

TESTIMONY OF

Aaron Carranza, Division Director, Regulatory Division

Chairman Luick, and members of the Senate Agriculture and Veterans Affairs Committee, I am Aaron Carranza the Regulatory Division Director of the Department of Water Resources. I'm here today to provide neutral testimony of House Concurrent Resolution 3018.

As everyone here today is aware, Devils Lake has had a complex and colorful history, even before North Dakota became a state. The dramatic fall and rise of the lake's water levels over the last century and a half has had a profound effect on people and homes, farms and ranches, and cities and roads in the area. The fluctuating lake water levels have also raised several important questions relative to land ownership, title interests, and taxation.

When looking to address these questions and provide guidance and surety to those affected, it is important to first identify what we do know relative to the questions at hand so that we might clearly identify what remains to be answered and form an efficient strategy moving forward.

I would like to first provide some background, key definitions, and key answers from various court decisions relative to the issues and questions before us.

Background

Each of the thirteen original colonies, at the time of independence, gained ownership of the land beneath navigable waters. "[T]he people of each state became themselves sovereign; and in that character hold the absolute right to all their navigable waters and soils under them, for their own common use." *Martin v. Wadell's Lessee*, 41 U.S. 367, 410 (1842). In 1845, the United States Supreme Court concluded that states entering the union after 1789 did so on an "equal footing" with the original States and so have similar ownership over these "sovereign lands."

Congress confirmed States' equal footing rights to submerged lands beneath inland navigable waters when it enacted the Submerged Lands Act of 1953, 67 Stat. 29 (1953), 43 U.S.C. 1301 et seq. The Act "confirmed" and "established" States' title to and interest in "lands beneath navigable waters within the boundaries of the respective States."

As such, North Dakota acquired title to the bed and banks of Devils Lake and other navigable lakes and streams up to the ordinary high water mark incidental to statehood in 1889 under the Equal Footing Doctrine.

Key Definitions

Navigable waters "means waters that were in fact navigable at the time of statehood, and that are used, were used, or were susceptible of being used in their ordinary condition as highways for commerce over which trade and travel were or may have been conducted in the customary modes of trade on water." North Dakota Century Code (N.D.C.C.) § 61-33-01(3)

Ordinary high water mark "means that line below which the presence and action of the water upon the land is continuous enough so as to prevent the growth of terrestrial vegetation, destroy its value for agricultural purposes by preventing the growth of what may be termed an ordinary agricultural crop, including hay, or restrict its growth to predominantly aquatic species." N.D.C.C. § 61-33-01(4)

Sovereign lands "means those areas, including beds and islands, lying within the ordinary high watermark of navigable lakes and streams." N.D.C.C. § 61-33-01(5)

Relicted land is land that was covered with water, but which is uncovered by the imperceptible recession of the water.¹

Submergence is the converse of reliction and involves the imperceptible rise in water level so that land formerly free of water becomes submerged.¹

Legal Insights

The North Dakota Supreme court has rendered several decisions relevant to the effects of fluctuating nature of Devils Lake. The following are citations from those court decisions.

"The district court has further ruled that, at the time of North Dakota's statehood, the ordinary high water mark was the meander line. Consequently, the State acquired title to the bed of Devils Lake up to the meander line."¹

"The land acquired by the plaintiffs or their predecessors in interest through United States or State patent was adjacent to the ordinary high water mark of West Bay at the time of the original survey. Therefore, these lands are riparian in character."¹

"Title to riparian land carries unique benefits and burdens. It carries the benefit of reliction. Conversely, riparian land is burdened by submergence."¹

¹ 101 Ranch v. United States, 714 F. Supp. 1005 (D.N.D. 1988)

"When relicted lands are created, the upland owner takes title to those lands and is not accountable for the gain."¹

"When this happens (submergence), title to submerged lands reverts to the State and the loss is uncompensated."¹

"As noted earlier, the water line, no matter how it shifts, remains the property boundary around Devils Lake."¹

"Thus, the ordinary high water mark is not a fixed line, but is instead ambulatory."²

"The extent of the State's and the adjacent landowner's title fluctuates with the water line as it exists from time to time."³

The North Dakota Attorney General has provided guidance on the questions of "Who takes title to relicted land?" and "Would a pre-submergence nonriparian owner become the riparian owner with rights to all relicted lands as the lake recedes?" in the absence of court direction.

