

1 UNITED STATES SENATE
2 COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
3 SUBCOMMITTEE ON WASTE, SUPERFUND AND OVERSIGHT
4 MANAGEMENT
5

6 Five Years from the Flood: Oversight of the
7 Army Corps' Management of the Missouri River and
8 Suggestions for Improvement
9

10 North Sioux City Council
11 Chambers of City Hall
12 North Sioux City, South Dakota
13 March 31, 2016
14 1:00 p.m.

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13 P U B L I C H E A R I N G
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15 APPEARANCES:
16 Senator Mike Rounds, Chairman of the Senate
17 Environment and Public Works Subcommittee on Waste,
18 Superfund and Oversight Management
19 SPEAKER:
20 Mr. David J. Ponganis, U.S. Army Corps of Engineers
21 Secretary Steven Pirner, South Dakota DENR
22 Chairman Harold Frazier, Cheyenne River Sioux Tribe
23 Mr. Jeff Dooley, Manager of Dakota Dunes Community
24 Improvement District
25 Mr. Paul Lepisto, Izaak Walton League of America

1 (Public Hearing Convened at 1:05 p.m.)

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3 SENATOR ROUNDS: Good afternoon. The
4 Environment and Public Works Subcommittee on
5 Superfund, Waste Management, and Regulatory
6 Oversight is meeting today to conduct a field
7 hearing entitled "Five Years from the Flood:
8 Oversight of the Army Corps' Management of the
9 Missouri River and Suggestions for Improvement." I
10 would like to thank our witnesses for being with us
11 today, and I look forward to hearing your testimony.

12 The United States Army Corps of Engineers
13 is responsible for managing the Missouri River to
14 meet the needs of both the Corps and the surrounding
15 communities. In order for this to be successful,
16 management of the river should always be done with
17 extensive communication among stakeholders and a
18 well-founded understanding of the needs of state and
19 local governments, agriculture, recreation and
20 economic interests, all of which depend on the
21 proper management of the Missouri River.

22 In 2011, record-setting rains, unusually
23 moist soil conditions, and melting snow from a
24 near-record setting snowfall in the Rocky Mountains
25 and Northern Plains states combined to form a

1 perfect storm that led to catastrophic flooding all
2 along the Missouri River basin.

3 From May through August, extensive
4 flooding caused major damage on residences,
5 infrastructure, businesses and agriculture in the
6 basin states of South Dakota, North Dakota, Iowa,
7 Nebraska, Missouri, Montana and Kansas.

8 The flood caused more than \$2 billion in
9 damages and resulted in five fatalities. Four
10 thousand homes were flooded. Roads were destroyed
11 and agricultural land was ruined. Entire
12 communities were under attack from the 2011 flood,
13 largely left to fend for themselves. The Federal
14 Emergency Management Administration, or FEMA, issued
15 disaster declarations in each state in this region.

16 In our state capital of Pierre and
17 neighboring Fort Pierre, residents were given less
18 than one week to prepare for what would be one of
19 the worst floods in 60 years. After the flood, the
20 city's streets, sewer system -- or sewage system,
21 storm sewers, parks and electrical systems suffered
22 unprecedented damage that cost millions of dollars
23 to repair. The recovery took months. Citizens are
24 still paying for the damages.

25 When the floodwaters had receded and life

1 began to return to normal, the next step was to make
2 sure that any and all measures were taken to make
3 certain this would not happen again.

4 In 2014 Government Accountability Office
5 reported, or the GAO reported -- report concluded
6 that improving existing hydrologic data and
7 collecting new soil moisture, plains snowpack, and
8 archeological flood and drought data could assist
9 the Corps in making future release decisions and in
10 improving long-term forecasting models.

11 Accordingly, a 2014 Water Resources Reform bill,
12 which is commonly referred to as WRRDA, authorized
13 the Army Corps to coordinate with various government
14 agencies to create a soil moisture and snowpack
15 monitoring network in the Upper Missouri River
16 Basin.

17 Since the flood, we have also been
18 confronted with several other issues involving the
19 Army Corps' management of the Missouri River. In
20 2008, the Army Corps issued Real Estate Guidance
21 Policy Letter Number 26. This directive required
22 municipal and industrial water users from the
23 Missouri River Mainstem Reservoirs to acquire a
24 water storage contract from the Corps before the
25 Corps would issue an access easement for a pump

1 site. Since the issuance of this guidance policy,
2 the Corps has been seemingly unable or unwilling to
3 issue access easements to South Dakotans seeking to
4 utilize water from the Missouri.

5 Additionally, the Corps has been
6 undertaking surplus water studies and engaging in a
7 rule-making effort to standardize how the Corps will
8 charge citizens for surplus water storage. The 2014
9 WRRDA bill prohibited the Corps from charging a fee
10 for surplus water for ten years. This prohibition
11 should be permanent. South Dakotans should not be
12 required to pay a fee of any kind for using water
13 from the Missouri River.

14 Proper management of the Missouri River is
15 vital to life in the Midwest. We depend on the
16 Missouri River not only for recreation, but for
17 agriculture and irrigation, shipping and
18 hydroelectric power. The Missouri River is vital to
19 our livelihood and to our economy.

20 It has now been nearly five years since
21 the flood. Today we will be hearing testimony from
22 both the U.S. Army Corps of Engineers and state and
23 local stakeholders regarding the Corps' management
24 of the Missouri River. We will be exploring what
25 the Corps is doing right, what can be improved upon,

1 and how Congress can help get the Corps and the
2 communities the resources they need to manage this
3 vital resource. We will also offer suggestions on
4 how the Corps' management can be improved in order
5 to prevent future flooding and better meet the needs
6 of both the surrounding communities and the Corps.

7 Each witness will have approximately five
8 minutes to present their testimony, and I will then
9 follow up with questions to the witnesses.

10 I'd like to again thank our witnesses for
11 being with us today, and I look forward to hearing
12 all of their testimonies.

13 This hearing has two panels. We'll begin
14 with our first panel today, and Mr. Dave Ponganis is
15 the Director of Programs, the Northwestern Division
16 of the U.S. Army Corps of Engineers. Mr. Ponganis,
17 whenever you're ready you may begin your five
18 minutes of testimony. Once again, we appreciate
19 your being here today.

20 MR. PONGANIS: Thank you, Chairman Rounds. I
21 am Dave Ponganis, Programs Director of Northwestern
22 Division of the U.S. Army Corps of Engineers. I am
23 pleased to be here today to discuss the efforts of
24 the Corps in the Missouri River basin to reduce the
25 risk of flood damage during and after the Missouri

1 River flood of 2011.

2 The Missouri River Mainstem Reservoir
3 System is comprised of six multipurpose dams and
4 reservoirs, which include hydroelectric power plants
5 and recreational areas; levees downstream along the
6 mainstem of the Missouri River and a 735-mile
7 navigation channel extending from Sioux City, Iowa,
8 to the mouth near St. Louis, Missouri. The six dams
9 on the mainstem of the Missouri River form the
10 largest system of reservoirs in the United States.

11 The Corps is charged with responsibly
12 managing this complex and extensive system for eight
13 congressionally authorized purposes: Flood control,
14 navigation, hydropower, municipal and industrial
15 water supply, water quality control, recreation,
16 irrigation, and fish and wildlife. The Missouri
17 River Master Manual is the Corps' manual that guides
18 the operating regime of these reservoirs under a
19 wide range of water conditions consistent with those
20 authorized purposes. In addition, operation of the
21 system must also comply with other applicable
22 federal statutory and regulatory requirements,
23 including the Endangered Species Act.

24 Cycles of flooding and drought have always
25 been a major part of the Missouri River Basin

1 hydrology. The 2011 flood was the result of
2 unprecedented hydrologic events. Following a wet
3 fall of 2010, heavy snow accumulated on the upper
4 plains of Montana, Wyoming, North and South Dakota.
5 Mountain snowpack was just slightly above average
6 most of the winter, but surged late in the season
7 and peaked much above average in early May. But it
8 was the unprecedented record rainfall in May and
9 June over much of Montana, North Dakota and South
10 Dakota that, when combined with the runoff from the
11 plains and mountain snowpack, resulted in the flood
12 event of 2011. Runoff above Sioux City, Iowa,
13 totaled 62 million acre feet compared to a normal
14 25 million acre feet, more than double the average
15 and the highest on record, requiring record releases
16 from all six mainstem dams. Releases from Gavins
17 Point Dam were maintained between 150,000 cubic feet
18 per second and 160,000 from mid-June through
19 mid-August, more than double the previous record
20 release of 70,000 cubic feet per second.

21 While much damage occurred in the basin
22 during this flood, the Missouri River Mainstem
23 Reservoir System, including the federal and non-
24 federal levees, along with the response actions
25 taken by federal, state, and local agencies, and

1 private citizens both before and during the flood,
2 provided substantial benefits. Without them, the
3 damages and safety risks would have been much
4 greater. Important repairs have been completed
5 since then. There are still a few to be done that
6 we're working on right now.

