

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### GARRISON DIVERSION OVERVIEW COMMITTEE

Friday, September 17, 1999  
Edwards House, Camp Grafton  
Devils Lake, North Dakota

Representative John Dorso, Chairman, called the meeting to order at 1:00 p.m.

**Members present:** Representatives John Dorso, Merle Boucher, Pam Guleson, Eugene Nicholas, Francis J. Wald; Senators Joel C. Heitkamp, Aaron Krauter, Gary J. Nelson, Rod St. Aubyn

**Members absent:** Representatives Mick Grosz, David Monson; Senators Layton Freborg, John T. Traynor, Terry M. Wanzek

**Others present:** Joe Belford, Lake Emergency Management Committee, Devils Lake

Vern Thompson, State Senator and Lake Emergency Management Committee, Minnewaukan

Curtis E. Brekke, State Representative, Devils Lake

Harvey Sand, State Senator, Langdon

David Sprynczynatyk, State Water Commission, Bismarck

Ken Solberg, State Senator, Rugby

Roger O'Day, KDLR/Devils Lake News, Devils Lake

Gary Krantz, City Commission, Devils Lake

Marshall W. Moore, Grant Levi; Department of Transportation, Bismarck

Clay Sorneson, Department of Transportation, Devils Lake

Russ Dushinske, Devils Lake

Glenn Olson, City of Devils Lake, Devils Lake

Warren L. Jamison, Garrison Diversion Conservancy District, Carrington

Chairman Dorso called on Mr. Joe Belford, Ramsey County Commission and Cochairman, Lake Emergency Management Committee, Devils Lake, to address the committee. He said the Devils Lake Basin flood emergency is continuing, and it appears the lake will freeze at its high for the year. He said this does not bode well for next year as it appears the lake will continue to rise. Concerning Channel A, he said, it was put in to relieve pressure northwest of Devils Lake, and it merely diverts water to Devils Lake sooner than this water would otherwise arrive at Devils Lake and thus has no impact on the level of Devils Lake. He said he has been working with the Public Service Commission and representatives of the Burlington Northern Santa Fe Railroad to ensure that the railway from Grand Forks and Devils Lake to Minot is maintained and kept open. He said it would

be devastating for the economy of the lake region if the railroad was closed due to the rising level of Devils Lake. He referred to an article in the Friday, September 17, 1999, *Grand Forks Herald* entitled "Churchs Ferry Pursues Buyout: Residents Wrestle with Decision: Continue Flood Fight or Flee," a copy of which is on file in the Legislative Council office. He said it is very disheartening to the residents of the Devils Lake Basin to see communities pursuing communitywide buyouts that would allow residents to move away from the threat of rising water. He said the flood must be dealt with rather than allowing or encouraging people to leave the basin. He said approximately 450 structures have been removed from around the lake, which has also led to a loss in utility sales, tax revenue, and population. He said approximately 70,000 acres of deeded farmland is underwater, and an outlet or spillway to remove water from Devils Lake must be constructed to prevent the lake from going higher.

Chairman Dorso called on Senator Vern Thompson, Cochairman, Lake Emergency Management Committee, Minnewaukan, to address the committee. He distributed a packet of information concerning the Churchs Ferry community buyout program, a copy of which is on file in the Legislative Council office. He said the residents of the Devils Lake Basin are dealing with a great deal of stress as a result of the rising level of Devils Lake, and he commended the people of Churchs Ferry for taking action at the local level to deal with the flood. He said if Devils Lake can be managed, it could be a great asset for the state of North Dakota and the people who live in the basin. He said the lake is one of the best fisheries in North America, and the funds being spent in the Devils Lake Basin to deal with the flood could be returned many times over once the lake is managed in a controlled manner. He said the state must work in partnership with the local political subdivisions and the federal government to find a solution to the flooding in the Devils Lake Basin.

