

2015 SENATE ENERGY AND NATURAL RESOURCES

SB 2267

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

SB 2267
1/29/2015
22830

- Subcommittee
 Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

To provide for the purchase of inundated land under a terminal lake; and to provide an appropriation.

Minutes:

Chairman Schaible called the committee to order, all members were present.

Senator Heckaman: District 23. (Attachment #1) Senator Heckaman also provided testimony from Scott Stofferahn. (Attachment #2) (:30-10:59)

Jeff Frith: Manager, Devils Lake Basin Joint Water Resource Board. (Attachment # 3) (11:20-17:54)

Senator Murphy: I question the assumption that there are only 2 terminal lakes outside of the Great Salt Lake. If the federal legislation is based on faulty legislation then we need to change that.

Jeff Frith: I know of several lakes like that in Minnesota, I certainly question that and it may have to be revisited.

Senator Murphy: I hunted the bottom of lake that was east of the city of Minnewauken so we know it goes up and down.

Senator Armstrong: The 6.5 feet that you talked about, on an average year how much has it fluctuate?

Jeff Frith: The lake does fluctuate a great deal, for instance, in 1993 it came up 5 feet, once those extreme highs were passed in the 1990s they thought they couldn't go up any further.

Paul Becker: Chairman of Ramsey County Water Resource District. (Attachment #4) (22:15-24:29)

Senator Triplett: Are you aware when you ask for what you ask for that you are giving up the federal match?

Paul Becker: Yes that is, we feel strongly enough that there are too many things tied to the federal legislation.

John Paczkowski: Chief of Regulatory Section, North Dakota State Water Commission. See attachment #5. (26:32-28:58)

Senator Armstrong: In previous testimony we heard a witness say that they were paying property taxes at a reduced rate. If the land is owned by the state why do they pay taxes on it?

John Paczkowski: There are a number of land owners in the basin that feel if they continue to pay property taxes on this land that it will afford them some guarantee of getting that property when the water recedes.

Senator Triplett: Can you put the MOU between the state of North Dakota and the NRCS in context so we know how it fits into this.

John Paczkowski: The NRCS was the one who administered the program; there was a push to utilize this effort.

Senator Triplett: It looks like more of a case by case basis for easements and not a final concession of ownership.

John Paczkowski: Yes it was for an easement.

Senator Triplett: So this doesn't affect the federal legislation?

John Paczkowski: Yes.

Senator Hogue: Can we say that any part of the rise of the lake is because of man-made structures?

John Paczkowski: I think that there was a lawsuit and the vast majority of changes are climatic and not manmade.

There was no more testimony and the hearing was closed.

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

SB 2267
1/29/2015
22848

- Subcommittee
 Conference Committee

Committee Clerk Signature

Kate Olive

Explanation or reason for introduction of bill/resolution:

To provide for the purchase of inundated land under a terminal lake; and to provide an appropriation.

Minutes:

Chairman Schaible: We heard that it was unconstitutional. If the new farm program going to be in violation no matter what we do.

Todd Sando: It has been a challenge of any program anything below the watermark is state of North Dakota.

Chairman Schaible: No matter what we do it will be a problem.

Senator Triplett: If it was never going to work relative to our state constitution why have they put so much time and energy into it?

There were no further questions for Todd Sando.

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

SB 2267
1/30/2015
22870

- Subcommittee
 Conference Committee

Committee Clerk Signature

Katie Oliver

Explanation or reason for introduction of bill/resolution:

To provide for the purchase of inundated land under a terminal lake; and to provide an appropriation.

Minutes:

Chairman Schaible called the committee back to order.

Senator Triplett: I was the one who asked that we hold this bill overnight, I thought it was fair to discuss with a few of the sponsors. The sponsors didn't have any ideas to offer for amendments, given that the information that we got from the water commission it seems impossible to make this work. I would offer a do not pass.

Vice Chair Unruh: Second.

There was no further discussion, roll was taken, the motion passed with a 7-0 vote and Senator Laffen carried the bill to the floor.

REPORT OF STANDING COMMITTEE

SB 2267: Energy and Natural Resources Committee (Sen. Schaible, Chairman)
recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
SB 2267 was placed on the Eleventh order on the calendar.

2015 TESTIMONY

SB 2267

SB 2267
TERMINAL LAKE ASSISTANCE BILL

1.1
1/29/15

Chairman Schaible and Members of the Senate Energy and Natural Resources Committee:

I am Senator Joan Heckaman from New Rockford and I represent District 23.

I am here to introduce you to SB 2267 which is the Terminal Lake Assistance Bill. This bill would provide matching funds available in the current farm bill to compensate landowners in the Devils Lake Basin for land they lost to the flooding which started in 1993.

This Devils Lake Basin issues have a long history in the legislature with the construction of the outlets, roads, dikes, and other infrastructure. But one thing that has never been done is to compensate landowners for their loss of land. That land was the livelihood of this agriculture community. And while tourism, fishing, and recreation uses have increased, the number of acres of land underwater has remained much the same.

The two outlets continue to pump water out of the lake but that will only happen to a level of 1446 ft. Below that, all land covered since 1993 will remain covered until nature changes course. This bill would provide compensation to the landowners for land under 1446 ft.

(Terminal Lake Assistance Handout)

Chairman and members of the committee: I will walk you through some of the conditions that were placed in the current farm bill.

1. This is written ONLY for Devils Lake and Stump Lake as they are the only 2 terminal lakes in the United States with the exception of the Great Salt Lake and that is excluded from qualifying.
2. The land would be sold to the state.
3. The land would then be ineligible for any wetland reserve easement programs.
4. The depth would be at least 6.5 feet of water covering the land or at a level below which the state manages the level (1446 on the east end of the lake and 1445 at the west end).
5. This program is completely voluntary.
6. The federal funds would provide up to \$400 per acre for crop and hay land which would be matched by \$400 of state money (or more state money if you so desire).
7. The federal funds would provide up to \$200 per acres for pasture land and grazing land with the state matching that \$200 (or more state money if you so desire).
8. The land then becomes the property of the state.
9. The land could be used for conserving uses which may include haying or a number of other uses as placed into administrative code by the State Water Commission when they complete the administrative rule process for this funding.
10. \$25,000,000 has been authorized for this bill. Senator Hoeven sits on the committee that is charged with appropriating this money so we have the opportunity to successfully complete this program.
11. There is also another section of the farm bill (D) making \$150 million available for administering this program. That money will remain available until it is expended. These funds are available for the following services:

- a. To lease water
- b. To purchase land, water appurtenant to the and related interests
- c. To carry out research, conservation, and support activities.

It is my understanding that this money does not need matching funds.

I understand that not all landowners will buy into this program, but for the ones that will, this is their first and last opportunity to get compensated for the years of lost income, energy zapping stress and uncertainty, and the lost opportunity to pass their farm on to the next generation. Just think if this was your land and you have had no income since 1993. For many it has been that long since they have harvested a crop from their land. As you drive around the lake, you can see the roads that have been raised, the dikes that have been built, and the infrastructure needed to keep the community safe. What you don't see is the acres and acres of land sitting under many feet of water-most acres which will not be usable for generations to come.

