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Action Plan Devils Lake, North Dakota

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Action Plan
Devils Lake, North Dakota
prepared by the
Devils Lake Collaborative Working Group

Executive Summary

This action plan was prepared by the Devils Lake Collaborative Working Group (DLCWG) to provide the current status of the 21 actions identified in the December 2010 “Report of the Federal Interagency Devils Lake Working Group” and outline additional revisions and actions to address the changing situation in the basin. The DLCWG was identified as one of the 21 actions within the December 2010 report. The DLCWG represents basin stakeholders and is tasked with developing and recommending direction and actions to the Devils Lake Executive Committee (DLEC), which was also identified in the report. Members of the committee include senior working staff from Federal, tribal, State, local government, the International Joint Commission (IJC) (observer status), Canada (observer status), and NGOs (observer status). This action plan was identified as one of the first products for the DLCWG to prepare for the DLEC.

The initial meeting of the DLEC was held on 7 March 2011 in Bismarck, North Dakota. At this meeting, the DLEC designated lead federal and state or tribal agencies for each of the 21 actions. A second meeting was held on 4 April in Bismarck, where the set of action items were modified and clarified. The initial list of actions can be found in the December 2010 report.

The initial meeting of the DLCWG was held on 29 March 2011 in Devils Lake. The main purposes of the meeting were to review the 21 action items, discuss the status of these action items, modify, delete or add action items as necessary, and assign individuals to prepare portions of the draft report. A second meeting of the DLCWG was held on 27 April in Devils Lake. As a result of discussions at these meeting and subsequent recommendations from DLCWG members, modifications to the action were made as noted in Table 1. This table also includes a summary of the required federal funding and remarks. The action plan was approved at the June 13, 2011, DLEC meeting subject to revisions which are incorporated into this plan. Additional comments from DLEC members regarding this plan are attached in Appendix A.

Table 1 – Revised Action Items

#	Category	Action	Description	Federal Cost	Remarks
W-1a	Water Management	East Devils Lake Outlet	Construction of an outlet and channel from East Devils Lake to Tolna Coulee. The route begins on East Devils Lake, runs east southeast 5-1/2 miles and outlets into Tolna Coulee. This alternative would slow potential future lake level rises.	None	State will implement.
W-1b	Water Management	Expansion of West End Outlet	Expansion of the existing west end outlet by 100 cubic feet per second (cfs) from 250 cfs to 350 cfs is being investigated. This expansion would require construction of an additional inlet for two more pumps. Due to the urgency of getting water off Devils Lake and the fact that the West End Outlet is currently the only means available to do so, the construction of the additional 100 cfs cannot interrupt operation of the existing system.	None	This action item replaces the “Pipeline from Pelican Lake to Round Lake” action item which is no longer being considered. State will implement.
W-1c	Water Management	Control Outflows at Tolna Coulee	Construction of a sheet pile sill and control structure on the upper end of Tolna Coulee that would prevent catastrophic outflows. This action item includes environmental mitigation. This action item would provide assurance that if Devils Lake was to continue to rise up to or above the natural outflow elevation at Tolna Coulee (1458 msl), it would not result in uncontrolled discharges should erosion of the divide occur. It would also include a control structure that would allow for gradual lowering of Devils Lake if that erosion occurs.	\$6,500,000 (non-Federal sponsor share \$3,100,000, for a total cost of \$9,600,000)	Design of this action item is underway.
W-2a	Water Management	Address Water Quality Issues	Review downstream water quality standards (WQS), and consider only WQS revisions that are legally and scientifically defensible and that would comply with Clean Water Act (CWA) requirements. This alternative included review of the downstream WQS applicable to the Sheyenne River and the Red River.	None	Complete; no further action required
W-2b	Water Management	Increase Sheyenne River Channel Capacity	This action item includes modeling the Sheyenne River at flow rates between 600 and 900 cfs to identify areas of constriction, possible channel capacity improvements and areas that would be impacted on which the NDSWC would acquire flood easements.	None	State will implement.
W-3	Water Management	Flooded Land Compensation and Increase Upper Basin	This action item includes several alternatives: use of Compensation Programs for Wetland Restoration and Flooded Land Compensation; and Development of a Multi-Purpose Pelican Bay Recreation and	\$75,000,000	Combines two action items: Increase Upper Basin Storage, and Development of the Multi-

		Storage	Tourism Area. All would provide for upper basin storage to reduce inflow to Devils Lake, a means of compensating flooded landowners, or both.		Purpose Pelican Bay Recreation and Wildlife Area. Recommends making an exception to the federal crop insurance program for producers in closed lake basins such as Devils Lake.
W-4	Water Management	Biota Filters for Devils Lake Outlets	This action item includes studies designed to determine the necessity for additional water treatment facilities to filter biota for discharges from the existing West End Outlet or proposed East End Outlet.	None	Studies are underway.
I-1a	Infrastructure	Fully Fund Roads Acting as Dams Project	Increase levels of funding for the Federal Highway Administration (FHWA) and Bureau of Indian Affairs (BIA) activities in Devils Lake to modify roads acting as dams and construct other associated embankments. The increased funding allocation would allow construction to proceed to a level of protection to approximately elevation 1466 feet that accommodates freeboard requirements including flood inflows and wave action, which is sufficiently higher than the ultimate lake elevation of 1458 feet.	\$120,000,000	Recommends future funding allocated to the BIA with the Bureau of Reclamation providing dam safety expertise.
I-1b	Infrastructure	Road Raise Contracts to 1460/1465	Provide funds for existing construction contracts on federal-aid roads which are currently being raised to an elevation of 1460, and obtain authorization and funding to modify existing road raise contracts to elevation 1465. The roads eligible for federal-aid highway funding include all critical federal-aid system roads (state and county roads that are major collector and above, but not township and lower classification county roads). The elevation to which the roads would be raised is based on protecting roads from inundation and wave action, and would be consistent with the elevation that has been used for bridge replacement construction (1465) previously completed.	\$190,000,000	Combines two action items, Road Raise Contracts to 1460, and Modify Road Raise Contracts and Provide Additional Contracts to 1465. Recommends congressional action for a waiver on the \$100 million cap per state for FHWA Emergency Relief (ER) program funding requests; reducing local match to federal ER funds; and making ER funds available for emergency preparedness.
I-1c	Infrastructure	Raise Township Roads	Obtain authorization and funding to reimburse for raising existing township roads in advance of flooding, when it is less expensive and	Not identified	New action item. Recommends authorization of a pre-disaster

			more feasible to do so. This action would focus on roads deemed of strategic value to local or tribal government versus an entire road network. To support this effort, Local and Tribal governments should conduct/continue to conduct (with state and federal support) strategic analysis of which roads are essential to their network and to determine which roads are candidates for raises in advance of flooding, and also plan to abandon those roads which are not deemed of strategic value once threatened with inundation.		grade raise program.
I-2	Infrastructure	Utility, Infrastructure, and Critical Facility Repair / Relocations	Use existing federal authorities to repair, replace or relocate utilities, infrastructure, and critical facilities that are adversely affected by flooding due to the rise of Devils Lake and associated ground water impacts.	Not identified	Expansion of action item Utility Relocations.
I-3	Infrastructure	Railroad Embankment Raises	Raise existing railroad embankments affected by the rising lake. The level of protection is based on protecting the railroad from wave action and being overtopped by the lake. The elevation would be consistent with the elevation proposed for critical roadways in the Devils Lake basin.	\$97,400,000	A special appropriation is necessary for this action to raise the railroad embankment.
R-1	Risk Management	Mental Health Assistance	Provide mental health assistance for individuals affected by the long-term flooding problems associated with Devils Lake, in coordination with a myriad of other government, non-profit, and voluntary organizations.	Existing funding sources, but recommends investigating sources outside existing disaster programs.	New action item.
R-2a	Risk Management	Local/ Tribal Hazard Mitigation Planning	Communities should be developing and/or updating their hazard mitigation plans. Mitigation plans are the foundation for effective hazard mitigation and FEMA's Hazard Mitigation Assistance programs require a community to have a FEMA-approved local or tribal mitigation plan to be eligible to apply for and/or receive federal funding for mitigation projects.	Existing funding sources	New action item. Recommends that local and tribal mitigation planning activities continue to be funded through FEMA's HMA grant programs and technical assistance is provided as necessary.
R-2b	Risk Management	Non-Structural Hazard Reduction: Acquisition/Relocation of	Acquisition/relocation of imperiled structures, which would permanently reduce risk by moving these impacted structures to a higher elevation. This activity would offer willing homeowners a non-	Existing funding sources	Action is ongoing. Recommends development of a special appropriation

		Imperiled Structures	structural opportunity to reduce their risk before they suffer damage, and would avoid future damage if the lake reaches this level again.		administered through FEMA's Hazard Mitigation Grant Program (HMGP). This appropriation would enable expeditious review and approval of projects benefitting the Devils Lake basin. The program would be administered through FEMA's HMGP under the 5% initiative that funding would only be used to relocate and acquire imperiled structures and select infrastructure.
R-3	Risk Management	Tolna Coulee Monitoring for Emergency Preparedness	Expand the current environmental monitoring network in and around Devils Lake to include the Tolna Coulee outlet from Stump Lake. Such observations would help provide advance warning of a potential spill, improve short-term flood emergency response in the event of a spill, and help with longer-term mitigation and adaptation planning in the event of a prolonged spill.	\$20,000, from existing funding sources	Modification of Additional Observations for Emergency Preparedness.
R-4	Risk Management	Downstream Effects	Undertake studies to identify potential adverse effects on Tolna Coulee, the Sheyenne River, and the Red River of the North due to increased outflows from the West and East End Outlets and from flows from Stump Lake through Tolna Coulee. Potential adverse effects could include increased stream bank erosion, disruption to roadways and bridges, increased sedimentation at Lake Ashtabula, loss of riparian forests and aquatic species, increased safety concerns at about 20 low head dams, and increased operational costs for downstream water treatment facilities.	Up to \$100,000 (for initiation of a reconnaissance study)	New action item.
R-5	Risk Management	Prepare a Multi County Evacuation and Mass Care Annex to Existing Emergency Operations Plans	There is a potential for rising lake waters to impact communities that border the Devils Lake Basin. As such, it is imperative these communities take advance measures to prepare for potential flooding. Adding Evacuation and Mass Care Annexes to Existing Emergency Operations Plans is a pre-emptive means of ensuring life safety.	Existing funding sources	
G-1	Governmental	Comprehensive	Develop a coordinated, comprehensive watershed management	General funding	Effort would be performed

	Collaboration	Watershed Management Strategy	strategy that is fully integrated with the established future lake level (or lake level range), and that supports the permanent long-term recovery and sustainability of the Devils Lake basin while considering downstream interests. The strategy would address environmental, economic, flood mitigation, and social issues (e.g., enhanced quality of life, stable housing, education, emergency medical services, transportation, and equitable compensation), and establish goals and document accomplishments for the watershed.	sources	mostly by state and local agencies, with input from federal agencies. Recommends wetland restoration program specific to Devils Lake basin; modify the Water Bank Program to be utilized as a water storage program; modify the Wetland Reserve Program to implement 30-year contracts rather than easements and establish an elevation for consideration of WRP applications; or creation of new programs.
G-2	Governmental Collaboration	Use of In-Lieu Fee or Mitigation Bank	This action item will evaluate streamlined approaches for determining Section 404 Clean Water Act compensatory mitigation requirements for infrastructure improvement projects (primarily road grade raises) that result in a discharge of fill into waters of the United States in areas experiencing prolonged flooding that were previously permitted under Section 404 and where compensatory mitigation has been provided. It will concurrently provide information to local transportation authorities and others regarding the establishment of mitigation bank(s) to provide compensatory mitigation for unavoidable impacts in waters of the United States, when that compensation is necessary to ensure project(s) comply with the 404(b)(1) Guidelines and are not contrary to the public interest. The streamlined approaches could further apply to “non-jurisdictional” wetlands protected by Executive Order 11990.	None specific	New action item; would help expedite road raise projects and other construction. It is recommended to revise 33 CFR 332.3(j)(2) to allow federally-funded aquatic resource restoration or conservation projects undertaken for purposes other than compensatory mitigation can be used for the purpose of generating compensatory mitigation credits; and, amend Section 9 of Executive Order 11990 such that it does not apply to emergency work.
G-3	Governmental Collaboration	Devils Lake Executive Committee (DLEC)	The DLEC is a forum for all agencies that have responsibilities and authorities related to proposals and recommendations on projects, plans and ongoing actions affecting the Devils Lake watershed and those downstream. The formal committee provides continuity for an	General funding sources	Initial meeting held 7 March 2011.

			interagency approach to planning and implementing measures to reduce the risks associated with flooding in the Devils Lake basin and vicinity.		
G-4	Governmental Collaboration	Devils Lake Collaborative Working Group (DLCWG)	The DLCWG represents all basin stakeholders to develop and recommend direction and actions to the DLEC. The DLCWG provides a forum to discuss collaborative solutions among local, state, federal, tribal, and international agencies in conjunction with input from stakeholders. All basin parties and stakeholders are able to participate in suggesting plans and actions regarding Devils Lake. Additionally, the DLCWG provides work products as directed by the DLEC.	General funding sources	Initial meeting held 29 March 2011.

