

FEB 10 2014

CASS COUNTY COMMISSION

MEMORANDUM

TO: Cass County Commission

FROM: Sean M. Fredricks

DATE: February 12, 2014

RE: Maple River Water Resource District
GARSTEIG-EMBDEN MAINTENANCE DISTRICT

OhnstadTwichell
attorneys

The Maple River Water Resource District (“Maple River WRD”) is preparing to commence a process to create a federal maintenance district regarding Garsteig Dam, Embden Dam, and channel improvements in the vicinity of the dams. The process for creating the GARSTEIG-EMBDEN MAINTENANCE DISTRICT will require cooperation between the Cass County Commission and the Maple River WRD. This memo provides a brief outline of the necessary steps for purposes of creating the GARSTEIG-EMBDEN MAINTENANCE DISTRICT.

The Soil Conservation Service (a precursor to the NRCS) constructed the Garsteig Dam, the Embden Dam, and various channel improvements all in the same watershed several decades ago. The NRCS does not maintain the facilities and, therefore, the Maple River WRD is responsible for their operation and maintenance under North Dakota law. In recognition of the fact that water resource districts do not have funding mechanisms for purposes of operation and maintenance of these federally constructed projects, the legislature created a federal maintenance district process to allow water resource districts to generate maintenance funds. The following bullet points provide the legal background and the requisite steps:

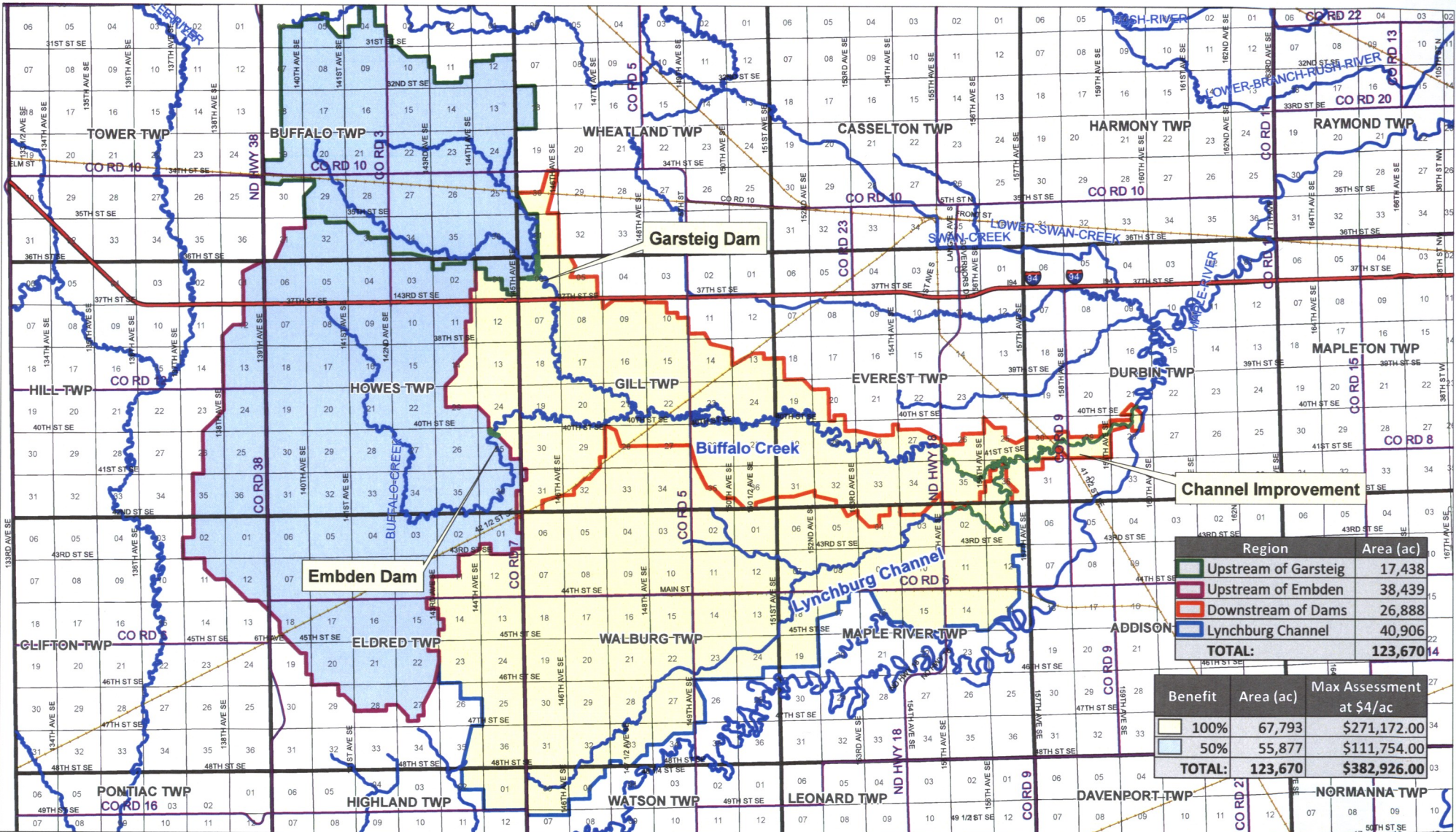
- Under N.D. Cent. Code § 61-16.1-40, “Any dam, dike, or other water control device or flood control project” constructed by a federal agency, but no longer maintained by the federal agency, is the responsibility of the water resource district where the facility is located.
- SCS previously constructed Garsteig Dam, Embden Dam, and channel improvements within the Garsteig-Embden watershed.
- Neither SCS nor its successor, NRCS, maintains, operates, or contributes any funds to operation of any of these projects.
- The projects are all within the geographical jurisdiction of the Maple River WRD; therefore, the Maple River WRD is responsible for operation and maintenance (“O&M”) of the projects.