7 During the Missouri River flood of 2011,
8 the Corps expended approximately \$70 million on
9 fortifying existing levees, building temporary
10 levees, monitoring dam and levee safety and other
11 activities, such as providing flood flight supplies
12 to states and tribes, within the Corps' authorities
13 under Public Law 84-99. These actions by the Omaha
14 and Kansas City Districts of the Corps were highly
15 effective in reducing flood damages along the
16 mainstem of the Missouri River.

17 Following the flood the Corps initiated a
18 variety of post-flood actions. These include both
19 internal and independent external technical reviews
20 of the water management operation, an after action
21 review of the flood flight response, and the
22 concentrated effort to assess and repair key
23 features of the infrastructure that the Corps owns
24 and operates on the Missouri, as well as eligible
25 non-federal levees under the Corps' Public Law 84-99

1 program. In addition, we also participated in a
2 review of our reservoir operations by the Government
3 Accountability Office.

4 The Corps set up an external technical
5 review panel to assess the Corps' operation of the
6 mainstem reservoir system prior to, during, and
7 after the 2011 flood event for the purposes of
8 gaining lessons learned and recommendations to
9 improve future operations. The independent review
10 panel recommended infrastructure investment to
11 ensure that our flood release spillways and tunnels
12 are ready for service and our levees are in good
13 condition. Consistent with this recommendation, the
14 Corps has spent over \$580 million since 2011 to
15 repair federal and non-federal infrastructure on the
16 Missouri River including the dams, levees, and
17 channel structures. The bulk of these repairs were
18 completed prior to the 2012 run-off season.
19 However, some repairs, particularly for the large
20 items such as spillway structures and gates are
21 still underway.

22 The independent panel also recommended
23 that the Corps conduct several studies on the
24 operation of the Missouri River Mainstem System.
25 The 2011 flood was a historic event that provided a

1 new data point to incorporate into the tools used to
2 predict, monitor, and manage the system. The Corps
3 has updated numerous internal technical reports and
4 has partnered with NOAA on three additional reports.
5 These include an attribution study of the 2011
6 flood; an evaluation of the feasibility of managing
7 the reservoir system for anticipated wet and dry
8 cycles; and a study that is looking at changes of
9 the basin climatology and hydrology since the 1970s.

10 Post 2011 flood, the Corps has worked with
11 the National Weather Service, the Natural Resource
12 Conservation Service, and states to share existing
13 data and have developed a proposal for comprehensive
14 a snow plains snowpack and soil moisture monitoring
15 network for the upper plains.

16 Since 2011, the Corps has also greatly
17 enhanced its coordination with tribes, state, and
18 local governments during periods of heightened flood
19 risk including monthly basin calls leading up to and
20 during the peak run-off seasons.

21 Knowing my time has run out, Senator --

22 SENATOR ROUNDS: Take another minute and try to
23 finish up.

24 MR. PONGANIS: Okay. In September 2014, the
25 GAO issued a report on its review of the Corps'

1 water release decisions and communication during the
2 2011 flood and the 2012 drought. As part of this
3 review, GAO worked with the National Academy of
4 Sciences and convened a meeting of nine experts to
5 discuss the Corps' data, forecasts, and release
6 decisions. These experts concluded that the Corps
7 took appropriate action during the 2011 flood and
8 the 2012 drought given the circumstances, but
9 recommended that the Corps evaluate the pros and
10 cons of incorporating new forecasting techniques
11 into its management of the Missouri River system.
12 That evaluation is ongoing and is expected to be
13 completed later this summer.

14 We are hopeful that the improvements in
15 the run-off forecasting and sharing of critical data
16 will provide even greater lead time for flood events
17 resulting from high plains and mountain snowpack,
18 although they will have little impact on the more
19 typical rainfall-driven flooding which is most
20 common in the lower basin. The Corps is also
21 communicating more frequently and more broadly with
22 federal, state, county, and local officials, tribes,
23 emergency management officials, independent experts
24 and the media to discuss conditions on the ground
25 and current Corps reservoir release plans and

1 forecasts.

2 This concludes my testimony. Thank you
3 for allowing me to testify about the flooding in
4 2011 and future operation of the Missouri River
5 Mainstem System. I will be happy to answer any
6 questions you may have.

7 SENATOR ROUNDS: Thank you, Mr. Ponganis.
8 Mr. Ponganis, along with all of the other
9 individuals who will be testifying today, have
10 provided us with a written testimony, and all of the
11 written testimony will be entered in its entirety
12 into the record of this -- of this meeting.

13 Mr. Ponganis, Section 4003 of the 2014
14 WRRDA Bill authorized the Corps to coordinate with
15 various government agencies to create a soil
16 moisture and snowpack monitoring network in the
17 Upper Missouri River basin and maintain high
18 elevation snowpack monitoring sites. However, in a
19 2015 report the Government Accountability Office
20 found that federal agencies have made limited
21 progress implementing the monitoring program. What
22 is the status of the soil moisture and snowpack
23 monitoring program? What can Congress do to better
24 facilitate the implementation of its program, and is
25 the Corps willing to take the role of lead agency to

1 implement this program?

2 MR. PONGANIS: Senator, we have gotten
3 implementing guidance of that WRRDA section. What
4 that guidance indicates to us is that -- tells us
5 that, one, we need to seek additional appropriations
6 specifically. In other words, it was in addition to
7 our normal operations.

8 In addition, as part of that we would need
9 to ensure that once we help and work with the other
10 forecasting agencies, NOAA, NRCS, USGS, and what
11 kind of additional monitoring is necessary, where,
12 and once those additional monitoring sites would be
13 installed, that those agencies would be responsible
14 for taking over the maintenance and the monitoring
15 activities which we would need to enter. So we are
16 starting that coordination with them on that, and
17 we're hopeful that we'll get future appropriations
18 to do so.

19 SENATOR ROUNDS: So in 2014, the bill
20 authorized the Corps to coordinate with the various
21 other government agencies. We're now in 2016.

22 MR. PONGANIS: Yes, sir.

23 SENATOR ROUNDS: You're now suggesting that you
24 need additional funding from Congress. Has that
25 request been made at all?

1 MR. PONGANIS: So, Senator, the process that we
2 have is we get implementation guidance from our
3 Secretary of the Army's office and through our
4 headquarter's office, we got of -- any sections in
5 WRRDA, we got that this fall. So it was too late to
6 enter into anything for the President's budget
7 process for this current, for FY -- proposed for
8 FY-17. Now that we have that, we'll engage with the
9 administration in looking into the proposed budgets
10 for the future years, sir.

11 SENATOR ROUNDS: You know, one of the reasons
12 why people up in this part of the country get
13 frustrated is because they see that things don't
14 move very fast when it comes to the federal
15 government. You've got folks out here in the
16 audience right now that lived through a flood in
17 2011. It was at a time -- and let me just
18 background this just a little bit. There were folks
19 up and down this Missouri River at that time that
20 understood that we had full reservoirs, that we had
21 snowpack in the mountains. It didn't take a
22 scientist to see that. They knew that we had a lot
23 more snow in the Upper Midwest. Every report out
24 that you could find from commercial sources would
25 have indicated that.

1 As my memory serves me correct, during
2 March, I believe it was on March 3rd, it was one of
3 those kind of days that you remember. On March 3rd
4 it seems to me that one of the Corps' spokespeople
5 said in an article that was related in the Omaha
6 Herald on that day, that we were going to be just
7 fine that year with regard to maintaining the water
8 levels within the banks, unless it rained. And I
9 don't believe they quite said "unless it rained,"
10 but basically unless we had additional moisture, and
11 so forth. That was on March 3rd.

12 My first thought after looking at that
13 was, is that it's a heck of a way to run a major --
14 a major system right through the middle of the
15 United States, that we would be just fine unless it
16 rained.

17 And second of all, I live along the
18 Missouri River. I live on the Fort Pierre side of
19 the Missouri just across from the capital city of
20 Pierre. We had moved into our home after I left
21 working as governor for a period of eight years. We
22 moved into a new home along the Missouri River, and
23 we could see the levels below the Oahe Dam and the
24 tailwaters of Lake Sharpe. We had record low
25 releases the first week in May, record low releases.

1 I know, because we were actually working on the
2 shoreline behind our home. Three weeks later we
3 moved out of our home. People in our entire area of
4 80-some homes moved out. We did so because we had
5 basically just about a week's notice that something
6 bad was going to happen.

7 I can understand why folks up here don't
8 refer to it as the 2011 flood. They refer to it as
9 the Corps flood of 2011. In part, because they
10 think that there was not enough information provided
11 by the Corps in advance, and that the Corps was
12 unprepared to deal with this amount of water coming
13 through which was very large amounts. But it seems
14 like after operating this particular -- this
15 particular system for more than 60 years, that there
16 would be an adequate way to determine whether or not
17 the amounts of water coming in was more than what we
18 could handle in the mainstem dams and whether or not
19 we might have more than a week's notice below every
20 one of these major facilities with regard to huge
21 releases that all of a sudden had to happen.

