

# **Responses to Red Lake Band of Chippewa Indians**

## **Comments on the Draft Report on the Red River Valley Water Supply Project Needs and Options**

**RED LAKE BAND**  
**of CHIPPEWA INDIANS**  
**RED LAKE NATION HEADQUARTERS**



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7 HEREDITARY CHIEFS

PO Box 550, Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-3378

September 26, 2005

Red River Valley Water Supply Project  
Bureau of Reclamation  
P.O. Box 1017  
Bismark, ND 58502-1017

Dear Sirs,

On behalf of the Red Lake Nation, a federally recognized tribal government, which stands to be adversely impacted by elements of the Red River Valley Water Supply Project, we offer the following comments to the Draft Report On Red River Valley Water Needs And Options. Our concerns are in several areas, which are related primarily to the bias that has been inherent in the development of this document, and secondly to the inadequacy of the reports on Population and Water Needs wherein future population and needs data has been inflated (as a direct result of that bias), as well as the inadequacy of the options and alternatives developed (also a result of inherent bias).

As a general comment, we understand that, in its simplest sense, this process has been designed, and is being followed, in order for the State of North Dakota to pursue its desires to usurp other water user's rights in order to justify taking their waters, for (quite possibly sole) use by North Dakota. It is no secret that from the inception and the first surveys of the State, it was well-recognized that the availability of water would be the most influential factor limiting development of the State. Despite this fact, North Dakota for the past 116 years has continued to develop beyond the means of the land (and its inherent waters) to sustain that growth. The State is now at a critical junction wherein it realizes that in order to continue to develop, it *must* get water from somewhere outside of its borders. From where, from whom, and despite what effects that may cause to the rightful users, they obviously care not. Moreover, questions of to what and at whose expense appear immaterial as well, since the State appears to feel that the taxpayers of the United States have a debt to the State and therefore should foot the State's bills in its quest to develop beyond the means of the land to sustain such. This attitude flies in the face of the traditional knowledge of the aboriginal inhabitants of this land, which teaches that as human beings, we are provided with what we need in terms of land and resources,

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## Response to Comment 1

The report is not biased. In fact, Reclamation established Study Review and Technical teams involving approximately numerous entities to monitor and participate in the Needs and Options Report development. Reclamation has solicited input from potentially affected states throughout the preparation of this report. The process has been open and public. All of the plans of study that guided preparation of the report were developed with input from stakeholders. These plans of study and results of analyses were discussed in detail at Technical Team meetings convened by Reclamation.

Two teams of stakeholders (Technical Team and Study Review Team) were formed to incorporate public involvement in study planning. Gubernatorial designees from states that could be affected by the Project and other representatives of federal, state, local agencies, tribes, and environmental groups were invited to serve on the teams. In 2003, the Study Review Team was combined with the Technical Team. Technical Team members reviewed and commented on plans of study and draft reports. Organizations and agencies whose representatives attended Technical Team meetings are listed in table 1.3.1. of the Final Needs and Options Report. The Draft Needs and Options Report was distributed to the Technical Team, the public, federal agencies, and potentially affected States for a 120-day review. Comments received from reviewers were given serious consideration and were used in preparing the Final Needs and Options Report.

Public involvement extended beyond the Technical and Study Review Teams. Reclamation, with the assistance of the North Dakota State Water Commission, conducted water users meetings in eight communities in the Red River Valley during October 2002. The purpose of these meetings was to present information about the studies being conducted for the Needs and Options Report and solicit the assistance of local communities in these efforts. This also gave the water users an opportunity to learn about previous Reclamation Red River Valley studies and to provide comments. Comments received during these meetings and during public scoping of the DEIS (draft environmental impact statement) were taken into consideration and assisted Reclamation in developing the options described in the Final Needs and Options Report.

Reclamation also disagrees with the comment about inflated population and water needs. Reclamation revised the *Report on Red River Valley Water Supply Project Needs and Options, Current and Future Population of the Red River Valley Region 2000 through 2050, Final Report* to provide additional clarification on population projections and identified where populations would reside in the future. Reclamation did use the “optimistic” population projection of 417,600 (table 9) in the 13 eastern counties in North Dakota, but this was only 15,100 more than the results with migration shown in table 8 or a 3.8% increase. The difference was 27,079 or 6.9% higher than the projections provided by Northwest Economics Associates.

Two water demand scenarios used in the Needs and Options Report provide adequate data to understand the relationship between option costs and water demands. Additional water demand sensitivity analyses may be done for the FEIS (Final Environmental Impact Statement).

