

# ORDINARY HIGH WATER MARK OF THE HISTORICAL MISSOURI RIVER BED



September 27, 2018

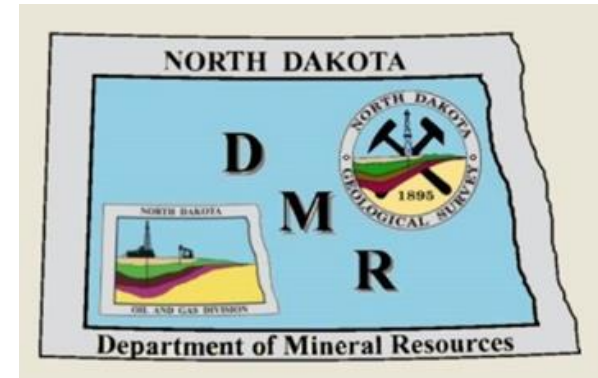
# OUTLINE

- **Introductions.**
- **Brief review of report presentation from last April.**
- **Summary of comments received.**
- **Proposed responses to comments.**
- **Proposed report amendments.**
- **Questions.**



# INDUSTRIAL COMMISSION

## Department of Mineral Resources



- Lynn Helms - Director
- Edward Murphy – State Geologist

# Consulting team members present

**Joel Toso**  
**Project Manager**



**Kale Van Bruggen**  
**Water Law Attorney**



# PROJECT SCOPE AND PURPOSE

- OHWM analysis of historic Missouri River bed under what is now Lake Sakakawea.
- Initiated by State Legislation for reviewing the delineation of state-owned land.
- Presumptive determination is the US Army Corps of Engineers (USACE) survey.

**Goal** – Determine if clear and convincing evidence is present that the USACE survey does not accurately represent the OHWM of the historical Missouri riverbed per state law.

# USACE Survey

**The presumption that the USACE condemned riparian land to the OHWM may be in error.**

- **USACE email – Survey is based on 1943 river bank.**
- **State Engineer – USACE may have acquired land to the OLWM.**
- **USDOI – USACE Survey is the best map, supported by extensive data.**

# OHWM DEFINITION

**In brief, based on N.D.C.C. § 61-33.1-03(3):**

**The OHWM is the point at which the presence of action of the water is so continuous as to destroy the value of the land for agricultural purposes, including hay lands.**



# PROJECT AREA





# SCOPE OF WORK

- Data gathering
- Data analysis
- Presentation of findings
- Publication of findings
- **Comment review and final recommendations**



# WORK SINCE LAST APRIL

- Publication of the findings - The report and supporting information to be made available to the public through a link on the DMR website.
- 60 day public comment period.
- Public hearing (~June 26).
- Address comments and provide recommendations to Commission.