Now is the time to take the opportunity to match federal funds with a state match to provide compensation to those landowners who do wish to participate. We will lose this opportunity if we wait because it will not be included in the next farm bill if it isn't used. It has taken 20 years to get this provision. Let's make sure we take advantage of it for the sake of the families devastated by the waters of Devils and Stump Lake.

I have with us today, Jeff Frith, from the Devils Lake Basin Joint Water Resource Board to provide further information for you.

Thank you for considering this bill and I would stand for any questions.

Senator Joan Heckaman

TERMINAL LAKES ASSISTANCE

1.3

The Terminal Lakes Assistance program establishes a voluntary program that will provide some measure of relief to farmers and ranchers whose land has been flooded by the overflow of a terminal lake. The program requires a State to provide a minimum 50 percent match and establish the procedures to implement the purchase program. It also requires participating States who purchase land under the program to maintain the land in conserving use.

The 2013 Farm Bill authorizes \$25 million in annual appropriations for the Terminal Lakes Assistance program, which is uniquely suited to compensate farmers who have lost land due to the expansion of Devils Lake in North Dakota. Senator Conrad first introduced the concept in the 2012 Farm Bill and Senator Heitkamp worked with her colleagues on the Senate Agriculture Committee to ensure that the language was included in the 2013 Farm Bill.

Many producers in North Dakota have farm and grazing land that has been flooded for several years to a depth greater than 6.5 feet. They have lost the use of their most important farm asset, are unlikely to be able to reclaim their property for agriculture production in the foreseeable future, if ever, and are not eligible for other federal farm, conservation and insurance programs.

<http://www.gpo.gov/fdsys/pkg/BILLS-113s954pp/pdf/BILLS-113s954pp.pdf>

Legislative Language

SEC. 2507. TERMINAL LAKES ASSISTANCE.

Section 2507 of the Food, Security, and Rural Investment Act of 2002 (43 U.S.C. 2211 note; Public Law 107-171) is amended to read as follows:

“SEC. 2507. TERMINAL LAKES ASSISTANCE.

“(a) DEFINITIONS.—In this section:

“(1) ELIGIBLE LAND.—The term ‘eligible land’ means privately owned agricultural land (including land in which a State has a property interest as a result of state water law)—

“(A) that a landowner voluntarily agrees to sell to a State; and

“(B) which—

“(i)

(I) is ineligible for enrollment as a wetland reserve easement established under the Agricultural Conservation Easement Program under subtitle H of the Food Security Act of 1985;

“(II) is flooded to—

“(aa) an average depth of at least 6.5 feet; or

“(bb) a level below which the State determines the management of the water level is beyond the control of the State or landowner; or

“(III) is inaccessible for agricultural use due to the flooding of adjoining property (such as islands of agricultural land created by flooding);

“(ii) is located within a watershed with water rights available for lease or purchase; and

“(iii) has been used during at least 5 of the immediately preceding 30 years—

“(I) to produce crops or hay; or

“(II) as livestock pasture or grazing.

“(2) PROGRAM.—The term ‘program’ means the voluntary land purchase program established under this section.

“(3) TERMINAL LAKE.—The term ‘terminal lake’ means a lake and its associated riparian and watershed resources that is—

“(A) considered flooded because there is no natural outlet for water accumulating in the lake or the associated riparian area such that the watershed and surrounding land is consistently flooded; or

“(B) considered terminal because it has no natural outlet and is at risk due to a history of consistent Federal assistance to address critical resource conditions, including insufficient water available to meet the needs of the lake, general uses, and water rights.

“(b) ASSISTANCE.—The Secretary shall—

“(1) provide grants under subsection (c) for the purchase of eligible land impacted by a terminal lake described in subsection (a)(3)(A); and

“(2) provide funds to the Secretary of the Interior pursuant to subsection (e)(2) with assistance in accordance with subsection (d) for terminal lakes described in subsection (a)(3)(B).

“(c) LAND PURCHASE GRANTS.—

“(1) IN GENERAL.—Using funds provided under subsection (e)(1), the Secretary shall make available land purchase grants to States for the purchase of eligible land in accordance with this subsection.

“(2) IMPLEMENTATION.—

“(A) AMOUNT.—A land purchase grant shall be in an amount not to exceed the lesser of—

“(i) 50 percent of the total purchase price per acre of the eligible land; or

“(ii)

(I) in the case of eligible land that was used to produce crops or hay, \$400 per acre; and

“(II) in the case of eligible land that was pasture or grazing land, \$200 per acre.

“(B) DETERMINATION OF PURCHASE PRICE.—A State purchasing eligible land with a land purchase grant shall ensure, to the maximum extent practicable, that the purchase price of such land reflects the value, if any, of other encumbrances on the eligible land to be purchased, including easements and mineral rights.

“(C) COST-SHARE REQUIRED.—To be eligible to receive a land purchase grant, a State shall provide matching non-Federal funds in an amount equal to 50 percent of the amount described in subparagraph (A), including additional non-Federal funds.

“(D) CONDITIONS.—To receive a land purchase grant, a State shall agree—

- “(i) to ensure that any eligible land purchased is—
 - “(I) conveyed in fee simple to the State; and
 - “(II) free from mortgages or other liens at the time title is transferred;
- “(ii) to maintain ownership of the eligible land in perpetuity;
- “(iii) to pay (from funds other than grant dollars awarded) any costs associated with the purchase of eligible land under this section, including surveys and legal fees; and
- “(iv) to keep eligible land in a conserving use, as defined by the Secretary.

“(E) LOSS OF FEDERAL BENEFITS.—Eligible land purchased with a grant under this section shall lose eligibility for any benefits under other Federal programs, including—

- “(i) benefits under title XII of the Food Security Act of 1985 (16 U.S.C. 25 3801 et seq.);
- “(ii) benefits under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.); and
- “(iii) covered benefits described in section 1001D(b) of the Food Security Act of 1985 (7 U.S.C. 1308–3a).

“(F) PROHIBITION.—Any Federal rights or benefits associated with eligible land prior to purchase by a State may not be transferred to any other land or person in anticipation of or as a result of such purchase.

“(d) WATER ASSISTANCE.—

“(1) IN GENERAL.—The Secretary of the Interior, acting through the Commissioner of Reclamation, may use the funds described in subsection (e)(2) to administer and provide financial assistance to carry out this subsection to provide water and assistance to a terminal lake described in subsection (a)(3)(B) through willing sellers or willing participants only—

- “(A) to lease water;
- “(B) to purchase land, water appurtenant to the land, and related interests; and
- “(C) to carry out research, support and conservation activities for associated fish, wildlife, plant, and habitat resources.”

“(2) EXCLUSIONS.—The Secretary of the Interior may not use this subsection to deliver assistance to the Great Salt Lake in Utah, lakes that are considered dry lakes, or other lakes that do not meet the purposes of this section, as determined by the Secretary of the Interior.