It should also be noted that the Minnesota Department of Natural Resources comment letter included comments from the Minnesota State Demographic Center. Their concluding comment is as follows: “Despite my various criticisms, I should note that the “best estimate” projection is only about 26,000 more than the more conventional “trend migration” projection after 50 years, a difference of less than 5 percent. This is not a huge difference in the world of population projections.”

## Response to Comment 2

Reclamation disagrees with the conclusion that the process used to develop the Needs and Options Report was implemented to facilitate the State of North Dakota’s desire to usurp other water user’s rights. The Dakota Water Resources Act directed the Secretary of the Interior (which designated Reclamation) to conduct a comprehensive study of water needs and options to meet those needs for the Red River Valley. The Needs and Options Report was the exclusive responsibility of Reclamation.

## Response to Comment 3

The Draft Needs and Options Report does not make any statements about “taxpayers of the United States have a debt to the State and therefore should foot the State’s bills in this quest.” The financial analysis of options, as shown on pages 4-45 through 4-47 in the Final Needs and Options Report, assumes that a majority of project costs will be reimbursable by the local project beneficiaries. Further information is in the financial analysis included in Appendix C, Attachment 11, of the Final Needs and Options Report.

## Response to Comment 4

Regarding your comment advising the state (North Dakota) to accept the fact that they exist in an area where deficiencies exist in regards to water availability and that they should develop a plan to live with in their available water supply, this is not the scope of studies that Congress directed the Secretary of the Interior to complete.

and that it is not only unrealistic to expect more than what has been provided by the Creator, but that it is sheer folly to attempt to re-engineer nature to satisfy our own desires. Nor is it proper to simply take what you want while violating the needs and rights of others in doing so, despite whatever justification you can present. For these simple reasons alone, the Red Lake Nation is opposed to the State of North Dakota's attempt to stake a claim to our, or anyone else's waters. Certainly in this day and age, especially in light of recent examples of man's folly in attempting to conform nature to meet his needs, we think it would be much more advisable for the State to accept the fact that they exist in an area where deficiencies exist in regards to water availability, to plan around what is immediately available, and to adopt and utilize all available technological and policy measures to conserve, recycle, and re-use what is available, especially should a drought occur. Ultimately, as stewards of our waters, one thing we cannot do is to condone the State of North Dakota's attempts and desires to usurp the waters and the water rights of others.

#### Conflict of Interest and Bias in the EIS and Supporting Documents

The Council of Environmental Quality - Regulations for Implementing the National Environmental Policy Act (NEPA), under which constraints this report is *purportedly* written, in Sec 1506.5 (c) state that "It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to **avoid any conflict of interest.**" (Emphasis added.) However, in the case of this Draft Report on Red River Valley Water Supply Project (RRVWSP) the document is in essence being prepared for the Bureau of Reclamation (BoR) by the Garrison Diversion Conservancy District (GDCD), and this requirement is not being observed or followed.

The DWRA directly charges the Secretary of the Interior, acting through the BoR, to prepare the study. Specifically, Paragraph 8(b)(1) of the Dakota Water Resources Act states that:

**"The Secretary of the Interior shall conduct a comprehensive study of the water quality and quantity of the Red River Valley in North Dakota and options for meeting those needs."**

(Emphasis added)

Despite this congressionally mandated directive, it is not the Secretary being represented by the BoR that is writing the *Draft Report*, but rather it is essentially the GDCD (which has been improperly delegated by the State of North Dakota) that is preparing the report. However, the GDCD has no constitutional or statutory authority to represent the state. As you must be aware, the mission of the GDCD from its' inception has been to promote the completion of the Garrison Works (the Works). Perhaps even more troubling is the fact that the entities that have been contracted by the GDCD to prepare studies and reports that form the basis of the *Draft Report* are the very same contractors that the GDCD has used through the years, and continues to use, to slowly put together the pieces of the Garrison Works. Clearly, both the GDCD and the GDCD's contractors have a vested interest in any plan that could be used to complete the Garrison Works or any part of the Works.

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## **Response to Comment 5**

The Needs and Options Report was the exclusive responsibility of Reclamation. The Dakota Water Resources Act directed the Secretary of the Interior (which designated Reclamation) to conduct a comprehensive study of water needs and options to meet those needs for the Red River Valley.

## **Response to Comment 6**

See response to Comment 5.

## **Response to Comment 7**

The Governor of North Dakota has the authority to designate the Garrison Diversion Conservancy District to represent the State in this study. The North Dakota Office of Attorney General clarified this in a letter dated August 31, 2004 (Letter Opinion 2004-L-56).

