

REQUEST FOR COMMENTS

PROPOSED INITIATIVE FOR DEVILS LAKE, NORTH DAKOTA

**PRESENTED TO
NORTH DAKOTA STATE FLOOD COORDINATION CENTER MEETING
DEVILS, LAKE, NORTH DAKOTA
29 APRIL 2004**

**REGIONAL DIRECTOR
FEMA REGION VIII
DENVER, COLORADO
APRIL 2004**

Table of Contents

INTRODUCTION 1

PROPOSED INITIATIVE FOR DEVILS LAKE 1

 Basis of the Proposed Devils Lake Initiative 2

 Integration of Other FEMA Programs 3

SUPPORTING RATIONALE FOR PROPOSED INITIATIVE 5

 Public Assistance Program 5

INTRODUCTION

Thirteen Presidential Disaster Declarations have been issued for the state of North Dakota from 1993 through 2002. In recent years information on the impacts of continual flooding in North Dakota and the Devils Lake area has become available that allows for the identification of the magnitude, extent and type of flood damage that has occurred or may possibly occur. It has become apparent that in addition to the damage and loss of structures, public health and safety is being compromised due to the loss of key infrastructure.

The flooding conditions at Devils Lake are unique because of the frequency of the reoccurrence of the flooding and that the closed basin system of the lake does not provide for drainage of the flood waters out of the lake basin. The closed basin system terminates in Devils Lake and Stump Lake to the east. Devils Lake and the adjacent Stump Lake collect the Basin's surface runoff that flows through many small coulees and lakes. Devils Lake collects about 86 percent of the Basin's runoff; Stump Lake collects the remainder. The runoff remains in these two lakes until it evaporates or percolates into the groundwater. The Basin lies within the Red River-Hudson Bay drainage system.

From 1996 to 1999, it became clear that the area encompassing the Devils Lake Basin was in an extraordinary wet cycle that, by some projections, could continue for another 15 to 20 years and longer. It was also determined that FEMA programs, particularly the Public Assistance Program, had to reassess the repetitive nature of the situation if it were to continue to deliver programs designed to reduce threats to life and improved property, and restore public services on a cost effective basis.

The Regional Director for FEMA Region VIII has concluded that the repetitive flooding in the area surrounding Devils Lake has necessitated the development of a regional initiative that focuses on the unique flooding conditions and the associated risks to structures and infrastructure. This document presents the Regional Director's proposed risk management strategy and basis for a proposed new initiative that has been developed to respond to this situation. It is hoped that this document will stimulate discussions and comments on this proposed initiative.

PROPOSED INITIATIVE FOR DEVILS LAKE

Using information developed as part of the Devils Lake Risk Assessment it has been estimated that from elevation 1447 to 1455, 220 houses in Benson and Ramsey Counties would be inundated or isolated because access roads would be flooded. For planning purposes FEMA has estimated the value of these houses at \$19.2 million (2002 \$). This translates into an average value per house of \$87,000 (\$19.2 million/220). A total of 160 miles of non-Federal-Aid-System (FAS) roads would be flooded, and FEMA estimates the cost to maintain access to the flooded houses would be \$52.4 million (2002 \$). The average cost to maintain access per house is \$238,000 (\$52.4 million/220).

Based on this information, the Regional Director (RD) of FEMA Region VIII believes that it is

no longer cost-effective to continue to maintain access to all residences in the Devils Lake Basin. As a result of this conclusion the RD has developed a proposed initiative for providing assistance under the Stafford Act and 44 CFR in future major disasters to the Devils Lake area in a manner that would prove to be a more cost-effective use of federal resources that is based upon moving people out of harms way.

Basis of the Proposed Devils Lake Initiative

FEMA is required to comply with the following requirements of the Stafford Act and Executive Orders when providing assistance under the Public Assistance Program. The requirements are intended to reduce future damage and impacts when eligible facilities, such as roads, are located in areas that are subject to future damage.

- Presidential Executive Orders 11988 and 11990 (Floodplain Management and the Protection of Wetlands)
- 44 CFR 206.226(e) [Hazard Mitigation]
- 44 CFR 206.226(g) [Relocation]

These documents provide the Regional Director with the authority to require cost effective hazard mitigation measures as a condition of receiving assistance to restore eligible facilities under the Public Assistance Program. For facilities that are subject to repetitive heavy damage, such as roads located in the Devils Lake lakebed (the lakebed is considered to be the area below an elevation of 1460), the Regional Director also has the authority under 44 CFR 206.226(g) to require relocation/demolition of the damage facilities, and if relocation is not cost effective, to disapprove Federal funding altogether. In the latter case, the applicant's only option is to apply for alternate project funding.