Attorney General Opinion 2004-L-33 (enclosed to my testimony online) states (emphasis added):

"The North Dakota Supreme Court in Perry v. Erling, 132 N.W.2d 889 (N.D. 1965), has indirectly examined a variation of the issue you present. In Perry, land which was originally surveyed as riparian was submerged by the encroaching Missouri River; the encroachment caused land, originally surveyed as nonriparian, to become riparian. The Perry Court concluded that when the river shifted back, causing the land originally surveyed as riparian to reemerge, title to the reemerging land *rested with the owner of the original riparian land and not with the owner of the original nonriparian land.*"

"Although the North Dakota Supreme Court has not directly addressed this issue relative to Devils Lake, *it is possible that the Court would expand upon the precedent set in Perry and 101 Ranch, and allow title to formally inundated riparian land to revert to the person who owned it prior to inundation.*"

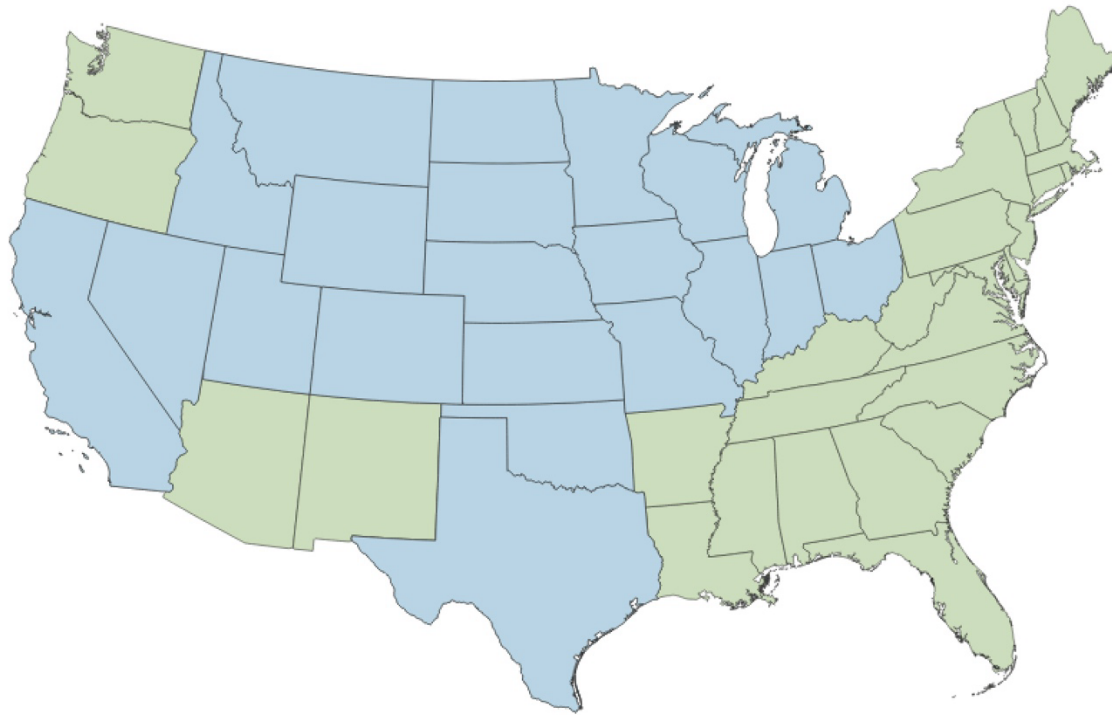
Proposed Study Language

Where the "whereas" justification are specific to navigable waters and the online testimony are specific to lands submerged by Devils Lake, a state navigable water, the study direction is much less specific.

