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SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1151

2001 HOUSE NATURAL RESOURCES

HB 1151

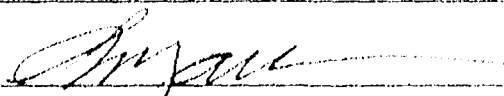
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1151

House Natural Resources Committee

☐ Conference Committee

Hearing Date January 19, 2001

Tape Number	Side A	Side B	Meter #
1		x	2495 to end
2	x		0 to end
2		x	0 to 2530
Committee Clerk Signature 			

Minutes: Chairman Earl Rennerfeldt, Vice Chair Jon O. Nelson, Rep. Brekke, Rep. Droydal, Rep. Galvin, Rep. Keiser, Rep. Klein, Rep. Nottestad, Rep. Porter, Rep. Weiler, Rep. Hanson, Rep. Kelsh, Rep. Solberg, Rep. Winrich.

Chairman Rennerfeldt: I will open the hearing on HB 1151. Clerk read the title. (title read) Is there anyone here to introduce HB 1151?

Dale Frink - Interim State Engineer, State Water Commission: I am here today in support of HB 1151. (see written testimony)

Vice Chair Nelson: Dale, when you were acquiring the land for the NAWS project, did you have to use Quick Take authority?

Frink: Most of our experience is on the SW Pipeline, we've used the Quick Take authority 14 times on SW Pipeline. That covers over 2000 miles of pipeline. Between Lake Sakakawea and Dickinson which is 84 miles we did not use this. When you get into rural areas, we have used it 14 times.

Vice Chair Nelson: So you do have some history, although you try to the best of your ability to come to an agreement before that. There is some history where you have had to use that in the past. You feel it may be necessary?

Frink: We believe it will be necessary.

Rep. Porter: During the last legislative session we were told about the problem with the Federal Government. I was just wondering by removing them from the project, what is the risk or liability that we could potentially have by going outside what they want, or why they slowed the project down?

Frink: First of all the changes we made allow us to go either way, we could have a Federal project or we could have an all state project. In terms of the temporary outlet, we proposed an environmental review, rather than a full blown environmental impact statement. There has been some opposition, especially with the Tribes up there, we have not made a final decision on that. There are those who feel we should do a full blown environmental impact statement. The issue is whether we could get an environmental impact statement approved. If we would build it with state funds, we could get by in certain situations with an environmental review.

Rep. Porter: If we do it without the Federal government and full blown environmental review, are we risking any law suits or retribution from the Federal government by completing a project they don't approve of?

Frink: I think lawsuits are a distinct possibility. There are huge issues with bills like these. It is likely we will get tested.

Rep. Porter: While I understand we need to get this done, I am not really going to oppose this because of the potential of a law suit, I just want it on the record and open. I think we have waited long enough to get this project done. The people around Devils Lake have waited long

enough. In the media recently there have been reports that Spirit Lake Indian Reservation has expanded and bought up some of the land between the end of Devils Lake and the start of Stump Lake that is going to impede this project. What's going on with that?

Frink: The alignment that we chose for the temporary outlet has been chosen to avoid what we felt were Federal permits required areas. It is across the Spirit Lake Indian Reservation. We attempted to avoid, with the channel, any Indian owned land, however we have recently received a letter from BIA indicating that they don't feel that we have totally avoided all Indian land. We are still negotiating with the Tribes. We certainly will continue to work with the Tribes on this issue.

Rep. Nottestad: Does the Quick Take authority we have, can we use it on the Indian Sovereign Nation Land?

Frink: Yes, no guarantees on that one.

Rep. Kelsh: You correctly state that the Design Build Process is used a lot in private industry, you also state you allow the Water Commission to use Design Build Process only on a portion of this project. Can you point that out, where it can only be used on a portion?

Frink: We looked at that specific thing yesterday, I am going to ask our attorney to respond to that.

Julie Krenz - Attorney Generals Office representing State Water Commission: The way we interpret that, the right to use that is discretionary, that we could use it on all or a portion of the project. The authority is discretionary. On the Sovereign Lands question, it is not the state law that gives you the right to use Eminent Domain Law on the Reservation, it's Federal law that says you can condemn land on the reservation under the state law. It is because of the Federal Law.

Rep. Winrich: It is my understanding that the studies that have been conducted by the Corps of Engineers is that the temporary outlet cannot move enough water to relieve the flooding on Devils Lake, can you elaborate on that?

Frink: The Devils Lake Outlet will have to meet the water quality requirements downstream and that would include the treaty we have with Canada. There are times when you would not be able to use that outlet. On average we would take about a foot off the lake, but there are times we would not be able to pump because of water quality concerns. On average, one foot per year is what we could take off. Over the long term it can take off several feet.

Rep. Winrich: Since 1993, how much has the lake risen?

Frink: The lake has risen 23 feet since 1993.

Rep. Winrich: So that is about three feet per year.

Frink: Yes, this outlet is not going to keep the lake stable. What we are trying to do is come up with an alternative that will at least slow down the rise. If the lake was 3-4 feet lower today, Devils Lake area would be much better off than we are today.

Chairman Rennerfeldt: Any further questions of the committee? Anyone else here care to testify in favor of this bill?

Joe Belter - Chairman of the Ramsey Co. Commission: I have been very involved in this process and would like to give you a short visual overview of the Devils Lake area. Anything we can take off that lake will be a help for us. Every foot of rise is an additional 25 million dollars in additional damage. We are spending 35 million again this year on the road system. We have to consider raising the dike that protects the city. It would be a tremendous loss to the state to lose our community of 7500 people. The economy is tight and will get tighter as lands flood. We need to continue to support HB 1151. (Visual display, refer to USGS brochure and map.)

Rep. Hanson: What's the present level of lake now?

Belfer: 1446.1 ft.

Rep. Hanson: If we put a temporary outlet in, what would that lower to.

Belfer: We could take approximately a foot off the lake each year, our inflows would offset that, but perhaps we could start to maintain a little. Had we been able to do that four years ago the lake would be four feet lower today and we could have saved about 100 million dollars in expenses and cut out a lot of pain and suffering.

Rep. Winrich: One of the design criteria for dikes in Grand Forks is that they are designed so they don't affect the water profile so other communities downstream are not affected. Is that a design criteria for this project?

Belfer: Our situation is different from Grand Forks, we have no flow, our dikes are in place, they will continue to have 22 feet of water against them and also the Corp. did a study, if the dikes were not there, the lake would only be 2 inches lower than it is today. We are not spreading water over a lot of geography but we are spreading water over a lot of real estate.

Vice Chair Nelson: You mentioned that for every foot of rise that is 25 million dollar economic factor, does that consider the loss in the upper basin and surrounding areas, specifically the loss of a rail line, the CP Line that is impacting the elevators ability to do business and the possible loss of the Burlington Line, is that in the consideration?

Belfer: It is just a ballpark figure we use. When I say we, I mean the State, Federal and Local government, 6 1/2 million dollars trying to keep that rail line open for the elevators to operate. I have been talking to the Burlington Northern Santa Fee line about Churchs Ferry. They are talking about a 12 ft. Raise in the grade there. First of all we need to do something about the

elevators. If we raise the rail cars, they would be higher than the load spout. We just use that for a number.

Vice Chair Nelson: Would it be fair to speculate, at least as the lake increases in size, because of the spreading factor that 25 million would a conservative estimate.

Belfer: I agree with that. One number we cannot get a handle on is economic lost. There is land that is nonproductive. If the lake rises to 1460 feet, 180,000 acres of prime land are covered. FEMA currently is working with the counties trying to put in a rigid flood plane ordinance that will not allow a farmer 10 miles away to build a room on his house. That is how critical this thing is getting up there.

Rep. Galvin: You mentioned at some point that there would be a natural overflow and erosion then would occur.

Belfer: That is out of Stump Lake, where the outflow would be. The 1460 elevation is right there. (see map). It is soil and not clay.

Rep. Galvin: I guess what's not clear in my mind is why this would not be an advantage to have that natural erosion?

Belfer: Because it would throw such a thrust of water on communities downstream, depending on how hard it came in. If it comes in gently it will go out gently. If we have a storm like we had in Grand Forks County, then it's going to go out very rapidly.

Rep. Winrich: You mentioned the FEMA restrictions on building that exist. As I understand it, those restrictions exist unless you have a federally approved flood control project. What are the implications of doing this as a state project. Do residents still have to pay higher flood insurance?

Belfer: We have zoning in our basin, depending on where you live, the different premiums for flood insurance, and if we can get some sort of stabilization and the Corp. could certify that the

lake would not get over a certain elevation, then the restrictions could be removed. By passing this ordinance, we are the only flood plan designee in the US with such stringent regulations. We are negotiating with those people on that. The flood plane insurance would not change a lot.

Chairman Rennerfeldt: Any further questions of the committee?

Rep. Porter: Could we have Mr. Frink come back up? Mr. Frink, there's a couple of numbers I missed as we were going along here. At what elevation does Devils Lake naturally drain into Stump Lake?

Frink: The overflow right now is 1446.5. It naturally overflows to the Sheyenne River in the 1458 -1460 range.

Rep. Porter: I guess as the presentation was going along, long term wise, the bridges are all being built at 1446.5. Is there any reason why they aren't being built a little higher so we don't have to build them twice?

Frink: I think Joe was 10 feet off on that one. The bridges are 1464.5, at least 10 feet higher than the lake.

Don Flynn - Vice Chairman of the Southwest Water Authority: I come today to speak in favor of HB 1151. (see written testimony).

Chairman Rennerfeldt: Anyone have any questions? Anyone else care to testify in favor of HB 1151, if not is there any opposition to HB 1151?

Donald Vig - Member of The People to Save the Sheyenne, Valley City, ND: It gives me no great pleasure to testify in opposition to this bill. The people in Devils Lake and Eastern ND have suffered greatly in the past 7 years. We feel for them. My main objection is that we are dealing with expectations and possibilities rather than with facts. The Sheyenne River, my main concern, is a slow meandering river. When Bald Hill dam was built it absorbed 43 river miles

into 27 miles of lake. The Bald Hill Dam was said to be able to absorb any flooding coming from Devils Lake, it is essentially a pass through structure. One that whatever comes into the lake must come out of the lake. It's capabilities with new improvements could hold some additional water. But both the problems with additional flooding as a result of an outlet would not do anything to the people upstream from the Bald Hill Dam. The expectations for increased flooding we've experienced since 1993, July 14, 1993 an 11 inch rain took place in which people were called upon to sandbag. Those kinds of situations cannot Bald Hill Dam alleviate, but the increased flow from an outlet would exacerbate. Another point - there might be this huge wall of water coming down if the Devils Lake/Stump Lake would experience an event like this and would wash out the Toman Coulee. The study that was done by the Corp. Of Engineers to come up with the figure of 12,500 cu. Ft. Per second discharge. There would be a surge or a 6 ft. Rise that would wash out the Toman Coulee. How this surge would occur is unknown. There are no trees or bridges to hold an ice flow. Nothing to hold back the water and then at certain times breaks through. Fargo needs water, a 6 year study by the Bureau of Reclamation shows no shortage of water, unless the population doubles to 192,000 and four new corn plants are built and a 1930's drought occurs. These three things need to occur at the same time in order for a shortage of water to occur. Grand Forks would still not have a shortage. The cost of treatment for Devils Lake water into a municipal situation would be extremely expensive for them. Valley City and Devils Lake are the same in population. The tax collections for Devils Lake is twice that of Valley City. The economics of the Devils Lake area are different than they are for Valley City. They compare to Jamestown, a city twice the size. The economic activity is high there for the population size. This is due to the increase in recreation that the lake has provided. Some of the things left out from the State Water Commission Bill is that it does not address the stake holders

down stream as it does for the people in Devils Lake. The people in the Boundary Waters Treaty are not being addressed. This is not a problem just for Devils Lake. It goes beyond my territory near Barnes County. It would be advisable that these things bear repeating. There was a preliminary NEPA study done and a need for another 6 million dollars appropriated to finish it. The preliminary report was a study of the environmental impacts of an outlet between Devils Lake and Cooperstown. I have not seen that report. We require scientific reports for decision making done on basis of facts, not expectations and probability. Mr. Frink mentioned they don't feel receiving a permit under NEPA is possible. That to me seems dangerous. (reads paragraph from Council on Environmental Quality under the purpose of NEPA). You need facts before doing action on HB 1151.

Chairman Rennerfeldt: Any questions?

Vice Chair Nelson: Do you live adjacent to the river?

Vig: No, I live 8 miles west, northwest of Valley City.

Vice Chair Nelson: In your testimony you talked about the flows the river could handle under a full condition. You talked about the lack of your trust of Corp. Of Engineers study. You said we need hard documentation, if I am understanding this correctly, the hard documentation would not be in the Corp. of Engineer study. What would you consider would be hard documentation of a hard spill over at Stump Lake.

Vig: I don't know who wanted this surge, or why this surge was placed on the modeling of that study. It seems foreign to me that a saddle shaped valley as is the Toman Coulee have some way of amassing six feet of water and then be released for that washing out to occur. I am not questioning the Corps. Capability, how or why some condition of a model was put in place is what I do question. Like any scientific equation, it's just a statement. Depending on what is in

the front of the equal gives you the end result. It seems odd to me that somebody would request a surge on that lake level. The state geologist has done some core sampling in that Tolna outlet, the most of which they could find was a six inch layer of silt. We know in the past 10,000 years the Lake has overflowed naturally into the Sheyenne, three or four times. If there would have been a surge or a washout at the Tolna Coulee they would have found some evidence of it.

Vice Chair Nelson: Do you offer some documentation's more reliable than these. If so, could you get that to the committee?

Vig: I don't have any studies. I just question the way in which that is being used.

Vice Chair Nelson: One other question, in your study of the taxable sales of the City of Devils Lake was the sales tax revenues trending up or did you just take a snapshot of where it is in relation to Jamestown without looking at the effect of the water in the last 8 years.

Vig: I believe it was 1998 figures, they had been trending upwards, for all of ND.

Vice Chair Nelson: At the same rate as surrounding areas. Do you have any information about that?

Vig: I didn't look at that.

Chairman Rennerfeldt: Any further questions? In the event of running out time, how many people are here to speak in opposition to this bill. I will have to limit you to 5 minutes per testimony and new information only.

Richard Betting - People to Save the Sheyenne: (see written testimony).

Chairman Rennerfeldt: Any questions of the committee? If not, anyone else care to testify?

Carol Two Eagles: Today I am speaking to you about Spirit Lake, obviously there is a problem, but the problem is man-made. I speak from a spiritual center, the lake is essential to that spiritual center. I did not exactly pick up my pipe with enthusiasm. I am taking an unpopular stand. It's

my job. I don't have a choice. That lake is not Devils' anything, it is Spirit Lake. It is a spiritual lake of the Sioux Nation. The is a living being. The lake and I are intimately connected. The Lake and anything to do with water is a female thing. My people are all relatives. The man before me spoke of the upper basin water storage. Everyone is talking about putting in a outlet, but not talking about stopping the flow in. If you poke a hole in the lake you poke a hole in our people too. Our traditional teaching is that there is a line around the lake, if you build your house within that line, you will lose your house. The bill refers to doing things in a way that would cause us spiritual and physical pain. I wish that you would consider more than the down hill end of the lake.

