

1999 SENATE APPROPRIATIONS

SB 2164

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2164 & SB2188

Senate Appropriations Committee

Conference Committee

Hearing Date January 20, 1999

Tape Number	Side A	Side B	Meter #
1	X		115-4080
2/12/99 2	X		5900-end
Committee Clerk Signature <i>Kathryn C. Kottelrock</i>			

Minutes:

SENATOR NETHING: Opened the hearing on SB2164; A BILL FOR AN ACT TO PROVIDE FOR THE ISSUANCE OF BONDS AND AN APPROPRIATION TO FINANCE CONSTRUCTION OF AN OUTLET FROM DEVILS LAKE AND TO FINANCE A STATEWIDE WATER DEVELOPMENT PROGRAM; AND TO PROVIDE AN EXPIRATION DATE.

JACK TRAYNOR: State Senator from Devils Lake, District 15 to testify in support of SB2164 & SB2188 (tape 1, side A, meter 115-660).

SENATOR SOLBERG: Is the basin any closer with the Corps of Engineers doing something? Is not the Corps waiting for a dry cycle?

JACK TRAYNOR: Corps has to follow their procedures, we're hoping they will address when on the emergency schedule.

SENATOR SOLBERG: Any movement to construct the proper outlet on the East end of the Lake to make Devils Lake a viable body of water for years to come.

JACK TRAYNOR: There's been some discussions with the land owners in Nelson County because if they would except an outlet into Stump Lake on a controlled basis, they would be compensated for the damage it does, there is certainly a feeling in our Community that we should do something along that line.

SENATOR SOLBERG: I had a farmer tell me that on his computer he dug a trench from a natural outlet by-passing Stump Lake going directly to Tolna Coulee, giving the cubic yards of earth to be moved, the volume of water and etc.

JACK TRAYNOR: There is a natural opening in the hills in this area and it's marsh and the water could connect directly and by-pass Stump Lake.

SENATOR TALLACKSON: How are the negotiation's going with Canada.

JACK TRAYNOR: The Boundary Waters Treaty would not prohibit water from Devils Lake into the Sheyenne River.

VERN THOMPSON: Senator from Minnewauken representing District 12 and CO-Chair of the Lake Emergency Management Committee to testify in support of SB2188 and on record of supporting SB2165 (tape 1, side A, meter 1129-1390).

DAVE SPRYNCZYNATYK: North Dakota State Engineer and also Secretary to the State Water Commission to testify in Support of the bonding concept in SB2164 and SB2188 and specifically in support of SB2164 (testimony attached (tape 1, side A, meter 1397-1750).

SENATOR ANDRIST: Do we have good assurance that this outlet would remove enough water?

DAVE SPRYNCZYNATYK: The outlet that is being designed currently would remove 1 ¼ ft. of water per year from the Lake at its current level. This is based upon the amount of water that could be released in the Sheyenne River without causing additional flooding and significant water quality problems. The outlet is not intended to divert all the water coming into Devils Lake, out of the Lake into the Sheyenne River. Intended to provide means to help lower the lake.

SENATOR ANDRIST: So, it's going to help but, it may not take care of the problem.

DAVE SPRYNCZYNATYK: That's absolutely correct and ties in with the other parts of upper basin storage as well as interstructure protection.

SENATOR SOLBERG: Wouldn't the cost of the outlet from the Southeast, going directly into the Tolna Coulee through the marsh land be much less than the \$50M to construct that so called Emergency Corps of Engineer thing, and wouldn't be in place for many years improving the Lakes quality. Plus the maintenance and upkeep be a lot less than \$2M a year?

DAVE SPRYNCZYNATYK: No question, there are cheaper alternatives than the West end pumped outlet. We've looked at least a dozen alternatives and the amount of effort and cost to move water out of the East end would be significantly less. The problem is that the water quality in the East end is significantly greater and water released for the West end doesn't always meet the water quality standards downstream.

SENATOR SOLBERG: That water has improved over the last six years. Parts per million in solids is improved significantly. Maybe we should solve a problem that is going to last for years rather than a temporary solution. The difference between the \$25 and \$50M and the upkeep, we could pay Valley City, Lisbon, Fargo, Grand Forks and whoever else drawing their water, if the water quality is not so good, payments to take care of any additional cost for treating the water which would be a lot less than a small pipeline.