Alternate project funding is applicable when the applicant determines that the public welfare is not best served by restoring a damaged facility or its function to pre-disaster design. The applicant uses the Public Assistant grant for other purposes. The grant may be used on more than one alternate project that must be a permanent project. Debris removal and emergency protective measures are not eligible. Alternate project funds may also be used for hazard mitigation projects that would otherwise be eligible through the Hazard Mitigation Grant Program (HMGP) under Section 404 of the Stafford Act. The alternate project must be approved by FEMA prior to construction and comply with applicable environmental and historic preservation laws.

In the Devils Lake lakebed, funding that would have been for damaged roads would be directed, by the applicant, to an alternate project. Alternate project funding would not be authorized for a project that results in a structure remaining within the Devils Lake lakebed and subject to future damage. In the event that primary residences are isolated or impacted due to long detour distances, the applicant would first be required to use available alternate project funding to purchase and demolish the affected residences or fund the relocation of the residence out of the lakebed (above an elevation 1460).

Under this proposed initiative current property owner(s) would retain the ownership of the land and other non-residential structures. The conditions that would be placed on the use of the

property have yet to be determined. However, roads and other public facilities would not be eligible for future disaster assistance under the Stafford Act after the area has been vacated or if the remaining homeowners have not accepted the purchase offers. Only after affected residences are purchased or relocated out of the lakebed would applicants be allowed to use any remaining alternate project funds for another project.

As is the case for all Public Assistance Program funding, the implementation of this initiative would depend upon future major disaster declarations and activation of the Public Assistance Program. Although Public Assistance Program projections indicate that the cost of maintaining public services to all occupied residences in the Devils Lake lakebed area far exceeds the cost of the residential housing, it will take multiple major disasters to acquire all of the residences and other affected facilities. The success of this proposed initiative would require the pooling of available funds from FEMA's various mitigation programs plus active participation by the National Flood Insurance Program.

Integration of Other FEMA Programs

In addition to the PA Program, this proposed initiative would integrate aspects of the Individual Assistance (IA), Hazard Mitigation Grant Program (HMGP), Predisaster Mitigation Planning, and Competitive programs and the National Flood Insurance Program (NFIP).

Individual Assistance - Individual Assistance (IA) program would be available when there has been a Presidential disaster declaration that includes both individual and public assistance programs. Utilization of the IA Program as part of this proposal would be limited and evaluated on an individual, case-by-case basis.

Hazard Mitigation - Hazard Mitigation Grant Program (HMGP) and Pre-Disaster Mitigation (PDM) funds may be available in limited circumstances. The HMGP is available after a Presidential disaster declaration and typically is limited to a percentage of the total disaster costs. If the State receives a declaration, funding may be available for Mitigation activities in the Devils Lake area. The State is the administrator of the grant, and therefore chooses the projects that receive HMGP funding. However, FEMA encourages the State to target mitigation opportunities in the Devils Lake area. Targeting mitigation efforts in the Devils Lake area has been included in FEMA/State Agreements for disaster declarations. The State has worked with the Regional Planning Council, the County, and local jurisdictions to purchase properties threatened by the raising waters of Devils Lake. These properties have either been candidates for inundation or been affected by access/egress problems.

The Pre Disaster Mitigation (PDM) program is not tied to a disaster declaration. Currently, FEMA Region VIII is working with the State of North Dakota to complete multi-hazard mitigation plans for local jurisdictions and a State-wide Multi-Hazard Plan using funding PDM Planning grant funding. Each plan must include a risk assessment/vulnerability analysis and a listing of prioritized mitigation goals to reduce or avoid long-term risk to identified hazards. Approved plans are required for future funding through either HMGP or PDM. PDM planning funds, much like HMGP, are administered by the State. It is critical that the mitigation plans identify the needs in the Devils Lake region.