William Moore - The People to Save the Sheyenne; (See written testimony).

Chairman Rennerfeldt; Any committee questions? We will extend this to 11:30 and hear one more testimony and then collect written testimony if you have it.

Thelma Paulson - Peterson Coulee Outlet Assn.; (See written testimony).

Chairman Rennerfeldt; Any questions from the committee? I will have to cut it off here, if you like to sign the register or submit testimony we won't act on this bill right away and give you a chance to have your voice heard. With that I will close the hearing on HB 1151.

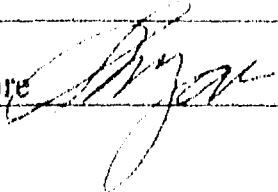
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1151

House Natural Resources Committee

☐ Conference Committee

Hearing Date February 2, 2001

Tape Number	Side A	Side B	Meter #
1	x		1 to 695
Committee Clerk Signature 			

Minutes:

Chairman Earl Rennerfeldt, Vice Chair Jon O. Nelson, Rep. Brekke, Rep. DeKrey, Rep. Droydal, Rep. Galvin, Rep. Keiser, Rep. Klein, Rep. Nottestad, Rep. Porter, Rep. Weiler, Rep. Hanson, Rep. Kelsh, Rep. Solberg, Rep. Winrich.

Chairman Rennerfeldt: I will call the Natural Resources Committee to order. Let's take a look at HB 1151, the Devils Lake Bill. That has to go to appropriations. I have amendments for it. What the amendments do is removes the interest from the bill. It would remove it from page 1, line 3 and 5, The Water Development Trust Fund is removed.

Rep. Droydal: I move the amendments.

Vice Chair Nelson: I second.

Chairman Rennerfeldt: So I take it the money would into the general fund instead of back into the Water Trust Fund?

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House Natural Resources Committee

Bill/Resolution Number HB 1151

Hearing Date February 2, 2001

Vice Chair Nelson: As we are looking at this, in the Governor's budget this interest money was included in his budget, so if we leave this money in the bill, there's another \$900,000 hit to the state general fund budget, so that is what this amendment does, it mirrors what the Governor is already proposing in his budget. There doesn't seem to be any disagreement from those involved. That is the purpose of this amendment.

Rep. Keiser: I would like clarification. The amendment says remove line 8-15. That takes out all of that section, not just the new language, and that includes the 45% of the total annual transfer from the Tobacco Settlement Trust Fund.

(some discussion)

Rep. Winrich: If you take out all of those lines, we are not amending the Century Code, Section 1 is an amendment to the Century Code, and if we take that out this bill doesn't amend the Century Code in that particular section. (more discussion)

Rep. Keiser: Typically when we get a bill, the underlined portion of the bill, that language is being added, the other language there is existing language. So we are taking out the 45%.

Rep. DeKrey: This bill is matched up with the Century Code afterwards there will be nothing left so they won't touch that section.

(more discussion)

Vice Chair Nelson: In subsection 3, it does identify the 45% of the annual transfers that go into this fund. It is still in there as I would read it.

Chairman Rennerfeldt: Do we need to clarify that? Do you want to hold it up? I have a do pass and a second on the amendment. All in favor say Aye? Opposed? Amendment carries. We have HB 1151 before us as amended.

Vice Chair Nelson: I move a Do Pass as amended.

Page 3

House Natural Resources Committee

Bill/Resolution Number HB 1151

Hearing Date February 2, 2001

Rep. Porter: 1 second.

Chairman Rennerfeldt: Any further discussion? If no further discussion, call the roll.

MOTION FOR A DO PASS AS AMENDED

YES, 15 NO, 0

CARRIED BY REP. BREKKE

FISCAL NOTE
Requested by Legislative Council
02/08/2001

Bill/Resolution No.:

Amendment to: HB 1151

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The ammended version of HB 1151 has removed the provision for interest earned on funds in the Water Development Trust Fund to be deposited into that fund. With the removal of that provision this bill has no fiscal impact.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each rovenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Dale Frink	Agency:	State Water Commission
Phone Number:	328-4941	Date Prepared:	02/07/2001

FISCAL NOTE

Requested by Legislative Council

01/11/2001

REVISION

Bill/Resolution No.: HB 1151

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	(\$323,000)	\$323,000	(\$900,000)	\$900,000	(\$500,000)	\$500,000
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

HB 1151 directs that interest earned on moneys in the Water Development Trust Fund (WDTF) must remain in the fund. Interest earned on money in the WDTF currently accrues to the General Fund. SB 2029 directs that the interest earned in the WDTF should be deposited in the Community Health Trust Fund. Therefore, SB 2029 and HB 1151 are in conflict. The amount of interest earned is highly dependent on the rate of expenditures out of the WDTF. The Executive Recommendation assumes that the Water Commission's operations expenditures (\$10.1 million) would be taken from the WDTF. If the Water Commission's operations are funded from the WDTF, the estimate of interest earned is \$900,000. If the Water Commission's operations are funded from the General Fund, the estimate of interest earned is \$1.4 million. The fiscal impact of HB 1151 all relates to the interest in the WDTF. The other section of HB 1151 does not have a fiscal impact.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

All calculations were based on a 5.5 percent average interest rate and assumes the WDTF would be drawn down to the \$3-\$5 million range in the 2001-2003 biennium before new bonds would be issued. Interest earned after July 1, 2003, would be less because of a lower average balance in the WDTF.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Dale Frink	Agency:	Water Commission
Phone Number:	328-4941	Date Prepared:	01/12/2001

FISCAL NOTE

Requested by Legislative Council
12/26/2000

Bill/Resolution No.: HB 1151

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$900,000)		(\$500,000)	
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

HB 1151 directs that interest earned on moneys in the Water Development Trust Fund (WDTF) must remain in the fund. Interest earned on money in the WDTF currently accrues to the General Fund. SB 2029 directs that the interest earned in the WDTF should be deposited in the Community Health Trust Fund. Therefore, SB 2029 and HB 1151 are in conflict. The amount of interest earned is highly dependent on the rate of expenditures out of the WDTF. The Executive Recommendation assumes that the Water Commission's operations expenditures (\$10.1 million) would be taken from the WDTF. If the Water Commission's operations are funded from the WDTF, the estimate of interest earned is \$900,000. If the Water Commission's operations are funded from the General Fund, the estimate of interest earned is \$1.4 million. The fiscal impact of HB 1151 all relates to the interest in the WDTF. The other section of HB 1151 does not have a fiscal impact.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

All calculations were based on a 5.5 percent average interest rate and assumes the WDTF would be drawn down to the \$3-\$5 million range before new bonds would be issued. Interest earned after July 1, 2003, would be less because of a lower average balance in the WDTF.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Dale Frink	Agency:	Water Commission
Phone Number:	328-4041	Date Prepared:	12/27/2000

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1151

Page 1, line 3, remove "subsection 3 of section 54-27-25,"

Page 1, line 5, remove "funds deposited in the water development trust fund and"

Page 1, remove lines 8 through 15

Renumber accordingly

18202.0101
Title. 0200

Prepared by the Legislative Council staff for
Representative Rennerfeldt
January 26, 2001

VR
2/2/01

AMENDMENTS TO HB1151

HOUSE NATURAL RESOURCES

02/04/01

Page 1, line 3, remove "subsection 3 of section 64-27-26,"

Page 1, line 5, remove "funds deposited in the water development trust fund and"

Page 1, remove lines 8 through 15

Renumber accordingly

Date: 02/02/01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1151

House Natural Resources Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DO Pass as Amended

Motion Made By Rep Nelson Seconded By Rep Porter

Representatives	Yes	No	Representatives	Yes	No
Earl Rennerfeldt - Chairman	✓		Lyle Hanson	✓	
Jon O. Nelson - Vice Chairman	✓		Scot Kelsh	✓	
Curtis E. Brekke	✓		Lonnio B. Winrich	✓	
Duane DeKrey	✓		Dorvan Solberg	✓	
David Drovdal	✓				
Pat Galvin	✓				
George Kelser	✓				
Frank Klein	✓				
Darrell D. Nottestad	✓				
Todd Porter	✓				
Dave Weiler	✓				

Total (Yes) 15 No 0

Absent _____

Floor Assignment Rep. Brekke

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 5, 2001 8:29 a.m.

Module No: HR-20-2323
Carrier: Brekke
Insert LC: 18202.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1151: Natural Resources Committee (Rep. Rennerfeldt, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (15 YEAS, 0 NAYS, ABSENT AND NOT VOTING). HB 1151 was placed on the Sixth order on the calendar.

Page 1, line 3, remove "subsection 3 of section 54-27-25,"

Page 1, line 5, remove "funds deposited in the water development trust fund and"

Page 1, remove lines 8 through 15

Renumber accordingly

2001 SENATE NATURAL RESOURCES

HB 1151

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1151

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 3-1-01

Tape Number	Side A	Side B	Meter #
1	X		18.9 - end
		X	Start - -19.9
3-16-01 1		X	36.9 - end
2	X		Start - 3.8
Committee Clerk Signature <i>Janet Janer</i>			

Minutes:

SENATOR FISCHER opened the hearing on HB 1151.

DALE FRINK, Interim State Engineer of the State Water Commission presented HB 1151. A BILL RELATING TO THE CONSTRUCTION AND BONDING OF A DEVIL'S LAKE OUTLET. (See attached testimony).

SENATOR KELSH asked for explanation of the difference between a "quick take" and a "eminent domain".

DALE FRINK explained that "eminent domain" is in the court system . With "quick take" the process is to contact the owner at least three times in 30 days to negotiate an agreement. If an agreement can't be reached a deposit of the offer is made with the clerk of court and access is taken to the property. If appealed it will go to court and the issue becomes the amount of payment.

SENATOR TRAYNOR asked if there has been contact with the Minnesota Department of Natural Resources because they have submitted testimony by fax.

DALE FRINK said that to the best of his knowledge they never had.

SENATOR TRAYNOR asked if a specific location for the outlet has been decided.

DALE FRINK answered that there several proposals along from the east to the west.

JOE BELFORD, chairman of the Ramsey County Commission, testified in support of HB 1151.

He also had a video presentation. (See attached testimony)

RICK LAFLEUR, a resident of Devil's Lake testified in support of HB 1151. He is deeply concerned about his community and state. He feels there are two choices of either a controlled outlet or an uncontrolled outlet. He thinks that the corps numbers are erroneous and that they should look at Devil's Lake contributing to the Sheyenne River and what the true natural outlet is with the erosion element. The outlet path is very unstable and this should be considered. There will be no control with a natural overflow and who will be responsible for the disaster.

Something needs to be done now to avoid this disaster in the making.

JOE BELFORD wanted in introduce all the people from the Devil's Lake community in support of HB 1151.

MIKE DYWER, representing the North Dakota Water Coalition and the North Dakota Water Users and testified in support of HB 1151. He commented this one of North Dakota's highest priorities in the water scheme.

DALE YRI, a member of the Peterson Coulee Association testified in opposition of HB 1151, (See attached testimony). He asked the Committee to use common sense and work on the east end of Devil's Lake for an outlet.

SENATOR FISCHER asked if he has considered the water quality of the east end verses the west end for drainage and that the east end drainage of the lake would be in violation of the international treaties.

DALE YRI said he was well aware of that fact, but the lake was going to naturally drain that way anyway solids would be washed away with the drainage.

THELMA PAULSON representing the Peterson Coulee Outlet Association testified in opposition to HB 1151 (See attached testimony).

Written testimony was presented by MIKE DONAHUE, representing the North Dakota Wildlife Federation, opposing HB 1151 unless it was amended (See attached testimony)

SENATOR FISCHER closed the hearing on HB 1151.

MARCH 16, 2001

SENATOR FISCHER reopened the discussion on HB 1151.

Amendments from Rep. Kelsh were discussed which does not seem to fit totally with the original or the engrossed version of the bill.

SENATOR TRAYNOR stated that if HB 1468 is amended by the committee it may be lost if its returned to the house. Perhaps the water commission can include this amendment in their work.

SENATOR TRAYNOR made a motion for a "DO PASS" of HB 1468.

SENATOR EVERY second the motion.

SENATOR FISCHER called for a roll vote of HB 1468 indicating 7 YAYS, 0 NAYS, AND 0 ABSENT OR NOT VOTING.

SENATOR TRAYNOR will carry HB 1468.

18202.0201
Title.

Prepared by the Legislative Council staff for
Representative S. Kelsh
March 1, 2001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1151

Page 2, line 11, replace "May issue, when it" with "Whenever possible, shall use the competitive bidding process to construct the outlet. If the commission"

Page 2, line 21, after the comma insert "however, the commission may issue"

Renumber accordingly

Roll Call Vote #:

BILL/RESOLUTION NO. 1151

Committee

☐ Conference Committee**Legislative Council Amendment Number**

D. Pass

Over

[illegible]

[Signature]

4

Траут

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 16, 2001 12:49 p.m.

Module No: SR-46-5840
Carrier: Traynor
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1151, as engrossed: Natural Resources Committee (Sen. Fischer, Chairman)
recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1151 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

HB 1151

I'm William Moore from Rogers and a member of the People to Save the Sheyenne.

Mr. Chairman and members of the committee, I appreciate the opportunity to speak in opposition to House Bill 1151. ~~As members of this committee you have the obligation to seriously consider all of the testimony on this bill and the possible impacts it will have on the state's natural resources.~~

I do not believe this should be considered as an emergency measure anymore than the high water in Devils Lake is an emergency. One of the reasons this bill is before you today is because the promoters of an outlet have tried to push it through congress as an emergency to circumvent meeting the requirements of NEPA and avoid completing an EIS.

This bill is an attempt to push ahead at full speed and damn the torpedos. A problem with this ^{is} that many of the torpedos are not even known. The only way to find what the impacts of an outlet will be is to complete a full environmental impact statement. This bill does not even mention NEPA or an EIS for an outlet from Devils Lake to the Sheyenne.

Why are the outlet promoters trying to avoid an EIS??

Could it be that they are afraid of the results??

~~The reasons for conducting a full EIS are to gather data to determine the impacts, evaluate this information to see if the project is justified and to examine alternatives.~~ * To date little data is available on the Sheyenne River and many studies are needed. It is known that the Sheyenne River and downstream will be negatively impacted, but to what extent is not known. Federal legislation has been passed to appropriate money to complete an EIS.

