

MINUTES DEVILS LAKE WATER IMPROVEMENT DISTRICT REGULAR MEETING

COUNCIL CHAMBERS, CITY HALL, 3rd Floor June 7, 2012 6:00 P.M.

PRESENT: David Skirvin

Brian Green Noel Walker Kip Ward Randy Weldon

ABSENT: None

AUDIENCE: Barton Howe, Greg Whitaker, Pat Dooling, Michelle

Highland, Gerald Morrison, Mitchell Moore, Dana Moore, Karen Richards, Gary Ellingson, Dennis Nisbet, John Flory,

Kathy Cramer, Richard Hughes, Douglas Pirie, Mark

Christie, Doug McGowan, Susie Henderson, Joanne Daschel,

Alex Ward, Pat Christie, Mark Highland, William Henderson, Paul Katen, Jack Strayer, Bill Piggott, Lisa Voelker, Angie Wright, Doug Holbrook, Dale Walker, Tony

McCaslin, Bud Depweg and others.

STAFF: Lake Manager Paul Robertson, Seth Lenaerts, Project

Manager

MEDIA: Patrick Alexander, The News Guard; Dave Price, Oregon

Coast Today

The Board held an Executive Session at the DLWID office prior to this regular DLWID Board of Directors meeting and public hearing and budget hearing.

Skirvin called the regular DLWID Board of Directors meeting to order at 6:00 P.M.

Consent Agenda for the May Minutes and the May Financial Report

Mark Christie asked Green to request that the Minutes of the Previous Meeting be amended to include an insertion right after "he thinks they should have another month to consider it." "Please feel free to inundate us with more information—empirical stuff, not just that you would like the dam taken out or not taken out, but solid reasons why, like you have already given us, but more. We can't get enough information."

The Board voted unanimously to approve the May Minutes with the requested changes, and approved unanimously the May Financial Report.

Public Comment on the Regular Meeting—None

Special order of Business

Public Hearing

Lake Level and Oregon Water Right Certificate #69267, Permits 52672 and R-11968 Opening of the Public Hearing, Introduction and Hearing Procedures

Chair David Skirvin made a statement to the audience that the DLWID is holding public hearing to take input on the lake level and the District's water rights. He said he would call those wishing to speak up in pairs to hear from those members of the audience who were unable to be here last meeting. Others wishing to provide additional testimony will be given time as well.

Skirvin noted that 31 people had signed up to speak. He would, therefore, allot three minutes per person for testimony, thus consuming one and a half hours for the public hearing.

Green made a statement. One point that had been made by a member of the audience was that two of the Board members should recuse themselves because of a conflict of interest. He said the issue was being skewed and he wished to clarify the meaning of the term "conflict of interest," based on the official description in the Guide of Public Officials based on the Oregon Government Ethics Law from the Oregon Ethics Commission. "Conflict of interest" refers to a public official receiving financial benefit or detriment. He said that, obviously, the decision of whether to raise or lower the lake level would generate no financial gain or detriment for these two Board members. The fact that one or both of them made their positions clear before they were elected to office has no bearing on this. He went on to analogize the issue with an individual running for Congress or another public office, and reminded the audience that people are voted into office by people who think the way they do. We elect people because we agree with their positions, not so that we can accuse them of a conflict of interest. "If your intent is to be persuasive, you are losing credibility with me if you persist in this viewpoint."

Staff Report and Presentation (FAQ Handouts) (Presentation is on DLWID website.) This was the second public hearing on the lake level.

Robertson thanked the audience for attending. He showed the PowerPoint on the history of the lake, including background information and reiterated the Erosion Study conclusions from the Tetra Tech, Inc. report. Below is the summary from the previous minutes which were also covered again in this second hearing.

Some of the highlights were: Background. The lake is 14,000 years old.

Since 1859, the lake has been owned by all Oregonians; it has a 10.4-foot meander boundary. Devils Lake Facts.

In 1986, the original structure was installed as a fish fence; in 1991 the District began the process to apply for a water right. In 1996, the District obtained water rights, and in 1997 and 1998 the impoundment was first installed under permit R11968.

In 2006, the dam was repaired; in 2007 to 2009, complaints and accolades began

In 2009, Oregon WRD reviewed and declared 9.53 above sea level the maximum water level allowed.

In 2011-12, an Erosion Study was performed to evaluate impacts on the SOS program and erosion.

Impoundment Structure photo was shown. It is 18 inches high, constructed of wood and steel on concrete.

From the early records available, between 1983 and 1991, water level fluctuated between 8.3 by mid summer and 10 feet by winter.

1998 - 2009, data shows the variability of the lake with winter lows going down to 8.5 or 8.3 and in late fall up to 10.4.

The dam is in operation beginning April 15; it is pulsed every other night May 15 through May 31 to assist the Coho's migration.

Topics to be covered were listed.

The Erosion Study from Tetra Tech, Inc. showed that as much as two miles (16%) of shoreline is eroding. This is caused by summer winds hitting the areas of highest erosion; these areas are also vulnerable to boat wakes.

More than 18% of wave energy comes from boat wakes. The dam has narrowed the impact zone.

Recommendations & Considerations: Active Shoreline Restoration; remove invasives, plant native species. Opportunity to limit erosion with the impoundment structure is limited to 18"

Coho salmon are on the endangered species list; their status is threatened.

The dam impedes outward migration May through mid-July.

Pulsing the dam—pulling sections of the dam every other night—does help somewhat.

Bass live in the lake and actually prey on the Coho.

The District modified the Rock Creek Dam upstream; created an infiltration gallery on Green Acres

Other fish and wildlife species: Sea-run Cutthroat and Pacific Lamprey

Erosion prevention measures can protect human homes, but at the expense of fish and wildlife.

Impoundment Right was for water quality.

The dam blocks and traps; flowing water creates more oxygen and permits additional flushing.

Wetlands work to trap nutrients; inhibit bluegreen algae.

Wetlands store water that helps maintain the lake level throughout the summer.

Septic Systems: dam raises that saturation of soils reducing effectiveness of treatment. 685 systems in watershed 1/3 of which have no record making them pre-1974 installation.

Recreation & Accessibility: Long history of recreation predating the dam, public access points established pre dam as were most private docks. Canals dredged many decades prior to provide otherwise landlocked properties access to the water.

DLWID representation and mission restated.

The entire presentation can be found on www.dlwid.org

Questions and Comments from the Board

Green asked why the hole in the dam could not be made wider.

Robertson replied that you would then lose the impoundment effectiveness and more water would be released.

Skirvin said you would decrease the effectiveness of the dam.

Discussion ensued regarding the effects of enlarging the hole in the dam.

Walker asked how the District obtained the permit to impound water.

Robertson said the Coho were not listed as endangered until 1998 after the water rights were issued in 1996. Today, if you were applying for impoundment, they would have a lot stronger eye on the issue, he said.

Walker asked about the likelihood of increased cyanobacteria.

Robertson said if water flows naturally, you have a much healthier system. There are impacts when you create shallow areas that heat up quickly. He said he does not have a clean answer, but it is a consideration.

Walker said the last couple of years, the lake has been good.

Robertson said temperature is the issue—it is driven by the sun.

Walker said that we are trying to obtain more grass carp; how will they be kept in?

Robertson said that ODFW has ruled and provided a letter to the District that we do not need the fish control structure for grass carp. So, we have not had a "fish control structure" since the mid-'90's.

The structure itself got rammed by logs during winter storms. The question was—was it needed since the carp would perish if they entered salt water. Most fresh water fish will not enter salt water.

Skirvin asked how the size of the fish passage was established.

Robertson replied it was the bare minimum.

Second Comment Period

Barton Howe: Teacher at Taft High. He said he takes nobody's facts for granted. Devils Lake has seemed precarious. The lake seems to be filling in. He said studies tell that humans manipulate the process. He understands that removing the dam could drop the lake 18 inches; however, he doesn't understand why this is a problem. The long-term effects of harmful blooms kill water fowl. He lives three blocks from the lake and he and his daughter like to walk along the shore. His position is to remove the dam and lower the lake level.

Greg Whitaker. Has a Lake Drive vacation home. He asked that the Board consider the people who are going to speak. After discussion a year and a half ago, why are we discussing this issue again? He said he cannot believe that anybody on the Board would want to lower the lake to improve their water skiing. After listening to the erosion study and the presentation, he feels there is an agenda to lower the lake—the slides are slighted toward lowering the lake. He referred to some of the slides that he felt were slanted toward lowering the lake level. None of the items referred to the conclusion of the erosion study. He asked the Board members to get a fact-based presentation and remain neutral. Winter conditions set up the greatest potential for erosion, he said. Carefully consider what has been given in your reports and use it to make your decision.

Walker said he wanted to make a comment on the 18 inches. Doesn't 18 inches work out to be 18 percent of the volume of the lake?

Robertson: You would have to look at it from the volume of the lake.

Pat Dooling. (See Dooling's attached comments on Revised Bathymetry Survey.)

Skirvin: Did you do any measurements? Dooling: Extrapolated measurements.

Michelle Highland. (See comments attached.)

Gerald Morrison: It is critical that the dam be installed as soon as possible. He said he has been out kayaking and has experienced a drop in the lake level and has been out in the canals where a submerged bottom is becoming exposed. He experienced scraping the bottom of the lake. The State was given the responsibility of caring for lands and submerged lands and navigable water ways used for fishing, commerce, etc. of the beds and banks of many rivers and lakes in Oregon. The Department of State Lands, DSL, is responsible for reviewing and improving water way uses. They would be interested in knowing that the lower water line will fall because of the impoundment being removed. He said he has an active registration and pays fees for docks. Those fees are being doubled. Lake levels will decrease in areas of high recreation. Those are what we are being assessed on. There are several concrete walls along the north shore. Walls are important during winter storms when wave action becomes ocean like. These walls have been in place since the '40's. It is irresponsible to let the water fall enough to undermine the footings of these walls. Soils behind the walls have eroded. You can see where people have had to fill in behind the walls. He invited the Board to come take a look. He is in favor of not lowering the water of the lake.

Mitchell Moore: Has a home on NE Loop Drive. (Comments attached on water temperature; information he said he discussed with a limnologist.)

Karen Richards: S. W. Hwy. 101. Works with Kip Ward. Owns the Nelscott Wine Shop and manages the Eventuary. She believes the lake should be lowered. Wetlands in the lake are like human lungs and they need a certain amount of water to function. She said her 14-year-old daughter understands this analogy. The lake is for everyone and should remain healthy—keep the natural water level. There are enough reasons for it. Although she is not a lake property owner, she has a right to state her opinion.

Dave Price: He said thanks to all the Board for their service. He said he keeps coming back to how the philosophers would weigh in on this. They would agree that the needs of many outweigh the needs of a few. He's a 15 year member of the community. Has a vested financial interest. Businesses depend on the beach, commercial districts and Devils Lake. Tourism is becoming greener and Lincoln City must lead the coast in the protection of natural resources. He was here when the impoundment began and remembers skiing and kayaking before that time. Beyond shoreline protection, doing the right thing for threatened fish species and the environment cannot help but pay bigger dividends. You cannot run Devils Lake like a backyard pool. It is not fair to its inhabitants, it's not fair to its heritage, and it's not fair to its taxpayers throughout the District those who funded it for so long. Ask the thousands of voters, do you want to pay for a pool boy or do you want to enhance Devils Lake.

Gary Ellingsen: 3417 S. W. Anchor. Disclosed that he is a member of the Lincoln City council. He has not discussed this matter with any other council member, and the council will not take a position on the matter. He has paid attention to lake issues. In the '90's, people volunteered to sit on a review board of coastal shore lands. He said it was supposed to consume a few months and went on for a few years. They went over wetlands, among many other things around the lake and talked about the importance of wetlands to the health of adjoining water bodies. He does not want anyone to think he is not concerned about all the issues. He thinks that some things might be contradictory. He suggests trying a period of time where the lake water is not impounded and see if everyone's suppositions actually would occur vs. what good might come of a natural level and weigh the benefits.

