

August 13, 2024

Office of the North Dakota Attorney General
600 E. Blvd. Ave.
Department 125
Bismarck, North Dakota
58505

Re: Joint Request by four Ramsey County Townships for Attorney General Opinion

Dear Attorney General Wrigley:

BACKGROUND

The Ramsey County State's Attorney recently submitted a letter dated 6/18/2024, asking four questions about land ownership issues around Devils Lake.¹ That letter and the questions are adopted and incorporated by reference as if set forth herein. Townships are local government bodies. Like counties, townships also have specific governing duties, responsibilities, and functions, including maintaining safe township roads, assessing private property, and regulating land usage as permitted. The four undersigned Ramsey County Townships submit this joint request to obtain your answers to the questions submitted by the Ramsey County State's Attorney. In addition, the undersigned Townships ask for a legal opinion on the following questions under North Dakota law.

ADDITIONAL QUESTIONS PRESENTED BY FOUR TOWNSHIPS IN RAMSEY COUNTY

1. Can the state artificially hold back navigable water to connect it with non-navigable water bodies and claim ownership of inundated land without paying for taking private property for public use located under the non-navigable bodies?
2. Is N.D.C.C. § 61-33 applicable for identifying the boundaries of Devils Lake navigable water and delineating the navigable water from non-navigable adjoining lakes, inflowing tributaries, and wetlands? If so, what can be done to require the state to identify the boundaries between Devils Lake navigable water and connected areas of non-navigable water around Devils Lake?

¹ 1. If previously identified "navigable water" and "non-navigable waters" merge into a single continuous body of water, is the water considered "navigable" subject to N.D.C.C. § 61-33?

2. Does the analysis of navigability change if the merger was natural or artificial?

3. Are patent parcels exempt from claims of State ownership when state water has inundated said patent parcels?

4. If patent parcels are not exempt, by what lawful authority is the State exercising its claims to the inundated patent parcels?

3. When does a taking by non-navigable water occur in a flood situation characterized as an Act of God? See, Aasmudstad v State 2008 N.D. 206. Does the fact the state artificially manipulates the level of Devils Lake every year affect when a taking occurs? Can there be a new taking every year because of the artificial manipulation of Devils Lake's water level?

4. Does township authority and responsibility to repair and maintain township roads for public safety shift to the state while township roads are inundated by navigable Devils Lake water? If the state owns all land, including township roads, inundated by navigable Devils Lake water, who is responsible for repairing damage caused by navigable state water when it recedes?

ADDITIONAL FACTS

The undersigned Townships are in northwest Ramsey County and contain some of the hardest-hit agriculture areas and communities. There are numerous inundated patent parcels throughout Ramsey County that the federal government transferred to private homesteaders, railroads, and others before North Dakota became a state. Most homestead patent parcels were continuously farmed from before statehood until Devils Lake's current condition developed; many owners of patent parcels and adjoining deeded land have lost their ancestral homes and livelihoods. As a result, our Townships no longer have the financial wherewithal to fulfill some of our duties requiring property assessments, much less manage flood-related issues and pursue litigation for answers to these questions. Your responses will therefore guide our decision-making on how to proceed.

Thank you for responding to this Joint Township request under North Dakota law.

Respectfully submitted,



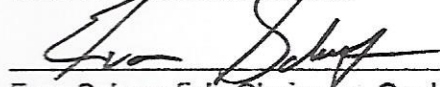
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