

Summary and Critique - Devils Lake 'Agreement'

August 10, 2005

This preliminary critique is based on the August 5, 2005 joint government statement posted on the North Dakota Governor web site: <http://governor.state.nd.us/media/news-releases/2005/08/050806.html>

Content is based on recent sources in the media, and on government and environmental websites.

OVERVIEW - THE DEVILS LAKE OUTLET:

North Dakota can begin draining Devils Lake water into the Sheyenne River, which empties into the Red River and Canada's Lake Winnipeg, but the water must flow through an interim rock and gravel macroscopic filter, and be tested along the outlet's route and at spots along the two rivers.

Critique:

The 'agreement' does nothing to stop North Dakota from beginning to flush out the Devils Lake through the just-completed channel before any mitigation work is undertaken (the rock and gravel filter was already part of the planned outlet project).

North Dakota Governor John Hoeven has been quoted as saying that the joint statement issued by the U.S. State Department and Canada's Department of Foreign Affairs simply outlines a series of principles, has not been signed by anyone and is not legally binding. This has been confirmed by Canada's Ambassador to the United States, Frank McKenna.

MONITORING:

The participants will work with the International Red River Board to develop and implement a shared risk management strategy for the greater Red River Basin, involving an early detection and monitoring system for water quality and aquatic nuisance species throughout the Basin.

Critique:

This level falls significantly short of previous calls by the Manitoba and Canadian governments for referral to the IJC and full review. That review and its recommendations would have been based on the provisions of the Canada-U.S. Boundary Waters Treaty of 1909, a responsibility of the IJC. Potentially this is a joint decision to monitor pollution after it has occurred.

FILTERS:

North Dakota has already built a rock and gravel filter for the outlet's water (at a cost of approximately US \$50,000); the U.S. and Canadian governments are to cooperate to build a more advanced filtration and/or disinfection system expected to cost \$18-million (U.S.) or more, taking into account the results of ongoing monitoring and risk assessment.

Critique:

The gravel filter is macroscopic (as opposed to microscopic) and only restricts the flow of organisms and particulate matter that are greater than two millimetres in diameter. Bacteria, microscopic invasive marine life or dangerous chemicals and contaminants such as sulfates and mercury will flow freely through this filter.

'People to Save the Sheyenne' also commented that there is nothing to force the water from going through the gravel filter; if it fills up, the water will simply pour over the top.

Completion of the more advanced filtration system could take more than a year and water is expected to start flowing almost immediately.

Financing of the co-operative Canada-US initiative to build a more sophisticated filter is not specified in the 'agreement'. North Dakota has been quoted as saying it is not required to pay a cent to build or operate this filter. Canada has adopted the polluter pays principle, which should be reflected in decisions about any filtration system.

INVASIVE SPECIES:

"[I]mmediate measures" will be taken to prevent the spread of any aquatic nuisance species that pose significant risk to the Basin, should any be identified through monitoring, and testing.

Critique:

It is not clear how these immediate measures might be or how they might work, given that the species will already be present in the waterway by the time they are detected. Premier Doer was quoted as suggesting that disinfection was one possibility.

BARRIERS:

Manitoba will finish building culverts in an earthen barrier along 48 kilometres of the Manitoba-North Dakota border. US farmers in the area say the barrier pushes water back onto their land, rather than allowing it to flow north naturally.

Critique:

Manitoba farmers and communities will have significant increases in US flood waters to deal with.

MISSOURI RIVER:

About the possibility of an inlet being built from the Missouri River to Devils Lake to help stabilize lake levels, the statement by the Governor of North Dakota "affirms it does not have such a current intention, plan or prospective proposal to construct such an inlet; and the US federal government affirms that it is prohibited by federal law from expending funds towards the construction of such an inlet". This project was under discussion in the 1980s and early 1990s when Devils Lake levels were declining.

Critique:

The joint statement affirms there is no current plan to divert water from the Missouri by means of an inlet, but it does not specifically forbid construction of such an inlet or other diversion. North Dakota Senators have indicated they do not consider this language binding, and other proposals to increase North Dakota water resources – like a Lake of the Woods pipeline – remain to be dealt with in the future.