



July 15, 2009

The Honorable John Hoeven
Governor of North Dakota
600 E. Boulevard Avenue
Bismarck ND 58505-0001

Dear Governor Hoeven:

The North Dakota Department of Health recently received letters from the North Dakota State Water Commission and the city of Devils Lake describing widespread flood impacts affecting the environment, economic stability and public health in the Devils Lake region (see enclosed). The letters describe the need for an emergency response to flood conditions and request the department to initiate immediate action to address the situation by increasing flow from the Devils Lake outlet.

The following issues are of concern:

- 1) The probability of a natural water discharge from the east end of Devils Lake has increased substantially over the last year. Since 1993, Devils Lake has risen 26 feet, 3.8 feet since just this spring, to a record 1550.7 feet, which is just seven feet from an uncontrolled spill into the Sheyenne and the Red rivers. A natural water discharge from the east end of the lake has the real potential of causing catastrophic impacts to downstream users due to the documented poorer water quality in the east end of Devils Lake.
- 2) In less than five months, Devils Lake has flooded an additional 40,000 acres, which includes roads, businesses, homes, farmsteads and high quality agricultural land. Devils Lake is projected to continue to rise, placing land, buildings, infrastructure and livelihoods in immediate danger of inundation.
- 3) Rising lake levels are stressing the capacity of existing dike systems, roads acting as dikes and other structures not designed to retain water. Their failure would result in additional flooding of cities and rural areas, impacting land productivity as well as municipal and rural infrastructure.
- 4) Spring runoff added an additional 600,000 acre-feet of water to Devils Lake. Stabilizing the increasing lake levels may take several years to be effective, requiring the state to initiate immediate action to counteract the record volume increase.

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In an effort to address the widespread flood impacts in the Devils Lake region, the department finds that emergency rulemaking is necessary and is requesting the authority to implement interim emergency rules to reclassify stream water quality standards for a portion of the Sheyenne River. This action would allow an immediate increase of discharge from the west end of Devils Lake in an effort to stabilize or decrease lake levels, thus reducing the impact of flooding. Under the authority of N.D.C.C. § 28-32-03, emergency rules are appropriate if an imminent peril threatens public health, safety and welfare which would be abated by emergency effectiveness. With your approval, the Department of Health has the authority to determine that emergency rule-making is necessary. As part of the authority provided under NDCC 28-32-03, we must declare that the proposed rule be an interim final rule. It must be filed with the Legislative Council to be valid and finalized within 6 months after the completion of an appropriate public participation process.

We request your approval of the attached emergency rule.

If you have any questions relating to this matter, please contact me at 701-328-5150.

Sincerely,



L. David Glatt, P.E., Chief
Environmental Health Section

LDG/MTS:cc
Enclosures