### 3.7.3.2 Candidate Species Impacts/Mitigation

Alternative A (No Action) – Alternative A would not adversely impact candidate species.

Alternative B (Proposed Action) – The proposed project is located in an area that is moderately disturbed by grazing, yet still contains suitable habitat for the Dakota skipper and Sprague's pipit. The proposed project may impact individuals or habitat, but will not likely contribute to a trend toward federal listing or cause a loss of viability to the population or species. An "effect determination" under Section 7 of the Endangered Species Act has not been made due to the current unlisted status of each species.

## 3.8 Eagles, Migratory Birds, and Other Wildlife

Through the direction of the BIA Environmental Protection Specialist, an intensive, pedestrian resource survey of the proposed water depot site was conducted on September 5, 2012 by KL&J. The purpose of these surveys was to gather site-specific data and photos with regards to botanical, biological, threatened and endangered species, eagles, and water resources. A study area of the entire potential area of disturbance and a 250-foot wide access road corridor was evaluated for the site. In addition, a 0.5 mile wide buffer around all areas of project disturbance was used to evaluate the presence of eagles and eagle nests. Resources were evaluated using visual inspection and pedestrian transects across the sites.

### 3.8.1 Bald and Golden Eagles

Protection is provided for the bald and golden eagle through the Bald and Golden Eagle Protection Act (BGEPA) of 1940. 16 U.S.C. 668–668d, as amended, was written with the intent to protect and

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<sup>7</sup> Information contained in this document is based on current land use conditions visible during the EA on-site. It should be noted that site conditions may change as grazing patterns change.

<sup>8</sup> Information contained in this document is based on current land use conditions visible during the EA on-site. It should be noted that site conditions may change as grazing patterns change.

preserve bald and golden eagles, both of which are treated as species of concern within the Department of the Interior. Under the BGEPA, "take" includes to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest, or disturb, wherein "disturb" means to agitate or bother a bald or golden eagle to the degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, causing injury, death, or nest abandonment.

The bald eagle (*Haliaeetus leucocephalus*) is sighted in North Dakota along the Missouri River during spring and fall migration periods and periodically in other places in the state such as the Devils Lake and Red River areas. In 2009, the ND Game and Fish Department estimated that 66 nests were occupied by bald eagles, although not all eagle nests were visited and verified<sup>9</sup>. Its preferred habitat includes open areas, forests, rivers, and large lakes. Bald eagle pairs tend to use the same nest year after year, building atop the previous year's nest. No bald eagles or eagle nests were observed during the field survey conducted on September 5, 2012.

The golden eagle (*Aquila chrysaetos*) can be spotted in North Dakota throughout the Badlands and along the upper reaches of the Missouri River in the western part of the state. Golden eagle pairs maintain territories that can be as large as 60 square miles and nest in high places including cliffs, trees, and human-made structures. They perch on ledges and rocky outcrops and use soaring to search for prey. Golden eagle preferred habitat includes open prairie, plains, and forested areas. No golden eagles or eagle nests were observed during the field survey conducted on September 5, 2012.

The USGS Northern Prairie Wildlife Research Center maintains information on bald eagle and golden eagle habitat within the state of North Dakota. According to the USGS data, the 0.5 mile buffered survey area for the proposed water depot site does contain recorded habitat for both the bald eagle and the golden eagle. In addition, Dr. Anne Marguerite Coyle of Dickinson State University has completed focused research on golden eagles and maintains a database of golden eagle nest sightings. According to Dr. Coyle's information, the closest recorded golden eagle nest is located approximately eight miles southeast of the survey area. Please refer to **Figure 3.4, Bald and Golden Eagle Habitat and Nest Sightings**.

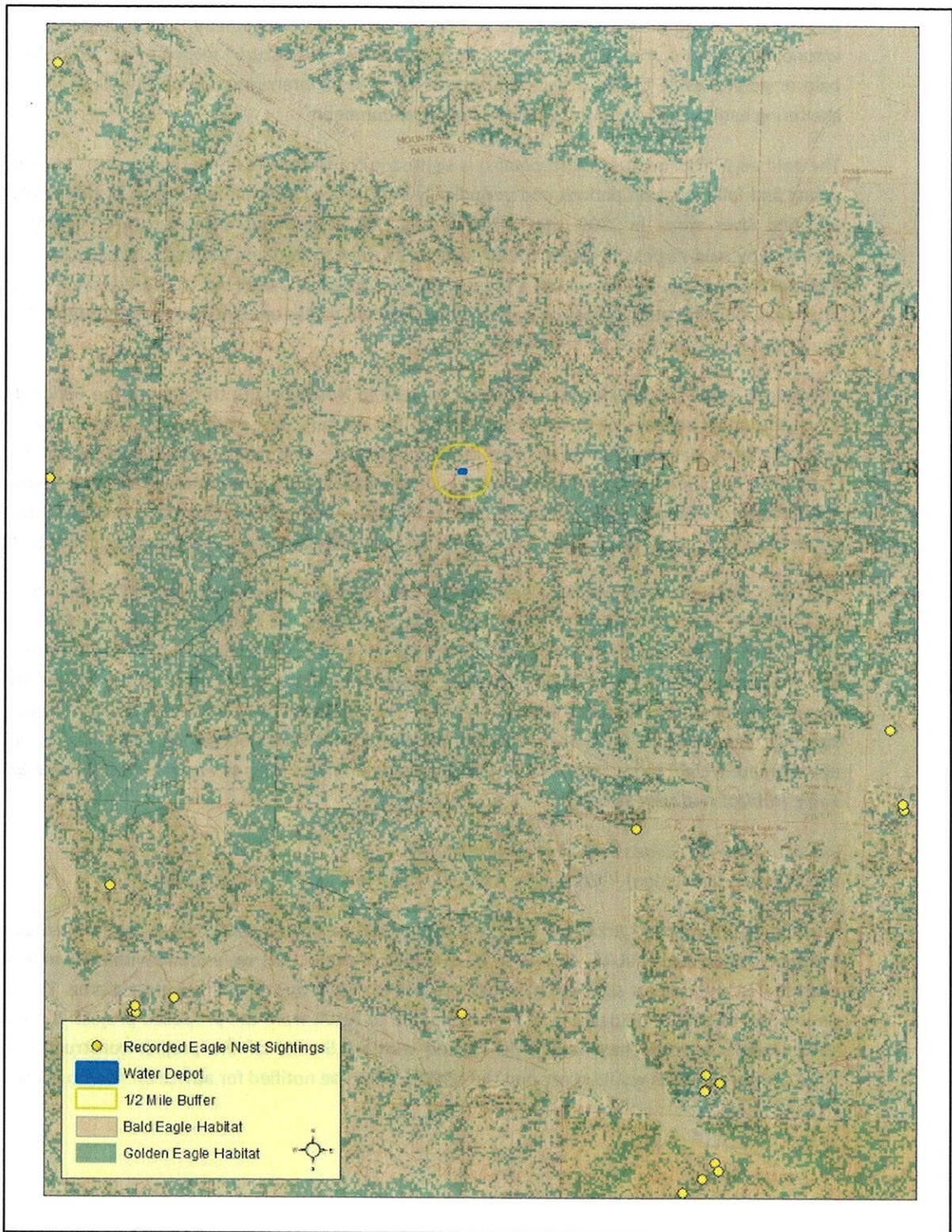
#### 3.8.1.1 Bald and Golden Eagle Impacts/Mitigation

Alternative A (No Action) – Alternative A would not impact bald or golden eagles.

Alternative B (Proposed Action) – The proposed project is located within areas of recorded suitable bald and golden eagle habitat. However, no evidence of eagle nests were found within 0.5 mile of the project area and no nest sightings have been recorded within one mile of the project area. Therefore, no impacts to bald or golden eagles are anticipated to result from the proposed project. If a bald or golden eagle or eagle nest would be sighted within 0.5 mile of the project construction area, construction activities would cease and the USFWS would be notified for advice on how to proceed.

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<sup>9</sup> Source: "Nesting in Numbers." ND Outdoors February 2010 issue.



**Figure 3.4, Bald and Golden Eagle Habitat and Nest Sightings**

### 3.8.2 Migratory Birds and Other Wildlife

The Migratory Bird Treaty Act (MBTA), 916 U.S.C. 703–711, provides protection for 1,007 migratory bird species, 58 of which are legally hunted. The MBTA regulates impacts to these species such as direct mortality, habitat degradation, and/or displacement of individual birds. The MBTA defines “taking” to include by any means or in any manner, any attempt at hunting, pursuing, wounding, killing, possessing, or transporting any migratory bird, nest, egg, or part thereof, except when specifically permitted by regulations.

The proposed project area lies in the Central Flyway of North America. As such, this region is used as resting grounds for many birds on their spring and fall migrations, as well as nesting and breeding grounds for many waterfowl species. Other non-game bird species are known to fly through and inhabit this region.

In addition, the project area contains suitable habitat for mule deer (*Odocoileus hemionus*), whitetail deer (*Odocoileus virginianus*), plains sharptail grouse (*Tympanuchus phasianellus*), ring-necked pheasant (*Phasianus colchicas*), coyote (*Canis latrans*), red fox (*Vulpes vulpes*), eastern cottontail rabbit (*Sylvilagus floridanus*), white-tailed jackrabbit (*Lepus townsendii*) and North American porcupine (*Erethizon dorsatum*).

During the pedestrian field survey, the potential occurrence of migratory birds, raptors, big and small game species, non-game species, potential wildlife habitats, and and/or bird nests was investigated. No wildlife was observed during the survey.

#### 3.8.2.1 Migratory Birds and Other Wildlife Impacts/Mitigation

Alternative A (No Action) – Alternative A would not impact migratory birds or other wildlife.

Alternative B (Proposed Action) – Due to the presence of suitable habitat at the project site for many wildlife and avian species, it is possible that ground clearing activities associated with the proposed project may impact individuals by displacing animals from suitable habitat. Bird Industries Inc. plans to begin construction in the fall of 2012. In the event that construction activity takes place within the nesting and breeding season, February 1 to July 15, pre-construction surveys for migratory birds or their nests would be conducted within five days prior to the initiation of construction activities; or mowing of the site prior to the nesting/breeding season would be completed to discourage nesting activities. Therefore, the proposed project may affect individuals and populations within these wildlife species, but is not likely to result in a trend towards listing of any of the species identified.

The proposed water depot site is located on an upland area that is at a considerably higher elevation (approximately 160 feet) than the Lake Sakakawea shoreline. Additionally, the distance to Lake Sakakawea is approximately four miles. This distance, along with the topographic features of the area, would provide sight and sound buffers for shoreline-nesting birds.

All reasonable, prudent, and effective measures to avoid the taking of migratory bird species would be implemented during the construction and operation phases.

## 3.9 Vegetation

Botanical resources were evaluated using visual inspection. The project area was also investigated for the presence of invasive plant species.

The project area for the proposed water depot consisted of grazed upland grasses. The five-acre site was dominated by Kentucky bluegrass (*Poa pratensis*), smooth brome (*Bromus inermis*), western wheatgrass (*Agropyron smithii*), blue grama (*Bouteloua gracilis*), western yarrow (*Achillea millefolium*) and western snowberry (*Symphoricarpos occidentalis*). No noxious weeds were observed during the field survey. There are no threatened or endangered plant species listed for Dunn County. No wetlands were observed in the study area. Please refer to *Figure 3.5, West End of Site Facing East*, *Figure 3.6, Water Line Facing BIA Route 12*, *Figure 3.7, Water Line Facing East*, and *Figure 3.8, Vegetation and Soil Profile*, for examples of vegetation and soil observed at the water depot site.



**Figure 3.5, West End of Site Facing East**



**Figure 3.6, Water Line Facing BIA Route 12**



**Figure 3.7, Water Line Facing East**



**Figure 3.8, Vegetation and Soil Profile**

In addition, the project area was surveyed for the presence of noxious weeds. Of the 11 species declared noxious under the North Dakota Century Code (Chapter 63-01.0), four are known to occur in Dunn County. Please refer to **Table 3.3, Noxious Weed Species**. In addition, counties and cities have the option to add species to the list to be enforced within their jurisdictions. Dunn County has listed no additional species. No noxious weeds were observed during the field survey.

**Table 3.3, Noxious Weed Species**

COMMON NAME	SCIENTIFIC NAME	2011 DUNN COUNTY REPORTED ACRES
Absinth wormwood	<i>Artemisia absinthium L.</i>	51,900
Canada thistle	<i>Cirsium arvense (L.) Scop</i>	41,200
Dalmation toadflax	<i>Linaria genistifolia ssp. Dalmatica</i>	60
Diffuse knapweed	<i>Centaurea diffusa Lam</i>	—
Leafy spurge	<i>Euphorbia esula L.</i>	8,100
Musk thistle	<i>Carduus nutans L.</i>	—
Purple loosestrife	<i>Lythrum salicaria</i>	—
Russian knapweed	<i>Acroptilon repens (L) DC.</i>	—
Salt cedar (tamarisk)	<i>Tamarix ramosissima</i>	—
Spotted knapweed	<i>Centaurea maculosa Lam.</i>	—
Yellow toadflax	<i>Linaria vulgaris</i>	—

### 3.9.1 Vegetation Impacts/Mitigation

Alternative A (No Action) – Alternative A would not impact vegetation.

Alternative B (Proposed Action) – Ground clearing activities associated with construction of the proposed water depot would result in vegetation disturbance; however, the area of proposed surface disturbance is minimal in the context of the setting.

Following construction, reclamation measures to be implemented include leveling, re-contouring, backfilling, compacting fill, and re-seeding with a native grass seed mixture from a BIA -approved source. These measures would be undertaken as soon as practical after construction and no later than the next appropriate planting season. Erosion control measures would be installed as appropriate. Stockpiled topsoil would be redistributed and re-seeded as recommended by the BIA.