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- For assessment projects constructed by Maple River WRD, landowners who benefit from the project must first vote to create an assessment district to fund construction and to fund O&M in the future.
- With these federal projects, however, Maple River WRD was not involved at the time of construction and did not have the opportunity to submit the projects to assessment district votes.
- Without the assessment district votes, Maple River WRD could not create any assessment districts to finance O&M.
- Under Section 61-16.1-40, Maple River WRD has had to utilize its general fund dollars to fund O&M of these projects since they are within Maple River WRD's jurisdiction; Maple River WRD has limited general funds to finance the Board's operations.
- The legislature recognized the financial challenge created by Section 61-16.1-40, since the statute creates the O&M obligations but does not create a mechanism to finance O&M.
- Therefore, the legislature enacted N.D. Cent. Code § 61-16.1-40.1 to authorize water resource districts to create "federal maintenance districts" to generate revenues for O&M.
- The federal maintenance process is not a vote-driven process; the legislature recognized most landowners would not vote to assess themselves for projects already in operation and already providing benefits to them.
- Utilization of general fund dollars to finance O&M of these federally-constructed projects requires all landowners in Maple River WRD's district to pay for O&M of projects that only benefit landowners within the Garsteig-Embden watershed.
- The federal maintenance district process under Section 61-16.1-40.1 recognizes this inequity and, therefore, allows Maple River WRD, with cooperation of the Cass County Commission, to create a maintenance districts to fund O&M of Garsteig Dam, Embden Dam, and the channel improvements within the Garsteig-Embden watershed.
- The process under Section 61-16.1-40.1 requires Maple River WRD to conduct a hearing, preceded by public notice.