Corps 2001 budget - I BELIEVE STATE SHOULD FOLLOW FEDERAL ENVIRONMENTAL
Sun July 1, 2000 LAW & NOT TRY TO CIRCUMVENT IT

Why is the state in such a rush to forge ahead with an outlet when the Corps of Engineers is working on an EIS?? If it will cost the Corps several million dollars to conduct the EIS how can the state consider starting an outlet until the studies are completed??

The Sheyenne River is a valuable natural resource and deserves protection.

Some of the negative impacts of adding increased volumes of lower quality water can be quantified and have a dollar value. Many of the impacts such as bank erosion, harm to the fishery and aesthetic degradation cannot be quantified or compensated. Section 4-7a(1) of this bill is very vague in damages. Addressing damages is meaningless unless something is done about them.

There is no evidence that an outlet would be significant in lowering the level of Devils Lake. The optimistic figures being given do not take into consideration that an outlet could not operate at full capacity much of the time.

If the guidelines are honored and water quality standards are met, an outlet could only operate at full capacity under ideal conditions. If the river is too high water cannot be added and if it is too low, lower quality water cannot be added because it can't be diluted enough to meet quality standards. Thus the impact on lake level could be from a few inches to zero, probably closer to zero. - I strongly disagree with the flood figures given earlier than the state water commission.

A flow of 300cfs is not a lot of water in a lake of over 100,000 acres, but would have a large impact on a small winding river that often has flows of less than 100 cfs.

If the guidelines are not followed the Sheyenne would become a drainage ditch.

I urge you to defeat this bill and wait until the Corps of Engineers complete and analyze the EIS.

Testimony: For House Bill Number 1151
Construction of a Devils Lake outlet

From: Peterson Coulee Outlet Association
Thelma Paulson, Chairperson

Date: January 19, 2001

Hello, my name is Thelma Paulson and I represent the Peterson Coulee Outlet Association. Our association is a non-profit corporation that was formed because of concerns about the impacts from the proposed Peterson Coulee Outlet Project. Our members are farmers along the route of the proposed Peterson Coulee Outlet Project, and other members are concerned citizens from Benson and Ramsey Counties.

BACKGROUND INFORMATION

In 1998, we first learned about some proposed outlet projects that would drain water from Devils Lake. At that time there was very little information available about the project. So we formed our association to obtain more information, relating to our concerns about the impacts from the project.

The state had an ambitious goal to construct the outlet project in a very short time. By simply "declaring" that there was an emergency, they thought they could proceed with minimal investigation of alternatives and consideration of impacts, and minimal compliance with the requirements of the National Environmental Policy Act (NEPA).

Because of the very short timetable for the project, we reasoned that we were better able to deal with the project as a group rather than as individuals. But even as a group, it was very difficult to obtain information and respond to project activities in a timely manner. We did the best we could by giving up large amounts of time in between farm work and other activities.

Initially our members were open minded and willing to consider an outlet project. But as they learned more about the proposed project, and the politics involved in the whole process, their viewpoints changed considerably. They learned not just about the proposed outlet, but about the entire Devils Lake flooding situation.

The feasibility study for the project was being carried out by the US Army Corps Of Engineers (USACOE), with the ND State Water Commission (NDSWC) as the project sponsor. This was the first experience for most of us in dealing with state and federal agencies. In our dealings with the USACOE we were always treated with respect, and obtained the information we requested, although not always in a timely manner.

However, we do not have many kind words to say about our dealings with the NDSWC. We were seldom treated with respect and dignity. When we talked to them over the phone or in person, we got the impression that they thought that we did not know anything because we were farmers. In their news stories to the media, they would not even acknowledge that we had an organized association, and would not use the name of the association. Instead, we were just referred to as some farmers along the route of the proposed outlet project. They frequently distorted information that they had obtained from us when reporting it to the media.

In one instance, as chairperson I had agreed to set up a meeting with the NDSWC to discuss Right Of Entry Agreements. After spending 2 days calling all of the members to set up the meeting, I was informed by the NDSWC that they had already selected a time and place!!! How disrespectful can an agency get? They obviously didn't care if they communicated with us at all, it was just another checklist item to complete. And there were numerous other instances like this. Before dealing with this project, we as farmers would never have believed that a state agency could treat the public so arrogantly and disrespectfully, unless we had experienced it firsthand! And I think it is this same arrogance that is reflected in the content and wording of this bill that we are discussing today. We include this in our testimony here today because we want to inform the legislature about how their state agencies actually conduct business.

GOOD PUBLIC PROJECTS

In 1998, our association was pleased to see that the initial funding appropriation for the outlet feasibility study from Congress had a requirement regarding the outcome of the study. To be eligible to be funded as a project, the study needed to show that the outlet was **technically sound, economically feasible, and environmentally acceptable**. These are the requirements that any large scale public project must meet. A project is a good project if it meets these three tests, and this proves that it is worthy of taxpayer funding. A project that is approved by following the NEPA project development process will pass these three tests.

So before full funding for an outlet project will be authorized, Congress will require that the outlet project passes these three tests, based on the information in the feasibility study, in conjunction with following the NEPA process. At this point in time, neither the USACOE nor the NDSWC has been able to show that any proposed outlet would pass these three tests. In fact, it is doubtful that an outlet project could pass even one of these three tests.

The House Bill 1151 that is before us today seeks to bypass all of these good project requirements, simply by declaring the Devils Lake flooding to be an emergency. Our association believes that is very reckless and an abuse of their authority for the NDSWC to even propose such legislation.

As an association, we have spent a great deal of time collecting and studying information about the entire Devils Lake flooding situation. Stated below are some of our observations relating to whether an outlet project could meet these three tests.

The issue of whether or not the outlet is technically sound (in other words, will it work?) has been questioned by many because of the existence of the Spiritwood Aquifer. According to the ND State Geologist, the lake bed may be in contact with the aquifer. What this means is that any water pumped out of the lake may be replaced by water from the aquifer in a short time.

The issue of economic feasibility is in question because feasibility studies show a very low return (about 35 cents) in benefits for each dollar that is spent. (Obviously, the State Of North Dakota should not spend \$ 100 million dollars to save \$ 35 million dollars in reduced flooding impacts).

The issue of environmental acceptability is in question because of biota transfer, downstream impacts, and many other issues.

NOT AN EMERGENCY

What is an emergency? One of the definitions of emergency is that it is an unforeseen event. Another definition is that it is an event that threatens to cause a loss of life.

No one in the congressional delegation or state government has been able to show that this is an emergency based on the above definitions. We acknowledge that the rapid rise of the lake has caused a lot of suffering, and our sympathy goes out to these people. We especially feel for those farmers who have lost farmland from flooding.

It is true that the lake will probably overflow into Stump Lake this coming spring. But does that constitute an emergency? Our association believes that the emphasis at this time then needs to be placed on moving people and property in the Stump Lakes area out of harm's way. They have already known for years that this might happen, so much of this preparation should already have been done. This type of work is the proper role of local, county, or state government. When the overflow occurs, the lakes may rise rapidly, but it is an event that can be monitored to prevent any loss of life or property.

And in the longer term, the lake would need to approximately double in volume before it would overflow into the Sheyenne River. If this were an uncontrolled flow, it would be an emergency situation. But it would not need to be an uncontrolled flow, because the state could build a discharge structure to control the flow. And if this event happens, it will be many years or even decades in the future.

As stated in the recent US Geological Survey publication entitled "Climatology and Potential Effects of an Emergency Outlet" (June 2000), an outlet would only reduce the probability of overflow from the lake into the Sheyenne River from 2% (without the outlet) to 1% (with the outlet). This is assuming wet weather conditions continue until 2015. That is a very insignificant probability reduction, even assuming the outlet could lower the lake over that period of time. (The outlet would have to operate at 300 CFS, and there are many who believe that the Sheyenne River could not accept that much water without excessive erosion of the streambanks and other effects).

So our association believes that the very premise of this bill is flawed, in declaring the Devils Lake flooding to be an emergency situation. By declaring this an emergency, the NDSWC is implying that this is supposed to justify:

Not following the NEPA process for the project,
Not following normal procedures to acquire land, and
Not following the competitive bidding process

Under the flawed argument that an emergency exists simply by declaring it, this bill would:

- 1) Remove the full protection normally given by the NEPA process to those citizens affected by the project,
- 2) Eliminate the rights of the property owners along the route of the outlet,
- 3) And cost the taxpayers additional money because of the elimination of the competitive bidding process.

Our association would like to make some comments now about the land acquisition issues now, because as farmers this is of great concern to us. The provisions in this bill are totally unacceptable to landowners because:

They do not define what constitutes proper notice
They do not provide for meaningful negotiation
The offer as described is not related to market value

Basically, the way the bill reads, it deprives the landowner of their constitutional right of due process of law. This is an issue of great concern to all farmers, because for most of them, the value of their land represents their life savings. *It would also set a very dangerous precedent for the state.*

In the past, our association has had some discussions with the NDSWC about compensation for the pipelines associated with an outlet project. We did not agree with their method of evaluation and compensation, and believe that there would be a major devaluation of our land if an outlet were ever constructed.

CAUSES OF FLOODING DAMAGES

According to the State Geologist, the natural condition of Devils Lake is to be rising and falling, because it is the low point in a closed drainage basin.

Our association, and others, believe that this effect has been amplified by farming and draining of wetlands in the upper basin. And the State Geologist has stated that the lake may be interacting with the Spiritwood Aquifer. This interaction with the aquifer may also account for some of the flooding damages.

Our association also believes that over the Devil Lake region, much of the damage and harm in this situation has been caused by poor decisions and improper actions by local and state government. For example, in the past, why did the government set the flood plain elevations too low and allow people to build structures in the area? Most of the houses that have been moved were constructed in areas that were in the natural flood plain.

In the city of Devils Lake alone, over \$50 million dollars has been spent to build a massive dike south and west of the city. This entire amount of taxpayer funds could have been saved if local and state governments had done their jobs properly, by preventing construction in this area. This includes the ND Department Of Transportation, which should have constructed US Highway 2 northeast of the city rather than southwest of the city. Why weren't these agencies acting in the best interests of the people, by using available information and long term planning? Why was the ND Geological Survey not supplying accurate information to the local, state, and federal officials? And concerning the upper basin, why has the NDSWC approved thousands of legal drains in the past, and allowed many other illegal drains to stay in place?

Where is the accountability of government to its citizens? And why has the media generally not questioned these poor decisions in the coverage of the whole Devils Lake flooding situation? So are we proposing to build an outlet to correct decades of poor planning and poor decisions by government?

These are some questions for the ND legislators to try to answer for themselves as they consider this legislation.

SOLUTIONS TO FLOODING

So government has been raising roads, building dikes, paying farmers to store water on their land in the upper basin, and moving houses, businesses, and farmsteads to move people out of harm's way. Most people would agree that these actions by government have been appropriate, as long as they are cost effective.

FINAL COMMENTS

Our association believes that the items mentioned above are all necessary and should continue to be carried out. In addition, we believe that the government should spend other available funds to:

- 1) close all legal and illegal drains in the upper basin
- 2) provide additional storage of water in the upper basin, where appropriate
- 3) purchase flooded farmland and farmsteads to allow farmers to farm elsewhere
- 4) Purchase flooded businesses to allow those people to relocate their business elsewhere
- 5) Prohibit any future construction in the flood plain
- 6) Investigate and implement other measures to reduce flooding and flooding impacts
- 7) Create plans for a control discharge structure to be used at East Stump Lake, to control the flow of water into the Sheyenne River

We believe that upper basin storage is a key element in dealing with the Devils Lake flooding situation. *But we do not believe that an outlet is a feasible or prudent solution.* Also, the state cannot legally build any outlet without first obtaining approval from the Spirit Lake Nation, Minnesota, and Canada. *This approval has not yet been obtained.*

We believe that the ND State Water Commission, in proposing this legislation, is an agency that is abusing its authority and is out of control. Its very purpose and function needs to be re-examined by the legislature in the near future.

In conclusion, the landowners and citizens in the Peterson Coulee Outlet Association **STRONGLY OPPOSE** House Bill Number 1151, and recommend that it be defeated in the legislature.

Thelma Paulson
Thelma Paulson, Chairperson
Peterson Coulee Outlet Association

**VERBAL TESTIMONY
OF**

**DON FLYNN
VICE CHAIRMAN
SOUTHWEST WATER AUTHORITY
SCRANTON, ND**

**SUBMITTED TO
NORTH DAKOTA HOUSE NATURAL RESOURCES COMMITTEE
HB1151**

January 19, 2001

BISMARCK, ND

Chairman Rennerfeldt, members of the committee

Good morning. I am Don Flynn from Scranton, North Dakota.

I am the Vice-Chairman of the Southwest Water Authority. I come today to speak in favor of House Bill 1151. This bill keeps the interest earned from Water Development Trust Fund monies with the Water Development Trust Fund.

The State Budget, as currently presented, will take the Water Commission budget of approximately \$10.1 million from the Water Development Trust Fund. This \$10.1 million, along with the transfer of interest from this trust fund will in fact reduce the amount of funding available for statewide water development projects.

At three percent inflation, an engineer's estimate is that it will cost an additional \$15 million to complete construction on the Southwest Pipeline Project than it would if the project were completed this year. Most water development projects are built over a period of years. The costs will increase and the interest earned on the Water Development Trust Fund will be needed to keep pace with the increased costs.

The Southwest Water Authority would appreciate a favorable response from this committee in order to help facilitate completion of water development projects throughout the state.

Restoring Upper Basin Wetlands Will Eliminate the need for an Outlet from Devils Lake to the Sheyenne River.

I. An outlet from Devils Lake to the Sheyenne will not solve the flooding problem in the Lake. An outlet will, pumping only when feasible, reduce Devils Lake level by four or five inches a year at most—when Channel A and Mauvais Coulee add about 300,000 acre/feet (or 30 inches) per year to the lake. And if Devils Lake rises further, an outlet will have even less effect on the level of the lake.

II. A complete Environmental Impact Statement (EIS) should be completed before an outlet from Devils Lake is authorized or funded. Environmental Impact Statement information must be disseminated and discussed so that North Dakotans are fully aware of the possible solutions and their potential harmful impacts.

III. Preliminary benefit/cost estimates have not included damages to the Sheyenne River and since they have been negative, do not justify building an outlet.

IV. More importantly, however, the real cause of the problem has not been adequately addressed: Drainage in the upper Devils Lake basin has caused most of the flooding in Devils Lake. Until upper basin drainage control has been fully implemented, asking downstream Sheyenne River users to suffer with seriously degraded Devils Lake water, added summer flooding and bank erosion is premature and illogical.

NEIL TANGEN, CHAIRMAN; MILTON SAUER, TREASURER;
PEOPLE TO SAVE THE SHEYENNE—VALLEY CITY, NORTH DAKOTA
RICHARD BETTING, SECRETARY.