Maintenance of the re-vegetated site would continue until such time that the stand was consistent with the surrounding undisturbed vegetation and the site free of noxious weeds. The surface management agency would provide final inspection of the site to deem the reclamation effort complete. Considering all the above factors, no significant impacts to vegetation will occur.

### 3.10 Cultural Resources

Historic properties, or cultural resources, on federal or tribal lands are protected by many laws, regulations and agreements. The National Historic Preservation Act of 1966 (16 USC 470 et seq.) at Section 106 requires, for any federal, federally-assisted or federally-licensed undertaking, that the federal agency take into account the effect of that undertaking on any district, site, building, structure or object that is included in the National Register of Historic Places (NRHP) before the expenditure of any federal funds or the issuance of any federal license. Cultural resources is a broad term encompassing sites, objects, or practices of archaeological, historical, cultural and religious significance. Eligibility criteria (36 CFR 60.6) include association with important events or people in our history, distinctive construction or artistic characteristics, and either a record of yielding, or a potential to yield, information important in prehistory or history. In practice, properties are generally not eligible for listing on the NRHP if they lack diagnostic artifacts, subsurface remains or structural features. Those considered eligible are treated as though they were listed on the NRHP, even when no formal nomination has been filed. This process of taking into account an undertaking's effect on historic properties is known as "Section 106 review," or more commonly as a cultural resource inventory.

The area of potential effect (APE) of any federal undertaking must also be evaluated for significance to Native Americans from a cultural and religious standpoint. Sites and practices may be eligible for protection under the American Indian Religious Freedom Act of 1978 (AIRFA; 42 USC 1996). Sacred sites may be identified by a tribe or an authoritative individual (Executive Order 13007). Special protections are afforded to human remains, funerary objects, and objects of cultural patrimony under the Native American Graves Protection and Repatriation Act (NAGPRA, 25 USC 3001 et seq.).

Whatever the nature of the cultural resource addressed by a particular statute or tradition, implementing procedures invariably include consultation requirements at various stages of a federal undertaking. The MHA Nation has designated a Tribal Historic Preservation Officer (THPO) by Tribal Council resolution, whose office and functions are certified by the National Park Service. The THPO operates with the same authority exercised in most of the rest of North Dakota by the State Historic

Preservation Officer (SHPO). Thus, BIA consults and corresponds with the THPO regarding cultural resources on all projects proposed within the boundaries of the Fort Berthold Reservation.

The NAGPRA is triggered by the possession of human remains or cultural items by a federally-funded repository or by the discovery of human remains or cultural items on federal or tribal lands. It provides for the inventory, protection, and return of cultural items to affiliated Native American groups. Permits are required for intentional excavation and removal of Native American cultural items from federal or tribal lands.

The AIRFA requires consultation with Native American groups concerning proposed actions on sacred sites on federal land or affecting access to sacred sites. It establishes federal policy to protect and preserve for American Indians, Eskimos, Aleuts, and Native Hawaiians the right to free exercise of their religion in the form of site access, use and possession of sacred objects, as well as the freedom to worship through ceremonial and traditional rites. The AIRFA requires federal agencies to consider the impacts of their actions on religious sites and objects important to these peoples, regardless of eligibility for listing on the NRHP.

In accordance with 16 U.S.C. 470hh(a), information concerning the nature and location of archaeological resources and traditional cultural properties, and detailed information regarding archaeological and cultural resources, is confidential. Such information is exempt from the Freedom of Information Act and is not included in this EA.

A cultural resource inventory of this water depot project was conducted by personnel of Kadrmas, Lee & Jackson, Inc., using an intensive pedestrian methodology. Approximately 7.6 acres were inventoried on September 18, 2012 (Ó Donnchadha 2012). No historic properties were located that appear to possess the quality of integrity and meet at least one of the criteria (36 CFR 60.6) for inclusion on the National Register. As the lead federal agency, and as provided for in 36 CFR 800.5, on the basis of the information provided, BIA reached a determination of **no historic properties affected** for this undertaking. This determination was communicated to the THPO on October 5, 2012; however, the THPO did not respond within the allotted 30 day comment period.

### 3.10.1 Cultural Resources Impacts/Mitigation

Alternative A (No Action) – Alternative A would not impact cultural resources.

Alternative B (Proposed Action) – No new or previously recorded cultural materials were encountered during the Class III inventory. As such, cultural resources impacts are not anticipated. If cultural resources are discovered during construction or operation, work would immediately be stopped, the affected site secured, and BIA and THPO notified. In the event of a discovery, work would not resume until written authorization to proceed has been received from the BIA. All project workers would be prohibited from collecting artifacts or disturbing cultural resources in any area under any circumstances.

## 3.11 Socioeconomic Conditions

Socioeconomic conditions depend on the character, habits, and economic conditions of people living within the proposed project area. Business, employment, transportation, utilities, etc. are factors that affect the social climate of a community. Other factors that distinguish the social habits of one particular area from another include the geography, geology, and climate of the area.

The Fort Berthold Reservation is home to six major communities, consisting of New Town, White Shield, Mandaree, Four Bears, Twin Buttes, and Parshall. These communities provide small business amenities such as restaurants, grocery stores, and gas stations; however, they lack the larger shopping centers that are typically found in larger cities of the region such as Minot and Bismarck. According to 2006-2010 US Census data, educational/health/social services is the largest industry on the Reservation, followed by the entertainment/recreation/accommodation/food industry<sup>10</sup>. The Four Bears Casino, Convenience Store, and Recreation Park are also major employers with over 320 employees, 90 percent of whom are tribal members. In addition, several industries are located on the Reservation, including Northrop Manufacturing, Mandaree Electrical Cooperative, Three Affiliated Tribes Lumber Construction Manufacturing Corporation, and Uniband.

Several paved state highways provide access to the Reservation including ND Highways 22, 23 and 1804. These highways provide access to larger communities such as Bismarck, Minot and Williston. Paved and gravel BIA roadways serve as primary connector routes within the Reservation. In addition, networks of rural gravel roadways are located throughout Reservation boundaries providing access to residences, oil and gas developments, and agricultural land. Major commercial air service is provided out of Bismarck and Minot, with small-scale regional air service provided out of New Town and Williston.

#### 3.11.1 Socioeconomic Impacts/Mitigation

Alternative A (No Action) – Alternative A would not impact the socioeconomic conditions in the project area.

Alternative B (Proposed Action) – Alternative B is not anticipated to substantially impact the socioeconomic conditions in the project area, but it does have the potential to yield minor beneficial impacts on Tribal income. The purchase of water from the Fort Berthold Rural Water system would financially benefit the Tribe. Additionally, the proposed action may result in indirect economic benefits to tribal business owners resulting from construction workers expending money on food, lodging, and other necessities. Bird Industries Inc. would follow Dunn County, BIA, and the North Dakota Department of Transportation (NDDOT) rules and regulations regarding oversize/overweight loads on state and county roads used as haul roads.

### 3.12 Environmental Justice

Per Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, measures must be taken to avoid disproportionately high adverse impacts on minority or low-income communities.

Generally, the Three Affiliated Tribes qualify for environmental justice consideration as both a minority and low-income population. The population of North Dakota is predominately Caucasian. American Indians comprise 5.4 percent of North Dakota's population and 12.7 percent of the population in Dunn County.

Population decline has been a growing trend as individuals move toward metropolitan areas of the state, such as Bismarck and Fargo. While Dunn County's population had been slowly declining prior to

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<sup>10</sup> Since 2010, there has been an increasing focus on oil and gas development on the Fort Berthold Reservation. As such, it is anticipated that the trends have potentially shifted; however, data from the 2011 US Census has not yet been released for the Fort Berthold Reservation.

the oil boom, the Fort Berthold Reservation has witnessed a steady increase in population. The recent intensification of drilling activity in the western part of the state has likely contributed to increased populations in western counties. American Indian is the majority population on the Fort Berthold Reservation, but are the minority population in Dunn County and the state of North Dakota. Please refer to *Table 3.4, Demographic Trends*.

**Table 3.4, Demographic Trends**

LOCATION	POPULATION ESTIMATE 2010	% OF STATE POPULATION	% CHANGE 2000-2010	PREDOMINANT RACE	PREDOMINANT MINORITY
Dunn County	3,536	0.53%	-1.8	Caucasian	American Indian (12.7%)
Fort Berthold Reservation	6,341	0.94%	+7.2	American Indian	Caucasian (23.8%)
Statewide	672,591	—	+4.7	Caucasian	American Indian (5.4%)

Source: U.S. Census Bureau, 2010 American Community Survey

According to 2006–2010 U.S. Census Bureau data, the Fort Berthold Reservation’s per capita income and median household income are lower than the respective statewide averages. Dunn County has higher median household income but lower per capita income than the respective statewide averages. Dunn County has the same rate of unemployment as the state average, while Fort Berthold’s rate of unemployment is greater than the state average<sup>11</sup>. Please refer to *Table 3.5, Employment and Income*.

**Table 3.5, Employment and Income**

LOCATION	PER CAPITA INCOME	MEDIAN HOUSEHOLD INCOME	UNEMPLOYMENT RATE	INDIVIDUALS LIVING BELOW POVERTY LEVEL
Dunn County	\$24,832	\$48,707	3.6%	8.6%
Fort Berthold Reservation	\$18,059	\$41,658	6.9%	26.0%
Statewide	\$25,803	\$46,781	3.6%	12.3%

Source: U.S. Census Bureau, 2010 American Community Survey

<sup>11</sup>While more current data reflecting income, unemployment, and poverty levels within the Fort Berthold Reservation are not yet available, it is anticipated that 2011-2012 may show different trends. The exploration and production of oil and gas resources on the Reservation has created employment opportunities and have likely affected the economic indicators; however, this assessment uses the best available data.

### 3.12.1 Environmental Justice Impacts/Mitigation

Alternative A (No Action) – Alternative A would not result in environmental justice impacts.

Alternative B (Proposed Action) – Alternative B would not require relocation of homes or businesses, cause community disruptions, or cause disproportionately adverse impacts to members of the Three Affiliated Tribes or other minority or low-income populations. The proposed project has not been found to pose significant impacts to any other critical element (public health and safety, water, wetlands, wildlife, soils, or vegetation) within the human environment.

## 3.13 Infrastructure and Utilities

The Fort Berthold Reservation's infrastructure consists of roads, bridges, utilities, and facilities for water, wastewater, and solid waste.

There are several known utilities and infrastructure within the vicinity of the proposed project. They include gravel roadways (BIA Routes 12 and 14), Fort Berthold Rural Water pipeline, and electric power lines. The proposed access roads connect directly to BIA Route 12. Residential buildings are also in the vicinity with associated utilities.

### 3.13.1 Infrastructure and Utility Impacts/Mitigation

Alternative A (No Action) – Alternative A would not impact infrastructure or utilities.

Alternative B (Proposed Action) – The proposed project would provide infrastructure for oil and gas wells to be used during the hydraulic fracturing process on the Fort Berthold Reservation. The proposed water depot site does not cross any roadways, but will connect to BIA Route 12 with two separate access roads. To minimize potential impacts to the roadway conditions and traffic patterns in the area, all haul routes used would be approved for this type of transportation by the local governing tribal, township, county, and/or state entities. Construction of the site would also include tapping into the rural water line located adjacent to the site. No measureable or permanent impacts to the rural water system are anticipated. No other mitigation measures would be required for construction of the proposed water depot.

## 3.14 Public Health and Safety

Public health and safety are key concerns on any construction project. One major objective in designing and constructing a water depot is to minimize the risk to public health and safety. Typically, the highest probability of an accident occurs during the construction phase due to the variety of equipment, number of personnel and types of activity which are present during this period.

Generally, negative impacts, such as noise, dust, air pollution from the use of fossil fuels, as well as traffic hazards from construction are temporary. These temporary negative impacts can be controlled through routine education, safety reminders/briefings, careful planning and proper preparation.

Ground water contamination from liquid spills can greatly impact public health and safety. The possibility of ground water contamination can be reduced through proper planning, preparation, regulation, and inspection.

High pressure releases or ruptures, when working around water pipelines, are nonetheless an important consideration when evaluating public health and safety for any project. The risk and extent

of negative impact from system operation is considerably more difficult to predict than the impact from construction due to the many, diverse variables involved.

#### 3.14.1 Public Health and Safety Impacts/Mitigation

Alternative A (No Action) – Alternative A would not impact public health and safety.

Alternative B (Proposed Action) –The pipeline proposed for this project is to be buried a minimum of four feet below the ground surface. The above-ground open top water tank has 12 foot side walls with limited access points. A high pressure rupture of the water line or storage tank, although extremely unlikely, is possible; therefore, human safety and structural damage are potentially at risk. A water rupture may result in damage or injury to occupants or structures within a close radius. The water is clean and of relatively small volume and therefore, would have no significant impact on soil, vegetation, wildlife or nearby bodies of water.

Proper preparation will be the key to mitigate health and environmental safety hazards especially during the construction phase.