“(3) TRANSITIONAL PROVISION.—

“(A) IN GENERAL.—Notwithstanding any other provision of this section, any funds made available before the date of enactment of the Agriculture Reform, Food, and Jobs Act of 2013 under a provision of law described in subparagraph (B) shall remain available using the provisions of law (including regulations) in effect on the day before the date of enactment of 16 that Act.

“(B) DESCRIBED LAWS.—The provisions of law described in this section are—

- “(i) section 2507 of the Farm Security and Rural Investment Act of 2002 (43 U.S.C. 2211 note; Public Law 107–171) (as in effect on the day before

the date of enactment of the Agriculture Reform, Food, and Jobs Act of 2013); 283

“(ii) section 207 of the Energy and Water Development Appropriations Act, 2003 (Public Law 108–7; 117 Stat. 146);

“(iii) section 208 of the Energy and Water Development Appropriations Act, 2006 (Public Law 109–103; 119 Stat. 2268, 123 Stat. 2856); and

“(iv) section 208 of the Energy and Water Development and Related Agencies Appropriations Act, 2010 (Public Law 111–85; 123 Stat. 2858, 123 Stat. 2967, 12 125 Stat. 867).

“(e) FUNDING.—

“(1) AUTHORIZATION OF APPROPRIATIONS.— There is authorized to be appropriated to the Secretary to carry out subsection (c) \$25,000,000, to remain available until expended.

“(2) COMMODITY CREDIT CORPORATION.—As soon as practicable after the date of enactment of the Agriculture Reform, Food, and Jobs Act of 2013, the Secretary shall transfer to the Bureau of Reclamation Water and Related Resources Account \$150,000,000 from the funds of the Commodity Credit Corporation to carry out subsection (d), to remain available until expended.”.

January 29, 2015

2.1

Testimony submitted in support of legislation introduced for the purpose of matching federal funding to allow for the purchase of land deep within Devils Lake.

My name is Scott Stofferahn. I currently live in Fargo and work for a farmers cooperative there. But prior to my current position, I was a State Director for Senator Conrad. While there, I assisted Senator Conrad in the writing of the 2002 and 2008 farm bills. In addition, I was assigned to work on issues related to Devils Lake flooding. During that time, I became very familiar with the region and the people who live there

Today, I have not particular responsibility related to the people or communities of Devils Lake. But despite my change in responsibilities, my concern for the region and its people has not changed and I have a special place in my heart for the farmers and ranchers who have suffered so much.

I applaud the sponsors for introducing this legislation today and hope that the ND State Legislature sees fit to help resolve one of the most problematic issues within the Devils Lake Basin. When Senator Heckaman contacted me about the possibility of sponsoring a bill to match language in the farm bill, I was very encouraged.

Funding identified in this bill is intended to match federal funding authorized in the most recent farm bill. Obtaining funding at the federal level is and has been very difficult over the past several years. If, however, a state puts funding toward the match, the prospect and likelihood of federal funding rises dramatically.

North Dakota was in a great position during the most recent farm bill debate with both Senators Hoeven and Heitkamp on the Senate Agricultural Committee. If North Dakota goes forward with matching funding for this program, we remain in very good position with Senator Hoeven on the appropriations committee. That doesn't mean it will be easy. What it does mean is that Senator Hoeven's position and relative seniority gives us an opportunity that most states don't have. Being able to hold up state matching money is a very very positive bargaining chip to play in the process.

What was the genesis of this federal law? The US Army Corps of Engineers led a federal, state, and local task force focused on solutions to many problems facing the Devils Lake Basin. As I mentioned before, one of the most vexing problems in the basin is the loss of property to the lake. It has been said very often that while there has been federal and state support for flooded homes, dikes to protect property, and raising roads, farmers and ranchers who were hit more significantly than any others do not get the attention they deserve. I agree.

At the federal level legislation from the 2008 farm bill allowed for easements on land that is flooded. There were two problems with the program. There was a general reluctance to enroll

into a 30 year easement AND land that was deeper than 6.5 feet was ineligible for enrollment. Certainly, our members of Congress proposed shorter term contracts with annual payments, but there simply was no support in Congress to allow for that in the farm bill. Yet many thousands of acres were enrolled because the Wetlands Reserve Program was the only viable option.

A few years later, some funding was made available within the constraints of the Waterbank program. Many farmers/ranchers did take advantage of this, but the funding quickly ran out. Here again, Waterbank program funding was not designed for land deeper under water.

You are probably asking about why there are depth levels of other restrictions highlighted in the law restricting enrollment. I'll try to address some of them.

- 1) As I mentioned before, crop and pasture land shallower than 6.5 feet or the identified depths in the legislation had at least some opportunity for enrollment in a program while there were no options for these landowners.
- 2) The depths identified track closely to depth at which the State sponsored outlets cease to pump water out of the lake. This is also the same level at which local governments officially identified as the level at which they would like to see the lake stabilized.
- 3) Land below this level at which the State is unable to further manage the water is situated where there is at least a shared interest in the title to the land between the landowner and the State, according to water laws. *(Water laws can be very complex. Primarily, they relate to the rise and fall of a river and relate to low water marks, high water marks, meander lines, etc. They don't easily lend themselves to a lake like Devils Lake, but they are the only reference we have.)*
- 4) Because of this complex set of water laws, the design of this legislation would place in the hands of the State the ownership of land that is currently confused. And while the federal legislation is not perfect (no law is), it does help the State resolve title issues AND it provides an option for individuals owning land that may not be available for generations.

Clear title issues were also a topic of legal concern when the USDA considered issuing easements on land flooded by Devils Lake. To resolve this title issue for purpose of the USDA purchasing a property interest easement, the State Water Commission waived the State's ownership right to allow for enrollment to proceed. This precedent could be used again to allow for purchase of deeply flooded land by willing sellers. I've attached a copy of the SWC's WRP waiver for your consideration.

I would like to make an additional point about the federal legislation. As you can see the federal share of matching participation may not exceed the nominal amounts identified for pasture or cropland. This should not be taken as a limitation on the ability for the State to pay more than the federal government if the State believes the total value offered to purchase land is insufficient. In other words, the State is not limited in how much it can contribute toward a purchase.

You will note that the land (should it someday rise above the surface) must be kept in 'conserving use'. The state is free to establish a definition for conserving use. This could mean that the land must remain in grass. But there is no reason that the state couldn't allow for economic use of the grassland for grazing, hay land, or other forage purposes. It is up to the State to write the definition and there is no better time than to do that now - before the assigned federal agency writes the first sentence of rules.

Finally, I would like to clearly state that the funding of this program, while solving a problem for landowners who have lost there land to the lake, is in the interest of the State. The State can resolve the title interest on thousands of acres of land deep below the surface of the lake.

This program may not be for every landowner. Some may resist because they have hope that the land may someday become available to them. Nobody shares that wish for them more than me. But similar to the reluctance for enrollment in the WRP program, many may eventually participate in a willing sale after considering that this option may be the one and only option they will ever have.

