

**TESTIMONY OF MARCUS WELLS, JR.
FOR THE THREE AFFILIATED TRIBES
OF THE FORT BERTHOLD RESERVATION
TO THE COMMITTEE ON INDIAN AFFAIRS,
UNITED STATES SENATE**



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Restitution for the Flooding of Tribal Lands

I would like to thank the Committee and the Chairman for inviting me to testify today.

Over 50 long years ago, our lands were flooded to construct the Garrison Dam and its reservoir. These lands were our prime bottomlands, home to over 90% of our Tribal members. These lands provided us with fertile soil for agriculture. These lands were where our Tribal ancestors lived and prospered. We were largely self-sufficient. In all, we lost over 156,000 acres of our best and most fertile lands. Our Tribal families were forced to move up into the dry, windy highlands of the Reservation, which our people had previously used only to graze our animals. Now our people must live there.

This result was not by our own choosing. Our Tribe was pressured and steamrolled into signing away our prime bottomlands in the 1940's. In May 1948, Tribal Chairman George Gillette traveled to Washington, D.C. to sign the final agreement with the Department of Interior. A photograph of that event shows Chairman Gillette weeping as Interior Department officials sign away the Tribe's lands to make way for the Garrison Dam's giant reservoir, Lake Sakakawea. Chairman Gillette said, "Right now the future does not look too good for us." I keep that photograph above my desk as a reminder of why I and my fellow Council members work so hard to ensure that the United States government fulfills its long-delayed promises to make our people whole again.

Chairman Gillette was right. The flooding of our bottomlands destroyed our prosperous agricultural base and segregated the Reservation into six isolated segments. We have struggled to be self-sufficient again as our communities became separated from one another. Driving from one part of the Reservation to another can take 3 or more hours, making it very difficult and costly to provide basic governmental services such as law enforcement, health care, education and transportation services.

The payment from the Federal government to the Tribe was far too little to compensate us for the loss of our bottomlands, our depth of our peoples suffering and the fragmentation of our unified Tribal government services. Three decades later, the Federal government admitted as much. Secretary of the Interior Donald Hodel signed a charter in 1985 creating the Garrison Unit Joint Tribal Advisory Committee, or JTAC. The JTAC's final report of 1986 stated very clearly that our Tribe had been forced to accept a highly inequitable payment for the flooding of our lands, resulting in catastrophic social and economic damage. The JTAC report found that the resource base we lost was valued in the range of \$170 million and \$343 million.

In addition to further financial restitution, the JTAC report recommended that the Federal government undertake several measures to compensate the Tribe for its sustained losses. These steps included completion of a Reservation-wide drinking water system, construction of two major irrigation projects, financial assistance for Reservation farms, development of recreational shoreline opportunities on Lake Sakakawea, preferential rights for Garrison power, and replacement and refurbishment of critical infrastructure lost due to the flooding – such as our health care facility, bridge, school dormitories,

Tribal roads, and housing facilities. These recommendations were intended to make the Tribe whole again.

These projects have not been fulfilled in accordance with the Federal government's promise. It has been over 50 years since the flooding of our lands, and we have still not been made whole. Each year, the Tribe subsidizes the government's trust responsibilities by millions of dollars. The Tribe puts \$600,000 of its own funds per year toward the law enforcement program; \$500,000 per year toward the Indian Health Service programs; \$600,000 per year toward the Roads Programs; and \$1 million per year toward the Housing Program.

The Tribe's drinking water system is far from complete. In fact, 90% of our Tribal households still have no running water. Over 300 families truck in water for use in the home, making life on the Reservation expensive and inconvenient. Other families use well-water laden with heavy salts and minerals. I have seen parents washing their babies in brown well-water that reeks of heavy and unhealthy minerals such as manganese, coal, iron, and lime. Our horses and other livestock also drink from the same brown water. More than 50 years after the flooding of our land too many of our family homes do not have access to a safe, clean water supply.