UPPER BASIN STORAGE

[PEOPLE TO SAVE THE SHEYENNE; VALLEY CITY, ND]

ORIGINAL WETLANDS ACRES IN THE UPPER BASIN OF DEVILS LAKE

DEVILS LAKE BASIN

ADVISORY COMMITTEE (1975)

569,000 ACRES

LUDDEN, A.P., AND OTHERS (1983)

412,000 ACRES

(Water Storage Capacity of the Natural Wetlands in the
Devils Lake Basin of North Dakota. Soil and Water Cons.)

U.S. FISH AND WILDLIFE

400,000 ACRES

SERVICE (1-31-1997) "Devils Lake
Feasibility Study"

Range of
estimates

REMAINING WETLAND ACRES (UNDRAINED) IN THE UPPER BASIN

U.S. FISH AND WILDLIFE

211,000 ACRES REMAINING

SERVICE & N.D. STATE

(UNDRAINED)

ENGINEER (1-8-1997)

N.D. STATE WATER COMMISSION

152,000 ACRES REMAINING

(8-23-2000) FIGURES AS OF 1997 (?)

(UNDRAINED)

Range

THEREFORE: DRAINED WETLAND ACRES IN THE UPPER BASIN

SUBTRACT REMAINING ACRES FROM ORIGINAL
ACRES THE RANGE OF POSSIBILITY IS

248,000 TO 417,000
(DRAINED ACRES)

U.S. FISH AND WILDLIFE STUDY (1997) CONCLUDES

189,000
(DRAINED ACRES)

Range

THEREFORE: STORAGE AVAILABLE IN THE UPPER BASIN:

U.S. BUREAU OF RECLAMATION .72 FEET X 189,000 = 136,000 acre/feet
(.72 feet = est. ave. depth of wetlands) .72 FEET X 417,000 = 300,000 acre/feet

Low

LUDDEN 100 YEAR AVERAGE 1.54 FEET X 189,000 = 291,000 acre/feet
(1.54 ft. = est. ave. depth of wetlands) 1.54 FEET X 417,000 = 642,000 acre/feet

Range

U.S. FISH AND WILDLIFE S. 1.71 FEET X 189,000 = 323,000 acre/feet
(1.71 ft. = est. ave. depth of wetlands) 1.71 FEET X 417,000 = 713,000 acre/feet

high

**AVERAGE OF WATER DEPTHS = 1.32 ft.; AVERAGE OF STORAGE = 400,000 ac./ft.
THEREFORE, AVERAGE STORAGE AVAILABLE = 528,000 acre/feet.**

Conclusions from Page 2:

[3 of 4]

1. Some estimates indicate that almost half of the original wetland acres in the upper basin have been drained;
2. Storage in the upper basin ranges from a conservative low of 136,000 acre/feet to over 713,000 acre/feet. The U.S. Fish and Wildlife Service (1997) estimates 491,400 to 926,100 acre/feet of storage in the upper basin.
3. Evaporation, plant use and seepage will reduce restored water levels by almost 36" (three feet) each year—every year!!

THEREFORE: RESTORING ONLY A MODERATE ESTIMATED NUMBER OF UPPER BASIN WETLAND ACRES WILL REMOVE THE NEED FOR AN OUTLET BECAUSE KEEPING ALMOST 300,000 ACRE/FEET OF WATER OUT OF DEVILS LAKE WILL KEEP THE LAKE FROM RISING THREE FEET EVERY YEAR!

OTHER CONSIDERATIONS, QUESTIONS

I. Size and height (mean sea level) of Devils Lake

In January 2001 Devils Lake is about 120,000 acres in size.

In January 2001 the height of Devils Lake is about 1446 msl. If it rises, Devils Lake will flow into Stump Lakes at 1447 + and then both lakes must rise 12'+ to overflow into the Sheyenne River at 1459 +. At that height Devils Lake/Stump Lakes will be over 275,000 acres in size.

II. Overflow into Stump Lakes

Devils Lake will overflow into Stump Lakes at about 1447 msl.

The U.S. Army Corps of Engineers Fact Sheet of 9-7-2000 states: "Although the natural overflow starts at elevation 1447, to get any significant flow over the divide the level of Devils Lake must 'surcharge' well above this elevation . . . a lake level of 1452 would be needed to generate a flow of 500 cfs."

III. Overflow from Devils Lake into the Sheyenne River

Devils Lake/Stump Lakes will overflow into the Sheyenne River at about 1459 msl, but the Corps Fact Sheet states that "to get any significant flow the level of Devils Lake must 'surcharge' above this elevation." In other words, Devils Lake will overflow into the Sheyenne minimally at 1460, about 500 cfs at 1464 msl.

No 14-foot wall of water will rampage down the Sheyenne River!!

THUS: RESTORING UPPER BASIN WETLANDS

[The U.S. Fish and Wildlife Service estimates that 189,000 upper basin wetland acres have been drained.]

WILL ELIMINATE THE NEED FOR AN OUTLET

by **PEOPLE TO SAVE THE SHEYENNE**

Neil Tungen, Chairman; Milton Sauer, Treasurer; Richard Betting, Secretary. Valley City, North Dakota

Adverse impacts from a Devils Lake outlet to the Sheyenne River include the following:

1. WATER QUALITY IN THE SHEYENNE RIVER WILL DETERIORATE

North Dakota Health Department studies show that Devils Lake water contains many contaminants, the most common and obvious being high levels of total dissolved solids (tds) and of sulfates. The best water in Devils Lake contains over 1200 milligrams per liter (mg/L) total dissolved solids (tds) and a minimum of 500 parts per million (ppm) sulfates.

By contrast, Sheyenne River water contains an average of about 475 mg/L total dissolved solids and 95 ppm. sulfates. Moving Devils Lake water to another watershed seems to **violate North Dakota's water quality standards, limiting sulfates to 450 parts per million, and others.**

Valley City will either have to build a new water treatment plant or find different sources for its municipal use. Remember, the City of Devils Lake does not use Devils Lake water.

2. FLOODING WILL INCREASE ON THE SHEYENNE RIVER

In terms of volume, the U.S. Corps of Engineers sets 600 cfs as bankful on the Sheyenne. Adding 300 to 480 cfs from Devils Lake outlets (Corps or State) will cause more flooding. Once water is released into the Sheyenne River from Devils Lake it cannot be controlled.

3. BANK EROSION WILL INCREASE

Bank erosion will increase in both frequency and duration, causing damage to homes, outbuildings and property, and result in loss of streambank grasses, trees and habitat.

4. HIGHER LEVELS OF POOR QUALITY WATER WILL CAUSE GROUNDWATER DAMAGE

Elevated groundwater levels in areas adjacent to the Sheyenne River, including the Sheyenne National Grasslands, will adversely impact the Sheyenne River and its flora and fauna, including the Lake Ashtabula and Sheyenne River fisheries, mussel and other aquatic invertebrate populations, and threatened western prairie fringed orchids in the Sheyenne National Grasslands.

[page 4 of 4]

Web site.www.savethesheyenne.com

TESTIMONY ON HOUSE BILL 1151

House Natural Resources Committee

**Dale Frink, Assistant State Engineer
State Water Commission**

January 19, 2001

Mr. Chairman and Members of the House Natural Resources Committee. I am Dale Frink, Interim State Engineer for the State Water Commission and I appear today in support of House Bill 1151.

Devils Lake is at an elevation of 1446.1 feet msl. While this is one foot lower than its peak elevation in August 1999, the flooding crisis in the Devils Lake basin is not over. This past fall was one of the wettest on record, refilling much of the storage in the basin. Snow water samples taken by Water Commission staff on January 17 and 18, 2001, indicate there is an average of 2.1 inches of water in the snow. While this is less than in 1997, two inches is above average for January. As a result, I believe Devils Lake will begin to flow into Stump Lake this year. The attached fact sheet provides additional information on Devils Lake, including a discussion of climatic patterns by Leon Osborne with the Regional Weather Information Center. Dr. Osborne indicates a noticeable shift in the climate in the late 1970s, causing a higher frequency of wet years in the Devils Lake basin. Dr. Osborne also expects the present wet conditions to continue until approximately 2015.

House Bill 1151 includes four significant items for consideration. Section 1 allows the interest on moneys in the Water Development Trust Fund to accrue to the fund. While the water community certainly prefers this, the proposal is in conflict with the executive recommendation, which assumes the interest moneys would accrue to the general fund. Therefore, the Water Commission requests that the proposed changes in Section 1(3) be deleted.

Senate Bill 2188 as passed by the Legislature two years ago provided \$20 million for a Devils Lake outlet, but the Legislature required the outlet to be a federal project. The proposed changes in Sections 2, 4, and 5 remove this requirement and allows state funds to be used on either a state project or as a cost share for a federal project. The Water Commission continues to work with the U.S. Army Corps of Engineers on a permanent outlet from the west end of Devils Lake. While progress continues, we feel a federal project is three to five years away. As a result, the Water Commission is considering a temporary outlet from the west end of the lake. Although we have also incurred delays, we believe the State has a better chance of completing the outlet than the Army Corps of Engineers.

Section 3(1) of House Bill 1151 relates to a Devils Lake outlet to either the Sheyenne River or to Stump Lake. We believe quick take authority will be required for any Devils Lake outlet. As the legislation indicates, we will make every effort

to acquire needed land by negotiation. The Water Commission currently has quick take authority for both the Southwest Pipeline Project and the Northwest Area Water Supply Project. Although the use of quick take authority has been very limited, in some cases it is necessary.

Section 3(2) authorizes the Water Commission to use a design build process instead of the traditional design-bid-build process if it determines the design build process would have advantages to the State. The design build process combines the roles of design professional and the construction contractor. In some cases, when efficiently carried out, it can expedite project completion by removing delays and conflicts between design and construction functions. The authority to use the design build process would apply only to the Devils Lake outlet, not to any other Water Commission projects. The authority also allows the Water Commission to use design build on only a portion of the outlet. This design build concept is occasionally used by other states and is often used by private industry.

House Bill 1151 also includes an emergency clause.

On December 8, 2000, the State Water Commission approved support for this bill and I request your favorable consideration.

Thank you.

ESSENTIAL



Climatology and Potential Effects of an Emergency Outlet, Devils Lake Basin, North Dakota

Introduction

The Devils Lake Basin is a 3,810-square-mile subbasin (fig. 1) in the Red River of the North Basin. At an elevation of about 1,447 feet above sea level, Devils Lake begins to spill into Stump Lake; and at an elevation of about 1,459 feet above sea level, the combined lakes begin to spill through Totten Coulee into the Sheyenne River (fig. 2).

Since the end of glaciation about 10,000 years ago, Devils Lake has fluctuated between spilling and being dry. Research by the North Dakota Geological Survey indicates Devils Lake has overflowed into the Sheyenne River at least twice during the past 4,000 years and has spilled into the Stump Lakes several times (Bluemle, 1991; Murphy and others, 1997). John Bluemle, North Dakota State Geologist, concluded the natural condition for Devils Lake is either rising or falling, and the lake should not be expected to remain at any elevation for a long period of time.

Recent conditions indicate the lake is in a rising phase. The lake rose 24.7 feet from February 1993 to August 1999, and flood damages in the Devils Lake Basin have exceeded \$300 million. These damages, and the potential for additional damages, have led to an effort to develop an outlet to help control lake levels. Therefore, current and accurate climatology and hydrologic data are needed to assess the viability of the various options to reduce flood damages at Devils Lake.

Climatology

Nature of Climate Variability

Devils Lake responds directly to climate variability across the region. This

climate variability generally can be regarded as the movement of the jet stream from season to season and from

year to year. As weather systems move, they are guided along the jet stream. Climate variability results from a long

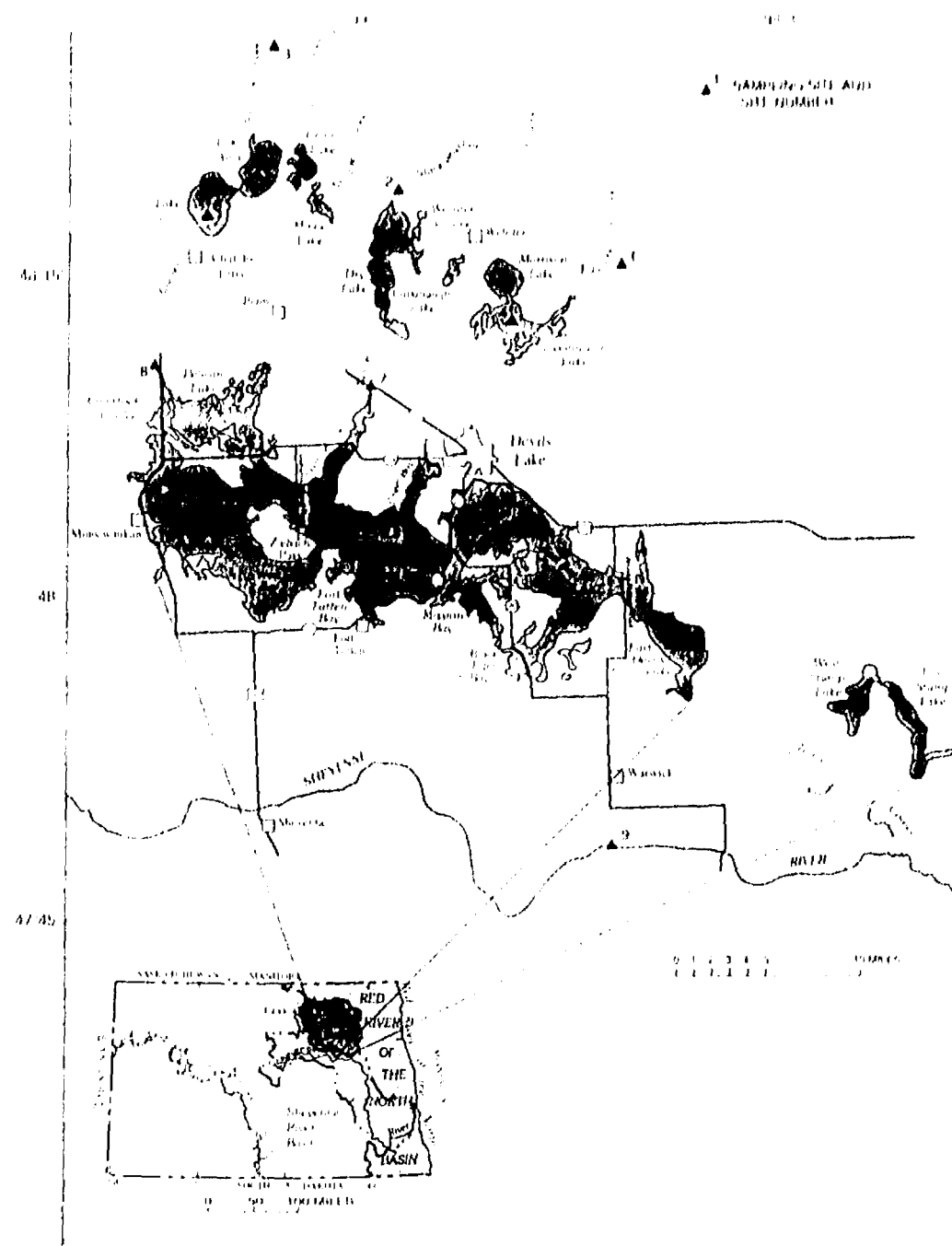


Figure 1. Location of the Devils Lake Basin, Devils Lake and Stump Lakes, and the Sheyenne River.

