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Dear Col. Swenson:

The City of Grand Forks, North Dakota (“Grand Forks”) appreciates the opportunity to provide written comments regarding the United States Corps of Engineers (“Corps”) Lake Ashtabula and Baldhill Dam Water Control Manual update. The comments of this letter are focused in particular on the proposed “Alternative 1” of the United States Corps of Engineers (“Corps”) May 2025 “Lake Ashtabula and Baldhill Dam Project Water Control Manual Update – Draft Decision Document and Integrated Environmental Assessment” (“Draft Decision Document”). Included in the scope of these comments is the “Drought Operations Plan” referenced in “Executive Summary Table 1” [ES 1] of the Draft Decision Document, which is included with the Draft Decision Document as “Appendix G, Attachment 2: Drought Operations Plan.” References herein to “Alternative 1” include the “Drought Operations Plan” unless otherwise noted. In addition to this letter, Grand Forks’ consulting engineer, Precision Water Resources Engineering, is also filing separate comments on behalf of Grand Forks which the Corps should consider along with this letter.

Alternative 1 was developed during the re-evaluation and update of the Water Control Manual (“WCM”) for Lake Ashtabula and Baldhill Dam.<sup>1</sup> “Water control plans will be developed [by the Corps] for reservoirs . . . *to conform with objectives and specific provisions of authorizing legislation and applicable Corps of Engineers reports[.]*” 33 C.F.R. §222.5(f)(1) (emphasis added). “Water control plans developed for specific projects and reservoir systems will be clearly documented in appropriate water control manuals. These manuals . . . will be revised as necessary to conform with changing requirements resulting from developments in the project area and downstream, improvements in technology, new legislation and other relevant factors, *provided such revisions comply with existing federal regulations and established Corps policy.*” 33 C.F.R. §222.5(f)(3) (emphasis added). The last WCM for Baldhill Dam and Lake Ashtabula was the Baldhill Dam and Lake Ashtabula Water Control Manual (Sept. 2013),

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<sup>1</sup> Throughout this document, the names “Lake Ashtabula” and “Baldhill Dam” are used interchangeably.

This comment letter is organized as follows:

- *First*, this comment letter provides supplemental facts for the record in this matter regarding: (i) the Congressionally authorized purposes for Lake Ashtabula, (ii) the State of North Dakota's Thompson-Acker allocations in Lake Ashtabula, and (iii) Grand Forks' pending application to the Corps for a water supply storage agreement in Lake Ashtabula for its Thompson-Acker allocation and associated State of North Dakota water permit pursuant to the Water Supply Act of 1958 and its 1963 Amendment. *See* Water Supply Act of 1958, Pub. L. No. 85-500, § 301, 72 Stat. 319 (1958) (codified at 43 U.S.C. § 390b); An Act Defining the Interest of Local Public Agencies in Water Reservoirs Constructed by the Government Which Have Been Financed Partially By Such Agencies, Pub. L. 88-140, 77 Stat. 249 (1963) (codified at 43 U.S.C. §§390c-390f).
- *Second*, this comment letter references and discusses the specific provisions of the Draft Decision Document and Alternative 1 that conflict with the Congressionally authorized purposes for Lake Ashtabula, violate Section (e) of the Water Supply Act of 1958, 43 U.S.C. §390b(e), unreasonably disregard the "permanent rights to the use of storage" held by Grand Forks and other Thompson-Acker allottees, Engineer Regulation 1105-2-100, § 3-8b(2), and are in derogation of Grand Forks' pending application for a water supply storage agreement in Lake Ashtabula.
- *Third*, this comment letter specifies the modifications that should be made to Alternative 1 in order to bring it into compliance with applicable Federal law.

## 1. Supplemental Facts for the Record

The facts contained in this Section 1 were omitted from the Draft Decision Document, and the failure of the Corps to consider them was unreasonable and materially erroneous. The record for the Draft Decision Document, including Alternative 1 and the Drought Operating Plan, is supplemented accordingly below.