Dennis Nisbet: 3851 NE 51st, Neotsu. He is not for lowering the lake. Has heard that this will not affect docks. Forty 40 people use his dock and half the people pay for launching privileges. He said all but one spot of his dock would be useless, including his ramp if the lake is lowered. He wants to remind the Board that it would affect a lot of people. He measured down one foot and if the lake were lowered to the 8.15 feet, he could not get a boat out to launch. At the ramp, the depth was 2 feet.

John Flory: 4676 N.E. Loop. He spoke last month. He said his boat is already sitting on the bottom. Tonight he is inspired by one lady's report that said home owners are only concerned about their properties and not concerned about anything else, for instance the fish. He believes that there are ways to accomplish more than one objective and he encourages the Board to consider multiple objectives. Bonneville has tried to figure out multiple objectives in trying to manage the fish, along with power issues. He urges the Board to consider that whatever decision is made some thought be given to some way to accomplish a win-win situation with multiple objectives. His experience is that if you dig hard enough, there will be some ways of accomplishing a win-win solution.

Skirvin asked which side he is on. He is on the Thompson Creek side. Skirvin asked if he had any solution ideas. Flory said none at this time, but he will provide some feedback.

Dennis Nisbet: Spoke again and said that in the 15 years that he has been there, he has never had any erosion issues in the summer; they have always been from the winter high winds.

Kathy Cramer: She lives on Loop Drive. Her biggest concern as a nurse is that bacteria grow in the warmth. Robertson was unable to say that decreasing the lake level would increase the temperature. He said that Coho salmon already cannot live in the lake because of the warmth. She said that bacteria will grow and kill more Coho if the lake is lowered. She said the lake will warm up if you lower the lake level.

Richard Hughes: He has a home at NE 20th. He cannot use his boat and cannot get it in and out of the boathouse. Lake level is too low. Last year, a neighbor hit bottom in his area and damaged his propeller. He has been a lake user and lake front owner since the '60's. He has seen weed growth where the lake was nearly choked. \$30,000 was spent researching grass carp to clean up the lake. If he were to come to the lake users and suggest that they not put in the carp, drain the lake and put in dangerous objects, they would have him committed. He is the loser and said that the board should either commit themselves to not using the lake or commit everyone to not using the lake. He has seen waves that come over his dock and onto his property in the wintertime, but no wave comes even close to his dock in the summertime.

Kathy Cramer: Added, "If we do get more carp for the lake, we need to put up a barrier to keep them in the lake or they will die."

Douglas Pirie: NE 10th Street. Pirie said there are three simple truths.

One, shallow waters warm more quickly than deep water masses. Therefore, less thermal mass and more thermal mixing through the thermocline will lead to deeper warmer waters and more potential algae growth in the summer and fall.

Two, in the shallower waters, more sediment resuspension will take place from boat wake waves and wind waves. This is due to higher horizontal shear stress velocities on the bottom goo.

Three, the more the bottom muck is re-suspended, the more the algae will grow in the warmer waters. Given these three truths, why would you purposely decrease the depth of Devils Lake?

There are boats on the lake that are much deeper than his. A Hobie Cat boat is not the design vessel for draft considerations for Devils Lake. Any fixed dagger board boat will have significant damage if hitting bottom or a bottom snag and for a Cal 20 or Venture or Mac 26, the 18 inch less water could be critical. Even a small El Toro or Laser will have troubles with the decreased depths that are being considered. The conclusion reached by staff concerning the erosion study is full of holes. He said he is a retired coastal engineer with decades of experience and would be happy to discuss these issues with anyone.

Mark Christie: N.E. Loop Drive. Said he is happy they are talking about the fish passage. As Board members, it is important to discuss information that is factual. (See comments attached.)

Skirvin: Last meeting you said that the highest recreational level was mid-June to mid-September.

Is your concern passage during recreational periods?

Christie said during the time when the impoundment structure is in place. The bottom line is that none of the Board has vetted the issue at all—it was brought up for the first time it came up was last meeting. Last month, Green was considering removing the dam completely for fish passage. He feels that nobody has done any due diligence.

Green said what he said was to leave the boards out until the day of this meeting to allow the fish passage because we know when the fish passage is. Knowing that we are not going to suffer any loss of lake level, we are at 9.1, there is no problem.

Christie said he would listen to the audio.

Robertson said that he wanted to clarify that this issue was not just brought up in May, 2012. This issue was brought up in April of 2009 when we had this concern years ago. Fish passage was brought up then and we have been in dialog with the State and have had reviews to see if we were meeting the minimum requirements. It was not just dropped on the Board in May 10, 2012. If you want to implore additional fish passage, you would open up a larger section of the dam. We cannot do a fish ladder.

Doug McGowan: Lives at Sandpoint. He provided some photos of his property. He has been on the lake for 20 years and replaced his dock in 2009. He has had adequate water to do everything until last summer, which was the first time it was a challenge. The only way to dock his boat was to get out and push the boat in. To take the lake down further would be disastrous. He said he has taken measurements and his dock sticks out 45 feet; 33 feet of that dock would be high and dry if the lake is lowered. There will be no swimming for the grandkids. There will be no fishing or swimming for recreational users and all public users. One of his granddaughters wanted to go swimming and she had to get on the outside of the dock to get out in the water. It isn't safe out there. You start thinking about swimmers and they are going out into the body of the lake to swim, but not only at Sandpoint Park. He does not see any acknowledgement of the effect this will have on human beings. That is what is missing here.

Susie Henderson: She has a home on NE Loop Drive. (See attached comments.) She is concerned about preserving one of the few recreational lakes on the Oregon Coast. Should the District abandon the dam, 330 million gallons of water will flow into the Pacific Ocean.

Joanne Daschel: She is a full-time resident and business owner in the District. She does not live on the lake, but a few blocks away. Lakefront homeowners are not the only ones with something to lose here. We would like to support the restoration of the natural hydrologic cycle of the dam. The salmon cannot speak tonight. They are the ones who have the most to lose. We are all stewards of the lake and it is a privilege and a right to speak out. Please vote to lower the lake.

Alex Ward: He noted that he was a city council member. He thinks decisions are much harder when there are people who disagree. He said what is missing here is education. He encouraged the audience to stick around and to be certain that the agenda is to do what is right and what is good in the long run.

Dana Moore: She has a home on Loop Drive. Last month, she brought a petition with 200 signatures. She would like to see the lake level maintained at current levels. Not just for the

home owners, but for people in and outside of Oregon. Tonight there are another 420 signatures, 80 of whom are local. They remember the lake before the dam and do not understand why we would like to go back to the problems. ODFW is in favor of the way this it is being handled. Let's just keep it as it is. Why go back?

Pat Christie: She has a home on NE Loop. (See comments attached and hard copy of comments of all the petitioners in the binders in the DLWID offices.) She referred to the petition containing over 400 signatures from all over the state—not just locals. The message here is that the District should keep the current policy of 9.53 feet. 87 people provided a comment as to why they signed the petition. She read comments from some of the people who signed the petition.

Mark Highland: He has a home on NE Lake Drive. He said the audience is providing testimony that they expect the Board to use to make decisions. We would like to see the results of your own due diligence. He said, "You were entrusted to either agree with or challenge the decisions of Paul Robertson, lake manager." How many marine biologists have each of you consulted with to critique the lake manager's presentation? Paul said bass would wait in the open for the smolt to come out. How many of you agree with this? Ward said that from some of the reports he has read, bass do eat the smolts. Highland said he has talked with people that say it just does not happened—bass seek cover and do not wait in the open. He wants to make sure that the Board members vet this information. He said regarding Jerry Morrison's comment on sea walls for 40 years (he is at the north end of the lake.) Highland's folks' house is west facing side of Sandpoint that took the brunt in the summertime of heavy winds that come off the coast and from the boats. From 1968 within ten years, they had to replace the footings on the wall prior to the dam. Shoreline and water level was so low the wave action would wash away the ground that supported the sea walls. Ten years later, they had to do the same thing again. The last set of footing was just before the dam; he checked recently and it is still intact because the water level has been maintained over this time. Finally, he said, "We have seen the lake and wildlife in all kinds of conditions over the past 40-some years and it has not been better as it has the last few years."

Jack Strayer: Has had a home on NE Lake Drive for 30 years. (See attached comments.) He has reviewed the reports and would like to offer that the Coho run is the strongest of the coastal Coho runs. The Oregon coast Coho is endangered because of global warming and ocean conditions. He said on Slide 84, predation is shown as from large-mouth bass. The bass are the only ones who can eat Coho; however, lake bass predation is not significant. Ocean conditions and global warming are much more dangerous.

This is a tough decision that the Board has to make. There are 84 slides in the FAQ. He urged the Board to listen to the testimony, discuss the issue, and maintain the lake level at 9.53.

Ward asked Robertson: Do you know what the temperature of the feeding at Rock Creek is? Robertson said it is substantially cooler, typically might be 56 degrees, and the lake at that time might be 71 degrees. Cooling of the lake is a result of the ocean air. Ward asked a question related to volume and cooling. Robertson stated, by example if you have less volume and add an ice cube, it will cool faster.

Strayer: Cooling would be negligible.

William Henderson: "Good Evening my name is Bill Henderson I have a home on NE Loop Drive. In an attempt to simplify the process of bringing the various opinions that have been expressed on this topic to a successful resolution we have drafted a resolution on which the board should act tonight. This resolution contains concessions, which address some of operational issues related to the impoundment structure permitted on the D-River. With all due respect, there seems to be a bit of confusion on the part of the proponents of abandoning the use of the impoundment structure, as to the reasons why and the benefits derived. Originally, a 6-inch drop was under consideration solely to reduce erosion. This evolved to full abandonment of the District's water rights to control erosion, as well as save threatened salmon, reduce algae and E.coli issues, restore wetlands, control invasive species, and protect us from septic systems. We were told all of this could be accomplished without impact on property or recreational use of the lake. It seems somewhat fanciful to think that the removal of the dam would cure almost every ailment in the watershed. Many speakers in two different public hearings have addressed the flaws in reasoning that were presented in support of this action as a panacea for Devils Lake. In the end, it is up to you as a board to decide what action to take.

Let me take just a moment to review two of the major points shared with you. First, please recall that you were told that the erosion study provided by Tetra-Tech has proved to be inconclusive with respect to a definitive answer on the effects of lake level. Second, you should know that Robert Buckman from the Oregon Department of Fish and Wildlife has stated that the District is currently in compliance with their requirements. It is his assessment that the fish structure has been developed to be as fish friendly as possible and that water released each year for outward fish migration has been a successful strategy.

Oregonians have a long history of fighting for environmental matters and protecting the natural resources that make this such a special place to live. What has made our efforts successful is the balance we strike. We provide places for people to live and the places for them to participate in the activities they enjoy. Devils Lake is within the Lincoln City Urban Growth Boundary providing for residential development as well as access to a navigable waterway to be enjoyed by all.

All of us who live on or near the lake as well as those who come from other places to enjoy the lake also care about our environment. We are here tonight because we care about Devils Lake. It is in that spirit that we offer the board a draft resolution. A resolution that would garner the support of all who present it and it we believe addresses some of the operational challenges associated with the District's Water Right.

I have copies for you to review for subsequent action in this meeting. Let me take a moment to read you this draft resolution.