Legend:

USACE (MVD): U. S. Army Corps of Engineers, Mississippi Valley Division
 USACE (MVP): U. S. Army Corps of Engineers, St. Paul District
 USACE (NWO): U. S. Army Corps of Engineers, Omaha District
 USFWS: United States Fish and Wildlife Service
 EPA: Environmental Protection Agency
 FHWA: Federal Highway Administration
 FRA: Federal Railroad Administration
 NRCS: Natural Resources Conservation Service
 FEMA: Federal Emergency Management Agency

RD: Department of Agriculture, Rural Development
 USGS: United States Geological Survey
 NDSWC: North Dakota State Water Commission
 NDGF: North Dakota Game and Fish
 NDDH: North Dakota Department of Health
 NDDDES: North Dakota Department of Emergency Services
 NDPR: North Dakota Parks and Recreation
 SLT: Spirit Lake Tribe
 NDDOT: North Dakota Department of Transportation
 NDDC: North Dakota Department of Commerce

Background

The December 2010 “Report of the Federal Interagency Devils Lake Working Group” summarized the results of a three month interagency effort, initiated by the Administration and led by the Office of Management and Budget (OMB) to assess the status of the efforts of each major Federal agency actively addressing the flooding in the area of Devils Lake, North Dakota, and options for additional near-term actions within existing federal authorities.

At the direction of OMB, the working group that prepared the report was led by the Army Corps of Engineers, and included representatives from the Office of Management and Budget, the U. S. Environmental Protection Agency (EPA), and the Departments of Agriculture (USDA), Commerce, Defense, Homeland Security, Interior, State and Transportation. The working group obtained input from local officials and subject matter experts in four listening sessions held in Devils Lake and Valley City in July 2010. The working group identified 21 alternatives that could be implemented by federal agencies to address flooding. The final report was published in December 2010, and a copy of the report is located at <http://asacw.hqda.pentagon.mil/documents/DevilsLakeReportFINAL.pdf> . The actions identified in this plan are intended to supplement the actions being undertaken by state and local agencies to minimize flood damages in the Devils Lake region.

The report identified Governmental Collaboration as a key action to improve Federal, State and local collaboration and planning, stating:

“Federal agencies will work with the State and the Spirit Lake Tribe to develop new arrangements or extend the use of existing collaborative governmental activities, such as the North Dakota Silver Jackets team, to improve how Federal, state, Spirit Lake Tribe and local agencies work together to reduce flood risk and address flood impacts, including the identification of specific lake elevation trigger points for emergency actions. To ensure close collaboration among the relevant Federal agencies and clear communication with State and local officials, the Administration will designate the Chief of the US Army Corps of Engineers to oversee efforts and ensure Federal actions are expedited to the greatest extent possible.”

The Chief of Engineers of the U. S. Army Corps of Engineers, LG Robert L. Van Antwerp, delegated authority to oversee the Governmental Collaboration initiative to the Mississippi Valley Division Engineer, MG Michael J. Walsh, in a letter dated 25 January 2011. The letter directed the following:

“To implement the Governmental Collaboration measure included in the referenced report, a regional Federal/State/local/tribal team using the Silver Jackets approach should be formed to develop an action plan to include schedules, funding, funding sources and the recommended actions to be undertaken. The compatible activities described in the referenced report should be used as a basis for development of the action plan. It should be completed by June 2011 so any future Federal requirements can be considered in the FY13 budget process. After Administration approval is

obtained for the Federal portions, the Federal portions of the action plan will be implemented.”

This action plan was prepared by the Devils Lake Collaborative Working Group (DLCWG) in response to this direction. The DLCWG is chaired by the USACE St. Paul District Commander, Col. Michael Price, and includes representatives from federal, tribal, state and local agencies and non-governmental organizations.

W-1a. East Devils Lake Outlet

Water Management

Responsible Agencies: USACE (NWO), NDSWC

Description: Construction of an outlet and channel from East Devils Lake to Tolna Coulee. The NDSWC analyzed 31 initial alternatives/routes to identify one general route with slightly varying alternatives. The route begins on East Devils Lake, runs east southeast 5- 1/2 miles and outlets into Tolna Coulee. This alternative would slow potential future lake level rises.

Status: The engineering firm Bartlett & West/AECOM, contracted by the NDSWC, is currently working on the design of a 5.5 mile outlet from East Devils Lake to Tolna Coulee. The outlet will discharge into Tolna Coulee downstream from the proposed control structure. The outlet plan consists of a pumping plant with several pumps with the total capacity of 350 cubic feet per second (cfs). A large reinforced concrete intake structure with screens below ice level is planned. The pumps will direct flow into a pipe to the east-southeast. This pipe may be steel or reinforced concrete or a combination of the two. Near the end of the outlet the pipe a gravel filter will be incorporated to address Canadian biota concerns. At the end of the outlet will be a terminal structure to dissipate energy before discharging into Tolna Coulee. At this time the final alignment has not been established. The Corps of Engineers, Omaha District (USACE (NWO)) listed 109 waters which they determined were not regulated under Section 404 of the Clean Water Act. EPA concurred with this determination on 14 April 2011. The 16 waters USACE (NWO) preliminarily identified as being regulated have not changed. After snowmelt they will conduct a field review to ensure all waters were identified. The location of jurisdictional wetlands will influence the outlet route, as jurisdictional wetlands will be avoided by the final alignment if possible. The estimated cost of the project varies from \$60 to \$90 million.

Recommendations: Omaha District will expedite any permit applications related to this action, however, it appears a 404 permit will not be required.

Federal Authorities: N/A

Schedule: Contracts for procurement of pipe and pumps are scheduled to be awarded by the end of May 2011, and construction would begin in August 2011. The NDSWC plans to have the East End outlet operational in June 2012.

Funding: N/A

W-1b. Expansion of West End Outlet
Water Management

Responsible Agencies: USACE (NWO), NDSWC

Description: This action item replaces the “Pipeline from Pelican Lake to Round Lake” action item which is no longer being considered. Expansion of the existing west end outlet by 100 cubic feet per second (cfs) from 250 cfs to 350 cfs is being investigated. This expansion would require construction of an additional inlet for two more pumps. Due to the urgency of getting water off Devils Lake and the fact that the West End Outlet is currently the only means available to do so, the construction of the additional 100 cfs cannot interrupt operation of the existing system. Bartlett & West/AECOM, under contract with the NDSWC, will complete the design of the west end outlet.

Status: Design of this action item is underway.

Recommendations: Omaha District will expedite any permit applications related to this action, however, it appears a 404 permit will not be required.

Federal Authorities: N/A

Schedule: TBD

Funding: N/A

W-1c. Control Outflows at Tolna Coulee

Water Management

Responsible Agencies: USACE (MVP), NDSWC

Description: Construction of a sheet pile sill and control structure on the upper end of Tolna Coulee that would prevent catastrophic outflows. This action item includes environmental mitigation. This action item would provide assurance that if Devils Lake was to continue to rise up to or above the natural outflow elevation at Tolna Coulee (1458 msl), it would not result in uncontrolled discharges should erosion of the divide occur. It would also include a control structure that would allow for gradual lowering of Devils Lake if that erosion occurs. None of these actions would induce higher lake elevations for the design flood event associated with the City of Devils Lake Embankments project.

Status: Governor Dalrymple sent a letter dated 13 Jan 2011 requesting Advance Measures assistance with "...the design and construction of a control structure on the Tolna Coulee divide...capable of being lowered to allow additional controlled discharge down to an elevation of 1446 feet msl..."

HQUSACE provided direction to proceed with a Project Information Report (PIR) for an Advance Measures project at Tolna Coulee that would develop the least cost alternative to prevent catastrophic release of flows through the Tolna Coulee at elevation 1458. Costs of measures to control water elevation or releases above or below 1458, including engineering and design associated with such measures, will be borne by the non-Federal sponsor.

The PIR identifies three alternatives in addition to the No Action alternative: riprap protection of Tolna Coulee, a sheetpile sill, and an embankment and spillway. The sheetpile sill was determined to be the least cost alternative, at a cost ranging from \$8 million to \$14 million. The non-Federal sponsor for the project would be the State of North Dakota. The additional cost for design and construction of the control structure will be a 100 percent non-Federal cost. The PIR was approved by HQUSACE on 25 March 2011. Construction is expected to be completed in March 2012.

Recommendations: Construct a sheet pile sill with a control structure on Tolna Coulee using Advance Measures federal authority. A major action will be identification of an operating plan that balances both upstream and downstream needs. Flow would not exceed maximum flow that would have occurred without the structure.

Federal Authorities: 33 U.S.C. 701n (commonly referred to as Public Law (PL) 84-99) provides federal authority for the U. S. Army Corps of Engineers to provide Advance Measures assistance.

Schedule:

- Advertise: July 2011
- Award: September 2011
- Construction complete: March 2012.

Funding: The cost for a sheet pile sill, including engineering and design, construction, and supervision and administration, is approximately \$8.7 million. This cost will be cost shared at a rate of 75 percent federal, 25 percent non-federal. The cost for the control structure, including engineering and design, construction, and supervision and administration, estimated to increase the total cost by approximately \$0.9 million to \$9.6 million, will be a 100 percent non-federal cost. The non-federal sponsor for the project would be the State of North Dakota, represented by the North Dakota State Water Commission.

W-2a. Address Water Quality Issues

Water Management

Responsible Agencies: EPA, NDDH

Description: Review downstream water quality standards (WQS), and consider only WQS revisions that are legally and scientifically defensible and that would comply with Clean Water Act (CWA) requirements. This alternative included review of the downstream WQS applicable to the Sheyenne River and the Red River.

Status: The review and appropriate revisions of downstream water quality standards has been completed. On September 16, 2010, EPA Region 8 approved North Dakota's water quality standards revision for sulfate in the upper Sheyenne River, thereby providing for the additional transfer of water from Devils Lake to the river at the existing west-end outlet without violating the applicable water quality standards for sulfate. The sulfate water quality criterion for the upper Sheyenne was changed from 450 mg/L to 750 mg/L. Neither North Dakota nor Minnesota is pursuing further water quality standards changes on either the Sheyenne River or Red River.

On December 3, 2010, the North Dakota Department of Health wrote a letter to EPA indicating their belief that both the existing west-end outlet and proposed new east-end outlet constitute a water transfer. On December 14, 2010, EPA Headquarters provided a response letter back to the North Dakota Department of Health and concurred based on the information available to EPA. This means that there is no requirement to obtain a 402 discharge permit. However, the water uses on the Sheyenne River still must be preserved. Once Valley City completes their reverse osmosis water treatment plant, currently scheduled for November 2011, the requirement based upon actual use would be 750 mg/l to protect aquatic life for the entire Sheyenne River. The 750 mg/l sulfate would also provide adequate protection for agricultural and industrial designated uses. This would provide additional flexibility in the operation of the West End and East End Outlets.

The USGS report (Simulation of the effects of Devils Lake outlet alternatives on future lake levels and downstream water quality in the Sheyenne River and the Red River of the North) will be available by June 30, 2011. This report is being prepared in cooperation with the NDDH, Water Quality Division.

The ND Department of Health and the EPA initiated discussions with Minnesota and Manitoba on the water quality issues with a Devils Lake outlet. Within the guidance of the Clean Water Act and the water to water transfer rule, limited water quality degradation is allowed. The existing 250cfs west end outlet and the proposed 350cfs East Devils Lake outlet are consistent with the water to water transfer rule. Under this plan, all beneficial uses of the water are maintained.

Downstream interests, including Valley City, Fargo, Minnesota and Manitoba et al have expressed grave concerns with a Stump Lake outlet, and have asked the state to implement measures that would avoid/minimize the probability of an uncontrolled discharge. A discharge from Stump Lake would result in severe impairment to the beneficial uses of the Sheyenne and Red Rivers. Should the lake elevation exceed 1458 feet msl, it is considered an “act of god” and therefore beyond the scope of a regulatory action.

Recommendations: Potential change in water quality from the operation of a Devils Lake outlet(s) continues to be a concern for some downstream interests. The appropriate federal and state agencies should continue to engage and address these concerns as well as explore potential flexibilities and limitations provided by existing state, and federal laws and international agreements.

Federal Authorities: N/A

Schedule: Ongoing

Funding: N/A

W-2b. Increase Sheyenne River Channel Capacity Water Management

Responsible Agencies: USACE (MVP), NDSWC

Description: Past investigation and modeling determined the maximum channel capacity of the Sheyenne River between the west end outlet and Lake Ashtabula to be approximately 600 cubic feet per second (cfs). This discharge of 600 cfs has been the flow constraint on the Sheyenne River controlling the outlet discharge. In 2010, up to 250 cfs flow was added to the Sheyenne River from the west end outlet. Future flows from the planned East Devils Lake outlet of 350 cfs, combined with a flow of 250 cfs from the existing west end outlet would increase total flows up to 600 cfs in the Sheyenne River below the Tolna Coulee confluence with the Sheyenne River. In addition, a possible expansion of the west end outlet from 250- cfs to up to 350 cfs in the future would increase outlet capacity to 700 cfs. Since this additional flow in the Sheyenne River will exceed the channel capacity, the NDSWC is modeling the Sheyenne River at flow rates between 600 and 900 cfs to identify areas of constriction, possible channel capacity improvements and areas that would be impacted on which the NDSWC would acquire flood easements.

If Stump Lake overflows, even with the Tolna Coulee structure, flows in the Sheyenne River could exceed 3,000 cfs for extended periods of time. This would adversely affect farmland, road crossings and downstream cities. While the state outlets reduce the likelihood of the lake flowing out Tolna Coulee they cannot prevent such flows if the extreme wet conditions persist. The NDSWC is also modeling the effects of these flows. This information will provide preliminary information on what flood response and recovery efforts may be needed if such an event occurs. This modeling will further define the effects discussed in action item R-4.