Of course for this option to be made available, the State legislature must act to fund the State portion of this program.

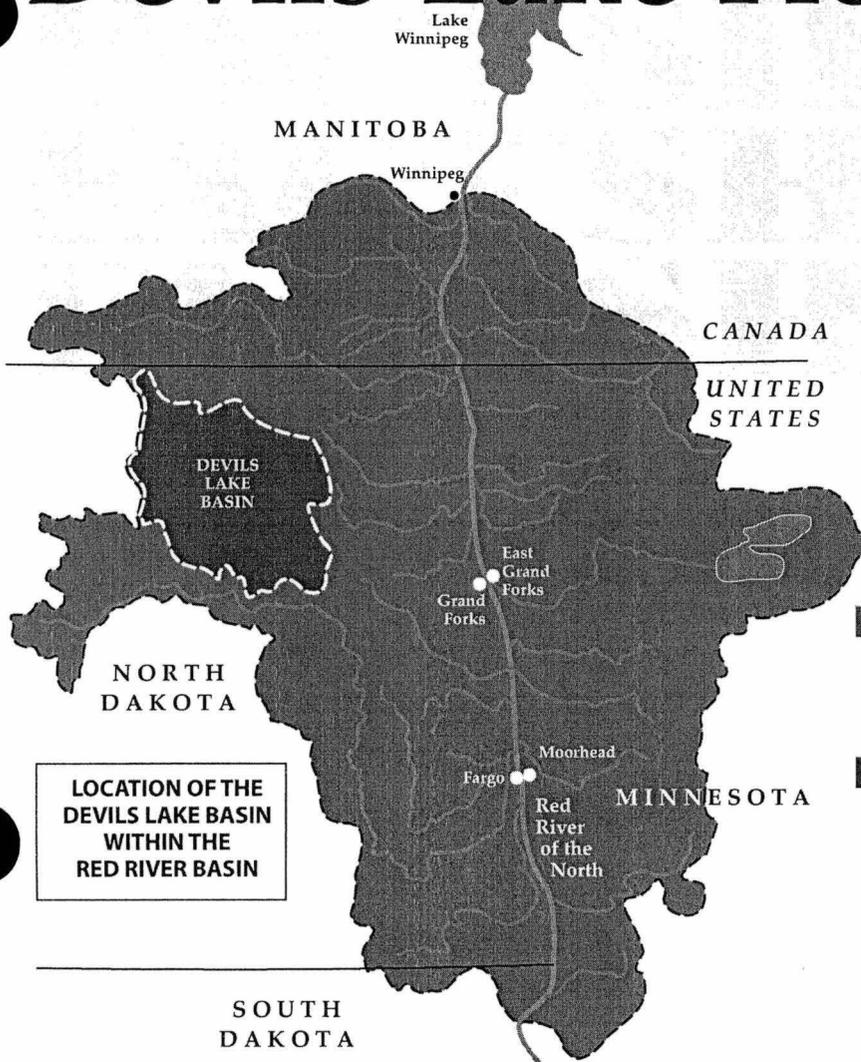
It is my hope that you will approve this legislation instead of kicking the can down the road. The can on this topic has been kicked down the road so far that there is virtually no more road to kick it to.

Sincerely,
Scott Stofferahn
1739 37th Avenue South
Fargo, ND 58104

Devils Lake and Stump Lake elevation-area-volume table

Lake level (feet above sea level)	Devils Lake										Stump Lake	
	Total		West Bay		Main Bay		East Bay		East Devils Lake		Total, East and West	
	Area (acres)	Volume (acre- feet)	Area (acres)	Volume (acre- feet)	Area (acres)	Volume (acre- feet)	Area (acres)	Volume (acre- feet)	Area (acres)	Volume (acre- feet)	Area (acres)	Volume (acre- feet)
1,443.8	105,429	2,062,928	48,379	529,566	24,507	729,523	26,530	594,033	6,012	209,805	13,808	449,697
1,443.9	105,938	2,073,494	48,777	534,423	24,551	731,975	26,581	596,688	6,028	210,407	13,841	451,079
1,444.0	106,451	2,084,111	49,179	539,319	24,595	734,432	26,632	599,348	6,044	211,010	13,874	452,464
1,444.1	106,969	2,094,779	49,585	544,256	24,640	736,893	26,684	602,013	6,059	211,615	13,907	453,853
1,444.2	107,491	2,105,500	49,995	549,234	24,685	739,359	26,735	604,684	6,075	212,222	13,939	455,245
1,444.3	108,018	2,116,286	50,410	554,259	24,730	741,832	26,786	607,362	6,092	212,831	13,973	456,642
1,444.4	108,549	2,127,112	50,828	559,320	24,775	744,307	26,838	610,043	6,108	213,441	14,006	458,041
1,444.5	109,085	2,137,991	51,251	564,422	24,820	746,786	26,889	612,729	6,124	214,052	14,039	459,442
1,444.6	109,625	2,148,924	51,677	569,568	24,866	749,270	26,941	615,420	6,140	214,665	14,072	460,848
1,444.7	110,170	2,159,910	52,109	574,756	24,911	751,758	26,992	618,115	6,157	215,280	14,106	462,256
1,444.8	110,721	2,170,966	52,544	579,993	24,957	754,254	27,044	620,820	6,173	215,897	14,139	463,670
1,444.9	111,275	2,182,063	52,984	585,269	25,004	756,751	27,096	623,526	6,190	216,515	14,173	465,085
1,445.0	111,834	2,193,216	53,428	590,588	25,050	759,253	27,147	626,238	6,207	217,135	14,207	466,504
1,445.1	112,398	2,204,425	53,877	595,952	25,097	761,760	27,199	628,955	6,224	217,756	14,240	467,926
1,445.2	112,966	2,215,690	54,330	601,361	25,143	764,272	27,251	631,676	6,240	218,380	14,274	469,351
1,445.3	113,541	2,227,027	54,788	606,822	25,191	766,791	27,303	634,407	6,258	219,005	14,308	470,782
1,445.4	114,119	2,238,407	55,250	612,323	25,238	769,312	27,355	637,139	6,275	219,632	14,342	472,214
1,445.5	114,703	2,249,845	55,716	617,870	25,285	771,837	27,408	639,877	6,292	220,260	14,377	473,650
1,445.6	115,291	2,261,342	56,188	623,463	25,333	774,368	27,460	642,620	6,309	220,890	14,411	475,089
1,445.7	115,885	2,272,898	56,664	629,105	25,381	776,903	27,512	645,368	6,326	221,521	14,445	476,532
1,445.8	116,484	2,284,528	57,145	634,801	25,429	779,446	27,565	648,124	6,344	222,156	14,480	477,979
1,445.9	117,088	2,296,204	57,630	640,538	25,478	781,991	27,618	650,883	6,362	222,791	14,514	479,429
1,446.0	117,697	2,307,940	58,120	646,324	25,526	784,540	27,670	653,646	6,379	223,428	14,549	480,882
1,446.1	118,311	2,319,738	58,615	652,159	25,575	787,095	27,723	656,416	6,397	224,066	14,584	482,338
1,446.2	118,931	2,331,597	59,115	658,044	25,624	789,654	27,776	659,190	6,415	224,707	14,619	483,798
1,446.3	119,557	2,343,533	59,620	663,987	25,673	792,221	27,829	661,973	6,433	225,350	14,654	485,263
1,446.4	120,187	2,355,517	60,130	669,973	25,723	794,791	27,882	664,758	6,451	225,994	14,689	486,730
1,446.5	120,823	2,367,565	60,644	676,010	25,773	797,365	27,935	667,548	6,469	226,640	14,724	488,200