DAVE SPRYNCZYNATYK: In addition to the cities, you also have to look at the Landowners downstream. We have ranchers that use those Rivers for livestock operations, some irrigation and impact of what saltier water would have on the land as well.

SENATOR TOMAC: Wouldn't an outlet on the East end have a flushing affect, wouldn't eventually improve that?

DAVE SPRYNCZYNATYK: Yes, it does have a flushing affect, no question the water deteriorates from West to East. We still have a lot of salts in the bed of the Lake and as the water quality in the Lake improves it develops those salts from the bed.

JOE BELFORD: Ramsey County Commissioner and CO-Chair of the Lake Emergency Committee and also representing County Commissioners Association on the North Dakota Water Coalition to testify in support of SB2164 (testimony attached (tape 1, side A, meter 2580-3120)).

SENATOR BOWMAN: If you are going to use 10 pumps to move the water, has that cost been determined for the longevity of this project, versus a natural flow outlet.

JOE BELFORD: Last estimate, \$1.2-\$1.5M per year.

SENATOR BOWMAN: Does the Corps of Engineers have something built into their budgets that will compensate our State for the cost we are incurring because of the delay?

JOE BELFORD: No.

SENATOR BOWMAN: If we do get this ok, when do we start doing something to solve the problem?

JOE BELFORD: The report is in to Congress and if all goes well, the water should be flowing by year 2002.

Written testimony was distributed on behalf of Don Lee, Chairman of the Devils Lake Basin Joint Water Resource Board (attached).

SENATOR NETHING: Closed the hearing on SB2164 & SB2188.

SENATOR NETHING: The testimony that was offered on SB2188 will also apply to SB2164.

SENATOR NETHING: We will open and close the hearing on SB2164.

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2/12/99

Tape 2, Side A, 5900-end

SENATOR NETHING: Reopened the hearing and stated SB 2164 had been included in SB 2188.

SENATOR SOLBERG: Moved do not pass SB 2164.

SENATOR HOLMBERG: Seconded the motion.

ROLL CALL: 14 ayes; 0 nays; 0 absent & not voting

MOTION CARRIED TO DO NOT PASS SB 2164

CARRIER: SENATOR LINDAAS

SENATOR NETHING: Closed the hearing on SB 2164.

Date: 2/12/99
Roll Call Vote #: _____

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2164

Senate APPROPRIATIONS Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By Sen. Solberg Seconded By Sen. Holmberg

Senators	Yes	No	Senators	Yes	No
Senator Nething, Chairman	✓				
Senator Naaden, Vice Chairman	✓				
Senator Solberg	✓				
Senator Lindaas	✓				
Senator Tallackson	✓				
Senator Tomac	✓				
Senator Robinson	✓				
Senator Krauter	✓				
Senator St. Aubyn	✓				
Senator Grindberg	✓				
Senator Holmberg	✓				
Senator Kringstad	✓				
Senator Bowman	✓				
Senator Andrist	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Sen. Lindaas

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

REPORT OF STANDING COMMITTEE (410)
February 12, 1999 3:29 p.m.

Module No: SR-29-2821
Carrier: Lindaas
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2164: Appropriations Committee (Sen. Nething, Chairman) recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2164 was placed on the Eleventh order on the calendar.

1999 TESTIMONY

SB 2164

TESTIMONY ON SENATE BILLS 2164 AND 2188

Senate Appropriations Committee

**David A. Sprynczynatyk, State Engineer
and Secretary to the State Water Commission**

January 20, 1999

Mr. Chairman and Members of the Appropriations Committee, my name is David Sprynczynatyk. I am the North Dakota State Engineer and Secretary to the State Water Commission, and appear today in support of the bonding concept contained in Senate Bills 2164 and 2188.