² State ex rel. Sprynczynatyk v. Mills, 1999 ND 75, 592 N.W.2d 591

³ Matter of Ownership of Bed of Devils Lake, 423 N.W.2d 141 (1988)

For context, as was presented to this committee under a different bill earlier in the session, during this past interim, the Department of Water Resources sought to close an information gap in understanding water management in geographically similar states to North Dakota and thus commissioned a study to research current surface water management practices in the 21 states shown below in blue.



The Department's study concluded at the end of December 2024. A summary report with recommendations, along with an appendix of the state-specific regulations, were provided and are available here: https://www.dwr.nd.gov/info_edu/reports_and_publications/

The report generated a gargantuan amount of information, leading to recommendations (as noted below) that suggested further research and investigation.

- 1. Implement Ongoing Tracking Across the Key States:** Continue to track developments in watershed management across the Key States in order to facilitate future discussions or identify new trends.
- 2. Follow up with Key States' State Agencies Directly:** NDDWR may choose to follow up directly with the relevant state agencies to gather more precise and up-to-date information on specific areas of interest. The following states, in particular, have been identified for follow-up: Utah, Nebraska, Minnesota, Iowa, and Wyoming.
- 3. Support Cross-Political Boundary Water Management:** NDDWR may consider working with the legislature and water stakeholders to further study Joint WRDs and evaluate the potential for them to serve in an advisory capacity over the political-boundary based WRDs or to assist in broader

water management planning. States identified with cross-jurisdictional regulations are Montana, Colorado, Idaho, Utah, Nevada, and Nebraska.

4. **Incentivize Research into Surface Water Data Collection and Mapping Efforts:** North Dakota may choose to provide grant funding to Joint WRDs or other watershed-based political subdivisions in order for them to research and model the unique hydrology of their watershed.
5. **Further Research Appeal and Dispute Resolution Pathways:** NDDWR may consider working with the North Dakota's legislature, and water stakeholders to consider doing a further review of North Dakota's administrative remedies to identify efficiencies and assure effective management for surface water. States identified with unique administrative remedies are Montana, Colorado, Idaho, Utah, Nevada, and Nebraska.

The point of including this here is that the above effort to aggregate data from 21 states cost the Department just under \$100,000 and many hours of staff time to get to the final product. The current bill appears to be even more broad in scope than the Department's study. The Department supports using its recently completed report as a starting point on whatever final study may be chosen via HCR 3018.

The Department recognizes that there are specific concerns and questions that seek answers and suggests that refining the study direction language to be much more specific to these concerns and questions may help lead to an actionable result from the study effort.

To aid in developing study language that efficiently answers outstanding questions that remain unanswered, the Department neutrally suggests the following language to replace lines 22 through 23 on page 1 and lines 1 through 7 on page 2 of HCR 3018 with:

That Legislative Management shall consider studying taxation, title interests, and conveyance of submerged lands as a result of the changing water levels of Devils Lake; and

BE IT FUTHER RESOLVED, the study must include an examination of what, if any, title interests are retained by the record title holder of submerged lands; what, if any, local taxation of submerged lands is allowed by existing state law; what, if any, rights to convey interests are retained by the record title holder of submerged lands; and

Thank you for the opportunity to testify, and I'm happy to answer any questions.

LETTER OPINION
2004-L-33

May 11, 2004

Mr. Michael Connor
Manager
Devils Lake Basin Joint Water Resource Board
524 4th Avenue #27
Devils Lake, ND 58301

Dear Mr. Connor:

Thank you for your letter asking questions related to Devils Lake.¹ For the reasons discussed below, it is my opinion that as Devils Lake rises or recedes, the adjacent landowner will take title down to the ordinary high water mark, the State will take title to lands up to the ordinary low water mark, and the adjacent landowner and the State will have correlative rights to the area in between the two marks known as the shorezone; any financial assistance received by landowners related to land inundated by Devils Lake will likely not adversely affect the State's property interest in the bed of Devils Lake; debris removal on land exposed by the receding lake will be governed by N.D.C.C. § 61-03-23.1 if applicable, and, if not applicable, will be the responsibility of the landowner for land above the ordinary high water mark; the courts have historically, without much explanation, applied laws determining the boundaries of navigable bodies of water to both rivers and lakes; and if Devils Lake continues to rise, State ownership may follow rising waters to inundated lands.