### 1.1. *The Congressionally Authorized Purposes for the Lake Ashtabula and Baldhill Dam Project: the 1944 Flood Control Act and Senate Document 193*

The 1944 Flood Control Act, Pub. L. 78-534, 57 Stat. 887, authorized the construction of Baldhill Dam on the Sheyenne River "for flood control and other purposes in the Sheyenne River Basin, North Dakota, . . . substantially in accordance with the recommendations of the Chief of Engineers in Senate Document Numbered 193, Seventy-eighth Congress, second session, at an estimated cost of \$810,000." A copy of the relevant portion of the Flood Control Act of 1944 is provided as **Exhibit 2**. Senate Document 193 contains a report dated March 15, 1944 from the

Chief of Engineers, United States Army, regarding the Sheyenne River. A copy of Senate Document 193 is provided as **Exhibit 3**.

Importantly, because Congress “adopted” the report of the Chief of Engineers contained in Senate Document 193, and by necessary implication the reports of the district and division engineers upon which the Chief of Engineers relied, all those reports “became part of the authorizing legislation [for Baldhill Dam and Lake Ashtabula], and the project purposes proposed in the Corps’ reports became the ‘authorized purposes’ of [Baldhill Dam and Lake Ashtabula].” Memorandum from the Office of Chief Counsel to the Corps (June 25, 2012), p 10 (“Stockdale Memorandum”). A copy of the Stockdale Memorandum is attached as **Exhibit 4**. *See also Alabama v. Corps*, 2025 U.S. Dist. LEXIS 60988, \*44 (D.D.C. Mar. 31, 2025) (applying the standard of review of *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024) and concurring with the Stockdale Memorandum’s analysis of the Water Supply Act of 1958).

Senate Document 193 concludes that “the most economical plan of improvement is the construction of [Lake Ashtabula and Baldhill Dam] for the dual purpose of flood control and alleviation of low-water conditions downstream.” Senate Document 193, p 38. The report details the flood control purpose as controlling “the run-off from an effective drainage area of 983 square miles” to provide flood protection for “the flood plain of Red River of the North.” *Id.* at pp 3, 31. The report details the water supply purpose as storing streamflow from the Sheyenne River to provide water supply for local municipal and rural needs (but not irrigation) and to dilute stream pollution from upstream disposal of sewage. *Id.* at pp 12, 20-27, 37. The water requirements of “Grand Forks and vicinity,” Fargo, Southwest Fargo, Valley City, and Lisbon are discussed in detail. *Id.* at pp 20-28.

Senate Document 193 summarizes the recommendations to Congress by the Chief of Engineers as follows:

After due consideration of [the] reports [contained in Senate Document 193], . . . I therefore recommend construction of Baldhill Reservoir on Sheyenne River, N. Dak., for flood control and water conservation, in general accordance with the plans of the district engineer as shown on the accompanying drawings, with such modifications as in the discretion of the Secretary of War and the Chief of Engineers, may be desirable, at an estimated first cost to the United States of \$810,000 with \$6,000 annually for operation and maintenance; *subject to the condition that no funds shall be expended on construction of the project until local interests have contributed \$208,000 toward the first cost of the reservoir* and until responsible local agencies have given assurances satisfactory to the Secretary of War that they will (a) hold and save the United States free from damages due to the construction works; (b) bear the expense of all necessary

alterations of utilities, roads, highways and bridges; (c) construct, operate, and maintain the Fargo diversion dam and diversion ditch improvements in accordance with plans and regulations to be approved by the Secretary of War; (d) maintain the channels below the reservoir in satisfactory condition for the flow of water released from storage, to include the prevention of encroachments on the carrying capacity of the channel which would unduly interfere with the conveyance of floodwaters; and (e) establish and enforce suitable regulations to prevent pollution of the waters of Sheyenne River.

*Id.* at pp 1-2 (emphasis added). Subsequent Corps documents confirm that local interests contributed the \$208,000 and provided satisfactory assurances that the remaining conditions required by the Chief Engineer would be met. The \$208,000 payment constituted part of the basis of the Thompson-Acker allocations by the State of North Dakota discussed below.