As the lead federal agency, it is the BoR's responsibility to ensure that the *Draft Report* is prepared in such a way as to avoid any instances of conflict of interest which would serve to compromise the objectivity of the statement. Yet a review of the process involved in preparing this *Draft Report* indicates that there has been substantial conflict of interest involved, and thereby there has been very substantial bias introduced into the *Draft Report*. The facts are as follows:

1. The Red River Valley Water Supply Study (Red River Water Needs and Options Study) was initiated on December 21, 2000, six days after the Dakota Water Resources Act was passed, by a Study Management Team consisting of the Dakotas Office manager of the Bureau of Reclamation, the North Dakota State Engineer, and the manager of the Garrison Diversion Conservancy District.
2. At the second meeting of the Study Management Team on January 23, 2001, an official of Houston Engineering, submitted five task orders relating to the Red River Valley Water Supply Study on which Houston Engineering wanted to begin work.
3. Houston Engineering performed five of nine engineering tasks for the Red River Valley Water Supply Study.
4. Houston Engineering has a long and on-going history of contractual relationships with the North Dakota State Water Commission, the Garrison Diversion Conservancy District, the City of Fargo and others with a vested interest in a Red River Valley Water Supply Project.
5. The Drought Frequency Investigation of the Red River of the North Basin upon which the *Draft Red River Valley Water Needs and Options Report* is based was prepared by Leon Osborne of Meridian Environmental Technologies. Dr. Osborne also has a contractual history with North Dakota water development interests and developed the novel "wet future scenario" upon which the State bases its claim that its ineffective Devils Lake outlet is justified<sup>1</sup>.
6. The industrial water needs projections used in the *Draft Report on Red River Valley Water Needs and Options* was prepared under contract with the Garrison Diversion Conservancy District, which has a vested interest in the implementation of the Red River Valley Water Supply Project.
7. The Garrison Diversion Conservancy District contracted with its own private consultants to develop information for the Red River Valley Water Supply Study and

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<sup>1</sup> It is quite interesting to note that on one hand Dr. Osborne, in meeting the desires of the State of ND, formulated the "Future Wet Scenario" which was used to justify the recent construction of the State's Devil's Lake Outlet, while essentially at the same time predicting the drought scenario for 2050 with which the *Draft Report* is attempting to justify the State's desires to usurp other water user's rights in order to justify its desires to steal water from other areas and other watersheds.

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## Response to Comment 8

Reclamation disagrees with your conclusion that North Dakota State Water Commission and Garrison Diversion Conservancy District have had undue influence in the studies. The Needs and Options Report was prepared in an unparalleled open and public process including the formation of two stakeholder teams. See the response to comment 1 for a more detailed explanation.

Houston Engineering, Inc., was used by Reclamation primarily to estimate option costs. These estimates were peer reviewed, and to date Reclamation has received no comments critical of these cost estimates, although we have heard that options are too expensive.

## Response to Comment 9

Reclamation disagrees with your contention that Dr. Osborne's work on the drought frequency investigation for the Red River Valley studies should be questioned just because he worked on the Devils Lake Outlet studies that had results with which you disagree.

## Response to Comment 10

The North Dakota State University report written by Bangsund and Leistriz shows that historically value-added food processing has taken place in the Red River Valley, and this trend and the need for water would continue. The Scenario One water demand used the intermediate industrial water demand result, which follows historic trends. The high industrial water demand is more optimistic, but both scenarios are evaluated in the Needs and Options Report so reviewers can understand the sensitivity of the industrial demand as compared to water shortages and costs.

## Response to Comment 11

All work completed by Houston Engineering, Inc., through Garrison Diversion Conservancy District was done under federal oversight in response to task orders issued by Reclamation.

was reimbursed by the Bureau for those consulting costs. Other stakeholders had no voice in the selection of the contractors or in the development of the contracts.

8. The Draft Report on Red River Valley Water Needs and Options is based on two projected water needs scenarios, one of which was developed by participant municipalities having vested interests in a Red River Valley Water Supply Project.
9. The design criteria for options considered in the Draft Report on Red River Valley Water Needs and Options for meeting future Red River Valley water needs were developed by Houston Engineering.

Paragraph 8(b)(3) of the Dakota Water Resources Act specifies that:

“In conducting the study, the Secretary through an open and public process shall solicit input from gubernatorial designees from states that may be affected by possible options to meet such needs as well as designees from other federal agencies with relevant expertise.”

