

## Tobacco Settlement Shortfall Impacts Water Projects in North Dakota

By Patrick Fridgen

Earlier this summer, Lorillard Tobacco Company, R.J. Reynolds Tobacco Company, and Phillip Morris USA withheld about \$755 million in tobacco settlement payments to states that participated in the 1998 tobacco settlement lawsuit. Of that amount, North Dakota received about \$1.5 million less than expected from its anticipated 2006 settlement payment.

So one might ask, what is the connection between a reduction in the amount of tobacco settlement payments and water development in North Dakota? The original argument for the settlement dollars was to help states pay for costs associated

with smoking, or more specifically, health-related costs. However, like many other states, North Dakota has chosen to use tobacco settlement dollars for a variety of purposes, including water development.

During the 1999 Legislative Assembly, Senate Bill 2188 established a Water Development Trust Fund as a primary means of repaying bonds that it authorized. House Bill 1475 was then enacted, which allocated 45 percent of the funds received by the state from the 1998 tobacco settlement into the Water Development Trust Fund.

Therefore, because of the reduced overall payment to the state, the Water Development Trust Fund, which

provides funding for water projects, also received about \$675,000 less. In total, about \$9.5 million was deposited in the Water Development Trust Fund. Because the lost funding could have been used to bond for almost \$7 million, the impact felt by water project sponsors across the state becomes quite substantial.

The reason for the reduced payment stems from an arbitrator's ruling earlier this spring that said the large tobacco companies have lost a portion of their market share in the cigarette market to smaller companies that were not included in the 1998 settlement, and are not required to make payments to states. Thus, without having to make settlement payments, it is then possible for smaller tobacco companies to sell their products at a lower price, which in turn, impacts sales of tobacco products marketed by larger corporations named in the settlement.

According to the terms of the 1998 settlement, tobacco companies are allowed to reduce payments if states do not take steps to even the playing field, so to speak, by requiring smaller tobacco companies to set aside money for potential settlements, or by other means. It is based on this argument, that the larger tobacco companies have lowered recent payments.

In North Dakota, the Attorney General's Office has told the tobacco companies -- not so fast. In April, the North Dakota Attorney General's Office filed a lawsuit to recoup the amount missing from the 2006 payment. As of mid-June, the State of North Dakota was waiting to hear whether the dispute would be heard before a state district judge, or by arbitrators.

The basis for North Dakota's lawsuit is that North Dakota is going way out of its way to go after smaller companies that avoided the original lawsuit, and by making it illegal for

**The State of North Dakota has contributed \$52 million from the Water Development Trust Fund toward the Grand Forks flood control project.**



those companies to even distribute or sell tobacco in the state. Several other states across the nation are also suing the tobacco companies again to acquire money lost as a result of the reduced payments.

Since the first tobacco settlement payment was received by North Dakota in December 1999, North Dakota has received about \$174 million from the tobacco companies. Forty-five percent, or about \$78 million of that amount has been deposited in the Water Development Trust Fund, for the advancement of water development projects throughout the state.

Originally, North Dakota was expecting to collect about \$866 million over the course of 25 years from the settlement. As a result of decreasing tobacco sales, that amount has now been reduced to about \$777 million.

Since the Water Development Trust Fund was put in place in 1999, tobacco settlement revenue has advanced numerous water development efforts in all corners of the state, such as: large-scale flood control projects at Grand Forks, Devils Lake, and Wahpeton; and several water supply projects, including contributions toward the near

completion of the Southwest Pipeline Project, to name a few.

As far as future tobacco settlement contributions to the Water Development Trust fund go, revenues are projected to be \$33.1 million per biennium for the 2007-2009 through 2015-2017 bienniums, and then fall back to \$23.6 million for the 2017-2019 through the 2023-2025 bienniums. However, because future payments will be based partly on inflation and tobacco consumption, it is likely that payments will continue to decrease along with reduced tobacco consumption.

## Devils Lake and Stump Lake Destined to Become One Big Lake

When Devils Lake reached another new record high in May when it hit 1,449.2 feet above mean sea level (amsl), it was definitely an event worth mentioning. By mid-June, the lake's elevation had fallen slightly, but the National Weather Service (NWS) was still giving the big lake a 90 percent chance of reaching 1,449.4 feet amsl sometime this summer, and an 80 percent chance of getting to 1,449.5 feet amsl.