Senate Document 193 does not evaluate recreational benefits. *Id.* at p 35, ¶ 87 (“At normal pool level the proposed reservoir would have a surface area of about 5,400 acre and although subject to fluctuation it is believed that an appreciable amount of recreational activity would develop. However, recreational benefits have not been evaluated in this report.”). Fish and wildlife benefits are not discussed. The only references to storage of water from the Missouri River Basin are as follows:

73. Size of reservoir. – A reservoir with normal pool at elevation 1,264 would have a capacity of about 60,000 acre-feet. . . . However, the restudy now being made of the proposed Missouri River diversion project, which has as one of its objectives the diversion of Missouri River water into the upper Sheyenne River to meet the water requirements of that stream and of the Red River of the North at and below Fargo and Moorhead, indicates the necessity for storage capacity of 66,000 acre-feet at the Baldhill site in connection with its scheme of operation. . . . It is, therefore, deemed advantageous to adopt the larger reservoir, with normal pool at elevation 1,266, for this investigation inasmuch as the increase in cost would be relatively small and the reservoir would fit into the general plan for the proposed Missouri River diversion project, if such a project should be adopted.

*Id.* at p 30. Senate Document 193 also references the “current restudy of the proposed Missouri River diversion project.” *Id.* at p 29, ¶ 68. However, Senate Document 193 contains no authorization or contemplation of storing Missouri River water in Lake Ashtabula beyond the language quoted above from paragraph 73.

In sum, Lake Ashtabula was originally authorized in 1944 for flood control, local water supply, and pollution abatement. Recreational benefits were not evaluated and fish and wildlife was neither evaluated nor discussed. Storage of transbasin water from the Missouri River was contemplated, but only for 6,000 acre-feet and the plans were not firm. Further, a State-sponsored Missouri River Basin project, in contrast with an integrated, multi-basin Federal project, was not contemplated.

1.2. *Thompson-Acker Allocations by the State of North Dakota to Local Contributors to the Project*

The Thompson-Acker “plan” constituted allocations of the storage in Lake Ashtabula made in 1950 by the State of North Dakota Water Commission. The concept behind the plan was that 25 percent of storage allocations would be weighted based on the particular municipality’s or industry’s contribution to the \$208,000 local contribution required by Senate Document 193, and 75 percent of storage allocations would be weighted based on the proportionate populations in 1950 of the contributing municipalities. The original allocations under the Thompson-Acker plan were as follows:

Table 3-1 Thompson /Acker Plan – Original Distribution of Storage						
City / Organization	% Cash Contributed	25 % Share	% of Population	75 % Share	Total Share	Acre-Feet
Fargo	55.69	13.92	50.77	38.08	52.00	35,880
Grand Forks	8.24	2.06	35.94	26.96	29.02	20,023
Valley City	11.11	2.78	9.21	6.91	9.69	6,686
West Fargo	1.52	0.38	1.35	1.01	1.39	959
Lisbon	2.17	0.54	2.73	2.04	2.58	1,780
Sugar Company	15.84	3.96			3.96	2,732
Union Stock Yards	0.90	0.23			0.23	159
Rail Road Companies	3.17	0.79			0.79	546
Northern States Power	1.36	0.34			0.34	235
Totals	100.00	25.00	100.00	75.00	100.00	69,000

According to the 2013 Lake Ashtabula WCM, the industrial contributors subsequently “relinquished” their allocations, resulting in the determination by the State Water Commission, pursuant to a July 18, 1988 letter to the Corps, of the following remaining allocations:

Fargo	35,880 AF
Grand Forks	20,023 AF
Valley City	6,686 AF
West Fargo	954 AF
Lisbon	373 AF

*Id.* at section 3-5.<sup>2</sup> The State of North Dakota Department of Water Resources has issued water permits, with varying priority dates, for these amounts of storage in Lake Ashtabula. The Department of Water Resources also claims to hold 5,084 acre-feet of remaining conservation pool storage in Lake Ashtabula.<sup>3</sup>

Because the holders of Thompson-Acker allocation water permits contributed to the \$208,000 local contribution and provided satisfactory assurances of the remaining conditions required by the Chief Engineer, all as mandated by Senate Document 193, Public Law 88-140 applies. Public Law 88-140 was enacted in 1963 and is placed in the United States Code at 43 U.S.C. §§390c – 390f, immediately after the statutes codifying the Water Supply Act of 1958.