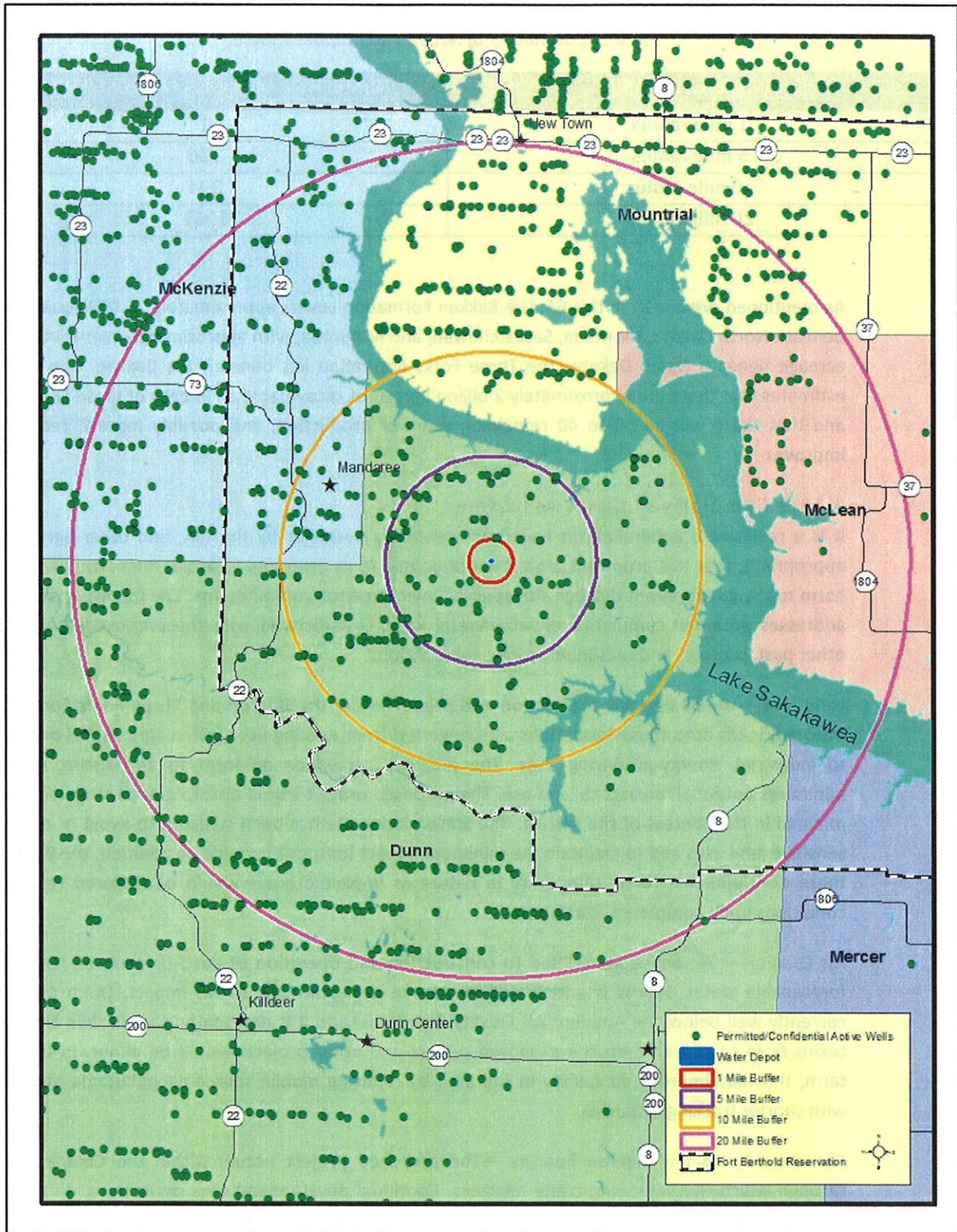
### 3.15 Cumulative Considerations

Cumulative impacts result from the incremental consequences of an action “when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions” (40 CFR 1508.7). Effects of an action may be minor when evaluated in an individual context, but these effects can add to other disturbances and collectively may lead to a measureable environmental change. By evaluating the impacts of the proposed action with the effects of other actions, the relative contribution of the proposed action to a projected cumulative impact can be estimated.

#### 3.15.1 Past, Present, and Reasonably Foreseeable Actions

Oil and gas development, along with associated infrastructure, in western North Dakota has occurred with varying intensity for the past 100 years. Gas development began in the area in 1909, and the first recorded oil well was drilled in 1920. North Dakota’s oil production has proliferated twice prior to the current boom; first in the 1950s, peaking in the 1960s, and again in the 1970s, peaking in the 1980s. North Dakota is currently experiencing its third oil boom, which has already far surpassed the previous events in magnitude. This oil boom is occurring both within and outside the Fort Berthold Reservation.

According to the NDIC, as of September 17, 2012, there were approximately 919 active and/or confidential oil and gas wells within the Fort Berthold Reservation, 575 of which were located on tribal trust property under the authority of the BIA. In addition, there are approximately 1,061 within the 20-mile radius of the proposed water depot site. Please refer to *Figure 3.9, Existing and Proposed Oil and Gas Wells* and *Table 3.6, Summary of Active and Proposed Wells*.



**Figure 3.9, Existing and Proposed Oil and Gas Wells**

*Table 3.6, Summary of Active and Proposed Wells*

DISTANCE FROM SITE	NUMBER OF ACTIVE OR PROPOSED WELLS
1 mile radius	1
5 mile radius	126
10 mile radius	394
20 mile radius	1061

As mentioned previously in this EA, the Bakken Formation covers approximately 25,000 square miles beneath North Dakota, Montana, Saskatchewan, and Manitoba, with approximately two-thirds of the acreage beneath North Dakota. The Three Forks Formation lies beneath the Bakken. The NDDMR estimates that there are approximately 2 billion barrels of recoverable oil in each of these Formations and that there will be 30 to 40 remaining years of production, and possibly more if technology improves.

### 3.15.2 Cumulative Impact Assessment

It is a reasonable generalization based on regulatory oversight by the BIA, and other agencies as appropriate, that this proposed project is not unique in its attempts to avoid, minimize, or mitigate harm to the environment through site-specific environmental commitments. The following discussion addresses potential cumulative environmental impacts associated with the proposed project and other past, present, and reasonably foreseeable actions.

**Land Use** — As oil and gas exploration and production of the Bakken and Three Forks Formations proceed, lands atop these formations are converted from existing uses (often agricultural or vacant) to industrial, energy-producing uses. The practice installation adjacent to an existing roadway minimizes potential impacts to land use. The proposed project would disturb grazed rangeland but is minimal in the context of the setting. The water depot site has been selected to avoid or minimize sensitive land uses and to maintain the minimum impact footprint possible. In addition, the BIA views these developments to be temporary in nature as impacted areas would be restored to original conditions upon complete reclamation.

**Air Quality** — Air emissions related to construction and operation of past, present, or reasonably foreseeable water depots is anticipated to have a negligible cumulative impact. Dunn County is currently well below the Ambient Air Quality Standards, and it is anticipated that mobile air source toxins from truck traffic for the proposed project and other projects would be minor. In the long-term, this may improve air quality in the area by reducing mobile source air pollutants associated with shorter trucking distances.

**Threatened and Endangered Species** —The proposed project occurs within the Central Flyway through which the whooping crane migrates. Continual development (e.g. agriculture, oil and gas, wind, etc.) within the Central Flyway has compromised whooping crane feeding and roosting habitat both through direct impacts via conversion of potential habitat for other uses and indirect impacts due to disrupting the use of potential stopover habitat. However, the proposed project, which would not impact preferred roosting or feeding habitat for the whooping crane, is not anticipated to significantly contribute to cumulative impacts occurring to the whooping crane population.

As previously stated, habitat for the interior least tern, pallid sturgeon, and piping plover is primarily associated with Lake Sakakawea. Due to site-specific environmental commitments and mitigations the project would unlikely contribute to cumulative impacts to the interior least tern, pallid sturgeon, and piping plover.

Please refer to the discussion below (Wetlands, Eagles, Other Wildlife, and Vegetation) for an analysis of potential cumulative impacts to candidate species (Dakota skipper and Sprague's pipit).

*Wetlands, Eagles, Other Wildlife, and Vegetation* — The proposed project, when added to previously constructed and reasonably foreseeable oil, gas, and water developments, would temporarily contribute to habitat loss and fragmentation associated with construction. The North Dakota Parks and Recreation Department notes in its undated publication, *“North Dakota Prairie: Our Natural Heritage”* that approximately 80 percent of the state's native prairie has been lost to agriculture, with most of the remaining areas found in the arid west. Ongoing oil and gas activity has the potential to threaten remaining native prairie resources.

The proposed action and other similar actions are carefully planned to avoid or minimize impacts to wildlife and associated habitat. Multiple components of the process used by the BIA to evaluate and approve such actions, including biological and botanical surveys, on-site assessments with representatives from multiple agencies and entities, agency comment periods on this EA, and site-specific environmental commitments are in place to ensure that environmental impacts associated with the project are minimized. The practice of utilizing existing roadways to the greatest extent practicable further minimizes impacts to wildlife habitats and prairie ecosystems. Reclamation activities after construction are anticipated to minimize and mitigate disturbed habitat.

### 3.16 Irreversible and Irrecoverable Commitment of Resources

Potential irreversible and irretrievable commitments of resources include soil lost through wind and water erosion, cultural resources inadvertently destroyed, wildlife killed during project construction and implementation, and energy expended during project construction and operation.

### 3.17 Short-term Use of the Environment Versus Long-term Productivity

Short-term activities would not significantly detract from long-term productivity of the project area. The area dedicated to the access roads and water depot pad would be unavailable for livestock grazing, wildlife habitat, or other uses. However, the Tribe and/or allottees with surface rights would be compensated for loss of productive acreage and non-working areas would be reclaimed and reseeded. Successful and ongoing reclamation of the landscape would quickly support wildlife and livestock grazing, stabilize the soil, and reduce the potential for erosion and sedimentation. In addition, there would be a long-term benefit as the proposed project would reduce the trucking distance of water to oil and gas well sites.

### 3.18 Permits

The United States Environmental Protection Agency (USEPA) administers the National Pollutant Discharge Elimination System (NPDES) on Tribal lands. The proposed project would require an NPDES permit prior to construction.

### 3.19 Environmental Commitments/Mitigation

The following commitments have been made by Bird Industries Inc.:

- Topsoil would be segregated and stored on-site to be used in the reclamation process. All disturbed areas would be re-contoured to original elevations as part of the reclamation process.
- Water would be used as a palliative to control dust during construction and operation.
- Disturbed vegetation would be re-seeded with an approved seed mixture from the BIA Environmental Protection Specialist upon completion of the project. The seeding would be maintained until such time that the vegetation is consistent with surrounding undisturbed areas and the area is free of noxious weeds.
- If cultural resources are discovered during construction or operation, work would immediately be stopped, the affected site secured, and BIA and THPO notified. In the event of a discovery, work would not resume until written authorization to proceed has been received from the BIA.
- All project workers would be prohibited from collecting artifacts or disturbing cultural resources in any area under any circumstances.
- Suitable mufflers would be put on all internal combustion engines and certain compressor components to mitigate noise levels.
- Wire mesh or grate covers would be placed over barrels or buckets placed under valves and spigots to collect dripped oil and/or grease.
- If a bald or golden eagle or eagle nest is sighted within 0.5 mile of the project construction area, construction activities would cease and the USFWS would be notified for advice on how to proceed.
- Utility modifications would be identified during design and coordinated with the appropriate utility company. In addition, every attempt would be made to leave existing utility infrastructure in place.
- In the event that construction activity takes place within the nesting and breeding season, pre-construction surveys for migratory birds or their nests would be conducted within five days prior to the initiation of construction activities and/or the route would be mowed prior to the nesting/breeding season to prevent birds from nesting along the route.
- Interim reclamation would occur as soon as possible after the production phase.
- Established load restrictions for state and BIA roadways would be followed and haul permits would be acquired as appropriate.
- If a whooping crane is sighted within one-mile of the site while it is under construction, all work will cease within one-mile of that part of the project and the USAFWS will be contacted immediately. In coordination with USFWS, work may resume after the bird(s) leave the area.
- A NPDES Permit from the USEPA would be acquired prior to construction.

## CHAPTER 4 PREPARERS AND AGENCY COORDINATION

### 4.1 Introduction

This chapter identifies the names and qualifications of the principal people contributing information to this EA. In accordance with Part 1502.6 of the Council on Environmental Quality regulations for implementing NEPA, the efforts of an interdisciplinary team comprising technicians and experts in various fields were required to accomplish this study.

This chapter also provides information about consultation and coordination efforts with agencies and interested parties, which has been ongoing throughout the development of this EA.

### 4.2 Preparers

KLJ prepared this EA under a contractual agreement between Bird Industries Inc. and KLJ. A list of individuals with the primary responsibility for conducting this study, preparing the documentation, and providing technical reviews is contained in **Table 4.1, Preparers**.

**Table 4.1, Preparers**

AFFILIATION	NAME	TITLE	PROJECT ROLE
<b>Bureau of Indian Affairs</b>	Marilyn Bercier	Regional Environmental Scientist	Review of Draft EA and recommendation to Regional Director regarding FONSI or EIS
	Mark Herman	Environmental Engineer	
<b>Bird Industries Inc.</b>	Lori Bird	Project Developer	Project development, alternatives, document review
	Travis Holm	Project Developer	Project development, alternatives, senior review
<b>Kadmas, Lee &amp; Jackson, Inc.</b>	Grady Wolf	Environmental Scientist	Client coordination, field resource surveys, document review
	Ashley Ross	Environmental Planner	Impact assessment, agency coordination, principal author, exhibit creation
	Brian O'Donnchadha	Archaeologist	Cultural Resource Surveys
	Sophie Asbury	Archaeologist	Cultural Resource Surveys

#### 4.3 Agency Coordination

To initiate early communication and coordination, an early notification package was distributed to tribal, federal, state, and local agencies and other interested parties on September 7, 2012. This scoping package included a brief description of the proposed project, as well as a location map. *Appendix A* contains *Scoping Materials*. Pursuant to Section 102(2) (D) (IV) of NEPA, stakeholder comments were solicited to ensure that social, economic, and environmental effects were considered in the development of this project.