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- At the hearing, Maple River WRD must explain the Garsteig Dam, Embden Dam, and the channel improvements within the Garsteig-Embden watershed, and the necessity for creation of the GARSTEIG-EMBDEN MAINTENANCE DISTRICT to properly and adequately operate and maintain the projects.
- Following the hearing, to ultimately create the GARSTEIG-EMBDEN MAINTENANCE DISTRICT, Maple River WRD and the Cass County Commission must both approve the creation of the federal maintenance district by two-thirds' votes.
- If Maple River WRD and the Cass County Commission both approve the creation of the GARSTEIG-EMBDEN MAINTENANCE DISTRICT, Maple River WRD will enter a final Order to create the district and will publish notice of its creation.
- Upon final creation of the GARSTEIG-EMBDEN MAINTENANCE DISTRICT, Maple River WRD may levy up to a maximum of \$4 per acre for ag property for O&M, but only as necessary for operation and maintenance.
- On an annual basis, Maple River WRD will review the O&M needs regarding the federal projects and will determine the maintenance levy for that year, anywhere between \$0 up to a maximum of \$4 under current law, all based on need.
- Maple River WRD cannot simply continue to levy maintenance levies in perpetuity without utilizing the funds for O&M; Maple River WRD can only collect up to the equivalent of six years maximum levies.
- Maple River WRD can only use the funds generated by the GARSTEIG-EMBDEN MAINTENANCE DISTRICT for purposes of operating and maintaining Garsteig Dam, Embden Dam, and the federally-constructed channel improvements within the Garsteig-Embden watershed; Maple River WRD cannot use those funds for any other purpose or any other project.



Channel Improvement

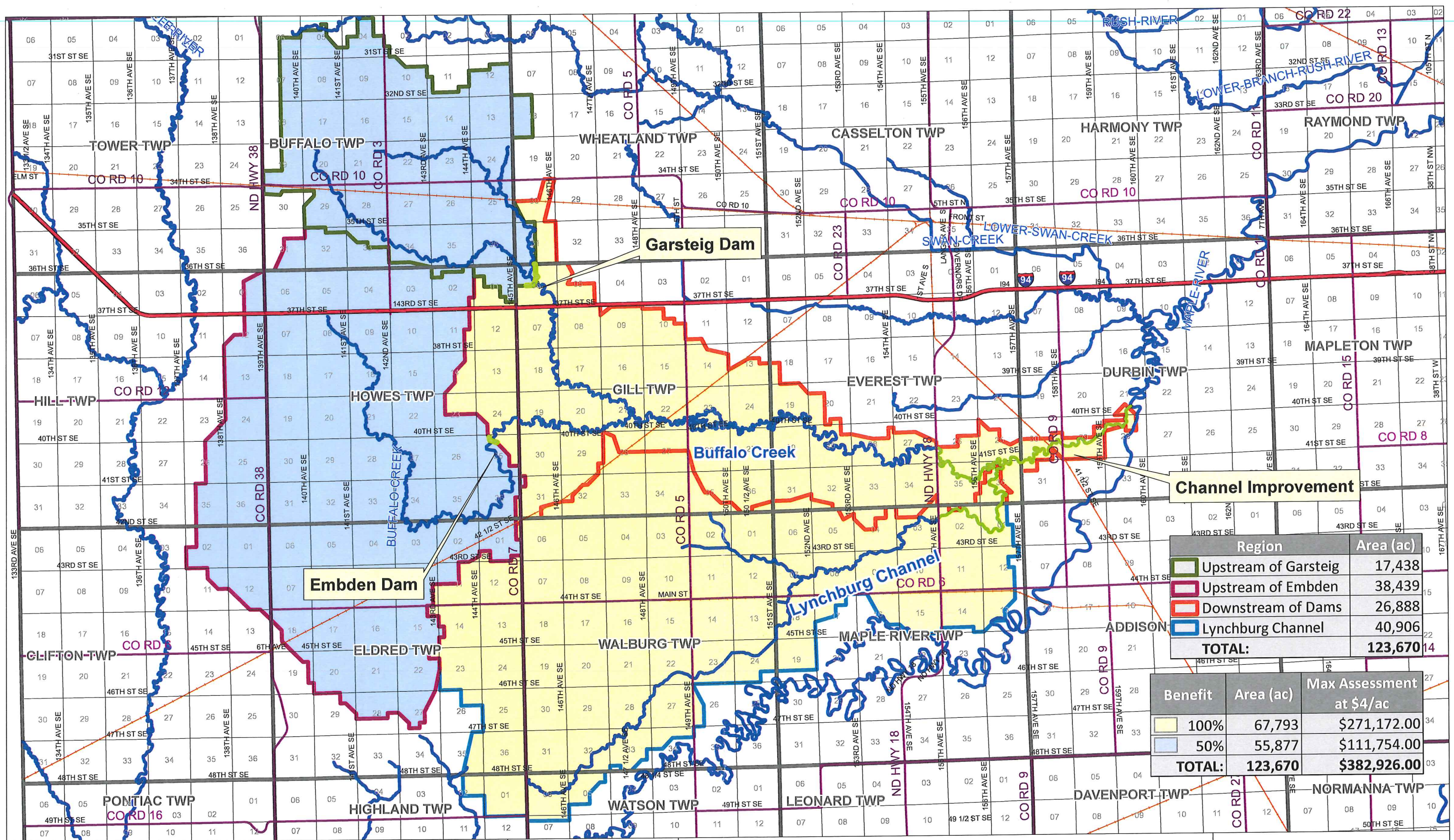
Region	Area (ac)
Upstream of Garsteig	17,438
Upstream of Embden	38,439
Downstream of Dams	26,888
Lynchburg Channel	40,906
TOTAL:	123,670

