

COPY

***DEVILS LAKE BASIN
JOINT WATER RESOURCE BOARD***

524 4th Avenue, #27, Devils Lake, ND 58301

701-662-7076 Fax 701-662-7096

E-mail: dlbjb@stellarnet.com

December 11, 2003

Wayne Stenehjem, Attorney General
State of North Dakota
600 East Boulevard Avenue, Dept. 125
Bismarck, ND 58505

Dear Mr. Stenehjem:

The Devils Lake Basin Joint Water Resource Board is made up of the counties of Benson, Eddy, Cavalier, Nelson, Pierce, Ramsey, Rolette, Towner and Walsh Counties Water Resource Districts under a Joint Powers Agreement (NDCC 61-16.1-11).

The Devils Lake Basin Joint Water Resource Board and all member counties believe Water Resource Districts are required under several sections of the North Dakota Century Code to "investigate drainage obstructions, and where necessary procure their removal" on natural waterways in their jurisdiction.

The Devils Lake Basin Joint Water Resource Board is currently investigating the accumulation of silt in the Tolna Coulee between Stump Lake and the Sheyenne River. A study completed by the North Dakota Geological Survey (Investigation No. 100, 1997) states "The channel-fill deposits in the Tolna Coulee are 15 to 25 feet thick and consist of peat, clay, silt, sand and gravel." A study by Northern Plains Environmental, P.C. (May, 2002) states "Soil Logs show there is an average of about eighty (80) inches of sediments and alluvium materials deposited across the investigation site."

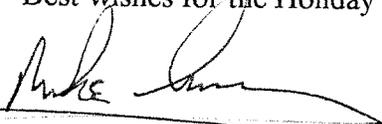
In February, 2002 the State Engineer in a letter to the Devils Lake Basin Joint Water Resource Board stated that "the siltation that has occurred since statehood is the only quantity of silt I will allow to be removed and still be considered maintenance". (Copy of State Engineer's letter enclosed)

The Devils Lake Basin Joint Water Resource Board is requesting an opinion from your office if the State Engineer can arbitrarily decide what constitutes permissible maintenance in a natural waterway?

Wayne Stenehjem, Attorney General
State of North Dakota
December 11, 2003
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If you need any other information or copies of the reports mentioned to assist you in issuing your opinion please contact this office.

Best wishes for the Holiday Season,

A handwritten signature in black ink, appearing to read "Michael Connor", written over a horizontal line.

Michael Connor
Manager

CC: Devils Lake Basin Joint Water Resource Board



ORIGINAL

Office of the State Engineer

February 12, 2002

Michael Connor, Manager
Devils Lake Basin Joint Board
524 4th Avenue #27
Devils Lake, ND 58301

Dear Mike:

On January 9 at the monthly Joint Board meeting, you requested my opinion on the amount of silt that is allowed to be removed without the issuance of a state drain permit. A permit from this office is not required to maintain a natural drainway in its natural state by removing sediment and debris. It is my responsibility as the State Engineer to determine if a proposed action constitutes maintenance or drainage requiring a permit. Maintenance does not include deepening or widening of the drainway. We will continue to research the details of this important issue. For now, the siltation that has occurred since statehood is the only quantity of silt I will allow to be removed and still be considered maintenance.

I understand that the Joint Board or Nelson County Water Resource Board may not agree with my interpretation of permissible maintenance. Either Board could, if it chooses, bring a declaratory judgment action against the state engineer to determine what constitutes permissible maintenance in the natural drainway.

In dealing specifically with the divide area between Stump Lake and the Sheyenne River in the Tolna Coulee, a report from the North Dakota Geological Survey stated the depth of siltation that has occurred since statehood is approximately one foot. Additional surveys and soil borings may be required to determine the extent of the proposed removal area.

Also, there may be some man-made obstructions near the divide location. The Nelson County Water Resource District or the Devils Lake Joint Water Resource Board may have the authority to order removal of such an obstruction, if it is determined to impede the natural flow of water. The Nelson County Water Resource District or the Devils Lake Joint Water Resource Board should coordinate any effort to remove obstructions with this office, to ensure compliance with North Dakota state law regarding the need for a drain permit.

I understand the frustrations the people in this region are feeling when dealing with the rising water levels of Devils Lake. We must continue to work together to find an adequate solution that will benefit all of North Dakota.

OVER

Michael Connor
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February 12, 2002

If you have any additional questions, please contact James Landenberger at (701) 328-4962.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dale Frink".

Dale Frink, P.E.
State Engineer

DLF:JL:cg/416-1