Seven responses were received by the conclusion of the 30-day comment period. These comments provide valuable insight into the evaluation of potential environmental impacts. The comments were referenced and incorporated where appropriate within the environmental impact categories addressed in this document. *Appendix B* contains *Agency Scoping Responses*.

#### 4.4 Public Involvement

Provided the BIA approves this document and determines that no significant environmental impacts would result from the proposed action, a Finding of No Significant Impact (FONSI) will be issued. The FONSI will be followed by a 30-day public appeal period. BIA will advertise the FONSI and public appeal period by posting notices in public locations throughout the Reservation. No construction activities may commence until the 30-day public appeal period has expired.

## CHAPTER 5 REFERENCES

- "Annual Report: North Dakota Air Quality Monitoring Data Summary 2010." Nov. 2011. North Dakota Department of Health, Bismarck. 27 July 2012. <[http://www.ndhealth.gov/aq/ambient/Annual%20Reports/ANN\\_10.pdf](http://www.ndhealth.gov/aq/ambient/Annual%20Reports/ANN_10.pdf)>.
- "Bald Eagle Fact Sheet: Natural History, Ecology, and History of Recovery." U.S. Fish & Wildlife Service. 9 Dec. 2008. U.S. Department of Interior, U.S. Fish & Wildlife Service, Midwest Region. 27 July 2012. <<http://www.fws.gov/midwest/eagle/recovery/biologue.html>>.
- "Bald Eagle Population Size." U.S. Fish & Wildlife Service. 1 Sept. 2010. U.S. Department of Interior, U.S. Fish & Wildlife Service, Midwest Region. 27 July 2012. <<http://www.fws.gov/midwest/eagle/population/index.html>>.
- "Black-footed Ferret Fact Sheet." U.S. Fish & Wildlife Service. 18 Dec. 2008. U.S. Department of Interior, U.S. Fish & Wildlife Service, North Dakota Field Office. 22 Feb. 2010. <[http://www.fws.gov/northdakotafieldoffice/endspecies/species/black-footed\\_ferret.htm](http://www.fws.gov/northdakotafieldoffice/endspecies/species/black-footed_ferret.htm)>.
- "County Occurrence of Endangered, Threatened, and Candidate Species and Designated Critical Habitat in North Dakota." Feb. 2012. U.S. Fish and Wildlife Service, North Dakota Field Office. 27 July 2012. <[http://www.fws.gov/northdakotafieldoffice/county\\_list.htm](http://www.fws.gov/northdakotafieldoffice/county_list.htm)>.
- "The Cranes Status Survey and Conservation Action Plan Whooping Crane (*Grus americana*)."  
U.S. Geological Survey Northern Prairie Wildlife Research Center. 3 Aug. 2006. U.S. Department of Interior, U.S. Geological Survey, Northern Prairie Wildlife Research Center. 27 July 2012. <<http://www.npwrc.usgs.gov/resource/birds/cranes/grusamer.htm>>.
- "Dakota Skipper Fact Sheet." Apr. 2007. U.S. Fish and Wildlife Service, Midwest Region. 27 July 2012. <<http://www.fws.gov/midwest/Endangered/insects/dask.html>>.
- "Fact Sheet: Pallid Sturgeon (*Scaphirhynchus albus*)."  
U.S. Fish & Wildlife Service. 6 March 2012. U.S. Department of Interior, U.S. Fish & Wildlife Service, Midwest Region. 30 July 2012. <[http://www.fws.gov/midwest/endangered/fishes/palld\\_fc.html](http://www.fws.gov/midwest/endangered/fishes/palld_fc.html)>.
- "Fort Berthold Reservation: Home of the Three Affiliated Tribes." Fargo Forum. 21 Aug. 2009. <<http://legacy.inforum.com/specials/DyingTongues/graphics/demographics.pdf>>.
- Geological Survey Staff. 28 June 2010. USGS Digital Elevation Models for North Dakota. U.S. Department of Interior, U.S. Geological Survey. Available URL: <<http://www.nd.gov/gis/>>.
- "Golden Eagle." National Geographic. 27 May 2012. <<http://animals.nationalgeographic.com/animals/birds/golden-eagle.html>>.
- "Gray Wolves in the Northern Rocky Mountains." U.S. Fish & Wildlife Service. May 2012. U.S. Department of Interior, U.S. Fish & Wildlife Service, Mountain-Prairie Region. 27 May 2012. <<http://www.fws.gov/mountain-prairie/species/mammals/wolf/>>.
- "Hawks, Eagles, and Falcons of North Dakota." U.S. Geological Survey Northern Prairie Wildlife Research Center. 3 Aug. 2006. U.S. Department of Interior, U.S. Geological Survey, Northern Prairie Wildlife Research Center. 27 May 2012. <<http://www.npwrc.usgs.gov/resource/birds/hawks/intro.htm>>.
- "Interior Least Tern (*Sterna antillarum athalassos*)."  
Texas Parks and Wildlife. 2 June 2009. Texas Parks and Wildlife. <<http://www.tpwd.state.tx.us/huntwild/wild/species/leasttern/>>.

- Johnson, S. Feb. 2010. Nesting in Numbers: Active Bald Eagle Nests Up in North Dakota. North Dakota Outdoors, North Dakota Game and Fish Department. 27 May 2012. <<http://gf.nd.gov/sites/default/files/nest-numbers.pdf>>.
- "Least Tern (Interior Population)." U.S. Fish & Wildlife Service. 6 March 2012. U.S. Department of Interior, U.S. Fish & Wildlife Service, Midwest Region. 27 May 2012. <<http://www.fws.gov/midwest/Endangered/birds/tern.html>>.
- "Least Tern (*Sterna antillarum*)." U.S. Fish & Wildlife Service. 1 Oct. 2011. U.S. Department of Interior, U.S. Fish & Wildlife Service, North Dakota Field Office. 27 May 2012. <[http://www.fws.gov/northdakotafieldoffice/endspecies/species/least\\_tern.htm](http://www.fws.gov/northdakotafieldoffice/endspecies/species/least_tern.htm)>.
- "Major Research Gives Insight into the Needs of Whooping Cranes." GBRA. 29 April 2009. Guadalupe-Blanco River Authority. 27 May 2012. <<http://www.gbra.org/News/2009/042901.aspx>>.
- Monteau, H. 15 Mar. 2012. North Dakota Oil Boom Bringing Jobs, Wealth—and a Looming Humanitarian Crisis. Indian Country Today Media Network. 20 Jul. 2012. <<http://indiancountrytodaymedianetwork.com/2012/03/15/north-dakota-oil-boom-bringing-jobs-wealth%E2%80%94and-a-looming-humanitarian-crisis-103023>>.
- Nordeng, S. H. 2009. Salts as Candidates for Air Storage in the Williston Basin, ND. North Dakota Geological Survey Geologic Investigation No. 78. 27 May 2012. <[https://www.dmr.nd.gov/ndgs/Publication\\_List/pdf/geoinv/GI78.pdf](https://www.dmr.nd.gov/ndgs/Publication_List/pdf/geoinv/GI78.pdf)>.
- "North Dakota Prairie: Our Natural Heritage." 24 Aug. 2006. North Dakota Parks and Recreation Department, U.S. Department of the Interior, U.S. Fish and Wildlife Service. 27 May 2012. <<http://www.npwr.usgs.gov/resource/habitat/heritage/index.htm>>.
- North Dakota State Water Commission Staff. 2011. Ground and Survey Water Data Query. State of North Dakota, State Water Commission. 17 Sept. 2012. <<http://www.swc.state.nd.us/4dlink2/4dcgi/wellsearchform/Map%20and%20Data%20Resources>>.
- Northern Prairie Wildlife Research Center. 3 Aug. 2006. Ecoregions of North Dakota and South Dakota. 27 May 2012. <<http://www.npwr.usgs.gov/resource/habitat/ndsdeco/nodak.htm>>.
- "Noxious Weed List Survey 2011." Feb. 2012. North Dakota Department of Agriculture. 17 Sept. 2012. <<http://www.nd.gov/ndda/program/noxious-weeds>>.
- Ó Donnchadha, Brian  
(2012) Bird Industries Water Depot: A Class III Cultural Resource Inventory in Dunn County, North Dakota. KJ Cultural Resources for Bird Industries, Minot, ND.
- "Piping Plover." 28 Mar. 2012. U.S. Department of Interior, U.S. Fish and Wildlife Service, Mountain-Prairie Region. 27 May 2012. <<http://www.fws.gov/mountain-prairie/species/birds/pipingplover/>>.
- "Recommendations for Development of Oil and Gas Resources Within Important Wildlife Habitats, Version 5.0." Mar. 2010. Wyoming Game and Fish Department. 27 May 2012. <<http://www.oilandgasbmps.org/docs/CO45.pdf>>.
- Soil Survey Staff. 2008 and 2009. Spatial and Tabular Data of the Soil Survey for McKenzie County, North Dakota. Natural Resources Conservation Service, U.S. Department of Agriculture. 17 Sept. 2012. <<http://soildatamart.nrcs.usda.gov/>>.
- Soil Survey Staff. 2008 and 2009. Web Soil Survey. Natural Resources Conservation Service, U.S. Department of Agriculture. 17 Sept. 2012. <<http://websoilsurvey.nrcs.usda.gov>>.
- "Three Forks Formation to yield lots of oil in North Dakota." 30 Apr. 2010. Bismarck Tribune Online. 27 May 2012. <[http://www.bismarcktribune.com/news/state-and-regional/article\\_368dcb38-53ef-11df-a6c8-001cc4c03286.html](http://www.bismarcktribune.com/news/state-and-regional/article_368dcb38-53ef-11df-a6c8-001cc4c03286.html)>.

"Whooping Crane Recovery Plan Revised." 29 May 2007. U.S. Department of Interior, U.S. Fish and Wildlife Service, Southwest Region. 27 May 2012. <[http://www.fws.gov/mountain-prairie/pressrel/WO\\_717\\_Whooping\\_crane\\_recoveryplanpr.pdf](http://www.fws.gov/mountain-prairie/pressrel/WO_717_Whooping_crane_recoveryplanpr.pdf)>.

U.S. Census Bureau. 2000-2010. 17 Sept. 2012. <<http://www.census.gov>>

U.S. Department of Interior, U.S. Geological Survey. USGS Hydrography Dataset for North Dakota. 26 July 2011. <<http://nhd.usgs.gov/>>.

U.S. EPA. National Ambient Air Quality Standards. 2006 and 2008. 27 May 2012. <<http://www.epa.gov/air/criteria.html>>.

U.S. Soil Conservation Service and North Dakota Agricultural Experiment Station. 1982. Soil survey of Dunn County, North Dakota. U.S. Government Printing Office, Washington, DC. 27 May 2012. <<http://soildatamart.nrcs.usda.gov/manuscripts/ND025/0/dunn.pdf>>.

Van Bruggen, T. 1992. Wildflowers, Grasses & Other Plants of the Northern Plains and Black Hills. Fourth Edition. Badlands Natural History Association, Interior, South Dakota.

Vance, F.R., J.R. Jowsey, J.S. Mclean, and F.A. Switzer. 1999. Wildflowers of the Northern Great Plains. Third Edition. University of Minnesota Press, Minneapolis, Minnesota.

Wyoming Game and Fish Department. Recommendations for Development of Oil and Gas Resources Within Important Wildlife Habitats. Version 5.0. March 2010. <<http://gf.state.wy.us/downloads/pdf/og.pdf>>

# Appendix A

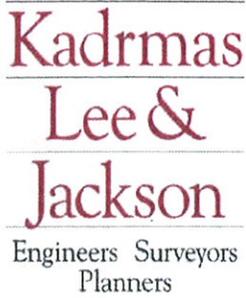
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## *Scoping Materials*

# Appendix A

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## *Scoping Materials*



September 7, 2012

Recipient Name  
Recipient Title  
Recipient Company  
Recipient Address  
Recipient City, State, Zip

**Re: Bird Industries Inc.  
Water Depot  
Fort Berthold Reservation  
Dunn County, North Dakota**

Dear Recipient Name:

On behalf of Bird Industries Inc., Kadrmass, Lee, & Jackson, Inc. is preparing an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) for the Bureau of Indian Affairs (BIA). The proposed action includes approval by the BIA for the development of a water depot on the Fort Berthold Indian Reservation in Dunn County, North Dakota.

The Water Depot would consist of a gravel pad, water tank, and a water line that would connect to an existing rural water line on the Fort Berthold Reservation. The five acre parcel proposed for the development would be located in the NW ¼ of Section 31, T149N, R92W. ***Please refer to the enclosed Project Location Map.*** The water depot was positioned to utilize existing roadways for access to the extent possible. Construction of the proposed water depot is scheduled to begin in the fall of 2012.

To ensure that social, economic, and environmental effects are analyzed accurately, we solicit your views and comments on the proposed action. We are interested in existing or proposed developments you may have that should be considered in connection with the proposed project. We also ask your assistance in identifying any property or resources that you own, manage, oversee, or otherwise value that might be adversely impacted.

Please provide your comments by **October 8, 2012**. We request your comments by that date to ensure that we will have ample time to review them and incorporate them into the EA.

If you would like further information regarding this project, please contact me at (701) 355-5961 or email me at [ashley.ross@kljeng.com](mailto:ashley.ross@kljeng.com). Thank you for your cooperation.