In response to a question from Representative Boucher, Senator Thompson said over \$300 million has been spent in the Devils Lake Basin for raising roads, moving sewer systems, moving lagoon systems, moving homes and businesses, and improving other infrastructure. He said \$30 million is

spent for each one-foot rise in the level of Devils Lake.

At the request of Chairman Dorso, committee counsel distributed a letter from Mr. Joseph Westphal, Assistant Secretary of the Army (Civil Works), in which the United States Army Corps of Engineers declined to send a representative to the committee meeting because the matter of Devils Lake flooding is pending review by the White House. A copy of this letter is attached as Appendix A.

In response to a question from Representative Dorso, Senator Thompson said when water begins to spill from Devils Lake into the Stump Lake system, Minnewaukan will get a one-year reprieve. However, he said, once the Stump Lake system fills, then Minnewaukan will be facing the same decision Churchs Ferry is currently facing concerning a buyout.

At the request of Chairman Dorso, Mr. Glenn Olson, City Engineer, Devils Lake, addressed the committee. He discussed the Devils Lake emergency controlled outlet plan which calls for constructing an outlet from the south end of West Stump Lake to the Tolna Coulee. He said the proposed structure would be approximately 6,000 feet long and would require a cut of approximately 60 feet.

In response to a question from Representative Wald, Mr. Olson said the Tolna Coulee empties into the Sheyenne River.

Mr. Olson said the proposed structure is in the permit approval process. He said the Nelson County Water Resource District Board has approved the plan, and it has been submitted to the State Engineer's office. Two issues that must be addressed, he said, are water quantity and quality in the Sheyenne River. He said the city of Devils Lake wants to operate the facility in an environmentally sound manner and will not put water into the Sheyenne River when it is at flood stage. He said the city of Devils Lake also wants to send good quality water to the Sheyenne River. He said construction of the outlet is essential to provide two feet of relief for Devils Lake prior to the anticipated rise in Devils Lake in the year 2000. Concerning operation of the Devils Lake emergency controlled outlet, he said, the city of Devils Lake would be the owner and operator of the structure.

In response to a question from Representative Boucher, Mr. Olson said if nothing is done and a natural flow from Devils Lake to the Sheyenne River occurs, it would be very detrimental to downstream landowners as well as the quality of water in the Sheyenne River. He said it would be preferable to construct a controlled outlet and operate it in an environmentally sound manner that would not harm downstream landowners or water quality.

In response to a question from Representative Dorso, Mr. Olson said the city of Devils Lake will support any operating plan that would be effective in lowering the level of Devils Lake. He said the city supports an operating plan developed at the local

level and approved by the state rather than a plan developed by an outside entity such as the United States Army Corps of Engineers.

In response to a question from Senator St. Aubyn, Mr. Olson said the Devils Lake emergency controlled outlet facility does not include a water treatment facility for water moving from Stump Lake to the Sheyenne River.

Chairman Dorso called on Mr. David Sprynczynatyk, State Engineer and Secretary, State Water Commission, to address the committee. He said the Devils Lake Basin is saturated and there is nowhere for water to go except into Devils Lake, and thus if any precipitation is received over the winter, the lake will continue to rise again next spring.

In response to a question from Representative Boucher, Mr. Sprynczynatyk said the state has been unable to renew 32 contracts for upper basin storage because these areas have become inundated. He said the potential for upper basin storage is nearing exhaustion and thus other alternatives will have to be explored. He said 98.5 percent of the drains in the Devils Lake Basin are legal drains and closure of illegal drains is the responsibility of the local water resource district boards. He said if the State Engineer were to require the closure of legal drains, it would result in the state being liable for the taking of property. In addition, he said, only a foot or two of the rise in Devils Lake can be attributed to drainage with the rest of the increase due to increased precipitation in the Devils Lake Basin.