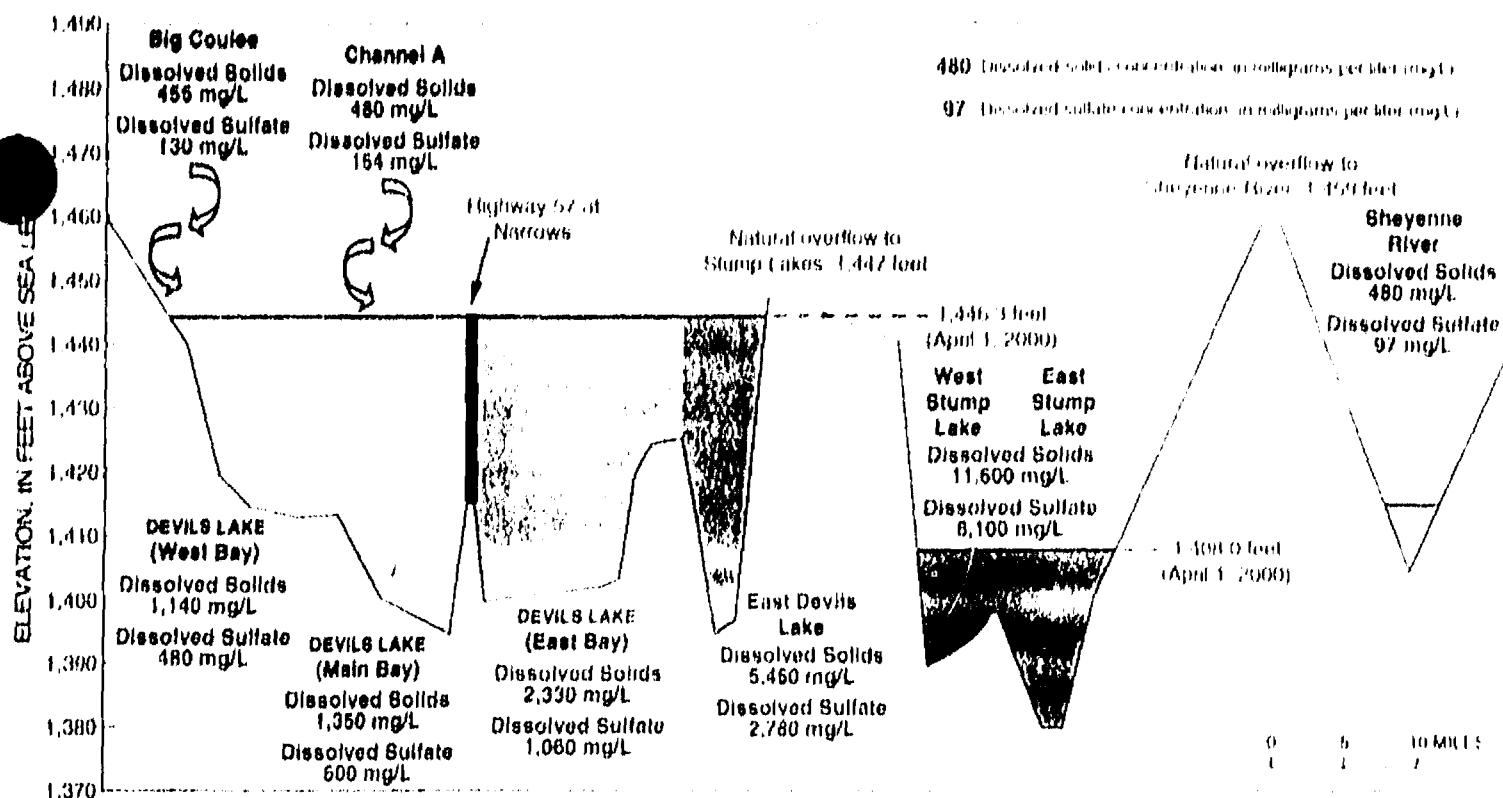


Figure 2. Spill elevations of Devils Lake and Stump Lakes, lake levels on April 1, 2000, and dissolved-solids and sulfate concentrations for tributary inflows, lake water, and Shoyenne River flow.

term shift in circulation patterns of the jet stream. As the circulation patterns shift, precipitation and temperature patterns also shift.

Global atmospheric circulation patterns are driven predominantly by variations in sea-surface temperatures. The most noticeable of these variations, known as El Nino, occurs in the equatorial Pacific and accounts for the dramatic variations in precipitation patterns along the western equatorial regions of South America. Across the plains of the northern United States and southern Canada, El Nino and its cold counterpart--La Nina--produce variations in precipitation and temperature patterns primarily in the winter months. However, long-term variations in annual precipitation and temperature patterns across the region also occur as a result of variations in the tropical sea-surface temperatures. These long-term variations often last for decades and are instrumental in the occurrence of flood and drought conditions across the Devils Lake Basin and elsewhere.

When El Nino and La Nina are strong, their interaction with global circulation patterns results in strong jet-stream wind-speeds and violent storms along the jet-

stream path. The relation between sea-surface temperatures and the global circulation patterns results in long-term shifts in the position of the jet stream. Therefore, the position of the jet stream is important in determining the precipitation and temperature patterns in the Devils Lake Basin. The variations in these patterns across the Devils Lake Basin over time are the result of changing global circulation patterns.

Atmospheric Weather Patterns Before 1977

Before the late 1970's, the activity of El Nino was subdued, and few variations occurred in the precipitation and temperature patterns in the Devils Lake Basin. The average seasonal precipitation values for 1950-77 varied from year to year but had no definite trends (fig. 3). The average annual temperatures for 1950-77 were slightly warmer than temperatures after 1977, and a sharp temperature contrast occurred between the winter and summer extremes.

Atmospheric Weather Patterns from 1977 to the Present

Since the late 1970's, the activity of El Nino has been greater than at any

other time during the 20th century. This heightened El Nino activity, and the subsequent movement of the jet stream farther north, has resulted in an increased frequency of moisture-bearing storms from the Gulf of Mexico across the Devils Lake Basin, particularly during May and June and during the early fall.

Climate Outlook for the Future

The duration of the present wet conditions cannot be determined definitely because of the complex interactions between global weather factors. Although La Nina conditions could bring some periodic relief from persistent, excessive precipitation, long-range climate models indicate generally wet conditions for the near future. Also, because the factors causing the wet conditions are global in scale, the transition from wet conditions to dry conditions may require years. Therefore, generally cool and wet conditions similar to those that occurred from 1977 to the present likely will continue beyond the first decade of the new century. Significant year-to-year variations in precipitation also will continue to occur.

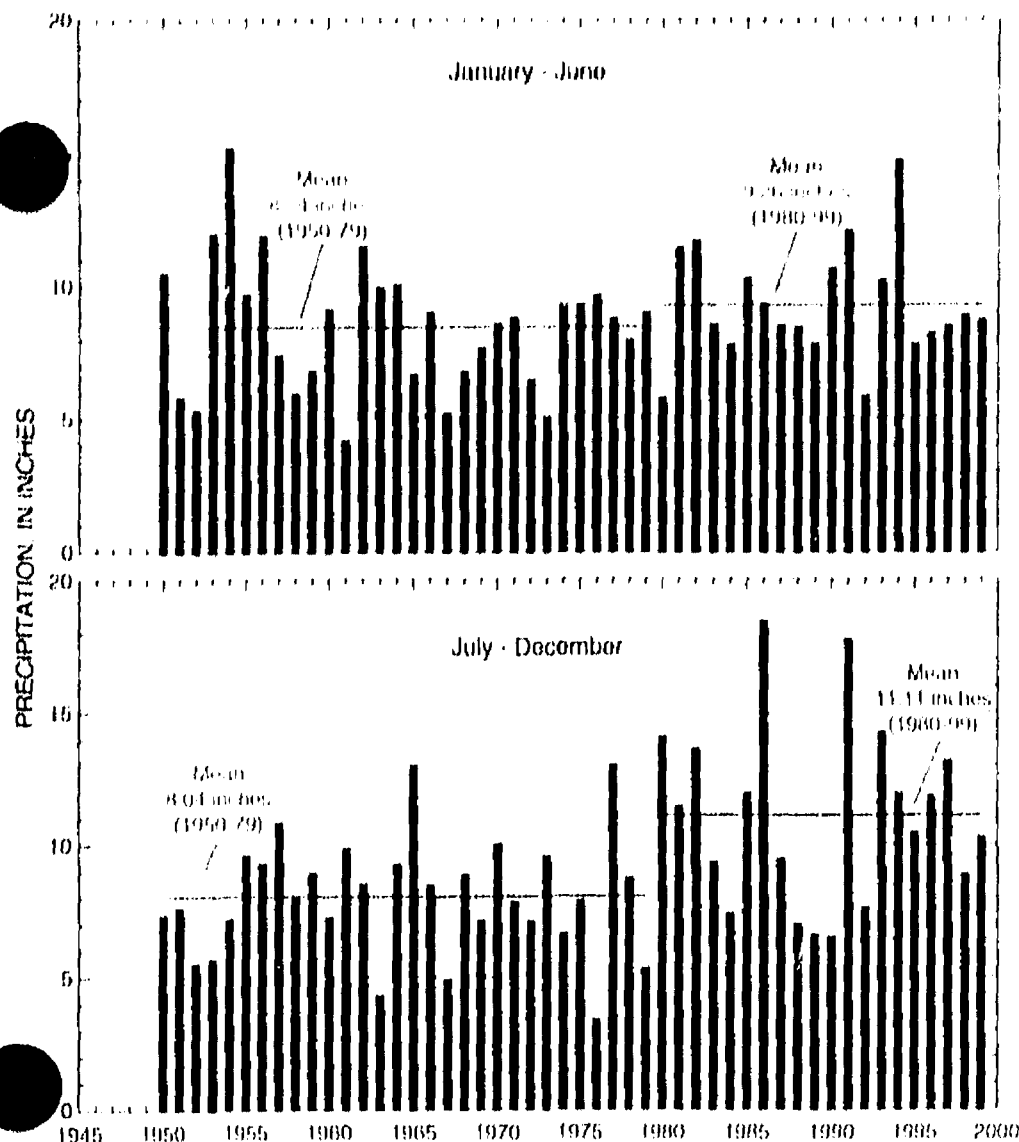


Figure 3. Devils Lake precipitation, 1950-99.

Potential Effects of an Emergency Outlet

Devils Lake currently is a terminal lake, and the lake levels in any year are affected by the storage and, therefore, the lake levels in the previous year. In contrast, the elevation of a river in any year is not affected by the elevation in the previous year. Because of this difference, standard statistical tools used to calculate values such as the "one hundred year flood" for rivers cannot be used for Devils Lake, and a tool that accounts for previous conditions was needed to evaluate the effects of an outlet on Devils Lake. As a result, the U.S. Geological Survey developed a simulation model for Devils Lake. This model uses historical climate conditions and the storage available in Devils Lake to generate 10,000 possible futures, called traces. Assuming the recent wet conditions will continue

through 2015, the model indicates about a 2-percent chance Devils Lake will spill to the Sheyenne River before 2015 with no emergency outlet. With a 300-cubic-foot-per-second emergency outlet, the chance of a spill is reduced to less than 1 percent.

The potential for a catastrophic spill from the natural outlet to the Sheyenne River poses a threat for downstream interests. If Devils Lake reaches the spill elevation (about 1,459 feet above sea level), the contributing drainage area of the Sheyenne River near Cooperstown, N. Dak., will quadruple (from 1,270 square miles to 5,070 square miles) because the entire Devils Lake Basin then would contribute flow to the Sheyenne River. Also, water in Stump Lake (which becomes part of Devils Lake at an elevation of about 1,447 feet above sea level) is of much poorer quality than water in western Devils Lake, and significant volumes of water spilling from the natural

outlet would cause serious downstream water quality problems.

The potential discharge of spills from Devils Lake through Tolna Coulee to the Sheyenne River is shown in figure 4. The amount of water that spills from Devils Lake is controlled by the geometry of the spill channel. Devils Lake can rise to an elevation much above 1,459 feet above sea level, and the magnitude of the spill will increase as the lake rises. Therefore, the 182 traces that exceed the spill elevation were separated into two groups: the 50 worst traces, for which Devils Lake exceeded 1,460.8 feet above sea level, and the remaining 132 traces, for which Devils Lake peaked between 1,459.0 and 1,460.8 feet above sea level.

The top graph in figure 4 shows daily discharge averaged over 50 traces that exceed 1,460.8 feet above sea level with no constructed west end outlet. The 2 years shown are the year in which the lake peaks and the year after the lake peaks. With no outlet, discharge is about 2,100 cubic feet per second in late June, above 2,000 cubic feet per second for more than 1 month, above 1,000 cubic feet per second for more than 4 months, and above 400 cubic feet per second for more than 1 year. In terms of volume and duration, the spills would overwhelm ambient flow in the Sheyenne River with poor-quality water. Sulfate concentrations are several times the North Dakota water-quality standard of 450 milligrams per liter. As shown on the lower line, an outlet would not eliminate the effects of the potentially catastrophic spills, but the spill volumes and durations would be reduced substantially.