Board Resolution – Concerning the Appropriation of Public Waters and Level of DevilsLake

WHEREAS, Devils Lake is a multi-purpose recreational lake that is designated as a navigable waterway and is enjoyed by many Oregonians, and

WHEREAS, Devils Lake is unique in Oregon; as it is one of only a handful of lakes in the coastal region where unrestricted recreational boating is permitted by the Oregon Marine Board (OMB), and

WHEREAS, the District holds Water Right Certificate 69267, Permit to Appropriate the Public Waters #52672 and Permit to Store the Public Waters #R-11968, and

WHEREAS, ORS 498.351 and ORS 509.605 through 509.625 provide that no person shall construct an artificial obstruction across a waterway in which anadromous fish exist unless that person provides a fishway deem adequate by the Oregon Department of Fish and Wildlife (ODFW), and

WHEREAS, Robert Buckman ODFW District Fish Biologist in Newport has deemed that the District is currently in compliance with their fish passage requirements while operating their impoundment structure through the release of water as determined necessary by ODFW to permit outward fish migration, and

WHEREAS, the District has held two Public Hearings as part of its May 10, 2012 and June 7, 2012 board meetings, to allow the board to take public input on the lake level and the use and continuance of their water permits and certificate, now

THEREFORE BE IT RESOLVED, that the Devils Lake Water Improvement District Manager shall fully exercise the District's right to store and use water as defined in water right (#69267 permits 52672 and R-11968) at the maximum level of impoundment of 9.53 feet MSL by operating an impoundment structure on the D-River.

THEREFORE BE IT FURTHER RESOLVED, that the period of operation will begin April 15th of every year and continue to October 15th of each year.

THEREFORE BE IT FURTHER RESOLVED, that the Lake Manager shall preside over the accommodation of fish passage from commencement of operations until May 15th each year, by methods defined by Oregon Department of Fish and Wildlife.

THEREFORE BE IT FURTHER RESOLVED, that at the Board's sole discretion construction of the impoundment structure may be delayed until June 1st of each year, provided that the lake level be maintained to a minimum level of 9.0 feet MSL. DATED this 7th day of June 2012.

Chairperson

Secretary/Treasurer

Skirvin said he appreciated the draft of the resolution from William Henderson and the Board would take the item into consideration.

Paul Katen: He said he does not live within the District; however, he has been a volunteer with the Salmon River Drift Creek Watershed Council and has done a lot of work in the Devils Lake watershed. He has been involved in the rescue of fish and removal of both dams on Rock Creek, and as recently as this week helped by collecting water samples. He said the reason the lake is listed as 303(d) was from work completed from 2002 through 2008; he was heavily involved in studying the lake. He is in support of removing the dam. There are lots of properties in the taxing district and those are the silent partners who are depending on the Board to make the best decision to help create the healthiest lake possible. There are many excellent reports and other issues of concern. Removing the dam and lowering the lake level is what he urged the Board to decide.

Bill Piggott: Has lived in the District 25-plus years and has not been involved for awhile since he has been living in the desert enjoying dry weather, but has been getting notes. He was astounded to hear this issue pop up. This is his first meeting in awhile. He wanted to go

on record as wanting the dam to stay in place. He was dismayed at the way information has been disseminated in the report and feels it is advocacy driven. He would like to see more professional management. There are a slew of things involved and this is an important topic that was never discussed before. All of a sudden people are saying that they want the dam removed. People have been looking for an opportunity to do this. In a short period of time from a nothing issue to tonight you are going to make the decision to remove the dam. You need to sit back and seriously consider an objective, professional, neutral approach to this issue, he said, there is a lot at stake here.

Dale Walker: Property at NE E. Devils Lake Road. Wants to keep the dam in. Wants the Board to consider the impact of the elderly getting in and out of their boats. Also, there will be hidden dead heads that are hidden in the lake and there will be some boat damage and injured skiers.

Tony McCaslin: Has a home on the Loop. He thinks that this is the most one-sided prejudicial of reports that he has ever seen. The lake manager should be a neutral party and not push his own agenda. Last month, we presented a map from 1977 to 2007, a 30-year period, that showed there was no erosion. Septic tanks were talked about affecting the water quality, and the Newport County employee spoke, who has been running the septic program for some 30 years, said that if every septic tank on the lake were replaced, it would not affect the water quality 1%. So, that is not a problem. Cyanobacteria has been a big issue with the lake manager, and yet he said that a 12-year-old boy would have to drink 12 gallons of water in an hour before he would be sick. While McCaslin believes the wildlife are important, they are not any more important than the people who own property and live on the lake. They should be the major consideration.

Robertson said he would like to make it clear that it was depending on the concentration. He may have been referring to drinking water standards. But when you get to 50 parts per billion, it can get down to a gulp or two. When you look at historic values of the lake, when you get 80 parts per billion of microcystin, it gets down to one gulp or a cup per child.

Bud Depweg: He has had property at Sandpoint since 1970, is 82 years old. He has two pieces of property—on both sides of Sandpoint. He said what the lake manager is saying is just wrong. His position should be eliminated and the Board should make more of the daily decisions and list them and pass them out to his new hired employee or one like him and save the salary that is spent on this gentlemen and all his maps, diagrams and emblems. Since 1970, the only problem is when the lake is over the top at Sandpoint going across Mitch Moore's side and likewise on the east side of Sandpoint when the waves come up the lake at 60 or so mph. He said Moore has called him and asked him to check on his boat. It has been beating against the wall. He said he has two docks that are 30 feet long--one on east side and one on the west side. He cannot park a boat right now. At 9.0 and 8.7 he still has water. There is water up to the wall, but if it is dropped 18 inches, he cannot get to the boat. He has dug the neighbors' boats out. He has two neighbors who cannot get in or out. This week the water has gone down 4 to 5 inches. He has markers that he can see the bottom.

When it was 9.7, a [measuring] ring is touching water. He is concerned that his dock and the sand in front of his wall will be 20 feet away. Another thing, he said the lake manager should

not be working in the office, but should be out around the lake. He said it is 13 miles around the lake

He can vouch for the fish and wildlife and the bass are not sitting and waiting for fish coming or going. The State does not want the bass sitting under your dock. Doug McGowan made the mistake of trying to make his dock longer and had to put in a new plastic dock. It is to keep the predator fish away that kill all those minnows. He said time and money was spent getting the fish. Speeches were made at bass clubs, both in the valley and in Portland. This dam that they have in has been knocked out twice by logs. Why put up with it again. Put in a concrete one that will hold the water level at 9.53 because you can adjust it with the proper dam. That fish weir can be widened out to what the fish want so that the salmon and trout can get back and forth and you can control those fish. They've got them all over the state. You've got the money in savings. Go ahead and put it in so that the lake is at the proper level for everyone.

One lady in the audience said there is hardly any water left at the Regatta Park for the kids in the swimming place. Families can go there and there is no water because the water is so low. She thinks they should put the boards in so the water comes up for the kids.

Lisa Voelker: 1321 Pepperwood, Lincoln City. She said she was a former member of the DLWID Board, and she was also on the Goal 5 & 17 Committee. She said the Board's mission was to identify and suggest protections for this natural resource. The report included the scientific data that included Devils Lake as a significant natural resource. She said emotional argument is a part of a Democratic process; however, the lake is a complex entity. In response to an earlier comment, regarding the flow, flow is answered by dimensional analysis and there are many different variables in altering one component if that equation significantly affects the outcome and is as simple as applying a percentage ratio. It is that kind of fact and knowledge that is required to make a scientific decision. Shoreline management is integral and directly proportional to water quality of the lake. In 1948, the Federal Water Pollution Act was created and optimized in 1972 with the Clean Water Act followed by the 2010 U.N. Resolution that clean water is essential to the realization of all human rights. Therefore, it is the septic system variable that I wish to address tonight. The septic system's purpose is to effectively accept and treat liquid waste water. Their function requires discharging waste into the soil for treatment and disbursal. A soil must be aerobic, that is, it must contain oxygen for treatment to occur. Biological contaminants are absorbed and rendered inactive within a few feet of the absorption field depending upon the type of soil the amount and concentration of waste and the age of the system. Most septic systems have only a 20- to 30-year life. Waste water flow from a home with a septic system is about 70 gallons per person per day. The aerobic zone below the soil must be at least 2 ½ feet thick for a three-bedroom home. When septic systems are close to the lake and are saturated during high water periods, they leak waste into the lake. When shorelines erode, the distance between the septic system and the shoreline becomes shorter, making it more likely that the liquid waste can and will move through the soil bank and then to the water. This can happen, even though your system appears to be working well and complies with local codes. When water levels are high, the soil is soaked and is no longer aerobic, but is anaerobic without oxygen. The wastewater moves rapidly faster than the soil can treat it. All soil pores are filled with water. What are the effects of increased sewage into the lake? A small amount of

additional phosphorous in the lake can make a huge difference in the amount of aquatic weeds that grow during the spring and summer. Only one pound of additional phosphorous creates 500 pounds of additional weed matter. Additional effects—hepatitis, dysentery, typhoid fever and acute gastrointestinal illnesses are spread by bacteria and viruses and parasites in the waste. To respond to an earlier comment, just in Oregon, we have gastrointestinal diseases that have occurred in Devils Lake in the 30 years that I've lived here and I know it was a concern last year about the blue-green algae blooms because a dog died in one lake, having just licked a little bit of cyanobacteria water. So, it does not take 12 gallons. Again, it depends upon the concentration. The health hazard to Devils Lake under the conditions of the Clean Water Act could warrant action by the State Water Board. Water quality should be a high priority for everyone in Lincoln City, in the State and in the country. And, for that we rely on science. Correct testing of lake waters in conjunction with the same for all 643 septic systems within the watershed would provide solutions and answers, favorable or not. Removal of the dam should be based on scientific fact. Regardless, septic systems, all 643 of them, should be routinely inspected.

Doug Holbrook. He said he lives at Southwest 8th Street. He said when a paid professional puts together a scientific report and opinion, he would be inclined to follow it, unless there is a substantial reason not to. He said John Oksenholt had to leave before he could comment. He believes that more than half the people who have spoken are fearful of what the change in water level might cause to their property. Holbrook feels that the fiduciary duty of the Board is to maintain the water quality of the lake, from federal directives, and also simply because the health of the lake is in everybody's long-term interest. You have a bevy of scientific opinions on how you can improve the lake. He is an advocate of removal of the dam.

Lisa Voelker: She said that her husband, Tom Owczarzak, worked for three years to coordinate the building of the Regatta Grounds to create Sand Castle Park. The water bounded by the lake is so integral for children of this community. Does not know what the levels were pre 1997 and 1998, but what was the impoundment system was put in, but what was condition of all of these docks pre impoundment? Is it true that they won't be useful if the impoundment will be taken out? Was there dredging before?

Angie Wright: Said she Lives on 4763 NE East Devils Lake Road. She said she logs miles on the lake and is working toward a race that has been moved to September. She just logged over 20 miles on this 3.5-mile lake. Why do people say there are no navigable waters? She has logged many miles. She lives near the north end of the lake and is concerned about the creek being too low. She is also concerned about her neighbors at Sandpoint; suggested they share dredging responsibilities with the landowners. She is a natural journalist. She is concerned with the habitat of the fish and mammals and the lake level being up in the summertime. She is concerned about people not being able to use their equipment; however, she would like to say that there is plenty of navigable water in the lake. Her recommendation is not to put the dam in.

Skirvin closed the public comment session at 9:25 P.M. He thanked those who spoke for helping the Board to obtain additional information and knowledge from which to form a decision.

Board Discussion and Decision

Skirvin asked that the Board spend a few minutes expressing to each other what their thoughts are based on what they have heard this evening and the information that each has collected.

Kip Ward: Said he wanted to express support for Paul Robertson and Seth Lenaerts and fellow Board members and the people who have tried to keep this issue a positive one. He said he has served on a lot of boards and projects. When he started on this position, he was excited that he would have a chance to do something for the lake. It has been choppy waters. He said he has seen people at his restaurant who are now angry. He does not feel that this issue should be so emotional. He believes people should seek the truth. The question is do we make a decision based on short-term gains or for long-term goals. What we decide tonight could cause major consequences. He has heard the voices. He continued: "Many of you believe me to be stupid, arrogant, non-listening and non-caring. After hearing and reading all the propaganda, you might believe that I want to destroy the lake and ruin the recreational pleasures for those who live on it. I have even heard that I'm a part of a conspiracy to ban motor boats. If this were true, then you have every right to be angry. But, I hope that you are not so angry that you close your ears and your minds. "When I was elected to this position almost a year ago, I believed that there was an implied contract with those of you who put me in office. I believe part of the contract was that I would try to find reasonable solutions, I would do my homework, and if I found solutions

that I believe to be true, then I would stand up for what I believe to be the truth. I would be neutral and objective. In short, I would be trustworthy and someone you could count on to do the right thing.
"The Erosion Study was ordered well before I took office and getting up to speed has been a

"The Erosion Study was ordered well before I took office and getting up to speed has been a challenge. I decided to look at the erosion problem through three different lenses: scientific, historical and empirical.