In consideration of the additional land that will be inundated by Devils

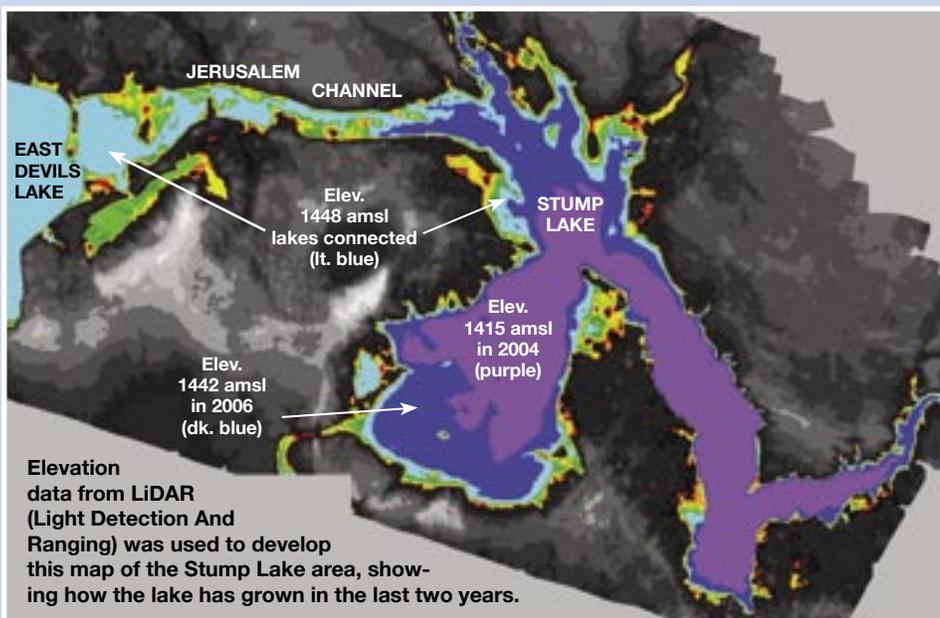
Lake's persistent rise, again, these seemingly eminent new records on the horizon are certainly worth mention. However, a key point underlying this situation that should *not* go unmentioned is the fact that Devils Lake is expected to rise, even as it pushes its way into Stump Lake—a once isolated lake east of Devils Lake in western Nelson County.

As of the middle of June, Stump Lake was at about 1,442 feet amsl, having risen 1.8 feet in the last month, and 13.11 feet since the

previous year. That means an additional 600 acres around Stump Lake were inundated by floodwater from Devils Lake from mid-May to mid-June 2006, and in that previous year, almost 3,200 acres were flooded.

Water has flowed continuously in the Jerusalem Channel, the natural outlet from Devils Lake to Stump Lake, since the spring of 2004, with Stump Lake rising over 27 feet since then. The gage on the Jerusalem Channel, which was moved upstream earlier in the summer, was showing flows of 375 cubic feet per second from Devils Lake to Stump Lake in the first part of June.

So the question is, when will Stump Lake and Devils Lake equalize, becoming one giant lake? In June, the NWS was predicting that Devils Lake had a 90 percent chance of dropping to about 1,448.3 feet amsl by September. Based on the assumption that the lake could drop to 1,448 feet amsl before freeze-up, available storage at that time, and using 2005 flow data; Devils Lake and Stump Lake could equalize at 1,448 feet amsl by the end of October. Once that happens, the last remaining storage area around Devils Lake will have been filled.



# Tile Drainage Gaining Popularity in State in Recent Years

By Michael Noone

In North Dakota, where large portions of the state have been in a wet cycle for over a decade, agricultural land has been frequently inundated with standing water, either from snowmelt, or from frequent storms. Standing water on land delays planting, and can kill crops that have been planted.

Unfortunately, areas throughout North Dakota that have been wet are also areas with clay-rich soils that have poor water infiltration, leading to standing water for prolonged periods of time. It is understandable that farmers want to get standing water off of their land as soon as possible, to improve their chances of higher yields in the fall.

A practice that has gained popularity in North Dakota in recent years is called tile drainage. Perforated polyethylene tubing is buried in a field, generally at a depth of three to six feet. The pipe takes in surrounding ground water that is saturating the soils, and transports it away from the field. From there, the water is discharged into a waterbody such as a large wetland or lake, ditch, or into a natural watercourse.