Senate Bill 2164 contains the executive recommendation for the Devils Lake emergency outlet and Garrison Diversion. It is similar to legislation approved two years ago that provided \$20 million, through bonding, for funding the non-federal cost share requirement of these two projects. Senate Bill 2164 updates the bonding language in current law, making the issuance of the bonds more efficient. Also, it does not provide for an appropriation to retire the bond debt during the biennium. Interest accrued during the biennium would be capitalized in the bond issuance. Since construction of the outlet will not begin before the year 2000, interest during the biennium will be minimal.

Senate Bill 2188 provides an extension of current law for bonding for Devils Lake and Garrison Diversion, and provides an appropriation of \$2 million from the Bank of North Dakota profits for making bond payments during the next biennium. This is the only significant difference between the two bills.

The attached map shows how the area of Devils Lake expands as the level increases. In the spring of 1993, Devils Lake was at elevation 1423 and covered only 45,000 surface acres. At elevation 1444, Devils Lake today covers nearly 105,000 acres. Increasing levels have had drastic impacts on ranchers, homeowners, cabinowners, developers, utilities, and roads. To date, approximately \$260 million dollars have been spent on infrastructure modifications and replacements in the last six years. The attached graph shows how those damages have occurred as Devils Lake has risen since 1993.

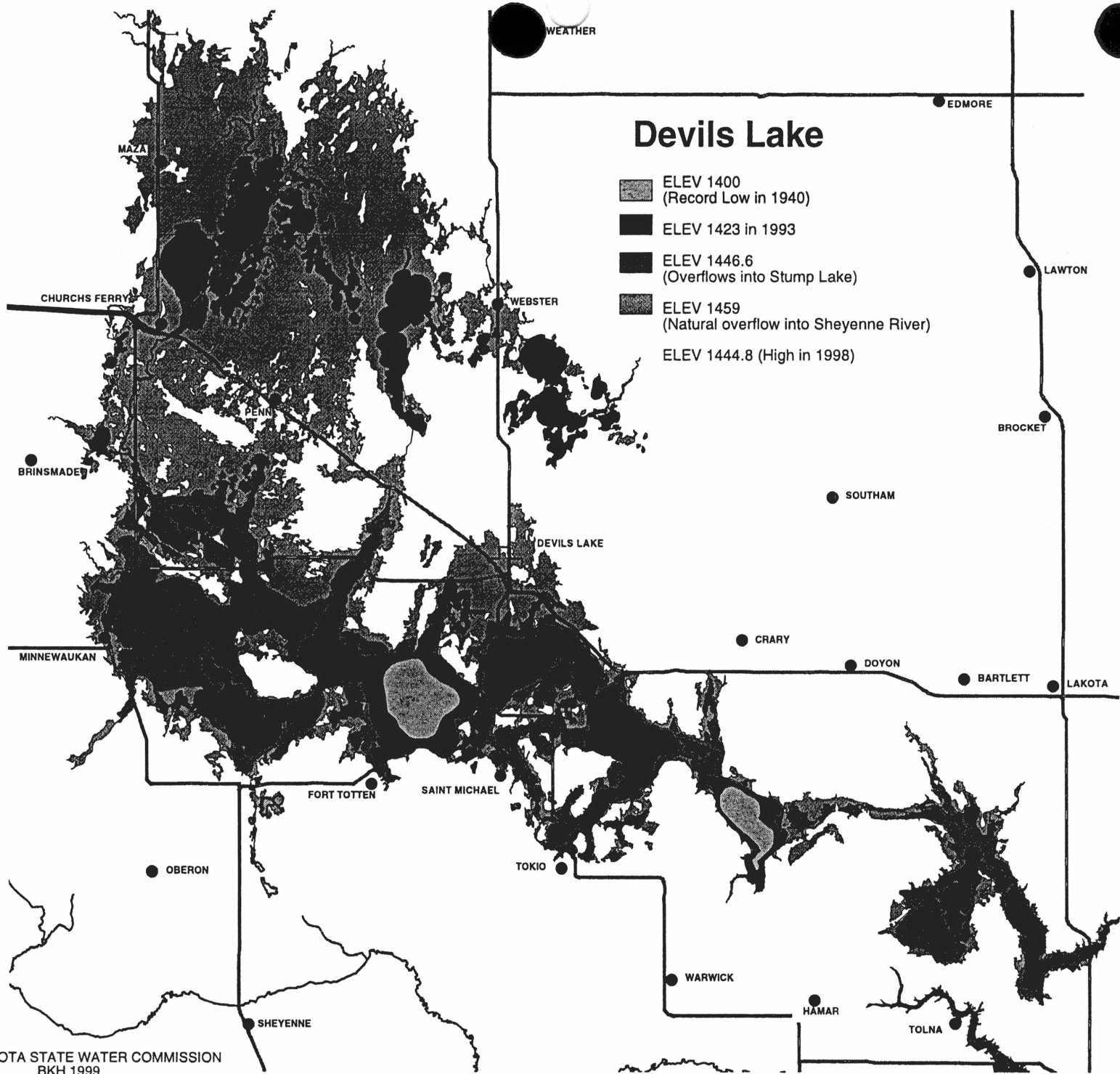
The latest Corps of Engineers cost estimate for the outlet is \$50 million. The Corps requires a 35 percent minimum cost share, therefore, \$17.5 million would be required for the Devils Lake emergency outlet. The outlet would pump 300 cubic feet per second through a pipeline from the west end of the lake to the Sheyenne River. The Corps is still working on a draft Interim Report to Congress. This report is expected to be completed within the next few months. Water quality concerns and economic justification remain significant issues, as is the Canadian issue of the interbasin transfer of water. We are hopeful, however, that the issues can be resolved allowing the project to move forward. Annual