ANALYSIS

As you know, Devils Lake is a large freshwater lake in northeast North Dakota whose elevation has fluctuated widely. During Devils Lake's most recent rise beginning in the 1940's, the lake has risen and inundated many acres of developed land surrounding Devils Lake.

¹ You also ask questions relating to the operation of the Devils Lake outlet. This office will not issue an opinion on matters in which it is currently engaged in litigation. The State has, in fact, been sued over the outlet. Two groups have appealed the North Dakota Pollutant Discharge Elimination System Permit issued for the outlet by the North Dakota Department of Health to the State Water Commission. Consequently, this office respectfully declines to answer questions relating to the outlet.

Today, Devils Lake's elevation is over 1,447 feet mean sea level (msl). You ask if Devils Lake rises to 1,450' msl, whether the additional acreage inundated becomes State property. The essence of your question is whether the State's title to the bed of Devils Lake can expand. Conversely, you ask how ownership will be determined if the lake recedes. The answers to your questions require an analysis of why the State has absolute title to beds of navigable waters and principles of water and property law.

Upon achieving independence from Great Britain, each American colony became sovereign. As such, they held "the absolute right to all their navigable waters and the soils under them . . . subject only to the rights since surrendered by the constitution to the general government." Martin v. Waddell's Lessee, 41 U.S. 367, 410 (1842). Since the beds of navigable waters were not surrendered by the U.S. Constitution to the federal government, they were retained by the states. Mumford v. Wardwell, 73 U.S. 423, 436 (1867). New states admitted to the Union were entitled to the same rights as those held by the original states. Id.; Pollard v. Hagan, 44 U.S. 212, 224, 228-29 (1845). This concept is the equal footing doctrine. See Utah Division of State Lands v. United States, 482 U.S. 193, 195-196 (1987). Indeed, North Dakota's Enabling Act states that North Dakota shall be "admitted . . . into the union . . . on an equal footing with the original States" 25 Stat. 676, 679 (1889) reprinted in 13 N.D.C.C. p. 63 (1981).

Under the equal footing doctrine, upon North Dakota's admission to the Union it took title to the sovereign lands within the state. State v. Brace, 36 N.W.2d 330, 332 (N.D. 1949). "The starting legal principle is that a state acquires, as an incident of statehood, title to the beds of all navigable bodies of water within its boundaries" 101 Ranch v. United States, 714 F. Supp. 1005, 1013 (D.N.D. 1988), aff'd, 905 F.2d 180 (8th Cir. 1990). See also J.P. Furlong Enterprises, Inc. v. Sun Exploration and Production Co., 423 N.W.2d 130, 132 (N.D. 1988) (same). This title is "absolute," Oregon ex rel. State Land Bd. v. Corvallis Sand and Gravel Co., 429 U.S. 363, 372, 374 (1977), and has been confirmed by the Submerged Lands Act. 43 U.S.C. § 1311(a). Thus, the State has absolute title to the beds of navigable waterways.²

Devils Lake is navigable. See In re Matter of the Ownership of the Bed of Devils Lake, 423 N.W.2d 141 (N.D. 1988); Rutten v. State, 93 N.W.2d 796 (N.D. 1958); Devils Lake Sioux Tribe v. State of North Dakota, 917 F.2d 1049 (8th Cir. 1990); 101 Ranch, 714 F.

² Although North Dakota took title to the bed of Devils Lake at statehood, in 1971, as part of the Garrison Diversion water project, the State conveyed to the United States by quitclaim deed all land "lying below the meander line in the Devils Lake-Stump Lake chain of lakes." 101 Ranch v. United States, 905 F.2d 180, 184 (8th Cir. 1990). "The 1971 deed expressly conveyed the lakebed by reference to pools in the lake." Id. at 184 n.9. The fact that the State conveyed certain lands to the United States should not affect the principles of law governing boundary determinations.

Supp. 1005; 101 Ranch, 905 F.2d 180; National Wildlife Federation v. Alexander, 613 F.2d 1054 (D.C. Cir. 1979). The next logical question is to what extent does the State's and adjacent landowners' ownership of a navigable body of water change as the lake rises and falls?