"When I started to work towards understanding the problems that encompass the lake, I first looked to the 50 or so studies that are on the DLWID website under research. These are available to the public and anyone can read them. I'm not a scientist—not even close, so when I came across terms like "lake stratification" and words like "bathymetry" and "paleolimnology" and dozens of others, I had to look them up and soldier on. The studies I found most helpful were not only the erosion study that is at issue, but the 1979 Study of Highly Eutrophic Lakes, the 1985 Devils Lake Vegetation Study, the 1996 Recent Paleolimnology of Devils Lake and the 2005 Updated Bathymetry and Paleolimnology Report. What I found was that all of the challenges of the lake are interrelated and it is impossible to get a clear perspective by viewing only one report. Lakes are very complicated systems.

"With this in mind, I would like to share with you my views regarding erosion issues. Issue #1.

The Devils Lake Shoreline Erosion Study.

Concern #1. The study did not conclude that raising the lake level would increase erosion. While I was not at all convinced by the data regarding estimated boat wave energy, I do

believe that boats do create waves and those waves will have some degree of erosive effect on the shoreline. The rest of the report I could pretty much accept at its face.

"While we hear that the final erosion study drew no conclusions related to lake level and its impact on erosion, clearly it did. The bottom line here is that at any water level, we are going to have erosion. Water is erosive and any time that you put water next to soil, you will have erosion. The more water/soil contact, the more erosion you will have.

"Concern #2. The study made no recommendations.

This is true, because it would have been improper for them to do so. It is our lake manager's job to evaluate the contents of the study and make his recommendations to the Board for a decision. This is the way boards and councils work. In fact, in these litigious times, it is not advisable for a study author to make recommendations. It can get them into deep trouble.

"So why do we care that much about erosion?

A natural way of viewing things is that the more water, the better. But over time, that comes with consequences. Another common view is if John smith loses his shoreline, that is his problem, my shoreline is armored. But there is trouble with that viewpoint as well. This is where some of the other studies come in.

"Although the lake looks wonderful on top, it is in serious trouble underneath. Core samples taken that go back to 1860 show a lake that is in serious decline. It is a natural process in the life cycle of a lake, except in our case, man has greatly sped up the process. Erosion is a two-sided coin. On one side, you have erosion and on the other side you have sedimentation. This is why when John Smith's bank fails, it becomes everyone's problem. John Smith's bank will become part of the lake's bottom. And as the bottom rises, you will have less water

"Back in the late 1800's, the sedimentation rate was stable from year to year. If you put it on a graph, it would look like a ship sailing on the ocean. However, in the early 1900's, things began to change and as the area became more populated, the sedimentation rate began to climb and climb and from the 20's until now, it has really taken off. Instead of looking like a ship sailing on the ocean, it goes straight up like a rocket ship headed to the moon. What this means to you is that the lake is filling in at a rate of about ten times what it was a hundred years ago. And it is likely speeding up.

How much sediment are we talking about? Currently, according to the 2005 Bathymetry Report, the lake is filling in at about 1 cm a year. Doesn't sound like much, but, if you do the math, that translates into 23,859 cubic meters per year this is volume to be equal to 9.5 Olympic-size swimming pools or 13 cargo loads of a 747 being deposited on our lake floor every year. And the rate is likely increasing. This does not take into account big unexpected events, like in 1964 when Oregon and Washington suffered massive floods and an area in the south end of the lake got three new feet of sediment in 48 hours. This was not the first or last big event to strike the lake and frankly, we live in an era of increasing big events.

"The erosion report as a stand-alone document may not seem a persuasive call to action. But if you combine it with the flipside of the coin, i.e., sedimentation, the arguments become very persuasive.

"In the end, the science is so simple. If you put more sediment in the lake, than you take out, eventually, the lake will fill up with sediment and you will have no water. Until that time, every year, you will have less and less water. And remember you don't have to get down to zero water before the lake becomes unusable for recreation.

"Even though they are different systems, I remember coming to Taft and crabbing off the dock on Siletz Bay in the '60's. I never measured it, but my guess is that it must have been 20 or more feet deep. While I was at the museum awhile ago, I saw a photo of a very large boat carrying many people in that same bay in the '30's. It was a thriving marine recreation area. My guess is that if you had asked someone in the '30's, they would have told you that the bay would always be there. Yet, now it's a mud flat due mostly to horrible logging practices. We have mud-flat golf tournaments where we used to crab. And that is just in one lifetime.

"Issue 2.

Damming the lake harms Coho migration.

I believe this to be true. In addition, it appears that the migration of the sea Run Cutthroat that run from June through mid-August and the Pacific Lamprey that run February through October are hindered as well.

"Issue 3

Damming the lake destroys precious wetlands and riparian zones. This makes scientific sense and commons sense as well. The lake needs the wetlands as it traps nutrients and sediment before they end up in the lake. The wetlands are your friend and an asset.

"Conclusion:

Erosion is our enemy, not each other. Erosion is a thief and it will steal from every one of you. We can't stop erosion, but we can slow it while we try to find a way to remove it. If we address erosion where we find it, we buy time. If we ignore it, eventually, it will find us. History bears this out.

"In 1953, the city of Ocean Lake pumped all of its raw sewage into the lake It was a practice that continued until 1970. They did it because it was the easy thing to do. It almost killed the lake and we are still profoundly affected by that selfish and shortsighted thinking. I hope we can do better.

"Recommendation:

My recommendation would be to leave the splash boards out of the dam this summer. Although I understand that this might be difficult for some, it will give us an unvarnished view of the lake at its natural summertime levels. This would help us make a decision that is based upon what we observe to be true rather than upon fear and speculation.

As an alternative, I would recommend that this issue be put on the November ballot to be voted on by all. This would not only help to involve and educate all of the watershed stakeholders all over the city, but would also help us resolve this issue once and for all.

Noel Walker: He said he was leaning toward leaving the lake as it is. It is a highly populated lake on the coast and he thinks that most people believe that they pay twice as much in taxes to live on the lake. They use the lake and they pay a lot of money for their houses. They have good reason to leave the lake at the current level. That's why they are here. He keeps hearing in the past month that there are the people on the lake who apparently think that it's their backyard pool and somehow they are not equal to the common man that lives in town. He continued:

"I have yet to hear anybody in town that even has a concern about what we do here. They are not advocates because the issue does not have that kind of weight with them. I think the study was a rotten one and we paid for something that we didn't get. Some of us pressed and pressed to try to get more answers and managed to get a few clarifications. But it wasn't conclusive. I have no faith in the study. I have business on the lake. I fear cyanobacteria rather than erosion. I have a degree in conservation. So it's not like I haven't concerned myself with that before. I don't fear erosion so much as I do cyanobacteria. We can address erosion. We just have to live through it. I'd rather deal with the erosion. Has Robertson discussed addressing cyanobacteria? I do not believe that the lake will be better by lowering the level. It's not going to get better. Is it going to heal itself if we lower the lake? I don't understand why we should go to that."

Randy Weldon: He said he feels that there is a misconception about what the board is looking at. We are not looking at lowering the lake during the summertime recreational period. What we have to decide is whether to continue to impound water in the summertime and artificially increase the lake level. Lowering the lake is a misnomer, but it drives a lot more emotional response. The Board is not lowering the lake. We cannot physically lower the lake, but do we continue to impound the water as we have the last 13 or 14 years. We are talking about artificially raising the lake in the summer. Anytime we get into conflicting issues, he said he continues to look at the mission: To improve and maintain the water quality and the environment for fish and wildlife and humans. He reiterated some of the mission.

How does impounding water fit within the mission? Does elevating during the summer improve it or does it hinder? Does it improve or maintain the water quality?

If you increase the erosion, that increases sedimentation. That's not positive. It also talks about improving the environment for the fish and wildlife and for humans.

If you give fish an 8-inch hole to go through on a 70-foot dam, it has to hinder their ability. They need that flow to give them the sense that it's time to go.

In improving recreational opportunities, he thinks it is a neutral. The first nine years, there was no dam on the lake and he recreates as he did before.

Some people have said there are logs and danger. But you have to boat smart. If you stay 100 feet away from docks and shorelines, you will not damage your boat.

Regarding the statements about the level at Leisure Bay that at 200 feet, you are at 3 feet of water, Weldon has checked it. At 100 feet, there is four to five feet of water now. So, there is a little bit of exaggeration going on.

As far as recreation goes, he does not believe "recreation" should include how you park your boat or how you access your boat. It is his responsibility as a property owner, if my dock doesn't work right it is his responsibility as a property owner with a lease with the DSL to go to them and they will do allow you to make changes and give you access to a certain point. A lot of people added hydraulics, boat lifts, water lifts etc., and now they are faced with making changes. If your preference is two boats instead of one, it is hard losing preferences now that we do not have that water. He said he just wonders when people talk about the boating issue, or docking issue, is it a boating issue or docking issue and where does personal responsibility come in?

Regarding the 18-inch issue, we know the base of the 8.03 feet is the foundation of the dam. When that was resurveyed, it was still 8.03 feet. Full impoundment is 9.53 feet that gives 18 inches of water. We resurveyed the staff gauges. When the staff gauge was showing 9.53 and measuring off the foundation we were showing 20 or 21 inches, WRC resurveyed it and found out that our staff gauges were off by 0.20°. Since the base of the dam is the same and our impoundment was the same and our lowest level was 8.3 with the readjusted staff gauge, our lowest level ever would be 8.5. If we go to our lowest level ever recorded, it is 3/100 over 1 foot. So you are talking 12 inches from the maximum we can have to maximum low that was ever recorded. We are at 9.15 and we are 4/10 from maximum impoundment and we are 6/10 from record low. Even though the foundation is 8.13 we have never had recorded those bottom six inches in over 20 years.

He said he has been looking at every one of these petitions and was interested to see the comments. People are afraid of what kind of water level they are going to have. He does not believe that is going to be an issue. He never had issues in parking boats or recreating when there was no impoundment structure and during the eight years when the first dam leaked. The new dam is water tight and we can impound water and hold water. We need to be doing what is best for the lake and put the lake first.

Brian Green: The word that caught his attention in the public hearing section was Mitchell Moore's "experimentation. Please do not experiment with lowering our lake level." Since 1997 or so, we have been experimenting with increasing the natural levels of the lake and periodically struggling to establish an increase in the water level. We've struggled because understanding and prioritizing the factors and effects of increasing water level is complex. We have identified all the factors that go into the decision. We've had lots of various helpful testimony—people's discussion of wave energy, Jack Strayer's report regarding water volume was helpful. And a lot of other reports were helpful.

One solution that he finds appealing because it is simple would be to remove the dam completely and let Devils Lake be a natural lake all year round. The virtue of that is that we would stop messing with Mother Nature and would stop creating the effects of the known and unknown. On the other hand, there is a lot that is unnatural that cannot be fixed no matter what we do and that is the result of intense development for the past 100 years. He said, "Where I'm going and provided that there is a status in which the harm to the lake environment can be minimized, is that we are going to have to be satisfied with a hybrid summer reservoir. I conclude that 9.53 feet causes and will cause unnecessary shoreline erosion and wetland inundation and possible septic system dysfunction that can be avoided

by less water impoundment. My observations in reading and listening to the input, I conclude that impoundment of raising the lake to a summer level of around 9.0 through July, then receding to 8.5 or 8.6 by the end of September would create the best balance in terms of maximizing the summer recreational and dock opportunities while minimizing our summertime erosion.