operation and maintenance costs are estimated at \$2.5 million. Since the outlet will not be operational during the 1999-2001 biennium, these costs were not included in either Senate Bill 2164 or 2188.

The emergency outlet is only one part of a three-prong approach to the problems at Devils Lake. A second part includes floodproofing the many structures and facilities around the lake. The Corps is in the final stages of constructing a dike around the city of Devils Lake and some of the areas immediately outside of the city. This project will protect the city to a lake level of 1450 msl. The city of Devils Lake is the local sponsor for this project, although the state has contributed to the project. The Federal Emergency Management Agency, through the Flood Insurance Program, has provided over \$20 million to move homes and other structures to higher ground. Also, more than \$80 million has been provided to raise and relocate roads in the area.

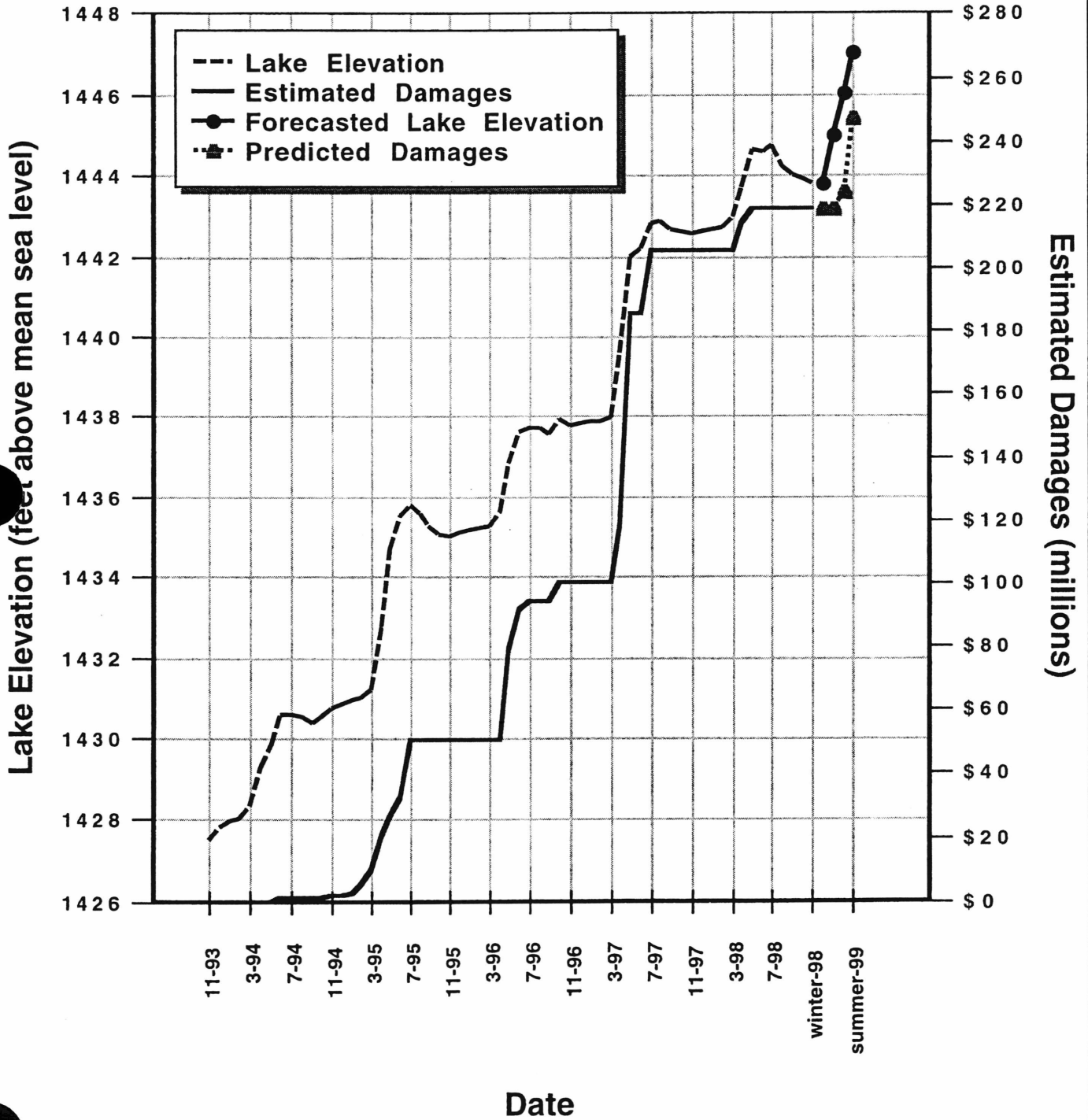
The third part of the effort at Devils Lake involves upper basin management. The State Water Commission has spent nearly \$2.9 million on the Available Storage Acreage Program (ASAP) to increase storage in the upper basin. These efforts are being coordinated with other programs and entities to provide the greatest impact possible.

Your favorable consideration of Senate Bill 2164 is requested. If you agree that \$2 million should be appropriated to pay for debt retirement in the 1999-2001 biennium, then the appropriation should be added to Senate Bill 2164, which would eliminate the need for Senate Bill 2188.



Devils Lake Flood Crisis

Past and Future Estimated Damages With Lake Elevations



Testimony of Joe Belford
Ramsey County Commissioner