22 We moved out of our home, and I said we
23 were out for two months. My wife reminds me, no, it
24 was 63 days. There were a lot of folks out here
25 that were gone -- that were out for a lot longer

1 than that, and there was billions of dollars in
2 damage that was done, some of which, I think a lot
3 of people think could have been handled more
4 appropriately if we could have started making
5 releases sooner. It doesn't mean that we could have
6 stopped all the damage that was done, but most
7 certainly it could have been eliminated more if we
8 wouldn't have had record low releases for a month
9 before we had record high releases. You could have
10 averaged it out a little bit. But you can't do that
11 unless you've got adequate information.

12 We understand that if we had not provided
13 the resources to get it, or if we had not provided
14 the directions, as Congress, to the Corps of
15 Engineers, to maintain or to get adequate
16 information, but the reason why I lay out this is
17 because now, after we've had a direction from
18 Congress that you get in gear with other agencies to
19 actually put together the necessary information to
20 prevent it in the future, two years later you're
21 saying that you can't get it done until we get an
22 appropriation from Congress, and you didn't think
23 enough about it to get it done in this
24 appropriations bill. I don't understand. And so if
25 I'm a little upset, I think there's a whole lot of

1 people out here that are probably more upset than
2 what I am.

3 Can you just share with us a little bit
4 about why this is taking more than two years just to
5 get the original plans done, so you can get the
6 monitoring in place so we don't have this kind of
7 thing because you don't have the information
8 necessary on how to appropriately maintain the water
9 levels in this major structure throughout the
10 central part of the United States?

11 MR. PONGANIS: Senator, one, several actions
12 took place immediately after the flood event. We
13 did work with the other agencies. As part of that
14 coordination/collaboration with NOAA and USGS was
15 the emphasis that -- the foundation for the WRRDA
16 section that you've identified. So, one, that was a
17 result of a lot of good work that was done prior to
18 WRRDA 14.

19 Secondly, we have worked with NOAA to look
20 at flood forecasts. Could we have foreseen it?
21 What are -- are there changes that are occurring?
22 Can NOAA, who we rely on, from the weather --
23 National Weather Service and the forecasting to look
24 and predict earlier on. And those -- those reports
25 of -- a couple have been completed. One's still

1 ongoing. So we haven't, in the absence of seeking
2 appropriations for this particular section, we have
3 not stood still, sir. We have tried to do our best
4 working with those agencies and trying to get
5 better. You are totally correct, when operating a
6 major system like this, having information early on
7 is critical.

8 Another part is we have started, and
9 continue, to this day, with having calls early on,
10 starting in January, with the region, with the
11 forecasting agencies to share whatever information
12 we have as early as we can, sir.

13 SENATOR ROUNDS: I think it still comes back
14 down to it should not take five years to implement
15 this type of a program, and right now we're talking
16 about years to come yet, unless we can expedite
17 this. Could I have your assurance that the Corps of
18 Engineers would be interested in expediting this
19 process to get this in place as soon as possible?

20 MR. PONGANIS: Sir, we'll work with the
21 administration on trying to implement that section
22 of WRRDA as quickly as we can, sir.

23 SENATOR ROUNDS: Very good. In 2008, the Corps
24 issued a Real Estate Guidance Policy Letter
25 Number 26. This directive required municipal and

1 industrial water users from the Missouri River
2 Mainstem Reservoirs to acquire a water storage
3 contract from the Corps prior to the Corps issuing
4 an access easement for a pump site. Access
5 easements are needed for all South Dakota water
6 users of the Missouri River to include municipal,
7 industrial, and temporary use for short-term
8 projects for which state permits have been issued.

9 The Corps' unwillingness to issue access
10 easements affects South Dakotans' ability to manage
11 the public's ability to use water from the Missouri
12 River. Do you plan to continue denying access
13 easements to South Dakotans seeking to use water
14 from the Missouri River?

15 MR. PONGANIS: Senator, let me give you the
16 status of where we're at and our direction from the
17 Assistant Secretary of the Army's office. About
18 2012 we were asked by the Assistant Secretary to
19 produce surplus water reports for the six major
20 reservoirs projects. It was through that process
21 and approval of those reports that would allow us to
22 move forward and enter into contracts with the --
23 with the provision of WRRDA 14 of not charging, and,
24 therefore, allow the real estate access. One of
25 those reports has been approved by the Assistant

1 Secretary of the Army's office for Garrison.
2 There's still -- other ones are under review.

3 Concurrently, the Assistant Secretary of
4 the Army's office with our headquarters have been
5 pursuing a rule-making on surplus water reports,
6 Water Supply Act, charging practices, our policy of
7 how to allow for these storage contracts, et cetera.
8 And the reason the Secretary's office is -- was
9 going to pursue that was because when this issue
10 came back up in 2012, it was found out nationwide it
11 was being -- there's inconsistencies across this
12 country in how we were implementing that, and the
13 idea was to try to get some consistency. That
14 rule-making is being done at that level, not in the
15 regional level. I can't give you -- sir, I would be
16 speculating of where they're at. I know they've
17 been working very hard on it. They're very hopeful
18 that something can come out soon so that we can have
19 that. And if it comes out as a rule, for comment by
20 all the states, stakeholders across the country.
21 This -- it's an important issues, as you know, and
22 nationally water supply is a major concern across --
23 across this country given the recent droughts that
24 we've had.

25 SENATOR ROUNDS: Well, based upon the 2014

1 WRRDA bill, it required the Corps to waive the
2 proposed water charges for contract and surplus
3 water identified in the surplus water reports. Can
4 you tell me the status of the surplus water studies
5 then? Is that the one that you're saying right now
6 that they're still in the middle of trying to do a
7 rule-making process?

8 MR. PONGANIS: They're in the middle of doing
9 the rule-making. We are implementing Congressional
10 direction on -- we are not charging per -- per that
11 section of WRRDA, sir.

12 SENATOR ROUNDS: So you're not charging for the
13 water that's in storage, but you're still in the
14 middle, as you understand it, and I understand this
15 is not regional, but your understanding is that
16 they're in the middle of proposing the rules to
17 charge or to put together a policy to charge for the
18 water even though Congress has directed that for the
19 next 10 years you not charge for the water in
20 storage. Is that a correct analysis here?

21 MR. PONGANIS: So the ten-year moratorium on
22 charging is for water for surplus. There's two
23 acts. One is the surplus water provisions and also
24 then there's the Water Supply Act. And, again, sir,
25 I haven't been involved in any details of the

1 national rule-making to give you any specifics on
2 how that's being addressed, sir.

3 SENATOR ROUNDS: Okay. I don't think that
4 there should be a charge for that water which flows
5 through. I think that's part of the process that we
6 have -- we should have access to. I'll go back down
7 to even the city of Pierre, which is right on the
8 Missouri River, simply trying to get access so they
9 can do irrigation in their park systems, as of
10 yesterday, still had not had a response back simply
11 to get access across the Corps land to get in to put
12 in a pump station so that they can access the water,
13 which is part of the free-flowing part in the Lake
14 Sharpe area of the Oahe dam. There's got to be a
15 better way to do this.

16 Currently, Mr. Ponganis, the Corps is
17 currently engaged in a recovery program to replace
18 lost habitat for the pallid sturgeon, the piping
19 plover and the least tern. Can you update us on the
20 status of these plans?

21 MR. PONGANIS: Yes, Senator. We are working
22 with the Missouri River Recovery Implementation
23 Committee, per Congressional direction under WRRDA
24 07, that committee was formed, approved by the
25 Assistant Secretary of the Army at the time. We are

1 looking at -- we've had an independent scientific
2 advisory panel review all of the current science.
3 We're still looking at the recommendation of the
4 scientists in terms of what actions would be needed
5 or required, and life stages of these different
6 endangered species, how best to look at that. We're
7 right in the middle of that analysis, sir. And the
8 schedule is to work through that analysis, identify
9 potential actions, evaluate those actions and
10 produce a draft environmental impact statement by
11 the end of this calendar year. That would come out
12 for public review, regional reviews so everybody has
13 a chance to look at that. No decisions have been
14 made on what types of actions are -- we would take
15 in the future because we still have to go through
16 that process, sir.

17 SENATOR ROUNDS: Okay. First of all, let me
18 thank you for coming out for this meeting today.
19 Let me just finish in terms of questions for you
20 today, sir, just asking if there was -- if there was
21 anything that Congress has not done that they should
22 be doing that we can help with with regard to
23 helping you to eliminate or to absolutely minimize
24 the possibility of a flood like what occurred in
25 2011 from happening again, I most certainly would

1 invite your thoughts on it. I can tell you that I
2 was fortunate. We had a city which stepped way up
3 in the City of Fort Pierre and help put together a
4 berm that protected all the homes in our development
5 area. So I'm one of the lucky ones because we
6 didn't have our home destroyed. I would suspect
7 that there are folks here in the audience today who
8 did have their homes destroyed. And I think the
9 message, if nothing else is is that this has not
10 been one of those items which has simply been put on
11 the back burner because we had a drought in 2012,
12 and that somewhere along the line, even though
13 sometimes we're not very efficient at the federal
14 level, we get things done. And that, I hope, is
15 part of what folks come away with is that there
16 truly is an intent to try to fix this problem
17 because one clearly exists. And if there's anything
18 that Congress needs to hear from you about what we
19 need to do to help you in your job to see that it
20 doesn't happen again, I would offer this -- you
21 know, a few minutes for you to express that at this
22 time.