701 355 8400  
128 Soo Line Drive  
PO Box 1157  
Bismarck, ND 58502-1157  
Fax 701 355 8781  
[kljeng.com](http://kljeng.com)

Sincerely,

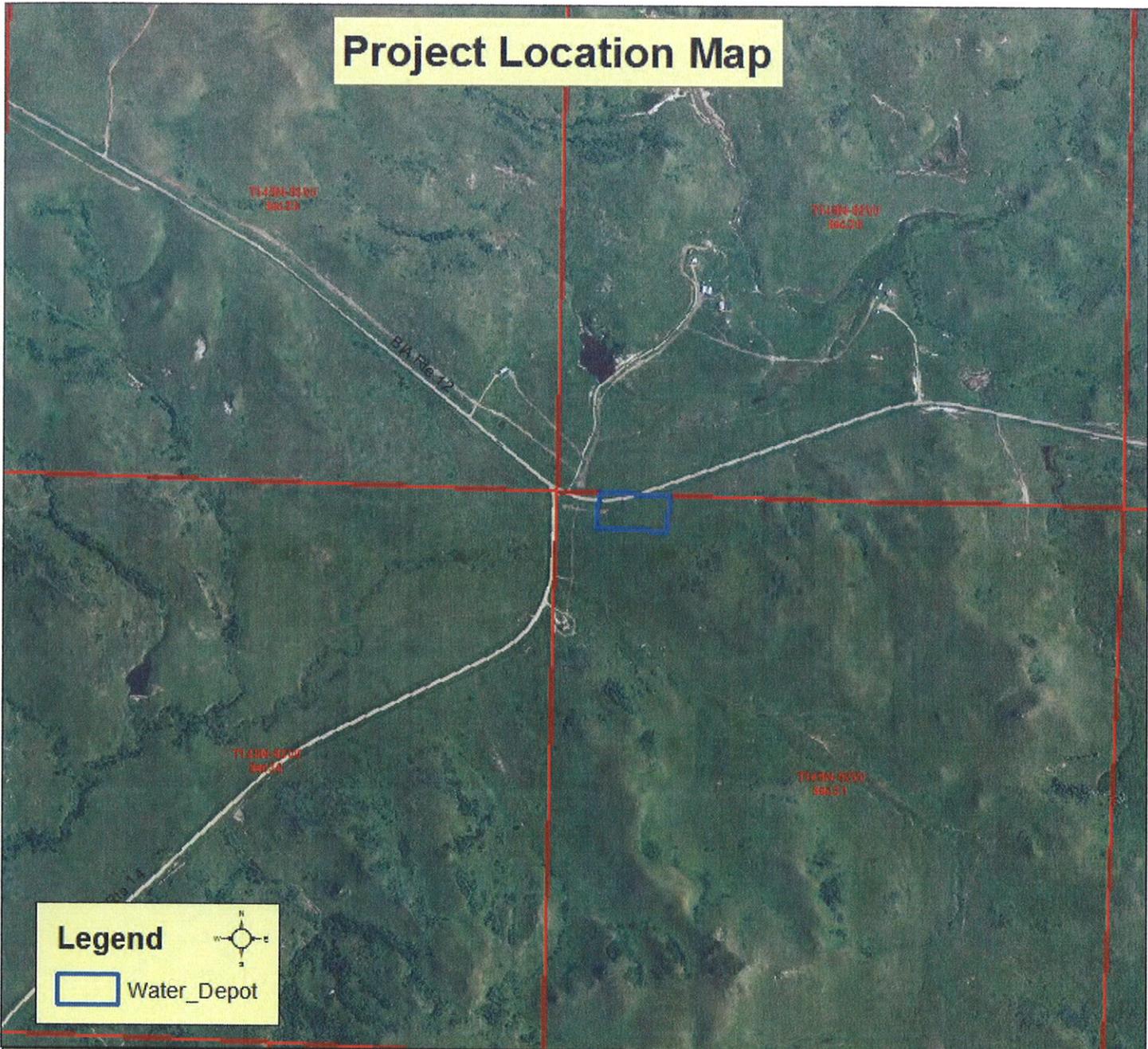
**Kadrmas, Lee & Jackson, Inc.**

Ashley Ross

Ashley Ross  
Environmental Planner

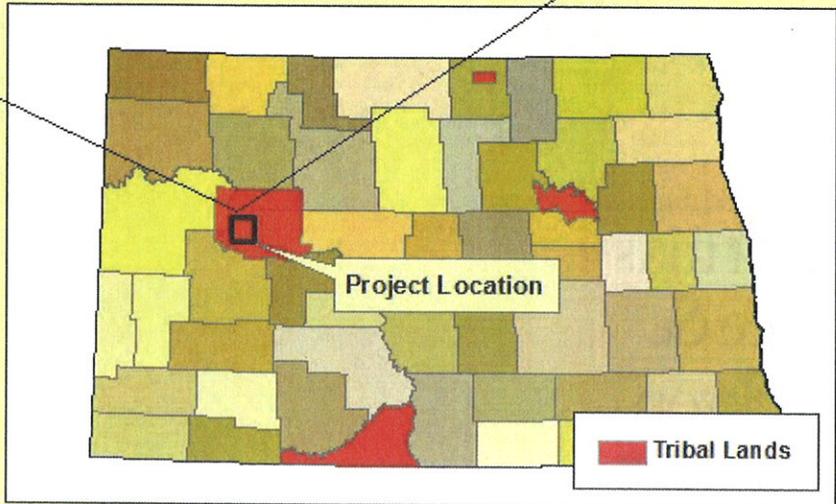
Enclosure: Project Location Map

# Project Location Map



**Bird Industries Inc.**  
**Water Depot**  
**Dunn County, North Dakota**

**Kadmas**  
**Lee &**  
**Jackson**  
Engineers, Surveyors  
Planners



SOV MASTER LIST

\*\*Save as new file for each project and edit accordingly with project specific contacts\*\*

C/Title	First	Last	Title	Department	Agency	Address	City	State	Zip
Mr.	Weldon	Louderemik	Regional Director		Bureau of Indian Affairs	115 4th Ave. SE	Aberdeen	SD	57401
Mr.	Jeffrey	Desjarlais	Environmental Protection Specialist		Bureau of Indian Affairs	202 Main Street	New Town	SD	58763
Mr.	Darryl	Turcotte	Environmental Protection Specialist		Bureau of Indian Affairs	202 Main Street	New Town	ND	58763
Sir	Thomas	Schauer or Madam	Manager	Environmental Management Division	Bureau of Reclamation	PO Box 1017	Bismarck	ND	58502-1017
Mr.	Dan	Cimaresti	Manager	Bismarck Airport's District Office	Federal Aviation Administration	2301 University Drive, Bldg 23B	Bismarck	ND	58504
Mr.	Charles	Sorensen	Natural Resource Specialist	ND Regulatory Office	US Army Corps of Engineers	1513 S. 12th St.	Bismarck	ND	58504
Mr.	Brad	Thompson	CENWO-PM-AC	Riverdale Field Office	US Army Corps of Engineers	PO Box 527	Riverdale	ND	58565
Ms.	Mary	Podol	State Conservationist	Omaha District	US Army Corps of Engineers	1616 Capital Avenue	Omaha	NE	68102
Mr.	Gerald	Paulson	Director, Transmission Line Substations	ND Maintenance Office	Natural Resources Conservation Service	220 East Rosser Avenue	Bismarck	ND	58501
Ms.	Suzanne	Bohan	Director	NEPA Program, Region 8	Western Area Power Admin.	PO Box 1173	Bismarck	ND	58502-1173
Mr.	Richard	Clark	Wetlands Coordinator	Region 8, EPR-EP	US Environment Protection Agency	1595 Wynkoop Street	Denver	CO	80202-1129
Mr.	Jeffrey	Towner	Field Supervisor	ND Field Office	US Fish & Wildlife Service	3425 Miriam Ave.	Bismarck	ND	58501
Mr.	Irwin	Russell	Assistant State Conservationist		US Department of Agriculture	PO Box 1458	Bismarck	ND	58502-1458
Mr.	Scott	Davis	Executive Director		Indian Affairs Commission	600 E. Blvd. Ave.	Bismarck	ND	58505-0300
Mr.	Gregg	Wiche	Director	Water Resources Division	US Geological Survey	1st Floor, Judicial Wng. Rm 117	Bismarck	ND	58501
Mr.	L. David	Glatt	Chief	Environmental Health Section	ND Department of Health	821 E. Interstate Ave.	Bismarck	ND	58501-1947
Mr.	Steve	Dyke	Conservation Section Supervisor	Gold Seal Center		918 E. Divide Ave., 4th floor	Bismarck	ND	58501-1947
Mr.	Ed	Murphy	State Geologist		ND Game & Fish Department	100 Bismarck Expressway	Bismarck	ND	58501-5095
Mr.	Mark	Zimmerman	Director		ND Geological Survey	600 E. Blvd. Avenue	Bismarck	ND	58505-0840
Mr.	Todd	Sando	State Engineer		ND Parks & Recreation Dept.	1600 E. Century Ave., Suite 3	Bismarck	ND	58503-0649
Mr.	Scott	Hochhalter	Soil Conservation Specialist		ND State Water Commission	900 E. Blvd. Ave.	Bismarck	ND	58505-0850
Mr.	Bill	Boyd	Construction Manager		Soil Conservation Committee	2718 Gateway Ave., #104	Bismarck	ND	58503
Mr.	Doug	Dixon	General Manager	Badlands Region	Midcontinent Cable Company	719 Memorial Hwy	Bismarck	ND	58501
Sir	John	Skurupey or Madam	General Manager		Montana Dakota Utilities	PO Box 1406	Williston	ND	58802-1406
Sir	Mary	Messad	Manager/CEO		McKenzie Electric Cooperative	PO Box 649	Watford City	ND	58854-0649
Ms.	David C.	Schekeloph	CEO		Northern Border Pipeline Company	13710 FNB Parkway, Suite 300	Omaha	NE	68154
Sir			Manager		Southwest Water Authority	4665 2nd St. SW.	Dickinson	ND	58601
Sir			Manager		West Plains Electric Coop., Inc.	PO Box 1038	Dickinson	ND	58602-1038
Sir			Manager		Xcel Energy	PO Box 2747	Fargo	ND	58108-2747
Sir			Manager		Mountain-Williams Electric Cooperative	355 Main St	New Town	ND	58763
Mr.	Lonny	Bagley	District Engineer	Dickinson District	ND Department of Transportation	1700 3rd Ave W, Suite 101	Dickinson	ND	58601-3009
Mr.	Mike	Nash	Field Office Manager	Division on Mineral Resources	Bureau of Land Management	99 23rd Ave W, Suite A	Dickinson	ND	58601
Mr.	Michael	Savage	Assistant Field Office Manager		Bureau of Land Management	99 23rd Ave W, Suite A	Dickinson	ND	58601
Ms.	Myra	Pearson	Tribal Chairman	Ft. Totten Tribal Business Office	Sisseton-Wahpeton Sioux Tribe	PO Box 509	Sisseton	SD	57252-0267
Mr.	Charles	Murphy	Tribal Chairman	Natural Resources Department	Standing Rock Sioux Tribe	PO Box 359	Ft. Totten	ND	58325
Mr.	Joe	Gillies	Environmental Division Director		Three Affiliated Tribes	PO Box D	Fort Yates	ND	58538
Mr.	Elgin	Crows Breast	Tribal Historic Preservation Officer		Three Affiliated Tribes	404 Frontage Road	New Town	ND	58763
Mr.	Tex	Hall	Tribal Chairman		Three Affiliated Tribes	HC3 Box 2	New Town	ND	58763
Mr.	Merle	St. Claire	Tribal Chairman		Three Affiliated Tribes	HC3 Box 2	New Town	ND	58763
Mr.	Damon	Williams	Tribal Attorney		Turtle Mountain Chippewa	PO Box 900	Belcourt	ND	58316-0900
Ms.	Fred	Fox	Director	Energy Department	Three Affiliated Tribes	404 Frontage Road	New Town	ND	58763
Ms.	V. Judy	Bugh	Representative	Four Bears Segment	Three Affiliated Tribes	404 Frontage Road	New Town	ND	58763
Mr.	Arnold	Strahs	Representative	Mandaree Segment	Three Affiliated Tribes	404 Frontage Road	New Town	ND	58763
Mr.	Scott	Eagle	Representative	Shell Creek Segment	Three Affiliated Tribes	404 Frontage Road	New Town	ND	58763
Mr.	Mervin	Packineau	Representative	Parshall/Lucky Mound Segment	Three Affiliated Tribes	404 Frontage Road	Parshall	ND	58770
Mr.	Frank	Whitecall	Representative	White Shield Segment	Three Affiliated Tribes	404 Frontage Road	New Town	ND	58763
Mr.	Barry	Benson	Representative	Twin Buttes Segment	Three Affiliated Tribes	70879 E Ave NW	Halliday	ND	58636
Mr.	Fred	Poirra	Director	Fort Berthold Rural Water	Three Affiliated Tribes	404 Frontage Road	New Town	ND	58763
Mr.	Lester	Crowsheart	Operations Manager	Reservation Telephone Cooperative	Reservation Telephone Cooperative	308 Four Bears Complex	New Town	ND	58763
Mr.	Brooks	Goodall	Auditor		Dunn County	PO Box 68	Parshall	ND	58770-0088
Mr.	Reinhard	Hauck				PO Box 105	Manning	ND	58642

SOV MASTER LIST

\*\*Save as new file for each project and edit accordingly with project specific contacts\*\*

C/Title	First	Last	Title	Department	Agency	Address	City	State	Zip
Ms	Tim	Stefan	Chairman	County Commission	Dunn County	1740 Highway 22	Manning	ND	58642

# Appendix B

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*SOV Responses*



REPLY TO  
ATTENTION OF

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

September 10, 2012

North Dakota Regulatory Office

Kadrmass Lee and Jackson  
Attn: Ashley Ross  
128 Soo Line Drive  
PO Box 1157  
Bismarck, ND 58502-1157

Dear Ms. Ross:

This is in response to your letter dated September 7, 2012 requesting US Army Corps of Engineers (Corps) comments regarding a project for the development of a water depot on the Fort Berthold Indian Reservation located in northwest quarter of Section 31, Township 149 North, Range 92 West in Dunn County, North Dakota.