The boundary of a tract of land abutting a navigable body of water is ordinarily formed by a water line. In re Ownership of the Bed of Devils Lake, 423 N.W.2d at 143.³ The boundary is generally discussed by reference to the ordinary low water mark, the ordinary high water mark, and the area between those two marks which is referred to as the "shorezone." The State owns absolute title to the bed of navigable bodies of water up to the low watermark. State ex rel. Sprynczynatyk v. Mills, 523 N.W.2d 537, 540 (N.D. 1994) (citing Hogue v. Bourgois, 71 N.W.2d 47, 52 (1955)). The adjacent or upland owner owns title to the ordinary high water mark. Both the State and the upland owner have correlative rights between the ordinary high water mark and the ordinary low water mark known as the shorezone. State ex rel. Sprynczynatyk, 523 N.W.2d at 544-45.

Section 61-15-01, N.D.C.C., defines the ordinary high water mark as "that line reached by water when lake or stream is ordinarily full and the water ordinarily high." In a case involving the ordinary high water mark of Devils Lake, the Court explained:

"'High Water Mark' means what its language imports -- a water mark. It is co-ordinate with the limit of the bed of the water; and that only is to be considered the bed which the water occupies sufficiently long and continuously to wrest it from vegetation, and destroy its value for agricultural purposes. . . . In some places, however, where the banks are low and flat, the water does not impress on the soil any well-defined line of demarcation between the bed and the banks.

In such cases the effect of the water upon vegetation must be the principal test in determining the location of high-water mark as a line between the riparian⁴ owner and the public. It is the point up to which the presence and action of the water is so continuous as to destroy the value of the land for agricultural purposes by preventing the growth of vegetation, constituting what may be termed an ordinary agricultural crop."

In re Ownership of the Bed of Devils Lake, 423 N.W.2d at 144-5 (quoting Rutten v. State, 93 N.W.2d 796, 799 (N.D. 1958)). The doctrines of reliction and submergence

³ Because the water level of the lake may rise or fall before the ordinary high water mark is established, at any given time, the water level could be below or above the ordinary high water mark.

⁴ Riparian means 'belonging or relating to the bank of a river or stream; of or on the bank.' North Shore, Inc. v. Wakefield, 530 N.W.2d 297, 298 at n.1 (N.D. 1995).

define the boundary between public and private interests. 101 Ranch, 905 F.2d at 183. Relicted land is that which was covered with water, but which was uncovered by the imperceptible recession of the water. 101 Ranch, 714 F. Supp. at 1014 (citing Bear v. United States, 611 F. Supp. 589, 593 n.2 (D. Neb. 1985), aff'd, 810 F.2d 153 (8th Cir. 1987)). When relict lands are created, the upland owner takes title to those lands; the doctrine of reliction causes the title to riparian land to be ambulatory. 101 Ranch, 714 F. Supp. at 1014 (citing Oregon ex rel. State Land Board v. Corvallis Sand & Gravel Co., 429 U.S. at 386, and California ex rel. State Lands Com'n v. United States, 805 F.2d 857, 864 (9th Cir. 1986)).

“Submergence is the converse of reliction and involves the imperceptible rise in water level so that land formerly free of water becomes submerged.” 101 Ranch, 714 F. Supp. at 1014 (citing Municipal Liquidators, Inc. v. Tench, 153 So.2d 728 (Fla. 1963)). When this happens, title to submerged lands reverts to the State and the loss is uncompensated. 101 Ranch, 714 F. Supp. at 1014. Thus, the ordinary high water mark is not a fixed line, but is instead ambulatory. In re Ownership of the Bed of Devils Lake, 423 N.W.2d at 144-5 (quoting Rutten v. State, 93 N.W.2d 796, 799 (N.D. 1958)). The extent of the State’s and the adjacent landowner’s title fluctuates with the water line as it exists from time to time. State ex rel. Sprynczynatyk v. Mills, 592 N.W.2d at 592 (citing In re Ownership of the Bed of Devils Lake, 423 N.W.2d at 143-144).