Tile drainage can help a landowner farm land that might otherwise be lost to flooding for that season. It is called "tile" drainage because up until the 1970s, most drainpipes were made from short, cylindrical sections of concrete or clay called "tile."

The positive aspect of using tile drainage in agriculture is that it allows for timely fieldwork and crop growth on soils that would otherwise be marginal for agriculture. The downside of this practice is the potential for increased flooding

downstream, negative effects on water quality due to sedimentation, and leaching of fertilizers, herbicides, and pesticides in the waterbodies into which the drain tile discharges.

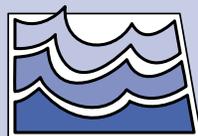
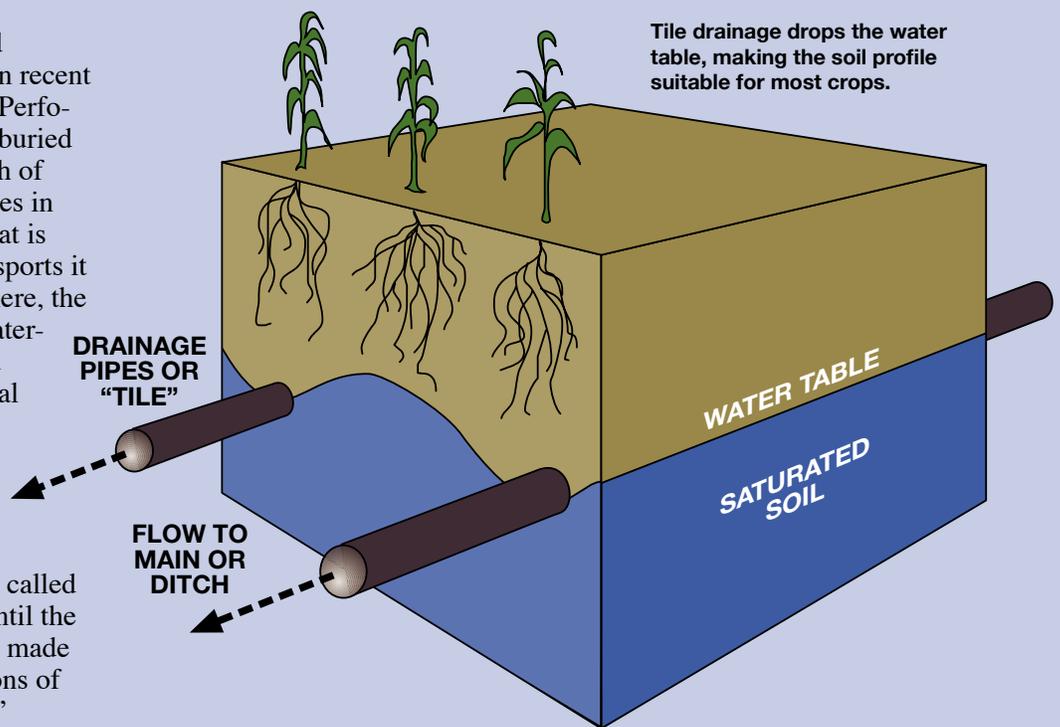
Draining, filling, or pumping of an area that has a watershed, or contributing area of more than 80 acres requires a permit from North Dakota's Office of the State Engineer. However, there has been a significant amount of confusion in our state about whether drain tiling also requires a permit from the State Engineer.

In fact, installing drain tile does require a permit from the State Engineer, when the contributing watershed is more than 80 acres. It is

important to understand and account for the fact that the contributing area may be larger than the perimeter of the drain tile. In areas of the state where projects have been deemed to be of statewide significance, such as the Devils Lake basin, tile drainage systems are also subject to those orders.

For questions regarding drain tile permits, contact John Paczkowski, North Dakota State Water Commission at 701-328-3446, or by e-mail at [jpaczkowski@nd.gov](mailto:jpaczkowski@nd.gov).

For more information on drain tile, contact Gary R. Sands with the University of Minnesota Extension Service at 621-625-4756, or by e-mail at [grsands@umn.edu](mailto:grsands@umn.edu).



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