Status: Investigations of this action item are underway.

Recommendations: Omaha District will expedite any permit applications related to this action.

Federal Authorities: N/A

Schedule: Any actions to increase the Sheyenne River channel capacity beyond what is necessary for the outlets would likely not be implemented until at least 2012.

Funding: N/A

W-3. Flooded Land Compensation and Increase Upper Basin Storage Water Management

Responsible Agencies: NRCS/USFWS, NDGF/NDSWC

Description: This action item includes several alternatives: use of Compensation Programs for Wetland Restoration and Flooded Land Compensation; and Development of a Multi-Purpose Pelican Bay Recreation and Tourism Area. All would provide for upper basin storage to reduce inflow to Devils Lake, a means of compensating flooded landowners, or both.

Compensation Programs: Increase upper basin water storage by soil tillage and residue management practices, wetland restoration, converting cropland to permanent vegetation, wetland enhancements, wetland protection and within coulee storage. Storage could also take place on existing State and Federal lands within the basin and there may be sites for small dam construction. Increased incentives for storage could be made available to allow for expansion of water and land management on private lands. Compensation programs which would assist with land restorations, water retention and water management practices include:

Conservation Reserve Program (CRP): The Conservation Reserve Program (CRP) provides technical and financial assistance to eligible farmers and ranchers to address soil, water, and related natural resource concerns on their lands in an environmentally beneficial and cost-effective manner. The program provides assistance to farmers and ranchers in complying with Federal, State, and tribal environmental laws, and encourages environmental enhancement.

Wetlands Reserve Program (WRP): The Wetlands Reserve Program (WRP) is a voluntary program providing both technical and financial assistance to eligible landowners to restore and protect wetlands. The program can be used to secure 10-year restoration cost-share agreements, 30-year easements, or 30-year contracts on Tribal lands. NRCS administers the program in agreement with the Farm Service Agency (FSA) and in consultation with the U.S. Fish and Wildlife Service.

Water Bank Program (WBP): The Water Bank Program (WBP) is a voluntary program to conserve surface waters; preserve and improve the nation's wetlands; increase migratory waterfowl habitat in nesting, breeding and feeding areas in the US; and secure environmental benefits for the Nation.

Agricultural Water Enhancement Program (AWEP): The Agricultural Water Enhancement Program is a division of the Environmental Quality Incentives Program of USDA. The Red River Basin was designated as a priority area for AWEP in the 2008 farm bill. It would be possible to utilize AWEP funding to build water storage structures

in the upper basin. This program cost shares projects with the landowner paying a share and does not reimburse land costs.

Multi-Purpose Pelican Bay Recreation and Tourism Area: This action item also includes development of the Multi-Purpose Pelican Bay Recreation and Tourism Area which would encompass an area of significant size between Minnewaukan and the Chain of Lakes area. This alternative would provide opportunities for area landowners to willingly sell their flooded or potentially flooded property in fee title. This action will create an opportunity to increase recreation and tourism to assist in improving economic growth in the Devils Lake Basin. In addition there would be an opportunity to have the State and Federal agencies manage the area for recreation and tourism. Some landowners have indicated that selling their flooded property for a public use area would provide a sense of legacy for their family farm. Interpretive displays can outline the history of the area and the landowners who participated in the creation of a recreation landmark.

Status:

Compensation Programs:

Wetland Restoration:

Existing programs for wetland restoration have had limited success in the upper basin of Devils Lake. While there are wetlands that could be restored, few programs are capable of attracting participation and those that do are not sufficiently funded to have an impact.

The failure to hold landowners harmless for enrolling in a wetland restoration program will prevent any long term success. Landowners may be willing to participate in an appropriate program, however, if they are prevented from allowing its character to return to pre-contract conditions at the conclusion of the easement - the great majority will not participate.

Crop insurance has in some cases helped producers as the waters of the lake have risen. But crop insurance, by statute, is a program that insures against perils to annual crop production. Long term flooding is outside of the statutory federal authority for this program.

Flooded Land Compensation

The only program available for landowners who have been inundated by Devils Lake is the Wetlands Reserve Program. Program limitations related to the 30-year easement length, depth of water (no greater than 6.5 feet at time of application), and available funding limit the effectiveness of WRP as a compensation program.

The North Dakota State Water Commission enacted the Available Storage Acreage Program (ASAP) in 1996. This program paid landowners to store water that would otherwise have contributed to the flooding around Devils Lake. The program ran from 1996-1999 and stored 8,000-22,000 acre-feet per year at a total cost of \$3.5 million. In 2000, the ASAP evolved into the Extended Storage Acreage Program (ESAP), which involved extended (typically ten-year, rather than one-year) contracts. This program has had limited participation because of no guarantee in allowing pre-contract conditions once the contract expires.

Multi-Purpose Pelican Bay Recreation and Tourism Area: Due to the continual and prolonged nature of flooded lands in the Pelican Lake and Chain of Lakes area, there is a need to develop nonconventional economic options for the landowners who are affected. This option would provide for buyouts of willing sellers whose private property has been or will be flooded by the rise of Devils Lake.

Recommendations:

Compensation Programs:

Wetland Restoration: It may make sense to create a program specifically for the Devils Lake basin with flexibility in terms and reimbursement rates capable to attract successful participation. Such a program could focus on both short and long term contracts. Federal funding could be matched with state funding for this purpose. The State could utilize these funds for a variety of creative programs to both restore and create wetlands in the upper basin.

Conservation Reserve Program (CRP):

With the exception of the Farmable Wetlands Pilot, most continuous sign-up practices do not have sufficient state allocations. Additional allocations are required for CRP practices useful in retaining water in the upper basin.

To be effective, the average depth of water allowed on created wetlands would have to be much deeper than currently allowed. Restored wetlands have no depth limitation.

Continuous practices in the DL Basin would need to be opened up to larger tracts.

Cropping history should be waived in circumstances where an existing wetland is not physically capable of being cropped when the wetland can be improved to hold even greater amounts of water than the current state.

Wetland Reserve Program (WRP):

Adjustments to the WRP program would require the ability to not only restore, but to create wetlands which is currently not an option in the program.

Current compensation rates using 70% of a county average value are insufficient to convert productive cropland into restored wetlands. It is believed compensation rates would have to exceed existing land values despite state law limiting easements to 30 years. Changing federal compensation levels would impact the entire country, and therefore, be enormously expensive, unless limited to specific areas. Utilizing local, state, and private sources of funding to supplement the offers may entice participation.

Allow for a WRP contract with shorter term lengths. The cost of implementing easements shorter than 30 years would be impractical. Contracts would be much easier to implement in a timely manner and could allow for a shorter term length more acceptable to landowners. Clearly, a shorter term WRP contract would need to be evaluated by NRCS to determine compensation rates, but it is certainly anticipated that the reimbursement would be significantly lower than what is offered for 30 year easements.

Rather than utilizing the current program concept of a 6.5 foot depth to differentiate between “wetlands” and “lakes”, ask the NRCS to change their regulatory guidance to allow for a set lake level above which all easements would be accepted. This could be based on some local or state determination of a “target” managed lake level, such as the depth by which water crosses over to Stump Lake at Jerusalem Coulee or the level below which the west end outlet ceases to operate.

Water Bank Program (WBP): The Waterbank program could be utilized as a water storage option. It remains in the statute, but it has not been funded for many years. It may need to have provisions modified to be utilized as a water storage program.

Agricultural Water Enhancement Program (AWEP): The Agricultural Water Enhancement Program is a division of the Environmental Quality Incentives Program of USDA. The Red River Basin was designated as a priority area for AWEP in the 2008 farm bill. It would be possible to utilize AWEP funding to build water storage structures in the upper basin. This program cost shares projects with the landowner paying a share and does not reimburse land costs. In combination with other State and Federal programs that might reimburse land costs and pay the landowner share of project implementation, AWEP could both store water and improve water quality of water entering Devils Lake.

Supplemental Financial Support Considerations:

One of the biggest hurdles in obtaining participation in existing programs that might include water storage is payment rates. While it is acknowledged that wetland restoration in the upper basin can have a positive impact on annual inflows into the lake, restoration can only be done on a voluntary utilizing very generous financial incentives. It is believed that the cost to permanently restore wetlands on a tract would require a rate equal or greater than 125% of the market value for the property. By contrast, the WRP easement program pays roughly 70% of the average county market value - well short of attracting participation to restore wetlands.

State Policy from the SWC is to pay for acres storing water in excess of what would otherwise occur. Specifically, this means that the SWC's ESAP program would not be able to pay additional funding for every acre in a WRP easement or contract. Only those acres that store additional water would be eligible for compensation. However, if the WRP or other Federal Programs can be changed to allow for "increased" water storage or for the "creation" of wetlands, there could be room for the State to supplement these efforts under existing guidelines. Further, it is recognized that grassland associated with wetland areas also reduces runoff from tracts which could be justification for support of all acres enrolled.

There may also be other state, federal, private or non-profit sources of funding available as an add on to wetland restoration efforts. Those sources are likely to anticipate some level of public, wildlife, or natural resource benefit beyond the purpose of water storage.

Placement Options

Opportunities to store water along existing coulees without negative impacts on agricultural land are also possible. These options could include a series of stepped down storage cells in coulee channels throughout the drainage system constructed through innovative programs combining USDA conservation program funding and state and local sources.

A serious effort should be undertaken in conjunction with county water boards to identify useful opportunities for storage that takes advantage of natural topography focusing on land less beneficial for crop production.

Flooded Land Compensation

Conservation Reserve Program (CRP): Landowners impacted by growing wetlands do have an option through the CRP farmable wetlands pilot. This program limits participation in flooded wetlands provisions to 20 acres per tract.

Significant growth of wetlands in these regions, limits the application of this program.

Wetland Reserve Program (WRP): The only program available for landowners who have been inundated by Devils Lake is the Wetlands Reserve Program. Program limitations related to the 30-year easement length, depth of water (no greater than 6.5 feet at time of application), and available funding limit the effectiveness of WRP as a compensation program. Landowners with land deeper than 6.5 feet would participate, but are ineligible. Landowners with shallower land are hopeful they will regain access to their land and therefore do not want to sign up for 30-year easements.

Statutory Considerations:

Revise the WRP program to implement 30-year contracts rather than easements. In addition, add an option for 15 year contracts as part of the WRP allowed options.

Establish a lake level by which the state intends to manage the lake. This could be used to negotiate a static level above which all WRP applications are considered to be eligible rather than a floating 6.5 foot depth limitation. For instance, if it were recognized that the target managed lake elevation was 1446 msl, NRCS could determine that all land above 1446 could be eligible for enrollment.

Federal Crop Insurance: This program has provided some coverage for inundated land, but long term problems of inundation run counter to an insurance product designed to indemnify annual crop risks. While a preferred option for producers, allowing coverage for persistently flooded cropland would ultimately take a statutory change. In addition, crop insurance would provide no coverage for the loss of pasture and grassland.

"Prevented planting" provisions in federal crop insurance provide payments to farmers who are unable to seed a crop on overly wet ground. But farmers can't file a claim if the land has been inundated for more than two years in a row.

USDA Risk Management Agency has received requests from state officials to make an exception to the policy provisions for prevented planting for producers in affected areas.

While Federal crop insurance provides prevented planting coverage for weather events occurring within the insurance period, coverage is unavailable for events occurring outside the insurance period. Many farmers have benefited from

prevented planting coverage during this wet spring. However, acreage which is flooded due to weather events occurring outside the insurance period, such as rains in previous crop years which leave wet conditions on the land continuously, is not eligible for prevented planting coverage. William Murphy, Administrator of the Risk Management Agency, reminds individuals facing such situations that the Federal Crop Insurance Act does not offer prevented planting coverage in these cases.

The Federal Crop Insurance Act provides coverage for distinct periods of time based upon the occurrence of the cause of loss and the date the policyholder purchased a crop insurance policy. Acreage that continues to be flooded due to prior weather events beyond the 2-year period provided in the statute is not eligible for a continued prevented planting payment because under normal weather conditions it remains indefinitely flooded, or too wet to plant, throughout the final and late planting period. The Common Crop Insurance Policy addresses this statutory limitation.

However, the crop insurance policy is a contract between the policyholder and the insurance company and is reinsured by the Federal Crop Insurance Corporation. The provisions of the policy may not be waived or varied in any way by RMA, nor by crop insurance companies. Insurance is provided only to protect against unavoidable, natural events occurring within the insurance period.

The Risk Management Agency was not in attendance at the DLEC meeting on June 13, 2011, when the DLEC voted on approval of the Action Plan contingent upon incorporation of a "prevented planting" provision in the federal crop insurance program. The DLEC recommends that the Risk Management Agency make an exception for producers in closed lake basins such as Devils Lake, where floodwaters have swallowed up more than 160,000 acres of prime farm and pasture land. [The Risk Management Agency does not concur with the DLEC's recommendation, and their non-concurrence is included in Appendix A.].

New Program: Trying to 'shoehorn' the problem of flooded land into an existing program has its limitations and creates some public risk for the programs especially, if doing so stretches statutory program purposes. Therefore it may be useful to consider an entirely separate program to compensate landowners and split those compensation measures into different categories: a) long term flooding and b) shorter term flooding. Challenges to the creation of a new program are substantial, however. They include:

Successfully inserting a new program into a farm bill at a time when farm bill resources are anticipated to dramatically shrink.

The program should be designed to target a specific purpose while not designating a specific location.