Typically, ordinary high water mark determinations only arise due to court actions. There have been at least two North Dakota Supreme Court cases and one federal district court case discussing ordinary high water mark determinations for Devils Lake. In Rutten v. State, the plaintiff argued and the district court agreed that the ordinary high water mark was 1,419 feet msl. Rutten, 93 N.W.2d at 798. The North Dakota Supreme Court, however, analyzed the historical rises and falls of the lake and concluded that the evidence was insufficient to sustain the plaintiff’s contention that the waters of Devils Lake had permanently receded and that the ordinary high water line of the lake was 1,419 feet msl. Id. at 798-99. The Court explained that “the evidence before the court fails to warrant the conclusion that there has been a permanent reliction to the present level of the lake, or that the waters in the lake will never again reach some higher level.” Id. at 799. In 1988, the North Dakota Supreme Court determined that the ordinary high water mark was 1,426 feet msl. In re Ownership of the Bed of Devils Lake, 423 N.W.2d at 143. The same year, however, the North Dakota federal district court determined the ordinary high water mark to be 1,427 feet msl. 101 Ranch, 714 F. Supp. at 1008 (D.N.D. 1988). I am unaware of any additional court determinations relative to Devils Lake’s ordinary high water mark. These cases illustrate the ambulatory nature of title to land adjacent to Devils Lake.

In some cases, land that was not riparian to the lake may now be inundated by Devils Lake. In a conversation you had with a member of my staff, you asked whether the nonriparian owner would become the owner of the riparian land if Devils Lake recedes below that riparian land. The North Dakota Supreme Court in Perry v. Erling, 132

N.W.2d 889 (N.D. 1965), has indirectly examined a variation of the issue you present. In Perry, land which was originally surveyed as riparian was submerged by the encroaching Missouri River; the encroachment caused land, originally surveyed as nonriparian, to become riparian. Id. at 897. The Perry Court concluded that when the river shifted back, causing the land originally surveyed as riparian to reemerge, title to the reemerging land rested with the owner of the original riparian land and not with the owner of the original nonriparian land. Id.

Although the North Dakota Supreme Court has not directly addressed this issue relative to Devils Lake, it is possible that the Court would expand upon the precedent set in Perry and 101 Ranch, and allow title to formerly inundated riparian land to revert to the person who owned it prior to inundation.

You ask if the State's ownership will be affected if landowners receive financial assistance for inundated land without State involvement. Generally, the State's title to land is unaffected by an exchange of money between landowners and a third party. See 101 Ranch, 714 F. Supp. 1005. It is difficult to imagine a situation in which an arrangement or transaction between a landowner and another person will adversely affect the State's property interest.

You ask who is responsible for debris removal from land currently inundated as the water recedes. For instance, debris such as dead tree groves (fallen and standing), abandoned machinery, and other objects that might be considered garbage may be left behind by receding waters on the newly exposed land.

In 1997, the North Dakota Legislature passed N.D.C.C. § 61-03-21.3, giving the State Engineer the authority to order the removal, modification, or destruction of dangers in, on the bed of, or adjacent to a navigable lake. The law provides in part:

If the state engineer finds that buildings, structures, boat docks, debris, or other manmade objects, except a fence or corral, situated in, on the bed of, or adjacent to a lake that has been determined to be navigable by a court are, or are imminently likely to be, a menace to life or property or public health or safety, the state engineer shall issue an order to the person responsible for the object. The order must specify the nature and extent of the conditions, the action necessary to alleviate, avert, or minimize the danger, and a date by which that action must be taken The person responsible is the person who owns or has control of the property on which the object is located, or if the property is inundated with water, the person who owned or had control of the property immediately before it became inundated by water.

Id.