23 MR. PONGANIS: Well, Senator, again, we
24 recognize this is an extremely important and complex
25 system out here. Your statements earlier about

1 having better information as early as possible,
2 we're exploring those. And we will do everything
3 possible to try to improve upon that in the future.
4 Communication is key as you also mentioned. We will
5 continue to have those early and often regional
6 discussions of what the system looks like for the
7 coming year, our best estimates, both from a federal
8 and -- and which allows the states, as well as the
9 public, to comment on what information they may have
10 so we can have a better understanding. So we'll
11 continue to do that, sir, and if we find out
12 anything else that we need we will definitely let
13 you know.

14 SENATOR ROUNDS: Thank you. Thank you,
15 Mr. Ponganis. Appreciate it.

16 MR. PONGANIS: Thank you.

17 SENATOR ROUNDS: At this time I would also like
18 to call up our second panel of witnesses. Our
19 witnesses joining us for our second panel today are
20 Secretary Steve Pirner, Secretary for the Department
21 of Environment and Natural Resources. And, Steve,
22 come on up and join us, please, up here.

23 Chairman Harold Frazier, Tribal Chair of
24 the Cheyenne River Sioux. Chairman, welcome today.

25 Mr. Jeff Dooley, District Manager of the

1 Dakota Dunes Community Improvement District. Jeff,
2 welcome.

3 And Mr. Paul Lepisto, Regional
4 Conservation Coordinator of the Isaak Walton League
5 of America. Paul, come on up.

6 By the way, for anybody that's here or
7 watching, if you have thoughts, you'd like to have
8 something incorporated into this, I will make the
9 announcement at the end of the meeting as well, but
10 any written testimony that you'd like to have
11 presented at this is welcome. We will record it in
12 as part of the records on this, and we will also
13 hold this meeting open for an extra two weeks as
14 well. So that as you've heard testimony from the
15 individuals that are up here, and if you'd like to
16 make a public comment on it, a personal contact back
17 in, and you'd like to have it entered into the
18 record, this meeting will actually stay open for a
19 period of two weeks to allow for additional comments
20 to be entered into the Congressional record as well.

21 So with that, we will now turn to our
22 first witness, Secretary Steve Pirner for five
23 minutes. And before I allow Steve to begin, I just
24 want to say thank you because you're one of the guys
25 that a lot of the other folks from around the

1 country call the dean of the folks that work in the
2 area of Environment and Natural Resources. I know
3 that you worked for me for eight years when I was
4 governor, and we most certainly appreciated your
5 hard work and your professionalism. And I most
6 recently asked if he would come up and testify in
7 front of the entire Environment and Public Works
8 Committee, which he did, in D.C. And Steve was one
9 of these guys that truly understands that D.C. is
10 perhaps a place that some people like to visit. He
11 doesn't, but he came anyway. And I appreciated
12 that. And once again, I've asked him for the second
13 time now in less than about a month and a half to
14 participate.

15 So, Steve, with that, Secretary Pirner,
16 would you please go ahead with your statement. And
17 once again, I'd like to limit them to about five
18 minutes, but I'm not going to hold you to an exact
19 five-minute limit. Please, Steve, go ahead.

20 SECRETARY PIRNER: Chairman Rounds, thank you
21 very much for holding this hearing here today. My
22 name is Steve Pirner, Secretary of the South Dakota
23 Department of Environment and Natural Resources. We
24 learned a lot about the Missouri River and flooding
25 in 2011, but today I want to touch on some other

1 problems that you've already touched upon and
2 present some possible suggestions. I want to share
3 with you our perspectives on the surplus water
4 reports and reallocation studies proposed by the
5 Corps of Engineers for the Missouri River
6 reservoirs, and, again, offer suggestions for
7 improvement.

8 To put our issues with these studies into
9 context, remember that our people and Tribes paid a
10 heavy price for the four Missouri River dams in
11 South Dakota. These reservoirs permanently flooded
12 more than a half million acres of our most fertile
13 river bottomlands. Many citizens and tribal members
14 were forced from their lands, from their homes, and
15 from their communities. The promise of federal
16 irrigation projects to help offset these losses
17 never materialized.

18 Then another payment was extracted from us
19 in 2008 when the Corps issued the Real Estate
20 Guidance Policy Letter Number 26 that you talked
21 about. This policy requires municipal and
22 industrial water users to acquire a water storage
23 contract prior to the Corps issuing an access
24 easement to the Missouri River reservoir for a pump
25 site, but the Corps had no process for issuing the

1 contracts. Therefore, the effect of the policy was
2 to place a moratorium on easements to the Missouri
3 River reservoirs.

4 This moratorium hit South Dakota hard.
5 Out of a thousand miles of Missouri River shoreline,
6 only about 100 miles were on the two short
7 free-flowing stretches in the state. Therefore,
8 90 percent of our shoreline became off limits to
9 potential users of the Missouri River water.
10 Midland Contracting was one of the first to find
11 this out when the Corps told them they could no
12 longer pump water used for dust control out of Lake
13 Sharpe. The most vivid example was the Corps
14 refusing to let another contractor pump water
15 during -- during the 2011 flood.

16 To develop a process for Policy Letter
17 Number 26 the Corps began Surplus Water and
18 Reallocation Studies under the authority of
19 Section 6 of the 1944 Flood Control Act and the
20 surplus water provisions of the 1958 Water Supply
21 Act. We do not dispute the Corps has authorities
22 under those acts, but we strongly dispute the Corps'
23 resulting definition of stored water as being all
24 the water within the reservoir boundaries. This new
25 definition, should it go unchallenged, creates a

1 monumental change to the law and would defeat
2 states' rights to natural flows that, by tradition,
3 and by law, are under the jurisdiction of the
4 states. To better understand natural flows,
5 visualize that reservoirs have stored water sitting
6 on top of a river with natural flows passing
7 underneath. This natural flow of the water
8 represents water that should be under the
9 jurisdiction of the state.

10 States' rights to natural flows of
11 navigable waters within their borders are
12 constitutionally founded and protected in the Equal
13 Footing Doctrine. Congress acknowledged this
14 states' right in the first sentence of Section 1 of
15 the 1944 Flood Control Act by stating, "It is
16 declared to be the policy of the Congress to
17 recognize the interests and rights of the states in
18 determining the development of the watersheds within
19 their borders and likewise their interests and
20 rights in water utilization and control." As a
21 consequence of the doctrine and the enacted law, the
22 Corps must acknowledge the state's right to natural
23 flows.

24 Another concern with the Corps' studies is
25 one of equity. The Corps has documented the

1 tremendous benefits the reservoirs supply to people
2 throughout the basin; controlled water supplies,
3 hydropower, flood control. Now to require just the
4 upstream states to pay the cost through the stored
5 water fees with people in the downstream states
6 enjoying these benefits at no cost is not fair or
7 equitable. As Governor Daugaard wrote to the Corps
8 in 2012, "To impose all reservoir operation and
9 maintenance costs on upstream states alone adds
10 insult to injury."

11 To resolve these issues, South Dakota
12 suggests Congress take the following three actions:

13 Number one, reiterate that natural flows
14 through the reservoirs exist and those flows remain
15 under the jurisdiction of the states.

16 Number 2, make permanent the ten-year
17 waiver of the 2014 Water Resources Recovery and
18 Development Act on water charges for contracted
19 surplus water.

20 And, Number 3, lift the moratorium on pump
21 access agreements -- easements by rescinding the
22 Corps' Real Estate Guidance Policy Letter Number 26
23 and allow users who have obtained state water right
24 permits to pump water without interference from the
25 Corps.

1 I hope this information is useful to the
2 subcommittee. Thank you again for the invitation.

3 SENATOR ROUNDS: Thank you for your testimony,
4 Secretary Pirner. Our next witness is Chairman
5 Harold Frazier. Chairman Frazier, you may begin.

6 CHAIRMAN FRAZIER: Thank you, Senator Rounds,
7 for the opportunity to be here and to address your
8 committee. I thank you for that. My name is Harold
9 Frazier, and I'm the Chairman of the Cheyenne River
10 Sioux Tribe. Our reservation is the size of
11 Connecticut. We have two rivers that run through
12 it; the Moreau River and the Cheyenne River. Our
13 reservation is home to four bands of the Sioux
14 Nation. We have nearly 19,000 members that reside
15 on our reservation. Through treaties, executive
16 orders, acts of Congress, case law, United States
17 has a unique trust responsibility to protect our
18 trust assets and our lands. It's odd that the
19 Federal Government, through the Corps of Engineers,
20 is destroying our lands and our way of life.

21 I live twelve miles from the mouth of the
22 Moreau River in the community of White Horse, and
23 about three years ago we had a flood along the
24 Moreau River. And when you go south, there's a road
25 runs south toward Ridgeview and on into Eagle Butte.

1 That was flooded. When you go east along the Moreau
2 River towards Mobridge, at about four spots that
3 road was flooded. So the only way out was to the
4 west towards Timber Lake, but yet two miles out of
5 White Horse the water level was right up to the
6 road. So I think that if we ever have another
7 flood, where I live, will be completely surrounded
8 except for going north horseback. It is a concern
9 of ours the way the Corps is managing the river.