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<sup>2</sup> Note also that Lisbon reduced its allocation from 1,780 acre-feet to 373 acre-feet, and West Fargo reduced its allocation by 5 acre-feet.

<sup>3</sup> According to the 2013 Lake Ashtabula WCM, Lake Ashtabula’s conservation pool is 70,600 acre-feet. The total amount of storage that would be allocated to the allocations, plus the State’s 5,084 acre-feet, would be 68,700 acre-feet. Presumably, the shortfall is due to sedimentation.

Corps regulations interpret Public Law 88-140 as follows: "Permanent Rights to Storage. Under the authority of Public Law 88-140 of 1963 (Extension of Right to Water Supply Storage), the non-Federal sponsor acquires a permanent right to the use of storage as long as the space is physically available." Engineer Regulation 1105-2-100, 3-8b(2).<sup>4</sup> Consequently, Grand Forks

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<sup>4</sup> The relevant provisions of Public Law 88-140 are as follows:

Cognizant that many States and local interests have in the past contributed to the Government, or have contracted to pay to the Government over a specified period of years, money equivalent to the cost of providing for them water storage space at Government-owned dams and reservoirs, constructed by the Corps of Engineers of the United States Army, and that such practices will continue, and, that no law defines the duration of their interest in such storage space, and realizing that such States and local interests assume the obligation of paying substantially their portion of the cost of providing such facilities, their right to use may be continued during the existence of the facility as hereinafter provided.

*This Act [is] applicable to all dams and reservoirs heretofore or hereafter constructed by the United States Government (acting through the Corps of Engineers of the United States Army) wherein either a part of the construction cost thereof shall have been contributed or may be contributed by States or local interests (hereinafter called "local interests") or local interests have acquired or may acquire rights to utilize certain storage space thereof by making payments during the period of such use as specified in the agreement with the Government and wherein the amount of money paid, exclusive of interest, is equivalent to the cost of providing that part of such dam and reservoir which is allocated to such use, whether such share of cost shall have been determined by the "incremental cost" method or by the "separable costs-remaining benefits" method or by any other method. Included among the dams and reservoirs affected by this Act are those constructed by the Corps of Engineers of the Department of the Army. . . .*

*The right thus acquired by any such local interest is hereby declared to be available to the local interest so long as the space designated for that purpose may be physically available, taking into account such equitable reallocation of reservoir storage capacities among the purposes served by the project as may be necessary due to sedimentation, and not limited to the term of years which may be prescribed in any lease agreement or other agreement with the Government, but the enjoyment of such right will remain subject to performance of its obligations prescribed in such lease agreement or agreement executed in reference thereto. Such obligations will include continued payment of annual operation and maintenance costs allocated to water supply. In addition, local interests shall bear the costs allocated to the water supply of any necessary reconstruction, rehabilitation, or replacement of project features which may be required to continue satisfactory operation of the project. Any affected local interest may utilize such facility so long as it is operated by the Government. . . .*

Upon application of any affected local interest its existing lease or agreement with the Government will be revised to evidence the conversion of its rights to the use of storage as prescribed in this Act.

and the other holders of Thompson-Acker allocation water permits are entitled to the permanent use of storage in Lake Ashtabula, subject to physical availability.