Similar to the extension of existing and unfunded programs like WRP, competition of resources will require strong justification for the program.

(Note: Requiring a significant local match to program dollars will help diminish the national cost and more successfully target the funding toward closed basin situations like Devils Lake, however, it may also reduce participation.)

Long Term Flooding: This category would be designated to land that is below a specific depth - not anticipated to be available for a generation. Options to determine a specific average or predominant depth could include:

Land within 3 feet of the level below which the existing state outlet does not operate (1445 plus 3);

Land at or below the level where water crosses to Stump Lake at Jerusalem Coulee (approximately 1446 feet);

Any other depth the State or local governments determine for the purpose of lake level management.

(Note: The Ramsey County Commission and the City of Devils Lake are both on record suggesting stabilizing the lake at 1446 msl.)

Long term flooding compensation would involve a voluntary buyout program. The program could be an agricultural version of FEMA's HMGP program intending to remove property owners from a hazardous situation into the future.

Like HMGP, this should be a program where the State participates in the program at a minimum of 25%. However, given the difficult prospect of initiating a new program at the federal level - a 50/50 cost share would not be unreasonable. Values would be determined based on the condition of the land prior to the disaster related condition.

One possibility would be to create a subchapter of the Emergency Watershed Program (EWP) whereby the USDA would provide funding to the State for purchases at a 50/50 rate of cost share. The State would be responsible for administering the program and would become the owner of purchased land. (This would be consistent with title issues relative to "waters of the state".)

The cost of title work would be the responsibility of the State and could be included toward meeting the State's 50% obligation.

Shorter Term Flooding:

The definition for shorter term flooding would be everything else not covered by the long term solution. These would be optional contracts of 5 and 10 years with the potential to extend for at least one five year period.

Payment rates would be established by the State. A suggestion would be to have payments that equal a 3-year average rental rate with the expectation that the federal obligation would be limited to 50% of this amount with the State being responsible for the remaining 50%.

To target landowners most heavily impacted, tracts with greater than 40% inundation and inaccessible land are eligible and only inundated and inaccessible land would be reimbursed.

To prevent landowners from restructuring tracts for eligibility purposes, determinations would be based on the ownership at a date certain (example 1-1-11 or date of enactment). Exceptions would be allowed for heirs of deceased landowners. If a landowner enrolls, but chooses not to extend, they are not eligible for a successive re-enrollment.

USDA program benefits are suspended on these acres during the enrollment period.

Contract terms could include two options:

5 or 10 year contracts that would anticipate the landowner to seed grass cover on land when the lake recedes. Payment rates would be as outlined above.

5 or 10 year contracts that require restoration of wetlands on tracts as the lake recedes planting a grass buffer around each wetland. Remaining land may return to crop production through the use of minimum till or no-till cropping strategies, OR the entire tract may be planted to grass for the purpose of haying or grazing. Payment rates would be 70% of the normal rate for this option.

(Note: The program assumes that wetland restoration is only required through the term of the contract period. Crop planted under terms of agreement may be insured through the crop insurance program.)

Multi-Purpose Pelican Bay Recreation and Tourism Area:

A rough conceptual spatial boundary for the Multi-Purpose Pelican Bay Recreation and Tourism Area has been identified. Although the exterior boundary could change, the proposed area encompasses approximately 50,000 acres of private land in the Pelican Lake and Chain of Lakes region that has been flooded or is likely to flood if the lake rises to elevation 1458 above mean sea level or higher. Compensation rates of \$400/acre for pasture land and \$800/acre for crop land are suggested as starting points.

Initially, larger sized tracts would receive a higher priority ranking for purchase than smaller tracts. The reason for this is that smaller isolated tracts are most expensive to manage and provide less benefit. This would become less of an issue as land purchases tie adjacent parcels together. The following is a suggested scale for prioritizing tracts:

- 1) Very high priority - tracts 600 acre and larger.
- 2) High priority - tracts 160 to 600 acres in size.
- 3) Moderate priority - tracts less than 160 acres in size.

Lands under water would require no immediate land management (e.g. treatment or manipulation) while lands above water would be managed by State and Federal agencies for recreational development and tourism. These lands may be set aside for fishing, hunting, education, bird watching, camping, trails development, wildlife management and other compatible uses. A State Federal partnership would be developed to acquire lands from willing sellers and a method to address county taxes would be investigated. Multiple sources of funding will be needed to accomplish this effort including State agencies, Federal agencies, local governments and non-governmental agencies.

Federal Authorities:

Compensation Programs:

Conservation Reserve Program (CRP): CRP was authorized by Title XII of the Food Security Act of 1985, as amended and continues through September 30, 2012. The program is funded through the Commodity Credit Corporation (CCC). CRP is administered by the Farm Service Agency, with NRCS providing technical assistance.

Wetland Reserve Program (WRP): Section 1237 of the Food Security Act of 1985, as amended, authorizes the WRP through September 30, 2012. The Wetland Reserve Program is a voluntary approach to preserving, protecting, and restoring valuable wetlands and is administered by the Natural Resources Conservation Service.

Water Bank Program (WBP): The Water Bank Act, Public Law 91-559 (1970), as amended by Public Law 96-182, approved January 2, 1980, authorized and directed the Secretary of Agriculture to formulate and carry out a continuous program to prevent the serious loss of wetlands and to preserve, restore and improve such lands. This program is also administered by NRCS.

Multi-Purpose Pelican Bay Recreation and Tourism Area: Potential agencies that could provide input or support in some manner include but are not limited to North Dakota Game & Fish Department, North Dakota Parks and Recreation Department, Federal Emergency Management Agency, Ramsey County, Benson County, United States Fish & Wildlife Service and the United

States Department of Agriculture. Lands could be acquired under various existing federal authorities.

Schedule:

Compensation Programs: The schedule for all these programs would be for the next 5 to 30 years starting October 1, 2012.

Multi-Purpose Pelican Bay Recreation and Tourism Area: The schedule for this action is highly variable depending upon the availability of funding and the willingness of landowners to sell their land. If funding could be made available in the next few years (e.g. 2012-2014) land purchases could begin shortly thereafter.

Funding:

Compensation Programs: To increase participation in the programs listed below the rates would need to be increased and supplemented with other federal, state, and local dollars.

Conservation Reserve Program (CRP): Funding for this program is currently available through September 30, 2012. The average Soil Rental Rate for CRP in the Devils Lake basin is \$48/acre and it ranges from \$34/acre up to \$68/acre.

Wetland Reserve Program (WRP): Funding for this program is currently available through September 30, 2012. The average WRP easement land value (30 year easement) is \$735/acre and it ranges from \$457/acre up to \$1,417/acre.

Water Bank Program (WBP): This program is currently not funded and the last WBP Agreement was completed on December 31, 2010.

Past payment rates for counties in the Devils Lake Basin were based on the following:

Cropland Class II & III includes wetlands Type 1 & 2 - \$25/acre

Cropland Class IV - \$20/acre

Land not in cropping rotation included Class VI & VII lands - \$10/acre

Wetlands Types 3 thru 7 - \$10/acre

Wetlands under Easement - \$8/acre

New Program:

Long Term Flooding:

Land between 1448 and 1423 totals approximately 83,000 acres split roughly 50% grass/pasture and 50% cropland.

Using recent reported values for cropland (\$800) and pasture (\$400), multiplying by 75% and dividing by 2 (state-federal split) - the federal cost would be roughly **\$18.7 million.**

Using 2011 WRP rates (\$735) and dividing by 2 (state-federal split) - the federal cost would be roughly **\$28.6 million.**

Shorter Term Flooding:

Inundated Land between 1448 and 1455 is approximately 71,167 acres of which roughly 85% is cropland and 15% grass/pasture.

Assume that half of cropland participants would choose the reduced payment allowing the possibility of cropping when water recedes.

Assume payment rates of \$50 for cropland and \$20 for grass/pasture and each contract runs for 10 years.

Total Contract Payments over 10 years = \$22,879,858 (Cropland Contracts - \$26,313,998, Grass Pasture Contracts - \$2,135,010)

Federal Share at 50% = **\$14,224,504**

Estimated federal cost for land outside of DL inundation (40% more land) = **\$5.7 million**

Multi-Purpose Pelican Bay Recreation and Tourism Area: Many of the previously listed agencies may have some limited potential for land acquisition. However, due to the size and scale of the proposed area, a new source of funding will need to be pursued in order to bring this concept to fruition. Preliminary estimates indicate that costs could be up to \$36M based on current land prices.

W-4. Biota Filters for Devils Lake Outlets

Water Management

Responsible Agencies: USACE (MVP), NDSWC

Description: This action item includes studies designed to determine the necessity for water treatment facilities to filter biota for discharges from the existing West End Outlet or proposed East End Outlet. The International Red River Board identified that diverting water from Devils Lake to the Sheyenne River had raised concerns about downstream water quality and the potential for biota transfer to receiving waters in the Hudson Bay drainage. Fish pathogens and parasites are one component of biota that has been cited as a potential serious threat. To address these concerns, the U.S. Army Corps of Engineers first examined biota transfer as a component of an Environmental Impact Statement for construction of an emergency outlet from Devils Lake to the Sheyenne River. During 2001-2002, the U. S. Fish and Wildlife Service (USFWS), Bozeman Fish Health Center, performed a fish pathogen survey under contract with the Corps. Fish were collected from Devils Lake and the Sheyenne and Red rivers and tested for a specific list of bacterial and viral fish pathogens included in the USFWS National Wild Fish Health Survey (2006) program. The survey did not include a fish parasite component. Beginning in 2005, the Council on Environmental Quality (CEQ) requested the USFWS perform fish health survey work in Devils Lake and in the Sheyenne and Red rivers but not limited to the pathogens and parasites listed in the National Wild Fish Health Survey (Hudson and Peters 2005; Peters and Hudson 2007). In 2007, Lake Traverse, the southernmost body of water in the Hudson Bay drainage, was added to the list of sample sites (USFWS 2009).

The objectives of the Parasite/Pathogen Sampling Program as outlined by the IRRB are:

- Determine the presence/absence of fish parasites and pathogens in resident fish from Devils Lake, Sheyenne River, Red River, Red River Delta, and Lake Winnipeg
- Provide a comprehensive and scientifically credible survey of fish parasites and pathogens in fish from Devils Lake, Sheyenne River, Red River and Red River Delta. The data can be used in performing risk analyses associated with transfer of fish parasites and pathogens from the outlet on Devils Lake to aquatic ecosystems in the Red River basin including Lake Winnipeg
- Use the comprehensive survey of fish collected during this proposed survey to meet the overall framework for biological monitoring in the Red River basin that is included in the Work Plan of the International Red River Board

Status: The IRRB's Aquatic Ecosystem Committee (AEC) has completed its three-year comprehensive survey for 2006, 2007 and 2008; with all the results now available for the period of study. To date, more than 5000 fish have been assessed in both U.S. and Canada; possibly the largest single fish health assessment in North America.

The Board has so far made two presentations on the findings of the survey to governments on December 13, 2007 and March 10, 2009.

The results from the 2006 and 2007 Pathogen and Parasites Survey of Devils Lake, the Red and Sheyenne Rivers indicate statistical confidence on six species. The statistical confidence is based on 60 fish being sampled from each of the 6 species to meet sampling protocol established by the joint science/technical advisory experts to the sampling program. This report is available on the IJC website at: http://www.ijc.org/rel/pdf/irrb_Fall_2006_Program_Report.pdf.

As in the 2006 and 2007 surveys, no targeted viral pathogens of concern were detected in the 2008 sampling in Canada. Analyses of fish samples collected in the U.S. in 2008 were completed in January 2011. The analyses for the U.S. portion of the survey took longer than initially planned due to funding delays from the State Department to the US Fish and Wildlife Service. The analyses results were discussed at the April 2011 Risk Assessment workshop held in Bismarck, North Dakota.

Recommendations: The report of the risk assessment will be completed at the end of May 2011. This report should inform future recommendations for any biota filter.

Federal Authorities: None

Schedule: To be determined.

Funding: None identified.

I-1a. Fully Fund Roads Acting as Dams Project
Infrastructure

Responsible Agencies: BIA / FHWA, SLT

Description: Increase levels of funding for the Federal Highway Administration (FHWA) and Bureau of Indian Affairs (BIA) activities in Devils Lake to modify roads acting as dams and construct other associated embankments. The increased funding allocation would allow construction to proceed to a level of protection to approximately elevation 1466 feet that accommodates freeboard requirements including flood inflows and wave action, which is sufficiently higher than the ultimate lake elevation of 1458 feet.

Status: The Roads Acting as Dams (RAADs) project is currently under construction. The scope of work is to construct the embankments to an elevation of 1455 feet. The last \$10M of SAFETEA-LU Section 1937 funding that totals \$70M will be obligated and expended in FY2011. A contract modification will be executed to construct the embankments to as near to the 1460 feet elevation as possible. The plans and specification package has been reviewed by the Bureau of Reclamation (BOR). The package should be sent to the contractor for proposal purposes during the first part of June 2011. Since the current embankment height does not exceed the predicted 2011 lake elevation, an additional \$5.9 million was provided in February 2011 to construct 3-foot emergency berms with riprap to an elevation of 1458 feet to avoid overtopping the existing embankments. The emergency berms are approximately 98 percent complete.

Recommendations: Due to the lake level increases the RAADs project does not have adequate freeboard and is in jeopardy of overtopping. The resulting inundation would not only inundate thousands of acres of Tribal land and property, it would close critical transportation access for users on ND State Highway 20 and numerous BIA, township, and local roads. It is recommended that funding be provided through existing federal programs and/or perhaps by specific legislative congressional action in the amount of \$120 million.