10 A lot of our problems that comes from the
11 flooding of the Moreau River is what we call the
12 Promise Bridge. This bridge, the original design
13 was supposed to be 140 feet long, longer than what
14 it is, and have an additional 70 feet span on each
15 side of the bridge to accommodate the level of water
16 and sedimentation that would flow from the Moreau
17 into the Missouri. But in 1960 the Corps, through a
18 memo, recommended changes to the design of the
19 bridge that shortened the span of it. This was to
20 save the government a mere \$100,000. But this
21 bridge, this bottlenecks everything and causes
22 flooding upstream on the Moreau River, not only
23 destroying fertile agriculture river bottoms, but
24 there's a cemetery that belongs to the St. Mary's
25 church that is completely flooded every time it

1 floods the Moreau River.

2 Another problem is we have a BIA road,
3 Route 3, and it is just constantly eroding, caving
4 in, caving in. The BIA moved it to the north, but
5 now it continues to cave in. Now it's right up to
6 the fence line. So it ain't going to take too much
7 longer before that road is completely into the
8 river.

9 There was a flooding in 1997, and the
10 Tribe met with the Corps to seek help in remediating
11 the damage caused by the flooding, and the Corps'
12 response was, You have to sue us because we have no
13 funds to remediate the situation. So 2003, the
14 Tribe and numerous individual tribal members filed a
15 lawsuit against the Corps of Engineers. And in
16 September 2014 the Tribe met with the Assistant
17 Secretary Jo-Ellen Darcy and Steven Kopecky in their
18 office to discuss the pending lawsuit, the flooding,
19 and the need to lengthen the span of the bridge, but
20 because of the pending lawsuit Assistant Secretary
21 Darcy would not talk about any settlement options.

22 And as far as the bridge, we were told
23 that we would be in contact with officials in the
24 Omaha office to seek solutions, but since then we
25 have heard nothing from the Corps about trying to

1 fix the bridge.

2 We feel that since the Corps built it
3 originally, since the Corps' operation of Lake Oahe
4 is a major factor in our situation, the siltation
5 problem, we believe the Corps has a responsibility
6 to fix this situation by removing the silt and
7 widening the distance or spanning between the bridge
8 columns that are in the Moreau River.

9 Another issue where -- that the Corps has
10 failed the Cheyenne River Sioux Tribe is between
11 2012/2014, an individual south of the Cheyenne River
12 dug a trench north of the Cheyenne River. When he
13 dug that trench, originally it was 100 feet wide and
14 two miles long, and his goal was to route the river.
15 And by him doing that, you know, not only did he
16 alter our boundaries, but he also took approximately
17 about 140 acres of our land.

18 Back in the '90s we were in a lawsuit with
19 Homestake Gold Mine because of the mine tailings,
20 and so forth, coming down into our water intake.
21 And since then a lot of the mine tailings and
22 sedimentation, and things like that, have kind of
23 subsided. But by this individual digging his
24 trench, disturbing the ground, we have had samples
25 through our EPA office that have seen a rise of

1 mercury and other contaminants. We did report it to
2 the Corps. The Corps told us in D.C. that this
3 individual approached them, asked for a permit.
4 They denied it, but he went ahead and did it anyway.

5 We also -- in 1960 when they removed our
6 agency, they replaced a lot of our buildings. And
7 one of our buildings is our administration building
8 with the BIA. Right now, a couple years back, we
9 were moved out of there because of mold and things
10 like that. And we did talk to them about assisting
11 us in any type of way, planning, and so forth. They
12 did tell us in Washington that they would help us
13 with 135,000 and start developing a plan to build a
14 new tribal building, but since then we have heard no
15 response from them.

16 In conclusion, I want to thank you for the
17 opportunity, and I appreciate any kind of assistance
18 you can to help the Cheyenne River Sioux Tribe and
19 all of our members and our residents, because
20 there's a lot of residents that reside on the
21 reservation that are not members of our Tribe. And
22 I thank you for the opportunity.

23 SENATOR ROUNDS: Thank you, Chairman Frazier.
24 Now we will hear from Mr. Jeff Dooley. Mr. Dooley,
25 you may begin.

1 MR. DOOLEY: Thank you, Senator. We all
2 appreciate you bringing up this issue in this area,
3 in this format. As you can see by the turn-out it's
4 a very important issue to all of us.

5 In preparation for this testimony I drew
6 on my experience as manager of the community Dakota
7 Dunes that's right on the Missouri River and my role
8 in the 2011 flood fight. And I also reviewed
9 transcripts from two Congressional committee
10 hearings that were held on this issue, along with a
11 Corps document entitled "Review of the Regulation of
12 the Missouri River Mainstem Reservoir System During
13 the Flood of 2011."

14 I see three major themes that came out of
15 that review. Number one, is improved communication
16 between the Corps of Engineers and the stakeholders.
17 As the events that precipitated the 2011 flood
18 unfolded from April through May, there was
19 insufficient communication as to the increasing
20 problem of melting snowpack and plains snowpack and
21 the rain events in the upper basin.

22 By the time the communications were
23 established, the release and projections were
24 escalating quickly making it difficult to formulate
25 a response. However, since that time the Corps has

1 taken substantial steps to formulate a regimented
2 schedule of conference calls during the run-off
3 season with federal, state, local officials, as well
4 as the media and Congressional staff to provide
5 updates on climate and run-off conditions as well as
6 reservoir releases and power generation plants.

7 Additionally, during these calls there was
8 time allotted for questions to be posed by each
9 state, by each local jurisdiction, and they take a
10 significant amount of time to go through that list
11 and provide that opportunity. Had that place -- had
12 these calls been in place in 2011, I think the local
13 jurisdictions in the state and the stakeholders
14 could have asked questions and challenged some of
15 their assumptions they made that dictated their
16 management decisions.

17 It should also be noted that in 2011 the
18 Corps was very responsive to our needs as far as
19 preventive measures go, and also during the recovery
20 phase. And in 2014 this area experienced a large
21 flooding event on the Big Sioux River, and the Corps
22 was able to reduce releases from Gavins Point Dam to
23 10,000 CFS, which really helped the water elevation
24 of the Big Sioux and it created a manageable
25 situation in some cases.

1 Number two, assessing and prioritizing of
2 the authorized purposes outlined in the Corps Master
3 Manual. From a citizen's perspective, the conflict
4 of the authorized uses is commonly referred to as a
5 major impediment to flood control on the Missouri
6 River. A study entitled "Missouri River Authorized
7 Purpose Study" was under way prior to the 2011
8 event. As I understand it, that progress has been
9 suspended on the study, that which would have looked
10 at each authorized use and kind of prioritize it and
11 have had it discussed. The sometimes conflicting
12 uses can cause a slower response and attention to
13 the flood control.

14 Thirdly, improved data collection as it
15 relates to plain snowpack and soil moistures. And
16 you mentioned this in your comments during the Corps
17 panel, and while the torrential May rains in the
18 upper basin were a major contributor to the record
19 run-off and difficult and maybe even impossible to
20 predict, the snowpack on the plains and in the
21 mountains were above average and quantifiable. An
22 improved snowpack and soil moisture monitoring
23 system would allow better predictions of known
24 precipitation and the resulting run-off. The need
25 for improved data collection is documented in the

1 Corps of Engineers' post-event review entitled, "The
2 Upper Missouri Basin Monitoring Committee - Snow
3 Sampling and Instrumentation Recommendations." And
4 as you said, Section 404 of the WRRDA 2014 provides
5 for that to improve that, and no actions have been
6 taken. I would encourage Congress to continue to
7 push for these improvements and to maybe set some
8 milestones for its implementation.

9 Also, I'd like to note that after the 2014
10 Big Sioux River flood, local jurisdictions found
11 that data collection along the Big Sioux was
12 insufficient to provide accurate water surface
13 elevation projections during that event, and as a
14 result the Dakota Dunes, North Sioux City, and Union
15 County partnered to provide the local match with
16 USGS to implement three new gauges along the Big
17 Sioux River below Akron. Those are in place and are
18 working and are collecting data for a year. So I
19 think that kind of falls under where there's a will
20 there's a way type subject. So with that, again, I
21 appreciate you bringing this issue up in this
22 format, and I will standby for any questions.

23 SENATOR ROUNDS: Thank you, Mr. Dooley. We
24 will now hear from our next witness, Mr. Paul
25 Lepisto. Mr. Lepisto, you may again.

1 MR. LEPISTO: Thank you, Senator. Thank you
2 for holding this hearing. I'm with the Isaak Walton
3 League of America. It's one of the oldest, most
4 established conservation organizations in the United
5 States. We have 43,000 members around the country
6 and 240 chapters. Many of those members live in the
7 states that I work in. I live in Pierre, South
8 Dakota, but I work for the Isaak Walton League in
9 the States of Iowa, South Dakota, and Nebraska. And
10 many of our members hunt and fish and truly enjoy
11 living along the river, and the river plays a major
12 role in the lives of many of our members.