*1.3. Grand Forks' Pending Application for a Water Supply Storage Agreement in Lake Ashtabula*

Pursuant to an April 30, 2025 letter from Mayor Brandon Bochenski to Colonel Eric Swenson, Grand Forks has formally requested a water supply storage agreement in Lake Ashtabula for its Thompson-Acker allocation and associated State of North Dakota water permit. A copy of the letter is provided as **Exhibit 5**. As explained in the letter, Grand Forks' request is in accordance with the Water Supply Act of 1958 and its 1963 Amendment. As further explained in the letter, because Grand Forks, along with the City of Fargo and other holders of Thompson-Acker allocation water permits contributed in 1950 to the \$208,000 local payment, and provided satisfactory assurances that the remaining conditions required by the Chief Engineer would be met, all as required by the Congressional authorization of Lake Ashtabula under the 1944 Flood Control Act, Pub. L. 78-534, 57 Stat. 887, 896-97, and Senate Document 193, Grand Forks and the other holders of Thompson-Acker allocation water permits have "permanent rights to the use of storage" in Lake Ashtabula. See Engineer Regulation 1105-2-100, § 3-8b(2).

**2. Specific Provisions of Concern in the Draft Decision Document and Grand Forks' Comments**

**Provisions:** Draft Decision Document Section 1.3 "Authority" Table 1; Statements at G2-3 of Drought Operations Plan that "Baldhill Dam has a multiple use mandate" beyond water supply and flood control, and that "[t]he Baldhill Dam and Lake Ashtabula Project was authorized, designed, and constructed . . . in 1944 to provide water supply for local communities, flood abatement, wildlife habitat, and recreational uses"; Statement at G2-2 of Drought Operations Plan that "[w]hile municipal water supply needs would in all likelihood have the highest priority during drought periods, the Corps must still give consideration to adverse impacts on all authorized project purposes."

**Comments:** These provisions erroneously disregard the specific authorizing legislation for Lake Ashtabula from the Flood Control Act of 1944 and Senate Document 193. See discussion above in Section 1.1. They improperly conflate the authorized purposes for Lake Ashtabula with generally applicable Congressional acts. Flood control, water supply, and water quality are express authorized purposes for Lake Ashtabula under Senate Document 193; surplus water and recreation are *incidental or subordinate* purposes; and fish and wildlife is *not* an authorized purpose. To the extent

a fish and wildlife purpose is “derived from general Congressional acts,” it must be operated in accordance with the specific authorized project purposes. *See Am. Rivers, Inc. v. Corps*, 421 F.3d 618, 630 (8th Cir. 2005) (“Case law supports the contention that environmental- and wildlife-protection statutes do not apply where they would render an agency unable to fulfill a non-discretionary statutory purpose or require it to exceed its statutory authority”).

**Provisions:** Draft Decision Document Section 1.9 “Prior Reports and Existing and Future Water Resource Projects”; Draft Decision Document Section 4.4.1 “Past, Present and Future Projects”

**Comments:** Despite the extensive discussion of the Thompson-Acker allocations in the USACE’s 2013 Lake Ashtabula WCM, these sections of the Draft Decision Document *entirely omit* consideration of the Thompson-Acker allocation water permits. This omission, without any justification, is arbitrary and capricious. “Longstanding Congressional understanding, legal opinions, and caselaw have established that while the Corps has considerable discretion to exercise its engineering judgment to design and operate its projects, the Corps may not add or delete an authorized project purpose, nor materially alter the relative importance of authorized purposes, without approval of Congress.” *Use of U.S. Army Corps of Engineers Reservoir Projects for Domestic, Municipal, & Industrial Water Supply*, 81 Fed. Reg. 91556, 91578 (December 16, 2016).<sup>5</sup> Further, the omission does not accord with Federal law: Grand Forks, along with the City of Fargo and other holders of Thompson-Acker allocation water permits, contributed in 1950 to the \$208,000 local payment and provided satisfactory assurances of the remaining conditions needed by the Chief Engineer, as required by the 1944 Flood and Senate Document 193. This entitles them to “permanent rights to the use of storage” in Lake Ashtabula. 43 U.S.C. §§390c–390f; *see also* Engineer Regulation 1105-2-100, § 3-8b(2). See discussion above in Section 1.2.

