



North Dakota Legislature Pursues Bill to End Row Over Missouri River Bed Mineral Ownership Outside FBIR and SRIR

By: [Andrew Glenn](#)

On Friday, April 7, 2017, the North Dakota House passed a version of SB 2134, 79-11, which is intended to resolve the ongoing dispute between the State and private property owners over ownership of the minerals beneath Lakes Sakakawea and Oahe (“Lakes”). The crux of the dispute is the location of the original high water mark of the Missouri River that has been inundated by the Lakes. In 2013, the North Dakota Supreme Court concluded that the State owned the minerals beneath the original high water mark, but it left open the question of the high water mark’s original location.

The legislation passed by the House is specifically designed to address that outstanding question. The bill requires that the State hire a third party engineering firm to reassess the original high water mark survey previously prepared by the U.S. Army Corps of Engineers in order to determine if the original survey location must be altered. The bill also creates an administrative notice and comment period for interested parties to identify possible errors in the new survey, but the bill does not provide any sort of administrative remedy to those adversely affected by the survey.

Rather, the bill establishes that the exclusive remedy for adversely affected parties is to challenge the new survey in state court. A party must file its claim within two years of the survey’s adoption or forfeit that claim. Once in court, the challenger must prove by clear and convincing evidence—a relatively high evidentiary burden—that the survey is somehow inaccurate.

The bill, however, does not address the location of the high water mark within the Fort Berthold and Standing Rock Indian reservations—the subject of a potential dispute, as covered by [this](#) prior article. Nor does the bill address those sections of the Lakes abutting federal land.

The House has proposed several amendments to SB 2134, which originated in the Senate, including a provision that sets aside \$750,000 to reimburse private mineral owners for legal fees incurred in prosecuting or defending the various lawsuits pertaining to ongoing mineral ownership dispute. The Senate rejected the House’s amendments on Monday, April 10, 2017, and a conference committee has been appointed to reconcile the competing versions.

If the bill passes, as is expected, it will ideally resolve the row between the State and its citizens, but that resolution will likely take many years. A copy of the SB No. 2134 may be found [here](#).

Please contact [Andrew Glenn](#) for more information.

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