13 The League strives to look for common
14 sense science-based solutions that work with the
15 river rather than fighting against it. There's no
16 question the Missouri is one of the most altered
17 ecosystems on the face of the Earth. The
18 alterations that came as a result of the '44 Flood
19 Control Act created the authorized purposes that
20 others have talked about today are interesting
21 because since their inception those authorized
22 purposes have been and will continue to be in direct
23 conflict with each other, one of the reasons why
24 management of the system is so difficult.

25 The Missouri today is far different than

1 the historic river. Thirty-five percent of the
2 river is impounded in the six reservoirs, 33 percent
3 of it is contained by the artificial navigation
4 channel between Sioux City and St. Louis. And with
5 those changes, millions of acres of the river's
6 historic aquatic and terrestrial habitat have been
7 lost or destroyed. The modifications are very
8 significant. The river was shortened by more than
9 120 miles between Sioux City and St. Louis with
10 construction of the navigation channel. These
11 changes destroyed most of the braided side channels,
12 the chutes, wetlands, islands, sandbars, backwaters,
13 natural floodplain and riparian forest that
14 historically made the Missouri one of the richest
15 ecosystems on the face of the Earth.

16 Habitat recovery efforts as have been
17 mentioned are ongoing, but the League members
18 believe that much more needs to be done. Many areas
19 are worthy and in need of habitat restoration due to
20 the high-quality recreational, natural, scenic and
21 historic resources that they contain. If they were
22 restored, these areas could once again provide
23 critical habitat for native fish and wildlife
24 species and be a boon for the recreation industry.

25 The Corps does face a tremendous

1 management paradox. As mentioned, flood control is
2 the only purpose that requires removing water from
3 the six reservoirs. All the other seven purposes
4 require the Corps to hold onto water. Another
5 vexing management issue that we see is that only
6 53 percent of the basin is regulated by the
7 reservoirs. That leaves nearly half the basin
8 unregulated and subject to regular flooding
9 irregardless of what's in the Corps' annual
10 management plan or any of their management actions.

11 In the past we've urged the Corps to
12 increase their communication efforts about this fact
13 so more people know that the Corps doesn't and
14 cannot control run-off in the entire basin, and
15 despite their best efforts periodic flooding will
16 always occur on the lower river.

17 With that, we continue also to urge the
18 Corps to always rethink rather than just rebuild
19 man-made flood control structures that have in the
20 past repeatedly failed. We support levee setbacks
21 and additional river widening projects that would
22 give the Missouri more room to roam in the lower
23 river. This would provide additional flood risk
24 reduction and by reducing the flood stage during
25 high flow events.

1 The Missouri River Master Manual called
2 for a 3,000-foot floodplain from Sioux City to
3 Kansas City, and a 5,000-foot floodplain from Kansas
4 City to the mouth. We've urged the Corps to work
5 with local governments on new zoning ordinances to
6 implement this wider floodplain which would save tax
7 dollars and produce a much healthier river. The
8 incredible dynamics the basin has has been discussed
9 at large already today. The record run-off in 2011
10 resulted in that prolonged flood with massive damage
11 throughout the basin, but that was quickly replaced
12 by extreme widespread drought in 2012. These
13 dramatic swings demonstrate the urgent need for a
14 much more flexible management approach by the Corps
15 and a much more adaptable management system to what
16 is the actual hydraulic conditions in the basin.

17 We support updating the master manual that
18 would allow additional in-season adjustments that
19 would accurately match the actual run-off as each
20 year unfolds.

21 Critically important water management
22 decisions that impact the entire basin should not
23 follow a locked-in-stone policy that's set months in
24 advance of when the actual run-off conditions are
25 realized.

1 The current review policy of the water and
2 storage happens only in March and July. That
3 determines the navigation support and the navigation
4 season length. It doesn't adequately address the
5 needs of the residents of the basin. Once water,
6 which we feel is the most precious and fragile
7 resource in the basin, is released from the
8 reservoir system, that water is gone forever. The
9 League supports a comprehensive review of the eight
10 authorized purposes to determine what's best for the
11 American taxpayer and for the needs of all the
12 people in the basin and for the river itself.

13 The river, in essence, is still operating
14 on a 70-year-old business plan, and that review is
15 urgently needed and long overdue.

16 The river today is vastly different than
17 what was envisioned when the Flood Control Act was
18 drafted in 1944. Some purposes have met or greatly
19 surpassed the original expectations of that Act.
20 Recreation, for example, exceeds estimates by more
21 than 10 times today, while other purposes have
22 fallen way short, meeting only a fraction of their
23 original expectations. A review would streamline
24 river operating expenses and we feel would bring the
25 Missouri River into the 21st Century.

1 To many members of the Isaak Walton
2 League, the Missouri River is a national treasure
3 and one of the nation's most unique rivers. We feel
4 it's an incredible economic engine, that if it's
5 managed correctly for multiple uses, including fish
6 and wildlife and outdoor recreation, the river would
7 create even more jobs, more tax revenue, and
8 additional recreational opportunities for families
9 across the nation. I thank you for your time and
10 for holding this hearing.

11 SENATOR ROUNDS: Thank you, Mr. Lepisto. I've
12 got a few questions, and I'll just work my way down
13 the line and around here, and then we'll kind of go
14 from there.

15 Mr. Pirner, Secretary Pirner, I would like
16 to ask you about Policy Letter Number 26. You
17 stated that the Corps has no process for issuing
18 water storage contracts and the result has been a
19 moratorium on access easements to the Missouri River
20 reservoirs. I understand that there have been
21 applications to the Corps for access easements. Is
22 the Corps responsive to these applications or has
23 the Corps been uncommunicative with the state on
24 these issues?

25 SECRETARY PIRNER: Senator Rounds, I think the

1 Corps has essentially -- they've communicated their
2 denial of those easement requests, pretty much. The
3 only one that I know of that's still in play is the
4 City of Pierre recently requested an easement access
5 to put in potentially some pumps so that they could
6 irrigate some of their green space, parks, and so
7 on, and the camp -- the capital campus that the
8 Corps did respond back to and said they wanted more
9 information. Since that time the city has responded
10 with additional information and that's where that
11 matter lies.

12 SENATOR ROUNDS: So as of yesterday they had
13 not gotten a response back yet?

14 SECRETARY PIRNER: That would be my
15 understanding, correct.

16 SENATOR ROUNDS: What impact does the Corps'
17 unwillingness to issue access easements have on
18 municipal and industrial water users?

19 SECRETARY PIRNER: As I -- Senator, the way --
20 as I said during my testimony, essentially anybody,
21 any new user of Missouri River water has been pretty
22 much shut off. And the reason, again, is is because
23 in South Dakota, we've got four reservoirs. Just
24 about all of our shoreline on the Missouri River is
25 in one of those reservoirs. And so by not draining

1 an access easement to the reservoir, we're
2 essentially -- we're shut off. The only place that
3 we don't have a reservoir would be those two
4 free-flowing stretches which are down in this part
5 of the state.

6 SENATOR ROUNDS: I think just in terms of
7 laying out the frustration the folks in this part of
8 the country get once in awhile, I had anecdotal
9 information from a contractor who actually, during
10 the flood of 2011, they were trying to do some work
11 on the boat ramp, which was above the reservoir.
12 And the boat ramp enters -- it's on Corps land. And
13 my understanding is is that they simply wanted to
14 get water out of the flooding Missouri River in
15 order to do the compression, and so forth, on the
16 boat ramp, and they were denied and told to go
17 around down below the dam and get it out of the
18 free-flowing portion of the river. Is that correct?
19 Am I correct on that?

20 SECRETARY PIRNER: That would outline
21 relatively closely with the -- with the example that
22 we heard as well.

23 SENATOR ROUNDS: Doesn't sound like South
24 Dakota common sense to me.

25 SECRETARY PIRNER: No, sir.

1 SENATOR ROUNDS: Thank you. Secretary Pirner,
2 the Surplus Water Reallocation Studies that are
3 being undertaken by the Corps, the Corps is
4 proposing to change the definition of stored water
5 as being all the water within the reservoir
6 boundaries. How does this definition run contrary
7 to the historical constitutional interpretation of
8 states' authority regarding water rights? Are you
9 aware as to why the Corps is making this change?

10 SECRETARY PIRNER: No, sir, we are not. If you
11 go -- as I talked about in my testimony, there's
12 really two legal bases for the states having rights
13 to what I call natural flow of water. First is that
14 Equal Footing Doctrine. When every state has been
15 admitted to the Union, every state has been granted
16 the same rights by Congress. One of those rights is
17 the rights to the navigable waters and groundwater
18 within its borders. And then as I talked about in
19 the Section 1 of the flood -- 1944 Flood Control
20 Act, this very issue, if you go to John Guhin's
21 South Dakota Law Review, I think you knew John, he
22 was an Assistant Attorney General, did a lot of work
23 on some of the litigation that's been pursued over
24 the years with the Missouri River. He's put
25 together a probably -- he's passed away now, but

1 this is probably one of the most complete reference
2 documents on the "Law of the Missouri" is what he
3 titled it. And he talks in there about this very
4 issue about states' rights being a part of the 1944
5 Flood Control Act and the amendments that were made
6 to protect those rights. And again, Section 1 of
7 the 1944 Flood Control Act talks about specifically
8 that Congress recognizes the interest and rights of
9 the states in the development of the watersheds
10 within their borders, and, likewise, their interest
11 in rights in water utilization and control which to
12 me talks -- is directly speaking to the prior -- or
13 the appropriation process that we use here in South
14 Dakota to allocate rights to the use of the water to
15 the public.