Federal Authorities: The Reclamation Safety of Dams Act of 1978, as amended, authorizes the Secretary of the Interior to construct, restore, operate, and maintain new or modified features at existing Federal reclamation dams for safety of dams purposes.

The Federal Highway Administration's Emergency Relief for Federally Owned (ERFO) roads program and SAFETEA-LU Section 1937 have been the traditional approach for funding the RAADs project needs. The BIA is the current owner of the roads being reconstructed and will be the future owner of the dams constructed under the project. The project also protects existing ND State Highway 20 and several BIA and township roads. Since the project is primarily dams it is logical to have future project funds allocated to the BIA with the BOR providing dam safety expertise.

Schedule: There is no schedule to raise the RAADs project to an elevation of 1466 feet because there are no remaining funds as provided via Section 1937, which allows FHWA to specifically fund dam elements.

Funding: The current funding shortfall is \$120 million.

I-1b. Road Raise Contracts to 1460/1465

Infrastructure

Responsible Agencies: FHWA / BIA, NDDOT

Description: Provide funds for existing construction contracts on federal-aid roads which are currently being raised to an elevation of 1460, and obtain authorization and funding to modify existing road raise contracts to elevation 1465. The roads eligible for federal-aid highway funding include all critical federal-aid system roads (state and county roads that are major collector and above, but not township and lower classification county roads). The elevation to which the roads would be raised is based on protecting roads from inundation and wave action, and would be consistent with the elevation that has been used for bridge replacement construction (1465) previously completed.

Status: Currently the state routes US 281, ND 57, ND 20, and ND 19 are under construction to raise the roads to an elevation of 1461 (subgrade). Several of the construction contracts are being modified by change order, with a cumulative additional cost of about \$25 million, to the ultimate grade of 1465 (top of roadway). The NDDOT has completed design and will contract for construction on grade raise projects on ND 19 at the City of Devils Lake levee and US 2 near Penn to a grade raise of 1461. These projects may also be considered for a grade raise to the ultimate elevation of 1465 during construction. There are several county routes in project development for construction this year. Grahams Island Road and Woods Rutten road are two of the larger county grade raise projects with proposed elevation of 1461. These projects may also be considered for a grade raise to 1465.

Recommendations:

- Any future, strategic road raises should aim for an elevation of 1465. The NDDOT estimates this may cost in excess of \$250 million. Currently, identified near-term transportation investments are approaching the level of \$190 million.
- Future Federal Highway Administration Emergency Relief (ER) program funding requests are expected to exceed the \$100 million per state per disaster as established by 23 U.S.C. 125(d)(1). It is recommended that Congress take action to allow funding to exceed the \$100 million obligation maximum for the Devils Lake basin.
- Local and Tribal governments should conduct/continue to conduct (with state and federal support) strategic analysis of which roads are essential to their network, and plan to abandon those roads which are not deemed of strategic value once threatened with inundation.
- Expedite reimbursement to local agencies and the State under the Federal Highway Administration's Emergency Relief program, for both emergency and permanent repairs.

- The local match to federal emergency relief funds should be reduced; however, this change in statute (23 U.S.C. 120(b)) would require legislative action by Congress.
- The NDDOT should consider using other federal funds or state funds to raise the grades to the ultimate on the current construction projects and request an exchange of these funds later with ER funds once they are available.
- The ER program should be available for emergency preparedness for a more proactive approach to the Devils Lake flooding. This change in statute (23 U.S.C. 120(e) and 23 U.S.C. 125(a)) would require legislative action by Congress.

Federal Authorities: The Federal Highway Administration's Emergency Relief (ER) program has been the traditional approach for funding the Devils Lake basin roadway needs. Currently, Emergency Relief is capped at \$100 million per state per event (23 U.S.C. 125) with a waiver in this cap requiring Congressional action. The Federal Highway Administration's Emergency Relief for Federally Owned Roads (ERFO) program provides funds for Tribal roads and BIA routes. It is also restricted to the same \$100 million cap. The NDDOT is also allowed to use regular federal-aid funding, such as NHS funds for US 2, US 281, and ND 20/57 eligible routes. Both the regular federal-aid and permanent repairs done with ER funds would be the same participation ratio, 80.93% federal and 19.07% local or state. Any emergency repairs done with ER funds are funded at 100%. The ERFO program is funded at 100%.

Schedule: The NDDOT is currently in design or construction to raise the grades and provide protection to all the critical State routes to 1461, and potentially up to 1465 (top of roadway).

Funding: The Federal Highway Administration has expended approximately \$300 million in the Devils Lake Basin on roadway grade raises and protection. It is quite likely that near-term transportation investments will exceed \$190 million. The Federal Highway Administration released Emergency Relief Funds on Monday, April 11, 2011, of which North Dakota received \$33.5 million for 2010 Devils Lake basin flooding. On March 23, 2011 the FHWA Division Office received a letter of intent (LOI) from the NDDOT to seek emergency relief and emergency relief for federally owned roads funds for 2011 flooding in the Devils Lake basin. The LOI identifies anticipated roadway damage on the federal-aid system in the Devils Lake basin to be \$67 million on State routes and \$14.3 million for county major collector routes, for an estimated total of \$81.3 million.

I-1c. Raise Township Roads Infrastructure

Responsible Agencies: FEMA, NDDDES

Description: Obtain authorization and funding to reimburse for raising existing township roads in advance of flooding, when it is less expensive and more feasible to do so. This action would focus on roads deemed of strategic value to local or tribal government versus an entire road network. To support this effort, Local and Tribal governments should conduct/continue to conduct (with state and federal support) strategic analysis of which roads are essential to their network and to determine which roads are candidates for raises in advance of flooding, and also plan to abandon those roads which are not deemed of strategic value once threatened with inundation.

Status: Currently, no authorization or appropriation exists to reimburse pre-disaster actions to avoid damages to strategic road networks. Under the Stafford Act, FEMA has the federal authority to cost share grade raises on inundated roads three feet above expected pre-fall freeze up levels. They have no ability/federal authority to assist with road repairs/raises, as an agency, without a Disaster Declaration. Current laws, policy, and guidance allow for any public road that is not under FHWA federal authority and subject to long term inundation or providing sole access to a residence, to be eligible for grade raise funding associated with elevating the road three feet above predicted lake level. Although funding is available for each impacted site, review of the local strategic road plan and a full analysis under flood plain laws, regulations, and guidance would dictate whether the road site would actually be funded or not. A FEMA policy also exists for voluntary acquisitions of residential structures served by sole access roads as a cost-effective alternative to permanent grade raises.

Local governments must still wait for damages to occur, however, for any type of disaster assistance for their road networks. In a repetitive long term flooding event with relatively predictable damages over time (such as is found in the Devils Lake basin), such policies are contrary to the efficient and effective use of taxpayer dollars, and create unwarranted suffering and uneconomical use of resources and time.

Recommendations:

- Sustain the current Public Assistance (PA) policies for permanent grade raises and voluntary acquisition. These policies are having a positive effect on alleviating suffering and repetitive road damages in the basin.
- Assist in the development of justification for an authorization and appropriation to provide financial assistance to local governments to raise the grades on roads deemed of strategic value in advance of inundation. Any future, strategic road raises should aim for an elevation of 1465 ft MSL.

Federal Authorities: New authorization would be required to support a pre-disaster grade raise program.

Schedule: Current disaster assistance programs are tied to the timing of declared disasters. Authorization and appropriation for a pre-disaster grade raise program would need to be timed to take advantage of the short construction season North Dakota has available to them, and also be established to be proactive in nature.

Funding: Special appropriation would be required for a local government pre-disaster grade raise program.

I-2. Utility, Infrastructure, and Critical Facility Repair / Relocation

Infrastructure

Responsible Agencies: RD / USACE (MVP), NDDDES

Description: Use existing federal authorities to repair, replace or relocate utilities, infrastructure, and critical facilities that are adversely affected by flooding due to the rise of Devils Lake and associated ground water impacts. This may also include the City of Devils Lake's Lemna Wastewater Treatment Facility. The facility will require future, continuous analysis to determine if continued groundwater rise will impact the operation of this facility, which may lead to the need for relocation. Potential federal involvement for this effort could include the EPA, which does provide funding for the State Revolving Fund (SRF). The state health department prioritizes potential projects using this money under their intended use plan.

Status: Issues and concerns arising in this action item area have been adequately addressed when needed as the lake rose over time, or are being addressed currently. Examples include:

- City of Devils Lake lagoons: The embankment raise to 1466 ft MSL currently under construction for the city will continue to provide protection to this facility.
- City of Minnewaukan lagoon: Relocated. In addition, project applications have been submitted to flood proof the city lift stations.
- Ramsey County Rural Utilities lift stations: Lift stations were raised and protected, however the lake rise has inundated the communities that had used the system.
- Benson and Ramsey county transmission line: Relocated.
- City of Devils Lake water system: No longer relies on a pipe under the lake. The water supply line was relocated using the Section 594 program.
- New City of Minnewaukan water tower: Will be constructed in a new development northwest of the existing city footprint. This tower will be able to support the new development, plus what remains in the old Minnewaukan site. The old tower will be demolished and removed once the new tower is operational. This project will be funded via a grant from the US Army Corps of Engineers (Section 594 program) and N.D. Department of Emergency Services

Recommendations: Continue to manage this issue as required and in concert with continued lake flooding, and continue funding for programs to support relocations of utilities and mitigate the impacts of ground water damages.

Federal Authorities: Section 594 of the Water Resources Development Act of 1999, Public Law 106-53, as amended; Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206, and 44 CFR § 206

Schedule: As required with lake level changes

Funding: Funding for this effort will be obtained by each individual agency and/or local applicants. There is no unique funding source for this effort.

I-3. Railroad Embankment Raises

Infrastructure

Responsible Agencies: FRA / FHWA, NDDOT

Description: Raise existing railroad embankments effected by the rising lake. The level of protection is based on protecting the railroad from wave action and being overtopped by the lake. The elevation would be consistent with the elevation proposed for critical roadways in the Devils Lake basin.

Status: The information presented is extracted from the Railroad Grade Raise Planning and Feasibility Study, BNSF Mainline Track Raise between Devils Lake and Churchs Ferry, North Dakota, dated April 8, 2011 and from a conversation with Ray Lang, Amtrak's Senior Director, State & Local Government Affairs on May 6, 2011. The Feasibility Study was a joint effort by North Dakota Department of Transportation (NDDOT), National Railroad Passenger Corporation (Amtrak), and the Burlington Northern Santa Fe Railway (BNSF). NDDOT used Statewide Planning and Research (SPR) program funding (\$120,000) provided by the Federal Highway Administration (FHWA) to pay its share of the study's cost. The complete Feasibility Study is available at

<http://www.dot.nd.gov/manuals/planning/FeasibilityStudyBNSFMainlineTrackRaise.pdf>.

The segment of BNSF mainline track known as the Devils Lake Subdivision between Devils Lake and Churchs Ferry, North Dakota, has a significant potential for inundation due to the increasing elevation of Devils Lake. Continued rises in the lake level will render the BNSF mainline track inoperable between approximately Mile-Post 91.0 and Mile-Post 106.4, thus jeopardizing the ability to provide continued rail transport unless major construction work is undertaken to raise the track and bridges in this reach. Further, it is anticipated that the mainline track will be raised to 1463 and the branchline track would be abandoned with the crossing of US281.

In the fall of 2001, the lowest segment of BNSF mainline and passing tracks at the Mauvais Coulee crossing at Churchs Ferry that was in imminent danger of being flooded was raised to a top-of-rail elevation of approximately 1,456 feet (NGVD 29). As of early May 2011, the BNSF mainline remained operational for Amtrak service only. BNSF last ran regular service along the line between Churchs Ferry and Devils Lake in 2009. Along the 15-mile stretch, the bridges at Churchs Ferry (Mauvais Coulee) and Channel A are most threatened with inundation. Amtrak approached North Dakota approximately two years ago with the concept of an orderly shift of service to the KO Subdivision but the state and the three communities were adamant that service remain on the existing route as long as possible.

The girders on both bridge decks were submerged by the end of April 2011 and the water was only five inches from the ties. After a temporary closure in the first week of May, 2011, the line

was reopened for one night on May 5th. The line was closed again to Amtrak service after the eastbound Empire Builder passed on the morning of May 6, 2011. On that morning, the water at the Church's Ferry Bridge reached the height of the ties. Currently, the line remains open; however, intermittent service can be expected in the foreseeable future.

It is unlikely that water will recede before colder weather returns. If the bridge girders remain under water during freezing weather they will no longer be able to safely support trains – even if water levels drop – due to freeze/thaw and spalling. Additionally, the existing track is composed of outdated jointed rail on wooden ties. Tie rot and rust will render the entire section unusable. It is now highly improbable that Amtrak will maintain any consistent service to the three communities using the track and bridges in their current position. Therefore, the only option to return reliable service to the communities in the future is to complete the track raising and reconstruction project. Amtrak has a long history and good relationships with the three communities and “will be back the day the track reopens” in the words of an Amtrak official.

With the closure of the line, Devils Lake, Grand Forks, and Rugby will lose service. Amtrak has embraced a two-part approach to a service change. First, they will temporarily suspend service to the three communities and reroute the Empire Builder over the KO subdivision. Second, they will work with North Dakota and local officials to seek funding for the rail reconstruction project. Amtrak will call the loss of service a “Suspension of Service” and is publicly open to returning service to the three communities in the future if the line is rebuilt.