The bottom graph in figure 4 shows daily discharge averaged over 132 traces that are between 1,459.0 and 1,460.8 feet above sea level with no constructed west end outlet. With no outlet, discharge is about 430 cubic feet per second in July, above 200 cubic feet per second for more than 4 months, and above 100 cubic feet per second for more than 1 year. Although these discharges are not large enough to cause major flood problems in the Sheyenne River, the duration and high sulfate concentrations of the spills would cause significant water-quality problems downstream. The effects of the spills would be greatly reduced (or entirely eliminated) with the outlet. The outlet

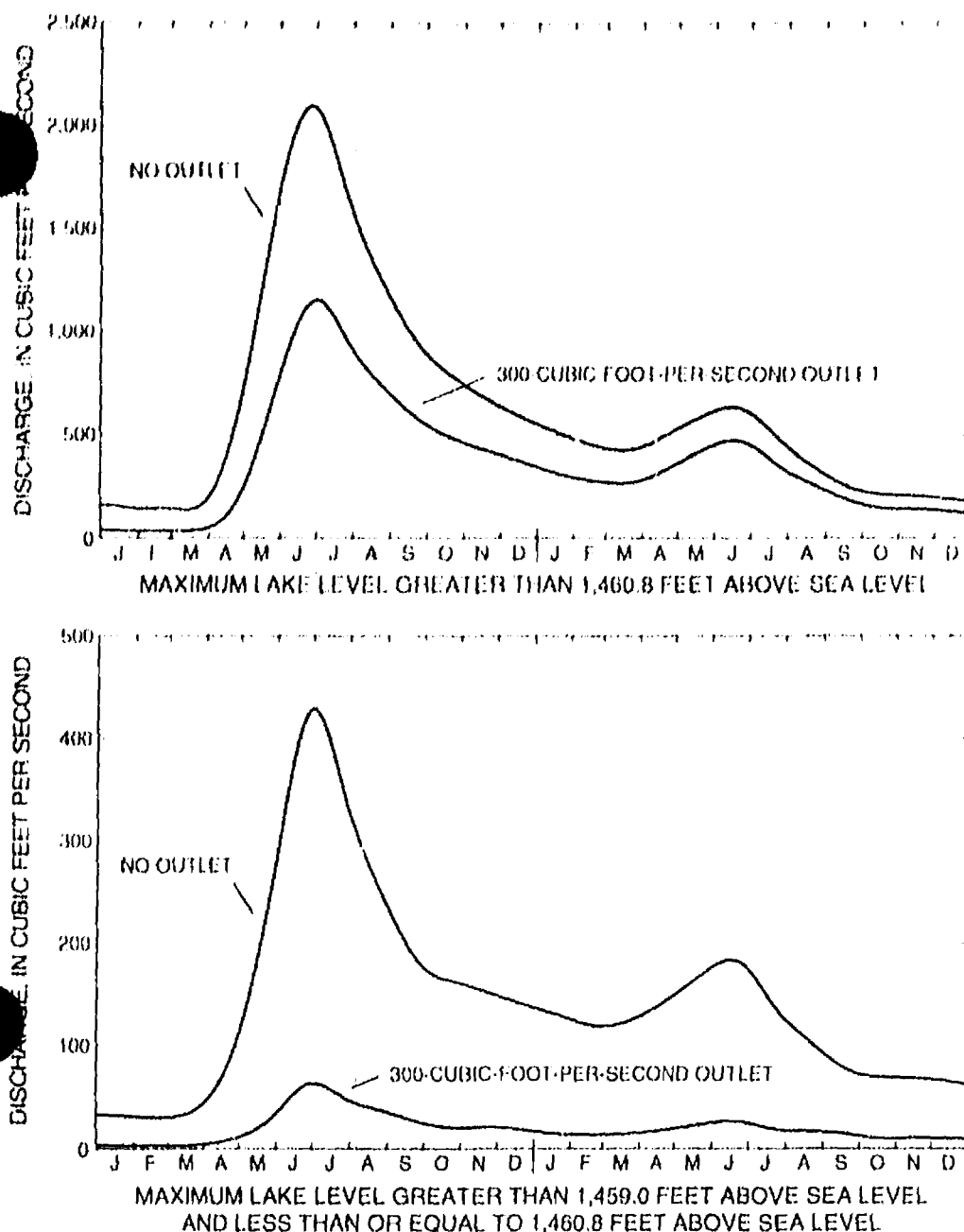


Figure 4. Discharge of spills through Tolna Coulee to the Sheyenne River. (Top graph shows average over 50 traces with and without an outlet; bottom graph shows average over 132 traces with and without an outlet)

completely eliminated the spills in 98 of the 132 traces shown on the bottom graph and greatly reduced the spills in the remaining traces.

If Devils Lake spills, discharge would flow through a channel to Tolna Coulee and then to the Sheyenne River. Because of the shape of the channel and the soil materials on its bottom (Murphy and others, 1997), erosion likely would

commence immediately and could continue down to an elevation of about 1,447 feet above sea level. At that elevation, Stump Lake is no longer connected to Devils Lake, and the channel would reach a plateau that has a much milder downstream slope. Such an event would release up to 2 million acre-feet of water, about four times the volume of the 1997 flood at Lisbon, from the Devils Lake-

Stump Lake system. This water would be in addition to the flows described earlier.

G. J. Wiche and A. V. Vecchia, U.S. Geological Survey, Leon Osborn University of North Dakota Regional Weather Information Center, and James T. Fay, North Dakota State Water Commission

References and Further Reading

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- Sether, B.A., Vecchia, A.V., and Berkas, W.R., 1999, Spatial and temporal variability of dissolved sulfate in Devils Lake, North Dakota, 1998: U.S. Geological Survey Fact Sheet FS-096-99, 4 p.

Upham, Warren, 1895, The glacial Lake Agassiz: U.S. Geological Survey Monograph No. 25, 658 p.

Wiche, G.J., and Vecchia, A.V., 1996, Lake-level frequency analysis for Devils Lake, North Dakota: U.S. Geological Survey Water-Supply Paper 2469, 57 p.

For more information contact any of the following:

For water information:
District Chief
821 East Interstate Avenue
Bismarck, ND 58503
(701) 250-7400

For more information on all USGS reports and products (including maps, images, and computerized data), call 1-800-USA-MAPS.

Additional earth science information can be found by accessing the USGS "Home Page" on the World Wide Web at "http://www.usgs.gov".

I am hear today in support of HB1151, as its sets the stage for future relief to the citizens of the Devils lake Basin. I am sure many of you know that the new forecast for the elevation of Devils Lake with a 50% chance to be 1449.2 feet. This elevation is totally unacceptable to our area, as I believe some of you heard me say 4 years ago that 1450 elevation would ruin the economic condition of our area and I am not very far from being wrong. We are spending 30 million dollars on roads and bridges, with at least another 20 million scheduled for 2002. We possibly are going to haveto raise the dike 3 more feet this summer for another 10 million dollars, the road-dike issue is still unresolved, we are working on protection for the Ramsey County Rural Sewer and flood protection for the Lakewood area. There may need to be 30 to 40 homes moved again this year, as well as, water flowing into Stump Lake causing more damage, loss of land, moving of buildings and sending another signal downstream that this thing is for real.

We will again have highway 19 closed all summer for another economic loss, stress for those traveling back and forth to Devils lake for what ever reason. The time has come weather you are for or against the outlet project to roll up your sleeves and find a solution that will help all, as this is a North Dakota problem and it could become a monster for all of eastern North Dakota.

I ask for your total support in the passage of HB 1151, so we in the Devils lake area can get our lives back in place. Once again I want to thank you for all the help you have given in the past and your continued support in the future will very much be appreciated thank you

Joe Belford
Chairman Ramsey County Commission

3/1/1

To: ND Senate Natural Resources Committee
reference: HB 1151

The ND Wildlife Federation would like the bill amended so that an EIS is required regarding an outlet to the Sheyenne river.

Page 3, line 13 of the bill requires an EIS for an outlet to Stamp Lake but is quite regarding the Sheyenne.

We urge you to accept this amendment. Otherwise, we do not support the bill.

Thank you,

Mike Donohue
Lobbyist #258

Dear Senators of the State of North Dakota:

I am a concerned citizen, private land owner, and taxpayer near the West end Peterson Coulee outlet proposal.

This proposal is not cost prohibited.

We believe the (attempt) or (idea) of a West end outlet is a blatant waste of time and money. There is no possible way to move the significant amount of water needed to lower the level of Devils Lake through a West end outlet.

We believe the Army Corps of Engineers should remain in charge. Without their involvement, no Federal money will be available. Congress has appropriated \$32,500,000. with which an Environmental Impact Study would be conducted. With regard to the Freedom of Information Act, without the Environmental Impact Study, the State of North Dakota cannot legally do the West end outlet, according to the National Environmental Policy Act. We believe this Legislative Process is technically fraudulent because it is out of the scope of authority of this legislative body to establish the process of a Devils Lake outlet.

The public needs a complete, full scale written report (Environmental Impact Study) from the Corps of Engineers so that concerns from citizens inside and outside of the State of North Dakota can have time to review the study.

If this policy is not followed, we contend public law is not being followed. This puts the state at risk and our private property rights will be violated. We will:

1. Seek litigation with Attorney Generals outside the State of North Dakota.
2. File damage claims against or pursue legal action against the State of North Dakota.

In summation, we believe the West end outlet is flawed and will NOT work.

If the state is going to spend money, lets do it right and compensate those who have suffered loss, and work to move, protect, save, and control what is possible to the East as the water goes naturally.

Please defeat HB bill 1151

Respectfully submitted,

Dale Yri

Peterson Coulee assoc.

TESTIMONY ON ENGROSSED HOUSE BILL 1151

Senate Natural Resources Committee

Dale Frink, Interim State Engineer
State Water Commission

March 1, 2001

Mr. Chairman and Members of the Senate Natural Resources Committee. I am Dale Frink, Interim State Engineer for the State Water Commission and I appear today in support of Engrossed House Bill 1151.

Devils Lake is at an elevation of 1446.1 feet msl. While this is one foot lower than its peak elevation in August 1999, the flooding crisis in the Devils Lake basin is not over. This past fall was one of the wettest on record, refilling much of the storage in the basin. The National Weather Service recently provided a 50 percent chance forecast for Devils Lake of 1449.2 feet msl. As a result, Devils Lake will begin to flow into Stump Lake this year. We expect Stump Lake to raise 10-15 feet this year if Devils Lake reaches 1449.2 msl. Dr. Leon Osborne with the Regional Weather Information Center has studied climatic patterns for North Dakota and Devils Lake. Dr. Osborne indicates a noticeable shift in the climate in the late 1970s, causing a higher frequency of wet years in the Devils Lake basin. Dr. Osborne also expects the present wet conditions to continue until approximately 2015.

Engrossed House Bill 1151 includes three significant items for consideration. Senate Bill 2188 as passed by the Legislature two years ago provided \$20 million for a Devils Lake outlet, but the Legislature required the outlet to be a federal project. The proposed changes in Sections 1, 2, 4, and 5 remove this requirement and allows state funds to be used on either a state project or as a cost share for a federal project. The Water Commission continues to work with the U.S. Army Corps of Engineers on a permanent outlet from the west end of Devils Lake. While progress continues, we feel a federal project is three to five years away. As a result, the Water Commission is considering a temporary outlet from the west end of the lake. Although we have also incurred delays, we believe the State has a better chance of completing the outlet than the Army Corps of Engineers.

Section 3(1) of Engrossed House Bill 1151 relates to a Devils Lake outlet to either the Sheyenne River or to Stump Lake. We believe quick take authority will be required for any Devils Lake outlet. As the legislation indicates, we will make every effort to acquire needed land by negotiation. The Water Commission currently has quick take authority for both the Southwest Pipeline Project and the Northwest Area Water Supply Project. Although the use of quick take authority has been very limited, in some cases it is necessary.

Section 3(2) authorizes the Water Commission to use a design build process instead of the traditional design-bid-build process if it determines the design build

process would have advantages to the State. The design build process combines the roles of design professional and the construction contractor. In some cases, when efficiently carried out, it can expedite project completion by removing delays and conflicts between design and construction functions. The authority to use the design build process would apply only to the Devils Lake outlet, not to any other Water Commission projects. The authority also allows the Water Commission to use design build on only a portion of the outlet. This design build concept is occasionally used by other states and is often used by private industry.

Engrossed House Bill 1151 also includes an emergency clause.

On December 8, 2000, the State Water Commission approved support for this bill and I request your favorable consideration.

Thank you.

**DEPARTMENT OF NATURAL RESOURCES
WATERS****STATE OF MINNESOTA
Office Memorandum****DATE:** February 28, 2001**TO:** Chair, Natural Resources Committee, North Dakota State Senate**FROM:** Kent Lokkesmoe, Director**Subject:** *Kent Lokkesmoe*
North Dakota House Bill No. 1151

I was forwarded a copy of this legislation which I understand was recently passed by the North Dakota House of Representatives. I was also informed that your committee will be holding a public hearing to take testimony on March 1, 2001. Due to time and travel constraints, it will be impossible for any representative of the State of Minnesota to present testimony in person.

However, I would like to submit the attached information on behalf of the State of Minnesota and request that it be distributed to your committee members for their consideration before voting on the proposed bill. The attachment, although directed to the U.S. Army Corps of Engineers in reaction to a permit application for an outlet to Devils Lake, contains requests for information that the State of Minnesota feels is applicable and essential to be considered before any proposed outlet to Devils Lake would be acceptable to the State of Minnesota.

It is imperative that a project such as the Devils Lake outlet being proposed by the North Dakota State Water Commission follow the process contained in the National Environmental Policy Act and address the concerns we have raised. Thank you for the opportunity to submit this information for your committee's consideration.

Enclosure

c: Governor's Office, Attn: Joe Bagnoli
Commissioner's Office, Attn: Steve Morse, Michelle Beeman



Minnesota Department of Natural Resources

500 Lathrop Road
St. Paul, Minnesota 55155-4012

September 10, 1999

US Army Corps of Engineers
Omaha District
North Dakota Regulatory Office
1513 So. 12th Street
Bismarck, ND 58504

RE: Comment on Public Notice, Devils/Stump Lake Emergency Outlet
North Dakota State Water Commission
Application N. 199960467

Minnesota only became aware of this notice shortly before the deadline for written comments. In our capacity as the Minnesota fish and wildlife agency referred to in the US Fish and Wildlife Coordination Act, we called and received an extension from Mr. Dan Cimarosti. He noted that comments will be accepted postmarked by the September 11 deadline given for those attending the public hearing to submit additional written material.

Our comments follow.

I. GENERAL COMMENTS.

A. Decision process. Minnesota has multiple concerns about many aspects this proposal, and about the decision process being followed regarding proposed responses to high Devils Lake levels. As Attachment 1 summarizes, Minnesota has raised numerous issues over a number of years during a long review process of various proposals, including this one. We have responded to requests from the COE during its EIS scoping process, and regarding its draft report to Congress. Yet no environmental studies or studies of alternatives have been released for public and agency review, and the draft Report to Congress has not been given to Minnesota, in spite of assurances from the COE that this would be done. Furthermore, North Dakota agencies have been given the opportunity for such review, including review of the draft Report to Congress. Such a process ill-serves the public interest, and is not justified given the millions of dollars being spent or foreseen to be spent.

Our substantive comments in this letter are largely not new, and we attach a summary and the previous correspondence. We have concerns about impacts to the Red River basin in Minnesota because of water quality impacts, transfer of undesirable species (or of increasing the risk of such transfer because of the major new route created), and impacts to waterfowl. We also strongly urge a careful view of alternatives, and believe there is time to complete adequate studies before construction of an outlet to the Shoyenne River. The proper course is completion of an EIS, careful and thoughtful weighing of costs, benefits, and alternatives.

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These comments are not meant to downplay the problems occurring in the Devils Lake area, the difficulty of the problems, or the impact to people and businesses in the Devil Lake area. The best solutions to these problems come from allowing full and open review of proposals and objective analysis of alternatives. Should the highly unusual wet conditions continue to hold, we are ready to respond to deal with these issues.