However, the process of developing this Draft Report, as well as the studies that form it's basis, has been anything but “open and public”, as evidenced by the following facts:

1. The Study Management Team knowingly and deliberately withheld from the designees of states that may be affected and other federal agencies as well as tribes with relevant expertise information regarding the time and location of Study Management Team meetings.
2. Although the Study Management Team discussed reimbursement of Garrison Diversion Conservancy District personnel for participation on the Technical Team for the Red River Valley Water Supply Study, neither the manager of the Garrison Diversion Conservancy District nor the Deputy Regional Director of the Bureau would answer when asked if the Conservancy District was being reimbursed for its expenses in participating on the Technical Team.
3. The designees of other states that may be affected and other federal agencies and tribes with relevant expertise were not consulted on or advised of the Garrison Diversion Conservancy District's contract with the Department of Agribusiness and Applied Economics at North Dakota State University for a report on future Red River Valley industrial water needs until after the report had been prepared.
4. The designees of other states that may be affected and other federal agencies and tribes with relevant expertise were not consulted on or advised of the contract with Meridian Environmental Technologies for a Drought Frequencies Investigation of the Red River of the North Basin until after the report had been prepared.
5. The designees of other states that may be affected and other federal agencies and tribes with relevant expertise were not consulted on or advised of the contract with the U. S. Geological Survey for an evaluation of the risk of biota transfer from Red River Valley Water Supply Project options involving the transfer of Missouri River



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## Response to Comment 12

Reclamation included the Scenario Two water demands in the Needs and Options Report at the request of water users. Reclamation believes that it is appropriate to disclose more information to the public about potential option costs.

## Response to Comment 13

All work completed by Houston Engineering, Inc., through the agreement with Garrison Diversion Conservancy District, was done under federal oversight in response to task orders issued by Reclamation. The task orders were for engineering design work authorized by DWRA. The design criteria developed by Houston Engineering, Inc., was reviewed by Reclamation and found to be adequate. We have not received technical comments about the inadequacy of the design document.

## Response to Comment 14

All gubernatorial designees from states that might be affected by possible options were invited to participate on one or both of the stakeholder teams established by Reclamation. States such as Minnesota and Missouri were active participants in most meetings, while other states chose to be less active. See response to comment 1.

## Response to Comment 15

Because of concerns raised, Reclamation developed new agreements with the State of North Dakota in accordance with the Dakota Water Resources Act (DWRA). As a result of internal review Reclamation also developed a new memorandum of understanding with the State, which was specific to the requirements in DWRA and made the State a co-lead on the environmental impact statement. The Study Management Team was disbanded after the memorandum of understanding was signed in November 2002.

## Response to Comment 16

The Garrison Diversion Conservancy District is authorized to expend federal funds as needed to administer the state of North Dakota Municipal, Rural, and Industrial water supply program. This includes any oversight activities of the Project (Red River Valley Water Supply Project), which is an authorized project under the Dakota Water Resources Act.

## Response to Comment 17

Interested parties had an opportunity to comment on the draft North Dakota State University industrial needs report. Members of the Technical Team were given opportunities to comment on specific plans of study for the Project but were not a part of the federal or state contracting process.

## Response to Comment 18

The Technical Team was given an opportunity to review the study plans for the drought frequency investigation. Members of the Technical Team were given opportunities to comment on specific plans of study for the Project but were not a part of the federal contracting process.

## Response to Comment 19

The Technical Team members reviewed the original plan of study for the USGS (United States Geological Survey) report *Risk and Consequence Analysis Focused on Biological Invasions Potentially Associated with Surface Water Transfers between the Missouri River and Red River Basins*. The USGS used its peer review process to review the draft report, which does not include the general public.

water to the Red River Valley until after the principal elements of the contract had been developed.

6. The results of the Draft Red River Valley Water Needs and Options Report were made available to the Garrison Diversion Conservancy District and the Lake Agassiz Water Authority at least three weeks before the report was made available to the designees of other states that may be affected and other federal agencies and tribes with relevant expertise.

As you will note, paragraph 8(b)(3) of the Dakota Water Resources Act makes no provision for the Garrison Diversion Conservancy District or the State of North Dakota to have a greater role in the Red River Valley Water Supply Study than any other stakeholders with relevant expertise, yet the Conservancy District and the State clearly dominated and exerted improper influence over the study and were privy to information not made available, or not made available at the same time or in a timely manner, to the designees of other states, federal agencies and tribes.