In the short term, Amtrak will operate a shuttle bus service connecting the affected communities to Fargo and Minot for a period of 30 days in order to honor the majority of tickets that have already been purchased. In both directions, the Empire Builder averages \$8800 per day in revenue from the three stations. Shuttle bus service will cost \$2200 per day. Amtrak's experience shows that bus substitution reduces ridership by approximately 80 percent over time, which is the reason the bus service will operate for only 30 days. It is assumed that most passengers from Grand Forks will eventually drive to Fargo and that those from Rugby will drive to Minot to reach Amtrak.

BNSF has offered Amtrak the ability to operate over the KO Subdivision indefinitely and suggested the creation of a potential new stop at New Rockford. Amtrak would have to construct an ADA-accessible platform and station. The cost estimate for the project to raise the track does not include an interim station at New Rockford.

Recommendations: With the line closed and service rerouted, two options are possible for the future. One option would be to rebuild the line through Devils Lake at considerable cost. The other alternative is to permanently re-route the Empire Builder over the KO Subdivision with the option of constructing a new station at New Rockford, North Dakota. Local communities prefer the former alternative.

Without available funding for the line reconstruction, the re-route is likely to be permanent. A raise of the mainline track to top of subgrade elevation 1,466 feet (NGVD 29) in non-critical

reaches and 1467 feet (NGVD 29) in critical reaches between Mile-Post 91.0 and Mile-Post 106.4 would be needed to return rail service through Devils Lake. Two bridges would also need to be reconstructed in addition to raising the railroad embankment. These bridges extend across waterways known as Channel A and Mauvais Coulee, which is the location of the Churchs Ferry Bridge.

Federal Authorities: The Passenger Rail Investment and Improvement Act of 2008 reauthorized the National Railroad Passenger Corporation, better known as Amtrak, and authorized several grant programs focused on intercity passenger rail, including Amtrak's long-distance routes and the Northeast Corridor, state-sponsored corridors throughout the Nation, and the development of high-speed rail corridors.

The FRA administers grants to Amtrak for both operations and capital improvement. Funding for Amtrak is requested annually both by the Administration through the Department of Transportation budget request and directly by Amtrak through its Federal Grant and Legislative Request to Congress. In conjunction with operating revenues and funds from state and local governments, Amtrak uses its Federal appropriations to cover its operating expenses and to maintain and improve its rolling stock (e.g. locomotives and passenger cars) and fixed capital assets (e.g. stations, track, and signals).

FRA also administers the Rail Line Relocation and Improvement program for rail improvement projects that involve lateral or vertical line relocation and also mitigate the adverse effects of rail traffic on safety, motor vehicle traffic flow, community quality of life, or economic development. On occasion, grants are made with funding appropriated for specific projects or grantees.

The Railroad Rehabilitation & Improvement Financing (RRIF) program was established by the Transportation Equity Act for the 21st Century (TEA-21) and amended by the Safe Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for Users (SAFETEA-LU). The RRIF provides direct federal loans and loan guarantees to finance development of railroad infrastructure. The funding may be used to acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings and shops; refinance outstanding debt incurred for the purposes listed above; and develop or establish new intermodal or railroad facilities.

The Transportation Infrastructure Finance and Innovation Act (TIFIA) program provides Federal credit assistance in the form of direct loans, loan guarantees, and standby lines of credit to finance surface transportation projects of national and regional significance. The TIFIA credit program's fundamental goal is to leverage Federal funds by attracting substantial private and other non-Federal investment in critical improvements to the nation's surface transportation system. Further information is available from the TIFIA program office in the Federal Highway Administration at <http://www.fhwa.dot.gov/ipd/tifia/>.

Section 2202 of the Department of Defense and Full-Year Continuing Appropriations Act, 2011, will provide approximately \$528,000,000 for National Infrastructure Investments (known as the DOT's TIGER program). The program is awarded on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area or a region.

Schedule: If funding for a line reconstruction is available, it is anticipated to take between six and seven months to complete.

Funding: No funding is needed for the service re-route; however, a permanent station at New Rockford would cost approximately \$500,000. The total funding needed to reconstruct the line through Devils Lake is estimated at \$97,442,000. The portion of cost to raise the railroad track and two bridges along the existing alignment is approximately \$75,552,000. BNSF estimated the cost for replacing the existing rail with new rail relay is \$28,900,000 (approximately 55.5 miles of bolted rail along the Devils Lake Subdivision). This rail relay is a requirement for Amtrak operations. The salvage value of the existing rail and other track materials to be removed within the 55.5 miles is approximately \$7,010,000 and is included in the total estimate above.

R-1. Mental Health Assistance

Risk Management

Responsible Agencies: FEMA, NDDDES

Description: Provide mental health assistance for individuals affected by the long-term flooding problems associated with Devils Lake, in coordination with a myriad of other government, non-profit, and voluntary organizations.

Status: Currently several programs exist to assist individuals with long term mental health issues arising from Devils Lake flooding. Examples are:

- **RAFT-Resources Agencies Flood Team:** The Resources Agencies Flood Team (RAFT) is a faith-based and community based coalition of agencies working together in a crisis to address unmet needs, including mental health.
- **Lake Region Human Services Center (ND Department of Human Services):** Mental health treatment is available on an outpatient basis for qualifying individuals
- **FEMA Crisis Counseling Assistance and Training Program (CCP):** The Crisis Counseling Assistance and Training Program, authorized by §416 of the Stafford Act, is designed to provide supplemental funding to States for short-term crisis counseling services to people affected in Presidentially declared disasters. There are two separate portions of the CCP that can be funded: immediate services and regular services. A State may request either or both types of funding. The immediate services program is intended to enable the State or local agency to respond to the immediate mental health needs with screening, diagnostic, and counseling techniques, as well as outreach services such as public information and community networking. The regular program is designed to provide up to nine months of crisis counseling, community outreach, and consultation and education to people affected by a Presidentially declared disaster. Funding for this program is separate from the immediate services grant.
- **Supplemental funding for crisis counseling is available to State Mental Health Authorities through two grant mechanisms:** (1) the Immediate Services Program (ISP) which provides funds for up to 60 days of services immediately following a disaster declaration; and (2) the Regular Services Program (RSP) which provides funds for up to nine months following a disaster declaration. While SAMHSA provides technical assistance for an ISP, the monitoring responsibility remains with FEMA. FEMA has designated SAMHSA as the federal authority responsible for monitoring all RSP programs.

Recommendations: Programs and expertise are in existence to address the mental health needs of the Devils Lake region, however, not all are funded and/or staffed to a level allowing them to

operate as required to address the needs of the people. In addition, the FEMA CCP only comes into effect with a disaster declaration, and has limited availability timelines associated with the declaration date. The Devils Lake disaster event has been ongoing since 1993, and much of the mental angst caused by this event is tied to the longevity of the suffering it has created in addition to actual suffering due to disaster losses. Unfortunately, the 60 day and 9 month assistance windows are often closed before the effectiveness of CCP programs can be fully brought to bear. Given the unique temporal dimensions associated with flooding in the Devils Lake Basin, the State should work in concert with FEMA and other federal agencies to obtain access to additional Congressional appropriations outside existing disaster programs. These appropriations would fund mental health assistance to survivors of on-going natural disasters.

Federal Authorities: Section 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 1974 authorizes FEMA to provide grant funding for crisis counseling assistance and training activities in Presidentially declared major disaster areas. The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) - Emergency Mental Health and Traumatic Stress Services Branch (EMHTSSB) works with FEMA through an interagency agreement to provide technical assistance, consultation, and training for State and local mental health personnel, grant administration and program oversight.

Schedule: New federal authorities and appropriation are needed as soon as possible to address the deteriorating mental health of basin residents so that existing programs can be enhanced and continued as required for as long as necessary

Funding: Through the aforementioned programs and outlets, with new federal authorities and appropriation enacted (based on existing CCP program concepts) to address the long term mental health needs of the basin that continue outside the authorized funding windows of existing disaster mental health programs.

R-2a. Local/ Tribal Hazard Mitigation Planning

Risk Management

Responsible Agencies: FEMA, NDDDES

Description: Communities should be developing and/or updating their hazard mitigation plans. Mitigation plans are the foundation for effective hazard mitigation and FEMA's Hazard Mitigation Assistance programs require a community to have a FEMA-approved local or tribal mitigation plan to be eligible to apply for and/or receive federal funding for mitigation projects. Through the planning process, hazards are identified, risks are assessed, and a comprehensive strategy for reducing risks to life and property is developed. The most effective plans contain two key elements: comprehensive risk and capability assessments that form a solid foundation for decision making; and participation by a wide range of stakeholders who play a role in identifying and implementing mitigation actions.

Status: According to the Devils Lake Joint Water Resource Board, there are nine counties: Benson, Cavalier, Eddy, Nelson, Pierce, Ramsey, Rolette, Towner, and Walsh; and one tribe, the Spirit Lake Nation, located in the Devils Lake Basin. Six of the counties have a FEMA-approved local multi-jurisdictional mitigation plan in effect, two are in the process of developing mitigation plans, and one recently received federal and state funding to update its hazard mitigation plan. The sole Indian Tribal Government is in the process of developing a tribal mitigation plan.

Recommendations:

- Counties and Indian Tribal Governments should continue to develop and update hazard mitigation plans; effectively reducing risk to people and property within their geographic boundaries.
- Communities may continue to develop multi-jurisdictional mitigation plans. FEMA's Local Mitigation Plan requirements under 44 CFR §201.6 and Tribal Mitigation Plan requirements under 44 CFR §201.7 specifically identify criteria that allow for multi-jurisdictional mitigation plans. Many issues are better resolved by evaluating hazards comprehensively by coordinating at the county, regional, or watershed level. Basin-wide coordination of mitigation projects may be a more effective use of limited local resources. Although economy-of-scale efforts are apparent and encouraged with multi-jurisdictional plans, FEMA requires that all participating jurisdictions meet the requirements for mitigation plans identified in 44 CFR §201.6 and 201.7. While certain elements *may be* common to all participating jurisdictions, there are some elements that are unique to each and must be documented within the plan.
- In partnership, FEMA and the State of North Dakota will educate members of Congress and other key decision makers of the importance of mitigation planning and the cost-effectiveness of mitigation projects, particularly from a multi-jurisdictional perspective;

continued funding of FEMA's Hazard Mitigation Assistance programs will help to eliminate long-term risk to people and their property from hazards and their effects within the Devil's Lake Basin.

- Counties and Indian Tribal Governments located in the Devils Lake Basin should continue to champion mitigation planning by engaging all stakeholders in the planning process. An effective planning process ensures that all stakeholders understand risks and vulnerability, work with the County or Indian Tribal Government, and support its policies, actions, and tools over the long-term to achieve a reduction in future losses.
- Given the unique flood risks associated with the Devils Lake Basin, communities are urged to prepare a comprehensive risk assessment using the best available data and methodologies for calculating risk and determining losses.
- As part of the mitigation strategy, communities should identify and prioritize a wide range of mitigation actions in their plans. These actions should be directly linked to the risk assessment and may include, but are not limited to: property acquisition and structure demolition, property acquisition and structure relocation, structure elevation, dry flood proofing of historic and non-residential structures, minor localized flood reduction projects, structural and non-structural retrofitting of existing buildings and facilities, safe room construction, infrastructure retrofit, soil stabilization, vegetation management activities, and post-disaster code enforcement.
- Counties and Tribes should develop an effective method for maintaining their plans. A well-conceived method for plan maintenance will result in a living document - one which will remain useful to the community throughout its lifespan.
- The North Dakota Department of Emergency Services (NDDDES) and FEMA Region VIII should continue to actively promote local and tribal planning efforts and provide training and technical assistance as needed, including assisting Counties or Indian Tribal Governments to complete applications or sub-applications for federal and state funding to develop or update local or tribal hazard mitigation plans.

Federal Authorities: Section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5165, as amended by the Disaster Mitigation Act of 2000 (DMA) (P.L. 106-390), provides for States, Tribes, and local governments to undertake a risk-based approach to reducing risks to natural hazards through mitigation planning.

Schedule: Approximately 12-24 months to develop and/or update an existing local or tribal hazard mitigation plan

Potential Funding Sources: Funding for hazard mitigation planning is available through three of FEMA's Hazard Mitigation Assistance Programs: the Hazard Mitigation Grant Program (HMGP); Pre-Disaster Mitigation Program (PDM); and Flood Mitigation Assistance Program (FMA). Associated costs may be supplemented or supplanted by state, local, and tribal funding streams.

R-2b. Non-Structural Hazard Reduction: Acquisition/Relocation of Imperiled Structures Risk Management

Responsible Agencies: FEMA, NDDDES

Description: Acquisition/relocation of imperiled structures, which would permanently reduce risk by moving these impacted structures to a higher elevation. This activity would offer willing homeowners a non-structural opportunity to reduce their risk before they suffer damage, and would avoid future damage if the lake reaches this level again. The City of Minnewaukan could potentially benefit from acquisition and relocation projects as part of this alternative.