# SUMMARY OF COMMENTS RECEIVED

**22** commenters submitted **1,436** pages of written comments.

**15** commenters at public hearing, including **4** new commenters

# SUMMARY OF COMMENTS RECEIVED

**79** total comments received:

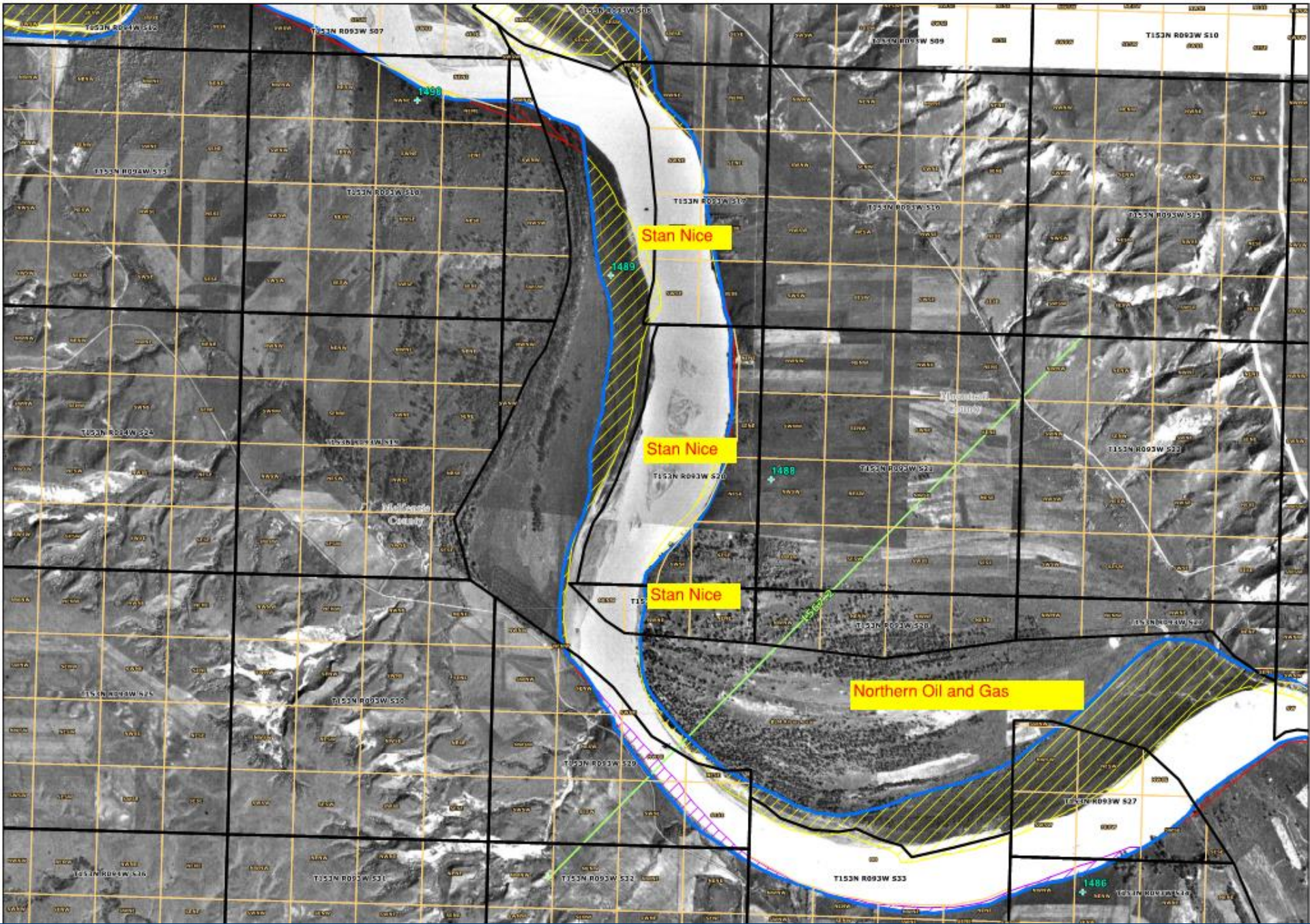
- **37** comments outside scope of ch. 61-33.1
- **20** comments on Wenck Report
  - 9 – methods & analysis
  - 7 – USACE survey v. Wenck Study OHWM definition
  - 5 – terms & definitions
- **22** comments on Wenck's OHWM