In light of all of the above facts, the evidence is both clear and irrefutable that the Secretary of the Interior did **not** conduct the study of Red River Valley water needs and options for meeting those needs as contemplated in Paragraph 8(b)(1) of the Dakota Water Resources Act of 2000, and that the study was **not** conducted through the open and public process specified in Paragraph 8(b)(3) of the Act.

Two component studies form the basis of the Needs and Options Report, a study to determine projected Population Growth, and a study to determine project future Water (usage) Needs. Both of these studies have been inflated, beginning with the Population Study, then subsequently further compounded in the Water Needs study which is in large part based upon the future population figures.

#### *Inadequacy of the Population Study*

In preparing the *Current and Future Population, Red River Valley Region 2000 through 2050*, the Bureau of Reclamation/GDCD was apparently not satisfied to utilize the figures and expertise of the Census Bureau, whose projections indicate a 12.7% growth rate for the period of 2000 to 2050. Nor was it satisfied to rely upon the figures provided by its contractor, the Northwest Economic Associates, which produced a rather inflated figure of 27.7% growth. Rejecting both of these sources, along with observance of any established demographic principles, realistic assumptions and objective data analysis, the Bureau instead provides entirely unrealistic figures of 43.2% growth for Scenario I, and an even further inflated figure of 104% for Scenario II of the 50-year period of study. Scenario II was, of course, developed at the request of the municipalities (who also have a vested interest in biasing the report to meet their wants). However, rather than attempt to define what portion of the increased growth reported by the municipalities stemmed from rural-to-urban shift and/or from a tide of immigration which has obviously dwindled as a result of new post-911 immigration policies, the Bureau simply increased the

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## Response to Comment 20

Garrison Diversion Conservancy District and Lake Agassiz Water Authority did not receive a copy of the Draft Needs and Option Report three weeks earlier than any other entities.

## Response to Comment 21

Reclamation disagrees with the contention that Garrison Diversion Conservancy District and the State of North Dakota exerted improper influence over the study. The Draft Needs and Options Report was distributed for a 120-day review. Relatively few technical comments were received.

## Response to Comment 22

The simplest but most unreliable population projection scenario is the trend analysis based on U.S. Bureau of Census estimates of past population. Use of trend analysis methodology assumes that past patterns of growth or decline will continue, ignoring any changes in underlying demographic characteristics, such as the age structure and ratio of males to females in the region. The populations for some Red River Valley counties were projected to drop to zero using the U.S. Census trend methodology, which is clearly not likely to occur. Trend analysis is the least rigorous projection technique, and these projections are the least likely to be accurate.

Reclamation revised the *Report on Red River Valley Water Supply Project Needs and Options, Current and Future Population of the Red River Valley Region 2000 through 2050, Final Report* to provide additional clarification on population projections and identified where populations would reside in the future. Reclamation did use the higher population projection of 417,600 (table 9) in the 13 eastern counties in North Dakota, but this was only 15,100 more than the results with migration shown in table 8 or a 3.8% increase. The difference was 27,079 or 6.9% higher than the projections provided by Northwest Economics Associates.

It should also be noted that the Minnesota Department of Natural Resources comment letter included comments from the Minnesota State Demographic Center. Their concluding comment is as follows: "Despite my various criticisms, I should note that the "best estimate" projection is only about 26,000 more than the more conventional "trend migration" projection after 50 years, a difference of less than 5 percent. This is not a huge difference in the world of population projections."

Two water demand scenarios used in the Report provide adequate data to understand the relationship between option costs and water demands. Additional water demand sensitivity analyses may be done for the FEIS (Final Environmental Impact Statement).

population figures for the municipalities without even attempting to adjust any other figures downward, ultimately resulting in a grossly over-inflated population projection.

Therefore, despite the unreliability of projecting population growth 50 years into the future, and despite the recommendations by the Technical Team to display the population projections at 10-year increments showing the potential range of error for each period, the *Draft Report* grossly inflates population growth, without giving anyone any indication of the uncertainties involved in the projections.