Status: According to the North Dakota Department of Emergency Services (NDDDES), 69 homeowners have expressed an interest in acquisition/demolition and 23 homeowners are interested in relocating their homes to elevations above predicted maximum lake levels. The relocation of structures includes a separate application for the disposition of three rental properties owned by the Minnewaukan Public School system and an application to relocate one county social service building. It will cost approximately seven million dollars to acquire the properties and demolish or relocate the at-risk structures. The city hopes to be able to fund its acquisitions through FEMA's Hazard Mitigation Grant Program (HMGP), the State Disaster Relief Fund, and Minnewaukan's budget. Recently, HMGP funds were extended for NDDDES; affording the City of Minnewaukan the opportunity to apply for eligible project activities.

The purpose of HMGP is to significantly reduce or permanently eliminate future risk to lives and property from natural hazards. HMGP funds projects in accordance with priorities identified in the North Dakota State Hazard Mitigation Plan and enables acquisitions to be implemented during the recovery from a disaster. HMGP is administered by the State of North Dakota through NDDDES; the State prioritizes projects and reviews each sub-application to ensure all federal and state program requirements are met prior to submitting sub-applications to FEMA for review and approval. There are five minimum criteria which must be met in order to be considered for funding: projects must conform to the State Multi-Hazard Mitigation Plan; provide beneficial impact upon the designated disaster area; conform to environmental laws and regulations; solve a problem independently or constitute a functional portion of a solution; and be cost-effective. The city has developed and will submit four eligible grant applications.

The Corps of Engineers is also proceeding with design and construction of temporary protection to the City of Minnewaukan's school, water tower and lift station under the PL 84-99 Advance Measures program, which will allow continued use of these facilities while permanent relocation is implemented.

Recommendations:

- The City of Minnewaukan should be aware that the relocation process is wholly voluntary, complex, expensive, and requires extensive planning. The process for

individual buildings involves lifting a home off its foundation, placing it on a heavy-duty flatbed trailer, hauling it to the new site, and lowering it onto a new, conventional foundation. Single story, wood frame structures over a crawlspace or basement foundation are easiest to relocate; multi-story and solid masonry structures are the most difficult to relocate. Slab-on-grade foundations complicate the relocation process because they make the installation of lifting equipment more difficult. In addition, certain Environmental and Historic Preservation compliance review activities may be necessary, such as environmental assessments and/or environmental impact statements and, whether acquisition/demolish or acquisition/relocation is undertaken, open space restrictions on purchased land will remain in perpetuity. These restrictions prohibit construction of levees.

- The City of Minnewaukan should consider all potential funding sources as it contemplates current and future acquisition projects. Some related costs may not be allowable costs under HMGP. The construction and installation of new infrastructure, for example, is not an eligible cost under HMGP. The City will need to identify other potential funding streams for this and other ineligible expenses.
- The City of Minnewaukan and/or its chosen applicant agent should ensure that complete sub-grant applications are developed and submitted in a timely fashion; delays and unanticipated additional expenses will be less likely. For relevant FEMA Hazard Mitigation Assistance programs, for example, a complete scope of work would include: basic applicant, contact, and community information; information regarding the applicable hazard mitigation plan for the city/county; descriptions of the hazard, the problem, and project; information regarding the applicable Flood Insurance Study or Flood Insurance Rate Map; building inventory; a description of the decision-making process and evaluation of alternatives; a benefit cost analysis and supporting documentation; a detailed cost estimate; and a description of environmental considerations and supporting documentation.
- Assist in the development of a special appropriation. It is recommended that this appropriation be administered through FEMA's Hazard Mitigation Assistance programs, using guidelines specific to HMGP 5% initiative projects. This would ensure that projects benefitting the Devils Lake Basin would be reviewed and approved expeditiously. Planning for voluntary acquisitions in the nearby counties of Towner and Nelson should begin before either county is significantly impacted by Devils Lake. The North Dakota Department of Emergency Services (NDDDES) should serve as the point of contact for all property acquisition activities and coordinate with project beneficiaries such as the City of Minnewaukan and FEMA. FEMA should provide technical assistance to the North Dakota Department of Emergency Services throughout the acquisition and demolition/relocation process.

Federal Authorities: Section 404 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act), 42 U.S. Code (U.S.C.) 5170c; Section 203 of the Stafford Act, 42

U.S.C. 5133; and Section 1366 of the National Flood Insurance Act of 1968 (NFIA); 42 U.S.C. 4101c, as amended by the National Flood Insurance Reform Act of 1994 (NFIRA), Public Law 103-325; and the Flood Insurance Reform Act of 2004 (FIRA), Public Law 108-264, Public Law 84-99.

Schedule: Approximately 12-24 months for acquisition/demolition projects and 18-36+ months for acquisition/relocation.

Funding: Primary funding sources for acquisitions include several of FEMA's Hazard Mitigation Assistance programs: the Hazard Mitigation Grant Program (HMGP), Pre-Disaster Mitigation (PDM), and Flood Mitigation Assistance (FMA), HUD's Community Development Block Grants (CDBG), the North Dakota State Disaster Relief Fund, and direct funding from property owners and county and city revenue sources. Cities are urged to investigate other potential funding streams, including: disaster assistance loans from the Small Business Administration, grants or loans from the U.S. Department of Agriculture, and funding from the U.S. Department of Commerce's Economic Development Administration.

R-3. Tolna Coulee Monitoring for Emergency Preparedness

Risk Management

Responsible Agencies: USGS, NDSWC

Description: Expand the current environmental monitoring network in and around Devils Lake to include the Tolna Coulee outlet from Stump Lake. Such observations would help provide advance warning of a potential spill, improve short-term flood emergency response in the event of a spill, and help with longer-term mitigation and adaptation planning in the event of a prolonged spill.

Status: The USGS currently operates a real-time lake gage on Eastern Stump Lake, in cooperation with various State and local partners. Since the lake level at the Tolna Coulee outlet is expected to be essentially the same as the existing gage, there is no need for another lake gage nearer to the outlet. However, installation and operation of a real-time webcam overlooking the outlet would be useful for monitoring the effects of wind and wave action if the lake continues to rise. The webcam also would be of keen interest for public viewing of construction of the Tolna Coulee control structure later this year.

The other area of concern is potential groundwater leakage from Stump Lake. The NDSWC currently has 4 groundwater monitoring wells near the spill location, which should be sufficient for detecting any changes in the groundwater system. However, the wells are currently measured manually about once each month. The NDSWC plans to install an electronic data logger on one of the wells later this year for providing more complete temporal coverage.

There currently is no downstream gage on Tolna Coulee. To provide a failsafe mechanism for detecting spills or potential groundwater leakage from Stump Lake, a USGS real-time rapid-deployment lake gage and conductivity monitor is planned for installation on Tolna reservoir later this spring. A real-time stream gage and conductivity monitor would be installed on Tolna Coulee itself upstream of the reservoir (location to be determined) if/when a spill does occur.

Recommendations:

- 1) Install a USGS real-time rapid-deployment gage on Tolna reservoir by May 2011. The gage would be discontinued after the Tolna Control structure is complete.
- 2) Install an automated data logger on one of the existing NDSWC monitoring wells at the Tolna Coulee outlet from Stump Lake by May 2011. It is anticipated the logger and monitoring wells would be maintained in future years.
- 3) Install a USGS real-time webcam overlooking the Tolna outlet by June 2011. The webcam would be maintained in future years as long as interest and need exist.

Federal Authorities: N/A

Schedule: The rapid-deployment gage on Tolna Reservoir, real-time webcam overlooking the outlet, and groundwater well data logger should be installed as soon as possible this spring. The stream gage and conductivity monitor on Tolna Coulee would be installed in the event of an eventual spill.

Funding:

- 1) Rapid-deployment gage and on Tolna Reservoir: approximately \$10,000 for installation and one year's operation (NDSWC, USGS)
- 2) Data logger for groundwater monitoring well (part of NDSWC existing monitoring budget)
- 3) Real-time webcam on Tolna outlet: Approximately \$10,000 for equipment, installation (including DSL service), and one year's operation. Additional maintenance and operation about \$5,000 per year. (50-50 coop between USGS and NDSWC)

R-4. Downstream Effects

Risk Management

Responsible Agencies: USACE/FHWA, NDSWC/NDDOT

Description: Undertake studies to identify potential adverse effects on Tolna Coulee, the Sheyenne River, and the Red River of the North due to increased outflows from the West and East End Outlets and from flows from Stump Lake through Tolna Coulee. Potential adverse effects could include increased stream bank erosion, disruption to roadways and bridges, increased sedimentation at Lake Ashtabula, loss of riparian forests and aquatic species, increased safety concerns at about 20 low head dams, and increased operational costs for downstream water treatment facilities.

For comparison; record flows in the Upper Sheyenne River at the Cooperstown USGS gage were 8520 cfs on April 14th, 2011. Natural overflows from Stump Lake if erosion of the Tolna Coulee takes place could contribute up to an additional 14,000 cfs for an extended period.

The Corps and the NDSWC are considering construction of a control structure to control discharges from Tolna Coulee (action item W-1c) should erosion of the divide occur. Even with this control structure in place discharge from Devils Lake could be as high as 3000 cfs for extended periods of time.

The Corps report entitled, “Devils Lake, North Dakota Integrated Planning Report and Environmental Impact Statement,” dated April 2003 contains extensive information on potential downstream impacts from either a controlled pumping outlet system or a natural overflow.

In addition to reducing flooding around Devils Lake the outlets also reduce the potential of a natural overflow. To further mitigate downstream damages the NDSWC is developing a Devils Lake Outlet Mitigation Plan. A draft copy of this plan can be found on the NDSWC web page. In addition, the NDSWC is investigating the Sheyenne River channel capacity (action item W-2b) and will address the channel capacity needed for the outlets.

With regard to effects on transportation infrastructure, these effects (i.e., bridge scour) will not be identified until the NDSWC has completed their modeling under Action Item W-2b. Other information requirements include the planned future flows of the Sheyenne and the duration for determining downstream roadway improvements. Possible improvements include increased culvert sizes, bridge bank and pier scour protection, or new bridges. It will likely impact roadways in Ransom, Barnes, Nelson, Richland, Cass, and Griggs counties.

Status: No action at this time.

Recommendations: In addition to the actions being undertaken by the NDSWC with regard to the outlets, a study could be conducted to refine a list of possible impacts from potential actions at Devils Lake and to begin monitoring and data collection. The study would establish a baseline

condition and identify appropriate mitigation efforts. Long-term monitoring should be a non-federal responsibility.

Federal Authorities:

The Corps of Engineers has at least three potential avenues that could be used to conduct such a study.

- Section 22, Planning Assistance to States (PAS)
- Specifically authorized Corps planning study, beginning with a reconnaissance study followed by either:
 - A cost-shared feasibility study, or
 - A cost-shared Section 729 watershed study

Schedule: Dependent on funding and interest of a non-federal sponsor.

Funding: Limited federal funding is currently available for expansion of the Sheyenne River reconnaissance study. No federal funding is currently available to initiate a new PAS study, reconnaissance study or feasibility-level watershed study.

R-5. Prepare a Multi County Evacuation and Mass Care Annex to Existing Emergency Operations Plans
Risk Management

Responsible Agencies: FEMA, NDDDES

Description: There is a potential for rising lake waters to impact communities that border the Devils Lake Basin. As such, it is imperative these communities take advance measures to prepare for potential flooding. Adding Evacuation and Mass Care Annexes to Existing Emergency Operations Plans is a pre-emptive means of ensuring life safety.

Status:

- FEMA has developed a database, with geographic locations and pictures, of all structures in the Devils Lake Basin at 1460 ft MSL and below.
- Urban Search and Rescue Grid Atlases have been developed for communities around the lake, which depict structures threatened up to 1460 ft MSL. These atlases are in US National Grid (USNG) format, which is the standard for urban search and rescue.
- Advanced emergency planning efforts occur on an annual basis, led by the ND Department of Emergency Services. Annual advanced planning takes into account lake elevations as part of the overall triggers for requesting state and federal support to the basin.

Recommendations:

- Sustain advanced emergency planning efforts as the lake continues to rise, which include provisions for mass care and sheltering by nature. The National Weather Service stated on July 15, 2010, that the wet cycle is projected to possibly continue another 10 years, and such efforts will remain a necessity to ensure Federal, State, local, and tribal jurisdictions stay out front of the requirements curve.
- Archive current emergency planning efforts for flooding for future generations to use when the lake rises again.
- Plan and act knowing Devils Lake will always be in flux; stability will be the exception rather than the rule, and thus evacuation and mass care planning must be flexible enough to adapt to the dynamic nature of lake flooding.
- Sustain Emergency Management Performance Grant (EMPG) funding well into the future to ensure the above planning efforts can continue to occur.

Federal Authorities: Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110-53); the Department of Homeland Security Appropriations Act, 2010 (Public Law 111-83); the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) (Public Law 109-295); and the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (Public Law 93-288), as amended, 42 U.S.C. 5121-5207.

Schedule: Ongoing

Funding: FEMA provides Emergency Management Performance Grants (EMPG) to assist State and local governments to sustain and enhance all-hazards emergency management capabilities, including the development of emergency operations plans. EMPG has a 50 percent Federal and 50 percent State cost share, cash- or in-kind, match requirement.

G-1. Comprehensive Watershed Management Strategy

Governmental Collaboration

Responsible Agencies: USACE (MVP), NDSWC/NDDDES

Description: Develop a coordinated, comprehensive watershed management strategy that is fully integrated with the established future lake level (or lake level range), and that supports the permanent long-term recovery and sustainability of the Devils Lake basin while considering downstream interests. The strategy would address environmental, economic, flood mitigation, and social issues (e.g., enhanced quality of life, stable housing, education, emergency medical services, transportation, and equitable compensation), and establish goals and document accomplishments for the watershed. This effort would be performed mostly by state and local agencies, with input from federal agencies.