This draft resolution [Bill Henderson's] has some merit to it. I'm not sure I like all of it. I think that would minimize summer shoreline erosion, minimize adverse effects on wetlands hydrology effects, less inundation and more saturation during those months. John Flory said to try to come up with something that is a win/win. I'm not sure that this will make anybody happy, but I feel like it's a good place to be going with this. The lake really quiets down around 9 feet. It is not as rough and there is a sweet spot at 9 feet. During heavy winter rain, the elevation soars to 10 feet, and it rather quickly flushes and goes right back to 9 feet. It seems to like to be at 9 feet. So, I think that the large majority of the docks and the homes on canals, shoreline that is armoring the lake were all constructed before lake levels were artificially raised. I do not see how all of those structures are adversely affected by returning summer impoundment levels closer to natural lake levels while keeping them slightly elevated. I also find that we ought to discuss delaying the impound date to June 1 or June 15. Beginning before that date seems to have very little impact to the 9.0 level. Before today the level was at 9.1 and my information is that it does have a beneficial impact on outward fish migration. So, I think that that this resolution would be endorsed not just by people who live on the lake, but by our 11,000 or so constituents in our District as being the best long-term solution. I think you can see that I appreciate the presentations and the information from the folks that have been here for the last couple of meetings and the information they have provided."

David Skirvin: Thinks that he approaches the issue from the discussion of the journey that began in the '07 time frame when the impound structure the new dam was rebuilt was impounding at a higher level than it was in the past. At that time, he did notice several things in erosion. Big clumps of grass were floating down the lake in the summertime. He watched the wetlands in front of his property retreat. I know that the system that we look at here is one of multi-use and I think that it's important for all of us to look at finding a balance between what would be natural and beneficial and provide all of us with sense of stability and understanding. For some of us, it is private docks and for some of us it's public docks. I've struggled over time in researching and listening to all of you and I've read all of the petitions and the comments. I think that while a natural state is a wonderful dream for many places, the concept of an entirely natural state is not a factor here. If we go completely natural in one component of this watershed, it's difficult not to go natural in other components that we do. So finding that balance in what can be beneficial in a natural world and in recreating on the lake is really important to me. I want to reiterate Brian's comments that the lake likes to lay down and there is less rebound and a quieter system the lower we go. As you get lower, you reduce the vertical impact whether it's wind or boat driven waves against the shoreline. That's the truth within the system. As a home owner, I don't want to have to do anything with my dock, and if we went natural with no dam, I would have to move it. I have to consider that as an option. But as a Board member, I have to look at what is best for the water quality and the environment and think beyond myself and how I to choose to have that interface with the lake. There has been a lot of discussion and I've have

heard all of you and have asked questions as we went along. I am open to talking about where we go from here. We do not want to be seen as being punitive to anyone. I find a little bit of hope in this board resolution because I recognize what I have advocated for during the last several years. And part of what we've done as a Board during the last three years is we've delayed the dam going in. Mr. Strayer was on the board those first years and I respect the fact that he voted against it. We've always had 9 feet of water during that time period. And I seconded Jack's position at the time, but we didn't have a lot of people saying that they were stuck on their dock. I realize that after the erosion study, we started to get concerns when we started dropping below 9 feet, I think it was 8.9. Larry Rich called and expressed that he was concerned about his lift and his dock. I went to his house and we talked. I've heard that if it goes below 9 feet, people tend to have issues. I get the idea that things should be left as they are. On the other side of it, every spring, for the last three years, I've heard about how clean the water is. It is a complex system and we don't know why that is. But I look at the fact that the dam has been left open. I look back to '09 Lake Assn. Meeting where the HAB'S program was talking about one of the best things for cyanobacteria was to maintain flowing water to keep it at bay. Flowing water is a good thing. And, I wonder if leaving the dam open for helping fish passage also trickled into other components of the system and had a positive effect. For me, I think it's important from the perspective of some of the material that has been brought here today, to maintain that practice as much as we can. When school gets out until Labor Day or better if that's our sweet spot for recreation, we need to maintain a balance during that period by also providing a little bit of give and respect for the natural parts that are left in our system because we don't have what we had 100 years go. I think it's important to take that into consideration as well.

Ward said, "In an ideal world, nobody would be frightened, we would have no hostility. We could drive this road together. Everybody thinks that when we do something here, it's permanent. It doesn't have to be. I would love not to have to put the splash boards in this summer. I would like to not put the boards in and see what would happen. If it was terrible, we could put the boards in. I think that the 9 foot idea meets a lot of criteria. It sounds like it would take care of the wetland issue and a lot of the boat issues. One thing it doesn't take care of is the searun cutthroat and the Pacific lamprey issue. If we do this, can we widen up the hole? Why do we have to have the minimum? Why can't we have the maximum? Green: We have the searun cutthroat and the Pacific lamprey map and their migration. The structure has not blocked all their migration.

Robertson: It has impeded it, but it has not blocked it.

Green: No public authority has objected to the level of migration that we have as being severely impeded or has complained about the issue of these two, have they? Robertson: The major interest is going to be the Confederated Tribe of the Siletz. They have a lot invested in understanding the species. If you are looking for guidance or a stakeholder in Pacific lamprey, they would be the one. The U.S. Fish and Wildlife are stakeholders. This is a very important species to the tribe and it has become a species of concern within the federal agencies as well. They are working toward solutions and improvements and have contacted us in the past.

They (Pacific lamprey) are used to moving through the system, hanging onto a rock and swimming and hanging onto a rock. When you put the vertical faces in there, it is difficult

for them to go over things. The tribe has learned that the fish ladders really don't do a very good job for these species.

Green: There is less blockage at the 9.0 than at the 9.53.

Discussion continued on the migration of these two species.

Weldon: Is this something that we can adjust a little later? Maybe you could get a professional opinion? If we go from 9.53 to 9.0 through a large portion of the summer, the velocity is quite a bit less—the flow would be less.

Robertson: The other aspect of inward migration is velocity barriers—physical and velocity barriers. If you widen the gap, you can get the same amount of water out at a lower speed.

Weldon: Maybe wait a little while until we get a more professional opinion.

Ward: Would like a concerted effort on this issue. A lot of people are testifying about the welfare of the fishery. We used to have a great fishery here. A restored fishery would be wonderful thing for the lake.

Green: The size of the weir is not part of the water right.

Weldon: The thing I like about the 9 foot thing is that I feel this would squelch a lot of concerns about not being able to still utilize the lake. Not going to a completely natural state, hopefully, will give people some confidence.

Walker: The 8.03 is a scary issue. When I saw this resolution presented, I felt that it would be a good compromise instead of taking all the boards out and leaving them out. 9 feet might be right in the ballpark.

Green: I do not want to compromise just for the sake of compromise. There is a lot of benefit on both sides. While preserving recreational use, it goes a long way toward benefiting the ecological issues. People might have to modify their docks somewhat, so be it. But my observations are that there is not going to be an undue amount of that required.

Jack Strayer: The Coho salmon run on Devils Lake is basically restored. They go up and count the numbers. There may be a problem in the wetlands. The Boards are doing fine. Mark Christie said that the searun cutthroat is the strongest it's ever been. If you go through the D River in December, they are all over. The salmon run is restored. They are threatened because of sea conditions and global warming. It took the Federal Register five pages to say this. I'll send it to you.

Mitchell Moore wanted me to say that Bonneville solved their lamprey problem by curving their fish ladders so that they could go around the corners and they act like rocks.

Green: Do we need to delay the date as part of the water right so that we narrow the period from June 1 or June 15 to September 30 or shall we leave the dates as they are and do it on a year by year basis?

Weldon: I think it's important that you talk about June 1 or June 15. When was the last time we went below 9.0? I do not understand why the impoundment period is until October 15.when our drawdown ends September 30.

Green: What if we have an exceptionally dry spring? We don't have the ability to put them in early.

Ward: I like June 15, but I like the flexibility that if we run into trouble, they go in early.

Skirvin: So you are talking June 1 instead?

Ward: We need some flexibility in case there is some need.

Discussion continued on the dates to install the impoundment structure.

Green moved to request the WRD to reduce the impoundment right by an amount of water sufficient to keep the lake level at a maximum height of 9.0 feet.

Mitchell Moore: You are not required to impound to the height of your water right except for one day in five years There is no need to request a change in the water right. There is no risk. I believe we can have a conversation with the WRD. Just move your boards. Only move to impound it to a lower level. Please do not change the water right.

Weldon: I would like to have Brian continue in the avenue that he is going. I want to see a compromise; I can see it easily being changed down the road.

Walker: Only if it is needed. Do you want to see it decided for the future? Why do we have to change the water right? We want to take away their choice [in the future?] Discussion on whether this should be a permanent decision or not.

Skirvin made a suggestion that we do a summer at this level. We need to come to some form of permanency in the decision. The question would be what are we going to be able to live with? Is 9.0 right or is 9.2 right? If the Board was to work with a few summers of a plan of trying various things so that we can find a balance, is that something that we can live with? We do a stepped approach and take some comment back at the end of the season. See how it goes at the end of the summer and see if it is the reasonable course going forward.

Green: Wouldn't mind struggling with this another five years if it takes that to get it right, but what we've been hearing from a lot of people is why do you keep revisiting the issue. If we can all be mature enough to postpone a decision until we really get it right, I think that's great. If you want to start out with an understanding that we will take an honest look at this, why not take all the boards out for the entire summer?

Ward: But, as the devil's advocate, if we can have these conversations without people getting upset, this is a starting point. As far as being able to understand the decision-making process, we would know where we would be at August with no dam. That might be useful information to have. If you want to start at 9.0, I get that.

Robertson said impoundment must be discontinued August 1.

Skirvin: I propose that we take a hybrid approach here and work as a community to find where the sweet spot is. He said he would move that at this point we set a policy to install the dam on the first of June, leaving it open through the 15th of June provided the water stays at 9.0 with a height of 9.0 and a and a drawdown in August and September.

Green: If you really want to be mature enough to live with the struggle a little longer, you could look at all the possibilities, one of which is elimination of the dam. Skirvin: I get the sense that people want to be reasonable about it and if we all want to be civil to each other, we can find a good balance point. I'm willing to make the effort if everyone else is.

Skirvin moved that our policy be set that the dam will be constructed and the stanchions be put in place the first of June and we will begin water impoundment on June 15, or the earliest business day, if the water goes below the 9.0 between the June 1

and June 15, we will establish the dam with an impoundment height of 9.0 above mean sea level.

Walker seconded the motion.

Ward confirmed that there was an agreement about the fish.

Green: We don't have to mention terminating the impoundment July 31, because that's part of the water right.

All voted in favor of the motion. Motion carries.

Budget Hearing 2012-2013

Robertson presented the budget PowerPoint and the Budget Committee Recommendations.

Public Comment

Mitchell Moore. (Comments are attached.)

Skirvin moved to adopt the budget for 2012-13 as recommended by the Budget Committee. Ward seconded.

Skirvin read three separate Resolutions:

2013-03, Adopting the Budget dated 7th day of June, 2012.

Skirvin moved and Weldon seconded approving the motion.

All voted in favor. Motion carried.

Resolution 2012-04, Appropriating Funds.

Skirvin moved and Walker seconded approving the motion.

All voted in favor. Motion carried.

Resolution 2012-05, Imposing Taxes and Categorizing the Levy.

Taxes as provided--.2499/\$1,000 for properties within inside boundary.

.1280/\$1,000 for properties in the outside boundary.

Skirvin moved and Green seconded the motion.

All voted in favor. Motion carried.

Budget Hearing was closed at 11:30 p.m.

Unfinished Business

The Devils Lake Plan Septic Tank Revitalization Program

No Board action.

Save our Shoreline Campaign

No Board action. (See staff reports 2012-06-07 for an update.)

Vegetation Management

Project scheduled for the grass carp. Robertson has been in contact with Portland State University Center for Lakes and Reservoirs and received a response this afternoon. Nobody has had an opportunity to review the response yet. There are two proposed methodologies at two separate costs—one for around \$3,000 and another for approximately \$8,500. Robertson proposes that the Board appropriate within the current budget and consider providing the authority to him and/or a Board member to evaluate these in great detail and come up with a recommendation.

