

N.D.A.G. Letter to Jones (March 16, 1990)

March 16, 1990

Mr. Lloyd A. Jones
Commissioner
North Dakota Game and Fish Department
100 North Bismarck Expressway
Bismarck, ND 58501-5095

Dear Mr. Jones:

Thank you for your October 31, 1989, letter concerning the proposed management by the North Dakota Game and Fish Department (Department) of mitigation lands acquired for the Garrison Diversion Project. I apologize for the delay in answering your letter.

The lands in question are acquired by the United States Bureau of Reclamation and the deeds are retained by the United States Fish and Wildlife Service (Fish and Wildlife Service). You further stated that the Fish and Wildlife Service makes "in lieu of tax payments" to counties for local distribution per a statutory formula. 16 U.S.C. § 715s (1988); N.D.C.C. § 11-27-09.1. Because of these federal payments, you wish to know whether the Department would be responsible for all "in lieu of tax payments" under N.D.C.C. ch. 57-02.1, or for the difference between the federal payments and actual tax liability if the land was not otherwise exempt, if the Department decided to manage these lands.

For the following reasons, it is my opinion that if these lands are managed by the Department pursuant to an arrangement by which the Department leases or holds property by lease or license from the United States and the Department controls the real property, all of the "in lieu of tax payments" provided for under N.D.C.C. ch. 57-02.1 would be due, notwithstanding the fact that similar payments may also be paid by the Fish and Wildlife Service.

The North Dakota Game & Fish Department "in lieu of tax payments" provision provides as follows:

57-02.1-02. Imposition of payments. The state game and fish commissioner shall annually make payments, subject to legislative appropriations, to the counties in which property subject to valuation is located pursuant to the provisions of this chapter. Such payments shall be in lieu of taxes which would otherwise be available to such counties if the real property upon which these payments are based were not owned by the state, United States, or a political subdivision of this state.

(Emphasis supplied.) "Property subject to valuation" is defined as real property owned by the state or real property leased or held by lease or license from the United States or a political subdivision of this state, and controlled by the state game and fish department but shall not include any land leased by such department if such land is being assessed for ad valorem taxation to the owner.

N.D.C.C. § 57-02.1-01(1). (Emphasis supplied.) Therefore, if the Department manages land owned by the United State Wildlife Service, as authorized by that federal agency, it may be obligated to make "in lieu of tax payments" under N.D.C.C. ch. 57-02.1. The Department would be obligated to make the "in lieu of tax payments" if it leases the federal land or holds it by lease or license and if it controls the land. Whether these conditions are met depends upon the terms of the agreement between the Department and the Fish and Wildlife Service.

There is no provision of N.D.C.C. ch. 57-02.1 which would diminish or eliminate the Department's obligation to make "in lieu of tax payments" simply because the Fish and Wildlife Service makes "in lieu of tax payments" under 16 U.S.C. § 715s. Likewise, there is no provision in 16 U.S.C. § 715s which would diminish or eliminate the obligation of the Fish and Wildlife Service to make "in lieu of tax payments" simply because the Department makes "in lieu of tax payments" under N.D.C.C. ch. 57-02.1. The federal "in lieu of tax payments" under 16 U.S.C. § 715s and the North Dakota "in lieu of tax payments" under N.D.C.C. ch. 57-02.1 operate separately.

I trust that this answers your inquiry.

Sincerely,

Nicholas J. Spaeth

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