II. SUMMARY OF KEY DETAILS OF THE PROPOSAL CONTAINED IN THE PUBLIC NOTICE.

Based on Minnesota's concerns with this project, there are several key items in the COE public notice, as follows.

A. Project features and purposes. The notice actually describes two projects, which, if taken together, would result in a outlet to the Sheyenne River from Devils Lake, with a possible capacity of up to 800 cfs:

1. Governor Shafer proposal. The purpose of this project, which has a projected two month construction time, is temporary relief of flooding around Devils Lake. A 6.6 mile long ditch would be constructed to allow rapid filling of Stump Lake, causing a 37 foot rise from current levels. This is projected to lower Devils Lake by three feet. Currently, Devils Lake is at 1447 msl, which is the same elevation as the natural spillover into Stump Lake. The natural outlet of Stump Lake to the Sheyenne River is 1459 msl. The new channel is intended to be a permanent feature, and would be able to pass 1,000 cfs into Stump Lake. It's bottom would be at 1439 msl, 8 feet lower than the natural outlet to Stump Lake. The COE has received an application for this project, and the public notice is for this project alone.

2. City of Devils Lake proposal. This project is to construct a 7,344 foot long ditch outlet from Stump Lake to Tolna Coulee, which leads to the Sheyenne River. This ditch, with a bottom at 1440 msl, would be 1 foot higher than the ditch proposed by Governor Shafer, and would lower the natural outlet of Stump Lake by 19 feet. The ditch capacity is described as "500 or 800 cfs." An application went to the State of North Dakota, which has assigned a state engineer to help with design. A public hearing for this proposal was held a few days before the COE hearing, and the public comment period closed September 1. This proposal is described in the Public Notice, but the COE states that it has not received an application as yet.

B. Environmental issues of importance to Minnesota. The public notice points out certain impacts and project features of importance to Minnesota or to the environmental analysis necessary for the project. These are:

1. Water quality. Stump Lake contains high TDS and sulfate, as does the east end of Devils Lake. (page 4 and 5.)

US Army Corps of Engineers

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2. Loss of wetlands and waterfowl habitat. The project would impact 2,178 acres of wetlands (1,923 acres impacted by inundation with up to 37 feet of water.)The Stump Lake area is also important canvasback habitat, according to the notice. (page 4). No proposal for wetland mitigation is included, nor are these mitigation costs included in project cost estimates, the notice says: *(Note: Scaup also are found in the area, and some portion of the populations of both species from Stump Lake migrate through Minnesota. In addition, COE regulatory practices have included requiring wetland mitigation for the impacts of inundating wetlands. If a figure of \$800/acre for costs of wetland mitigation would be used, the costs of mitigating wetlands alone would be \$1.76 million.)*

3. Previous actions relating to suppression of drainage activities within the basin. The notice notes that an earlier Stump Lake outlet plan, permitted by the COE in 1995, "did not require Governor Shafer to implement a moratorium on agricultural drainage throughout the basin...." *(Note: One of the contentious issues is that North Dakota has not done enough to curtail drainage throughout the period of rise of Devils Lake. There is an extensive agricultural drainage system north of the lake, and improvements continued to be made in it in spite of the ongoing flooding around Devils Lake.)*

4. Closed basin. The Public Notice refers to the Devils Lake basin as a "closed (non-contributing) basin....(It) was considered a part of the Red River Basin, however, no flow to the Red River has occurred since 1830." *(Note: this is an important consideration because such isolation can result in substantially different biota. In addition, the report of flow in 1830 seems subjective.)*

III. SPECIFIC COMMENTS ON THE PROJECT.

The following items are largely based on past comments on this project by the Minnesota DNR. These are referenced and summarized in Attachment 1. The documents in their entirety will be mailed separately, and referred to as Attachment 2.

A. Relation to other projects. The COE public notice is for the Shafer project outlet to Stump Lake; however, the City of Devil's Lake project is simultaneously undergoing planning, public hearing input, and the involvement of the North Dakota Water Commission staff in design of both projects. Furthermore, the latter project would have no purpose except to outlet water from Devils Lake to the Sheyenne River.

As pointed out in our testimony to Congressional committees, Minnesota takes the position that the Garrison Diversion Project inlet to Devils Lake during drier climatic periods is part of this US project. (See June 21, 1999 testimony of Deputy Commissioner Morse in Senate hearings.) In addition, the written record is replete with references to the need for an inlet, and plans were progress in North Dakota, even in the earlier stages of the recent lake rise. The dramatic rise of the recreational fishery that corresponds to the lake rise is based on the rapidly growing

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populations of northern pike, walleye, and perch. The economic value of this recreation, and the businesses generated, will almost certainly lead to intense public demand for Missouri River water to stabilize the lake should dry conditions return. The potential for this recreational fishery has not been seen in the past on Devils Lake.

Therefore, effects and permitting decisions must be based on the projects taken together.

B. Estimates of lake rise, including time of natural spillover to the Sheyenne River. This issue is key to understanding the degree to which there is an "emergency" beyond the areas adjacent to the rising lakeshore. Admittedly, forecasting the rate of rise has been difficult because of the unusual wet cycle and many other factors. However, the COE, St. Paul District stated that if wet conditions continue, natural overflow to the Sheyenne will not occur until about 2017 or 2018. (See Attachments 1 and 2, May 21, 1999 Letter from Paul Swenson to USCOE.) This request from the COE was in conjunction with their preparation of the draft Report to Congress on this project.

However, there is much confusion on this topic, pointing to the need for release of comprehensive studies of the project. For instance, the Congressional Record of June 28, 1999 (p. S7688) contains testimony of Senator Dorgan by which he reads into the record what he calls a draft summary of the COE Draft Report to Congress on the Devils Lake Project. Language in this report refers to the imminent overflow into the Sheyenne River. We called the COE St. Paul District, and have been told that this document has not been accepted by the COE (in effect, the material in the Congressional Record is an early draft that has been subsequently rejected.)

Such an analysis is key to decision making. In fact, the Congressional Record also contains a June 17, 1999 letter from the COE to Senator Dorgan from Division Engineer Phillip Anderson, which is much more similar to the information supplied to us. It forecasts that construction would not need to begin until 2006, lending support to our statements that there is plenty of time to complete an EIS and an orderly decision making process.

C. Magnitude of flows to the Sheyenne River. The notice refers to potential flows to the Sheyenne River of up to 800 cfs. In earlier correspondence, and during scoping meetings, a flow of 350 cfs was foreseen out of the west end. This flow was limited by channel capacity and water quality, and may even be restricted further depending on existing flows in the Sheyenne River. In addition, previous information indicated that water quality was much poorer on the east end of Devils Lake. This is confusing, and greatly in need of study. Our past comments have noted that need for clarity on projected flows and the receiving water quality implications of any lake outlet (See Attachments 1 and 2)

D. Will an outlet accomplish the objective of decreasing flooding impacts? Information presented to us during the scoping process showed that an outlet to the Sheyenne River (west end) would only decrease the rate of increase in the lake level, should the wet cycle continue

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Current news reports and statements now seem to present a constructed outlet as the solution to problems. We understand that in this Notice, the project purpose is stated as temporary relief of flooding problems. However, money could instead be spent on alleviating damages around the lake as it rises, since the COE says construction of an outlet to the Sheyenne River need not begin until 2006. This question needs to be analyzed in the form of a careful presentation of costs and benefits. Our past comments have also asked that this be done.

E. Biota transfer issues. As described in the Public Notice, this basin is closed off from the Red River Basin, and it's past connection to the basin is subject to conjecture. Some reports are that there was overflow to the Sheyenne River 4 times in the last 10,000 years. There are other, unconfirmed reports of other connections to the Red River basin. Our most extensive comments on this topic are contained in a letter of August 27, 1998 to Colonel Kasprisin, St. Paul District of the COE. These are comments describing what questions need answering in the EIS.

F. Water quality issues. Minnesota has repeatedly raised concerns about effects on water quality of the Red River from an outlet to the Sheyenne River. These include concerns that bank erosion from higher flows in the Sheyenne River will result in sediment movement and siltation of habitats, and adverse effects from dissolved solids, including sulfates. The record shows that these concerns are heightened if the outlet is on the east end of Devils Lake. There is an allusion to the need for water treatment in the Public Notice, but no cost estimates are included. Our past comments on the COE scoping process address these issues. (October 17, 1996 letter; October 2, 1997 letter, March 23, 1998 letter; see Attachments 1 and 2.)

G. Operating issues. The past record indicates that project operations--when flows could actually be directed into the Sheyenne River--are closely constrained by time of year, water quality, and flood levels on the Sheyenne and even the Red River. For example, this summer has seen high flows all summer. The Sheyenne River and even the Red River have periodically been at flood stage. The purpose of the project is for it to be used if the current wet cycle continues. This likely means high flows elsewhere downstream. This issue is pointed out in our June 21, 1999 letter (see Attachment 1 and 2.)

H. Project costs and benefits. It is imperative that there be an accounting of the costs of these proposed projects. While it is true that unexpected costs will appear, there are other cost categories that are specifically already recognized, but not enumerated. The project is being presented as one that is to reduce economic damages. It is therefore important to come up with reasonable estimates in these categories. Examples are mitigation costs, water treatment costs, maintenance costs, including monitoring for unwanted species moving into the Red River basin, and so forth. Only with these estimates in hand--and they need not be exact--will it be reasonable to draw conclusions about the project feasibility. Again, our past comments refer to the need to address these issues.

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IV. NEED FOR STUDIES TO BE RELEASED TO THE PUBLIC AND AGENCIES

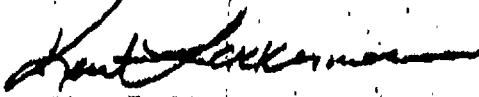
Several times, we have called for the completion of the draft EIS on this project. (See Attachments 1 and 2.) In addition, we received a commitment from the COE, St. Paul District, that the draft Report to Congress would be made available to us prior to it's being released to Congress. News reports about this project portray a high degree of confusion, argument, and debate about the project's costs, benefits, feasibility, environmental impacts, effectiveness, alternatives, projected runoff to the Sheyenne River, and so forth. There have been some technical reports made available, but it is unclear how the information in these reports translate into public policy or choice of alternatives. There is intensifying public controversy occurring.

We feel that completion of studies and presentation for agency and public review is very important for making progress on any decisions. It is difficult for Minnesota to participate in this climate of requests for input, but no translation into clear presentations of choices, costs and benefits, and environmental impacts.

We note and strongly support the position of Major General Phillip Anderson, Division Engineer, Mississippi Valley Division, Vicksburg Mississippi, as stated in his June 17, 1999 letter to Senator Byron Dorgan (with one exception as noted in the following.) In this letter, he states that he has "not reached a conclusion that an outlet is a necessary or appropriate solution to the recent rise of water in Devils Lake." His recommendation to the COE central office in Washington is that "we complete the Final Report to Congress, which will include analysis of several alternatives, including outlet plans. ...The Final Report to Congress will contain a fully coordinated Environmental Impact Statement...." The exception we note is that his letter refers to a Technical Report which is part of the Report to Congress. This report, and the earlier draft Report, which was given to the State of North Dakota, should be provided to us so we may respond to it in time for inclusion of our views in the Final Report to Congress.

Thank you for this opportunity to comment.

Sincerely,
DNR Waters



Kent Lokkesmoe
Director

copy: Dave Sprynczynatyk, ND State Water Commission
Paul Swenson, DNR Region 1



Minnesota Department of Natural Resources

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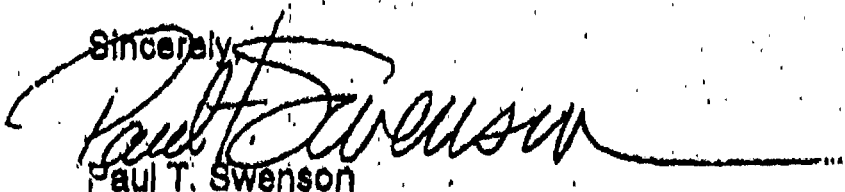
September 10, 1999

US Army Corps of Engineers
Omaha District
North Dakota Regulatory Office
1513 So. 12th Street
Bismarck, ND 58504

RE: Comment on Public Notice, Devils/Stump Lake Emergency Outlet
North Dakota State Water Commission
Application N. 199960467

A comment letter has been sent to you from our St. Paul office on this Public Notice. It has been signed by Kent Lokkesmoe, Director of the Division of Waters. It refers to Attachment 1 and 2. These were not available to include, and we are therefore including them in this letter. They refer to various previous correspondence from Minnesota regarding the Devils Lake Project. Attachment 1 includes a chronological list and summary. Attachment 2 contains the correspondence in its entirety.

Sincerely,


Paul T. Swenson
Regional Director

PTS:PS:bar

ATTACHMENT 1

Summary and Chronology of Comments of the Minnesota Department of Natural Resources
to the US Corps of Engineers and Congress
Devil's Lake Project
September 10, 1999

June 21, 1999. Written testimony of Deputy Commissioner Steve Morse to Senate Subcommittee on Energy and Natural Resources, Senator Gordon Smith, Chair. S. 623, Dakota Water Resources Act.

Testimony summarizes concerns over the Garrison Diversion and Devils Lake projects, and opposition to interbasin diversions, reiterating past comments, and pointing out that Minnesota views the inlet to Devil's Lake, and an outlet to the Sheyenne River, as one project. It notes that Minnesota has not received a response from North Dakota to an earlier request from former Governor Arne Carlson regarding the connection between the two projects. It states that Minnesota may be substantially impacted by the Devils Lake project, and that it be included in deliberations to the greatest extent possible.

May 21, 1999. Letter from Paul Swenson, DNR Regional Administrator, Bemidji Region 1 HQ, to Randy Devendorf, USCOE, St. Paul District, responding to a COE request: *"Comments on a May 19 request concerning Minnesota DNR concerns with downstream impacts of a natural spillover of Devil's Lake (1459 elevation), and of impacts of maintaining the lake at 1454 el., if it were assumed that the current wet cycle would continue."*

The comment notes: 1) Even with the assumption of a continued wet cycle, the COE projects that the lake would not naturally flow to the Sheyenne River and to Minnesota waters until about the year 2017 or 2018. 2) The Devil's Lake basin would still contain a "worst-case" 250 yr flood event until the year 2008. 3) Lack of information about biota transfer, downstream water quality, sediment and channel erosion in the Sheyenne River moving into the Red River, operating plans for an outflow into the Sheyenne, and various forecasted precipitation scenarios means that the EIS should be completed and presented for public and agency review. 4) There is time to prepare the EIS and prepare for a continuation of the wet cycle before natural outflow is to occur.

October 1998. Testimony of Deputy DNR Commissioner Ron Nargang, before Senate Subcommittee on Water and Power, regarding Garrison Diversion Project and Devils Lake project, prepared upon request of Governor Carlson.