Devils Lake Flood Facts



LOCATION OF THE DEVILS LAKE BASIN WITHIN THE RED RIVER BASIN

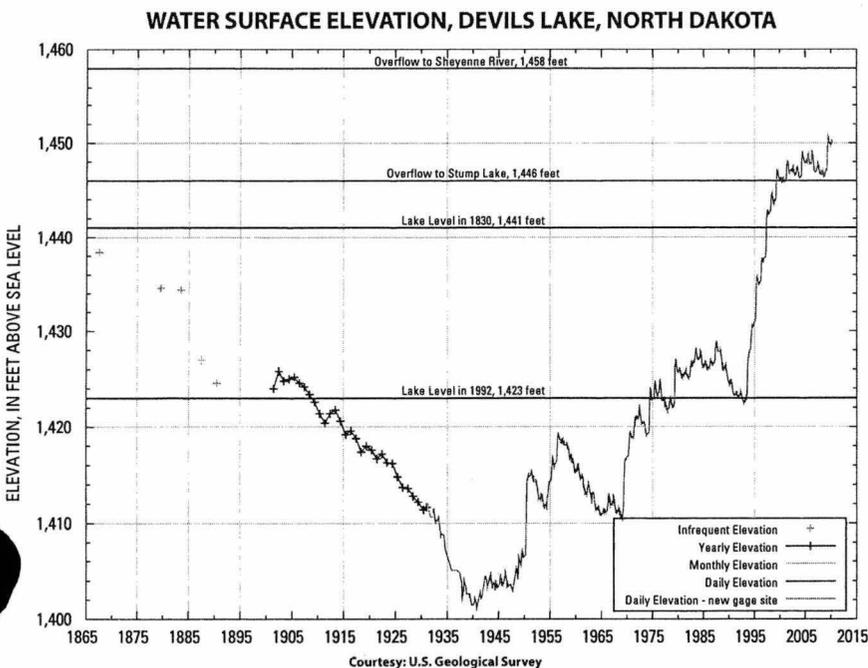
The Devils Lake basin is a 3,810 square-mile sub-basin of the Red River of the North. At current water levels, the lake itself has no natural outlet.

A natural surface water connection from the northeast edge of the Devils Lake basin boundary to the Red River basin has been documented during several years since 1997. This is significant because it has provided a natural route for biota exchange between Devils Lake and the rest of the Hudson Bay watershed.

On April 2, 2010, Devils Lake crept to a new record level, surpassing the previous record of 1450.73 feet above mean sea level (amsl), set on June 27, 2009. At the time this publication was published, the lake was continuing to rise.

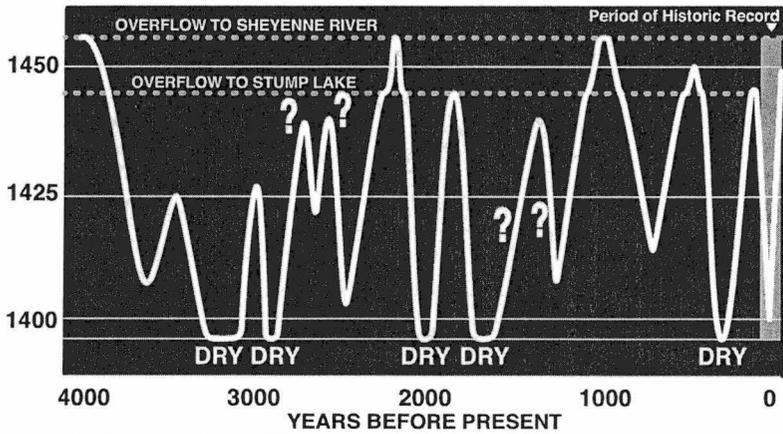
Devils Lake naturally spills into Stump Lake at 1,446.5 feet amsl. Since water began trickling into Stump Lake from Devils Lake in 1999, Stump Lake has now been filled and has become part of Devils Lake – rising 43.5 feet in the process.

From its lowest 1993 elevation of 1422.62 feet amsl to its end of April 2010 elevation of 1451.5 feet amsl, Devils Lake rose 28.88 feet.