#### *Inadequacy of the Water Needs Study*

The Water Needs Study involves several components, Per Capita Water Use, Water Conservation, and Industrial Water Needs. Based directly upon the inflated population projections cited in the Population Report (above), and failing to envision any substantive technological or policy considerations that could be employed to increase the efficiency of water use amidst dwindling supplies, the Draft Report simply assumes that:

“The water demand analysis assumes that historic water use represents future water demand on a per capita basis.” (Draft Report, p. 2-29)

Furthermore, based upon the Bureau’s *Water Conservation Potential Assessment Final Report* (WCPAFR) the *Draft Report* states that:

“Per capita water savings range from 6.54 to 9.02 gallons per person.  
(Draft Report, p. 2-40)

However, the Bureau fails to indicate that when it submitted this report to its independent consultant for review, the consultant “...put the total savings, or conservation potential, in the range of 15 percent or more, a large portion of which would be due to the plumbing code”(Maddaus, 2004). Nonetheless, the *Draft Report* uses water conservation savings of half that—and fails to mention the report or its independent consultant, or even to list a reference to them in the Literature Cited, and the report goes on to summarily discount water conservation measures, including such measures as water conservation pricing. Furthermore, the WCPAFR defines “economically feasible” water conservation measures as those measures that could be implemented at a cost equal or less than the cost of the least costly alternative in the Phase II Report (In Basin, Enlarged Lake Ashtabula) and no attempt is made to evaluate conservation measures in comparison to any of the other Garrison Diversion alternatives.

The third and most influential component of the Water Needs Study is that of Industrial Water Needs. The Draft Report dismisses the Bureau’s own original analysis of future industrial water needs, and defers instead to the figures developed by Bangsund and Leistritz (2004) in their report furnished *not* under contract to the Secretary, but under

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## Response to Comment 23

Reclamation used historic per capita water use, as agreed to by the Technical Team, to develop future water demands. However, Reclamation also reduced these historic data based on the results from the *Water Conservation Potential Assessment, Final Report* (WCPA) (Reclamation 2004b) report.

## Response to Comment 24

Water conservation is included in all Project options as a feature (see chapter four, Final Needs and Options Report). Water conservation water savings used in the Needs and Options Report are based on results of the WCPA. The WCPA evaluates potential water conservation measures and identifies reasonable and achievable water reduction activities. The draft WCPA report was by stakeholders and peer reviewers and was modified in response to comments. The only major peer review comment that was not incorporated related to washing machines that are under development. We felt that was too speculative to include in the water savings estimate.

The water systems in the Red River Valley already have made significant progress on water conservation in the last 10 to 15 years. This is due to the direct actions of the water systems in terms of metering service connections, monitoring water use, repairing and replacing pipelines, and effectively managing water systems. Regulatory changes have mandated installation of water efficient plumbing fixtures that have saved water. Water savings in the last 10 to 15 years are estimated between 5.0 gpc/d and 37.3 gpc/d or 4.3% to 33.2%, depending on the water system. These current water conservation savings are the foundation for identifying reasonable water conservation measures to pursue through 2050.

## Response to Comment 25

The Department of Agribusiness and Applied Economics, North Dakota State University, has the expertise to investigate the development of agribusiness in the Red River Valley. Their report was the best available information on the topic. The *Industrial Water Needs Assessment for the Red River Valley Water Supply Project* (Bangsund and Leistritz 2004) report shows that historically value-added food processing has taken place in the Red River Valley, and this trend and the need for water would continue. The Scenario One water demand used the intermediate industrial water demand. This water demand is consistent with historic trends. Although the high industrial water demand is more optimistic, both scenarios are evaluated in the Needs and Options Report. This allows reviewers to understand the sensitivity of industrial demand in comparison to shortages and costs. The results of Reclamation's estimates of future industrial demand were used in the low industrial water demand, which was not used in the option analysis, because it was lower than historic trends.

contract to the GDCD. As a result, the Bangsund and Leistriz study, is not only based upon the inflated population figures of the Population Report (as discussed prior), but is also largely based upon the “needs” of the GDCD and the Red River Valley water users on the North Dakota side, all of whom have a very vested interest in the outcome of the study. Furthermore, the stated “needs” are not really needs at all, but rather would be more properly defined as “wants”. Moreover, a large part of the “want” for North Dakota is to find some means of justifying the completion of the Garrison Works as originally identified in the 1950’s era Garrison Diversion Plan for some purpose(s) other than irrigation, as the federal government has clearly indicated that it would not justify completion of the project works for the sole purpose of irrigation. Hence, the State is attempting, through this process, to justify the completion of the Garrison Works for the *purported* purposes of supplying (overtly inflated) “needs” for Municipal, Residential and Industrial Supply. We have no doubt, that after the expenditure of \$1 to \$1.5 billion of US taxpayer dollars to provide a system for North Dakota to provide for its inflated supply wants “in case of a drought”, that they will not be satisfied to let that system sit idly should a drought not occur. In such case, be assured, that North Dakota will begin clamoring to utilize the idle works to supply irrigation. After all, the capacity will be there, and it would be simply a shame to let the Works sit idle and “stand as monuments that waste taxpayers’ dollars.”<sup>2</sup>