**Provision:** Draft Decision Document Section 3.5 “Evaluation and Screening of Phase 1 Measures” – Screening of Measure 105 from Alternative 1.

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<sup>5</sup> This was a notice of proposed rulemaking by the Corps for a rule to “enhance the Corps’ ability to cooperate with State and local interests in the development of water supplies in connection with the operation of its reservoirs for federal purposes as authorized by Congress, to facilitate water supply uses of Corps reservoirs by others as contemplated by Congress, to facilitate water supply uses of Corps reservoirs by others as contemplated under applicable law, and to avoid interfering with lawful uses of water by any entity when the Corps exercises its authority under . . . the WSA.” *Id.* at p 91556. The proposed rule was withdrawn in January 2020, purportedly to reflect a shift toward a less centralized regulatory approach. Regardless, the proposed rule, which is detailed and extensive, is helpful to understand Corps’ interpretation of the WSA at the national level.

Measure 105 would have contained “additions to the operating plan to include any changes to the operations if/when the RRVWSP (Red River Valley Water Supply Plan) is operating.” Section 3.4, Table 11. Measure 105 “was considered because [the RRVWSP] is a potential future hydraulic change that could impact input to Lake Ashtabula. *Changes were explored to benefit people and reduce water supply risk.* In this measure, the updated WCM would contain specific changes to the operations of Baldhill Dam if/when the RRVWSP is online. *Several potential changes to the Baldhill Dam operations were considered, including increasing minimum flow and dealing with imported water differently from natural flow.*” Section 3.4, “Measure 105, Changes When the RRVWSP Pipeline is Operating” (emphasis added).

According to the Draft Decision Document, Measure 105 was screened from Alternative 1 on the following grounds: “The operations of Baldhill Dam will not be modified based on the source of water. The ND DWR can continue to make water supply release requests to USACE. The RRVWSP does not alter the authorized federal purposes of Baldhill Dam, and USACE will continue to meet those authorized purposes regardless of the source of water. USACE does not have the authority or responsibility over state water rights and is not involved with the design, construction, operation, or management of the RRVWSP. Therefore, this measure was screened based on completeness because USACE has neither the responsibility for nor control of the pipeline.” Section 3.5, “Evaluation and Screening of Phase 1 Measures – Measure 105.”

**Comments:** The screening of Measure 105 violates Section 390b(e) of the Water Supply Act of 1958, 43 U.S.C. §390b(e), which provides:

Modifications of a reservoir project heretofore [having been] authorized, surveyed, planned, or constructed to include storage. . . which would seriously affect the purposes for which the project was authorized, surveyed, planned, or constructed, or which would involve major structural or operational changes shall be made only upon the approval of Congress as . . . provided by law.

“[I]n order to determine authority to modify a reservoir project . . . the Corps must first determine the Congressional purposes and operation of that project at the time of authorization.” Stockdale Memorandum, pp 19-20. “[T]he statutory terms ‘major’ and ‘seriously’ in [43 U.S.C. §390b(e)] refer to changes and impacts that fundamentally depart from

Congressional intent for a project, as expressed through the authorizing legislation relevant to that project.” *Id.* at p 35; *see also Alabama v. Corps*, 2025 U.S. Dist. LEXIS 60988, \*44.

Senate Document 193 clearly contemplates that the primary purposes of Baldhill Dam are to store *water of the Sheyenne River* to prevent floods and to release that water to mitigate municipal and rural water supply shortages in the Sheyenne and Red River basins. The statement in the Draft Decision Document that “[t]he operations of Baldhill Dam will not be modified based on the source of the water” flatly contradicts the purposes of the reservoir project as authorized by Congress. Because the Corps’ analysis of the authorized purposes for Lake Ashtabula is not in accordance with the law, its analysis of what constitutes a modification of those project purposes is erroneous.