With respect to the Garrison Project diverting Missouri River water, the testimony notes the serious problems of interbasin transfers and points out the policy against this agreed to by the eight Great Lakes states, notes that interbasin transfers are short term solutions that are not sustainable, points out legal problems with water laws between the states, and notes problems with groundwater supplies and navigation in the lower Mississippi. With respect to the Devil's Lake project, the testimony reiterates concerns about biota transfer, water quality impacts to the Red River, and lack of studies of the project, noting the EIS is needed. Specific technical issues are identified.

August 27, 1998. Letter From Kent Lokkesmo, Director Division of Waters, to Colonel Kenneth Kasprisin, providing detailed scoping comments on COE EIS on the Devils Lake proposed outlet on the west end of Devils Lake.

The letter provides detailed recommendations regarding addressing biota transfer, water quality (mercury contamination and habitat changes in the Red River), and effects of higher flows on the Sheyenne River with respect to channel erosion and sedimentation (and subsequent effects on the Red River). Minnesota's extensive exotic species program and law is described, and notes that one of the main issues needing addressing is the increased risk of harmful transfer of species because of increasing connectivity. It also notes that Eurasian water milfoil has been reported in the Sheyenne River, the only known location so far in the Red River Basin. Details are provided as to how to assess these issues in the EIS, and what technical

questions need answering.

March 23, 1998. Letter Commenting on COE scoping process on the Devils Lake project from four Minnesota state agency commissioners (Rodney Sando, Department of Natural Resources Commissioner; Pedar Larson, Minnesota Pollution Control Agency Commissioner; Ann Barry, Department of Health Commissioner; and Kathleen Roer, Chair, Board of Water and Soil Resources) to Lt. Colonel William Breyfogel, USCOE, St. Paul District.

The comment letter notes that the outlet capacity would not likely alleviate the high water problems then occurring, even if wet conditions continue. It notes the expectations then created for bringing in Missouri River water when water levels are decreasing. It noted concerns about water quality, affects on water treatment systems, and affects on drinking water supplies. Also noted were adverse impacts from non-native species, and requests careful study of economic benefits and costs, and alternatives.

October 23, 1997. Written testimony of Ron Nargang, Deputy Commissioner of the DNR, submitted to Senator John Chafee, Chair, Senate Committee on Environment and Public Works, on the occasion of a hearing on flood control at Devils Lake. A cover letter from Governor Arne Carlson is provided.

Governor Carlson's cover letter expresses concern that Minnesota was not invited to give testimony and notes that the project could have great impact on Minnesota. The testimony of Mr. Nargang provides specific comments on cost-benefit analysis, water quality and water quality modeling and subsequent effects on the fishery, calls for study of forecasted project operations, evaluation of alternatives, including upper basin storage. It notes that the Devils Lake and Garrison Diversion project may be "connected actions."

October 17, 1997. Comments regarding environmental impacts submitted by Tom Balcolm, Supervisor, Environmental Review Section, DNR, to Thomas Raster, St. Paul District, USCOE, in response to a request for review of a feasibility study of an outlet of Devils lake to the Sheyenne River.

Recommends an EIS on the proposal, based on extensive possible adverse impacts, including: effects on the Sheyenne River channel (enlargement), erosion and sediment, water quality, aquatic habitats from disruption of the channel and sedimentation in the Red River and from water quality changes, and biota transfer. It asks that these issues be analyzed thoroughly.

October 2, 1997. Comments submitted to Robert Whiting, St. Paul District COE, Environmental Resources Section, in response to a request for comments on the COE. The letter is combined Minnesota Department of Natural Resources and Minnesota Pollution Control Agency comments, signed by Kent Lokkesmo, Director, Division of Waters, and Rod Massey, Acting Manager, Water Quality Division, Pollution Control Agency.

Comments note that a comprehensive study of the proposed outlet plan is needed, and that an EIS should be initiated. Issues needing addressing included cost benefit analysis, and that significant damage would have still ensued (only a 1.1 foot reduction in lake levels would have been accomplished) if the proposed outlet had been in operation from 1986-1995. It asked that impact assessment topics include effects on Red River water quality, including nitrates, biota transfer, and effects on the Red River fishery. It noted the linkage to the Garrison Diversion project, and asked for evaluation of alternatives and upper basin storage, and operational plans.

Testimony: For House Bill Number 1151
Construction of a Devils Lake outlet

From: Peterson Coulee Outlet Association
Thelma Paulson, Chairperson

Date: March 1, 2001

Hello, my name is Thelma Paulson and I represent the Peterson Coulee Outlet Association. Our association is a non-profit corporation that was formed because of concerns about the impacts from the proposed Peterson Coulee Outlet Project. Our members are farmers along the route of the proposed Peterson Coulee Outlet Project, and other members are concerned citizens from Benson and Ramsey Counties.

BACKGROUND INFORMATION

In 1998, we first learned about some proposed outlet projects that would drain water from Devils Lake. At that time there was very little information available about the project. So we formed our association to obtain more information, relating to our concerns about the impacts from the project.

The state had an ambitious goal to construct the outlet project in a very short time. By simply "declaring" that there was an emergency, they thought they could proceed with minimal investigation of alternatives and consideration of impacts, and minimal compliance with the requirements of the National Environmental Policy Act (NEPA).

Because of the very short timetable for the project, we reasoned that were better able to deal with the project as a group rather than as individuals. But even as a group, it was very difficult to obtain information and respond to project activities in a timely manner. We did the best we could by giving up large amounts of time in between farm work and other activities.

Initially our members were open minded and willing to consider an outlet project. But as they learned more about the proposed project, and the politics involved in the whole process, their viewpoints changed considerably. They learned not just about the proposed outlet, but about the entire Devils Lake flooding situation.

The feasibility study for the project was being carried out by the US Army Corps Of Engineers (USACOE), with the ND State Water Commission (NDSWC) as the project sponsor. This was the first experience for most of us in dealing with state and federal agencies. In our dealings with the USACOE we were always treated with respect, and obtained the information we requested, although not always in a timely manner.

However, we do not have many kind words to say about our dealings with the NDSWC. We were seldom treated with respect and dignity. When we talked to them over the phone or in person, we got the impression that they thought that we did not know anything because we were farmers. In their news stories to the media, they would not even acknowledge that we had an organized association, and would not use the name of the association. Instead, we were just referred to as some farmers along the route of the proposed outlet project. They frequently distorted information that they had obtained from us when reporting it to the media.

In one instance, as chairperson I had agreed to set up a meeting with the NDSWC to discuss Right Of Entry Agreements. After spending 2 days calling all of the members to set up the meeting, I was informed by the NDSWC that **they** had already selected a time and place!!! How disrespectful can an agency get? They obviously didn't care if they communicated with us at all, it was just another checklist item to complete. And there were numerous other instances like this. Before dealing with this project, we as farmers would never have believed that a state agency could treat the public so arrogantly and disrespectfully, unless we had experienced it firsthand! And I think it is this same arrogance that is reflected in the content and wording of this bill that we are discussing today. We include this in our testimony here today because we want to inform the legislature about how their state agencies actually conduct business.

GOOD PUBLIC PROJECTS

In 1998, our association was pleased to see that the initial funding appropriation for the outlet feasibility study from Congress had a requirement regarding the outcome of the study. To be eligible to be funded as a project, the study needed to show that the outlet was **technically sound, economically feasible, and environmentally acceptable**. These are the requirements that any large scale public project must meet. A project is a good project if it meets these three tests, and this proves that it is worthy of taxpayer funding. A project that is approved by following the NEPA project development process will pass these three tests.

So before full funding for an outlet project will be authorized, Congress will require that the outlet project passes these three tests, based on the information in the feasibility study, in conjunction with following the NEPA process. At this point in time, neither the USACOE nor the NDSWC has been able to show that any proposed outlet would pass these three tests. In fact, it is doubtful that an outlet project could pass even one of these three tests.

The House Bill 1151 that is before us today seeks to bypass all of these good project requirements, simply by declaring the Devils Lake flooding to be an emergency. Our association believes that is very reckless and an abuse of their authority for the NDSWC to even propose such legislation.

As an association, we have spent a great deal of time collecting and studying information about the entire Devils Lake flooding situation. Stated below are some of our observations relating to whether an outlet project could meet these three tests.

The issue of whether or not the outlet is **technically sound** (in other words, will it work?) has been questioned by many because of the existence of the Spiritwood Aquifer. According to the ND State Geologist, the lake bed may be in contact with the aquifer. What this means is that any water pumped out of the lake may be replaced by water from the aquifer in a short time.

The issue of **economic feasibility** is in question because feasibility studies show a very low return (about 35 cents) in benefits for each dollar that is spent. (Obviously, the State Of North Dakota should not spend \$ 100 million dollars to save \$ 35 million dollars in reduced flooding impacts).

The issue of **environmental acceptability** is in question because of water quality, biota transfer, downstream impacts, and many other issues.

NOT AN EMERGENCY

What is an emergency? One of the definitions of emergency is that it is an unforeseen event. Another definition is that it is an event that threatens to cause a loss of life.

No one in the congressional delegation or state government has been able to show that this is an emergency based on the above definitions. We acknowledge that the rapid rise of the lake has caused a lot of suffering, and our sympathy goes out to these people. We especially feel for those farmers who have lost farmland from flooding.

It is true that the lake will probably overflow into Stump Lake this coming spring. But does that constitute an emergency? Our association believes that the emphasis at this time then needs to be placed on moving people and property in the Stump Lake area out of harm's way. They have already known for years that this might happen, so much of this preparation should already have been done. This type of work is the proper role of local, county, or state government. When the overflow occurs, the lakes may rise rapidly, but it is an event that can be monitored to prevent any loss of life or property.

And in the longer term, the lake would need to approximately double in volume before it would overflow into the Sheyenne River. If this were an uncontrolled flow, it would be an emergency situation. But it would not need to be an uncontrolled flow, because the state could build a discharge structure to control the flow. And if this event happens, it will be many years or even decades in the future.

As stated in the recent US Geological Survey publication entitled "Climatology and Potential Effects of an Emergency Outlet" (June 2000), an outlet would only reduce the probability of overflow from the lake into the Sheyenne River from 2% (without the outlet) to 1% (with the outlet). This is assuming wet weather conditions continue until 2015. That is a very insignificant probability reduction, even assuming the outlet could lower the lake over that period of time. (The outlet would have to operate at 300 CFS, and there are many who believe that the Sheyenne River could not accept that much water without excessive erosion of the streambanks and other effects).

So our association believes that the very premise of this bill is flawed, in declaring the Devils Lake flooding to be an emergency situation. By declaring this an emergency, the NDSWC is implying that this is supposed to justify:

Not following the NEPA process for the project
Not following normal procedures to acquire land, and
Not following the competitive bidding process

Under the flawed argument that an emergency exists simply by declaring it, this bill would:

- 1) Remove the full protection normally given by the NEPA process to those citizens affected by the project,
- 2) Eliminate the rights of the property owners along the route of the outlet, and
- 3) Cost the taxpayers additional money because of the elimination of the competitive bidding process.

Our association would like to make some comments now about the land acquisition issues now, because as farmers this is of great concern to us. The provisions in this bill are totally unacceptable to landowners because:

They do not define what constitutes proper notice
They do not provide for meaningful negotiation
The offer as described is not related to market value

Basically, the way the bill reads, it deprives the landowner of their constitutional right of due process of law. This is an issue of great concern to all farmers, because for most of them, the value of their land represents their life savings. This would also set a very dangerous precedent for the state.

In the past, our association has had some discussions with the NDSWC about compensation for the pipelines associated with an outlet project. We did not agree with their method of evaluation and compensation, and believe that there would be a major devaluation of our land if an outlet were ever constructed.

CAUSES OF FLOODING DAMAGES

According to the State Geologist, the natural condition of Devils Lake is to be rising and falling, because it is the low point in a closed drainage basin.

Our association, and others, believe that this effect has been amplified by farming and draining of wetlands in the upper basin. And the State Geologist has stated that the lake may be interacting with the Spiritwood Aquifer. This interaction with the aquifer may also account for some of the flooding damages.

Our association also believes that over the Devil Lake region, much of the damage and harm in this situation has been caused by poor decisions and improper actions by local and state government. For example, in the past, why did the government set the flood plain elevations too low and allow people to build structures in the area? Most of the houses that have been moved were constructed in areas that were in the natural flood plain.

In the city of Devils Lake alone, over \$50 million dollars has been spent to build a massive dike south and west of the city. This entire amount of taxpayer funds could have been saved if local and state governments had done their jobs properly, by preventing construction in this area. This includes the ND Department Of Transportation, which should have constructed US Highway 2 northeast of the city rather than southwest of the city. Why weren't these agencies acting in the best interests of the people, by using available information and long term planning? Why was the ND Geological Survey not supplying accurate information to the local, state, and federal officials? And concerning the upper basin, why has the NDSWC approved thousands of legal drains in the past, and allowed many other illegal drains to stay in place?

Where is the accountability of government to its citizens? And why has the media generally not questioned these poor decisions in the coverage of the whole Devils Lake flooding situation? So are we proposing to build an outlet to correct decades of poor planning and poor decisions by government?

These are some questions for the ND legislators to try to answer for themselves as they consider this legislation.

SOLUTIONS TO FLOODING

So government has been raising roads, building dikes, paying farmers to store water on their land in the upper basin, and moving houses, businesses, and farmsteads to move people out of harm's way. Most people would agree that these actions by government have been appropriate, as long as they are cost effective.

FINAL COMMENTS

Our association believes that the items mentioned above are all necessary and should continue to be carried out. In addition, we believe that the government should spend other available funds to:

- 1) close all legal and illegal drains in the upper basin
- 2) provide additional storage of water in the upper basin, where appropriate
- 3) purchase flooded farmland and farmsteads to allow farmers to farm elsewhere
- 4) Purchase flooded businesses to allow those people to relocate their business elsewhere
- 5) Prohibit any future construction in the flood plain
- 6) Investigate and implement other measures to reduce flooding and flooding impacts
- 7) Create plans for a control discharge structure to be used at East Stump Lake, to control the flow of water into the Sheyenne River

We believe that upper basin storage is a key element in dealing with the Devils Lake flooding situation. *But we do not believe that an outlet is a feasible or prudent solution.* Also, the state cannot legally build any outlet without first obtaining approval from the Spirit Lake Nation, Minnesota, and Canada. This approval has not yet been obtained.

We believe that the ND State Water Commission, in proposing this legislation, is an agency that is abusing its authority and is out of control. Its very purpose and function needs to be re-examined by the legislature in the near future.

In conclusion, the landowners and citizens in the Peterson Coulee Outlet Association **STRONGLY OPPOSE** House Bill Number 1151, and recommend that it be defeated in the legislature.

Thelma Paulson

Thelma Paulson, Chairperson
Peterson Coulee Outlet Association
3321 54th Avenue NE
Maddock, ND 58348-9636