Corps regulatory offices administer Section 10 of the Rivers and Harbors Act (Section 10) and Section 404 of the Clean Water Act (Section 404). Section 10 regulates work impacting navigable waters. Section 10 waters in North Dakota are the Missouri River (including Lake Sakakawea and Lake Oahe), Yellowstone River, James River south of the railroad track in Jamestown, North Dakota, Bois de Sioux River, Red River of the North, and the Upper Des Lacs Lake. Work over, in, or under navigable waters is considered to have an impact. Section 404 of the Clean Water Act regulates the discharge of dredged 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.

Please submit a location map and completed Corps permit application (copy enclosed) describing all proposed work and construction methodology, to the letterhead address if a Section 10/404 permit is required.

Do not hesitate to contact this office by letter or telephone (701-255-0015) if we can be of further assistance.

Sincerely,

Joseph M. Tanko  
Acting Regulatory Program Manager  
North Dakota

Enclosure



18. Nature of Activity (Description of project, include all features)			
19. Project Purpose (Describe the reason or purpose of the project, see instructions)			
<b>USE BLOCKS 20-23 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED</b>			
20. Reason(s) for Discharge			
21. Type(s) of Material Being Discharged and the Amount of Each Type in Cubic Yards:			
Type Amount in Cubic Yards	Type Amount in Cubic Yards	Type Amount in Cubic Yards	
22. Surface Area in Acres of Wetlands or Other Waters Filled (see instructions)			
Acres			
Or			
Liner Feet			
23. Description of Avoidance, Minimization, and Compensation (see instructions)			
24. Is Any Portion of the Work Already Complete? Yes <input type="checkbox"/> No <input type="checkbox"/> IF YES, DESCRIBE THE COMPLETED WORK			
25. Addresses of Adjoining Property Owners, Lessees, Etc., Whose Property Adjoins the Waterbody (If more than can be entered here, please attach a supplemental list).			
Address --			
City --	State --	Zip --	
26. List of Other Certifications or Approvals/Denials Received from other Federal, State, or Local Agencies for Work Described in This Application.			
AGENCY	TYPE APPROVAL*	IDENTIFICATION NUMBER	DATE APPLIED      DATE APPROVED      DATE DENIED
* Would include but is not restricted to zoning, building, and flood plain permits			
27. Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.			
_____ SIGNATURE OF APPLICANT	_____ DATE	_____ SIGNATURE OF AGENT	_____ DATE
The application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent if the statement in block 11 has been filled out and signed.			
18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.			

**Instructions for Preparing a  
Department of the Army Permit Application**

**Blocks 1 through 4.** To be completed by Corps of Engineers.

**Block 5. Applicant's Name.** Enter the name and the E-mail address of the responsible party or parties. If the responsible party is an agency, company, corporation, or other organization, indicate the name of the organization and responsible officer and title. If more than one party is associated with the application, please attach a sheet with the necessary information marked Block 5.

**Block 6. Address of Applicant.** Please provide the full address of the party or parties responsible for the application. If more space is needed, attach an extra sheet of paper marked Block 6.

**Block 7. Applicant Telephone Number(s).** Please provide the number where you can usually be reached during normal business hours.

**Blocks 8 through 11.** To be completed, if you choose to have an agent.

**Block 8. Authorized Agent's Name and Title.** Indicate name of individual or agency, designated by you, to represent you in this process. An agent can be an attorney, builder, contractor, engineer, or any other person or organization. Note: An agent is not required.

**Blocks 9 and 10. Agent's Address and Telephone Number.** Please provide the complete mailing address of the agent, along with the telephone number where he / she can be reached during normal business hours.

**Block 11. Statement of Authorization.** To be completed by applicant, if an agent is to be employed.

**Block 12. Proposed Project Name or Title.** Please provide name identifying the proposed project, e.g., Landmark Plaza, Burned Hills Subdivision, or Edsall Commercial Center.

**Block 13. Name of Waterbody.** Please provide the name of any stream, lake, marsh, or other waterway to be directly impacted by the activity. If it is a minor (no name) stream, identify the waterbody the minor stream enters.

**Block 14. Proposed Project Street Address.** If the proposed project is located at a site having a street address (not a box number), please enter it here.

**Block 15. Location of Proposed Project.** Enter the latitude and longitude of where the proposed project is located. If more space is required, please attach a sheet with the necessary information marked Block 15.

**Block 16. Other Location Descriptions.** If available, provide the Tax Parcel Identification number of the site, Section, Township, and Range of the site (if known), and / or local Municipality that the site is located in.

**Block 17. Directions to the Site.** Provide directions to the site from a known location or landmark. Include highway and street numbers as well as names. Also provide distances from known locations and any other information that would assist in locating the site. You may also provide description of the proposed project location, such as lot numbers, tract numbers, or you may choose to locate the proposed project site from a known point (such as the right descending bank of Smith Creek, one mile downstream from the Highway 14 bridge). If a large river or stream, include the river mile of the proposed project site if known

**Block 18. Nature of Activity.** Describe the overall activity or project. Give appropriate dimensions of structures such as wing walls, dikes (identify the materials to be used in construction, as well as the methods by which the work is to be done), or excavations (length, width, and height). Indicate whether discharge of dredged or fill material is involved. Also, identify any structure to be constructed on a fill, piles, or float-supported platforms.

The written descriptions and illustrations are an important part of the application. Please describe, in detail, what you wish to do. If more space is needed, attach an extra sheet of paper marked Block 18.

**Block 19. Proposed Project Purpose.** Describe the purpose and need for the proposed project. What will it be used for and why? Also include a brief description of any related activities to be developed as the result of the proposed project. Give the approximate dates you plan to both begin and complete all work.

**Block 20. Reasons for Discharge.** If the activity involves the discharge of dredged and/or fill material into a wetland or other waterbody, including the temporary placement of material, explain the specific purpose of the placement of the material (such as erosion control).

**Block 21. Types of Material Being Discharged and the Amount of Each Type in Cubic Yards.** Describe the material to be discharged and amount of each material to be discharged within Corps jurisdiction. Please be sure this description will agree with your illustrations. Discharge material includes: rock, sand, clay, concrete, etc.

**Block 22. Surface Areas of Wetlands or Other Waters Filled.** Describe the area to be filled at each location. Specifically identify the surface areas, or part thereof, to be filled. Also include the means by which the discharge is to be done (backhoe, dragline, etc.). If dredged material is to be discharged on an upland site, identify the site and the steps to be taken (if necessary) to prevent runoff from the dredged material back into a waterbody. If more space is needed, attach an extra sheet of paper marked Block 22.

**Block 23. Description of Avoidance, Minimization, and Compensation.** Provide a brief explanation describing how impacts to waters of the United States are being avoided and minimized on the project site. Also provide a brief description of how impacts to waters of the United States will be compensated for, or a brief statement explaining why compensatory mitigation should not be required for those impacts.

**Block 24. Is Any Portion of the Work Already Complete?** Provide any background on any part of the proposed project already completed. Describe the area already developed, structures completed, any dredged or fill material already discharged, the type of material, volume in cubic yards, acres filled, if a wetland or other waterbody (in acres or square feet). If the work was done under an existing Corps permit, identify the authorization, if possible.

**Block 25. Names and Addresses of Adjoining Property Owners, Lessees, etc., Whose Property Adjoins the Project Site.** List complete names and full mailing addresses of the adjacent property owners (public and private) lessees, etc., whose property adjoins the waterbody or aquatic site where the work is being proposed so that they may be notified of the proposed activity (usually by public notice). If more space is needed, attach an extra sheet of paper marked Block 24.

Information regarding adjacent landowners is usually available through the office of the tax assessor in the county or counties where the project is to be developed.

**Block 26. Information about Approvals or Denials by Other Agencies.** You may need the approval of other federal, state, or local agencies for your project. Identify any applications you have submitted and the status, if any (approved or denied) of each application. You need not have obtained all other permits before applying for a Corps permit.

**Block 27. Signature of Applicant or Agent.** The application must be signed by the owner or other authorized party (agent). This signature shall be an affirmation that the party applying for the permit possesses the requisite property rights to undertake the activity applied for (including compliance with special conditions, mitigation, etc.).

## DRAWINGS AND ILLUSTRATIONS

### General Information.

Three types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are identified as a Vicinity Map, a Plan View or a Typical Cross-Section Map. Identify each illustration with a figure or attachment number.

Please submit one original, or good quality copy, of all drawings on 8½ x11 inch plain white paper (electronic media may be substituted). Use the fewest number of sheets necessary for your drawings or illustrations.

Each illustration should identify the project, the applicant, and the type of illustration (vicinity map, plan view, or cross-section). **While illustrations need not be professional (many small, private project illustrations are prepared by hand), they should be clear, accurate, and contain all necessary information.**



**NORTH DAKOTA**  
DEPARTMENT of HEALTH

ENVIRONMENTAL HEALTH SECTION  
Gold Seal Center, 918 E. Divide Ave.  
Bismarck, ND 58501-1947  
701.328.5200 (fax)  
www.ndhealth.gov



September 14, 2012

Ms. Ashley Ross  
Environmental Planner  
Kadmas Lee & Jackson  
P.O. Box 1157  
Bismarck, ND 58502-1157

Re: Bird Industries, Inc. Water Depot  
Fort Berthold Reservation, Dunn County

Dear Ms. Ross:

This department has reviewed the information concerning the above-referenced project submitted under date of September 7, 2012, with respect to possible environmental impacts.

This department believes that environmental impacts from the proposed construction will be minor and can be controlled by proper construction methods. With respect to construction, we have the following comments:

1. All necessary measures must be taken to minimize fugitive dust emissions created during construction activities. Any complaints that may arise are to be dealt with in an efficient and effective manner.
2. Aggregate to be used for road or pad construction should not contain any erionite. Aggregate sources should be tested for erionite following guidelines found at [www.ndhealth.gov/EHS/Erionite](http://www.ndhealth.gov/EHS/Erionite). For questions regarding erionite testing, please call Mark Dible at 701-328-5188.
3. Care is to be taken during construction activity near any water of the state to minimize adverse effects on a water body. This includes minimal disturbance of stream beds and banks to prevent excess siltation, and the replacement and revegetation of any disturbed area as soon as possible after work has been completed. Caution must also be taken to prevent spills of oil and grease that may reach the receiving water from equipment maintenance, and/or the handling of fuels on the site. Guidelines for minimizing degradation to waterways during construction are attached.
4. Projects disturbing one or more acres are required to have a permit to discharge stormwater runoff until the site is stabilized by the reestablishment of vegetation or other permanent cover. Projects located within tribal boundaries are required to obtain a permit from the U.S. Environmental Protection Agency. Further information on the stormwater permit may be obtained from the U.S. EPA's website or by calling the the U.S. EPA - Region 8 at 303-312-6312. Also, cities may impose

cc: [redacted]

Environmental Health Section Chief's Office 701.328.5150	Division of Air Quality 701.328.5188	Division of Municipal Facilities 701.328.5211	Division of Waste Management 701.328.5166	Division of Water Quality 701.328.5210
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additional requirements and/or specific best management practices for construction affecting their storm drainage system. Check with the local officials to be sure any local stormwater management considerations are addressed.

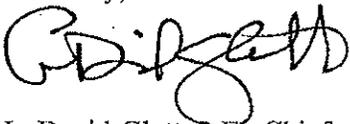
5. Noise from construction activities may have adverse effects on persons who live near the construction area. Noise levels can be minimized by ensuring that construction equipment is equipped with a recommended muffler in good working order. Noise effects can also be minimized by ensuring that construction activities are not conducted during early morning or late evening hours.

The department owns no land in or adjacent to the proposed improvements, nor does it have any projects scheduled in the area. In addition, we believe the proposed activities are consistent with the State Implementation Plan for the Control of Air Pollution for the State of North Dakota.

These comments are based on the information provided about the project in the above-referenced submittal. The U.S. Army Corps of Engineers may require a water quality certification from this department for the project if the project is subject to their Section 404 permitting process. Any additional information which may be required by the U.S. Army Corps of Engineers under the process will be considered by this department in our determination regarding the issuance of such a certification.

If you have any questions regarding our comments, please feel free to contact this office.

Sincerely,



L. David Glatt, P.E., Chief  
Environmental Health Section

LDG:cc

Attach.

c: Mark Dihle, Division of Air Quality



**Construction and Environmental Disturbance Requirements**

These represent the minimum requirements of the North Dakota Department of Health. They ensure that minimal environmental degradation occurs as a result of construction or related work which has the potential to affect the waters of the State of North Dakota. All projects will be designed and implemented to restrict the losses or disturbances of soil, vegetative cover, and pollutants (chemical or biological) from a site.

**Soils**

Prevent the erosion of exposed soil surfaces and trapping sediments being transported. Examples include, but are not restricted to, sediment dams or berms, diversion dikes, hay bales as erosion checks, riprap, mesh or burlap blankets to hold soil during construction, and immediately establishing vegetative cover on disturbed areas after construction is completed. Fragile and sensitive areas such as wetlands, riparian zones, delicate flora, or land resources will be protected against compaction, vegetation loss, and unnecessary damage.

