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2001 HOUSE NATURAL RESOURCES

HB 1151

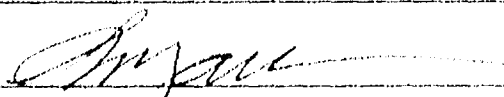
2001 HOUSE STANDING COMMITTEE MINUTES

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?

Erink: 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?

Erink: 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?

Erink: 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 Belfer - 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. Winrieh: 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 be a conservative estimate.

Belfer: I agree with that. One number we cannot get a handle on is economic loss. 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. Winrieh: 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 Vlg - 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 economies 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