Benefit	Area (ac)	Max Assessment at \$4/ac
100%	67,793	\$271,172.00
50%	55,877	\$111,754.00
TOTAL:	123,670	\$382,926.00

**BUFFALO CREEK WATERSHED
PROPOSED ASSESSMENT DISTRICT
CASS COUNTY, NORTH DAKOTA**



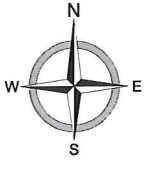
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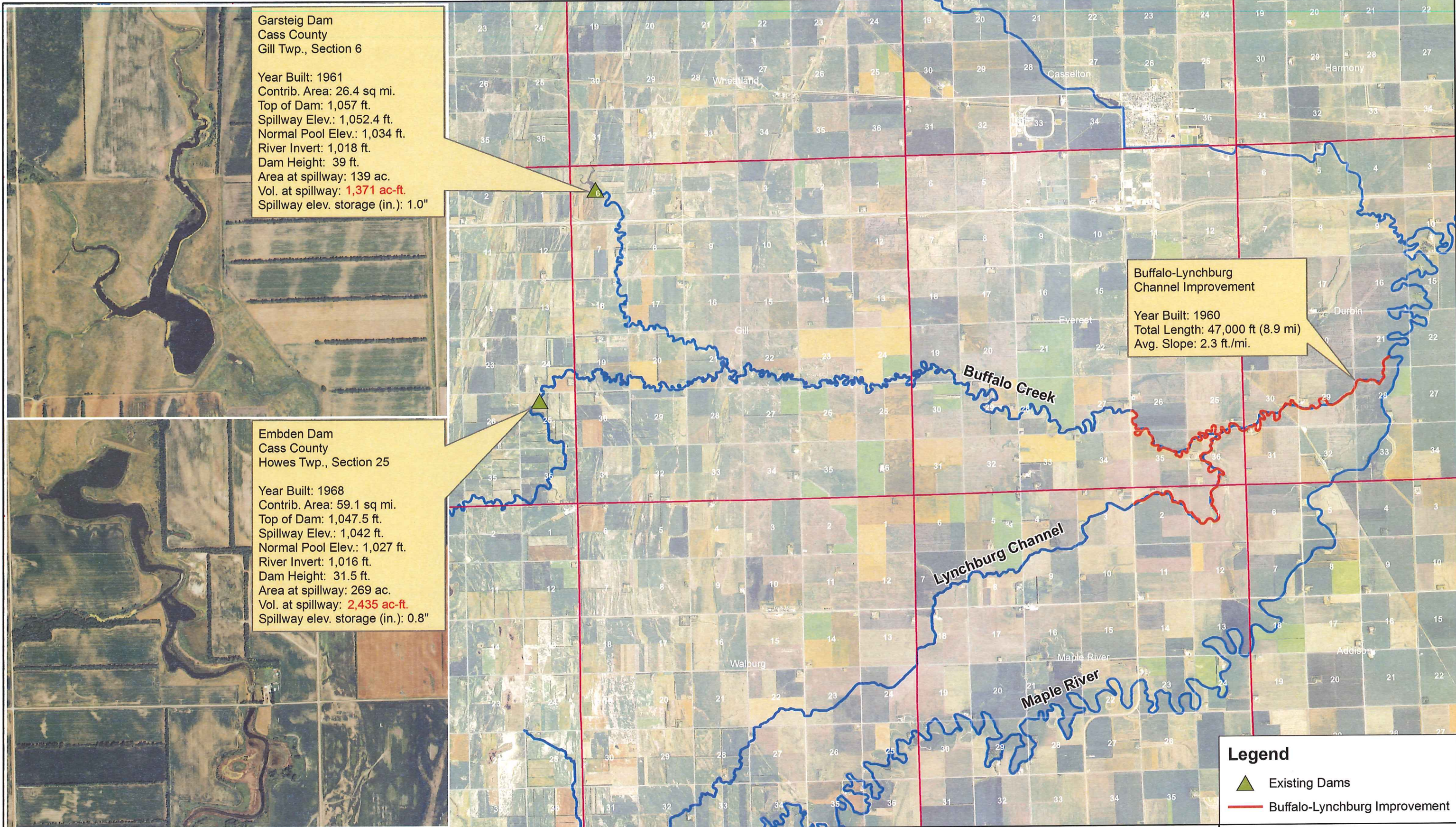
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Garsteig Dam
 Cass County
 Gill Twp., Section 6