Co-Chair Lake Emergency Committee
on Senate Bill 2164
Senate Appropriations Committee
January 20 1999

Dear Senator Nething and members of Senate Appropriations Comm.

I am here to suggest to you why we are very much in need of SB2164 for the fine citizens of the Devils Lake Basin.

As most of you know we have been in a flood condition since the fall of 1993. Millions of dollars have been spent since that time on roads, dikes, Ramsey County Rural Sewer System, moving of homes, economical loss to all communities as well as agriculture. To be exact about \$250,000 dollars of federal, state and local.

I am going to list some of the reasons for our need of the outlet.

- A. The Devils Lake Dike which is being built for protection to elevation of 1457 with protection to elevation of 1450. Without it about 35 percent of the City of Devils Lake would be lost as well as out sewage system.
- B. We are very thankful to the North Dakota Highway Dept for keeping the roads passable, but we want to remember that most of them are only about 4 feet above the level of the lake. We don't want a repeat of 1997 when a lot of the roads went under again which caused severe economic injure to Devils Lake as well as many other area communities
- C. Our Ramsey County Sewer System will be in big trouble if the lakes gains a few more feet causing a large amount of homes to be unhooked, in fact we had to unhook 3 homes on Christmas day. Another fact is we still owe about \$900,000 dollars on the system.
- D. Ramsey County has abated about 600 parcels of land which causes strain on all forms of government.
- E. The stress on life because of the unknown, the over 400 structures that have been moved, the timeless effort put in by many including the federal, state and many others.