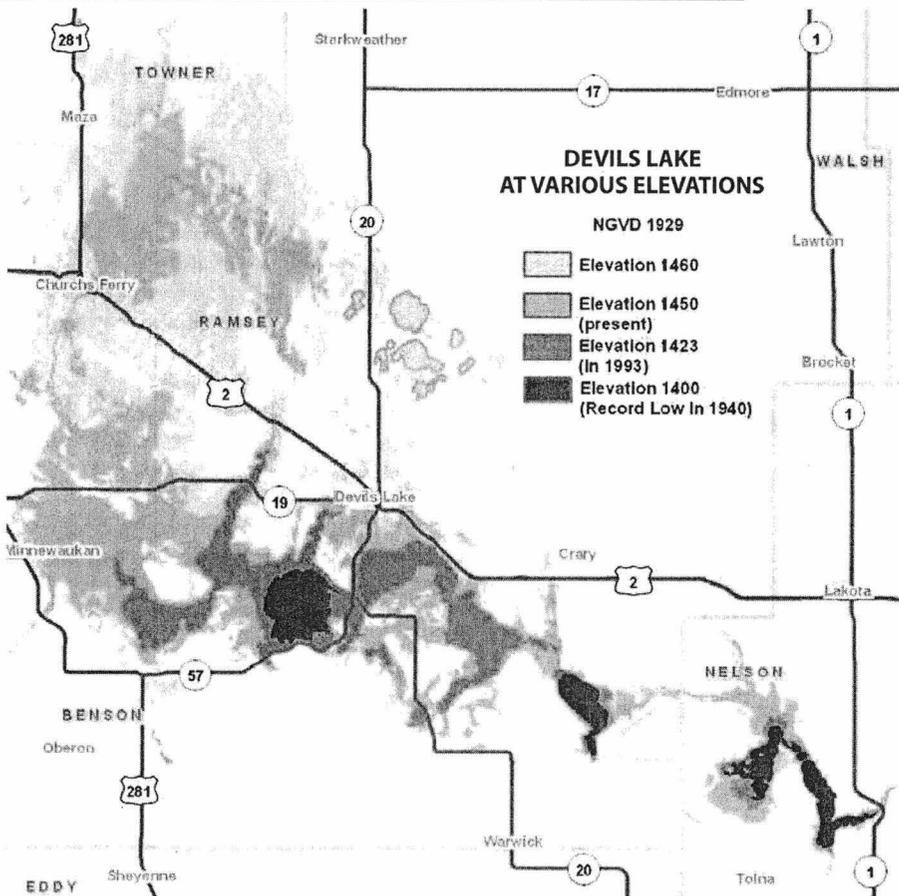


Courtesy: U.S. Geological Survey

DEVILS LAKE WATER LEVELS: 4000 YEARS OF FLUCTUATIONS

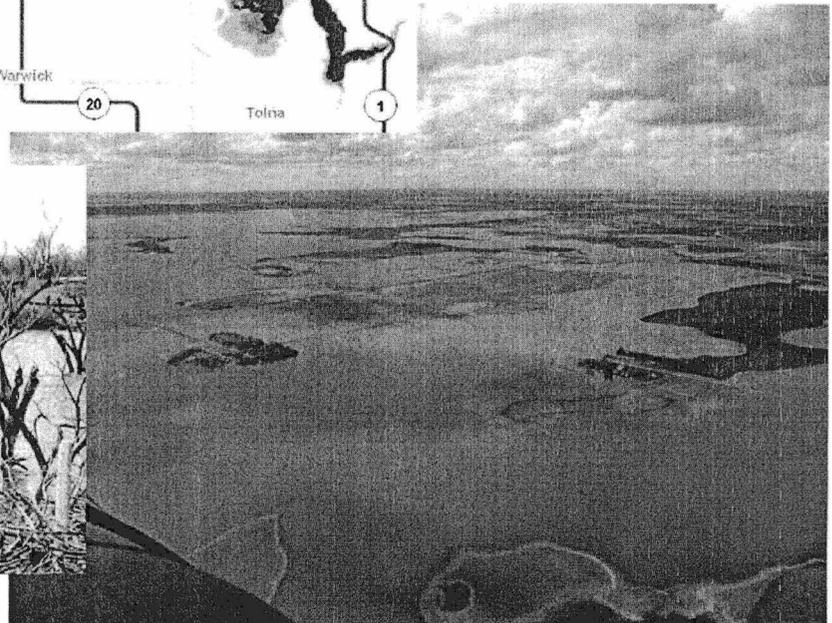


- Devils Lake naturally overflows into the Sheyenne River at 1458.0 feet amsl. The Sheyenne River is a tributary of the Red River of the North, which flows into Canada.
- Since glaciation, Devils Lake has been fluctuating from overflowing to dry. This variability is the normal condition of the lake – reflecting climate changes.
- Devils Lake has reached its spill elevation of 1,458.0 feet amsl and overflowed into the Sheyenne and Red Rivers at least twice during the past 4,000 years. The last Devils Lake spill into the Sheyenne River occurred less than 2,000 years ago.

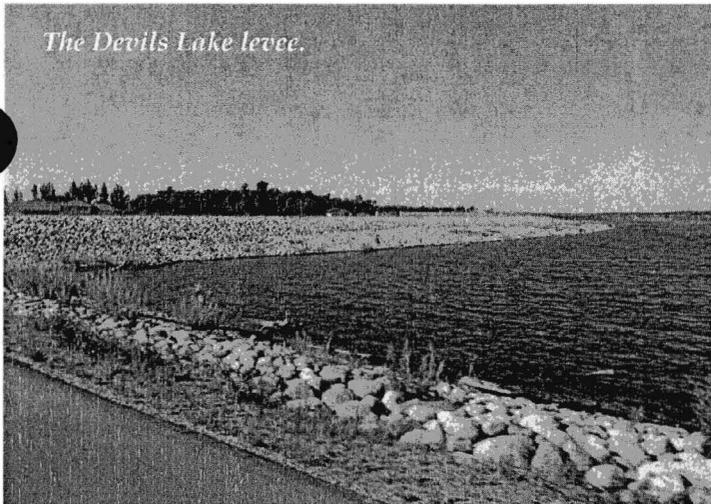


- At its spill elevation, Devils Lake will cover more than 261,000 acres.
- In March 1993, Devils Lake had a surface area of 44,230 acres. At its April 30, 2010 elevation, Devils Lake covered about 177,100 acres – an increase of 132,870 inundated acres, or about 208 square miles. During that same time period, the volume of water in Devils Lake had grown by more than six times.

Flooded Devils Lake farmland.



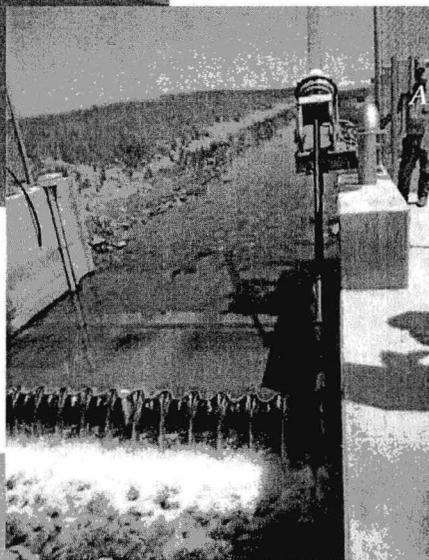
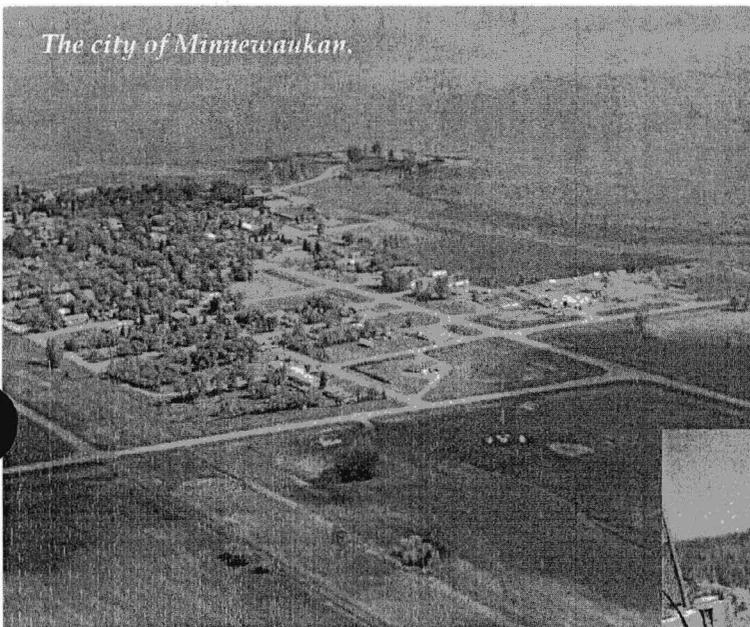
The Devils Lake levee.



■ In response to forecasted lake levels in 2009, the U.S. Army Corps of Engineers began working on another levee raise and extension for the city of Devils Lake. The cost of this project is estimated at about \$100 million.