Do not wait until a dry cycle begins to start projecting planning requirements for the eventual drop of lake levels in the long term. Plan and act knowing Devils Lake will always be in flux; stability will be the exception rather than the rule.

Status: A schedule is planned (see below), with execution of the schedule commencing shortly after submission of the DLEC recommendations to OMB.

Recommendations: Commence the planning effort with the completion and submission of the DLEC report to OMB. The main strategic planning committee should consist of those comprising the current DLCWG.

Federal Authorities: There is no specific federal authority for this effort, however, there are general federal authorities for federal involvement

Schedule:

- Late May-Early June 2011: Take the final recommendations of the DLEC report submitted to OMB in June, combine with other planning products developed for the basin, and implement a strategic planning process
- July 2011: Plan and conduct strategic planning activities amongst Federal, State, Local, and Tribal Agencies which will ultimately lead to the development and adaptation of a basin-wide strategic plan with unifying goals and short, mid-term, and long range objectives and supporting action plans
- NLT Aug 31, 2011: Publish the strategic plan for approval and adaptation
- Quarterly in Oct, Jan, Apr, and Jul: Conduct In Progress Reviews and Follow Ups (minimum two face to face annually, the rest remote) on a quarterly basis to monitor progress of executing the strategic plan and addition to/ modification of items contained. Continue until all items on the plan are addressed and closed out.

Funding: Funding for each federal agency will be from general funding sources. There is no specific funding source for this effort.

G-2. Use of In-Lieu Fee or Mitigation Bank Governmental Collaboration

Responsible Agencies: USACE (NWO) / USFWS / FHWA, NDDOT

Description: In projects that will impact waters of the United States (wetlands, for example), the permitting process under Section 404 of the Clean Water Act currently poses a significant challenge to meeting expedited schedules. Also, under Executive Order 11990, each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands. This initiative proposes expanded use of in-lieu fees (ILF) and mitigation banking currently allowed under existing statute, regulations, State law and court decisions in order to expedite project delivery and benefit flooded landowners.

It will evaluate streamlined approaches for determining Section 404 Clean Water Act compensatory mitigation requirements for infrastructure improvement projects (primarily road grade raises) that result in a discharge of fill into waters of the United States in areas experiencing prolonged flooding that were previously permitted under Section 404 and where compensatory mitigation has been provided. It will concurrently provide information to local transportation authorities and others regarding the establishment of mitigation bank(s) to provide compensatory mitigation for unavoidable impacts in waters of the United States, when that compensation is necessary to ensure project(s) comply with the 404(b)(1) Guidelines and are not contrary to the public interest. The streamlined approaches could further apply to “non-jurisdictional” wetlands protected by Executive Order 11990.

A wetland mitigation bank is a wetland or a group of wetlands that have been restored, created, preserved, or enhanced to provide compensation for unavoidable impacts to wetlands and other aquatic resources. The bank may be created by a government agency, corporation, nonprofit organization, or individual. Its intent is to facilitate efficient planning of construction projects while ensuring that any environmental impacts are adequately addressed.

Establishing an individual mitigation site for each construction activity or project can be costly and time-consuming. Establishing a bank of mitigation credits, or mitigation bank, streamlines processes, saving time and money. Having credits in a bank also saves time for future projects; wetland impacts can simply be deducted from the bank.

In-lieu fee program means a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy required compensatory mitigation. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees

whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor.

State Departments of Transportation (DOTs) can often fulfill their mitigation obligations by simply purchasing credits in a bank, or paying into an ILF program, thereby removing a significant hurdle to project delivery. In addition, state DOTs are relieved of any further mitigation responsibility when purchasing credits from a private bank or paying fees to an ILF program since this payment transfers all risk to the bank or ILF sponsor. Banks sponsored by state DOTs do not transfer ecological performance risk, but aid in project delivery by ensuring that mitigation credits will be available when needed. Regulatory agencies now generally prefer banks and ILF programs because they often protect and restore larger blocks of habitat that provide greater ecosystem benefits than small, project-by-project mitigation. Also, regulators do not typically award credits to a bank or ILF program until certain performance criteria are reached. Thus, environmental risk and uncertainty are minimized.

Status: The USACE Omaha District-North Dakota Regulatory Office has spoken with the US Environmental Protection Agency and met with the US Fish and Wildlife Service, and North Dakota Game and Fish Department to discuss streamlined approaches for determining compensatory mitigation requirements for specific circumstances related to infrastructure improvement projects in areas experiencing prolonged flooding where Section 404 permits have been previously issued and compensatory mitigation has been previously provided.

The Omaha District-North Dakota Regulatory Office met with Ducks Unlimited (DU) to discuss the possibility of creating wetland mitigation banks in conjunction with DU wetland restoration and creation projects. DU is reviewing sites for possible wetland mitigation banks.

Also, establishment of a mitigation bank using state funds could be considered.

Recommendations: Continue coordination to evaluate streamlined approaches for determining Section 404 Clean Water Act compensatory mitigation requirements for infrastructure improvement projects (primarily grade raises) that result in a discharge of fill into waters of the United States in areas experiencing prolonged flooding, that were previously permitted under Section 404, and where compensatory mitigation has been provided. Expedite reviews of wetland mitigation bank proposals that would provide aquatic resource credits, when that compensation is necessary to ensure compliance with the Guidelines and to ensure the project(s) are not contrary to the public interest.

Consider other planned actions in the basin (i.e. upper basin storage) to offset wetland impacts due to construction. Specifically, it is recommended to revise 33 CFR 332.3(j)(2) such that federally-funded aquatic resource restoration or conservation projects undertaken for purposes other than compensatory mitigation, such as the Wetlands Reserve Program, Conservation Reserve Program, and Partners for Wildlife Program activities, can be used for the purpose of generating compensatory mitigation credits.

Also, it is recommended to request a Presidential amendment to Executive Order 11990 such that it does not apply to emergency relief projects in the Devils Lake Basin. Specifically, revise Section 9 of Executive Order 11990 to “Sec. 9. Nothing in this Order shall apply to assistance provided for emergency work, essential to save lives and protect property and public health and safety, performed pursuant to 42 U.S.C. 5145, 5146, and 5170-5173 and 23 U.S.C. 120 and 125.”

Federal Authorities: 33 CFR 320.4(r), 33 CFR 332.1, and the February 1990 DA/EPA document entitled, “*Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines*.” Executive Order 11990 (Protection of Wetlands) of May 24, 1977, appear at 42 FR 26961, 3 CFR, 1977 Comp., p. 121.

Schedule: Continued inter-agency coordination and solicitation of public comments could be completed by October 2011.

Funding: No specific funding available, although agencies that would make most use of this action could provide funding.

G-3. Devils Lake Executive Committee (DLEC)

Governmental Collaboration

Responsible Agencies: USACE (MVD), NDSWC

Description: The Devils Lake Executive Committee is a forum for all agencies that have responsibilities and authorities related to proposals and recommendations on projects, plans and ongoing actions affecting the Devils Lake watershed and those downstream. The formal committee provides continuity for an interagency approach to planning and implementing measures to reduce the risks associated with flooding in the Devils Lake basin and vicinity.

Status: The Devils Lake Executive Committee (DLEC) was formed by Major General Michael Walsh per direction from Lieutenant General Robert Van Antwerp. Members of the committee include senior working staff from Federal, tribal, State, local government. The initial meeting of the DLEC was held on 7 March 2011 in Bismarck, North Dakota. A charter for the committee was developed and signatures for the document are being obtained from charter members. A second meeting of the DLEC was held on 4 April 2011 in Bismarck.

Recommendations: Continue meeting and coordinating amongst member agencies.

Federal Authorities: There is no specific federal authority for this effort, however, there are general federal authorities for federal involvement.

Schedule: The DLEC will meet as needed upon completion of this action plan.

Funding: Funding for each federal agency will be from general funding sources. There is no specific funding source for this effort.

G-4. Devils Lake Collaborative Working Group (DLCWG)

Governmental Collaboration

Responsible Agencies: USACE (MVP), NDSWC

Description: The Devils Lake Collaborative Working Group represents all basin stakeholders to develop and recommend direction and actions to the Devils Lake Executive Committee (DLEC). The DLCWG provides a forum to discuss collaborative solutions among local, state, federal, tribal, and international agencies in conjunction with input from stakeholders. All basin parties and stakeholders are able to participate in suggesting plans and actions regarding Devils Lake. Additionally, the DLCWG provides work products as directed by the DLEC.

Status: The Devils Lake Collaborative Working Group (DLCWG) was formed by Colonel Michael Price per direction from the DLEC. Members of the committee include working staff from Federal, tribal, State, local government, the International Joint Commission (IJC) (observer status), Canada (observer status), NGOs and private interests. The initial meeting of the DLCWG was held on 29 March 2011 in Devils Lake, North Dakota. A charter endorsement for the group was developed and signatures for the document are being obtained from group members.

Recommendations: Continue meeting and coordinating amongst member agencies.

Federal Authorities: There is no specific federal authority for this effort, however, there are general federal authorities for federal involvement.

Schedule: The DLCWG will meet quarterly upon completion of this action plan.

Funding: Funding for each federal agency will be from general funding sources. There is no specific funding source for this effort.

Appendix A
Additional DLEC Member Comments

Csajko, William L MVP

From: Sherri Thompson [mwkncity@gondtc.com]
Sent: Wednesday, June 15, 2011 2:38 PM
To: Csajko, William L MVP
Subject: comments from Mondays meeting

Hi Bill, could you please forward this to Charles Barton as I do not have his email. Thanks.

Please add to your comments: Can the Devils Lake Executive committee explore options for more reservoir capacity on the Sheyenne River such as a reservoir north of Cooperstown. The capacity offered by Lake Astabula is not enough to manage the flows needed from Devils Lake? Thanks.

Sherri Thompson
Assistant Auditor
City of Minnewaukan



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June 16, 2011

Charles Barton, B MVD

Dear Mr. Barton,

I was recently informed that during the DLEC meeting in Devils Lake, ND on Monday, June 13, 2011, there was an approved motion for revision of the draft action plan part W-3-Flooded Land Compensation and Increase Upper Basin Storage to include a "prevented planting" provision in the federal crop insurance program. Since RMA representation was not requested at this meeting to weigh in on the discussion before the revision was approved, this letter constitutes my formal written opposition with the following facts and concerns.

While Federal crop insurance provides prevented planting coverage for weather events occurring within the insurance period, coverage is unavailable for events occurring outside the insurance period. Acreage which is flooded due to weather events occurring outside the insurance period, such as rains or flooding in previous crop years, which result in the land being unavailable to plant, is not eligible for prevented planting coverage.

The Federal Crop Insurance Act provides coverage for distinct periods of time based upon the occurrence of the cause of loss and the date the policyholder purchased a crop insurance policy. The Common Crop Insurance Policy addresses this statutory limitation. Insurance is provided only to protect against unavoidable, natural events occurring within the insurance period. Acreage that continues to be flooded due to prior weather events beyond the 2-year period provided in the statute is not eligible for a continued prevented planting payment because under normal weather conditions it remains indefinitely flooded, or too wet to plant by the final planting date.

Providing crop insurance coverage for acreage that is no longer physically available to plant was not and is not the intent of Congress in the creation and current amendment of the Federal Crop Insurance program. The intent of Congress for the Federal Crop Insurance program was to provide coverage for growing crops. In the 1995 Farm Bill, which amended the Act beginning with the 1996 crop year Congress added statutory language to cover prevented planting due to a weather event for a period of two years (from the sales closing date (March 15) of the previous crop year through the end of the late planting period (June 30, depending on the crop) of the current year. After this period of time, if the acreage remains unavailable for planting during the planting window for the intended crop because of continued flooding, such acreage under the program statute is no longer physically available for planting and is therefore no longer eligible for prevented planting coverage.

The crop insurance policy is a yearly contract between the policyholder and the insurance company and is reinsured by the Federal crop insurance Corporation. Once the contract

The Risk Management Agency Administers
And Oversees All Programs Authorized Under
The Federal Crop Insurance Corporation



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change date is past the provisions of the policy may not be waived or varied in any way by RMA for that crop year, nor by crop insurance companies.

I find it hard to believe that Congress would make such a change as recommended in the resolution to the Federal Crop Insurance Act because of our public/private relationship between the Risk Management Agency and the insurance companies. The agency has a standard reinsurance agreement with 16 of these companies to deliver and service this insurance program, under the agreement they have agreed to accept a portion of the risk and losses that arise from their policies each year. The recommended resolution goes against all the basic precepts of an insurance policy. No insurance policy allows a provider to bind coverage to a burning house or a wrecked car, nor does the crop insurance program allow the binding of coverage to acreage with a preexisting condition, that doesn't have the capability of growing a crop during the crop year.

The Federal Crop Insurance Act authorizes insurance programs, not land conservation or land reserve programs. I hope this explains the Risk Management Agency's (RMA) position in this matter. RMA has sister USDA agencies such as FSA and NRCS that Congress has authorized to administer acreage conservation and reserve programs that under the intent of Congress were designed for acreage in this situation. It would be far more palatable for Congress to make statutory changes and fund to programs such as these in order to address the needs of these producers.

I request the revision to include a "prevented planting" provision in the federal crop insurance program be removed from the draft action plan part W-3-Flooded Land Compensation and Increase Upper Basin Storage.

Sincerely,

Doug Hagel, Regional Director
Risk Management Agency

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The Federal Crop Insurance Corporation

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