I could go on for hours telling stories about all the problems associated with the DEVILS LAKE MONSTER but I won't as I know you know very well what we are going through.

In closing I personally want to thank the Legislative assemble,

Governor Shafer and all his staff as well as the agency heads and their staffs it has been great and the Devils Lake Basin residences appreciate it.

We truly hope your committee will recommend a do pass on SB2164 and SB2188. Thank you.

DEVILS LAKE FLOOD FACT SHEET

January 1999

History

Devils Lake is considered a closed sub-basin of the Red River of the North Basin. However, evidence suggests that Devils Lake has, on several occasions during the past 10,000 years, reached its spill elevation of about 1459 feet above mean sea level (msl) and overflowed to the Sheyenne and Red Rivers. Geologists conclude that the level of Devils Lake naturally varies widely due to climatic swings. Beginning 130 years ago with the first recorded level of 1438.4 msl, the lake level fell until reaching its recorded low of 1400.9 msl in 1940. The lake has since followed a rising trend, reaching the modern high of 1444.7 msl in July 1998. Devils Lake has now engulfed Lake Irving and Lake Alice, two of the upper basin lakes.

Flood Problems and Damages

Flooding in 1993 caused Devils Lake to rise 5 feet in six months. The lake has steadily risen each year since, over 22 feet in total. The volume of water in Devils Lake has quadrupled since the spring of 1993. Over 65,000 acres of adjacent land, much of it deeded land, has been flooded since 1993. The lake now covers about 106,000 acres. More than 172 buildings have been affected. In 1997, about 400 insurance damage claims were filed totaling \$20 million in Ramsey and Benson Counties. In addition, 83 homes on the Spirit Lake Nation Reservation have been moved. As of April 1998, 385 flood insurance claims were paid around the lake totaling \$21.4 million. Some of these homes have been in place for up to 50 years. An additional 88 claims have been filed since April. There are 1,352 flood insurance policies in effect around the lake with \$178.9 million in coverage as of July 31, 1998.

Maintaining state and county roads at Devils Lake has cost tens of millions of dollars since 1993. There were 17 highway elevation raising projects around Devils Lake in 1997 at a total cost of \$27.2 million. Highways 20 and 57 went under water at the Narrows south of Devils Lake in 1997. Except for Highway 57, top of roadway elevations on most highways adjacent to Devils Lake is now at 1448.5 msl, less than 5 feet above the current lake level. Highway 57 is currently being raised to 1456.5 msl. The dirt fill and rip-rap work is essentially complete. Constructing a bridge and paving the roadway remains to be done. The road is scheduled to open during the summer 1999, with a total cost of \$8.1 million.

The US Army Corps of Engineers is raising the City of Devils Lake levee system. The first increment raised the original levee by five feet and extended the line of protection to 1445 feet msl. The second increment has raised the protection level to elevation 1447 msl (top of levee at elevation 1452 feet msl). The third increment raises the protection level to elevation 1450 msl (top of levee at elevation 1457). This levee raise was started September 1998 and could be complete by the fall of 1999. Three of the five pumping stations required for the levee have been completed. Planning continues to protect the cities of Minnewaukan and Churches Ferry from eminent flooding.

The North Dakota State Park System has four parks adjacent to the lake. The Narrows State Park was flooded and abandoned in 1995. The road to Grahams Island State Park and many facilities within the park were flooded in 1997. The road was raised in 1997 and a new two-lane concrete boat ramp constructed in 1998. Many facilities at Grahams Island State Park remain flooded. Shelters Grove and Black Tiger Bay Parks have some flooded facilities, but they remain open.

Nearly \$1 million of repair work have been identified and funded to relocate pipes and pump stations required to keep the Ramsey County rural sewer system operable. This work is

approximately 60 percent complete. As the lake continues to rise, additional problems have developed causing the need for additional funding. Vacated hookups and added operating costs are making it difficult to maintain the system.

Basin Water Management Efforts

A multi-faceted approach, which includes basin water management, infrastructure protection as mentioned above, and an outlet to the Sheyenne River, is critical for addressing Devils Lake flooding problems.