**Surface Waters**

All construction which directly or indirectly impacts aquatic systems will be managed to minimize impacts. All attempts will be made to prevent the contamination of water at construction sites from fuel spillage, lubricants, and chemicals, by following safe storage and handling procedures. Stream bank and stream bed disturbances will be controlled to minimize and/or prevent silt movement, nutrient upsurges, plant dislocation, and any physical, chemical, or biological disruption. The use of pesticides or herbicides in or near these systems is forbidden without approval from this Department.

**Fill Material**

Any fill material placed below the high water mark must be free of top soils, decomposable materials, and persistent synthetic organic compounds (in toxic concentrations). This includes, but is not limited to, asphalt, tires, treated lumber, and construction debris. The Department may require testing of fill materials. All temporary fills must be removed. Debris and solid wastes will be removed from the site and the impacted areas restored as nearly as possible to the original condition.

United States Department of Agriculture



Natural Resources Conservation Service  
PO Box 1458  
Bismarck, ND 58502-1458

RECEIVED

SEP 24 2012

September 18, 2012

Kadrmass, Lee & Jackson  
128 Soo Line Drive  
PO Box 1157  
Bismarck, North Dakota 58502-1157

RE: Bird Industries, Inc., Water Depot  
Fort Berthold Reservation, Dunn County, North Dakota

Dear Sirs:

The Natural Resources Conservation Service (NRCS) has reviewed your letter dated September 7, 2012, concerning the development of a water depot on the Fort Berthold Indian Reservation in Dunn County, North Dakota.

Farmland Protection Policy Act

NRCS has a major responsibility with the Farmland Protection Policy Act (FPPA) in documenting conversion of farmland (i.e., prime, statewide importance and local importance) to non agriculture use. It appears your proposed project is not supported by federal funding, therefore; FPPA does not apply and no further action is needed.

Wetlands

The Wetland Conservation Provisions of the 1985 Food Security Act, as amended, provides that if a USDA participant converts a wetland for the purpose or to have the effect of making agricultural production possible, loss of USDA benefits could occur. The Natural Resource Conservation Service has developed the following guidelines for the installation of permanent structures where wetlands occur. If these guidelines are followed the impacts to the wetland will be considered minimal allowing USDA participants to continue to receive USDA benefits. Following are the requirements:

*Helping People Help the Land*

An Equal Opportunity Provider and Employer



- Disturbance to the wetland must be temporary.
- No drainage of wetland is allowed (temporary or permanent).
- Mechanized landscaping necessary for installation is kept to a minimum and preconstruction contours are maintained.
- Temporary side cast material must be placed in such a manner not to be dispersed in the wetland.
- All trenches must be backfilled to the original wetland bottom elevation.

NRCS would recommend that impacts to wetlands be avoided.

If you have additional questions pertaining to FPPA, please contact Steve Sieler, Liaison Soil Scientist, NRCS, Bismarck, ND at 701-530-2019.

Sincerely,

A handwritten signature in black ink, appearing to read 'Wade D. Bott', with a stylized flourish at the end.

WADE D. BOTT  
State Soil Scientist

**Kadrmass**  
**Lee &**  
**Jackson**  
Engineers Surveyors  
Planners

September 10, 2012

Jeffery Towner  
U.S. Fish and Wildlife Service  
North Dakota Field Office  
3425 Miriam Avenue  
Bismarck, North Dakota 58501-7926

Re: Bird Industries Inc.  
Water Depot  
Fort Berthold Reservation  
Dunn County, North Dakota

U.S. FISH AND WILDLIFE SERVICE  
ECOLOGICAL SERVICES  
ND FIELD OFFICE

Project as described will have no significant impact on fish and wildlife resources. No endangered or threatened species are known to occupy the project area and/or are not likely to be adversely affected. IF PROJECT DESIGN CHANGES ARE MADE, PLEASE SUBMIT PLANS FOR REVIEW.

9-28-12 *Jeffrey K. Towner*

Date

Jeffrey K. Towner  
Field Supervisor

Dear Mr. Towner:

On behalf of Bird Industries Inc., Kadrmass, Lee & Jackson, Inc. (KL&J) is preparing an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) for the Bureau of Indian Affairs (BIA). The proposed action includes approval by the BIA for the development, and completion of a water depot on the Fort Berthold Reservation. The proposed water depot is to be positioned in T149N, R92W, and NW¼ of Section 31. ***Please refer to the enclosed project location map.***

The proposed action would allow for a more accessible water source to the nearby oil field; therefore, minimizing the truck traffic. The water depot has been positioned to utilize existing roadways for access to the extent possible. Construction of the proposed water depot is scheduled to begin in the fall of 2012.

The BIA Environmental Protection Specialist, Bird Industries and survey staff completed a site visit on August 27, 2012. During the assessment, construction suitability with respect to topography, stockpiling, drainage, erosion control, and other surface issues were considered. Those present at the on-site assessment agreed that the chosen site is positioned in an area which would have minimal impacts to sensitive wildlife and botanical resources.

Through the direction of the BIA Environmental Protection Specialist, an intensive, pedestrian resource survey of the proposed water depot site was conducted on September 5, 2012 by KL&J. The purpose of these surveys was to gather site-specific data and photos with regards to botanical, biological, threatened and endangered species, eagles, and water resources. A study area of the entire potential area of disturbance and a 250-foot wide access road corridor was evaluated for the site. In addition, a 0.50 mile wide buffer around all areas of project disturbance was used to evaluate the presence of eagles and eagle nests. Resources were evaluated using visual inspection and pedestrian transects across the sites.

701 355 8400

128 Soo Line Drive

PO Box 1157

Bismarck, ND 58502-1157

Fax 701 355 8781

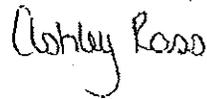
kljeng.com

It is requested that any comments or information be forwarded to our office on or before **October 8, 2012**. We request your comments by that date to ensure that we will have ample time to review them and incorporate them into the necessary environmental documentation.

If you would like further information regarding this project, please contact me at (701) 355-5961 or email me at [Ashley.ross@kljeng.com](mailto:Ashley.ross@kljeng.com). Thank you for your cooperation.

Sincerely,

Kadrmass, Lee & Jackson, Inc.



Ashley Ross  
Environmental Planner

Enclosure(s): Maps



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

REPLY TO  
ATTENTION OF

September 25, 2012

Planning, Programs, and Project Management Division

Ms. Ashley Ross  
Kadmas Lee & Jackson  
128 Soo Line Drive  
P.O. Box 1157  
Bismarck, North Dakota 58502

Dear Ms. Ross:

The U.S. Army Corps of Engineers, Omaha District (Corps) has reviewed your letter dated September 7, 2012 regarding the environmental report on the development of a water depot that will be connected to an existing water line on the Fort Berthold Indian Reservation located in Dunn County, North Dakota. The Corps offers the following comments:

Your plans should be coordinated with the state water quality office in which the project is located to ensure compliance with federal and state water quality standards and regulations mandated by the Clean Water Act and administered by the U.S. Environmental Protection Agency (USEPA). Please coordinate with the North Dakota Department of Health concerning state water quality programs.

If you have not already done so, it is recommended you consult with the U.S. Fish and Wildlife Service and the North Dakota Game and Fish Department regarding fish and wildlife resources. In addition, the North Dakota State Historic Preservation Office should be contacted for information and recommendations on potential cultural resources in the project area.

Since the proposed project does not appear to be located within Corps owned or operated lands, we are providing no floodplain or flood risk information. To determine if the proposed project may impact areas designated as a Federal Emergency Management Agency special flood hazard area, please consult the following floodplain management office:

North Dakota State Water Commission  
Attention: Jeff Klein  
900 East Boulevard Avenue  
Bismarck, North Dakota 58505-0850  
[jjkein@nd.gov](mailto:jjkein@nd.gov)  
T-701-328-4898

F-701-328-3747

Any proposed placement of dredged or fill material into waters of the United States (including jurisdictional wetlands) requires Department of the Army authorization under Section 404 of the Clean Water Act. You can visit the Omaha District's Regulatory website for permit applications and related information. Please review the information on the provided website to determine if this project requires a 404 permit (<http://www.nwo.usace.army.mil/html/od-rne/nehome.html>). For a detailed review of permit requirements, preliminary and final project plans should be sent to:

U.S. Army Corps of Engineers  
Bismarck Regulatory Office  
Attention: CENWO-OD-R-ND/Cimarosti  
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.

Sincerely,



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

**Kadrmass**  
**Lee &**  
**Jackson**  
 Engineers Surveyors  
 Planners

September 7, 2012

Mr. Steve Dyke  
 Conservation Section Supervisor  
 ND Game & Fish Department  
 100 Bismarck Expressway  
 Bismarck, ND 58501-5095

10/4

**Re: Bird Industries Inc.**  
**Water Depot**  
**Fort Berthold Reservation**  
**Dunn County, North Dakota**

Dear Mr. Dyke:

On behalf of Bird Industries Inc., Kadrmass, Lee, & Jackson, Inc. is preparing an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) for the Bureau of Indian Affairs (BIA). The proposed action includes approval by the BIA for the development of a water depot on the Fort Berthold Indian Reservation in Dunn County, North Dakota.

The Water Depot would consist of a gravel pad, water tank, and a water line that would connect to an existing rural water line on the Fort Berthold Reservation. The five acre parcel proposed for the development would be located in the NW ¼ of Section 31, T149N, R92W. *Please refer to the enclosed Project Location Map.* The water depot was positioned to utilize existing roadways for access to the extent possible. Construction of the proposed water depot is scheduled to begin in the fall of 2012.

To ensure that social, economic, and environmental effects are analyzed accurately, we solicit your views and comments on the proposed action. We are interested in existing or proposed developments you may have that should be considered in connection with the proposed project. We also ask your assistance in identifying any property or resources that you own, manage, oversee, or otherwise value that might be adversely impacted.

Please provide your comments by **October 8, 2012**. We request your comments by that date to ensure that we will have ample time to review them and incorporate them into the EA.

If you would like further information, please call 701-355-5961 or email me at ashl.



**North Dakota Game & Fish Dept.**  
**100 N. Bismarck Expressway**  
**Bismarck, ND 58501-5095**

We have reviewed the project and foresee no identifiable conflict with wildlife or wildlife habitat based on the information provided.

*Greg Link*  
 Greg Link

Chief, Conservation & Communication Division

Date: 10/4/12

BLK

701 355 8400  
 128 Soo Line Drive  
 PO Box 1157  
 Bismarck, ND 58502-1157  
 Fax 701 355 8781  
 kljeng.com





# Appendix C

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## *Water Purchase Agreement*

TAT Segment Area: Mandaree  
Type of Service: X Finished;      Raw  
Agreement Number: 17921.202-1  
Effective Date of Agreement: 5.30.2012

# Water Purchase Agreement

1. **Parties:** The Parties to this Agreement are as follows:

- **Administrator.** Bartlett and West, Inc. is the administrator of this agreement and has duties, obligations, and powers as defined herein and also within the Tribal Water Sales Policy.
- **Company.** Company is Butch and Sundance, LLC; company is also referenced as 'purchaser' within the Tribal Water Sales Policy.

2. **Intent:** This Water Purchase Agreement (Agreement) is issued pursuant to the terms of the Water Sales Policy (Policy) of the Three Affiliated Tribes (TAT) of the Fort Berthold Indian Reservation. This Agreement documents the conditions and terms by which water will be provided to the company or applicant noted herein. All provisions of this agreement are subject to the TAT Water Sales Policy. No part of this agreement can modify the intent of such Policy. This contract is entered into under the understanding that the Company intends to use such water for energy development activities and other related activities.

3. **Water Purchase Request:** The Company requests the following water delivery service from the TAT:

- **Point of Delivery of Water:** NW ¼ of NW ¼ of S31 T149N R92W (Intersection of BIA Road 14 and BIA Road 12)
- **Amount of Requested Water:** Off-Peak Water, as available
- **Term of Request:** 2.5 year, with 1 year option for renewal
- **Special Conditions of Request:** Maximum of 300 gpm

4. **Sales Conditions and Terms:** Based on above Water Purchase Request the Administrator offers water to the Company under terms as follows:

- **Annual Connection Fee:** Fee is based on a formula of ~~\$700~~ (N/A) per gpm requested. For this request the annual connection fee is \$0.00. Fee is non refundable and is non-prorated. This fee secures the water as noted by this Agreement for the Company under the terms and conditions of this Agreement.
- **Contracted Amount of Water:** The contracted amount of water shall be determined by extending the contracted gallons per minute over a 24 hour basis for a 365 day year.
- **Cost of Water:** Cost of water is \$20 per 1,000 gallons (approximately \$0.84 per barrel); this cost will be determined by a metering station or other method of measurement as determined by the Administrator. All meter readings or other measurement methods will be provided to the Company with the monthly billing statement.
- **Payment for Water:** The Company will provide payment for all used water to the Administrator on a monthly basis based on an invoice which the Administrator shall provide to the Company. Payment shall be made to 'Bartlett & West, Inc.' at 3456 East Century Avenue, Bismarck, ND, 58503.

