

SE Introduces Sovereign Land Bill

During the 60th Legislative Assembly, which began in January, the Office of the State Engineer introduced only one bill—Senate Bill 2096. This piece of legislation was related to sovereign land management responsibilities. The need for SB 2096 came about as a result of a sovereign land management planning process undertaken by the State Engineer in 2006.

North Dakota's sovereign lands are those areas, including the beds and islands lying below the ordinary high water mark of navigable lakes and streams. The Office of the State Engineer is authorized to manage the state's non-mineral interests in sovereign land as afforded in North Dakota Century Code § 61-35-05.

SB 2096 had four purposes. The first was to provide the Game and Fish Department with the authority to enforce sovereign land-related rules and regulations on the state's sovereign lands. Because the Office of the State Engineer does not currently have law enforcement-type staff, it was either going to be necessary to hire and manage enforcement officers, or utilize existing law enforcement infrastructure. With Game and Fish law enforcement already in the field, it was determined to be far more efficient and cost-effective to use their existing wardens to assist with sovereign land-related law enforcement.

Closely related, the second purpose of SB 2096 was simply to allow the State Engineer to enter into

agreements with the North Dakota Game and Fish Department or other law enforcement entities to enforce sovereign land-related rules and regulations. Again, with the Office of the State Engineer having no law enforcement staff in the field, this change will allow flexibility to work with existing law enforcement.

The third purpose of SB 2096 was to provide the State Engineer with the authority to manage the removal,

modification, or destruction of dangers in all of the state's navigable waters that have been determined to be navigable by a court of law. The existing statute said that if various manmade objects, such as buildings or docks located in navigable lakes were determined to be a menace to life, property, or public health, the State Engineer could require the owner to remove those objects at the owner's expense. With the amendments in SB 2096, that same authority will apply to all navigable waters, including rivers.

The final purpose of SB 2096 was to provide a penalty for violations of sovereign land rules and regulations.

At the time this article was written, SB 2096 had passed both the House and Senate. If signed by the Governor, SB 2096 will take effect on Aug. 1, 2007.

April Commission Meeting Highlights

The North Dakota State Water Commission held a telephone conference call in the Governor's conference room at the state capitol on April

12. Under consideration were contracts and funding for the advancement of the Northwest Area Water Supply (NAWS) and Southwest Pipeline projects. The Commission also considered the selection of bond council for the next four years.

The first agenda item approved by the Commission was for a NAWS project contract (2-2A Minot Area Segment) in the amount of \$5,876,766. This project involves approximately four miles of 24 and 36-inch pipe; several river and highway borings, including the Max Railroad bore; and cathodic protection and appurtenances.

The project will start just east of the Minot Water Treatment Plant at the



Construction on Southwest Pipeline, Summer 2006.

proposed High Service Pump Station, which is currently under design, and goes west through the Highway 83 bypass along the west edge of Minot. From there, the pipeline will “tee” to the south and north along the western edge of Minot.

Though a lawsuit with the Province of Manitoba is still pending over the NAWS project, this particular project contract was granted approval to proceed with design and construction by a judge in March 2006.

When the entire NAWS project is completed, it will provide up to 26 million gallons of Missouri River water per day to at least 63,000 citizens in northwest North Dakota. With addition rural development, NAWS could serve as many as 81,000.

With the Southwest Pipeline Project (SWPP), the Commission approved cost-share in the amount of \$919,800 for Contract 4-2A/4-1C with Cummins N Power, LLC, who was the apparent low bidder. The purpose of this project is to place backup power generators at the Richardson and Dodge Raw Water Pump Stations.

The Commission also approved authorization of the State Engineer to award a contract for the seeding of disturbed areas associated with the construction of SWPP contracts last summer. Last year’s pipeline alignments went through a higher percentage of pasture and hay land than usual. As a result, approximately 1,033 acres of hay/grass land, pasture, CRP, and alfalfa will need to be seeded. The cost of the project is estimated at \$288,207 or \$279 per acre.

The Commission also approved the selection of Arnston and Stewart, P.C. as the agency’s bond council. Before Arnston and Stewart, P.C. can officially become the Commission’s bond council for the next four years, the North Dakota Attorney General must concur.

Grant Awarded to WRD Association

To continue the Water Commission’s track record of supporting the efforts of local water managers, the State Engineer recently approved a grant request from the North Dakota Water Resource Districts Association (Association). The purpose of the grant is to assist the Association with funding an update of the North Dakota Water Manager’s Handbook, and to conduct a series of workshops across the state.