16 So I think there's a clear basis for the
17 right -- for the state to have the right and the
18 jurisdiction over the natural flow of the Missouri
19 River, the definition that the Corps has proposed
20 through these studies doesn't mention natural flow.
21 Basically it says it's all the water. And we
22 strongly, strongly disagree with that because we
23 think that -- I mean, we've been issuing water
24 rights out of the Missouri River and the reservoirs
25 for years. And another federal agency, the Bureau

1 of Reclamation clearly, clearly acknowledges -- they
2 manage federal reservoirs as well. They clearly
3 acknowledge the states' rights to natural flows.
4 All of a sudden the Corps comes out with this new
5 policy that natural flow is absent from the
6 discussion and we're going like, Where is our water?
7 Where did it go?

8 SENATOR ROUNDS: By reference, we will also
9 acknowledge and enter into the record Mr. Guhin's
10 work --

11 SECRETARY PIRNER: That would be an excellent
12 addition, yes, sir.

13 SENATOR ROUNDS: Thank you. Chairman Frazier,
14 your testimony says that you filed your lawsuit
15 against the Corps in 2003, and that it has since
16 been referred to the U.S. Department of Justice
17 Environment and Natural Resources Division. Is it
18 correct that this lawsuit has now been pending for
19 over a decade, that the Corps has made no progress
20 in attempting to -- no progress in attempting to
21 settle this issue?

22 CHAIRMAN FRAZIER: Yes, that's correct. The
23 only settlement offer that they offered to us was
24 they wanted us to grant them a flowage easement
25 which a lot of our members disagree with because

1 they shouldn't have a right to flood our lands. You
2 know, and like I mentioned, and what I've seen
3 living along the Moreau River all my life, you know,
4 it's just slowly going further, further back west
5 into the Moreau River. And I recall at one point I
6 watched a documentary on a dam such as the Oahe Dam,
7 and, you know, I know the purpose of the Flood
8 Control Act was to control flooding downstream, but
9 it says as years went by -- goes by, probably 40, 50
10 years, they're going -- these dams are going to
11 start causing problems upstream. And I think we're
12 at that stage now. You know, at Cheyenne River we
13 got, you know, a lot of our -- I just seen a lot of
14 good hay bottoms just eroding away, just going into
15 the river, river widening, a lot of siltation. It's
16 just a big problem, but...

17 SENATOR ROUNDS: Chairman, on the Moreau, for
18 those folks that aren't familiar with this area,
19 it's an area which flows on the west side of the
20 Missouri River into the Missouri River, and the
21 Moreau is one of the primary tributaries into the
22 Missouri River there. But the dam -- or I guess I
23 can almost call it the dam, but it's the Promise
24 Bridge that goes across Moreau. I've been there.
25 I've seen it. And what they've done is is they've

1 moved out, they've shortened the span. And in
2 shortening the span they had to get to where the
3 span would begin, and basically what they've created
4 is a semi-dam there where the water can't get
5 through the trestles underneath the dam, and so it
6 backs up into the areas that you identified,
7 including a secretary -- including the cemetery.
8 And my suspicion is as close-knit as everybody is
9 in our parts of the country, you probably have
10 relatives that are buried there as well. If nothing
11 else, if we could get the Corps to work to resolve
12 the issue surrounding the Promise Bridge and to get
13 that area resolved, so that we didn't have water
14 backing up behind it, that would make a major cause
15 of concern for the members of your Tribes, they
16 would at least see something coming from the Corps
17 to try to eliminate some of the problems that are
18 being caused by that construction project. Fair
19 enough?

20 CHAIRMAN FRAZIER: Yup. Yup. If we can get
21 that bridge resolved, expanding it or cleaning some
22 of that siltation near it, I think that would
23 greatly improve the lives, you know, of our people
24 along the Moreau River.

25 SENATOR ROUNDS: Thank you, Mr. Chairman.

1 CHAIRMAN FRAZIER: Thank you.

2 SENATOR ROUNDS: Mr. Dooley, in your testimony
3 you say that the conflict of authorized uses is
4 commonly referred to as -- let me -- let me slide
5 back in a little bit because I think part of what
6 you suggested here today was truly a chance to find
7 some common ground with the Corps. And what you
8 indicated is is that after the flood in 2011 that
9 you found that the Corps stepped in and that they
10 were responsive to the emergency needs at that time.
11 Fair statement?

12 MR. DOOLEY: That's fair.

13 SENATOR ROUNDS: Okay. Since that time you've
14 also indicated that the communications that have
15 been provided have been helpful in terms of
16 maintaining the ability to get advice back and
17 forth. And have they been responsive to the
18 concerns that you and the community down here have
19 laid out to them?

20 MR. DOOLEY: Thank you, Senator. You know, my
21 experience with the Corps as it relates to Dakota
22 Dunes is we've always been able to get the
23 information we need. These conference calls is a
24 really great forum for them to put out the
25 information that they're going off of, and it allows

1 the stakeholders, which there's a lot of expertise
2 throughout the stakeholder community, allows them to
3 ask questions and challenge some of the things that
4 the Corps are doing with the river. So in that
5 aspect I think the communication has been very good.
6 The question and answer part of those conference
7 calls are good. And outside of that, any questions
8 that I have regarding the Missouri River I can pose
9 to Ms. Farhat and her staff, and I've always been
10 able to get a good response on that.

11 SENATOR ROUNDS: Okay. How about in terms of
12 the -- when we talk about the suit and the issues
13 surrounding that; you indicate that you put together
14 a team here that actually helped to provide for the
15 hydrological metering information, and so forth.
16 Can you share a little bit about how you worked
17 that, and did you need permission from anyone to do
18 that?

19 MR. DOOLEY: Well, after the 2014 Big Sioux
20 event, the state Lieutenant Governor Michels came
21 down and we all met and kind of compared notes, and
22 it kind of became apparent to us that, you know, one
23 of the problems were the projected levels of the Big
24 Sioux River were off. And as we looked a little bit
25 further, it came to our attention that one of the

1 reasons is there weren't enough river gauges on the
2 Big Sioux River below Akron, I believe. So we
3 talked about it between the communities of North
4 Sioux City, Dakota Dunes, and Union County, and
5 worked with the USGS to get those installed and
6 operational. And to do that we had to pay I think
7 roughly half of installation costs, capital costs,
8 and then we -- now we pay roughly half of the
9 operating costs moving forward here in about a year.

10 SENATOR ROUNDS: Okay. Mr. Lepisto, according
11 to the South Dakota Game, Fish and Parks, recreation
12 on the Missouri River provides more than
13 \$100 million in economic benefit to the Dakotas and
14 Montana. In your testimony you say that more people
15 should have increased access to the river for
16 recreation such as hunting and fishing as well as
17 increased educational opportunities for families.
18 What are the recreational -- what are the
19 recreational access issues and limitations that face
20 recreational users seeking to utilize the river
21 today?

22 MR. LEPISTO: Senator, as you're well aware in
23 your eight years as governor of the State of South
24 Dakota, the upstream states, during periods of
25 extended drought, have spent millions, literally

1 millions of dollars chasing water to provide
2 recreational access on the reservoirs in South
3 Dakota, Nebraska, North Dakota, and Montana when the
4 levels are down for an extended period of time. The
5 ramps either have to be greatly extended, which in
6 some areas is not physically possible. So then
7 those boat ramps and access facilities have to
8 literally be relocated to an area that would
9 facilitate recreational access near that area, but
10 you have to put in the parking area, everything that
11 goes with it, all the infrastructure that goes with
12 it. When the reservoirs come up, all that work and
13 money spent is literally under water again. So a
14 management philosophy that would take that into
15 consideration and make sure that the reservoirs by
16 their nature go up and down, and with the management
17 practices they do go up and down, but it's the
18 drastic 30- and 40-foot drops in the big three; Lake
19 Oahe, Lake Sakakawea, and Fort Peck in Montana that
20 cause these problems and prohibit recreational
21 access.

22 We also have the same issues with
23 recreational access, the lack of facilities for
24 people to get to the river and on the river below
25 Gavins Point. I mentioned it in the written

1 testimony I submitted that the Nebraska Game and
2 Parks Commission and the Missouri Department of
3 Conservation did a study on recreational spending
4 from Gavins Point to St. Louis, and it came up with
5 about \$68 million in annual recreational spending.
6 And with more access and more facilities on the
7 lower river, I think you could put at least a one in
8 front of that 68 million and have that much more
9 recreation on the lower river if those facilities
10 and access sites would be available.

11 SENATOR ROUNDS: Mr. Lepisto, you stated in
12 your testimony that we should consider
13 non-structural alternatives to levees. Can you tell
14 us what these alternatives might be and how they
15 would differ from the current levees used by the
16 Corps?