### *Bias in the development of the Options and the Alternatives*

Every aspect of the Red River Valley Water Supply Study having a significant influence on future water needs and options was systematically and fundamentally biased to inflate those needs to make options involving the delivery of Missouri River water to the Red River Valley utilizing the Garrison Diversion project appear to be more feasible. For example:

- The *Draft Report* is based on an unrealistically long 50-year planning horizon which was utilized to inflate future water needs, despite wide recognition of the unreliability of population and water use projections that far into the future.
- The *Draft Report* is based on single point Scenario One and Scenario Two year 2050 population and water use projections, rather than on a series of projections at shorter intervals that would show the diminishing reliability of those projections and allow the public, decision makers and water facility managers to make informed evaluations about realistic needs.

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<sup>2</sup> These are the very words of Garrison Diversion Conservancy District Chairman Norman Haak, in his May 27, 1999, testimony before the Senate Committee on Energy and Natural Resources, Subcommittee on Water and Power, when he attempted to explain the GDCD’s support for the passage of the Dakota Water Resources Act of 1998 with an authorization of 57,900 acres for irrigation development. The act was also seen as a means of resolving the awkward existence of nearly 120 miles of canal cutting across the middle of the State with no current function, which had been built by the GDCD despite the repeated calls for postponement of construction of those canals until the numerous serious issues associated with the Garrison Diversion project were resolved.

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## Response to Comment 26

Reclamation disagrees with your conclusion that the water needs disclosed in the Needs and Options Report biases decision-makers to selecting options importing Missouri River water. All seven of the options developed in the Needs and Option Report provide adequate water to serve the Red River Valley through 2050. In fact, from a cost standpoint, the three least costly options were very similar in cost, North Dakota In-Basin, Red River Basin, and GDU Import to Sheyenne River Alternatives. The first two options are in-basin and the latter would import Missouri River water.

Reclamation disagrees with the conclusion that the estimated water needs preclude the selection of No Action Alternative. Hydrologic analysis of the current 2005 water demands reveals that significant water shortages in the Red River Valley would occur during a drought similar to the 1930s. The conclusion from that analysis is that the Red River Valley has a problem now and potentially a much worse problem in the future even with modest growth. Planning a water project capable of delivering water to meet a projected shortage is a way of managing risk.

- Population estimates by independent entities with demographic expertise were rejected for the *Draft Report's* Scenario One population projection.
- The participant municipalities' inflated population projections were incorporated for the *Draft Report's* Scenario Two population projection.
- Because future industrial water needs cannot be reliably estimated more than 10 years in the future, the *Draft Report* is not based on an objective, scientific analysis of those needs, but simply on hypothetical scenarios and speculation.
- The potential contributions of water conservation to reducing future shortages were minimized or summarily dismissed in the *Draft Report*.
- Significant MR&I water shortages would not be expected to occur in the Red River Valley by 2050 even with the inflated and speculative demands generated for the *Draft Report*, so the development of options was based on the assumption that another 1930s-type drought will occur by 2050.
- Although all of the options identified in the *Draft Report* for meeting future Red River Valley MR&I water needs are based on the presumption that a 1930s type drought will occur by 2050, nowhere in the *Draft Report* is there any consideration of how the implementation of drought contingency measures could reduce shortages during droughts.
- Although the drought frequency report upon which the *Draft Report* is based concludes that a drought of the magnitude of the 1930s drought is a realistic and statistically significant representation of the most extreme drought anticipated until 2050, and although the *Draft Report* states that it utilized a period including the 1930s drought for modeling purposes, it dismissed consideration of drought contingency measures by claiming that they "must be reserved for unforeseen events."
- Rather than considering that a 1930s type drought could occur any time before—or after—2050, the *Draft Report* assumed that it would occur just prior to 2050, when the inflated Scenario One and Scenario Two water needs would be the greatest, in order to maximize the shortages.
- None of the options identified in the *Draft Report* for meeting future Red River Valley water needs is designed to be implemented in increments as water needs do—or do not—materialize. All of the alternatives developed for the report would require a massive amount of infrastructure development to be built in advance, at an enormous expense to taxpayers, despite the unlikelihood of such an event actually occurring.
- None of the Alternatives takes into consideration the future needs of users outside the State of North Dakota (other than in the cities of Moorhead and East Grand Forks) who currently rely upon the waters that North Dakota seeks



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to access, be they within the Red River Basin, or within the Missouri Basin. The study simply does not anticipate, or provide any analysis of, the needs of the reliant population (apart from North Dakota residents) or the decreased availability of water that may exist under a drought scenario.