According to the Association, there has been an extensive amount of turnover among water resource district members in recent years. By hosting a series of workshops and training sessions, local water managers can be more thoroughly informed about their roles and responsibilities. This will ensure that water resource districts are operating as the law intends.

During the month of April, Association staff and a hired consultant conducted workshops and training sessions in Dickinson, Minot, Bismarck, Jamestown, Hillsboro, Devils Lake, and Williston. Updates to the Water Manager’s Handbook are scheduled for completion and distribution to water resource districts in late June.

North Dakota’s water resource districts are a local level of government with broad water management responsibilities. Should a water management concern arise, the local water resource district should be the first point of contact in getting it resolved, or to provide advice regarding various options. There are currently water resource districts in every county in North Dakota, and in five counties, more than one water resource district exists.

Water resource district board members attend a workshop in Devils Lake.



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Why Not Use Devils Lake for Eastern North Dakota Water Supply?

About 96 percent of North Dakota's surface water is located in the Missouri River and its reservoirs in the western half of the state. The Missouri system also has the best water quality in the state. However, 42 percent of North Dakota's population resides in the opposite end of North Dakota in the Red River Valley. And, during a long-term drought, similar to what was seen during the "Dirty Thirties," communities in the Red River Valley will experience shortages of drinkable water, as surface water supplies dry up. In fact, according to the recently released Supplemental Draft Environmental Impact Statement for the Red River Valley Water Supply Project, maximum annual shortages of 80,000 acre-feet could occur before 2050 during a 1930s-type drought. With the Missouri River system located in the western part of the state and Devils Lake in the eastern part of the state, it seems reasonable for people to ask:

Why isn't Devils Lake being considered as an alternative to supply water to the Red River Valley in times of drought?

After all, Devils Lake has risen to historic levels that would seem to provide a readily obtainable source of water for communities along the

Red River. Since 1993, Devils Lake has risen more than 25 feet, and the volume of water in the lake has quadrupled to more than 2 million acre-feet. This historic rise of the lake has caused upwards of \$500 million in damages, which prompted the Water Commission to build an outlet to remove some of the floodwater. The building of the outlet has then understandably prompted another question:

Why can't the Devils Lake outlet be used to convey unwanted floodwater to communities in the Red River Valley?

Both are excellent questions, and both seem like reasonable proposals. However, like many seemingly simple solutions, this issue is a little more complicated than it would seem at first glance.

So why not use Devils Lake floodwater? Simply put—reliability. During a long-term drought that the Red River Valley Water Supply Project is designed to mitigate, it is almost certain that the Devils Lake Basin would be in a drought as well. Although Devils Lake has generally risen during the last fifty years, it was nearly dry in 1940 following the drought years of the 1930s. Geologic evidence indicates that Devils Lake

is always either rising or falling, and during the type of long-term dry cycle that would cause water shortages in the Red River Valley, Devils Lake would be drying up as well. Thus, it could not be relied upon as a dependable long-term water supply.

The reliability issue alone is enough to exclude Devils Lake from being considered as an alternative water supply to the Red River Valley. But, there are other obstacles in using the outlet as a means of conveying Devils Lake water to the Valley.

Currently, operation of the Devils Lake Outlet is regulated by a North Dakota Health Department-issued permit. Although Devils Lake is within the Red River Basin, its water quality is different from the Sheyenne River. As such, a permit has been issued to protect water quality in the Sheyenne and Red Rivers. In 2006, there was little or no flow in the upper Sheyenne River. Therefore, during a long-term drought of 1930s-type severity, we can expect that the Sheyenne River will have little or no flow at all for extended periods of time. As a result, when the water is most needed in the Red River Valley during a drought, the permit would likely prevent outlet operation. In addition, the Devils Lake Outlet can only pump water out of Devils Lake when it is at an elevation of 1,445 feet above mean sea level or higher. During a long-term drought, Devils Lake will be on the decline, and will likely fall below that threshold elevation.

As the previous discussion suggests, the factors that make water limited during a drought in the Red River Valley would also affect the availability of water from Devils Lake. Therefore, it would be unsuitable as a supplemental water source for the Red River Valley.



In 2006, the Sheyenne River was almost completely dry upstream of Warwick, as depicted in this photo taken near Bremen.