The Available Storage Acreage Program (ASAP) has now been in place for three years. In 1996, 8,000 acre-feet of water was being stored. In 1997, 22,000 acre-feet was kept out of the lake and 21,000 acre-feet was stored in 1998. Evaporation, transpiration, and seepage to the water table consume the water before it can cause damage in Devils Lake. The net effect of the initial storage and subsequent years of evapotranspiration from the ASAP sites has been the retention of between 40,000-50,000 acre-feet of water, which is equivalent to approximately four to five inches off Devils Lake. ASAP has cost \$2.9 million thus far and has recently been funded with an additional \$950,000 to store water through 1999.

The U.S. Fish and Wildlife Service has completed ten wetland development projects in the upper Devils Lake basin in the past few years. These ten sites have the capacity to provide 2,281 acre-feet of storage on public lands. The cost for development of these projects was approximately \$985,717. Twenty-two additional sites are planned, which have the potential to collectively store 11,452 acre-feet of water. The U.S. Fish and Wildlife Service has been given approval by Governor Schafer to purchase 1,200 acres of land in the upper basin. Once this acquisition is complete, up to 2,200 acres-feet of water storage could be developed.

ND Wetland Trust is helping finance wetland restorations on Conservation Reserve Program tracts through incentive payments to landowners. To date, 1,584.5 acres of wetlands will be restored when survey work can be completed. These restored wetlands comprise 608 basins, with incentive payments costing about \$102,000. The State Waterbank Program is also reducing runoff contributing to Devils Lake by enrolling approximately 1,600 acres of land.

The Outlet Part of the Solution

Several potential alignments for a Devils Lake outlet have been considered. In all cases, potential water quality impacts and flood risk in receiving waters are major concerns. The preferred alternative is a buried pipeline that generally follows Peterson Coulee. The all pipeline alternative will pose the fewest environmental problems. When finished, the project may pump a maximum of 300 cubic feet per second (cfs) to the Sheyenne River. This could remove up to 120,000 acre-feet of water annually or about one foot at the current level.

FY 1998 Energy and Water Development Appropriations Act, signed by President Clinton on October 13, 1997, contained \$5 million to initiate construction of an outlet from Devils Lake to the Sheyenne River, subject to completing economic and environmental analyses, reporting to Congress, and consulting with the International Joint Commission concerning the Boundary Waters Treaty. The Act also clearly prevents the use of funds to implement an inlet or diversion of Missouri River water into Devils Lake. Economic and environmental studies are underway, with a interim Report to Congress scheduled for May 1999.

The Final Scoping Document for the Environmental Impact Statement (EIS) is expected to be released in February 1999. A draft EIS is scheduled to be released for public review in September 1999. Public meetings to review the draft EIS will begin the following month.

Devils Lake Basin Joint Water Resource Board
524 4th Avenue #27
Devils Lake, ND 58301

January 19, 1999

Senator David E. Nething
Chairman Senate Appropriations Committee
Capital Building
Bismarck, ND 58505

Chairman Nething and Committee Members:

The Devils Lake Basin Joint Water Resource Board requests this committee give a due pass to Senate Bills 2164 & 2188. We know that State funds will be very tight this biennium, but the Devils Lake Basin has been plagued by flooding for several years now and is in dire need of assistance. The ranchers and farmers around Devils Lake have thus far received no compensation for their loss of land and the business community in the City of Devils Lake has suffered from the economic loss of the farmers.

Information from Landsat Thematic Mapper satellite imagery covering about 80% of the basin shows land inundated by water in the upper basin has increased 255% from 1992 to 1997 and the surface area of Devils Lake has increased 130% in the same time frame. Without an outlet from Devils Lake, land inundated by flood waters will remain unproductive for many years to come. By removing water from the lake, land could be placed back into production and help many ranchers and farmers who may otherwise go out of business.

The Devils Lake Basin Joint Water Resource Board also recommends due pass of Senate Bills 2165 & 2043.

The Devils Lake Basin Joint Water Resource Board would like to be on record as supporting the need for all the water projects in the State. We strongly support all the water projects identified by the North Dakota State Water Coalition which we are a member of.

Thank you for addressing our concerns.



Don Lee, Chairman
Devils Lake Basin Joint Water Resource Board.