# Summary of Comments on OHWM

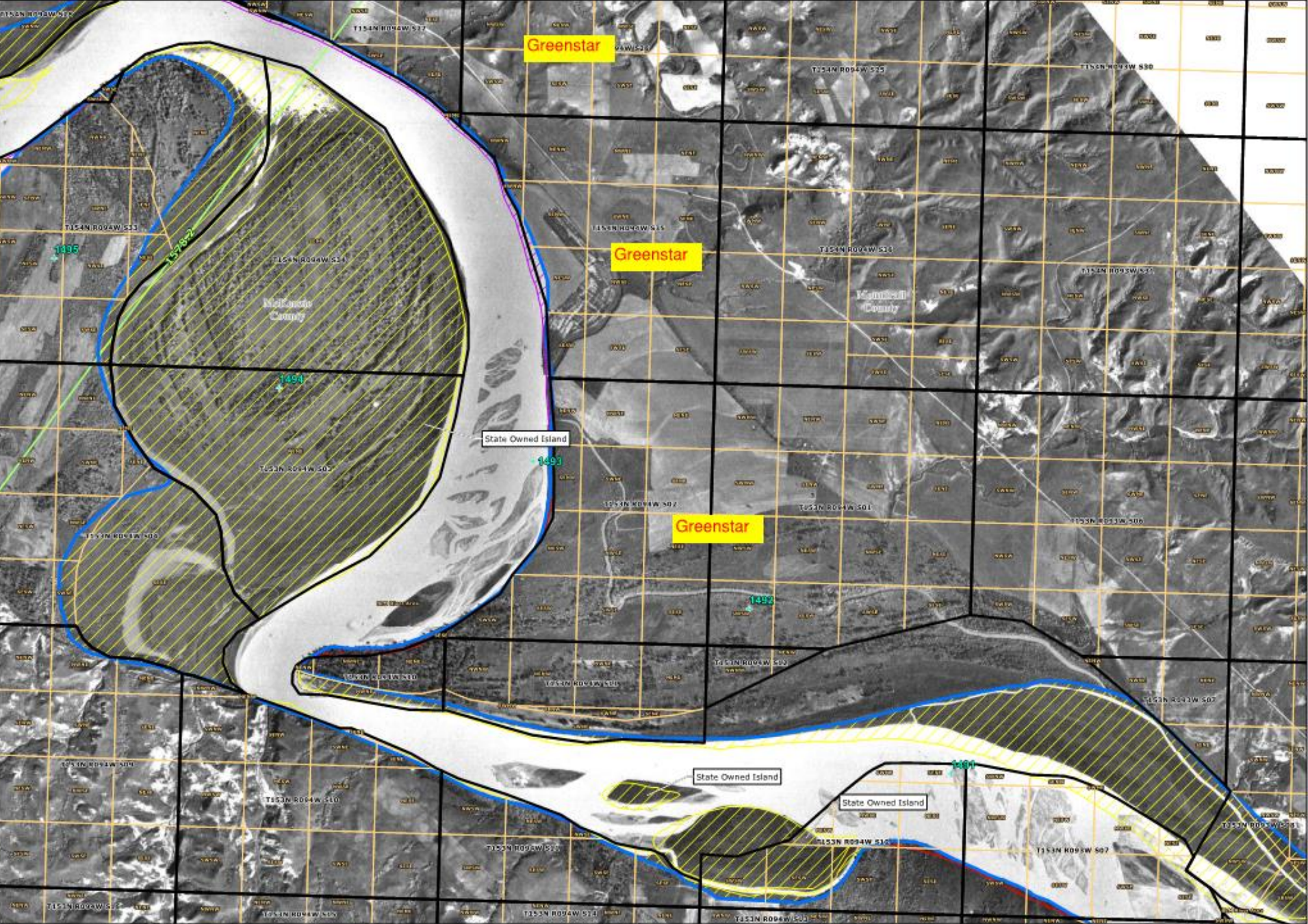
## **22 comments regarding Wenck OHWM**

- **17** comments advocated for excluding additional lands from below the OHWM
  - All were investigated; **4** comments found with merit to recommend excluding additional lands.
- **2** comments advocated for moving the OHWM line inland; after investigation, no recommended change.
- **2** comments supported Wenck's OHWM.
- **1** comment noted error related to ownership of island.





