



United States Department of the Interior
OFFICE OF THE SOLICITOR
Washington, D.C. 20240

March 12, 2026

M-37088

Memorandum

To: Assistant Secretaries
Bureau and Office Heads

From: Solicitor

Subject: Permanent Withdrawal of Solicitor's Opinion M-37073, *Opinion Regarding the Status of Mineral Ownership Underlying the Missouri River Within the Boundaries of the Fort Berthold Reservation (North Dakota)* (Feb. 4, 2022), and Reinstatement of Solicitor's Opinion M-37056, *Status of Mineral Ownership Underlying the Missouri River within the Boundaries of the Fort Berthold Indian Reservation (North Dakota)* (May 26, 2020).

On March 19, 2021, Solicitor's Opinion M-37066 was issued¹ permanently withdrawing Solicitor's Opinion M-37056.² Solicitor's Opinion M-37056 determined that the bed of the original Missouri River ("Riverbed"),³ where it flows through the Fort Berthold Indian Reservation ("Reservation"), passed to the State of North Dakota ("State") under the Equal Footing Doctrine upon the State's admission to the Union on November 2, 1889.⁴ Following the issuance of Solicitor's Opinion M-37066, a new Solicitor's Opinion was issued on February 4, 2022, M-37073,⁵ which found that the original Riverbed and its underlying minerals were made a part of the Fort Berthold Indian Reservation ("MHA Nation") and, therefore, the original Riverbed and its underlying minerals are held in trust for the MHA Nation.

On February 28, 2025, a memorandum was issued to all assistant secretaries and bureau and office heads within the Department of the Interior stating that "[t]o allow for the requisite legal and policy review, . . . each M-opinion issued between January 20, 2021, and January 20, 2025 (M-opinions numbered M-37065 through M-37084) shall be placed under a 'Suspension Review.'" The memo further stated that the Suspension Review period "shall last until the individual M-opinion has been reviewed and a determination has been made as to whether that M-opinion should be reinstated, modified, or revoked."

Upon my review of Solicitor's Opinion M-37073, I have determined that the legal conclusions reached therein do not decisively establish that the status of ownership of the mineral rights below the Riverbed are held in trust for the MHA Nation. For the reasons detailed in Solicitor's Opinion M-37056, I conclude the better interpretation of applicable law is that the original Riverbed, and

its underlying minerals where the Missouri River flows through the Fort Berthold Indian Reservation, passed to the State upon its admission to the Union under the Equal Footing Doctrine, and are not held in trust for the MHA Nation.⁶

For these reasons, I hereby permanently withdraw Solicitor's Opinion M-37073, and the related Solicitor's Opinion M-37066. I hereby reinstate the legal analysis set forth in Solicitor's Opinion M-37056. All relevant Department bureaus and offices are instructed to treat Solicitor's Opinion M-37056 as binding and authoritative.



William L. Doffenmyre

¹ Principal Deputy Solicitor Anderson, U.S. Dep't of the Interior, M-37066, *Permanent Withdrawal of M-37056, "Status of Mineral Ownership Underlying the Missouri River within the Boundaries of the Fort Berthold Indian Reservation (North Dakota)"* (March 19, 2021) (hereinafter "Solicitor's Opinion M-37066").

² Solicitor Jorjani, U.S. Dep't of the Interior, M-37056, *Status of Mineral Ownership Underlying the Missouri River within the Boundaries of the Fort Berthold Indian Reservation (North Dakota)* (May 26, 2020) (hereinafter "Solicitor's Opinion M-37056").

³ The "original" Riverbed refers to the lands submerged beneath the Missouri River where it flows through the Reservation prior to the impoundment of Lake Sakakawea in 1949 that flooded the Missouri River and its surrounding uplands.

⁴ Solicitor's Opinion M-37056 was issued following a partial suspension and temporary withdrawal of a prior Solicitor's Opinion that addressed the ownership of minerals located beneath the original Riverbed, and ownership of minerals beneath uplands adjacent to the original Riverbed, that were flooded by construction of the Garrison Dam and the formation of Lake Sakakawea impounded behind the Dam. See Acting Solicitor Jorjani, U.S. Dep't of the Interior, M-37052, *Partial Suspension and Temporary Withdrawal of Solicitor Opinion M-37044, "Opinion Regarding the Status of Mineral Ownership Underlying the Missouri River within the Boundaries of the Fort Berthold Reservation (North Dakota)"* (June 8, 2018).

⁵ Solicitor Anderson, U.S. Dep't of the Interior, M-37073, *Opinion Regarding the Status of Mineral Ownership Underlying the Missouri River Within the Boundaries of the Fort Berthold Reservation (North Dakota)* (Feb. 4, 2022) (hereinafter "Solicitor's Opinion M-37073").

⁶ Solicitor's Opinion M-37056 *supra* n.2.