Skirvin asked if the work could be scheduled and not paid out of this year's budget. Robertson said if the Board gave the authorization, they would be committing to making those funds available. If it is the Board's intent to get this moving, you have some options. Green asked if this survey was going to be a requirement of Joe Eilers' grass carp application.

Robertson replied, "Yes."

Skirvin asked if Eilers had provided any guidance.

Robertson said Eilers had not seen the proposal. Robertson said a depth finder device could be purchased for \$800 to \$3,000. Eilers said for about \$1,500 you could purchase one. Skirvin asked if it would not be better to have a third party doing this rather than trying to do it in house.

Robertson said that Joe Eilers is recommending that we do monitor. If you are given the opportunity to get the grass carp, it might be part of the conditions. They will want to know what are the volume of weeds and the types of vegetation is out there. If you buy the hardware, the uploads of the data are by acre—it was about \$600 per major survey, every 25 meters across the lake. Your operating costs would be under \$1,200. It does not include plant identification that Portland State or another entity would do. If we go with their equipment, that data set is not uploadable to their system.

Skirvin: Is the Board okay with allowing Robertson to make the decision before the next board meeting?

Green said they should get Joe Eilers input to see what he would be comfortable with in terms of making the best possible presentation.

Weldon moved to allow the lake manager to spend up to \$10,000 after conferring with Joe Eilers to determine which of the surveys would be the best to purchase for the grass carp application.

Skirvin seconded.

Vote: Unanimous. Motion carried.

Sewer

Green said there have been two meetings in the last month—one with the city manager, three city councilors and mayor, the engineer, John Oksenholt and Brian Green. Out of that came about the main issue of whether there would be a required connection date. There was a discussion and the resolution was unclear. Green asked for a one on one meeting with David Hawker. The meeting was 2:00 P.M. The proposal is now there is a must-connect date of 15 years, longer than they wanted. At the beginning and every five years the systems would be inspected and if they failed, they would require connection within a certain period (Green was thinking within a year), and also upon the sale of the property and if a DEQ permit is required. Hawker is happy with these details.

Green will go back to the property owners to see if they still have a majority. Hawker will not recommend public financing—they will have to obtain private financing, i.e., the bank makes a loan to the city. If private financing is not available, will the city make financing available?

Riparian and Wetland Protection

Skirvin instructed staff to remove this from future agendas.

Communications Report

Robertson said his radio appearances are the second Tuesday of every month from 7:30 A.M. to 8:00 A.M. on KBCH. Podcasts of the program can be found on http://www.kbcham.com/home/

Safety Report

No accidents

MidCoast TMDL

See Staff Report of 2012-06-07.

Internship- Summer 2012

Alyssa Clayton has accepted this position and will start June 21, 2012 and work through the end of August. She will focus on water quality, data archiving and educational outreach.

New Business

Non-Agenda Items

Contract Review.

Lake Contractor: Contract will take a cafeteria approach for services rendered, breaking down tasks and providing associated costs versus a flat rate for all services as was in the previous contract.

Skirvin moved to amend the contract to reflect the new policy established by the Board this date on the impoundment issue.

Green seconded the motion.

Vote: Unanimous. Motion carried.

Legal services contract.

Skirvin moved to accept the contract with the hourly rates of Attorney--\$150 and ParaLegal--\$65, and Secretarial--\$45.

Green seconded the motion.

Vote: Unanimous. Motion carried.

Payroll services contract.

Skirvin moved to accept the contract with the increase to \$35 per hour.

Weldon seconded the motion.

Vote: Unanimous. Motion carried.

Minutes recording contract.

Skirvin moved to adopt the contract with no changes.

Green seconded the motion.

Vote: Unanimous. Motion carried...

Project manager contract.

Skirvin moved to approve the contract with compensation of \$37,800, plus the employee should receive ten days of sick time.

Weldon seconded.

Vote: Unanimous. Motion carried.

Lake manager contract.

Skirvin moved to approve the contract with compensation of \$59,119 and to include ten sick days per year.

Ward seconded.

Vote: Unanimous. Motion carried.

Green wanted to go on record in stating that Robertson has not abused any sick time anddeserves the ten days per year.

Ward said Robertson has done a great job enduring situations that nobody else could endure.

Non-Agenda Items

Lincoln City Chamber of Commerce Board of Directors Ballot:

Robertson read the names of the list of candidates for this Board of Directors

The ballot is due on June 14.

There were four openings with five candidates.

The Board voted for two candidates—Seth Lenaerts and Susan Wahlke.

Skirvin moved to permit Robertson to carry over his unused vacation time to be used within six months.

Ward seconded.

Vote: Unanimous. Motion carried.

Ward said he would like to see a process where we establish a rule of decorum that is strictly enforced. We should not have to listen to personal attacks.

Skirvin said he felt the public comment session was very productive and he appreciated it.

Skirvin reminded everyone that the meetings of the DLWID from now on will be held on the second Thursday of the month.

Adjournment

The meeting adjourned at 12:00 P.M.

The next regularly scheduled Board meeting will be July 12, 2012 at 6:00 P.M.

Respectfully submitted,

Linda Burt

Revised Bathymetry

Good evening, my name is Pat Dooling, I live on Horseshoe Bay.

One of the undeniable results of the proposal under consideration tonight is shallower water. How shallow, is dependent on where you are on the lake. Since the lake bottom is, well at the bottom of the lake, it makes it pretty difficult to visualize the impact of the decision before you. Fortunately, a number of years ago the District provided a tool that could be helpful.

Back in 2004, the District contracted with MaxDepth Aquatics to develop a new bathymetric map and to conduct an analysis of the sediments in Devils Lake. The objective of conducting a new bathymetric survey was to provide a high-resolution map of the lake that could serve as a benchmark against which to judge future changes such as the one under consideration now.

The bathymetric survey for Devils Lake was conducted on March 24-25, 2004 at a time when the lake level was at 8.75 ft. Subsequently, the District discovered that lake gauges were .22 ft off from the correct elevation and have since been replaced. Given the relatively low level of the lake at the time of the original study, only minor modifications to the original map were required to illustrate levels that might occur should the District fail to install the dam. To that end, we re-colored the original map moving the color gradient by one value throughout the map. A careful examination of the original map on the District's home page and our re-colored version raise some concerns. Our revised bathymetry indicates that the swimming area at Sandpoint could be reduced in size by 20-30% and be limited to 2 to 3 feet in depth. The point near Leisure Bay already very shallow, will have limited water available for safe navigation, less than 3 ft extending nearly 200 feet into the lake. This is one example where the District would create a "change of condition" and could expose itself to considerable legal liability should a serious injury occur.

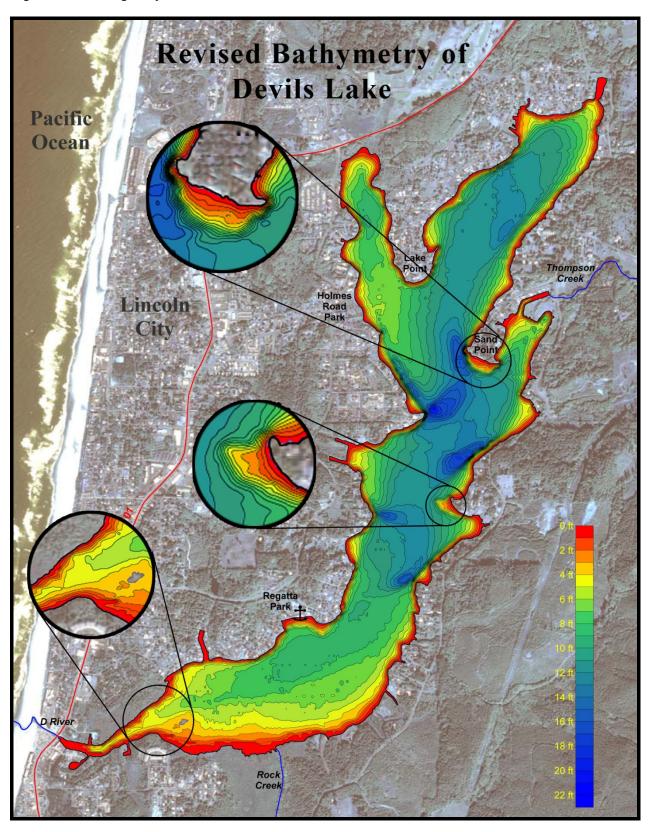
The lakeshore near Rock Creek becomes very shallow extending well into the lake and encompassing the entire D-River. Water levels will be safe for boating in much of the western end of the lake as well as the Marina lobe but with 4 to 6 feet in depth, propeller turbulence will keep bottom settlement suspended all summer long. This will release the rich nutrient bed normally left undisturbed with deeper water, increasing the likelihood of mid-summer blue-green algae blooms. In addition, it appears every canal as well as Horseshoe Bay will be all but empty as the water level reaches its lowest point.

With public safety and water quality at stake it would seem the Board would have been provided an opportunity to consider a valuable illustration such as this to use in your deliberations. Please give this the document I have provided tonight your full attention.

In closing, I would request that the board approve the resolution presented this evening which commits the District to the installation of the dam on the D-River as soon as possible and maintains a lake level of 9.53 feet according to its existing policy.

(See attached schematic.)

Page 2 of Pat Dooling's Report.



6-7-2012

To: DLWID Board of Directors

Subject: Testimony Public hearing on Lake Level

Topic: Tetra-Tech 2nd version boat Wave analysis as it relates lake level

Presenter: Michelle Highland 2170 NE Lake Drive

Recreational Period:

The recreational period as described in the study and provided by the District (April 15th thru October 15th) and used to calculate the total wave energy must be recalculated to what Board Member Weldon verified in the May 10^{th} meeting as being mid to late June thru mid-September stating that "we don't see recreation really taking off until late June and by July 4^{th} it goes nuts and you have 8 weeks of chaos on the lake, that's just the way it always is" Randy goes on to say "even though Mark Christie and I disagree on a lot of things I think he is totally accurate on this point that the recreation does not actually start until mid-June." The correct number of months that should have been used to calculate wave energy was 3 months yet the information that was provided to Tetra-Tech was 6 months.

Wave Analysis:

The only wave analysis that should be considered in this study is measured by the Glamore study. Again, information provided by the district greatly exaggerated wave height by as much as 31% to unfairly weight total wave energy as a major cause of potential erosion over wind energy. To further skew the data the District provided only two types of boats for Tetra-Tech to use in their wave calculations: wakeboard boats (accounting for 75% of boat traffic) and water ski boats (accounting for 25% of boat traffic). We can all agree that a more likely % break down would include a large number of PWC, fishing boats, followed by kayak's and sail boats. We have a multi-use lake.

While we can agree that the number of boats on the lake at any given time appears to be realistic there is some confusion between Tetra-Tech's assumptions that "typically 20 to 40 boats operating on the lake at any given time during the summer months, with a peak of about 60 on holiday weekends" and the Districts portrayal of the peak season at 20-40 boats per day. Where we have the greatest difficultly and concern is with the length of time that each of these boats is purported to stay on the lake. Again this information was provided by the District to Tetra-Tech and was stated as: "This information also indicates that a typical boat will operate for about 3 hours on any given day and make about 6 turns per hour" You all know that in almost all cases this is completely inaccurate. However, as presented it over exaggerates the total wave energy: "based on the 75:25 percent ratio of wakeboard to water ski boat, this indicates about 13,500 water ski turns and about 40,500 wakeboard turns per season."

Conclusion:

If you plan on making a decision tonight to lower the lake based on boat wave energy, don't. You have no basis for that decision because the data that was provided to Tetra-Tech by the District is greatly exaggerated and thus invalid. The study must be revised using true and factual data.

My name is **Pat Christie** my home is at 3184 NE Loop Drive, Otis

Tonight you received a petition that contains the signatures of 473 individuals who wish to express their opinions.

The message these many petitioners want to send to the board is that the district should keep the current policy related to lake level and install the dam on the D-River as soon as possible maintaining a lake level of 9.53 feet.

Along with their signatures, many provided a comment as to why they signed the petition. I would like to share a couple of these comments, the entire set is attached to the petition.