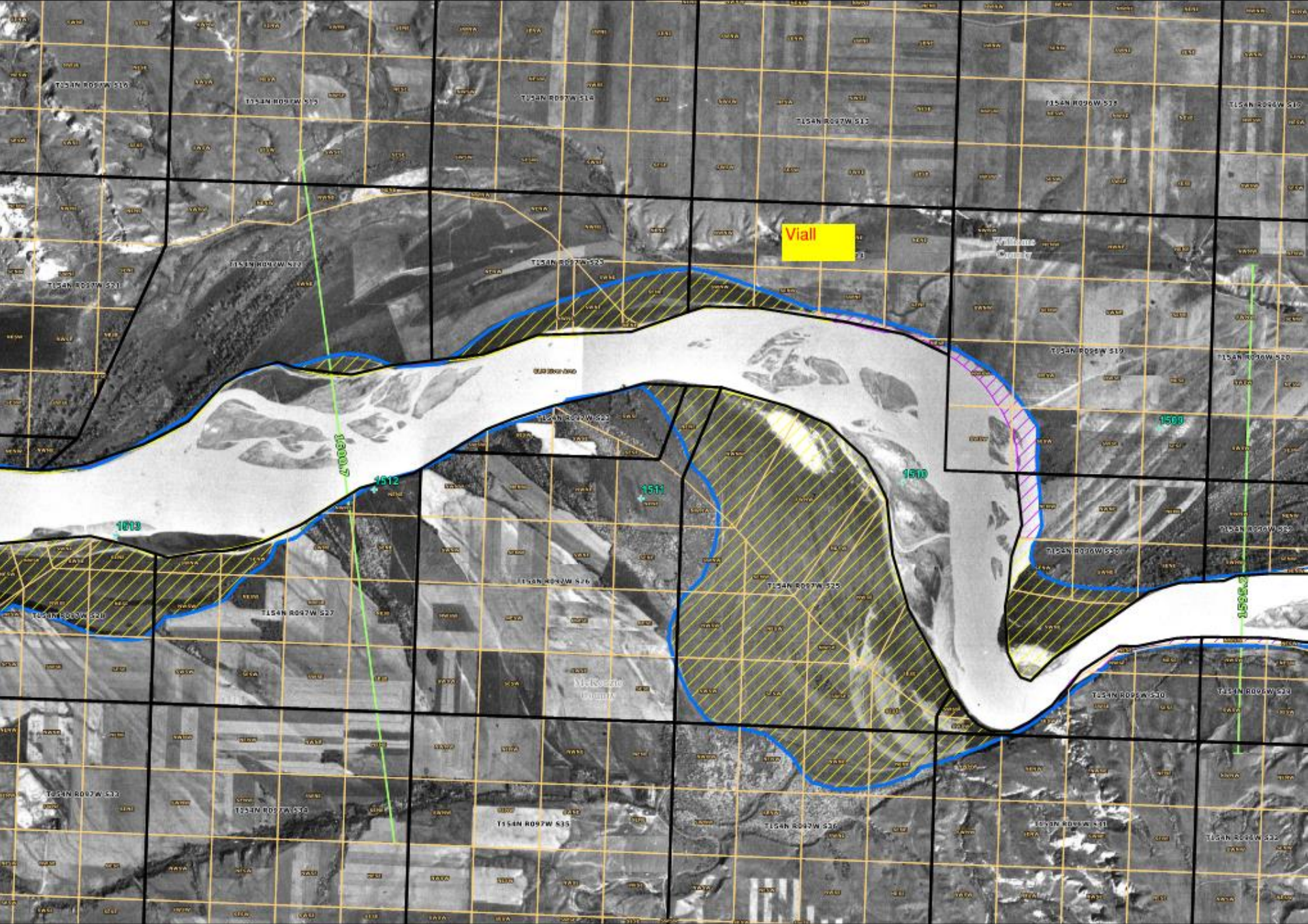




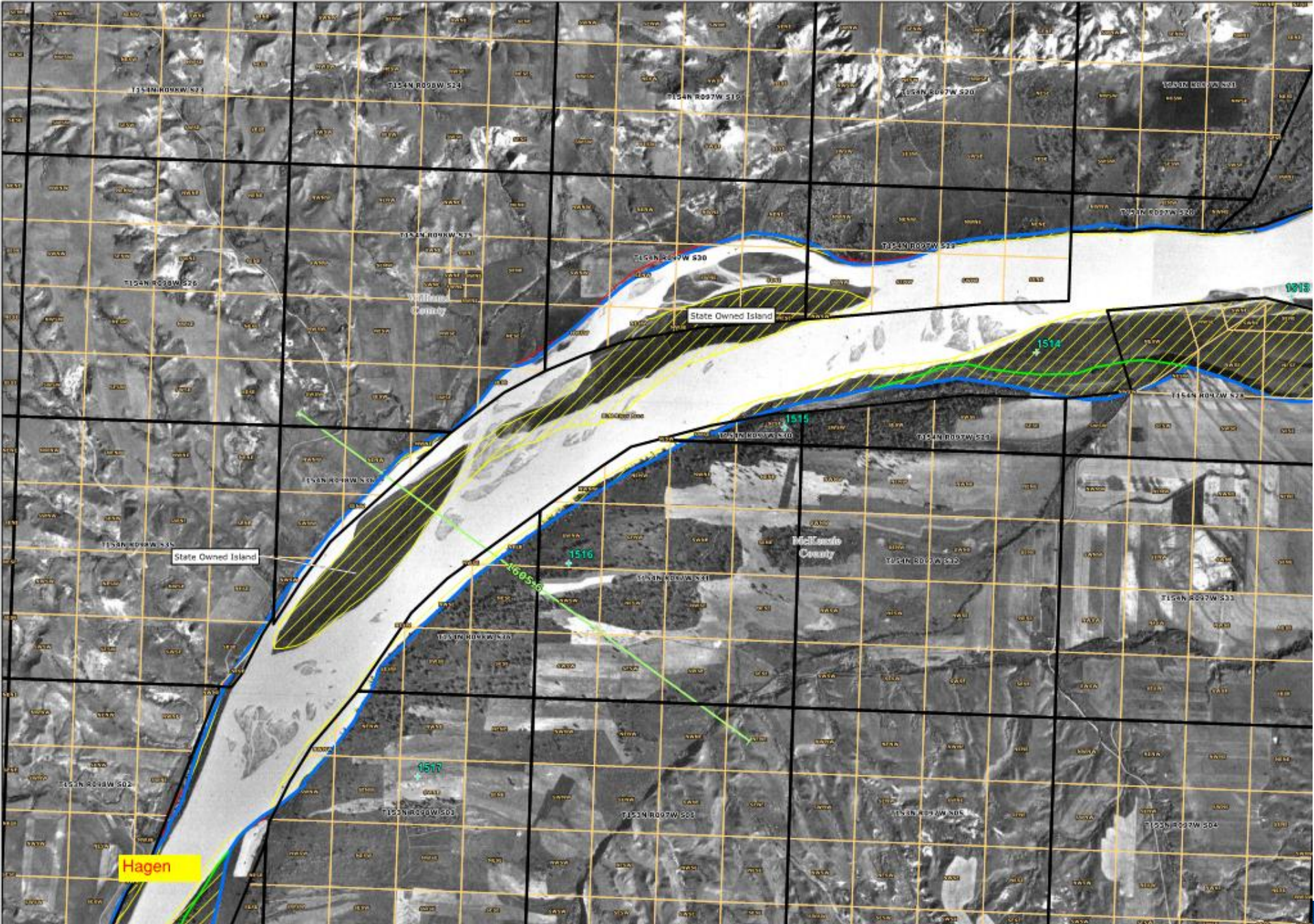








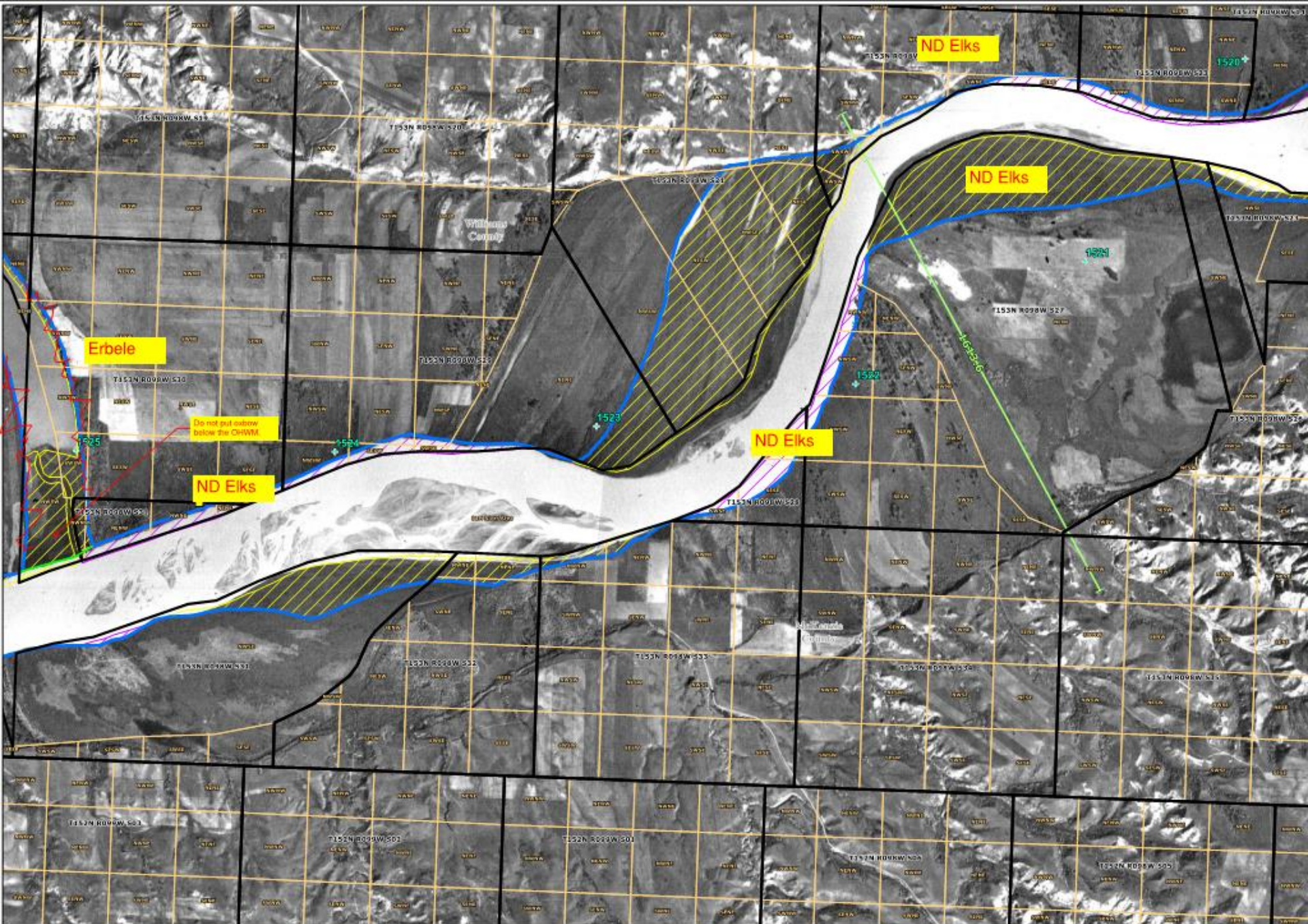