■ The city of Minnewaukan continues to be threatened by Devils Lake. The community's school, which is currently at or above capacity, is at an elevation of 1,458 feet amsl, but the city's sewer, water lines, and water tower are expected to start experiencing problems from groundwater and soil saturation at the lake's current elevation.

The city of Minnewaukan.



The Devils Lake outlet.

■ The State of North Dakota completed construction of an outlet to the Sheyenne River in the summer of 2005. *Specific facts pertaining to the outlet can be referenced from the Devils Lake Outlet section of the State Water Commission website at www.swc.nd.gov (click on Devils Lake Flooding, then Outlet).*

■ The original outlet pumps were designed for a maximum operating capacity of 100 cubic feet per second (cfs). Modifications constructed in early 2010 will increase that capacity to 250 cfs.



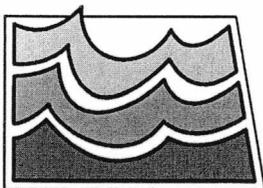


PHOTO: ND TOURISM / DAPHNE KINZLER

■ The Devils Lake area provides world-class fishing and hunting opportunities, attracting sportsmen from all across North America and around the world. It is estimated that fishing alone contributes \$40 million annually to the Devils Lake area economy.



PHOTO: ND TOURISM / DAWN CHARGING



ND State Water Commission
900 East Boulevard Ave
Bismarck, ND 58505-0850
701-328-2750

April 2010

Agricultural Economic Impact in the Devils Lake Area Flooding in 2011

This analysis quantifies the extent of lost agricultural production in the Devils Lake Basin due to rising water levels in Devils Lake and Stump Lake and the surrounding area. The potential production that will not be produced in 2011 represents lost income to area producers as well as the region's economy. The total impact of this loss to the region is further increased in the form of indirect losses as this money is not available to be spent in other economic sectors of the economy.

Production data for the most recent five-year period, as reported by North Dakota Agricultural Statistics Service, were used in this analysis. Lost income due to increased water levels in the Devils Lake basin was assumed to be the value of the crop production that could have been produced on this acreage if it had been available to plant in 2011. Therefore, this acreage will not contribute to the economic activity in the region in 2011.

Acreage and yield data for 14 major crops grown in Benson and Ramsey counties for the years 2005 through 2009 were summarized. Average yields for the region are shown in Table 1. These yields were weighted based on the production from each county. The average percentage of acreage devoted to each crop is shown in Table 2. This crop mix is based on the sum of all acres produced over this 5-year period.

Table 1. Weighted Average Yields for Benson and Ramsey Counties, 2005-2009.

Crop	Average Yield/Acre
Barley	59.4
Corn Grain	97.9
Alfalfa Hay	1.9
Other Hay	1.7
Winter Wheat	49.2
Durum	35.4
Spring Wheat	38.2
Canola	1408.5
Flaxseed	18.2
Soybeans	27.7
Oil Sunflowers	1403.9
Conf Sunflowers	1234.5
Edible Beans	14.1
Dry Edible Peas	18.0

Table 2. Major Crops Grown in Benson and Ramsey Counties, 2005-2009.

Crop	Percent of Total Acre
Barley	13.0%
Corn Grain	9.5%
Alfalfa Hay	2.1%
Other Hay	3.5%
Winter Wheat	3.3%
Durum	1.0%
Spring Wheat	28.1%
Canola	6.9%
Flaxseed	1.7%
Soybeans	17.2%
Oil Sunflowers	2.5%
Conf Sunflowers	1.8%
Edible Beans	8.5%
Dry Edible Peas	1.0%

These estimates were prepared by Dwight Aakre and Randal Coon, Department of Agribusiness and Applied Economics, and Bill Hodous Ramsey County Extension Agent, North Dakota State University, February 2011.

The current estimate of inundated area is 163,450 acres for 2011. This acreage data is from The Devils Lake Basin Joint Water Resources Board's website. The 163,450 acres represents the acreage inundated as the lake level has risen from 1422.9 feet in 1993 to a forecasted level of 1455.0 feet above sea level in 2011. Potential lost production per year is summarized in Table 3. This table includes the average acreage of each crop, the estimated market price, and the total value for each crop. The estimated value of production that could have been produced on this acreage for 2011 is \$52,757,993. This is an estimate of the direct loss that will incur in 2011.

Table 3. Potential Lost Production per Year in the Devils Lake Basin with 163,450 Acres of Cropland Inundated.

Crop	Average Yield	Average Acreage	Estimated Price	Value Per Year
Barley	59.4	21,321	4.50	5,696,335
Corn Grain	97.9	15,487	5.00	7,584,470
Alfalfa Hay	1.9	3,427	65.00	425,201
Other Hay	1.7	5,786	45.00	431,803
Winter Wheat	49.2	5,449	7.50	2,009,731
Durum	35.4	1,622	8.50	487,364
Spring Wheat	38.2	45,917	8.50	14,914,236
Canola	1408.5	11,235	0.220	3,481,445
Flaxseed	18.2	2,760	13.00	653,204
Soybeans	27.7	28,053	12.00	9,319,860
Oil Sunflowers	1403.9	4,041	0.240	1,361,571
Conf				
Sunflowers	1234.5	2,954	0.330	1,203,384
Edible Beans	14.1	13,823	25.00	4,877,513
Dry Edible Peas	18.0	1,575	11.00	311,875
Market Value of Lost Production				\$52,757,993

Total Economic Loss

The market value of the potential production that will not be produced represents the direct loss to the region's economy. Additional losses accrue in the form of indirect loss throughout the economy. The indirect impact is the economic activity created by the spending and re-spending of the direct impacts.

Total impact on business activity in the region from both direct and indirect losses is estimated at \$194,419,000. The major losses are \$57.6 million to the crop sector, \$50.9 million to the households sector (personal income), and \$42.9 million to the retail trade sector. The remainder of the \$194.4 million loss is distributed among several other sectors of the economy.

This loss of business activity ultimately is reflected in lost jobs in the region. Employment loss is estimated at 1,150 jobs for the region.

These estimates were prepared by Dwight Aakre and Randal Coon, Department of Agribusiness and Applied Economics, and Bill Hodous Ramsey County Extension Agent, North Dakota State University. February 2011.

**DEVILS LAKE BASIN
JOINT WATER RESOURCE BOARD**

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**TESTIMONY TO NORTH DAKOTA LEGISLATURE SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES**

SB 2267

My name is Jeff Frith I am from Devils Lake and I am the Manager of the Devils Lake Basin Joint Water Resource Board. Mr. Chairman, Madam Vice Chairman and distinguished members of the committee I would like to thank you for allowing me the time to address the committee today. The testimony I am providing is neither in support of nor opposed to Senate Bill 2267 just merely providing some factual information.

First off a little background information: The Devils Lake Basin is 3810 square mile sub-basin of the Hudson Bay drainage system located in Northeastern North Dakota. Since 1993, Devils Lake has been in a prolonged wet cycle and has risen over 28 feet to a current level of 1451.60' this is down from a historical high of 1454.40' above sea level which was reached in June of 2011.