The Garrison Reformulation Act of 1986 and the Dakota Water Resources Act of 2000 were meant to speed the completion of our drinking water system, but annual funding has been too little to make substantial progress. There are only a handful of elders left who remember the time before the flooding of our lands. They deserve to see clean, safe drinking water running into their homes, in their own lifetimes.

Contrary to the Federal government's promises and the express terms of the Dakota Water Resources Act, our Tribal members living in New Town and Parshall also are paying extremely high water bills and live under the threat that their water will be turned off due to the falling water levels in the Missouri River. Our Tribe has prepared detailed water purchase agreements to share the benefits of the Dakota Water Resources Act fairly with all our Tribal members living on the Reservation, whether living in towns or in the rural areas. Although the Dakota Water Resources Act expressly states that the water project is to provide municipal as well as rural water benefits, the Bureau of Reclamation so far has not agreed that appropriations under the Act can be used to help provide water benefit to residents of New Town and Parshall. We need this Committee's help to change this unwise and unfair policy.

We also had to bring a lawsuit against the Bureau of Reclamation to gain recognition that the Tribes' successful financing of a small portion of the water project through low-interest USDA loans could be repaid with DWRA appropriations. To help us more promptly complete this vital municipal, rural and industrial water project, I ask for this Committee's support for – and Congress' prompt passage of – S. 2200, the Tribal Water Resources Innovative Financing Act, which was introduced by Senator Conrad and cosponsored by Senators Johnson and Tester.

Since our lands were first taken from the Tribe for the Pick-Sloan Project over a half century ago, the Tribe has also attempted to recover lands that are in excess of those needed for the Project. The Three Affiliated Tribes and Standing Rock Sioux Equitable Compensation Act provided for the return of Project lands located at or above elevation 1,860 feet mean sea level to the Tribe and other former land-owners, but those provisions

were repealed in 1994. The new law provided that "the U.S. Army Corps of Engineers should proceed with the Secretary of the Interior to designate excess lands and transfer them." The Corps has been studying the potential transfer of the lands since 1994, but to date the Tribe has not received any of the lands.

The Tribe seeks the immediate return of those lands that are at or above the maximum flood pool elevation, and we have advised the Corps that we will agree to reasonable and necessary easements for Lake access for Project purposes. There is no question that the Corps has the legal authority to transfer these lands immediately to the Tribe under the Fort Berthold Mineral Restoration Act. The Corps agrees that this provision provides legal authority for the Corps to transfer the excess lands to the Secretary of the Interior for the benefit of the Tribe, but we are still waiting for it to be done

The Tribe and the Corps share a mutual interest in, and stewardship over, these lands along the lakeshore, but in my view, the Tribe has a greater interest and ability to manage these lands. I firmly believe that the Tribe would be a better steward of these lands than the Corps. We are already managing the contiguous tribal lands. The return of the lands would assist the Tribe in developing tourism, recreation, and economic development opportunities. It is long overdue.

I also remind the Committee of the JTAC promise to replace the hospital that was flooded due to the Pick-Sloan Project. We have been working diligently with Chairman Dorgan and our North Dakota Congressional delegation to fulfill this promise, but we still have a ways to go. I ask for the support of this Committee to finally bring the dream of caring, competent and accessible health care to the Fort Berthold Reservation.

Finally, individual Tribal landowners did not receive adequate compensation for their losses caused by Pick-Sloan project. For example, the Federal government agreed to move some houses up to the dry land before the flood, but many of these homes were simply moved atop dry bluffs in the middle of nowhere. These homes were not livable and have been long since abandoned. Many Tribal members had to abandon the Reservation because they could no longer survive in the land of their ancestors. Fundamental fairness demands that all individual Tribal members who were cast out of their homes receive just compensation for their losses.

Again, I thank the Committee for the opportunity to speak and look forward to answering any questions you may have. I will be submitting more detailed written testimony shortly.