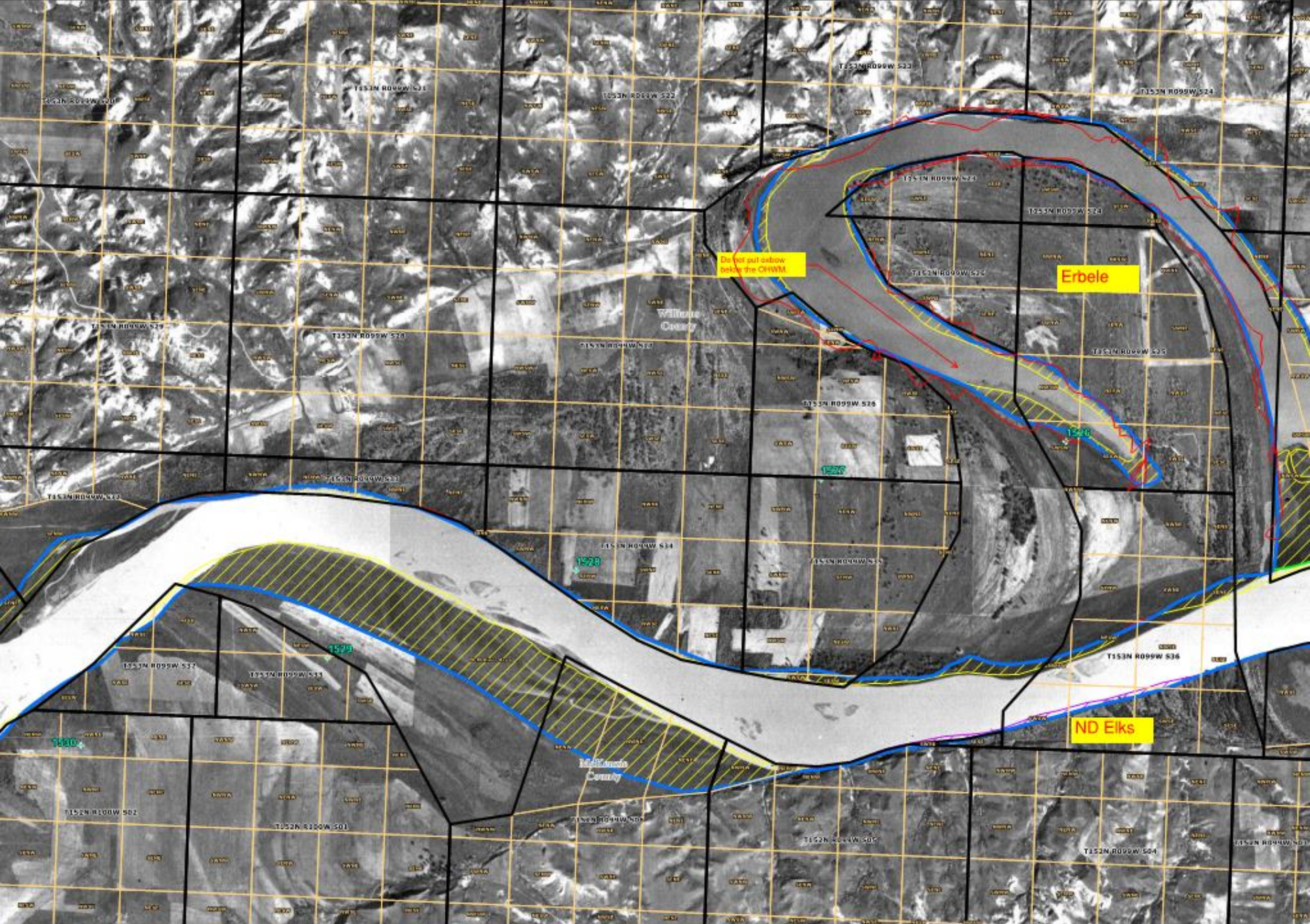




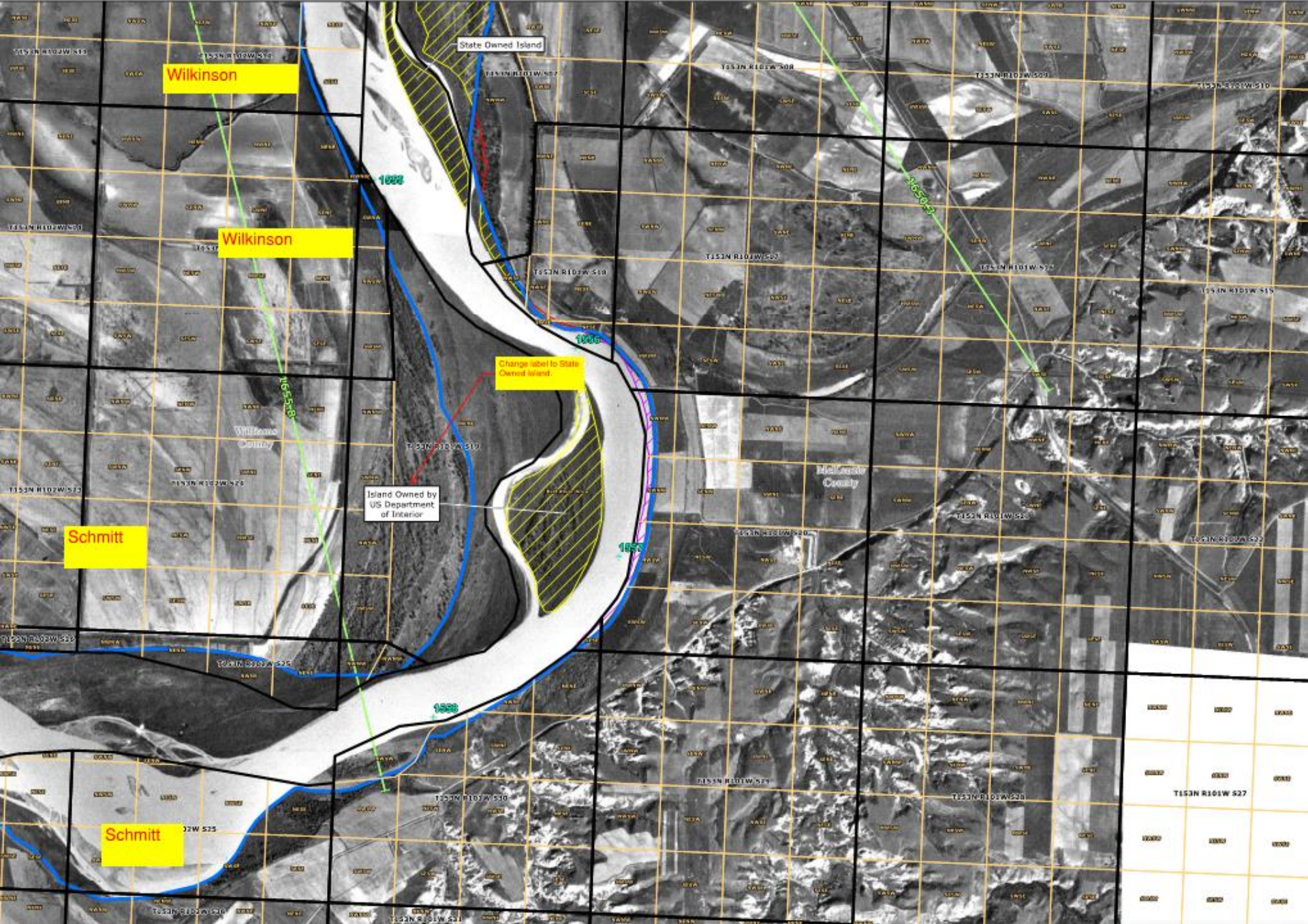












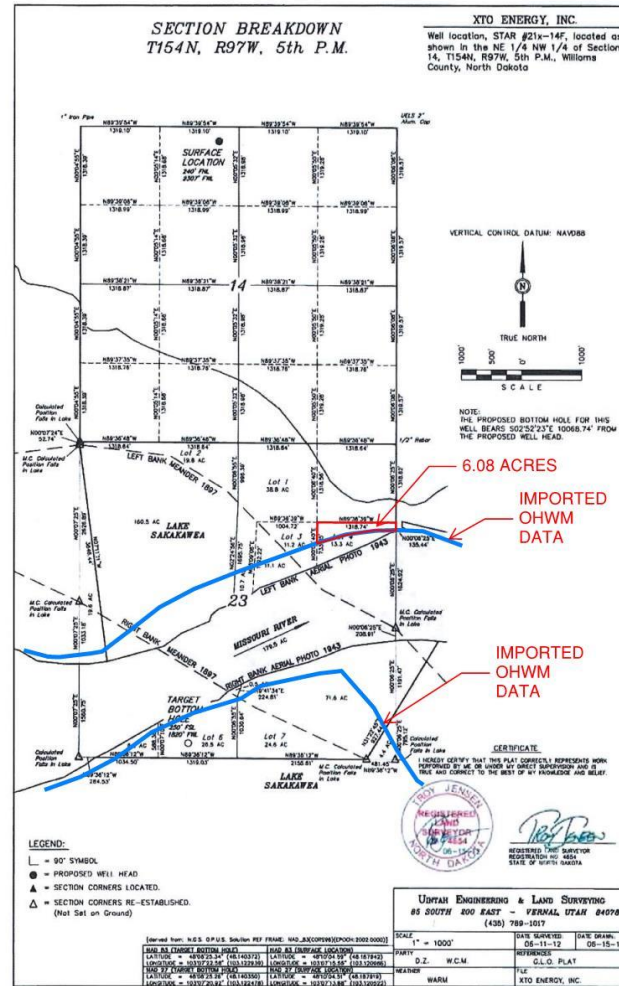