Debra Flory said

We have had our home for 9 years. When upgrading our dock we followed all the requirements to get a permit including placing a special material on our new dock that nearly tripled the cost of the dock. This was to keep predator fish from using the dock as a hideout. Now, we may not be able to use the dock. Last year when the lake was lowered, without notice, our boat motor sank into the silt. I have a disability that makes it difficult for me to get into my kayak and boat to begin with. Lowering the lake makes it nearly impossible.

Last year the lowered lake caused our inlet to become stagnant. The bacteria build up was so bad, there was a rotten stench that prevented us from using our deck at night.

Keenan Graziano said

I have been going to Devils Lake for about 8 years every summer to visit our friends. I love going and look forward to it every year. The thing I like to do is wake board, water ski, ride the jet ski, swim and jump off the dock. I hope the lake will be safe for us to water ski next summer. My dad is a police officer who has worked on a lot of rivers in Portland and he says if the water is too low there are hazards that can happen and people can get hurt.

Sandra Lamb said

Devils Lake is enjoyed by many, both fisherman and water sports enthusiasts. I remember the days when the weeds were so thick it was impossible to boat without stopping to clean the weeds from the prop. When the weeds were removed by the carp, the lake became a recreational destination, and an economic boost to the city's businesses.

Lowering the lake, making docks inaccessible by boaters, will directly affect the economic benefit the lake brings to this community, and directly affect the property values of the homes that enjoy lake front locations and their tax value to the city and county. We need to safeguard this unique community asset and protect the lake level.

Deborah Poole said

I have been driving from the Seattle area to enjoy Devil's Lake for years. Lower water levels, and reduced kayak runs may cause me to look for alternate destinations. If others do the same, it could have a significant impact on tourism in Lincoln City.

In closing

I thank you for your time and add my request to this long list. Please make the decision tonight to install the dam and maintain a lake level of 9.53 feet.

Temperature and Mixing

Good Evening, My name is **Mitchell Moore** and I have a home at 2929 NE Loop Drive.

During the informational presentation tonight as well as the May 10th meeting there were two slides that challenged the commonly held belief that more water volume equals higher dilution, and lower lake temperatures. The slides claim the actual outcome could be the opposite.

Most of the audience and at least one board member questioned these concepts. Water temperature is one of the most basic measurements of water quality taken by the District. Historical temperature information prior to 1997 could have substantiated the claim but none was provided.

I like to point out that I have consulted with a professional limnologist concerning concepts outlined in the balance of my comments.

Temperature is just one part of a fundamental set of properties governing lakes, which also includes the interactions of light, and wind mixing. The absorption and attenuation of light decreases with depth and depends upon the amount of light-absorbing dissolved substances, mostly organic carbon compounds and the amount of absorption and scattering caused by suspended materials such as soil particles, and algae. As the lake becomes more turbid; more light is absorbed and stored in the form of heat.

There are six processes that allow heat energy exchange between a lake and its environment: solar energy, longwave radiation, evaporation, convection, lakebed conduction and groundwater inflow/outflow. The primary heating process is solar energy and the primary cooling process is evaporation. In recent years, our temperatures have ranged from 33 to 74 degrees.

Temperature drives another thermal process that determines how our lake waters mix. Thermal stratification defines a change in the temperature at varying depths, due to the change in water's density with temperature. Cold water at the bottom of the lake is denser than the warm water at the top. The dividing line between these layers is called the thermocline. Imagine a bottle of salad dressing containing oil and vinegar. The oil floats on top and the vinegar stays at the bottom. That is true in Devils Lake as well, the water above the thermocline readily mixes primarily from wind while that below does not, remaining relatively stagnant.

This process begins in the spring, when the surface water begins to absorb heat and warms. As the temperature rises, the water becomes lighter than the water below. For a while, winds may still mix the lake from bottom to top, but eventually the upper water becomes too warm and too buoyant to mix completely with the denser deeper water. It simply takes too much energy to mix the water any deeper.

The depth of mixing depends in part on the exposure of the lake to wind, but is most closely related to the lake's size. The mixing depth of Devils Lake was identified in the 1983 Study commissioned by the District, which established a mixing boundary at 2.5 meters.

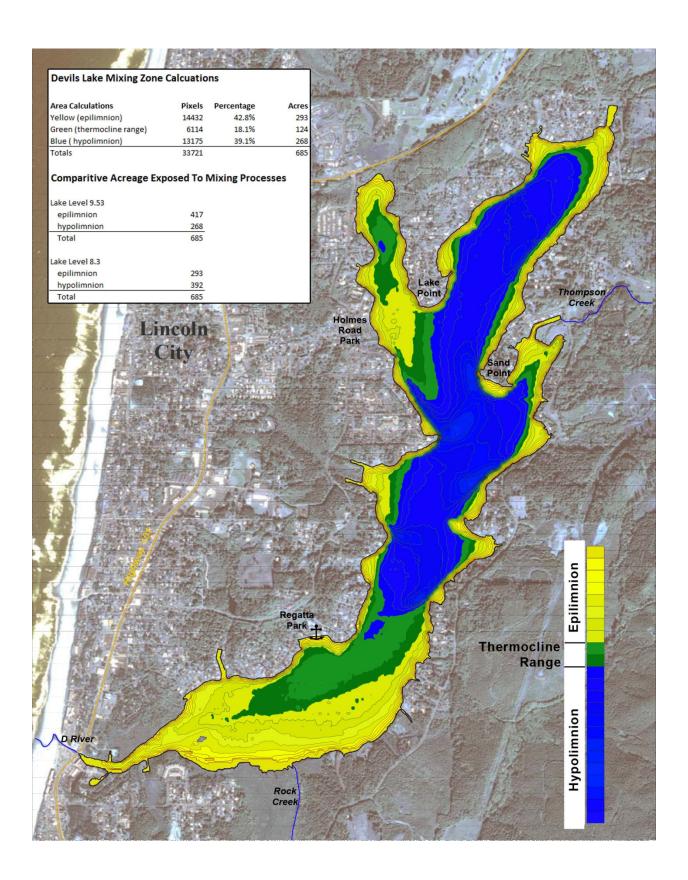
As we consider the impact lake level may have on temperature, we need to also consider the impact it has on the location of the thermocline. Much like pulling the plug on a bathtub when water is released down the D-River the surface of the lake lowers. This is true of the thermocline as well. Both will drop in unison 18 inches.

The impact of this on the health of the lake is potentially much greater than a few degrees of temperature change. At the lower lake level 124 acres of nutrient rich lake sediment becomes exposed to the natural mixing processes at work above the thermocline.

In the illustration I distributed the blue shaded area represents the lakebed below the thermocline and the yellow areas represents the lakebed above. The green areas represent the 124 acres which would cross the thermocline boundary as the lake level is lowered. This is the size of the additional nutrient laden lakebed that could be inserted into the mixing zone of Devils Lake.

What is the magnitude of these additional nutrients that will become the fuel for blue-green algae blooms? The Bathymetry Study from 2005 indicates that nitrogen represented .7 % and phosphorus .14% of the dry weight in the top foot of lakebed. We can calculate that the dry weight of the 124 acres of lakebed is 11,000 tons. From there we can determine that each inch of sediment depth in the green area contains 630 tons of nitrogen and 126 tons of phosphorus, with over 9,000 tons of nutrients in that first foot of material.

How much of that material will make it into the water column. We cannot say for sure. We can say that it will likely increase, should the District reverse its policy and abandon the use of its water right. Please do not experiment with the health of our lake. Please take action tonight and make a long-term commitment to exercise your water right and keep the summertime lake level at 9.53 feet.



6-7-2012

To: DLWID Board of Directors

Subject: Testimony Public hearing on Lake Level

Topic: Fish passage and lake level

Presenter: **Mark Christie**3184 NE Loop Drive

Fish passage has never been brought up in the conversation with respect to lake level until the May 10th 2012 DLWID public hearing. I reviewed the agenda items from July 2nd 2009 to May 10th 2012 and not one topic related to fish passage was listed as a discussion/agenda item. In my review there has not been a mention of dam removal associated with fish passage until May 10th 2012.

To try and understand why we would be linking lake level and fish passage together for the first time we contacted Bob Buckman (ODFW District Fish Biologist responsible for D. Lake) who responded to the following questions on May 23rd.

- * Is the District in compliance with rules pertaining to Coho fish migration?
- "Yes, I believe they have been in compliance. The potential trouble spot is when coho smolts are migrating out of the lake to the ocean in May and June. The water right for storage has a stipulation that water will be released as determined necessary by ODFW for fish migration. We have had a couple recent years when we were concerned we would need to ask for additional releases of water, but then it rained and there was adequate water to get the coho smolts out based on our assessment and still maintain the lake at desired levels."
- * Is the District in compliance with all other rules pertaining to fish migration?
- "As far as I know they are in compliance."
- *Maintaining the current lake impoundment of 9.53 is very important to an overwhelming number of lake users. Is there a way we could enhance fish migration during the migratory period still maintaining the 9.53 impoundment? I believe there could be wide spread support to look at some type of modification to the current structure to allow better fish passage.
- "If we have a dry spring, ODFW may ask for water releases that bring the lake below target levels. The structure has been developed to be as fish friendly as possible so I do not know of methods to improve it, although I am open to suggestions."

When contacted by phone on June 5th 2012 Bob had the following to add to the previous dialog:

- *ODFW has no issues with the lake level at 9.53 and has not contacted the District to request removal or modification of the impoundment structure (dam).
- *Paul and his assistant have done a good job with accommodating fish passage when requested by ODFW.
- *Bob stated his concern with the water draw down from the Siletz Tribe (golf course) and stated it there could be 1" of draw down.
- * Bob stated that the Cut Throat Trout are doing really well in D. Lake.

Bob is a great asset to our region and the State of Oregon and we look forward to better understanding how we can continue to be good partners here on D. Lake.

So I guess I don't get it?

My question is:

Whose idea is it to remove the dam or lower the lake level to accommodate fish passage?

Not ODFW.

If you plan on making a decision tonight to lower the lake based on fish passage, don't.

A Unique Asset

My name is **Susie Henderson** and I have a home on Loop Drive.

I am here today speak to you about preserving one of the few recreational lakes on the Oregon coast. Devils Lake in Lincoln City is a multi-purpose recreational jewel enjoyed by many Oregonians for decades.

Should the District abandoned their water impoundment permit obtained and forgo installation of the dam at the mouth of the D-River 330 million gallons of water will flow into the Pacific Ocean. The purpose of the structure is to keep this very shallow coastal lake navigable, dilute dissolved nutrients, which contribute to harmful algae blooms, and keep summertime water temperatures safe for fish. The proposed release of this water is the result of well meaning but misguided attempts to restore the lake to a "natural" state, without adequately establishing that the current use is detrimental to the local environment.

As you are well aware Devils Lake is unique in Oregon; it is a lake with 450 homes currently lining its shoreline. It is also unique as it is one of only a handful of lakes in the coastal region where unrestricted recreational boating is permitted by the Oregon Marine Board (OMB). In fact, you must make a three-hour drive South, beyond Florence to Siltcoos Lake to find the nearest lake with similar boating rules. To the North you can drive an hour and a half to Lake Lytle or another hour beyond that to Cullaby Lake, to find similar boating opportunities; yet these two lakes are much smaller and boat traffic is limited in number and must adhere to a counter clockwise circulation pattern. Indeed, there are only four lakes, which OMB has identified as being open to motorized boat traffic in the 209-mile stretch of Hwy 101 between Florence and Astoria. This makes Devils Lake highly sought after by recreational boaters and fishermen who come to Lincoln City and support our local economy.

The decision before you tonight will not directly eliminate boating on Devils Lake. It will however lower the lake 18 inches, reducing its surface area by 27 acres. With an average depth of only 8.4 feet this new lake level will create unavoidable hazards to navigation as sandy shoals lie dangerous near the surface. Boat ramp facilities funded by the OMB to provide public access to the lake will be placed in jeopardy as they will be rendered useless without substantial augmentation to deal with the low water. Private access to the lake will be lost, as hundreds of docks constructed on Department of State Lands (DSL), leased parcels will no longer have water depths sufficient to float a boat.