The PDM-Competitive (PDM-C) grant program is another part of the PDM program that is a nationwide competition for pre-disaster mitigation grant money. Unlike the HMGP or PDM programs, applicants must compete for mitigation dollars. Eligible applicants include state and tribal governments. Eligible Sub-applicants include other state-level agencies, local and tribal governments. The government entity that receives the grant must be participating in the NFIP (where applicable). There is a \$3,000,000 federal share cap for each eligible project. Local and tribal governments must prepare a grant proposal and compete for the funds. Although funding is not guaranteed, the PDM-C grant program could become an important source of dollars for mitigation efforts in the Devils Lake area. Decisions on winning proposals in this competition are made by FEMA Headquarters. FEMA would encourage the State and local government agencies and the Spirit Lake Nation develop proposal for PDM-C funding.

Flood Insurance

The NFIP will pay insurance claims under the Standard Flood Insurance Policy “Continuous Lake Flooding” clause, which requires 90 consecutive days of inundation. The number of Devils Lake structures with flood insurance coverage is subject to change regularly. A flood insurance policy is effective 30 days after purchase, with a few exceptions.

Additionally, in the Devils Lake basin there are four communities that are eligible for the NFIP Closed Basin Lake Endorsement program. The Endorsement pays an accelerated claims benefit, prior to flooding, in order for the structure to be relocated above 1460 feet msl. The eligible communities are Benson County, Creel Township, City of Devils Lake and City of Minnewaukan. For a structure to be eligible under the Endorsement, flood insurance must have been purchased by 11/30/99 and maintained continuously until a claim is paid. Therefore, until claims are filed, it is unknown how many ultimately qualify under the Endorsement program. Endorsement claims will be paid under the “imminent threat” determination clause.

The NFIP also supports insurance companies and agents in a cooperative advertising program to increase flood insurance awareness and purchase.

REQUEST FOR COMMENTS

The Regional Director, FEMA Region VIII is proposing a new initiative that includes a modification to the current delivery of the Public Assistance program and a stronger integration of the Individual Assistance and Hazard Mitigation programs to respond to the risks created by rising lake levels of Devils Lake following a Presidential disaster declaration. In addition, the proposed initiative requests that the State of North Dakota and the Spirit Lake Nation continue to focus on mitigation projects that will move people out of harms way in lieu of continuing to raise roadways that are at risk of being flooded.

The Regional Director is soliciting your comments and views on this initiative within the next 30-days. Please direct your comments to FEMA Region VIII, P.O. Box 25267 Denver Federal Center, Denver, Colorado 80225 Attention: Paul Seeley R&R Division or you may e-mail comments to Paul.Seeley@dhs.gov.

SUPPORTING RATIONALE FOR PROPOSED INITIATIVE

Public Assistance Program

Since 1993, the Public Assistance (PA) Program has funded the elevation or relocation of roads in the Devils Lake lakebed to reduce threats to life and improved property by maintaining public access to occupied residences. These actions have become increasingly more costly and difficult as the lake elevation continues its rise towards the spill elevation of approximately 1460 feet msl. Road grade raises that were initially costing \$10,000 to \$20,000 are now costing in the hundreds of thousands of dollars. Some roads require a grade raise disaster-after-disaster, with no end in sight. Other roads require costly re-routing.

The PA Program has initiated numerous innovations to alleviate the road network problems created by the continuing rising lake level. Applicants have been required to transfer assistance for the repair of inundated roads to other less vulnerable roads to strengthen the road system in the affected area. Riprap has been approved to protect road embankments subject to repeated wave action. Emergency grade raises have included enough freeboard to protect against wave action and limited lake level increases.

To further provide funding for these initiatives and to ensure maximum assistance for the restoration of public facilities impacted by inundation and ground saturation, FEMA Region VIII, in 1997, requested policy clarification by FEMA Headquarters. It was determined that,

“While facilities that are inundated or affected by excessive ground saturation may not be damaged, per se, they can be determined to be eligible for Stafford Act assistance if they lose their ability to function as they did prior to the declared disaster. As a result, we have concluded that a partial or complete loss of functionality may be considered damage under the Stafford Act and 44 CFR if the loss functionality occurred during the incident period.”

The policy clarification goes on to state,

“Eligible restoration work may include restoration of the facility at its existing location, transferring the function to an adjacent facility, relocation, to some other cost-effective alternative that will restore functionality lost during the incident period. An applicant also may choose to request approval of an improved or alternate project.”