17 MR. LEPISTO: As I mentioned, Senator, in the
18 testimony that the river -- the lower river is
19 struggling to reconnect itself to its floodplain.
20 If you look at the old maps through USGS or the
21 Missouri River Institute at the University of South
22 Dakota and see where the Missouri River used to run
23 and the old side channels, chutes, backwater areas,
24 the oxbow lakes, all of those have been cut off
25 through the construction and ongoing maintenance of

1 the bank stabilization and navigation project.
2 We've been striving for years through this -- the
3 program I work with with the Izaak Walton League to
4 encourage more reconnection, hydraulic connection to
5 those old areas where those areas would be of
6 benefit for the fish and wildlife species, also a
7 boon for recreation, but they'll provide human
8 benefits because that's going to take the crest off
9 of the high-flow events. It will give floodwaters a
10 place to go during high-flow events and so the human
11 impact would be positive. We not only have
12 increased recreation, increased fish and wildlife
13 habitat, but we would have additional lower river
14 storage areas for floodwaters during times of high
15 flow or high run-off events.

16 SENATOR ROUNDS: I have one more question. I'm
17 going to begin it with Secretary Pirner, but I would
18 also open it up for all of the panel as well.
19 Secretary Pirner, a 2014 GAO office report concluded
20 that the Corps would benefit from increased and
21 updated soil moisture and snowpack monitoring
22 program to help the Corps better predict potential
23 flood conditions. Do you feel that the increased
24 monitoring would be enough to prevent future
25 flooding or should the Corps do more to prevent

1 future floods from occurring? And once again, I
2 would open this up first of all to Secretary Pirner,
3 and then anyone else who would like to have a
4 thought in terms of the monitoring systems that we
5 thought we were in the middle of working on, and
6 what we've heard today has basically not gone very
7 far so far. This is now 2016, and the flood
8 occurred in 2011. The authorizations were completed
9 in 2014. But, Secretary Pirner, your thoughts on
10 the monitoring system and its need.

11 SECRETARY PIRNER: Senator, I think the
12 thoughts that went into that language in the 2014
13 WRRDA bill that you talked about, I think the
14 thoughts that went into that monitoring system that
15 was proposed by Congress and approved by Congress
16 will do the job, are adequate. I think what remains
17 to be done, as you've pointed out today, now we
18 need -- now we need to do it. So the thoughts are
19 there, and they're right, and they'll work, but now
20 we need to put those thoughts into action.

21 SENATOR ROUNDS: Anyone else? Mr. Dooley?

22 MR. DOOLEY: Senator, the major data component
23 I think for managing the Missouri River is trying to
24 figure out how much water ends up running into it,
25 and to do that we need to make sure that the Corps

1 has the adequate data available and the most
2 comprehensive data available. I think from my
3 perspective these measuring tools are absolutely
4 vital for the best management practices of the
5 Missouri River, and to try to at least minimize or
6 eliminate flooding. I don't think you'll ever
7 eliminate it, but to minimize flood impacts in the
8 future. So someone needs to really make sure that
9 this is followed through on and that that's
10 implemented.

11 SENATOR ROUNDS: Mr. Lepisto?

12 MR. LEPISTO: Senator, ever since the 2011
13 flood the League in its comments to the Corps at
14 their twice annual, annual operating planned
15 meetings, in written comments and also at the
16 meetings, we've urged them to as quickly as possible
17 implement a monitoring system working with other
18 state and federal agencies so that knowledge and
19 that data can be gathered accurately and quickly,
20 and then most importantly shared with the
21 stakeholders and residents of the basin so we know
22 what the moisture content is of the snowpack that's
23 on the plains, and especially the water content of
24 the snow and the mountains. And we are as
25 disappointed as you are that five years after that

1 initial attempt to have this done we're still
2 waiting for it to be implemented. So we would urge
3 Congress, and we have urged Congress in letters on
4 the annual budget request to provide the funding for
5 those measuring devices and for that technology. To
6 date the funding has not been there.

7 SENATOR ROUNDS: Mr. Chairman?

8 CHAIRMAN FRAZIER: Yeah. Thank you. I think
9 it would be a good thing for them to implement. I
10 mean, that way there we could be prepared for what's
11 going to be ahead of us. Kind of like what I see is
12 what you said about, you know, the community of Fort
13 Pierre, so we're ready to take whatever measures if
14 it appears there's going to be flooding. And I
15 agree with Mr. Dooley here that that's something we
16 probably can't ever control, but, you know, at least
17 minimize it and be prepared if it does happen. So I
18 think that it is crucial for the Corps to have these
19 monitoring devices implemented. I think it's time
20 for them to start taking action. Maybe quit
21 building a bomb for Iraq and use that money to pay
22 for this.

23 SENATOR ROUNDS: Gentlemen, I just want to say
24 thank you very much for you taking your time today
25 to come down here to participate with us in this --

1 in this hearing. Once again, I'd like to thank all
2 of our witnesses for taking this time. The record
3 will be open for two weeks which would bring us to
4 Thursday, April 14th.

5 Let me close with this: I've heard some
6 things today that I -- that I had not heard before.
7 I was not aware that the Promise Bridge had been
8 under item of discussion for as long as it has been,
9 for more than a decade. I know we did not get into
10 the issue of the tribal building in Eagle Butte, but
11 it was -- originally it was moved from down on the
12 floodplain, and when the Oahe River -- when the Oahe
13 Reservoir was backing up, it was one of the areas
14 which was moved, and the Corps built a different
15 facility for you up in Eagle Butte, which was then
16 identified as being -- having mold in it. It was
17 not usable. You had to move out of that. And I
18 know you've been working for some time now to find a
19 way to coordinate with other federal agencies to be
20 able to put together other resources to have a
21 gathering facility. Once again, you've been
22 frustrated, Mr. Chairman, with that. I will follow
23 up with you. That is part of our written record,
24 although we did not take much time to talk about it
25 here publicly, but it is part of the written record.

1 We would be happy to work with you on finding a way
2 around that issue.

3 CHAIRMAN FRAZIER: Thank you.

4 SENATOR ROUNDS: The funding request, which
5 we've talked about here, I was disappointed to find
6 out that, number one, that there was, according to
7 the Corps today, a lack of funding for this. I
8 thought we would have studies completed and
9 recommendations being made after this event in '11.
10 To a lot of us it's a very serious issue that
11 occurred then. And at that time I think the Corps
12 feels like they were off guard and their response
13 was is that they didn't have the information
14 available to make an accurate decision at the time
15 and that it caught them off guard because a lot of
16 it was late-arriving moisture, and that they've
17 indicated that if they had these additional
18 monitoring systems in place that they could prevent
19 that. Same thing could have occurred this year, now
20 five years later. I think it shows that we need to
21 expedite the process of getting the review
22 completed. It surprises me that they did not
23 include it in their request to the President's
24 budget again this year. If that was the case, most
25 certainly that means that we will take it under

1 consideration and find out what it is they need, but
2 until they get a request made, until they get an
3 estimate of what they've got to do with the
4 proposal, it's pretty tough to put the money in the
5 budget it would seem to me. So the first thing is
6 is to get the doggone report done. And after five
7 years I think it should be done. So we're going to
8 put some pressure on the Corps, and we're going to
9 expect some time dates. One thing I've learned in
10 Washington, D.C., folks, is is that to a lot of
11 folks in Washington the result is is when you get a
12 report or the result is is when you get a committee
13 hearing rather than getting an actual something
14 done. And results is what counts. And I can just
15 share with you that there is a growing number of
16 individuals who work within the United States Senate
17 that understand that people of this state, people of
18 this region expect results, not just studies. And
19 you begin with a study, but you've got to have the
20 results. And I think that's one thing that we will
21 commit to you is is that we're going to get some
22 results, one way or another. That's our job.

23 And so with that, I will once again repeat
24 that the record will be open for two weeks, which
25 brings us to Thursday, April 14th. Those

1 individuals who are out here that have heard
2 something that they would like to comment on, your
3 written comments are welcome, and you do have two
4 weeks in which to provide them to us. Members of
5 our staff are up here and around the room, touch
6 base with them. They will give you an appropriate
7 way in which to get those items entered into the
8 record. And with that, this hearing is adjourned.

9 (Public Hearing Adjourned at 2:35 p.m.)

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1 STATE OF SOUTH DAKOTA)
2 :SS CERTIFICATE
3 COUNTY OF LINCOLN)
4

5 I, Pat L. Beck, Registered Merit Reporter
6 and Notary Public within and for the State of South
7 Dakota:

8 DO HEREBY CERTIFY that I took the
9 proceedings of the foregoing Public Hearing, and the
10 foregoing pages 1-68, inclusive, are a true and
11 correct transcript of my stenotype notes.

12 I FURTHER CERTIFY that I am not an
13 attorney for, nor related to the parties this
14 action, and that I am in no way interested in the
15 outcome of this action.

16 In testimony whereof, I have hereto set my
17 hand and official seal this 6th day of April, 2016.
18
19
20

21 _____
22 Pat L. Beck, Notary Public
23 Expiration Date: June 11, 2017
24 Iowa CSR: No. 1185
25