 Year Built: 1961
 Contrib. Area: 26.4 sq mi.
 Top of Dam: 1,057 ft.
 Spillway Elev.: 1,052.4 ft.
 Normal Pool Elev.: 1,034 ft.
 River Invert: 1,018 ft.
 Dam Height: 39 ft.
 Area at spillway: 139 ac.
 Vol. at spillway: **1,371 ac-ft.**
 Spillway elev. storage (in.): 1.0"

**Buffalo-Lynchburg
 Channel Improvement**

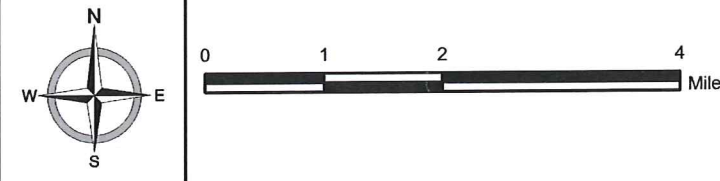
 Year Built: 1960
 Total Length: 47,000 ft (8.9 mi)
 Avg. Slope: 2.3 ft./mi.

Embden Dam
 Cass County
 Howes Twp., Section 25

 Year Built: 1968
 Contrib. Area: 59.1 sq mi.
 Top of Dam: 1,047.5 ft.
 Spillway Elev.: 1,042 ft.
 Normal Pool Elev.: 1,027 ft.
 River Invert: 1,016 ft.
 Dam Height: 31.5 ft.
 Area at spillway: 269 ac.
 Vol. at spillway: **2,435 ac-ft.**
 Spillway elev. storage (in.): 0.8"

Legend
 Existing Dams
 Buffalo-Lynchburg Improvement

Embden and Garsteig Dams showing Buffalo Creek and Lynchburg Channel downstream



Created By: Kyle Haffiger Date Saved: 02/18/2014
 Aerial Image: 2012 County SIDS Elevation Data: IWI Lidar
 Horizontal Datum: NAD 1983 UTM Zone 14N Vertical Datum: NAVD1988
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Clausen Springs Dam

Location: Lower Sheyenne River Watershed. Year of failure: 2009



Absaraka Dam

Location: Swan Creek Watershed. Year of failure: 2009



Cottonwood Creek Dam

Location: Cottonwood Creek. Year of failure: 2009



Renwick Dam

Location: Pembina River Watershed. Year of near failure: 2013