Concerning elevations in the Devils Lake Basin, Mr. Sprynczynatyk said the overflow elevation from east Devils Lake to Stump Lake is 1,447.1 feet mean sea level. He said the overflow from Stump Lake to the Sheyenne River is 1,459 feet mean sea level.

Concerning the outlet plans under consideration by the United States Army Corps of Engineers, Mr. Sprynczynatyk said there are two main plans under consideration. He said these are the Peterson Coulee route and a route that would exit the lake north of Highway 19. He said the cost of the Peterson Coulee route is approximately \$60 million, and the cost of the Highway 19 route is approximately \$100 million. He said if water were diverted north of Highway 19, it would result in better quality water being delivered to the Sheyenne River.

In response to a question from Representative Dorso, Mr. Sprynczynatyk said the final draft of the state's economic analysis of the impact of flooding in the Devils Lake Basin is under review.

Mr. Sprynczynatyk said if the proposed outlet had been constructed by the United States Army Corps of Engineers in 1995, Devils Lake would be approximately four feet lower than it is today. Using the rule of thumb that a one-foot rise in the level of the lake results in \$25 million in damages, he said, the outlet would have saved \$100 million in damages. He said the Stump Lake channel is not an outlet but a spillway

or channel to Stump Lake. He said the spillway will provide approximately three feet of relief to Devils Lake and is designed to merely buy time for Devils Lake until a permanent outlet is constructed. He said the cost is estimated to be \$8 million, which includes the channel, improvements to Highway 1, and acquisition of easements. In addition, he said, the cost of mitigating the project could be up to \$2 million for a total cost of \$10 million. He said the permit application was submitted to the United States Army Corps of Engineers in June, a hearing was held in August, and the permit is under review. He said opponents to the outlet include the federal Environmental Protection Agency, United States Fish and Wildlife Service, the state of Minnesota, the state of Missouri, the province of Manitoba, the National Audubon Society, and the Sierra Club.

In response to a question from Representative Dorso, Mr. Sprynczynatyk said once a 404 permit is acquired for the Stump Lake outlet, two additional hurdles must be surmounted--acquisition of land for the outlet and funding. He said the bonding provisions of 1999 Senate Bill No. 2188 cannot be used for the Stump Lake outlet because it is not a federally authorized project. However, he believed that if the outlet is authorized, the funds will be found.

Mr. Sprynczynatyk said the State Water Commission is also exploring the possibility of constructing a temporary west end outlet. He said the outlet would be temporary and use temporary pumps and the estimated cost of the outlet would be between \$6 and \$10 million. He said the outlet would be operated for a period of three to five years and provide approximately three to five feet of relief to Devils Lake.

In response to a question from Senator Nelson, Mr. Sprynczynatyk said items that the State Engineer's office will review in determining whether to grant the city of Devils Lake's permit application for the Devils Lake emergency controlled outlet facility are downstream water quality impacts, downstream water quantify impacts, flow rates, the impact on Lake Ashtabula, the impact on other water users, and whether other alternatives exist.

At the request of Chairman Dorso, Mr. Sprynczynatyk reviewed the cost of the state assuming jurisdiction of the Section 404 program under the Clean Water Act. A copy of Mr. Sprynczynatyk's memorandum is attached as Appendix B. He said the State Engineer's office has estimated the cost to be approximately \$800,000 per biennium.

In response to a question from Representative Dorso, Mr. Sprynczynatyk said there would be opposition to the state assuming jurisdiction over the Section 404 permit process from individuals and groups that feel the state would not do as good a job as the United States Army Corps of Engineers. In response to a further question from Representative Dorso, Mr. Sprynczynatyk said it would take approximately two years for the State Engineer's

office to adopt rules and implement the 404 permit process.

At the request of Chairman Dorso, Mr. Sprynczynatyk presented an update of the projects authorized in 1999 Senate Bill No. 2188. A copy of Mr. Sprynczynatyk's presentation is attached as Appendix C. He said Senate Bill No. 2188 authorizes the State Water Commission to issue up to \$84.8 million of bonds for the Southwest Pipeline Project, city of Grand Forks flood control, city of Wahpeton flood control, city of Grafton flood control, and Devils Lake flood control.