- Alternatives such as the Lake of the Woods (Pipeline) and the Red River Basin (Pelican River Aquifer) were developed and incorporated without proper consultation of tribes whose water rights would stand to be abrogated. The Red Lake Nation, as well as numbers of our relatives of the First Nations in Canada all have hunting and fishing rights, as well as other usage rights on the Lake of the Woods. These rights have existed since before the creation of the States of Minnesota and North Dakota. Despite this, tribes were not properly invited to participate in the process from its inception, and there was no substantial attempt to include them, consult with them, or to address their concerns in the development of the *Draft Report*, despite the fact that the *Bureau of Reclamation is bound by its Federal Trust Responsibility to consult with tribes and to protect tribal resources.*

As we stated before, appropriate Minnesota tribes were not invited into the process under which the *Draft Report* was developed. However, in Red Lake's case, a Red Lake Nation Department of Natural Resources staff person, namely Chuck Meyer, became aware of the process through a knowledgeable colleague, and essentially invited himself to attend the last few meetings of the technical review team, just prior to the release of the population and water needs reports. Immediately, Mr. Meyer informed Bureau staff that it was the duty of the Bureau to present their plans to the Red Lake Tribal Council and to get tribal input. However, it took the Bureau over 10 months to finally come to the Red Lake Nation and explain their plan. After the Bureau's presentation, where they heard some questions and comments from the Tribal Council and members in regards particularly to the Lake of the Woods Alternative, Mr. Meyer had a quick conversation with the Bureau staff. Mr. Meyer says that during that conversation Bureau staff displayed a callous and dismissive attitude by stating that some of the comments were, in essence, irrelevant. It is very clear that the Bureau's history of previously dealing only with tribes under western water law left it totally unprepared to deal on a proper and understanding basis with those tribes who still retain riparian water rights. Furthermore, it appears that they are unprepared to understand, or try to understand, the cultural and spiritual ties of the Anishinabe to water. Unfortunately, without even at least a precursory understanding of this spiritual tie between the people and the water, it will be impossible for the Bureau to adequately weigh and compare the impacts of alternatives such as the Lake of the Woods Alternative. Yet the fact that, because of their mindset, Bureau and GDCD staff cannot easily understand or quantify such spiritual and cultural issues does not mean that this spiritual tie is not real to the people of the Red Lake Nation, or any other tribal person(s). Furthermore, it does not justify the dismissal of

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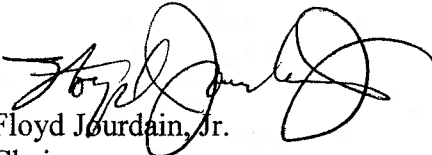
## Response to Comment 27

Comment noted.

appropriate consideration of the cultural and spiritual implications of trespassing on Native American rights and resources.

Ultimately, an objective review of the evidence clearly indicates that the Draft Report was not properly prepared by the Secretary acting through the Bureau of Reclamation, as was specified in the DWRA. Furthermore, an in-depth analysis of the DWRA, the history of the Garrison Diversion Project and all of its various reformulations (including the DWRA), and most importantly the facts surrounding the development of the Draft Report itself clearly indicate that there has been undue influence in both the report, and in the studies that the report is based upon, exerted by the State and the GDCD as well as by their contractors. This situation has introduced significant bias into the report and the process that led to its development. Such conflicts of interest are in direct violation of the intent of the National Environmental Policy Act, and are specifically in violation of Congress' intent as evidenced by the very language of the DWRA. For these and many other reasons, which we simply and unfortunately do not have sufficient time to address at this point in time, the Bureau should declare this Draft Report to be invalid. Furthermore, the process to develop a meaningful report, with meaningful analysis based upon reasonable projections and realistic demands, should be re-started from the very beginning. Moreover, in doing so, Tribes and other stakeholders must this time have a meaningful place and say on the Technical Steering Team as well as the Project Review Team.

Respectfully Submitted,

  
Floyd Jourdain, Jr.  
Chairman

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## Response to Comment 28

Reclamation disagrees with your conclusion that the study process should start over. Reclamation distributed the Final Needs and Options Report in November 2005 and released the Draft Environmental Impact Statement on the Red River Valley Water Supply Project in December 2005 for public review. Congress incorporated deadlines into the authorizing legislation that requires Reclamation to release reports on schedule.