Storage of RRVWSP water in Lake Ashtabula to the possible exclusion of Sheyenne River water would clearly constitute a modification of the purposes for which the Baldhill Dam project was authorized by Congress. Consequently, the Corps is required to analyze whether such modifications would *seriously affect* those purposes. 43 USC §390b(e). This would require analyzing “any changes to the operations if/when the RRVWSP is operating,” as proposed by Measure 105.

Grand Forks acknowledges that the Corps has discretion to balance competing purposes at its multipurpose reservoirs. *See In re ACF Basin Litig.*, 554 F. Supp. 3d 1282, 1302 (N.D. Ga. 2021). However, the Corps does not have discretion to decline to evaluate whether a modification of a reservoir project would seriously affect the purposes for which the project was authorized. Furthermore, the Corps cannot delegate this determination to the State of North Dakota, as suggested by the reasoning presented by the Corps for screening Measure 105. Although the State of North Dakota has jurisdiction to award water rights for Corps projects located in North Dakota, it does not have authority to determine the authorized purposes of Corps projects. Only Congress has that authority. And only the Corps has the authority to determine under 43 U.S.C. §390b(e) whether those purposes are seriously affected by project modifications.

The screening of Measure 105 is also in conflict with and would diminish, if not negate, the “permanent rights to storage” in Lake Ashtabula to which holders of Thompson-Acker allocation water permits are entitled from their contribution in 1950 to the local payment required by the 1944 Flood and Senate Document 193. *See* 43 U.S.C. §§390c–390f; *see also* Engineer Regulation 1105-2-100, § 3-8b(2) and discussion above in

Section 1.2. Possible affects on the permanent rights of Thompson-Acker allocations to use Lake Ashtabula storage should be evaluated, including possible affects on Grand Forks' request for a water supply storage agreement in Lake Ashtabula. This analysis could occur within the scope of Measure 105, as properly formulated.

**Provision:** Statement at G2-2 that "any requests to release water from Lake Ashtabula for water supply purposes must be received through the North Dakota Department of Water Resources."

**Comment:** Experience in other Corps Districts shows that holders of State issued water rights who have entered a water supply storage agreement with the Corps are not required to route their requests for releases of water from storage in Corps' reservoirs through the State. Instead, the provisions of the water storage agreement, which are generally based on forms developed in accordance with the Water Supply Act of 1958, provide procedures for coordination of releases between the water user and the Corps.

### **3. Modifications That Should be Made to Alternative 1 to Bring It Into Compliance with Applicable Federal Law**

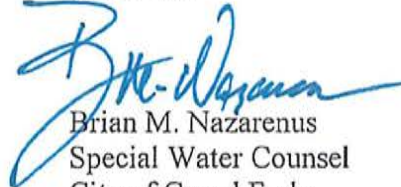
Measure 105 should be run in conformance with the Congressionally authorized purposes for Lake Ashtabula described herein. The run should recognize the State of North Dakota's Thompson-Acker allocations in Lake Ashtabula as "permanent rights of use" and determine how RRVWSP water may be stored in, and delivered from, Lake Ashtabula in a manner that does not seriously affect Thompson-Acker allocation water permits. Grand Forks' pending application to the Corps for a water supply storage agreement in Lake Ashtabula for its Thompson-Acker allocation should also be considered in the run, along with any other applications by Thompson-Acker allottees for water storage agreements in Lake Ashtabula. The Corps should fully consult with Grand Forks and other holders of Thompson-Acker allocation water permits regarding these modifications of Measure 105 and the resulting runs. The Alternative 1 and the Drought Operations Plan should be revised in accordance with the modified Measure 105 results.

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In conclusion, Grand Forks appreciates the Corps' consideration of our comments, and we look forward to ongoing collaboration with the Corps with regards to both the preparation of a Water Control Manual that conforms with the Congressionally authorized purposes for Lake Ashtabula, and the determination of the terms of a Lake Ashtabula water supply storage agreement for Grand Forks' Thompson-Acker water permit.

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Sincerely,



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Special Water Counsel  
City of Grand Forks

cc: Mayor Brandon Bochenski  
Todd Feland  
Dan Gaustad  
Shane Coors  
Patrick Noe