In cases where N.D.C.C. § 61-03-21.3 does not apply, for instance, if the debris did not constitute a menace to life, property, or public health or safety, other principles would govern. As noted earlier, the water line, no matter how it shifts, remains the property boundary around Devils Lake. 101 Ranch, 802 F.2d at 184-185 (citing Oberly v. Carpenter, 274 N.W. 509, 513 (1937); Jefferis v. East Omaha Land Co., 134 U.S. 178, 196 (1890)). Thus, if the water level drops, the owner of previously inundated land would regain absolute ownership to land above the ordinary high water mark and be responsible for debris removal assuming, of course, that either state or local law required the removal. Between the ordinary high water mark and the low water mark there is a zone along the shoreline wherein the State and the landowner have correlative rights. In State ex rel. Sprynczynatyk v. Mills, 523 N.W.2d at 544, the North Dakota Supreme Court declined to specify the rights of riparian landowners and the State: "The shore zone presents a complex bundle of correlative, and sometimes conflicting, rights and claims which are better suited for determination as they arise. Any precise delineation of parties' rights in this situation would be advisory." The Court did, however, cite to a Minnesota Supreme Court decision wherein that court explained:

"While the title of a riparian owner in navigable or public waters extends to ordinary low-water mark, his title is not absolute except to ordinary high-water mark. As to the intervening space his title is limited or qualified by the right of the public to use the same for purpose of navigation or other public purpose. The state may use it for any such public purpose, and to that end may reclaim it during periods of low water, and protect it from any use, even by the riparian owner, that would interfere with its present or prospective public use, without compensation. Restricted only by that paramount public right the riparian owner enjoys proprietary privileges, among which is the right to use the land for private purposes."

Id. at 543-44 (quoting State v. Korrer, 148 N.W. 617 (Minn. 1914)). Thus, neither the State nor the riparian landowner have absolute title to the shorezone, although the riparian landowner can use his or her land as long as the landowner does not interfere with the public's use of the zone. Based upon the lack of direction from the North Dakota Supreme Court relative to the extent of correlative interests and the potential for numerous factual scenarios, I am unable to issue an opinion whether it is the State or private landowner who would be responsible for debris removal in the shorezone when N.D.C.C. § 61-03-21.3 is not applicable.

You ask how laws designed to resolve "river" disputes can be applied to lakes. Historically, when analyzing the boundaries of navigable bodies of water, North Dakota courts have not distinguished between rivers and lakes. In Roberts v. Taylor, 181 N.W. 622, 625 (N.D. 1921), the North Dakota Supreme Court explained that "in this state a lake is differentiated from a water course only in that it is simply an enlarged water course wherein the water may flow or a basin wherein the waters are quiescent." In In re Matter of Ownership of Bed of Devils Lake, 423 N.W.2d at 144, the Court explained

that the doctrines of accretion and reliction have often been applied by this court to lakes and rivers in this state. Id. (citing Hogue v. Bourgois, 71 N.W.2d at 52; Roberts v. Taylor, 181 N.W. at 622; Brignall v. Hannah, 157 N.W. 1042, 1045 (N.D. 1916)). In sum, the Court, without much explanation, has readily applied the principles of reliction, submergence, etc., to lakes just as those principles have been applied to rivers.

Finally, you ask whether lakes and coulees connected to Devils Lake that become inundated by the rising waters of Devils Lake become part of Devils Lake and subject to State ownership. As explained above, the extent of the State's ownership in the bed of Devils Lake fluctuates with the rise and fall of the lake. If geographic features connected to Devils Lake become covered by the rising lake, I see no reason why the principles discussed above would not apply and, therefore, the bed of the "connected" lakes and coulees could become owned by the State.

You also ask whether coulees and land under lakes "not previously connected to Devils Lake" that become inundated by the expansion of Devils Lake become part of Devils Lake and subject to State ownership. Your question implies that the lakes were not navigable at statehood and, therefore, their beds are not owned by the State. Again, the principles discussed above and the ambulatory nature of the State's ownership would seem equally applicable to this situation. But the situation is unique and we have not found a court decision that directly addresses this issue. Further, there is uncertainty in the meaning of "not previously connected to Devils Lake." Does it mean not connected in the past 10, 100, or 1,000 years? Consequently, although State title may follow rising Devils Lake waters to lands "not previously connected to Devils Lake," we are unprepared at this time to issue an opinion on the subject.

Sincerely,

Wayne Stenehjem
Attorney General

mas

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).