Lowering the lake, making docks and boat ramps inaccessible by boaters, will directly affect the economic benefit the lake brings to this community, and directly affect the property values of the homes that enjoy lake front locations and their tax value to the city and county. We need to safeguard this unique community asset and protect the lake level.

Each year the Salmon River Fish Hatchery plants 20,000 trout into Devils Lake. The lake is home to a unique Coho salmon run as well. These fish require cool water temperatures to survive. The resulting low water will increase the summertime lake temperature which currently can reach the mid 70F's. A temperature of 75F is toxic to salmon and trout. Lower water will at best increase distress on this fishery and at worst increase mortality.

Lower lake levels will of course cause great concern by local residents as the summer draws on. This change comes during the first year of water use from Devils Lake by the Siletz Tribe under contract with the City. This use we were told, was expected to be a non issue however we have no history to provide a record of its impact. As frustration levels rise, the public may place some of the blame on the water draw and begin to apply pressure for it to be turned off further complicating a bad situation. This needless tension could be avoided with the installation of the impoundment structure as anticipated during the water right process that provided the Tribe this option. In the Pacific Northwest environmental matters and protecting the natural resources are important; that is what makes this such a special place to live. What has made our efforts successful is the balance we strike. We provide places for people to live and the places for them to participate in the activities they enjoy. This system is formalized by our land use planning process and these areas are defined by Urban Growth Boundaries (UGB's). Devils Lake provides both; it is a place for people to play and reside. It is located within the Lincoln City UGB, it is reasonably populated, and it has been designated as a navigable waterway to be enjoyed by all who partake in a variety of water based activities.

Please keep this valuable recreational asset in Lincoln City. I am asking you to install the dam on the D-River as soon as possible and maintain a lake level of 9.53 feet.

Thank you for taking the time to give these comments your consideration.

<u>DLWID – June 2012 Testimony – Jack Strayer</u>

My testimony will respond to some directors' that belief that removing the dam will be a great benefit to native fish – like the Coho and other issues where more facts are needed.

In many instances the public information on the 84 slides, the FAQ sheet and recent testimony by the LM tell less than the full story.

Let's start with the Coho basic facts.

<u>Did you know</u>: Devils Lake Coho Run is the strongest of the Coastal Coho Runs [#1], - two sources one is Bob Buckman]

<u>Did you know</u>: the lake level stabilization structure is not identified as an impediment to salmon [upstream or down] in the reports on fish habitat barriers.

<u>Did you know</u>: The reason Oregon coast Coho is kept on the ESA listing because of the extinction potential -- mostly **from expected temperature increases due to global warming and changing ocean conditions** 35764 Federal Register / Vol. 76, No. 118 / Monday, June 20, 2011 / Rules and Regulations

When at the May 2012 meeting Director Green asked the LM to compare impacts of the <u>loss of lake surface area</u> compared to the <u>loss of lake volume</u> and the resulting impact on fish and temperture-- the answer by the LM was that it was <u>"a question mark"</u> and "<u>Don't fully understand</u>." And the Director dropped the issue as undetermined and complicated.

Director Green here are the facts:

Facts: Lake temperature question:

surface reduced 27 acres [27/685=4%]

while the water right lost would reduce the volume by 1360 ac/ft [1360/5750=24%].

<u>Summer temperature will go up substantially</u> because the surface heat collection area will be reduced 4% while the volume it heats will be reduced 24% .[6-times]

Summer lake temperature is in the mid 70's f – salmon 75 f is lethal – by reducing lake volume – the temperature will rise faster and reach higher levels – removing the dam could be the tipping point for Coho extinction in Devils Lake.

REMEMBER: That is over 443 million gallons of water lost from the lake[1360 ac/ft].

Predation by non-native game fish in the lake:

One slide states that 98% of fish lake predation is by Large Mouth Bass -- The rest of the quote indicates that bass are the only fish big enough to eat any small Coho in lakes. [hardly an argument for lake level] I have talked to Dr Bonar [author of the study] who's conclusion for the study is that lake bass predation is not significant, of much greater concern are ocean conditions and global warming.

The LM state in his presentation that LMB are lined up in front of the dam eating Coho. False – LMB do not line up in shallow water waiting for small fish to come by, no science to back it up, and fish agencies are ok with the existing lake stabilization structure.

Slide –Rockcreek Dam Modification for Coho Passage: 2006 stream award

Dam truth: You have heard of the award winning Rock Creek Dam modification [the one with the picture of the LM standing beside the governor at the award ceremony].

How many believe that the Rock Creek Dam was removed? FWS designed the project:

- --to remove a 20' section of the concrete dam [leaving the rest in place],
- --installing metal I-beams across the front, and
- -- placing removable wood beams across the 20' opening to impound water [this dam about 30" high]
- -- so the land owner's water rights, and the city's water supply access will continue.
- --the Award concluded that this is an example of salmon being able to get upstream while managing the structure for the land owner and the city.
- --State news release stated that this is the last obstacle to Coho spawning in Rock Creek

An official was quoted that," the project was completed "without the loss of the water resource, without the potential cost of rebuilding a dam, and with the additional benefit to the landowner, the City of Lincoln City, of becoming good stewards of the natural resource."

By the way – the official that made the statement was/is the Devils lake manager.

PS: If the 30" Modified removable dam receives an award why is the structure at the mouth of Devils Lake a candidate to be retired.

TMDL [total mean daily load] truth for DEQ:

- --if Devil Lake is a reservoir [removable wood structure] DLWID may be required to take steps to deal with high water temperatures in the lake.
- --if Devils Lake is a natural lake unregulated the DLWID has no responsibility to take action with regard to temperature.
- --The LM has been lobbying to get DEQ to treat Devils Lake as a natural lake [see last month minutes] to "reduce the DEQ required actions [for temperature] just to reduce the district's paper work." [meanwhile native fish will suffer]

You have heard from over 30 speakers discussing the weakness of the slides and the FAQ – I will not rehash those except to say that both sides were not give equal scientific weight as we should expect in public information.

Examples:

- -- "higher lake levels increase the tendency for erosion" [not true ask Dr Pennington, read the report]
- --"While dock installation and repairs are ongoing"
 [as an example of why dock modification is of little importance]
 [recent dock/boat hous needed 75' with low water, now dry will be allowed to go farther into the lake to repair dock/boat house?].
- -- "what is also certain is undoubtedly that like generations before, generations to come will enjoy the lake recreationally . . .

[as a reason for ignoring the pain lake residents and lake users will suffer] -- "cooling down the lake at the end of a bloom is important . . ."
[ignoring the fact that the heating up may be fatal to native fish]

TO Review:

The Devils Lake Coho is a strong run, the lake control structure is not a barrier, and the biggest reason that the Coho is classified as "Threatened" is the potential impacts of global warming and ocean conditions. Without the wood dam – the lake temperature is not a "question mark" but a certainty with facts like a 4% reduction in surface and 24% reduction in volume.

Remembering that the reduction would be 443 million gallons of water. Lake predation according to Dr Bonar is insignificant compared to ocean temperature and global warming. Bass sitting in shallow water feasting on young helpless salmon is a figment of someone's imagination. TMDL [DEQ] lobbing to get Devils lake reclassified as a natural lake is crazy and will significantly harm native fish.

When the irregularities, inconsistencies and imaginary concepts in the FAQ and the 84 slides, the arguments to support the discarding of the water rights and water control structure ARE TOTALLY WITHOUT MERRIT. SOME BOARD MEMBERS SAID THAT THIS IS A "TOUGH DECISION" THAT THEY HAVE TO MAKE.

IT IS ONLY TOUGH IF YOU TRY TO MAKE SENSE OUR THE 84 SLIDES AND FAQ. If you listen to the science, the facts and the expert testimony presented, the decision is EASY – KEEP THE LAKE LEVEL AT 9.53 FEET.

THE PUBLIC DESERVES AND EXPECTS QUALITY INFORMATION AND THE FULL STORY FROM THE LAKE MANAGER, AND SOUND DECISIONS FROM THE BOARD.

Budget Hearing Public Comments

Good Evening, My name is **Mitchell Moore** and I have a home at 2929 NE Loop Drive. I appeared before you during your May 11th Budget Committee meeting where I shared a few comments.

Tonight I would like to revisit one concept.

In April 2007, the District created one new, wholly encompassing "Improvement Fund". The purposes of the fund are for vegetation management, watershed protection, capital improvement, water quality improvements, cyanobacteria control, and other improvements seen necessary by the Devils Lake Water Improvement District Board of Directors. With that list the funds can be used for just about any expenditure.

The improvement fund is also known as LB-11 and appears under a title of Reserve Fund. The problem is that the District does not treat this much like a reserve fund.

What is the purpose of a Reserve Fund?

A reserve fund is a fund which is established for the purpose of covering expenses which will come up in the future. The goal of a reserve fund is to make sure that monies are set aside to cover expenses so that these expenses do not require spending general funds. Often the uses of these funds are designated for a specific purpose.

What has been the District's Practice?

Each year the District proposes large expenditures to be funded by the reserve fund. The history of the fund includes

Proposed Reserve Expenditures			
2008-2009	856,308	856,308	100%
2009-2010	1,487,507	631,199	42%
2010-2011	222,875	(1,264,632)	-567%
2011-2012	663,665	440,790	66%
2012-2013	656,207	(7,458)	<u>-1%</u>
Total	3,886,562		

That's nearly 4 million in expenditures in 5 years.

Actual funds held in the reserve have been well below the requested expenditures

Actual Reserve Reso	urces		
2008-2009	267,814	267,814	100%
2009-2010	321,686	53,872	17%
2010-2011	343,117	21,431	6%
2011-2012	332,614	(10,503)	-3%
2012-2013	286,883	(45,731)	<u>-16%</u>
Average Balance	310,423		

The average balance over the past five years of \$310,000 indicates many of the budgeted expenditures have never occurred. That said many projects have been funded from the Reserve Fund

Looking at the difference between the reserve and requested expenditures reveals \$2.3 million variance

Difference Between Reserve Expenditures and Resources					
2008-2009	(588,494)		-69%		
2009-2010	(1,165,821)		-78%		
2010-2011	120,242		54%		
2011-2012	(331,051)		-50%		
2012-2013	(369,324)		-56%		
Total	(2,334,448)				

How is this a Reserve Fund when in every year requested expenditures far outpace funds? Projects in this year's budget include the Grass Carp Study, Save Our Shoreline, CAFE, contributing to a study on East Devils Lake Road, and the creation of a DVD. These projects total \$369,324 more than the current balance of the fund. Some of these expenditures will occur should the budget be approved. Other such as the CAFE will not given budgeted funding for purchase of the Union 50 Club are \$375,000 below the current asking price.

So what needs to be done?

I would submit to you that there is nothing Reserve about LB-11. It is being used as an extension of the General Fund. A very large extension being 222% greater than expenditures from the General Fund. There is nothing Reserve about it, as the District has proposed to draw funds in excess of its balance 4 out of the last 5 years.

The board should commit to a review of the Reserve Fund that would include the purpose of the fund and the process for which projects are approved.

I recommend that the Reserve Fund be converted to a Restricted Reserve Fund and the board review its stated purpose. This will require the district to live within the General Fund resources for the routine functions it performs from year to year. As it should be.

While this will give the District access to the current year tax levy. I would further recommend the board direct a specified amount of the annual tax levy to the Restricted Reserve Fund each year.

The Restricted Reserve Fund would be held aside for a special projects. These projects would be funded in the annual budget only after thorough review by the board including a public hearing process in order for these projects be authorized for placement in the annual budget.

This should not create a burden as projects funded from this source should be strategic and previously vetted by the board. The creation of a DVD would likely not meet the test and should be funded from the General Fund.

Please take these suggestions as intended, a request to address the issue and one possible way to address it. All I ask today is that you commit to review this in the coming year.