- 46 • ~~Minimum Purchase:~~ The Company commits to purchase a minimum of 80% of the contracted  
47 amount of water on a monthly basis. Each month the Administrator shall invoice the company  
48 for at least the calculated contracted water on a monthly basis. Payment for such minimum  
49 amount is due and payable from the Company regardless if such amounts of water are used by  
50 the Company.
- 51 • **Improvements to System and Facilities Provided by Company:** In the event that TAT may need  
52 to make improvements to their water supply system in order to accommodate the needs of the  
53 Company, the Company shall be responsible for the costs of such improvements. In the event  
54 that new facilities, beyond those facilities already in place and in use by the TAT, are needed,  
55 the Company shall be responsible for the costs of such new facilities. The costs shall include,  
56 but may not be limited to, the costs of the design, construction management, and installation of  
57 such facilities. All such design and installation of any such facilities will be in accordance with  
58 Tribal and State design standards. Such new facilities may include but may not be limited to  
59 pipeline, line connections, metering equipment, line control equipment, pump station(s) and  
60 other similar facilities.
- 61 • **Limitations of Service:** The Company is notified that the ability of the Administrator to provide  
62 water according to circumstances beyond the control of the Administrator. To the greatest  
63 extent possible, the Administrator will endeavor to provide such water as requested by this  
64 Agreement but in the event such water service becomes interrupted or discontinued, the  
65 resource or remedy by the Company against the Administrator or the TAT is limited to relief  
66 from payment for the minimum bill provision of this agreement.  
67

68 **S. Ongoing Operations Provisions:** The Company agrees to provide a management plan for any new  
69 facilities which may be constructed to receive or use water from the TAT by this Agreement. Such  
70 management plan shall provide provisions which assure the TAT that water provided is being properly  
71 protected from spillage, and that metering and control equipment is properly maintained to assure  
72 accurate water usage readings. The Company, at their option, may enter into a separate agreement  
73 with the Administrator for operational and maintenance compliance; if such agreement is entered into,  
74 the Administrator shall assume the responsibility of the Company to provide operational and  
75 management records to satisfy the requirements of the TAT.  
76

77 **6. Other Conditions of the Agreement:**  
78

- 79 • **Construction Standards of Facilities.** All facilities constructed by the Company relative to this  
80 agreement shall meet all applicable Tribal, State, and Federal design and construction standards.
- 81 • **Term of this Agreement.** This agreement shall have a term of 30 months from the effective  
82 date of the agreement.
- 83 • **Termination of agreement.** Termination of this agreement may be achieved by either the  
84 Company or the Administrator. Termination, if initiated, will be by a 30 day written notice.  
85 Grounds for termination by the administrator shall include; delinquent payment greater than 90  
86 days past the invoice date. ~~If termination is initiated by the Administrator the Company shall be~~  
87 ~~relieved of the minimum purchase requirements of this agreement however shall have no other~~  
88 ~~recourse. If termination is initiated by the Company the Administrator shall be entitled to the~~  
89 ~~minimum monthly bills for any remaining months of the agreement.~~
- 90 • **Intent to Renew.** Prior to 60 days from the termination of this agreement the Company shall  
91 notify the Administrator of their intent to either request a renewal of the agreement or of their  
92 intent to not renew the agreement. Failure to notify the Administrator may be construed by the

93 Administrator as the Company not wishing to renew the agreement. A request from the  
94 Company to renew does not bind the Administrator to the renewal of the Agreement.  
95 • **Water Rate change.** To the extent possible, and as may be under the control of the  
96 Administrator, the water rate stated in this agreement shall be maintained thought-out the life  
97 of the agreement. If conditions occur by which the water rate fee cannot be maintained, the  
98 Administrator shall promptly notify the Company and mutually negotiate an amendment to this  
99 Agreement.  
100 • **Tribal Tax Charges.** The Company is advised that the TAT may institute a tribal water use or  
101 water sales tax. The Administrator has no advance knowledge of how, or if, such a possible tax  
102 may impact this agreement, but if such tax is required by the TAT to be applied to this  
103 agreement, then that tax will be added to the water rate as noted herein.  
104  
105

106 **Signature and Acknowledgement:** The terms and conditions of this Agreement are accepted and  
107 implemented by the Parties noted below:  
108

109   
110 \_\_\_\_\_  
111 Administrator  
112 Bartlett & West, Inc.

113   
114 \_\_\_\_\_  
115 Company  
116 Butch and Sundance, LLC

117 5/30/2012  
118 Date

119 5-29-2012  
120 Date

121 Company Billing Address:  
122  
123 Butch and Sundance, LLC  
124  
125 5507 155<sup>th</sup> ST NW  
126  
127 Williston, ND 58801  
128  
129 \_\_\_\_\_  
130

# Appendix D

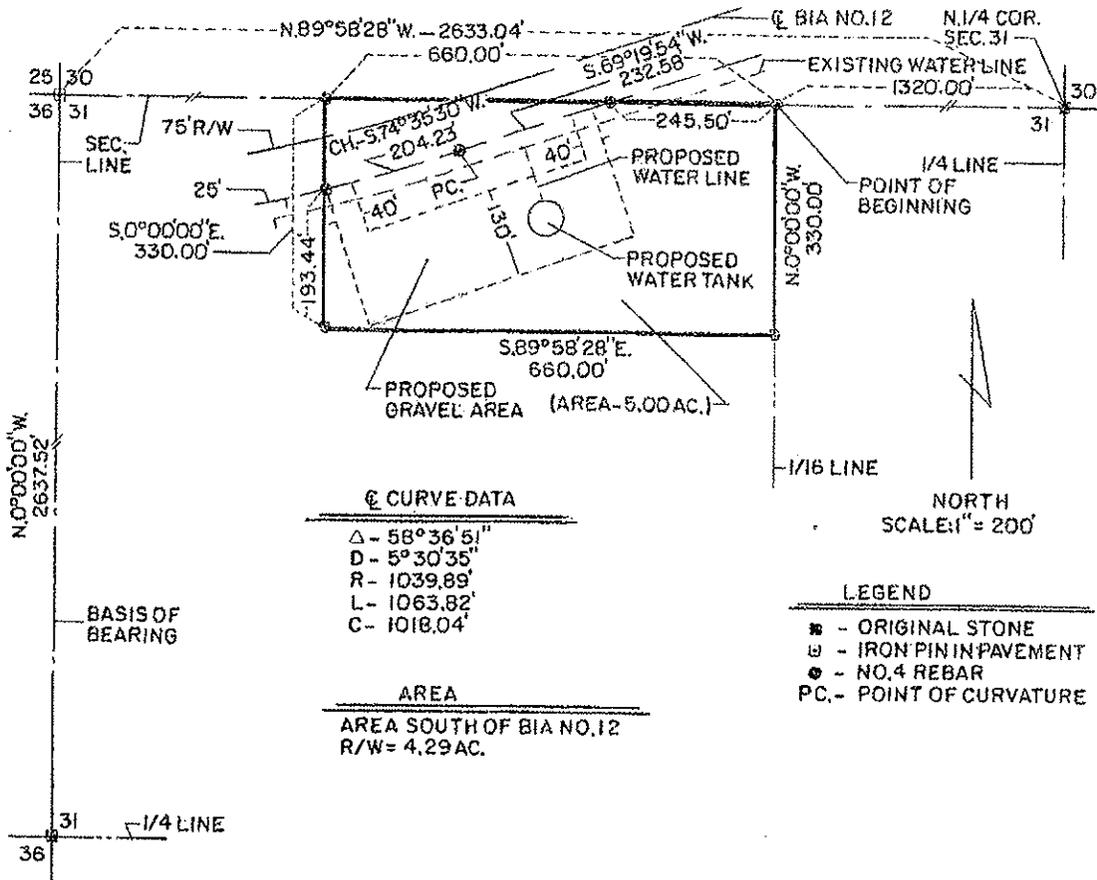
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*Site Layout*

# TAT SURVEY

(GREAT WESTERN RESOURCES, L.C.)

5.00 ACRE PARCEL LOCATED IN GOV'T LOT '1' OF THE NW¼ OF SECTION 31, T.149N., R.92W.  
DUNN COUNTY, ND



## DESCRIPTION

T.149N., R.92W. OF THE 5TH PRINCIPAL MERIDIAN, DUNN COUNTY, NORTH DAKOTA, THAT PART GOV'T LOT '1' OF THE NW¼ OF SECTION 31; DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTH ONE QUARTER (N¼) CORNER OF SAID SECTION 31, THEN N.89°58'28"W., ALONG THE NORTH SECTION LINE OF THE NW¼ OF SAID SECTION 31, A DISTANCE OF 1320.00 FEET TO THE POINT OF BEGINNING; THEN CONTINUING N.89°58'28"W., ALONG SAID NORTH SECTION LINE, A DISTANCE OF 660.00 FEET TO A POINT; THEN S.0°00'00"E., A DISTANCE OF 330.00 FEET TO A POINT; THEN S.89°58'28"E., A DISTANCE OF 660.00 FEET TO A POINT; THEN N.0°00'00"W., A DISTANCE OF 330.00 FEET TO THE POINT OF BEGINNING; CONTAINING 5.00 ACRES MORE OR LESS. THE ABOVE BEARINGS WERE DEFLECTED FROM ASSUMED N.0°00'00"W., ALONG THE WEST SECTION LINE OF THE NW¼ OF SAID SECTION 31.

## SURVEYOR'S CERTIFICATE

I, RICK L. HORNADAY, BEING A DULY REGISTERED LAND SURVEYOR IN THE STATE OF NORTH DAKOTA, DO HEREBY CERTIFY THAT THE ABOVE REFERENCED SURVEY WAS DONE BY ME OR UNDER MY DIRECT SUPERVISION AND THAT ALL ANGLES, DISTANCES AND AREAS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.



*Rick L. Hornaday*  
**RICK L. HORNADAY RLS**

# **Notice of Availability and Appeal Rights**

BIRD INDUSTRIES: WATER DEPOT

**The Bureau of Indian Affairs (BIA) is planning to issue administrative approvals related to Water Depot on the Berthold Reservation as shown on the attached map. Construction by Bird Industries, Inc. is expected to begin in 2012.**

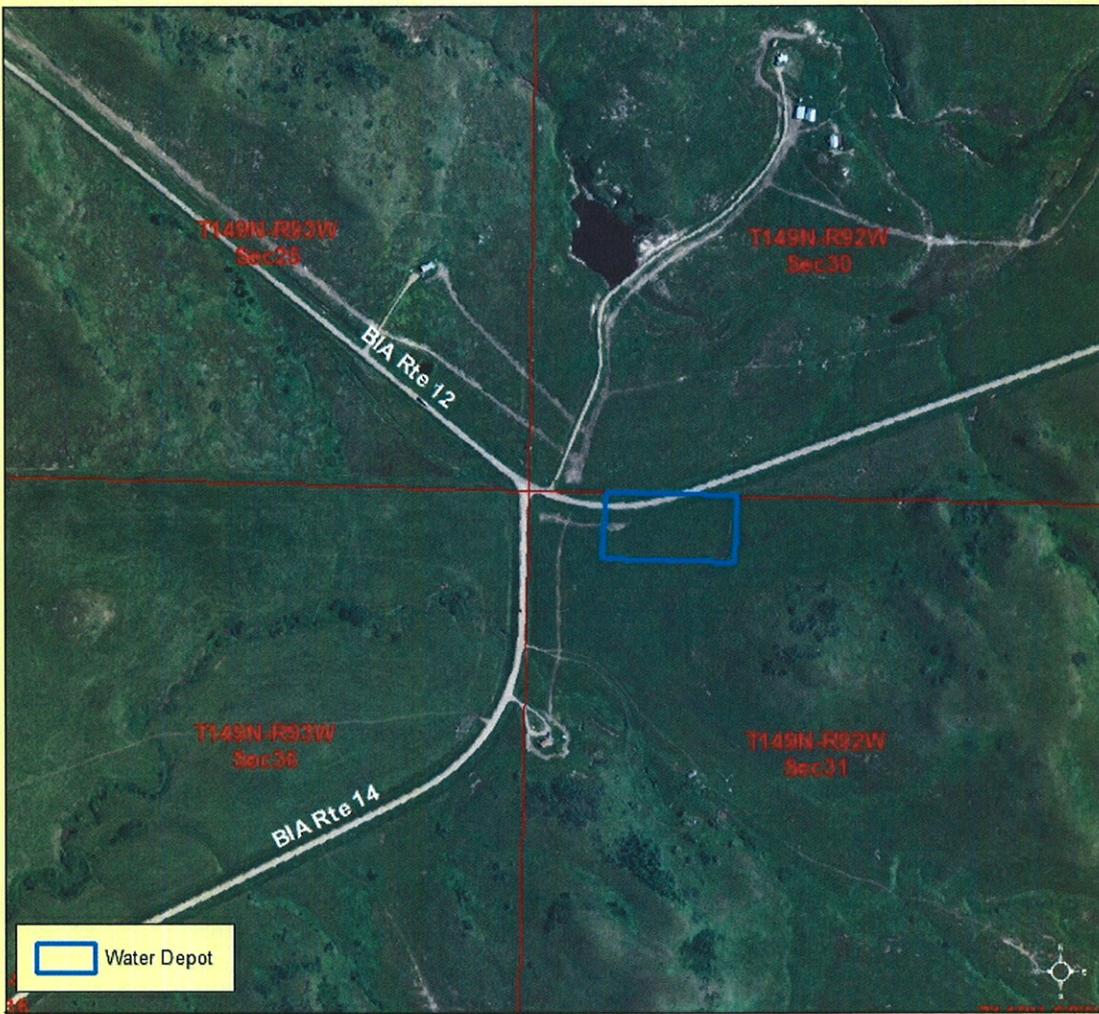
**An environmental assessment (EA) determined that proposed activities will not cause significant impacts to the human environment. An environmental impact statement is not required. Contact Earl Silk, Superintendent at 701-627-6570 for more information and/or copies of the EA and the Finding of No Significant Impact (FONSI).**

**The FONSI is only a finding on environmental impacts – it is not a decision to proceed with an action and *cannot* be appealed. BIA's decision to proceed with administrative actions *can* be appealed until December 8, 2012 by contacting:**

**United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Indian Appeals  
801 N. Quincy Street, Suite 300, Arlington, Va 22203.**

**Procedural details are available from the BIA Fort Berthold Agency at 701-627-6570.**

Project locations.



**Bird Industries Inc.  
Water Depot  
Dunn County, North Dakota**