# PROPOSED REPORT AMENDMENTS

- Include edits based on comments from the State Engineer.
- Clarify USACE Survey – may not be to OHWM.
- Edit mapping and areas.
- Include coordinates of OHWM and USACE survey for use by Professional Land Surveyors.

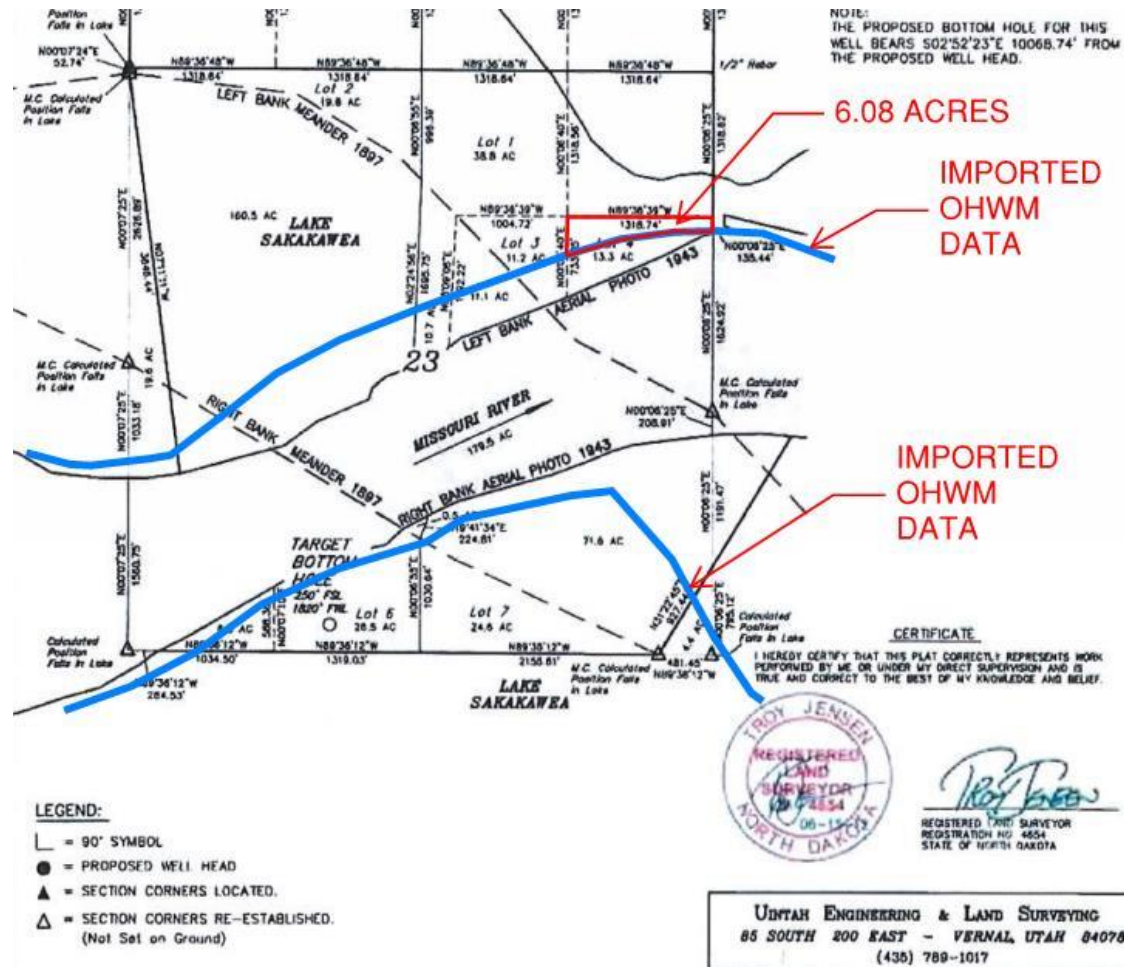


# EXAMPLE OF OHWM DATA USE

## Well Location Map



# EXAMPLE OF OHWM DATA USE



# QUESTIONS?