In response to a question from Senator Nelson, Mr. Sprynczynatyk said he would start the process of the state assuming jurisdiction over the Section 404 program by contacting the federal Environmental Protection Agency and laying the groundwork for this assumption of jurisdiction.

Chairman Dorso recognized Senator Harvey Sand. A copy of Senator Sand's written comments is attached as Appendix D. He said his constituents in eastern Pembina County would like to see the Devils Lake flood situation eased.

Chairman Dorso called on Mr. Marshall W. Moore, Director, Department of Transportation, to address the committee. He distributed a schedule of highway expenditures in the Devils Lake Basin since 1993, a copy of a schedule of highway projects around Devils Lake for 1999 and 2000, and a map showing the road elevation of transportation infrastructure in the Devils Lake Basin. The schedules are attached as Appendices E and F, and the map is on file in the Legislative Council office. The schedule of Devils Lake Basin highway expenditures shows a total investment of \$91,197,533 from 1994 through 1999, \$79,583,665 in federal funds and \$11,613,868 in state and county funds. He said Federal Highway Administration emergency funds are difficult to qualify for because a road must be inundated or in imminent danger of inundation in order to qualify for emergency highway funds.

Chairman Dorso called on Mr. Warren L. Jamison, Manager, Garrison Diversion Conservancy District, Carrington, to address the committee. Concerning appropriations for the Garrison Diversion Unit Project, he said, a Senate committee has approved an appropriation of \$28.6 million for fiscal year 2000, and the administration's request of \$26.6 million is before a House committee. He said the Dakota Water Resources Act is scheduled for markup on September 22 and a hearing on September 30.

Mr. Jamison distributed an information sheet entitled *Dakota Water Resources Act of 1999: The Need* and an information sheet entitled *The Dakota Water Resources Act of 1999: Time for Action*. Copies of these information sheets are attached as Appendices G and H.

At the request of Chairman Dorso, committee counsel presented a memorandum from Attorney General Heidi Heitkamp concerning payments from

the tobacco industry under the master settlement agreement. A copy of the memorandum is attached as Appendix I. The memorandum outlines the timing of tobacco payments, summarizes the states that have not agreed to state-specific finality, and outlines each state's tobacco settlement payment. Committee counsel also distributed an overview of state tobacco legislation and activities prepared by the National Conference of State Legislatures. A copy of this document is attached as Appendix J. The memorandum shows North Dakota receiving a total of \$717.8 million.

At the request of Chairman Dorso, committee counsel distributed a memorandum from Mr. Charles M. Carvell, Assistant Attorney General, concerning the *Spirit Lake Nation v. North Dakota* litigation. A copy of the memorandum is attached as Appendix K. The memorandum concluded it has become clear that a negotiated settlement cannot be reached, and the case has been returned to active status.

At the request of Chairman Dorso, committee counsel distributed a packet of letters from former Representative Gordon Berg to Mr. James Lee Witt, Director, Federal Emergency Management Agency, to the North Dakota Regulatory Office of the United States Army Corps of Engineers, and to the editors of various newspapers in North Dakota. A copy of this packet is attached as Appendix L.

Chairman Dorso recognized Senator Ken Solberg. He said it is time for North Dakota to take matters into its own hands and to pursue an outlet to Devils Lake to benefit the citizens of North Dakota.

### STAFF DIRECTIVES

Chairman Dorso requested that the Legislative Council staff arrange for updates from the office of the Attorney General and the National Conference of State Legislatures concerning payments from the tobacco industry under the master settlement agreement.

No further business appearing, Chairman Dorso adjourned the meeting at 5:00 p.m.

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Jeffrey N. Nelson  
Committee Counsel

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John D. Olsrud  
Director

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