- **Devils Lake spilled into Stump Lake at elevation 1446.3 amsl. In the summer of 1999. The last significant spill into Stump Lake occurred in the early 1800s.**
- **Since glaciation, Devils Lake has been fluctuating from dry to overflowing; this variability is the normal condition of the lake.**
- **Devils Lake has reached its spill elevation of 1458' and has overflowed into the Sheyenne and Red Rivers at least twice during the past 4,000 years.**
- **The last Devils Lake spill into the Sheyenne River occurred less than 2,000 years ago.**
- **The volume of water in Devils Lake has increased over 4.5 times since the spring of 1993. Devils Lake & Stump Lake now covers over 177,000 acres and have a volume of 3,648,206 acre feet of water.**
- **For every foot of elevation increase the lake consumes 9 to 10 thousand acres of highly productive farmland.**
- **At their spill elevation, Devils Lake and Stump Lake would cover more than 261,013 acres.**

- **At today's elevation of 1451.60 the Devils Lake area has lost 122,840 acres of privately owned, productive agriculture land. The loss of which has had a tremendous economic impact not only to those families that lost the land but the entire region's economy is affected. Since 2010 NDSU studies have indicated an economic impact of lost agricultural production to be around two hundred million dollars...annually.**

ELEVATIONS AND ACRAE AS PERTAINING TO THIS LEGISLATION

- **1993 Pre flooding elevation 1423' and 54,267 combined acres of Devils Lake & Stump Lake.**
- **Acres of lakes at 1445' – 126,041 difference between 1993 data is 71,774 acres**
- **Acres of lakes at 1446' – 132,246 difference between 1993 data is 77,979 acres**
- **Acres between today's elevation (1451.60') and 1446' – 44,861 acres**

The land that is underneath the waters of Devils Lake was once part of multi-generational family farms and belonged to the men and woman who helped build this great state. In the past as the waters continued to consume acre after acre, farmstead after farmstead there were programs to insure buildings and dwellings were protected and compensated when inundated but nothing for the land or the income it once produced. The loss of that land has brought great heartache and anguish to those who lost so much over the years but also to those who wanted, wished and tried to find a solution and end the suffering that so many were dealing with.

As I mentioned in my opening statement that I neither support nor oppose this legislation I do however have some questions that have been brought to me by affected landowners.

- Is the price \$400/200 per acre for cropland/pasture or is that just the state's share?
- At what elevation will the land be eligible for purchase?
 - The federal legislation states that a depth greater than 6.5 feet. Is that a moving target as the lake elevations fluctuate?
- What will be allowed on the land once purchased and if/when it dries out?
 - Could it be used for any agricultural purpose such a haying or grazing?
 - Could it be sold back to the original landowner?
 - Would any type of buildings be permitted on it?
 - Could infrastructures such as roads, bridges and such be able to be maintained in order to access adjacent lands that weren't sold?
- How would state ownership of this land affect local tax rolls?
- Could the land that is purchased be considered part of a wetland mitigation bank for other dryland projects?
- Would the selling landowner be responsible for a capital gains tax or other taxes, either from the state or federal governments?

This legislation isn't perfect however I am not sure since it is tied to federal legislation if anything can be changed. While I do see some issues as it is currently written I do not want to be the one standing in the way of a landowner whose land has been underwater for 15 plus years and them receiving some kind of a payment. I applaud the sponsors who drafted the legislation and you for your willingness to bring it forward and at the very least open up the conversation about compensating landowner.

THANK YOU FOR YOUR TIME!

Respectfully Submitted,

Jeff W. Frith, Manager

Devils Lake Basin Joint Water Resource Board

Ramsey County Water Resource District

524 4th Ave NE #12

Devils Lake, ND 58301

Testimony of Paul Becker, Chairman

Ramsey County Water Resource District

Presented to the Senate Energy and Natural Resources Committee

on

SB2267

January 29, 2015

Chairman and members of the Senate Natural Resources Committee:

Ramsey County Water Resource District has some concerns with SB2267.

1. Getting compensation to flooded land owners is very important and long overdue.
2. We have a problem with the State ownership without a chance to reown the land. Most of this land has been flooded more than 15 years; could we have a contract between the State and Landowner for an additional 15-25 years with annual payments as opposed to an outright purchase? This land has been used for water storage for all of these years with no compensation. Without stabilization the Lake will go down at some time in the future, give the landowner the option of using it for its best use at that time. This could be done with a State Waterbank Program. Most of the landowners that are in this situation want to retain ownership of their land, make the changes to allow this.
3. This would allow this land to be brought back to the tax rolls. Purchase prices are too low; an annual payment would allow the land to remain in local ownership. The State will have annual costs for management when the land is out of the water with this bill.
4. This bill does not address the 40,000 acres that are above the 1445 elevation.

TESTIMONY ON SENATE BILL NO. 2267

Senate Energy and Natural Resources Committee

**John Paczkowski, Chief – Regulatory Section
North Dakota State Water Commission**

January 29, 2015

Mr. Chairman and members of the Energy and Natural Resources Committee, my name is John Paczkowski. I am the Chief of the Regulatory Section for the State Water Commission. On behalf of the State Engineer, Todd Sando, I am here to inform you that Senate Bill No. 2267 seems to be contradictory to existing state law and the state constitution regarding the purchase of property under Devils Lake.

First, the bill would require the use of state money to pay for land already owned by the state. The state engineer and the North Dakota Supreme Court have determined Devils Lake to be navigable at the time of statehood, and therefore, a sovereign water body under N.D.C.C. chapter 61-33. As a sovereign water body, according to N.D.C.C. § 61-33-03, all possessory interests belong to the state of North Dakota. In establishing the limit of the state's possessory interests in Devils Lake, the North Dakota Supreme Court in the *Matter of Ownership of the Bed of Devils Lake* (1988) directed that the state's ownership interest extends to the ordinary high water mark. The state engineer has determined the current ordinary high watermark to be the water's edge and that the ordinary high watermark moves as the level of Devils Lake fluctuates. As a result, any lands beneath Devils Lake are sovereign and are owned by the state.

Secondly, the bill arguably violates Article X, Section 18 of the Constitution of North Dakota, also known as the anti-gift clause. As stated previously, the state currently retains possessory interests in the area under Devils Lake. If the bill were to be enacted, the state would be using state money to make donations to or aid an individual, which is potentially contradictory to the constitutional language.

The State has spent hundreds of millions of dollars dealing with flooding in the Devils Lake Basin, including the construction and operation of two outlets that have helped to lower the level of Devils Lake. In addition there are also federal and state programs that are currently being used within the Devils Lake basin that compensate landowners for retaining water. Programs include the NRCS Water Bank Program, the NRCS Regional Conservation Partnership Program, the Working Wetlands in North Dakota program, the North Dakota Agriculture Water Bank program, and the Water Storage Piggyback program.

Thank you for the opportunity to comment on this matter. I will be happy to answer any questions you might have.